



## POINTS AND AUTHORITIES

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## NATURE OF THE CASE

The nature of the State's Appeal (No. 122793) is described in its brief filed on February 20, 2018. Plaintiffs' Appeal (No. 122822) arises out of the same circuit court judgment, which resolved claims challenging the validity and application of parts of Public Act 97-651 (the "Act") that modified several Pension Code provisions relating to public pension plan benefits available for employment with a private labor union. Among other things, the Act stated, "as a declaration of existing law" for participants in the pension funds governed by Articles 8 and 11 of the Pension Code (collectively the "Funds"), that the salaries used to determine their retirement annuities do not include any salary "paid by an entity other than employer" as defined in Sections 8-110 and 11-107 — both of which define "employer" to include only government entities. Claiming that this provision of the Act actually changed the Pension Code, and that the Code previously required the pensions of Fund members who took a leave of absence to work for a labor union to be based on their union salaries, Plaintiffs alleged that the Act impermissibly diminished their pension benefits in violation of Article XIII, Section 5 of the Illinois Constitution (the "Pension Clause"), as well as the Contracts Clauses and Takings Clauses of the Illinois and United States Constitutions. The circuit court dismissed these claims, holding that the statutory definition of a member's salary, for purposes of pension calculations, was always the salary for the government position from which the member was on leave. Plaintiffs have appealed that dismissal.

After these claims were dismissed, Plaintiffs filed additional claims alleging that because the Funds had previously awarded annuities to other Fund participants based on their union salaries, the Funds were precluded, under breach-of-contract and estoppel principles, from applying the Act to Plaintiffs according to its terms. Plaintiffs also asserted that the circuit court's ruling upholding the Act's clarification of the pensionable salary for union service credits should be given prospective-only effect, and not applied to any Fund member who began a union leave of absence before the Act took effect. The circuit court granted summary judgment against Plaintiffs on these additional claims. Plaintiffs also appealed those rulings.

### **ISSUES PRESENTED FOR REVIEW**

The issues in Plaintiffs' Appeal are the following:

1. Whether the Illinois legislature validly corrected an erroneous application of the Pension Code by local pension fund officials and clarified that, under Articles 8 and 11 of the Pension Code, the pensionable salary for public employees on a leave of absence to work for a labor union is the salary for their retained government position, not their union salary.

2. Whether, if Public Act 97-651 properly clarified that the pensionable salary for employees on a leave of absence to work for a labor union is the salary for their government position, Plaintiffs may avoid the Act's effect pursuant to (a) a breach-of-contract theory, (b) equitable estoppel principles, or (c) the courts' authority to give judicial decisions a prospective-only application.

## STATEMENT OF FACTS

This statement of facts supplements the one in the State’s opening brief in Appeal No. 122793.

### **Articles 8 and 11 of the Pension Code**

Articles 8 and 11 of the Pension Code (40 ILCS 5/8–101 to 8–253, 11–101 to 11–232), which contain largely identical terms, govern two pension funds — the Laborers’ and Retirement Board Employees’ Annuity and Benefit Fund of Chicago, and the Municipal Employees’ Annuity and Benefit Fund of Chicago — that provide retirement benefits to certain employees of the City of Chicago and the Chicago Board of Education. Retirement annuities under Articles 8 and 11 are generally calculated based on a member’s years of creditable service and “highest average annual salary” before retirement. See 40 ILCS 5/8–138, 11–134. (See also below at 4-6.) Plaintiffs’ appeal involves the definition of the “annual salary” for a Fund member on a leave of absence to work for a labor union.

### **Public Act 85–964**

In 1987, Public Act 85–964 amended Articles 8 and 11 to allow Fund participants to receive service credits for employment with a private labor union during a leave of absence from their government service. 1987 Ill. Laws 4326, 4356; Public Act 85–964 (eff. Dec. 9, 1987), adding Sections 8–226(c), 11–215(3)). New Section 8–226(c), added by Public Act 85–964, amended Article 8’s computation of creditable service to include:

(c) Leaves of absence without pay during which a participant is employed full-time by a local labor organization that represents municipal employees, provided that (1) the participant continues to make employee contributions to the Fund, based on the regular salary rate received by the participant for his municipal employment immediately prior to such leave of absence . . . .

1987 Ill. Laws 4326, codified at Ill. Rev. Stat. Ch. 108½, par. 8–226(c); see also 1987 Ill. Laws 4356, codified at Ill. Rev. Stat. Ch. 108½, par. 11–215(3).

Apart from allowing such service credits, Public Act 85–964 did not change the basic terms of the formulas and definitions in Articles 8 and 11 used to calculate annuities for Fund members who received such service credits. As described immediately below, the annuity formulas continued to be based on a participant’s “highest average annual salary”; the definitions of “salary” and “annual salary” continued to refer to the salary for the “position” of an “employee” with an “employer”; and the definitions of “employee” and “employer” continued to refer to an employee of a government entity.

Both before and after Public Act 85–964 took effect, Section 8–138 stated that the annuity for a member retiring at age 60 with at least 20 years of service equaled a specified percentage, for each year of service, of the member’s “highest average annual salary for any 4 consecutive years within the last 10 years of service” before retirement. 1987 Ill. Laws 4316-19; see also 1987 Ill. Laws 4349-51, amending Section 11–134. Different percentages applied to members with 20 years of service who retired after age 55, and after age 65. 1987 Ill. Laws 4316-19,

4349-51, codified at Ill. Rev. Stat. Ch. 108½, pars. 8–138, 11–134 (1987).<sup>1</sup>

Section 8–117, which defined the terms “salary” and “annual salary,” also did not change for Fund members who received service credits for union employment. 1987 Ill. Laws 4316; see also 1987 Ill. Laws 4347-48, codified at Ill. Rev. Stat. Ch. 108½, par. 11–116 (1987)). Section 8–117 contained separate provisions for when an employee’s compensation was set on an annual basis, and when it was set on another basis (e.g., monthly or weekly). Ill. Rev. Stat. Ch. 108½, par. 8–117 (1987). Subsection (b), defining an employee’s “annual salary” when it was “fixed or arranged on an annual basis,” stated that it is:

the actual sum payable during the year if the employee worked the full normal working time in his position, at the rate of compensation . . . appropriated or fixed as salary or wages for service in the position.

1987 Ill. Laws 4316; Ill. Rev. Stat. Ch. 108½, par. 8–117(b) (1987); see also 1987 Ill. Laws 4347-48; Ill. Rev. Stat. Ch. 108½, par. 11–116(a) (1987).<sup>2</sup>

Subsection (c), defining an employee’s “annual salary” when it was “fixed or arranged on other than an annual basis,” specified that the employee’s compensation shall be converted “to an annual basis” according to Sections 8–233 and 8–235. *Id.* Section 8–233, which was unchanged by Public Act 85–964,

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<sup>1</sup> Public Act 85–964 did make a few changes in the annuity formulas for all Fund members, e.g., for members who retired before age 60 with 20 years of service before January 1, 1988. 1987 Ill. Laws 4317-19, 4349-51.

<sup>2</sup> Public Act 85–964 changed this definition for all Fund members to expressly exclude “final vacation.” 1987 Ill. Laws 4316, 4347-48.

stated, in particular:

For the purpose of this Article, the annual salary of an employee whose salary or wage is appropriated, fixed, or arranged in the annual appropriation ordinance upon other than an annual basis shall be determined as follows:

(a) If the employee is paid on a monthly basis, the annual salary is 12 times the monthly salary. . . .

“Monthly salary” means the amount of compensation or salary appropriated and payable for a normal and regular month’s work in the employee’s position in the service.

40 ILCS 5/8–223 (1987); see also 40 ILCS 5/11–217(a) (1987). Section 8–223 contained similar terms for employees compensated on a weekly, daily, or hourly basis. 40 ILCS 5/8–223 (1987); see also 40 ILCS 5/11–217 (1987).

Section 8–113, also unchanged by Public Act 85–964, defined “employee” as “[a]ny employee of an employer.” 40 ILCS 5/8–113 (1987); see also 40 ILCS 5/11–110 (1987). And Section 8–110, likewise unchanged by Public Act 85–964, defined “employer” to be any one of a list of government entities, including “a city of more than 500,000 inhabitants” or its “Board of Education.” 40 ILCS 5/8–110 (1987); see also 40 ILCS 5/11–107 (1987).<sup>3</sup>

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<sup>3</sup> Section 8–110 (Ill. Rev. Stat. Ch. 108½, par. 8–110) defined “Employer” as:  
A city of more than 500,000 inhabitants or the Board of Education of such city to which this Article applies, or the Retirement Board.

(That definition was amended in 2002 to include the Chicago Housing Authority and the Chicago Public Building Commission, Public Act 92–599, § 10, 2002 Ill. Laws 11-5-06, and has not since been changed, see 40 ILCS 5/8–110 (2016).) Section 11–107 (Ill. Rev. Stat. Ch. 108½, par. 11–107) defined “Employer” as:

**Public Act 86-272**

In 1989, Public Act 86-272 amended Sections 8-226(c) and 11-215(3) to require, for union leave-of-absence service credits, contributions to the relevant Fund by “the participant, or the labor organization on the participant’s behalf, . . . as though it were the employer, . . . based on the regular salary rate received by the participant for his municipal employment immediately prior to such leave of absence . . . .” 1989 Ill. Laws 1941, 1950. Public Act 86-272 did not change Article 8’s or 11’s definitions of “salary,” “annual salary,” “employee,” or “employer.”

**Public Act 86-1488**

In 1991, Public Act 86-1488 again amended Sections 8-226 and 11-215 of the Pension Code, which authorized service credit for full-time employment for a labor union during a leave of absence and specified the required contributions for those service credits. These amendments provided that contributions for such service credits before their effective date (January 14, 1991) would be based on the member’s “regular salary rate . . . for his municipal employment immediately prior to such leave of absence,” and after that date would be “based on his current salary with such labor organization.” 1991 Ill. Laws 4128, 4151-52, codified at

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A city of more than 500,000 inhabitants, the Board of Education of such city to which this Article applies, the board of this fund, or the retirement board of any other annuity and benefit fund on a reserve basis in such city (one or more employees of which have applied for participation in this fund as provided in this Article).

That definition is the same today. 40 ILCS 5/11-107 (2016).

Ill. 1991 Rev. Stat. Ch. 108½, pars. 8–226(c), 11–215(c)(3). (Public Act 86–1488 also renumbered Section 11–215, so that Section 11–215(3) became Section 11–215(c)(3). 1990 Ill. Laws 4151-52.) Public Act 86–1488, like Public Act 86–272, did not change Article 8’s or 11’s definitions of “salary,” “annual salary,” “employee,” or “employer.”

**The Funds’ Application of the Code’s Union Leave-of-Absence Provisions After the 1991 Changes in Member Contributions**

After Articles 8 and 11 of the Pension Code were amended in 1991 to specify that contributions for subsequent union leave-of-absence service credits would be based on a member’s union salary, the Funds awarded these members annuities based on their union salaries when they retired. (Sup C 959, 1113-15, 1208.) The record does not contain any explanation of why the Funds adopted this practice. (*Id.*)

**Public Act 97-651**

After being alerted by press reports to the Funds’ practice of awarding pensions based on the union salaries of members who received service credits for union employment, the General Assembly passed the Act (Public Act 97–651), which took effect on January 5, 2012. (See State Br. at 3-5.) Among other things, the Act amended Articles 8 and 11 by adding new Sections 8–233(e) and 11–217(e), which are substantively the same. (C 645, 653.) New Section 8–233(e) states:

This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in

Section 8–110, to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment.

(C 645; see also C 653, adding new Section 11–217(e).)<sup>4</sup>

### **Plaintiffs’ Original Complaint**

Plaintiffs’ original complaint challenged the constitutionality of new Sections 8–233(e) and 11–217(e) (collectively, the “pensionable salary clarification”) on multiple grounds. In particular, Plaintiffs alleged that before the Act took effect the Pension Code gave Fund members who took a leave of absence to work for a labor union the right to have their pension calculated based on their union salary, and that by diminishing or impairing this alleged right the Act’s pensionable salary clarification violated the Pension Clause. (C 71-78, 124-25, 135.) Plaintiffs also filed claims alleging that, for the same reason, the Act’s pensionable salary clarification violated the Contracts Clauses and Takings Clauses of the Illinois and United States Constitutions. (C 125-29, 136-40.)

### **Circuit Court Dismissal of Pensionable Salary Clarification Claims**

After initially denying the State’s motion to dismiss Plaintiffs’ claims challenging the constitutionality of the Act’s pensionable salary clarification, the circuit court, on reconsideration, dismissed these claims. (C 1305-06, 1309-14.)

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<sup>4</sup> The Act also amended the annuity formulas in Sections 8–138(g–1) and 11–134(f–1) to require the Funds, when calculating the annuities of members who took a leave of absence to work for a labor union, to use the highest average salary over a four-year period during the 10 years “prior to the leave of absence,” adjusted by later increases in the Consumer Price Index. (C 641, 649-50.)

The court's dismissal order stated: "The plain language of the salary definition supports Public Act 97-0651's clarification." (C 1310.) Elaborating, the court relied on "'salary' being defined as 'the actual sum payable during the year if the employee worked the full normal working time in his position'"; "'employee' being defined as basically anyone employed by an 'employer'"; and "'employer' being defined as the public body for which the participant works." (*Id.*, citations omitted.) Adding that the applicable definitions referred to a salary that is "appropriated or fixed . . . for service in the position" and to the "rate of compensation or wage appropriated and payable," the circuit court found that "[t]hese statutory references to 'appropriated' clearly contemplate a salary set by the public employer." (C 1311.) Noting the absence of any contemporaneous changes in the definitions of a member's "salary" used to calculate annuities, the circuit court also rejected Plaintiffs' contention that the 1991 changes in contribution levels for members on a union leave of absence also changed the salary used to calculate their retirement annuities by requiring use of their union salaries. (C 1310.)

### **Plaintiffs' New Claims Challenging the Pensionable Salary Clarification**

After the dismissal of their constitutional claims challenging the Act's pensionable salary clarification, Plaintiffs filed new claims alleging that breach-of-contract and estoppel principles precluded applying that provision of the Act to them. (C 1723-25, 1734-38, 1740-44.) Plaintiffs' breach-of-contract claim alleged that members who took a union leave of absence entered into binding contracts

with the Funds to have their annuities based on their union salaries. (C 1740-42.) Such contracts were created, Plaintiffs alleged, because the Funds, by previously following the practice of basing annuities on union salaries, made an “offer” to continue doing so that these members “accepted” by making contributions to the Funds for their leave-of-absence service credits. (C 1741.)

Plaintiffs’ estoppel claim similarly alleged that they relied on the Funds’ prior “interpretation and practice” of calculating annuities based on the union salaries of members; that “it would be inequitable to allow the [Funds] to apply retroactively a new interpretation” to Plaintiffs; and that the Funds should be “equitably estopped” to do so. (C 1743-44.) Based on the Funds’ past practice of calculating annuities based on members’ union salaries, Plaintiffs further alleged that “the balance of equities” mandated a prospective-only application of the court’s decision upholding the pensionable salary clarification. (C 1738.)

Plaintiffs and the State both filed motions for summary judgment on these new claims. (C 1839, 1841-43, 1853-60, 1920-21, 1936-42, 1983 n.5, 1990; Sup C 216-74.) In support of their motion, Plaintiffs submitted copies of election forms they signed acknowledging the need to make contributions to receive union leave-of-absence service credits. (C 259, 362, 384, 1647; Sup C 282, 649, 660, 841, 843, 886, 891, 1080, 1240, 2171.) Two Plaintiffs also submitted affidavits stating that, when they elected to receive such service credits, unidentified members of the Funds’ “staff” orally represented to them that their pensions would be based on their union salaries. (Sup. C 1270, 2161.)

### **The Circuit Court's Summary Judgment Ruling**

The circuit court entered summary judgment against Plaintiffs on their new claims seeking to prevent application of the Act's pensionable salary clarification. (A 18-22.) Addressing Plaintiffs' breach-of-contract claim, the circuit court noted that its prior ruling dismissing Plaintiffs' constitutional claim challenging the pensionable salary clarification concluded that "P.A. 97-0651 was a clarification, not an amendment" of the Pension Code provisions governing Fund members' pensionable salaries, and that, as Plaintiffs recognized, "contracts entered into by government entities, which are contrary to statute, are unenforceable." (A 19.) With respect to Plaintiffs' estoppel claim, the circuit court observed that "the doctrine of equitable estoppel will not be applied to governmental entities absent extraordinary and compelling circumstances." (A 20, quoting *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 94.) It then held that Plaintiffs did not satisfy the necessary elements to apply this doctrine, including "an affirmative act by either the public body or an official with express authority to bind the public body" (*id.*, citing *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 40).

The circuit court also refused to give its decision upholding the pensionable salary clarification a prospective-only application, stating that the provision was a "constitutional clarification establishing the sole permissible interpretation of this provision of the Pension Code," and that it "did not establish a new principle of law, nor did it overrule past legal precedents." (A 22.) The court added that

it “does not have unrestricted equitable powers to make judgments on legislative enactments prospective only,” and that it “cannot order the Funds to disburse annuities in a manner contravening the letter of the Pension Code.” (*Id.*)

### **Claims Not Disputed, or Not Appealed by, the State**

This case also included several issues on which the State took no position, or that are not included in the present appeals. Among other things, Plaintiffs and the Funds, but not the State, disputed whether the Act required the Funds to reopen past annuity awards to conform to the Act’s conditions and limits on annuities for union leaves of absence. The circuit court held that the Act did not override the general rule that an annuity award is final, and may not be reopened, more than 35 days after the Board decision granting it. (A 7-10.) That ruling granted all the relief sought by plaintiffs Carmichael, Hall, and Mahoney (A 10), and the Funds did not appeal that ruling. (This change was not reflected on the cover to the State’s opening brief but is reflected on the cover to this brief.)

In the circuit court, the State also defended the constitutionality of a provision in the Act concerning a union employee’s ability to simultaneously participate in a union pension plan. The circuit court entered summary judgment for Plaintiffs, and against the State, on that issue (A 13-15), and the State did not appeal that ruling. Plaintiffs and the Funds, but not the State, also contested whether this eligibility condition applies to defined-contribution plans as well as defined-benefit plans. The circuit court held that it applies to both (A 15-18), and Plaintiffs appealed that ruling.

In addition, because possible rulings by the circuit court could mean that some Plaintiffs made greater contributions than were required for the leave-of-absence service credits they were legally entitled to receive (e.g., because their contributions were based on their union salaries, or they were not eligible to receive service credits for which they made contributions), the parties stipulated that the issues decided in the case do not include any claims to recover such over-contributions. (C 1833.)

## ARGUMENT

### I. Summary of Argument

#### *Plaintiffs' Appeal (No. 122822)*

The circuit court correctly held that the Act's pensionable salary clarification did not violate the Pension Clause because it reaffirmed what the Pension Code always provided concerning the pensionable salary of a Fund member on a leave of absence to work for a labor union — namely, that this salary corresponds to the salary for the member's government position, not the member's union salary. In clarifying this aspect of the Pension Code, the Act corrected, for future annuity determinations, the Funds' prior erroneous interpretation of the Pension Code for such leaves of absence. For the same reason, the circuit court properly dismissed Plaintiffs' claims alleging that the Act's pensionable salary clarification violates the Pension Clause, as well as Plaintiffs' similar claims under the Contracts Clauses and Takings Clauses.

The circuit court also correctly entered summary judgment against Plaintiffs on their breach-of-contract and equitable estoppel claims seeking to require the Funds to calculate Plaintiffs' pensions based on their union salaries, contrary to the terms of the Pension Code. These common law principles do not authorize circumventing the Funds' lack of authority to make a commitment to issue annuities in amounts contrary to what the Pension Code allows. In addition, the pensionable salary clarification's clear expression of its temporal reach, by stating that it declared existing law, excluded any occasion to consider

whether it should be applied only prospectively. Such an application is unwarranted in any event under the general standards governing the retrospective or prospective effect of judicial decisions.

*The State's Appeal (No. 122793)*

As explained in the State's opening brief, the Court should uphold the Act's provision eliminating the ability to receive service credits for private employment with a labor union during a leave of absence that commences after the Act took effect because the Pension Clause was never intended to protect the ability to receive public pension benefits for private employment. Critically, Plaintiffs do not dispute that the common understanding and well-established justification of a public pension, which the Pension Clause was intended to protect, was that it represents a form of deferred compensation for public service intended to induce continued public service. Thus, Plaintiffs do not argue that the Pension Clause was actually intended to secure a similar protection for public pension benefits based on private employment. Instead, they insist that this protection exists because the ability to receive such service credits is found in the Pension Code, and therefore is a benefit of membership in a public pension plan that comes within the literal text of the Pension Clause. But applicable principles of constitutional interpretation do not compel that strained reading of the Pension Clause, which would not only deviate from the Clause's unmistakable purpose but also, by encouraging government employees to leave public service, contravene the long-recognized justification for public pensions. The ability to receive service

credits for work with a labor union thus represented only a statutory right, not a constitutional one, which the General Assembly could prospectively eliminate for any public employee who had not yet started a leave of absence.

## **II. Standard of Review**

*De novo* review applies both to Plaintiffs' appeal from the circuit court's dismissal of their constitutional claims challenging the pensionable salary clarification, see *Carr v. Koch*, 2012 IL 113414, ¶ 27, and to review of the entry of summary judgment on Plaintiffs' other claims challenging application of that provision, see *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 13.

## **III. The Act Validly Clarified That the Pensionable Salary of a Fund Member During a Leave of Absence to Work for a Labor Union Is the Salary for His Government Position, Not His Union Salary.**

Plaintiffs' various claims challenging the pensionable salary clarification fall into two categories: claims based on their contention that the Act changed the meaning of the relevant Pension Code provisions defining a member's salary for purposes of annuity calculations, and claims asserting that even if the Act did not change the meaning of these provisions, they should still be denied effect. Neither category of claim has merit. As described below, the Act did not change the Pension Code's meaning on this point because the Code always required using the salary for a member's government position, not her union salary, to calculate her pension. And all of Plaintiffs' arguments that this statutory meaning should be denied effect are unavailing.

**A. The Act Did Not Change the Code’s Definition of a Fund Member’s Pensionable Salary During a Leave of Absence to Work for a Labor Union.**

The claims in Plaintiffs’ original complaint challenging the validity of the Act’s pensionable salary clarification all rested on the premise that the Act changed the meaning of the Pension Code — and consequently violated the Pension Clause, the Contracts Clauses, and the Takings Clauses — by taking away the prior right of Fund members who took a leave of absence to work for a labor union to have their retirement annuities calculated based on their union salaries. That premise is wrong.

The unambiguous meaning of the relevant language in Articles 8 and 11 confirms the circuit court’s conclusion that the definition of a member’s “salary” used to calculate his annuity always referred to the salary attached to the *government position* in which he actually worked, or from which he was on leave. As described above (at 4-6), annuity determinations under Articles 8 and 11 are based on a member’s years of creditable service and “highest average annual salary” over a specified period before the member retires. And the statutory definitions of “salary” and “annual salary” used in this calculation have always expressly referred to the salary for the “position” of an “employee,” where “employee” is defined as an “employee of an employer,” and “employer” is defined to include only government entities (e.g., the City of Chicago and the Chicago Board of Education). Indeed, nothing in the relevant Code provisions defining a member’s “annual salary,” including the related definitions of an

“employee” or “employer,” supports Plaintiffs’ suggestion that these terms have a different meaning for Fund members who officially “retain their status” as public employees, as Plaintiffs themselves emphasize (Pl. Br. at 31, n.6), while on leave from a government position to work for a labor union.

The conclusion that the definitions of “annual salary” in Articles 8 and 11 refer to the salary for a Fund participant’s government position is reinforced, as the circuit court noted, by the language in these definitions referring to this salary being either “appropriated, fixed or arranged on an annual basis,” 40 ILCS 5/8–117(b), 11–116(a), or “appropriated, fixed or arranged in the annual appropriation ordinance upon other than an annual basis.” 40 ILCS 5/8–233, 11–217(a). (See above at 5-6.) These statutory references, the circuit court observed, “clearly contemplate a salary set by the public employer.” (C 1311.)

In support of their contrary reading of the Pension Code, Plaintiffs offer a multitude of arguments. (Pl. Br. at 38-56.) But these arguments largely disregard the actual language of the Pension Code and assume that a member’s annuity may be based on her union salary unless the Pension Code specifies otherwise. (See, e.g., Pl. Br. at 43, 50.) That approach is misguided because, as described above, the applicable provisions of Articles 8 and 11 before the Act took effect did make clear that the “salary” used to calculate a member’s retirement annuity is the salary attached to the member’s position with a public employer.

Plaintiffs insist that the Code’s definitions of “salary” and “annual salary” merely prescribe “calculation rules” to determine “the amount” of an employee’s

annual salary, including conversion formulas for when the employee is paid a daily or hourly wage, and do not define “by whom the salary must be paid in order to count.” (Pl. Br. at 45.) This argument is unsound because Plaintiffs do not identify any other source, apart from these definitions, to determine what is a pensionable salary for purposes of calculating a member’s average annual salary. These definitions are plainly designed to serve that purpose. And because the Code does contain these definitions of a member’s salary, which expressly define it as the rate of compensation attached to an employee’s position with a public employer, there is no “gap” to fill by looking elsewhere.

Plaintiffs nonetheless contend that the meaning of the Code sections defining the pensionable salary of Fund members on a leave of absence changed in 1991 when the General Assembly amended other sections of Articles 8 and 11 to provide that the *contributions* for such members would be based on their union salaries, which are typically higher — in some cases significantly higher<sup>5</sup> — than the salaries for their government positions. (Pl. Br. at 52-53.) The circuit court rightly rejected that argument because when the legislature made that change in *contribution* levels for people permitted to earn public pension service credits without performing any public service, it did not change the Code provisions

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<sup>5</sup> For example, Plaintiff June Davis left a public position that paid “less than about \$20,000 per year” and in her final years as a union employee received a salary that “ranged from around \$125,000 to more than \$130,000.” (Sup C 644.) Plaintiff Anthony Lopez went from a government position paying about \$30,000 a year to a union position for which he receives an annual salary greater than \$135,000. (Sup C 770, 781.) Plaintiff Joseph Notaro’s annual salary increased by about 24%, to about \$126,000, when he took a leave of absence from his job with the City of Chicago to work for the union. (Sup C 292, 1281.)

specifying the salary to be used to calculate their *annuities*. (C 1310.)

Plaintiffs argue that extrinsic matters, including comments in the legislative history of Public Act 86–1488 indicating that the unions agreed to the 1991 changes in member contributions, support the conclusion that these changes also included a change in the salary used to calculate the annuities of their employees on a leave of absence from public service. (Pl. Br. at 51-52.) These comments are not relevant. Such extrinsic matters could only help clarify an ambiguity in the actual text of Public Act 86–1488 relating to Fund members’ pensionable salaries. See *Land v. Board of Educ. of City of Chicago*, 202 Ill. 2d 414, 426 (2002). And as the circuit court held, Plaintiffs point to no such text, much less any ambiguity in it. (C 1311-12.) Even they were relevant, such general comments would have almost no probative value on the issue presented here. Of course, the pertinent relevant intent is that “of the legislature,” *In re Detention of Lieberman*, 201 Ill. 2d 300, 307 (2002), not that of other persons with a role in its drafting, see *Town of City of Bloomington v. Bloomington Twp.*, 233 Ill. App. 3d 724 (4th Dist. 1992); see also *Davis v. City of Leawood*, 257 Kan. 512, 517, 524-28 (1995); *In re Jones*, 152 B.R. 155, 167 (Bankr. E.D. Mich. 1993). And as the circuit court explained, “the legislative history demonstrates only that the legislature accepted the parties’ compromise, not that the legislature understood that it was changing the method for calculating annuities for participants who were on a leave of absence with their local labor organization.” (C 1312.)

It is true, as Plaintiffs emphasize, that after 1991 the Funds calculated both contributions and annuities for members on a leave of absence based on their union salaries. (Pl. Br. at 52.) But the Funds furnished no explanation — much less one based on the text of the Pension Code — of why they did so for annuity calculations (Sup C 959, 1113-15, 1208), and it appears that they simply assumed, incorrectly, that the same salary basis should be used for both calculations. That unsupported assumption, however, cannot prevail over the plain meaning of the Code’s actual text. *People ex rel. Chadwick v. Sergel*, 269 Ill. 619, 623-24 (1915); see also *People ex rel. Watson v. House of Vision*, 59 Ill. 2d 508, 514-15 (1974).

Plaintiffs also insist that the term “salary” must have a consistent definition, and that the salary used to calculate annuities must be the same as the salary used to determine contributions made by the member or on his behalf. (Pl. Br. at 51.) As Plaintiffs acknowledge, however, Sections 8–102 and 11–102 of the Code specify that their definitions apply “except when the context otherwise requires.” 40 ILCS 5/8–102, 11–102. And although Sections 8–226 and 11–215, which specifically address *contributions* for leave of absence service credits, specify that such contributions for union employment after 1991 are based on a member’s union salary, nothing in the context of Sections 8–138 and 11–134, which base *annuities* on a member’s highest average annual salary, requires, or even suggests, using a definition of “salary” or “annual salary” different from the ones provided in Sections 8–117 and 11–116 for use in Articles

8 and 11 generally. Nor do these definitions require, as Plaintiffs suggest (Pl. Br. at 51), that a member's pensionable salary be the salary actually "paid" by the employer and "received" by the member for the relevant period of service. There is, therefore, no inconsistency in these provisions that justifies disregarding Sections 8-117's and 11-116's definitions when calculating annuities, as opposed to contributions.

Plaintiffs also argue, with little elaboration, that using a member's union salary to calculate her pension is warranted simply by virtue of the Code provision authorizing service credits for union employment. (Pl. Br. at 51.) This argument finds no support in the text or history of Sections 8-226(c) and 11-215(c)(3), on which Plaintiffs rely. As described above (at 4, 7), before 1991 these provisions, which authorized service credits for leave-of-absence employment with a union, required that a member's *contributions* be "based on the regular salary rate . . . for his municipal employment immediately prior to such leave of absence." 1989 Ill. Laws 1941, 1950. And the 1991 amendments changed that to specify two levels of member *contributions*: based on the member's government position for union employment before these amendments took effect, and based on the member's union salary for union employment after they took effect. See 1991 Ill. Laws 4128, 4151-52, codified at 40 ILCS 5/8-226(c), 11-215(c)(3) (2010). But nothing in the language or context of Sections 8-226(c) and 11-215(c)(3) — either before or after the 1991 amendments — supports the argument that they implicitly required using just a member's union salary, instead of Section 8-117's

and 11-116's definitions of "annual salary," to determine the Fund member's pensionable salary for purposes of calculating a retirement *annuity*.

Plaintiffs further contend that because a Fund member's annuity is based on his highest average annual salary in a consecutive four-year period during his last 10 years before retiring, the circuit court's interpretation of the Code creates an absurdity by eliminating *any* period on which to base this calculation for someone who began a leave of absence more than six years before retiring. (Pl. Br. at 11, 54.) Again, however, this argument incorrectly assumes that a member must actually *receive* the specific salary used to calculate his highest average annual salary for annuity purposes. That assumption is unsupported by the relevant language and definitions in the Code, which do not define a member's pensionable salary based on an amount actually *received* by the employee or specify that this salary must be *paid* by the public employer. Instead, for employees whose compensation is set "on an annual basis," the relevant statutory definitions refer to "the actual sum *payable* during the year *if* the employee worked the full normal working time in his position, at the rate of compensation, exclusive of overtime and final vacation, appropriated or fixed as salary or wages for service in the position." 40 ILCS 5/8-117(b); 11-116(a) (emphasis added). The definitions for employees whose compensation is set on a monthly or weekly basis similarly refer to "the amount of compensation or salary appropriated and payable for a normal and regular month's [or week's] work in the employee's position in the service." 40 ILCS 5/8-233(a), 11-217(a). There is no merit,

therefore, to Plaintiffs' argument that the circuit court's interpretation of these provisions creates an absurdity in situations where a member works for a union for an extended period before retiring.<sup>6</sup>

Plaintiffs also contest the circuit court's observation that the statutory references in the definition of a Fund member's annual salary to amounts "appropriated," or included in an "annual appropriation ordinance," support the conclusion that this definition refers to the salary for a government position. (Pl. Br. at 47-50.) Plaintiffs' arguments in this regard are weak, at best. Plaintiffs maintain that the term "appropriation" is not exclusively limited to expenditure authorizations by public entities. (*Id.* at 48.) But that is certainly the most prevalent usage and common understanding of the term. See *State v. AFSCME, Council 31*, 2016 IL 118422, ¶ 42 ("An appropriation involves the setting apart from public revenue a certain sum of money for a specific object.") (citation and internal quotation marks omitted); *Black's Law Dictionary* (9th ed. 2009), 117-18 (definition of "appropriation"). Plaintiffs also invoke the "last antecedent" canon

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<sup>6</sup> Plaintiffs also challenged the separate parts of the Act that amended the annuity formulas in Sections 8-138(g-1) and 11-134(f-1) to direct the Funds to calculate annuities for members who took a union of leave of absence using the highest average salary over a four-year consecutive period during the 10 years "prior to the leave of absence," adjusted by later increases in the Consumer Price Index (emphasis added). (See above at 9, n.4.) Those provisions could present an *as-applied* constitutional problem if they reduced a member's annuity below what would result from using the salary for the member's government position, as defined in Sections 8-233 and 11-217 (e.g., if the member did not have four years of public service before taking a leave of absence, or if the salary for the member's government position during her leave of absence was higher than the imputed salary obtained using this new formula). But Plaintiffs never introduced any evidence to show such a problem for any of them in this case, and the Court therefore need not address that hypothetical concern.

of interpretation (Pl. Br. at 49-50), which explains that in some circumstances a qualifier following a list of items applies only to the last item. See *In re E.B.*, 231 Ill. 2d 459, 466-68 (2008). But reading these definitions in Article 8 and 11 as a whole, they firmly convey the impression of a salary set by a public entity, and this canon adds little to Plaintiffs' attempt to contend that they embrace private-employer salaries. Finally, Plaintiffs insist that the circuit court's reliance on the term "appropriation ordinance" in the definition of a Fund member's salary makes no sense because the Board of Education authorizes employee compensation and other expenditures by "resolution." (Pl. Br. at 49.) But such a resolution is still an "ordinance" in the legal sense, i.e., an official exercise of a municipal government's delegated legislative authority. See *Blue Bird Air Serv. v. City of Chicago*, 376 Ill. 272, 275 (1941) ("the resolution of the city council could be deemed in the nature of an ordinance"); *People ex rel. Miller v. Lee*, 112 Ill. 113, 122 (1884); see also *Black's Law Dictionary* (9th ed. 2009), 1208 (defining "ordinance" and stating that it "may be purely administrative in nature, establishing offices, prescribing duties, or setting salaries"). This again confirms the logic of the circuit court's analysis.

In any event, the circuit court correctly held that even if the definition of an employee's salary in Article 8 and 11 could be considered ambiguous, the General Assembly properly clarified that it was always intended to mean the salary for the employee's position with his public employer. (C 1308-13.) See *Collins v. Board of Trustees of Firemen's Annuity & Benefit Fund of Chicago*, 155

Ill. 2d 103, 107-17 (1993); *In re Marriage of Cohn*, 93 Ill. 2d 190, 202 (1982) (“an amendment may be applied retroactively if its purpose is to clarify an existing law that is ambiguous”).

In sum, the circuit court correctly dismissed all of Plaintiffs’ claims based on their contention that the Act changed the meaning of a Fund member’s salary for purposes of calculating the member’s retirement annuity.

**B. Plaintiffs May Not Avoid the Code’s Consistent Definition of a Fund Member’s Pensionable Salary.**

Plaintiffs argue, in the alternative, that even if the Act reaffirmed the Pension Code’s preexisting definition of a Fund member’s pensionable salary during a leave of absence to work for a labor union, they have established various grounds not to give effect to that definition, and instead to base their annuities on their union salaries. Each of these grounds lacks merit as a matter of law.

**1. Plaintiffs May Not Avoid the Code’s Definition of a Pensionable Salary Under Breach-of-Contract Principles.**

The circuit court properly entered summary judgment against Plaintiffs on their breach-of-contract claim, which sought to avoid the Act’s pensionable salary clarification, because the Funds did not purport to, or have the authority to, enter into contracts requiring them to issue annuities to Plaintiffs in excess of what the Pension Code permits.

Plaintiffs’ attempt to craft a breach-of-contract claim to get around the Pension Code’s provisions specifying the pension benefits available to a Fund participant during a leave of absence to work for a labor union misapprehends the

nature of the contractual rights created by the Pension Code, as well as the Funds' role in administering those rights. It is firmly established that members of a public retirement system, including a system in which participation is mandatory, have contractual rights. *Jones v. Mun. Employees' Annuity & Benefit Fund of Chicago*, 2016 IL 119618, ¶ 29. But the terms of a member's contractual right to a retirement annuity are defined by the Pension Code. *People ex rel. Sklodowski v. State of Illinois*, 182 Ill. 2d 220, 229 (1998) ("the contractual relationship is governed by the actual terms of the Pension Code"); see also *McNamee v. State of Illinois*, 173 Ill. 2d 433, 439 (1996) (same); *Di Falco v. Board of Trustees of Firemen's Pension Fund of Wood Dale*, 122 Ill. 2d 22, 26 (1988) (same). Thus, the Funds' Boards, which are charged with administering the Pension Code according to its terms, do not enter into individual contracts — through "offer" and "acceptance" — with Fund members.

The documents Plaintiffs signed and submitted to the Funds when they chose to receive service credits for their union employment belie their claim that they entered into individual contracts with the Funds contrary to the terms of the Pension Code. Those documents are in the form of *elections* to take advantage of the union leave-of-absence service-credit provisions of the Pension Code, not contracts. (See, e.g., Sup C 282: "I hereby elect to make contributions to the Municipal Employees' pension fund.") Each election form was signed by a Plaintiff, not by the Fund. And each Plaintiff acknowledged the required level of contributions. But nothing in the form stated that the Fund agreed, or promised,

to calculate the Plaintiff's pension in any particular manner, let alone by using his union salary to determine her average annual salary on retirement. (C 259, 362, 384, 1647; Sup C 282, 649, 660, 841, 843, 886, 891, 1080, 1240, 2171.)

In any event, the Funds are creatures of statute and have only the authority granted to them by the legislature — here, under the Pension Code. The Funds therefore could not enter into a valid contract contrary to the Pension Code. See *Gaffney v. Board of Trustees of Orland Fire Prot. Dist.*, 2012 IL 110012, ¶ 38 (“an agency’s powers are limited to those granted by the legislature and any action must be specifically authorized by statute”); *Alvarado v. Industrial Comm’n*, 216 Ill. 2d 547, 553-54 (2005). It is axiomatic, therefore, that the Funds had no authority to enter into contracts to pay pension benefits greater than the Pension Code specified. See *Green v. Hutsonville Twp. High Sch. Dist. No. 201*, 356 Ill. 216, 221 (1934); *De Kam v. City of Streator*, 316 Ill. 123, 129 (1925) (stating, with respect to an alleged municipal contract, that “[a] contract expressly prohibited by a valid statute is void.”); *Ad-Ex, Inc. v. City of Chicago*, 207 Ill. App. 3d 163, 169 (1st Dist. 1990) (Freeman, J.) (“a municipality cannot be bound by a contract that does not comply with the prescribed conditions for the exercise of its power”); see also *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 98 (“a municipal corporation cannot be obligated under a contract implied in fact that is *ultra vires*, contrary to statutes, or contrary to public policy”).

Consequently, as the circuit court ruled, any contract purporting to obligate the Funds to pay Plaintiffs pension benefits greater than the Pension Code

authorized was contrary to public policy and void.<sup>7</sup> It is irrelevant whether the Funds misunderstood the limits of their actual authority, for otherwise statutory limits on agency action could be evaded by erroneous, if sincere, beliefs about what the law allows, and government could be bound to all sorts of void and unlawful obligations. See *Ashton v. Cook County*, 384 Ill. 287, 299 (1943); *U.S. Neurosurgical, Inc. v. City of Chicago*, 572 F.3d 325, 332 (7th Cir. 2009) (applying Illinois law).

**2. Equitable Estoppel Does Not Provide a Basis to Disregard the Code’s Definition of a Pensionable Salary.**

The circuit court also properly held that there is no merit to Plaintiffs’ claim that, if they are wrong about the Code’s pre-Act meaning regarding a member’s pensionable salary during a leave of absence to work for a labor union, equitable estoppel principles nonetheless prohibit the Funds from applying that meaning, and the Act, to them. Just as the Funds lacked authority to enter into contracts contrary to the terms of the Pension Code, they also could not be bound to the same outcome by equitable estoppel.

Plaintiffs rely on two categories of facts as a basis for their estoppel claim: the Funds’ practice of using union salaries to calculate annuity awards issued

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<sup>7</sup> That does not mean, of course, that the Funds’ pre-Act annuity awards based on a member’s union salary were void. The Funds had the statutory authority to make annuity determinations, 40 ILCS 5/8–203, 11–192, and a mistake in the exercise of that authority did not place those determinations beyond the Funds’ quasi-adjudicatory jurisdiction. *Newkirk v. Bigard*, 109 Ill. 2d 28, 37 (1985) (“An agency’s jurisdiction or authority is not lost merely because its order may be erroneous.”).

after the 1991 amendments to the Code, and alleged representations to two individual Plaintiffs, made by unnamed Fund “staff” members, that the Funds would use their union salaries to calculate their future annuities. (Sup C 1270, 2161.) Neither provides a legally sufficient basis for an estoppel claim to prevent application of the Act according to its terms.

To sustain a claim of equitable estoppel generally, a party must show that:

(1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof.

*Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313-14 (2001); see also *Sinclair v. Sullivan Chevrolet Co.*, 31 Ill. 2d 507, 510 (1964).

Beyond these requirements, the law also greatly disfavors estoppel against public entities, especially when public revenues are at stake. See *Matthews*, 2016 IL 117638, ¶ 94 (“Illinois courts have consistently held that the doctrine of equitable estoppel will not be applied to governmental entities absent extraordinary and compelling circumstances.”); *Patrick Engineering, Inc. v. City of Naperville*,

2012 IL 113148, ¶ 40 (“when public revenues are at stake, estoppel is particularly disfavored”); *Brown’s Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 431-32 (1996); *Austin Liquor Mart, Inc. v. Dep’t of Revenue*, 51 Ill. 2d 1, 4 (1972). Thus, when estoppel is asserted against a public entity, any representation relied on to support the claim must be made by the entity itself or by a person with “actual authority” to bind it; “apparent authority” is not enough. *Patrick Engineering, Inc.*, ¶¶ 33-42. The reason for this requirement is straightforward: laws are made by legislative bodies, and “[i]f a municipality were held bound through equitable estoppel by an unauthorized act of a governmental employee, then the municipality would remain helpless to remedy errors and forced to permit violations to remain in perpetuity.” *Halleck v. County of Cook*, 264 Ill. App. 3d 887, 894 (1st Dist. 1994) (citation and internal quotation marks omitted); see also *Patrick Engineering, Inc.*, 2012 IL 113148, ¶ 36; *Brown’s Furniture*, 171 Ill. 2d at 432 (stating that applying estoppel against the State would allow “valuable public interests [to] be jeopardized or lost by the negligence, mistakes or inattention of public officials”); see also *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990) (holding that permitting equitable estoppel to require payment of public funds could allow “unauthorized oral or written statements” by executive officials to override Congress’s authority).

This requirement of actual authority necessarily applies to a claimed obligation contrary to a statute governing a public entity. Thus, where a government entity may not make a contractual commitment because doing so would

violate a statute, estoppel principles cannot be used to avoid that prohibition. Enforcing an equitable claim in those circumstances would both violate the State's public policy and give effect to representations that neither the entity, nor its agents, had any legal authority to make. See *Green*, 356 Ill. at 221 (“a municipal corporation cannot be estopped to dispute the validity of a contract which it had no power to make”); *De Kam*, 316 Ill. at 136-37; *Ekkert v. City of Lake Forest*, 225 Ill. App. 3d 702, 705-06 (2d Dist. 1992); *Ad-Ex, Inc.*, 207 Ill. App. 3d at 169-75.

In light of these standards, the circuit court correctly ruled that Plaintiffs' estoppel claim lacks merit as a matter of law. As described above, the Funds had no legal authority to commit to grant annuities greater than the Pension Code specified. Any representation that they would do so necessarily exceeded their actual authority and could not sustain an estoppel claim to enforce that representation.<sup>8</sup>

The State recognizes that individual Plaintiffs may have expected to receive a pension, upon retirement, based on their union salaries, which were higher — in some cases significantly higher — than the salaries for their government positions. (See above at 20, n.5.) But their rights must be defined by the

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<sup>8</sup> Plaintiffs specifically alleged equitable estoppel, not promissory estoppel (C 1744), but for similar reasons the alleged representations on which they rely could not sustain a promissory estoppel claim. See *Matthews*, 2016 IL 117638, ¶¶ 98-101 (holding that promissory estoppel against public entity requires that person making alleged promise have actual authority to bind entity). Plaintiffs also did not establish that the Funds themselves ever made an “unambiguous promise” to Plaintiffs to base their future annuities on their union salaries. See *Quake Constr., Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309-10 (1990).

law as enacted by the General Assembly. Thus, courts have recognized that such hardship cannot justify requiring a public body to take actions, or expend funds, contrary to their lawful authority. See, e.g., *Ad-Ex, Inc.*, 207 Ill. App. 3d at 175; see also *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 62-65 (1984); *Cheers v. Sec’y of Health, Educ., & Welfare*, 610 F.2d 463, 468-69 (7th Cir. 1979). The circuit court correctly held, therefore, that Plaintiffs’ expectations, however sincere, cannot take precedence over the actual terms of the Pension Code.<sup>9</sup>

Plaintiffs’ estoppel claim also fails for other reasons. To the extent that this claim relies on the Funds’ pre-Act issuance of annuities based on a mistaken interpretation of the Pension Code, it does not satisfy the elements necessary to estop the Funds from correctly applying the law in determining Plaintiffs’ annuities. First, those pre-Act awards cannot be considered representations to Plaintiffs. Of course, in fulfilling their statutory responsibility to make annuity determinations when members retire, the Funds must apply the relevant provisions of the Pension Code as they understand them. (See above at 30, n.7.) But

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<sup>9</sup> While several Plaintiffs asserted that they would not have elected to receive union leave-of-absence service credits if they had known what the Pension Code meant (Sup C 645, 772), they did not seek rescission of their elections to receive those credits. Nonetheless, the difference between the annuities they expected and the ones they are legally entitled to receive is mitigated by various factors, including higher union salaries and their right, as stipulated, to seek repayment of their overcontributions (e.g., because their contributions were based on their union salaries, or because they were not eligible to receive service credits for which they made contributions), and possibly the Fund’s earnings on those contributions, see *Shell Oil Co. v. Dep’t of Revenue*, 95 Ill. 2d 541, 547 (1983), which could be substantial.

neither those quasi-adjudicative decisions, nor the interpretation that underlies them, amounts to a *representation to other persons* as to what the Code means, much less one intended to induce action by them, or on which they may reasonably rely. Otherwise, every incorrect decision by an agency could lock it into the same error indefinitely, contrary to what the governing statute actually requires. See *Brown's Furniture*, 171 Ill. 2d at 432 (“this court has held that the Department was not estopped from taxing certain securities which, under a previous Department policy, had been exempt from taxation”); *Austin Liquor Mart, Inc.*, 51 Ill. 2d at 5; *Redarowicz v. Ohlendorf*, 92 Ill. 2d 171, 185-86 (1982) (finding no merit to fraud claim based on representations to third party absent any “allegation that the defendant made the misrepresentations to induce the plaintiff to act”); *Wollenberger v. Hoover*, 346 Ill. 511, 573-74 (1931) (rejecting estoppel claim based on representations directed to a different class of persons); see also *Smith v. City of Chicago*, 457 F.3d 643, 649 (7th Cir. 2006) (“a prior misapplication of the ordinance . . . does not estop the City from applying it correctly in a subsequent case”); *Lustgarden v. Gunter*, 966 F.2d 552, 555 (10th Cir. 1992) (ruling that “the fact that the Parole Board had previously misapplied the statute does not constitute [a] promise” that it will continue to do so); *Amarillo Prod. Credit Ass'n v. Farm Credit Admin.*, 887 F.2d 507, 512 (5th Cir. 1989) (“even if the FCA formerly interpreted the Act as permitting unregulated withdrawal from the System, that interpretation was incorrect and the FCA cannot be estopped from acting in accordance with the law”); *Natural Res. & Envtl. Prot. Cabinet v.*

*Kentucky Harlan Coal Co.*, 870 S.W.2d 421, 427 (Ky. App. 1993).

Second, equitable estoppel, like a claim of common law fraud, may not be predicated on an alleged representation concerning a question of law, as opposed to a past or existing fact. *Fish v. Cleland*, 33 Ill. 238, 243 (1864); *In re Marriage of Mancine & Gansner*, 2014 IL App (1st) 111138-B, ¶ 51 (“in order to assert equitable estoppel the representation must regard a material fact, not a matter of law”); *McCarthy v. Pointer*, 2013 IL App (1st) 121688, ¶ 17; *In re Joseph B.*, 258 Ill. App. 3d 954, 977 (1st Dist. 1994); *In re Marriage of Lipkin*, 208 Ill. App. 3d 214, 218 (4th Dist. 1991) (quoting *Fish*, 33 Ill. at 243); see also *Matthews*, 2016 IL 117638, ¶ 94, n.11 (distinguishing equitable estoppel from promissory estoppel and stating that equitable estoppel requires “a representation of past or existing fact”); *Sinclair*, 31 Ill. 2d at 510 (explaining that a misrepresentation, to support equitable estoppel, “must generally relate to an existing or past event, not to a promise or prognostication concerning a future happening”).<sup>10</sup>

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<sup>10</sup> Other jurisdictions follow the same principle. *West Virginia Consol. Pub. Ret. Bd. v. Carter*, 633 S.E.2d 521, 530 (W. Va. 2006) (holding that claimed representation by public pension fund staff member about status of unused vacation pay could not support estoppel because, “if made, [it] was one of law rather than of fact”); *Let The People Vote v. Board of County Comm’rs of Flathead County*, 2005 MT 225, ¶ 24, 120 P.3d 385, 390 (Mont. 2005); *State Dep’t of Ecology v. Theodoratus*, 957 P.2d 1241, 1249-50 (Wash. 1998) (en banc); *Arkansas State Highway Comm’n v. Lasley*, 239 Ark. 538, 540, 390 S.W.2d 443, 444 (Ark. 1965) (“the state is not estopped by an erroneous construction of the law by its representatives”); *Kohlbeck v. City of Omaha*, 318 N.W.2d 742, 745 (Neb. 1982) (“a misrepresentation as to the law . . . cannot be said to constitute conduct which amounts to a false representation or concealment of material facts”).

In this case, the statutory rule defining a Fund member's annual salary for purposes of calculating her retirement annuity represents a question of law, not a question of fact. Thus, even if the Funds' past practice for calculating annuities for members who took a leave of absence to work for a union could be deemed a representation to Plaintiffs that their annuities would be based on their union salaries, that representation could not sustain an estoppel claim. See *Burnidge Bros. Almora Heights, Inc. v. Wiese*, 142 Ill. App. 3d 486, 495-96 (2d Dist. 1986) (holding that reliance on alleged representations by local officials was unreasonable as matter of law where legal limits on municipality's contracting authority were "clearly matters of law").

Third, even assuming that the Funds' use of members' union salaries to calculate their annuities could be considered a representation of fact, there is no basis to conclude that the Funds knew this representation was untrue. To the contrary, everything in the record is consistent with the notion that this practice simply reflected an honest mistake following the 1991 change in the statutory contribution levels for members on a leave of absence to work for a union.

For many of the same reasons, no individual Plaintiff can establish estoppel claims based on their asserted reliance on alleged representations to them by unnamed Fund staff members about how their future annuities would be calculated. These alleged representations were ones of law, not fact. There is no suggestion that the unidentified staff members who supposedly made these representations believed them to be untrue. And the employees plainly lacked

actual authority to bind the Funds to take any position regarding future annuity awards to individual Fund members.

**3. The Act's Pensionable Salary Clarification, as a Declaration of Existing Law, Should Not Be Given Prospective-Only Effect.**

The circuit court also rightly rejected Plaintiffs' contention that the courts' common law authority to give their decisions a prospective-only application justified denying effect to the Act's clarification of the pensionable salary for Fund members on a union leave of absence. Because the General Assembly has expressly declared the temporal effect of this provision of the Act, that authority is inapplicable here, and in any event it would not justify the unusual relief Plaintiffs seek.

Judicial rulings on points of law are typically applied retroactively, including to the parties in the case in which the decision is issued. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 285 (2009). In certain circumstances, however, the courts' common law authority includes the power to make their rulings prospective only. *Id.*; *Harris v. Thompson*, 2012 IL 112525, ¶ 29. Given the general presumption that judicial rulings are retroactive, this authority is used sparingly. See *United States v. Coker*, 399 F.2d 433, 451-52 (5th Cir. 1968).

Factors relevant to the exercise of this authority include:

whether: (1) the decision establishes a new principle of law, either by overruling past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly fore-shadowed; (2) given its purpose or history, the decision's

operation will be impeded or promoted by prospective or retroactive application; and (3) a balance of the equities mandates prospective application.

*Exelon Corp.*, 234 Ill. 2d at 285.

Application of this authority necessarily also depends on the subject of a court's ruling. This Court has exercised its authority to make its ruling prospective when it modified a common-law rule (e.g., adopting the tort principle of comparative negligence in lieu of contributory negligence, see *Alvis v. Ribar*, 85 Ill. 2d 1, 28 (1981); see generally *Sunich v. Chicago & N. W. Transp. Co.*, 106 Ill. 2d 538, 544-45 (1985) (surveying cases involving decisions overturning long-standing common law rules); when it overruled a longstanding judicial precedent or pronouncement, see, e.g., *Exelon Corp.*, 234 Ill. 2d at 285 (making prospective Court's holding that electricity is "tangible personal property" under retailers' occupation tax statute, despite Court's contrary dicta a half century earlier); and when, in declaring a statute unconstitutional, retroactive application of that ruling would raise serious due process concerns, see *Perlstein v. Wolk*, 218 Ill. 2d 448, 454-67 (2006). In each of these situations, no constitutional or statutory provision restricted the Court's ability to exercise its common law authority to determine the temporal effect of its ruling.

The present case is different, however, because it involves a specific issue — the temporal scope of the Act's pensionable salary clarification — that the legislature has directly addressed. In this particular situation, therefore, the Court's general authority to determine whether to give prospective-only effect to

its ruling on a point of law must give way to the General Assembly's declaration on that very issue.

The Act's relevant amendments, adding Sections 8-233(e) and 11-217(e) to the Pension Code, expressly state that they are "a declaration of existing law and shall not be construed as a new enactment." (C 645, 653.) By using that language, the legislature clearly prescribed the temporal scope of these provisions and intended that they be applied to past as well as future events. See *Premier Prop. Mgmt., Inc. v. Chavez*, 191 Ill. 2d 101, 122 (2000) (Freeman, J., concurring); *DTCT, Inc. v. City of Chicago Dep't of Revenue*, 407 Ill. App. 3d 945, 952 (1st Dist. 2011); *First Mortg. Co. v. Dina*, 2017 IL App (2d) 170043, ¶ 31 ("the difference between a statement that an amendment is declarative of existing law and one that it should have full retroactive scope is one of form only"); *Hubbard St. Lofts LLC v. Inland Bank*, 2011 IL App (1st) 102640, ¶ 17; see also *Bailey & Assocs., Inc. v. Illinois Dep't of Employment Sec.*, 289 Ill. App. 3d 310, 320-22 (4th Dist. 1997) (holding that "the question of whether a statute operates retroactively or prospectively is one of legislative intent," and that for a statute intended to clarify the law, an express statement that it applies retroactively would be "superfluous"). That legislative expression of the Act's temporal effect is dispositive.

The Constitution vests in the General Assembly the legislative power, which is limited only by the Constitution. *Cincinnati Ins. Co. v. Chapman*, 181 Ill. 2d 65, 78 (1998) ("the General Assembly is free to enact any legislation not expressly prohibited by the Constitution"). Thus, "[i]f the General Assembly has

clearly expressed an intention that a statute be given retroactive effect, we *must* honor that intention unless the constitution prohibits us from doing so.” *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 332 (2006) (emphasis added); see also *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 38 (2001). Accordingly, when the General Assembly enacts a law for which it specifically directs a retroactive scope, and the courts have both interpreted the law and upheld its constitutionality, they do not possess an additional authority to defeat the law’s temporal application according to its terms on the basis that this application would be inequitable, unwise, or unfair. See *Franklin v. Cernovich*, 287 Ill. App. 3d 776, 783 (3d Dist. 1997) (holding that where court “merely interpreted the language in the statute in accordance with the legislature’s intent,” there was no basis to make that interpretation prospective); *Rodi v. Horstman*, 2015 IL App (1st) 142787, ¶ 36; *Marozas v. Board of Fire & Police Comm’rs*, 222 Ill. App. 3d 781, 788 (1st Dist. 1991).

That principle applies here. Because the legislature has directly addressed the temporal effect of the Act’s statutory provision defining the pensionable salary of Fund members on a union leave of absence, there is no occasion for the Court to make an additional determination — in the exercise of its common law authority, based on equitable considerations — as to whether a ruling upholding that provision should be applied only prospectively.

Even if the Court did address the issue, it should not depart from the general rule that its decisions apply retroactively. A decision upholding the Act’s

clarification that the pensionable salary for union leaves of absence was always the salary for the member's government position will not overrule any "clearly declared judicial doctrine." See *Harris*, 2012 IL 112525, ¶ 30 ("issue of nonretroactive application of decision need be addressed only where there is a clearly declared judicial doctrine upon which litigant relied, which was overruled in favor of a new rule"). The Funds' administrative rulings in unpublished, uncontested, nonadversarial proceedings fall far short of this standard. See *SEC v. Sterling Precision Corp.*, 393 F.2d 214, 220 (2d Cir. 1968) (holding that uncontested administrative construction of statute, though longstanding, carried little weight). Nor does the Pension Code's definition of a member's pensionable salary present an issue of first impression whose resolution was subject to serious doubt. See *Marozas*, 222 Ill. App. 3d at 788 ("*Lockett [v. Chicago Police Board]*, 133 Ill.2d 349 (1990),] does not establish a new principle of law since the plain language of the Administrative Review Act requires naming all parties of record at the administrative hearing as party defendants."). The Funds' nonadherence to the plain meaning of the Code, while prompting passage of the pensionable salary clarification, did not obscure that meaning.

Finally, the balance of the equities does not mandate a prospective application of the Act. To the contrary, because the General Assembly specifically intended the pensionable salary clarification to apply retroactively, giving a decision upholding that enactment a prospective-only application would render that decision largely meaningless. And especially where estoppel principles

cannot operate to deny effect to a legislative enactment, any reliance by Plaintiffs on a mistaken understanding of the Pension Code, even one shared by the Funds themselves, should not require the Funds to make statutorily unauthorized payments. That is particularly true for pension credits not based on actual public service where the affected members' union salaries often far exceeded their government salaries. (See above at 20, n.5.) Even if that were not the case for each individual who took a leave of absence to work for a union, the substantive law should not "shift and spring according to the particular equities of individual parties' claims of actual reliance on an old rule and of harm from a retroactive application of the new rule." *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993) (citation, brackets, and internal quotation marks omitted).

**IV. The Act's Provisions Prospectively Eliminating the Ability to Receive Service Credits in a Public Pension Plan for Private Employment During a Future Leave of Absence Do Not Violate the Pension Clause.**

The Pension Clause was never intended to protect retirement benefits in a public pension system derived from private employment. Before adoption of the Pension Clause, the common understanding of a public pension, and its long-established justification, was that it represented a type of deferred compensation for public service specifically designed to induce continued public service. That understanding, which is firmly grounded in this Court's precedent, is embodied in the text, history, and purpose of the Pension Clause. (See State Br. at 13-18.) Accordingly, the Court should not embrace Plaintiffs' contention that the Pension Clause protects the ability to take a future leave of absence and receive service

credits in a public pension for employment with a private labor union. The Court should, instead, uphold the Act's future-leave-of-absence provisions.

Before the 1970 Constitution, public pension benefits were repeatedly justified as, and widely understood to be, a form of deferred compensation for public service, intended to induce continued public service. See, e.g., *People ex rel. Schmidt v. Yerger*, 21 Ill. 2d 338, 344 (1961) (“It is clear that the purpose of the Firemen’s Pension Fund Act is to provide for additional pay for active firemen, by way of benefits withheld, in order to induce long continued service. . . . *The essential prerequisite of all benefits is the active service of the firemen.*”) (emphasis added). (See also State’s Br. at 14-16.) Not surprisingly, then, nothing in the text, history, or purpose of the Pension Clause of 1970 Constitution supports Plaintiffs’ contention that it deviated from this understanding and extended constitutional protection to the ability to earn service credits in a government retirement system for *private* employment.

Critically, Plaintiffs do not dispute this long-established meaning of a public pension. Nor do they plausibly dispute that granting public-pension service credits for private employment actually encourages pension system members to leave government service, rather than to continue such service. Plaintiffs maintain that “[t]he union service credit benefit . . . encourages public employees who do go to work for their unions to take a leave of absence rather than quitting their public jobs altogether,” and “increases the likelihood that when they choose to leave their union jobs (or are voted out of office), they return

to their public jobs providing service to the public employer.” (Pl. Br. at 37-38.) But those incentives, to the extent they actually operate, are fully accomplished by allowing a leave of absence. Adding public retirement system service credits for union employment just makes it more attractive to discontinue active public service, regardless of any intention to return.<sup>11</sup>

Thus, Plaintiffs do not, and realistically cannot, maintain that the drafters of the 1970 Constitution and Illinois voters who ratified it actually *intended* to give constitutional protection to public pension benefits based on private employment. Instead, they contend that such a protection is encompassed by the literal text of the Pension Clause because union service credits are included in the Pension Code, and therefore automatically constitute a protected benefit of membership in a public retirement system. That argument, however, must give way in favor of the Pension Clause’s intent to secure public retirement benefits for public service, not to give a constitutional protection to service credits in a

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<sup>11</sup> Plaintiffs’ brief notes (at 38) that the State’s opening brief incorrectly asserted (at 5) that none of the Plaintiffs returned to active public employment after going on a union leave of absence, and that “two of the plaintiffs here . . . did just that, returning to their City jobs following a union election after the filing of the Complaint.” The State regrets this inadvertent error.

It remains the case, though, that the availability of union leave-of-absence service credit encourages government employees to leave active public service without intending to return. The problem is illustrated by Plaintiff June Davis, who chose to “resign” from her government position and start receiving an annuity, rather than returning to that position, when her union’s leadership changed, but then, when that leadership again changed, was technically “reinstated” to her government position and immediately started working for the union, receiving additional service credits in the public pension plan without performing any public service. (Sup C 641-42.)

public pension system for individuals who leave government service for private employment.

The ultimate goal in interpreting a constitutional or statutory provision is to determine the drafters' or ratifiers' intention. *Uldrych v. VHS of Ill., Inc.*, 239 Ill. 2d 532, 540 (2011); *In re Application of County Treasurer*, 214 Ill. 2d 253, 259 (2005); *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311-12 (2001); *Collins*, 155 Ill. 2d at 111 (“Traditional rules of statutory construction are merely aids in determining legislative intent, and those rules must yield to such intent.”). The commonly accepted meaning of the provision's language provides the starting place, and typically the best evidence, to determine that intention. *In re Donald A.G.*, 221 Ill. 2d 234, 246 (2006); *People v. Campa*, 217 Ill. 2d 243, 252 (2005); *People v. Hanna*, 207 Ill. 2d 486, 497-98 (2003). The drafters' or ratifiers' intention is also informed by the circumstances surrounding the provision's adoption and the problems it was intended to remedy. *Walker v. McGuire*, 2015 IL 117138, ¶ 16; *Client Follow-Up Co. v. Hynes*, 75 Ill. 2d 208, 216 (1979); *Sayles v. Thompson*, 99 Ill. 2d 122, 125-28 (1983); *Wolfson v. Avery*, 6 Ill. 2d 78, 93-94 (1955); see also *People v. Reese*, 2017 IL 120011, ¶ 30; *Prazen v. Shoop*, 2013 IL 115035, ¶ 21. And when that intention differs from the provision's literal meaning in a particular situation, that intention must control. *Uldrych*, 239 Ill. 2d at 540; *Thies v. State Bd. of Elections*, 124 Ill. 2d 317, 323 (1988); *In re Application of County Treasurer*, 214 Ill. 2d at 259; *In re D.F.*, 208 Ill. 2d 223, 230 (2003); *Wolfson*, 6 Ill. 2d at 93-94; see also *In re Donald A.G.*, 221 Ill. 2d at 246; *Hanna*, 207 Ill. 2d at 498 (“when

the literal construction of a statute would lead to consequences which the legislature could not have contemplated, the courts are not bound to that construction”) (citation omitted); *Collins*, 155 Ill. 2d at 112; *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 464 (1976); *People v. McCoy*, 63 Ill. 2d 40, 44 (1976); *People ex rel. Rusch v. Ladwig*, 365 Ill. 574, 583-84 (1937); *Peabody v. Russel*, 301 Ill. 439, 442-43 (1922).

Interpretation of a constitutional or statutory provision must honor its “general purpose.” *Wolfson*, 6 Ill. 2d at 94. And because constitutional provisions are intentionally drafted in broader language than statutes, their intended scope does not always encompass every situation technically falling within their literal terms. *Id.* at 93-94; see also *Sayles*, 99 Ill. 2d at 125-28 (constitutional prohibition against transport a person “out of the State for an offense committed within the State”); *Edelen v. Hogsett*, 44 Ill. 2d 215, 217 (1969) (constitutional mandate that the State “shall never be made defendant in any court of law or equity”), *overruled on other grounds*, *Williams v. Medical Center Comm’n*, 60 Ill. 2d 389 (1975); *Gillespie v. Barrett*, 368 Ill. 612, 614 (1938) (Separation of Powers Clause of Illinois Constitution); *Rusch*, 365 Ill. at 581-85 (constitutional provision requiring that all laws relating to courts be “general, and of uniform operation”); see generally *Bain Peanut Co. of Texas v. Pinson*, 282 U.S. 499, 501 (1931) (Holmes, J.) (“The interpretation of constitutional principles must not be too literal.”); *State v. Nixon*, 384 N.E.2d 152, 198-203 (Ind. 1979) (stating that principles of interpretation are applied with less “rigidity” to constitutional provisions).

Indeed, if literal terms and their definitions always controlled their meaning, the courts' critical function of determining constitutional or statutory intent would reduce to a mechanical exercise more suited to experts in grammar and semantics. See *Gompers v. United States*, 233 U.S. 604, 610 (1914) (Holmes, J.) (stating that significance of constitutional provisions "is to be gathered not simply by taking the words and a dictionary"), *disapproved on other grounds*, *Bloom v. State of Illinois*, 391 U.S. 194, 195-202 (1968). As explained in the State's opening brief (at 10-18), application of those principles of interpretation leads to the conclusion that the Pension Clause does not constitutionally guarantee public pension benefits based on private employment.

In opposition to this conclusion, Plaintiffs contend that the State's position, "[b]oiled down to its essence, . . . presents only a policy argument" about what the Pension Clause should protect, and that the General Assembly resolved any policy concerns when it added union leave-of-absence service credits to the Pension Code. (Pl. Br. at 35-36.) Plaintiffs are wrong. The threshold question, which Plaintiffs avoid addressing, is whether the Pension Clause, when it conferred a constitutional protection on the retirement benefits of public pension systems, intended to depart from the common understanding of a public pension. And all relevant sources — the text, purpose, and history of the Clause, as well as this Court's precedents — correspond to the conclusion that it did not do so. Again, the State is not asserting in this case that the General Assembly was prohibited from allowing such service credits as a statutory right. But such statutory

rights may be prospectively eliminated, see *A.B.A.T.E. of Ill., Inc. v. Quinn*, 2011 IL 110611, ¶ 33; *Sklodowski*, 182 Ill. 2d at 231-32, which is what the Act did.<sup>12</sup>

Plaintiffs rely heavily on the Court’s decision in *Kanerva v. Weems*, 2014 IL 115811, but that reliance is misplaced. *Kanerva* held that health insurance granted by statute to retired members of the pension system for state employees was a “benefit” of membership in that system, and therefore protected by the Pension Clause against later reduction. *Id.*, ¶¶ 39-40. The central issue in the case was whether that benefit fell outside the Clause’s protection because it did not represent a traditional pension benefit and was not contained in the Pension Code. *Id.*, ¶¶ 38-41. The case did not involve any question concerning retirement benefits based on private employment. General language in the case therefore should not be read to resolve that distinct issue. See *Nudell v. Forest Preserve Dist.*, 207 Ill. 2d 409, 416 (2003); *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993).

Consistent with this specific scope of *Kanerva*’s holding, the opinion referred on several occasions to retirement benefits for “public employees.”

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<sup>12</sup> As noted in the State’s opening brief (at 18, n.3), before Illinois’ adoption of the 1970 Constitution the Arkansas Supreme Court held in *Chandler v. Board of Trustees of Teacher Retirement System*, 365 S.W.2d 447, 449 (Ark. 1963), that the State’s Constitution prohibited giving public pension benefits to employees of a private labor union for services “rendered . . . in the course of their work for a private employer.” Plaintiffs seek to distinguish that case on the ground that “the individuals granted public pension benefits [in *Chandler*] were not and *had never been public employees.*” (Pl. Br. at 34, emphasis added.) That assertion is not supported by the decision and in any event is inconsistent with its holding. See *Chandler*, 365 S.W.2d at 449 (“[T]here is no indication that the [union] employees devote their time to the public service. Even if such a showing had been made, the public services would still have been rendered by these people in the course of their work for a private employer, . . . affording no basis for a claim against the State.”) (emphasis in original).

*Kanerva*, 2014 IL 115811, ¶ 3 (“In addition to the wages they are paid, most public employees in Illinois receive additional benefits, including subsidized health care, disability and life insurance coverage, eligibility to receive a retirement annuity, and survivor benefits.”); *id.*, ¶ 48 (observing that Constitutional Convention debates showed that Pension Clause was intended to guarantee “retirement rights enjoyed by public employees”). The opinion also noted that the Clause’s supporters emphasized the traditional purpose of public pensions. *Id.*, ¶ 46 (quoting Convention delegates’ comments that public employees “have worked for often substandard wages over a long period of time”; that without contractual protection for public pensions, “public employees . . . are beginning to lose faith in the ability of the state and its political subdivisions to meet these benefit payments”; and that the Clause was intended “to address the insecurity on the part of the public employees which is really defeating the *very purpose for which the retirement system was established*”) (emphasis added, brackets and internal quotation marks omitted). And the Court extensively quoted the comments of Delegate Green, a principal sponsor, confirming this specific purpose:

Now, I think [the General Assembly] either ought to live up to the laws that they pass or that very quickly we ought to stop when we are hiring public employees by telling them that they have any retirement rights in the state of Illinois. If we are going to tell a policeman or a school teacher that, ‘Yes, *if you will work for us for your thirty years or until whenever you reach retirement age, that you will receive this,*’ . . . then they ought to live by their own rules.

*Id.*, ¶ 47 (emphasis added).

*Kanerva* also specifically emphasized, as support for its holding, that a program of health insurance benefits for state employees and retirees receiving an annuity was established by statute before adoption of the Pension Code, and that the drafters were presumed to act with knowledge of that program of benefits. *Id.*, ¶¶ 3, 41. No similar argument exists here. Plaintiffs recognize that the provisions allowing union leave-of-absence service credits in the Funds did not exist in 1970. They do point out that such benefits were previously available in one Article of the Pension Code, Article 17, for Chicago teachers granted a special leave of absence by the Board of Education. (Pl. Br. at 36.) But the handful of Chicago teachers who may have been covered by this provision pale in comparison to the more than 10,000 retired state employees and widows or widowers in 1970 who were entitled to health insurance under the state program on which the Court relied on *Kanerva*. Thus, neither the Constitutional Convention Delegates, nor Illinois voters, can fairly be assumed to have been mindful of that obscure feature of the Pension Code when they approved the Pension Clause.<sup>13</sup>

*Kanerva* therefore is not dispositive of the different legal issue presented in this case. And because, unlike the benefits at issue in *Kanerva*, the Pension Clause was never intended to provide a constitutional guarantee to public retire-

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<sup>13</sup> Plaintiffs also attempt to liken union leave-of-absence service credits to service credits allowed for military service during a leave of absence from public employment. (Pl. Br. at 34 & n.7.) But given the nature of military service, the large number of individuals affected, and the extensive and longstanding prevalence of such military-leave provisions in the Pension Code, this comparison misses the mark by a wide margin.

ment system benefits for private employment, the Court should hold that the Act validly eliminated the right to earn such credits in the Funds for leaves of absence starting after the Act took effect.

### **CONCLUSION**

For the foregoing reasons, the Court should (1) reverse the circuit court's dismissal of Plaintiffs' claims challenging the Act's prospective elimination of service credits in the Funds for a union leave of absence beginning after the Act took effect; and (2) affirm the circuit court's entry of summary judgment against Plaintiffs on all of their claims challenging the validity and application of the Act's pensionable salary clarification.

June 5, 2018

Respectfully submitted,

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**Supreme Court Rule 341(c) 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) 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 13,823 words.

/s/ Richard S. Huszagh

**Verified Certificate of Filing and Service**

On June 5, 2018, I electronically filed this Brief of Appellee / Reply Brief of Appellant Intervenor, State of Illinois ex rel. Lisa Madigan, Attorney General (the "Brief") with the Clerk of the Illinois Supreme Court using the Odyssey eFileIL system.

To the best of my knowledge, counsel of record for the other participant in this appeal, named below, are registered service contacts on the Odyssey eFileIL system. In addition, on June 5, 2018, I served this Brief on them by e-mails sent to their e-mail addresses of record, listed below.

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify, to the best of my knowledge, information, and belief, that the statements in this Verified Certificate of Filing and Service are true and correct.

June 5, 2018

/s/ Richard S. Huszagh