

No. 118585

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

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| IN RE: PENSION LITIGATION |)))))) | Appeal from the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois Consolidated as No. 2014 MR 1 Hon. John W. Belz, Judge Presiding |
| DORIS HEATON, <i>et al.</i> , Plaintiffs-Appellees, v. PAT QUINN, Governor of Illinois, <i>et al.</i> , Defendants-Appellants. |)))))) | Originally Filed as Cook County Case No. 2013 CH 28406 |
| RETIRED STATE EMPLOYEES ASS'N, <i>et al.</i> , Plaintiffs-Appellees, v. PATRICK QUINN, Governor of Illinois, <i>et al.</i> , Defendants-Appellants. |)))))) | Originally Filed as Sangamon County Case No. 2014 MR 1 |
| ILLINOIS STATE EMPLOYEES ASS'N, <i>et al.</i> , Plaintiffs-Appellees, v. BOARD OF TRUSTEES OF STATE EMPLOYEES RETIREMENT SYSTEM OF ILLINOIS, <i>et al.</i> , Defendants-Appellants. |))))))) | Originally Filed as Sangamon County Case No. 2014 CH 3 |
| GWENDOLYN A. HARRISON, <i>et al.</i> and WE ARE ONE ILLINOIS COALITION, Plaintiffs-Appellees, v. PATRICK QUINN, Governor of Illinois, <i>et al.</i> , Defendants-Appellants. |))))))) | Originally Filed as Sangamon County Case No. 2014 CH 48 |
| STATE UNIVERSITIES ANNUITANTS ASS'N, <i>et al.</i> , Plaintiffs-Appellees, v. STATE UNIVERSITIES RETIREMENT SYSTEM, <i>et al.</i> , Defendants-Appellants. |))))))) | Originally Filed as Champaign County Case No. 2014 MR 207 |

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RESPONSE IN OPPOSITION TO MOTION FOR ACCELERATED DOCKET

The plaintiffs, by their undersigned counsel, respectfully submit this response in opposition to the defendants' motion for an accelerated docket.

INTRODUCTION

The defendants have failed to establish that the normal appellate process is inadequate here. Their motion rests upon a false sense of urgency that is not supported by the history of this litigation or by any factual record. In addition, their motion attempts to impose an emergency briefing schedule (either the one labeled as "Alternative A" or the one labeled as "Alternative B") that would be manifestly unfair to the plaintiffs. Accordingly, the motion should be denied.

ARGUMENT

A. THE MOTION IS BASED UPON A FALSE SENSE OF URGENCY.

Like many of the cases on this Court's docket, this case is important to the public. That fact alone, however, does not render the normal appellate process inadequate. Nor does it justify replacing the normal operation of the Supreme Court Rules with an *ad hoc* emergency procedure at the insistence of the defendants. This Court frequently decides cases of public importance, and even in cases where the constitutionality of a statute is at issue, the Supreme Court Rules foster an orderly process in which the rights of all parties are adequately protected.

The defendants argue that this Court should impose an emergency schedule in light of a "May 31, 2015 deadline for passage of the State's fiscal-year 2016 budget" (Motion, ¶ 9.) The defendants complain that "[f]ormulating the State's budget is necessarily complicated by uncertainty over the validity" of Public Act 98-0599. (*Id.*, ¶ 13.) This argument fails for numerous reasons.

First, the defendants' professed need for certainty rings hollow. The notice of appeal states that the defendants seek reversal of the circuit court's judgment and "remand for the

purposes of addressing the merits of all of the plaintiffs' claims, including the merits of the plaintiffs' Pension Clause claims in light of the affirmative matter alleged in the defendants' answers" (SR 2.) Even if the defendants were to obtain all of that relief by May 31, 2015, they still would have no certainty. In order to successfully defend Public Act 98-0599, the defendants still would have to proceed with dispositive motions or a trial on remand (following fact and expert discovery) and another appeal following a judgment by the circuit court on remand. Even if this Court were to issue a ruling on January 22, 2015 – the earliest oral argument date requested by the defendants – and even if the Court were to award the defendants all of the relief that they seek, it would be impossible for the defendants to obtain a final resolution of this case in their favor before May 31, 2015. Meanwhile, enforcement of Public Act 98-0599 has been enjoined by the circuit court. Accordingly, under no realistic set of circumstances could the defendants possibly implement Public Act 98-0599 before May 31, 2015, irrespective of any abbreviated schedule this Court might order.

Second, the defendants' professed need for certainty is belied by their previous conduct in this case. Far from seeking an expedited resolution, the defendants waited more than four and a half months before even answering the first-filed complaint in these consolidated cases. Likewise, the defendants chose not to pursue a Rule 307 appeal from the circuit court's preliminary injunction order of May 14, 2014, which enjoined the enforcement of Public Act 98-0599. If the defendants had a genuine need for immediate guidance from a reviewing court, they would have sought such guidance from the appellate court more than half a year ago. They opted not to do so.

Third, the defendants have no shortage of legal authorities to which they may look for guidance. The Constitution of the State of Illinois already gives the defendants clear guidance.

It says that pension rights “shall not be diminished or impaired.” See Illinois Constitution, art. XIII, §5. This constitutional language is “plain.” See *Kanerva v. Weems*, 2014 IL 115811 ¶¶ 36, 40-42; see also *Felt v. Bd. of Trustees of Judges Ret. Sys.*, 107 Ill.2d 158, 168 (1985). The defendants also have received substantial guidance from the six-page judgment order of the circuit court. The defendants refuse to accept that guidance simply because they disagree with it.

Fourth, the defendants’ argument is not even supported by the affidavits of any public officials who are responsible for the State budgeting process. It is supported only by an affidavit of the Solicitor General. The Solicitor General’s affidavit relies upon various tables and charts (see SR 29, ¶10; see also SR 20-25), but the Solicitor General lays no foundation for those documents and, in any event, does not explain specifically how the figures reflected in those tables and charts support any of the conclusions stated in her affidavit.

Finally, any number of cases on this Court’s docket may guide the decisions of public officials or affect public budgets. Similarly, the parties in many cases on this Court’s docket are presumably eager for the certainty and finality that a decision would provide. None of those circumstances, however, justify a departure from the fair and orderly process mandated by the Supreme Court Rules. The motion should therefore be denied.

B. THE DEFENDANTS ATTEMPT TO IMPOSE AN UNFAIR BRIEFING SCHEDULE ON THE PLAINTIFFS.

The defendants made no effort to consult with the plaintiffs on any agreed briefing schedule prior to filing their motion. The reason is obvious. The defendants seek to impose a manifestly unfair briefing schedule on the plaintiffs.

The motion presents this Court with a menu of three emergency schedules. (Motion, ¶ 10.) The first schedule (“Alternative A”) would require: the defendants to file their brief and supporting record by December 18, 2014; the plaintiffs to file their brief by January 8, 2015; the

defendants to file their reply brief by January 15, 2015; and the Court to hear oral argument on January 22, 2015. Under this proposed schedule, the plaintiffs would have only 21 days in which to prepare and file their appellate brief, and those 21 days would fall over the holidays. The defendants, meanwhile, would have 27 days from the circuit court's judgment order of November 21, 2014, in which to draft and file their appellants' brief. This clearly is not a fair briefing schedule.

The second schedule the defendants propose ("Alternative B") similarly is not fair to the plaintiffs. Under Alternative B, the defendants would have 48 days from the circuit court's judgment order of November 21, 2014, in which to prepare and file their appellants' brief. The plaintiffs, however, would have approximately half of that time (25 days), 10 days less than what Supreme Court Rule 343(a) provides, in which to prepare and file their appellate brief.

Moreover, as this Court is aware, five separate lawsuits have been consolidated in this case. Those five groups of plaintiffs are represented by four separate law firms in this appeal. The plaintiffs' respective counsel need a reasonable amount of time not only to draft their legal arguments, but also to coordinate with one another and attempt to minimize the number of appellees' briefs that this Court will receive. Therefore, the plaintiffs need the full 35-day period provided by Supreme Court Rule 343(a).¹

C. THERE IS NO NEED FOR THE DEFENDANTS' THIRD PROPOSED EMERGENCY SCHEDULE.

As discussed above, the defendants offer no valid justification for departing from the normal operation of the Supreme Court Rules in this appeal. Accordingly, the defendants' third

¹ The defendants' proposed order also appears to require all of the plaintiff groups to file a single brief. While the plaintiffs will attempt to file joint briefs to the fullest extent possible, not even the defendants offer any reason why the plaintiffs should be required to jointly file a single appellees' brief.

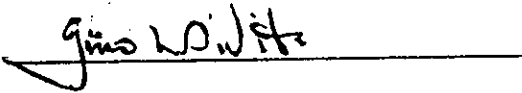
proposed emergency schedule ("Alternative C") also is unnecessary, and their motion should be denied. If, however, this Court finds that the circumstances justify an abbreviated schedule, Alternative C at least would provide the plaintiffs with a 35-day period – from January 12 to February 16 – in which to prepare and file their appellees' brief(s). Accordingly, the schedule proposed by the defendants as "Alternative C," while unnecessary, would mitigate the prejudice to the plaintiffs, provided that implementation of that schedule would not foreclose the opportunity for one or more of the plaintiffs, consistent with the Supreme Court Rules, to seek an extension in which to file their appellate brief. Therefore, if this Court allows the defendants' motion over the plaintiffs' objections, the plaintiffs respectfully request that the Court implement the schedule set forth in Alternative C and state in the implementing order that any party may seek, consistent with the Supreme Court Rules, an extension of time in which to file its brief. Finally, while Alternative C specifies a date for oral argument, the plaintiffs respect the Court's prerogative to set oral argument for a date of its own choosing.

CONCLUSION

For the reasons discussed above, the plaintiffs respectfully request that this Court deny the defendants' motion for an accelerated docket. In the alternative, if this Court chooses to allow the motion over the plaintiffs' objections, the plaintiffs respectfully request that the Court select Alternative C and state in the order that implements the abbreviated schedule that a party may seek, consistent with the Supreme Court Rules, an extension of time in which to file its brief.

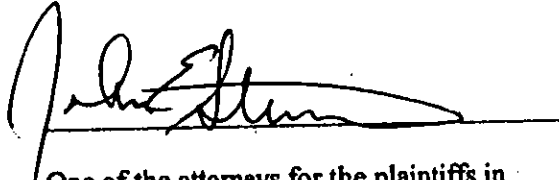
Date: December 9, 2014

Respectfully submitted,



Attorney for the plaintiffs in *Heaton v. Quinn*,
Cook County No. 2013 CH 28406

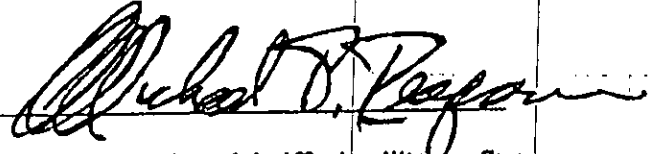
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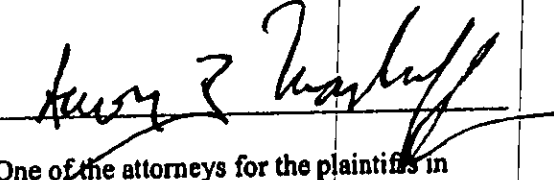
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| STATE UNIVERSITIES ANNUITANTS ASS'N, <i>et al.</i> , Plaintiffs, |) | Originally Filed as Champaign County Case No. 2014 MR 207 |
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NOTICE OF FILING

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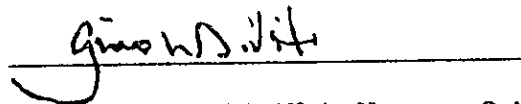
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CLERK**

TO: See attached Certificate of Service

PLEASE TAKE NOTICE that on December 9, 2014, the undersigned counsel filed with the Clerk of the Illinois Supreme Court, 200 East Capitol Avenue, Springfield, Illinois 62701, the original and eight copies of the Plaintiffs-Appellees' Response in Opposition to Motion for Accelerated Docket, a copy of which is hereby served upon you.

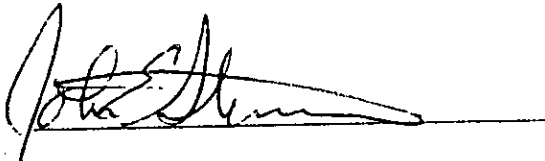
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Respectfully submitted,



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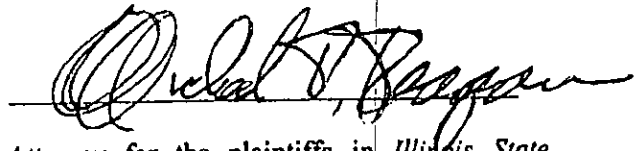
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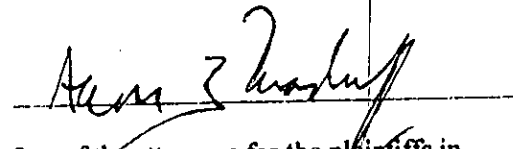
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on December 9, 2014 he caused a copy of the Plaintiffs-Appellees' Response in Opposition to Motion for Accelerated Docket to be served on the persons indicated below via email and via U.S. mail, by depositing copies of the Response in Opposition to Motion for Accelerated in the U.S. mail drop located at 311 S. Wacker Drive, Chicago, Illinois 60606, before 5:00 p.m., in postage prepaid envelopes addressed to the persons and with the addresses indicated below:

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By: 
John T. Shapiro

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