

No. 118585

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

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,	)	Originally Filed as
v.	)	Cook County Case
PAT QUINN, Governor of Illinois, <i>et al.</i>,	)	No. 2013 CH 28406
Defendants-Appellants.)	
RETIRED STATE EMPLOYEES ASS'N, <i>et</i>)	
<i>al.</i> ,)	
Plaintiffs-Appellees,	)	Originally Filed as
v.)	Sangamon County Case
PATRICK QUINN, Governor of Illinois, <i>et</i>)	No. 2014 MR 1
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Defendants-Appellants.)	
ILLINOIS STATE EMPLOYEES ASS'N, <i>et</i>)	
<i>al.</i> ,)	
Plaintiffs-Appellees,)	Originally Filed as
v.	)	Sangamon County Case
BOARD OF TRUSTEES OF STATE	)	No. 2014 CH 3
EMPLOYEES RETIREMENT SYSTEM)	
OF ILLINOIS, <i>et al.</i> ,)	
Defendants-Appellants.)	
GWENDOLYN A. HARRISON, <i>et al.</i> and)	
WE ARE ONE ILLINOIS COALITION,)	
Plaintiffs-Appellees,	)	Originally Filed as
v.	)	Sangamon County Case
PATRICK QUINN, Governor of Illinois, <i>et</i>	)	No. 2014 CH 48
<i>al.</i> ,)	
Defendants-Appellants.)	
STATE UNIVERSITIES ANNUITANTS)	
ASS'N, <i>et al.</i> ,)	
Plaintiffs-Appellees,	)	Originally Filed as
v.	)	Champaign County Case
STATE UNIVERSITIES RETIREMENT	)	No. 2014 MR 207
SYSTEM, <i>et al.</i> ,)	
Defendants-Appellants.)	

CROSS-MOTION TO RESOLVE IMPASSE REGARDING ORAL ARGUMENT

FILED (16)

MAR 3 - 2015

SUPREME COURT
CLERK

Pursuant to Supreme Court Rule 361, the plaintiffs-appellees in the *ISEA*, *RSEA*, *Heaton* and *Harrison* actions respectfully move for an order specifying that the oral argument for the appellees shall be divided between attorneys Gino L. DiVito and John T. Shapiro, stating as follows.¹

INTRODUCTION

1. By order of this Court, five lawsuits challenging Public Act 98-0599 were consolidated in this single action. Four of the five plaintiff groups – the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs – have selected attorneys Gino L. DiVito and John T. Shapiro to argue orally before this Court on March 11. Attorney Michael T. Reagan, who represents two of the five plaintiff groups, in recognition of both Supreme Court Rule 352(d) and the need to present an orderly oral argument for this Court, has decided to not orally argue as part of the agreement that the majority of plaintiffs have reached.

2. One holdout group of plaintiffs, the *SUAA* plaintiffs, refuses to accept this choice and insists that its counsel must be allowed to address this Court on an unknown subject, notwithstanding the wishes of all other plaintiffs. Instead of resolving this disagreement in good faith, *SUAA* has chosen to initiate motion practice so as to impose its choice upon all four of the other plaintiff groups.

3. By this cross-motion, the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs reluctantly ask this Court to enter an order specifying that the oral argument for the appellees will be divided between attorneys Gino DiVito and John Shapiro. Such an order will give effect to the decision of the vast majority of plaintiffs in this case, as is contemplated by Supreme Court Rule 352(d). Moreover, because all plaintiff groups share precisely the same interest in the affirmance of the

¹ By this cross-motion, the undersigned plaintiff groups also object to the motion regarding oral argument filed by the State Universities Annuitants Association (*SUAA*).

circuit court's judgment, there is no legitimate need for SUAA to be separately represented at the oral argument of this appeal. The order requested by the four plaintiff groups joining in this motion will resolve this impasse and this motion practice in the most fair and practicable manner.

ARGUMENT

4. As the Court is aware, this is a consolidated action comprising five separate lawsuits that were initially filed in three different counties. By order of this Court, the five lawsuits were consolidated in the circuit court for the Seventh Judicial Circuit in Sangamon County. In this appeal, the plaintiffs in two of those lawsuits (the *ISEA* and *RSEA* plaintiffs) are represented by attorney Michael T. Reagan, the plaintiffs in another of the lawsuits (the *Heaton* plaintiffs) are represented by attorney Gino L. DiVito and other attorneys at his firm, the plaintiffs in another of the lawsuits (the *Harrison* plaintiffs) are represented by attorneys Michael D. Freeborn, John T. Shapiro, and other attorneys at their firm, and the plaintiffs in the fifth and final lawsuit (the *SUAA* plaintiffs) are represented by attorney Aaron Maduff and other attorneys at his firm.

5. In an effort to avoid burdening the Court with redundant arguments, the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs together filed a single brief. The *SUAA* plaintiffs filed a separate brief. The arguments raised in the *SUAA* plaintiffs' brief were largely redundant of those raised in the brief filed by the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs. This should come as no surprise. All plaintiffs in this case are appellees, and all argue for the affirmance of the circuit court based upon arguments that were raised in the circuit court. Further, all plaintiffs are similarly situated with regard to the issues the defendants raise in their appeal. There is no cross-appeal, and no plaintiff group requests any relief other than affirmance of the circuit court.

6. Counsel for the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs engaged in lengthy discussions with counsel for the *SUAA* plaintiffs regarding the upcoming oral argument. Those discussions included an extensive teleconference on the evening of Friday, February 27. In that teleconference, counsel for *SUAA* insisted that they would argue orally before the Supreme Court for one-half the time allotted, no matter how the other plaintiffs felt about that choice. Counsel for *SUAA* refused to indicate which issues they intend to address in oral argument, or why those arguments could not be made by other attorneys.

7. On Monday, March 2, an attorney for the *Harrison* plaintiffs attempted to contact the counsel *SUAA* has designated for argument multiple times by telephone and email to further discuss whether the parties could reach an agreement regarding oral argument. His efforts to reach that particular counsel were unsuccessful until the evening of March 2, at which time the *Harrison* plaintiffs' attorney was informed that he must speak with a different attorney for *SUAA*. During that subsequent conversation, in which Mr. Reagan also participated, the *SUAA* plaintiffs disclosed that they already had served a motion regarding oral argument and that no agreement could be reached other than one that provided *SUAA*'s counsel one-half the time for argument.

8. At this point, the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs do not believe that it is possible to effectively divide the oral argument with counsel for *SUAA* or to coordinate with him concerning the issues to be addressed in oral argument. Even despite hours of teleconferences on the subject and direct questions posed to *SUAA*'s counsel, the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs still have no idea which topics *SUAA*'s counsel intends to address at oral argument.

9. Unfortunately, the five plaintiff groups in this consolidated action are unable to reach unanimous agreement on who should speak for the appellees at oral argument. Mr. DiVito and Mr. Shapiro, however, are the choice of four of the five plaintiff groups, including the plaintiff group (the *Harrison* plaintiffs) which represents by far the largest number of people, either as individual plaintiffs or as members of unions which belong to the plaintiff We Are One Illinois Coalition. Simply put, in this consolidated action, fairness dictates that the attorneys selected by the majority of the plaintiff groups be designated to speak at oral argument, particularly when there is no real divergence of interests between the plaintiff groups.

10. Pursuant to Supreme Court Rule 352(d), Mr. DiVito and Mr. Shapiro will take care to avoid any duplication in their arguments. Also, Mr. DiVito, Mr. Shapiro and Mr. Reagan will continue to solicit the input of the *SUAA* plaintiffs and will endeavor to reasonably accommodate their ideas in preparing for oral argument.

11. Because no extension of time for oral argument is requested at this time, the defendants' rights are not affected by this motion.

12. The *SUAA* plaintiffs will not be prejudiced if their counsel does not provide oral argument. As an initial matter, participation in appellate oral argument is not a matter of right. *Cf. Duldulao v. Saint Mary of Nazareth Hosp. Center*, 115 Ill.2d 482, 494 (1987) (“we can discern no rule, statute, or constitutional provision which creates a specific right to oral argument”). Oral argument is a matter of the Court’s prerogative. Further, the *SUAA* plaintiffs already have had a full opportunity to make whatever arguments they wanted, in whatever way they wanted to make them, in their separate brief. Moreover, filing an independent and redundant brief does not entitle one to a speaking role at oral argument. If the rule were

different, then parties in other consolidated litigation would be incentivized to avoid cooperation with their co-parties in briefing common legal issues.

13. Additionally, Supreme Court Rule 352(d) specifies that “[n]o more than two counsel will be heard from each side except by leave of court, which will be granted when there are several parties on the same side with diverse interests.” See Ill. Sup. Ct. R. 352(d). The *SUAA* plaintiffs have no “diverse interests” in this appeal. In their separate brief, they requested precisely the same relief requested by all of the other plaintiffs—affirmance of the circuit court. See *ISEA, et al.* Br. at 49 (requesting affirmance of the circuit court’s judgment); see *SUAA* Br. at 34 (same). There is no cross-appeal, and all plaintiffs in this case seek the same result based upon arguments that were raised in the circuit court. Accordingly, there is no basis under Rule 352(d) for allowing anyone to speak for the appellees at oral argument in addition to Mr. DiVito and Mr. Shapiro.

CONCLUSION

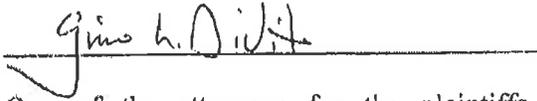
For the reasons stated above, the *ISEA, RSEA, Heaton* and *Harrison* plaintiffs respectfully request that this Court enter an order specifying that the oral argument for the appellees shall be divided between attorneys Gino L. DiVito and John T. Shapiro, deny *SUAA*’s motion, and award any further relief that the Court deems proper.

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned attorneys certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certify as aforesaid that they verily believe the same to be true.

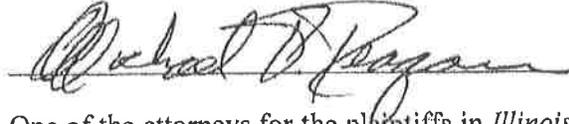
Date: March 3, 2015

Respectfully submitted,



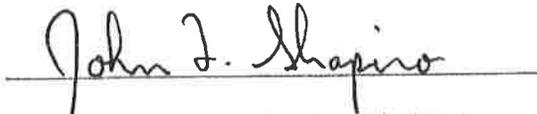
One of the attorneys for the plaintiffs in *Heaton v. Quinn*, Cook County No. 2013 CH 28406

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One of the attorneys for the plaintiffs in *Illinois State Employees Association v. Board of Trustees of State Employees Retirement System of Illinois*, Seventh Judicial Circuit No. 2014 CH 3, and *Retired State Employees Association v. Quinn*, Seventh Judicial Circuit No. 2014 MR 1

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One of the attorneys for the plaintiffs in *Harrison, et al. and We Are One Illinois Coalition v. Quinn*, Seventh Judicial Circuit No. 2014 CH 48

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Plaintiffs-Appellees,)	Originally Filed as
v.)	Champaign County Case
STATE UNIVERSITIES RETIREMENT)	No. 2014 MR 207
SYSTEM, <i>et al.</i> ,)	
Defendants-Appellants.)	

NOTICE OF FILING

FILED

MAR 3 - 2015

SUPREME COURT
CLERK

TO:

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PLEASE TAKE NOTICE that on March 3, 2015, the undersigned counsel caused to be filed with the Clerk of the Illinois Supreme Court in Springfield, Illinois, the enclosed Cross-Motion to Resolve Impasse Regarding Oral Argument, which is hereby served upon you.

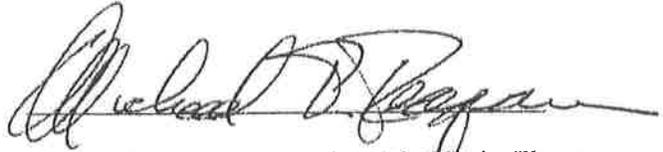
Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned attorneys certify that the statements set forth in this Notice of Filing are true and correct.

Date: March 3, 2015

Respectfully submitted,



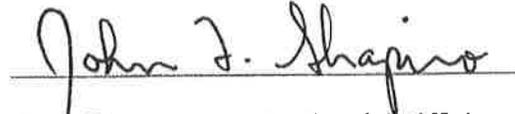
One of the attorneys for the plaintiffs in *Heaton v. Quinn*, Cook County No. 2013 CH 28406



One of the attorneys for the plaintiffs in *Illinois State Employees Association v. Board of Trustees of State Employees Retirement System of Illinois*, Seventh Judicial Circuit No. 2014 CH 3, and *Retired State Employees Association v. Quinn*, Seventh Judicial Circuit No. 2014 MR 1

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 3, 2015, before the hour of 5:00 p.m., he caused true and correct copies of the foregoing Notice of Filing and the document referred to therein to be served upon the following parties by e-mail.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



John M. Fitzgerald

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[PROPOSED] ORDER

This matter coming to be heard on the cross-motion of the plaintiffs-appellees in the *ISEA*, *RSEA*, *Heaton* and *Harrison* actions to resolve an impasse regarding oral argument, due notice having been given and the Court having been duly advised, IT IS HEREBY ORDERED AS FOLLOWS:

The cross-motion is ALLOWED / DENIED.

The 20 minutes of oral argument allocated to the appellees shall be divided among attorneys Gino L. DiVito and John T. Shapiro.

ENTERED:
