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Respectfully submitted,

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I, Craig C. Martin, an attorney, hereby certify that on January 12, 2015, I caused the foregoing **Motion By The Illinois Municipal League For Leave To File *Instanter* The Brief *Amicus Curiae* In Support of Defendants-Appellants, Proposed Order and Notice of Filing** to be electronically filed with the Clerk of the Supreme Court of Illinois by using the i2File system. Pursuant to the *Supreme Court of Illinois Electronic Filing User Manual*, I certify that I will cause an original and one copy of the above filing to be transmitted to the Court via UPS overnight delivery within five (5) days of the date of the Supreme Court's acceptance of same.

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IN THE
SUPREME COURT OF ILLINOIS

IN RE: PENSION REFORM LITIGATION)	Appeal from the Circuit Court
	)	for the Seventh Judicial Circuit,
	)	Sangamon County, Illinois,
)	
	)	Sangamon County Case Nos.
	)	2014 MR 1, 2014 CH 3, and
	)	2014 CH 48; Cook County Case
	)	No. 2013 CH 28406; and
	)	Champaign County Case No.
	)	2014 MR 207
	)	(consolidated pursuant to
	)	Supreme Court Rule 384)
)	
	)	The Honorable
)	John W. Belz, Judge Presiding	

**BRIEF *AMICUS CURIAE* OF THE ILLINOIS MUNICIPAL LEAGUE
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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INTEREST OF THE *AMICUS*

The Illinois Municipal League is a not-for-profit, non-political association of 1,121 municipalities in the State of Illinois. State statute designates the League as the instrumentality of its members. 65 ILCS 5/1-8-1 (2012). The League's mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois communities.

More and more of these communities are in crisis, and the circuit court's sweeping new rule would foreclose their only path to relief that does not jeopardize public safety and, perversely, harm the very retirees that the Pension Clause aims to protect. The League takes no position on whether the State ultimately can make the ambitious factual showing required to sustain Public Law 98-599 as a valid exercise of the State's police power. That is a question for the circuit court on remand. Nor do the League's members take pension reform lightly. Protecting public pensions helps communities attract and retain the skilled, dedicated people who fill some of society's most important positions, and communities and their citizens gladly offer pensions that will attract the best candidates and reward these men and women for their service. Municipal governments therefore view any reduction in pension benefits for these employees as a last resort, and Illinois communities have been going to extraordinary lengths to preserve these benefits. But the State must retain its longstanding authority to provide targeted relief for communities who find themselves in desperate financial straits, without any way to generate the revenue needed to stop their fiscal decline,

much less reverse it. This is especially so where the alternative to the exercise of the State's police power is to risk public safety and, ultimately, to inflict even greater injury on public retirees.

ARGUMENT

The circuit court's judgment should be reversed. The decision below would make it impossible for the State to exercise its centuries' old police power—no matter the circumstances—if doing so would in any way adversely affect public pensions. This iron-clad rule would bar resort to the police power even where the only alternative is to harm the very interests that Illinois' Pension Clause exists to serve. What if modest pension reform now is the only way to protect the public safety by maintaining fully-staffed police and fire departments and to avoid a financial collapse that will leave pension recipients with far less in the future? Under those extraordinary circumstances, at least, the police power must offer the possibility of relief. The alternative is a rule requiring citizens—including our children and future generations, as well as the pension recipients themselves—to suffer, while municipalities with no effective way to increase revenue are forced to default on payments to deserving retirees. Nothing in the text of the Illinois Constitution or in this Court's precedent compels such an absurd result.

To be sure, the police-power exception must apply only rarely, and the State must overcome significant hurdles in seeking to apply that power here.

Whether the State can make the required factual showing in defense of Public Law

98-599 is an open question—one that is not before this Court and on which the League takes no position. Nor does this appeal ask the Court to draw the metes and bounds of the State’s police power under the Pension Clause. That, too, is a task best left in the first instance to the circuit court, with the benefit of a full record. All this Court must decide is whether, in protecting pensions, the framers of our constitution meant to abolish the State’s longstanding power to offer relief from extraordinary hardship, even where the harm is to public safety—to the citizens of Illinois that the police power protects—and, ultimately, to public employees and retirees. If the Court agrees that this could not have been the framers’ intent, then the circuit court reached its novel constitutional ruling in error, and the decision below must be reversed.

I. The State Retains Its Police Power, Even In Pension-Related Matters, Provided The State Can Make The Required Factual Showings.

A. The Circuit Court’s Rule Has No Basis In The Constitution Or This Court’s Precedent.

This Court has long held that “[n]either the fourteenth amendment nor any provision of the Illinois constitution prevents the enactment of laws for the protection of the public health, safety, welfare or morals,” *City of Chicago v. Vokes*, 28 Ill. 2d 475, 479 (1963) (emphasis added), a point the Court has reaffirmed under the State’s 1970 Constitution, *see, e.g., George D. Hardin, Inc. v. Village of Mount Prospect*, 99 Ill. 2d 96, 103 (1983). As an “essential attribute of [a State’s] sovereignty,” this police power cannot be “surrender[ed]” or contracted away. *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 23 (1977); *see*

also *Atl. Coast Line R.R. Co. v. City of Goldsboro*, 232 U.S. 548, 558 (1914); *City of Chi. v. Chi. Union Traction Co.*, 199 Ill. 259, 270 (1902); *Dingman v. People*, 51 Ill. 277, 280 (1869).

It is undisputed that the Contract Clause is subject to this implied, police-power exception. “[T]he contract clause does not immunize contractual obligations from every conceivable kind of impairment or from the effect of a reasonable exercise by the States of their police power.” *Felt v. Bd. of Trs. of Judges Ret. Sys.*, 107 Ill. 2d 158, 165 (1985) (quoting *Hardin*, 99 Ill. 2d at 103). In fact, all contracts, public and private, “are subject to be interfered with or otherwise affected by subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the federal Constitution, enjoy any immunity from such legislation.” *Hite v. Cincinnati, I. & W. R.R. Co.*, 284 Ill. 297, 299 (1918); see also *Hardin*, 99 Ill. 2d at 103 (noting that Contract Clause in Illinois Constitution should be interpreted in step with Federal Constitution). This is so notwithstanding the Contract Clause’s absolute language, which on its face admits no exception. See *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983); *Hardin*, 99 Ill. 2d at 103.

The Pension Clause should be no different. The Clause exists to create “contractual protection” for pension benefits. *Buddell v. Bd. of Trs., State Univ. Ret. Sys. of Ill.*, 118 Ill. 2d 99, 102 (1987). With the addition of the Clause in the 1970 Constitution, “the rights conferred . . . by the Pension Code became contractual in nature”—rather than merely statutory, as they had been—and

therefore “cannot be altered, modified or released *except in accordance with usual contract principles.*” *Id.* at 104-05 (emphasis added). In other words, the constitutional provision “lock[ed] in” the “contractual line of cases prior to the new constitution.” *Kraus v. Bd. of Trs. of Police Pension Fund*, 72 Ill. App. 3d 833, 848 (1st Dist. 1979).

This Court has addressed the interplay between the Pension Clause and the police power only once, when the Court recognized the police power as an implied exception to the Clause’s otherwise categorical bar. In *Felt*, the Court addressed the constitutionality of an amendment to section 18-125 of the Illinois Pension Code, which changed the basis for computing judicial retirement annuities. 107 Ill. 2d at 160-61. After determining that the amendment would violate the terms of the Pension Clause, the Court presumed that a police-power exception would apply and declined to give it effect only because the State failed to make the factual showing required to sustain it. *Id.* at 165-67. Although, as the Court recognized, the State had an “undeniable interest and responsibility in ensuring the adequate funding of State pension systems,” the impairment there was not narrowly tailored to the State’s proffered justification. *Id.* at 166-67.

The Court’s recent decision in *Kanerva v. Weems*, 2014 IL 115811, does not purport to overturn *Felt*. The State raised no police-power argument in *Kanerva*. Rather, that case turned entirely on a predicate question—whether subsidized health insurance even qualifies as a pension benefit regulated by the Pension Clause. *See id.* ¶ 26; *id.* ¶ 70 (Burke, J., dissenting).

B. To Exercise The Police Power, The State Must Make A Substantial Showing.

The police power is not easily invoked, of course. Historically, this Court “has upheld State legislation impairing contracts in very few cases.” *See Hardin*, 99 Ill. 2d at 104. If a law sufficiently impairs a contract right, thereby raising the need for a police-power exception, the State must show that the impairment is “reasonable and necessary to serve an important public purpose,” *Sanelli v. Glenview State Bank*, 108 Ill. 2d 1, 22 (1985) (quoting *United States Trust Co.*, 431 U.S. at 25), including “the public health, safety, morals, and general welfare or convenience,” *City of Carbondale v. Brewster*, 78 Ill. 2d 111, 114-15 (1979) (internal citations omitted). “To be a valid exercise of police power, the legislation must bear a reasonable relationship to one of the foregoing interests which is sought to be protected, and the means adopted must constitute a reasonable method to accomplish such objective.” *Id.* at 115 (internal citations omitted).

Again, the League takes no position on whether the State can make these showings in support of Public Law 98-599—whether the reforms in that law advance an “important public purpose” and are “reasonable and necessary” to achieve that end. Nor is there any need for this Court to define the contours of the police power in that context on this appeal. A constitutional question of that dimension benefits from a full, factual record. *Cf. Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 455 (2008) (courts should evaluate

important constitutional questions based on evidentiary record). At this stage, rather, the only question is whether the State will have an opportunity even to attempt those factual showings.

II. The Municipal Experience Illustrates The Need For Some Police-Power Exception.

The municipal experience predicts the devastating effects of closing the door entirely on a police-power exception, as the circuit court's categorical holding would do. Without such an exception, the State would be powerless to provide even targeted relief to the most hard-pressed communities.

An increasing share of municipal police and fire pensions are already grossly underfunded, and municipalities have little ability to raise additional revenue to reverse this trend. Communities are experimenting with creative fiscal solutions, but there are practical limits on what these cities, towns, and villages can do, and some communities have been forced to shrink the size of their police and fire departments, while others have gone even further and privatized these services. The end game for the most distressed of these communities is clear—without modest reform in the near-term, and despite their best intentions, they will be unable to make scheduled payments to their retirees.

It cannot be that the Pension Clause is meant to punish pension recipients by precluding the State from providing modest relief for these most imperiled communities. Whatever the ultimate result of this litigation, therefore, the Court

should reverse the judgment below and, as in *Felt*, recognize some role for the police power, however narrow, in the pension context.

A. Many Police And Fire Funds Are Grossly Underfunded, With No Way To Replenish Them.

Without the ability to impose an income tax, municipalities have only limited means to raise revenue. Aside from certain per-capita payments they receive from the State—whose amounts municipalities do not control—these communities may try to generate added revenue by, for example, raising property taxes or imposing sales taxes, but these measures have strict practical and legal limits. Small, chiefly-residential communities have little to no commercial tax base and relatively few properties to tax. And municipal taxes are cumulative, adding to existing national, state, and county taxes, which makes it difficult to raise them beyond relatively low levels without losing significant population.

On top of all this, many municipalities face legal obstacles to any increase in their property tax rates. For those communities covered by the Property Tax Extension Limitation Law (“PTELL”), 35 ILCS 200/18-185 *et seq.*, any property tax increase that exceeds the lower of 5% or the current inflation rate must be approved by popular referendum. Recently, inflation has been less than 2%, meaning property tax increases are capped at that level for PTELL communities unless their voters are willing to approve more significant increases.

Notwithstanding these practical and legal limits on raising revenue, municipalities provide a host of essential services. They pay for police and fire

departments, water treatment plants, libraries, parks, roads, public works, waste disposal, snow removal, and other basic elements of daily life. Given the essential nature of these services, moreover, municipal government must run 24 hours per day, seven days a week. Significantly, State law also requires Illinois communities with populations between 5,000 and 500,000 to create police and fire pension funds and to pay retirees between 50% and 75% of their final salaries.¹ 40 ILCS 5/3-111, 5/4-109. This amount increases by 3%, compounded annually, 40 ILCS 5/3-111.1, 5/4-109.1, on top of which the funds must pay survivors' benefits for widows and widowers, 40 ILCS 5/3-112, 5/4-114. The State further requires municipalities to finance these funds at a rate sufficient to meet their annual liabilities, while simultaneously raising fund assets up to 90% of total liability by 2040. 40 ILCS 5/3-125(a), 5/4-118(a).

In light of these rising, and compounding, obligations—coupled with stringent limits on municipal revenue—it is no surprise that a growing number of municipal police and fire pensions are grossly underfunded. As of 2012, more than 20 police and 10 fire pension funds were less than 30% funded, from Park City's (funded at less than 17%), to Madison's (funded at under 20%), and from Cairo's relatively small fire system (funded at under 18%), to large fire systems in Kankakee and Danville (funded at less than 19% and 25%, respectively).

¹ The pension code's requirements also apply to municipalities of fewer than 5,000 who have adopted the code by referendum. *See* 40 ILCS 5/3-145, 5/4-141.

Distressing as these numbers are, the situation for many Illinois municipalities is further deteriorating. In 1993, excluding Chicago, municipal police pension funds had combined unfunded liabilities of approximately \$692 million (funded at an aggregate level of nearly 75%). By 2012, that number had jumped to \$4.7 billion (with aggregate funding of less than 55%). Municipal firefighters' pension funds are experiencing the same trend. In 1993, these funds (again, not counting Chicago) had a total of \$463 million in unfunded liability (making them more than 75% funded). In 2012, that number reached \$3.6 billion (just over 55% funded).

Meanwhile, another trend is likely to accelerate underfunding. In addition to municipal contributions and investment income (which is subject to the vagaries of the market), pension funds depend on contributions from active employees. It is therefore significant that the ratio of active to retired employees in Illinois police and fire departments is declining, and as some departments shrink under fiscal pressure, *see infra* pp. 12-13, this trend will only gain momentum. In 2004, there were approximately 1.9 active police officers for every fund beneficiary, with 1.59 active firefighters per beneficiary. By 2012, these ratios had declined to 1.4 and 1.29, respectively.² As a result, beneficiaries account for an increasing share of total system participants (active employees plus retirees and other beneficiaries), and eventually, beneficiaries may outnumber active employees.

² This downward trend is consistent. The 2004-2012 active police/beneficiary ratios were: 1.9, 1.86, 1.79, 1.74, 1.71, 1.64, 1.55, and 1.41. For fire employees, the ratios were: 1.59, 1.51, 1.51, 1.49, 1.48, 1.44, 1.37, and 1.29. (There are no data for 2011.)

Even assuming sound investments in a rebounding economy, therefore, this trend makes it increasingly difficult for communities to stop, much less reverse, the downward trend in pension funding.

B. Illinois Municipalities Are Doing What They Can, But Some Are Already Reducing Police And Fire Protections Because Of Pension Obligations.

Notwithstanding the obvious challenges municipalities face in raising taxes, some communities have managed to do so to help satisfy their pension obligations. Municipalities recognize the importance of well-funded pensions to attract, retain, and reward police officers and firefighters. Accordingly, in December 2014 alone, Caseyville, a village in St. Clair County, increased its property taxes by 17.5%; Monmouth, in Warren County, passed a 9.7% increase; and LaSalle, in LaSalle County, raised its tax by 10.6%. All three passed these substantial increases in an express effort to fund municipal pensions.³

Other municipalities have come up with more creative options. Peoria, for example, recently imposed new utility taxes and doubled its garbage collection fees to help fund its pension liabilities. And Stone Park, in Cook County, has

³ Roger Starkey, *17.5 percent tax hike for Caseyville unanimously approved*, The Metro Independent, Dec. 11, 2014, <http://metroindependent.com/2014/12/11/17-5-percent-tax-hike-for-caseyville-unanimously-approved/9918/>; Jake Bolitho, *Monmouth City Council approves 9.7% tax increase*, Daily Review Atlas, Dec. 15, 2014, <http://www.reviewatlas.com/article/20141215/NEWS/141219797>; Rachel Stella, *La Salle taxes on the rise due to pension issue*, LaSalle News Tribune, Dec. 3, 2014, <http://newstrib.com/Main.asp?SectionID=2&SubSectionID=28&ArticleID=40706>.

taken the extraordinary step of issuing \$2 million in municipal bonds to improve funding of its police pension from 7% to (a still low) 23%.⁴

But again, such measures can only do so much. A bond issue, like Stone Park's, provides some short-term relief, but only until the bonds become due. And there are limits to what residents will allow when it comes to tax and fee increases that municipalities may impose on top of existing federal, state, and county taxes. In November of last year, for example, 82% of voters in Braidwood, a Will County community, rejected a property tax increase that would have funded police pensions, despite the police chief's warning that, without additional pension funding, the police department may have to close.⁵

This was no empty threat. Some Illinois communities are already shrinking their police and fire departments in the face of growing pension underfunding. In April, Lyons, a village in western Cook County, cut one-third of its police force.⁶ And in Danville, whose fire pension is woefully underfunded, *see supra* p. 9, the most recent budget allows for 18% fewer firefighters than last year and for the closure of one of the city's four fire stations.⁷ For communities like these, the

⁴ Andrew Schroedter & Patrick Rehkamp, *Dozens of suburban police and fire pension funds drying up*, Chicago Sun-Times, Aug. 5, 2014, <http://chicago.suntimes.com/chicago-politics/7/71/161799/dozens-of-suburban-police-and-fire-pension-funds-drying-up>.

⁵ Lee Provost, *Kankakee owes more in pensions than it can afford*, The Daily Journal, Nov. 12, 2014, http://www.daily-journal.com/news/local/kankakee-owes-more-in-pensions-than-it-can-afford/article_89a24e13-4e0c-5038-a4f8-f81e835d021c.html.

⁶ ABC 7 Chicago, *Union: Lyons To Cut Police Force By One-Third*, Apr. 10, 2014, <http://abc7chicago.com/archive/9499431/>.

⁷ *Danville council OKs budget that cuts firefighters*, The News-Gazette, Dec. 16, 2014, <http://www.news-gazette.com/news/local/2014-12-16/danville-council-oks-budget-cuts-firefighters.html>.

pension crisis is not an abstraction on a balance sheet. Citizens there face greater real-world risks as police and fire departments are increasingly understaffed. Meanwhile, those police officers and firefighters who remain must attempt to fulfill their duties in smaller numbers.

Other municipalities are taking even more drastic steps. Faced with overwhelming pension obligations, the Village of McCook has fired eight of its nine firefighters and handed its fire department over to a private contractor.⁸ North Riverside is trying to do the same. With a \$1.9 million budget deficit—due principally to \$1.8 million in police and fire pension payments—that community has sought to contract with a private company to assume operation of the village’s fire department and retirement funds. And while that effort remains the subject of litigation aimed at stopping the privatization, the Village of North Riverside has been unable to make payments into its fire pension fund. Currently, the Illinois Department of Insurance is threatening to seize the village’s sales tax revenue to cover its pension obligations, a move that “would be devastating to North Riverside, as more than 60 percent of the Village’s general operating funds come from this important revenue source.”⁹

⁸ Natalie Martinez, *Suburban Fire Department Fights Mass Layoffs*, NBC Chicago, Aug. 4, 2014, <http://www.nbcchicago.com/news/local/Suburban-Fire-Department-Objects-to-Mass-Layoffs-269919331.html>.

⁹ Press Release, Village of North Riverside, *With Mounting State Pressure To Fund Millions In Public Pensions, North Riverside Explores Fire Department Privatization*, June 19, 2014, <http://northriverside-il.org/node/432>.

Recent experiences in communities like these show the direct and substantial threat that unreformed pension obligations can pose. Once again, this appeal does not ask the Court to decide what level of risk to “public health” and “safety” is needed to justify exercise of the police power, *Brewster*, 78 Ill. 2d at 114-15, but the municipal experience demonstrates the need for some residual state power to provide targeted relief to particularly hard-hit communities.

Indeed, one of the benefits of secure pensions is their ability to attract and retain skilled, dedicated men and women to protect the public safety and welfare. To that end, and to reward retirees for their service, municipalities like Caseyville, Monmouth, LaSalle, Peoria, and Stone Park are going to great lengths to fund their pension systems. But for those communities where modest and reasonable pension reform would be the only viable means of avoiding unsafe reductions in police and fire personnel, it would be ironic (to say the least) to read the Pension Clause—which otherwise promotes the public welfare—to undercut it.

C. Some Municipalities Are Already Unable To Meet Their Pension Obligations.

If nothing else, there must be some role for the police power in the extraordinary case where the alternative to minimal, targeted pension reform is demonstrable future injury to the pension beneficiaries themselves. As described above, a community like North Riverside is already unable to make scheduled payments into its funds, and examples from out of state show the unfortunate next step—municipalities that cannot pay their retirees.

Municipal bankruptcy, while obviously a last resort, is an option for communities overwhelmed by pension and other debt. With state authorization, a municipality may seek protection under Chapter 9 of the U.S. Bankruptcy Code if it is insolvent, desires to adjust its debts, and has attempted to resolve them. 11 U.S.C. § 109(c). And pension debt, like other obligations, is dischargeable in bankruptcy, as recent experience has shown. Notwithstanding a Michigan constitutional provision that is nearly identical to Illinois' Pension Clause, a bankruptcy court held—in declaring Detroit eligible to file a Chapter 9 petition—that “pension rights . . . are subject to impairment in a federal bankruptcy proceeding.” *In re City of Detroit*, Case No. 13-53846, Doc. 1945, at 80 (Bankr. E.D. Mich. Dec. 5, 2013). The court went on to hold that “if a state consents to a municipal bankruptcy, no state law can protect contractual pension rights from impairment in bankruptcy, just as no law could protect any other types of contract rights.” *Id.* at 92. Another bankruptcy court recently ruled that the city of Stockton, California, could reject its contract with CalPERS, the state pension system, as part of Stockton’s bankruptcy restructuring.¹⁰

In both Detroit and Stockton, public employees ultimately agreed to plans that kept pension payments intact only by reducing salaries and benefits for

¹⁰ Steven Church, *Calpers No Better Than Bondholders in Stockton Bankruptcy*, Bloomberg, Oct. 1, 2014, <http://www.bloomberg.com/news/2014-10-01/calpers-denied-special-protection-in-stockton-bankruptcy.html>.

current employees. For both municipalities, however, the failure to reform the public pension systems poses the serious risk of continued fiscal strain.¹¹

Unlike those in Detroit and Stockton, pension payments in other communities have been affected by municipal bankruptcy. When Central Falls, a city of 19,000 in Rhode Island, declared bankruptcy in August 2011, its retired firefighters and police officers received pension payments up to 55% less than originally guaranteed. Only with a later, \$2.6 million infusion from the state legislature was Central Falls able to boost that figure to 75%. But even with state funding and lower pension payments, the municipality has continued to struggle to fund its pensions.¹²

Prichard, an Alabama community with 22,000 residents, declared bankruptcy in 1999, and it used bankruptcy to reduce pension benefits significantly for current retirees. The city emerged from bankruptcy but, faced with limited revenue, would have been able to reduce its ongoing pension shortfall only by cutting essential municipal services, including police, fire, water, garbage, and sewage. In short order, the pension fund ran dry, and in September 2009, Prichard stopped making payments to its retirees entirely for 21 months, forcing many of its former public servants to declare personal bankruptcy. When pension

¹¹ Mary Williams Walsh, *Detroit Emerges From Bankruptcy, Yet Pension Risks Linger*, N.Y. Times, Nov. 11, 2014, <http://dealbook.nytimes.com//2014/11/11/detroit-emerges-from-bankruptcy-pension-risk-still-intact/>.

¹² Katherine Gregg, *et al.*, *RI Assembly passes Central Falls pension bailout, NECAP moratorium, teacher evaluations*, Providence Journal, June 21, 2014, <http://www.providencejournal.com/politics/content/20140620-ri-assembly-passes-central-falls-pension-bailout-necap-moratorium-teacher-evaluations.ece>.

payments finally resumed, in June 2011, they were at one-third their former level.¹³

At a minimum, Illinois must have the police power needed to prevent situations like these—where the alternative to the exercise of that power would be to injure, not only the public at large, but retirees specifically. Although Illinois law does not currently authorize municipalities to seek Chapter 9 protection in bankruptcy, several Illinois communities have expressed an interest in doing so, and nothing would prevent the General Assembly from authorizing municipal bankruptcy as fiscal pressures approach the breaking point in some communities. In any event, as the Prichard example shows, with or without bankruptcy, a fund without money cannot pay its beneficiaries. This is likely to become a reality for many Illinois municipalities, who lack the tax base and other resources needed to sustain their funds. For these communities, at least, it is essential that the State retain the power necessary to prevent that failure.

CONCLUSION

Whether the State can make the strict showing Illinois law demands to justify use of the police power remains to be seen. But the circuit court's sweeping rule cannot stand. As the experience of more and more Illinois and out-of-state communities shows, the State must retain some ability to modify public

¹³ Michael Cooper & Mary Williams Walsh, *Alabama Town's Failed Pension Is a Warning*, N.Y. Times, Dec. 22, 2010, at A1, <http://www.nytimes.com/2010/12/23/business/23prichard.htm>; Katherine Sayre, *Prichard pension crisis: Judge approves settlement; payments to restart next month*, May 25, 2011, http://blog.al.com/live/2011/05/judge_approves_prichard_pensio.html.

contract obligations—including those involving pensions—under extreme circumstances. There must be some residual power to assist communities suffering from a direct and real threat to public safety, so long as the remedy is narrowly drawn and does everything possible to protect the legitimate expectations of current and retired public servants. At a minimum, the State must be able to protect former public employees and their families by choosing targeted reform now over a dramatic inability to pay beneficiaries later.

Dated: January 12, 2015

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IN THE
SUPREME COURT OF ILLINOIS

IN RE: PENSION REFORM
LITIGATION

) Appeal from the Circuit Court
) for the Seventh Judicial Circuit,
) Sangamon County, Illinois,
)

) Sangamon County Case Nos.
) 2014 MR 1, 2014 CH 3, and
) 2014 CH 48; Cook County Case
) No. 2013 CH 28406; and
) Champaign County Case No.
) 2014 MR 207
) (consolidated pursuant to
) Supreme Court Rule 384)
)

) The Honorable
) John W. Belz, Judge Presiding
)

CERTIFICATE OF COMPLIANCE

I, Craig C. Martin, an attorney, certify that the **BRIEF *AMICUS CURIAE* OF THE ILLINOIS MUNICIPAL LEAGUE IN SUPPORT OF DEFENDANTS-APPELLANTS** conforms to the requirements of Rules 345, 341(a) and (b). The length of this brief *amicus curiae*, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 18 pages.

Dated: January 12, 2015

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IN THE
SUPREME COURT OF ILLINOIS

IN RE: PENSION REFORM LITIGATION)	Appeal from the Circuit Court
)	for the Seventh Judicial Circuit,
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)	Champaign County Case No.
)	2014 MR 207
)	(consolidated pursuant to
)	Supreme Court Rule 384)
)	
)	The Honorable
)	John W. Belz, Judge Presiding	

NOTICE OF FILING

To: *See* attached Certificate of Service

PLEASE TAKE NOTICE that on **January 12, 2015**, I caused the foregoing **Brief** *Amicus Curiae Of The Illinois Municipal League In Support Of Defendants-Appellants* to be electronically filed with the Clerk of the Supreme Court of Illinois, by using the i2File system.

Dated: January 12, 2015

Respectfully submitted,

ILLINOIS MUNICIPAL LEAGUE

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CERTIFICATE OF SERVICE

I, Craig C. Martin, an attorney, hereby certify that on January 12, 2015, I caused the foregoing **Brief *Amicus Curiae* of the Illinois Municipal League In Support Of Defendants-Appellants and Notice of Filing** to be electronically filed with the Clerk of the Supreme Court of Illinois by using the i2File system. Pursuant to the *Supreme Court of Illinois Electronic Filing User Manual*, I certify that I will cause an original and 12 copies of the above filing to be transmitted to the Court via UPS overnight delivery within five (5) days of the date of the Supreme Court's acceptance of same.

I further certify that I have this 12th day of January, 2015, caused three copies of the above filing to be served upon counsel listed below via U.S. regular mail postage prepaid:

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