

No. 125330

IN THE SUPREME COURT OF ILLINOIS

WILLIAMSON COUNTY BOARD OF)	
COMMISSIONERS, a body politic and)	
Corporate; ROBERT GENTRY;)	
RONALD M. ELLIS, and JAMES D.)	
MARLO,	)	On Appeal from the First Judicial
	)	Circuit Court, Williamson County
Plaintiffs-Appellees,)	
	)	Circuit Court Case No.: 18MR215
vs.)	
	)	Honorable Jeffrey Goffinet, Judge
BOARD OF TRUSTEES OF THE	)	Presiding
ILLINOIS MUNICIPAL RETIREMENT)	
FUND, et al.)	
)	
Defendants-Appellants.		

OPENING BRIEF AND APPENDIX OF THE DEFENDANTS-APPELLANTS

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ORAL ARGUMENT REQUESTED

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II. NATURE OF THE CASE AND JUDGMENT APPEALED FROM

Plaintiffs brought this action to seek reversal of a final administrative decision by the Defendant, Illinois Municipal Retirement Fund (“IMRF” or the “Fund”) Board of Trustees, which terminated Plaintiffs Robert Gentry, Ronald Ellis, and James Marlo’s participation in the Fund in their capacities as Williamson County Commissioners. IMRF terminated the individual Plaintiffs’ participation in the Fund based on the Williamson County Board of Commissioners’ failure to comply with the terms of Section 7-137.2(a) of the Illinois Pension Code.

The circuit court entered judgment reversing the decision of the IMRF Board of Trustees, ruling that Public Act 99-900, which enacted Section 7-137.2(a), violates Article XIII Section 5 of the Illinois Constitution. Defendant appealed from the circuit court judgment that found Section 7-137(a) to be unconstitutional. No questions are raised on the pleadings.

III. ISSUE PRESENTED FOR REVIEW

The issue presented for this Court’s determination is whether Section 7-137.2(a) of the Illinois Pension Code violates Article XIII, Section 5 of the Illinois Constitution.

IV. JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 302(a) because the circuit court’s judgment found an Illinois statute to be invalid. The circuit court entered judgment finding a portion of Public Act 99-900 to be unconstitutional on August 29, 2019. (C219-226) ¹. Defendants timely filed their notice of appeal on September 24, 2019. (C227). After remand pursuant to Illinois Supreme Court Rule 302(c) the circuit

¹ Common Law Record filed on December 2, 2019.

court issued an amended judgment on November 25, 2019, clarifying its finding of unconstitutionality. (C245-254).

V. STATUTES INVOLVED

The text of Sections 7-137 and 7-137.2 of the Illinois Pension Code (40 ILCS 5/7-137; 7-137.2), as amended by Public Act 99-900 and effective August 26, 2016, provide, in pertinent part:

§ 7-137. Participating and covered employees.

* * *

(b) The following described persons shall not be considered participating employees eligible for benefits from this fund, but shall be included within and be subject to this Article (each of the descriptions is not exclusive but is cumulative):

1. Any person who occupies an office or is employed in a position normally requiring performance of duty during less than 600 hours a year for a municipality (including all instrumentalities thereof) or a participating instrumentality. . . ;

2. Except as provided in items 2.5 and 2.6, any ~~Any~~ person who holds elective office unless he has elected while in that office in a written notice on file with the board to become a participating employee;

2.5. Except as provided in item 2.6, any person who holds elective office as a member of a county board, unless:

(i) the person was first elected as a member of a county board before the effective date of this amendatory Act of the 99th General Assembly;

(ii) the person has elected while in that office, in a written notice on file with the board, to become a participating employee;

(iii) the county board has filed the resolution required by subsection (a) of Section 7-137.2 of this Article; and

(iv) the person has submitted the required time sheets evidencing that the person has met the hourly standard as required by subsection (b) of Section 7-137.2 of this Article.

2.6. Any person who is an elected member of a county board and is first so elected on or after the effective date of this amendatory Act of the 99th General Assembly;

* * *

(e) Any participating municipality or participating instrumentality . . . may, by a resolution or ordinance duly adopted by its governing body, elect to exclude from participation and eligibility for benefits all persons who are employed after the effective date of such resolution or ordinance and who occupy an office or are employed in a position normally requiring performance of duty for less than 1000

hours per year for the participating municipality (including all instrumentalities thereof) or participating instrumentality except for persons employed in a position normally requiring performance of duty for 600 hours or more per year (i) by such participating municipality or participating instrumentality prior to the effective date of the resolution or ordinance and (ii) by a participating municipality or participating instrumentality, which had not adopted such a resolution when the person was employed, and the function served by the employee's position is assumed by another participating municipality or participating instrumentality. . . . The election made by the resolution or ordinance shall take effect at the time specified in the resolution or ordinance, and once effective shall be irrevocable.

§ 7-137.2. Participation by elected member of county boards.

(a) An elected member of a county board is not eligible to participate in the Fund with respect to that position unless the county board has adopted a resolution, after public debate and in a form acceptable to the Fund, certifying that persons in the position of elected member of the county board are expected to work at least 600 hours annually (or 1000 hours annually in a county that has adopted a resolution pursuant to subsection (e) of Section 7-137 of this Code). The resolution must be adopted and filed with the Fund no more than 90 days after each general election in which a member of the county board is elected.

(b) An elected member of a county board that participates in the Fund with respect to that position shall monthly submit, to the county fiscal officer, time sheets documenting the time spent on official government business as an elected member of the county board. The time sheets shall be (1) submitted on paper or electronically, or both, and (2) maintained by the county board for 5 years. An elected member of a county board who fails to submit time sheets or fails to conduct official government business with respect to that position for either 600 hours or 1000 hours (whichever is applicable) annually shall not be permitted to continue participation in the Fund as an elected member of a county board. The Fund may request that the governing body certify that an elected member of a county board is permitted to continue participation with respect to that position.

Article XIII, Section 5 of the Illinois Constitution provides as follows:

Section 5. Pension and Retirement Rights

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. art. XIII, § 5.

VI. STATEMENT OF FACTS

On August 26, 2016, Public Act (P.A.) 99-900 was signed into law, updating Section 7-137 and creating Section 7-137.2 of the Illinois Pension Code. P.A. 99-900 had three components: (1) excluding from IMRF participation all county board members first elected after August 26, 2016 (40 ILCS 5/7-137(b)(2.6)); (2) requiring all county boards to certify within 90 days of each general election that their county board members are required to work sufficient hours to meet the hourly standard for IMRF participation (40 ILCS 5/7-137.2(a)); and (3) requiring county board members who participate in IMRF to submit monthly time sheets to show whether they meet the annual hourly standard (40 ILCS 5/7-137.2(b)).

On August 30, 2016, a mere four days after P.A. 99-900 was signed into law, IMRF issued Special Memorandum #334 to the authorized agent of every county in Illinois. (C74-76, 131-133). The authorized agent is an individual at every IMRF participating employer who is designated to act on behalf of the employer. *See* 40 ILCS 5/7-135. One of the duties of an authorized agent is “[t]o forward promptly to all participating employees any communications from the fund for such employees.” 40 ILCS 5/7-135. Because the provisions of P.A. 99-900 only apply to elected county board members, the Special Memorandum was only sent to county employers rather than other local government employers who also participate in IMRF. The authorized agent for Williamson County received Special Memorandum #334, but did not open it until March 3, 2017—more than six months after IMRF sent the memorandum and well after the 90 day period for adopting the resolution had already passed. (C61, 135). Special Memorandum #334 explained that in order for a county board member to be eligible for participation in IMRF, the county board must adopt a resolution certifying that the position of county board member will

require the performance of duty of at least that county's hourly standard. (C74-76, 131-133). Since Williamson County adopted the 1000-hour standard in 1982 pursuant to Section 7-137(e) of the Illinois Pension Code, the 1000-hour standard applies to each of the Plaintiffs in this case. Interpreting P.A. 99-900, Special Memorandum #334 explained that the county board resolution must be adopted within 90 days of each election in which a member of the county board is elected or reelected. (C75-76, 133). The memo cautions that "[i]f the County Board fails to adopt the required IMRF participation resolution within 90 days after an election, the entire Board will become ineligible and IMRF participation will end for those Board members in IMRF, as of the last day of the last month in which the resolution could have been adopted." (C75-76, 133). The memo also provided a variety of instructions regarding the timesheet requirements created by Section 7-137.2(b). (C74-76, 131-133). P.A. 99-900 created Section 7-137.2(b) of the Pension Code which requires participating county board members to keep monthly timesheets substantiating their performance of job duties in excess of the applicable hourly standard and to submit such timesheets to the county's fiscal officer. 40 ILCS 5/7-137.2(b). Compliance with the timesheet requirement did not impact Plaintiffs' eligibility for IMRF participation. Therefore, only the requirement that a county board adopt a resolution certifying the eligibility of the position of elected county board member within 90 days of an election pursuant to Section 7-137.2(a) is at issue before this Court.

In addition to Special Memorandum #334, IMRF sent a direct mailing to every individual county board member who was participating in IMRF when P.A. 99-900 took effect. Three nearly identical letters were drafted, each addressing a different hourly standard scenario. The first version addressed those county board members representing

counties under the 600-hour standard. (C109-111). The second version addressed those county board members who were initially elected under the 600-hour standard, but their respective counties had since adopted the 1000-hour standard. (C112-114). This group of individuals did not receive the third version of the letter because they were grandfathered under the 600-hour standard on an individual basis. Finally, the third version of the letter addressed those county board members who represent counties at the 1000-hour standard. (C115-117). Plaintiffs were subject to the 1000-hour standard, so they were mailed the third version of the letter on September 9, 2016 as shown by the Plaintiffs' names appearing at the bottom of the mass mailing list on page 128 of the Common Law Record. (C128).

During the administrative appeal and at the circuit court level, Plaintiffs deny receiving the letters sent to individual board members. (C102-105). However, they acknowledged the fact that they began filing monthly timesheets in compliance with P.A. 99-900 shortly after the law went into effect. (C87). Plaintiffs' awareness of and compliance with the timesheet requirement must mean that they received notice and had specific knowledge of at least a portion of the requirements of P.A. 99-900.

On November 8, 2016, Plaintiff Gentry was reelected to the Williamson County Board. His reelection triggered the 90 day window during which the County was required to adopt a resolution certifying that the position of elected county board member required the performance of duty in excess of 1000 hours per year. The 90 day window closed on February 6, 2017. Williamson County adopted a resolution related to the County's elected officials' participation in IMRF on February 23, 2017, after the time period for certifying the position of elected county board member pursuant to Section 7-137.2(a) had already closed. (C72).

VII. PROCEDURAL BACKGROUND

On March 9, 2017, IMRF notified each individual Plaintiff that the Williamson County Board of Commissioners did not adopt, within 90 days of the 2016 general election, a resolution certifying that its members are expected to work at least 1000 hours per year. The written notice explained that the individual Plaintiffs were no longer eligible for IMRF participation and were given administrative appeal rights. (C69-71). Plaintiffs timely exercised their right to appeal. (C77). On June 26, 2017, Plaintiffs submitted a written argument along with supporting documentation through their attorneys. (C85-104). IMRF then provided Plaintiffs with additional information substantiating its efforts to notify individual county board members and the county board itself of P.A. 99-900 being enacted into law. (C105-137). Upon doing so, IMRF allowed Plaintiffs to submit a supplemental argument specific to the new documentations, which the Plaintiffs once again did through their attorneys. (C138-144).

A hearing was held on March 14, 2018. Plaintiffs appeared in person and explained the basis of their appeal through counsel. (C60). Plaintiffs' argument regarding the constitutionality of P.A. 99-900 was preserved for appeal and was not decided by the IMRF Board of Trustees at the administrative appeal stage because an administrative agency cannot declare any portion of its governing statute to be unconstitutional. *See Bd. of Ed. of Peoria Sch. Dist. No. 150 v. Peoria Fed'n of Support Staff*, 2013 IL 114853, ¶ 38 (2013). Without addressing the issue of constitutionality, the hearing officer who presided over the hearing issued a recommended decision to affirm the staff determination terminating the Plaintiffs' participation in IMRF effective as of February 28, 2017. (C58-65). The IMRF Board of Trustees adopted the recommended decision of the hearing officer on May 18, 2018. (C55-57).

Plaintiffs filed a two-count amended complaint in Williamson County Circuit Court on October 2, 2018. Count I sought administrative review of the administrative decision by the IMRF Board of Trustees. Count II sought a declaration that P.A. 99-900 violates Article XIII, Section 5 of the Illinois Constitution. (C42-51). The circuit court issued a judgment finding P.A. 99-900 unconstitutional on August 29, 2019. (C219-226). IMRF timely filed its appeal on September 24, 2019. (C227). After remand from this Court to draft an opinion in compliance with Supreme Court Rule 18 (C243), the circuit court issued an Amended Judgment on November 25, 2019 clarifying its ruling and finding of unconstitutionality. (C245-254). The circuit court made clear that its ruling was based solely on the unconstitutionality of Section 7-137.2(a) of the Illinois Pension Code—the portion of P.A. 99-900 that requires certification of county board member eligibility within 90 days of a general election. The circuit court did not render an opinion on the remaining portions of P.A. 99-900 and did not render a decision based on the administrative review count of Plaintiffs' First Amended Complaint. (C254). Therefore, the sole issue before this Court is whether the portion of Public Act 99-900 that created Section 7-137(a) of the Illinois Pension Code violates Article XIII, Section 5 of the Illinois Constitution.

VIII. ARGUMENT

The signing of P.A. 99-900 into law did not terminate the Plaintiffs' participation in IMRF. The individual Plaintiffs were terminated from IMRF participation because the Williamson County Board of Commissioners failed to certify that the position of elected member the county board continued to meet the hourly standard required for IMRF participation. An IMRF participating employer always had an obligation to certify the eligibility of its employees and elected officials in order for persons in those positions to qualify for IMRF participation. Section 7-137.2(a) codified a method by which the

eligibility of the position of elected county board must be certified, but it did not change the underlying eligibility requirements. Therefore, Section 7-137.2(a) neither diminishes nor impairs protected public pension benefits. This Court should affirm the constitutionality of Section 7-137.2(a) and the IMRF decision to terminate the Plaintiffs' participation in the Fund for failure to timely certify the eligibility of their positions.

a. The Plaintiffs' pension benefits were neither diminished nor impaired by the enactment of Section 7-137.2(a); therefore, Section 7-137.2(a) does not violate the pension protection clause.

This Court applies a *de novo* standard of review when determining the applicability and effect of the pension protection clause. *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶ 53 (citing *Hawthorne v. Vill. of Olympia Fields*, 204 Ill. 2d 243, 254-255 (2003)). A statute is presumed to be constitutional whenever it is reasonably proper to do so. *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 47 (citing *Wilson v. Dep't of Rev.*, 169 Ill. 2d 306, 310 (1996)). The party challenging the validity of a statute bears the burden of rebutting its constitutionality. *Kanerva v. Weems*, 2014 IL 115811 ¶ 34 (citing *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112637, ¶ 33). However, when the challenging party has proven that the General Assembly has exceeded the scope of its power, a court is obligated to declare the unconstitutional provisions invalid. *Id.* (citing *Maddux v. Blagojevich*, 233 Ill. 2d 508, 528 (2009)).

It is undisputed that the pension protection clause requires Illinois pension systems to pay pension benefits and prohibits those benefits from being reduced. The pension protection clause, codified in Article XIII, Section 5 of the Illinois Constitution, provides:

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. The solution set forth in the pension protection clause “was to protect the benefits of membership in public pension systems not by dictating the specific funding levels, but by safeguarding the benefits themselves.” *Jones v. Mun. Emps. Annuity and Benefit Fund of Chi.*, 2016 IL 119618, ¶ 9 (quoting *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 15). This Court has explained that “the clause means precisely what it says: ‘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.’” *In re Pension Reform Litig.*, 2015 IL 118585, ¶ 45 (quoting *Kanerva*, 2014 IL 115811, ¶ 38). In order to determine whether Section 7-137.2(a) violates the pension protection clause, this Court must first identify whether the Plaintiffs’ continued participation in IMRF is a benefit of the enforceable contractual relationship resulting from their prior membership in IMRF. If the answer is in the affirmative, then this Court must determine whether the enactment of Section 7-137.2(a) diminished or impaired that benefit. In reviewing the vast body of case law interpreting the pension protection clause, this Court will find that unlike all previous laws that were stricken down, the enactment of Section 7-137.2(a), on its own, did not change the Plaintiffs’ pension rights. Instead, it specified a process for employers to make a certification that employers were already required to make under the Illinois Pension Code. Thus this Court should uphold the constitutionality of Section 7-137.2(a) of the Illinois Pension Code.

i. Continued participation in IMRF while in a non-qualifying position is not a contractual benefit afforded to the individual Plaintiffs by virtue of their prior eligibility for IMRF participation.

Positions that do not meet the eligibility requirements for IMRF participation are not entitled to IMRF service credit. This is true even if the position had once met the requirements for participation but no longer does. Sections 7-137 and 7-137.2 set forth the eligibility requirements for IMRF participation. In general, a person is eligible for IMRF participation if the person meets the definition of employee in Section 7-109 and his or her position is expected to meet the applicable hourly standard. (40 ILCS 5/7-137). The hourly standard for Williamson County employees is 1000 hours per year. Therefore, any employee in a position expected to work at least 1000 hours in a year must participate in IMRF. (40 ILCS 5/7-137(a)). Any individuals who are expected to work less than 1000 hours per year are specifically excluded from IMRF participation. (40 ILCS 5/7-137(b)(1)). Elected officials, however, are treated differently. Even if an elected official holds an office which is expected to meet the hourly standard, the elected official must choose to participate in IMRF. Until an elected official “opts-in” to IMRF, they do not participate in the Fund regardless of whether their position is expected to meet the hourly standard. (40 ILCS 5/7-137(a)(3)).

The methods for certifying the eligibility of a non-elected employee position versus an elected official position are different. Although the IMRF Board of Trustees has the authority to make final administrative decisions on participation and coverage in the Fund for all participants (40 ILCS 5/7-200), the authorized agent at an IMRF participating employer plays an important role. An authorized agent is a designated individual at each IMRF participating employer who has certain powers and duties to act

on behalf of the participating employer. (40 ILCS 5/7-135(b)). One of the powers and duties provided to the authorized agent is “[t]o certify to the fund whether or not a given person is authorized to participate in the fund.” (40 ILCS 5/-135(b)(1)). Based on the preceding authority in the Pension Code, for the entire history of IMRF, authorized agents have certified that particular employment positions meet the hourly standard. To the extent that IMRF learns of an authorized agent making an erroneous certification, IMRF rejects the enrollment, removes any erroneous service credit, and allows all aggrieved parties the right to file an administrative appeal. However, the expected hours worked for elected members of a governing body, such as a county board, have been certified through an alternative process.

The IMRF Board, pursuant to authority granted by statute (40 ILCS 5/7-198), first adopted an administrative rule in 1968 requiring that the governing body of a participating employer adopt a resolution certifying that the position of elected governing body member required the hourly standard in order for any individual member of the governing body to participate in IMRF. (Ill. Mun. Ret. Fund Bd. Resol. No. 1968-7273 (Nov. 22, 1968) *superseded by* Ill. Mun. Ret. Fund Bd. Resol. No. 2019-05-09(d) (May 17, 2019)). Whereas an individual authorized agent could certify the eligibility of an employee, the eligibility of elected governing body positions required action at a public meeting by the employer’s governing body. This is due to the unique nature of governing body positions, which have no direct oversight by an employer. Prior to P.A. 99-900 adding Section 7-137.2(a) to the Illinois Pension Code, the certification of elected official eligibility by governing body resolution was imposed by IMRF administrative rule. P.A. 99-900 incorporated the certification of eligibility by resolution for a subset of elected

officials—elected members of a county board— and implemented a recertification deadline of 90 days after a general election in which a county board member is elected. (40 ILCS 5/7-137.2(a)).

Neither the Plaintiffs nor the circuit court contest IMRF's authority to adopt an administrative rule requiring certification of eligibility for elected officials through an employer resolution. In fact, the Plaintiffs rely on Williamson County's previous compliance with the resolution requirement as support for their position. (C160). Plaintiffs nonetheless contend that the General Assembly did not have the same authority to amend IMRF's enabling statute as IMRF had to adopt an administrative rule regarding the eligibility of elected officials.

Neither IMRF's administrative rule initially adopted in 1968 nor P.A. 99-900 changed the participation requirements for elected county board members—there must have been an expectation that the job duties of the elected county board position required at least the hourly standard. Nevertheless, both that administrative rule and P.A. 99-900 specified how the participation requirements were to be communicated to IMRF. By not adopting a resolution certifying the eligibility of the elected county board members, an employer communicates to IMRF that the positions are not expected to meet the applicable hourly standard.

When an individual is in a position which is no longer expected to meet the hourly standard, then that individual's participation in IMRF is terminated by operation of law. Section 7-137(b)(1) specifically excludes from participation those individuals who are not expected to meet an employer's hourly standard:

The following described persons *shall not* be considered participating employees eligible for benefits from this fund . . . Any person who occupies

an office or is employed in a position normally requiring performance of duty during less than [the applicable hourly standard] for a municipality.

40 ILCS 5/7-137(b)(1) (emphasis added). There is no legal basis for a person in a non-qualifying position to continue participation in IMRF. Positions change over time, so IMRF recommends that all positions be reevaluated at least on an annual basis in order to verify that positions should continue participating in IMRF:

Employer audits have found that, over time, positions (and the number of hours an employee works) change. The change can affect whether that position qualifies for IMRF. Therefore, it is important to review both participating and non-participating positions on an annual basis to determine if the position continues to meet/exceed your employer's hourly standard for IMRF participation.

“General Requirements for IMRF Coverage (600 or 1,000 Hour Standard)” § 3.65A III.

Mun. Ret. Fund Authorized Agent's Manual, [https://www.imrf.org/AAmanual/](https://www.imrf.org/AAmanual/Online_AA_Manual/aamanual.htm)

[Online_AA_Manual/aamanual.htm](https://www.imrf.org/AAmanual/Online_AA_Manual/aamanual.htm). Just as IMRF requires its employers to certify the continued eligibility of employment positions, Section 7-137.2(a) requires county boards to certify the continued eligibility of elected county board members. Plaintiffs erroneously contend that once they initially became participants in IMRF as elected county commissioners, they had an enforceable contractual right to continued participation in the Fund regardless of whether the eligibility of the position changed. Such a broad interpretation of the pension protection clause creates absurd results where an individual need only qualify for participation once and then be entitled to future participation for an indefinite amount of time. Moreover, it would require IMRF to exceed its statutory authority by granting service credit where the Illinois Pension Code does not authorize it to do so. Therefore, participation in a pension fund while in a non-qualifying position is not a pension benefit entitled to the constitutional protections of the pension protection clause.

ii. The enactment of Section 7-137.2(a) did not diminish, impair, or otherwise impact Plaintiffs' pension benefits.

Assuming *arguendo* that the Plaintiffs' continued participation in IMRF was a benefit entitled to constitutional protection, the constitutionality of Section 7-137.2(a) must nonetheless be affirmed. This case is fundamentally different than every other case in which this Court has found a statutory change to violate the pension protection clause. The adoption of Section 7-137.2(a), on its own, did not diminish or impair Plaintiffs' pension benefits. In every prior pension protection clause case, the plaintiffs had lesser benefits as soon as the statutory change was signed into law. In this case, the Plaintiffs' benefits on the day P.A. 99-900 was signed were the same as their benefits were the day before it was signed. Unlike all of the preceding pension protection clause cases, it took an intervening act (or failure to act) by Williamson County in order for the Plaintiffs' pension benefits to be impacted.

In *Felt v. Board of Trustees of the Judges Retirement System*, this Court held that a statutory change which altered the base salary for pension benefit calculations violated the pension protection clause. 107 Ill. 2d 158, 162-63 (1985). As soon as the General Assembly adopted the amendment to Section 18-125 of the Illinois Pension Code, the benefits that the *Felt* plaintiffs were entitled to were reduced. *Id.* at 162. In *Buddell v. Board of Trustees of the State University Retirement System*, this Court held that a statutory change which precluded the purchase of military service credit violated the pension protection clause. 118 Ill. 2d 99, 106 (1987). As soon as the General Assembly adopted the amendments to Section 15-113(1)(i) of the Illinois Pension Code, Buddell was foreclosed from purchasing military service credit. *Id.* In *Kanerva v. Weems*, this Court held that the statutory change eliminating the minimum standards for the state's

contributions to health insurance premiums for retirees violated the pension protection clause. 2014 IL 115811, ¶ 57. As soon as the General Assembly adopted P.A. 97-695, the annuitants in the State Employees' Retirement System, the State Universities Retirement System, and the Teachers' Retirement System of the State of Illinois were entitled to lesser State contributions to their health insurance premiums. *Id.* at 13.

When this Court considered *In re Pension Reform Litigation*, this Court struck down the various benefit reductions included in the pension reform statute as being in violation of the pension protection clause. 2015 IL 118585, ¶ 47. As soon as the General Assembly adopted P.A. 98-599, the annual benefits for the members of the five state retirement systems were immediately reduced. *Id.* at ¶ 27. This Court reached the same conclusion for similar reasons when considering the benefit reductions in P.A. 98-641 for the City of Chicago pension funds. *Jones v. Mun. Employees' Annuity and Benefit Fund of Chi.*, 2016 IL 119618, ¶ 61. As soon as the General Assembly adopted P.A. 98-641, the benefits that Chicago retirees were entitled to were reduced. *Id.* at ¶ 18. Finally, in *Carmichael v. Laborers' & Retirement Board Emps.' Annuity & Benefit Fund of Chicago*, this Court held that the statutory changes eliminating the eligibility of service credit and salary earned while working for a union violated the pension protection clause. 2018 IL 122793, ¶ 65. As soon as the General Assembly adopted P.A. 97-651, the benefits for the *Carmichael* plaintiffs were immediately reduced. *Id.* at ¶¶ 8-9. In each of these cases, this Court looked at the statutory change at issue and found that the statutory change caused the plaintiffs' benefits to be diminished or impaired. The same cannot be said about P.A. 99-900 in this case.

On August 26, 2016, P.A. 99-900 was signed into law. On August 27, 2016, the Plaintiffs continued to be participating members of IMRF accruing service credit at the same rate and at the same salary that they had been accruing prior to P.A. 99-900 becoming law. Similarly, the underlying eligibility requirements for IMRF participation also remained the same: the Plaintiffs were required to be in a position ordinarily requiring the performance of duty for at least 1000 hours per year.

When Williamson County failed to adopt the required resolution within the time period required by Section 7-137.2(a), it communicated to IMRF that the position of county commissioner was not expected to work at least 1000 hours annually. Section 7-137.2(a) did not disqualify the Plaintiffs from continued IMRF participation; the Williamson County Board's inaction disqualified the Plaintiffs from continued IMRF participation. Regardless of P.A. 99-900, if IMRF ever learned that Plaintiffs' positions no longer required at least 1000 hours annually, their participation in IMRF would have been terminated. The only change that occurred as a result of Section 7-137.2(a) was the mechanism by which county boards communicated to IMRF that the position of elected county board member required the number of hours necessary for IMRF participation. This is similar to an employer notifying IMRF that it has changed a full-time position to a part-time position which is no longer eligible for IMRF participation. In this case, Williamson County notified IMRF that the position of elected county commissioner no longer qualified for IMRF participation when the county board did not adopt the resolution required by Section 7-137.2(a). This Court has never found a statute to violate the pension protection clause where failure to comply with the statute rather than the statute itself caused the diminishment of pension benefits. This Court should reject the

Plaintiffs' invitation to do so in this case. Therefore, the requirement to certify the continued eligibility of elected county board positions found in Section 7-137.2(a) does not violate the pension protection clause where it requires affirmation of existing statutory eligibility requirements.

b. Although it is not relevant to the question of constitutionality, the circuit court erred in finding that Plaintiffs' did not have notice of Public Act 99-900.

Even though due process does not require Plaintiffs to receive individual notice of new legislation, Plaintiffs received notice of P.A. 99-900 in this case. The circuit court issued a judgment based on the constitutionality of P.A. 99-900, but it also made an erroneous factual determination that Plaintiffs had not received notice of P.A. 99-900. (C252). The record and Plaintiffs' own conduct supports the fact that they had notice of P.A. 99-900.

IMRF made attempts to communicate the requirements of P.A. 99-900 to Plaintiffs in no less than two ways. First, IMRF notified the authorized agent for Williamson County of the legal updates via Special Memorandum #334 dated August 30, 2016. (C74-76, 130-134). Section 7-135 of the Illinois Pension Code provides that one of the duties of the authorized agent is to "forward promptly to all participating employees any communications from the fund for such employees." 40 ILCS 5/7-135(b)(5). As such, IMRF could presume that the authorized agent fulfilled their duties under the Pension Code by conveying the information to Plaintiffs.

Second, IMRF mailed letters notifying individual county board members of the new legal requirements on September 9, 2016. (C124-128). Although Plaintiffs deny being notified of P.A. 99-900, they must have become aware of its requirements when they each began filing the monthly timesheets required by another portion of P.A. 99-

900, the newly created Section 7-137.2(b). (C61, 87). In the Plaintiffs' own words as submitted during the administrative appeal before the IMRF Board of Trustees:

Williamson County thereafter began taking necessary steps to become compliant with the changes to remain participating in IMRF. *The County Commissioners began completing the required time sheets* and submitting them to the County Clerk who in turn contacted IMRF for direction on where to submit those only to be told those were to be filed with the county's own records.

(C87) (emphasis added). Based on Plaintiffs' remarks, it is clear that they had notice of P.A. 99-900.

Although IMRF was not required to provide notice of the legislative change to the Plaintiffs, they nonetheless received notice in this case either directly from IMRF or through the Williamson County authorized agent. Thus, the circuit court erred in finding that there was no evidence in the record that the Plaintiffs received notice of P.A. 99-900. Plaintiffs, by their own conduct, had knowledge of the requirements of P.A. 99-900. Therefore, this Court should affirm the constitutionality of Section 7-137.2(a) and affirm the IMRF administrative decision to terminate Plaintiffs' participation in the Fund.

IX. CONCLUSION

For the foregoing reasons, it is submitted that Section 7-137.2(a) as enacted by P.A. 99-900 does not violate the pension protection clause of the Illinois Constitution where it does not diminish or impair a pension benefit entitled to constitutional protection. Unlike all other statutory provisions that have been held unconstitutional by this Court, P.A. 99-900 did not alter the pension benefits that Plaintiffs were entitled to. Instead, Williamson County's failure to certify the continued eligibility of the position of elected county board member caused the Plaintiffs to lose their IMRF eligibility. Therefore, this Court should affirm the constitutionality of P.A. 99-900 and affirm the IMRF final administrative

decision terminating the Plaintiffs' participation in the Fund for failure to comply with Section 7-137.2(a).

Respectfully submitted,

**ILLINOIS MUNICIPAL RETIREMENT
FUND BOARD OF TRUSTEES,**

By: /s/Vladimir Shuliga, Jr.
Associate General Counsel

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No. 125330

 IN THE SUPREME COURT OF ILLINOIS

WILLIAMSON COUNTY BOARD OF)	
COMMISSIONERS, a body politic and)	
Corporate; ROBERT GENTRY;)	
RONALD M. ELLIS, and JAMES D.)	
MARLO,	)	Appeal from the First Judicial
	)	Circuit, Williamson County
Plaintiffs-Appellees,)	
	)	Circuit Court Case No.: 18MR215
vs.)	
)	
BOARD OF TRUSTEES OF THE)	
ILLINOIS MUNICIPAL)	
RETIREMENT FUND, et al.)	
)	
Defendants-Appellants.)	

 NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE that on January 6, 2020, I caused to be electronically filed the attached Opening Brief and Appendix of Defendants-Appellants and this Notice of Filing with the Clerk of the Supreme Court of Illinois through the Odyssey eFileIL electronic filing service provider, a copy of which is attached hereto and served upon you.

Respectfully submitted,

Board of Trustees of the Illinois
Municipal Retirement Fund

By: /s/ Vladimir Shuliga, Jr.
Associate General Counsel

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CERTIFICATE OF SERVICE

I, Vladimir Shuliga, Jr., hereby certify under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that the statements set forth in this instrument are true and correct and that I caused a copy of the attached Opening Brief and Appendix of Defendants-Appellants and this Notice of Filing to be served upon the counsel of record listed below by service through the Odyssey eFileIL electronic service provider and by electronic mail to each email address listed below before 5:00 pm on January 6, 2020.

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CERTIFICATE OF COMPLIANCE

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

/s/ Vladimir Shuliga, Jr.
Attorney for Defendants-Appellants

APPENDIX

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BEFORE THE BOARD OF TRUSTEES OF THE
ILLINOIS MUNICIPAL RETIREMENT FUND

In the Matter of:)
Williamson County Commissioners)
(Ronald Ellis, Robert Gentry &)
James Marlo)) Hearing held March 14, 2018
[Continued Participation in IMRF])

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ronald Ellis, Robert Gentry and James Marlo ("Petitioners") are elected members of the Williamson County Board of Commissioners. Board Exhibits, pages 4-7. Prior to August 26, 2016, each individual was a participant in the Illinois Municipal Retirement Fund ("IMRF") in their capacity as a County Commissioner.¹ Board Exhibits, Pages 4-6. On August 26, 2016, Public Act 99-900 became effective, adding Section 7-137.2 to the Illinois Pension Code. Board Exhibits, Pages 4-6.² Among other requirements,

¹ The Williamson County Board of Commissioners is the functional equivalent of other Illinois county's "county boards."

² Section 7-137.2 of the Illinois Pension Code provides, as follows:

(a) An elected member of a county board is not eligible to participate in the Fund with respect to that position unless the county board has adopted a resolution, after public debate and in a form acceptable to the Fund, certifying that persons in the position of elected member of the county board are expected to work at least 600 hours annually (or 1000 hours annually in a county that has adopted a resolution pursuant to subsection (e) of Section 7-137 of this Code). *The resolution must be adopted and filed with the Fund no more than 90 days after each general election in which a member of the county board is elected.*

(b) An elected member of a county board that participates in the Fund with respect to that position shall monthly submit, to the county fiscal officer, time sheets documenting the time spent on official government business as an elected member of the county board. The time sheets shall be (1) submitted on paper or electronically, or both, and (2) maintained by the county board for 5 years. An elected member of a county board who fails to submit time sheets or fails to conduct official government business with respect to that position for either 600 hours or 1000 hours (whichever is applicable) annually shall not be permitted to continue participation in the Fund as an elected member of a county board. The Fund may request that the governing body certify that an elected member of a county board is permitted to continue participation with respect to that position. (Emphasis added)

Section 7-137.2 mandates that the county adopt a resolution, after each general election in which a county board member is elected, certifying that an elected member of the county board is expected to work the requisite number of hours required for IMRF participation ("hourly standard"). Board Exhibits, Pages 4-6.

The 2016 general election was held on November 8, 2016. Board Exhibits, Page 22. Commissioner Gentry was re-elected at that general election, thereby triggering the need for a new certification resolution. Board Exhibits, page 22. However, the Williamson County Board of Commissioners did not adopt the certification resolution until February 23, 2017, approximately 107 days after the general election. Board Exhibits, Pages 4-6. As a result, on March 9, 2017 the IMRF General Counsel advised each Petitioner that he was no longer eligible to participate in IMRF as of February 28, 2017. Board Exhibits, Pages 4-6. Subsequently, each Petitioner, acting through their attorney, timely appealed the staff decision. Board Exhibits, page 12.

Pursuant to the IMRF Non-Disability Appeal Procedures, a hearing was held on March 14, 2018, before Michael B. Weinstein, the duly designated IMRF Hearing Officer. Copies of all documentation submitted as evidence at this hearing were received into evidence as Board Exhibits, pages 1 through 79, including a three page cover memo from IMRF staff.

(Source: P.A. 99-900, eff. 8-26-16.)

The Petitioners were given proper notice of the hearing. The Petitioners appeared, in person and through their attorneys, Rhett Burke and Williamson County Assistant State's Attorney Wendy Cunningham, and explained the basis for their appeal. Also present at the hearing were Beth Janicki Clark, IMRF General Counsel, Vladimir Shuliga, IMRF Associate General Counsel, Brian Collins, IMRF Executive Director, and Larice Davis, IMRF paralegal.

The Petitioners assert three arguments in support of their position: First, they argue that Public Act 99-900 is unconstitutional, being in violation of Article 13, Section 5 of the Illinois Constitution of 1970 (the "Pension Protection Clause"). Second, they allege that they were not given proper notice of the changes mandated by Public Act 99-900. Finally, they assert that the 90 day requirement is ambiguous.

As a result of this hearing, the Board of Trustees of IMRF finds and determines as follows:

I. EVIDENCE AND TESTIMONY

Review of Written Documentation and Presentation

1. The Petitioners are elected members of the Williamson County Board of Commissioners. Board Exhibits, pages 4-7.
2. Prior to August 26, 2016, each individual was a participant in IMRF in their capacity as a County Commissioner. Board Exhibits, pages 4-6; 37-39.

3. Public Act 99-900 added Section 7-137.2 to the Illinois Pension Code, effective August 26, 2016. Board Exhibits, page 9.

4. IMRF issued Special Memorandum 334, describing Public Act 99-900, on August 30, 2016. Board Exhibits, page 9-11.

5. Using the "Employer Access Secure Messaging System", the Special Memorandum was sent to all IMRF Authorized Agents on August 31, 2016 as part of a "Special Edition" Employer Digest. Presentation by IMRF staff; Board Exhibits, pages 65-69.

6. IMRF records indicate that the Williamson County Authorized Agent received the Employer Digest but did not open it until March 3, 2017. Presentation by IMRF staff, Board Exhibits, pages 69-72.

7. Nevertheless, at some point prior to February 1, 2017, Williamson County began completing the timesheets that are required by Public Act 99-900 (40 ILCS 5/7-137.2(b)). Presentation by Petitioners; Board Exhibits, page 22.

8. On September 9, 2016, IMRF posted a FAQ and sample time sheet with respect to Public Act 99-900. Board Exhibits, page 35.

9. On that same date, a mass mailing, detailing the new requirements contained in Public Act 99-900, was sent to participating County Board members. Presentation by IMRF staff; Board Exhibits, pages 35-36; 42-64.

10. IMRF records show that mailing labels for the mass mailing, including labels for each Petitioner, were created on September 8, 2016.

Board Exhibits, page 63.

11. However, none of the Petitioners received the aforementioned mailing. Presentation by Petitioners; Board Exhibits, pages 37-39; 77-79.

12. Commissioner Gentry was re-elected to the County Board of Commissioners at the general election held on November 8, 2016. Board Exhibits, page 22.

13. On February 23, 2017, the Williamson County Board of Commissioners adopted Resolution 17-02-23-23, "A Resolution Relating to Participation by Elected Officials in the Illinois Municipal Retirement Fund." Presentation by Petitioners; Board Exhibits, pages 7-8; 23; 34.

14. February 23, 2017 was 107 days after the date of the November 2016 election. Presentation by IMRF staff.

15. On March 9, 2017, the Petitioners were notified that, effective February 28, 2017, they were no longer eligible to continue participation in IMRF since the County Board Resolution was not adopted within 90 days of the 2016 general election as required by Public Act 99-900. Board Exhibits, page 4-6.

II. FINDINGS OF FACT

1. The Board finds as fact items 1-15, above.

III. CONCLUSIONS OF LAW

2. The Board of Trustees of IMRF has jurisdiction over the Petitioners' appeals pursuant to Sections 7-146, 7-179, and 7-200 of the Illinois Pension

Code (40 ILCS 5/7-146, 7-179, and 7-200), as well as under the Non-Disability Appeal Procedures that have been adopted by the Board pursuant to Section 7-198 of the Illinois Pension Code (40 ILCS 5/7-198).

3. Under Illinois case law, “administrative agencies have no authority to declare statutes unconstitutional or even to question their validity.” *Board of Education of Peoria School District No. 150 v. Peoria Federation of Support Staff, et al.*, 2013 IL 114853, ¶ 38, 998 N.E.2d 36, 47 (2013).

4. Therefore, the Petitioners’ first argument (*i.e.*, that Public Act 99-900 is unconstitutional) cannot be decided by the Board of Trustees of IMRF.

5. There is no requirement within Public Act 99-900 that necessitates that the Petitioners’ be given personal notice of the changes contained within the Act.

6. On the contrary, Section 7-135(b) 5. of the Illinois Pension Code (40 ILCS 5/7-135(b) 5.) provides that one of the duties of IMRF Authorized Agents is, “[T]o forward promptly to all participating employees any communications from the fund for such employees”.

7. Therefore, any failure to provide notice to the Petitioners’ of the obligations of Public Act 99-900 and, more specifically, the need to adopt a new certification resolution, is due to inaction by the Williamson County Authorized Agent.

8. Public Act 99-900 provides that, “The [certifying] resolution must be adopted and filed with the Fund no more than 90 days after each general

election in which a member of the county board is elected.

9. The phrase “no more than 90 days after each general election” is not ambiguous; the certifying resolution must be adopted and filed with IMRF no more than 90 days after the date that a general election is held.

10. Thus, the certifying resolution had to be adopted and filed no later than February 6, 2017, 90 days after the general election was held in which a county board member (Commissioner Gentry) was elected.

11. Based upon the fact that Williamson County began completing the timesheets that are required by Public Act 99-900 it is more likely than not that the Williamson County Authorized Agent became aware of Public Act 99-900 shortly after its effective date.

12. This conclusion is mandated, notwithstanding court decisions that have held that the language of pension statutes must be liberally construed in favor of the rights of the pensioner. *Matsuda v Cook County Employees' & Officers' Annuity & Benefit Fund*, 178 Ill.2d 360, 365-66, 687 N.E.2d 866, 227 Ill.Dec. 384 (1997).

13. Petitioners have failed to show, by a preponderance of the evidence, that their failure to receive individual notice of the obligations of Public Act 99-900 is attributable to IMRF or that the failure to receive individual notice violates their due process rights under the Illinois Pension Code.

14. Furthermore, the Petitioners have failed to show, by a preponderance of the evidence, that Public Act 99-900 is ambiguous with

respect to the 90 day requirement for the adoption of a new certifying resolution.

IV. DECISION

By reason of the above findings of fact and conclusions of law, and after careful consideration of the evidence, IT IS HEREBY ORDERED by the Board of Trustees of the Illinois Municipal Retirement Fund, in regard to the Petitioners, Ronald Ellis, Robert Gentry and James Marlo, as follows:

The administrative staff determination terminating the Petitioners' participation in IMRF as of February 28, 2017 is hereby affirmed, without deciding the Petitioners' argument with respect to the constitutionality of Public Act 99-900.

This is a final administrative decision, which is reviewable under the terms of the Illinois Administrative Review Law. (*See* 40 ILCS 5/7-220)

These Findings and Decision are adopted this 18th day of May, 2018.

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS**

FILED

NOV 25 2019

Adw. Wi.
CLERK OF THE CIRCUIT COURT

WILLIAMSON COUNTY BOARD)
OF COMMISSIONERS, a body politic and)
Corporate;)
ROBERT GENTRY;)
RONALD M. ELLIS, and)
JAMES D. MARLO,)
Plaintiffs,)

v.)

No. 2018-MR- 215

BOARD OF TRUSTEES OF THE ILLINOIS)
MUNICIPAL RETIREMENT FUND;)
NATALIE COPPER, President and member)
Executive Trustee member of the Board of)
Trustees of the Illinois Municipal)
Retirement Fund;)
ALEX WALLACE, JR., Employee Trustee)
member of the Board of Trustees of the)
Illinois Municipal Retirement Fund;)
DAVID MILLER, Executive Trustee and)
member of the Board of Trustees of the)
Illinois Municipal Retirement Fund;)
SHARON U. THOMPSON, Annuitant)
Trustee and member of the Illinois)
Municipal Retirement Fund;)
GWEN HENRY, Executive Trustee and)
member of the Board of Trustees of the)
Illinois Municipal Retirement Fund;)
TOM KUEHNE, Executive Trustee and)
member of the Board of Trustees of the)
Illinois Municipal Retirement Fund;)
SUE STANISH, Executive Trustee and)
Member of the Board of Trustees of the)
Illinois Municipal Retirement Fund; and)
TRUDY WILLIAMS, Employee Trustee)
and member of the Board of Trustees of the)
Illinois Municipal Retirement Fund;)
Defendants.)

DEC 06 2019

AMENDED JUDGMENT

This cause comes before the Court on the two count Complaint filed by the Plaintiffs County of Williamson Commissioners and Plaintiffs Robert Gentry, Ronald M. Ellis and James D. Marlo. In Count I, which is filed pursuant to the Illinois Administrative Review Act [735 ILCS 5/3-101], Plaintiffs have sought this Court to reverse the decision of the Board of Trustees of the Illinois Municipal Retirement Fund terminating the continued participation of Plaintiffs Gentry, Ellis and Marlo in the Illinois Municipal Retirement Fund based on the Plaintiffs' contentions that the decision (1) violates these Plaintiffs' protected rights under the Illinois Constitution, Article 13, Section 5; (2) violates these Plaintiffs' rights under the United States Constitution to due process; and (3) the decision is inconsistent with Illinois law. In Count II of the Plaintiffs' Complaint, the Plaintiffs seek this Court to judicially declare that Public Act 99-900 is unconstitutional and violative of the Illinois Constitution, Article 13, Section 5, in that that Act allegedly diminishes and impairs vested pension rights and benefits of the Plaintiffs and, in addition, the Act is unconstitutional under the United States Constitution in that the Act allegedly imposes requirements for Plaintiffs' continued participation in IMRF without due process of law.

After review of the record presented and the arguments of counsel, and after remand from the Illinois Supreme to address Supreme Court Rule 18, the Court is fully advised in the premises and finds as follows:

1. Prior to the August, 2016, adoption of Public Act 99-900, elected county board members and other local public officials were permitted under the Illinois Pension Code to be contributing members and participants in the Illinois Municipal Retirement Fund ("IMRF") if (1) the public body had adopted and provided the IMRF Board with a resolution using IMRF Form 6.64 declaring that the county expected its members to meet the minimum hours of annual service required for IMRF participation and (2) the elected official (*i.e.* county board member) had filed with the IMRF Board an election on IMRF Form 6.21 notifying the IMRF

Board of the county board member's election to contribute to and participate as a member of IMRF.

2. Plaintiff Robert Gentry, was first elected and first became a Williamson County Commissioner in 2004. Gentry's first term began December of 2004 and, after Gentry filed IMRF form 6.21 on December 6, 2004, electing to participate IMRF, Gentry became a participating and contributing member of IMRF.
3. Plaintiff Ronald Ellis was first elected and first became a Williamson County Commissioner in 2008. Ellis' first term began December of 2008, and after Ellis filed IMRF form 6.21 on November 12, 2008, Ellis became a participating and contributing member of IMRF.
4. Plaintiff James Marlo was first elected and first became a Williamson County Commissioner in 2012. Marlo's first term began December of 2012 and, after Marlo filed IMRF form 6.21 on November 30, 2012, Marlo became a participating and contributing member of IMRF.
5. The Illinois Municipal Retirement Fund ("IMRF") is a public pension fund recognized by statute as a body politic and corporate. (40 ILCS 5/22-401). It is funded by the contributions of certain public employees, public employers, and investment returns. Participating members receive pension benefits or annuities upon retirement based provisions in the Illinois Pension Code and formulas which consider the employee-member's years of creditable service and the employee's qualifying salary which is a function of the average of the employee's highest years' salary, or in some cases, the employee's salary on the date of retirement.
6. Prior to August of 2016 and through the month of December of 2016, Plaintiffs Gentry, Ellis and Marlo were contributing members and participants in IMRF as a consequence of (1) the County of Williamson's adoption and delivery to the IMRF of IMRF Form 6.64 where the County declared its expectation that its county board members were expected to annually perform in excess of the 1,000 hours of service required for their participation in IMRF and (2) Plaintiffs Gentry's, Ellis'

and Marlo's filing with the IMRF Board these Plaintiffs' election to contribute and participate in the pension fund known as the Illinois Municipal Retirement Fund.

7. In August of 2016, the Illinois legislature amended the Illinois Pension Code by the adoption of P.A. 99-900, which amended the Pension Code in two areas. First, the Act prohibited IMRF participation of county board members who were first elected after the adoption of P.A. 99-900 [See 40 ILCS 5/7-137(b)(2.6)]. This portion of the Act is not at issue in this case.
8. Second, it prohibited the continued IMRF participation of previously serving county board members absent the county board's adoption of a resolution certifying the qualification of its county board member within 90 days of a general election in which a county board seat is up for re-election. 40 ILCS 5/7-137.2(a). IMRF Form 6.64 is the appropriate form resolution which employers use for this re-certification.
9. Section 40 ILCS 5/7-137.2(b), also enacted under P.A. 99-900, is not at issue in this case.
10. The language at issue, found at 40 ILCS 5/7-137.2(a), is produced below:

Sec. 7-137.2. Participation by elected members of county boards.

(a) An elected member of a county board is not eligible to participate in the Fund with respect to that position unless the county board has adopted a resolution, after public debate and in a form acceptable to the Fund, certifying that persons in the position of elected member of the county board are expected to work at least 600 hours annually (or 1000 hours annually in a county that has adopted a resolution pursuant to subsection (e) of Section 7-137 of this Code). The resolution must be adopted and filed with the Fund no more than 90 days after each general election in which a member of the county board is elected.

11. Shortly following the August, 2016, effective date of P.A. 99-900, the IMRF Board attempted to send an electronic communication and notice to Williamson County of the adoption of P.A. 99-900 and the additional requirements imposed, but the record shows that the Defendant Board's electronic communication and notice was not received by the employees and agents of Williamson County until February of 2017.
12. Plaintiff Gentry was re-elected as a Commissioner and county board member of Williamson County in the general election of 2016.
13. The record shows that prior to February of 2017, Plaintiffs Gentry, Ellis and Marlo were not aware of or informed of the provisions of P.A. 99-900.
14. Contrary to a finding by the IMRF Board in its decision affirming the termination of Plaintiffs Gentry, Ellis and Marlo from post-2016 continued participation in IMRF, the Court's finds that the manifest weight of the evidence shows that the Defendant Board did not notify or attempt to notify Plaintiffs Gentry, Ellis and Marlo in 2016 or early 2017 of the provision in P.A. 99-900 which purported to condition these IMRF members' continued participation and membership in IMRF upon the employing county's recertification by resolution of the county board positions and the filing of such resolution with the IMRF Board within 90 days of a general election where a county board member was elected.
15. In February of 2017, and more than 90 days following the date of the general election of 2016 where Gentry was re-elected, an agent of IMRF Board notified Williamson County of the legislature's adoption of P.A. 99-900.
16. In February of 2017 and shortly after the Plaintiffs first became aware of the adoption and provisions of P.A. 99-900, the County of Williamson re-adopted IMRF Form 6.64 declaring the county's expectations that the county's board members would service in excess of 1,000 hours annually as Commissioners of Williamson County.
17. On March 9, 2017, the IMRF notified Plaintiffs that Gentry, Ellis and Marlo were not qualified to continue to be members and participants in IMRF based on the

IMRF's Board construction of P.A. 99-900 [40 ILCS 5/7-137.2] and the Board's determination that the February 23, 2017, re-adoption and delivery to the IMRF Board of a resolution re-certifying the county board positions was not received within 90 days of the general election of 2016 and the Plaintiffs were not qualified to continue to be contributing participants in IMRF as a consequence of this failure.

18. Plaintiffs timely pursued administrative appeals and remedies and, at a hearing on the matter, asserted (1) the IMRF had misconstrued the date applicable under P.A. 99-900 [40 ILCS 5/7-137.2] for a county to re-adopt such recertification resolution to permit previously qualified county board members to continue to participate in IMRF; (2) that the Plaintiffs' rights to due process were violated by the Board's termination of Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF under the circumstances where these members were not notified of newly adopted requirements upon Williamson County for its county board members to continue to participate in IMRF; and (3) Plaintiffs' rights under the Illinois Constitution protecting their protected pension rights were violated by the termination of Plaintiffs from continued participation in IMRF.
19. Following the administrative hearing on the Plaintiffs' objection to the Defendant Board's termination of Gentry's, Ellis' and Marlo's continued participation in IMRF, the IMRF Board adopted as its final order the recommended order of the hearing officer.
20. Plaintiffs' two count complaint was timely filed challenging in Count I the correctness of the IMRF Board terminating Gentry, Ellis and Marlo from continued membership and participation in IMRF as contrary to Illinois law and as a violation of due process and a violation of the Illinois Constitution, Article 13, Section 5. In Count II of the Complaint Plaintiffs seek a declaratory judgment declaring P.A. 99-900 [40 ILCS 5/7-137.2(a)] conditioning Plaintiffs' continued participation in IMRF upon the County of Williamson's adoption and delivery to the IMRF Board the re-certification resolution within 90 days of an election of

county board member unconstitutional under Article 13, Section 5, of the Illinois Constitution.

21. Appropriate notice as required by Supreme Court Rule 19 of the Plaintiffs' claims of unconstitutionality was provided and duly served and those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute.
22. If the IMRF Board's decision concluding P.A. 99-900 [40 ILCS 5/7-137.2(a)] bars Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF after 2016 is affirmed and allowed to stand, these Plaintiffs' pension benefits will be significantly impaired and diminished from the terms, conditions and provisions existing at the time these Plaintiffs began public employment and initially qualified as members and participants in IMRF. The effect of the Defendant Board's decision is to deprive these Plaintiffs of increased pension annuity benefits they would have enjoyed by the recognition of their additional post-2016 years of their public employment service after 2016 and deprive these Plaintiffs of the increased pension benefits they would enjoy if these Plaintiffs' post-2016 salaries and years of service were considered by the IMRF Board in the calculation of these public employees' retirement annuities.
23. The Court finds that Defendant Board unnecessarily and improperly construed P.A. 99-900 [40 ILCS 5/7-137.2(a)] and the Pension Code to require termination of Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF where within days of being informed of the provisions of P.A. 99-900, the Williamson County readopted and re-certified to the IMRF Board the county's prior determination that its county board members were expected to provide in excess of 1000 hours of service as county board members. The modest delay for the IMRF Board's receipt of the re-certification is not shown by this record to have compromised or harmed the Fund or its administration and, under the facts presented, this delay cannot rationally or legitimately serve to justify termination or barring Plaintiffs' continued participation in the Fund.

24. The Court further finds that, to the extent that the Illinois legislature, by adoption of P.A. 99-900 [40 ILCS 5/7-137.2(a)] which conditioned continued IMRF participation of participating county board members upon action by a county to re-certify by resolution the county's expectations that its county board members are expected to serve in excess of 1000 hours annually, the due process requirements of the United States Constitution applicable to the States through the Fourteenth Amendment require the IMRF Board to give notice of these newly enacted terms to the county and to each affected employee-member. The facts in this record show that no such notice was received by the County of Williamson and no such notice was attempted or received by Plaintiffs Gentry, Ellis and Marlo contrary to these Plaintiffs' rights notice under the United States Constitution.
25. The Court further finds that, to the extent that the Illinois legislature, by adoption of P.A. 99-900 [40 ILCS 5/7-137.2(a)], conditioned continued IMRF participation of previous pension fund participants upon action by a county to re-adopt a resolution within 90 days of the election of a county board member and re-certify the county's expectations that its county board members are expected to serve in excess of 1000 hours annually, P.A.99-900 [40 ILCS 5/137.2(a)] would as applied to these Plaintiffs and on its face, be violative of the Illinois Constitution, Article XIII, Section 5 which prohibits the State from unilaterally diminishing or impairing existing contractual pension benefits of public pension members.
26. In light of the Court's foregoing findings that the Defendant Board has unnecessarily and improperly construed P.A. 99-900 [40 ILCS 5/7-137.2(a)] as compelling termination of Plaintiffs' continued participation in IMRF under circumstances where the Plaintiff County and the Plaintiffs Gentry, Ellis and Marlow were not notified of the newly adopted terms of P.A. 99-900 and where the Pension Fund was not shown to have been harmed by it February receipt from the County of Williamson of IMRF Form 6.64, the Court finds that a finding of unconstitutionality is not necessary to the decision or judgment of Count I of the Complaint.

27. The Court finds that it is compelled to address the constitutionality of the portion of P.A. 99-900 [40 ILCS 5/7-137.2(a)] under the Illinois Constitution to resolve the declaratory judgment and relief requested in Plaintiffs' Complaint in Count II. Count II of the Complaint asserts that P.A. 99-900 [40 ILCS 5/7-137.2(a)] is an unconstitutional legislative act which impairs and diminishes previously existing and vested pension benefits of public employee pension members protected under the Illinois Constitution, Article 13, Section 5.
28. The Court finds it necessary to address the constitutionality of the challenged portion of P.A. 99-900 [40 ILCS 5/7-137.2(a)] in resolving Count II of the Complaint. The Act in Section 7-137.2(a) conditions continued participation of IMRF members on new terms and conditions (*i.e.* re-adoption and delivery by the County of a resolution certifying the participation of county board members within 90 days of the election of a county board member) not existent at the time the public employee members became participants in a State sponsored pension fund and the Act cannot be reasonably construed in a manner that would preserve the statute's validity.
29. The Court finds in regard to Count II of Plaintiff's Complaint that P.A. 99-900 [40 ILCS 5/7-137.2(a)] purporting to prohibit Plaintiffs' continued participation in IMRF as a consequence is unconstitutional as applied to these Plaintiffs and on its face under the Illinois Constitution, Article 13, Section 5, because it unilaterally diminishes and impairs protected public employee benefits.


IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

- A. The decision of the Illinois Municipal Retirement Board finding Gentry, Ellis and Marlo are barred from post-2016 membership and participation in the Illinois Municipal Retirement Fund is contrary to Illinois law and said decision is set aside and reversed with direction to the Defendant Illinois Municipal Retirement Board to reinstate Plaintiffs Gentry, Ellis and Marlo and make these Plaintiffs whole with full rights, membership and participation. The

reversal of the finding by the Illinois Municipal Retirement Fund Board is predicated on the finding of unconstitutionality in paragraph B below. The Court cannot and therefore is not ruling in the Plaintiffs' favor based on their claims brought pursuant to the Administrative Review Law.

- B. The Court declares P.A. 99-900 as codified in 40 ILCS 5/7-137.2(a), which prohibits a previously qualified IMRF participant county board member from continued participation in IMRF absent the re-adoption and delivery to IMRF of a resolution within 90 days of the election of a county board member is unconstitutional as violative of the Illinois Constitution, Article 13, Section 5.
- C. As they were not at issue in this litigation, this Court does not render an opinion on the constitutionality of the time sheet requirement contained in 40 ILCS 5/7-137.2(b) or the exclusion from IMRF participation any county board members elected after August 26, 2016, the effective date of P.A. 99-900, contained in 40 ILCS 5/7-137(b)(2.5).

ENTERED this 25 day of November



JUDGE JEFFREY A. SOFFINET

**APPEAL TO THE SUPREME COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS**

WILLIAMSON COUNTY BOARD OF)	
COMMISSIONERS, a body politic and)	
Corporate; ROBERT GENTRY;	)	CASE NO. 18 MR 215
RONALD M. ELLIS, and JAMES D.)	
MARLO,)	
	)	Judge Jeffrey Goffinet
Plaintiffs-Appellees,)	
)	
vs.)	
)	
BOARD OF TRUSTEES OF THE)	
ILLINOIS MUNICIPAL RETIREMENT)	
FUND, et al.)	
)	
Defendants-Appellants.)	

NOTICE OF APPEAL

Defendants-Appellants, Board of Trustees of the Illinois Municipal Retirement Fund, Natalie Copper, Alex Wallace, David Miller, Sharon U. Thompson, Sharon U. Thompson, Gwen Henry, Tom Kuehne, Sue Stanish, and Trudy Williams, each in their official capacity, by Vladimir Shuliga, Associate General Counsel pursuant to Supreme Court Rule 302(a) hereby directly appeals to the Supreme Court of Illinois from the following orders entered in this matter in the Circuit Court of Williamson County:

1. The order of the circuit court dated August 29, 2019, reversing the administrative decision of the IMRF Board and declaring Public Act 99-900 unconstitutional as violative of the Illinois Constitution, Article 13, Section 5. A copy of the court's finding pursuant to Rule 18 is attached to this Notice of Appeal.

By this appeal, the Defendants-Appellants will request reversal of the Circuit Court's decision, or for such other and further relief as the Supreme Court may deem proper.

/s/ Vladimir Shuliga, Jr._____

Vladimir Shuliga, Jr.

Attorney for Defendants-Appellants

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(630) 706-4517
ARDC Atty. No. 6313989

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the attached Notice of Appeal was served upon the below named parties through the Court's electronic filing system and e-mail on September 24, 2019.

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Attorneys for Plaintiff Williamson County Board of Commissioners, Robert B. Gentry, Ronald M. Ellis, & James D. Marlo

By: /s/ Vladimir Shuliga, Jr.
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**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS**

WILLIAMSON COUNTY BOARD
OF COMMISSIONERS, a body politic and
Corporate;

ROBERT GENTRY;
RONALD M. ELLIS, and
JAMES D. MARLO,

Plaintiffs,

v.

BOARD OF TRUSTEES OF THE ILLINOIS
MUNICIPAL RETIREMENT FUND;

NATALIE COPPER, President and member
Executive Trustee member of the Board of
Trustees of the Illinois Municipal
Retirement Fund;

ALEX WALLACE, JR., Employee Trustee
member of the Board of Trustees of the
Illinois Municipal Retirement Fund;

DAVID MILLER, Executive Trustee and
member of the Board of Trustees of the
Illinois Municipal Retirement Fund;

SHARON U. THOMPSON, Annuitant
Trustee and member of the Illinois
Municipal Retirement Fund;

GWEN HENRY, Executive Trustee and
member of the Board of Trustees of the
Illinois Municipal Retirement Fund;

TOM KUEHNE, Executive Trustee and
member of the Board of Trustees of the
Illinois Municipal Retirement Fund;

SUE STANISH, Executive Trustee and
Member of the Board of Trustees of the
Illinois Municipal Retirement Fund; and

TRUDY WILLIAMS, Employee Trustee
and member of the Board of Trustees of the
Illinois Municipal Retirement Fund;

Defendants.

FILED

AUG 29 2019

Ami E. Kochan
CLERK OF THE CIRCUIT COURT

No. 2018-MR- 215

JUDGMENT

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This cause comes before the Court on the two count Complaint filed by the Plaintiffs County of Williamson Commissioners and Plaintiffs Robert Gentry, Ronald M. Ellis and James D. Marlo. In Count I, which is filed pursuant to the Illinois Administrative Review Act [735 ILCS 5/3-101], Plaintiffs have sought this Court to reverse the decision of the Board of Trustees of the Illinois Municipal Retirement Fund terminating the continued participation of Plaintiffs Gentry, Ellis and Marlo in the Illinois Municipal Retirement Fund based on the Plaintiffs' contentions that the decision (1) violates these Plaintiffs' protected rights under the Illinois Constitution, Article 13, Section 5; (2) violates these Plaintiffs' rights under the United States Constitution to due process; and (3) the decision is inconsistent with Illinois law. In Count II of the Plaintiffs' Complaint, the Plaintiffs seek this Court to judicially declare that Public Act 99-900 is unconstitutional and violative of the Illinois Constitution, Article 13, Section 5, in that that Act allegedly diminishes and impairs vested pension rights and benefits of the Plaintiffs and, in addition, the Act is unconstitutional under the United States Constitution in that the Act allegedly imposes requirements for Plaintiffs' continued participation in IMRF without due process of law.

After review of the record presented and the arguments of counsel, the Court is fully advised in the premises and finds as follows:

1. Prior to the August, 2016, adoption of Public Act 99-900, elected county board members and other local public officials were permitted under the Illinois Pension Code to be contributing members and participants in the Illinois Municipal Retirement Fund ("IMRF") if (1) the public body had adopted and provided the IMRF Board with a resolution using IMRF Form 6.64 declaring that the county expected its members to meet the minimum hours of annual service required for IMRF participation and (2) the elected official (*i.e.* county board member) had filed with the IMRF Board an election on IMRF Form 6.21 notifying the IMRF Board of the county board member's election to contribute to and participate as a member of IMRF.

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2. Plaintiff Robert Gentry, was first elected and first became a Williamson County Commissioner in 2004. Gentry's first term began December of 2004 and, after Gentry filed IMRF form 6.21 on December 6, 2004, electing to participate IMRF, Gentry became a participating and contributing member of IMRF.
3. Plaintiff Ronald Ellis was first elected and first became a Williamson County Commissioner in 2008. Ellis' first term began December of 2008, and after Ellis filed IMRF form 6.21 on November 12, 2008, Ellis became a participating and contributing member of IMRF.
4. Plaintiff James Marlo was first elected and first became a Williamson County Commissioner in 2012. Marlo's first term began December of 2012 and, after Marlo filed IMRF form 6.21 on November 30, 2012, Marlo became a participating and contributing member of IMRF.
5. The Illinois Municipal Retirement Fund ("IMRF") is a state sponsored pension fund funded by the contributions of certain public employees and public employers. Participating members receive pension benefits or annuities upon retirement based provisions in the Illinois Pension Code and formulas which consider the employee-member's years of creditable service and the employee's qualifying salary which is a function of the average of the employee's highest years' salary, or in some cases, the employee's salary on the date of retirement.
6. Prior to August of 2016 and through the month of December of 2016, Plaintiffs Gentry, Ellis and Marlo were contributing members and participants in IMRF as a consequence of (1) the County of Williamson's adoption and delivery to the IMRF Form 6.64 where the County declared its expectation that its county board members were expected to annually perform in excess of the 1,000 hours of service required for their participation in IMRF and (2) Plaintiffs Gentry's, Ellis' and Marlo's filing with the IMRF Board these Plaintiffs' election to contribute and participate in the pension fund known as the Illinois Municipal Retirement Fund.
7. In August of 2016, the Illinois legislature amended the Illinois Pension Code by the adoption of P.A. 99-900, which Act prohibited IMRF participation of county

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- board members who were first elected after the adoption of P.A. 99-900 and further purported to prohibit the continued IMRF participation and membership of previously serving county board members absent service on the IMRF Board within 90 days of a general election a re-adoption of IMRF Form 6.64 re-certifying the IMRF Board of the county's expectation that its county board members were expected to annually serve in excess of 1,000 hours in their positions as county board members.
8. Shortly following the August, 2016, effective date of P.A. 99-900, the IMRF Board attempted to send an electronic communication and notice to Williamson County of the adoption of P.A. 99-900, but the record shows that the Defendant Board's electronic communication and notice was not received by the employees and agents of Williamson County until February of 2017.
 9. Plaintiff Gentry was re-elected as a Commissioner and county board member of Williamson County in the general election of 2016.
 10. The record shows that prior to February of 2017, Plaintiffs Gentry, Ellis and Marlo were not aware of or informed of the provisions of P.A. 99-900.
 11. Contrary to a finding by the IMRF Board in its decision affirming the termination of Plaintiffs Gentry, Ellis and Marlo from post-2016 continued participation in IMRF, the Court's finds that the manifest weight of the evidence shows that the Defendant Board did not notify or attempt to notify Plaintiffs Gentry, Ellis and Marlo in 2016 or early 2017 of the provision in P.A. 99-900 which purported to condition these IMRF members' continued participation and membership in IMRF upon the employing county's re-adoption of IMRF Form 6.64 and filing of the re-adopted resolution with the IMRF Board within 90 days of a general election where a county board member was elected.
 12. In February of 2017, and more than 90 days following the date of the general election of 2016 where Gentry was re-elected, an agent of IMRF Board notified Williamson County of the legislature's adoption of P.A. 99-900.

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13. In February of 2017 and shortly after the Plaintiffs first became aware of the adoption and provisions of P.A. 99-900, the County of Williamson re-adopted IMRF Form 6.64 declaring the county's expectations that the county's board members would service in excess of 1,000 hours annually as Commissioners of Williamson County.
14. On March 9, 2017, the IMRF notified Plaintiffs that Gentry, Ellis and Marlo were not qualified to continue to be members and participants in IMRF based on the IMRF's Board construction of P.A. 99-900 and the Board's determination that the February 23, 2017, adoption and delivery to the IMRF Board was not received within 90 days of the general election of 2016.
15. Plaintiffs timely pursued administrative appeals and remedies and, at a hearing on the matter, asserted (1) the IMRF had misconstrued the date applicable under P.A. 99-900 for a county to re-adopt IMRF Form 6.64 to permit previously qualified county board members to continue to participate in IMRF; (2) that the Plaintiffs' rights to due process were violated by the Board's termination of Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF under the circumstances where these members were not notified of newly adopted requirements upon Williamson County for its county board members to continue to participate in IMRF; and (3) Plaintiffs' rights under the Illinois Constitution protecting their protected pension rights were violated by the termination of Plaintiffs from continued participation in IMRF.
16. Following the administrative hearing on the Plaintiffs' objection to the Defendant Board's termination of Gentry's, Ellis' and Marlo's continued participation in IMRF, the IMRF Board adopted as its final order the recommended order of the hearing officer.
17. Plaintiffs' two count complaint was timely filed challenging in Count I the correctness of the IMRF Board terminating Gentry, Ellis and Marlo from continued membership and participation in IMRF as contrary to Illinois law and as a violation of due process and a violation of the Illinois Constitution, Article 13,

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Section 5. In Count II of the Complaint Plaintiffs seek a declaratory judgment declaring P.A. 99-900 unconstitutional under Article 13, Section 5, of the Illinois Constitution.

18. Appropriate notice as required by Supreme Court Rule 19 of the Plaintiffs' claims of unconstitutionality was provided and duly served and those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute.
19. If the IMRF Board's decision concluding P.A. 99-900 bars Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF after 2016 is affirmed and allowed to stand, these Plaintiffs' pension benefits will be significantly impaired and diminished from the terms, conditions and provisions existing at the time these Plaintiffs began public employment and initially qualified as members and participants in IMRF. The effect of the Defendant Board's decision is to deprive these Plaintiffs of increased pension annuity benefits they would have enjoyed by the recognition of their additional post-2016 years of their public employment service after 2016 and deprive these Plaintiffs of the increased pension benefits they would enjoy if these Plaintiffs' post-2016 salaries and years of service were considered by the IMRF Board in the calculation of these public employees' retirement annuities.
20. The Court finds that Defendant Board unnecessarily and improperly construed P.A. 99-900 and the Pension Code to require termination of Plaintiffs Gentry, Ellis and Marlo from continued participation in IMRF where within days of being informed of the provisions of P.A. 99-900, the Williamson County readopted and re-certified to the IMRF Board the county's prior determination that its county board members were expected to provide in excess of 1000 hours of service as county board members. The modest delay for the IMRF Board's receipt of the re-certification is not shown by this record to have compromised or harmed the Fund or its administration and, under the facts presented, this delay cannot rationally or

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legitimately serve to justify termination or barring Plaintiffs' continued participation in the Fund.

21. The Court further finds that, to the extent that the Illinois legislature, by adoption of P.A. 99-900, conditioned continued IMRF participation of previous pension fund participant upon action by a county to re-adopt IMRF Form 6.64 and re-certify the county's expectations that its county board members are expected to serve in excess of 1000 hours annually, the due process requirements of the United States Constitution applicable to the States through the Fourteenth Amendment require the IMRF Board to give notice of these newly enacted terms to the county and to each affected employee-member. The facts in this record show that no such notice was received by the County of Williamson and no such notice was attempted or received by Plaintiffs Gentry, Ellis and Marlo.
22. In light of the Court's foregoing findings that the Defendant Board has unnecessarily and improperly construed P.A. 99-900 and the Defendant Board has failed to satisfy the United States' constitutional requirements for due process, this Court is constrained under Supreme Court Rule 18 in rendering its order resolving Count I of the Plaintiffs' complaint to address the constitutionality of P.A. 99-900.
23. While this Court need not and cannot, consistent with Supreme Court Rule 18, address the constitutionality of P.A. 99-900 in the Court's resolution of Count I which is an action in administrative review, the Court is compelled to address the constitutionality of P.A. 99-900 under the Illinois Constitution to resolve the declaratory judgment and relief requested in Plaintiffs' Complaint in Count II. Count II of the Complaint asserts that P.A. 99-900 is an unconstitutional legislative act which impairs and diminishes pension benefits protected under the Illinois Constitution, Article 13, Section 5. The Court finds in regard to Count II of Plaintiff's Complaint that P.A. 99-900 is unconstitutional under the Illinois Constitution, Article 13, Section 5, because it unilaterally diminishes and impairs protected public employee benefits.

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IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

- A. The decision of the Illinois Municipal Retirement Board finding Gentry, Ellis and Marlo are barred from post-2016 membership and participation in the Illinois Municipal Retirement Fund is contrary to Illinois law and said decision is set aside and reversed with direction to the Defendant Illinois Municipal Retirement Board to reinstate Plaintiffs Gentry, Ellis and Marlo and make these Plaintiffs whole with full rights, membership and participation.
- B. The Court declares P.A. 99-900 unconstitutional as violative of the Illinois Constitution, Article 13, Section 5.

ENTERED this 29 day of August, 2019



JUDGE JEFFREY A. GOFFINET

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS

WILLIAMSON COUNTY BOARD OF COMMISS)	
Plaintiff/Petitioner	)	Reviewing Court No: 125330
	)	Circuit Court No: 2018MR215
)	Trial Judge: GOFFINET
v)	
)	
)	
BOARD OF TRUSTEES OF THE ILLINOIS)	
Defendant/Respondent)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
WILLIAMSON COUNTY, ILLINOIS

WILLIAMSON COUNTY BOARD OF COMMISS)	
Plaintiff/Petitioner	)	Reviewing Court No: 125330
	)	Circuit Court No: 2018MR215
)	Trial Judge: GOFFINET
v)	
)	
)	
BOARD OF TRUSTEES OF THE ILLINOIS)	
Defendant/Respondent)	

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