Nos. 122793 & 122822 (consol.)

IN THE SUPREME COURT OF ILLINOIS

Rochelle Carmichael; June Davis; Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO; Plaintiffs-Appellees/Appellants, v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Municipal Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago; Public School Teachers' Pension & Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago; Defendants-Appellees, And State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, Intervenor-Defendant-Appellant/Appellee.	Direct Appeal Pursuant to Supreme Court Rule 302(a) (Case No. 122793) And Direct Appeal Pursuant to Supreme Court Rule 302(b) (Case No. 122822) From the Circuit Court of Cook County, Illinois County Department, Chancery Division, No. 12-CH-37712 The Honorable CELIA G. GAMRATH, MARY L. MIKVA Judges Presiding.

SEPARATE APPENDIX OF
PLAINTIFFS-APPELLEES/APPELLANTS

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Carolyn Taft Grosboll
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J. Peter Dowd
Justin J. Lannoye
George A. Luscombe III
DOWD, BLOCH, BENNETT, CERVONE
AUERBACH & YOKICH
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
Tel: (312) 372-1361
Fax: (312) 372-6599
Email: gluscombe@laboradvocates.com
Firm I.D. Number: 12929

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

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ROCHELLE CARMICHAEL, *et al.*,

Plaintiffs,

v.

LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO, *et al.*,

Defendants,

and

STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,

Intervenor-Defendant.

No. 12 CH 37712
Judge Celia Gamrath
Calendar 6

FINAL AMENDED MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

This cause comes to the court on the State of Illinois' June 19, 2017 Unopposed Section 2-1203 Motion to Amend June 7, 2017 Judgment, and Plaintiffs' June 30, 2017 Motion for Attorney's Fees, Illinois Supreme Court Rule 304 Certification, Modification of Escrow Order and for a Stay of Enforcement of the Order Modifying the Escrow Order Pending Appeal. The motions are granted. This Final Amended Order amends and supersedes the June 7, 2017 Memorandum Opinion and Order.

This cause comes to the court on cross-motions for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1005 (West 2016). Judge Mary Mikva dismissed multiple counts of Plaintiffs' complaint. The parties seek summary judgment on the remaining counts of Plaintiffs' complaint (counts I-III A-E, VI-VII A-E, X, and XI A-B) and supplemental complaint (counts XII-XIV), challenging the applicability and constitutionality of Public Act ("P.A.") 97-0651, which alters Articles 8, 11, and 17 of the Illinois Pension Code (40 ILCS 5/8-101 *et seq.*, 11-101 *et seq.*, 17-101 *et seq.* (eff. Jan. 5, 2012)). The motions are granted in part and denied in part. The court invalidates two distinct provisions of P.A. 97-0651 as a violation of the Pension Protection Clause.

BACKGROUND

Judge Mikva's November 27, 2013 Dismissal Order, and September 29, 2014 Reconsideration Order, provide the factual and procedural history of this case. The court here reviews briefly the parties to the suit, the operative changes to the Pension Code, and the background leading to the instant cross-motions for summary judgment.

A. Parties to the Suit

Plaintiffs are nine retired or working employees of the City of Chicago or Chicago Board of Education. Zeidre Foster, Anthony Lopez, Michael Senese, and David Torres are current employees. Rochelle Carmichael, Oscar Hall, Joseph Notaro, and June Davis are retired employees. Plaintiff Kathleen Mahoney is the wife of the late John Mahoney, a retiree and an original Plaintiff in this action. After her husband's death, Mahoney intervened on her own behalf for the 50% survivor's annuity based on her husband's pension. *See* 40 ILCS 5/8-150.1(j). Each of the nine Individual Plaintiffs is a participant in one of the three public pension systems named as Defendants. Three local labor organizations intervened as Union Plaintiffs: Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO ("CTU"); Local 1001, Laborers' International Union of North America, AFL-CIO ("Laborers' Local 1001"); and Local 9, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 9").

Defendants are three public pension funds and governing boards (the "Funds") affected by changes to Articles 8, 11, and 17 of the Pension Code. Amendments to Article 8 affect the Municipal Employees' Annuity and Benefit Fund of Chicago ("MEABF"); amendments to Article 11 affect the Laborers' and Retirement Board of Employees' Annuity and Benefit Fund of Chicago ("LABF"); and amendments to Article 17 affect the Public School Teachers' Pension and Retirement Fund of Chicago ("CTPF"). The Office of the Attorney General appeared on behalf of the State of Illinois as Intervenor-Defendant (the "State"). The State primarily shouldered the defense of P.A. 97-0651's constitutionality, while the Funds argued against Plaintiffs' jurisdictional, declaratory, and equitable claims.

B. Public Act 97-0651

In response to news coverage of alleged abuses of public pension funds, the General Assembly passed P.A. 97-0651, altering the Pension Code administered by the Funds. The law limits public workers' ability to: (1) count as periods of service leaves of absence during which they worked for private unions; and (2) apply their private union salary to calculate their public

pension annuity. These changes affect different Plaintiffs in different ways, but they all allege P.A. 97-0651 unconstitutionally diminishes their constitutionally protected pension benefits.

The Funds calculate pension annuities through a formula. The inputs for the formula are derived from the years of service of an employee, dictating the percentage of his or her salary, multiplied by the highest average annual salary in the last few years before retirement. Participants have incentives to serve as public employees for long stretches of their careers to obtain the highest percentage and to increase their salary to obtain a higher annuity. The Individual Plaintiffs accomplished both by receiving service time for years employed by private unions while on leaves of absence from their public positions. They were also able to apply their higher private union salary to the public annuity calculation. P.A. 97-0651 changes all of this, overturning years of practice by the Funds and altering the way annuities are calculated.

Plaintiffs challenge the constitutionality of three reforms in P.A. 97-0651 that modify the annuity calculation. Only the constitutionality of the first two reforms is at issue here. The constitutionality of the third reform regarding "highest average annual salary" was dismissed by Judge Mikva in her Reconsideration Order.

1. Denial of service time for post-January 5, 2012 leaves of absence in Articles 8, 11, and 17

First, Plaintiffs challenge the constitutionality of P.A. 97-0651, which limits the counting of service time in the annuity calculation to "[l]eaves of absence without pay *that begin before the effective date of this amendatory Act*...during which a participant is employed full-time by a local labor organization that represents municipal employees," provided other requirements are met. Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(c), 11-215(c)(3), 17-134(4)) (new text in italics). Before the enactment of P.A. 97-0651, Articles 8, 11, and 17 of the Pension Code allowed participants to count such leaves of absence as periods of service in their annuity calculation, regardless of when the leaves of absence began. After P.A. 97 0651, leaves of absence that begin on or after January 5, 2012, are excluded.

2. Expansion of the "any pension plan" proviso to cover union affiliate plans in Articles 8 and 11

Second, Plaintiffs attack the constitutionality of expanding the phrase "any pension plan" to cover union affiliate plans in connection with the union service time allowance. Before the enactment of P.A. 97-0651, the union service time allowance came with a proviso that leaves of absence for union work could count toward the annuity calculation, provided "the participant

does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c), 11-215(c)(3)(C). P.A. 97-0651 amends Articles 8 and 11 by expanding the definition of "any pension plan," as follows:

> For the purposes of this Section, the phrase "any pension plan established by the local labor organization" means any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at the local, intrastate, State, multi-state, national, or international level. The definition of this phrase is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(e), 11-215(c)). This definition curtails the ability to count time for union service where a participant receives credit in any pension plan established by the local labor organization itself, as well as its affiliates at any level.

3. Exclusion of private union salary in the "highest average annual salary" calculation in Articles 8 and 11

Third, P.A. 97-0651 modifies Articles 8 and 11 by adding a new subsection (e) and clarifying the meaning of "highest average annual salary." Subsection (e) provides:

> This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in [Section 8-110 or Section 11-107], to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (adding 40 ILCS 5/8-233(e), 11-217(e)). "Employer," as defined in sections 8-110 and 11-107 and referred to in subsection (e), is limited to large cities, certain public entities, and boards.

P.A. 97-0651 also amends sections 8-138(g-1) and 1-134(f-1) by clarifying the meaning of "highest average annual salary," as follows:

> For the purpose of calculating this annuity, "final average salary" means the highest average annual salary for any 4 consecutive years in the last 10 years of service. *Notwithstanding any provision of this subsection to the contrary, the "final average salary" for a participant that received credit under [Sections 8-226(c) and 11-215(c)(3)] means the highest average salary for any 4 consecutive years (or any 8 consecutive years if the employee first became a participant on or after January 1, 2011) in the 10 years immediately prior to the leave of absence, and adding to that highest average salary, the product of (i) that highest average salary, (ii) the average percentage increase in the Consumer Price Index during each 12-month calendar year for the calendar years during the participant's leave of absence, and (iii) the length of the leave of absence in years, provided that this shall not exceed the participant's salary at the local labor organization.*

For purposes of this Section, the Consumer Price Index is the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-138(g-1), 11-134(f-1)) (new text in italics). When taken together, these amendments have the effect of limiting the annuity calculation to a participant's public-employer salary only, which is typically less than paid by private unions.

In her Reconsideration Order, Judge Mikva characterized these changes as a permissible legislative clarification of "highest average annual salary" and dismissed with prejudice Plaintiffs' constitutional claims in counts IV-V A-E. Plaintiffs do not ask this court to revisit Judge Mikva's ruling. Rather, they ask the court to avoid the detrimental effect of this legislation based on theories of contract and estoppel set forth in counts XIII-XIV of their supplemental complaint.

ANALYSIS

Summary judgment is warranted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). By filing cross-motions for summary judgment, the parties "invite the court to decide the issues presented in the action as questions of law." *American States Ins. Co. v. Koloms*, 281 Ill. App. 3d 725, 727-728 (1st Dist. 1996).

Statutes are presumptively constitutional, and the challenging party has the burden of rebutting this presumption. *People v. McCarty*, 223 Ill.2d 109, 135 (2006). To carry this burden, a plaintiff must "clearly establish any constitutional invalidity." *Allegis Realty Investors v. Novak*, 223 Ill.2d 318, 334 (2006). A court must uphold a statute's validity "whenever it is reasonably possible to do so." *Id.* "Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner." *Kanerva v. Weems*, 2014 IL 115811, ¶ 55. This rule applies "with equal force" to interpretations of the Pension Protection Clause. *Id.*

C. Plaintiffs' Standing

In their cross-motions for summary judgment, LABF and MEABF argue the Individual and Union Plaintiffs lack standing to bring their claims. Judge Mikva rejected LABF's previous attacks on standing. (Order, May 9, 2013; Hearing Transcript, May 9, 2013 at 26:20—27:2, 27:5—29:8, 30:18—31:5, 36:19-20, 41:5-16, 76:13—78:7, 83:19-22.) The court adopts the earlier reasoning and rejects the new standing challenges raised by LABF and MEABF. This is

juxtaposed with the court's finding on count XI (section D *infra*) that the Funds lack jurisdiction to revise pension annuities for Plaintiffs Carmichael, Hall, and Mahoney.

1. Individual Plaintiffs have standing to sue

LABF and MEABF challenge the standing of Individual Plaintiffs Senese, Torres, Davis, and Mahoney, arguing the court lacks subject matter jurisdiction to hear their claims. Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs. *People v. M.W. (In re M.W.)*, 232 Ill.2d 408, 415 (2009).

LABF contends Plaintiffs Senese and Torres lack standing to bring their claims where neither of them applied for pension benefits and Senese is not eligible to apply. LABF insists the two Plaintiffs' claims are not ripe and the harms alleged are merely speculative; thus, the court should not decide them. *See Sedlock v. Bd. of Trs.*, 367 Ill. App. 3d 526, 529 (3d Dist. 2006). MEABF similarly challenges this court's subject matter jurisdiction over Plaintiffs Davis and Mahoney on the grounds that neither has received a final administrative adjudication for their annuity—Davis's application having only been processed upon Order of this court on October 10, 2014, and Mahoney's annuity having derived from her late husband's 2003 calculation after his death in 2016. Given its "exclusive original jurisdiction in...all claims for annuities, pensions, benefits or refunds" (40 ILCS 5/8-203), MEABF argues this court lacks jurisdiction to consider Plaintiffs' claims because no final administrative decision has been rendered. The court disagrees.

In *Canel v. Topinka*, 212 Ill.2d 311 (2004), the Illinois Supreme Court held:

> An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where a statute, ordinance or rule is attacked as unconstitutional on its face. A party may also seek review where issues of fact are not presented and agency expertise is not involved. Moreover, exhaustion is not required if the administrative remedy is inadequate or futile or in instances where the litigant will be subjected to irreparable injury due to lengthy administrative procedures that fail to provide interim relief.

212 Ill.2d at 321 (citations omitted).

Here, Plaintiffs attack the constitutionality of P.A. 97-0651. There are no issues of fact, no agency expertise is required, and the administrative remedy would be futile where the Funds lack the ability to declare a statute unconstitutional. Furthermore, forcing Plaintiffs who are not

yet retired to wait until they retire and apply, or to wait until their benefits are actually diminished, will cause irreparable harm. Accordingly, the Individual Plaintiffs have standing to bring suit and the court has subject matter jurisdiction to adjudicate their claims.

2. Union Plaintiffs have associational standing to sue

LABF and MEABF also allege the three Union Plaintiffs lack direct or associational standing to bring suit. In order to establish direct standing, the Unions must demonstrate they will suffer a direct injury that is: (1) distinct and palpable; (2) fairly traceable to Defendants' actions; and (3) substantially likely to be prevented or redressed by the requested relief. *Chicago Teachers Union Local 1 v. Board of Education of the City of Chicago*, 189 Ill.2d 200, 206-207 (2000). In order to establish associational standing, the Unions must show: (1) their individual members have standing to sue in their own right; (2) the interests the Unions seek to protect are germane to their purpose; and (3) neither the claims asserted, nor the relief requested, requires the individual members to participate in the lawsuit. *International Union of Operating Engineers, Local 148, AFL-CIO v. Illinois Department of Employment Security*, 215 Ill.2d 37, 47 (2005), citing *Hunt v. Washington State Apple Advertising Commission*, 423 U.S. 333 (1977).

Clearly, the Union Plaintiffs have associational standing. First, as noted above, their individual members have standing to sue. Second, protecting Union members' rights to pension benefits under the Pension Code is clearly germane to the Unions' purpose. *See Bldg. & Constr. Trades Council of Buffalo, N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 148 (2d Cir. 2006) ("[T]he requirement of germaneness is undemanding; mere pertinence between litigation subject and organizational purpose is sufficient.").) Third, the claims in this case are not disputed issues of fact, but of law, and do not require the individual members to participate in the lawsuit. Rather, the issues involve declaratory and injunctive relief with no disputed calculation of damages. *See International Union of Operating Engineers, Local 148, AFL-CIO*, 215 Ill.2d at 47, 61 (holding individual participation of union members not necessary where case raises only questions of law).) Accordingly, the Union Plaintiffs have associational standing to sue.

D. Lack of Jurisdiction to Revise Annuities (count XI)

In count XI, Plaintiffs challenge the Funds' jurisdiction to revise the pension annuity calculations for retired participants Carmichael, Mahoney, and Hall based on P.A. 97-0651. Plaintiffs claim the Funds lack jurisdiction to revise the annuities where the decision on their

pension benefits was a final administrative decision and no party filed a complaint within 35 days after the Funds made their final decision. The court agrees.

"Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." 735 ILCS 5/3-103. To trigger the 35-day rule, there must be a "final administrative decision." An administrative decision is "any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101. An administrative agency "lacks jurisdiction to reconsider its final decisions after the expiration of the 35-day period." *Kosakowski v. Bd. of Trs.*, 389 Ill. App. 3d 381, 383-384 (1st Dist. 2009), citing *Sola v. Roselle Pol. Pens. Bd.*, 342 Ill. App. 3d 227, 231 (2d Dist. 2003) ("*Sola I*") (finding police officer's widow entitled to survivor's benefit and 3% cost of living where board lacked jurisdiction to modify earlier offering after 35-day period).

The Funds contend there was no adversarial process and no final and binding decision by an agency to trigger the 35-day rule. However, an adversarial hearing is not a requisite for a final decision in the pension context. *Fields v. Chaumburg Firefighters' Pens. Bd.*, 383 Ill. App. 3d 209, 220 (1st Dist. 2008) (definitive action and communication of decision crucial to "final" action, but not an adversarial hearing). The Funds took definitive action when they calculated and awarded the three Plaintiffs' annuities and communicated this to them, rendering the decisions final. Consequently, the Funds lack jurisdiction to reconsider these decisions after the expiration of the 35-day period.

Relying on 40 ILCS 5/11-192 and *People ex. rel Madigan v. Burge*, 2014 IL 115635, LABF contends it has exclusive jurisdiction to authorize or suspend the payment of Plaintiff Hall's annuity and the 35-day rule does not bar modification. The court is not persuaded by LABF's broad construction of section 11-192, as it is still bounded by the 35-day limitation of section 3-103. *See* 40 ILCS 5/11-231 ("The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the board provided for under this Article.").

Burge is also factually and procedurally distinguishable. In *Burge*, the Illinois Supreme Court sorted the competing jurisdictional claims of the pension board and the Attorney General in a suit involving termination of pension benefits of a pensioner convicted of a felony. The Supreme Court held the Attorney General's suit could not proceed and that the board "rendered a final 'administrative decision' when it ruled on the motion to terminate Burge's pension benefits." 2014 IL 115635, ¶ 36.

Unlike *Burge*, this case does not involve an agency's original jurisdiction to terminate benefits for cause. Rather, it involves the Funds' jurisdiction, or lack thereof, to modify an applicant's pension, which is in pay status, after the 35-day review period expired, as a result of a purported error and misinterpretation of law. Illinois courts have explicitly rejected this argument. *See Kosakowski*, 389 Ill. App. 3d at 386 (police pension board lacked jurisdiction to modify after expiration of 35-day period from service of its annuity calculation); *Rossler v. Morton Grove Pol. Pens. Bd.*, 178 Ill. App. 3d 769, 773-74 (1st Dist. 1989) (pension board lacked jurisdiction to revise annuity 1½ years after giving notice of pension); *Sola I*, 342 Ill. App. 3d at 231 (same).

The supposed mistake in calculating Plaintiffs' annuities was likewise not a type of "misrepresentation, fraud, or error" allowing the Funds to modify the annuities. 40 ILCS 5/8-244(c), 11-223(b) ("The board may retain out of any future annuity, refund, or disability benefit payments such amount or amounts as it may require for the repayment of any moneys paid to any annuitant, pensioner, refund applicant, or disability beneficiary through misrepresentation, fraud or error."). There is no claim of fraud or misrepresentation in this case; rather, the focus is on "error." Yet, as to these three Individual Plaintiffs, there was no inadvertent mathematical error; rather, each was awarded the annuity intended after an individualized calculation. *See Kosakowski*, 389 Ill. App. 3d at 384, citing since-revised similar language at 40 ILCS 5/3-144.2.

MEABF's reliance on *Board of Education v. Board of Trustees*, 395 Ill. App. 3d 735 (1st Dist. 2009) is equally unpersuasive and does not permit modification of Plaintiffs Carmichael and Mahoney's annuities. MEABF argues its pension determinations before P.A. 97-0651 were not "final administrative decisions," but something closer to "systematic miscalculations" that fall outside of the ARL's 35-day rule. *Board of Education*, 395 Ill. App. 3d at 744-45. The parties in *Board of Education* are vastly different, with one entity (the municipal agency)

challenging another (the pension board), claiming the board was miscalculating pensions that would lead to a shortfall in funding the agency would have to cover.

Here, the dispute is between the pensioners and the Funds—the same Funds that calculated Plaintiffs' benefits and could have sought review within the 35-day period. There is no allegation the original calculations for Plaintiffs Carmichael and Mahoney failed to comport with the law prior to P.A. 97-0651. Even construing the original determinations as derived from a misunderstanding of a pre-clarified Pension Code, these calculations did not become less "final" by virtue of a legislative clarification. *See Sola v. Roselle Pol. Pens. Bd.*, 2012 IL App (2d) 100608, ¶ 19 ("*Sola II*") ("[E]ven though the pension board may have erred in calculating the benefits," review past the 35-day period was barred "because the statutory review period had expired.").

Ultimately, as cited above, a change in interpretation of the Pension Code, or overpayment of benefits as a result of an agency's failure to verify information, does not qualify as an error or miscalculation that subverts the 35-day rule. *See Kosakowski*, 389 Ill. App. 3d at 386; *Rossler*, 178 Ill. App. 3d at 773-74; *Sola II*, 2012 IL App (2d) 100608, ¶ 19. To rule otherwise would not only thwart the 35-day rule, "but would leave pension recipients uncertain as to their entitlement to benefits despite the fact they relied on the judgment of the Pension Board." *Rossler*, 178 Ill. App. 3d at 774-75.

Absent an error within the meaning of the Pension Code, the Funds lack jurisdiction to revise or modify the final annuities of Plaintiffs Carmichael, Mahoney, and Hall. Summary judgment on count XI is granted in favor of these three Individual Plaintiffs.

E. Constitutional Challenges

Plaintiffs attack the operative provisions of P.A. 97-0651 through several counts, articulating a variety of constitutional bases. The counts that survived to the instant cross-motions sound in the Illinois Pension Protection Clause and State and Federal Contracts and Takings Clauses.

The Pension Protection Clause states: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. "'If something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the State's pension

or retirement systems, it cannot be diminished or impaired.'" *Heaton v. Quinn* (*In re Pension Reform Litig.*), 2015 IL 118585, ¶ 45, quoting *Kanerva*, 2014 IL 115811, ¶ 38. This includes all pension benefits that flow directly from membership. *Kanerva*, 2014 IL 115811, ¶ 40.

The benefits protected by the Pension Protection Clause "include those benefits that are 'attendant to membership in the State's retirement systems,' including 'subsidized health care, disability and life insurance coverage, eligibility to receive a retirement annuity and survivor benefits,'" but not legislative funding for pensions. *Jones v. Mun. Emples. Annuity & Ben. Fund of Chicago*, 2016 IL 119618, ¶ 36, quoting *Kanerva*, 2014 IL 115811, ¶¶ 39, 41; *see People ex rel. Sklodowski v. State*, 182 Ill.2d 200, 226, 232 (1998) (rejecting contention that "the Pension Code establishes vested contractual rights to statutory funding levels"); *McNamee v. State of Illinois*, 173 Ill.2d 433 (1996) (same). In *Heaton*, the Supreme Court recognized constitutional protection for the pension benefit calculation formulas. *Heaton*, 2015 IL 118585, ¶ 50, quoting *Fields v. Elected Officials' Ret. Plan*, 320 P.3d 1160, 1166 (Ariz. 2014).

These constitutional protections "attach at the time an individual begins employment and becomes a member of the public pension system." *Jones*, 2016 IL 119618, ¶ 29. Therefore, "once an individual begins work and becomes a member of a public retirement system, any subsequent changes to the Pension Code that would diminish the benefits conferred by membership in the retirement system cannot be applied to that individual." *Heaton*, 2015 IL 118585, ¶ 46; *see e.g. Jones*, 2016 IL 119618, ¶¶ 5, 61; *Kanerva*, 2014 IL 115811, ¶¶ 35, 55; *Buddell v. Bd. of Trustees*, 118 Ill.2d 99, 104-05 (1987).

1. Denial of service time for post-January 5, 2012 leaves of absence in Articles 8, 11, and 17 is unconstitutional (counts I-III A)

Using the framework above as a guide, the court cannot square these principles with the amendments to Articles 8, 11, and 17 of the Pension Code, which eliminate counting as periods of service leaves of absence for fulltime union service that did not begin before the effective date of the Act, January 5, 2012. Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(c), 11-215(c)(3), 17-134(4)).

It is uncontested that when Plaintiffs began employment and became members of the public pension system, they were able to count time spent on leaves of absence with their local labor organization in their annuity calculation. Some Plaintiffs have taken advantage of this benefit; many never will. But of critical importance is the right of existing members to exercise this benefit of membership, which vested once they joined. *See Jones*, 2016 IL 119618, ¶ 29;

Heaton, 2015 IL 118585, ¶ 46; *Buddell*, 118 Ill.2d at 103 (rejecting denial of pension credit where "military service credit was part of the applicable pension code at the time that Dr. Buddell was hired"). Because P.A. 97-0651 diminishes this benefit of membership, it is unconstitutional.

The State concedes, as it must, that an employee on a leave of absence does not stop being a public employee; instead, it contends that continued public service is a requisite to conferring constitutional protection for pension benefits. However, provided the employee or the union continues to pay the requisite employer contributions, and the worker pays the employee contributions, he or she remains a public employee and a member of the public pension system, even while engaging in fulltime private employment for a local labor organization. *See* 40 ILCS 5/8-226(c), 11-215(c)(3); *Callahan v. Bd. of Trs. of the Fireman's Pension Fund*, 83 Ill. App. 2d 11, 17 (4th Dist. 1967) ("The general purpose of a leave of absence is to preserve the status of the employee.").

Furthermore, the counting of union service time was available to participants regardless of the start date of the leaves of absence. As Judge Mikva framed it, "the right to exercise an option is protected, even before that option has, in fact, been exercised." (Dismissal Order at 8-9.) *See Buddell*, 188 Ill.2d at 105 ("It is the right to purchase the additional credits which plaintiff seeks to enforce, not the payment of additional benefits which are payable only if he is permitted to and does purchase the additional service credits."). The Pension Protection Clause acts to restrict legislative power to unilaterally diminish or impair exactly this type of benefit—a benefit expressly contained within the Pension Code. *See Id.* at 104 (giving weight to the fact the pension rights were contained in the Pension Code, not another statutory provision).

The State claims that the pre-amendment statutory leaves of absence benefit did not establish vested contractual rights, arguing the leaves of absence provision allowed participants merely to engage in private work with unions to no aid of taxpayers. The State draws support for its public/private work distinction from pension funding cases (*Sklodowski*, 182 Ill.2d at 220; *McNamee*, 173 Ill.2d 433), instances where city ordinance rather than State statute affected pension benefits (*Peters v. Springfield*, 57 Ill.2d 142 (1974)), and cases outside the Pension Protection Clause entirely (*Fumarolo v. Chicago Bd. of Educ.*, 142 Ill.2d 54 (1990)).

None of these authorities support the public/private distinction the State seeks to insert into the Pension Protection Clause. These cases establish that not every portion of the Pension

Code, such as funding provisions, garners constitutional protection. Likewise, benefits originating somewhere outside the Pension Code, such as a municipal code or ordinance, might not rise to the level of constitutional protection. The cases do not establish that vested pension rights, seated in the Pension Code, are somehow contingent on continued public work. Participants are entitled to Pension Protection Clause protection not because they performed public work, but because they are public employees with vested rights flowing from membership in the public pension systems.

The State would have this court rule, for the first time and contrary to Supreme Court precedent, that benefits codified in the Pension Code and flowing directly from membership in the public pension system are not entitled to constitutional protection. The court declines to do so. The provisions of P.A. 97-0651 amending Articles 8, 11, and 17 to deny members the benefit of counting leaves of absence for union service time in their annuity calculation unconstitutionally diminishes benefits protected under the Pension Protection Clause. Summary judgment is granted for Plaintiffs on counts I-III A.

2. Expansion of the "any pension plan" proviso in Articles 8 and 11 is unconstitutional (counts VI-VII A)

Much of the same case law cited above applies with equal force to Plaintiffs' second constitutional challenge to P.A. 97-0651. This challenge centers on expansion of the phrase "any pension plan" to now include union affiliate pension systems, rather than only those of the local labor organization.

Before P.A. 97-0651, the Pension Code allowed public employees on leaves of absence to count union service time toward their pension calculation, provided "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c), 11-215(c)(3)(C). P.A. 97-0651 expands this proviso by defining "any pension plan" to now include "any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at the local, intrastate, State, multi-state, national, or international level." Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(e), 11-215(c)).

Judge Mikva determined already that this expansion of "any pension plan" is "an amendment to, rather than a clarification of, the second pension plan proviso." (Reconsideration Order at 5-6.) The court is now called upon to decide whether this amendment to Articles 8 and

11 violates the Pension Protection Clause. The answer is yes. Expansion of this phrase to a multitude of affiliate plans diminishes a benefit that existed in the Pension Code when Plaintiffs in counts VI and VII began working and participating in the Funds. These are vested rights protected by the Pension Protection Clause. *See Jones*, 2016 IL 119618, ¶¶ 5, 29, 61 (holding unconstitutional a statute that jettisoned benefits of annual annuity increases and replaced with increases tied to Consumer Price Index, resulting in diminished annuities); *Heaton*, 2015 IL 118585, ¶¶ 45-50 (holding unconstitutional a public act that utilized five different mechanisms to reduce annuity benefits for participants); *Kanerva,* 2014 IL 115811, ¶¶ 35, 55 (holding State-subsidized health insurance plan is a benefit of membership in a pension or retirement system that could not be diminished or impaired); *Buddell,* 118 Ill.2d at 104-05 ("[U]pon the effective date of article XIII, section 5, of our 1970 Constitution, the rights conferred upon the plaintiff [to purchase military service pension credit] by the Pension Code became contractual in nature and cannot be altered, modified or released except in accordance with usual contract principles.").

Whereas before, participants in LABF or MEABF would find their time for union service excluded in the annuity calculation if they partook in only one other pension plan—the plan established by the local labor organization—P.A. 97-0651 expands the number of exclusionary plans to include not only the local labor organization itself, but its affiliates at the local, intrastate, State, multi-state, national, or international level. The impact on members is measurable. The following example is demonstrative.

Plaintiff Oscar Hall enrolled in LABF as a City of Chicago employee. When he took his leave of absence to work for Laborers' Local 1001, he enrolled in the affiliate International and District Council pension funds, rather than the pension plan established by Laborers' Local 1001. (Pl.'s Memo, Hall Aff. ¶¶ 2-13.) The ability to earn service time toward a State pension while simultaneously earning time toward a union affiliate's pension plan was a benefit that existed prior to passage of P.A. 97-0651. The amendment to Article 11 clearly diminishes this benefit to the detriment of Plaintiff Hall, and other similarly-situated participants, who are now stripped of time for years of service to which they were entitled, provided they did not enroll in any plan established by the local labor organization.

The State argues the original "any pension plan" exclusion was intended to bar all double counting of service time, whether earned from the local labor organization or any one of its affiliates, and it would be "absurd" to follow the plain meaning of the text. Plaintiffs respond

that the court must not substitute its judgment for a legislature's judgment, no matter how unwise the legislation, unless it exceeds constitutional limits. *See Hoffmann v. Clark*, 69 Ill. 2d 402, 424 (1977). Moreover, had the legislature wanted to all bar double counting of service time, it easily could have done so by using different language. The court agrees with Plaintiffs. The legislature could have drafted the original exclusion far more broadly to forestall the amendments in P.A. 97-0651. It did not. It specifically limited double counting of union service time where the participant receives credit in "any pension plan established by *the* local labor organization based on his employment by *the* organization." 40 ILCS 5/8-226(c), 11-215(c)(3)(C) (emphasis added).

Even the State concedes Plaintiffs' plain and narrow reading of the text is the natural one, albeit purportedly absurd. (Oral Argument Trans. at 46:1-10, "We don't dispute that the immediate natural reading of that is, 'only the local chapter of the union that employs you.'") However, the State cites no precedent, "legislative history[,] or other reliable indicia of legislative intent" (Reconsideration Order at 5) to support its proposed broad interpretation, which negatively affects pensioners. "Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner." *Kanerva*, 2014 IL 115811, ¶ 55.

Given the plain language and natural reading of the "any pension plan" proviso, the lack of legislative history, and the clear diminishment of vested rights through P.A. 97-0651, the court grants summary judgment to Plaintiffs on counts VI-VII A.

3. Contracts and Takings Clauses (counts I-III B-E and VI-VII B-E)

The court's rulings above on the Pension Protection Clause avoids the need to address Plaintiffs' State and Federal Contracts Clause and Takings Clause claims, which derive from the same cloth. As the Supreme Court held in *Kanerva*, 2014 IL 115811, ¶ 58, "[b]ecause plaintiffs have obtained all the relief that they seek, any comment on their other claims would be advisory and in conflict with traditional principles of judicial restraint." Following this directive, the court does not address Plaintiffs' counts I-III B-E and VI-VII B-E.

F. Declaratory and Equitable Relief (counts X and XII-XIV)

In counts X and XII-XIV, Plaintiffs seek declaratory and injunctive relief based on the court's powers of equity. In counts X and XII, they seek a declaration that the "any pension plan" proviso does not cover defined contribution plans, but only defined benefit plans. In counts

XIII and XIV, they ask the court to avoid the effect of Judge Mikva's ruling on the "highest average annual salary" calculation on theories of contract and estoppel.

1. Plaintiffs are not entitled to the declarations they seek regarding defined contribution plans (counts X and XII)

In count X, Plaintiffs Carmichael and Lopez seek a declaration that the "any pension plan" proviso does not preclude them from counting their union service time in the MEABF where they took part in the CTU's defined contribution plan, as opposed to a defined benefit plan. In count XII, Plaintiffs Mahoney and Notaro seek the same declaration against the MEABF based on their participation in IBEW Local 9's defined contribution plan. Plaintiffs' claims for declaratory relief exist independent of the court's ruling on the new definition in P.A. 97-0651, expanding the "any pension plan" proviso (section E 2 *supra*), and relates purely to the original language of section 8-226(c)(3). 40 ILCS 5/8-226(c)(3).

As a threshold matter, Plaintiffs have established the basic elements for a declaratory judgment regarding the declaration sought in counts X and XII, namely: (1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests. 735 ILCS 5/2-701; *Beahringer v. Page*, 204 Ill.2d 363, 372 (2003). However, Plaintiffs are not entitled to summary judgment in their favor on these counts.

Plaintiffs argue that, unlike the MEABF, the defined contribution plans at issue in counts X and XII are based on the workers' and their employers' contributions, not any formula factoring years served and highest salary earned. (*See* Sharkey Aff., Exs. E (CTU000365-67), F (CTU001169-71); Notaro Aff. (for IBEW Local 9), Ex. H (JN001638-39).) They contrast these plans with the language in section 8-226(c)(3), which counts leaves of absence time spent at a local labor union toward the annuity calculation, provided "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3). Plaintiffs latch on to the phrase "receive credit," claiming it makes no sense to say a participant could be credited under a defined contribution plan the way time spent on union leaves of absence is credited to the annuity calculation.

Plaintiffs' reading cannot be squared with the plain language of section 8-226(c)(3). The phrase "any pension plan" is not defined in the Pension Code, and the plain and ordinary meaning of "any pension plan" does not refer exclusively to defined benefit plans. "Any" means

any, and pensions come in all shapes and sizes, ranging from defined benefit to defined contribution to hybrid plans in between.

MEABF draws the court's attention to Webster's New World Dictionary and federal ERISA definitions of "pension," both of which broadly cover plans beyond the defined benefit category. *See* 29 U.S.C.A. § 1002(2)(A). Black's Law Dictionary likewise defines "pension" broadly as "[a] fixed sum paid regularly to a person (or to the person's beneficiaries), esp. by an employer as a retirement benefit." Black's Law Dictionary 531 (3rd pocket ed. 2006). The broad utility of the term "pension" is borne-out by Plaintiffs' own plans predicating counts X and XII, which expressly refer to themselves as "pensions" on plan documents and statements of participants. (*See e.g.* Notaro Aff., ¶ 22, Ex. G (referring to "Local 9, IBEW and Outside Contractors Defined Contribution Pension Fund"); MEABF Memo, Exs. C at 4, D at 6.)

The court rejects Plaintiffs' narrow reading of the word "credit" as exclusively applied to crediting time spent employed by a union. "Credit" is undefined in the Pension Code, and section 8-226 uses the term "credit" only twice—once in the quoted provision above at 8-226(c)(3) and again in the section 8-226(e) added by P.A. 97-0651. Outside of section 8-226, the Pension Code uses the term "credit" in a variety of ways—some indicating credit for time served, others indicating credit for monetary contributions or interest credit to an account.

MEABF correctly notes that the Local 9 Pension Summary Plan Description (Memo at 18, Ex. E at 2) references investment gains "credited," amounts in an account "credited," and employer contributions "credited." In the absence of a clear legislative intent to equate "credit" exclusively with factoring years of service in a pension calculation, the court is loath to unnaturally narrow the meaning of this undefined term, given the broad spectrum of pension options available and the plain language "any pension plan."

Finally, MEABF correctly notes that the legislature distinguishes between defined benefit and defined contribution plans throughout the Pension Code, but tellingly not at section 8-226. *See* 40 ILCS 5/2-165, 2-166, 14-156, 15-155, 15-200, 15-201, 16-205, 16-206, 20-124. The legislature is clearly capable of distinguishing the two types in legislation and did not do so, even when clarifying other provisions through P.A. 97-0651, which took effect in 2012. The court's decision today may prompt the legislature to take a different view and amend the Pension Code again, but it is a stretch to think the legislature was unaware of defined contribution plans in 2012 or 1987, for that matter. While 401(k) plans may not have been commonplace in 1987,

they first surfaced in the Revenue Act of 1978, which added permanent provisions to the Internal Revenue Code authorizing them, and major corporations began using them.

The court is mindful of the directive from *Kanerva* to "liberally construed in favor of the rights of the pensioner" on matters of statutory interpretation. 2014 IL 115811, ¶ 55. However, Plaintiffs are not seeking a mere liberal construction of an ambiguous provision, but the outright insertion of limiting terms to the otherwise clear and general phrase "any pension plan." This is beyond the court's powers of construction. Therefore, Plaintiffs are not entitled to the declaration they seek. Summary judgment is granted for Defendants on counts X and XII.

In the alternative, Plaintiffs seek three limiting declarations, asking the court to declare that section 8-226(c)(3) does not bar MEABF allowance of union service where the participant: (1) retroactively waived or forfeited contributions to a defined contribution plan; (2) did not receive employer contributions to such a plan; or (3) enrolled in a plan where employer contributions are not accepted. The court declines to do so.

First, this relief does not appear in the Original or Supplemental Complaints. Second, MEABF is correct that this court is prohibited from issuing advisory opinions, and the controversy regarding the three limiting declarations is not yet ripe. Third, even if the declaratory judgment elements were shown, the limiting language Plaintiffs would have the court declare has no textual support in the statute. The terms "waive" and "forfeit" appear nowhere in section 8-226, nor do the concepts feature as a brake to that section's operation. Although "employer contributions" are a prerequisite under section 8-226(c)(2) to counting union service time, the absence of such contributions does not necessarily nullify the disqualification found in the "any pension plan" proviso. Section 8-226(c)(3) bars the counting of union service time where the participant "receive[d] credit in any pension plan established by the local labor organization...," without any caveat that "establishing" the pension plan means "establishing and contributing to" that plan. Thus, Plaintiffs are not entitled to the limiting declarations they seek.

2. Plaintiffs do not have a contractual right to apply their union salaries to annuity calculations (count XIII)

As noted above, Judge Mikva dismissed counts IV and V, ruling that the changes in P.A. 97-0651 to the "highest average annual salary" calculation were valid legislative clarifications, and constitutional. (Reconsideration Order at 6-10.) In count XIII, Individual and Union Plaintiffs seek a declaration that application of this "new interpretation" of Articles 8 and 11 against Plaintiffs would breach their contractual rights to use their union salaries, where: (1) for

20 years, the Funds offered annuities based on union salaries; (2) Plaintiffs accepted this offer; and (3) all Plaintiffs paid consideration in the form of, respectively, employee and employer contributions based on the higher union salaries.

Plaintiffs recognize that courts have held contracts entered into by government entities, which are contrary to statute, are unenforceable. (Memo at 30, citing *McMahon v. City of Chicago,* 339 Ill. App. 3d 41, 48 (1st Dist. 2003).) They claim, however, Judge Mikva's ruling represents a "new interpretation," which was not contrary to statute, as evidenced by the Funds' 20-year unbroken practice of interpreting the Pension Code to apply the union salaries as the "highest average annual salary" in the annuity formula.

At the outset, Judge Mikva's decision that the change in P.A. 97-0651 was a clarification, not an amendment, forestalls Plaintiffs' claim of a "new interpretation." Under this analysis, Judge Mikva's interpretation is the only viable one. Moreover, Plaintiffs' theory that past practice creates contractual rights, runs afoul of the general rule that, "laws do not create private contractual or vested rights, but merely declare a policy to be pursued until the legislature ordains otherwise." *Sklodowski,* 182 Ill.2d at 231. An exception to this rule is in the Pension Protection Clause context, where rights found in the Pension Code and flowing from membership in the public pension system, create vested contractual rights. However, Judge Mikva's ruling already addressed whether Plaintiffs have vested contractual rights to apply union salaries in the annuity calculations. She held they do not.

This bears emphasizing, given the Supreme Court's pronouncement in *Sklodowski* that "[t]here is no vested right in the mere continuance of a law." 182 Ill.2d at 232. If there is no vested right in the continuance of a law, there certainly cannot be a vested contractual right in the continued application of a since-clarified law. Stripped from the "offer, acceptance, consideration" framework, count XIII is really a faint echo of the estoppel theory found in count XIV, discussed below. Defendants are granted summary judgment on count XIII.

3. The Funds are not estopped from limiting the "highest salary" calculation to public salaries (count XIV)

Plaintiffs' count XIV seeks a declaration that the Funds are equitably estopped from retroactively applying Judge Mikva's ruling regarding the "highest average annual salary" clarification, barring annuities calculated based on union salaries. They further ask the court to use principles of fairness and equity to apply the "highest average annual salary" decision prospectively only. Neither claim prevails.

"[G]enerally a finding of equitable estoppel against a public body is not favored." *Rossler*, 178 Ill. App. 3d at 775. "Illinois courts have consistently held that the doctrine of equitable estoppel will not be applied to governmental entities absent extraordinary and compelling circumstances." *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶ 94. A plaintiff invoking equitable estoppel against a government entity must plead specific facts that show: (1) an affirmative act by either the public body or an official with express authority to bind the public body; and (2) reasonable reliance upon that act by the plaintiff that induces the plaintiff to detrimentally change its position. *Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 40. The party asserting estoppel must prove it by "clear, precise, and unequivocal evidence." *Chemical Bank v. American Nat'l Bank & Trust Co.*, 180 Ill. App. 3d 219, 227 (1st Dist. 1989).

Plaintiffs claim the Funds, as administrators of the pension systems under Articles 8 and 11, maintained a 20-year practice of granting annuities based on union salaries. During this time, the Funds gave Plaintiffs estimates of pension annuities predicated on union salaries. This, according to Plaintiffs, amounts to an inducement of reliance by agents with authority to bind the State. Next, Plaintiffs argue they reasonably relied on this 20-year practice in arranging their contribution and retirement plans, given the uniform interpretation of Articles 8 and 11 of the Pension Code prior to P.A. 97-0651. Plaintiffs submit affidavits and exhibits to support the detrimental nature of their reliance on this reading. The court is not persuaded.

It is true the Funds can act as agents of the State. *See Pisani*, 2017 IL App (4th) 160417, ¶ 26 ("Pisani has a pension contract not with defendant [municipal employer], but with the State—or with the Fund's eight-member board, which is an agency or instrumentality of the State.") (quotations omitted). However, in the estoppel context, "[t]he affirmative act which prompts a party's reliance must be an act of the public body itself . . . rather than the unauthorized acts of a ministerial officer or a ministerial misrepresentation." *Halleck v. Cty. of Cook*, 264 Ill. App. 3d 887, 893-94 (1st Dist. 1994); *see also Patrick Eng.*, 2012 IL 113148, ¶ 37 ("[E]quitable estoppel may apply against a municipality only based on statements and conduct by municipal officials who possess actual authority.").

Simply put, the Funds do not have express authority to contravene the law as articulated by the State in the Pension Code. *Matthews*, 2016 IL 117638, ¶ 98 ("[A] municipal corporation cannot be obligated under a contract implied in fact that is *ultra vires*, contrary to statutes, or contrary to public policy."). Notwithstanding Plaintiffs' reading, *Matthews* is not inapposite to

this case. (*See* Pl. Reply at 25-26.) There, the Supreme Court ruled the Chicago Transit Authority ("CTA") could only be contractually bound by official action taken by the Chicago Transit Board ("Transit Board"). As the Transit Board made no inducements to provide benefits, a CTA employee could not act to bind the Transit Board in a manner contrary to its official actions or policies. *Matthews*, 2016 IL 117638, ¶ 99.

According to Plaintiffs, the CTA and Transit Board in *Matthews* cannot be analogous to the Funds and the State in the instant case where the Funds sit in the same benefit-dispersing position as the Board, not the CTA. (Pl. Reply at 25.) This is incorrect. *Matthews* is analogous because the Funds cannot act to bind the State in a manner contrary to the Pension Code, just as the CTA could not bind the Transit Board to the contravention of the Transit Board's policies. Thus, Plaintiffs' estoppel theory falters for lack of express authorization, in that, the Funds are unable to confer a benefit beyond what the law permits.

As with their jurisdictional limits (section D *supra*), the Funds' authority to administer annuities also begins and ends with the Pension Code. They cannot award an annuity greater than what the Code permits, and Judge Mikva's ruling made clear that the salary calculation clarified by P.A. 97-0651 mandates what the Code permits. Even if Plaintiffs were able to show an inducement analogous to the inducement in *Rossler*, such an inducement would be *ultra vires*, given the limits of the Pension Code. Defendants are therefore entitled to summary judgment on count XIV.

Lastly, Plaintiffs contend fairness and equity require this court to apply Judge Mikva's ruling on the "highest average annual salary" prospectively only. "Generally, judicial decisions are given retroactive as well as prospective effect." *Exelon Corp. v. Dep't of Revenue*, 234 Ill.2d 266, 285 (2009). "However, this court has the inherent power to conclude that a decision will not apply retroactively, but prospectively." *Id.* "[W]here an amendment merely clarifies existing law . . . the amendment applies retroactively." *Falato v. Teachers' Ret. Sys.*, 209 Ill. App. 3d 419, 425 (1st Dist. 1991) (finding amendment to the Pension Code was merely a definitional clarification that applied retroactively).

Whether a decision will be applied prospectively only depends on if: (1) the decision establishes a new principle of law, either by overruling past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) given its purpose or history, the decision's operation will be impeded or

promoted by prospective or retroactive application; and (3) a balance of the equities mandates prospective application. *Exelon*, 234 Ill.2d at 285.

Plaintiffs contend Judge Mikva's ruling was a new interpretation that "overruled 20 years of administrative agency precedent." (Pl. Memo at 26.) In actuality, Judge Mikva held that P.A. 97-0651's changes to the "highest average annual salary" calculation are a constitutional clarification establishing the sole permissible interpretation of this provision of the Pension Code. Her decision did not establish a new principle of law, nor did it overrule past legal precedents. It may have deflated Plaintiffs' expectations, but this is insufficient to apply it prospectively only.

Ultimately, the State is correct that the court does not have unrestricted equitable powers to make judgments on legislative enactments prospective only. In *Exelon*, the Supreme Court tellingly referred to its own supreme power to shape new rulings of law, stating "[g]enerally, judicial decisions are given retroactive as well as prospective effect . . . [h]owever, this court has the inherent power to conclude that a decision will not apply retroactively, but prospectively." 234 Ill.2d at 285, citing *Deichmueller Constr. Co. v. Industrial Com.*, 151 Ill.2d 413, 416 (1992) (finding appeal bond insufficient on new interpretation of law, to be applied prospectively only), and *Elg v. Whittington*, 119 Ill.2d 344, 356 (1987) (affirming dismissal for untimely notice of appeal, but applying rule prospectively to appeals filed or due to be filed after the date of its decision).

In short, Plaintiffs' claim for prospective-only application fails for the same reason its equitable estoppel theory is unsound—the court cannot order the Funds to disburse annuities in a manner contravening the letter of the Pension Code. *Matthews*, 2016 IL 117638, ¶ 98. Judge Mikva's decision deemed the "highest average annual salary" provisions of P.A. 97-0651 a legislative clarification, which, under the general rule, warrants retroactive application. *Exelon*, 234 Ill.2d at 285; *Falato*, 209 Ill. App. 3d at 425. Although Plaintiffs have presented evidence of the potential hardship flowing from the General Assembly's clarification, this court does not have unrestrained power to lighten that burden.

G. Severability of Unconstitutional Provisions

The severability of unconstitutional provisions turns on a question of statutory construction, which "primarily involves ascertaining and giving effect to the intent of the legislature." *Heaton*, 2015 IL 118585, ¶ 91. "In determining whether a statutory provision

containing an unconstitutional portion may be severed from the rest of a statute, we look first at the statute's own specific severability provision, if it has one." *Id.* The severability provision "creates a rebuttable presumption of legislative intent." *Jones*, 2016 IL 119618, ¶ 57. To rebut the presumption, the court must "determine whether the legislature would have passed the law without the invalid parts," considering whether the legislative purpose in passing the Act is "significantly undercut or altered" by eliminating the invalid sections. *Id.* (affirming circuit court finding that legislature would not have enacted P.A. 98-0641 without invalid annuity provisions, where clause dictated they were "inseverable" and analysis of the statutory mechanisms confirmed); *Heaton* 2015 IL 118585, ¶ 96 (same).

Applying these principles, the court notes the sole severability provision is at section 98 of P.A. 97-0651, which states: "The provisions of this Act are severable under Section 1.31 of the Statute on Statutes." Pub. Act 97-0651 (eff. Jan. 5, 2012). This creates a rebuttable presumption, which is confirmed by the operation of the provisions at issue in P.A. 97-0651.

The provisions denying counting of service time for leaves of absence that did not begin before January 5, 2012, and expanding the "any pension plan" proviso, are severable from the constitutional provisions in the Act. These two mechanisms end the counting of time for leaves of absence while working fulltime for a local labor organization, and expand the number of pension plans triggering the exclusion of such service in the pension annuity calculation. The constitutional "highest average annual salary" clarification does not meaningfully intersect or depend on the two voided mechanisms. Unlike *Jones* and *Heaton*, which involved interdependent statutory provisions buttressed by a legislative statement of inseverability, the unconstitutional provisions can stand on their own and ought to be severed from the remainder of P.A. 97-0651.

CONCLUSION

IT IS ORDERED:

1. Plaintiffs' motion for summary judgment is granted on count XI.
2. Plaintiffs' motion for summary judgment is denied on counts X and XII-XIV, and summary judgment is granted for Defendants on these counts.
3. Plaintiffs' motion for summary judgment is granted on counts I-III A and VI-VII A. The court declares the following two provisions of P.A. 97-0651

unconstitutional because they diminish or impair pension benefits in violation of the Pension Protection Clause, Ill. Const. 1970, art. XIII, § 5:

(a) Denial of service time for leaves of absence that did not begin before the effective date of the Act during which a participant is employed fulltime by a local labor organization in Articles 8, 11, and 17; and

(b) Expansion of the "any pension plan" proviso to cover union affiliate plans in Articles 8 and 11.

4. Defendants and the State are enjoined from enforcing or implementing the two provisions of P.A. 97-0651 (specified above in ¶3).

5. In accordance with Supreme Court Rule 18, the court makes the following findings:

(a) Two provisions of P.A. 97-0651 (specified above in ¶3) are declared unconstitutional as applied to the case *sub judice*; the parties stipulate that the claims in this case do not include any challenge to the validity of the Act as applied to individuals who were not public employees and members of any of the Defendant Pension Funds before the Act took effect;

(b) These two provisions cannot reasonably be construed in a manner that would preserve their validity;

(c) A finding of unconstitutionality is necessary to the judgment rendered, and the court's judgment cannot rest upon an alternative ground;

(d) These two unconstitutional provisions can be, and are hereby, severed from the remainder of the statute; and

(e) The State of Illinois was notified of the action and has intervened and participated in the proceedings.

6. Because the court's rulings on counts I-III A and VI-VII A gives Plaintiffs all the relief they seek, the court makes no comment on counts I-III B-E and VI-VII B-E.

7. Plaintiffs' claim and petition for attorney's fees is entered and continued.

8. Pursuant to Supreme Court Rule 304(a), there is no just reason to delay enforcement or appeal or both of the court's judgments with respect to the following claims in Plaintiffs' complaint and April 29, 2016 first supplemental complaint, which are resolved by this Final Amended Order and Judge Mikva's November 27, 2013 and September 29, 2014 Orders:

(a) Counts I F-G, II F-G, III F-G, IV A-H, V A-H, VI H, VIII A-B, and IX A-B, which were dismissed with prejudice, pursuant to the November 27, 2013 and September 29, 2014 Orders; and

(b) Counts X, XII, XIII, and XIV, granting summary judgment in favor of Defendants and against Plaintiffs, and Counts I-III A, VI-VII A, and XI A-B, granting summary judgment in favor of Plaintiffs and against Defendants, pursuant to this Amended Final Order.

9. The relief contained in the court's March 14, 2013 interlocutory Order is terminated in light of entry of this Amended Final Order on the claims listed in paragraph 8 above. Termination of that relief is without prejudice to any individual's right under applicable law to request a transfer to this court, or to Chancery Calendar 6, of any action seeking administrative review of any final administrative decision by any of the Defendant Pension Funds that involves any issue relating to the Act's application or to any question addressed in this case.

10. In accordance with paragraphs 8 and 9 above, the Clerk of Court is directed to disburse the funds in the escrow account created pursuant to the court's March 14, 2013 Order (the "Escrow Account") at the request of the parties and in accordance with the provisions of that Order and the court's judgments set forth in this Amended Final Order and Orders entered November 27, 2013 and September 29, 2014.

11. In anticipation of appeal, pursuant to the court's inherent authority and as contemplated by Supreme Court Rule 305, the court orders a stay pending any appeal, without bond, of enforcement of paragraph 10 above and the court's judgment to the extent it requires the Clerk of Court to remit monies in the Escrow Account to the Defendant Pension Funds or contributing parties. During any such appeal or until further order of this court, the parties and the Clerk of Court shall continue to make deposits into, and hold such deposits in, the Escrow Account in the same manner as provided in the March 14, 2013 Order. The parties agree to the form of this stay.

Judge Celia Gamrath

ENTERED:

JUL 14 2017

Circuit Court

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ROCHELLE CARMICHAEL, *et al.*,

Plaintiffs,

v.

LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO, *et al.*,

Defendants,

and

STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,

Intervenor-Defendant.

No. 12 CH 37712

Judge Mary L. Mikva

Calendar 6

ENTERED
JUDGE MARY LANE MIKVA - 1890
SEP 29 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ORDER AND OPINION

On November 27, 2013, this Court denied in part and granted in part Motions to Dismiss Plaintiffs' constitutional claims challenging Public Act 97-0651, which amended local labor organization leave of absence provisions of the Illinois Pension Code, 40 ILCS 5/8-101 *et seq.*, 11-101 *et seq.*, 17-101 *et seq.* (West 2012). Plaintiffs and Intervenor-Defendant, joined by Defendants, have filed Motions to Reconsider the November 27, 2013 Order and Opinion ("November 2013 Order").

At issue in these Motions are two aspects of Public Act 97-0651, purporting to "clarify," rather than amend, existing law in Article 8, involving the Municipal Employees' Annuity and Benefit Fund of Chicago, and Article 11, involving the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago, of the Pension Code. Intervenor-Defendant's motion to reconsider this Court's decision on Counts I, II, and III was previously DENIED on February 14, 2014. For the following reasons, both of the still-pending Motions are GRANTED.

Background

The first legislative clarification addressed in this Opinion involves the definition of "any pension plan established by the local labor organization based on his employment by the organization," referred to here as the "second pension plan proviso." 40 ILCS 5/8-226(c)(3), 11-

215(c)(3)(C) (West 2012). The second pension plan proviso allows pension fund participants to calculate time spent on a leave of absence towards their annuity computation so long as "the participant does not receive credit in any pension plan established by the local labor organization or based on his employment by the organization." *Id.*

Public Act 97-0651 added the following legislative clarification to the second pension plan proviso:

> For the purposes of this Section, the phrase "any pension plan established by the local labor organization" means any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at the local, intrastate, State, multi-state, national, or international level. The definition of this phrase is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(e), 11-215(e) (West 2010)).

The second legislative clarification involves the definition of "highest average annual salary" in the Pension Code. 40 ILCS 5/8-233, 11-217 (West 2012). Annuities are calculated based on a participant's "highest average annual salary" for four consecutive years in his or her last ten years before retirement. *Id.* §§ 8-138, 11-134. Articles 8 and 11 of the Pension Code provide that "the annual salary of an employee whose salary or wage is appropriated, fixed, or arranged in the annual appropriation ordinance upon other than an annual basis shall be determined as follows . . . ." *Id.* §§ 8-233, 11-217. This is followed by subsections specifying calculation methods for "employees paid on a monthly basis," *id.* §§ 8-233(a), 11-217(a), "employees paid on a daily basis," *id.* §§ 8-233(b), 11-217(b), and for employees whose salary rate changed during the year, *id.* §§ 8-233(c)–(d), 11-217(c)–(d).

Public Act 97-0651 added subsection (c) to clarify the "highest average annual salary" used in both Sections 8-233 and 11-217. These subsections provide:

> This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in [section 8-110 or section 11-107], to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (adding 40 ILCS 5/8-233(e), 11-217(e)).

Public Act 97-0651 also amended Sections 8-138(g-1) and 11-134(f-1):

> For the purpose of calculating this annuity, 'final average salary' means the highest average annual salary for any 4 consecutive years in the last 10 years of service. *Notwithstanding any provision of this subsection to the contrary, the*

> *'final average salary' for a participant that received credit under [Sections 8-226(c) and 11-215(c)(3)] means the highest average salary for any 4 consecutive years (or any 8 consecutive years if the employee first became a participant on or after January 1, 2011) in the 10 years immediately prior to the leave of absence, and adding to that highest average salary, the product of (I) that highest average salary, (ii) the average percentage increase in the Consumer Price Index during each 12-month calendar year for the calendar years during the participant's leave of absence, and (iii) the length of the leave of absence in years, provided that this shall not exceed the participant's salary at the local labor organization. For purposes of this Section, the Consumer Price Index is the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.*

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-138(g-1), 11-134(f-1) (West 201)) (added text in italics). While the amendments to Sections 8-138(g-1) and 11-134(f-1) certainl do not diminish any pension rights, they demonstrate that the legislature understood that Publ c Act 97-0651's clarification of salary would result in a significant change in how annuities we c being calculated.

In the November 2013 Order, this Court found that the second pension plan proviso w s a permissible clarification and that the salary definition was not. Having considered the fully-briefed and argued Motions to Reconsider by both sides, the Court reverses itself on both ruli g. The Court finds that the second pension plan proviso amends the law and therefore GRANTS Plaintiffs' Motion to Reconsider. The Court finds that the salary definition is a clarification o existing law, and therefore GRANTS Intervenor-Defendant's Motion to Reconsider. Accordingly, the claims based on the second pension plan proviso are not dismissed, and the claims based on the "highest average annual salary" clarification are dismissed.

Analysis

The Court's November 2013 Order recognized that the Pension Clause in Article XII Section 5, of the Illinois Constitution of 1970 protects participants in public pensions from legislation diminishing or impairing pension benefits that existed when he or she joined the pension fund. The legislative clarifications at issue are an obvious attempt by the General Assembly to overcome this limitation by declaring or clarifying that these perceived benefits were never, in fact, provided for in the Pension Code. Indeed, it is undisputed that both legislative clarifications are contrary to the method by which the Defendant pension funds w re calculating pension benefits at the time Public Act 97-0651 was enacted. This does not mean however, that they are necessarily changes to the Pension Code. While a legislative clarificat o

may not be used to effectively overrule a decision of the Illinois Supreme Court, it may be use by that Court as "some evidence that a lower court has misconstrued what the legislature originally intended in a statute." *People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 231 (2005 It follows that the legislative clarification, if it is a clarification, can be used to correct a misapplication of the Pension Code by the funds charged with their administration.

A motion to reconsider may bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Martinez v. R e Park Place, LLC*, 2012 IL App (1st) 111478, ¶ 23. Despite excellent briefing on the Motions t Dismiss, the Court believes it failed to properly apply the law on legislative clarifications of existing statutes.

The legislature may enact an amendment to an existing statute that either explicitly or implicitly clarifies, rather than changes or adds to, existing law. *In re Detention of Lieberman* 201 Ill. 2d 300, 323 (2002). However, the legislature's later declaration of prior intent cannot alter the clear import of the prior statutory language. *Roth v. Yackley*, 77 Ill. 2d 423, 428 (197). The courts must decide if an amendment is a "'clarification' of existing law" or "a change in the law." *Agpro*, 214 Ill. 2d at 230. If the former, the amendment can be applied retroactively, and in this case that means the clarification would not be a diminishment of existing pension benefit ; if the later, the amendment must be applied prospectively only. *Id.* at 238–40. Most significant to these Motions to Reconsider is that the legislative intent that guides the court in determining whether a later enactment is a clarification or a change is the intent of the legislature that enacted the statute that the later legislature purported to clarify. *O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 441 (2008).

On reconsideration, the Court believes it erred in applying these principles. The Court feels it failed to give appropriate deference to statutory language and rested instead on what it perceived as the legislative intent of the law prior to the enactment of Public Act 97-0651.

A. Clarification of the Second Pension Plan Proviso

The language of the second pension plan proviso states that a participant is entitled to receive service credit in his or her public pension plan while on a leave of absence with his or her local labor organization, provided that "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3), 11-215(c)(3)(C) (West 2012). As the Court recognized in the Novem ber

2013 Opinion, the proviso uses the definite article *the* and definite object *local labor organization*. Thus, based on the plain language, the proviso applies where the participant received credit in a pension plan established only by the local labor organization and no other organization. However, this Court found that the legislature must have intended a broader purpose of prohibiting receipt of simultaneous credit in two pension plans, relying on the principle that statutes are to be construed in light of their intended purpose, even where "'legislative intention, otherwise clear, was in part mistakenly or inaccurately stated.'" *In re Detention of Lieberman*, 201 Ill. 2d at 320 (quoting *Gill v. Miller*, 94 Ill. 2d 52, 58 (1983)). This Court concluded that circumventing this proviso by giving participants on leaves of absence service credits in plans set up through district councils or affiliated labor organizations undermined the legislative purpose of placing a limitation on this generous benefit for public employees.

These conclusions may be supported by logic, but they are not supported by legislative history or other reliable indicia of legislative intent. The legislative history of the initial enactments allowing service credit for participants working for their local labor organizations which included the second pension plan proviso, reflects only that the adopted language was the result of negotiated agreements between "various municipalities and employer groups." 85th Ill. Gen. Assem., House Proceedings, Nov. 6, 1987, at 124–26 (statements of Representative Cullerton and Representative Hoffman) (regarding the original provision in Public Act 85-955, effective December 9, 1987); 85th Ill. Gen. Assem., Senate Proceedings, Nov. 6, 1987, at 11[illegible] (statements of Senator Schuneman) ("This bill is the bill that was worked out after many months of negotiation between the employees, the employer, as well as those . . . local units of government.").

Plaintiffs suggest that if the Court does not grant the Motion to Reconsider, it should allow discovery from the participants in these negotiations to understand what they intended. The Court agrees with Intervenor-Defendant that the intent of these negotiating parties is not legislative intent and is not dispositive or even relevant. However, as to the second pension plan proviso, the absence of legislative history or other compelling evidence of legislative intent bolsters the Plaintiffs' position that there was no basis for the Court to ignore the clear, plain language of the statute. In light of the plain language, the Court finds that Public Act 97-0651 was an

amendment to, rather than a clarification of, the second pension plan proviso and that Plaintiff claims based on these clarifications are not dismissed.

B. Clarification of the Salary Used for Annuity Calculations

The Pension Code includes formulae for calculating annuities that are all based on a participant's "highest average annual salary" for a certain number of years of service. 40 ILCS 5/8-138, 11-134 (West 2012). Articles 8 and 11 of the Pension Code provide that "the annual salary of an employee whose salary or wage is appropriated, fixed, or arranged in the annual appropriation ordinance upon other than an annual basis shall be determined as follows . . . ," *Id.* §§ 8-233, 11-217, followed by subsections specifying calculation methods for "employees paid on a monthly basis," *id.* §§ 8-233(a), 11-217(a), "employees paid on a daily basis," *id.* §§ 8-233(b), 11-217(b), and for employees whose salary rate changed during the year, *id.* §§ 8-233(c)–(d), 11-217(c)–(d).

Neither these formulae for calculating annuities nor the definitions of salary were amended to include a participant's local labor organization salary when the 86th General Assembly, through Public Act 86-1488, amended the amount of contributions that were made for participants on a leave of absence. *See* Pub. Act 86-1488 (eff. January 13, 1991) (amending 40 ILCS 5/8-226(c)(1)–(2), 11-215(c)(3)(A)–(B) (West 1990)) (providing that participant contributions and employer contributions would both be based on the participant's salary with the local labor organization during the leave of absence, not the participant's public position salary). Therefore, this Court improperly focused on what the legislature intended in enacting Public Act 86-1488, rather than what the Pension Code says about the salary used to calculate annuities. In determining whether a clarification is permissible, the controlling legislative intent is that of the legislature that enacted the provisions that the legislature is purporting to clarify — here, those are the definition of highest average annual salary and the method for calculating annuity. *See O'Casek*, 229 Ill. 2d at 441.

The plain language of the salary definition supports Public Act 97-0651's clarification. In the November 2013 Order the Court focused on "salary" being defined as "the actual sum payable during the year if the employee worked the full normal working time in his position." 40 ILCS 5/8-117(b), 11-116(a) (West 2012); and "employee" being defined as basically anyone employed by an "employer," *id.* §§ 8-113, 11-110, and "employer" being defined as the public body for which the participant works, *id.* §§ 8-110, 11-107. As the Court noted there, this

language is, at best for Plaintiffs, ambiguous, leaving room for the legislature to clarify that "salary" is a participant's public salary.

The language is, in fact, stronger than the Court appreciated in its November 2013 Order in supporting a limitation to public salary. In its Motion to Reconsider the Intervenor-Defendant points out that the definition references a salary that is "appropriated or fixed . . . for service in the position." *Id.* §§ 8-233, 11-217. In addition, Defendant Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago points out that the statutory language defining "salary" for employees (like their participants) paid on a daily or hourly basis as a multiple of the "rate of compensation or wage appropriated and payable." *Id.* §§ 8-233(b), 11-217(b). These statutory references to "appropriated" clearly contemplate a salary set by the public employer.

Plaintiffs argue that the Pension Code includes a provision limiting the application of the definitions; the terms defined in the Pension Code have the meanings ascribed to them in the definitional provisions "except when context otherwise requires." *Id.* §§ 8-102, 11-102. Therefore, Plaintiffs contend, these definitions do not apply to calculating annuities in this situation. However, the Pension Code expressly recognizes that the definition of salary is to be used in the "context" of calculating annuities. *See id.* §§ 8-138(b) ("the actual annual salary, as salary is defined in this Article . . . ."), 11-134(a) (same). Even if the context could be said to have changed for participants who worked for and received a salary from their local labor organization, that change should have occurred in 1987 when the service credit benefit was enacted and participants began receiving different, non-public employer salaries. Plaintiffs do not suggest that the change occurred there, but rather when contributions were made based on the salary the participant was receiving from the local labor organization through Public Act 86-1488 in 1991. While this 1991 amendment changed the contributions, it did not change the "context" in which "salary" might be defined.

The Plaintiffs' position is that when Public Act 86-1488 was enacted in 1991 and contributions began to be made based on the local labor organization salary, the annuity calculation was also changed to take into account the local labor organization salary. There was no explicit change to the definition or the method for calculating annuities, so this is only true if Public Act 86-1488 *implicitly* amended the definition of salary for annuity purposes. Though possible, "[a]mendment by implication is not favored: a statute will not be held to have impliedly amended an earlier statute unless the terms of the later act are so inconsistent with those of the

prior act that they cannot stand together." *People v. Ullrich,* 135 Ill. 2d 477, 483 (1990); *see also People ex rel. Kwait v. Bd. of Fire & Police Comm'rs,* 14 Ill. App. 3d 45, 51 (1st Dist. 1973). Plaintiffs make a number of compelling arguments, but none meet this test for construing Public Act 86-1488 as an implicit amendment of the Pension Code provisions for defining salary or calculating annuities.

The legislative history of Public Act 86-1488, like the legislative history of Public Act 85-964, reflects only that the changes "have been negotiated with the appropriate agencies who have signed off on the changes and benefits involved," 86th Ill. Gen. Assem., House Proceedings, Jan. 8, 1991, at 61 (statements of Representative Wolf), and that all the changes were made with "the agreement of all the parties related to it." *Id.* at 62. Thus, the legislative history demonstrates only that the legislature accepted the parties' compromise, not that the legislature understood that it was changing the method for calculating annuities for participants who were on a leave of absence with their local labor organization. *See also* 86th Ill. Gen. Assem., House Proceedings, Apr. 25, 1989, at 33–34 (statements of Representative Cullerton ("Any benefits that are included in the Bill were at the request of the systems at the request of the municipality or the unit of government that had to pay for them. In other words, they have been negotiated and agreed to by the parties to the change.").

Plaintiffs point out that the Defendant pension funds interpreted "salary" as including salary paid by the local labor organization beginning in or around 1991 and the legislature did not act to clarify this until 2012. Though legislative inaction may be an aid in statutory interpretation, there is simply no amendatory language on which to hang this interpretation. The Defendant pension funds may well have been acting based on their understanding of what the 1991 amendments accomplished. But without statutory language to support this methodology, the legislature cannot be presumed to have accepted this understanding or to have endorsed their calculations.

While the November 2013 Opinion recognized certain tensions caused by the increase in contributions in Public Act 86-1488, without reciprocal changes in the salary used for annuity calculations, the Court does not view these as so inconsistent that they cannot stand together, which is the test for recognizing an implicit amendment. *Ullrich,* 135 Ill. 2d at 483. As this Court noted, if Public Act 86-1488 were intended to increase participant contributions in a manner that was not matched by an increase in benefits, it could impair or diminish a vested pension right

However, as the State points out, an increase in contributions may not always be viewed by the courts as a diminution in benefits. *See, e.g.*, *Kraus v. Bd. of Trs. of Police Pension Fund of Ni[illegible]s*, 72 Ill. App. 3d 833, 849 (1st Dist. 1979) (noting that "[l]egislative action directed toward another aim, but which has an incidental effect on the pensions which employees would ultimately receive, is not prohibited [by the Pension Clause]."). Moreover, even if there were a Pension Clause issue it would only provide a basis for a limited group of participants who were in service before the effective date to challenge their increased contributions; it would not increase the salary used to calculate their benefits.

In the November 2013 Order, the Court also pointed out that there are no other provision in the Pension Code in which a participant must contribute to the fund based on a salary amount that cannot be used to calculate the participant's annuity. There are also provisions in both Articles 8 and 11 prohibiting salary deductions for employee contributions that exceed that produced by the application of the proper deduction rates to the highest annual salary considered for annuity purposes for the same year. 40 ILCS 5/8-234, 11-218 (West 2012). However, as the Court also recognized, these are limits only on payroll deductions, and participants on leaves of absence must independently make employee contributions. Therefore, they are not directly applicable here. Moreover, these sections make sense as a way to avoid improper pension deductions on overtime pay.

Plaintiffs ask the Court to consider the Illinois Supreme Court's recent decision in *Kanerva v. Weems*, 2014 IL 115811. *Kanerva* is factually quite different than this case, but reiterates the principle that pension statutes are to be liberally construed in favor of participants. However, "this canon of construction has its bounds." *Mattis v. State Univ. Ret. Sys.*, 212 Ill. 2d 58, 76 (2004). Indeed, *Mattis*, which rejected a participant's claim that the State Universities Retirement System was required to include certain contributions in calculating his annuity, expressly recognizes that this rule of liberal construction does not justify giving a benefit that is not in the Pension Code. *Id.*

In sum, the Court views the clarification of "highest average annual salary" as a valid legislative clarification. Though it overturned years of practice by the Defendant pension funds it was within the legislature's power. While it likely did not comport with the understanding of the parties whose negotiations resulted in Public Act 86-1488, those parties are not the General Assembly. And though there is tension between an increase in contributions and no increase in

the salary used for annuity calculation, this tension does not render these provisions so incompatible than an implied amendment should be found. Therefore, the claims based on the clarification of "highest average annual salary" are dismissed.

Conclusion

For these reasons, both Motions to Reconsider are GRANTED, notwithstanding the portion of the Intervenor-Defendant's motion that has already been denied.

Therefore, the claims based on clarifications to the second pension plan proviso, Counts VI.A–E (40 ILCS 5/8-226) and VII.A–E (*id.* § 11-215), are not dismissed. The claims based on the clarification of "highest average annual salary," Counts IV.A–E (40 ILCS 5/8-138(g-1), 8-233(e)) and V.A–E (*id.* §§ 11-134(f-1), 11-217(e)), are DISMISSED with prejudice.

The October 1, 2014, 9:45 a.m. status stands.

IT IS SO ORDERED.

ENTERED:

Mary L Mikva 1890

Judge Mary L. Mikva, #1890
Circuit Court of Cook County, Illinois
County Department, Chancery Division

ENTERED
JUDGE MARY LANE MIKVA 1890
SEP 29 2014
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY
DEPUTY CLERK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ROCHELLE CARMICHAEL, *et al.*,

Plaintiffs,

v.

LABORERS' & RETIREMENT BOARD EMPLOYEES' ANNUITY & BENEFIT FUND OF CHICAGO, *et al.*,

Defendants,

and

STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,

Intervenor-Defendant.

No. 12 CH 37712

Judge Mary L. Mikva

Calendar 6

ORDER AND OPINION

This cause comes to the Court on Motions to Dismiss Plaintiffs' Constitutional Claims under section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615 (West 2012), filed by Intervenor-Defendant and Defendants. The Motions seek to dismiss Plaintiffs' claims challenging the constitutionality of amendments and additions made by Public Act 97-0651, effective January 5, 2012, to Articles 8, 11, and 17 of the Illinois Pension Code, 40 ILCS 5/8-101 *et seq.*, 11-101 *et seq.*, 17-101 *et seq.* For the reasons that follow, the Motions are DENIED in part and GRANTED in part.

Background

A. Nature of the Case

Plaintiffs' suit arises from recent changes to the Illinois Pension Code made by Public Act 97-0651. The Act amended several statutory provisions relating to leaves of absence by participants in three pension funds to work for their local labor organization. The legislative history shows that it was passed in response to several news articles on perceived abuses in public pension funds. *See* 97th Ill. Gen. Assem., House Proceedings, Nov. 29, 2011, at 38 (statements of Representative Cross) ("We are attempting, in this Bill, to address a variety of problems that came about as a result of some news articles . . . .").

Plaintiffs are current and former public employees who began their public employment before Public Act 97-0651's January 5, 2012 effective date, and all of whom are participants in one of the Defendant Funds.

Defendants are the public pension funds and the boards of trustees of each fund in which Plaintiff participants are members. Those funds, boards, and the relevant articles of the Pension Code are as follows.

Under Article 8 of the Illinois Pension Code:

- Municipal Employees' Annuity and Benefit Fund of Chicago ("Municipal Fund")
- Retirement Board of the Municipal Employees' Annuity and Benefit Fund of Chicago ("Municipal Board")

Under Article 11 of the Illinois Pension Code:

- Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago ("Laborers' Fund")
- Retirement Board of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago ("Laborers' Board")

Under Article 17 of the Illinois Pension Code:

- Public School Teachers' Pension and Retirement Fund of Chicago ("Teachers' Fund")
- Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago ("Teachers' Board")

Public Act 97-0651 eliminated the right of participants under Articles 8, 11, and 17 to earn service credit for time spent on a future leave of absence with their local labor organization. Under Articles 8 and 11, the Act clarified the definition of the "salary" that could be used for calculating a participant's annuity; and it clarified the prohibition on receiving service credit if the participant receives service credit for the same time period in a plan established by the local labor organization.

B. The Motions to Dismiss Constitutional Claims

The State as Intervenor-Defendant has moved to dismiss Plaintiffs' constitutional claims. The Defendants have filed Supplemental Motions and have also been allowed to join in the State's Motion. The Motions focus solely on constitutional claims which include the following:

Pension Clause of the Illinois Constitution

- Counts I.A (40 ILCS 5/17-134(4)), II.A (*id.* § 8-226(c)); III.A (*id.* § 11-215(c)(3)); IV.A (*id.* §§ 8-138(g-1), 8-233(e)); V.A (*id.* §§ 11-134(f-1), 11-217(e)); VI.A (*id.* § 8-226); VII.A (*id.* § 11-215).

Contracts Clause of the Illinois Constitution and the United States Constitution

- Counts I.B, I.C (40 ILCS 5/17-134(4)); II.B, II.C (*id.* § 8-226(c)); III.B, III.C (*id.* § 11-215(c)(3)); IV.B, IV.C (*id.* §§ 8-138(g-1), 8-233(e)); V.B, V.C (*id.* §§ 11-134(f-1), 11-217(e)); VI.B, VI.C (*id.* § 8-226); VII.B, VII.C (*id.* § 11-215).

Takings Clause of the Illinois Constitution and the United States Constitution

- Counts I.D, I.E (40 ILCS 5/17-134(4)); II.D, II.E (*Id.* § 8-226(c)); III.D, III.E (*id.* § 11-215(c)(3)); IV.D, IV.E (*id.* §§ 8-138(g-1), 8-233(e)); V.D, V.E (*id.* §§ 11-134(f-1), 11-217(e)); VI.D, VI.E (*id.* § 8-226); VII.D, VII.E (*id.* § 11-215).

Equal Protection Clause of the Illinois Constitution and the United States Constitution

- Counts I.F, I.G (40 ILCS 5/17-134(4)); II.F, II.G (*Id.* § 8-226(c)); III.F, III.G (*id.* § 11-215(c)(3)); IV.F, IV.G (*id.* §§ 8-138(g-1), 8-233(e)); V.F, V.G (*id.* §§ 11-134(f-1), 11-217(e)); VI.F, VI.G (*id.* § 8-226); VII.F, VII.G (*id.* § 11-215); VIII.A, VIII.B (*id.* § 8-226(c)(3)); IX.A, IX.B (*id.* § 11-215(c)(3)(C)).

Separation of Powers Clause of the Illinois Constitution

- IV.H (40 ILCS 5/8-138(g-1), 8-233(e)); V.H (*id.* §§ 11-134(f-1), 11-217(e)); VI.H (*id.* § 8-226); VII.H (*id.* § 11-215).

There are also statutory and administrative review claims that are not before the Court on these Motions.

C. Standard of Review

A motion to dismiss under section 2-615 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-615 (West 2012), challenges the legal sufficiency of the complaint based on defects on the face of the complaint. *Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶ 14. The inquiry on this Motion is whether the allegations in the complaint, considered in a light most favorable to plaintiffs, state a cause of action upon which relief can be granted. *Id.* A cause will be dismissed on the pleadings only if it is clear that no set of facts can be proved that would entitle the plaintiffs to relief. *Id.* Ruling on a section 2-615 motion is limited to only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record. *Id.*

Though the burden rests with movants, "Courts should begin any constitutional analysis with the presumption that the challenged legislation is constitutional, . . . and it is the plaintiff's burden to clearly establish that the challenged provisions are unconstitutional." *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 377 (1997). Furthermore, when construing pension statutes, "[i]t is well established that [they] are to be liberally construed in favor of those who are to be benefited." *Taylor v. Bd. of Trs. of the Police Pension Fund of Hoffman Estates*, 125 Ill. App. 3d 1096, 1099 (1st Dist. 1984).

D. Public Act 97-0651's Amendments and Additions to the Pension Code

There are three aspects of leaves of absence at issue.

1. Computation of service credit provisions in Articles 8, 11, and 17.

Before Public Act 97-0651, Articles 8, 11, and 17 of the Pension Code allowed participants to earn service credit towards their annuity computation for time spent on a leave of absence with their local labor organization. 40 ILCS 5/8-226(c), 11-215(c)(3), 17-134(4) (West 2010). Public Act 97-0651 eliminated the right to earn service credit for time spent on a future leave of absence to work for a local labor organization. *See* Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(c), 11-215(c)(3), 17-134(4) (West 2010)). The amendments provided that these leaves of absence counted only towards computation of service credit if the leave began "before the effective date of this amendatory Act of the 97th General Assembly." 40 ILCS 5/8-226(c), 11-215(c)(3), 17-134(4) (West 2012).

2. Highest average annual salary definition in Articles 8 and 11.

Annuities are calculated in part based on a participant's highest four consecutive years of annual salary in his or her last ten years before retirement. Articles 8 and 11 of the Pension Code provide that "the annual salary of an employee whose salary or wage is appropriated, fixed, or arranged in the annual appropriation ordinance upon other than an annual basis shall be determined as follows . . . ." 40 ILCS 5/8-233, 11-217 (West 2012). This is followed by subsections specifying calculation methods for "employees paid on a monthly basis," *id.* §§ 8-233(a), 11-217(a), "employees paid on a daily basis," *id.* §§ 8-233(b), 11-217(b), and for employees whose salary rate changed during the year, *see id.* §§ 8-233(c)–(d), 11-217(c)–(d).

Public Act 97-0651 added subsection (e) to the basis of annual salary provisions. These subsections provide as follows:

> This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in [section 8-110 or section 11-107], to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment

Pub. Act 97-0651 (eff. Jan. 5, 2012) (adding 40 ILCS 5/8-233(e), 11-217(e)).

Public Act 97-0651 also amended Sections 8-138(g-1) and 11-134(f-1):

> For the purpose of calculating this annuity, "final average salary" means the highest average annual salary for any 4 consecutive years in the last 10 years of service. *Notwithstanding any provision of this subsection to the contrary, the "final average salary" for a participant that received credit under [Sections 8-226(c) and 11-215(c)(3)] means the highest average salary for any 4 consecutive*

> *years (or any 8 consecutive years if the employee first became a participant on or after January 1, 2011) in the 10 years immediately prior to the leave of absence, and adding to that highest average salary, the product of (i) that highest average salary, (ii) the average percentage increase in the Consumer Price Index during each 12-month calendar year for the calendar years during the participant's leave of absence, and (iii) the length of the leave of absence in years, provided that this shall not exceed the participant's salary at the local labor organization. For purposes of this Section, the Consumer Price Index is the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.*

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-138(g-1), 11-134(f-1) (West 2010)) (added text in italics).

The allegations and legislative history reveal that before these declarations or clarifications, the pension funds used, for annuity purposes, the local labor organization salary—the same salary used for contributions—if that was the salary earned during the highest four consecutive years in the last ten years before retirement. This was significant for annuity calculation because participants generally make more working for their local labor organization than in their public positions. *See* (Pl.'s Compl. ¶¶ 130–36); 97th Ill. Gen. Assem., House Proceedings, Nov. 29, 2011, at 45 (statements of Representative Cross) ("[T]he change to the salary . . . will significantly change their anticipated benefits."). These clarifications result in participants instead being limited to the highest four consecutive years of salary earned from their public position immediately prior to taking a leave of absence.

The amendment also provided a percentage increase under the Consumer Price Index to account for situations where the public salary may have been a number of years earlier than the date of retirement under sections 8-138(g-1) and 11-134(f-1).

3. "Any plan established by the local labor organization" in Articles 8 and 11.

The leave of absence provisions allow participants to calculate time spent on a leave of absence towards their annuity computation so long as "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3), 11-215(c)(3)(C) (West 2012). Public Act 97-0651 added a legislative clarification:

> For the purposes of this Section, the phrase "any pension plan established by the local labor organization" means any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at

> the local, intrastate, State, multi-state, national, or international level. The definition of this phrase is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(e), 11-215(e) (West 2010)). This amendment clarified that the participant cannot receive service credit under his or her public pension plan if he or she earns service credit in another pension plan as a result of his or her work for the local labor organization, regardless of whether that nonpublic pension plan was established by the local labor organization itself or one of its affiliates.

Analysis

The Motions before the Court focus solely on Plaintiffs' constitutional claims. The Court will address first the computation of service credit changes to Articles 8, 11, and 17 and claims under the Illinois Pension Clause, the Contracts Clauses, and the Takings Clauses. The Court will then address the legislative clarifications of "salary" and "any pension plan established by the local labor organization" in Articles 8 and 11 and the claims regarding these changes under the Illinois Pension Clause, the Contracts Clauses, and the Takings Clauses. The Court will address the equal protection claims and separation of powers claims last.

I. Computation of service credit provisions in Articles 8, 11, and 17.

A. The Pension Clause

The Plaintiffs' primary challenge to the Act's elimination of service credit for future leaves of absence is under Article XIII section 5 of the Illinois Constitution, commonly known as the "Pension Clause":

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

The purpose of the Pension Clause, which was added to the 1970 Illinois Constitution, was to eliminate the legal distinction between "mandatory" pension plans that could be modified at any time and "optional" pension plans that were considered contractual in nature. *See People ex rel. Sklodowski v. Illinois*, 182 Ill. 2d 220, 229 (1998); *McNamee v. Illinois*, 173 Ill. 2d 433, 440 (1996); *Buddell v. Bd. of Trs. State Univ. Ret. Sys.*, 118 Ill 2d. 99, 102 (1987). The Pension Clause established that participation in a public pension system created an enforceable contractual relationship and that the benefits of that contractual relationship could not be diminished or impaired. *Id.* at 104–05.

A public employee's pension rights vest at the time that the employee enters the system. *See, e.g., Buddell*, 118 Ill. 2d at 104–05 (finding that a participant's pre-Pension Clause pension rights vested upon the effective date of the Pension Clause and those rights became contractual in nature and could not be altered). When pension rights vest, a public employee's pension is "governed by the actual terms of the Pension Code at the time the employee becomes a member of the pension system." *Di Falco v. Bd. of Trs. of Firemen's Pension Fund of Wood Dale Fire Prot. Dist. No. 1*, 122 Ill. 2d 22, 26 (1988); *see also Sklodowski*, 182 Ill. 2d at 229; *McNamee*, 173 Ill. 2d at 439; *Schroeder v. Morton Grove Police Pension Bd.*, 219 Ill. App. 3d 697, 700 (1st Dist. 1991).

Illinois courts have distinguished between pension funding provisions and pension benefits under the Pension Clause. In cases dealing with funding provisions, the Illinois Supreme Court has consistently held that participants do not have a right to enforce those provisions under the Pension Clause. *See, e.g., Sklodowski*, 182 Ill. 2d at 232; *McNamee*, 173 Ill. 2d at 466–47; *People ex rel. Ill. Fed'n of Teachers v. Lindberg*, 60 Ill. 2d 266, 273 (1975). In contrast, courts have struck down any attempt by the General Assembly to reduce participant benefits. *See, e.g., Buddell*, 107 Ill. 2d at 106; *Miller v. Ret. Bd. Policemen's Annuity*, 329 Ill. App. 3d 589, 601–02 (1st Dist. 2001) ("*Sklodowski*, *Lindberg* and *McNamee* are inapposite because those cases involved allegations that plaintiffs were entitled to a specific level of pension funding or to secure funding mechanisms. The courts in those cases held that the pension protection clause creates enforceable contractual rights only to receive benefits, not to control funding."); *Kraus v. Bd. of Trs. of the Police Pension Fund of the Vill. of Niles*, 72 Ill. App. 3d 833, 844 (1st Dist. 1979).

The State submits a novel argument for dismissing Plaintiffs' Pension Clause claims. The argument is that the Pension Clause only protects benefits based on public service, not private employment with a local labor organization. Under this argument, the legislature is free to diminish or impair any benefit that is not based on work done for an "employer"—*i.e.*, public body—as defined in the Pension Code.

In support of its argument, the State notes that neither the text of the Pension Clause nor the purpose nor the legislative history supports protection of benefits for private employment. To illustrate that not all benefits are protected under the Pension Clause, the State relies on funding provision cases, such as *Sklodowski* and *McNamee*.

The public/private distinction is not persuasive. The right to earn service credit belongs to the participants because they are public employees; it does not matter how one characterizes the work upon which the benefit is based.

Indeed, the State's public/private distinction is foreclosed by *Buddell v. Board of Trustees for the State University Retirement System*. That case dealt with a Pension Code provision allowing participants to purchase service credit for past military service; that military service could have occurred before or after the participant entered the pension system. *Buddell*, 118 Ill. 2d at 101. There, a participant had applied to purchase service credit for his past military service, but his application was denied because he applied after the statutory time limit. *Id.* The time limit, however, did not exist when the participant's pension rights vested. *Id.* at 104. The Court held that the participant's right to purchase service credit for military service, as it existed when his rights vested, was a contractual right protected by the Pension Clause. *Id.* at 104–05. While military service is "public" service, that fact was irrelevant to the Court's analysis. The vested right to military service credit was a benefit the participant was entitled to as a public employee. *Id.* at 105. That is no less true in this case; participants, who are all public employees, seek the right to earn service credit for time spent working for their local labor organization, a vested right or a benefit that they had when they became participants.

The State further argues that receiving benefits from private employment puts the Pension Code into conflict with the constitutional prohibition against using public funds for private purposes. Again, however, the "public" purpose is to provide a benefit to participants because of their public employment. In addition, participants on a leave of absence do not cease to be public employees or fund participants during their leave of absence—like, for example, a sabbatical or furlough. *See, e.g., Callahan v. Bd. of Trs. of the Fireman's Pension Fund*, 83 Ill. App. 2d 11, 17 (4th Dist. 1967) (noting that a purpose of a leave of absence is to preserve the employee's status).

The State and the Defendants do not make the argument that the 97th General Assembly apparently relied upon: that Public Act 97-0651 does not take service credit from participants already on a leave of absence. To briefly address that point, while the Act only impacts participants who have not begun their leave of absence, those participants already have a vested contractual right to take a leave of absence and earn service credit when and if they decide to do so, subject to certain conditions. Any distinction that might have been drawn under the Pension

Clause between those participants who were already on a leave of absence and those who are not has been foreclosed by the Supreme Court's interpretation of the Pension Clause which protects any right that existed in the Pension Code at the time the employee became a participant in the pension fund. *See Buddell*, 118 Ill. 2d at 103–06 (distinguishing *Peters v. City of Springfield*, 57 Ill. 2d 142 (1974) and analogizing *Kraus v. Board of Trustees of the Police Pension Fund*, 72 Ill. App. 3d 833 (1979)). As that analysis makes clear, the right to exercise an option is protected, even before that option has, in fact, been exercised.

Plaintiffs therefore state a claim that Public Act 97-0651 violates the Pension Clause to the extent that it eliminates the right of participants who were enrolled in the funds before the effective date of the Act to earn service credit for a leave of absence. The Motions to Dismiss are DENIED as to Counts I.A (40 ILCS 5/17-134(4)), II.A (*id.* § 8-226(c)), and III.A (*id.* § 11-215(c)(3)).

B. The Contracts Clauses

Plaintiffs also challenge the service credit amendments under the Contracts Clause of the United States and Illinois constitutions. The Contracts Clause of the U.S. Constitution states, "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . . ." U.S. Const. Art. I, § 10. The Contracts Clause of the Illinois Constitution states that the State shall not pass "law[s] impairing the obligation of contracts . . . ." Ill. Const. (1970), Art. I, § 16.

The State's argument for dismissing these claims rests entirely on its theory that there is no "enforceable contractual relationship" provided by the Pension Clause for this benefit. Because this Court has held that Plaintiffs state a claim that the Pension Clause protects participants' right to earn pension credit for a leave of absence, these Contract Clause claims are not dismissed. There is no need to reach Plaintiffs' argument that the Contract Clause claims could survive independent of the Pension Clause claims.

Therefore, the Motions to Dismiss are DENIED as to Counts I.B and I.C (40 ILCS 5/17-134(4)), II.B and II.C (*id.* § 8-226(c)), and III.B and III.C (*id.* § 11-215(c)(3)).

C. The Takings Clauses

The Takings Clause of the United States Constitution, U.S. Const. amend. V, as applied to the states through the Fourteenth Amendment, prohibits the government from taking private property for public use without just compensation. Similarly, the Takings Clause of the Illinois

Constitution states "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

The Takings Clause claims are premised on a property right. "Valid contracts are property, whether the obligor be a private individual, a municipality, a state, or the United States," and those rights arising out of a contract are protected by the Takings Clause. *Lynch v. United States*, 292 U.S. 571, 579 (1934) (citations omitted) (holding War Risk Insurance Act, which repealed all laws granting or pertaining to war risk insurance, was an unconstitutional taking). "When the [government] enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals." *Id.*

Plaintiffs allege a vested contract-based property right provided by the Pension Clause arising from Pension Code benefits. Therefore, like the Contracts Clause claims, the Takings Clause claims rest on the Pension Clause claims. There is also no need to reach whether the Contract Claims could survive independent of the Pension Clause claims.

Therefore, the Motions to Dismiss are DENIED as to Counts I.D and I.E (40 ILCS 5/17-134(4)), II.D and II.E (*id.* § 8-226(c)), and III.D and III.E (*id.* § 11-215(c)(3)).

II. Definitions of "salary" and "any plan established by the local labor organization" in Articles 8 and 11.

The same analysis outlined above for the Pension Clause, Contracts Clause, and Takings Clause claims applies to these provisions of Public Act 97-0651 that purported to declare, or "clarify," the definition of "salary" and "any plan established by the local labor organization" of Articles 8 and 11. But because these provisions were labeled declarations of, rather than amendments to, the Pension Code, it must first be determined whether these are in fact clarifications.

If these provisions are not clarifications but a change in the law, they may diminish or impair participants' rights to a benefit that was in place when their rights vested and thus violate the Pension Clause. If, however, these are truly clarifications, they would not be a deprivation of any vested contractual pension right, and they could constitutionally be applied to persons who were already participants when Public Act 97-0651 was enacted. Thus, the question is whether these are in fact clarifications.

The 97th General Assembly expressly stated that these clarifications were intended to be "declarations," or clarifications, of existing law. Thus, the Court need not determine what the General Assembly intended in enacting these clarifications. *Cf. In re Detention of Lieberman*,

201 Ill. 2d 300, 323 (2002) (reviewing legislative history of a later statute to conclude that a later amendment was "intended as a clarification of existing law and not as a change in the law."). Yet a later General Assembly cannot change a law under the guise of a clarification. To determine whether these are permissible clarifications, then, the Court must look to the text and intent of the statute as it existed prior to the enactment of Public Act 97-0651. *See O'Casek v. Children's Home & Aid Soc'y*, 229 Ill. 2d 421, 441 (2008). "[T]he legislative intent that controls the construction of a public act is the intent of the legislature which passed the subject act, and not the intent of the legislature which amends the act." *Id.*

Statutory interpretation is a question of law, and the objective of statutory construction analysis is ascertaining legislative intent. *Gruszeczka v. Ill. Workers' Comp. Comm'n*, 2013 IL 114212, ¶ 12 (citations omitted). In determining legislative intent, the language used in the statute is normally the best and most reliable indicator. *Id.*; *People v. Hunter*, 2013 IL 114100, ¶ 13. However, "[w]ords and phrases must not be viewed in isolation but must be considered in light of other relevant provisions of the statute." *Gruszeczka*, 2013 IL 114212, ¶ 12. "In ascertaining legislative intent, if the meaning of the enactment is unclear from the statutory language itself, the court may look beyond the language employed and consider the purpose behind the law." *Id.*

"'[C]ourts must construe the acts to reflect the obvious intent of the legislature even if the words of a particular section must be read as modified or altered so as to comport with the legislative intent.'" *In re Lieberman*, 201 Ill. 2d at 320 (quoting *People ex rel. Cason v. Ring*, 41 Ill. 2d 305, 313 (1968)) (finding that removal of statutory definition in new amendment was inadvertent and clearly contrary to the legislative intent). Where the letter of the statute conflicts with the spirit of the legislature's apparent objective, the legislature's objectives control. *See Gill v. Miller*, 94 Ill. 2d 52, 56 (1983).

In order to understand the legislative intent behind the statutory provisions that Public Act 97-0651 purports to clarify it is necessary to examine the enactment history of the leave of absence provisions of Articles 8 and 11.

The 85th General Assembly first enacted these leave of absence provisions in Public Act 85-964, effective December 9, 1987. The legislative history reflects that these provisions were the result of negotiated agreements between "various municipalities and employer groups." 85th Ill. Gen. Assem., House Proceedings, Nov. 6, 1987, at 124 (statements of Representative

Cullerton). The original enactment allowed for service credit computation for leaves of absence provided that the participant (1) continue to make employee contributions to the fund based on his regular salary rate received by the participant immediately prior to his or her leave of absence and (2) not receive credit in any pension plan established by the local labor organization based on his or her employment by the local labor organization. *See* Pub. Act 85-964 (eff. Dec. 9, 1987) (adding 40 ILCS 5/8-226(c), 11-215(c)(3)).

The 86th General Assembly, through Public Act 86-272, effective August 22, 1989, first amended the leave of absence provisos. That Act added a requirement that the participant, or the labor organization on the participant's behalf, make the employer's contribution share based on the regular salary rate received by the participant for his or her public employment immediately prior to the leave of absence. *See* Pub. Act 86-272 (eff. Aug. 22, 1989) (adding 40 ILCS 5/8-226(c)(2), 11-215(c)(3)(B)).

The 86th General Assembly amended the provisos again through Public Act 86-1488, effective January 13, 1991. That Act provided that participant contributions and employer contributions would both be based on the participant's salary with the local labor organization during the leave of absence, not the participant's public position salary. *See* Pub. Act 86-1488 (eff. Jan. 13, 1991) (amending 40 ILCS 5/8-226(c)(1)–(2), 11-215(c)(3)(A)–(B) (West 1990)).

As of January 13, 1991, then, participants in these funds could receive service credit for time spent on a leave of absence without pay during which the participant was employed full time by a local labor organization if (1) the participant made contributions to the fund based on his or her salary with the local labor organization, (2) the participant or the local labor organization made the employer's contribution share to the fund, which was also based on the local labor organization salary, and (3) the participant did not simultaneously receive credit in any pension plan established by the local labor organization based on his or her employment by the local labor organization. *See* 40 ILCS 5/8-226(c), 11-215(c)(3) (West 2010).

A. Highest average annual salary definition.

A participant's annuity is determined by years of service and an average of the highest annual salary for any four consecutive years within the last ten years of service. Public Act 97-0651 purported to clarify how to calculate that highest average "annual salary" by stating that "salary" for annuity purposes included only the salaries paid by the public employers. *See* Pub. Act 97-0651 (eff. Jan. 5, 2012) (adding 40 ILCS 5/8-233(e), 11-217(e)).

Public Act 97-0651 also amended sections 8-138(g-1) and 11-134(f-1) to provide for a percentage increase of the public salary that a participant last earned to account for the possibility that the public salary may have been a number of years earlier than the date of retirement. *See* Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-138(g-1), 11-134(f-1) (West 2010)).

The Plaintiffs allege that, before Public Act 97-0651, the Pension Code provided that a participant's pension benefit would be based in whole or in part on a local labor organization salary earned by the participant while on leave of absence. *See* (Pl.'s Compl. Counts IV.A–H, V.A–H); *see also* 97th Ill. Gen. Assem., House Proceedings, Nov. 29, 2011, at 44–45 (statements of Representative Cross) ("[T]he Code doesn't say whether they're supposed to use the salary earned as a public employee or as the union official . . . . [T]he pension systems have traditionally used the salary received at the labor organization . . . . [T]he change to the salary . . . will significantly change their anticipated benefits.").

The State argues that sections 8-233(c) and 11-217(e) of the Pension Code are permissible clarifications of existing law because the legislature has always intended to calculate the highest average annual salary based on public salary, not local labor organization salary. The State argues that subsection (e) simply seeks to clarify that the salary used for salary computation should be salary paid to an "employee" working for an "employer" and that therefore the highest annual salary used for annuity purposes must be a public salary.

The State correctly points out that salary is defined under the Pension Code as "the actual sum payable during the year if the employee worked the full normal working time in his position . . ." 40 ILCS 5/8-117(b), 11-116(a) (West 2012). "Employee" is defined as basically anyone employed by an "employer," *see id.* §§ 8-113, 11-110, and "employer" is defined as the public body for which the participant works, *see id.* §§ 8-110, 11-107.

Plaintiffs respond that the provisions defining salary place no limit on what entity can pay the salary. Rather, they provide salary calculation methods for employees who do not have an annual salary figure. Moreover, Illinois courts have recognized that public employees on a leave of absence continue to be public employees. *See Callahan*, 83 Ill. App. 2d at 17. Therefore, the "employee" and "employer" definitions are not dispositive, since the definition of "employee" continues to include a participant on a leave of absence.

Granted, the State's interpretation is possible and the Pension Code's salary definition nowhere mentions the local labor organization salary. Still, the text does not foreclose the use of a local labor organization salary in calculating the highest four consecutive years of salary. In light of this ambiguity, the General Assembly could clarify the salary definition to exclude consideration of local labor organization salaries from the calculation of the four highest salary years. But there are several convincing indicators that before Public Act 97-0651 the legislative intent was that the "salary" used for contribution purposes would be the same "salary" that was used to calculate an annuity.

First, Plaintiffs contend, and no Defendant contests, that there are no other provisions in the Pension Code in which a participant must contribute to the fund based on a salary amount that cannot be used to calculate the participant's annuity. In fact, as the Court pointed out at oral argument, there are provisions in both Articles 8 and 11 prohibiting the use of a higher salary for calculating deductions than the salary used in that same year for calculating the proper annuity. Under sections 8-234 and 11-218, "[t]he total of salary deductions for employee contributions for annuity purposes to be considered for any 1 calendar year shall not exceed that produced by the application of the proper salary deduction rates to the highest annual salary considered for annuity purposes for such year." 40 ILCS 5/8-234, 11-218 (West 2012).

The State points out that this is a limit only on payroll deductions, and an employee on a leave of absence must independently make employee contributions to the fund. While this is true, sections 8-234 and 11-218 still reflect the legislative understanding that dollars in, by way of deductions or contributions, would be based on the same "salary" as dollars out, in the form of annuities.

Second, as Plaintiffs point out, refusing to look to the local labor organization salary would be inconsistent with the requirement that annuity salaries be calculated from "within the last ten years of service." 40 ILCS 5/8-138(b), (g-1), 11-134(a), (f-1) (West 2012). For any participant who has been on a leave for more than six years, there will not be four consecutive years of public salary "within the last ten years of service." *Id.* The legislature sought to fix this problem by amending subsections g-1 and f-1 to require that the annuity be calculated using salaries from within the last ten years before a leave of absence and add an inflation adjustment. Yet the need for this fix only highlights that the decision to disallow the use of local labor

organization salaries was itself a change from the calculation methods as they existed prior to Public Act 97-0651.

Finally, the 86th General Assembly's changes to use the higher local labor organization salary for contribution purposes only makes sense if it understood that the local labor organization salary would also be used for annuity purposes. As noted, making contributions based upon local labor organization salary was not a requirement when the opportunity to earn service credit was first made a part of the Pension Code in Public Act 85-964. Public Act 86-272 required that participants, or the local labor organization on the participant's behalf, make employer contributions to the fund based on the public employer salary. Pub. Act 86-272 (eff. Aug. 22, 1989) (adding 40 ILCS 5/8-226(c)(2), 11-215(c)(3)(B)). Public Act 86-1488 amended these provisions to make both employee and employer contributions based on the participant's "current salary with such labor organization." Pub. Act 86-1488 (eff. Jan. 13, 1991) (amending 40 ILCS 5/8-226(c)(1)–(2), 11-215(c)(3)(A)–(B) (West 1990)).

Plaintiffs speculate that given the political climate in the early 1990s, it is unlikely that the 86th General Assembly wanted to disadvantage local labor organizations and the participants by increasing the contributions, unless it was also making an increase in pension payments. This may be true, but Plaintiffs cite no legislative history to support this theory. However, as Plaintiffs also point out, this change demonstrates that the legislature understood that the "salary" paid by the local labor organization and "salary" paid by the public employer might be significantly different; and if it intended to limit salary for annuity purposes to public salary, it would have said so at the time it made this change.

Also telling is that if Public Act 86-1488 were intended to increase participant contributions in a manner that was not matched by an increase in benefits, as Defendants and the State now contend, it could impair or diminish a vested pension right. This would implicate the Pension Clause and all of the other constitutional arguments that Plaintiffs make here. This presents another reason to doubt that this was what the 86th General Assembly intended when it required contributions based on the local labor organization salary.

In sum, the declarations that the salary used for annuity purposes is limited to public salary are amendments to, rather than clarifications of, existing law. The General Assembly could decrease pension benefits to which participants would otherwise be entitled. As such, these amendments are alleged to diminish or impair pension benefits and the complaint therefore states

a claim as to fund participants before the effective date of Public Act 97-0651. Therefore, the Motions to Dismiss are DENIED as to Counts IV.A–E (40 ILCS 5/8-138(g-1), 8-233(e)) and Counts V.A–E (*id.* §§ 11-134(f-1), 11-217(e)).

B. "Any plan established by the local labor organization" definition.

One of the conditions that has existed since the outset for earning service credit while on a leave of absence is that during the period of the leave the "participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3), 11-215(c)(3)(C) (West 2012).

Public Act 97-0651's legislative clarification states:

> For the purposes of this Section, the phrase "any pension plan established by the local labor organization" means any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at the local, intrastate, State, multi-state, national, or international level. The definition of this phrase is a declaration of existing law and shall not be construed as a new enactment.

Pub. Act 97-0651 (eff. Jan. 5, 2012) (amending 40 ILCS 5/8-226(e), 11-215(e) (West 2010)). Therefore, the question is what the 85th General Assembly, which first provided participants the right to earn service credit for a leave of absence, intended by this prohibition on receipt of simultaneous credit in two pension plans.

The State argues that the obvious purpose of the proviso was to avoid the use of public funds to subsidize retirement benefits for someone already receiving benefits based on his or her employment by the local labor organization. In other words, the General Assembly sought to prohibit "double dipping" on service credit. No legislative history has been provided to the Court and this Court cannot find any history to illuminate the original legislative intent.

But the proviso must be read in the context of the benefit it provides. The benefit is that participants on a leave of absence could continue to accrue service credit despite not actually serving in their public position. Since the leave of absence provision was added, there have been two basic requirements: continue to make contributions and no service credit for another plan based on the same work. To the extent that the General Assembly should have stated this requirement more broadly in the original enactment, as the State puts it, this was maybe an "imperfect reference." Thus it is imperfect in its narrowness—the proviso uses the definite article *the* and definite object *local labor organization*. Yet despite the word choice, statutes are to be

construed in light of their intended purpose, even where "'legislative intention, otherwise clear, was in part mistakenly or inaccurately stated.'" *In re Lieberman*, 201 Ill. 2d at 320 (quoting *Gill*, 94 Ill. 2d at 58). Indeed, circumventing this proviso by giving participants on leave service credits in plans set up through district councils or affiliated labor organizations clearly undermines any possible purpose for this proviso that the legislature placed on a generous benefit for public employees.

Plaintiffs speculate that the General Assembly might have intended "established by the local labor organization" as an acknowledgement that the local labor organization can control the terms and participation of its own pension plans but perhaps not a plan administered by an affiliate. But this distinction makes no sense in light of the clear intention to limit the benefit on service credit so that participants would not be "double dipping." There is simply no practical way to read the proviso in light of this intent except in the manner in which Public Act 97-0651 clarifies. Accordingly, this is a clarification of, rather than an amendment to, the Pension Code and Plaintiffs' claims under the Pension Clause, Contracts Clause, and Takings Clause claims are dismissed as to these clarifications.

Therefore, the Motions to Dismiss are GRANTED as to Counts VI.A–E (40 ILCS 5/8-226) and VII.A–E (*id.* § 11-215).

III. Equal Protection Clause Claims

Plaintiffs also challenge Public Act 97-0651 under the equal protection clauses of the United States Constitution and the Illinois Constitution. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970), Art. I, § 2.

The analysis under each clause is identical. *See Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 32 (1996). "The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." *Id.* (quoting *Jacobson v. Dep't of Public Aid*, 171 Ill. 2d 314, 322–23 (1996)) (internal citations and alterations omitted). The State may enact legislation drawing distinctions between different categories of people; it may not, however, treat differently persons who have been statutorily placed into different classes on the basis of criteria wholly unrelated to the legislation's purpose. *See id.* at 33.

Plaintiffs' equal protection challenge is based upon the amending of only Articles 8, 11, and 17 and no other Articles. Plaintiffs claim that the 97th General Assembly impermissibly treated participants in these three pension funds differently than participants of other pension funds. Because this Act does not impact fundamental rights or a suspect class, rational basis review applies; that is, the classification will be upheld unless it bears no rational relationship to a legitimate state goal. *See Edgar*, 174 Ill. 2d at 33; *DiSabato v. Bd. of Trs. of State Employees Ret. Sys. of Ill.*, 285 Ill. App. 3d 827, 833 (1st Dist. 1996).

"Under the rational basis test, a court's review of a legislative classification is limited and generally deferential." *People v. Shephard*, 152 Ill. 2d 489, 502 (1992) (citation omitted). And "if any state of facts can reasonably be conceived to justify the enactment, it must be upheld." *Id.* (citations omitted). "Classifications made by the General Assembly are presumed valid, and all doubts will be resolved in favor of upholding them." *Lacny v. Police Bd. of Chicago*, 291 Ill. App. 3d 397, 403–04 (1st Dist. 1997).

The Plaintiffs have failed to allege an equal protection violation. In the first place, the participants of different pension funds are not similarly situated. In *Friedman & Rochester, Ltd. v. Walsh*, our Supreme Court rejected an equal protection claim where only one of the eighteen pension funds was not exempt from garnishment proceedings. 67 Ill. 2d 413, 421 (1977). The Court noted that "[t]he mere fact that the legislature failed to exempt the pension fund for policemen from municipalities of 500,000 or less population from garnishment process does not require that we therefore invalidate the provisions granting such immunity to 17 other separate pension funds." *Id.*

The Municipal Fund and Municipal Board have pointed to relevant differences in the Pension Code for the various funds. For example, Articles 3, 4, 5, and 6 of the Pension Code have additional leave of absence restrictions that limit the specific positions for which participants may serve. *See, e.g.*, 40 ILCS 5/6-209(f) (President of Firemen's Association), 4-108(c)(3) (officer of a statewide firefighters' association), 3-110(c) (executive or head of an organization whose membership consists of a police department), 5-214(b) (same) (West 2012). And different Articles treat contributions for creditable service differently. *Compare id.* §§ 8-226(c) (providing different salary contributions depending upon whether a participant was employed before or after 1991) *with* 6-209 (no distinction for participants) *and* 4-108(c)(3) (same). And, unlike Article 8, other Articles require the public employer to make contributions

to the pension funds for the employer portion even though the employee is not actively working for the employer. *See id.* §§ 5-214(b), 6-209. And some Articles have minimum years of service requirements before a participant is eligible to take a leave of absence. *See id.* §§ 3-100(c), 4-108(c)(3).

Moreover, even if the participants are similarly situated, the equal protection clauses "do not prohibit the legislature from pursuing a reform 'one step at a time,' or from applying a remedy to one selected phase of a field while neglecting the others." *Walsh*, 67 Ill. 2d at 421 (citing *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489, (1955); *Ill. Coal Operators Assoc. v. Pollution Control Bd.*, 59 Ill. 2d 305, 312–13 (1974)). "[T]he State may direct a law against what it considers to be a problem as it actually exists; the law need not cover the whole field of possible abuse." *Shephard*, 152 Ill. 2d at 502.

The 97th General Assembly could have reasonably amended these leave of absence provisions because it thought the current operation of the law was being abused. The 97th General Assembly referenced the Chicago Tribune and several other news outlets during the debates: "We are attempting, in this Bill, to address a variety of problems that came about as a result of some news articles . . . ." 97th Ill. Gen. Assem., House Proceedings, Nov. 29, 2011, at 38 (statements of Representative Cross). Further, both sides acknowledge in their briefs that the amendments were passed in response to the news articles that addressed leaves of absence. Though the "actual motivation" is "irrelevant" under rational basis review and the court may uphold legislation on any conceivable, rational basis, *see Tri Cnty. Paving, Inc. v. Ashe Cnty.*, 281 F.3d 430, 439 (4th Cir. 2002) (citing *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980)), the evident motivation shows that the 97th General Assembly was indeed pursuing reform "one step at a time" to correct what it perceived as abuses.

In short, there are rational, conceivable bases for differentiating between Articles 8, 11, and 17, and the other Articles, even if they were similarly situated. There is no merit to Plaintiffs' contention that the General Assembly engaged in arbitrary and unreasonable discrimination against participants under Articles 8, 11, or 17; or in the alternative that it did not have a rational basis for doing so.

Therefore, the Motions to Dismiss are GRANTED as to Counts I.F and I.G (40 ILCS 5/17-134(4)), II.F and II.G (*id.* § 8-226(c)), III.F and III.G (*id.* § 11-215(c)(3)), IV.F and IV.G (*id.* §§ 8-138(g-1), 8-233(e)), V.F and V.G (*id.* §§ 11-134(f-1), 11-217(c)), VI.F and VI.G (*id.* §

8-226), VII.F and VII.G (*id.* § 11-215); VIII.A and VIII.B (*id.* § 8-226(c)(3)), and IX.A and IX.B (*id.* § 11-215(c)(3)(C)).

IV. Separation of Powers Clause Claims

The separation of powers doctrine is relevant only to the "clarified" provision challenges. The Separation of Powers Clause provides that "[N]o branch of government shall exercise the powers of another." Ill. Const. 1970, art. II, § 1. This doctrine precludes the legislature from overruling a judicial decision by declaring that an amendatory act applies retroactively to cases decided before its effective date. *See People ex rel. Ryan v. Agpro, Inc.*, 214 Ill. 2d 222, 228–29 (2005); *Roth v. Yackley*, 77 Ill. 2d 423, 429 (1979). But because there were no judicial determinations on the relevant Pension Code sections before the "clarifications" made by Public Act 97-0651, and because the legislature may properly seek to clarify a prior enactment, *see In re Lieberman*, 201 Ill. 2d at 321; *In re Cohn*, 93 Ill. 2d 190, 202 (1982), the Separation of Powers Clause is simply not implicated and Plaintiffs fail to state any separation of powers claim.

Therefore, the Motions to Dismiss are GRANTED as to Counts IV.H (40 ILCS 5/8-138(g-1), 8-233(e)), V.H (*id.* §§ 11-134(f-1), 11-217(e)); VI.H (*id.* § 8-226), and VII.H (*id.* § 11-215).

Conclusion

The Motions to Dismiss are DENIED as to:

I. Elimination of service credit computation Counts

Pension Clause of the Illinois Constitution

- I.A (40 ILCS 5/17-134(4)), II.A (*id.* § 8-226(c)); III.A (*id.* § 11-215(c)(3)).

Contracts Clause of the Illinois Constitution and of the United States Constitution

- I.B, I.C (40 ILCS 5/17-134(4)); II.B, II.C (*id.* § 8-226(c)); III.B, III.C (*id.* § 11-215(c)(3)).

Takings Clause of the Illinois Constitution and of the United States Constitution

- I.D, I.E (40 ILCS 5/17-134(4)); II.D, II.E (*id.* § 8-226(c)); III.D, III.E (*id.* § 11-215(c)(3)).

II. Highest average annual salary definition Counts

Pension Clause of the Illinois Constitution

- IV.A (40 ILCS 5/8-138(g-1), 8-233(e)); V.A (*id.* §§ 11-134(f-1), 11-217(e)).

Contracts Clause of the Illinois Constitution and the United States Constitution

- IV.B, IV.C (40 ILCS 5/8-138(g-1), 8-233(e)); V.B, V.C (*id.* §§ 11-134(f-1), 11-217(e)).

Takings Clause of the Illinois Constitution and the United States Constitution.

- IV.D, IV.E (40 ILCS 5/8-138(g-1), 8-233(e)); V.D, V.E (*id.* §§ 11-134(f-1), 11-217(e)).

The Motions to Dismiss are GRANTED, and the claims dismissed with prejudice, as to:

I. **Counts challenging "any plan established by the local labor organization" definition**

Pension Clause of the Illinois Constitution

- VI.A (40 ILCS 5/8-226); VII.A (*id.* § 11-215).

Contracts Clause of the Illinois Constitution and of the United States Constitution

- VI.B, VI.C (40 ILCS 5/8-226); VII.B, VII.C (*id.* § 11-215).

Takings Clause of the Illinois Constitution and of the United States Constitution.

- VI.D, VI.E (40 ILCS 5/8-226); VII.D, VII.E (*id.* § 11-215).

II. **Equal Protection Clauses of the Illinois Constitution and the United States Constitution Counts**

- I.F, I.G (40 ILCS 5/17-134(4)); II.F, II.G (*id.* § 8-226(c)); III.F, III.G (*id.* § 11-215(c)(3)); IV.F, IV.G (*id.* §§ 8-138(g-1), 8-233(e)); V.F, V.G (*id.* §§ 11-134(f-1), 11-217(e)); VI.F, VI.G (*id.* § 8-226); VII.F, VII.G (*id.* § 11-215); VIII.A, VIII.B (*id.* § 8-226(c)(3)); IX.A, IX.B (*id.* § 11-215(c)(3)(C)).

III. **Separation of Powers Clause of the Illinois Constitution Counts**

- IV.H (40 ILCS 5/8-138(g-1), 8-233(c)); V.H (*id.* §§ 11-134(f-1), 11-217(e)); VI.H (*id.* § 8-226); VII.H (*id.* § 11-215).

The December 2, 2013, 9:45 a.m. status hearing stands.

IT IS SO ORDERED.

ENTERED
JUDGE MARY LANE MIKVA - 1890
NOV 27 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

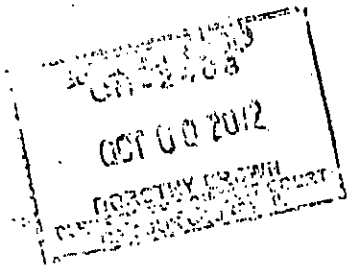
ENTERED:

Mary L Mikva 1890

Judge Mary L. Mikva, #1890
Circuit Court of Cook County, Illinois
County Department, Chancery Division

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Rochelle Carmichael; Zeidre Foster; Oscar Hall; Anthony Lopez; John Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO; Plaintiffs, v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Municipal Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago; Public School Teachers' Pension & Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago; Defendants.	12CH37712 No. _____ COMPLAINT IN CHANCERY FOR INJUNCTION / TEMPORARY RESTRAINING ORDER



COMPLAINT
INJUNCTIVE RELIEF REQUESTED

DOWD, BLOCH & BENNETT
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361 – Telephone
(312) 372-6599 – Facsimile
Firm I.D. Number: 12929

Attorneys for Plaintiffs

October 9, 2012

CLERK OF THE CIRCUIT COURT - COOK COUNTY
[illegible] 10/9/2012 2:19PM
ATTY: 12023 623 TAMBORE
AD DAMNUM: $0.00
CASE NO: 2012CH37712 CALENDAR: 02
COURT DATE: 0/0/0000 12:00AM
CASE TOTAL: $337.00

Base Filing Fee 6	$240.00
Document Storage	$15.00
Automation	$15.00
Law Library	$21.00
Arbitration	$10.00
Dispute Resolution	$1.00
Court Services	$25.00
Children Waiting Rm	$10.00
CHECK NO: 40583	
CHECK AMOUNT:	$337.00
CHANGE	$0.00

RECEIPT 0001 OF 0001
TRANSACTION TOTAL: $337.00

THANK YOU

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COMPLAINT

Plaintiffs Rochelle Carmichael, Oscar Hall, Zeidre Foster, Anthony Lopez, John Mahoney, Joseph Notaro, Michael Senese, and David Torres (collectively, the "Individual Plaintiffs") together with plaintiffs Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO (collectively, the "Union Plaintiffs"), by their attorneys, for their Complaint against defendants Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago, Municipal Employees' Annuity & Benefit Fund of Chicago, Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago, Public School Teachers' Pension & Retirement Fund of Chicago, and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago, state as follows:

INTRODUCTION

1. Plaintiffs bring this action to challenge the defendants' unconstitutional application of multiple provisions of Illinois Public Act 97-0651 ("P.A. 97-0651" or the "Act") signed into law by Governor Quinn on January 5, 2012. Defendants' application of the Act substantially diminishes and impairs the pension benefits of the Individual Plaintiffs and the Union Plaintiffs' members in violation of the Pension Benefits Clause of the Illinois Constitution, as well as the Contracts and Takings Clauses of the Illinois and Federal Constitutions. This action further challenges provisions of P.A. 97-0651 and the pre-Act provisions of the Pension Code that unlawfully discriminate against the plaintiffs in violation of the Equal Protection Clauses of the Illinois and Federal Constitutions. Plaintiffs seek declaratory

and injunctive relief against defendants' unlawful application of the challenged provisions of P.A. 97-0651 and the Pension Code.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims alleged in this action seeking declaratory and injunctive relief.

3. This Court has personal jurisdiction over the defendants pursuant to 735 ILCS 5/2-209 and venue is proper in this Court pursuant to 735 ILCS 5/2-101. Each of the defendants is established pursuant to provisions of the Illinois Pension Code and resides and has its principal place of business in Chicago, Cook County, Illinois.

PARTIES

4. Plaintiff Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO (the "CTU") is an organization of educators dedicated to advancing and promoting quality public education, improving teaching and learning conditions, and protecting members' rights. The CTU is a local labor organization within the meaning of 40 ILCS 5/8-226 and a teacher or labor organization within the meaning of 40 ILCS 5/17-134 that is certified to represent and negotiate terms of collective bargaining agreements for teachers and other employees of the Chicago Board of Education ("Board of Education"). Most (if not all) of the CTU's members are participants in either the Public School Teachers' Pension and Retirement Fund of Chicago (the "CTPF") or the Municipal Employees' Annuity & Benefit Fund of Chicago (the "Municipal Fund"). The CTU's principal place of business is 222 Merchandise Mart Plaza, Chicago, Illinois 60654.

5. Plaintiff Rochelle Carmichael is currently, and has been since 2002, a retiree Municipal Fund participant receiving pension benefits from the fund. Ms. Carmichael worked for the Board of Education in the Chicago Public Schools for more than 27-and-a-half years until

she took a leave of absence from her job as a paraprofessional to work full time for the CTU in September 1995. Ms. Carmichael remained on leave of absence until she resigned from her Board of Education position in 2002. After her retirement from the Board, Ms. Carmichael continued to work for the CTU until she fully retired on June 30, 2006, after almost 11 years with the union. Until her retirement from the Board of Education in 2002, Ms. Carmichael accumulated more than 34 years of service credit in the Municipal Fund. She resides in South Holland, Illinois.

6. Plaintiff Zeidre Foster is a teacher who worked for the Board of Education for about 10 years in the Chicago Public Schools from 2002 until August 2012 when she took a leave of absence to work full time for her union the CTU. Ms. Foster was a contributing participant in the CTPF during her entire service at the Board of Education. The amendments to 40 ILCS 5/17-134(4) in P.A. 97-0651, effective January 5, 2012, bar Ms. Foster from contributing to and receiving credit in the CTPF on her leave of absence working for the CTU. If not for P.A. 97-0651, Ms. Foster would elect to continue to contribute to the CTPF for her union employment on her leave of absence. Ms. Foster resides in Chicago, Illinois.

7. Plaintiff Anthony Lopez has been an active Municipal Fund participant since 1986. He worked for the Board of Education in the Chicago Public Schools for 16 years before he took a leave of absence from his job as a paraprofessional to work full time for the CTU beginning in August 2002. To the present, Mr. Lopez continues to work for the CTU on a leave of absence from his position with the Board of Education. He resides in Chicago, Illinois.

8. Plaintiff Local 1001, Laborers' International Union of North America, AFL-CIO ("Laborers' Local 1001") is a local labor organization within the meaning of 40 ILCS 5/11-215(c)(3) certified to represent and negotiate collective bargaining agreements covering laborers

and certain other workers employed by, among others, the City of Chicago ("City"). Most (if not all) of Laborers' Local 1001's members who are, or were, employed the City are participants in the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago (the "Laborers' Fund"). Laborers' Local 1001's principal place of business is 323 S. Ashland Avenue, Chicago, Illinois 60607.

9. Plaintiff Oscar Hall has been a retiree Laborers' Fund participant since 2009 receiving an annuity from the fund. He worked for the City for more than 25 years until he took a leave of absence from his job to work full time for Laborers' Local 1001 in 2005. Mr. Hall then worked for Laborers' Local 1001 on his leave of absence from 2005 until 2009 when he resigned from his City position with almost 30 years of total service as a contributing participant in the Laborers' Fund. Mr. Hall retired from Laborers' Local 1001 in 2011. He resides in Olympia Fields, Illinois.

10. Plaintiff Michael Senese worked for the City for 17 years before he took a leave of absence in August 2012 from his job in the Department of Streets and Sanitation to work full time for Laborers' Local 1001 where he continues to work today. Mr. Senese was a contributing participant in the Laborers' Fund from 1995 until he took his leave of absence. The amendments to 40 ILCS 5/11-215(c)(3) in P.A. 97-0651, effective January 5, 2012, bar Mr. Senese from contributing to and receiving credit in the Laborers' Fund during his leave of absence from his City position to work for Laborers' Local 1001. In the absence of P.A. 97-0651, Mr. Senese would choose to continue to contribute to the Laborers' Fund for his union employment on his leave of absence. He resides in Chicago, Illinois.

11. Plaintiff David Torres has been a contributing Laborers' Fund participant since 1984. He worked for the City for 24 years before he took a leave of absence in 2008 to work full

time for Laborers' Local 1001. To the present, Mr. Torres continues to work for Laborers' Local 1001 on a leave of absence from his position with the City. He resides in Chicago, Illinois.

12. Plaintiff Local 9, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 9") is a local labor organization within the meaning of 40 ILCS 5/8-226 certified to represent and negotiate collective bargaining agreements covering linemen employed by the City. Most (if not all) of IBEW Local 9's members who are, or were, employed by the City are participants in the Municipal Fund. IBEW Local 9's principal place of business is 4415 West Harrison Street, Suite 330, Hillside, Illinois 60162.

13. Plaintiff John Mahoney has been a retiree Municipal Fund participant since 2003 receiving an annuity from the fund. He worked for the City for 21 years until 1994 when he took a leave of absence from his job as a general foreman of lineman to work full time for IBEW Local 9. His leave of absence continued until he resigned from the City in 2003. He then continued to work for IBEW Local 9 until he retired from the union in 2009. Upon his retirement from the City in 2003, he had accumulated approximately 30 years of total service as a participant in the Municipal Fund. Mr. Mahoney resides in Chicago, Illinois.

14. Plaintiff Joseph Notaro was an active Municipal Fund participant from 1982 until on or about January 31, 2012, and he is now a retiree participant of the fund. He worked for the City for more than 27 years until he took a leave of absence in 2009 from his job as a general foreman of linemen to work full time for IBEW Local 9. His leave of absence continued until on or about January 31, 2012 when he retired from his City position after a total of 30 years of service as a contributing participant in the Municipal Fund. Mr. Notaro has applied to the Municipal Fund for his pension, but he has not yet begun to receive an annuity. Mr. Notaro continues to work for IBEW Local 9. He resides in Chicago, Illinois.

15. Defendant Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("Laborers' Fund") is the entity established by Article 11 of the Pension Code to provide specified pension benefits to, among others, certain laborers employed by the City. The Laborers' Fund's principal place of business is 321 N. Clark Street, Chicago, Illinois 60654.

16. Defendant Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("Laborers' Fund Board") is the board of trustees established by Article 11 of the Pension Code to administer the Laborers' Fund. The Laborers' Fund Board's principal place of business is 321 N. Clark Street, Chicago, Illinois 60654.

17. Defendant Municipal Employees' Annuity & Benefit Fund of Chicago ("Municipal Fund") is the entity established by Article 8 of the Pension Code to provide specified pension benefits to, among others, certain City and Board of Education employees as provided in 40 ILCS 5/8-113. The Municipal Fund's principal place of business is 321 N. Clark Street, Chicago, Illinois 60654.

18. Defendant Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago ("Municipal Fund Board") is the board of trustees established by Article 8 of the Pension Code to administer the Municipal Fund. The Municipal Fund Board's principal place of business is 321 N. Clark Street, Chicago, Illinois 60654.

19. Defendant Public School Teachers' Pension & Retirement Fund of Chicago (the "CTPF") is the entity established by Article 17 of the Pension Code to provide specified pension benefits for, among others, certain certified teachers in the Chicago Public Schools. The CTPF's principal place of business is 203 North LaSalle Street, Chicago, Illinois 60601.

20. Defendant Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago ("CTPF Board") is the board of trustees established by Article 17 of

the Pension Code to administer the CTPF. The CTPF Board's principal place of business is 203 North LaSalle Street, Chicago, Illinois 60601.

ILLINOIS SUPREME COURT RULE 19

21. Because this Complaint challenges the constitutionality of provisions of the Illinois Pension Code as amended by P.A. 97-0651, plaintiffs will provide notice of this Complaint to the State of Illinois pursuant to Illinois Supreme Court Rule 19.

BACKGROUND FACTS

I. The Protections of the Pension Benefits Clause

22. **Pension benefits provided for in the Pension Code are protected by the Pension Benefits Clause of the Illinois Constitution, which states:**

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

Ill. Const. (1970), Art. XIII, § 5.

23. Pursuant to the Pension Benefits Clause, a pension benefit provided for in the Illinois Pension Code is an enforceable contractual right that cannot be diminished or impaired by legislation or otherwise.

24. A public employee's membership in a retirement system vests the employee in the rights and benefits of the system in place during his or her employment, including the method of calculating benefits.

25. Pursuant to the Pension Benefits Clause, all pension benefits and rights provided for in the Pension Code vest, or become non-forfeitable, either (1) on the employee's first day of participation in the retirement system or (2) upon the employee's continued participation in the system after an increase in the benefits of that system.

II. P.A. 97-0651 Bars Pension Credit for Future Union Leaves of Absence

26. **P.A. 97-0651 eliminates current CTPF, Municipal Fund, and Laborers' Fund participants' rights to receive credit in the respective funds for future union leaves of absence.**

27. Before January 5, 2012, the Pension Code (40 ILCS 5/17-134) provided that any teacher participating in the CTPF could have his or her pension benefits calculated by giving credit to the teacher for any periods of "service with teacher or labor organizations based upon special leaves of absence therefor granted by an Employer" so long as the teacher and the labor organization met the specified conditions, including making the required contributions to the fund based on the participant's salary at the union.

28. With regard to the Municipal Fund and the Laborers' Fund, before January 5, 2012, the Pension Code (40 ILCS 5/8-226(c) & 5/11-215(c)(3), respectively) provided that any participant in the respective funds could have his or her pension benefits calculated giving credit as a "term of service" for any period when the participant was on a "leave[] of absence without pay during which a participant is employed full-time by a local labor organization that represents municipal employees," provided that the participant and the union met the specified conditions including making the required contributions to the fund based on the participant's salary at the union.

29. Thus, before the P.A. 97-0651 amendments, any participant in one of the funds had the right to receive credit toward his or her pension benefits for full-time employment with a local union such as one of the Union Plaintiffs while on a leave of absence from a position with the City or Board of Education.

30. Pursuant to the Pension Code prior to the Act's amendments, current Municipal Fund, Laborers' Fund, and CTPF participants also had the right to pension benefits based in

whole or in part on a union salary earned during a leave of absence taken at any time in the future before the participant's resignation from his or her municipal position.

31. Teachers, paraprofessionals, laborers, linemen, and other municipal employees were thus able to serve their colleagues as officers or staff of one of the local unions without sacrificing the credit they would otherwise have earned toward their pensions if they did not take a leave of absence from their positions with the City or Board of Education.

32. Because CTPF, Municipal Fund, and Laborers' Fund participants could take such a union leave of absence with the right to earn salary and service credit while on leave, these provisions in the Pension Code directly benefitted the local unions, including the Union Plaintiffs, by enabling them to recruit officers and staff with experience and tenure or career service status.

33. The right of current CTPF, Municipal Fund, and Laborers' Fund participants to retain membership in their retirement systems and receive credit in the respective funds for employment with a local union while on a future leave of absence, provided for in the Pension Code, is protected by the Pension Benefits Clause.

34. The statutory language before the Act's amendments also establishes that the General Assembly intended these provisions of the Pension Code, allowing fund participants to earn service and salary credit in the CTPF, the Municipal Fund, and the Laborers' Fund from employment with a union while on a leave of absence, to create contractual rights for the benefit of, and enforceable by, local unions, including the Union Plaintiffs, as well as the fund participants.

35. On January 5, 2012, Governor Quinn signed into law P.A. 97-0651, which amended multiple provisions of the Pension Code with application to individuals who were

already participants in the relevant pension systems, both current employees and participants who retired before the effective date of the Act.[1]

36. Applicable to the CTPF, the Act amended 40 ILCS 5/17-134(4) as follows (underline indicates language added by the Act):

> (4) For service with teacher or labor organizations authorized by special leaves of absence, for which no payroll deductions are made by an Employer, teachers desiring service credit therefor shall contribute to the Fund upon the basis of the actual salary received from such organizations at the percentage rates in effect during such periods for certified positions with such Employer. To the extent the actual salary exceeds the regular salary, which shall be defined as the salary rate, as calculated by the Board, in effect for the teacher's regular position in teaching service on September 1, 1983 or on the effective date of the leave with the organization, whichever is later, the organization shall pay to the Fund the employer's normal cost as set by the Board on the increment. Notwithstanding any other provision of this subdivision (4), teachers are only eligible for credit for service under this subdivision (4) if the special leave of absence begins before the effective date of this amendatory Act of the 97th General Assembly.

37. Applicable to the Municipal Fund, the Act amended 40 ILCS 5/8-226 as follows (underline indicates language added by P.A. 97-0651):

> In computing the term of service of any employee subsequent to the day before the effective date, the following periods shall be counted as periods of service for age and service, widow's and child's annuity purposes: . . .
>
> > (c) Leaves of absence without pay that begin before the effective date of this amendatory Act of the 97th General Assembly and during which a participant is employed full-time by a local labor organization that represents municipal employees, provided that (1) the participant continues to make employee contributions to the Fund as though he were an active employee, based on the regular salary rate received by

[1] For ease of reference, employees or retirees who were participants in the CTPF, Municipal Fund, or Laborers' Fund before the effective date of the Act on January 5, 2012 are referred to here as "current" employees, participants, or retirees.

> the participant for his municipal employment immediately prior to such leave of absence (and in the case of such employment prior to December 9, 1987, pays to the Fund an amount equal to the employee contributions for such employment plus regular interest thereon as calculated by the board), and based on his current salary with such labor organization after the effective date of this amendatory Act of 1991, (2) after January 1, 1989 the participant, or the labor organization on the participant's behalf, makes contributions to the Fund as though it were the employer, in the same amount and same manner as specified under this Article, based on the regular salary rate received by the participant for his municipal employment immediately prior to such leave of absence, and based on his current salary with such labor organization after the effective date of this amendatory Act of 1991, and (3) the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization; . . ..

38. Applicable to the Laborers' Fund, the Act amended 40 ILCS 5/11-215(c) as follows (underline indicates language added by the Act):

> (c) In computing the term of service of an employee subsequent to the day before the effective date, the following periods of time shall be counted as periods of service for annuity purposes: . . .
>
> > (3) leaves of absence without pay <u>that begin before the effective date of this amendatory Act of the 97th General Assembly and</u> during which a participant is employed full-time by a local labor organization that represents municipal employees, provided that (A) the participant continues to make employee contributions to the Fund as though he were an active employee, based on the regular salary rate received by the participant for his municipal employment immediately prior to such leave of absence (and in the case of such employment prior to December 9, 1987, pays to the Fund an amount equal to the employee contributions for such employment plus regular interest thereon as calculated by the board), and based on his current salary with such labor organization after the effective date of this amendatory Act of 1991, (B) after January 1, 1989 the participant, or the labor organization on the participant's behalf, makes contributions to the Fund as though it were the employer, in the same amount and same manner as specified under this Article, based on the regular salary rate received by the participant for his municipal

> employment immediately prior to such leave of absence, and based on his current salary with such labor organization after the effective date of this amendatory Act of 1991, and (C) the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization; . . ..

39. As a result of the Act's amendments to 40 ILCS 5/8-226(c), 5/11-215(c)(3) & 5/17-134(4), every current CTPF, Municipal Fund, and Laborers' Fund participant, including members of the Union Plaintiffs, who had not yet taken a leave of absence to work for a local union, such as the Union Plaintiffs, lost the right to receive credit in the applicable fund if he or she were to take such a leave of absence in the future.

40. Because of the Act (if allowed to be applied by defendants) current teachers, paraprofessionals, laborers, linemen, and other municipal employees can no longer serve their colleagues as officers or staff of the Union Plaintiffs, or any of the other local labor unions, without losing credit in the respective pension funds resulting in substantially lower pensions than they would have received under preexisting law.

41. For example, Ms. Foster, a 10-year veteran teacher in the Chicago Public Schools, took a leave of absence in August 2012 from her Board of Education position to work full time for the CTU representing her colleagues in the Chicago Public School system. When she first became a CTPF participant in 2002, 40 ILCS 5/17-134(4) gave her an enforceable contractual right to earn credit in the fund toward her pension for her union employment while on a leave of absence. The Act's amendments, effective January 5, 2012, however, eliminate that right and now bar Ms. Foster from contributing to and earning credit in the CTPF for her CTU employment. Because her CTPF pension will be based on her years of service credit in the system, her pension will be substantially smaller and the date she may elect to begin receiving her retirement annuity may be delayed due to this loss of service credit.

42. As another example, after working as a laborer for the City for 17 years, in August 2012, Mr. Senese took a leave of absence from his City position to work full time for Laborers' Local 1001 representing his colleagues at the City. When he first became a contributing member of the Laborers' Fund 17 years ago, 40 ILCS 5/11-215(c)(3) gave him an enforceable contractual right to earn credit in the fund for this union employment while on a leave of absence. The Act's amendments, effective January 5, 2012, however, eliminated that right and now bar Mr. Senese from contributing to and receiving credit in the Laborers' Fund for his employment with Laborers' Local 1001 while on the leave of absence. Because his Laborers' Fund pension will be based on the number of years of service credit he earns, his pension benefit will be substantially smaller and the date he may elect to begin receiving his retirement annuity may be delayed due to this loss of service credit.

43. The Act's elimination of Ms. Foster's and Mr. Senese's rights to earn credit in their respective retirement systems for their employment with their unions on their leaves of absence causes them irreparable injury for which there is no adequate remedy at law. Because of this loss of credit, Ms. Foster and Mr. Senese must forego other opportunities in order to try to save for retirement in the anticipation of much smaller pensions from the CTPF or Laborers' Fund. Month to month, and year to year, they will have to make difficult choices regarding whether to continue their leaves of absence working for their unions or to try to return to their former municipal positions in order to again begin accruing service credit in their retirement systems. After the fact money damages cannot compensate Ms. Foster or Mr. Senese for this loss of opportunity, security, and ability to prudently plan for their retirements.

44. In addition to harming the Union Plaintiffs' interests in protecting the pension benefits of their members, defendants' application of the Act's elimination of the right of current

fund participants to receive credit in the respective retirement systems for future union leaves of absence also causes the Union Plaintiffs direct harm. The Act will deter current participants from running for election to be an officer of one of the Union Plaintiffs or from agreeing to join a union's staff because of the resulting loss of credit in the applicable pension fund. The Union Plaintiffs, therefore, will find it substantially more difficult in the future to recruit experienced, tenured or career service employees to serve their colleagues.

45. Defendants' application of the Act's amendments to 40 ILCS 5/8-226(c), 5/11-215(c)(3) & 5/17-134(4) will cause irreparable injury to current fund participants, including members of the Union Plaintiffs, and the Union Plaintiffs themselves, for which there is no adequate remedy at law, because it is impossible to tell how many current fund participants the Act is already deterring, and will in the future deter, from running for union office or accepting a union staff position.

III. P.A. 97-0651 Discriminates Against Current CTPF, Laborers' Fund, and Municipal Fund Participants by Eliminating the Right to Earn Service Credit for Union Employment on Future Leaves of Absence

46. **By eliminating CTPF, Municipal Fund, and Laborers' Fund participants' rights to earn credit in those funds while on a union leave of absence that begins after the effective date of the Act, P.A. 97-0651 singles out participants in these funds and the local unions for whom they would work, including the Union Plaintiffs, for disparate treatment under the Pension Code.**

47. In contrast to the treatment of CTPF, Laborers' Fund, and Municipal Fund participants after the Act's amendments, the Pension Code continues to allow current participants in other retirement systems to receive credit toward their pensions for employment with unions while on future leaves of absence from municipal, county, or state employment.

48. The Pension Code provisions governing the downstate police pension funds (the "Downstate Police Funds"), the downstate firefighter pension funds (the "Downstate Firefighter Funds"), the Policemen's Annuity and Benefit Fund of Chicago (the "Chicago Police Fund"), the Firemen's Annuity and Benefit Fund of Chicago (the "Chicago Firefighters Fund"), and the County Employees' and Officers' Annuity and Benefit Fund of Cook County (the "Cook County Fund") (as applicable to county police and correctional officers) allow fund participants to earn credit toward their pensions for employment with a union while on a leave of absence. Participants in these other retirement systems continue to have these rights after the Act.

49. There is no rational basis related to a legitimate state interest to deny CTPF, Municipal Fund, and Laborers' Fund participants the right to receive pension credit for union employment on a future leave of absence while granting such a right to participants, who are similarly situated in all material respects, in other retirement systems governed by the Pension Code.

50. There is also no rational basis related to a legitimate state interest to deny the Union Plaintiffs the right to recruit in the future experienced, tenured and career service participants in the CTPF, the Municipal Fund, and the Laborers' Fund without such participants losing credit in the funds, while granting to other unions, which are similarly situated in all material respects but represent participants in other retirement systems governed by the Pension Code, the right to recruit participants from such other retirement systems without loss of service credit.

51. In addition to the loss of a material pension benefit, defendants' application of the Act's amendments to 40 ILCS 5/8-226(c), 5/11-215(e)(3) & 5/17-134(4) will cause irreparable injury, for which there is no adequate remedy at law, to CTPF, Municipal Fund, and Laborers'

Fund participants, including Ms. Foster, Mr. Senese, and other members of the Union Plaintiffs, and the Union Plaintiffs themselves by forcing them to endure unlawful discrimination officially sanctioned by the Pension Code as amended by the Act.

IV. P.A. 97-0651 Eliminates Current Municipal Fund and Laborers' Fund Participants' Right to Base Their Pension Benefits on a Union Salary Earned While on a Leave of Absence

52. **P.A. 97-0651 eliminates the right of Municipal Fund and Laborers' Fund participants to have their pension benefits based in whole or in part on a union salary earned while on leave of absence from a position with the City or Board of Education.**

53. Before the Act, the Pension Code provided that a Municipal Fund or Laborers' Fund participant's pension benefit could be based in whole or in part on a union salary earned by the participant while on leave of absence from the City or Board of Education.

54. Applicable to both the Municipal Fund and the Laborers' Fund, in consideration for receiving a pension benefit based on his or her union salary earned while on a leave of absence, the Pension Code required either the participant or the union employer to make the employee and employer contributions to the applicable fund based on the participant's union salary.

55. In consideration for the right to receive a pension based on his or her union salary earned while on leave of absence, each of the Individual Plaintiffs—except Ms. Foster and Mr. Senese who the Act denies any credit in their respective retirement systems for their union employment—have met all the requirements of the Pension Code, including making the employee and employer contributions to the applicable fund (or having their union employer pay part or all of such contributions) based on his or her union salary. Because IBEW Local 9 did not make any contributions to the Municipal Fund on behalf of Mr. Mahoney or Mr. Notaro, they

both personally made all of the required employee and employer contributions to the fund based on their union salaries.

56. Also in consideration for the pension benefits in the respective pension funds provided to their staff and officers, the CTU and Laborers' Local 1001 have complied with all the requirements of the Pension Code, including making the employer contributions to the respective funds based on their respective employees' union salaries.

57. Current active Municipal Fund and Laborers' Fund participants on union leaves of absence, including Mr. Lopez, Mr. Torres, and other members of the Union Plaintiffs, have planned for their retirements on the expectation that their pension benefits would be based in whole or in part on their union salaries earned on the leaves of absence.

58. Current Municipal Fund and Laborers' Fund retirees, including Ms. Carmichael, Mr. Hall, Mr. Mahoney, and Mr. Notaro, who took union leaves of absence during their active employment, also planned during their working years for retirement with the expectation that their pension benefits would be based in whole or in part on their union salaries earned on their leaves of absence. Such current retirees who are already collecting pension benefits from the funds, including Ms. Carmichael, Mr. Hall, and Mr. Mahoney, are receiving monthly benefits based on their union salaries from their union leaves of absence and have established their household budgets, family arrangements, financial obligations, and lifestyles on these benefits.

59. The right of current Municipal Fund and Laborers' Fund participants to have their pension benefits calculated using their union salaries from union leaves of absence, provided for in the Pension Code, is protected by the Pension Benefits Clause.

60. The Act amended 40 ILCS 5/8-138(g-1), applicable to the Municipal Fund, as follows (underline indicates language added by P.A. 97-0651):

> (g-1) . . . For the purpose of calculating this annuity, "final average salary" means the highest average annual salary for any 4 consecutive years in the last 10 years of service. Notwithstanding any provision of this subsection to the contrary, the "final average salary" for a participant that received credit under subsection (c) of Section 8-226 means the highest average salary for any 4 consecutive years (or any 8 consecutive years if the employee first became a participant on or after January 1, 2011) in the 10 years immediately prior to the leave of absence, and adding to that highest average salary, the product of (i) that highest average salary, (ii) the average percentage increase in the Consumer Price Index during each 12-month calendar year for the calendar years during the participant's leave of absence, and (iii) the length of the leave of absence in years, provided that this shall not exceed the participant's salary at the local labor organization. For purposes of this Section, the Consumer Price Index is the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

61. The Act also amended 40 ILCS 5/8-233, applicable to the Municipal Fund, adding a new paragraph (c) that provides:

> (c) This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in Section 8-110, to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment.

Neither the CTU nor IBEW Local 9 is an "employer" as defined in 40 ILCS 5/8-110, and therefore this amendment eliminates the right under the preexisting pension laws of CTU and IBEW Local 9 employees and retirees who are current participants in the Municipal Fund, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, and Mr. Notaro, to have their pension benefits based in whole or in part on their union salary.

62. With regard to the Laborers' Fund, the Act amended 40 ILCS 5/11-134(f-1) as follows (underline indicates language added by P.A. 97-0651):

> (f-1) . . . For the purpose of calculating this annuity, "final average salary" means the highest average annual salary for any 4 consecutive years in the last 10 years of service. Notwithstanding any provision of this subsection to the contrary, the "final average

> salary" for a participant that received credit under item (3) of subsection (c) of Section 11-215 means the highest average salary for any 4 consecutive years (or any 8 consecutive years if the employee first became a participant on or after January 1, 2011) in the 10 years immediately prior to the leave of absence, and adding to that highest average salary, the product of (i) that highest average salary, (ii) the average percentage increase in the Consumer Price Index during each 12-month calendar year for the calendar years during the participant's leave of absence, and (iii) the length of the leave of absence in years, provided that this shall not exceed the participant's salary at the local labor organization. For purposes of this Section, the Consumer Price Index is the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor.

63. The Act also amended 40 ILCS 5/11-217, applicable to the Laborers' Fund, adding a new paragraph (e) which provides (underline indicates language added by P.A. 97-0651):

> (e) This Article shall not be construed to authorize a salary paid by an entity other than an employer, as defined in Section 11-107, to be used to calculate the highest average annual salary of a participant. This subsection (e) is a declaration of existing law and shall not be construed as a new enactment.

Laborers' Local 1001 is not an "employer" as defined in 40 ILCS 5/11-107, and therefore this amendment eliminates the right under the preexisting pension laws of Laborers' Local 1001 employees and retirees who are current participants in the Laborers' Fund, including Mr. Hall, Mr. Senese, and Mr. Torres, to have their pension benefits based in whole or in part on their union salary.

64. The clear language of the preexisting statutes and the longstanding interpretations of those statutes by the relevant fund boards that allowed Municipal Fund and Laborers' Fund participants to use a union salary earned while on a leave of absence to calculate a highest average annual salary for pension benefit purposes contradicts the Act's statements that its

amendments to 40 ILCS 5/8-233(e) & 5/11-217(e) are "declaration[s] of existing law and shall not be construed as a new enactment."

65. The Act's amendments to 40 ILCS 5/8-138(g-1), 5/8-233(e), 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Municipal Fund and Laborers' Fund participants by eliminating their right to have their pension benefits based in whole or in part on a union salary earned on a leave of absence.

66. Because of the Act, if a current participant retires from his or her job with the City or Board of Education while on a leave of absence working for a union, the participant's pension benefits may be based only on the municipal salary the participant earned before taking the leave of absence. This means that for some current participants, including Ms. Carmichael, Mr. Hall, Mr. Mahoney, and Mr. Notaro, their pension benefits may only be based on a salary he or she earned many years before actual retirement which was substantially lower than the union salary he or she earned during their years of service immediately prior to retirement.

67. For example, instead of basing her pension benefit on her union salary from the CTU as it has been under preexisting law for the last 10 years, the Act allows Ms. Carmichael to receive pension benefits based only on her much lower salary from the Board of Education earned some seven years before her retirement. Moreover, because she retired with 34 years of service credit at only age 58, Ms Carmichael will likely not even be eligible for the Consumer Price Index adjustments provided for in the Act's amendments to 40 ILCS 5/8-138(g-1).

68. Instead of basing his pension benefit on the salary he earned at Laborers' Local 1001 as it has been under preexisting law, the Act allows the Laborers' Fund to base Mr. Hall's pension benefits only on his significantly lower City salary last earned about four years before his retirement—plus Consumer Price Index adjustments provided for in the Act's amendments to

40 ILCS 5/11-134(f-1) that will not make up for the difference between his union salary and his last municipal salary.

69. Instead of basing his pension benefit on his IBEW Local 9 salary as he was entitled to under preexisting law, the Act allows the Municipal Fund to base Mr. Notaro's pension benefit only on his lower City salary earned about two-and-a-half years before his retirement. Moreover, because he retired with 30 years of service credit at only age 50, Mr. Notaro will likely not be eligible for the Consumer Price Index adjustments provided for in the Act's amendments to 40 ILCS 5/8-138(g-1).

70. Instead of basing his pension benefit on his IBEW Local 9 salary as it has been for the past nine years under preexisting law, the Act allows the Municipal Fund to pay an annuity to Mr. Mahoney based only on the substantially lower City salary he last earned almost a decade before his retirement. Moreover, because he retired with 30 years of service credit at only age 54, Mr. Mahoney will likely not be eligible for the Consumer Price Index adjustments provided for in the Act's amendments to 40 ILCS 5/8-138(g-1).

71. Because the Act allows Ms. Carmichael, Mr. Hall, Mr. Mahoney, Mr. Notaro, and other similarly situated Municipal Fund and Laborers' Fund retirees to receive a pension benefit based on only their lower City or Board of Education salaries earned years before their retirements, the Act will result in each of them receiving a substantially smaller pension benefit than they had a right to under preexisting law.

72. Defendants' retroactive application of the Act's prohibition on using a union salary to calculate pension benefits to Ms. Carmichael, Mr. Hall, Mr. Mahoney, and other similarly stated Municipal Fund and Laborers' Fund retirees will also result in the reduction of the pension benefits they have already received for many years. Therefore, the retroactive

application of the Act will require them to reimburse to the respective funds the difference between the lower pension benefit provided by the Act and the higher pension benefits they have been receiving under preexisting law for many years. In the case of Ms. Carmichael and Mr. Mahoney, they will have to reimburse the Municipal Fund for almost a decade of benefits they received under the higher, pre-Act calculation of their pensions.

73. Defendants' retroactive application of the Act's amendments to 40 ILCS 5/8-138(g-1), 5/8-233(e), 5/11-134(f-1) & 5/11-217(e) will cause irreparable injury to current Municipal Fund and Laborers' Fund retirees, including Ms. Carmichael, Mr. Hall, Mr. Mahoney, and Mr. Notaro for which there is no adequate remedy at law. Each month that the Act's amendments are retroactively applied, affected retirees' pension benefits will be substantially lower. Out of these substantially lower benefits, they will also have to pay significant reimbursements to the funds for past benefits they received for years under preexisting law. This will be an immediate hardship on Ms. Carmichael, Mr. Hall, Mr. Mahoney, Mr. Notaro and other similarly affected retirees, continuing until their deaths. After the fact money damages cannot compensate them for the dramatic reduction in the funds needed to meet their retirement expenses, the mental anguish, and the likely many lost opportunities in their retirement years, caused by the loss of the retirement security they had planned on. After decades of working with the legitimate expectation of a pension benefit provided by the Pension Code, and guaranteed by the Illinois Constitution, the Act substantially diminishes their retirement security at a stage in their lives when they no longer have the time and ability to make up the loss of income.

74. Similarly, if Mr. Lopez, Mr. Torres, and other similarly situated Municipal Fund and Laborers' Fund participants, including members of the Union Plaintiffs, were to retire from their municipal jobs while still on leaves of absence working for their unions, instead of basing

their pension benefits on their union salaries as they would be entitled to do under preexisting law, the Act would allow them to base their pensions only on their municipal salaries last earned many years ago—four years ago in Mr. Torres's case, 10 years ago for Mr. Lopez. As a result, their pensions would be substantially smaller than the pensions they were entitled to under preexisting law.

75. Defendants' application of the Act's amendments to 40 ILCS 5/8-138(g-1), 5/8-233(e), 5/11-134(f-1) & 5/11-217(e) will cause irreparable injury to active current Municipal Fund and Laborers' Fund participants on union leaves of absence, including Mr. Lopez, Mr. Torres, and other members of the Union Plaintiffs, for which there is no adequate remedy at law. For example, both Mr. Lopez and Mr. Torres made their decisions to take a leave of absence to work for their respective unions with the expectation that they would be able to base their pension benefits in whole or in part on their union salaries. They planned for their retirement security accordingly. Now with most of their working years behind them, Mr. Lopez (age 62) and Mr. Torres (age 50) will not be able to make up for the loss of income in their retirement years resulting from the Act's diminishment of their Municipal Fund and Laborers' Fund pension benefits. After the fact money damages cannot compensate them for this loss to their retirement security because the uncertainty created by the Act prevents them from prudently planning for their retirements, including making decisions concerning when to retire, whether to continue their union employment, and what other opportunities they must now forgo to save additional money to meet their retirement expenses.

V. Even though P.A. 97-0651 Denies Individual Plaintiffs the Right to Pension Benefits Based on Their Union Salaries, the Individual and Union Plaintiffs' Contributions to the Municipal Fund and Laborers' Fund Were and Continue to be Based on Those Union Salaries

76. **In order to receive any service credit for employment with a union while on a leave of absence, P.A. 97-0651 requires current Municipal Fund and Laborers' Fund participants or their unions to make or have made contributions to the funds based on the participant's union salary but restricts the participant's pension to a formula based on the lower salary level earned by the participant before taking the leave of absence.**

77. The statutory language of 40 ILCS 5/8-226, 5/8-138, 5/11-215 & 5/11-134 establishes that the General Assembly intended to create a contractual right, enforceable by local labor organizations, including the Union Plaintiffs, that, once the unions paid contributions based on their employees' union salaries to the Municipal Fund or the Laborers' Fund for the purpose of providing a pension benefit to their employees through the funds, their employees would have the right to a Municipal Fund or Laborers' Fund pension benefit based in whole or in part on their union salaries.

78. Similarly, when current Municipal Fund and Laborers' Fund participants paid the required contributions to the funds based on their union salaries earned on leaves of absence—in the case of Mr. Mahoney and Mr. Notaro, paying both the employee and employer contributions to the funds—the Pension Code before the Act granted them an enforceable contractual right to receive a pension benefit based in whole or in part on the union salary.

79. The Act's amendments to 40 ILCS 5/8-138(g-1), 5/8-233(e), 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the enforceable contractual rights of current Municipal Fund and Laborers' Fund participants and their union employers who made contributions to the funds based on the participants' union salaries, including the Individual

Plaintiffs, the CTU, and Laborers' Local 1001, because the amendments require them to have paid, and continue to pay, contributions to the funds based on the participant's current union salary while allowing the participant to receive salary credit for pension purposes based only on a lower City or Board of Education salary often earned many years before the participant's retirement. As a result, such current Municipal Fund and Laborers' Fund participants, including Ms. Carmichael, Mr. Hall, Mr. Lopez, Mr. Mahoney, Mr. Notaro, Mr. Torres, and other members of the Union Plaintiffs, will receive a pension benefit much lower than they or their union employers, including the CTU and Laborers' Local 1001, provided consideration for under preexisting law.

80. The CTU and Laborers' Local 1001 are also threatened with added harm by the Act's reduction in the salary base of current participants' pension benefits. Most of these current participants are not highly compensated employees under section 415 of the federal Internal Revenue Code and the relegation of such employees to lower pension benefits, unrelated to their union salaries, could result in an IRS determination that the benefits provided by the unions through the Municipal Fund or Laborers' Fund discriminate in favor of highly compensated employees. Such a determination could result in the loss of tax-exempt status of the unions' pension contributions and other negative consequences including the costs of annual discrimination testing.

VI. P.A. 97-0651's Reduction in the Salary Base Calculation Discriminates Against Municipal Fund and Laborers' Fund Participants and Their Union Employers

81. **By Eliminating Municipal Fund and Laborers' Fund participants' right to calculate their pension benefits based on a union salary earned while on a leave of absence, P.A. 97-0651 singles out Municipal Fund and Laborers' Fund participants and their union employers for disparate treatment under the Pension Code.**

82. Pursuant to the Pension Code, participants in the CTPF, the Teachers' Retirement System of the State of Illinois (the "Teachers' Retirement System"), the State University Retirement System of Illinois (the "State University Retirement System"), and the State Employees Retirement System of Illinois (the "State Employees Retirement System") all have a right to receive a pension benefit based in whole or in part on a union salary earned while on a leave of absence.

83. In contrast to its effect on the Municipal Fund and Laborers' Fund, the Act does not prohibit participants in the CTPF, the Teachers' Retirement System, the State University Retirement System, and the State Employees Retirement System from taking into account their union salaries earned while on a leave of absence to calculate the salary base for their pension benefits.

84. On information and belief, except for Municipal Fund and Laborers' Fund participants who wish to receive credit in the funds for union employment on a leave of absence and their union employers, no other similarly situated public pension fund participant, retiree, or employer (including union employers) covered by the Pension Code is required to contribute to a fund based on one salary while receiving salary credit for pension purposes based only on some other, lower salary. This includes other Municipal Fund and Laborers' fund participants who do not, and do not intend, to work for a union while on a leave of absence.

85. There is no rational basis related to a legitimate state interest to deny Municipal Fund and Laborers' Fund participants the right to a pension benefit based in whole or in part on a union salary earned on a leave of absence while allowing such a right to similarly situated participants in other pension funds governed by the Pension Code.

86. There is also no rational basis related to a legitimate state interest to deny the CTU and Laborers' Local 1001 their right to provide their employees, who are participants in the Municipal Fund or Laborers' Fund, a pension benefit through the funds based on their union salaries, after the unions have made years of contributions to the funds based on those union salaries, while granting such a right to other unions, which are similarly situated in all material respects but represent participants in other retirement systems governed by the Pension Code.

87. Nor is there a rational basis related to a legitimate state interest to require Municipal Fund and Laborers' Fund participants, who wish to receive pension credit for union employment while on a leave of absence, and their union employers to contribute to the funds based on one salary while denying them the right to receive salary credit based on that salary where no other similarly situated pension fund participant or employer is treated in like fashion.

VII. P.A. 97-0651 Retroactively Changes the Interpretation of the Statutory Phrase "Any Pension Plan Established by the Local Labor Organization"

88. **P.A. 97-0651 for the first time eliminates current Municipal Fund and Laborers' Fund participants' right to earn credit in the funds for union employment while on a leave of absence when the participant receives credit for the same time in a pension plan established by an organization other than the participant's local union employer.**

89. The Pension Code contains identical provisos respectively applicable to the Municipal Fund and the Laborers' Fund that prevent participants from earning credit in the funds for union employment on a leave of absence if the participant "receive[s] credit in any pension plan established by the local labor organization based on his employment by the organization." 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C).

90. Before January 5, 2012, the statutory language of these provisos limited Municipal Fund and Laborers' Fund participants' right to earn credit in the respective funds only

if they earned credit for the same period of time in a pension plan created by the "local labor organization" for its employees. Therefore, Municipal Fund and Laborers' Fund participants had the right to earn credit in the respective funds for employment with a local labor organization on a leave of absence even if they earned credit for the same period of time in a pension plan established by some other organization including the local labor organization's international union affiliate or an industry pension plan established by a regional union and employer association.

91. Before January 5, 2012, both the Municipal Fund Board and the Laborers' Fund Board interpreted the statutory phrase "any pension plan established by the local labor organization" in 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) to refer to only a pension plan established by a fund participant's local union employer itself for the benefit of its employees.

92. On information and belief, before the Act, neither the Municipal Fund Board nor the Laborers' Fund Board had ever denied a participant credit in the respective funds pursuant to 40 ILCS 5/8-226(c)(3) or 5/11-215(c)(3)(C) based on the participant's receipt of credit for the same period of time in a pension plan established by an organization other than the participant's local union employer.

93. In conformity with the language of the Pension Code before passage of the Act and the Laborers' Fund Board's consistent interpretation of the 40 ILCS 5/11-215(c)(3)(C) proviso, Mr. Hall and Mr. Torres have contributed to and earned credit in the Laborers' Fund for employment with Laborers' Local 1001 while on a leaves of absence from the City even though both received credit for the same time in the Laborers' International Union of North America Staff and Affiliates Pension Fund (the "Laborers' International Union Plan") and the Laborers' Pension Fund established by various construction employer associations and the Construction

and General Laborers' District Council of Chicago and Vicinity (the "construction industry Laborers' Pension Plan"). The Laborers' International Union of North America established the Laborers' International Union Plan, and the Laborers' District Council with various construction employer associations established the construction industry Laborers' Pension Plan. Neither Mr. Hall nor Mr. Torres received credit for their employment with Laborers' Local 1001 in a pension plan established by Laborers' Local 1001.

94. In deciding to receive credit in the Laborers' International Union Plan and the Construction industry Laborers' Pension Plan, Mr. Hall and Mr. Torres relied on existing law before the Act and the Laborers' Fund Board's consistent interpretation of the 40 ILCS 5/11-215(c)(3)(C) proviso with the understanding that receiving credit in these other funds would not prejudice their right to receive credit in the Laborers' Fund. Before the Act, neither the Laborers' Fund nor the Laborers' Fund Board ever gave Mr. Hall, Mr. Torres, or Laborers' Local 1001 any reason to believe this understanding was incorrect.

95. Similarly, in conformity with the language of the Pension Code before passage of the Act and the Municipal Fund Board's consistent interpretation of the 40 ILCS 5/8-226(c)(3) proviso, both Mr. Mahoney and Mr. Notaro contributed to and received credit in the Municipal Fund for their employment with IBEW Local 9 while on leaves of absence even though they both received credit for the same time in the International Brotherhood of Electrical Workers International Pension Benefit Fund (the "IBEW International Pension Fund") and the National Electrical Benefit Fund (the "NEBF"). The International Brotherhood of Electrical Workers international union established the IBEW International Pension Fund, and various employer associations with the international union established the NEBF. Neither Mr. Mahoney nor Mr.

Notaro received credit for their employment with IBEW Local 9 during their leaves of absence from the City in a pension plan established by IBEW Local 9.

96. In deciding to receive credit in the IBEW International Pension Fund and the NEBF, Mr. Mahoney and Mr. Notaro relied on existing law before the Act and the Municipal Fund Board's consistent interpretation of the 40 ILCS 5/8/226(c)(3) proviso with the understanding that receiving credit in these other funds would not prejudice their right to receive credit in the Municipal Fund. Before the Act, neither the Municipal Fund nor the Municipal Fund Board ever gave Mr. Mahoney, Mr. Notaro, or IBEW Local 9 any reason to believe this understanding was incorrect.

97. The right of Municipal Fund and Laborers' Fund participants to receive credit in the respective funds for employment with a union while on a leave of absence, even if they earned credit for the same period of time in a pension plan created by an organization other than their local union employer, contained in the Pension Code, is protected by the Pension Benefits Clause.

98. The Act amended 40 ILCS 5/8-226 and 40 ILCS 5/11-215 adding the following identical language to both sections (underline reflects text added by P.A. 97-0651):

> For the purposes of this Section, the phrase "any pension plan established by the local labor organization" means any pension plan in which a participant may receive credit as a result of his or her membership in the local labor organization, including, but not limited to, the local labor organization itself and its affiliates at the local, interstate, State, multi-state, national, or international level. The definition of this phrase is a declaration of existing law and shall not be construed as a new enactment.

99. The clear language of the preexisting statutes and the longstanding interpretations of those statutes by the relevant fund boards that allowed Municipal Fund and Laborers' Fund participants to receive credit in the respective funds for employment with a union while on a

leave of absence, even if the participant received credit for the same time in a pension plan, such as an international union's pension plan, created by an organization other than the local labor organization employer, contradicts the Act's statements that its definition of the phrase "any pension plan established by the local labor organization" in the amendments to 40 ILCS 5/8-226 and 40 ILCS 5/11-215 is a "declaration of existing law and shall not be construed as a new enactment."

100. Defendants' retroactive application of that new definition of the phrase "any pension plan established by the local labor organization" would diminish and impair the pension benefits of current Municipal Fund and Laborers' Fund participants, including Mr. Hall, Mr. Mahoney, Mr. Notaro, Mr. Torres, and other members of the Union Plaintiffs, who, in reliance on existing law before the Act, received credit in pension plans established by organizations other than their local union employers while on a leave of absence. As a result of the loss of service credit dictated by the Act because of their participation in such other pension plans, they will receive substantially smaller pension benefits from the Municipal Fund or the Laborers' Fund than they were entitled to under preexisting law.

101. These dramatic negative effects to their pension benefits will cause irreparable injury to current retirees, including Mr. Hall, Mr. Mahoney, and Mr. Notaro, for which there is no adequate remedy at law. For example, in addition to receiving in the future a substantially lower pension benefit, Mr. Hall and Mr. Mahoney will have to reimburse to the respective funds the difference between the lower pension benefit provided by the Act and the higher pension benefits they have been receiving under preexisting law for many years—in the case of Mr. Mahoney for almost a decade.

102. Municipal Fund staff also advised Mr. Notaro that, as a result of the Act's new interpretation of the phrase "any pension plan established by the local labor organization," he would have to either waive all of his credit in the IBEW International Pension Fund and the NEBF or forfeit his service credit in the Municipal Fund for his years working for IBEW Local 9 on a leave of absence. Therefore, because of the Act he will receive a substantially smaller Municipal Fund benefit (and not be allowed to collect benefits for several more years) or he must lose the pension benefits he was counting on from the IBEW International Pension Fund and the NEBF.

103. Defendants' retroactive application of the Act's new interpretation of the phrase "any pension plan established by the local labor organization" would thus result in immediate hardship to Mr. Hall, Mr. Mahoney, Mr. Notaro, and similarly affected retirees continuing until their deaths. After the fact money damages cannot compensate them for the dramatic reduction in the funds needed to meet their retirement expenses, the mental anguish, and the likely many lost opportunities in their retirement years, caused by the loss of the retirement security they had planned on. After decades of working with the legitimate expectation of a pension benefit provided by the Pension Code, the Act substantially diminishes their retirement security at a stage in their lives when they no longer have the time and ability to make up for the loss of income.

104. Defendants' retroactive application of the Act's new interpretation of the statutory phrase "any pension plan established by the local labor organization" will also cause irreparable injury to active current Municipal Fund and Laborers' Fund participants on union leaves of absence, including Mr. Torres and other members of the Union Plaintiffs, for which there is no adequate remedy at law.

105. For example, Mr. Torres has planned for his retirement security with the legitimate expectation that he would receive a benefit from the Laborers' Fund based on earning service credit for his employment with Laborers' Local 1001 as well as the benefits he earned for the same time in the Laborers' International Union Plan and the construction industry Laborers' Pension Plan. Now, with most of his working years behind him, Mr. Torres (age 50) will not be able to make up for the loss of income in his retirement years resulting from the Act's diminishment of his Laborers' Fund benefits or a forced decision to waive his benefits from these other plans. After the fact money damages cannot compensate him for this loss to his retirement security because the uncertainty created by the Act prevents him from prudently planning for his retirement, including making decisions concerning when to retire, whether to irrevocably waive his credit in the Laborers' International Union Plan and the construction industry Laborers' Pension Plan, and what other opportunities he must now forego to save additional money to meet his retirement expenses.

VIII. A CTU Employee Who Participates in a Defined Contribution Plan Does Not "Receive Credit In Any Pension Plan Established by the Local Labor Organization Based On His Employment by the Organization" Within the Meaning of 40 ILCS 5/8-226(c)(3).

106. In the 1980s, the CTU established a defined contribution deferred compensation plan for the benefit of its professional employees, including employees on leaves of absence from their Board of Education positions such as Ms. Carmichael and Mr. Lopez (the "CTU Defined Contribution Plan"). Through December 31, 2011, the CTU Defined Contribution Plan was organized as a money purchase plan. Effective January 1, 2012 the CTU reorganized the CTU Defined Contribution Plan into the type of defined contribution plan commonly known as a profit-sharing plan with a § 401(k) component.

107. In lieu of paying its employees equivalent amounts in current taxable salary, the CTU Defined Contribution Plan required the CTU to make fixed monthly contributions on a tax-deferred basis to individual accounts for each of the employees in the plan. Amounts contributed to the CTU Defined Contribution Plan were not considered salary for pension purposes and therefore did not increase an employee's salary base for calculating a Municipal Fund benefit.

108. Contributions to the CTU Defined Contribution Plan did not provide CTU employees with credit toward a monthly pension based on their service to the CTU. An employee's interest in the CTU Defined Contribution Plan was determined only by the amount in his or her individual account. Investment returns on the contributions to the individual accounts were able to accumulate on a tax-deferred basis. Upon meeting the requirements of the CTU Defined Contribution Plan and applicable tax laws, a CTU employee could make withdrawals on the balance then existing in the individual account. Such withdrawals would be taxable income for the year made.

109. As with other defined contribution deferred compensation plans, the value of the CTU Defined Contribution Plan to any CTU employee was limited to only the amount of the contributions made to the employee's individual account and any investment returns or losses on the contributions. If the employee's individual account had negative investment returns, the employee's value in the CTU Defined Contribution Plan could be reduced or wiped out.

110. Participants in the CTU Defined Contribution Plan do not receive credit for age, service, salary or anything else. In other words, an employee's eventual benefit from the plan was not calculated based on the employee's age, years of employment by the union, or salary. An employee was entitled only to withdraw whatever funds were in the employee's individual account. If the employee had no funds in the account because of negative investment returns or

IRS permitted loans, the employee would have no cash benefit and, in any case, would never have any credit toward a monthly benefit from the plan, regardless of the employee's age, years of service, salary, or even the amount of contributions made to the account over the years.

111. In contrast to the interests of a participant in the CTU Defined Contribution Plan, a participant in a defined benefit pension plan such as the Municipal Fund, receives credit based on years of service, age, final average salary, and benefit accrual formulas. That is, in a defined benefit pension plan, the plan calculates the participant's benefit based on giving the participant credit towards a future monthly benefit based on these factors. Once the participants have accumulated the credits based on service, age, salary, and the benefit accrual formula, the plan guarantees the participants specific benefits even if the contributions made to the plan by the employees or employer plus investment returns would not be sufficient on a particular date to cover the benefits to be paid over the participants' expected lives. Thus, opposite to what would happen in the CTU Defined Contribution Plan, even if the contributions made to the defined benefit plan for the employees were depleted by negative investment returns, the participants would nonetheless be entitled to pension benefits based on the credits the participants earned in the plan for age, salary, and service.

112. Since the CTU Defined Contribution Plan was established, all CTU employees on leaves of absence from the Board of Education who were Municipal Fund Participants, including Ms. Carmichael and Mr. Lopez, participated in the CTU Defined Contribution Plan during their leaves of absence.

113. From its inception until December 31, 2011, the terms of the CTU Defined Contribution Plan required the CTU's non-management, professional staff, including professional staff on leaves of absence from Board of Education positions such as Ms.

Carmichael and Mr. Lopez, to participate in the plan. By the terms of the plan, such employees could not decline to participate in the plan or waive past contributions to their individual accounts in the plan. With changes to the nature of the CTU Defined Contribution Plan effective January 1, 2012, CTU employees, such as Mr. Lopez, could decline to participate in the plan going forward and could waive contributions to the plan made to their individual accounts after January 1, 2012. By the current terms of the plan and IRS rules, CTU employees and retirees, including Ms. Carmichael and Mr. Lopez still cannot waive the contributions made to their individual accounts before January 1, 2012.

114. 40 ILCS 5/8-226(c)(3) denies a participant the right to receive credit in the Municipal Fund for employment with a union while on leave of absence only if the participant "receive[s] credit in any pension plan established by the local labor organization based on his employment by the organization." Therefore, so long as the participant does not "receive credit" in a "pension plan established by the local labor organization," the participant has a right to receive credit in the Municipal Fund for employment with a union while on leave of absence, if the participant meets the other requirements of the statute.

115. An individual who participates in the CTU Defined Contribution Plan, in which the participant does not receive credit for age, service, salary or anything else, does not "receive credit in any pension plan" within the meaning of 40 ILCS 5/8-226(c)(3). Therefore, a CTU employee's participation in the CTU Defined Contribution Plan should not be deemed to make the employee ineligible to receive credit in the Municipal Fund for employment with the CTU while on a leave of absence.

116. The phrase "receive credit in any pension plan established by the local labor organization based on his employment by the organization" in 40 ILCS 5/8-226(c)(3) has not

been applied by the Municipal Fund to participation in a defined contribution plan established by a local labor organization for its employees, including the CTU Defined Contribution Plan. Any interpretation to apply the proviso to the CTU Defined Contribution Plan would conflict with the language of the statute.

117. Any interpretation that 40 ILCS 5/8-226(c)(3) would apply to the CTU Defined Contribution Plan would cause Ms. Carmichael, Mr. Lopez, and other CTU employees and retirees to forfeit all of their years of credit in the Municipal Fund for their years of employment with the CTU.

118. For many years the CTU has paid substantial contributions to the Municipal Fund so that its employees would earn credit in the Municipal Fund based on their employment and salary with the CTU. Any interpretation that 40 ILCS 5/8-226(c)(3) would apply to the CTU Defined Contribution Plan would cause the CTU to lose the consideration for all of those years of contributions that were made in order to provide its employees with the pension benefits available from the Municipal Fund. The Pension Code does not provide any basis for the CTU to receive reimbursement from the Municipal Fund for its contributions.

119. The Municipal Fund and the Municipal Fund Board, despite fiduciary duties to plan participants, never publicized or gave the CTU or its employees or retirees, including Ms. Carmichael and Mr. Lopez, notice of the application of the 40 ILCS 5/8-226(c)(3) proviso to any defined contribution plan of the union.

120. If the CTU had received notice that participation of its employees in a defined contribution plan would prejudice its members' and employees' right to receive credit in the Municipal Fund for CTU employment, the CTU could have altered the CTU Defined Contribution Plan to allow Municipal Fund participants to opt out of the plan. The CTU then,

instead of making contributions to the CTU Defined Contribution Plan, could have made equivalent payments to its employees as current pensionable salary. Such salary increases would have increased its employees' Municipal Fund benefits.

121. Any interpretation that 40 ILCS 5/8-226(c)(3) should apply to the CTU's Defined Contribution Plan would cause immediate irreparable harm to Ms. Carmichael for which there is no adequate remedy at law. Ms. Carmichael would forfeit approximately 7 years of service credit in the fund, dramatically reducing her future pension payments. Moreover, she would have to pay back to the fund tens of thousands of dollars for each of the more than 10 years of pension benefits she has already received based on her CTU employment. This would be an immediate harm to Ms. Carmichael that would continue until her death. After the fact money damages could not compensate her for the dramatic reduction in the funds needed to meet her retirement expenses, the mental anguish, and the many lost opportunities in her retirement years caused by the loss of the retirement income and security she had planned on. After decades of working with the legitimate expectation of a pension benefit based on her CTU employment, such an interpretation of 40 ILCS 5/8-226(c)(3) would substantially diminish her retirement security at a stage in her life when she no longer has the time and ability to make up for the loss of income.

122. Similarly, an interpretation that the 40 ILCS 5/8-226(c)(3) proviso should apply to the CTU Defined Contribution Plan would also cause Mr. Lopez and other CTU members and employees who are participants in the Municipal Fund irreparable harm for which there is no adequate remedy at law. For example, Mr. Lopez would forfeit approximately 10 years of credit in the Municipal Fund for his CTU employment when he had to participate in the CTU Defined Contribution Plan. As a result, upon retirement he would earn a substantially smaller Municipal Fund benefit than he was legitimately expecting based on the plain language of the statute. At

age 62, it is too late for Mr. Lopez to make up for the loss of income in his retirement years. After the fact money damages could not compensate him for this loss of retirement income and security and would affect his decisions concerning when to retire, whether to continue his union employment beyond his expected retirement date (if possible) and what other opportunities he would have to forego to save additional money he would need to meet his anticipated retirement expenses.

IX. The Pension Code's Prohibition Against Receiving Credit in the Municipal Fund and the Laborers' Fund if the Participant Receives Credit in a Pension Plan Established by a Local Labor Organization Discriminates Against Municipal Fund and Laborers' Fund Participants

123. **The Pension Code does not allow Municipal Fund and Laborers' Fund participants, in contrast to participants in other funds established by the Code, to earn credit in the funds for employment with a union while on a leave of absence if the participant earns credit for the same time in a pension plan established by the local union.**

124. The Pension Code provisions applicable to other public pension funds, including the CTPF; the Downstate Police Funds; the Chicago Police Fund; the Downstate Firefighter Funds; the Chicago Firefighters Fund; the Teachers' Retirement System; the State Employees Retirement System; and the State University Retirement System, also give participants in each of these funds the right to earn credit in the funds for employment with a union on a leave of absence.

125. The Pension Code sections applicable to these other funds contain no provisions, comparable to the 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) provisos applicable to the Municipal Fund or Laborers' Fund, that would restrict earning credit in the funds for employment with a union while on a leave of absence if the participant earns credit for the same period of time in a pension plan created by the union for its employees. As a result, unlike

participants in the Municipal Fund or Laborers' Fund, participants may receive credit in these other funds for employment with a union on a leave of absence and in pension plans established by their union employers for the same periods of time.

126. There is no rational basis related to a legitimate state interest to deny Municipal Fund and Laborers' Fund participants the right to receive credit in the funds for union employment while on a leave of absence if they receive credit for the same time in a pension plan established by their union employers while granting such a right to other public pension fund participants who are similarly situated in all material respects.

127. Defendants' application of the 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) provisos causes Municipal Fund and Laborers' Fund participants, including Ms. Carmichael, Mr. Hall, Mr. Lopez, Mr. Mahoney, Mr. Notaro, Mr. Torres, and other members of the Union Plaintiffs, significant irreparable injury for which there is no adequate remedy at law because they are denied the opportunity that the law allows to other public employees who are similarly situated in all material respects to plan and pay for additional retirement benefits to meet the rising costs for basic necessities including health care and housing.

128. For example, if the defendants are allowed to retroactively apply the Act's new interpretation of the statutory phrase "any pension plan established by the local labor organization" to current Laborers' Fund participants, Mr. Hall, Mr. Mahoney, Mr. Notaro, and Mr. Torres will forfeit credit in the Laborers' Fund for all of their years of employment with IBEW Local 9 or Laborers' Local 1001 while on leave of absence because they received credit for the same time in pension plans that would now fall within the 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) provisos. If they were treated equally with participants in other funds governed by the Pension Code, they would not be forced to forfeit this substantial pension credit.

129. With regard to Ms. Carmichael and Mr. Lopez, if the 40 ILCS 5/8-226(c)(3) proviso were interpreted to apply to the CTU Defined Contribution Plan, they would forfeit credit in the Municipal Fund for their years of employment with the CTU while on leave of absence. If they were treated equally with participants in other funds governed by the Pension Code, they would not be forced to forfeit this substantial pension credit.

X. P.A. 97-0651 Causes Substantial Harm to the Individual Plaintiffs

130. **Estimates of the Act's immediate effect on the Individual Plaintiffs' pension benefits demonstrate the substantial and irreparable injury the Act causes to current participants.**

131. Based on plaintiffs' estimates, as a result of the Act's amendments to Article 8 of the Pension Code, Ms. Carmichael's current monthly pension benefit could decrease from approximately $7,650 to as little as approximately $2,850. In other words, because of the Act, Ms. Carmichael's annual Municipal Fund Pension could decrease as much as, or more than, $57,600 to $34,200 for approximately 34 years of contributions to the fund by her, the Board of Education, and the CTU. Moreover, she will have to reimburse the fund tens of thousands of dollars for each of the approximately 10 years since her retirement that she has been receiving Municipal Fund benefits under the higher calculations provided for in preexisting law.

132. Municipal Fund staff gave Mr. Lopez an estimate of his Municipal Fund benefits if he were to have retired from the Board of Education effective December 31, 2011. The Municipal Fund estimated that if he lost credit for his employment with the CTU because of P.A. 97-0651, his monthly pension benefit would decrease from approximately $7,300 to $950. In other words, the Municipal Fund estimated that his annual pension would decrease by about $76,200 per year to only about $11,400 for 26 years of contributions to the fund by the Board of Education, the CTU, and him based on his union salary.

133. Mr. Hall's current Laborers' Fund pension is approximately $4,996 per month. By letter dated September 27, 2012, the Laborers' Fund informed him that it determined that P.A. 97-0651 would negatively affect his annuity. The fund estimated that, based on his lower final average salary at the City and giving him credit for only 26 years of service from his City employment, his monthly Laborers' Fund pension would decrease to approximately $4,230.38. In other words, his current annual pension would decrease from about $59,952 to only $50,764.56, for approximately 30 years of contributions to the fund by the City, Laborers' Local 1001, and him. Additionally, the Laborers' Fund's September 27, 2012 letter to Mr. Hall warned him that "the Fund has the right to collect from any future annuity or refund payments the full amount of overpaid annuity benefits which you historically received."

134. If—under preexisting law before the Act—Mr. Torres were to retire after accruing 30 years of Laborers' Fund credit at age 52 in 2014, plaintiffs estimate he would receive a Laborers' Fund pension of about $5,000 per month (based on his current union salary). The Act's amendments to Article 11 of the Pension Code would cause Mr. Torres to forfeit all of his credit from his service with Laborers' Local 1001. As a result, he would only have about 24 years of service credit in the fund from his City employment and, therefore, he would likely not be eligible to receive a Laborers' Fund pension until he turned 60 in 2021. The Act would also reduce his pension benefit to approximately $3,560 per month ($42,720 per year) or less, for the City's, Laborers' Local 1001's, and his more than 30 years of contributions to the fund. In other words, Mr. Torres would receive a Laborers' Fund Pension more than $17,000 smaller and some seven years later than under preexisting law before the Act. The delay in receiving benefits from 2014 to 2021 alone would result in a loss to Mr. Torres of more than $420,000.

135. As a result of the Act's amendments to Article 8 of the Pension Code, plaintiffs estimate that Mr. Mahoney's current monthly Municipal Fund benefit of approximately $7,200 per month would decrease to approximately $2,900 per month, or less. Thus, as a result of the Act, Mr. Mahoney's annual pension may decrease by more than $51,600 to less than $34,800 per year for his and the City's 30 years of contributions to the fund. Moreover, Mr. Mahoney will have to reimburse the fund tens of thousands of dollars for each of the 9 years that he has been receiving retirement benefits under preexisting law since his retirement in 2003. The loss to Mr. Mahoney's benefits may be much greater than these estimates because he might face substantial further reductions because the loss of 9 years of service credit may negate the benefit he was entitled to under preexisting law to retire without penalty at age 54 with 30 years of service credit.

136. On August 1, 2012 Municipal Fund staff gave Mr. Notaro an estimate of his Municipal Fund benefits, including an estimate of the effect of the Act. Based on those estimates, the Act's amendments to Article 8 of the Pension Code will result in Mr. Notaro's monthly pension benefit decreasing from $7,694.22 to $5,386.98 per month. In other words, as a result of the Act, Mr. Notaro's annual pension would decrease by $27,686.88 to $64,643.76 despite his and the City's 30 years of contributions to the fund and his added payments of both employer and employee contributions based on his union salary. Moreover, the Act would force Mr. Notaro to forfeit 2.5 years of service credit, and therefore, rather than being eligible to receive benefits beginning in February 2012, he would not be eligible for benefits until he reached the age of 55 in February 2016. Therefore, because of the Act, Mr. Notaro will additionally lose approximately 4 years of pension benefits, about $369,322.

XI. The Union Plaintiffs Have Standing to Sue on Behalf of their Members

137. Plaintiff CTU's members include current CTPF and Municipal Fund participants whose pension benefits are directly diminished and impaired by each of the Act's amendments applicable to those funds and the unconstitutional provisions of Article 8 of the Pension Code challenged in this Complaint. Such CTU members would have standing to sue in their own right to challenge the Act and the unconstitutional provisions of Article 8.

138. A fundamental part of the CTU's mission is to represent its members' interests in protecting their working conditions and benefits, including pension benefits provided for in the Pension Code.

139. The claims asserted by the CTU, dealing mostly with questions of law, and the relief requested, limited to declaratory and injunctive relief, do not require the participation of individual members in this lawsuit, and therefore, the CTU has standing to bring the applicable claims in this Complaint on behalf of itself and its affected members.

140. Plaintiff Laborers' Local 1001's members include current participants in the Laborers' Fund whose pension benefits are directly diminished and impaired by each of the Act's amendments applicable to that fund and by the unconstitutional provisions of Pension Code Article 11 that are challenged in this Complaint. Such Laborers' Local 1001 members would have standing to sue in their own right to challenge the Act and the unconstitutional provisions of Pension Code Article 11.

141. A fundamental part of Laborers' Local 1001's mission is to represent its members' interests in protecting their working conditions and benefits, including pension benefits provided for in the Pension Code.

142. The claims asserted by Laborers' Local 1001, dealing mostly with questions of law, and the relief requested, limited to declaratory and injunctive relief, do not require the

participation of individual members in this lawsuit, and therefore, Laborers Local 1001 has standing to bring the applicable claims in this Complaint on behalf of itself and its affected members.

143. Plaintiff IBEW Local 9's members include current participants in the Municipal Fund whose pension benefits are directly diminished and impaired by each of the Act's amendments applicable to that fund and the other unconstitutional provisions of Pension Code Article 8 challenged in this Complaint. Such IBEW Local 9 members would have standing to sue in their own right to challenge the Act and the other unconstitutional provisions of Pension Code Article 8.

144. A fundamental part of IBEW Local 9's mission is to represent its members' interests in protecting their working conditions and benefits, including pension benefits provided for in the Pension Code.

145. The claims asserted by IBEW Local 9 dealing mostly with questions of law, and the relief requested, limited to declaratory and injunctive relief, do not require the participation of individual members in this lawsuit, and therefore IBEW Local 9 has standing to bring the applicable claims in this Complaint on behalf of itself and its affected members.

146. The CTU and Laborers' Local 1001 have also contributed large sums to the Municipal Fund or Laborers' Fund in order to obtain pension benefits for their officers and staff, including retired former officers and staff, provided by preexisting law before the Act.

147. The Act substantially diminishes or wholly cancels the benefits of their members and employees, thus eliminating the consideration for the CTU's and Laborers' Local 1001's substantial contributions to the funds causing them direct, irreparable injury for which there is no adequate remedy at law.

COUNTS I.A TO I.G CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/17-134(4) ELIMINATING RIGHT TO EARN SERVICE CREDIT FOR UNION EMPLOYMENT ON FUTURE LEAVES OF ABSENCE

COUNT I.A
Violation of the Pension Benefits Clause of the Illinois Constitution
(Zeidre Foster and the CTU vs. CTPF and the CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current CTPF participants provided in the Pension Code are an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current CTPF participants to receive credit in the fund for employment with the CTU that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/17-134(4) substantially diminish and impair the vested pension benefits of current participants, including CTU members, in violation of the Pension Benefits Clause of the Illinois Constitution.

4. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants thus will violate the Pension Benefits Clause of the Illinois Constitution, causing current CTPF participants, including Zeidre Foster and other CTU members, and the CTU irreparable injury for which there is no adequate remedy at law.

COUNT I.B
Violation of the Contracts Clause of the Illinois Constitution
(Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current CTPF participants to receive credit in the fund for employment with the CTU that begins after the effective date of the Act and (2) the right of the CTU to recruit current teachers to work for the CTU without prejudice to their CTPF benefits, the Act's amendments to 40 ILCS 5/17-134(4) substantially diminish and impair the vested, enforceable contract rights of current CTPF participants, including Zeidre Foster and other CTU members, and the CTU.

6. Defendants' application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants will violate the Contracts Clause of the Illinois Constitution causing the CTU and current CTPF participants, including Zeidre Foster and other CTU members, irreparable injury for which there is no adequate remedy at law.

COUNT I.C
Violation of the Contracts Clause of the United States Constitution
(Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current CTPF participants to receive credit in the fund for employment with the CTU that begins after the effective date of the Act and (2) the right of the CTU to recruit current teachers to work for the CTU without prejudice to their CTPF benefits, the Act's amendments to 40 ILCS 5/17-134(4) substantially diminish and impair the vested, enforceable contract rights of current CTPF participants, including Zeidre Foster and other CTU members, and the CTU.

6. Defendants' application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants will violate the Contracts Clause of the United States Constitution causing the CTU and current CTPF participants, including Zeidre Foster and other CTU members, irreparable injury for which there is no adequate remedy at law.

COUNT I.D
Violation of the Takings Clause of the Illinois Constitution
(Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current CTPF participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the CTPF, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current CTPF participants to receive credit in the fund for employment with the CTU that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/17-134(4) substantially diminish and impair the vested pension benefits of current CTPF participants, including Zeidre Foster and other CTU members, without just compensation.

5. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants will violate the Takings Clause of the Illinois Constitution causing the CTU and current CTPF participants, including Zeidre Foster and other CTU members, irreparable injury for which there is no adequate remedy at law.

COUNT I.E

Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current CTPF participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the

Pension Code in effect when they first became participants in the CTPF, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current CTPF participants to receive credit in the fund for employment with the CTU that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/17-134(4) substantially diminish and impair the vested pension benefits of current CTPF participants, including Zeidre Foster and other CTU members, without just compensation.

6. The CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to current CTPF participants will violate the 14th Amendment of the United States Constitution causing the CTU and current CTPF participants, including Zeidre Foster and other CTU members, irreparable injury for which there is no adequate remedy at law.

COUNT I.F
Violation of the Equal Protection Clause of the Illinois Constitution
(Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/17-134(4) unilaterally eliminate the right of CTPF participants to receive credit in the CTPF for employment with the CTU that begins after the effective date of the Act.

4. Individuals similarly situated to CTPF participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to

earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/17-134(4) therefore treat CTPF participants, including Zeidre Foster and other CTU members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of CTPF participants.

6. The Act's amendments to 40 ILCS 5/17-134(4) also eliminate the CTU's right to recruit CTPF participants to work for the CTU after the effective date of the Act without prejudice to their CTPF benefits.

7. Unions similarly situated to the CTU in all material respects who represent participants in other pension funds established by the Pension Code continue to have the right to recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/17-134(4) therefore treat the CTU differently from similarly situated unions who represent participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of the CTU.

9. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to CTPF participants thus will violate the Equal Protection Clause of the Illinois Constitution causing CTPF participants, including Zeidre Foster and other CTU members, and the CTU irreparable injury for which there is no adequate remedy at law.

COUNT I.G
Violation of the Equal Protection Clause of the United States Constitution (Zeidre Foster and the CTU vs. CTPF and CTPF Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/17-134(4) unilaterally eliminate the right of CTPF participants to receive credit in the CTPF for employment with the CTU that begins after the effective date of the Act.

4. Individuals similarly situated to CTPF participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/17-134(4) therefore treat CTPF participants, including Zeidre Foster and other CTU members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of CTPF participants.

6. The Act's amendments to 40 ILCS 5/17-134(4) also eliminate the CTU's right to recruit CTPF participants to work for the CTU after the effective date of the Act without prejudice to their CTPF benefits.

7. Unions similarly situated to the CTU in all material respects who represent participants in other pension funds established by the Pension Code continue to have the right to

recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/17-134(4) therefore treat the CTU differently from similarly situated unions who represent participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of the CTU.

9. CTPF's and CTPF Board's application of the Act's amendments to 40 ILCS 5/17-134(4) to CTPF participants will violate the Equal Protection Clause of the United States Constitution causing CTPF participants, including Zeidre Foster and other CTU members, and the CTU irreparable injury for which there is no adequate remedy at law.

COUNTS II.A TO II.G CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/8-226(c) ELIMINATING RIGHT TO EARN SERVICE CREDIT FOR UNION EMPLOYMENT ON FUTURE LEAVES OF ABSENCE

COUNT II.A
Violation of the Pension Benefits Clause of the Illinois Constitution (CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Municipal Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with the CTU or IBEW Local 9 that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/8-226(c) substantially diminish and impair the vested pension benefits of current Municipal Fund participants, including CTU

and IBEW Local 9 members, in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing current Municipal Fund participants, including CTU and IBEW Local 9 members, the CTU, and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT II.B
Violation of the Contracts Clause of the Illinois Constitution
(CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current Municipal Fund participants to receive credit in the fund for employment with the CTU and IBEW Local 9 that begins after the effective date of the Act and (2) the right of the CTU and IBEW Local 9 to recruit current participants to work for the unions without prejudice to their Municipal Fund benefits, the Act's amendments to 40 ILCS 5/8-226(c) substantially diminish and impair the vested contractual rights of current Municipal Fund participants, including CTU and IBEW Local 9 members, the CTU, and IBEW Local 9.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants will violate the Contracts Clause of the Illinois Constitution causing the CTU, IBEW Local 9, and current Municipal Fund participants, including CTU and IBEW Local 9 members, irreparable injury for which there is no adequate remedy at law.

COUNT II.C
Violation of the Contracts Clause of the United States Constitution
(CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . ." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current Municipal Fund participants to receive credit in the fund for employment with the CTU and IBEW Local 9 that begins after the effective date of the Act and (2) the right of the CTU and IBEW Local 9 to recruit current participants to work for the unions without prejudice to their Municipal Fund benefits, the Act's amendments to 40 ILCS 5/8-226(c) substantially diminish and impair the vested contractual

rights of current Municipal Fund participants, including CTU and IBEW Local 9 members, the CTU, and IBEW Local 9.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants will violate the Contracts Clause of the United States Constitution causing the CTU, IBEW Local 9, and current Municipal Fund participants, including CTU and IBEW Local 9 members, irreparable injury for which there is no adequate remedy at law.

COUNT II.D
Violation of the Takings Clause of the Illinois Constitution
(CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with the CTU and IBEW Local 9 that begins after the

effective date of the Act, the Act's amendments to 40 ILCS 5/8-226(c) substantially diminish and impair the vested pension benefits of current Municipal Fund participants, including CTU and IBEW Local 9 members, without just compensation.

5. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants will violate the Takings Clause of the Illinois Constitution causing the CTU, IBEW Local 9, and current Municipal Fund participants, including CTU and IBEW Local 9 members, irreparable injury for which there is no adequate remedy at law.

COUNT II.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with the CTU and IBEW Local 9 that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/8-226(c) substantially diminish

and impair the vested pension benefits of current Municipal Fund participants, including CTU and IBEW Local 9 members, without just compensation.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to current Municipal Fund participants will violate the 14th Amendment of the United States Constitution causing the CTU, IBEW Local 9, and current Municipal Fund participants, including CTU and IBEW Local 9 members, irreparable injury for which there is no adequate remedy at law.

COUNT II.F
Violation of the Equal Protection Clause of the Illinois Constitution
(CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/8-226(c) unilaterally eliminate the right of Municipal Fund participants to receive credit in the Municipal Fund for employment with the CTU that begins after the effective date of the Act.

4. Individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/8-226(c) therefore treat Municipal Fund participants, including CTU and IBEW Local 9 members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and

there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. The Act's amendments to 40 ILCS 5/8-226(c) also eliminate the CTU's and IBEW Local 9's right to recruit Municipal Fund participants to work for the unions after the effective date of the Act without prejudice to their Municipal Fund benefits.

7. Unions similarly situated to the CTU and IBEW Local 9 in all material respects who represent participants in other pension funds established by the Pension Code continue to have the right to recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/8-226(c) therefore treat the CTU and IBEW Local 9 differently from similarly situated unions who represent participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of the CTU and IBEW Local 9.

9. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to Municipal Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Municipal Fund participants, including CTU and IBEW Local 9 members, the CTU, and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT II.G
Violation of the Equal Protection Clause of the United States Constitution (CTU and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/8-226(c) unilaterally eliminate the right of Municipal Fund participants to receive credit in the Municipal Fund for employment with the CTU and IBEW Local 9 that begins after the effective date of the Act.

4. Individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/8-226(c) therefore treat Municipal Fund participants, including CTU and IBEW Local 9 members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. The Act's amendments to 40 ILCS 5/8-226(c) also eliminate the CTU's and IBEW Local 9's right to recruit Municipal Fund participants to work for the unions after the effective date of the Act without prejudice to their Municipal Fund benefits.

7. Unions similarly situated to the CTU and IBEW Local 9 in all material respects who represent participants in other pension funds established by the Pension Code continue to have the right to recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/8-226(c) therefore treat the CTU and IBEW Local 9 differently from similarly situated unions who represent participants in other pension funds established by the Pension Code and there is no rational basis related to a legitimate state interest for this discriminatory treatment of the CTU and IBEW Local 9.

9. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226(c) to Municipal Fund participants will violate the Equal Protection Clause of the United States Constitution causing Municipal Fund participants, including CTU and IBEW Local 9 members, the CTU, and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNTS III.A TO III.G CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/11-215(c)(3) ELIMINATING RIGHT TO EARN SERVICE CREDIT FOR UNION EMPLOYMENT ON FUTURE LEAVES OF ABSENCE

COUNT III.A
Violation of the Pension Benefits Clause of the Illinois Constitution
(Michael Senese and Laborers' Local 1001 vs.
Laborers' Fund and the Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Laborers' Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/11-215(c)(3) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants, including Mr.

Senese and other Laborers' Local 1001 members, in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Laborers' Fund's and Laborers' Fund Board's application of the Act's Amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.B
Violation of the Contracts Clause of the Illinois Constitution (Michael Senese and Laborers' Local 1001 vs. Laborers' Fund and the Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution, the State shall pass "[no] law impairing the obligation of contracts . . . ." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act and (2) the right of Laborers' Local 1001 to recruit current participants to work for the union without prejudice to their Laborers' Fund benefits, the Act's amendments to 40 ILCS 5/11-215(c)(3) substantially diminish and impair the vested contractual rights of

current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants will violate the Contracts Clause of the Illinois Constitution causing current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.C
Violation of the Contracts Clause of the United States Constitution
(Michael Senese and Laborers' Local 1001 vs.
Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating (1) the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act and (2) the right of Laborers' Local 1001 to recruit current participants

to work for the unions without prejudice to their Laborers' Fund benefits, the Act's amendments to 40 ILCS 5/11-215(c)(3) substantially diminish and impair the vested contractual rights of current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants will violate the Contracts Clause of the United States Constitution causing current Laborers' Fund participants, including Mr. Senese and Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.D
Violation of the Takings Clause of the Illinois Constitution (Michael Senese and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers' Fund, and any

subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/11-215(c)(3) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, without just compensation.

5. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants will violate the Takings Clause of the Illinois Constitution causing current Laborers' Fund participants, including Mr. Senese and Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (Michael Senese and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed, expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers'

Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act, the Act's amendments to 40 ILCS 5/11-215(c)(3) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, without just compensation.

6. The Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to current Laborers' Fund participants will violate the 14th Amendment of the United States Constitution causing current Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.F
Violation of the Equal Protection Clause of the Illinois Constitution
(Michael Senese and Laborers' Local 1001 vs.
Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/11-215(c)(3) eliminate the right of Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act.

4. Individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to

have the right to earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/11-215(c)(3) treat Laborers' Fund participants, including Laborers' Local 1001 members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

6. The Act's amendments to 40 ILCS 5/11-215(c)(3) also eliminate the right of Laborers' Local 1001 to recruit Laborers' Fund participants to work for the union after the effective date of the Act without prejudice to their Laborers' Fund benefits.

7. Unions similarly situated to Laborers' Local 1001 in all material respects that represent participants in other pension funds established by the Pension Code continue to have the right to recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/11-215(c)(3) therefore treat Laborers' Local 1001 differently from similarly situated unions that represent participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Local 1001.

9. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to Laborers' Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Laborers' Fund participants, including Mr. Senese and other Laborers' Locals 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT III.G
Violation of the Equal Protection Clause of the United States Constitution (Michael Senese and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/11-215(c)(3) eliminate the right of Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 that begins after the effective date of the Act.

4. Individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to earn credit in the respective funds for employment with unions that begins after the effective date of the Act.

5. The Act's amendments to 40 ILCS 5/11-215(c)(3) treat Laborers' Fund participants, including Laborers' Local 1001 members, differently from similarly situated individuals who are participants in other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

6. The Act's amendments to 40 ILCS 5/11-215(c)(3) also eliminate the right of Laborers' Local 1001 to recruit Laborers' Fund participants to work for the unions after the effective date of the Act without prejudice to their Laborers' Fund benefits.

7. Unions similarly situated to Laborers' Local 1001 in all material respects that represent participants in other pension funds established by the Pension Code continue to have the right to recruit participants to work for the unions after the effective date of the Act without prejudice to their public pension benefits.

8. The Act's amendments to 40 ILCS 5/11-215(c)(3) therefore treat Laborers' Local 1001 differently from similarly situated unions that represent participants in other pension funds established by the Pension Code and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Local 1001.

9. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215(c)(3) to Laborers' Fund participants will violate the Equal Protection Clause of the United States Constitution causing Laborers' Fund participants, including Mr. Senese and other Laborers' Local 1001 members, and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNTS IV.A TO IV.H CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/8-138(g-1) AND 40 ILCS 5/8-233(e) ELIMINATING RIGHT TO PENSION BENEFITS BASED ON A UNION SALARY EARNED WHILE ON LEAVE OF ABSENCE

COUNT IV.A
Violation of the Pension Benefits Clause of the Illinois Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Municipal Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Municipal Fund participants to pension benefits based in whole or in part on a union salary earned while on leave of absence, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the vested pension benefits of current Municipal Fund participants in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.B
Violation of the Contracts Clause of the Illinois Constitution
(Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Municipal Fund participants to pension benefits based on a union salary earned on a leave of absence, the Act's amendments to

40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the vested contractual rights of current Municipal Fund participants.

6. By unilaterally eliminating the right of its current and former employees to pension benefits based on a union salary earned on a leave of absence for which the CTU has made substantial contributions to the Municipal Fund based on its employees' union salaries, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the CTU's vested contractual rights.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

8. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants will violate the Contracts Clause of the Illinois Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.C

Violation of the Contracts Clause of the United States Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Municipal Fund participants to pension benefits based on a union salary earned on a leave of absence, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the vested contractual rights of current Municipal Fund participants.

6. By unilaterally eliminating the right of its current and former employees to pension benefits based on a union salary earned on a leave of absence for which the CTU has made substantial contributions to the Municipal Fund based on its employees' union salaries, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the CTU's vested contractual rights.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

8. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants will violate the Contracts Clause of the United States Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.D
Violation of the Takings Clause of the Illinois Constitution
(Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed, expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Municipal Fund participants to a pension benefit based on a union salary earned while on leave of absence, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the vested pension benefits of current Municipal Fund participants without just compensation.

5. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants will violate the Takings Clause of the Illinois Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Municipal Fund participants to a pension based on a union salary earned while on leave of absence, the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) substantially diminish and impair the vested pension benefits of current Municipal Fund participants without just compensation.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to current Municipal Fund participants will violate the 14th Amendment of the United States Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.F

Violation of the Equal Protection Clause of the Illinois Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) eliminate the right of Municipal Fund participants to pension benefits based on a union salary earned while on a leave of absence.

4. After the Act, individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to pension benefits based on a union salary earned while on a leave of absence.

5. In order to receive any credit in the Municipal Fund for employment with a union while on a leave of absence, the Pension Code following the Act's amendments also requires Municipal Fund participants or their union employers, including the CTU and IBEW Local 9, to make or have made contributions to the fund based on the participant's union salary while allowing the participant to receive a pension benefit based only on a lower municipal salary earned before the leave of absence.

6. After the Act, on information and belief, no other similarly situated public pension fund participant or employer (with the exception of similarly situated Laborers' Fund participants and union employers) covered by the Pension Code are required to make or have made contributions to the funds based on one salary while being allowed to receive a pension benefit based only on some other lower salary.

7. The Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) treat Municipal Fund participants, who earn or earned salaries from a union while on a leave of absence, and their union employers, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, and Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 differently from other similarly situated Municipal Fund participants and employers and differently from

similarly situated participants and employers (including union employers) covered by other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of certain Municipal Fund participants and their union employers.

8. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to Municipal Fund participants and their union employers will violate the Equal Protection Clause of the Illinois Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.G
Violation of the Equal Protection Clause of the United States Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) eliminate the right of Municipal Fund participants to pension benefits based on a union salary earned while on a leave of absence.

4. After the Act, individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to pension benefits based on a union salary earned while on a leave of absence.

5. In order to receive any credit in the Municipal Fund for employment with a union while on a leave of absence, the Pension Code following the Act's amendments also requires Municipal Fund participants or their union employers, including the CTU and IBEW Local 9, to make or have made contributions to the fund based on the participant's union salary while allowing the participant to receive a pension benefit based only on a lower municipal salary earned before the leave of absence.

6. After the Act, on information and belief, no other similarly situated public pension fund participant or employer (with the exception of similarly situated Laborers' Fund participants and union employers) covered by the Pension Code is required to make or have made contributions to the funds based on one salary while being allowed to receive a pension benefit based only on some other lower salary.

7. The Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) treat Municipal Fund participants, who earn or earned salaries from a union while on a leave of absence, and their union employers, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members, the CTU, and IBEW Local 9 differently from other similarly situated Municipal Fund participants and employers and differently from similarly situated participants and employers (including union employers) covered by other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of certain Municipal Fund participants and their union employers.

8. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-138(g-1) & 5/8-233(e) to Municipal Fund participants and their union employers will violate the Equal Protection Clause of the United States Constitution

causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT IV.H
Violation of the Separation of Powers Clause of the Illinois Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Separation of Powers Clause of the Illinois Constitution provides that: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. (1970) Art. II, § 1.

3. The Separation of Powers Clause prohibits the Illinois General Assembly from exercising a power that is judicial in character.

4. Once a statute has been lawfully enacted, the judicial branch alone has the power to definitively construe and interpret the statute and any conflict with other legislative enactments and to adjudicate the rights of parties under the statute.

5. Before the passage of the Act, the clear statutory language of 40 ILCS 5/8-138 & 5/8-226 gave Municipal Fund participants the right to calculate their salary base for pension purposes using a union salary earned while on a leave of absence and, on information and belief, these statutes were consistently interpreted to grant Municipal Fund participants that right.

6. The Act amended 40 ILCS 5/8-138(g-1) and added a new paragraph (e) to 40 ILCS 5/8-233 stating that Article 8 of the Pension Code "shall not be construed" to authorize Municipal Fund participants to calculate their salary base for pension purposes using a union

salary earned while on a leave of absence. The Act further provides that this "subsection (e) is a declaration of existing law and shall not be construed as a new enactment."

7. The General Assembly adopted the amendments to 40 ILCS 5/8-138(g-1) & 5/8-233 in order to require the Municipal Fund Board to retroactively reduce the pension amounts previously approved by the board for certain union officials because of a public controversy concerning the size of their pensions. In any case that might arise before the courts concerning those union officials' pension benefits, the General Assembly also intended to deny the courts the power to interpret independently the language of the Pension Code as it existed before the Act.

8. By stating that the Act's amendments are a "declaration of existing law and shall not be construed as a new enactment" the Act, in violation of the Separation of Powers Clause of the Illinois Constitution, purports to retroactively interpret the statutory language of Article 8 of the Pension Code and to deny the judicial branch of government the power to interpret and apply, consistent with the Pension Benefits Clause, the clear statutory language adopted by a prior General Assembly.

9. Municipal Fund's and Municipal Fund Board's retroactive application of the Act's amendments to 40 ILCS 5/8-138(g-1) and 40 ILCS 5/8-233(e) to current Municipal Fund participants so as to deny them the right to calculate their salary base for pension purposes using a union salary earned while on a leave of absence will violate the Separation of Powers Clause of the Illinois Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNTS V.A TO V.H CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/11-134(f-1) & 40 ILCS 5/11-217(e) ELIMINATING RIGHT TO PENSION BENEFITS BASED ON A UNION SALARY EARNED WHILE ON LEAVE OF ABSENCE

COUNT V.A

Violation of the Pension Benefits Clause of the Illinois Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Laborers' Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Locals 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.B
Violation of the Contracts Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants.

6. By unilaterally eliminating the right of their current and former employees to pension benefits based on a union salary earned on a leave of absence for which Laborers' Local 1001 has made substantial contributions to the Laborers' Fund based on their respective employees' union salaries, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair Laborers' Local 1001's vested contractual rights.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

8. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants will violate the Contracts Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.C
Violation of the Contracts Clause of the United States Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants.

6. By unilaterally eliminating the right of their current and former employees to pension benefits based on a union salary earned on a leave of absence for which Laborers' Local 1001 has made substantial contributions to the Laborers' Fund based on its employees' union

salaries, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(c) substantially diminish and impair Laborers' Local 1001's vested contractual rights.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(c) to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

8. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants will violate the Contracts Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.D
Violation of the Takings Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001
vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers' Fund, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Laborers' Fund participants and retirees to pension benefits based on a union salary earned while on a leave of absence, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants without just compensation.

5. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants will violate the Takings Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers' Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence, the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) substantially diminish and impair the vested pension benefits of current Laborers' Fund participants without just compensation.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants will violate the 14th Amendment of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.F
Violation of the Equal Protection Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) eliminate the right of Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence.

4. After the Act, individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to pension benefits based on a union salary earned while on a leave of absence.

5. In order to receive any credit in the Laborers' Fund for employment with a union while on a leave of absence, the Pension Code following the Act's amendments also requires Laborers' Fund participants or their union employers, including Laborers' Local 1001, to make or have made contributions to the fund based on the participant's union salary while allowing the participant to receive a pension benefit based only on a lower municipal salary earned before the leave of absence.

6. After the Act, on information and belief, no other similarly situated public pension fund participant or employer (with the exception of similarly situated Municipal Fund participants and union employers) covered by the Pension Code are required to make or have made contributions to the funds based on one salary while being allowed to receive a pension benefit based only on some other lower salary.

7. The Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) treat Laborers' Fund participants, who earn or earned salaries from a union while on a leave of absence, and their union employers, including Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 differently from other similarly situated Laborers' Fund participants and employers and differently from similarly situated participants and employers (including union employers) covered by other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of certain Laborers' Fund participants and their union employers.

8. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to Laborers' Fund participants and their union employers will violate the Equal Protection Clause of the Illinois Constitution causing Mr.

Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.G
Violation of the Equal Protection Clause of the United States Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

4. The Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) eliminate the right of Laborers' Fund participants to pension benefits based on a union salary earned while on a leave of absence.

5. After the Act, individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to pension benefits based on a union salary earned while on a leave of absence.

6. In order to receive any credit in the Laborers' Fund for employment with a union while on a leave of absence, the Pension Code following the Act's amendments also requires Laborers' Fund participants or their union employers, including Laborers' Local 1001, to make or have made contributions to the fund based on the participant's union salary while allowing the

participant to receive a pension benefit based only on a lower municipal salary earned before the leave of absence.

7. After the Act, on information and belief, no other similarly situated public pension fund participant or employer (with the exception of similarly situated Municipal Fund participants and union employers) covered by the Pension Code are required to make or have made contributions to the funds based on one salary while being allowed to receive a pension benefit based only on some other lower salary.

8. The Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) treat Laborers' Fund participants, who earn or earned salaries from a union while on a leave of absence, and their union employers, including Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 differently from other similarly situated Laborers' Fund participants and employers and differently from similarly situated participants and employers (including union employers) covered by other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of certain Laborers' Fund participants and their union employers.

9. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to Laborers' Fund participants and their union employers will violate the Equal Protection Clause of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT V.H
Violation of the Separation of Powers Clause of the Illinois Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Separation of Powers Clause of the Illinois Constitution provides that: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. (1970) Art. II, § 1.

3. The Separation of Powers Clause prohibits the Illinois General Assembly from exercising a power that is judicial in character.

4. Once a statute has been lawfully enacted, the judicial branch alone has the power to definitively construe and interpret the statute and any conflict with other legislative enactments and to adjudicate the rights of parties under the statute.

5. Before the passage of the Act, the clear statutory language of 40 ILCS 5/11-134 & 5/11-215 gave Laborers' Fund participants the right to calculate their salary base for pension purposes using a union salary earned while on a leave of absence and, on information and belief, these statutes were consistently interpreted to grant Laborers' Fund participants that right.

6. The Act amended 40 ILCS 5/11-134(f-1) and added a new paragraph (e) to 40 5/11-217 stating that Article 11 of the Pension Code "shall not be construed" to authorize Laborers' Fund participants to calculate their salary base for pension purposes using a union salary earned while on a leave of absence. The Act further provides that this "subsection (e) is a declaration of existing law and shall not be construed as a new enactment."

7. The General Assembly adopted the amendments to 40 ILCS 5/11-134(f-1) & 5/11-217 in order to require the Laborers' Fund Board to retroactively reduce the pension

amounts previously approved by the board for certain union officials because of a public controversy concerning the size of their pensions. In any case that might arise before the courts concerning those union officials' pension benefits, the General Assembly also intended to deny the courts the power to interpret independently the language of the Pension Code as it existed before the Act.

8. By stating that the Act's amendments are a "declaration of existing law and shall not be construed as a new enactment" the Act, in violation of the Separation of Powers Clause of the Illinois Constitution, purports to retroactively interpret the statutory language of Article 11 of the Pension Code and to deny the judicial branch of government the power to interpret and apply, consistent with the Pension Benefits Clause, the clear statutory language adopted by a prior General Assembly.

9. Laborers' Fund's and Laborers' Fund Board's retroactive application of the Act's amendments to 40 ILCS 5/11-134(f-1) & 5/11-217(e) to current Laborers' Fund participants so as to deny them the right to calculate their salary base for pension purposes using a union salary earned while on a leave of absence will violate the Separation of Powers Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNTS VI.A TO VI.H CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/8-226 CHANGING THE DEFINITION OF "ANY PENSION PLAN ESTABLISHED BY THE LOCAL LABOR ORGANIZATION"

COUNT VI.A
Violation of the Pension Benefits Clause of the Illinois Constitution (John Mahoney, Joseph Notaro, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Municipal Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9, if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9, the Act's amendments to 40 ILCS 5/8-226 substantially diminish and impair the vested pension benefits of current Municipal Fund participants in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Municipal Fund's and Municipal Fund Board's application of the Act's new definition of the phrase "any pension plan established by the local labor organization" in 40 ILCS 5/8-226 to current Municipal Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.B
Violation of the Contracts Clause of the Illinois Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9, if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9, the Act's amendments to 40 ILCS 5/8-226 substantially diminish and impair the vested contractual rights of current Municipal Fund participants.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants will violate the Contracts Clause of the Illinois Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.C
Violation of the Contracts Clause of the United States Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9, if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9, the Act's amendments to 40 ILCS 5/8-226 substantially diminish and impair the vested contractual rights of current Municipal Fund participants.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants will violate the Contracts Clause of the United States Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.D
Violation of the Takings Clause of the Illinois Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9, if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9, the Act's amendments to 40 ILCS 5/8-226 substantially diminish and impair the vested pension benefits of current Municipal Fund participants without just compensation.

5. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants will violate the Takings Clause of the Illinois Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (John Mahoney, Joseph Notaro, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Municipal Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Municipal Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9, if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9, the Act's amendments to 40 ILCS 5/8-226 substantially diminish and impair the vested pension benefits of current Municipal Fund participants without just compensation.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to current Municipal Fund participants will violate the 14th Amendment of the United States Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.F
Violation of the Equal Protection Clause of the Illinois Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I; § 2.

3. The Act's amendments to 40 ILCS 5/8-226 eliminate the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9 if

the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9.

4. After the Act, individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to receive credit in the respective funds for employment with unions when the participant receives credit for the same time in a pension plan established by an organization affiliated with the union employer.

5. The Act treats Municipal Fund participants, including Mr. Mahoney and Mr. Notaro, differently from similarly situated individuals who are participants in other pension funds established by the code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to Municipal Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.G
Violation of the Equal Protection Clause of the United States Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/8-226 eliminate the right of current Municipal Fund participants to receive credit in the fund for employment with IBEW Local 9 if the participant receives credit for the same time in a pension plan established by an organization affiliated with IBEW Local 9.

4. After the Act, individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to receive credit in the respective funds for employment with unions when the participant receives credit for the same time in a pension plan established by an organization affiliated with the union employer.

5. The Act treats Municipal Fund participants, including Mr. Mahoney and Mr. Notaro, differently from similarly situated individuals who are participants in other pension funds established by the code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 to Municipal Fund participants will violate the Equal Protection Clause of the United States Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VI.H
Violation of the Separation of Powers Clause of the Illinois Constitution
(John Mahoney, Joseph Notaro, and IBEW Local 9 vs.
Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Separation of Powers Clause of the Illinois Constitution provides that: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. (1970) Art. II, § 1.

3. The Separation of Powers Clause prohibits the Illinois General Assembly from exercising a power that is judicial in character.

4. Once a statute has been lawfully enacted, the judicial branch alone has the power to definitively construe and interpret the statute and any conflict with other legislative enactments and to adjudicate the rights of parties under the statute.

5. Before the passage of the Act, the 40 ILCS 5/8-226(c)(3) proviso limited Municipal Fund participants' right to receive credit in the fund for employment with a local labor organization while on a leave of absence only if the participant received credit for the same time in "any pension plan established by the local labor organization."

6. Also before passage of the Act, the Pension Code did not provide a statutory definition of the phrase "any pension plan established by the local labor organization," and on information and belief, the 40 ILCS 5/8-226(c)(3) proviso was universally interpreted to apply only to pension plans created by a "local labor organization" itself for its own employees and not to any other pension plans.

7. The Act amended 40 ILCS 5/8-226 providing, for the first time, a statutory definition of the phrase "any pension plan established by the local labor organization" and stating that this "definition of this phrase is a declaration of existing law and shall not be construed as a new enactment."

8. The General Assembly adopted this new definition of the phrase "any pension plan established by the local labor organization" in order to require the Municipal Fund Board to

retroactively reduce the pension amounts previously approved by the board for certain union officials because of a public controversy concerning the size of their pensions. In any case that might arise before the courts concerning those union officials' pension benefits, the General Assembly also intended to deny the courts the power to interpret independently the language of the Pension Code as it existed before the Act.

9. By stating that the Act's new definition of the phrase "any pension plan established by the local labor organization" is a "declaration of existing law and shall not be construed as a new enactment" the Act, in violation of the Separation of Powers Clause of the Illinois Constitution, purports to retroactively interpret the statutory language of Article 8 of the Pension Code and to deny the judicial branch of government the power to interpret and apply, consistent with the Pension Benefits Clause, the clear statutory language adopted by a prior General Assembly.

10. Municipal Fund's and Municipal Fund Board's application of the Act's amendments to 40 ILCS 5/8-226 purporting to change retroactively the interpretation of the statutory phrase "any pension plan established by the local labor organization" to current Municipal Fund participants will violate the Separation of Powers Clause of the Illinois Constitution causing Mr. Mahoney, Mr. Notaro, and other IBEW Local 9 members and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNTS VII.A TO VII.H CHALLENGING THE ACT'S AMENDMENTS TO 40 ILCS 5/11-215 CHANGING THE DEFINITION OF "ANY PENSION PLAN ESTABLISHED BY THE LOCAL LABOR ORGANIZATION"

COUNT VII.A

Violation of the Pension Benefits Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Under the Pension Benefits Clause of the Illinois Constitution, the pension benefits of current Laborers' Fund participants constitute an "enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

3. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the funds for employment with Laborers' Local 1001, if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001, the Act's amendments to 40 ILCS 5/11-215 substantially diminish and impair the vested pension benefits of current Laborers' Fund participants in violation of the Pension Benefits Clause of the Illinois Constitution.

4. Laborers' Fund's and Laborers' Fund Board's application of the Act's new definition of the phrase "any pension plan established by the local labor organization" in 40 ILCS 5/11-215 to current Laborers' Fund participants will violate the Pension Benefits Clause of the Illinois Constitution, causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Locals 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.B
Violation of the Contracts Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Contracts Clause of the Illinois Constitution the State shall pass "[no] law impairing the obligation of contracts . . .." Ill. Const. (1970), Art. I, § 16.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the Illinois Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001, if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001, the Act's amendments to 40 ILCS 5/11-215 substantially diminish and impair the vested contractual rights of current Laborers' Fund participants.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Defendants' application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants will violate the Contracts Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.C
Violation of the Contracts Clause of the United States Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Contracts Clause of the United States Constitution declares that "[n]o state shall . . . pass any . . . law impairing the obligations of contracts . . .." U.S. Const. Art. I, § 10.

3. Pursuant to the Pension Benefits Clause of the Illinois Constitution, pension benefits provided in the Pension Code are an enforceable contractual relationship.

4. The Contracts Clause of the United States Constitution restricts defendants from enforcing laws that substantially impair vested pension benefits provided in the Pension Code.

5. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001, the Act's amendments to 40 ILCS 5/11-215 substantially diminish and impair the vested contractual rights of current Laborers' Fund participants.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants would be neither reasonable nor necessary to the advancement of a legitimate public purpose.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants will violate the Contracts Clause of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.D
Violation of the Takings Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. Pursuant to the Takings Clause of the Illinois Constitution, "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. (1970), Art. I, § 15.

3. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers' Fund, and any subsequent improvements to those benefits, and those rights are protected property under the Takings Clause of the Illinois Constitution.

4. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001, the Act's amendments to 40 ILCS 5/11-215 substantially diminish and impair the vested pension benefits of current Laborers' Fund participants without just compensation.

5. The Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants will violate the Takings Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.E
Violation of the 14th Amendment (Unlawful Taking) of the United States Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Takings Clause of the United States Constitution states "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

3. The Takings Clause of the United States Constitution is binding on the states through the 14th Amendment.

4. Current Laborers' Fund participants have vested contractual rights to, and a legitimate, investment backed expectation that they would receive, the pension benefits specified in the Pension Code in effect when they first became participants in the Laborers' Fund, and any subsequent improvements to those benefits, and those rights are protected property under the 14th Amendment and Takings Clause of the United States Constitution.

5. By unilaterally eliminating the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001, if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001, the Act's amendments to 40 ILCS 5/11-215 substantially diminish and impair the vested pension benefits of current Laborers' Fund participants without just compensation.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to current Laborers' Fund participants will violate the 14th Amendment of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.F
Violation of the Equal Protection Clause of the Illinois Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The Act's amendments to 40 ILCS 5/11-215 eliminate the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001, if the participant receives credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001.

4. After the Act, individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to receive credit in the respective funds for employment with unions when the participant receives credit for the same time in a pension plan established by an organization affiliated with the union employer.

5. The Act treats Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, differently from similarly situated individuals who are participants in, or retirees from, other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

6. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to Laborers' Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other

Laborers' Locals 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.G
Violation of the Equal Protection Clause of the United States Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The Act's amendments to 40 ILCS 5/11-215 eliminate the right of current Laborers' Fund participants to receive credit in the fund for employment with Laborers' Local 1001 if the participant receives or received credit for the same time in a pension plan established by an organization affiliated with Laborers' Local 1001.

4. After the Act, individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code continue to have the right to receive credit in the respective funds for employment with unions when the participant receives credit for the same time in a pension plan established by an organization affiliated with the union employer.

5. The Act treats Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, differently from similarly situated individuals who are participants in, or retirees from, other pension funds established by the Pension Code.

6. There is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

7. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 to Laborers' Fund participants will violate the Equal Protection Clause of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT VII.H
Violation of the Separation of Powers Clause of the Illinois Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Separation of Powers Clause of the Illinois Constitution provides that: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. (1970) Art. II, § 1.

3. The Separation of Powers Clause prohibits the Illinois General Assembly from exercising a power that is judicial in character.

4. Once a statute has been lawfully enacted, the judicial branch alone has the power to definitively construe and interpret the statute and any conflict with other legislative enactments and to adjudicate the rights of parties under the statute.

5. Before the passage of the Act, the 40 ILCS 5/11-215(c)(3)(C) proviso limited Laborers' Fund participants' right to receive credit in the fund for employment with a local labor organization while on a leave of absence only if they received credit for the same time in "any pension plan established by the local labor organization."

6. Also before passage of the Act, the Pension Code did not provide a statutory definition of the phrase "any pension plan established by the local labor organization," and on

information and belief, the 40 ILCS 5/11-215(c)(3)(C) proviso was universally interpreted to apply only to pension plans created by a "local labor organization" itself for its own employees and not to any other pension plans.

7. The Act amended 40 ILCS 5/11-215 providing, for the first time, a statutory definition of the phrase "any pension plan established by the local labor organization" and stating that this "definition of this phrase is a declaration of existing law and shall not be construed as a new enactment."

8. The General Assembly adopted the new definition of the phrase "any pension plan established by the local labor organization" in order to require the Laborers' Fund Board to retroactively reduce the pension amounts previously approved by the board for certain union officials because of a public controversy concerning the size of their pensions. In any case that might arise before the courts concerning those union officials' pension benefits, the General Assembly also intended to deny the courts the power to interpret independently the language of the Pension Code as it existed before the Act.

9. By stating that the Act's amendments are a "declaration of existing law and shall not be construed as a new enactment" the Act, in violation of the Separation of Powers Clause of the Illinois Constitution, purports to retroactively interpret the statutory language of Article 11 of the Pension Code and to deny the judicial branch of government the power to interpret and apply, consistent with the Pension Benefits Clause, the clear statutory language adopted by a prior General Assembly.

10. Laborers' Fund's and Laborers' Fund Board's application of the Act's amendments to 40 ILCS 5/11-215 purporting to change retroactively the interpretation of statutory phrase "any pension plan established by the local labor organization" to current

Laborers' Fund participants will violate the Separation of Powers Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNTS VIII.A & VIII.B CHALLENGING THE 40 ILCS 5/8-226(c)(3) PROVISO UNDER THE EQUAL PROTECTION CLAUSES

COUNT VIII.A
Violation of the Equal Protection Clause of the Illinois Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The 40 ILCS 5/8-226(c)(3) proviso prevents Municipal Fund participants, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, and Mr. Notaro from receiving credit in the fund for employment with the CTU and IBEW Local 9 if the participant receives credit for the same time in a pension plan established by the CTU or IBEW Local 9, respectively.

4. Individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code are permitted to receive credit in the respective funds for employment with unions while receiving credit for the same periods of time in pension plans established by the union employers.

5. The Pension Code, through the 40 ILCS 5/8-226(c)(3) proviso, treats Municipal Fund participants differently from similarly situated individuals who are participants in other pension funds established by the code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. Municipal Fund's and Municipal Fund Board's application of the 40 ILCS 5/8-226(c)(3) proviso to Municipal Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNT VIII.B
Violation of the Equal Protection Clause of the United States Constitution (Rochelle Carmichael, Anthony Lopez, John Mahoney, Joseph Notaro, the CTU, and IBEW Local 9 vs. Municipal Fund, and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The 40 ILCS 5/8-226(c)(3) proviso prevents Municipal Fund participants, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, and Mr. Notaro from receiving credit in the fund for employment with the CTU and IBEW Local 9 if the participant receives credit for the same time in a pension plan established by the CTU or IBEW Local 9, respectively.

4. Individuals similarly situated to Municipal Fund participants in all material respects who are participants in other pension funds established by the Pension Code are permitted to receive credit in the respective funds for employment with unions while receiving credit for the same periods of time in pension plans established by the union employers.

5. The Pension Code, through the 40 ILCS 5/8-226(c)(3) proviso, treats Municipal Fund participants, including Ms. Carmichael, Mr. Lopez, Mr. Mahoney, and Mr. Notaro, differently from similarly situated individuals who are participants in other pension funds

established by the code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Municipal Fund participants.

6. Defendants' application of the 40 ILCS 5/8-226(c)(3) proviso to Municipal Fund participants violates the Equal Protection Clause of the United States Constitution causing Ms. Carmichael, Mr. Lopez, Mr. Mahoney, Mr. Notaro, and other CTU and IBEW Local 9 members and the CTU and IBEW Local 9 irreparable injury for which there is no adequate remedy at law.

COUNTS IX.A & IX.B CHALLENGING THE 40 ILCS 5/11-215(c)(3)(C) PROVISO UNDER THE EQUAL PROTECTION CLAUSES

COUNT IX.A
Violation of the Equal Protection Clause of the Illinois Constitution (Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the Illinois Constitution provides that "[n]o person shall . . . be denied the equal protection of the laws." Ill. Const. (1970) Art. I, § 2.

3. The 40 ILCS 5/11-215(c)(3)(C) proviso prevents Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, from receiving credit in the fund for employment with Laborers' Local 1001 if the participant receives credit for the same time in a pension plan established by Laborers' Local 1001.

4. Individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code are permitted to receive credit in the respective funds for employment with unions while receiving credit for the same periods of time in pension plans established by the union employers.

5. The Pension Code, through the 40 ILCS 5/11-215(c)(3)(C) proviso, treats Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, differently from

similarly situated individuals who are participants in the other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

6. Laborers' Fund's and Laborers' Fund Board's application of the 40 ILCS 5/11-215(c)(3)(C) proviso to Laborers' Fund participants will violate the Equal Protection Clause of the Illinois Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT IX.B
Violation of the Equal Protection Clause of the United States Constitution
(Oscar Hall, Michael Senese, David Torres, and Laborers' Local 1001 vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

3. The 40 ILCS 5/11-215(c)(3)(C) proviso prevents Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, from receiving credit in the fund for employment with Laborers' Local 1001 if the participant receives credit for the same time in a pension plan established by Laborers' Local 1001.

4. Individuals similarly situated to Laborers' Fund participants in all material respects who are participants in other pension funds established by the Pension Code are permitted to receive credit in the respective funds for employment with unions while receiving credit for the same periods of time in pension plans established by the union employers.

5. The Pension Code, through the 40 ILCS 5/11-215(c)(3)(C) proviso, treats Laborers' Fund participants, including Mr. Hall, Mr. Senese, and Mr. Torres, differently from similarly situated individuals who are participants in the other pension funds established by the Pension Code, and there is no rational basis related to a legitimate state interest for this discriminatory treatment of Laborers' Fund participants.

6. Laborers' Fund's and Laborers' Fund Board's application of the 40 ILCS 5/11-215(c)(3)(C) proviso to Laborers' Fund participants will violate the Equal Protection Clause of the United States Constitution causing Mr. Hall, Mr. Senese, Mr. Torres, and other Laborers' Local 1001 members and Laborers' Local 1001 irreparable injury for which there is no adequate remedy at law.

COUNT X SEEKING DECLARATORY JUDGMENT THAT THE 40 ILCS 5/8-226(c)(3) PROVISO DOES NOT APPLY TO THE CTU DEFINED CONTRIBUTION PLAN

COUNT X
Declaratory Judgment
(Rochelle Carmichael, Anthony Lopez, and the CTU vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. The 40 ILCS 5/8-226(c)(3) proviso states that Municipal Fund participants may receive credit in the fund for employment with a union while on a leave of absence only if "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization."

3. An actual controversy exists between Ms. Carmichael, Mr. Lopez, and the CTU on the one hand and the Municipal Fund and Municipal Fund Board on the other concerning the

construction of the 40 ILCS 5/8-226(c)(3) proviso and its application to the CTU Defined Contribution Plan established by the CTU for its employees.

4. Ms. Carmichael, Mr. Lopez, and the CTU contend that, by the clear language of the statute, the 40 ILCS 5/8-226(c)(3) proviso does not apply to the CTU Defined Contribution Plan (or any other defined contribution plan) because, by participating in the CTU Defined Contribution Plan, an individual "does not receive credit in any pension plan."

5. The Municipal Fund's and Municipal Fund Board's failure to acknowledge that the 40 ILCS 5/8-226(c)(3) proviso does not apply to the CTU's Defined Contribution Plan deprives Ms. Carmichael, Mr. Lopez, and the CTU of needed information concerning the contractual rights of Ms. Carmichael, Mr. Lopez, and the CTU's other employees who are participants in, and contribute to, the Municipal Fund.

6. An interpretation that the 40 ILCS 5/8-226(c)(3) proviso applies only to defined benefit pension plans, in which a participant receives age, salary, and service credit, and not to the CTU's Defined Contribution Plan, in which a participant does not receive age, salary, or service credit, is consistent with both the statutory language and purpose of the proviso. Plaintiffs' interpretation of the 40 ILCS 5/8-226(c)(3) proviso is, therefore, mandated by the statutory language enacted by the General Assembly.

7. Ms. Carmichael, Mr. Lopez, and other current and former CTU members and employees who are or were Municipal Fund participants while on a leave of absence to work for the CTU have an interest in the correct interpretation of the 40 ILCS 5/8-226(c)(3) proviso and its application to the CTU's Defined Contribution Plan. A Municipal Fund Board interpretation of the 40 ILCS 5/8-226(c)(3) proviso to the contrary would threaten these Municipal Fund participants with the forfeiting of credit in the fund for all of their years of service working for

the CTU on a leave of absence based on their participation in the CTU's Defined Contribution Plan during the same time.

8. The CTU also has an interest in the correct and timely interpretation of the 40 ILCS 5/8-226(c)(3) proviso and its application to the CTU's Defined Contribution Plan because any interpretation contrary to law would result in the CTU's current and former employees and members being threatened with losing all of the pension benefits from the Municipal Fund for which the CTU paid substantial contributions to the fund.

9. A declaratory judgment by the Court that an individual who participates in the CTU's Defined Contribution Plan does not "receive credit in any pension plan established by the local labor organization based on his employment by the organization," within the meaning of 40 ILCS 5/8-226(c)(3), will terminate this controversy between the parties.

COUNTS XI.A & XI.B CHALLENGING MUNICIPAL FUND BOARD AND LABORERS' FUND BOARD JURISIDCTION TO REVISE PAST PENSION BENEFIT DETERMINATIONS

Count XI.A
Declaratory Judgment
(Rochelle Carmichael & John Mahoney vs. Municipal Fund and Municipal Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. An actual controversy exists between Ms. Carmichael and Mr. Mahoney on the one hand and the Municipal Fund and Municipal Fund Board on the other concerning whether the Municipal Fund Board has jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determinations of Ms. Carmichael's and Mr. Mahoney's Municipal Fund pension benefits.

3. 40 ILCS 5/8-252 provides that "[t]he provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto, shall

apply to and govern all proceedings for the judicial review of final administrative decisions of the retirement board provided for under this Article."

4. Because the Pension Code provides that decisions of the Municipal Fund Board are subject to the Administrative Review Law, the Municipal Fund Board's final administrative decisions can be reviewed only pursuant to that law.

5. Section 3-102 of the Administrative Review Law (735 ILCS 5/3-102) provides that "[u]nless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision."

6. Section 3-103 of the Administrative Review Law (735 ILCS 5/3-103) provides that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision."

7. In 2002, upon Ms. Carmichael's resignation from her Board of Education position, the Municipal Fund Board approved her application for a Municipal Fund annuity. Pursuant to the Pension Code before the P.A. 97-0651 amendments, the Municipal Fund Board granted her a Municipal Fund pension based on (1) giving her service credit for her employment with the CTU on her leave of absence from the Board of Education and (2) a final average salary calculated using her salary from the CTU earned while on the leave of absence.

8. The Municipal Fund Board's determination and grant of a Municipal Fund pension to Ms. Carmichael in 2002 was a final administrative decision within the meaning of the Administrative Review Law.

9. The Municipal Fund Board did not, within the 35-day period specified in the Administrative Review Law, seek to review or revise its decision to grant Ms. Carmichael a pension based on her CTU salary and service earned while on her leave of absence.

10. Because it did not seek to review or revise its determination of Ms. Carmichael's pension benefit within the Administrative Review Law time limit, the Municipal Fund Board now lacks jurisdiction to review or revise that final administrative decision.

11. In 2003, upon Mr. Mahoney's resignation from his City position, the Municipal Fund Board approved his application for a Municipal Fund annuity. Pursuant to the Pension Code before the P.A. 97-0651 amendments, the Municipal Fund Board granted him a pension based on (1) giving him credit for his employment with IBEW Local 9 on his leave of absence from the City and (2) a final average salary calculated using his salary from IBEW Local 9 earned while on the leave of absence.

12. The Municipal Fund Board's determination and grant of a pension to Mr. Mahoney in 2003 was a final administrative decision within the meaning of the Administrative Review Law.

13. The Municipal Fund Board did not, within the 35-day period specified in the Administrative Review Law, seek to review or revise its decision to grant Mr. Mahoney a pension based on his IBEW Local 9 salary and service earned on his leave of absence.

14. Because it did not seek to review or revise its determination of Mr. Mahoney's pension benefit within the Administrative Review Law time limit, the Municipal Fund Board now lacks jurisdiction to review or revise that final administrative decision.

15. On or about February 2, 2012, the Municipal Fund wrote to Ms. Carmichael and Mr. Mahoney advising them that the Municipal Fund Board could conduct hearings to consider

whether P.A. 97-0651 requires the modification or termination of their respective Municipal Fund pension benefits.

16. Ms. Carmichael and Mr. Mahoney contend that, because the Administrative Review Law's 35-day period has expired on the Municipal Fund Board's final administrative decisions determining their respective pension benefits, the Municipal Fund Board now lacks jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determinations of their pension benefits.

17. Section 5/1-103.1 of the Pension Code provides that "[a]mendments to this Code which have been or may be enacted shall be applicable only to persons who, on or after the effective date thereof, are in service as an employee under the retirement system or pension fund covered by the Article which is amended, unless the amendatory Act specifies otherwise."

18. P.A. 97-0651, read in conjunction with 40 ILCS 5/1-103.1, does not create an exception to the Administrative Review Law's 35-day period for review of final administrative decisions by the Municipal Fund Board determining the pension benefits of participants, including Ms. Carmichael and Mr. Mahoney, who were no longer in service as employees on the effective date of the Act, January 5, 2012.

19. Ms. Carmichael and Mr. Mahoney have an interest in the current level of their Municipal Fund pension benefits and in the finality of the Municipal Fund Board's past determinations of those benefits.

20. A declaratory judgment by the Court that the Municipal Fund Board lacks jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determinations of Ms. Carmichael's and Mr. Mahoney's pension benefits will terminate this controversy between the parties.

Count XI.B
Declaratory Judgment
(Oscar Hall vs. Laborers' Fund and Laborers' Fund Board)

1. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 147 preceding the Counts as this paragraph.

2. An actual controversy exists between Mr. Hall on the one hand and the Laborers' Fund and Laborers' Fund Board on the other concerning whether the Laborers' Fund Board has jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determination of Mr. Hall's Laborers' Fund pension benefit.

3. 40 ILCS 5/11-231 provides that "[t]he provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of final administrative decisions of the board provided for under this Article."

4. Because the Pension Code provides that decisions of the Laborers' Fund Board are subject to the Administrative Review Law, the Laborers' Fund Board's final administrative decisions can be reviewed only pursuant to that law.

5. Section 3-102 of the Administrative Review Law (735 ILCS 5/3-102) provides that "[u]nless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision."

6. Section 3-103 of the Administrative Review Law (735 ILCS 5/3-103) provides that "[e]very action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision."

7. In 2009, upon Mr. Hall's resignation from his City position, the Laborers' Fund Board approved his application for a Laborers' Fund annuity. Pursuant to the Pension Code before the P.A. 97-0651 amendments, the Laborers' Fund Board granted him a pension based on (1) giving him service credit for his employment with Laborers' Local 1001 on his leave of absence from the City and (2) a final average salary calculated using his salary from Laborers' Local 1001 earned while on the leave of absence.

8. The Laborers' Fund Board's determination and grant of a pension to Mr. Hall in 2009 was a final administrative decision within the meaning of the Administrative Review Law.

9. The Laborers' Fund Board did not seek to review or revise its decision, within the 35-day period specified in the Administrative Review Law, to grant Mr. Hall a pension based on his Laborers' Local 1001 salary and service earned while on his leave of absence.

10. Because it did not seek to review or revise its determination of Mr. Hall's pension benefit within the Administrative Review Law time limit, the Laborers' Fund Board now lacks jurisdiction to review or revise that final administrative decision.

11. By letter dated September 27, 2012, the Laborers' Fund advised Mr. Hall that, following P.A. 97-0651, the Laborers' Fund Board intended to recalculate his pension to reduce his annuity and that the board would hold an administrative hearing on October 26, 2012 to determine his future benefits.

12. Mr. Hall contends that, because the Administrative Review Law's 35-day period has expired on the Laborers' Fund Board's final administrative decision determining his pension benefit, the Laborers' Fund Board now lacks jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determination of his pension benefit.

13. Section 5/1-103.1 of the Pension Code provides that "[a]mendments to this Code which have been or may be enacted shall be applicable only to persons who, on or after the effective date thereof, are in service as an employee under the retirement system or pension fund covered by the Article which is amended, unless the amendatory Act specifies otherwise."

14. P.A. 97-0651, read in conjunction with 40 ILCS 5/1-103.1, does not create an exception to the Administrative Review Law's 35-day period for review of final administrative decisions by the Laborers' Fund Board determining the pension benefits of participants, including Mr. Hall, who were no longer in service as employees on the effective date of the Act, January 5, 2012.

15. Mr. Hall has an interest in the current level of his Laborers' Fund pension benefit and in the finality of the Laborers' Fund Board's past determination of that benefit.

16. A declaratory judgment by the Court that the Laborers' Fund Board lacks jurisdiction to review or revise, pursuant to P.A. 97-0651, its past determination of Mr. Hall's pension benefit will terminate this controversy between the parties.

[Continued on the next page.]

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. Judgment on Counts I.A, II.A, III.A, IV.A, V.A, VI.A, and VII.A declaring that the relevant parts of P.A. 97-0651 are void and unenforceable as applied to current pension fund participants because they diminish or impair vested pension benefits, in violation of the Pension Benefits Clause of the Illinois Constitution;

B. Judgment on Counts I.B-C, II.B-C, III.B-C, IV.B-C, V.B-C, VI. B-C, and VII.B-C declaring that the relevant parts of P.A. 97-0651 are void and unenforceable as applied to current pension fund participants because they substantially diminish or impair vested contractual rights, in violation of the Contracts Clauses of the Illinois and United States Constitutions;

C. Judgment on Counts I.D-E, II.D-E, III.D-E, IV.D-E, V.D-E, VI.D-E, and VII.D-E declaring that the relevant parts of P.A. 97-0651 are void and unenforceable as applied to current pension fund participants because they effect a taking of property without just compensation in violation of the Takings Clause of the Illinois Constitution and 14th Amendment of the United States Constitution;

D. Judgment on Counts I.F-G, II.F-G, III.F-G, IV.F-G, V.F-G, VI.F-G, and VII.F-G declaring that the relevant parts of P.A. 97-0651 are void and unenforceable in violation of the Equal Protection Clauses of the Illinois and United States Constitutions;

E. Judgment on Counts IV.H, V.H, VI.H, and VII.H declaring that the relevant parts of P.A. 97-0651 are void and unenforceable in violation of the Separation of Powers Clause of the Illinois Constitution;

F. Judgment on Counts I.A-G, II.A-G, III.A-G, IV.A-H, V.A-H, VI.A-H, VII.A-H issuing a preliminary and permanent injunction against enforcement of the relevant parts of P.A.

97-0651, and requiring defendants to reinstate the rights of the plaintiffs as they existed prior to enactment of P.A. 97-0651.

G. Judgment on Counts VIII.A-B and IX.A-B declaring the 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) provisos (denying credit in the respective funds for union employment on a leave of absence if participant receives credit in a pension plan established by a local labor organization for its employees) unconstitutional in violation of the Equal Protection Clauses of the Illinois and United States Constitutions;

H. Judgment on Counts VIII.A-B and IX.A-B issuing a preliminary and permanent injunction against enforcement of the 40 ILCS 5/8-226(c)(3) & 5/11-215(c)(3)(C) provisos;

I. Judgment on Count X declaring that an individual who participates in the CTU's Defined Contribution Plan does not "receive credit in any pension plan established by the local labor organization based on his employment by the organization," within the meaning of 40 ILCS 5/8-226(c)(3).

J. Judgment on Counts XI.A & XI.B declaring that the Municipal Fund Board and the Laborers' Fund Board lack jurisdiction to review or revise, pursuant to P.A. 97-0651, their past determinations of Ms. Carmichael's, Mr. Mahoney's, and Mr. Hall's pension benefits.

K. Judgment on Counts XI.A & XI.B issuing a preliminary and permanent injunction against the Laborers' Fund, Laborers' Fund Board, Municipal Fund, and Municipal Fund Board reviewing or revising, pursuant to P.A. 97-0651, their past determinations of Ms. Carmichael's, Mr. Mahoney's, and Mr. Hall's pension benefits.

L. Judgment on Counts I.A,B,D,F; II.A,B,D,F; III.A,B,D,F; IV.A,B,D,F,H; V.A,B,D,F,H; VI.A,B,D,F,H; VII.A,B,D,F,H; VIII.A; and IX.A awarding the plaintiffs their costs and expenses for this litigation, including reasonable attorneys' fees and other

disbursements, under the Illinois Civil Rights Act of 2003, 740 ILCS 23/5, which provides for attorneys' fees for "any action" to "enforce a right under the Illinois Constitution"; and

M. Granting such other and further relief as is deemed just and proper.

Respectfully submitted,

Rochelle Carmichael; Zeidre Foster; Oscar Hall; Anthony Lopez; John Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO

Dated: October 9, 2012

One of Plaintiffs' Attorneys

J. Peter Dowd
Michele M. Reynolds
Justin J. Lannoye
George A. Luscombe III
DOWD, BLOCH & BENNETT
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361 – Telephone
(312) 372-6599 – Facsimile
Firm I.D. Number: 12929

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Rochelle Carmichael; June Davis; Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO; Plaintiffs, v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Municipal Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago; Public School Teachers' Pension & Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago; Defendants, And State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, Intervenor-Defendant.	No. 12-CH-37712 CALENDAR 06 HON. MARY L. MIKVA FIRST SUPPLEMENTAL COMPLAINT IN CHANCERY FOR INJUNCTION / TEMPORARY RESTRAINING ORDER

FIRST SUPPLEMENTAL COMPLAINT
INJUNCTIVE RELIEF REQUESTED

J. Peter Dowd
Justin J. Lannoye
George A. Luscombe III
DOWD, BLOCH, BENNETT,
CERVONE, AUERBACH & YOKICH
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361 – Telephone
(312) 372-6599 – Facsimile
Firm I.D. Number: 12929

Attorneys for Plaintiffs

April 22, 2016

FIRST SUPPLEMENTAL COMPLAINT

Plaintiffs Rochelle Carmichael, June Davis, Oscar Hall, Zeidre Foster, Anthony Lopez, Kathleen Mahoney, Joseph Notaro, Michael Senese, and David Torres (collectively, the "Individual Plaintiffs") together with plaintiffs Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO (collectively, the "Union Plaintiffs"), by their attorneys, for their First Supplemental Complaint against defendants Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("Laborers' Fund"), Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("Laborers' Fund Board"), Municipal Employees' Annuity & Benefit Fund of Chicago ("Municipal Fund"), Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago ("Municipal Fund Board"), Public School Teachers' Pension & Retirement Fund of Chicago, and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago, state as follows:[1]

1. Plaintiffs filed the original complaint in this action on October 9, 2012 (the "Original Complaint").

2. Plaintiffs submit this First Supplemental Complaint to set up matters that have arisen after the filing of the Original Complaint and that, by amending and adding to the Original Complaint with this pleading rather than replacing it, may be efficiently and justly resolved as part of this action, conserving judicial and party resources.

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[1] Laborers' Fund and Laborers' Fund Board are referred to here as the "Laborers' Fund Defendants." Municipal Fund and Municipal Fund Board are referred to here as the "Municipal Fund Defendants."

Addition of June Davis as a Plaintiff

3. Plaintiff June Davis began working for the Chicago Board of Education (the "Board of Education") in 1966 and became a participant in the Municipal Employees' Annuity & Benefit Fund of Chicago (the "Municipal Fund") shortly thereafter.

4. Ms. Davis continued to work for the Board of Education until 1991 when she took a leave of absence from her position as a school community representative to work for her union, Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO (the "CTU").

5. Except for a break in service from 2002 until 2004, Ms. Davis worked for the CTU on a leave of absence from the Board of Education until submitting her resignation to the Board of Education effective at the end of 2011, before the effective date of P.A. 97-0651.

6. Over the approximately 17 years of her employment with the CTU, Ms. Davis received promotions and salary increases and advanced to top administrative positions with the union.

7. During her leave of absence from the Board of Education working for the CTU, Ms. Davis, and the CTU on her behalf, contributed to the Municipal Fund for union leave of absence credit pursuant to 40 ILCS 5/8-226(c) based on her union salaries.

8. The Municipal Fund Board did not award Ms. Davis's pension annuity until its meeting on January 22, 2015, following an order from the Court in this action.

9. At its January 22, 2015 meeting, the Municipal Fund Board awarded Ms. Davis an annuity of $908.46 per month, beginning in February 2015.

10. In awarding Ms. Davis's annuity, the Municipal Fund Board did not give her credit for any of her years of service or contributions made during her leave of absence from the Board of Education working for the CTU.

11. The Municipal Fund Board calculated Ms. Davis's annuity using only salaries paid to her by the Board of Education from 1991 and earlier, resulting in a final average salary for pension purposes of less than $2,000 per month.

12. The effective start date of Ms. Davis's Municipal Fund annuity was January 1, 2012. The Municipal Fund Board did not, however, award Ms. Davis any retroactive annuity payments for the period from January 2012 through January 2015. The Municipal Fund Board declined to make these retroactive payments purportedly because of a possible overpayment of past annuity payments to Ms. Davis during the period of 2002 through 2004 when the Municipal Fund Defendants had previously granted and paid Ms. Davis an annuity calculated using credit from her employment with the CTU on a leave of absence and salaries she was paid by the union.

13. Ms. Davis has disputed with the Municipal Fund Defendants the calculation of her annuity.

14. The Municipal Fund Board has deferred taking further action on Ms. Davis's annuity pending resolution of the relevant legal issues in this litigation.

15. The salaries the CTU paid to Ms. Davis in the 10 years preceding her retirement from the Board of Education in 2011 were substantially higher than the salaries the Board of Education paid Ms. Davis in the 10 years preceding the commencement of her union leave of absence in 1991.

16. If the Municipal Fund Defendants were to calculate Ms. Davis's final average salary for pension purposes using salaries the CTU paid to Ms. Davis during the 10 years before her retirement from the Board of Education in 2011, Ms. Davis's final average salary for pension purposes would be more than $10,500 per month.

17. During periods of her employment with the CTU on leave of absence from the Board of Education, Ms. Davis participated in the CTU defined contribution plans described in paragraphs 106 through 122 of the Original Complaint.

18. If the Municipal Fund Board awarded Ms. Davis an annuity calculated using all of the years for which she contributed to the Municipal Fund for union service credit and using salaries paid to Ms. Davis by the CTU during the last 10 years preceding her retirement from the Board of Education in 2011, Ms. Davis's Municipal Fund annuity would be more than $8,000 per month.

19. At 77 years old, Ms. Davis continues to work for the CTU because she cannot afford to retire based on her Municipal Fund pension, currently about $975 per month, after cost of living adjustments.

20. Ms. Davis joins as a plaintiff to Counts IV.A through IV.H, VIII.A, VIII.B, and X of the Original Complaint in this Action.

Addition of Widow Kathleen Mahoney as a Plaintiff

21. Kathleen Mahoney is the widow of John Mahoney, the Municipal Fund retiree who was a plaintiff in the Original Complaint.

22. John Mahoney died on February 4, 2016.

23. Applicable to Kathleen Mahoney, Article 8 of the Pension Code provides for an annuity for the widow of a deceased Municipal Fund retiree equal to "50% of the deceased employee's retirement annuity at the time of death." 40 ILCS 5/8-150.1(j).

24. At the time of her husband John Mahoney's death, Kathleen Mahoney was 66 years old and had been married to John Mahoney for 43 years.

25. At the time of John Mahoney's death his Municipal Fund retirement annuity was about $8,126 per month.

26. At a February 20, 2003 meeting, the Municipal Fund Board awarded John Mahoney an annuity of $5,870.40 per month calculated using his years of service working for IBEW Local 9 on a union leave of absence and using salaries paid to Mr. Mahoney by IBEW Local 9 during the leave of absence.

27. At the same February 20, 2003 meeting, the Municipal Fund Board fixed the amount of the widow annuity for John Mahoney's spouse, Kathleen Mahoney, as $2,935.20 monthly or, if greater, one half of John Mahoney's annuity at the time of his death.

28. By letter dated February 20, 2003, the Municipal Fund informed John Mahoney that "The Retirement Board of this System, meeting on February 20, 2003, approved your application for annuity." That February 20, 2003, letter further stated: "Your spouse, Kathleen, if she survives you, will be entitled to an annuity amounting to $2,935.20 monthly or, if greater, one-half of your annuity at death beginning immediately after your death. Such annuity is payable for life."

29. The minutes of the Municipal Fund Board meeting on February 20, 2003 reflect $2,935.20 as the amount of the widow annuity for John Mahoney's spouse in the Municipal Fund Board resolution granting John Mahoney's annuity, which was approved by a majority of the trustees of the Municipal Fund Board.

30. The Municipal Fund Board did not within 35 days after its February 20, 2003 meeting take any action to change the amount of John Mahoney's annuity award or the amount of the widow annuity for John Mahoney's spouse, including, but not limited to, any action to change the amounts of the widow annuity referenced in the minutes of the Municipal Fund

Board's February 20, 2003 meeting or in the Municipal Fund's letter to John Mahoney dated February 20, 2003.

31. Following its February 20, 2003, meeting, the Municipal Fund Board took no action regarding the widow annuity for John Mahoney's spouse until its March 17, 2016 meeting.

32. At its March 17, 2016 meeting, the Municipal Fund Board awarded Kathleen Mahoney an annuity of $2,288.42 per month.

33. In a letter dated March 29, 2016 to Kathleen Mahoney, the Municipal Fund notified her of the annuity granted to her at the Municipal Fund Board's March 17, 2016 meeting. In that letter, the Municipal Fund explained that: "As you may know, your late husband was a named party in a lawsuit pending in the Circuit Court of Cook County entitled *Carmichael, et al. v. Laborers' & Retirement Board Employees' Annuity and Benefit Fund of Chicago, et al.* 12CH7712 [sic]. At issue in that lawsuit is whether Illinois Public Act 97-0651, which changed how pension benefits for certain classes of union employees were calculated, is unconstitutional."

34. The Municipal Fund's March 29, 2016 letter to Ms. Mahoney further explained: "As a result of the pendency of the Litigation and the current uncertainty in the law as to (i) whether your husband was entitled to service credit for his time employed by a labor organization; and (ii) whether the appropriate salary for annuity purposes should have been his salary while employed by the labor organization or by the City of Chicago, the Board voted to grant you a monthly annuity in the amount of $2,228.42. This annuity amount was calculated by the Fund by giving you credit for your spouse's union service and using his final average salary while employed by the City of Chicago. This method of calculation used in arriving at your

monthly annuity amount is the same method as used to calculate annuities for other similarly situated individuals involved in the Litigation."

35. The Municipal Fund's March 29, 2016 letter to Ms. Mahoney further explained that a final determination of the amount of Kathleen Mahoney's annuity would depend on the outcome of the legal issues in this litigation.

36. The annuity awarded by the Municipal Fund Board to Kathleen Mahoney at its March 17, 2016 meeting is less than 50% of the Municipal Fund retirement annuity that her husband John Mahoney was receiving at the time of his death.

37. Kathleen has disputed with the Municipal Fund Defendants the calculation of her widow annuity.

38. Kathleen Mahoney contends that the Municipal Fund Board should have awarded her an annuity in the amount of 50% of John Mahoney's retirement annuity at the time of his death.

39. 50% of John Mahoney's retirement annuity at the time of his death would be approximately $4,063 per month.

40. Kathleen Mahoney joins as a plaintiff to Count XI.A in the Original Complaint. Because Kathleen Mahoney's widow's annuity is based on the amount of her husband John Mahoney's retirement annuity at the time of his death, she has an interest in a declaration from the Court that the Municipal Fund Board lacks jurisdiction to recalculate John Mahoney's retirement annuity.

41. Kathleen Mahoney also joins as a plaintiff to Counts IV.A through IV.H, VI.A through VI.H, VIII.A & VIII.B in the Original Complaint. Because Kathleen Mahoney's widow's annuity is based on the amount of her husband John Mahoney's retirement annuity at

the time of his death, she has an interest in preventing the Municipal Fund Defendants from unconstitutionally and wrongly recalculating the amount of John Mahoney's Municipal Fund service credit or highest average annual salary.

IBEW Local 9 Defined Contribution Plan

42. Plaintiff Local 9, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 9") represents certain City of Chicago employees and many private-sector employees. In or about 1999, IBEW Local 9 together with private-sector construction employers established the Local No. 9, IBEW and Outside Contractors Defined Contribution Pension Fund (the "IBEW Local 9 Defined Contribution Plan"), a defined contribution plan for IBEW Local 9 members employed in the private-sector construction industry.

43. IBEW Local 9 employees also participated in the IBEW Local 9 Defined Contribution Plan.

44. IBEW Local 9 made contributions to its employees' individual accounts in the IBEW Local 9 Defined Contribution Plan on a tax-deferred basis, in lieu of current taxable salary. Most of those employees never worked for the City of Chicago. However, John Mahoney and Joseph Notaro, who did work for the City of Chicago, took leaves of absence from the city when they were selected to be IBEW Local 9 employees.

45. The IBEW Local 9 contributions on behalf of John Mahoney and Joseph Notaro to the IBEW Local 9 Defined Contribution Plan were not considered salary for pension purposes in the Municipal Fund and, therefore, did not increase their salary base for calculating a Municipal Fund benefit.

46. As with other defined contribution deferred compensation plans, contributions to the IBEW Local 9 Defined Contribution Plan did not provide IBEW Local 9 employees with

credit toward a monthly pension based on their years of employment or salary. This contrasts to a defined benefit pension plan, such as the Municipal Fund, in which the participant receives credit for service or salary toward a guaranteed pension benefit.

47. An employee's benefit in the IBEW Local 9 Defined Contribution Plan is determined only by the amount in his or her individual account. An employee had no guaranteed credit in the plan at all. If the employee's individual account had negative investment returns, the employee's benefit could be less than the contributions made to the account.

48. An individual who participates in the IBEW Local 9 Defined Contribution Plan does not "receive credit in any pension plan" within the meaning of 40 ILCS 5/8-226(c)(3). An IBEW Local 9 employee's participation in the IBEW Local 9 Defined Contribution Plan, therefore, should not disqualify him or her from receiving union service credit pursuant to 40 ILCS 5/8-226(c).

49. Neither the Municipal Fund Defendants nor a court of competent jurisdiction has interpreted the phrase "receive credit in any pension plan established by the local labor organization based on his employment by the organization" in 40 ILCS 5/8-226(c)(3) to apply to participation in a defined contribution plan established by a local labor organization for its employees.

50. Municipal Fund Defendants' records do not reflect that the Municipal Fund Defendants ever communicated to Municipal Fund participants or to any local labor organization that the phrase "receive credit in any pension plan established by the local labor organization based on his employment by the organization" in 40 ILCS 5/8-226(c)(3) applies to participation in a defined contribution plan established by a local labor organization for its employees.

51. The decades-long practice of the Municipal Fund Defendants created a contractual right as part of the respective retirement systems to receive union leave of absence credit, notwithstanding a union employee's participation in a defined contribution plan. That contractual right is protected by Ill. Const. (1970), art. XIII, § 5 (the "Pension Clause").

52. Because the CTU and IBEW Local 9 contributions to their respective defined contribution plans are not counted as salary for pension purposes, when the union makes a contribution to an employee's defined contribution plan account, the employee does not receive credit in a pension plan for the same salary and service for which the employee receives credit in the Municipal Fund for the union leave of absence.

53. Had the Municipal Fund Defendants interpreted Articles 8 or 11 of the Pension Code to bar participation in a union defined contribution plan, and communicated such interpretation to participants, the local labor organizations could have paid equivalent amounts to their employees as current salary in lieu of contributions to the defined contribution plans. If they had done so, the participant's salary base for pension purposes in the Municipal Fund would have increased, thereby increasing his or her Municipal Fund pension.

It Would Be Inequitable To Impose Retroactively Any Newly Announced Interpretation That Articles 8 & 11 Of The Pension Code Bar The Use Of A Salary Paid By A Local Labor Organization To Calculate The Final Average Salary For Pension Purposes

54. Following the enactment of P.A. 86-1488 in 1991 until the enactment of P.A. 97-0651 in 2012, the Municipal Fund Board applied Article 8 of the Pension Code to allow a participant who had earned union service credit to receive an annuity based on a highest average annual salary or final average salary calculated using salaries paid to the participant by the local labor organization during the union leave of absence. The statutory terms "highest average

annual salary" or "final average salary" will be collectively referred to in this pleading as "final average salary" for ease of reference.

55. Following the enactment of P.A. 86-1488 in 1991 until the enactment of P.A. 97-0651 in 2012, the Laborers' Fund Board applied Article 11 of the Pension Code to allow a participant who had earned union service credit to receive an annuity based on a final average salary calculated using salaries paid to the participant by the local labor organization during the union leave of absence.

56. Following the enactment of P.A. 86-1488 in 1991 until the enactment of P.A. 97-0651 in 2012, the Municipal Fund Board granted to every retiree with union leave of absence credit annuities calculated using salaries earned by the retiree from his or her local labor organization during the union leave of absence.

57. Following the enactment of P.A. 86-1488 in 1991 until the enactment of P.A. 97-0651 in 2012, the Laborers' Fund Board granted to every retiree with union leave of absence credit annuities calculated using salaries earned by the retiree from his or her local labor organization during the union leave of absence.

58. Since the enactment of P.A. 86-1488 in 1991 until the enactment of P.A. 97-0651 in 2012, the Municipal Fund Defendants and Laborers' Fund Defendants offered to participants the benefit of a retirement annuity based on a final average salary calculated using salaries paid to the participant by a local labor organization, if the participant made contributions to the respective fund based on such local labor organization salaries while employed by the local labor organization full time on a leave of absence from a City of Chicago or Chicago Board of Education position.

59. By making contributions to the Municipal Fund or Laborers' Fund for union leave of absence credit based on salaries paid by their local labor organization employers, Municipal Fund and Laborers' Fund participants accepted the offer by the funds, and provided consideration to the funds, for a retirement annuity based on a final average salary that could be calculated using such salaries paid by the local labor organizations.

60. Thus, the Municipal Fund and Laborers' Fund participants who contributed to the funds for union leave of absence credit based on salaries paid by their local labor organization employers have a contractual right to annuities that could be based on final average salaries calculated using the same local labor organization salaries upon which contributions were made.

61. Also in reliance upon the Laborers' Fund Defendants' interpretation and application of the Pension Code allowing participants to receive a pension calculated using a local labor organization salary, Laborers' Local 1001 made contributions to the Laborers' Fund for its employees based on their Laborers' Local 1001 salaries. Laborers' Local 1001 did so in consideration for the Laborers' Fund Defendants' promise to provide the applicable Laborers' Local 1001 employee an annuity calculated based on the employee's Laborers' Local 1001 salary.

62. Also in reliance upon the Municipal Fund Defendants' interpretation and application of the Pension Code allowing participants to receive a pension calculated using a local labor organization salary, the CTU made contributions to the Municipal Fund for its employees based on their CTU salaries. The CTU did so in consideration for the Municipal Fund Defendants' promise to provide the applicable CTU employee an annuity calculated based on the employee's CTU salary.

63. Thus, CTU and Laborers' Local 1001 have contractual rights that their employees for whom they contributed to the Municipal Fund or Laborers' Fund based on union salaries will receive Municipal Fund or Laborers' Fund pensions calculated using the same union salaries.

64. The 20-year interpretation and application of Articles 8 & 11 of the Pension Code by the Municipal Fund Board and the Laborers' Fund Board, including the City appointed trustees, to allow the use of a salary paid by a local labor organization in calculating the final average salary for participants with union service credit created a retirement system benefit and contractual right protected by the Illinois Constitution's Pension Clause.

65. Before the order and opinion, dated September 29, 2014 (the "September 29, 2014 Order & Opinion"), in this action, no court of competent jurisdiction had interpreted the pre-P.A.97-0651 statutory text of Article 8 of the Pension Code to bar using a salary paid by a local labor organization in calculating the final average salary for pension purposes for a Municipal Fund participant who had earned union service credit pursuant to 40 ILCS 5/8-226(c).

66. Before the September 29, 2014 Order & Opinion, no court of competent jurisdiction had interpreted the pre-P.A.97-0651 statutory text of Article 11 of the Pension Code to bar using a salary paid by a local labor organization in calculating the final average salary for pension purposes for a Laborers' Fund participant who had earned union service credit pursuant to 40 ILCS 5/11-215(c)(3).

67. The September 29, 2014 Order & Opinion's interpretation of Articles 8 & 11 of the Pension Code with respect to the use of a local labor organization salary to calculate a final average salary established a new principle of law by effectively overruling the past interpretations of the statutes by the Laborers' Fund Board and the Municipal Fund Board.

68. The September 29, 2014 Order & Opinion's interpretation of Articles 8 & 11 of the Pension Code with respect to the use of a local labor organization salary to calculate a final average salary established a new principle of law by deciding an issue of first impression in the courts whose resolution was not clearly foreshadowed by any prior court precedent.

69. Given (1) the purpose of the P.A. 86-1488 amendments to the union leave of absence provisions of Articles 8 & 11 of the Pension Code, (2) the 20-year history of application of those amendments by the Laborers' Fund Board and Municipal Fund Board, and (3) the reliance of Municipal Fund and Laborers' Fund participants, a prospective-only application, if not reversal, of the September 29, 2014 Order & Opinion's interpretation of Articles 8 & 11 of the Pension Code with respect to the use of a local labor organization salary to calculate a final average salary would further the purpose of the decision and the underlying legislative intent. By contrast, a retroactive application of that decision would create substantial inequities and constitutional questions regarding whether the P.A. 86-1488 amendments diminished and impaired a retirement system benefit by increasing the required contributions for a retirement system benefit without any corresponding increase in the benefit or other consideration.

70. Given the 20-year history of the Laborers' Fund Board and Municipal Fund Board granting annuities based on union salaries and the reliance interests of Laborers' Fund and Municipal Fund participants, the balance of equities mandates, if not reversal, a prospective-only application of the September 29, 2014 Order & Opinion's interpretation of Articles 8 & 11 of the Pension Code with respect to the use of a local labor organization salary to calculate a final average salary.

SUPPLEMENTAL COUNTS

COUNT XII
Seeking Declaratory Judgment That The 40 ILCS 5/8-226(c)(3) Proviso Does Not Apply To Defined Contribution Plans

(Kathleen Mahoney, Joseph Notaro, and IBEW Local 9 vs. Municipal Fund and Municipal Fund Board)

71. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 70 of the First Supplemental Complaint and paragraphs 1 through 147 of the Original Complaint preceding the Counts as this paragraph.

72. The 40 ILCS 5/8-226(c)(3) proviso states that Municipal Fund participants may receive credit in the fund for employment with a union while on a leave of absence only if "the participant does not receive credit in any pension plan established by the local labor organization based on his employment by the organization."

73. An actual controversy exists between the plaintiffs on the one hand and the Municipal Fund Defendants on the other concerning the construction of the 40 ILCS 5/8-226(c)(3) proviso and its application to the IBEW Local 9 defined contribution plan.

74. Plaintiffs contend that the statutory language of the 40 ILCS 5/8-226(c)(3) proviso does not apply to defined contribution plans because, by participating in a defined contribution plan, an individual does not "receive credit in any pension plan" within the meaning of the statute.

75. The Municipal Fund Defendants' failure to acknowledge that the 40 ILCS 5/8-226(c)(3) proviso does not apply to defined contribution plans deprives plaintiffs of needed information concerning the plaintiffs' contractual pension rights.

76. An interpretation that the 40 ILCS 5/8-226(c)(3) proviso applies only to defined benefit pension plans, in which a participant's benefit is based on receiving credit for service, but not to defined contribution plans, in which a participant's benefit is not based on receiving credit for service, is consistent with the statutory language, the purpose of the proviso, and the law that any ambiguity in the terms of the Pension Code should be interpreted in favor of the participants. Plaintiffs' interpretation of the 40 ILCS 5/8-226(c)(3) proviso is, therefore, mandated by the statutory language enacted by the General Assembly.

77. Plaintiffs have an interest in the correct interpretation of the 40 ILCS 5/8-226(c)(3) proviso and its application to defined contribution plans. A Municipal Fund Board interpretation of the 40 ILCS 5/8-226(c)(3) proviso to the contrary would threaten the individual plaintiffs and the union plaintiffs' members and employees with the forfeiture of credit in the Municipal Fund for years of service working for the local labor organization on a leave of absence based on their participation in a defined contribution plan established by the union.

78. A declaratory judgment by the Court that an individual who participates in a defined contribution plan does not "receive credit in any pension plan established by the local labor organization based on his employment by the organization," within the meaning of 40 ILCS 5/8-226(c)(3), will likely terminate this controversy between the parties.

COUNT XIII

Seeking Declaratory Judgment That The Laborers' Fund Defendants And Municipal Fund Defendants Would Breach Plaintiffs' Contractual Rights By Retroactively Applying A New Interpretation Of The Pension Code Barring The Use Of A Local Labor Organization Salary To Calculate An Annuity With Union Service Credit

(Rochelle Carmichael, June Davis, Oscar Hall, Anthony Lopez, Kathleen Mahoney, Joseph Notaro, Michael Senese, David Torres, CTU, IBEW Local 9, and Laborers' Local 1001 v. Laborers' Fund, Laborers' Fund Board, Municipal Fund, and Municipal Fund Board)

79. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 70 of the First Supplemental Complaint and paragraphs 1 through 147 of the Original Complaint preceding the Counts as this paragraph.

80. The Municipal Fund Board and Laborers' Fund Board are the administrative bodies with the statutory authority to interpret and apply the terms of Articles 8 & 11 of the Pension Code, respectively, for the purpose of accepting contributions and granting annuities.

81. For about 20 years before P.A. 97-0651, the Municipal Fund Defendants and Laborers' Fund Defendants offered and granted participants annuities calculated using the salary paid to the participant by a local labor organization on a union leave of absence if the participant or local labor organization employer contributed to the respective fund based on the participant's union salary.

82. The individual plaintiffs and the CTU and Laborers' Local 1001 accepted and provided consideration for that offer by making all of the required contributions to the respective funds based on the salary paid to the applicable participant by the local labor organization employer.

83. The individual plaintiffs, therefore, have a contractual right to a Laborers' Fund or Municipal Fund annuity calculated using a salary paid by the applicable local labor organization during a union leave of absence if such salary contributed to one of the highest four annual salaries received by the participant in the last 10 years before the participant's retirement from the City of Chicago or Chicago Board of Education.

84. CTU and Laborers' Local 1001 also have a contractual right that their employees for whom they made contributions to the Laborers' Fund or Municipal Fund may receive a Laborers' Fund or Municipal Fund annuity calculated using a union salary if such salary

contributed to one of the highest four salaries received by the participant in the last 10 years before the employee's retirement from the City of Chicago or Chicago Board of Education.

85. The Municipal Fund Defendants and Laborers' Fund Defendants have threatened to deny the individual plaintiffs, including CTU and Laborers' Local 1001 employees, annuities calculated using their union salaries based on the retroactive application of a new statutory interpretation that Articles 8 & 11 of the Pension Code never permitted an annuity to be calculated using a salary paid by a local labor organization.

86. Plaintiffs contend that any retroactive application of that new interpretation of Articles 8 & 11 would breach the contractual rights of the individual plaintiffs, the CTU, and Laborers Local 1001.

87. This controversy between the parties would likely be terminated by a declaratory judgment from the Court that the Municipal Fund Defendants and Laborers' Fund Defendants retroactive application of that new interpretation of Articles 8 & 11 of the Pension Code would breach the contractual rights of the individual plaintiffs, the CTU, and Laborers' Local 1001.

COUNT XIV

Seeking Declaratory Judgment That The Laborers' Fund Defendants And Municipal Fund Defendants Should Be Estopped From Retroactively Applying A New Interpretation Of The Pension Code Barring The Use Of A Local Labor Organization Salary To Calculate An Annuity With Union Service Credit

(Rochelle Carmichael, June Davis, Oscar Hall, Anthony Lopez, Kathleen Mahoney, Joseph Notaro, Michael Scnese, David Torres, CTU, IBEW Local 9, and Laborers' Local 1001 v. Laborers' Fund, Laborers' Fund Board, Municipal Fund, and Municipal Fund Board)

88. Plaintiffs reallege and specifically incorporate by reference paragraphs 1 through 70 of the First Supplemental Complaint and paragraphs 1 through 147 of the Original Complaint preceding the Counts as this paragraph.

89. The Municipal Fund Board and Laborers' Fund Board are the administrative bodies with the statutory authority to interpret and apply the terms of Articles 8 & 11 of the Pension Code, respectively, for the purpose of accepting contributions and granting annuities.

90. For about 20 years before P.A. 97-0651, the Municipal Fund Defendants and Laborers' Fund Defendants offered and granted participants annuities calculated using the salary paid to the participant by a local labor organization on a union leave of absence if the participant or local labor organization employer contributed to the respective fund based on the participant's union salary.

91. The individual plaintiffs and the CTU and Laborers' Local 1001 reasonably relied on that 20 year interpretation and practice by the Municipal Fund Defendants and Laborers' Fund Defendants to their detriment by, among other things, making contributions to the respective funds based on union salaries and planning for retirements with the expectation of receiving pensions based on union salaries, and foregoing alternative methods for planning for their retirement security or that of their members and employees.

92. Given the plaintiffs' detrimental reliance upon the 20-year practice and interpretation of the Laborers' Fund Defendants and Municipal Fund Defendants offering and granting annuities based on union salaries, it would be inequitable to allow the defendants to apply retroactively a new interpretation of Articles 8 & 11 of the Pension Code to bar granting plaintiffs or plaintiffs' members and employees annuities based on the same union salaries upon which contributions were based.

93. Nonetheless, the Laborers' Fund Defendants and Municipal Fund Defendants have threatened to deny the individual plaintiffs, including CTU and Laborers' Local 1001 employees, annuities based on their union salaries premised on the retroactive application of a

new statutory interpretation that Articles 8 & 11 of the Pension Code never permitted an annuity to be calculated using a salary paid by a local labor organization.

94. This controversy between the parties would likely be terminated by a declaratory judgment from the Court that the Laborers' Fund Defendants and Municipal Fund Defendants are equitably estopped from retroactively applying the new interpretation of Articles 8 & 11 of the Pension Code barring the use of a union salary to calculate the final average salary for pension purposes.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment as follows:

A. Plaintiffs' incorporate the Prayers for Relief applicable to the Counts set forth in the Original Complaint.

B. On Count XII a declaration that an individual who participates in a defined contribution plan does not "receive credit in any pension plan established by the local labor organization based on his employment by the organization," within the meaning of 40 ILCS 5/8-226(c)(3).

C. On Count XIII a declaration that the Laborers' Fund Defendants' or Municipal Fund Defendants' retroactive application of the new interpretation of Articles 8 & 11 of the Pension Code barring annuities calculated based on union salaries would breach plaintiffs' contractual rights.

D. On Count XIV a declaration that the Laborers' Fund Defendants and Municipal Fund Defendants are equitably estopped from retroactively applying the new interpretation of Articles 8 & 11 of the Pension Code barring annuities calculated based on union salaries.

E. Granting such other and further relief as is deemed just and proper.

Respectfully submitted,

Rochelle Carmichael; June Davis, Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO

Dated: April 22, 2016

One of Plaintiffs' Attorneys

J. Peter Dowd
Justin J. Lannoye
George A. Luscombe III
DOWD, BLOCH, BENNETT
CERVONE, AUERBACH & YOKICH
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361 – Telephone
(312) 372-6599 – Facsimile
Firm I.D. Number: 12929

CERTIFICATE OF SERVICE

I, George A. Luscombe III, an attorney, certify that on April 29, 2016, I served a copy of the attached *First Supplemental Complaint* by email on the following:

Richard S. Huszagh
John Wolfsmith
Assistant Attorneys General
100 West Randolph Street
Chicago, Illinois 60601
Email: RHuszagh@atg.state.il.us

Attorneys for Intervenor-Defendant: State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois

Cary E. Donham
Graham C. Grady
John F. Kennedy
TAFT, STETTINIUS, & HOLLISTER, LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
Email: cdonham@taftlaw.com

Attorneys for defendants: Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago

Joseph M. Burns
David Huffman-Gottschling
JACOBS, BURNS, ORLOVE & HERNANDEZ
150 North Michigan Avenue, Suite 1000
Chicago, Illinois 60601
Email: davidhg@jbosh.com

Attorneys for defendants: Public School Teachers' Pension and Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago

Mary Patricia Burns
Vincent D. Pinelli
Larisa L. Elizondo
BURKE BURNS & PINELLI, LTD.
70 W. Madison Ave., Suite 4300
Chicago, Illinois 60602
Email: vpinelli@bbp-chicago.com

Attorneys for defendants: Municipal Employees' Annuity & Benefit Fund of Chicago and the Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago

Dated: April 29, 2016

George A. Luscombe III

12929 3323 AAP A.W.W. 3372 2871

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Rochelle Carmichael; June Davis; Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO; Plaintiffs-Appellants, v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Municipal Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago; Public School Teachers' Pension & Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension & Retirement Fund of Chicago; Defendants-Appellees, And State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, Intervenor-Defendant-Appellee.	Case No. in the Circuit Court of Cook County: Case No. 12-CH-37712 Hon. Celia G. Gamrath & Hon. Mary L. Mikva, Judges Presiding

NOTICE OF APPEAL

Plaintiffs-Appellants Rochelle Carmichael; June Davis; Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO hereby appeal to the Appellate Court of Illinois, First District the following orders of the Circuit Court of Cook County Illinois, County Department, Chancery Division, Case No. 12-CH-37712, Judges Celia G. Gamrath and Mary L. Mikva presiding:

1. Plaintiffs-Appellants appeal the June 7, 2017, Memorandum Opinion and Order ("June 7, 2017, Order") and the Final Amended Memorandum Opinion and Order on Reconsideration, dated July 14, 2017 (the "Final Amended Order"), with regard to the following Counts of Plaintiffs-Appellants' Complaint or First Supplemental Complaint. The July 14, 2017, Final Amended Order, which amended and superseded the June 7, 2017, Order, certified these issues for appeal under Ill. Sup. Ct. R. 304(a).

    a. **Count X (Declaratory Judgment – 40 ILCS 5/8-226(c)(3) Proviso Does Not Apply to the CTU Defined Contribution Plan):** The June 7, 2017, Order and the Final Amended Order denied Plaintiffs-Appellants' cross-motion for summary judgment and granted the cross-motion for summary judgment by Defendants-Appellees' Municipal Employees' Annuity & Benefit Fund of Chicago ("MEABF") and Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago ("MEABF Board") with regard to Count X. Plaintiffs-Appellants respectfully pray that these orders be reversed as to this Count, granting summary judgment in favor of Plaintiffs-Appellants, and that the case be remanded to the Circuit Court for appropriate proceedings.

    b. **Count XII (Declaratory Judgment – 40 ILCS 5/8-226(c)(3) Proviso Does Not Apply to Defined Contribution Plans):** The June 7, 2017, Order and the Final Amended Order denied Plaintiffs-Appellants' cross-motion for summary judgment and granted the cross-motion for summary judgment by Defendants-Appellees MEABF and MEABF Board with regard to Count XII. Plaintiffs-Appellants respectfully pray that these orders be reversed as to this Count, granting summary judgment in favor of Plaintiffs-Appellants, and that the case be remanded to the Circuit Court for appropriate proceedings.

c. **Count XIII (Declaratory Judgment – Breach of Contractual Rights):** The June 7, 2017 Order and the Final Amended Order denied Plaintiffs-Appellants' cross-motion for summary judgment and granted the cross-motions for summary judgment by Defendants-Appellees MEABF and MEABF Board and by Defendants-Appellees Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("LABF") and Retirement Board of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago ("LABF Board") and by Intervenor-Defendant-Appellee State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois ("State") with regard to Count XIII. Plaintiffs-Appellants respectfully pray that these orders be reversed as to this Count, granting summary judgment in favor of Plaintiffs-Appellants, and that the case be remanded to the Circuit Court for appropriate proceedings.

d. **Count XIV (Declaratory Judgment – Estoppel):** The June 7, 2017 Order and the Final Amended Order denied Plaintiffs-Appellants' cross-motion for summary judgment and granted the cross-motions for summary judgment by Defendants-Appellees MEABF and MEABF Board and Defendants-Appellees LABF and LABF Board, and by Intervenor-Defendant-Appellee State with regard to Count XIV. Plaintiffs-Appellants respectfully pray that these orders be reversed as to this Count, granting summary judgment in favor of Plaintiffs-Appellants, and that the case be remanded to the Circuit Court for appropriate proceedings.

2. Plaintiffs-Appellants appeal the Order and Opinion dated September 29, 2014 ("Sept. 29, 2014 Order & Opinion"), with regard to the following Counts in Plaintiff-Appellants' Complaint. The July 14, 2017, Final Amended Order certified these issues for appeal under Ill. Sup. Ct. R. 304(a).

   a. **Counts IV.A through IV.E (Constitutional Challenges to Public Act 97-0651 Amendments to 40 ILCS 5/8-138(g-1) and 40 ILCS 5/8-233(e) Eliminating Right to Pension Benefits Based on a Union Salary Earned While on Leave of Absence):** The Sept. 29, 2014 Order & Opinion dismissed with prejudice Plaintiffs-Appellants' Counts IV.A through IV.E of Plaintiffs-Appellants' Complaint, granting the motions to dismiss by Defendant-Appellees MEABF and MEABF Board and by Intervenor-Defendant-Appellee State. Plaintiffs-Appellants respectfully pray that this order be reversed as to these Counts, thereby reinstating the Counts, and the case be remanded to the Circuit Court for appropriate proceedings.

   b. **Counts V.A through V.E (Constitutional Challenges to Public Act 97-0651 Amendments to 40 ILCS 5/11-134(f-1) and 40 ILCS 5/11-217(e) Eliminating Right to Pension Benefits Based on a Union Salary Earned While on Leave of Absence):** The Sept. 29, 2014 Order & Opinion dismissed with prejudice Plaintiffs-Appellants' Counts V.A

through V.E of Plaintiffs-Appellants' Complaint, granting the motions to dismiss by Defendant-Appellees LABF and LABF Board and by Intervenor-Defendant-Appellee State. Plaintiffs-Appellants respectfully pray that this order be reversed as to these Counts, thereby reinstating the Counts, and the case be remanded to the Circuit Court for appropriate proceedings.

Respectfully submitted,

Rochelle Carmichael; June Davis, Zeidre Foster; Oscar Hall; Anthony Lopez; Kathleen Mahoney; Joseph Notaro; Michael Senese; David Torres; The Chicago Teachers Union, Local 1, American Federation of Teachers, AFL-CIO; Local 1001, Laborers' International Union of North America, AFL-CIO; and Local 9, International Brotherhood of Electrical Workers, AFL-CIO

Dated: August 9, 2017

One of Plaintiffs-Appellants' Attorneys

J. Peter Dowd
Justin J. Lannoye
George A. Luscombe III
DOWD, BLOCH, BENNETT
CERVONE, AUERBACH & YOKICH
8 South Michigan Avenue, 19th Floor
Chicago, Illinois 60603
(312) 372-1361 – Telephone
(312) 372-6599 – Facsimile
Primary Email:
gluscombe@laboradvocates.com
Secondary Email:
jpdowd@laboradvocates.com
Secondary Email:
efile@laboradvocates.com
Firm I.D. Number: 12929

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF FILING & SERVICE

I George A. Luscombe III, an attorney, certify that on August 9, 2017, I caused the foregoing *Notice of Appeal* to be filed with the Clerk of the Circuit Court of Cook County Illinois, County Department, Chancery Division and true and correct copies of the same to be served by email and by U.S. Mail, postage prepaid, before 5:00 p.m. on the following:

Richard S. Huszagh
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
Email: RHuszagh@atg.state.il.us

Attorneys for Intervenor-Defendant-Appellee: State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois

Cary E. Donham
Graham C. Grady
John F. Kennedy
TAFT, STETTINIUS, & HOLLISTER, LLP
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
Email: cdonham@taftlaw.com

Attorneys for Defendants-Appellees: Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago; Retirement Board of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago

Joseph M. Burns
David Huffman-Gottschling
JACOBS, BURNS, ORLOVE & HERNANDEZ
150 North Michigan Avenue, Suite 1000
Chicago, Illinois 60601
Email: davidhg@jbosh.com

Attorneys for Defendants-Appellees: Public School Teachers' Pension and Retirement Fund of Chicago; and Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago

Mary Patricia Burns
Vincent D. Pinelli
Larisa L. Elizondo
BURKE BURNS & PINELLI, LTD.
70 W. Madison Ave., Suite 4300
Chicago, Illinois 60602
Email: vpinelli@bbp-chicago.com

Attorneys for Defendants-Appellees: Municipal Employees' Annuity & Benefit Fund of Chicago and the Retirement Board of the Municipal Employees' Annuity & Benefit Fund of Chicago

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

the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: August 9, 2017

George A. Luscombe III

Index to Supplement to the Common Law Record on Appeal