

No. 129471

**IN THE
SUPREME COURT OF ILLINOIS**

ARLINGTON HEIGHTS POLICE PENSION FUND, et al.,)	
	)	On Leave to Appeal From
Plaintiffs-Appellants,	)	The Illinois Appellate Court, Second
	)	District, No. 2-22-0198
)	
v.	)	On Appeal From the Sixteenth
	)	Judicial Circuit, Kane
JAY ROBERT "J.B." PRITZKER, et al.,	)	County, No. 2021 CH 55
)	
Defendants-Appellees.	)	Honorable Robert K. Villa
	)	Judge Presiding
)	

**MOTION OF THE ILLINOIS MUNICIPAL LEAGUE TO FILE BRIEF,
INSTANTER, AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-
APPELLEES**

The Illinois Municipal League ("IML" or the "League"), by and through its undersigned *amicus* attorneys, hereby moves this Honorable Court for leave to file a brief *instanter* as *amicus curiae* in support of the Defendant-Appellees. In support of this motion, IML states the following:

1. The Illinois Municipal League ("IML" or the "League") is a not-for-profit, non-political association that represents the interests of the 1,294 municipalities in Illinois. State statute recognizes and designates the League as the instrumentality of its members. See 65 ILCS 5/1-8-1. The League's mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois's municipalities. It carries out this mission by advocating on behalf of municipalities in legislative matters before the Illinois

General Assembly, as well as before the federal government and in courts. The League also provides training and education on issues affecting municipal governments.

2. IML regularly files amicus curiae briefs in cases that present questions of interest and concern to IML's members.

3. On December 18, 2019, Governor JB Pritzker signed Public Act 101-0610, which represents the culmination of more than a decade of work by IML. The Act consolidates investment management responsibility for the assets of approximately 649 "Downstate and Suburban" public safety pension funds into two consolidated investment funds--one for Article 3 police officers and one for Article 4 firefighters. The consolidated funds will improve investment returns, eliminate unnecessary and redundant administrative costs, ensure more money is available to fund pension benefits, and reduce the burden on local taxpayers.

4. As a friend of the Court, IML wishes to present underlying data as to how Downstate and Suburban public safety pension funds are in crisis and in desperate need of reform. Consistent therewith, within the 2019 Governor's Pension Consolidation Feasibility Task Force, leaders of municipalities, labor unions, former elected officials, and financial experts joined together and made the unanimous recommendation of pension fund consolidation as a means of eliminating unnecessary and redundant administrative costs throughout these Article 3 and Article 4 pension funds. As a result of the Task Force's recommendations, Public Act 101-0610 passed with overwhelming bipartisan support.

5. In filing this litigation, Plaintiffs erroneously insinuate that pension consolidation will somehow lead to greater investment risk and/or lower rates of

investment returns. Actually, the opposite is true. The purpose of consolidation is to lower the administrative costs for individual pension funds, which in turn, should free up additional money for individual funds. Additionally, the pooling of larger consolidated funds will have fewer investment restrictions, which in turn, should lead to higher rates of investment return. Notably, recently published data demonstrates that the consolidated funds are starting to meet these goals of achieving significant cost savings and higher investment returns.

6. Either way, the participants and beneficiaries of Article 3 police officer and Article 4 firefighter funds are guaranteed annuities under the Illinois Constitution and the Pension Code. Indeed, aside from a pension fund's limited investment returns, under State law, taxing bodies must make up any difference for pension liabilities through the levy of property taxes. As such, any theoretical risks or investment limits are fully borne by the taxpayers of municipalities and other taxing districts, and Plaintiffs clearly have no standing to bring this litigation. As such, IML respectfully asks this Court to allow municipalities and other public bodies to enjoy the benefits of pension fund consolidation.

7. As such, IML seeks leave to file an *amicus curiae* brief so that it can share with this Court its members' unique perspective related to Article 3 and Article 4 pension fund consolidation and reform.

WHEREFORE, for the foregoing reasons, the ILLINOIS MUNICIPAL LEAGUE respectfully moves this Court for leave to file *instanter* an *amicus curiae* brief in support of the position taken by Appellees in the above-captioned matter.

Respectfully Submitted,

ILLINOIS MUNICIPAL LEAGUE

/s/ Paul Denham

One of Its Attorneys

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Date: September 13, 2023

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)	Honorable Robert K. Villa
Defendants-Appellees.)	Judge Presiding
)	

ORDER

This cause coming to be heard on Motion of the Illinois Municipal League to File Brief, *Instanter*, As *Amicus Curiae* in support of the Defendants-Appellees, and the Court being advised in the premises:

IT IS HEREBY ORDERED that the motion for leave to file the aforementioned brief *instanter* as *amicus curiae* is hereby ALLOWED / DENIED.

DATE: _____

Justice

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***AMICUS CURIAE* BRIEF OF THE
ILLINOIS MUNICIPAL LEAGUE**

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POINTS AND AUTHORITIES

	Page(s)
INTEREST OF THE AMICUS	1
65 ILCS 5/1-8-1	1
P.A. 101-0610	1-2
ARGUMENT	2
P.A. 101-0610	3
A. Pension Consolidation is Working.	3
B. Changes to the Pension Code Have Created Instability to the Increasingly Underfunded Individual Pension Funds.	5
P.A. 87-1265	5
P.A. 91-0466	5-6
P.A. 91-0939	6
P.A. 93-0689	6
<i>In re Pension Reform Litig. (Heaton v. Quinn),</i> 2015 IL 118585, ¶ 96	7
C. Any Alleged “Risks” of Pension Fund Consolidation are Assumed by the Taxpayers of Municipalities and Other Taxing Districts	8
P.A. 101-0610	8-10
40 ILCS 5/3-111, 3-113.1, 3-114.1, 3-114.2, 3-114.6	8
40 ILCS 5/4-109, 4-110	8
Ill. Const. 1970, art. XIII, § 5	6
40 ILCS 5/3-125.1	8
40 ILCS 5/4-118.1(a), (b).	8-9
40 ILCS 5/3-125(a),	8-9

D. Governor Pritzker’s Task Force Identified Savings and Reform Initiatives Through Pension Fund Consolidation	11
E. The Legislature Responds to the Task Force’s Recommendations by Passing Meaningful Pension Fund Reform	13
P.A. 101-0610	14-16
40 ILCS 5/22B-114.....	14
40 ILCS 5/22C-114.....	14
40 ILCS 5/22B-101.....	14
40 ILCS 5/22C-101.....	14
40 ILCS 5/22B-115(b)	15
40 ILCS 5/22C-115(b).....	15
40 ILCS 5/22B-118(b)	15
40 ILCS 5/23C-118(b)	15
40 ILCS 5/22B-122.....	15
40 ILCS 5/22C-122.....	15
40 ILCS 5/22B-120(h)	15-16
40 ILCS 5/23B-120(h)	15-16
F. Plaintiffs Repeatedly Mischaracterize the Status of the Pension System.	16
40 ILCS 5/3-128	16
40 ILCS 5/4-121	16
P.A. 94-0317	17
40 ILCS 5/22B-115(b)	17
40 ILCS 5/22C-115(b).....	17
40 ILCS 5/22B-120(h)	17
40 ILCS 5/23B-120(h)	17

40 ILCS 5/1-107, 1-109, 1-113, 1-119; 40 ILCS 5/3-106, 3-110, 3-110.7, 3-111, 3-111.1, 3-114.1, 3-114.2, 3-114.3, 3-114.6, 3-115, 3-125, 3-128, 3-132(3), 3-133, 3-136, 3-138, 3-139, 3-141.1, 3-143, 3-148; 40 ILCS 5/4-107(b), 4-108(c), 4-109, 4-109.1, 4-109.3, 4-110, 4-110.1, 4-111, 4-118(c), 4-121, 4-123(3), 4-123.1, 4-125, 4-127, 4-129, 4-134, 4-138.1, 4-139; 5 ILCS 420/4A-101.5(e); 5 ILCS 140/3.5; 5 ILCS 120/2.06(d)..... **21-22**

CONCLUSION **22**

INTEREST OF THE AMICUS

The Illinois Municipal League (“IML” or the “League”) is a not-for-profit, non-political association that represents the interests of the 1,294 municipalities in Illinois. State statute recognizes and designates the League as the instrumentality of its members. See 65 ILCS 5/1-8-1. The League’s mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois’s municipalities. It carries out this mission by advocating on behalf of municipalities in legislative matters before the Illinois General Assembly, as well as before the federal government and in courts. The League also provides training and education on issues affecting municipal governments. IML regularly files *amicus curiae* briefs in cases that present questions of interest and concern to IML’s members.

On December 18, 2019, Governor JB Pritzker signed Public Act 101-0610, which represents the culmination of more than a decade of work by IML. The Act consolidated investment management responsibility for the assets of approximately 649 “Downstate and Suburban” public safety pension funds into two consolidated investment funds--one for Article 3 police officers and one for Article 4 firefighters. Consistent with the consolidated funds’ legislative purpose, as demonstrated within recent reports released by the Illinois Firefighters’ Pension Investment Fund, thus far, consolidated funds have improved investment returns, eliminated unnecessary and redundant administrative costs, ensured more money is available to fund pension benefits, and reduced the burden on local taxpayers. (See pages 3-4 of this brief *infra*).

In filing this litigation, Plaintiffs erroneously insinuate that pension consolidation will somehow lead to greater investment risk and/or lower rates of investment returns. Actually, the opposite is true. The purpose of consolidation is to lower the administrative

costs for individual pension funds, which in turn, frees up additional money for individual funds. Additionally, the pooling of larger consolidated funds has fewer investment restrictions, which in turn, leads to higher rates of investment return. So far, published data demonstrates that the Illinois Firefighters' Pension Investment Fund is meeting these goals.

Regardless of fund performance, beneficiaries of Article 3 police officer and Article 4 firefighter funds are guaranteed annuities under the Illinois Constitution and the Pension Code. Indeed, aside from a pension fund's limited investment returns, under State law, taxing bodies must make up any difference for pension liabilities through the levy of property taxes. As such, any theoretical risks or investment limits are fully borne by the taxpayers of municipalities and other taxing districts, and Plaintiffs clearly have no standing to bring this litigation. As such, IML respectfully asks this Court to allow municipalities and other public bodies to enjoy the benefits of pension fund consolidation.

As a friend of the Court, IML also wishes to present underlying data as to how Downstate and Suburban public safety pension funds were in crisis and in desperate need of reform. Responding to the crisis, leaders of municipalities, labor unions, former elected officials, and financial experts joined together within the 2019 Governor's Pension Consolidation Feasibility Task Force and made the unanimous recommendation of pension fund consolidation as a means of eliminating unnecessary and redundant administrative costs throughout these Article 3 and Article 4 pension funds. As a result of the Task Force's recommendations, Public Act 101-0610 passed with overwhelming bipartisan support.

ARGUMENT

The municipalities that are members of IML are extremely grateful that pension fund consolidation is reducing pension burdens and liabilities faced by municipal

taxpayers. As explained in greater detail below, prior to consolidation, municipalities increasingly contributed exponentially more to individual funds because legislative changes from 20-30 years ago created an unstable and inefficient pension system with increasing underfunded liabilities. Such shortfalls are entirely assumed by the municipal taxpayer.

Nevertheless, in 2019, Governor J.B. Pritzker created a Task Force, and based on the recommendation from leaders of municipalities, labor unions, former elected officials, and financial experts, with overwhelming bipartisan support, the General Assembly passed Public Act 101-0610, which was signed into law in December of 2019. The purpose of the Act was first, to streamline investments, so that with pooled risks, the consolidated funds have more investment opportunities and can achieve a higher rate of investment returns. Second, the Act was intended to eliminate unnecessary and redundant administrative costs.

Within this brief, among other things, IML will present the need for consolidation from a historical standpoint, a summary and the background of the law, and some of the flaws within Applicants' arguments, including an explanation as to how municipalities and their taxpayers are the **only** stakeholders who realize losses or gains from pension fund investments—not the participants and/or individual trustees. However, initially it should be noted that based on recently released data:

A. Pension Consolidation is Working.

Last month, the Board of Trustees of the Illinois Firefighters' Pension Investment Fund (FPIF) released a June 30, 2023 report that was prepared by Northern Trust's Investment Risk & Analytical Services Department. This report was based on data

analyzed since the consolidated fund for firefighters began investing assets in October of 2021. See Memorandum and Article 4 Benchmark Report *available at*:

<https://ifpif.org/wp-content/uploads/2023/08/Article-4-Benchmark-Report-Memorandum-Website-2023.08.25.pdf> and

<https://ifpif.org/wp-content/uploads/2023/08/Northern-Trust-Article-4-Benchmark-Report-2023.06.30.pdf>.

According to the report:

“As of June 30, 2023, FPIF’s invested assets have outperformed every benchmark since the Fund’s inception.” *Id.* More specifically, in comparison to the actual asset allocation owned by the collective Article 4 funds immediately prior to transfer to FPIF, the new Article 4 consolidated fund returned an extra 0.31% return (or \$40,400,000). *Id.*

Moreover, according the FPIF’s December 16, 2022 Report of the Statutory Transition Period, January 1, 2020-June 30, 2022:

Total investment fees, from all local funds combined to the single consolidated fund, have been reduced by more than \$34 million annually. If the initial annual fee savings of \$34 million is compounded at FPIF’s actuarially assumed rate of return, the consolidation will have saved nearly \$470 million after 10 years and approximately \$3.2 billion after 30 years.

available at: <https://ifpif.org/wp-content/uploads/2022/12/Report-on-the-Statutory-Transition-Period-12.16.22.pdf>.

Quite clearly, based on initial data, as expected, pension consolidation has resulted in higher rates of investment returns with the elimination of unnecessary and redundant administrative costs. Similar successes should continue for both consolidated funds in the

future.¹ Moreover, the municipalities and other taxing bodies that effectively benefit from these returns and savings deserve to have the will of the legislature undisturbed by the judicial overreach advocated within the Appellants' brief.

B. Prior to Consolidation, Changes to the Pension Code Created Instability to the Increasingly Underfunded Individual Pension Funds.

There may very well not be another issue that will affect the future viability of municipalities and other taxing districts like pension reform. During the 1990s and early 2000s, the General Assembly passed a series of irrevocable benefit increases and enhancements that resulted in a downward trend of the financial health of local pension funds. First, in 1993, under Public Act 87-1265, the legislature granted 3% compounded cost-of-living adjustments for retired police officers, and it increased the minimum retirement pension payable to firefighters and surviving spouses from \$400 to \$475 per month. P.A. 87-1265. The legislature also increased the surviving spouse pension from 40% to 54% of the deceased firefighter's monthly salary, and it allowed a surviving spouse pension to continue after remarriage. *Id.*

Then, in 1999, the legislature amended the "Downstate and Suburban" Firefighters Pension Code (Article 4) to among other things, increase the pension formula from 2% to

¹ The Illinois Police Officers' Pension Investment Fund (IPOPIF) was unable to realize similar initial success as FPIF, mostly because of this litigation and the individual police pension funds' refusal to comply with the law. According to IPOPIF's Annual Comprehensive Financial Report for the fiscal year ending June 30, 2022: "The Board of Trustees is tasked with the responsibility of consolidating roughly \$9.5 billion from 357 individual Funds by June 30, 2022. Unfortunately, an ongoing legal challenge to the constitutionality of Public Act 101-0610 stalled progress on the transition of local funds to the Fund and only 119 local funds transitioned assets by June 30, 2022. The Board of Trustees, with guidance from Fund staff and professional service providers, continues to take prudent steps in the setup of this investment fund for the benefit of all their participants." available at: <https://www.ipopif.org/Resources/5a6e7702-376c-4926-8584-7cb3945211c7/Annual%20Report%202022%20-%201/>.

2.5% of salary for the 21st through the 30th year of service. P.A. 91-0466. The legislature also increased the minimum retirement disability and surviving spouse annuities to \$600 in 1999, \$800 in 2000 and \$1,000 in 2001. *Id.* In addition, the legislature created a new annuity, which awarded 100% of salary to the surviving spouses of firefighters who die in the line of duty. *Id.* Public Act 91-0466 also allowed firefighters on disability leave to earn up to 3 years of creditable service, and added “stroke” to a list of diseases that qualify a firefighter for an occupational disease disability annuity. *Id.*

Additionally, in 2000, under Public Act 91-0939, the legislature made similar changes to the “Downstate and Suburban” Police Pension Code (Article 3). P.A. 91-0939. Just four years later, in 2004, the legislature again amended the Fire Pension Code to make 100% surviving spouse pensions retroactive to January 1, 2004. The legislature also increased the minimum pension for survivors and retroactively and prospectively increased the children’s annuity by 3% annually through 2008. P.A. 93-0689.

Due to these structural changes, other inherent costs, issues with the economy, and limited returns on pension fund investments, municipalities clearly began having difficulties maintaining their funding obligations. As explained in the Illinois Commission on Government Forecasting and Accountability’s biennial “Report on the Financial Condition of the Downstate Police and Downstate Fire Pension Funds in Illinois” – 2021 Edition:

Police and Fire funds ended FY 1991 with aggregate funded ratios of 75.09% and 76.40%, respectively. In FY 1999, the aggregates reached peaks of 76.37% and 78.57%, respectively, but then began a year-over-year downward trend. Police and Fire pension funds bottomed out in the low 50’s in the wake of the 2008 stock market downturn. . . In FY 2019, both funded ratios were in the mid-50%. . . [From FY 1991 to FY 2019], net assets for Police and Fire pension funds have essentially grown at a pace of 6.15% per year while unfunded liabilities have expanded at 9.80% per year.

Combined, Article 3 & 4 funds had \$953 million in unfunded liabilities in FY 1991. By FY 2019, that figure had jumped to \$13.049 billion.

III. Commission on Government Forecasting and Accountability report *available at: <https://cgfa.ilga.gov/Upload/2021FinancialConditionDownstatePoliceFire.pdf>*.

As a result, in just 20 years, unfunded accrued liabilities increased over seven-fold for both Article 3 police officer funds (from just over \$1 billion in 1999 to \$7.5 billion in 2019) and Article 4 firefighter funds (from \$720.8 million in 1999 to \$5.54 billion in 2019). *Id.* At the same time, both police officer and firefighter pension funds have experienced an approximate 22-24% drop in funded levels since 1999 (police officer funds dropped from 76.37% to 54.98% while firefighter funds dropped from 78.57% to 54.35%). *Id.* Despite these additional liabilities, the amounts that municipal taxpayers are paying into these pension funds continue to grow exponentially.²

While there is a clear and dire need for pension reform, this Supreme Court's 2015 *In re Pension Reform Litig. (Heaton v. Quinn)* decision determined that pension benefits already in place for current and retired public employees are a right protected by the Illinois Constitution. 2015 IL 118585, ¶ 96. In the wake of this decision, options to reduce the pension burden on local taxpayers have been limited.

And to be clear, as will be explained in the section below, the groups or entities that are “on the hook” for any pension funding shortfalls and liabilities are not the individual pension funds or the pension contributors and beneficiaries, such as Plaintiffs. Any increase

² Based on Illinois Department of Insurance data, the Pension Fairness for Illinois Communities Coalition reported that statewide taxpayer contributions to police officer and firefighter pension funds had increased four-fold between 1997 to 2012, growing from \$156.3 million to \$629.2 million, annually. *See* March 2017 White Paper, *available at: <https://www.iml.org/file.cfm?key=15332>*.

in benefits or shortcomings in investment returns, by statute, must be made up through taxpayers of municipalities on other taxing districts through the levy of property taxes.

C. Any Alleged “Risks” of Pension Fund Consolidation are Assumed by the Taxpayers of Municipalities and Other Taxing Districts.

Throughout this litigation, Plaintiffs’ arguments have been entirely based on the erroneous misrepresentations that Public Act 101-0610 “diminishes or impairs” pension benefits and that pension participants have somehow lost the “ability to control their assets.” (Appellants’ Br at 2, 5, 12, 16, 17, 19, 22). However, in addition to being contradicted by recent data, these assertions completely overlook the statutory scheme of the Pension Code and the unchanged role of taxpayers in funding the pension liabilities and benefits of individual public safety employees (and their beneficiaries).

In particular, aside from requiring an increase in benefits for certain “Tier 2” police officers and firefighters, Public Act 101-0610 does not affect the retirement, disability, or survivor annuity amounts for any Article 3 or Article 4 employee. See 40 ILCS 5/3-111, 3-113.1, 3-114.1, 3-114.2, 3-114.6; 40 ILCS 5/4-109, 4-110. Quite simply, such benefits are guaranteed under statute and the State Constitution. *Id.*; Ill. Const. 1970, art. XIII, § 5.

Moreover, even though the annuity amount for a vested pension typically ranges between 50% to 75% of salary, in comparison to municipal taxpayers, employees only contribute a fraction of that amount during their careers. In particular, under the Police Pension Code, participants pay just 9.91% of their pensionable salary to their respective pension funds. 40 ILCS 5/3-125.1. Employees contribute even less (9.455% of their pensionable salary) under the Fire Pension Code. 40 ILCS 5/4-118.1(a), (b).

By statute, these funding shortfalls and liabilities are entirely covered by municipalities and other taxing bodies. 40 ILCS 5/3-125(a), 40 ILCS 5/4-118(a). More

specifically, aside from a pension fund's limited investment returns, taxing bodies generally must make up any difference for increased pension annuity liabilities with taxpayer dollars through the levy of property taxes. *Ids.* Taxing bodies must also increase funding so that by 2040, assets of each fund are at least 90% of the actuarial liabilities. *Ids.*

For instance, as demonstrated in Chart 1 below, within the Annual Statements that each of the 17 Individual Appellant Pension Funds filed with the Illinois Department of Insurance (DOI) for Fiscal Year 2021 (1/1/21--12/31/21), despite large investment returns based on record increases in the stock market during this period,³ municipal taxpayers still paid over \$79 million dollars to these 17 Pension Funds. The market was much worse during Fiscal Year 2022 (1/1/22--12/31/22), and during that period, municipal taxpayers paid even more, in an amount over \$80 million dollars:

**Chart 1--FY 2021 and FY
2022 Annual Report Data**

(In Millions)

Pension Fund	Tax Levy		Salary Deductions		Total Income from Investments	
	2021	2022	2021	2022	2021	2022
(\$ in millions)						
Arlington Heights Police Fund	\$4.07	\$4.11	\$1.15	\$1.22	\$24.99	-\$23.37
Aurora Police Pension Fund	\$18.81	\$18.68	\$3.32	\$3.74	\$31.90	-\$35.22
Champaign Police Pension Fund	\$7.39	\$6.89	\$1.00	\$1.00	\$27.59	-\$11.48
Chicago Heights Police Pension Fund	\$3.79	\$4.31	\$0.70	\$0.66	\$14.28	-\$4.81
Chicago Ridge Police Pension Fund	\$1.94	\$2.07	\$0.31	\$0.31	\$2.37	-\$4.01
DeKalb Police Pension Fund	\$2.91	\$3.09	\$0.56	\$0.60	\$5.75	-\$7.10
Elgin Police Pension Fund	\$8.40	\$8.35	\$2.04	\$2.08	\$18.32	-\$21.78

³ The S&P 500 rose 28.47% in 2021 and declined -18.01% in 2022.

Pension Fund	Tax Levy		Salary Deductions		Total Income from Investments	
	2021	2022	2021	2022	2021	2022
(\$ in millions)						
Elmhurst Police Pension Fund	\$4.86	\$4.84	\$6.71	\$6.76	\$8.05	-\$13.88
Evanston Police Pension Fund	\$11.18	\$11.08	\$1.52	\$1.33	\$26.73	-\$27.75
Maywood Firefighters Pension Fund	\$2.76	\$4.86	\$0.34	\$0.38	\$5.71	-\$2.48
Mokena Police Pension Fund	\$0.82	\$1.09	\$0.30	\$0.29	\$4.28	-\$3.61
Palos Heights Police Pension Fund	\$2.30	\$2.41	\$0.30	\$0.31	\$3.52	-\$5.44
Pleasantview Fire Protection District	\$1.56	\$1.48	\$0.40	\$0.41	\$4.90	-\$8.12
Rantoul Police Pension Fund	\$0.19	\$0.45	\$0.25	\$0.24	\$8.64	-\$0.96
Villa Park Police Pension Fund	\$2.33	\$2.22	\$0.34	\$0.37	\$4.70	-\$6.79
Wood Dale Police Pension Fund	\$1.49	\$1.68	\$0.33	\$0.37	\$7.42	-\$1.93
Woodridge Police Pension Fund	\$4.78	\$3.32	\$0.53	\$0.53	\$6.88	-\$7.92
TOTAL 2021	\$79.5+ million		\$20.1+ million		\$206+ million	
TOTAL 2022	\$80.9+ million		\$20.6+ million		-\$186+ million	

DOI Annual Reports, available at:

<https://insurance.illinois.gov/Applications/Pension/PensionDataPortal.aspx>

Accordingly, to the extent that Plaintiffs purportedly claim to be concerned about the risks, rates of return, and hypothetical dilution of investment returns, Plaintiffs are glossing over the fact that any theoretical liabilities to the fund (both before and after the implementation of Public Act 101-0610) are fully funded by the taxpayers of municipalities and other taxing districts. Essentially, Plaintiffs were exposed to zero risk under Public Act 101-0610, yet through this litigation, they are trying to preclude municipalities and other public bodies from enjoying the benefits of pension fund consolidation.

D. Governor Pritzker’s Task Force Identified Savings and Reform Initiatives Through Pension Fund Consolidation.

Based on this crisis in underfunded Article 3 and Article 4 pension funds, in February 2019, Governor Pritzker established a Pension Consolidation Feasibility Task Force to explore and make recommendations for pension fund consolidation and otherwise ensure the long-term health of local pension fund assets. (*See* “Report to Governor JB Pritzker Illinois Pension Consolidation Feasibility Task Force” (the “Task Force Report”), October 19, 2019, *available at*: <https://www.iml.org/file.cfm?key=17419>.) While IML was an active member of the Task Force, other members included representatives of entities with divergent interests, such as leaders of municipalities, labor unions, former elected officials, and financial experts. (*Id.* at Appx.).

Following eight months of data collection and analysis, on October 10, 2019, the Task Force issued its report. (*Id.*). As the report notes, 649 out of the 664 pension plans in Illinois are “Suburban and Downstate” police officer and firefighter pension plans covered under Articles 3 and 4 of the Pension Code. (*Id.* at 6). The Task Force found that the number of individual public safety pension funds in Illinois was an outlier in comparison to other states, including states with a comparable population size like New York, California, and Texas, which had significantly fewer numbers of pension funds in comparison to Illinois. (*Id.* at 5-6).

Additionally, the task force highlighted some of the systemic problems with underfunding throughout the Suburban and Downstate pension funds while concluding that:

The funded ratio for the average suburban and downstate police and fire pension plan is 55% funded, with 59% (384 of 649) of funds at or below a 60% funded level. In many of these plans, the cash inflows (contributions

from employers and employees, and investment returns) are less than the cash outflows (benefits and expenses). Also, their investment returns are often less than their assumed actuarial discount rate, meaning the average unfunded accrued liability gap of 45% is unlikely to ever be closed without major corrective action.

(Id. at 8).

Moreover, when comparing individual Article 3 and Article 4 funds to larger consolidated funds within Illinois, such as the Illinois State Board of Investment (ISBI) and the Illinois Municipal Retirement Fund (IMRF), the task force determined that “larger pool systems tend to operate more efficiently in terms of investment fees and expenses than smaller ones.” *(Id. at 8-10)*. In that respect, the Task Force utilized the DOI to conduct an analysis of investment returns for 590 of the Suburban and Downstate police officer and firefighter pension plans from fiscal years 2004 to 2013. Based on this analysis, the Task Force and DOI determined that the individual police officer and firefighter plans earned an average of 5.61% on investments, net of fees. *(Id. at 8-11)*. In contrast, similar investments made through larger statewide funds like ISBI and IMRF would have returned Investments of 6.73% or 7.62%, respectively. *(Id.)*.

Additionally, the Task Force concluded that the 649 different Article 3 and Article 4 plans maintained much lower average actuarial values in comparison to larger Cook County, City of Chicago, and Illinois statewide plans. Because smaller funds take on larger risks related to liquidity, these smaller, individual funds are typically unable to invest in the same types of investments as larger plans. *(Id. at 9-11)*. In turn, the task force found that smaller “plans with smaller size generally achieve substantially lower investment returns.” *(Id. at 7)*.

The Task Force also recognized that Article 3 and Article 4 pension funds operated with system-wide inefficiencies based on their size and fragmentation:

Aside from the difference in the rate of investment returns there is also administrative duplication (e.g. accounting, legal services, auditing, actuarial, training, association fees, travel, etc.) and a potential lack of uniformity in the administration of benefits associated with having 649 individual and independent funds.

(Id. at 10).

Ultimately, based off of this data, the Task Force concluded that:

The single most impactful step that the State can take to address the underfunding of downstate and suburban police and fire pension funds is to consolidate the plans' investment assets. This step is immediately actionable and beneficial to the health of the plans, retirees, and taxpayers. Analysis by the Department of Insurance estimates that if the more than \$14 billion of suburban and downstate police and fire plans were to achieve investment returns similar to the other larger Illinois plans over the next five years, they would collectively generate an additional \$820 million to \$2.5 billion in investment returns alone. If they were to achieve comparable returns over the remaining 20 years on their statutory ramp to 90% funded status, they would create an additional \$3.6 to \$12.7 billion in investment returns alone.

To achieve this consolidation, the Task Force recommends that the State create two new funds, one for municipal police beneficiaries and one for municipal fire beneficiaries, to pool the assets of the roughly 650 downstate and suburban police and fire funds and manage those assets. Each fund would be governed by a board with equal representation of employees and employers. Each local pension plan would maintain an individual and separate account within the new consolidated funds, such that no assets or liabilities are shifted from one plan to another. Each of the two consolidated funds will be held in independent trusts, separate from the State Treasury, with sole governance provided by their respective boards.

(Id. at 3-4).

E. The Legislature Responds to the Task Force's Recommendations by Passing Meaningful Pension Fund Reform.

Demonstrating the importance of pension fund reform as illustrated by the report of the Governor's Task Force, in November of 2019, the Pension Reform Bill passed both

houses of the General Assembly with significant majorities.⁴ On December 18, 2019, Governor Pritzker signed Public Act 101-0610. Unlike the special interest groups who are behind the present litigation, quite clearly, the creation, development, ratification and enactment of the Act was truly a democratic endeavor with the voice of stakeholders and elected representatives proactively coming together to seek meaningful reforms.

Indeed, the stated purpose of the Act is to “streamline investments and eliminate unnecessary and redundant administrative costs, thereby ensuring more money is available to fund benefits for the beneficiaries of the transferor [Article 3 and Article 4] pension funds.” 40 ILCS 5/22B-114, 40 ILCS 5/22C-114. To achieve this result, the Act created one fund, the Illinois Police Officers’ Pension Investment Fund (IPOPIF), “to manage the reserves, funds, assets, securities, properties, and moneys of” consolidated Article 3 funds, 40 ILCS 5/22B-101. A separate Illinois Firefighters’ Pension Investment Fund (IFPIF) similarly manages the consolidated Article 4 funds. 40 ILCS 5/22C-101.

Following a transition period, each consolidated fund is served by a Board of Trustees with fiduciary duties towards each consolidated fund and individual Article 3 and Article 4 funds. In addition to serving as fiduciaries for individual participants and beneficiaries, Trustees are required to:

take all reasonable steps to ensure that all of the transferor pension funds are treated equitably and that the financial condition of one participating pension fund, including, but not limited to, pension benefit funding levels and ratios, will have no effect on the financial condition of any other transferor pension fund.

⁴ Bill history available at: <https://www.ilga.gov/legislation/votehistory.asp?DocNum=1300&DocTypeID=SB&LegID=117910&GAID=15&SessionID=108&GA=101&SpecSess=>.

40 ILCS 5/22B-114; 40 ILCS 5/22C-114.

Each nine member Board of Trustees includes three members who are “mayors, presidents, chief executive officers, chief financial officers, or other officers, executives, or department heads of municipalities that have participating pension funds” and are elected by the mayors and presidents of municipalities, and taxing districts of participating pension funds; two members elected by pension fund participants; and one member recommended by IML who is “appointed by the Governor with the advice and consent of the Senate.” 40 ILCS 5/22B-115(b); 40 ILCS 5/22C-115(b). The remaining two Trustees for IPOPIF are elected by pension fund beneficiaries. 40 ILCS 5/22B-115(b). The remaining two Trustees for IFPIF are one member elected by beneficiaries, and one member nominated by a statewide labor organization representing firefighters who is “appointed by the Governor with the advice and consent of the Senate.” 40 ILCS 5/22C-115(b).

The Investment Funds’ Boards may appoint custodians to facilitate the transfer of assets during a 30-month transition process from the individual funds to the consolidated fund. 40 ILCS 5/22B-118(b), 40 ILCS 5/22C-118(b). To eliminate the duplication of administrative costs, these custodians appointed by the Board, on a more efficient State-wide basis, can retain external legal counsel, independent audit firms, investment advisors, and other consultants. *Id.*

Importantly, each consolidated fund also has the authority to invest funds without investment limitations applicable to smaller funds. 40 ILCS 5/22B-122; 40 ILCS 5/22C-122. To fund the transition process, the Illinois Finance Authority may lend each of the

consolidated funds up to \$7.5 million, which the consolidated funds must repay with interest. 40 ILCS 5/22B-120(h), 40 ILCS 5/23B-120(h).

F. Plaintiffs Repeatedly Mischaracterize the Status of the Pension System.

IML is greatly concerned that by filing this litigation, an undemocratic minority of disgruntled stakeholders who have previously profited from inefficiencies within the pension system are now attempting to effectively prevent municipal taxpayers from the benefits of meaningful reforms. Moreover, in filing its brief, Plaintiffs have misconstrued the current state of the Article 3 and Article 4 pension system.

First, contrary to their arguments, Individual Plaintiffs (e.g. pension fund trustees) have never had a “statutory right” to “exercise control over their locally-managed boards and pension funds.” (Appellants Br. 21-22). Currently, two (2) members of any local pension board are elected by active participants (e.g. police officers and firefighters); two (2) members are appointed by the mayor or president of the municipality or taxing district. The fifth (5th) member of the fund is elected by and from the retired and disabled beneficiaries. 40 ILCS 5/3-128; 40 ILCS 5/4-121.

Clearly, the only way that an individual trustee can exercise any level of “control” over investment funds is he or she (1) wins an election or is appointed to serve as a trustee, and (2) convinces two other trustees to vote as a bloc. Of course, just as a trustee might lose an election or vote in the minority of trustees during a pension board meeting, Public Act 101-0610 has not resulted in Individual Plaintiffs having suffered any “takings” or “loss of rights.”⁵

⁵ Throughout this litigation, Plaintiffs continuously have provided misleading arguments and information related to this issue of “voting rights.” As explained *infra*, participants in each consolidated fund still vote for representatives on a State-wide basis. While Plaintiffs

In fact, the make-up of pension boards under the Fire Pension Code has changed over the years. In particular, prior to 2005, the composition of municipal fire pension boards were larger with leaders such as the city treasurer, clerk, fire chief, mayor, village president and/or town attorney all having a statutory right to serve as trustees on a fire pension fund. *See* 40 ILCS 5/4-121 prior to P.A. 94-0317. Contrary to Appellees' arguments, the current five-member composition of pension funds is a matter of legislative change—not a constitutional right. There has also never been a “right” to keeping either the compositions of trustees or their investment decisions “local.”

It should also be noted that participants in each fund still have the ability to vote for representatives that make investment decisions. Indeed, following consolidation, both the IPOPIF and IFPIF are represented, in part, by trustees who were elected by pension fund participants. 40 ILCS 5/22B-115(b); 40 ILCS 5/22C-115(b). Participants are now represented by trustees on a State-wide basis as opposed to a local one. Clearly, based on this litigation, there are local trustees and other disgruntled interests who previously have benefitted over a historically inefficient system. However, the insinuation that pension fund participants were denied voting rights over fund representatives is completely baseless.

Additionally, aside from the standing issues related to Plaintiffs' claims, it is a complete misrepresentation for Appellees to argue that they have to “pay” for up to \$15,000,000, plus interest, in “startup costs.” (Appellants' Br. 2). While the **consolidated funds** certainly had the option of seeking a **loan** of up to \$7.5 million from the Illinois

are correct that local trustees no longer vote on investment decisions, that is a much different issue than suggesting that participants are somehow disenfranchised.

Finance Authority, it is absurd to characterize this as a “taking” from the individual pension funds. 40 ILCS 5/22B-120(h), 40 ILCS 5/23B-120(h).

In fact, the Appellees are completely overlooking the significant cost savings that consolidation will save each individual fund. For instance, as demonstrated in Chart 2 below, within the Annual Statements that each of the 17 Individual Appellant Pension Funds filed with the Department of Insurance for Fiscal Year 2021 (1/1/21--12/31/21), these different funds paid nearly \$3.4 million on investment advisors and annual expenses in 2021 alone:

Chart 2--FY 2021 Annual Report Data

Pension Fund	Investment Advisors and Expenses 2021
Arlington Heights Police Fund	\$384,783.50
Aurora Police Pension Fund	\$617,466.61
Champaign Police Pension Fund	\$448,950.26
Chicago Heights Police Pension Fund	\$345,743.53
Chicago Ridge Police Pension Fund	\$86,070.29
DeKalb Police Pension Fund	\$72,834.97
Elgin Police Pension Fund	\$299,868.06
Elmhurst Police Pension Fund	\$88,857.00
Evanston Police Pension Fund	\$346,890.41
Maywood Firefighters Pension Fund	\$39,979.48
Mokena Police Pension Fund	\$79,654.44
Palos Heights Police Pension Fund	\$70,957.47
Pleasantview Fire Protection District	\$151,496.00

Rantoul Police Pension Fund	\$89,566.24
Villa Park Police Pension Fund	\$86,199.00
Wood Dale Police Pension Fund	\$88,274.43
Woodridge Police Pension Fund	\$85,406.01
TOTALS	\$3,382,997.70

DOI Annual Reports, *available at*:

<https://insurance.illinois.gov/Applications/Pension/PensionDataPortal.aspx>

Admittedly, after the transition, the consolidated funds have still had to pay investment advisors and expenses. However, as explained by the Task Force: “larger pooled systems tend to operate more efficiently in terms of investment fees and expenses than smaller ones.” (Task Force Report at 10).

In fact, as noted above, such savings have now come to fruition, with the FPIF reporting that it has already saved over \$34 million in a reduction of investment fees. FPIF’s December 16, 2022 Report of the Statutory Transition Period, January 1, 2020-June 30, 2022, *available at*: <https://ifpif.org/wp-content/uploads/2022/12/Report-on-the-Statutory-Transition-Period-12.16.22.pdf>. Quite obviously, the \$5 million loan that the FPIF took to help with the transition was money well spent in comparison to its \$34 million in savings in 2012 (or the \$3.2 billion that it anticipates saving during the next 30 years). *Id.* Moreover, as explained above, even if there is a net loss in transition/administrative costs, which there is not, such funding shortfalls must be reimbursed by municipalities and other taxing bodies—not the Plaintiffs.

Quite simply, pension fund reform does not result in a “taking.” Ultimately, individual pension funds have had to pay less overhead while the entire pension system is

now having the opportunity to save billions of dollars that can be used to actually pay the pensions of firefighters and police officers.

Finally, Appellants' erroneous arguments that a participant or trustee's authority is "diminished" is misleading, at best. Again, following consolidation, participants still have the right to vote and elect representatives who serve as trustees. 40 ILCS 5/3-128; 40 ILCS 5/4-121. Individual funds are also responsible for: benefit payments to pensioners, 40 ILCS 5/3-132(3), 40 ILCS 5/4-123(3); disability pension application adjudication for participants and/or other beneficiaries, such as spouses or dependent minor children, 40 ILCS 5/3-114.1, 3-114.2, 3-114.3, 3-114.6, 3-115, 3-133, 40 ILCS 5/4-110, 4-110.1, 4-111, 4-125; payment of bills to vendors, 40 ILCS 5/3-138, 40 ILCS 5/4-127; active member file maintenance to ensure proper paperwork and records for each active member, 40 ILCS 5/3-139, 40 ILCS 5/4-129; statements of economic interest for board members, 5 ILCS 420/4A-101.5(e); assigning FOIA and OMA officers, 5 ILCS 140/3.5; approval of membership into the Fund as the proper tier, 40 ILCS 5/3-106, 40 ILCS 5/4-107(b); approval of actuarial valuation report and tax levy requests, 40 ILCS 5/3-125, 3-143, 40 ILCS 5/4-118(c), 4-134; approval of a required Municipal Compliance Report, *Ids.*; underfunding lawsuits; approval of fiduciary liability insurance, 40 ILCS 5/1-107; approval of GASB/67-68 disclosures, 40 ILCS 5/1-113; review and approval of QILDROs and QILDRO calculation orders, 40 ILCS 5/1-119; determination of proper creditable service time 40 ILCS 5/3-110, 3-141.1, 40 ILCS 5/4-138.1; determination of proper pensionable salary, *Ids.*; reciprocity or portability between Article 3 and 4 Funds per statute, 40 ILCS 5/3-110.7; 40 ILCS 5/4-109.3; purchase of military service time, 40 ILCS 5/3-110(b), 40 ILCS 5/4-108(c); determination of effective dates of service and retirement, 40 ILCS 5/3-110, 3-111, 40

ILCS 5/4-108, 4-109; approval of annual statutory required cost of living adjustments, 40 ILCS 5/3-111.1, 40 ILCS 5/4-109.1; a review of closed session meeting minutes per statute, 5 ILCS 120/2.06(d); preparation and approval of Department of Insurance required Annual Statement, 40 ILCS 5/1A-109; and in the context of calculating and adjudicating applications for retirement and disability annuities, pension funds also have the authority to hold evidentiary hearings, subpoena witnesses, and issue final decisions under the Administrative Review Law. 40 ILCS 5/3-133, 3-136, 3-148, 40 ILCS 5/4-123.1, 4-125, 4-139.

G. Deconsolidation would be a Disaster that would Punitively Hurt Municipalities Throughout this State.

On pages 8-10 of its brief, Appellants attempt to undermine the methodologies and assumptions that the Governor's Task Force utilized in 2019 for determining that consolidation would result in higher yields and more cost savings. Considering the recent success of FPIF, which has significantly reduced administrative costs while reporting that its assets outperformed every benchmark since the Fund's inception, Appellants clearly have no basis to criticize.

Nevertheless, it should also be noted that unlike the findings of the Governor's Task Force, Appellants do not actually argue that there will be cost savings or better investment returns if the consolidated funds are forced to return investments to individual pension boards. Appellants complain about the cost of consolidation while glossing over the fact that a judicially ordered deconsolidation would at least double those transition costs while more importantly, denying pension funds (and municipalities) the ability to make higher returns on investments and to reduce costs.

Appellants do not really care about these additional costs or inability to achieve higher financial returns because economically, it is municipalities and taxpayers who actually have an interest in creating a more efficient pension system. Based on the foregoing, IML respectfully asks this Supreme Court to affirm the will of the legislature while denying those interests that benefitted from the previous inefficient system, who are attempting to wreak havoc on the Article 3 and Article 4 pension systems throughout this State at the expense of the municipal taxpayer.

CONCLUSION

In light of the foregoing arguments and authority, IML respectfully requests that this Court sustain the decisions of the Circuit and Appellate Courts in affirming Public Act 101-0610 in its entirety.

Respectfully Submitted,

ILLINOIS MUNICIPAL LEAGUE

/s/ Paul Denham

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages.

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**IN THE
SUPREME COURT OF ILLINOIS**

ARLINGTON HEIGHTS POLICE PENSION FUND, et al.,)	
	)	On Leave to Appeal From
Plaintiffs-Appellants,	)	The Illinois Appellate Court, Second
	)	District, No. 2-22-0198
)	
v.	)	On Appeal From the Sixteenth
	)	Judicial Circuit, Kane
JAY ROBERT "J.B." PRITZKER,	)	County, No. 2021 CH 55
et al.,)	
	)	Honorable Robert K. Villa
Defendants-Appellees.	)	Judge Presiding

NOTICE OF FILING

TO: See Attached Certificate of Service

PLEASE TAKE NOTICE that on September 13, 2023, the **Illinois Municipal League** served and filed by electronically means using File & Serve Illinois on the Clerk of the Illinois Supreme Court of Illinois, the **MOTION OF THE ILLINOIS MUNICIPAL LEAGUE TO FILE BRIEF, INSTANTER, AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-APPELLEES and AMICUS CURIAE BRIEF OF THE ILLINOIS MUNICIPAL LEAGUE**, a true and correct copy of which is hereby served upon you.

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One of Its Attorneys

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing, **MOTION OF THE ILLINOIS MUNICIPAL LEAGUE TO FILE BRIEF, INSTANTER, AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-APPELLEES and AMICUS CURIAE BRIEF OF THE ILLINOIS MUNICIPAL LEAGUE** to be served upon the following counsel of record File & Serve Illinois and via electronic mail on September 13, 2023.

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[X] Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.