**No. 129471**

**IN THE SUPREME COURT OF ILLINOIS**

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| ARLINGTON HEIGHTS POLICE PENSION FUND, *et al*, | ) | On Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0198 |
| Plaintiffs-Appellants, | ) | |
| v. | ) | There Heard on Appeal from the Circuit Court of Kane County, Illinois, Case No. 2021 CH 0055 Honorable Robert K. Villa Judge Presiding |
| JAY ROBERT "J.B." PRITZKER, *et al*, | ) | |
| Defendants-Appellees. | ) | |

**ASSOCIATED FIREFIGHTERS OF ILLINOIS' *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES**

**INCLUDES APPENDIX**

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**EXHIBIT A**

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## **INTEREST OF *AMICUS CURIAE***

*Amicus curiae*, the Associated Firefighters of Illinois ("AFFI" or "the AFFI"), serves as the Illinois state labor association of the International Association of Firefighters. The AFFI has approximately 224 associated member unions, representing firefighters all across the state of Illinois. All affiliated unions are engaged as the exclusive bargaining representatives of firefighters employed by municipalities or fire protection districts in the state of Illinois. The AFFI supports its affiliated unions and their members in matters that may impact their retirement pensions. Those pensions are governed by the provisions of the Illinois Pension Code ("Pension Code"), including but not limited to 40 ILCS 5/1-101 *et seq.*, 40 ILCS 5/4-101 *et seq.*, and 40 ILCS 5/22C-101 *et seq.* The firefighters represented by the AFFI associated member unions are, upon retirement, eligible for pension benefits under Article 4 of the Pension Code, 40 ILCS 5/4-101 *et seq.*, if they meet the criteria Article 4 sets forth.

Plaintiffs Arlington Heights Police Pension Fund, *et al*, bring this suit to challenge Illinois Public Act 101-610 ("the Act").[1] The Act involves fundamental issues relating to the pension benefits guaranteed to firefighters and police officers who have chosen to pursue careers protecting the public. The resolution of this case is of utmost concern to the AFFI, its constituent unions, and their members, as public safety employees' statutory interests and the financial health of the system that exists to pay their pension benefits are directly at issue in this litigation. Further, if the arguments advanced by Plaintiffs are

[1] Plaintiffs' Brief includes a copy of *Federal* Public Act 101-610, which is not relevant to this case. A copy of *Illinois* Public Act 101-610 may be accessed at https://www.ilga.gov/legislation/publicacts/101/PDF/101-0610.pdf, *last visited* September 13, 2023.

accepted by this Court, it would lead to an unprecedented (and unnecessary) curtailment of the General Assembly's ability to create procedures to generate significant savings and additional revenue for pension systems, and to otherwise ensure that pension funds in Illinois are adequately funded.

## ARGUMENT

### I. The Act Protects the AFFI's Members By Strengthening The Financial Condition Of Article 4 Pension Funds Without Reducing Benefits

Illinois Public Act 101-610 ("the Act") consolidates investment assets and authority, and strengthens the pension system's financial condition without reducing the benefits paid to any beneficiary, participant, or future participant. In Illinois, every municipality or fire protection district with 5,000 or more residents, but less than 500,000 residents, which employs non-volunteer firefighters, emergency medical technicians, or paramedics, must establish a Firefighters' Pension Fund pursuant to Article 4 of the Illinois Pension Code. *See* 40 ILCS 5/4-101; 40 ILCS 5/4-103. Article 4 governs these "downstate" (non-Chicago) funds and provides that each downstate fund will be governed and administered by a board of trustees. 40 ILCS 5/4-121. Prior to the Act, the downstate funds had the authority to invest assets not immediately needed to pay benefits ("investment assets"). However, their returns on investments were somewhat limited as the downstate funds did not enjoy economies of scale and were limited by state statute as to how much they could invest in equities and fixed income investments. Additionally, each of the 295 downstate funds individually paid separate administrative fees and costs related to their investments. Commission on Government Forecasting and Accountability, REPORT ON THE FINANCIAL CONDITION OF THE DOWNSTATE POLICE & DOWNSTATE FIRE PENSION FUNDS IN ILLINOIS [P.A. 95-0950], 2021 edition, at 13 (noting 295 downstate firefighters' pension funds in 2019). By consolidating the downstate funds' investment assets into the Firefighters' Pension Investment Fund ("FPIF"), and transferring investment authority to the FPIF, the Act has generated and will generate superior investment returns and revenue, and has saved and will save money on administrative fees. This has increased, and will increase, the assets each downstate fund has available to pay firefighters' pensions without reducing benefits now or in the future.

The Act resulted in significant part from the recommendations of Governor J.B. Pritzker's task force ("Task Force"). The Task Force studied the financial problems of Illinois' pension systems. That Task Force then issued a report ("Task Force Report") (C 125 – C 146) that recommended the investment asset consolidation that the Act achieved. The Act will protect AFFI members by adding revenue and saving costs for their retirement system without decreasing benefits. This Court should affirm this salutary legislation.

### A. The Act Allows the Pension System to Generate and Retain Greater Financial Resources, to the Benefit of Funds and Their Beneficiaries

The Act allows the pension system to generate and retain greater financial resources, which has benefitted and will benefit the downstate funds and their beneficiaries. First, during its brief existence, the FPIF has already received superior returns on investment than the downstate funds. It is reasonable to expect that it will continue to do so. Second, the FPIF has realized substantial savings on administrative costs as compared to the total costs expended across all downstate funds. There is every reason to expect that it will continue to do so. Both these advantages of the FPIF will generate significant revenue or savings. In each case, the amount is expected to far eclipse the $7.5 million loan the FPIF received from the Illinois Finance Authority. *See* 40 ILCS 5/22C120(h). The revenue and savings will solidify the long-term financial health and viability of the Article 4 pension system.

### 1. *The FPIF has achieved, and will continue to achieve, a better rate of return on its investments than the downstate funds*

The FPIF has already achieved, and will continue to achieve, a superior rate of return on investments than the downstate funds achieved. The funding level of public safety pension systems has been an acute concern to Illinoisans for some time. Due to a variety of factors, as of Fiscal Year ("FY") 2017, 384 of Illinois' 649 Article 3 and Article 4 pension funds were funded at a level of 60% or less. REPORT TO GOVERNOR JB PRITZKER, ILLINOIS PENSION CONSOLIDATION FEASIBILITY TASK FORCE, October 19, 2019, at 8 ("Task Force Report") (C 132). The Task Force discovered that for the period FY 2004-FY 2013, Article 3 and Article 4 funds achieved an average annual return of just 5.61%, compared to the 7.62% and 6.73% returns achieved by the statewide IMRF and ISBI funds, respectively. Task Force Report, at 9 (C 133). Similarly, over the period FY 2012-FY 2016, Article 3 and Article 4 funds achieved an average annual return of 5.06%, while the total average of all other pension systems in Illinois was 6.89%. Task Force Report, at 9 (C 133). Thus, prior to consolidation, downstate funds investing their own investment assets were underfunded and were falling further behind due to poor investment returns.

The lower returns were the result of an unfortunate but necessary feature of the system. Prior to the Act's consolidation, the Pension Code restricted the investment options available to each downstate fund based on the total value of assets it held. *See* 40 ILCS 5/1-113.1; 40 ILCS 5/1-113.2; 40 ILCS 5/1-113.3; 40 ILCS 5/1-113.4; 40 ILCS 5/1-113.4a. A downstate fund holding less than $2.5 million in assets, for example, could only invest 10% of those assets in equities. 40 ILCS 5/1-113.2. As a downstate fund accumulated $2.5 million, $5 million, and $10 million in assets, investment restrictions loosened, but remained significant. 40 ILCS 5/1-113.3; 40 ILCS 5/1-113.4; 40 ILCS

5/113.4a. These restrictions sharply curtailed the downstate funds' ability to obtain a high rate of return on investment. A smaller downstate fund was forced to invest conservatively at all times, and could only capture a sliver of the growth offered by a strong equity market. For example, from FY 2012-FY 2020, Article 4 funds with $10 million or more in assets averaged a 6.2% annual rate of return on their investments, but those with less than $2.5 million in assets averaged just 3.0%. (C 475).[2]

It was necessary to impose investment limitations to protect smaller downstate funds, which could be substantially or completely "wiped out" by several months of a poor equity market. For the same reason, it was not viable to simply increase the percentage of assets those smaller funds were permitted to invest in equities. However, the limitations necessarily drove down the smaller funds' returns on investment at any time when equities performed well. The limited growth, in turn, caused underfunding and threatened the financial health of those funds. Smaller downstate funds seemed condemned to remain underfunded, or too small to take advantage of economies of scale.

The Act eliminates these restrictions and allows for greater investment opportunities. The FPIF now invests the combined assets it received from all downstate funds. As of June 30, 2023, the most recent date for which a report is available, the market value of the FPIF's assets was $7,923,831,641. Illinois FPIF Total Plan Investment Risk & Analytical Services, at 2, *accessed at* https://ifpif.org/wp-content/uploads/2023/08/Northern-Trust-Article-4-Benchmark-Report-2023.06.30.pdf,

[2] The median rates of return for these classes of downstate funds were 6.0% and 2.2%, respectively, (C 476), revealing an even greater disparity between the rates of return achieved by large and small funds.

*last visited* September 7, 2023.[3] By dint of its sheer volume, this body of assets will not face the possibility of being "wiped out" by several months of a poor equity market. The FPIF is protected by virtue of its size and will not suffer losses that seriously impact its financial health, as a smaller fund might. Additionally, should an investment loss occur, it will be spread *pro rata* among the FPIF's 295 individual accounts, one for each downstate fund. As a result, the downstate funds with the greatest levels of assets will suffer the greatest losses.

The Act has led to, and will continue to lead to, greater rates of return on investments. The statutory basis for this is that the Act eliminates the restrictive provisions that previously applied to the downstate funds' investment decisions, cited above. The Act states, "The [FPIF] shall not be subject to any of the limitations applicable to investments of pension fund assets by the transferor [downstate] pension funds under Sections 1-113.1 through 1-113.12 or Article 4 of this Code." 40 ILCS 5/22C-122. Instead, the Act provides that the FPIF "shall have the authority to invest funds, subject to the requirements and restrictions set forth in Sections 1-109, 1-109.1, 1-109.2, 1-110, 1-111, 1-114, and 1-115 of this Code." *Id.* These later-cited sections set restrictions that are far more lenient than those previously imposed on downstate funds. In fact, these sections set no <u>numerical</u> limits on the percentage of assets that the FPIF may invest in equities. Rather, the FPIF is limited by its Trustees' and investment managers' broad duty to faithfully discharge their fiduciary duties, including in selecting and diversifying investments, 40 ILCS 5/1-109, and by other

[3] The FPIF is a government body. Reports of government bodies are subject to judicial notice. *See People v. Matkovick,* 101 Ill.2d 268, 270-71 (1984).

more specific restrictions, *see, e.g.*, 40 ILCS 5/1-111. Otherwise, the FPIF may invest as it sees fit.

The FPIF's actual investment experience bears this out, and shows that the FPIF will obtain better returns on investment than the downstate funds <u>even in a market that is not friendly to equities</u>. The FPIF recently completed a study comparing its investment experience from October 2021, when it began investing, through June 30, 2023. Memorandum dated August 14, 2023 Re: FPIF Performance Relative to Article 4 Pension Fund Benchmarks, at 1, *accessed at* https://ifpif.org/wp-content/uploads/2023/08/Article-4-Benchmark-Report-Memorandum-Website-2023.08.25.pdf, *last visited* September 7, 2023. The FPIF compared its actual investment experience with four comparators: downstate funds with less than \$2.5 million in assets; downstate funds with \$2.5 million or more in assets, but less than \$10 million; downstate funds with \$10 million or more in assets; and an "Article 4: All Pensions" benchmark intended to represent all Article 4 pensions. *Id.* at 1-3. The FPIF found that during the time period in question, it outperformed all four comparators, including by outperforming the smallest downstate funds by 2.98%. *Id.* at 3. A further breakdown of the FPIF's performance with respect to the first three comparators (actual downstate funds), prepared by the FPIF, is included in the Appendix. *See* FPIF Investment Portfolio Performance analysis, A-00001. Of note, the FPIF outperformed these comparators even <u>during a time when the equities markets were suffering significant losses</u>. *Id.* The FPIF also outperformed all comparators during the time period in question. *Id.* The FPIF has proven its merit and obtained superior returns even in a poor equity market, and overall.

Further, the FPIF will also obtain higher rates of return during bull markets. Among all investment options, equities offer the greatest potential for growth, and certainly greater potential than the fixed income investments that many downstate funds held, by statute, in large proportions. Freed from the downstate funds' restrictions, which were necessary previously but are not now, the FPIF will inevitably obtain better returns.

In addition, the substantial assets of the FPIF guarantee that it will hold significant buying power. This was not true of downstate funds. This shift was intended by the General Assembly when it passed the Act. In the floor debate over what would become Act, the bill's sponsor, Representative Hoffman, stated in relevant part:

> [W]e're going to use the buying power or the economy as a scale for investing all the money together. . . . I think it was determined that actuarially, as well as the fact that many of these funds can't make the same type of investments that provide higher yields with lesser risk, that it would be better to . . . for investment purposes to have all the funds together whether it be police or fire.

*101st Ill. General Assembly, Regular Session November 13, 2019 (House of Representatives)* at 82-83. This logic regarding economies of scale applies not just to investment options, but to the ability to retain the best investment managers.

The FPIF has already obtained better rates of return on investment than the downstate funds obtained. There is every reason to believe it will continue to do so. This increases the assets available to pay pensions to thousands of beneficiaries and participants, many of whom are AFFI members.

### *2. The FPIF has realized and will realize substantial savings on administrative costs as compared to the downstate funds*

In addition to generating greater investment returns, the FPIF has realized and will continue to realize substantial savings on administrative costs, compared to the cumulative costs paid by the downstate funds. The investment advisor fee paid by the FPIF, in particular, offers significant savings over the fees paid by the downstate funds.

Prior to consolidation, each downstate fund retained its own investment advisor to invest that fund's assets. Investment advisors generally charge fees as a percentage of the total fund assets managed, expressed in basis points.[4] The Task Force specifically identified the fees paid to investment advisors as an area in which the downstate funds' cumulative spending could be significantly reduced. The Task Force noted that for FY 2018, IMRF's investment expense to asset ratio was 32 basis points, and ISBI's ratio was 12 basis points. Task Force Report, at 10 (C 134). However, for Article 3 and Article 4 pension funds, that figure was 57 basis points in FY 2013. Task Force Report, at 10 (C 134). The Task Force predicted that consolidating assets would save $38 million to $51 million on investment-related expenses alone for those funds. Task Force Report, at 10 (C 134).

Subsequently, the FPIF made its own comparison, which aligned with the Task Force's prediction. Downstate funds transferred their investment assets to the FPIF in multiple "tranches," including separate tranches in October and November 2021. In October, downstate funds transferred $874 million in investment assets to the FPIF. *See* "Cost Savings" News item, posted December 14, 2021 to the FPIF's website, *accessed at*

[4] A basis point is one one-hundredth of a percent (0.01%). For example, 50 basis points means 0.50%. 100 basis points means 1%.

https://ifpif.org/news/cost-savings/, *last visited* September 7, 2023. The investment advisor fees paid by those downstate funds ranged from 2 to 160 basis points, with a weighted average of 37 basis points. *Id.* This amounted to a total of $3.2 million annually in fees. *Id.* In contrast, the FPIF's investment advisor fee is just 3.3 basis points. *Id.* If that 3.3 basis points had applied to the $874 million that was transferred, the fees paid would have been just under $288,500. *Id.* This is a savings of approximately $2.9 million, or 91%. *Id.*

In November, downstate funds transferred $304 million in investment assets to the FPIF. *Id.* The weighted average investment advisor fee for these assets was 52 basis points. *Id.* This resulted in a fee of $1.6 million annually. *Id.* If the FPIF's fee of 3.3 basis points applied to these assets, only $100,000 in fees would have been paid. *Id.* This would have saved $1.5 million, or 94%. *Id.*

The FPIF analyzed projected savings based on the results from these two tranches. The weighted average of the downstate funds' investment advisor fees between October and November was 41 basis points. *Id.* Based on that figure, the downstate funds would have paid $30.5 million annually in investment advisor fees. *Id.* But applying the FPIF's fee of 3.3 basis points, the amount paid would be less than $2.5 million. *Id.* Thus, the FPIF projected the annual savings on <u>investment advisor fees alone</u> to be $28 million. *Id.* As a result, just one year of savings on investment advisor fees is projected to save the FPIF nearly four times the amount of the $7.5 million loan that Plaintiffs object to.

On December 16, 2022, the FPIF issued a report showing that the investment advisor fee savings were even greater than it had predicted. Report on the Statutory Transition Period, January 1, 2020 – June 30, 2022 ("Transition Period Report"), *accessed at* https://ifpif.org/wp-content/uploads/2022/12/Report-on-the-Statutory-Transition-

Period-12.16.22.pdf, *last visited* September 13, 2023. The report noted that the fee for the FPIF's passive investments was less than one basis point, and its fee for all investments was 3.4 basis points. Transition Period Report, at 4. As a result, compared to the fees paid by the downstate funds, the FPIF paid more than $34 million less in annual fees. *Id.* If the FPIF saved this amount every year, invested the savings, and obtained its actuarially assumed rate of return, the savings on fees would result in $3.2 billion in increased assets over 30 years. *Id.*

Even if the Act did nothing else, this significant savings in administrative costs would be a legislative victory.

### B. Neither the Act Nor the Consolidation Process it Creates Has Diminished, or Will Diminish, the Pension Benefits of any Beneficiary, Participant, or Future Participant

Neither the Act nor the consolidation process it creates has diminished, or will diminish, the pension benefits of any beneficiary, participant, or future participant. The Act strengthens the financial health of the pension system without decreasing or diminishing these benefits at all. Rather, by establishing a centralized Fund for the investment of assets, the Act increases the systems' resources without reducing present or future benefits.

The pension system created by Article 4 is a defined benefit system. Beneficiaries receive benefits in an amount certain set by a statutory formula, independent of how well or how poorly the invested assets perform. *See, e.g.*, 40 ILCS 5/4-109 (setting forth pension amounts for standard retirement pension). Thus, Article 4 obligations will exist in amounts certain and those amounts will not increase if investment assets draw a larger return.[5] The increased return has the direct effect of enhancing the financial health of the system.

A legislature seeking to enhance this financial health can either increase the resources provided to the pension system (the difficult, but correct, option), or it can reduce benefits for future pension system entrants. In 2010, the General Assembly chose the latter option and passed Public Act 96-1495. P.A. 96-1495 altered benefits for firefighters who entered service on or after January 1, 2011, by increasing the age at which a firefighter could retire without a reduction in his pension, 40 ILCS 5/4-109(c); decreasing the amount of yearly increases to the pension, 40 ILCS 5/4-109.1(g); and decreasing pensions to some survivors, 40 ILCS 5/4-114(j). These measures may have provided limited support to the pension system overall. However, <u>every</u> firefighter who entered service after January 1, 2011 will receive a lesser benefit than he would have received in the absence of P.A. 96-1495. P.A. 96-1495 is the sort of pension system "solution" that puts a burden on workers due to the unwise funding decisions of prior lawmakers.

In the Act at issue here, the General Assembly chose the other path. The Act enhances the financial health of the pension system by creating more revenue for the system as a whole, through greater investment returns and savings on administrative costs. The Act does not decrease benefits for any firefighter. It does not decrease the pensions provided in 40 ILCS 5/4-109 (governing regular retirement pensions); 40 ILCS 5/4-109.1 (governing annual pension increases); 40 ILCS 5/4-110, 110.1, and 111 (governing

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[5] For this reason, in other contexts, courts have taken a dim view of suits brought by defined benefit pension system beneficiaries which challenge such systems' investment decisions. *See, e.g., Thole v. U.S. Bank N.A.*, 140 S.Ct. 1615 (2020) (holding that defined benefit pension system beneficiaries lacked Article III standing to challenge investment decisions of employer and fiduciaries).

disability pensions); and 40 ILCS 5/4-114 (governing pensions to survivors), or anywhere else. In fact, in two respects, the Act increases pension benefits. *See* 40 ILCS 5/4-109(c) (amended by Public Act 101-610 to provide, in some cases, a greater average monthly salary to use to calculate pensions); 40 ILCS 5/4-114(j) (amended by Public Act 101-610 to provide, in some cases, a greater pension to survivors). There is no provision in the Act that will diminish any benefit for any pensioner, participant, or future participant. The Act achieved something that should please all stakeholders involved: it enhanced the financial strength of the pension system without decreasing benefits or increasing contributions or taxes. That is a remarkable legislative achievement. The participants and beneficiaries themselves have sustained no monetary loss under the Act, and the loss of downstate fund clients by investment advisors is not of legal significance.

Even if the Act reduced the pool of assets available to downstate funds—something that has not happened, but which is considered *arguendo*—that would not lead to a reduction in benefits or to any harm to any participant or beneficiary. All benefits remain guaranteed in their full amounts by the Pension Protection Clause, Ill. Const. 1970, art. XIII, sec. 5, and every beneficiary will receive all the money he or she is entitled to. In other words, losses at the Statewide investment level will not lead to reduced benefits for any individual firefighter. The Act simply contains no threat of harm to any individual's benefit.

Plaintiffs' arguments are unpersuasive. They cannot argue that any benefits are being reduced in violation of the Pension Protection Clause. The Pension Protection Clause protects benefits in the nature of monetary payments. Those benefits are not at issue here. This case is analogous to *People* ex rel. *Sklodowski v. State of Illinois*, 182 Ill.2d 220

(1998), and *McNamee v. State of Illinois*, 173 Ill.2d 433 (1996), in which the Illinois Supreme Court held that changes to the funding mechanisms employed by state pension systems do not implicate the Pension Protection Clause. This Court should note these cases and affirm.

The Act consolidates investment assets and creates a single statewide authority, the FPIF, to invest them. This will strengthen the financial health of the pension system. Further, it will do this without reducing benefits by a single cent for any current or future beneficiary. This is a laudable accomplishment that will protect all the AFFI's members now and far into the future. While a few downstate funds object, their objections cannot serve as an impediment to significant reform and improvement in the system. The State's power to create, change, alter, and reform pension funding mechanisms is broad, as shown in *Sklodowski* and *McNamee*. Here, the General Assembly was free to reform the pension system by consolidating assets for investment purposes. In doing so, it acted lawfully and wisely, and advanced the strong and legitimate interests of public safety employees in a financially health pension system.

## II. The Consolidation Pursuant To The Act Is Limited In Extent, As Every Pension Board Duty And Authority, Other Than Investment Duty And Authority, Remains Vested In The Downstate Boards

The consolidation that the Act enacts is limited in extent and extends only to each downstate fund's investment assets and authority. Every other duty of the downstate boards remains vested in those downstate boards. Certain language in the circuit court's order could be read to state that the Act eliminated the downstate funds entirely, and transferred all of their duties and authorities to the FPIF. (C 610). That did not occur. The Act consolidates only the investment assets and investing authority of the downstate funds, and transfers or grants those assets and that authority to the FPIF. The consolidation pursuant to the Act is limited in scope, and goes no farther than necessary to achieve a better-funded pension system. All pension board duties and authorities unrelated to investment remain vested in the downstate boards.

The Act did nothing to change the basic governing structure set out in Article 4, and in crucial ways, the Act reaffirmed the power of downstate funds. Article 4 still reflects that downstate funds will be created "[i]n each municipality" with 5,000 to 499,999 inhabitants. 40 ILCS 5/4-101; 40 ILCS 5/4-103. Each downstate fund will still be governed by a board. 40 ILCS 5/4-121. The Act makes no change to the downstate funds' authorities generally, including, *inter alia*, their authority to enforce contributions, 40 ILCS 5/4-124; to hear and determine applications for retirement pensions, 40 ILCS 5/4-125; and to order payments, 40 ILCS 5/4-125.

The powers and duties granted to the boards of downstate funds throughout Article 4 are broad in language and in practice. Aside from those related to investing, the Act leaves these powers and duties undisturbed. Downstate boards retain the powers and duties to make a broad range of determinations under Article 4. By way of example and not limitation, those powers and duties include determinations of, or related to:

- whether a firefighter has a disability;
- whether that disability was or was not caused by an act of duty;
- whether a firefighter has recovered from disability;
- how much creditable service a firefighter has accumulated;
- whether a retiree is entitled to a pension;

- the pensionable salary a firefighter's pension will be based on;
- a survivor's or child's entitlement to a pension;
- payment of invoices from vendors;
- the maintenance of contact information for beneficiaries and confirmation that they are not deceased;
- statements of economic interest;
- Freedom of Information Act requests;
- Open Meetings Act issues;
- membership applications;
- "reciprocity" determinations in connection with a firefighter's transfer between Article 4 funds;
- approval of reports to the municipality;
- tax levy requests;
- legal actions to secure municipal contributions;
- issues relating to divorce and a former spouse's entitlement to a pension; and
- whether the board has jurisdiction to revisit a prior determination.

The lion's share of powers and duties that were vested in the downstate boards before the Act—and all of the powers and duties unrelated to investing—remain vested in the downstate boards.

Further, the Act itself explicitly disavows that it will intrude on these traditional functions of downstate funds. The Act clarifies that each downstate fund "shall retain the exclusive authority to adjudicate and award disability benefits, retirement benefits, and survivor benefits under this Article and to issue refunds under this Article." *See* 40 ILCS 5/4-117.2 (as amended by Public Act 101-610). The Act specifically states that the FPIF "shall not have the authority to control, alter, or modify, or the ability to review or intervene in, the proceedings or decisions of the fund as otherwise provided in this Section." *Id.* The Act carefully restricted its effect to matters concerning investments, even disavowing the idea that it would deprive downstate funds of their traditional powers and duties. Great care was taken to respect the downstate funds' authority, and the Act only intrudes on that authority to the extent necessary for the FPIF to invest assets lawfully.

Any attempt to cast the Act as a full takeover or power grab is misguided. The downstate funds still perform every board function aside from the investment of assets. Local control remains the general rule.

## III. The AFFI's Members Elect The Employee-Side Trustees On The Firefighters' Pension Investment Fund's Board Of Trustees, Just As They Have Elected The Employee-Side Trustees In The Downstate Funds

The election process to elect trustees to the FPIF's Board of Trustees is open and democratic, just like the election process for the trustees who sit on the board of each downstate fund. Ultimately, the employee-side Trustees on the FPIF are elected by the AFFI's members, in a process nearly identical to the elections for downstate boards. The only difference—the number of voters for each candidate—is not sufficient to establish some infirmity in the Act. Viewed as a whole, the Act remains beneficial to the AFFI and its members and the fact that members are voting for a state board, not a local board, does not militate against the Act.

The Pension Code provides that, on the board of trustees of each downstate fund, there will be two trustees who are active participants, and are elected by the participants; and one trustee who is a retiree, elected by the retirees. 40 ILCS 5/4-121. The employee trustees hold a majority on the downstate board, and each AFFI member and retiree may vote for some representation on the downstate board. *Id.*

For the FPIF's Board, the mechanisms of representation are the same. Active participants may vote for the three FPIF Board trustees who, by statute, must be active participants. 40 ILCS 5/22C-115(b). Beneficiaries may vote for the trustee who is a beneficiary. *Id.* With the FPIF's Board, too, the employee trustees hold a majority on the board. *Id.* Each AFFI member and beneficiary thus votes for representation on the FPIF's Board.

The mechanisms for representation on the downstate board and on the FPIF's Board do not meaningfully differ. While each individual voter may be less able to decide an election for the FPIF's Board, that is not due to any legislative choice, nor is it due to the manner in which the boards or their statutes are constructed. It is simply due to mathematics. Representation remains proportional, as each individual gets one vote. This numerical change is simply not a basis for an Illinois court to find a statute unconstitutional. Each AFFI member is democratically represented on the FPIF's Board, just as they are on their own downstate board.

## **CONCLUSION**

For the foregoing reasons, and for the reasons stated in the Brief of Defendants, the AFFI respectfully requests that this Court affirm the decision of the District Court.

Dated: September 13, 2023.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 20 pages.

By: */s/ Margaret Angelucci*
Margaret Angelucci

## CERTIFICATE OF SERVICE

The undersigned attorney certifies that on September 13, 2023, a copy of the foregoing **Associated Firefighters of Illinois' Motion for Leave to File Brief as *Amicus Curiae* in Support of Defendants-Appellees**, as well as the foregoing **Associated Firefighters of Illinois' *Amicus Curiae* Brief in Support of Defendants-Appellees**, were filed and were served on the following attorneys of record by the Odyssey eFileIL system and via email:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: */s/ Margaret Angelucci*
Margaret Angelucci

**No. 129471**

**IN THE SUPREME COURT OF ILLINOIS**

| | | |
|---|---|---|
| ARLINGTON HEIGHTS POLICE PENSION FUND, *et al*,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>JAY ROBERT "J.B." PRITZKER, *et al*,<br><br>Defendants-Appellees. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | On Petition for Leave to Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0198<br><br>There Heard on Appeal from the Circuit Court of Kane County, Illinois, Case No. 2021 CH 0055<br>Honorable Robert K. Villa<br>Judge Presiding |

**APPENDIX TO THE**

**ASSOCIATED FIREFIGHTERS OF ILLINOIS' *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES**

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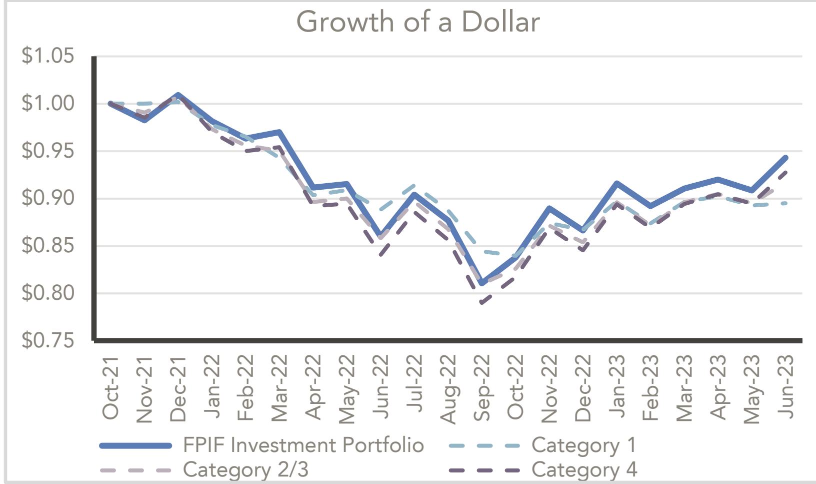
# FPIF Investment Portfolio Performance

| | | FPIF Investment Portfolio | Article 4 Category 1 | Article 4 Category 2/3 | Article 4 Category 4 |
|---|---|---|---|---|---|
| TRANSITION | Tranche 1<br>OCT 21 – JUN 23 | --- | -5.9% | -3.6% | -2.4% |
| | Tranche 2<br>NOV 21 – JUN 23 | -3.5% | -6.4% | -5.1% | -4.4% |
| | Tranche 3<br>DEC 22 – JUN 23 | -2.6% | -6.8% | -4.8% | -3.8% |
| | Tranche 4<br>JAN 22 – JUN 23 | -4.4% | -7.2% | -6.1% | -5.5% |
| | Tranche 5<br>FEB 22 – JUN 23 | -2.8% | -6.0% | -4.1% | -3.1% |
| | Tranche 6<br>APR 22 – JUN 23 | -2.2% | -4.1% | -2.9% | -2.3% |
| | Tranche 7<br>MAY 22 – JUN 23 | 2.9% | -0.8% | 1.9% | 3.4% |
| | Tranche 8<br>JUN 22 – JUN 23 | 2.8% | -1.4% | 1.7% | 3.4% |
| | Tranche 9<br>JUL 22 – JUN 23 | 9.6% | 0.8% | 6.8% | 10.3% |
| POST TRANSITION | 11-Month Return<br>AUG 22 – JUN 23 | 4.3% | -2.1% | 2.2% | 4.7% |
| SINCE INCEPTION | FPIF Investment Portfolio<br>NOV 21 – JUN 23 | -3.5% | -6.4% | -5.1% | -4.4% |

- **Category 1:** 10% equity/90% fixed income
- **Category 2/3:** 45% equity/55% fixed income
- **Category 4:** 65% equity/35% fixed income




## TAKEAWAYS

- **Overall:** Equity and fixed income markets were extremely volatile over all time periods and since the inception of the first assets transferred to FPIF. Individual member fund since inception performance has varied based upon each member fund's transition date
- **Transition Period**: The FPIF Investment Portfolio outperformed Category 1–4 member funds in tranches 2–6, while results varied in tranches 7–9
- **Post Transition Period:** The FPIF Investment Portfolio significantly outperformed Category 1–3 member funds (smaller asset plans) while slightly underperforming Category 4 member funds (larger asset plans)
- **Since Inception Period:** The FPIF Investment Portfolio outperformed Category 1–4 member funds since inception
- **Performance Note:** FPIF performance is net of fees while Category performance is gross of fees. As of June 30, 2023, the estimated investment management fee for FPIF was 5.2 basis points (0.052%)