No. 1-13-0416

IN THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST DISTRICT

BOARD OF TRUSTEES OF THE RIVERDALE POLICE PENSION FUND Plaintiff-Appellant, v. VILLAGE OF RIVERDALE Defendant-Appellee	On Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery Division No. 11-CH-60 The Honorable Franklin Valderrama, Judge Presiding.

BRIEF OF *AMICUS CURIAE* OF THE ILLINOIS MUNICIPAL LEAGUE IN SUPPORT OF THE VILLAGE OF RIVERDALE

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I. Points and Authorities

II. Interest of the *Amicus Curiae*

The Illinois Municipal League is a not-for-profit, non-political association of 1,124 municipalities in the State of Illinois. State statute designates the League as the instrumentality of its members. 65 ILCS 5/1-8-1 (West 2010). The League's mission is to articulate, defend, maintain, and promote the interests and concerns of Illinois communities.

The League and its member communities have a specific interest in this matter because the holding in this case will affect municipal governments and municipal taxpayers throughout the State. There are approximately 350 separate municipalities that have police and firefighter pension funds in Illinois that would be affected by this ruling. There are approximately 650 of those separate funds. Additionally, this ruling would affect the operation of a myriad of other pension systems as well.

Pension boards are unelected by and unaccountable to the voters. Allowing a pension board to dictate property-tax policy via the courts will devastate municipal budgets, will escalate property taxes, will deprive property-tax payers of a voice in the property-tax process, and

will hamper ongoing political attempts to address Illinois systemic pension problem.

III. ARGUMENT

This is a case of statutory interpretation. Does the Illinois Pension Code authorize the trustees of a police pension board to sue to require a village to increase its property taxes in order to allocate more money to the pension fund? The answer is no.

First, the statutory procedures set forth in the text of the Illinois Pension Code do not provide for funding suits by police pension boards. Second, the Illinois General Assembly never intended for funding suits by police pension boards. Finally, principles of sound public policy do not provide for funding suits by police pension boards.

For these reasons, the Illinois Municipal League requests this Court to affirm the decision of the Circuit Court.

A. This case affects local and State pension systems across Illinois.

With this case, the Pension Board is asking this Court to inject itself into the most pressing and contentious political issue in Illinois State government. Currently, Illinois finds itself in the throes of a pension funding crisis. Governor Quinn has recently defined the pension crisis as "the biggest, most important economic challenge we'll ever have." Monica Davey and Mary Williams Walsh, *Chicago Sees Pension Crisis Drawing Near*, N.Y. Times, August 6, 2013, A1.[1]

Municipal governments also face a pension crisis. There are currently 350 municipal police pension funds in Illinois. As of 2010, the average funding level for these funds is 54.31%. *See,* Commission on Government Forecasting and Accountability*, Report of the Financial Condition of the Downstate Police and Fire Pension Funds in Illinois (P.A. 96-1495),* pp. 6, January 2013 ("COGFA 2013 Study"). Despite paying increasing amounts into these pension funds, the funding levels continue to fall. Municipalities increased the amount of taxes paid to police pension funds from an aggregate of nearly $51 million per year in 1988 to an aggregate of $285 million per year by 2010. *See,* Illinois

[1] Available at http://www.nytimes.com/2013/08/06/us/chicago-sees-pension-crisis-drawing-near.html?pagewanted=all&_r=0.

Department of Insurance, *Report of Examination for the Public Employees' Pension Funds*, (1989)(stating the employer contribution amount of in 1988); Illinois Department of Insurance, *Public Pension Report (2009-2010)*, 67 (2011)(stating the employer contribution amount of in 2010)("PPR 2009").

During that same 22-year period, the unfunded liability among these funds increased from an aggregate of $458 million to $4.4 billion. *See,* Illinois Department of Insurance, *2005 Biennial Report of the Division of Insurance on the activities of its Public Pension Division*, 52 (2005)(stating the amount of unfunded liability in 1988); PPR 2009 at 68 (stating the amount of unfunded liability in 2010).

The amount of taxes paid into police pension systems increased by 459%—but the unfunded liability grew by 861%. The taxpayers cannot keep up.

There is only so much property-tax revenue available to serve the pension funds. The pension problem cannot be solved by simply throwing ever-increasing amounts of money at it; there are no sources of ever-increasing amounts of money to throw. The problem is systemic.

The Commission on Government Forecasting and Accountability has identified a number of causes, other than underfunding, that contribute to the falling funding levels. These factors include low investment returns and benefit increases. *See generally,* Commission on Government Forecasting and Accountability*, Fiscal Analysis of the Downstate Police and Downstate Fire Pension Funds in Illinois,* pp.3-59, December 2009. Ever increasing property taxes are not and cannot be the solution to the pension crisis. The entire pension system requires a statutory overhaul.

To that end, the Illinois General Assembly has been attempting to address the pension issues in the State for some time. This attempt has proven to be tumultuous. After failing to enact legislation at the end of the 2013 legislative session, the General Assembly convened a conference committee to recommend legislation. *See,* Sara Burnett, *Possible pension fix could save $145B,* State Journal Register, August, 23, 2013.[2]

It is against this backdrop that this case comes to court. The concerted efforts to address the pension crises in Illinois continue. The legal

[2] Available at: http://www.sj-r.com/breaking/x1367232506/Possible-pension-fix-could-save-145B#ixzz2cpxlKqcg.

standard sought by the Pension Board in this case would hamper that process. The legal standard proposed by the Pension Board would affect more than the Riverdale fund. It would affect more than police pension funds in general. The Illinois Pension Code contains 17 separate Articles that, each, establish a separate pension process with respect to a particular set of State or local employees. Each of those pension systems contains a funding mechanism requiring the employer to either levy a certain tax or appropriate a certain amount to fund the pension system. Allowing suits to mandate specific funding would apply to each and every one of those systems to the same extent that it would apply to the Riverdale fund.

B. The Illinois Pension Code does not provide for funding suits by police pension boards.

As the trial court held, there is no substantive right or injury at issue in this case. The Pension Board is trying to judicially regulate a procedural process rather than a substantive right. That procedural process does not allow for the Pension Board's lawsuit. The Pension Code does not expressly allow for the Board's suit, nor does the Board satisfy the requirements for an implied right of action.

This case concerns the tax levy years from 2000 to 2010. In 2010, the funding provision of Article 3 was amended to include additional remedies for the underfunding of pension contributions. *See* Public Act 96-1495. Those additional remedies still do not include a right to a lawsuit by a pension board. This brief discusses the status of the law prior to the 2010 revision.

1. There is no substantive right or injury at issue in this case.

This case is purely about the application of statutory procedure. There is no constitutional right to funding levels under the Pension Clause of the Illinois Constitution. People *ex rel. Illinois Fed'n of Teachers v. Lindberg,*60 Ill.2d 266, 277 (1975). There is no contractual right created by drafting the funding requirements into the Pension Code. *People ex rel. Sklodowski v. State*, 182 Ill.2d 220, 233-34 (1998). Nor is there any substantive harm to the right to receive pensions unless the fund is on the verge of default or imminent bankruptcy. *McNamee v. State of Illinois*, 173 Ill.2d 433, 447 (1996).

In his order granting summary judgment, Judge Valderrama spent considerable effort analyzing these cases to determine that no

substantive funding right or substantive injury was at issue in this case. In its brief, the Pension Board conceded this point; the Pension Board argued that the court's reliance on these cases was erroneous because those cases dealt with the Pension Clause of the Constitution rather than the provisions of Article 3 of the Pension Code. *See,* Brief and Argument of Plaintiff-Appellant at 27-30. That argument, however, misses the point of the Judge's order. Without any substantive right at issue, the Pension Board is left to argue only the technicalities of the statute. Those technicalities do not authorize them to sue the Village over funding levels.

2. Section 1-115 of the Pension Code does not expressly authorize a police pension board to sue a municipality over funding levels.

When construing a statute, this court's primary objective is to ascertain and give effect to the legislature's intent, keeping in mind that the best and most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning. *People v. Lloyd*, 2013 IL 113510, ¶25. In determining the plain meaning of the statute, the court must consider the subject that the statute addresses and the legislative purpose in enacting it.

A court cannot interpret a statutory provision in isolation; it must interpret the statute as a whole. It must read the provision at issue in light of the entire section in which the provision appears—and in light of the entire Act of which that section is a part. *Id*. When read as a whole, the Pension Code precludes the Pension Trustees from suing to enforce funding levels.

(a) The General Assembly enacted §1-115 to prevent the mishandling of investment authority.

The Pension Board argues that §1-115 of the Pension Code expressly authorizes it to sue the Village over funding levels. That provision states:

> §. 1-115. Civil Enforcement. A civil action may be brought by the Attorney General or by a participant, beneficiary or fiduciary in order to:
> (a) Obtain appropriate relief under Section 1-114 of this Code;
> (b) Enjoin any action or practice which violates any provision of this Code; or
> (c) Obtain other appropriate equitable relief to redress any such violation or to enforce any such provision. 40 ILCS 5/1-115 (West 2012).

The General Assembly added this statutory provision to the Pension Code in 1982. The provision was included in House Amendment 2 to Senate Bill 1579. The purpose of that amendment was to broaden the investment authority for the State pension funds by adopting the

Prudent Person Rule rather than relying on a list of specific investment restrictions. *See,* 82nd General Assembly House of Representatives Transcription Debate, June 18, 1982, Page 106 (statement of Representative Karpiel). This amendment was intended to apply to the Downstate Teachers' Retirement System, the State Universities Retirement System, the State Board of Investments (which includes the State Employees Retirement System, the General Assembly Retirement System, and the Judges' Retirement System), and the Illinois Municipal Retirement Fund. *Id.* The investment returns for the affected State systems were dramatically underperforming the national average. The purpose of the amendment was to increase the investment authority for these systems and, at the same time, increase the accountability of those making the investment decisions. The enforcement provisions were enacted to ensure against deviations from the Prudent Investor Rule. *See,* 82nd General Assembly Senate Transcription Debate, June 29, 1982, Page 31-32 (statement of Senator Davidson). The General Assembly never intended §1-115 to be used to allow a pension fund to sue the State or one of its political subdivisions over funding levels in a particular system.

(b) The rules of statutory interpretation hold that §1-115 does not apply to suits over funding levels.

An examination of the statutory processes set forth in the text of the Pension Code indicate that the General Assembly never intended police pension boards to bring funding suits.

(1) The doctrine of inclusio unius est exclusio alterius holds that §1-115 does not apply to suits over funding levels.

Under the doctrine of *inclusio unius est exclusio alterius,* the inclusion of one thing in a statute implies the exclusion of another; where a statute lists the thing or things to which it refers, the inference is that all omissions are exclusions. *City of St. Charles v. ILRB,* 395 Ill. App.3d 507, 509 (2 Dist. 2009).

This doctrine applies not only to individual statutory sections; it applies across entire statutory enactments. If language is included in one section of a statute but is omitted in another section of the same statute, then the courts must presume that the legislature acted intentionally in the inclusion or exclusion. *People v. Edwards,* 2012 IL 111711, ¶27 (2012); *see also*, 2A N. Singer, Sutherland on Statutes and Statutory Construction § 46:5 (7th ed. 2007) ("where the legislature has

employed a term in one place and excluded it in another, it should not be implied where excluded").

The Illinois Supreme Court has relied on this principle when interpreting the provisions of the Illinois Pension Code. *Roselle Police Pension Bd. v. Village of Roselle,* 232 Ill.2d 546, 556-57 (2009). The question before the court was whether survivor benefits under Article 3 of the Pension Code included annual cost-of-living increases. *Id.* at 554. The court answered this question by examining other Articles of the Pension Code. Other provisions of the Pension Code specifically provided for annual increases, but the provisions of Article 3 did not. Because of this, the Supreme Court held that Article 3 did not authorize the annual increases. *Id.* at 556-57 ("Because the legislature failed to provide for annual increases with equal clarity with respect to [the Article 3 benefits], we must conclude that no such annual increases were authorized").

The exact same analysis applies here. The question before the court is whether police pension boards may sue over pension funding levels. Like the court in the *Roselle* case, this court, can answer this question by examining other Articles of the Pension Code. In doing so, it will find that both Articles 7 and 16 specifically provide for funding suits. *See,* 40

ILCS 5/7-172.1 (West 2012); 40 ILCS 5/16-158.1 (West 2012). Conversely, Article 3 contains no such provision. Accordingly, this Court should hold that funding suits are not available under Article 3. The Court should affirm the decision of the trial court.

(2) The doctrine of ejusdem generis holds that §1-115 does not apply to suits over funding levels.

The doctrine of *ejusdem generis* holds that §1-115 applies to the investment and management of the pension fund; it does not apply to funding levels.

Under this doctrine, if a statute contains a list where a specific item is followed by a general item, then the general item is interpreted to be limited to the same type and character as the item that is specifically listed. *People v. Davis,* 199 Ill.2d 130, 138 (2002). The purpose of this doctrine is to prevent the general term from rendering the specific term superfluous. 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47:17 (7th ed.2007).

In this case, §1-115 lists a specific item that is followed by generality. It specifically allows for a civil suit to be brought to enforce a liability for a

breach of fiduciary duty under §1-114. It then goes on to provide for the catch-all provisions for enforcement against violations of the Pension Code. Under the doctrine of *ejusdem generis*, the generalized catch-all provisions in §1-115 should be interpreted to be in the same vein as the specific provision. That Section allows suits concerning the investment and management of the pension fund. It does not authorize suits to require that property taxes be increased to maintain specific funding levels.

(3) The presumption against superfluity holds that §1-115 does not apply to suits over funding levels.

When construing a statute, the court should avoid any interpretation that renders any part of the statute superfluous. *Ferguson v. Patton*, 2013 IL 112488, ¶28.

The Pension Board's claim to a cause of action violates this rule. It would render superfluous those causes of action that are explicitly expressed in the Pension Code. If §1-115 of the Pension Code were to grant all participants, all beneficiaries, and all fiduciaries of all pension systems in the Pension Code the right to bring a funding suit, then there would be no need to expressly grant that right under Article 7.

But Articles 7 and 16 expressly grant that right. Accordingly, it cannot apply under Article 3.

C. There is no implied authorization for a police pension board to sue a municipality over funding levels.

The Pension Board claims an implied private right of action to sue the Village over the amount of its property tax levy. Their argument relies on the four-part test referenced in *Corgan v. Muehling*, 143 Ill.2d 296, 312-15 (1991). The Board lists a number of liability cases in which the courts have found that an implied cause of action exists. *See,* Brief and Argument of Plaintiff-Appellant at 25. Conversely, the Pension Board avoids discussing any of those cases where the courts have disallowed an implied right of action. *See, e.g.:*

- *Fisher v. Lexinton Health Care, Inc.,* 188 Ill.2d 455, 460 (1999)(the Nursing Home Care Act does not imply a private right of action to an employee who was retaliated against);
- *Metzger v. DaRosa et al.*, 209 Ill.2d 30, 45 (2004)(the Personnel Code does not imply a private right of action for state employees who are retaliated against by other state employees);
- *Area Erectors, Inc. v. Travelers Property Cas. Co. of America,* 2012 IL App (1st) 111764, ¶30 (Insurance Code does not imply a

private right of action for violations of provisions that are regulatory in nature);

- *Tunca v. Painter,* 2012 IL App (1st) 100930, ¶ 20-22 (the Medical Studies Act does not imply a private right of action for violations of the Act's confidentiality provisions).

The four-prong test advanced by the Pension Board in this case does not apply with respect to the Pension Code. The first prong is whether the plaintiff is a member of a particular class for whose benefit the statute was enacted. *Rogers v. St. Mary's Hospital,* 149 Ill.2d 302, 308 (1992). The plaintiff in this case is the pension board. It is unclear from its brief why the Pension Board's claim that the Pension Code was enacted for the benefit of pension boards. There is nothing in the Pension Code that leads to that conclusion, nor has the Pension Board cited to any authority to support its proposition that the Pension Code was enacted for its benefit. The Pension Board fails the first prong of the four-part test.

The second prong of the four-part test is whether the plaintiff's injury is one that the statute was designed to prevent. *Id.* When determining the purpose of a statute under the four-part test, the courts must examine

the Act as a whole; it cannot pick out isolated provisions. *Metzger,* 209 Ill.2d at 463. All of the cases that the Pension Trustees cited in their brief concern statutes that are designed to protect the general public (the Federal Safety Appliance Act, the Real Estate Brokers and Salesman License Act, the Psychologist Registration Act, and Department of Transportation Regulations designed to prevent violations of the federal Civil Rights Act). *See,* Brief and Argument of Plaintiff-Appellant at 26. The Pension Code, however, is an entirely different animal. The Pension Code is not a statute that is designed to prevent injury. It is a statute that is designed to establish a procedure for providing benefits. The title of the Act is:

> An Act to revise and codify the laws relating to the creation, maintenance and administration of retirement systems, pension funds, annuity and benefit funds and related pension and benefit laws for persons performing services for the state, its agencies, instrumentalities, political subdivisions, and municipal corporations, and for the beneficiaries and dependents of such persons, to provide for a Commission to study such laws and to repeal certain Acts and parts of Acts herein named. *See* 40 ILCS 5/1-101 (West 2012)(annotation).

The Pension Code is not designed to be preventative. It is an administrative system. Again, the plaintiff—the Pension Board—does not have an injury in this case. Moreover, as the trial court went to great lengths to note, there is no substantive injury. There is no evidence that a beneficiary entitled to benefits has not received those

benefits, nor is the pension fund on the verge of default or bankruptcy. This question before the court concerns the workings of a statutory administrative process. The Pension Board fails the second prong of the four-part test.

The third prong of the four-part test is that a private right of action is consistent with the underlying purpose of the statute. *Rogers,* 149 Ill.2d at 308. An implied right of action under the Pension Code fails to comport with the underlying purpose of the Pension Code for the exact same reasons that §1-115 of the Pension Code does not provide an express cause of action. The General Assembly did not intend to create a cause of action for police pension boards to sue over taxing levels. The General Assembly avoided granting an express right to the pension boards to bring a suit. It would be wholly inconsistent with that legislative intent for this Court to find an implied right of action where the legislature purposefully avoided an express right of action. Accordingly, the Pension Board fails the third prong of the four-part test.

The last prong of the four-part test is that implying a private right of action is necessary to provide an adequate remedy for violations of the

statute. *Id.* A private right of action cannot be necessary to provide an adequate remedy because there is no substantive injury. Again, as the trial court determined, there is no evidence that a beneficiary entitled to benefits has not received those benefits, nor is the pension fund on the verge of default or bankruptcy. Without a substantive injury, there is no necessity for a remedy. The Pension Board fails the fourth and final prong of the four-part test.

Finally, the Pension Board argues that the Appellate Court allowed a pension board to sue over funding levels. *Board of Trustees of the Police Pension Fund of the City of Evanston v. City of Evanston,* 281 Ill. App.3d 1047, 1054 (1 Dist. 1996). That argument, however, reads more into that decision than is there. The question before the *Evanston* court was who is allowed to dictate the amount of the levy. *Id.* at 1049. The court reaffirmed prior holdings that the municipality is not bound by the levy amount dictated by the pension board. *Id.* at 1051-54 (*citing, Board of Trustees v. Rockford,* 96 Ill. App.3d 102 (2 Dist. 1981). The court did remand the matter due to a lack of evidence concerning the municipal process for calculating the levy. *Id.* at 1054. What the court never considered in that case, however, is what is at issue in this case—whether there was authority to bring the suit in the first place. That

issue never made it to the appellate court. It was never raised during the appeal, and it was not considered by the court. Because the *Evanston* opinion does not address the issue of the propriety of the pension board's suit, the *Evanston* opinion provides no precedential value on the issue.

D. The Illinois General Assembly never intended to require strict compliance with funding procedures.

Even if police pension boards were authorized to sue municipalities over property-tax levels, the legislature did not intend an inflexible and strident adherence to the funding mechanisms set forth for the various pension systems.

As noted by the trial court, any duty of the Village in this case hinges on the use of the word "shall" in the Financing provision in Article 3. *See* Memorandum Opinion and Order at 7. That provision states:

> §3-125. Financing. The city council or the board of trustees of the municipality *shall* annually levy a tax upon all the taxable property of the municipality at the rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of police officers, and revenues available from other sources, will equal a sum sufficient to meet the annual requirements of the police pension fund… 40 ILCS 5/3-125 (West 2008)(emphasis added).

The Pension Code, other statutory requirements, and the actions of the General Assembly contemplate something other than a strict adherence to the property-tax requirement. In many cases, in fact, State statutes make it impossible to strictly adhere to those funding mechanisms.

(1) The General Assembly intended property-tax policy to take precedence over strict adherence to funding policy under Article 3 of the Pension Code.

Statutes should be construed in such a way as to avoid "impractical or absurd results." *Nowak v. City of Country Club Hills,* 2011 IL 111838, ¶21 (avoiding an interpretation of the administration of benefits under the Public Safety Employee Benefits Act that would have been impractical if not impossible for municipalities in general to comply with). The Court should avoid an interpretation with similar results in this case. A strict compliance with the provisions of §3-125 of the Pension Code would be impractical if not impossible for municipalities to comply because tax-cap laws would prohibit many communities from strictly complying with the provision.

The Property Tax Extension Limitation Law (PTELL) limits the amount the aggregate levy taxing districts in jurisdictions in which the

law applies. *See generally,* 35 ILCS 200/18-185 through 35 ILCS 200/18-245 (West 2012). Property-tax levies for police pension systems are subject to limitation and reduction under PTELL. *Village of Spring Grove v. County of McHenry,* 309 Ill. App.3d 1010, 1016 (2000). In that case, the village levied a tax for its police pension fund. The county clerk reduced the amount of the levy, as required by PTELL. *Id.* at 1011-12. The village filed a declaratory judgment action against the county to recover the amount by which the police pension levy had been reduced. *Id.* at 1012. The village argued that §3-125 of the Pension Code compelled the full funding of the police pension levy. *Id.* at 1014. Both the trial court and the appellate court disagreed. The appellate court held that the legislature intended that PTELL limit police pension levies. *Id.* at 1016 ("The legislature was very specific in delineating the types of special purpose extensions that were to be excluded from PTELL, and we do not find, based on the language of the statute, that the amount collected for the police pension fund also was intended to be excluded").

In fact, over the last decade, the Illinois General Assembly has frequently considered—and consistently rejected—numerous pieces of

legislation that would have exempted police or firefighter pension levies from limitation under PTELL:

93rd General Assembly (2003-04)	**94th General Assembly (2005-06)**	**95th General Assembly (2007-08)**	**96th General Assembly (2009-10)**	**97th General Assembly (2011-12)**
93 HB 4588 93 HB6785 93 SB 3035	94 HB 263 94 HB 4820 94 HB 4861 94 HB 4968	95 HB 4680 95 HB 4682 95 HB 4904 95 SB 2152	96 HB 671 96 HB 2237 96 SB 1513 96 SB 2575	97 HB 1214 97 HB 1363 97 HB 2975 97 HB 5102

The Court should avoid an interpretation of a statute that leads to an absurd result. It would be absurd to find a legislative intent to require strict compliance with a statute with which strict compliance is impossible. Therefore, the Court should avoid an interpretation of §3-125 that requires strict compliance.

(2) The funding provisions of the Pension Code require only substantial compliance to the funding procedures under Article 3 of the Pension Code.

The use of the word "shall" in a statute usually—but not always—indicates that the legislature intended a mandatory provision. But even a mandatory provision does not always require strict compliance. Substantial compliance can satisfy even a mandatory provision. *See,*

Behl v. Gingerich, 396 Ill. App.3d 1078, 1086 (4 Dist. 2009). A two-part analysis determines whether substantial or strict compliance is required:

- Is the purpose of the statute, as a whole, achieved without strict compliance? and
- Is any party prejudiced by the failure to strictly comply with the statute? *See id.* at 1086-87.

To answer these questions with respect to this case, we must return to the analysis provided by the trial court concerning the lack of any substantive right or injury in this case. First, the purpose of the Pension Code is to establish a system of retirement benefits. That system is in place and is operational. As stated by trial court, there is no danger that benefits will cease or that the system is on the verge of default or imminent bankruptcy. The Riverdale Police Pension Fund is operational and is currently providing benefits. Therefore, the purpose of the Pension Code is achieved without strict compliance. Second, there is no prejudice to any party because, again, there is no substantive injury or right that has been violated, and, again, there is no danger that benefits will cease or that the system is on the verge of default or imminent bankruptcy. Accordingly, the Village has met its statutory duty by substantially

complying with the funding requirements at a level that satisfies the purpose and functions of Article 3 of the Pension Code.

E. Public policy proscribes funding suits by police pension boards.

When construing a statute, the Appellate Court should consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *County of Jackson v. Mediacom, LLC,* 2012 IL App (5th) 110350, ¶12 (*citing, People v. Gutman,* 2011 IL 110338, ¶ 12). While it is established that there is not a substantive right or injury at issue in this case, the consequences of allowing these suits based on a procedural technicality will be devastating to municipal governments, the taxpayers, and the political process.

The Pension Board demands higher property taxes. At the heart of this case is the question of who sets the municipal property-tax levy. The Pension Board? The Court? Or the officials specifically elected to do so? In essence, the Pension Board seeks to use the court system to dictate tax policy and demand higher property taxes.

(1) The Pension Board should not usurp the functions of city hall.

The Pension Board should not be able to determine the tax policy for the Village because doing so would interfere with the ability of city government to meet the needs of the community.

In a perfect world, there would be an unlimited supply of money and resources available to fund every program or address every issue that arises. The world is not perfect—money and resources are always limited.

A primary function of a municipal government is to allocate those scarce resources to best address the community's needs. To triage those needs according to the available resources. A number of municipal services are necessary to protect and advance the citizens' health, safety, and welfare. Roads and other critical infrastructure must be maintained. Emergency services must be available. Community planning and development ensures a better living environment. Municipal government is more than a pension-funding pass-through, and the taxpayers are more than a pension-funding machine. People have not organized themselves into communities since time immemorial for the purpose of providing retirement benefits. The

Appellate Court recognized the importance of community decision making when it determined that the funding provisions of Article 3 of the Pension Code do not remove the discretion from the city council in determining the dollar amount to be levied for these funds. *Board of Trustees of Police Pension Fund of Rockford v. City of Rockford*, 96 Ill. App.3d 102, 108 (2 Dist. 1981); *Board of Trustees of Police Pension Fund of City Evanston v. City of Evanston,* 281 Ill. App.3d 1047, 1051-54 (1 Dist. 1996).

Pensions are being paid out in Riverdale. The police pension system is not on the verge of default or imminent bankruptcy. The Pension Board prefers that its statutory procedures be moved to the front of the line ahead of the other community needs. It is asking this Court to prioritize it ahead of the rest of the citizens of the community. Doing so would be bad government.

(2) No taxation without representation—Tax policy should be determined by elected officials.

The Pension Board should not be able to determine the tax policy for the Village because doing so would remove the property-tax levy from the democratic process.

A pension board does not represent the interests of the community. In fact, its interests may be hostile to the best interests of the community. The pension board is removed entirely from the democratic process. It is not elected by the voters, nor is it accountable to them for its actions and decisions. A police pension board consists of five members: two appointed by the mayor; two elected by the current employees; and one elected by the beneficiaries. 40 ILCS 5/3-125. The pension board is controlled by those trustees who have a personal interest in the higher taxes for the fund. If a pension board makes poor investment decisions or benefit awards, it is the taxpayers who pay the extra costs of the board's error.

Property taxes are a critical issue for the public. Property taxes in Illinois, particularly in the Chicagoland area, are among the highest in the country. *See,* Carla Fried, *Counties in the U.S. with the Highest (and Lowest) Property Taxes*, CBS Money Watch, May 18, 2011[3] (stating that, among the 10 most populous counties in America, Cook County has the costliest property taxes). Property taxes can be a major factor in the quality of life for the citizens.

[3] Available at http://www.cbsnews.com/8301-505123_162-41142712/counties-in-the-us-with-the-highest-and-lowest-property-taxes/.

Municipal government must be judicious in its decisions to levy taxes. Even if a municipality has the authority to increase property taxes without limitation, it must give serious consideration to the effects of doing so. If property taxes are too high, then people cannot afford to remain in their homes and business cannot afford to remain in the community. This further degrades the value of the taxable property in the community and places an even higher tax burden on those remaining taxpayers. Property-tax decisions have a real and meaningful impact on the health and well-being of the citizens. The importance of these decisions is one of the main reasons why municipal officials face the voters every few years.

But the Pension Board Trustees do not face the voters. They are not accountable to the citizens for any decision that they make. They simply demand that property taxes should have been and must continue to be higher. The Court should not hand over the authority to raise taxes to those who have no accountability to the taxpayers that they affect.

V. Conclusion

For the reasons set forth in this brief, the Illinois Municipal League requests this Court to affirm the decision of the Trial Court.

Respectfully submitted,
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IN THE APPELLATE COURT OF ILLINOIS
FOR THE FIRST DISTRICT

BOARD OF TRUSTEES OF THE RIVERDALE POLICE PENSION FUND Plaintiff-Appellant, v. VILLAGE OF RIVERDALE Defendant-Appellee	On Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery Division No. 11-CH-60 Honorable Franklin Valderrama, Judge Presiding.

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 appendix pages containing 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 30 pages.

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