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No. 118585

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**IN THE  
SUPREME COURT OF ILLINOIS**

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IN RE: PENSION REFORM LITIGATION

DORIS HEATON, *ET. AL.*, PLAINTIFFS-APPELLEES

*v.*

BRUCE RAUNER, GOVERNOR OF ILLINOIS, *ET. AL.*, DEFENDANTS-APPELLANTS

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On Direct Appeal Pursuant to Supreme Court Rule 302(a)(1) from the  
Circuit Court for the Seventh Judicial Circuit, Sangamon County  
The Honorable John W. Belz, Presiding

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF  
DEFENDANTS-APPELLANTS**

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**FILED**

JAN 14 2015

9

**SUPREME COURT  
CLERK**

Pursuant to Illinois Supreme Court Rule 345, the Civic Federation respectfully moves this Honorable Court for leave to file the accompanying *amicus curiae* brief *instanter*, and states the following in support:

### INTRODUCTION

1. The Civic Federation is an independent, non-partisan government research organization working to maximize the quality and cost-effectiveness of government services in the Chicago region and the State of Illinois. The Civic Federation publishes reports and commentary about local government tax policies, government services, and public expenditures. The Federation's new research institute, the Institute for Illinois' Fiscal Sustainability, examines a wide range of fiscal issues relating to the State of Illinois, including and directly related to this litigation, reports on pension funding and reform. The Federation's national reputation for expertise in pension funding and reform has been earned through years of in-depth research and analysis of employee retirement systems statewide.

2. The Civic Federation was founded in Chicago in 1894 by several of the City's most prominent citizens including Jane Addams, Bertha Palmer and Lyman J. Gage to address deep concerns about the economic, political and moral climate at the end of the 19th century. The Civic Federation evolved during the 20th century to become a thought leader and advocate in Illinois for governmental fiscal responsibility. The role of the Civic Federation has continued to expand in the 21st century as a partner of Illinois State and local governments to improve their efficiency, effectiveness and accountability.

## ARGUMENT

### **I. AMICUS AND ALL ILLINOIS RESIDENTS WILL BE AFFECTED BY THE RULING IN THIS CASE.**

3. This action seeks to invalidate Public Act 98-0599, commonly referred to as Illinois Pension Reform Legislation, which was signed into law on December 5, 2013. Illinois Pension Reform Legislation creates a sustainable solution to the pension crisis that will allow the State of Illinois to meet its pension obligations while still maintaining necessary and essential governmental services. The circuit court granted plaintiffs' joint motion for partial summary judgment and judgment on the pleadings as to the affirmative defense and found Public Act 98-0599 unconstitutional. The financial consequences of that ruling severely impact Illinois's long-term financial stability.

4. Illinois has the most underfunded retirement system in all the fifty states. By the end of fiscal year 2014, the unfunded liability of Illinois's five retirement systems was \$104.6 billion based upon the market value of assets.

5. Illinois's pension system is currently broken and unsustainable.

6. In recent years, the State of Illinois has attempted to accommodate increased pension contributions by significantly increasing income taxes and maintaining a large backlog of unpaid bills that reached nearly \$9 billion in fiscal year 2012. However, even these actions could not generate enough funding to cover the cost of the pensions.

7. The General Assembly was confronted with a broken pension system that called out for reform. Public Act 98-0599 was a collaboration of Illinois state leaders to fix the pension system and to rehabilitate the financial condition of the State.

8. Illinois Pension Reform will strengthen the financial viability of the pension system while still permitting adequate funding in health, education, and infrastructure.

9. All of the citizens of Illinois will be impacted by this litigation as the future financial condition of the state and the ability of the state to provide necessary and essential services is at risk if the Circuit Court's decision is affirmed.

**II. AMICUS HAS ECONOMIC EXPERTISE THAT PROVIDES AN INFORMED PERSPECTIVE ON THE PUBLIC POLICY SERVED BY PENSION REFORM AND THE IMPACT THIS LITIGATION WILL HAVE ON THE FUTURE FINANCIAL STABILITY OF ILLINOIS.**

10. This case raises issues of great importance regarding the ability of the state to meet its future pension obligations while still providing necessary and essential governmental services. Amicus wishes to assist the Court by supplying information related to the statute at issue, the purpose behind the statute, and the economic impact of the statute on the long term financial condition of Illinois.

11. Amicus can offer unique insight relevant to the issues in this case due to its long history of expertise in governmental funding and budgets. The Civic Federation is a 116 year-old government research organization dedicated to improving the state's decision making process by providing timely fiscal policy analysis and budget recommendations to state officials.

12. Amicus publishes reports and commentary about government tax policies, government services and public expenditures in the state of Illinois, including issues directly related to this litigation.

13. Amicus has extensively studied the impact of underfunded pension obligations on the fiscal health of Illinois and other states. Amicus has published reports

on pension funding, estimated the accumulated liabilities of the pension system, and suggested reforms that could improve the fiscal health of Illinois.

14. Amicus wishes to assist the court by offering its expertise in the areas of pension funding and reform in order to accurately portray the current fiscal state of Illinois and to provide information to the court regarding the public policy consequences of this litigation.

15. Amicus seeks the opportunity to highlight the negative effect that affirming the circuit court's decision will have on the financial condition of Illinois and to illustrate why this Pension Reform Legislation is both necessary for the financial stability of the state and constitutional under the Illinois Constitution.

#### CONCLUSION

16. The amicus seeks to assist the Court in understanding the scope and economic impact of the statute in question, the connection between the statute and Illinois's fiscal sustainability and the broader public interests which rationally support the legislation. Therefore, the Civic Federation respectfully request leave to file the accompanying *amicus curiae* brief instanter.

Dated: January 12, 2015

Respectfully submitted,

THE CIVIC FEDERATION

By: 

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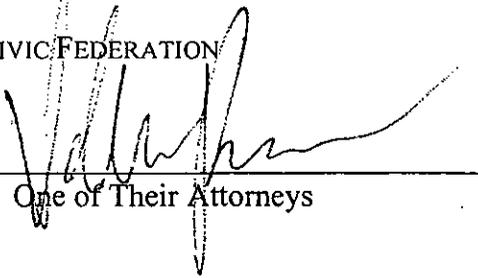
TO: See attached Certificate of Service

PLEASE TAKE NOTICE THAT on January 12, 2015, we caused to be filed with the Clerk of the Supreme Court of Illinois, a Motion for Leave to File *Amicus Curiae* Brief on behalf of The Civic Federation.

Respectfully submitted,

THE CIVIC FEDERATION

By:

  
One of Their Attorneys

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**FILED**

JAN 14 2015

**SUPREME COURT  
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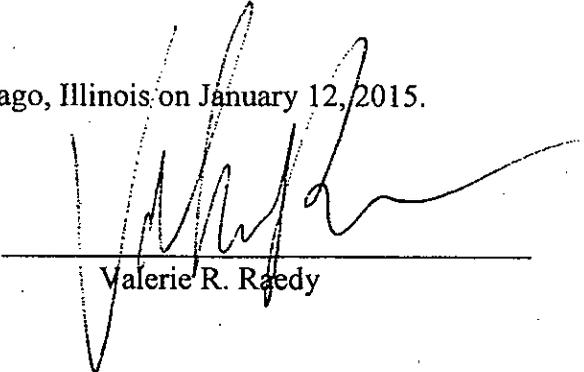
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**FILED**

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**SUPREME COURT  
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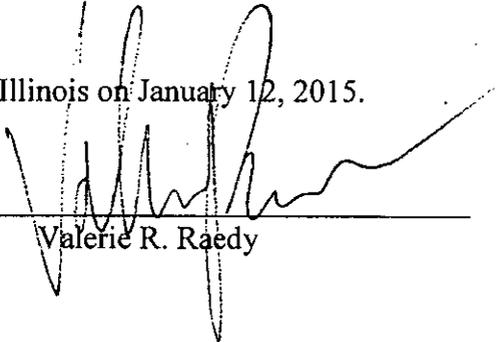
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---

**ORDER**

THIS CAUSE, coming to be heard on the Motion of THE CIVIC FEDERATION for Leave to File *Amicus Curiae* Brief, the Court being fully advised in the premises, IT IS ORDERED:

The motion is ALLOWED / DENIED.

Dated: January \_\_, 2015

ENTER:

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The Honorable John W. Belz, Presiding

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**BRIEF OF THE CIVIC FEDERATION AS *AMICUS CURIAE* IN SUPPORT OF  
DEFENDANTS-APPELLANTS**

---

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**POINTS AND AUTHORITIES**

**I. THE ILLINOIS PENSION REFORM LEGISLATION WAS A REASONABLE AND NECESSARY EXERCISE OF THE POLICE POWER IN ORDER TO CREATE THE BENEFIT OF A SUSTAINABLE AND FUNDED PENSION SYSTEM. THE LEGISLATION NEITHER DIMINISHED NOR IMPAIRED THE BENEFIT OF MEMBERSHIP IN THE PENSION SYSTEM ..... 5**

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## STATEMENT OF INTEREST

This Amicus Brief is filed on behalf of the Civic Federation, an independent, non-partisan research organization that provides analysis and recommendations on finance issues for the State of Illinois and its local governments. The history of the Civic Federation demonstrates a unique commitment to assist the State of Illinois and its municipalities in achieving economic stability. The Civic Federation was founded in Chicago in 1894 by several of the City's most prominent citizens including Jane Addams, Bertha Palmer and Lyman J. Gage to address deep concerns about the economic, political and moral climate at the end of the 19th century. The Civic Federation evolved during the 20th century to become a thought leader and advocate in Illinois for governmental fiscal responsibility. The role of the Civic Federation has continued to expand in the 21st century as a partner of Illinois State and local governments to improve their efficiency, effectiveness and accountability. *See e.g., People ex rel Devine v. Murphy*, 181 Ill. 2d 522, 535 fn. 1 (1998) (Civic Federation Task Force Report is legislative history for amendments to Property Tax Code regarding judicial review of property tax assessments).

The Civic Federation respectfully submits that it is an appropriate amicus curiae in this case. As part of its analysis of the fiscal health of the State of Illinois, the Civic Federation has examined one of the leading factors in the decline of Illinois' fiscal condition: the public pension crisis. The Civic Federation has researched extensively the impact that the instability of the State's public employee pension systems has on government finance. Further, the Civic Federation publishes research reports on the cost

to the taxpayers and the State itself of public employee benefits, and the Civic Federation generates annual statements on the status of local public pensions and those of the State of Illinois.

In 2008, thanks in part to a grant from the John D. and Catherine T. MacArthur Foundation, the Civic Federation established the Institute for Illinois' Fiscal Sustainability which examines fiscal issues relating to the State of Illinois with a mission to improve the State's decision-making process.<sup>1</sup> As part of this mission, in order to gather relevant facts, the Civic Federation collaborates with, among others, the Governor's Office of Management and Budget, the Illinois Department of Revenue and the Illinois Office of the Comptroller. Based upon its consultation with these groups, in October of 2014, the Civic Federation published a review of the State of Illinois Enacted FY2015 Budget. This report continues the Civic Federation's examination of steps required for the restoration of fiscal solvency to the State's finances, and significantly, the report focuses on the unfunded liability of the State's five retirement systems. Accordingly, the Civic Federation respectfully suggests that, based upon its experience and research, it can provide clarity for the Court to assist it in the decision making. Further, the Civic Federation can apprise the Court of the economic implications of the decision before it.

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<sup>1</sup> The Civic Federation also has studied extensively the impact of underfunded pension obligations and other obstacles on the fiscal health of the State's cities, counties and subdivisions. *See also* THE PEW CHARITABLE TRUSTS, AMERICA'S BIG CITIES IN VOLATILE TIMES MEETING FISCAL CHALLENGES AND PREPARING FOR THE FUTURE 20 (2013), available at <http://www.pewtrusts.org/~media/Assets/2013/11/11/AmericasBigCitiesinVolatileTimes.pdf>.

The Civic Federation reviewed with concern the decision of the Circuit Court that summarily declined to consider the Defendants' evidentiary submissions in support of the Pension Reform Legislation (sometimes, the "*Legislation*"), holding that the Public Law 98-0599 is unconstitutional as a matter of law. In the following pages, the Civic Federation will summarize the research that demonstrates the necessity for the Legislation to preserve the very purposes of State government, including the provision of essential and necessary governmental services and infrastructure and to provide sustainable and affordable pension benefits. Further, the Civic Federation will explain, from its unique perspective, how, as a result, the Legislation is consistent with the Constitution of the State of Illinois, including Article XIII Section 5 ("the Pension Clause").

#### **ISSUES PRESENTED**

1. Whether the Pension Reform Legislation which strengthened the Pension System to create sustainable and funded benefits impermissibly impaired or diminished the benefits of membership in the Pension System.
2. Whether the Pension Reform Legislation was a valid exercise of the State's inherent sovereign authority.

#### **PREFACE TO ARGUMENT**

Agreeing with the reasons for reversal cited by the Defendants-Appellants, the Civic Federation submits the following additional points to assist the Court:

1. Publicly available research clearly demonstrates that the Illinois Pension Legislation was necessitated by the *inability* of the State to satisfy pension obligations without adjustment, not an *unwillingness* to pay.

2. Without the reasonable modification designed to strengthen pension terms embodied in the Pension Reform Legislation, the State will be unable to afford to satisfy both the pension system and the appropriate funding of essential governmental services and infrastructure, its mandated governmental mission necessary for protection of the health, safety and welfare of its citizens. Additionally, without a resolution to the policy uncertainty surrounding the pension issue, the state's business climate cannot improve sufficiently with a consequent negative impact on the State's ability to generate revenue.

3. The Illinois Pension Reform Legislation must be upheld against challenges first because it in reality did not diminish or impair the pension system and second in order to satisfy the overriding mandate of a higher public purpose. The findings of the General Assembly in regard to the financial condition of the pension system relative to the need for the Legislation are entitled to due deference not afforded below and the presumption of the Legislation's constitutionality further mandates this result.

#### **STATEMENT OF FACTS**

The Civic Federation adopts the facts as set forth in the Brief of the Defendants-Appellants subject to clarification and expansion as set forth below.

## ARGUMENT

I. THE ILLINOIS PENSION REFORM LEGISLATION WAS A REASONABLE AND NECESSARY EXERCISE OF THE POLICE POWER IN ORDER TO CREATE THE BENEFIT OF A SUSTAINABLE AND FUNDED PENSION SYSTEM. THE LEGISLATION NEITHER DIMINISHED NOR IMPAIRED THE BENEFIT OF MEMBERSHIP IN THE PENSION SYSTEM

A. The Terms of the Legislation are Reasonable Especially in View of the Financial Condition of the State

Research conclusively demonstrates that the Pension Reform Legislation is a reasonable and necessary exercise of the State's police power that is essential to address the unprecedented crisis confronting the pension system and, indeed, the entire state. The extent and implications of the Illinois pension shortfall has been studied rigorously by the Civic Federation. Specifically, the Civic Federation has reviewed the growing percentage of General Funds<sup>2</sup> dollars required to meet pension benefits and its devastating effect both on Illinois' credit rating and the relative attractiveness of the business climate in Illinois. The most recent analysis of the Illinois pension shortfall and the resultant fiscal emergency caused by the diminished capacity to fund essential governmental services and infrastructure may be found in the Civic Federation's analysis of the State of Illinois Enacted FY2015 Budget. *See* THE INSTITUTE FOR ILLINOIS' FISCAL SUSTAINABILITY AT THE CIVIC FEDERATION, *State of Illinois Enacted FY2015 Budget: A Review of the Operating and Capital Budgets for the Current Fiscal Year* (Oct. 9, 2014),

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<sup>2</sup> The General Funds receive general tax revenues not dedicated to a special government enterprise and provides the resources necessary to sustain the day to day activities and administrative and operating expenses of the State.

[http://www.civicfed.org/sites/default/files/REPORT\\_StateofIllinoisEnactedBudgetFY2015.pdf](http://www.civicfed.org/sites/default/files/REPORT_StateofIllinoisEnactedBudgetFY2015.pdf) (“*Civic Federation FY2015 Budget Analysis*”).

The State’s General Funds contribution to the State of Illinois’ five retirement systems is \$6.05 billion in FY2015 or 19.7% of projected State-source General Funds revenues of \$30.6 billion. When the \$1.5 billion of principal and interest payments due on previously issued pension bonds is included, General Funds pension costs are \$7.5 billion or 24.7% of State-source revenues. A substantial portion of the liability of the five Illinois retirement systems is unfunded. By the end of FY2014, the unfunded liability of the five systems was \$104.6 billion based upon the market value of assets and the combined funded ratio was 42.9%. This means the amount of money in the pension system funds is sufficient to pay only 43 cents on the dollar of projected obligations. According to the Pew Center on the States, Illinois has the most underfunded retirement systems of any state and according to Moody’s Investors Service, the largest pension burden relative to state revenues. See THE PEW CENTER ON THE STATES, *The Widening Gap Update* (June 2012), <http://www.pewstates.org/state-pensions-update>; MOODY’S INVESTORS SERVICE, *Illinois State and Local Governments Face Daunting Pension Challenges*, Sept. 5, 2014. The growth in the unfunded liability is attributable to various causes, including the recent economic downturn in the financial markets resulting in investment losses for the pension funds, but is mainly due to decades of inadequate state funding. In addition, the unfunded liability has increased because of enhanced benefits and changes in mortality rates and other factors. See COMMISSION ON GOVERNMENT FORECASTING AND ACCOUNTABILITY, *Illinois State Retirement Systems: Financial Condition as of June 30, 2013*, p. 31 (March 2014),

<http://cgfa.ilga.gov/Upload/FinCondILStateRetirementSysFY13Mar2014.pdf>.

Regardless of the causes, the fact is the General Assembly was confronted with a pension system that was broken such that any “benefits” flowing from membership were diminished and impaired to the point of being illusory at best. It is of paramount importance for the General Assembly to deal with the problem to rehabilitate the fiscal condition of the State and repair the system so that benefits are achievable and no longer impaired.<sup>3</sup>

Failure to address the pension problems and failure to provide realistic benefits will have disastrous effects on the State of Illinois. A recent J.P. Morgan study has concluded that, for Illinois to pay its scheduled pension contributions, debt service for outstanding pension bonds, the current underfunding of pension obligations (\$100 billion) and retiree healthcare costs would require level payments equal to 40% of the State’s revenue over 30 years coupled with a 6% rate of return on pension-invested assets.<sup>4</sup> The J.P. Morgan study also notes that Illinois has the largest pension deficit and most troubled funding situation of all the fifty states. *Id.* At the same time, there is demand for Illinois State funds for the provision of essential services such as education, healthcare, public safety and infrastructure for the maintenance of roads, etc. In recent

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<sup>3</sup> See James Spiotto, *How Municipalities in Financial Distress Should Deal with Unfunded Pension Obligations and Appropriate Funding of Essential Services*, 50 WILLAMETTE L. REV. 515, 518-19 (2014) (“Spiotto”).

<sup>4</sup> In this study, Illinois has the highest percentage of state revenues going to retiree benefits of any state, and only 14 states had over 15% of state revenues required to make such retiree benefit payments and as noted below all of those states have enacted pension reforms to address the issue. See The ARC and the Covenants, *Assessing the Ability of States to Service Debt, Pension and Retiree Health Care Costs in a World of Finite Resources*, EYE ON THE MARKET SPECIAL PUBLICATION J.P.MORGAN, (June 5, 2014), <http://www.ctpolicyinstitute.org> (“ARC”).

years, the State of Illinois has accommodated increased pension contributions (a 65% increase in the last five years) by significantly increasing income taxes and maintaining a large backlog of unpaid bills that reached nearly \$9 billion in FY2012 and was projected to remain at \$6.4 billion by the end of FY2015. However, the unprecedented tax increase and significant postponement of payments to local governments and vendors still did not generate enough funding to cover the extraordinary cost of the pensions. In order to balance its budgets, the State also made significant cuts to Medicaid and reduced education funding below its own minimum foundation level which is the minimum deemed necessary to educate students. See THE INSTITUTE FOR ILLINOIS' FISCAL SUSTAINABILITY AT THE CIVIC FEDERATION, *State of Illinois FY2015 Budget Road Map: State of Illinois Budget Overview, Projections and Recommendations for the Governor and the General Assembly* (March 3, 2014), [http://www.civicfed.org/iifs/publications/fy2015\\_StateofIllinoisRoadmap](http://www.civicfed.org/iifs/publications/fy2015_StateofIllinoisRoadmap).

The broken status of the pension system was acknowledged by all concerned interests. For example, the Board of Trustees of the Teachers' Retirement System of the State of Illinois ("TRS") passed a resolution on March 30, 2012 - over a year after the income tax increase - stating: "The fiscal situation of the State has deteriorated to the point that the Board no longer has confidence the State will be able to meet its existing funding obligations to TRS." See *Teachers' Retirement System of the State of Illinois, Board of Trustees Resolution* (Oct 29, 2012), [http://trs.illinois.gov/press/2012/Oct29\\_12.pdf](http://trs.illinois.gov/press/2012/Oct29_12.pdf). Against this backdrop, the Pension Reform Legislation is a good first step to strengthen the pension systems while permitting the funding of health, education, safety and infrastructure necessary to make Illinois an

attractive place to live and do business. These steps necessary to restore the fiscal health of Illinois represent a higher public purpose than clinging to each aspect of unattainable and unsustainable pension promises never to be fulfilled and doomed to failure especially to the extent that the funding of essential governmental services and infrastructure would share the same fate.

Given the foregoing extreme and unique financial emergency, strengthening the pension system and making Illinois financially sound and competitive with other States clearly motivated the enactment of the Illinois Pension Reform Legislation. As noted by Speaker Michael Madigan during the debate prior to the passage of the Legislation:

“This is a comprehensive pension reform package that will lead to fiscal stability for the state and its pension systems. Based on the actuarial analysis prepared by the systems, we estimate that this proposal will save the state approximately \$160 billion over the next 30 years and immediately reduce our unfunded liability by at least 20 percent ... The new schedule will achieve 100 percent funding of the retirement systems no later than the end of the fiscal year 2044 ... We’re here today because the cost of the present state systems are simply too rich for the resources available to the State of Illinois to pay for those systems in addition to meeting our obligations in areas such as education and social services ... . Illinois leads the region in the amount of State-source revenue that we dedicate to our pensions. So as an example, we dedicate 14 percent of our state-source revenue to pensions.<sup>5</sup> Kentucky contributes 11.6 percent; Indiana, 6.9 percent; Missouri, 4.9 percent; Iowa, 1.6 percent; Wisconsin, 1.3 percent ... So we lead the region but not in the category where we wish to lead ... Something’s got to be done. We can’t go on dedicating so much of our resources to this one sector, pensions.” State of Illinois, 98th General Assemb., H.R. Deb. pp. 1-7 (Dec. 3, 2013) (“*House Debate*”).

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<sup>5</sup> This percentage does not include the annual debt service on the Pension Bonds of \$1.5 billion and the recent increase in the pension benefit contribution as noted above.

Representative Elaine Nekritz noted we need:

“to get to an adequate level of savings so it’s both affordable for taxpayers and sustainable for those expecting a pension ... Yet it’s the responsible thing ... to provide for a pension system that gives workers retirement security without bankrupting our State ... But this is one fundamental step ... to protecting our pension systems so that they have a more secured future.” *House Debate*, pp. 12-14.

Representative Patti Bellock also stated:

“We know that the most important thing is to sustain this pension system for all of the employees and teachers in Illinois who have paid into this system. Today is the day we can stop the uncertainty about this.” *House Debate*, p. 77.

Further, Leader Jim Durkin concluded that:

“If nothing is done, the credit agencies will continue to impose further downgrades for our state which makes it cost prohibitive to borrow and will ultimately damage our economic and job climate and put it in even worse condition. Illinois already has the worst credit rating of any other state and the highest unemployment of any state in our region and in the Midwest.” *House Debate*, p. 80.

Similarly, in the Senate debate, Senator Kwame Raoul stated:

“Certainly, as we seek to advance pension reform, one of our concerns in crowding out of other priorities, such as investment in education, human services and the other things that we as a State have the responsibility of funding.” *State of Illinois, 98th General Assemb., S. Deb.* p. 23 (Dec. 3, 2013).

The foregoing demonstrates the Legislation was motivated by a desire to strengthen the precarious nature of the State’s five pension systems while simultaneously

preserving the ability to maintain vital state services and infrastructure. The legislators also were cognizant of the financial dilemma facing the State. The State cannot pay what it does not have. The benefits of membership in the pension system were already impaired. A reasonable adjustment of pensions to what is sustainable and affordable was the goal. The Illinois Legislature determined that pension reform was necessary because of a clear *inability* to fund and not an *unwillingness* to pay. This finding was afforded no deference below by the trial court and Plaintiffs did not rebut this finding.

B. Each of the Elements of the Illinois Pension Reform Has Been Used by Other States to Preserve the Sustainability of the Pension System

The General Assembly determined that uncertainty with respect to the pension problem resolution adversely affects the State's credit rating and the decision of businesses to stay in or to move to Illinois or to undertake business expansion in this State. At the same time, many other states and cities are addressing pension underfunding. Over 43 states between 2009 and 2013 have addressed pension reform to restore or preserve pension plan sustainability (for example, 5 in 2009, 15 in 2010, 22 in 2011, 8 in 2012, and 10 in 2013).<sup>6</sup> Between 2009 and 2013, at least 27 states have increased employee contributions and at least 28 states have reduced public pension

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<sup>6</sup> See NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS ("NASRA"), *Selected Approved Changes to State Public Pensions to Restore or Preserve Plan Sustainability* (Dec. 2014), <http://www.nasra.org/files/Compiled%20Resources/nasrasustainabilitychanges.pdf>; NATIONAL CONFERENCE OF STATE LEGISLATURES, *Pensions and Retirement State Legislation Database*, PEW CHARITABLE TRUSTS (last updated April 8, 2014), <http://www.ncsl.org/research/fiscal-policy/pension-legislation-database.aspx>.

benefits.<sup>7</sup> Also, between 2009 and 2011, 23 states have increased the retirement age and service requirement<sup>8</sup> and at least 18 have reduced post-retirement benefit increases such as cost of living adjustments.<sup>9</sup> In addition, since 2008, at least 8 states have allowed, for at least some public employees, optional, hybrid or mandatory defined contribution plans providing a fixed payment with no risk of loss on the employer as compared to the traditional defined benefit with the risk of loss on the government.<sup>10</sup> Between 2010 and 2013, 24 states caused the reduction in the annual pension benefit ranging from minimal change to 20% annual change, with the average being a 7.5% reduction in annual benefits in order to preserve the viability of the pension system.<sup>11</sup> Each of the general elements of the Pension Reform Legislation has been successfully implemented by other states.<sup>12</sup>

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<sup>7</sup> NASRA, *NASRA Issue Brief: Employee Contributions to Public Pension Plans* (Jan. 2014), <http://www.nasra.org/files/Issue%20Briefs/NASRAContribBrief.pdf>; NASRA, *Effects of Pension Plan Changes on Retirement Security* (April 2014), <http://www.nasra.org/files/JointPublications/Effects%20of%20Pension%20Plans%20on%20Retirement%20Income.pdf>.

<sup>8</sup> NASRA, *Significant Reforms in State Retirement Systems* (last visited Jan. 9 2015), <http://www.nasra.org/files/Topical%20Reports/Pension%20Reform/Resources%20handout%202014%20jmr.pdf>; NASRA, *Effects of Pension Plan Changes on Retirement Security*, p. 6-7 (April 2014), <http://www.nasra.org/files/JointPublications/Effects%20of%20Pension%20Plans%20on%20Retirement%20Income.pdf>.

<sup>9</sup> NASRA, *NASRA Issue Brief: Cost of Living Adjustments* (Feb. 2014), <http://www.nasra.org/files/Issue%20Briefs/NASRACOLA%20Brief.pdf>.

<sup>10</sup> NASRA, *NASRA Issue Brief: State Hybrid Retirement Plans* (Sept. 2013), <http://www.nasra.org/files/Issue%20Briefs/NASRAHybridBrief.pdf>.

<sup>11</sup> NASRA, *Effects of Pension Plan Changes on Retirement Security* (April 2014), <http://www.nasra.org/files/JointPublications/Effects%20of%20Pension%20Plans%20on%20Retirement%20Income.pdf>.

<sup>12</sup> The Circuit Court, in its decision, noted its concern over changes to the retirement system relating to COLA benefits, retirement age, caps on benefits, and changes in annuity payments. (*Opinion*, ¶2a-e)

Likely for this reason the General Assembly enacted the Legislation to improve the benefit of being a member of the pension system in Illinois.

II. THE PENSION REFORM LEGISLATION IS A CONSTITUTIONAL EXERCISE OF THE STATE'S INHERENT SOVEREIGN POWER

A. Illinois Pension Reform Will Assure Funding Levels and the Sustainability of the Illinois Pension Systems and the Statewide-Business Climate

The painful statistics regarding Illinois pension systems referred to above formed the basis for the Legislation and demonstrate that the Illinois Pension Reform Legislation was a thoughtful effort to solve the pension crisis, improve rather than diminish the benefits of membership in the system, and return the State of Illinois to a sound fiscal path without undue hardship. As stated by this Court in response to claims that Illinois' pension system was inadequately funded, the "question of the specific fiscal appropriations necessary to meet these deficiencies is one which, at this time, should be directed to the legislature." See *People ex rel. Illinois Federation of Teachers v. Lindberg*, 60 Ill. 2d 266, 277 (1975). As will be set forth below, the Legislation thus should be upheld against constitutional attack. Article 13, Section 5 of the Illinois Constitution provides that the "benefits" of "membership" in a retirement system "shall not be diminished or impaired." To diminish means to make less and to impair means to make worse. MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/impair> and [/diminish](http://www.merriam-webster.com/dictionary/diminish) (last visited Jan. 9, 2015). The financial condition of Illinois' pension system currently is such an impairment to the benefit of

membership. The Illinois Pension Reform Legislation was intended to make better the pension system and to ensure, in the long run, the largest realistic payment of pensions given the practical realities of the circumstances.<sup>13</sup> The Legislation not only established a more secure funding promise by the State through enforcement mechanisms, but also increased the funding goal to an actuarially sound 100% and established the means to reach that goal at an earlier date and at a lower, more achievable cost to the taxpayers. It cannot be said this made less or made worse the benefit of membership in the pension system.

The fact is that annual projected payments under the 1995 funding law are unaffordable, reaching as much as \$16 billion in later years and thus rendering them illusory. If other obligations of the State, especially to provide services and infrastructure, are abandoned in order to pay pensions in full, it will erode the functions of government. If the policy uncertainty surrounding the State of Illinois' pension funding is not resolved, it will also negatively impact the state's business climate with deleterious effects on the State's ability to generate revenue and therefore fund pensions or essential government services. Even more harmful is the negative impact on economic

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<sup>13</sup> See, e.g. *Profl Fire Fighters of N.H. v. State*, 2014 N.H. LEXIS 142 (N.H. Dec. 10, 2014) (legislature did not intend pension contribution rates as a constitutional right that cannot be modified); *McInerney v. Public Employees' Ret. Ass'n*, 976 P.2d 348 (Colo. App. 1999) (a pension plan can be changed so long as any adverse modification is balanced by a corresponding change of a beneficial nature, a change that is actuarially necessary, or a change that strengthens or improves the pension plan; *Madden v. Contributory Retirement Appeal Bd.*, 729 N.E. 2d 1095 (Mass. 2000) (Modification to a state retirement scheme can be permitted as long as such modifications are reasonable and bear some material relationship to the theory of the pension system and its successful operation); *Burlington Fire Fighters Ass'n v. City of Burlington*, 543 A.2d 686 (Vt. 1988) (contract clause only violated if adjustment not reasonable and necessary to achieve an important public purpose).

growth associated with policy uncertainty, according to recent economic research. Economists have long studied how uncertainty negatively impacts business investment. Bernanke, Ben S. "Irreversibility, Uncertainty, and Cyclical Investment." *The Quarterly Journal of Economics*, February 1983, Vol. 98, No. 1, pp. 85-106. The negative impact of uncertainty on business investment is also borne out by the comments of business leaders, as collected by the Federal Reserve Bank in its March 6, 2013 Beige Book, "Contacts in the Cleveland, Richmond, Chicago, and Kansas City Districts cited concerns over government regulation and fiscal uncertainty as a reason for slow growth." FEDERAL RESERVE DISTRICT, 2013 BEIGE BOOK: SUMMARY OF COMMENTARY ON CURRENT ECONOMIC CONDITIONS (Feb. 2013), <http://www.federalreserve.gov/monetarypolicy/beigebook/beigebook201303.htm>. Recent economic research has shown that at the national level an increase in policy uncertainty is associated with a decrease in GDP and an increase in unemployment. See Scott R. Baker, Nicholas Bloom & Steven J. Davis, *Measuring Economic Uncertainty* (May 19, 2013), <http://www.policyuncertainty.com/media/BakerBloomDavis.pdf>. The foregoing authority supports the premise that if the pension legislation is not upheld, uncertainty about the State's fiscal future will increase and, in turn, impact the state's future growth and affect levels of employment. The consequences for the state's future financial stability and its ability to pay any pension benefits and provide core government services are readily apparent.

B. The Circuit Court Decision Ignored Established United States Supreme Court Precedent and Decisions of this Court in Striking Down the Legislation

The Circuit Court in its ruling recognized that Article XIII, Section 5 of the Illinois Constitution provides that the pension obligation is a contract.<sup>14</sup> The Court disagreed with the State's position that it has a sovereign power reserved to it to adjust contractually provided pension benefits in order to preserve and protect necessary essential services and infrastructure to ensure the health, safety and welfare of its citizens. In essence, then, the Circuit Court, in holding as a matter of law that there can be no change whatsoever to pensions, treats the Pension Clause in the Illinois Constitution as a suicide pact requiring the abandonment of all other State governmental functions in favor of satisfying unaffordable and unattainable pension obligations. Neither the United States nor Illinois Constitutions require such an unhappy result. *See Peters v. Springfield*, 57 Ill. 2d 142, 151-52 (1974) (change of the mandatory retirement age does not violate the Pension Clause). *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963) (U.S. Constitution protects against invasion of individual rights but is not a suicide pact). As will be shown below, the choice of language in the Pension Clause limiting the "impairment" of contractual rights is a reference to limits upon the impairment of contract rights under the federal constitution which does not prohibit actions in the exercise of police power that may weaken contractual rights. Further, the Circuit Court

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<sup>14</sup> "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5.

failed to afford the Legislation the required presumption of constitutionality the law demands. To say that the Pension Clause precludes any reasonable modification requires government to be infallible in contracting for retiree benefits since there is no room for error or to make necessary adjustments. This defies common sense and the principles for the establishment of government. More importantly the plaintiffs failed to establish how the benefit of membership in the pension system was diminished or impaired because they failed to offer any evidence that they will receive less under the Pension Reform Legislation than they otherwise would have received. The fact that the system was changed does not inexorably lead to the conclusion that the benefit of membership was diminished or impaired. As demonstrated below, the benefit of membership was enhanced with provisions for a sustainable, realistic and reliable system.

C. The United States Supreme Court has Consistently Ruled States Cannot Abdicate Their Inalienable Governmental Power to Provide Essential Governmental Services

1. The Contract Clause of the United States Constitution Does Not Prevent the Exercise of Police Power

In the event this Court finds that the Legislation diminished or impaired membership, which it did not, the legislation is still valid. The mandate of State government and its reason for being is to provide essential governmental services at an acceptable level for the health, safety and welfare of citizens so the State may prosper and grow. *See* PAUL BAIROCH, *CITIES AND ECONOMIC DEVELOPMENT* (1998); BRENDAN O'FLAHERTY, *CITY ECONOMICS* (2005). Legally, the assessment of a State's ability to

adjust pension benefits begins with the Contract Clause in the United States Constitution and the mission of the State to provide mandated public services at an acceptable level. Currently, it is widely accepted that public pensions are in the nature of a contract and therefore entitled to the protection of the Contract Clause. Amy B. Monahan, *Public Pension Plan Reform: The Legal Framework*, 5 EDUC. FIN. & POL'Y 617 (2010). Some states, including Illinois, have adopted constitutional provisions specifically protecting public pensions from impairment or modification. See e.g. Ill. Const. 1970, art. XIII, § 5. Importantly, absent from the legislative history of these states, including the State of Illinois, is an intent to elevate public pension obligations as super-priority claims over all other obligations of the State.

The Contract Clause of the United States Constitution provides that no State shall pass any law impairing the obligation of contracts. U.S. Const., art. I, § 10, cl. 2. The Illinois Pension Clause, as noted, includes a similar concept. The question which the Circuit Court did not examine is whether public pension obligations must be observed to the financial ruin of the State or whether the obligations can be adjusted, modified or reduced so that Illinois can fulfill its duty of providing essential public services at an acceptable level for its citizens.

An early case holding that the United States Contract Clause does not require a state to adhere to a contract that surrenders an essential governmental power was *Stone v. Mississippi*. *Stone v. Mississippi*, 101 U.S. 814 (1879). In that case, the state had granted a charter to a lottery company for twenty-five years but subsequently adopted a constitutional provision banning lotteries. In upholding the constitutional ban, the court noted that supervision by the state of this issue needed to be dealt with "as the special

exigencies of the moment require.” *Id.* at 819. This limitation on the Contract Clause thus found its source in the police power, *i.e.*, in the capacity of the states to regulate behavior and enforce order within their territory in the interest of the health, safety, morals, and general welfare of the inhabitants. Thus, a state contract is subject to modification in light of its police power.

In another early case, parties who had contracted with the state for clear passage through a creek objected to subsequent legislation providing for the installation of a dam across it. *Manigault v. Springs*, 199 U.S. 473, 473 (1905). The United States Supreme Court noted that police power is *paramount* to any contractual right and the principle against the impairment of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common good. *Id.* at 480.

Similarly in *Chicago and Alton Railroad Company v. Tranbarger*, the plaintiff argued that subsequent legislation requiring railroads to construct ditches and drains interfered with its operation. *Chicago & Alton R.R. Co. v. Tranbarger*, 238 U.S. 67, 74 (1915). The Supreme Court found that no person has a vested right in any policy of legislation entitling him to insist that it shall remain unchanged nor is such right implied in any express contract. *Id.* at 76. There is an implied reservation of rights that cannot be abrogated, surrendered or bargained away by contractual provisions. In an extension of this view, the Supreme Court in *Stephenson v. Binford*, 287 U.S. 251, 276 (1932) rejected the complaint of private carriers to provisions of highway legislation; it noted that contracts are to be regarded as having been made subject to the future exercise of the constitutional police power of the state. *See Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936).

## 2. The United States Supreme Court Recognizes Balancing of Interests as Applied to the Contract Clause

Over time, the Supreme Court's stated reasoning in determining the propriety of alleged impairment of contract rights has become more nuanced. In *Homebuilding & Loan Ass'n v. Blaisdell*, the Minnesota Mortgage Moratorium Law (which provided that, during a declared emergency, relief could be had with respect to mortgage foreclosures and execution sales) was challenged as being repugnant to the Contract Clause. See 290 U.S. 398 (1934). The United States Supreme Court upheld the statute as a valid exercise of the police power, noting that the constitutional protection against the abrogation of contracts was qualified by the authority the state possesses to safeguard the vital interests of its people and that the legislature cannot bargain away the public health or the public morals. Further, the economic interests of the state may justify the exercise of its continuing and dominant protective power notwithstanding any interference with contracts. Importantly for this analysis, the *Blaisdell* court noted that there needs to be a *rational compromise* between individual rights and the public welfare. It articulated the conditions that justify interference with contractual rights, including: (1) an emergency is present, (2) the legislation is addressed to a legitimate end, (3) the relief afforded is of a character appropriate to the emergency and (4) the conditions do not appear to be unreasonable. *Id.* at 444.

Relevant to the question before this Court, the United States Supreme Court applied these principles in an instance of governmental distress. In *Faitoute Iron & Steel Co. v. City of Asbury Park, N.J.*, the Supreme Court rejected a challenge by the unsecured bondholders of Asbury Park to a New Jersey law that issued refunding bonds with less

favorable terms than their original securities. *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942) (“*Asbury Park*”). The Supreme Court specifically rejected the bondholders’ claims that the original bonds “constituted contracts, the obligation of which was impaired by the denial of their right to recovery thereon and by the transmutation without their consent into the securities authorized by the plan of adjustment.” *Id.* at 509. The Supreme Court also rejected the view that the Contract Clause barred “the only proven way for sure payment of unsecured municipal obligations.” *Id.* at 512-13. According to the *Asbury Park* court, the state retains police power for the maintenance of its political subdivisions and for the protection of all creditors. *Id.* at 513-14. The court specifically noted that its holding did not apply to secured claims, claims secured by property (revenues) dedicated or pledged for the obligation by statute or contract such as revenue bonds. *Id.* at 516. Further, the court commented that, in view of the slump of the collections from the exercise of the city’s taxing power, the original bonds had little value. *Id.* at 513. The *Asbury Park* court noted that, under the circumstances, the modification of contract obligations was not an impairment but a recognition of limited resources and the paper rights of the contract did not alter the duties of government to provide essential services.<sup>15</sup> The court in *El Paso v. Simmons*, 379 U.S. 497 (1965) cited these cases when summarizing that not every modification of a contractual promise impairs the obligation of a contract under the Contract Clause. The Court cited *Blaisdell* for the proposition that the prohibition against

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<sup>15</sup> In fact, the Court noted that state and local governments in financial distress may lack the ability to collect sufficient funds to pay certain unsecured obligations and therefore there was no impairment or diminishment in the adjustment of those unsecured obligations to what can be paid.

impairment of contract “is not ... absolute ... and is not to be read with literal exactness like a mathematical formula.” *Id.* at 509.

Many view *United States Trust Co. v. New Jersey*, *U.S. Trust Co. v. New Jersey*, 431 U.S. 1 (1977), as the case in which the Supreme Court refined its analysis of the ability to adjust or “impair” public contracts. The trustee and holder of port authority bonds brought suit claiming that a New Jersey statute impaired the obligations of the State’s contract with bondholders in violation of the Contract Clause. *Id.* at 3. Citing *Blaisdell*, the Supreme Court confirmed that the Contract Clause was not absolute. *Id.* at 21. However, the court noted that the New Jersey statute, in fact, *totally eliminated* an important security provision for the bonds. *Id.* at 19. The court specified that, when a state impairs the obligations of its own contract, the “reserved-powers doctrine has a different basis.” *Id.* at 23. Impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. *Id.* The court found that the *extent* of impairment is a relevant factor in determining its reasonableness. *Id.* at 27.

The following year, in *Allied Structural Steel Co. v. Spannaus* (“*Spannaus*”), the Supreme Court quoted *U.S. Trust* for the proposition that the Contract Clause does not obliterate the police power of the state but does impose some limits upon the power of the state to abridge existing contractual relationships. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). Legislation adjusting the rights and responsibilities of contracting parties must be based upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. *See id.* at 242.

The wisdom of the above-cited United States Supreme Court cases should reinforce the appropriate interpretation of the Illinois Pension Clause that unaffordable pension benefits whose funding would interfere with the appropriate funding of governmental services and infrastructure must be reasonably adjusted for the sake of all concerned.

D. The Legislation Does Not Violate the Constitution of the State of Illinois

1. The Decisions of this Court Support Such a Finding

In the first part of the 20th century, the consensus among courts examining public pension benefits was that such benefits were entitled to virtually no protection. Pensions were deemed to be mere gratuities from the government that could be amended or withdrawn at any time.<sup>16</sup> Pensions were treated as pay-as-you-go obligations that would be paid if funds were available and if the local governments were willing. It was in reaction to such attitudes that the Illinois Pension Clause was enacted to change the prior custom and practice. After the change, under the Pension Clause, pension obligations were to be contractual obligations that were enforceable and no longer to be paid solely at the whim of the government. However, the Illinois Pension Clause does not state that pension obligations shall be paid if to do so would lead to financial ruin or even to the exclusion of the adequate funding of necessary services for the health, safety and welfare of the people.

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<sup>16</sup> Amy B. Monahan, *Public Pension Plan Reform: The Legal Framework*, 5 EDUC. FIN. & POL'Y 617 (2010), <http://ssrn.com/abstract=1573864>. Only Texas and Indiana retain the gratuity position.

Consistent with the United States Supreme Court cases, Illinois case law has recognized that there is no prohibited contractual impairment in adjusting contract rights for a higher public purpose. In *Hardin v. The Village of Mount Prospect*, 99 Ill. 2d 96 (1983), this Court stated that, although the Contract Clause language is absolute, the United States Supreme Court has not interpreted the language as such. According to the *Hardin* Court, a similar interpretation should be applied to the Illinois Constitution, “We see no reason why the virtually identical language in our State Constitution should not be interpreted in the same fashion. Both the United States Supreme Court decisions and decisions of this court have held that the Contract Clause does not immunize contractual obligations from every conceivable kind of impairment or the effect of the reasonable exercise by the States of their police power.” *Id.* at 103, citing *Spannaus*. Subsequently, in the case of *Felt vs. The Board of Trustee of the Judges Retirement System*, 107 Ill. 2d 158 (1985), this Court considered the Contract Clause and the Pension Clause in the context of retirement benefits and approached the impairment by applying a balancing test. The Court, also quoting the *Spannaus* case, noted “the severity of the impairment measures the height of the hurdle the state legislation must clear.” *Id.* at 166.

A similar analysis should be applied to Section 5 of Article XIII of the Illinois Constitution with respect to the question of diminution and impairment of pension benefits and in *Felt* this Court effectively presumed that such an analysis would apply. While the Court in *Felt* held that the substantial reduction in benefits in that case outweighed the benefits and therefore was not a reasonable exercise of police power, the case clearly supports the efforts of the legislators to balance the rights of pensioners with the necessity of protecting the health and safety of all citizens for a higher public

purpose.<sup>17</sup> The reasonable adjustments to pension benefits embodied in the Illinois Pension Reform Act will make long-term pension benefits more sustainable and affordable and hence are not a diminishment or impairment but rather are the recognition of reality of the limited revenues. Conversely, the failure to fund necessary essential services and infrastructure would eventually lead to ongoing policy uncertainty with its associated negative effects on the business climate and the state's economy. An unwillingness to locate or expand business in Illinois would lead to a loss of revenue and result in less revenues to pay workers, retirees and all concerned. This will harm the pension systems and result in less benefits being paid to retirees than pursuant to the legislation. Hence, the balancing advocated by the Supreme Court of the United States and this Court must inevitably lead to upholding the Legislation. A failure to adopt this balancing test will leave Illinois far behind the states that have adopted such an approach when dealing with pension adjustment.<sup>18</sup>

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<sup>17</sup> The Supreme Court of Puerto Rico has approved legislation modifying pension rights. Significantly, the Puerto Rican Constitution contains language explicitly stating "no laws impairing the obligation of contract shall be enacted." PRConst. Art. II, Section 7. The Supreme Court of Puerto Rico in the matter of *Trinidad Hernandez vs. Commonwealth* upheld the retirement system reform as constitutional. *Hernandez vs. Commonwealth*, 188 DPR 828 (2013)(Translation). The Puerto Rican Supreme Court relied upon the previously discussed *U.S. Trust* case in which the United States Supreme Court held that a government can impair its contractual obligations if that impairment is reasonable and necessary to serve a more important public purpose. Relying upon this standard, the Puerto Rican Supreme Court held that the measure was taken to prevent the retirement system collapse and Puerto Rico's credit being downgraded to junk.

<sup>18</sup> See *supra* note 13, at 13.

2. The Plaintiffs Failed to Offer Evidence Needed to Overcome the Presumption that the Pension Reform Legislation is Constitutional

It is well settled in this State that a statute is presumed to be constitutional, and the party challenging the statute bears the burden of demonstrating its invalidity. In addition, the court has a duty to construe a statute in a manner that upholds its validity and constitutionality if it reasonably can be done. *People of the State of Illinois v. Graves*, 207 Ill. 2d 478 (2003). Indeed, to overcome the presumption, the party challenging the statute must clearly establish that it violates the constitution. *People of the State of Illinois v. Sharpe*, 216 Ill. 2d 481 (2005). The Circuit Court failed to acknowledge or apply this well-established presumption. The only argument made by the Plaintiffs-Appellees to defeat the Legislation focuses on the language of Article XIII, Section 5 of the Illinois Constitution. As previously explained, the Legislation strengthens the pension benefits rather than diminishes or impairs them. If the choice is between the risk of no benefits and less benefits, at least temporarily, such Legislation must be held valid and not construed as an impermissible impairment. In any event, on the record below, the Plaintiffs-Appellees simply failed to demonstrate that there is no reasonable basis for the Legislation and failed to demonstrate by the requisite standard that the benefit of membership in the pension system was diminished or impaired, while the Court did not even consider the ample record before it in support of the Legislation. Thus, the Circuit Court's decision is contrary to Illinois law and should be reversed.

E. The Decision of the Circuit Court Fails to Interpret the Illinois Pension Clause Consistent with Other Constitutional Provisions

The Preamble to the Illinois Constitution states that the purpose of the Constitution for which the other clauses are established is to “promote the general welfare.” The other clauses of the Constitution should not be interpreted as in any way abdicating or contracting away the basic mandate for the existence of government.<sup>19</sup> Further, Article VIII of the Illinois Constitution specifically provides that the State budget shall be balanced and appropriations for any fiscal year shall be no greater than the estimate of funds available for the year. These provisions of the Illinois Constitution cannot be ignored in favor of the Pension Clause. The terms of the Constitution must be interpreted *in pari materia* to give meaning to each provision. Accordingly, unsustainable and unaffordable pension obligations, which block the funding of essential governmental services and infrastructure necessary for the health, safety and welfare of the State’s citizens, cannot alter or overwrite the mandate for the existence of government or the requirement of a balanced budget. To the extent the Circuit Court failed to construe the Pension Clause consistent with the other provisions of the Illinois Constitution, the decision must be reversed.

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<sup>19</sup> The Constitution should be interpreted to give effect to every clause and word so as to avoid rendering superfluous any language. *See Astoria Federal Savings & Loan Ass’n v. Solimino*, 501 U.S. 104, 112 (1991).

### III. CONCLUSION

The Civic Federation respectfully suggests that the Legislation is a reasonable and necessary exercise of the State's police power. Unlike the municipalities of Detroit, San Bernardino and Stockton, the State of Illinois cannot file for bankruptcy to resolve its pension issues.<sup>20</sup> The pension crisis must be dealt with by the State itself, not a Bankruptcy Court.

If this Court were to affirm the Circuit Court, such a result would do nothing to assist those entitled to Illinois State Pensions payable from a fiscally unsound State. If pension checks ultimately cannot be delivered or are dishonored, there is no adequate relief to be granted the retirees. The Legislature cannot be compelled to enact tax increases. A rational balancing of interests as exemplified by the Legislation is the only way to preserve pension benefits without further jeopardizing the State's financial status. The Illinois Pension Reform Legislation allows the State to pay as much as it can to pension obligations at the same time fully funding necessary services and infrastructure so workers and retirees can be paid in the future as much as is realistic and sustainable.

If the pension crisis was simply due to an unwillingness to fund and not an inability to pay, the result would be different. To the extent pensions are affordable, they

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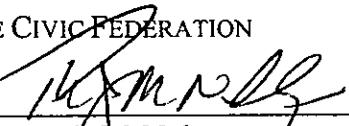
<sup>20</sup> The State of Illinois is a sovereign, and as a co-sovereign with the Federal Government, under the 10th Amendment to the Constitution, Congress cannot legislate to provide for the State's bankruptcy. Further, unlike the Federal Government, the State cannot print currency but must rely upon tax revenues to pay its bills, which has resulted in the "slow pay" or "no pay" phenomena. At the end of fiscal year 2014, the Civic Federation estimated that the State had approximately \$6 billion in unpaid bills and other General Funds liabilities that had to be paid from revenues received in fiscal year 2015. Total General Funds revenues in fiscal year 2015 are projected at about \$35 billion. *See also* Civic Federation FY2015 Budget Analysis p. 2.

should be paid in full and not subjected to political whim. Public workers deserve no less. However, in this instance, pension underfunding is due to a chain reaction of facts and circumstances over decades leading the State into perhaps the worst financial condition it has ever found itself resulting in an inability to pay. The quotations from the debates regarding the Legislation demonstrate the Illinois Legislature's determination that pension reform was necessary because of a clear inability to pay. The benefit of membership was not diminished or impaired by the Legislation. The failure to address this systemic problem will have increasingly dire consequences the longer dealing with the problem is delayed. The Civic Federation respectfully requests that this Court reverse the Circuit Court and uphold the Constitutionality of the Illinois Pension Reform Act.

Dated: January 10, 2015

Respectfully submitted,

THE CIVIC FEDERATION

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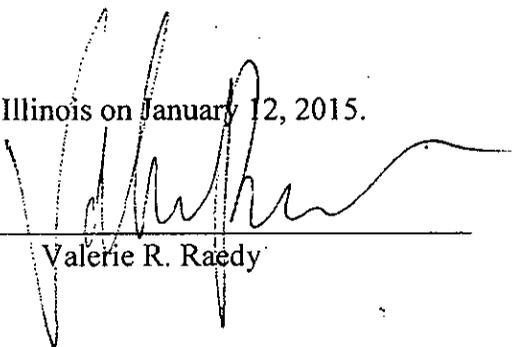
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**IN THE**  
**SUPREME COURT OF ILLINOIS**

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IN RE: PENSION REFORM LITIGATION

DORIS HEATON, *ET. AL.*, PLAINTIFFS-APPELLEES

*v.*

BRUCE RAUNER, GOVERNOR OF ILLINOIS, *ET. AL.*, DEFENDANTS-APPELLANTS

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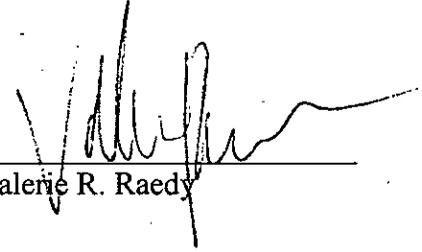
On Direct Appeal Pursuant to Supreme Court Rule 302(a)(1) from the  
Circuit Court for the Seventh Judicial Circuit, Sangamon County  
The Honorable John W. Belz, Presiding

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**CERTIFICATE OF COMPLIANCE**  
**WITH ILLINOIS SUPREME COURT RULE 341**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 29 pages.

Dated: January 12, 2015

  
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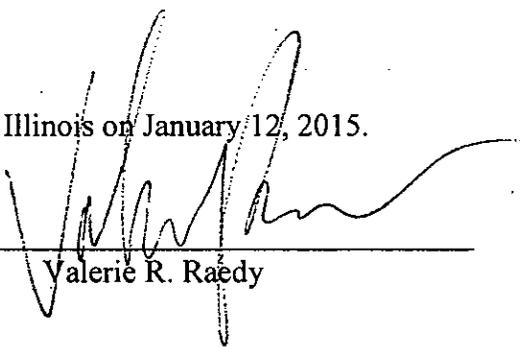
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