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IN THE
SUPREME COURT OF ILLINOIS

DAVID PICCIOLI, Plaintiff-Appellant, v. BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM, TONY SMITH, ANDREW HIRSHMAN, MARK BAILEY, TRACEY KEARNEY, FRED PERONTO, CINDA KLICKNA, LARRY PFEIFFER, DANIEL WINTER, and LAURA PEARL, as Trustees of the Teachers' Retirement System, Defendants-Appellees.	)	Direct Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois No. 2015 MR 43 The Honorable RYAN M. CADAGIN, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

This case involves a law that declared an earlier law unconstitutional, repealed it, and required actions under it to be undone. The central question in this appeal is which of the two laws is valid.

By serving as a substitute teacher for one day in 2007, plaintiff David Piccioli was able to take advantage of legislation that became law a few weeks later and allowed him to receive service credits in the Teachers' Retirement System (the "TRS") for nine years of prior employment as a lobbyist for the Illinois Federation of Teachers (the "IFT"). That legislation, Public Act 94–1111 (the "2007 Act"), was drafted by the IFT and created this opportunity for its employees without prior teaching service to get TRS service credits only if they became certified as teachers before the legislation was signed into law.

In 2012, the General Assembly enacted a new law, Public Act 97–651 (the "2012 Act"), which declared the 2007 law unconstitutional and "void ab initio," and directed the TRS to refund Piccioli's contributions under the 2007 Act, which he requested and received. Several years later, he brought this suit against the TRS challenging the validity of the 2012 Act and seeking a judgment enforcing the 2007 Act by requiring the TRS to restore the service credits it authorized. The circuit court granted the TRS's motion for summary judgment, holding that the 2007 Act was unconstitutional special legislation because it had an effective-date eligibility cutoff that excluded anyone who became certified as a teacher after the 2007 Act took effect. Piccioli appealed directly to this Court.

ISSUES PRESENTED FOR REVIEW

The 2007 Act authorized certain people to obtain service credits in the TRS. The 2012 Act declared the 2007 Act unconstitutional, repealed it, and directed the TRS to revoke those service credits and refund the corresponding contributions. The questions presented in this appeal are:

1. Whether the TRS, in an action against it challenging the validity of the 2012 Act and seeking enforcement of the 2007 Act, may argue that the 2007 Act is unconstitutional, as the 2012 Act declared.

2. Whether the 2007 Act was unconstitutional special legislation.

STATEMENT OF FACTS

Starting in 1997, Piccioli was employed as a legislative lobbyist for the IFT, which is one of two statewide unions that represents Illinois school teachers. (C 259, 268, 327-29, 376-78, 470, 509-19, 568-70.) The other statewide teachers union is the Illinois Education Association (the "IEA"). (C 330, 470, 569-70.) Piccioli represented the IFT and its members in matters before the General Assembly, including with respect to legislation affecting funds for public education. (C 259, 329, 366.) Steven Preckwinkle, another IFT employee, also worked as a legislative lobbyist. (C 376-77, 509-12.)

Under the Pension Code, TRS membership is mainly limited to certified public school teachers, staff, and administrators who have worked in that capacity in schools outside Chicago. See 40 ILCS 5/16–106 to 16–109, 16–123. (C 430-33, 469-71, 478.) TRS membership generally follows automatically from such employment. 40 ILCS 5/16–107, 16–123. (C 176-78, 472.) To be eligible for a pension, a TRS member must reach a certain age and have a minimum number of years of service at retirement. See 40 ILCS 5/16–132. (C 447-50.) If those conditions are met, a member's pension is typically calculated based on the member's years of service and salary history. See 40 ILCS 5/16–133.[1]

Before enactment of the 2007 Act, the Pension Code allowed a person who was already a TRS member (based on being a certified teacher and providing

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[1] Persons who became TRS members after 2010 are subject to "Tier 2" provisions that differ from those relevant to this case. See, e.g., 40 ILCS 5/1–160. For simplicity, this description does not include those provisions.

public teaching service), and who then went to work for a statewide teachers union, to continue earning TRS service credits for that union employment. See 40 ILCS 5/16–106(8) (2006). (C 458-59.) (See also below at 5.) Many IFT employees were former full-time public school teachers covered by that provision, but Piccioli and Preckwinkle had never been teachers and therefore were ineligible to benefit from it. (C 329, 367-68, 432, 458-59, 470-71, 478, 568-69, 591, 609-11.)

The 2007 Act

In 2006, the IFT pursued the objective of getting legislation passed that would give its employees who were not former public school teachers the ability to obtain pension benefits for employment with the union before becoming a TRS member. (C 260-64, 520, 531, 574-78, 588-90, 625.) Nick Yelverton, an IFT lobbyist responsible for pension matters, Preckwinkle, and the IFT's president were involved in that effort. (C 261, 343-44, 379-80, 531-34, 574, 588-90, 625.) In October 2006, Yelverton sent an e-mail to Andrea Creek, an employee in the General Assembly's Legislative Reference Bureau, with proposed language for a bill that would create this benefit for current IFT employees. (C 625-29.) That language was included verbatim in Senate Bill 36 ("SB 36"), which later became law as the 2007 Act. (C 574-76, 589-90, 625.) The IFT supported SB 36's passage through the legislative process. (C 276, 530-31, 588-89, 625.) As described below, Preckwinkle kept IFT employees apprised of the bill's progress during that process.

Senate Bill 36 was passed by the House and Senate on November 28 and 30, 2006, respectively, and was sent to the Governor for signature on December 29, 2006. (C 283-86.) It became law as Public Act 94–1111 according to its terms when the Governor signed it on February 27, 2007. 2006 Ill. Laws 5741-42. (C 280-81, 286.)

The 2007 Act made retroactive TRS pension benefits available to IFT employees without prior certified teaching service — i.e., for their IFT employment before becoming a TRS member based on such service — by amending Section 16–106 of the Pension Code. (C 276-81; 2006 Ill. Laws 5741-42.) Before the 2007 Act, Section 16–127 included as creditable service "all service as a teacher from the date membership begins," 40 ILCS 5/16–127, and Section 16–106's definition of a "teacher" eligible to receive pension benefits included, in subsection (8), an "officer or employee of a statewide teacher organization" who, among other things, "is certified under the law governing certification of teachers" and "had previously established creditable service under this Article." 40 ILCS 5/16–106 (2006). The 2007 Act added a paragraph at the end of Section 16–106 providing that a teacher, as defined in subsection (8), "may establish service credit for similar employment prior to becoming certified as a teacher if he or she (i) is certified as a teacher on or before the effective date of this amendatory Act . . . ; (ii) applies in writing to the system within 6 months after the effective date of this amendatory Act . . ."; and (iii) pays the TRS contributions equal to the "normal costs" for the benefits granted for that prior

employment, plus 8.5% compounded interest. 2006 Ill. Laws 5741-42. (C 280.)[2]

Thus, according to the 2007 Act's terms, the pension benefits it made available for employment with the IFT or IEA before becoming a school teacher and TRS member were expressly limited to employees who were certified as teachers *before* the 2007 Act was signed into law by the Governor. An employee applying for those benefits also had to qualify as a "teacher" under Section 16–106(8), which required having performed public teaching service ("creditable service"). (See above at 5.)

For purposes of being eligible for the benefits provided by the 2007 Act, teacher certification under Section 16–106 included certification as a substitute teacher, which required having a bachelor's degree. 105 ILCS 5/21–9 (2006). (C 371-72, 535-36.) And creditable service as a teacher included service as a substitute teacher, without any minimum number of days of such service. 40 ILCS 5/16–130(c) (2006).

The TRS was not aware of anyone before the 2007 Act took effect who had obtained service credit for subsequent union employment based on substitute teaching, as opposed to prior full-time teaching. (C 478.) And neither Piccioli nor the IFT was aware of any other legislation that allowed retroactive service credit

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[2] The "normal cost" is the actuarially calculated present cost necessary to pay projected pension benefits attributable to services performed in a given year. *Actuarial Standard of Practice No. 4, Measuring Pension Obligations and Determining Pension Plan Costs or Contributions*, Pension Committee of the Actuarial Standards Board (Dec. 2013 Rev.) ("*Actuarial Standard of Practice No. 4*"), § 2.15 (defining "normal cost") (*www.actuarialstandardsboard.org/wp-content/uploads/2013/12/asop004_173-3.pdf*, accessed July 23, 2018).

in a public pension system for union employment before becoming a pension system member. (C 364, 591.)

IFT In-House Communications About 2007 Act Before It Became Law

On two separate days in November 2006, before SB 36 was passed by the House and Senate, Preckwinkle held meetings for IFT employees who were not members of the TRS or another public pension system to give them information about becoming certified as a substitute teacher and performing service as a substitute teacher before SB 36 was signed by the Governor. (C 260-61, 345-48, 535-54, 593-95, 634-38.) Preckwinkle's November 9, 2006 e-mail announcing these meetings referred to "pending legislation" and stated that "[p]ersons who should attend . . . are those with a bachelors' degree (or higher)." (C 638.) Piccioli attended at least one of these meetings. (C 260-61, 347-48.)

After the House passed SB 36, Preckwinkle sent another e-mail to IFT employees stating that Senate passage was expected the following day, and that "approval by the Governor could take place anytime within the next 90 days." (C 637.) He added: "I want to reiterate that the TRS retroactivity section of the bill will *only* apply to those who have established TRS service credit on the date the bill is signed by the governor." (*Id.*, emphasis in original.) The following day, Preckwinkle sent an e-mail stating:

> I will do what I can to slow down the bill signing process to allow for everyone who wishes to participate in the TRS provisions the opportunity to do so. If things go well on that end, the effective date could be as late as mid-February, but there is really no way to know that for sure.

(C 636.) On January 10, 2007, Preckwinkle sent an e-mail stating that the bill was sent to the Governor for his signature on December 29, 2006, and that the Governor had up to 60 days from that date to sign it. (C 635.) He added:

> At this time I need to know who is in the pipeline for completing a substitute teaching assignment, your status, and when you expect to satisfy the requirements of the bill. I will try to ensure that anyone who wishes to get coverage under this legislation has enough time to do so prior to his signature.

(*Id.*)

Piccioli's Actions to Obtain the 2007 Act's Benefits

In December 2006, after SB 36 had passed both legislative chambers, Piccioli, who had a college degree, applied for and received certification as a substitute teacher from the Illinois State Board of Education so that he could take advantage of SB 36's provisions. (C 61, 248, 262, 268-69, 333-35, 390, 392-93.) He then applied to work as a substitute teacher at a local primary school in Springfield and, while continuing to be a full-time IFT employee, worked one day as a substitute a teacher, on January 22, 2007. (C 45, 61, 76, 262, 335-37, 391.) He did so to meet SB 36's requirements (for which he received $76.69 in net compensation), and never worked as a teacher again. (C 269-70, 336-38, 373.) Five weeks later, on February 27, 2007, the 2007 Act was signed into law and, by its terms, took effect immediately. (C 280-81, 286.)

On May 14, 2007, Piccioli submitted to the TRS an election to take advantage of the retroactive pension benefits authorized under the 2007 Act. (C 250,

269-70, 276-81, 283-86, 315, 339-43, 373-76, 454-55.) The TRS advised him how much he would have to contribute for this purpose, which he paid. (C 251, 270, 352-57, 444-45, 450-51.) (Preckwinkle also took steps to satisfy the 2007 Act's conditions and submitted an election to the TRS for that purpose, but he later chose not to make the specified contribution; C 315, 383, 519-28, 542-43, 556-58.)

Persons Not Able to Obtain Benefits Under the 2007 Act

When the 2007 Act became law, more than 50 IEA employees had college degrees but were not certified teachers with teaching service, and thus not TRS members. (C 301-08.) There is no evidence that anyone at the IEA — which, unlike the IFT, had no hand in the drafting or passage of the 2007 Act — knew of SB 36's existence before it became law. And when the 2007 Act became law, it was too late for any of these IEA employees to meet the Act's requirements, which included becoming certified as a teacher before the Act became law. In addition, between the time the 2007 Act became law and January 31, 2016, more than 30 individuals with college degrees, but without prior service as certified teachers, became IFT or IEA employees. (C 301-13.)

The 2012 Act

In late 2011, the General Assembly passed House Bill 3813, which became law as Public Act 97–651, when it was signed by the Governor on January 5, 2012. (C 288-89, 291-99.) Section 97 of the 2012 Act, entitled "Retroactive repeal," provided:

> This amendatory Act of the 97th General Assembly hereby repeals and declares void ab initio the last paragraph of Section 16–106 of the Illinois Pension Code as contained in Public Act 94–1111 as that paragraph furnishes no vested rights because it violates multiple provisions of the 1970 Illinois Constitution, including, but not limited to, Article VIII, Section 1.

(C 289.) The 2012 Act further provided that if anyone who made contributions pursuant to that provision of the 2007 Act submitted a refund application within six months after the 2012 Act took effect, the TRS "shall immediately refund" that person's contributions, plus an "amount determined by [its] Board to be equal to the investment earned by the System on those contributions since their receipt." (*Id.*) Within that six-month period, Piccioli applied to the TRS for a refund of his contributions under the 2007 Act, and it refunded those contributions to him, plus approximately $34,300 in earnings on them. (C 253, 271, 360, 363, 464, 500.)

Piccioli's TRS Pension

Piccioli retired from his employment with the IFT in late December 2012, and he then applied to the TRS for a pension based on that employment. (C 248, 268, 271, 327, 359, 386.) His final average salary used to compute his annuity, based entirely on his compensation as an IFT employee, exceeded $170,000. (C 271-72.) The TRS awarded him a pension according to the 2012 Act, excluding any service credit for his IFT employment before he was certified as a public

school teacher and became a TRS member. (C 252-53, 271-72.)[3]

Piccioli's Suit Against the TRS Challenging the 2012 Act

More than two and a half years after applying for his refund under the 2012 Act, Piccioli brought this suit against the TRS Board and its members at the time. (C 12-18.)[4] His complaint sought a judgment declaring the 2012 Act unconsttutional and directing the TRS, on receipt of his refunded contributions, to reinstate his service credits under the 2007 Act for his IFT employment before his teaching certification, teaching service, and TRS membership. (C 17.) In its answer, the TRS denied that the 2007 Act was valid (C 46) and further denied that Piccioli was entitled to the relief he sought (C 52).

After discovery, both sides filed motions for summary judgment. (C 74-79, 149-56, 640-41.) In support of its motion, the TRS argued that the 2007 Act was unconstitutional, as the 2012 Act stated, because it violated the Special Legislation Clause of the Illinois Constitution. (C 641, 643, 650-55.) That violation

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[3] The 2012 Act did not repeal the provisions of the Pension Code in effect before the 2007 Act that authorized TRS members to earn service credit for employment with a statewide teachers union *after* becoming a TRS member based on certified teaching service. The normal vesting period to receive a pension in the TRS is 5 years of full-time employment, 40 ILCS 5/16–132, and when Piccioli applied for retirement, he had accumulated about five years and five months of service credit for his IFT employment after serving as a substitute teacher for one day and becoming a TRS member. (C 402.) This case does not affect Piccioli's TRS pension benefits based on that post-membership IFT employment. (C 385.)

[4] Under Section 2–1008(d) of the Illinois Code of Civil Procedure, 735 ILCS 5/2–1008(d), the caption of this brief has been modified to reflect that the TRS Board position previously occupied by Marc Levine is now held by Tracey Kearney. Similar changes in the TRS Board's membership are noted in the TRS's November 17, 2017 Appearance in this Court.

existed, the TRS maintained, because the effective-date eligibility cutoff in the 2007 Act arbitrarily limited the class of persons who could benefit from the Act's provisions to individuals who satisfied its eligibility criteria before the 2007 Act became law. (C 650-55.) In response, Piccioli contended that the TRS did not have standing to defend the 2012 Act on the ground that the 2007 Act violates the Special Legislation Clause, and that the 2007 Act was constitutional. (C 661-63, 667-70.)

The circuit court granted the TRS's motion for summary judgment and denied Piccioli's motion. (C 766-71.) Rejecting Piccioli's contention that the TRS lacked standing to defend the 2012 Act's declaration that the 2007 Act was unconstitutional and void *ab initio*, the circuit court initially observed:

> TRS did not unilaterally treat either Act as being unconstitutional, but instead complied with both statutes until this litigation was filed. It was only when Piccioli sued TRS and challenged its compliance with the 2012 Act (which declared the 2007 Act unconstitutional and void *ab initio*) that TRS defended that claim by alleging that the 2012 Act was valid because the 2007 Act was, in fact, unconstitutional.

(C 768-69.) The circuit court then held:

> In these circumstances, the Court finds that TRS has standing to defend the actions the 2012 Act directed it to take, as well as the General Assembly's reason for requiring it to take those actions. In addition, denying the TRS the ability to defend the 2012 Act on the ground that the 2007 Act was unconstitutional would put the Court in the position of potentially having to enforce an

> unconstitutional law due to the lack of an adversary relationship between the parties on that issue. The Court declines to do so.

(C 769.) The court added that, in light of Piccioli's challenge to the TRS's standing, the Attorney General had indicated an interest in intervening to defend the 2012 Act but later announced her "intention not to seek to intervene on the standing issue because of the Court's indication that TRS does have standing to defend the suit." (C 769.)

On the merits, the circuit court held that "the 2007 Act's amendment to the Pension Code that added the last paragraph of Section 16–106 violated the Special Legislation Clause because it contained an effective-date eligibility cutoff." (*Id.*) The court explained:

> Pursuant to that provision of the 2007 Act, the pension benefits it authorized for employment with a statewide teachers union before the union employee became a TRS member were not available for anyone who met the 2007 Act's other eligibility criteria — being certified as a public school teacher and providing teaching service, thus becoming a TRS member — *after* the 2007 Act was signed into law and took effect.

(C 769-70.) The court added:

> Plaintiff[] ha[s] not explained why only individuals who met these criteria before the 2007 Act became law are unique with respect to any legitimate legislative purpose, nor [has he] identified any rational reason why the benefits available under the 2007 Act should be limited to such persons, and not be available to other individuals (includ-

> ing those disclosed in the record) who met those criteria after the 2007 Act became law.

(C 770.) Relying on this Court's opinion in *Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Association Unit*, 2013 IL 114853, ¶¶ 43-60 ("*Peoria School Bd.*"), the circuit court then held that the 2007 Act's addition of the final paragraph of Pension Code Section 16–106 was unconstitutional special legislation. (*Id.*) The court's judgment also contained findings required by Illinois Supreme Court Rule 18 for a judgment declaring a law unconstitutional. (C 770.) Piccioli filed a timely motion for reconsideration of the judgment. (C 740-43.) The circuit court denied that motion. (C 760.) Piccioli then appealed directly to this Court. (C 763-65.)

ARGUMENT

I. Summary of Argument

There is no merit to Piccioli's argument that even if the 2007 Act is unconstitutional, the circuit court was obliged to enforce it because he sued a defendant (the TRS) that lacks standing to dispute its validity. The 2012 Act declared the 2007 Act unconstitutional, repealed it, and required the TRS to undo the actions it took under the 2007 Act. The TRS had a statutory duty to implement the 2012 Act — a duty it could lawfully carry out do so only if the 2007 Act was invalid, as the 2012 act declared. Accordingly, when Piccioli filed an action challenging the TRS's implementation of the 2012 Act, the TRS necessarily had the authority to defend that Act's declaration that the 2007 Act was unconstitutional. Unlike a would-be plaintiff allegedly injured by the 2007 Act and seeking to invalidate it, the TRS did not need to demonstrate "standing" to defend its authority to act pursuant to the 2012 Act.

The same result applies even if, as Piccioli contends, the issue is viewed as one involving the TRS's "standing" to assert that the 2007 Act is unconstitutional. The TRS meets standing's justiciability requirements that all litigants must satisfy to assert a claim. And because the General Assembly enacted the 2012 Act, which required the TRS to undo its actions under the 2007 Act on the basis that the 2007 Act was unconstitutional, the TRS also satisfies the additional standing requirements that depend on a party's relationship to a specific claim.

The circuit court also correctly held that the 2007 Act violated the Special Legislation Clause of the Illinois Constitution because it contained an effective-date eligibility cutoff that created special privileges for a select group of persons who satisfied its conditions *before* it became law, while excluding the same privileges for persons who were similarly situated in every material respect but could meet the Act's substantive criteria only *after* it was enacted. Laws with an effective-date eligibility cutoff violate the Special Legislation Clause unless that cutoff serves to identify unique circumstances that justify singular treatment. See *Peoria School Bd.*, 2013 IL 114853, ¶¶ 42-54. Piccioli attempted to show that the 2007 Act targeted such a unique situation, justifying its effective-date eligibility cutoff. The circuit court rightly held, however, that the beneficiaries of the 2007 Act's provisions were not uniquely situated, but instead were materially identical to other individuals who were arbitrarily excluded from its provisions by the effective-date eligibility cutoff.

II. Standard of Review

The circuit court's grant of summary judgment is subject to *de novo* review. *Moline Sch. Dist. No. 40 Bd. of Educ. v. Quinn*, 2016 IL 119704, ¶ 15. *De novo* review also applies to the circuit court's holding that the 2007 Act violates the Special Legislation Clause, *id.*, and to its ruling on Piccioli's standing argument, *Glisson v. City of Marion*, 188 Ill. 2d 211, 220-21 (1999).

III. The TRS Had the Authority to Defend the 2012 Act's Declaration that the 2007 Act Was Unconstitutional.

Piccioli's contention that the TRS cannot defend the validity of the 2012 Act by arguing that the 2007 Act is unconstitutional, as the 2012 Act declares, misidentifies an issue of agency authority as a standing issue. What's more, that contention is wrong even on its own terms.

A. In Litigation Against the TRS Challenging the 2012 Act, It Did Not Need "Standing" to Argue That the 2012 Act Is Valid Because the 2007 Act Was Unconstitutional.

The TRS did not need to satisfy traditional standing rules to be able to argue, in a suit against it challenging the 2012 Act and its compliance with that Act, that the 2012 Act validly declared the 2007 Act unconstitutional. Standing principles govern whether a person may seek judicial redress for alleged harm from an unlawful act. See *Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 492-93 (1988); *In re Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14; see also *Black's Law Dictionary* 1536 (9th ed.) (defining "standing" as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right."). That is not the situation in this case, where the TRS is not seeking redress for harm caused by the 2007 Act, but is only defending an action against it to enforce that Act.

Piccioli argues that the TRS "lacks standing to launch [a] constitutional attack" on the 2007 Act (Pl. Br. at 9), and "lacks power to unilaterally attack the 2007 Act's constitutionality, as it has in this action" (*id.* at 12). But that is not what the TRS has done. It did not initiate litigation challenging the 2007 Act based on a claimed violation of its rights. To the contrary, before enactment

of the 2012 Act, it complied with the 2007 Act. Likewise, when the General Assembly enacted the 2012 Act, the TRS did not file suit seeking a declaration that the 2007 Act was unconstitutional. Again, it just complied with the terms of the 2012 Act.[5] Only years later, when Piccioli brought this action against the TRS, did it defend its authority under the 2012 Act and make the argument — which was necessary to defend the validity of the 2012 Act and its actions under that Act — that the 2007 Act was unconstitutional, as the 2012 Act expressly declared. The TRS did not need "standing" to make that argument in this suit against it.

The TRS is not seeking judicial relief for any alleged violation of its rights. It is simply doing what the General Assembly directed and authorized it to do in the 2012 Act. In the 2012 Act, the General Assembly declared the 2007 Act unconstitutional and directed the TRS to undo the actions it had taken under the 2007 Act by revoking Piccioli's service credits and refunding his contributions. Critically, those actions by the TRS pursuant to the 2012 Act were lawful *only if* the 2007 Act was unconstitutional, as the 2012 Act declared.[6] And when Piccioli

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[5] This is consistent with the principle that an agency acting in its administrative capacity, outside of judicial proceedings, has no authority to declare a statute unconstitutional or act on that basis. See *Arvia v. Madigan*, 209 Ill. 2d 520, 526 (2004).

[6] Whether the Pension Clause (Ill. Const. art. XIII, § 5) gives constitutional protection to pension benefits in a public retirement system for *private* employment is now before the Court in another case (No. 122793). But given the contractual terms of the 2007 Act, including the elective right to purchase specific service credits, such a purchase established rights protected by the Contracts Clause of the Illinois Constitution (art. I, § 16) — *if* the 2007 Act was valid. See *Bardens v. Bd. of Trs. of Judges Ret. Sys.*, 22 Ill. 2d 56, 60 (1961).

sued the TRS, challenging the validity of those actions, the TRS was not seeking affirmative relief for a claimed violation of its rights, but instead merely argued that the 2012 Act was valid because it Act correctly declared the 2007 Act unconstitutional. The TRS did not need "standing" to make this argument any more than any defendant needs "standing" to defend the lawfulness of its actions.

When a statute directs an administrative agency to take certain actions and a suit is brought against it challenging its authority to do so, the agency necessarily may defend the validity of that statute. That is no less true when implementing the statute requires the agency to reverse actions it took under an earlier law on the basis that the earlier law was unconstitutional. In that situation, the agency's duty to implement the statute — and its corresponding ability to defend its authority to do so — necessarily encompasses the ability to assert that the earlier law was invalid. And that is particularly true where, as here, the statute expressly declares the earlier law invalid. The legislative mandate to implement and defend the statute, bolstered by the legislative declaration that the earlier law was unconstitutional, gives the agency authority to do so on any available ground.

Piccioli maintains that the TRS did not have standing to argue that the 2007 Act violated the Special Legislation Clause because the TRS is not within the class of persons allegedly subject to discriminatory treatment. (Pl. Br. at 10, 12.) But again, this argument misses the point, for the TRS is not seeking judicial redress on the grounds that the 2007 Act violated its rights. Taken to its logical conclusion, Piccioli's argument would deny the General Assembly the ability to

enact a law repealing an earlier law on the basis that it violates the Special Legislation Clause. If the repealer is valid, its enforceability cannot depend on whether the entity charged with its enforcement would have standing to launch a freestanding challenge to the validity of the law that has been repealed.

Piccioli's argument would prevent fulfillment of the General Assembly's explicit directives in the 2012 Act by stripping the implementing agency of the ability to defend that Act's validity. No legal authority, nor any reasonable interpretation of the 2012 Act, supports that conclusion.

B. Even if the TRS Needed Standing to Argue that the 2007 Act Is Unconstitutional, It Had that Standing Under the 2012 Act.

The TRS in any event satisfies all relevant standing requirements to be able to argue in this case that the 2007 Act is unconstitutional. In support of his contrary argument, Piccioli lumps together different strands of standing doctrine, including justiciability principles designed to avoid court rulings on generalized grievances or abstract legal propositions, as well as merits-related limitations on who may invoke particular types of common law, statutory, or constitutional rights. (Pl. Br. at 9-12.) His arguments are not well taken. This case presented a concrete dispute between Piccioli and the TRS concerning the validity of the 2007 Act and of the 2012 Act, which expressly declared the 2007 Act unconstitutional and directed the TRS to undo its actions under the 2007 Act. In these circumstances, the TRS not only had a concrete stake in the outcome, but also had the statutory authority — indeed, the statutory duty — to defend the 2012 Act's declaration that the 2007 Act was unconstitutional, which was an essential

element of the TRS's authority to take the steps mandated by the 2012 Act.

1. General Standing Principles

In Illinois, a lack of standing does not implicate the court's subject matter jurisdiction, but instead represents an affirmative defense to a party's ability to assert a claim. *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 253-54 & n.4 (2010); *Greer*, 122 Ill. 2d at 494. In addition, although courts do not always expressly acknowledge the distinction, some standing requirements operate without regard to the particular claim the court is asked to resolve, while others are specific to the type of claim alleged. See, e.g., *People v. $1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 328 (1997) (noting distinction between "article III standing and statutory standing"). As described below, the TRS satisfies both sets of requirements in this case.

The first standing category, relating to justiciability, "seek[s] to insure that courts decide actual controversies and not abstract questions," *Lebron*, 237 Ill. 2d at 252 (brackets, citation and internal quotation marks omitted), and that "issues are raised only by those parties with a real interest in the outcome of the controversy," *Carr v. Koch*, 2012 IL 113414, ¶ 28; see also *Glisson*, 188 Ill. 2d at 221 ("The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit."); *Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14. "The primary focus of the inquiry is whether a party has a real interest in the outcome of the controversy." *$1,124,905 U.S. Currency*, 177 Ill. 2d at 328. To satisfy these standing requirements, a party must show "some injury to a

legally cognizable interest." *Lebron*, 237 Ill. 2d at 266; see also *Glisson*, 188 Ill. 2d at 221; *Greer*, 122 Ill. 2d at 492-93. "The claimed injury, whether actual or threatened, must be distinct and palpable, fairly traceable to the defendant's actions, and substantially likely to be prevented or redressed by the grant of the relief requested." *Lebron*, 237 Ill. 2d at 266; see also *Glisson*, 188 Ill. 2d at 221; *Greer*, 122 Ill. 2d at 492-93.

These standing requirements apply to claimed violations of a constitutional right. Thus, a person asserting such a violation "must be directly or materially affected by the attacked provision," *In re M.I.*, 2013 IL 113776, ¶ 32, and "a court will not determine the constitutionality of a provision of a statute that does not affect the parties," *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 423 (2005); see also *People v. Aguilar*, 2013 IL 112116, ¶¶ 11-12 (holding that any person directly injured by enforcement of facially invalid statute has standing to challenge it).

Establishing the justiciability elements of standing does not require being in the "zone of interests" protected by the provision on which the claim is based. *Greer*, 122 Ill. 2d at 488-93 (1988) (rejecting federal court "zone-of-interest" test that "tends to lead to confusion between standing and the merits of the suit"); see also *Glisson*, 188 Ill. 2d at 221; *Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14 ("A standing challenge focuses on the party seeking relief — not on the merits of the controversy").[7]

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[7] In *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S. Ct. 1377 (2014), the United States Supreme Court also abandoned

The second category of issues described as involving "standing" focuses on whether a specific litigant is a proper party to assert a particular type of claim. These standing requirements depend on the nature of the claim — e.g., whether it sounds in contract or tort, seeks enforcement of a particular statute, or alleges the violation of a specific constitutional provision. See, e.g., *Stahulak v. City of Chicago*, 184 Ill. 2d 176, 180-81 (1998) (holding that individual employees lack standing to bring suit alleging breach of collective bargaining agreement); *Wendling v. S. Illinois Hosp. Servs.*, 242 Ill. 2d 261, 270 (2011) (observing that hospitals which provided care to tort plaintiffs "had no standing to participate in the plaintiffs' personal injury lawsuits, nor could they bring independent causes of action against the tortfeasors"); *In re Marriage of Burgess*, 189 Ill. 2d 270, 272-79 (2000) (holding that statute governing guardianship of disabled adult impliedly gave guardian standing to continue marriage dissolution action commenced before adjudication of disability); *People v. McNeil*, 53 Ill. 2d 187, 190-92 (1972) (holding that standing to seek exclusion of evidence obtained in violation of Fourth Amendment does not extend to all persons aggrieved by use of evidence, but is limited to "'those whose rights were violated by the search itself'") (quoting *Alderman v. United States*, 394 U.S. 165, 171-72 (1969)). This type of standing inquiry is merits-related, in the sense that it relates to the scope of enforceable rights created by a particular legal duty or privilege. See *Greer*, 122 Ill. 2d at 488-

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zone-of-interest standing requirements as part of the federal courts' jurisdictional inquiry and held that such issues relate instead to the merits of specific claims, and in particular "whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." 134 S. Ct. at 1386-87.

92; see also *Glisson*, 188 Ill. 2d at 222; cf. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1551 (2016) ("Common-law courts imposed different limitations on a plaintiff's right to bring suit depending on the type of right the plaintiff sought to vindicate.").

2. The TRS Satisfies Core Justiciability Requirements.

There can be no doubt that the TRS satisfied all of the justiciability-related standing requirements necessary for it to dispute the validity of the 2007 Act. "Although the requirement of standing is meant to preclude uninterested persons from suing, it is not meant to preclude a valid controversy from being litigated." *Messenger v. Edgar*, 157 Ill. 2d 162, 171 (1993). The TRS is not an uninterested person in this controversy. Standing requirements therefore do not bar the TRS from defending the General Assembly's declaration that a law it repealed, and charged the TRS with undoing, is unconstitutional.

The TRS unquestionably has "a real interest in the outcome of the controversy." See *Carr*, 2012 IL 113414, ¶ 28. Resolution of whether the 2007 Act is valid will determine whether the TRS may, or may not, exercise the authority conferred on it by the 2012 Act. If the 2007 Act is found valid and enforced, as Piccioli requests, the TRS's inability to exercise that authority would constitute an injury to its legal interests. That injury also is directly traceable to the relevant issue: whether the 2007 Act is constitutional. And that injury will be redressed, allowing the TRS to act in accordance with the 2012 Act, if the 2007 Act is held to be unconstitutional. See *Lebron*, 237 Ill. 2d at 266; see also *Greer*,

122 Ill. 2d at 492-93.

Piccioli takes too narrow a view of what constitutes a "legally cognizable interest" by arguing that the TRS lacks standing because the relief he seeks will not injure its "personal rights" (Pl. Br. at 9) or impose "additional costs" on it (*id.* at 10).[8] "Where the standing of an administrative agency is at issue, the interest or duty of the agency, as prescribed by statute, determines whether the agency has standing in a judicial proceeding." *Illinois Dep't of Pub. Aid ex rel. Marshall v. Ringo*, 303 Ill. App. 3d 250, 252 (3d Dist. 1999). See also *Dep't of Registration & Educ. v. Aman*, 3 Ill. App. 3d 784, 786 (4th Dist. 1972), *aff'd*, 53 Ill. 2d 522 (1973). In *Aman*, the appellate court specifically rejected the notion that, for standing purposes, "the status of an administrative agency as a party to litigation can be judged upon grievance or injury in a 'personal' respect." 3 Ill. App. 3d at 786. Those principles govern in this case.

The TRS and its Board have a duty to comply with applicable statutes, and that duty gives them standing when their ability to fulfill the duty is at issue. Here, the 2012 Act imposed statutory duties on the TRS that it could lawfully

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[8] "Legally cognizable interests," for purposes of standing, include interests recognized at common law (including property rights), as well as interests created by statute. See *Greer*, 122 Ill. 2d at 493; *Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14; *Village of Lake in the Hills v. Laidlaw Waste Sys., Inc.*, 143 Ill. App. 3d 285, 292 (2d Dist. 1986); *Hill v. Butler*, 107 Ill. App. 3d 721, 725 (4th Dist. 1982); see also *Bio-Medical Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 546-48 (1977); *Glazewski v. Coronet Ins. Co.*, 108 Ill. 2d 243, 254 (1985). When a party claims an injury to an interest created by statute, a court must examine the statute to determine whether it creates any legally cognizable interests beyond those recognized at common law, but this inquiry is distinct from determining whether the plaintiff is an appropriate party to invoke those interests.

fulfill only if the 2007 Act was unconstitutional, as the 2012 Act stated. Those statutory duties, and that statutory declaration, therefore gave the TRS a legally cognizable interest (if it needed one) sufficient to give it standing to defend the General Assembly's conclusion that the 2007 Act was unconstitutional.

3. The TRS Is a Proper Party to Defend the 2012 Act's Declaration That the 2007 Act Was Unconstitutional.

To the extent such an interest was necessary, the 2012 Act also gave the TRS a direct, specific interest in being able to dispute the 2007 Act's constitutionality in any litigation relating to the 2012 Act. The TRS recognizes, as Piccioli points out, that normally only persons falling within the class allegedly discriminated against are considered to have standing, in the merits-related sense, to bring an action to enjoin enforcement of a statute on the ground that it is unconstitutionally discriminatory. See *Cronin v. Lindberg*, 66 Ill. 2d 47, 56 (1976); but cf. *Glisson*, 188 Ill. 2d at 222 (rejecting view that "the doctrine of standing requires that the plaintiff be a member of the class designed to be protected by the statute, or one for whose benefit the statute was enacted, and to whom a duty of compliance is owed"). But that analysis does not apply where a party is named a defendant in an action to enforce a statute against it. In *People ex rel. Holland v. Bleigh Const. Co.*, 61 Ill. 2d 258 (1975), the Illinois Director of the Department of Labor sued a foreign corporation to enforce a statute that prohibited the corporation from using non-Illinois laborers on public works projects. The defendant asserted that the statute unconstitutionally discriminated against citizens of other States. The Director contended that the defendant lacked standing to

challenge the statute because it was "not a proper party to represent the alleged constitutional rights of a class of laborers who are not Illinois citizens since it is not a member of that class." *Id.* at 260. Rejecting the Director's contention, the Court stated: "Defendant obviously has standing to challenge the validity of the statute upon which the action against it is based." *Id.* The same situation is presented here: the TRS obviously has standing (if that concept is even applicable) to challenge the validity of the 2007 Act, upon which Piccioli's action against it is based.

In addition, the 2012 Act reaffirms the TRS's standing to defend that statute's declaration that the 2007 Act is unconstitutional. "[S]tanding is part of the common law" in Illinois. *$1,124,905 U.S. Currency*, 177 Ill. 2d at 328. Thus, the General Assembly, in the exercise of its legislative power, may establish standing as a statutory matter within the limits of what the Constitution allows, as it has done both in the administrative law context, see *Aman*, 53 Ill. 2d at 523-25; *Ringo*, 303 Ill. App. 3d at 252 ("the Department's standing is determined by its interests and duties as prescribed in the Public Aid Code"), and for myriad statutory causes of action, see, e.g., *Board of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 467-68 (1989) (construing statutory standing provisions of Illinois Consumer Fraud Act).

In the specific circumstances of this case, where the TRS is charged with enforcing a statute that declares an earlier law unconstitutional, and whose validity depends on that declaration, that statute unambiguously conveys a legis-

lative intention to give the TRS standing (if that is necessary) to claim that the earlier law is unconstitutional. In other words, whatever bounds a zone-of-interests analysis may generally impose on the persons who may bring an equal protection or special legislation claim, those bounds were modified here by the 2012 Act, which authorizes the TRS to dispute the constitutionality of the 2007 Act in litigation challenging the 2012 Act. Cf. *Petrovic v. Dep't of Employment Sec.*, 2016 IL 118562, ¶¶ 14-19 (holding that agency had standing to appeal circuit court decision reversing its administrative decision where governing statute gave it interests in maintaining uniform body of law and protecting statutory fund).

The TRS also has standing, in this action against it to enforce the 2007 Act, to assert that the 2007 Act is *facially* unconstitutional, and consequently may not be enforced against anyone. In *Aguilar*, 2013 IL 112116, the defendant was convicted of violating two firearms statutes that he claimed violated the Second Amendment. On appeal, the State argued that the defendant was not "aggrieved" by the statutes' alleged unconstitutionally, and therefore lacked standing to contest their validity, because his own conduct was unprotected by the Second Amendment. *Id.*, ¶¶ 11-12. The Court rejected this argument because the defendant asserted that the statutes were *facially* unconstitutional, and so could not validly be "enforced against *anyone*." *Id.*, ¶ 12 (emphasis in original) (citing *People v. Mayberry*, 63 Ill.2d 1, 8 (1976)).

The same situation is present here. The 2007 Act's violation of the Special Legislation Clause renders it unconstitutional in all of its applications, not just

some of them, and prevents anyone who could obtain any benefits under the terms of the 2007 Act from doing so. See *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 33 (2003) (holding that statute violating prohibition against special legislation was "void"); see also *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 498 (2008) (distinguishing facial and as-applied constitutional challenges). Under this Court's holding in *Aguilar*, therefore, Piccioli's claim against the TRS to enforce the 2007 Act gives the TRS standing to assert the 2007 Act is facially unconstitutional, even if the TRS is not within the class discriminated against.

C. The Attorney General Should Be Granted Leave to Intervene, If Necessary, to Ensure a Defense of the 2012 Act.

Finally, if this Court does find that the TRS may not itself defend the 2012 Act's declaration that the 2007 Act is unconstitutional, the Court should grant the Attorney General, on behalf of the People of Illinois, leave to intervene to avoid the equivalent of a default judgment due to the lack of *any defense at all* of the 2012 Act's constitutionality. See Supreme Court Rule 19 (providing for notice to Attorney General and intervention in cases where constitutionality of statute is raised); *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 117 (2004) ("Rule 19 . . . has generally been understood to require notice to the Attorney General whenever the constitutionality of a state statute is challenged"); *Scachitti v. UBS Fin. Servs.*, 215 Ill. 2d 484, 491 (2005) ("we granted the Illinois Attorney General leave to intervene in the appeal . . . and to file a brief addressing the constitutionality of the [qui tam] Act"); *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 394 (1987) (noting that Court allowed the

Attorney General to intervene in light of constitutional question raised); *Mulay v. Mulay*, 225 Ill. 2d 601, 606 (2007) (same); *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 482-84 (1992) (describing Attorney General's broad constitutional common law authority to represent interest of state agencies, and rejecting claim that he lacked standing to assert claims relating to state agency's contracts).

The Attorney General suggested such intervention, if necessary, in the circuit court, but did not file a formal motion to intervene because the circuit court rejected Piccioli's standing argument. (C 692, 750, 769.) Thus, rather than allow the important constitutional issues in this case to be decided by default for want of a party with standing to defend the 2012 Act's declaration that the 2007 Act is unconstitutional, this Court should, if necessary, grant the Attorney General leave to intervene and to adopt the TRS's brief and argument.

IV. The 2007 Act Was Unconstitutional Special Legislation.

The circuit court correctly held that the 2007 Act violated the Special Legislation Clause by using an effective-date eligibility cutoff to create an arbitrary classification that conferred special privileges on a limited group of persons who were materially similar to individuals denied those privileges.

A. General Special Legislation Principles

The Special Legislation Clause of the Illinois Constitution provides: "The General Assembly shall pass no special or local law when a general law is or can be made applicable." (Ill. Const. art. IV, § 13.) It prevents the legislature "from

making classifications that arbitrarily discriminate in favor of a select group." *Crusius v. Ill. Gaming Bd.*, 216 Ill. 2d 315, 325 (2005). "[T]he hallmark of an unconstitutional classification is its arbitrary application to similarly situated individuals without adequate justification or connection to the purpose of the statute." *Allen*, 208 Ill. 2d at 28-29 (brackets, citation, and internal quotation marks omitted).

Of course, in some sense all statutory classifications discriminate between different persons or groups. See *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 393-94 (1997). But the focus of the Special Legislation Clause is on whether a statutory classification "is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute." *Allen*, 208 Ill. 2d at 29 (quoting *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 193-94 (1952)); see also *In re Belmont Fire Prot. Dist.*, 111 Ill. 2d 373, 380 (1986) ("the classification must be based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests" and "must also bear a rational and proper relation to the evil to be remedied and the purpose to be attained by the legislation"). Thus, the Court "has invalidated legislative classifications under the special legislation clause where they have an artificially narrow focus and . . . appear to be designed primarily to confer a benefit on a particular private group without a reasonable basis, rather than to promote the general welfare." *Best*,

179 Ill. 2d at 395.

The Clause does not prohibit a law "specifically addressing the conditions of an entity that is uniquely situated." *Peoria School Bd.*, 2013 IL 114853, ¶ 55; see also *Moline Sch. Dist.*, 2016 IL 119704, ¶ 22. But where a group of persons is not uniquely situated in light of a law's purposes, a legislative classification that arbitrarily gives them special treatment or benefits is unconstitutional. *Peoria School Bd.*, 2013 IL 114853, ¶¶ 55-59; *Moline Sch. Dist.*, 2016 IL 119704, ¶¶ 28-29; *Belmont Fire Prot. Dist.*, 111 Ill. 2d at 380 ("The legislature cannot create a class through the medium of an arbitrary statutory declaration in order that the class may be the recipient of special and exclusive legislative favors."); see also *Bridgewater v. Hotz*, 51 Ill. 2d 103, 109 (1972) ("Laws are general and uniform when alike in their operation upon all persons in like situation.") (citation and internal quotation marks omitted).

B. Discrimination Based on a Benefit Eligibility Cutoff

One device sometimes used to create an arbitrary classification that treats similar groups differently is a date restriction, including an eligibility cutoff based on a law's effective date. See *Peoria School Bd.*, 2013 IL 114853, ¶¶ 42-54 (surveying cases). In *Peoria School Board*, this Court declared invalid, under the Special Legislation Clause, a statute that granted a particular right only to persons with certain characteristics *on the date the statute took effect*, thereby arbitrarily excluding persons possessing those same characteristics at a later time. *Id.*, ¶¶ 7, 59-60.

The statute challenged in *Peoria School Board* reallocated the authority of the Illinois Labor Relations Board (the "ILRB") and the Illinois Educational Labor Relations Board (the "IELRB"), respectively, over a single labor matter. Before the law was enacted, Peoria School District No. 150 employed more than two dozen security agents and guards who were represented by a union that entered into successive labor agreements governed by the Illinois Educational Labor Relations Act, 115 ILCS 5/1 *et seq.* (the "IELRA"). The IELRA applies to public school employees, and the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (the "IPLRA"), applies to other government employees. In the event of an impasse in labor negotiations after expiration of a collective bargaining agreement, the IELRA allows employees to strike and allows management to impose the terms of its last offer, whereas the IPLRA mandates interest arbitration for peace officers. See *Peoria School Bd.*, 2013 IL 114853, ¶ 9. Shortly after the expiration of the most recent labor agreement covering the Peoria school district's security agents and guards, the General Assembly passed a law specifying that the ILRB, not the IELRB, would have authority over "peace officers" employed by "a school district" in "its own police department in existence *on the effective date of this amendatory Act*." *Id.*, ¶ 7 (emphasis added). The school district filed suit challenging the law, and this Court held that it violated the Special Legislation Clause. *Id.*, ¶¶ 6-9, 59-60.

Focusing on the temporal limitation in the challenged statute, the Court noted that on multiple occasions it had invalidated, as impermissible special

legislation, statutes that excluded from their coverage persons or entities that *in the future* might meet the law's criteria or have the same characteristics as those covered by the law. *Id.*, ¶¶ 43-46, 50-53. These cases, the Court stated, collectively stood for the following principle:

> [A] law the legislature considers appropriately applied to a generic class presently existing, with *attributes that are in no sense unique or unlikely of repetition in the future*, cannot rationally, and hence constitutionally, be limited of application by a *date restriction that closes the class as of the statute's effective date*.

Id., ¶ 54 (emphasis added). Elaborating, the Court stated:

> Barring some viable rationale for doing so, it would, for example, violate the proscription of the constitution for the legislature to apply a law to a person or entity in existence on the effective date of enactment, but make it inapplicable to a person or entity who assumed those attributes or characteristics the day after the statute's effective date.

Id.

Applying those principles, the Court in *Peoria School Board* declared the contested law unconstitutional because the legislature, having determined that it was important to provide particular labor-law consequences to peace officers employed by a school district in its own police department, could not rationally choose not to extend those same consequences to "school districts that may hereafter employ peace officers in their own police departments." *Id.*, ¶ 59. In other words, the Court stated, "there is no reason for restricting the advantages of the

legislation to a district with characteristics currently qualifying and not extending the same advantages to those districts qualifying at a subsequent time." *Id.* (citation and internal quotation marks omitted). Thus, the Court held, the challenged law was unconstitutional because "there is no rational justification for [its] limited application via effective-date restriction." *Id.*, ¶ 60.

C. The 2007 Act's Effective-Date Eligibility Cutoff Arbitrarily Discriminated Against Persons Similarly Situated to Those Who Could Benefit From the Act.

The Court's analysis and conclusion in *Peoria School Board* are controlling here. For no apparent reason, the 2007 Act limited the class of persons who could obtain *retroactive* pension benefits in the TRS (i.e., service credits for employment with a statewide teacher organization *before* becoming a TRS member) to union employees who became "certified as a teacher" by the effective date of the 2007 Act. Only if that requirement was met could a union employee who satisfied Section 16–106(8)'s definition of a teacher, which included having "previously established creditable service," apply for such service credits under the 2007 Act. Thus, any employee of a statewide teachers union who satisfied this criterion at a later time — because, for example, the employee did not become a certified teacher or was not aware of the 2007 Act's provisions until *after* the 2007 Act was signed into law — was arbitrarily excluded from the 2007 Act's coverage and benefits. The rationale of *Peoria School Board* leads directly to the conclusion that this discrimination in the 2007 Act was arbitrary, irrational, and unconsti-

tutional.[9]

The evidence in this case shows that more than 80 IFT and IEA employees could have satisfied the criteria established by the 2007 Act if not for its effective-date cutoff. (C 301-13.) They have college degrees, and thus are able to be certified as substitute teachers and perform teaching service. (*Id.*) Yet the 2007 Act arbitrarily excluded them from the benefits it made available to Piccioli and Preckwinkle, who knew of SB 36's terms and acted to satisfy its conditions before it became law as the 2007 Act. No reasonable explanation for this inherently arbitrary cutoff is suggested or possible. Nothing about the condition of the persons included in the class eligible to take advantage of the 2007 Act is unique to them or incapable of repetition in the future. See *Peoria School Bd.*, ¶ 54. It follows, as the circuit court held, that the 2007 Act is unconstitutional.

That conclusion is reinforced by the unusual manner by which the 2007 Act became law, as the result of an initiative by the IFT (and in particular its employees involved in legislative lobbying) to obtain special benefits for current IFT employees who did not have prior public teaching service. See *Lebron*, 237

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[9] Preckwinkle, an IFT lobbyist actively involved in its pre-enactment efforts related to SB 36, understood that to satisfy SB 36's eligibility criteria an IFT employee had to be certified as a teacher *and* provide public teaching service before it was signed into law. (C 635-37.) Arguably, however, the latter condition (teaching service) only had to be satisfied within a six-month window thereafter because a person applying for benefits under the 2007 Act must be a "teacher" within Section 16–106(8)'s definition, which requires having "creditable service." (See above at 5-6.) The 2007 Act is still invalid under this interpretation because an essential eligibility condition (teacher certification) had to be satisfied by the 2007 Act's effective date. And even if the other eligibility condition (teaching service) could be satisfied in the following six months, that deadline still suffers from the same flaw identified in *Peoria School Board*.

Ill. 2d at 395; *Best*, 179 Ill. 2d at 391 (noting that Illinois' "ban on special legislation originally arose in the nineteenth century in response to the General Assembly's abuse of the legislative process by granting special charters for various economic entities"). The IFT drafted the relevant provisions, submitted them to the General Assembly's staff involved in preparing legislation, supported adoption of legislation that included these provisions verbatim, and, for IFT employees who could benefit from those provisions, actively worked to ensure they could satisfy the necessary conditions before the law took effect, after which it was no longer possible to do so. (See above at 4-8.)

In short, the 2007 Act is a quintessential example of special legislation, prohibited by the Special Legislation Clause. Piccioli's claim in this case based on the 2007 Act therefore lacks merit as a matter of law, and summary judgment was properly entered against him and in favor of the TRS.

D. Piccioli's Arguments in Defense of the 2007 Act Lack Merit.

In opposition to this conclusion, Piccioli disputes that the persons who could benefit from the 2007 Act are similar to anyone who could not benefit from it. (Pl. Br. at 17-19.) He further argues that even if the 2007 Act's effective-date eligibility cutoff was discriminatory, that discrimination was not arbitrary, but instead furthered a valid legislative purpose. (*Id.* at 19-23.) Neither contention is convincing.

1. The 2007 Act's Effective-Date Eligibility Cutoff Treated Similarly Situated Individuals Differently.

There is no merit to Piccioli's argument that the 2007 Act's effective-date

eligibility cutoff does not discriminate between similarly situated groups because there are meaningful differences between persons who could satisfy that cutoff and those excluded by it. Piccioli initially complains that the circuit court's order "vaguely" refers to "purely hypothetical employees of statewide teachers unions who became certified public school teachers and taught after the 2007 Act's effective date" but "fails to name or further describe" them. (Pl. Br. at 17-18 & n.6.) But the circuit court's order, which did not have to recite specific evidence, noted that individuals prevented by the 2007 Act's eligibility cutoff from receiving its benefits were "disclosed in the record." (C 770.) And these individuals were listed in stipulations filed with the court. (C 301-13.) (By agreement, these individuals' names, which were disclosed in discovery, were redacted from the filed documents; C 301, 310, 573-74, 614.)

Piccioli next maintains that although he benefited from the 2007 Act, he was not similarly situated to these other individuals because they did not *actually apply* for pension benefits under the 2007 Act. (Pl. Br. at 17-18.) Thus, Piccioli asserts that "nothing in this record suggests that anyone except Piccioli *actually tried to apply* for retroactive pension benefits offered by the 2007 Act." (*Id.* at 17, emphasis added.) This contention seeks to elevate the 2007 Act's discriminatory exclusion of similarly situated individuals into a self-justifying virtue. The argument is also circular, for it attributes significance to the effect of an eligibility cutoff that bears no relation to the intrinsic characteristics of the individuals who fell on either side of it.

For people who became IEA or IFT employees after the 2007 Act took effect and, when they did so, had a college degree but did not have a teaching certificate or public teaching service, the Act unambiguously precluded them from applying for service credits for any prior union employment. It is absurd, therefore, to attach any significance to the fact that they did not "actually apply" for such service credits, which would have been patently futile.[10]

Piccioli offers no better argument for IEA employees who had a college degree but were not certified teachers when the 2007 Act became law. Again, he tries to characterize them as materially different from himself because the record does not show that any of them "was interested in joining TRS under the 2007 Act but was prevented from doing so due to the 2007 Act's deadline." (Pl. Br. at 18-19.) What Piccioli overlooks is that although the IFT, which drafted the relevant language of SB 36, was acutely aware of its eligibility conditions before it took effect (see above at 4-8), nothing in the record indicates that anyone in the IEA knew about it before the Governor signed it into law. It makes no sense, therefore, to rely on the fact that this group of IEA employees did not take affirmative steps before the 2007 Act became law to benefit from its provisions authorizing retroactive service credits for union employment.

Invoking the principle that the public is generally presumed to know the

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[10] Piccioli contends that they suffered no discriminatory treatment under the 2007 Act because they could obtain *prospective* service credit for union service after becoming a TRS member. (Pl. Br. at 18.) But they still would be denied service credit for union employment *before* they obtained a teaching certificate and taught in a public school, which was the situation the 2007 Act addressed.

law, Piccioli nonetheless argues that the Court should "presume" these IEA employees did know about SB 36 before it was signed into law. (Pl. Br. at 23-24.) But presumed knowledge of the law does not require prescience or clairvoyance, and it manifestly does not embrace the existence and terms of every bill that, by definition, is *not* law unless and until it satisfies the constitutional requirements for enacting legislation. Indeed, the implausibility of this argument just highlights the 2007 Act's intentional discrimination in favor of a select group of in-the-know IFT employees, implemented through the device of its effective-date eligibility cutoff.

2. This Court's Opinion in *Schiller* Does Not Establish the Validity of the 2007 Act's Effective-Date Cutoff.

In an attempt to avoid the significance of the 2007 Act's effective-date eligibility cutoff, Piccioli relies heavily on the Court's decision in *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130 (2006), which rejected a special legislation challenge to a law that authorized primary- and high-school district detachments and annexations for a single parcel of property. That reliance is misplaced. As this Court explained in *Peoria School Board*, its decision in *Schiller* was grounded on the fact that the case addressed "a problem unique to a particular geographical area." 2013 IL 114853, ¶ 57; see also *id.*, ¶¶ 55-56.

The affected property in *Schiller* was farmland located in Cook County but immediately adjacent to residential property in Will County, in the Village of Frankfort. 221 Ill. 2d at 134. The owner had pursued residential development of the property and petitioned to have it annexed to Frankfort, as well as to the

primary and secondary school districts serving Frankfort students. *Id.* at 134-35. And the record in the school district detachment and annexation proceedings demonstrated a "community of interest" between the property and Frankfort, which would provide all municipal and library services. *Id.* at 138, 155-56. The law authorizing the challenged school district detachments and annexations for the property defined it by several criteria, including its size, its location (identified in part by circumstances in existence when the law took effect), and the pendency of a municipal annexation petition for the property on the law's effective date. 221 Ill. 2d at 135-36.

The Court in *Schiller* acknowledged that the challenged law conferred a benefit on a single parcel of property, but it held that no other property was "similarly situated." *Id.* at 150-54. Other nearby farmland was not similar, the Court explained, because the record contained no evidence that its owners "sought to convert their farmland into residential areas, desired the Village of Frankfort to annex their property, or additionally sought a school district boundary change." *Id.* at 152-53. Thus, the Court ruled, the situation was different from other cases in which "the similarly situated entities or class of persons which was denied a benefit was clearly identified." *Id.* at 153.

Given *Schiller*'s facts, Piccioli attributes too much significance to the fact that the statute it upheld contained a definition of the affected property that incorporated an effective-date limitation. (Pl. Br. at 14-17.) As the Court noted in *Peoria School Board*, the circumstances in *Schiller*, despite "broader language"

in the opinion, presented a situation where the legislature permissibly "enact[ed] a law specifically addressing the conditions of an entity that is uniquely situated." 2013 IL 114853, ¶¶ 55-56. *Schiller*, the Court in *Peoria School Board* explained, was "distinguishable on [its] facts" because it "was addressing a problem unique to a particular geographical area," and, therefore, "a general law could not have been applied, as no other person or entity did, or could, occupy the precise position of the party or class affected." *Id.*, ¶ 57. In other words, use of the effective-date provision in *Schiller* merely served to define property that was unique for other reasons, such that no "general law [was] or [could] be made applicable," Ill. Const. art. IV, § 13. The circumstances in *Peoria School Board*, by contrast, were different because "a general law clearly could have been enacted that would have affected what is, and henceforth would be, a generic class of individuals." *Id.*

Here, as in *Peoria School Board*, the legislature could have enacted a law that applied uniformly to a "generic class" of persons. Instead, the 2007 Act discriminated in favor of a select subset of that class by arbitrarily excluding others who were similar in all material respects. *Peoria School Board*'s central teaching is directly relevant here and bears repeating:

> [A] law the legislature considers appropriately applied to a generic class presently existing, with *attributes that are in no sense unique or unlikely of repetition in the future*, cannot rationally, and hence constitutionally, be limited of application by a *date restriction that closes the class as of the statute's effective date*.

Id., ¶ 54 (emphasis added).[11]

3. The 2007 Act's Discrimination Among Similarly Situated Individuals Is Not Justified by a Valid Public Purpose.

Piccioli alternatively argues that even if the 2007 Act discriminates in favor of a select group, that discrimination is not arbitrary because legitimate reasons could have justified the legislature's limitation on the availability of retroactive TRS pension benefits. These reasons, he asserts, include helping statewide teachers unions "retain experienced workers" by "discourag[ing] them from taking more lucrative jobs elsewhere" (Pl. Br. at 20-21), and being "fiscally responsible" by limiting the number of such employees who would put demands on "TRS' finite funds" (*id.*). These arguments are unconvincing.

As an initial matter, it may be questioned whether there is a legitimate public interest in encouraging employees of a private union that represents government employees to continue their union employment by giving them public pension benefits for that employment. Cf. *Chandler v. Board of Trustees of Teacher Ret. Sys.*, 365 S.W.2d 447, 449 (Ark. 1963) (declaring invalid, under state constitution, statute authorizing benefits in public retirement system for employ-

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[11] Piccioli argues that "time related cutoffs are commonplace in the pension area." (Pl. Br. at 20.) But the frequent use of a legislative device does not make it constitutional. *People v. Rosehill Cemetery Co.*, 371 Ill. 510, 513-14 (1939); see also *I.N.S. v. Chadha*, 462 U.S. 919, 944 (1983). That is especially true because the 1970 Constitution made the validity of statutory classifications under the Special Legislation Clause a matter for judicial determination, *Moline Sch. Dist.*, 2016 IL 119704, ¶ 20, and this Court has repeatedly declared the use of such a cutoff unconstitutional, see *Peoria School Bd.*, 2013 IL 114853, ¶¶ 43-54 (surveying precedent).

ment with private labor union). But assuming, for this appeal, that such a public interest exists, Piccioli fails to explain how the 2007 Act's inclusion of an effective-date eligibility cutoff rationally advances it. Such union employment is certainly encouraged by giving the union's employees the ability to participate in a public retirement system and earn service credit for their *future* private employment with the union. It is harder to see, however, how that interest is further advanced by also giving such employees the ability to earn *retroactive* service credit for their union employment before becoming retirement system members.

But even if such retroactive benefits did incrementally advance that interest, Piccioli does not, and realistically cannot, explain how that interest is promoted by *putting a deadline* on the ability to apply for and receive such retroactive service credits. Thus, *this feature* of the 2007 Act is not rationally related to achieving the purpose Piccioli invokes in a way that a general law would not have achieved. See *Peoria School Bd.*, 2013 IL 114853, ¶ 59 (holding that effective-date eligibility cutoff did not rationally further statute's stated purposes); see also *Moline Sch. Dist.*, 2016 IL 119704, ¶ 32.

Piccioli contends that the provision of the 2007 Act "[l]imiting such offers to current employees was reasonable because the legislature could have perceived a *temporary need* to guard against attrition." (Pl. Br. at 20-21, emphasis added.) But this is just another way to claim that the individuals who were able to benefit from the 2007 Act are unique, instead of being similarly situated to other IFT or IEA employees who were in a position to satisfy the 2007 Act's eligibility criteria

(except the cutoff) only after it took effect. As discussed above, that claim is unsound. Otherwise, every select group that is similar to others could be granted special privileges, or excused from general burdens, by the simple device of claiming they are somehow more deserving of legislative favors than others. And if that device were routinely accepted, the Special Legislation Clause would be toothless. Every special legislative favor could be described as meeting a "temporary" need. But that is not sufficient to differentiate a group from others who in the future may possess similar characteristics. See *Peoria School Bd.*, 2013 IL 114853, ¶¶ 42-54, 57, 59; see also *Moline Sch. Dist.*, 2016 IL 119704, ¶¶ 29-32, 35; *People ex rel. E. Side Levee & Sanitary Dist. v. Madison County Levee & Sanitary Dist.*, 54 Ill. 2d 442, 447 (1973); *Best*, 179 Ill. 2d at 406 (noting that Court has rejected view that ban on special legislation permits legislature to pursue reform "one step at a time"); *Belmont Fire Prot. Dist.*, 111 Ill. 2d at 385 ("We also reject petitioners' suggestions that the General Assembly has authority to address a problem by degree.").

Nor is there any factual or legal merit to Piccioli's related argument that the 2007 Act's effective-date eligibility cutoff rationally served to limit the fiscal impact of granting retroactive pension benefits for pre-membership employment with a statewide teachers union. The supposed factual premise for Piccioli's argument is belied by the legislative history of the 2007 Act, whose sponsors insisted it would have *no impact* on the State's finances. Indeed, Piccioli himself emphasizes this. (Pl. Br. at 10-11.)

On the third reading of SB 36 in the House, Representative Hannig, a bill sponsor, stated: "This is a pension Bill that does several things, *none of which will cost the State of Illinois any additional pension moneys*. . . . There's *no cost* to the State of Illinois." House Transcript of Nov. 28, 2006, at 68-69 (emphasis added). (C 676-77.) Two days later, on SB 36's third reading in the Senate, Senator Martinez, another bill sponsor, was asked, "is there unfunded liability in this bill?" and responded, "No. *It does not have any unfunded liability*." Senate Transcript of Nov. 30, 2006, at 51 (emphasis added). (C 687.) Thus, limiting the benefits of the 2007 Act to a subset of IFT employees who took steps to avail themselves of those benefits before it became law cannot be justified on the basis that doing so was "fiscally responsible," as Piccioli claims. (Pl. Br. at 20.)

Nor, as a legal matter, does Piccioli's argument about fiscal savings find any support in case law applying the Special Legislation Clause, which focuses on the *objects* of the challenged law and whether there are meaningful differences between the persons or entities granted a benefit and those denied it. See, e.g., *Belmont Fire Prot. Dist.*, 111 Ill. 2d at 380 ("To render a statutory classification valid, the classification must be based upon a rational difference of situation or condition found to exist in the persons or objects upon which the classification rests."). Consequently, courts have held that the Special Legislation Clause does not permit using limited public resources in ways that favor only a few members of a group of similarly situated persons.

In *Moline School District No. 40*, the Court explained that the Special Legislation Clause embodies the principles that "governments should establish and enforce general principles applicable to all their citizens and not enrich particular classes of individuals at the expense of others," and that "'one class or interest should not flourish by the aid of government, whilst another is oppressed with all the burdens.'" 2016 IL 119704, ¶ 19 (quoting 1970 Constitutional Convention Debates at 391-92, statements of Delegate Anderson). Applying these principles, the Court held that there was "no reasonable basis for limiting the tax incentives" at issue in that case "to this particular type of business at this particular facility in this particular part of the state." *Id.*, ¶¶ 28-29.

In an analogous context, the Court in *Searle Pharmaceuticals, Inc. v. Department of Revenue*, 117 Ill. 2d 454, 468-78 (1987), declared invalid, under the Uniformity of Taxation Clause of the Illinois Constitution (art. IX, § 2), a law limiting the availability of net operating loss carrybacks to affiliated corporations that file a consolidated federal tax return. The Department of Revenue tried to justify the law based on the State's interest in preserving limited public resources. *Id.* at 462, 475. Rejecting that rationale, the Court stated:

> This is achieving the goal of maximizing State income in an arbitrary and capricious manner. There is no real and substantial difference between these two classes rationally related to this stated objective.

Id. at 478. Similar reasoning applies here.

In sum, the 2007 Act, by means of its effective-date eligibility cutoff, arbitrarily discriminates among similarly situated persons, and the circuit court correctly held that it is unconstitutional.

D. The Pension Clause Noes Not Require Enforcing the 2007 Act.

For the reasons described above, the Pension Clause of the Illinois Constitution (art. XIII, § 5), on which Piccioli relies (Pl. Br. at 24-26), does not change the relevant analysis or bolster his claim. His argument under the Pension Clause assumes that the 2007 Act was valid and consequently gave him pension rights protected by the Pension Clause. Thus, he complains that "[t]he 2012 Act unequivocally stripped Piccioli of all his *vested pension rights* he had acquired by purchasing, under the 2007 Act, nearly 10 years of service credit" (Pl. Br. at 24, emphasis added), and that "[t]he 2012 Act entirely eradicates Piccioli's *right* to receive pension annuities attendant to his pre-2007 union service" (*id.* at 25-26, emphasis added). But if the 2007 Act was unconstitutional and void, as the 2012 Act declared, this assumption is incorrect. See *Allen*, 208 Ill. 2d at 33.

For good reason, even Piccioli does not argue that the Pension Clause gives constitutional protection to an unconstitutional law. The Pension Clause grants a constitutional protection to pension benefits similar to that provided by the Contracts Clause to contracts generally. See *Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 58. (See also above at 18, n.6.) That protection depends, initially, on the existence of a valid contract. See *Mercantile Trust & Deposit Co. v. City of Columbus*, 203 U.S. 311, 321 (1906) ("It cannot be determined that

there is an impairment of the obligation of a contract until it is determined what the contract is, and whether it is a valid contract."); see also *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 428 (1954); *Houston & Texas Cent. R.R. Co. v. State of Texas*, 177 U.S. 66, 93 (1900). Because the 2007 Act, as an unconstitutional law, did not give rise to any valid contractual right to obtain pension benefits, the Pension Clause offers no support for Piccioli's claim in this case.

CONCLUSION

For the foregoing reasons, the circuit court's judgment should be affirmed.

July 24, 2018

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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 containing 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 49 pages.

/s/ *Richard S. Huszagh*

Verified Certificate of Filing and Service

On July 24, 2018, I electronically filed this Brief of Defendants-Appellees (the "Brief") with the Clerk of the Illinois Supreme Court using the Odyssey eFileIL system.

Counsel of record for the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system. In addition, on July 24, 2018, I served this Brief on her by e-mail sent to her 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.

July 24, 2018 /s/ *Richard S. Huszagh*

CERTIFICATE OF FILING AND SERVICE

I certify that on July 25, 2018, I electronically filed the foregoing **Brief of Defendants-Appellees** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, was served by transmitting a copy on July 25, 2018, from my e-mail address to all primary and secondary e-mail addresses of record designated by that participant:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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