No. 2-22-0198

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

ARLINGTON HEIGHTS POLICE PENSION FUND, *et al.*,	)	On Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois
Plaintiffs-Appellants,	)	
v.	)	
JAY ROBERT "J.B." PRITZKER, in his official capacity as Governor of the State of Illinois, *et al.*,	)	No. 2021 CH 55
Defendants-Appellees.	)	HONORABLE ROBERT K. VILLA, Judge Presiding.

(full caption and list of counsel on following pages)

BRIEF OF DEFENDANTS-APPELLEES

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-3312

RICHARD S. HUSZAGH
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 814-2587 (office)
(773) 590-7076 (cell)
CivilAppeals@ilag.gov (primary)
richard.huszagh@ilag.gov (secondary)

Attorneys for Defendants-Appellees Illinois Governor JB Pritzker and Dana Popish Severinghaus, Acting Director of the Illinois Department of Insurance

ORAL ARGUMENT REQUESTED

No. 2-22-0198

IN THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

ARLINGTON HEIGHTS POLICE PENSION FUND, AURORA POLICE PENSION FUND, CHAMPAIGN POLICE PENSION FUND, CHICAGO HEIGHTS POLICE PENSION FUND, CHICAGO RIDGE POLICE PENSION FUND, CICERO POLICE PENSION FUND, DeKALB POLICE PENSION FUND, ELGIN POLICE PENSION FUND, ELMHURST POLICE PENSION FUND, EVANSTON POLICE PENSION FUND, MOKENA POLICE PENSION FUND, PALOS HEIGHTS POLICE PENSION FUND, RANTOUL POLICE PENSION FUND, VILLA PARK POLICE PENSION FUND, WOOD DALE POLICE PENSION FUND, WOODRIDGE POLICE PENSION FUND, MAYWOOD FIREFIGHTERS' PENSION FUND, PLEASANTVIEW FIREFIGHTERS' PENSION FUND, THOMAS HENDERSON, SCOTT MAY, LAWRENCE SUTTLE, DANIEL HOFFMAN, PATRICK SIMONS, PATRICK KELLY, GENE KEELER, STEVEN ANKARLO, LEE MORRIS, DEAN MANN, PAUL MOTT, JIM KAYES, JAMES ROSCHER, THOMAS QUIGLEY, VICTOR VALDEZ, THOMAS TUREK, WILLIAM CZAJKOWSKI, DAVID DELANEY, RICHARD WEIKAL, DAVID FLOWERS, SR., ROBERT MILLER, DAN RANKOVICH, AARON WERNICK, TIMOTHY SCHOOLMASTER, DAVE LOEHMAN, MIKE HERBERT, MATTHEW BROSS, MICHAEL TITTLE, SCOTT SHROEDER, BENJAMIN DEFILIPPIS, JORDAN ANDERSON, DENNIS KOLETSOS, WILLIAM BODNAR, and FRED MALAYTER, Plaintiffs-Appellants, v. JAY ROBERT "J.B." PRITZKER, in his official capacity as Governor of the State of Illinois, CHRISTOPHER B. MEISTER, in his official capacity as Executive Director of the Illinois Finance Authority; DANA POPISH SEVERINGHAUS, in her official capacity as Acting Director of the Illinois Department of Insurance; THE BOARD OF TRUSTEES FOR THE POLICE OFFICERS' PENSION INVESTMENT FUND; and THE BOARD OF TRUSTEES FOR THE FIREFIGHTERS' PENSION INVESTMENT FUND, Defendants-Appellees.	)	On Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois No. 2021 CH 55 HONORABLE ROBERT K. VILLA, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

JOSEPH M. BURNS
TAYLOR E. MUZZY
David Huffman-Gottschling
Jacobs, Burns, Orlove, and
Hernandez, LLP
1 N. La Salle St., Ste. 1620
Chicago, IL 60602
(312) 327-3443
jburns@jbosh.com
tmuzzy@jbosh.com
davidhg@jbosh.com

Attorneys for the Board of Trustees for the Police Officers' Pension Investment Fund

KWAME RAOUL
Attorney General, State of Illinois
JANE ELINOR NOTZ
Solicitor General
RICHARD S. HUSZAGH
Assistant Attorney General
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2587 (office)
(773) 590-7076 (cell)
CivilAppeals@ilag.gov (primary)
richard.huszagh@ilag.gov (secondary)

Attorneys for Defendants-Appellees Illinois Governor JB Pritzker and Dana Popish Severinghaus, Acting Director of the Illinois Department of Insurance

RICHARD F. FRIEDMAN
LANGDON D. NEAL
Neal & Leroy, LLC
20 S. Clark St., Suite 2050
Chicago, IL 60603
(312) 641-7144
rfriedman@nealandleroy.com
lneal@nealandleroy.com

Attorneys for Christopher B. Meister, in his official capacity as Executive Director of the Illinois Finance Authority

MICHAEL A. SCODRO
BRETT E. LEGNER
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 701-8886
mscodro@mayerbrown.com
blegner@mayerbrown.com

Attorneys for the Board of Trustees for the Firefighters' Pension Investment Fund

TABLE OF CONTENTS

Page(s)

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Illinois has approximately 650 local pension funds for police and firefighters governed by Articles 3 and 4 of the Pension Code. In 2019, the General Assembly enacted Public Act 101-0610 (the "Act") based on its conclusion that consolidating the investment management of these funds' assets, without changing each local fund's authority to make benefit determinations for its own members, would reduce administrative fees and costs and allow higher investment returns, lowering tax burdens on residents of the communities that employ these members. The Act created two consolidated investment funds — one for the police pension funds governed by Article 3 of the Pension Code, and one for the firefighter pension funds governed by Article 4 of the Pension Code (together, the "Investment Funds") — that operate like mutual funds, with pooled assets for combined investments, and with a separate account for each local fund that shares in the investment returns and management expenses in proportion to the value of its assets.

In this action, 18 local pension funds (the "Plaintiff Funds") and some of their members (the "Individual Plaintiffs") challenged the constitutionality of the Act, alleging that it violates the Pension Protection Clause (art. XIII, § 5) and Takings Clause (art. I, § 15) of the Illinois Constitution. The circuit court entered judgment against them. In a ruling that Plaintiffs do not challenge on appeal, the circuit court held that the Plaintiff Funds lack

standing to challenge the Act. The court further held that because the Act has no effect on the financial benefits that local fund members are entitled to receive, it does not violate the Pension Protection Clause by changing the people who manage the investment of fund assets or the process for choosing those people. The court also held that the Act does not violate the Takings Clause. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the Plaintiff Funds, by not challenging on appeal the circuit court's holding that they lack standing to contest the Act's constitutionality, have forfeited any challenge to that holding.

2. Whether, in the alternative, the circuit court correctly held that the Plaintiff Funds, which are not members of a public retirement system, lack standing to claim that the Act violates the Pension Protection Clause or the Takings Clause of the Illinois Constitution.

3. Whether the circuit court correctly held that the Act does not violate the Individual Plaintiffs' rights under the Pension Protection Clause because it has no effect on the financial benefits they receive.

4. Whether the circuit court correctly held that the Act does not violate the Takings Clause of the Illinois Constitution.

5. Whether the circuit court's judgment in favor of the Illinois Finance Authority's Executive Director should be affirmed on the ground that Plaintiffs lack standing to pursue their constitutional claims against him.

STATEMENT OF FACTS

Introduction

This case involves a constitutional challenge to Public Act 101-0610, which transferred the custody and investment management of the assets of pension funds governed by Articles 3 and 4 of the Pension Code to the newly created Investment Funds, but did not change the amount of the benefits received by the local funds' members or change the authority of those funds' boards to determine the amount of those benefits.[1] The circuit court entered judgment against Plaintiffs on all of their constitutional claims. (A 1–15; C 370–71.)[2] The circuit court first held that only the Individual Plaintiffs, not the Plaintiff Funds, had standing to raise the constitutional claims alleged in the complaint, and dismissed the Plaintiff Funds' claims. (C 370.) The court then rejected the Individual Plaintiffs' contention that the pre-Act provisions of the Pension Code governing the administration of local fund assets were "benefits" protected by the Pension Protection Clause. (A 8–11.) The court held that the Pension Protection Clause protects only benefits with a monetary value to members, such as the annuities they receive on retirement. (A 10–11.) The court also held that the Act does not violate the Takings

---

[1] Plaintiffs assert that the Act "eliminated Illinois' locally-controlled suburban and downstate police and firefighter pension funds and consolidated them into two statewide funds – one for police and one for firefighters." (Pl. Br. at 5.) That assertion is incorrect.

[2] Citations to the Appendix to Plaintiffs' brief begin with the prefix "A," and citations to the common law record begin with the prefix "C."

Clause. (A 12–14.)

Article 3 and 4 Pension Funds

Articles 3 and 4 of the Illinois Pension Code, 40 ILCS 5/1-101 *et seq.*, govern local police and firefighter pensions for municipalities with 5,000 to 500,000 inhabitants ("local funds"). 40 ILCS 5/3-101 *et seq.*; 40 ILCS 5/4-101 *et seq.*; *see* 40 ILS 5/3-103, 4-103 (defining municipality). There are approximately 650 local funds in Illinois, making it one of the States with the highest number of public pension systems, and with the lowest average value of assets, in the United States.[3] Each local fund is governed by a five-member board, with two appointed members, two members elected by active members and one elected by other fund beneficiaries (e.g., retirees). 40 ILCS 5/3-128, 4-121. Each board is responsible for determining the retirement, disability, and death benefits payable to fund members, their dependents, and other beneficiaries (collectively, "members"), subject to judicial review under the Administrative Review Law (735 ILCS 5/3-101 *et seq.*). 40 ILCS 5/3-148, 4-139. The Act does not change that responsibility of local fund boards.

The Pension Code sets eligibility requirements and formulas for the calculation of member pension and disability benefits, including annual increases. 40 ILCS 5/3-111, 3-111.1, 3-114.1, 3-114.2; 40 ILCS 5/4-109,

---

[3] *See* Oct. 19, 2019 Report to Governor JB Pritzker, Illinois Pension Consolidation Feasibility Task Force (the "Task Force Report," or "Report"), at 3. (C 127.) The Task Force Report (C 125–46) and the earlier report on the same topic (*see* below at 7–8 & n.8) are subject to judicial notice. *See People v. Matkovick*, 101 Ill. 2d 268, 270–71 (1984).

4-109.1, 4-110, 4-111. The Pension Code also prescribes financing requirements for local funds, including member and employer contributions. 40 ILCS 5/3-125, 3-125.1; 40 ILCS 5/4-118, 4-118.1. Member contributions (which the employer may pay, or "pick up") are 9.91% of salary for police officers, and 9.455% of salary for firefighters. 40 ILCS 5/3-125.1, 3-125.2, 4-118.1, 4-118.2. Employers must make separate contributions that are sufficient, when added to member contributions, to cover the fund's "normal cost" (the amount necessary to pay the additional benefits earned by current services)[4] and to fund 90% of its actuarial liabilities by 2040, paying down the unfunded liability by a specified amount each year. 40 ILCS 5/3–125, 4–118.[5] And the municipal employer must pay member benefits when they come due regardless of the amount of its local fund's assets. *See Jones v. Mun. Employees' Annuity & Benefit Fund*, 2016 IL 119618, ¶¶ 42-45.

Pre-Act Investment Authority of Local Funds

Section 1-109 of the Pension Code requires all pension fund assets to be managed in accordance with the long-established "prudent man" standard. 40

---

[4] *See* Actuarial Standard of Practice No. 4, Measuring Pension Obligations and Determining Pension Plan Costs or Contributions, Pension Committee of the Actuarial Standards Board (Dec. 2013 Rev.) ("Actuarial Standard of Practice No. 4"), § 2.15 (*www.actuarialstandardsboard.org/wp-content/uploads/2013/12/asop004_173-3.pdf*). (All internet sites accessed Oct. 5, 2022.)

[5] At the end of fiscal year 2020, the average funding ratio (assets as a share of accrued liabilities) was 55.81% for police pension funds, and 55.75% for firefighter pension funds, representing approximately $7.7 billion and $5.6 billion in unfunded accrued liabilities, respectively. (C 447–48.) *See https://insurance.illinois.gov/Applications/Pension/PensionDataPortal.aspx*; FY 2020 Annual Detailed Financial Data for Article 3 and Article 4 Funds, sheet 22.

ILCS 5/1-109. Pension Code Sections 1-113.1 through 1-113.4a, enacted and amended several times from 1997 to 2012, further prescribed permissible investments for local funds based on the value of their assets: below $2.5 million; at least $2.5 million; at least $5 million; and at least $10 million. 40 ILCS 5/1-113.1 to 113.4a.[6] Local funds with assets below $2.5 million and at least $2.5 million, respectively, could invest up to 10%, and up to 25%, of their assets in mutual funds that hold stocks. 40 ILCS 5/1-113.2(13), 1-113.3. Local funds with an investment adviser and assets of at least $5 million and at least $10 million, respectively, could invest up to 35%, and up to 55%, of their assets directly in common stocks. 40 ILCS 5/1-113.4, 1-113.4a.

Under this statutory investment authority, publicly available data back to 2012 shows that larger local funds had significantly higher average investment earnings than smaller funds, as summarized in the following chart.

Average Annual Rate of Return from 2012 through 2020

Assets:	< $2.5 million	$2.5 to $5 million	$5 to $10 million	≥ $10 million
Article 3 funds	2.4%	4.1%	4.7%	6.1%
Article 4 funds	3.0%	4.7%	5.1%	6.2%

(C 474–76.)

[6] Before 1997, local fund boards could invest only in government bonds, tax anticipation warrants, and bank deposits. *See* Ill. Rev. Stat. ch. 108½, pars. 3-135, 4-128 (1963). The categories and amounts of permitted investments were broadened in 1997 by Public Act 90-507, which added new Sections 1-113.1 through 1-113.4; in 2000 by Public Act 91-887, which amended Section 1-113.2; and in 2011 by Public Act 96-1495, which amended Section 1-113.2 and enacted new Section 1-113.4a.

Over the years, the Pension Code has also included various other restrictions on the types of investments made by local funds. For example, from 1987 to 1994, when the investment standards for Article 3 and 4 funds were governed by Section 1-113 of the Pension Code (*see* Public Act 90-507), they could not invest in companies with certain activities or dealings in South Africa. *See* Pub. Act 84-1472 (Ill. Laws 1986 at 4532), repealed by Pub. Act 88-535 (Ill. Laws 1994 at 45). And in 2020, the General Assembly required all public pension funds, including Article 3 and 4 funds, to adopt "sustainability policies" for their investment decisions, as provided under the Illinois Sustainable Investing Act. 40 ILCS 5/1-113.6, 1-113.17; Pub. Act 101-473.[7]

General Assembly Examination of Consolidated Investments

Since at least 2010, the General Assembly has explored the possibility of consolidating the local funds' investment functions. Public Act 96-1495, enacted in 2010, commissioned a report on this issue. Pub. Act 96-1495, § 5; 40 ILCS 5/1-165. The report concluded, among other things, that "[i]nvestment-related fee savings represent the greatest potential for savings in a consolidation," and that by consolidating all local funds' investments, the

---

[7] Such policies must take into account corporate governance and leadership factors (e.g., "executive compensation structures, . . . , leadership diversity, regulatory and legal compliance, shareholder rights, and ethical conduct"); environmental factors (e.g., "greenhouse gas emissions . . . [and] ecological impacts"); social capital factors (e.g., "human rights, customer welfare, . . . [and] community reinvestment"); human capital factors (e.g., "labor practices, . . . employee health and safety, . . . , diversity and inclusion, and incentives and compensation"); and (5) business model and innovation factors. 40 ILCS 5/1-113.6, 5/1-113.17; 30 ILCS 238/20.

median outcome under simulated scenarios over a 10-year period would be an increase in annual earnings from 5.7% to 6.9%, and almost twice that increase for funds with less than $10 million in assets.[8]

Governor's Task Force Report

In February 2019, Governor Pritzker established a Pension Consolidation Feasibility Task Force to explore and make recommendations for the consolidation of local pension fund assets and administration to ensure their long-term health. (C 127.) Following eight months of data collection and analysis, the Task Force issued its Report. (C 125–46.)

The Report concluded that as a result of the local funds' small size compared to other public pension funds, they incurred higher administrative expenses, were typically unable to access higher-return investment opportunities, and had significantly lower investment returns than their larger counterparts. (C 132–34.) The consequence, the Report found, was that "local taxpayers [were] left with the burden of paying taxes to make up for these lower investment returns, forcing most municipalities to rely on a never-ending cycle of increasing local property taxes or cutting services to meet their pension obligations." (C 127.) Based on historical data, the Task Force concluded that if the local funds could achieve returns similar to Illinois' larger

[8] Marquette Assoc., Analysis of Fee Savings and Transaction Costs due to the Potential Consolidation of the Downstate Police and Firefighters' Pension Funds report (Feb. 2012) at 12, 47 (*https://cgfa.ilga.gov/Upload/Feb2012MarquetteAssocStudyforCGFA.pdf*). (C 449–50.)

public pension plans over the next five years, "they would create an estimated additional $820 million to $2.5 billion in investment returns," and that pooling assets would save tens of millions of dollars annually on investment-related expenses. (C 135–36.) Based on these findings, the Task Force recommended "establishing two new statewide police and fire funds that include all existing suburban and downstate funds, with assets consolidated under their own respective trusts and under the purview of separate governing boards." (C 140.) The Report called this the "single most impactful step" the State could take to address pension underfunding. (C 127.)

After the Report was issued, the Illinois Chiefs of Police Association declared that it was "not opposed conceptually to the consolidation of investment funds, because we understand the potential benefits of generating additional millions of dollars in the return on investments." (*See www.ilchiefs.org/pension-consolidation-response*.) The Association added that one of its "biggest concerns" was "that our benefits not be reduced," and that it was "pleased" the Illinois Municipal League promised it had "no interest even in addressing pension benefits." (*Id.*)

Public Act 101-0610

Passed with bipartisan support, the Act adopted the Task Force's recommendation and amended the Pension Code by transferring custody and investment responsibility for each local fund's assets to the Investment Funds.

40 ILCS 5/22B-101 *et seq.;* 5/22C-101 *et seq*.[9] The legislation was supported by the Fraternal Order of Police, Independent Firefighters of Illinois, Metropolitan Association of Police, and Illinois Municipal League, as well as many rank-and-file members of local police and fire departments. *See* Ill. House Tran. 2019 Reg. Sess. No. 70 (Nov. 13, 2019) at 26-28.[10]

The Act declares that the purpose of this consolidation is to "streamline investments and eliminate unnecessary and redundant administrative costs, thereby ensuring more money is available to fund pension benefits." 40 ILCS 5/22B-114, 22C-114. Under the Act, the Investment Funds operate like mutual funds, investing and administering the pooled assets of all local funds collectively. 40 ILCS 5/22B-118(c), 22C-118(c). The Investment Funds are not subject to the same investment limitations, in terms of the types of assets and share of total assets that may be invested in them, that applied to the local funds. 40 ILCS 5/22B-122, 40 ILCS 5/23C-122; *see* above at 5–6.

The Investment Funds' assets are held outside of the State Treasury. 40 ILCS 5/22B-121(c), 23C-121(c). Each local fund retains a separate "account," and "[t]he operations and financial condition of each participating pension fund account shall not affect the account balance of any other participating pension fund." 40 ILCS 5/22B-118(c), 22C-118(c). Investment

---

[9] *See https://www.ilga.gov/legislation/votehistory.asp?GA=101&DocNum=1300&DocTypeID=SB&GAId=15&LegID=117910&SessionID=108*.

[10] *See https://ilga.gov/legislation/witnessslip.asp?DocNum=1300&DocTypeID=SB&LegID=117910&GAID=15&SessionID=108&GA=101&SpecSess=*.

returns are "allocated and distributed pro rata among each participating pension fund account in accordance with the value of the pension fund assets attributable to each fund." *Id.*

The permanent board for each of the Investment Funds has nine members, including three officers or executives from the local funds' municipalities, three active participants of the local funds elected by those participants, two beneficiaries of the local funds elected by those beneficiaries, and one member recommended by the Illinois Municipal League and appointed by the Governor, subject to Senate confirmation. 40 ILCS 5/22B-115, 22C-115.

The Act established a transition process and period, ending on June 30, 2022, for the transfer of assets from the local funds to the Investment Funds. 40 ILCS 5/3-132.1, 4-123.240, 22B-120(a), 22C-120(a). To fund the transition process, the Act authorized the Illinois Finance Authority (the "IFA") to lend the Investment Funds up to $7.5 million each (representing approximately one-thousandth of their more than $14 billion in assets), to be repaid with interest. 40 ILCS 5/22B-120(h), 23B-120(h); C 131.

The Act does not reduce pension or disability benefits for any police officer or firefighter or beneficiary. The benefit formulas in Articles 3 and 4 of the Pension Code remain the same as before, except that the Act increased potential benefits for "Tier II" members (who first became members after January 1, 2011). 40 ILCS 5/3-111(d), 3-112(a), 4-109(c), 4-114(j). The Act specifically states that it does not adjust employee contributions and will not

do so retroactively. 40 ILCS 5/3-111, 3-125.1, 4-109, 4-118.1.

Nor does the Act change the authority of the local funds' boards to determine pension and other benefits. Instead, the Act provides that local funds retain "exclusive authority to adjudicate and award" retirement and other benefits, and that the Investment Funds "shall not have the authority to control, alter, or modify, the ability to review or intervene in, the proceedings or decisions" of the local funds. 40 ILCS 5/3-124.3, 4-117.2.

Plaintiffs' Claims

Plaintiffs are 18 of the State's approximately 650 local funds (the "Plaintiff Funds"), along with 34 of their members (the "Individual Plaintiffs"), out of more than 44,000 active, disabled, and retired members. (C 73, 77–82.)[11] They filed a three-count amended complaint (the "Complaint") challenging the Act's constitutionality and naming, as defendants, Governor Pritzker in his official capacity; Christopher Meister, in his official capacity as Executive Director of the IFA; Dana Popish Severinghaus, in her official capacity as Acting Director of the Illinois Department of Insurance; the Board of Trustees for the Police Officers' Pension Investment Fund; and the Board of Trustees for the Firefighters' Pension Investment Fund ("Defendants"). (C 73–94.) The Complaint asserted

---

[11] *See https://insurance.illinois.gov/Applications/Pension/PensionDataPortal.aspx* (FY 2021 Annual Detailed Financial Data for Article 3 and Article 4 Funds, sheet 23, reporting number of local funds' members and beneficiaries.

During the course of this appeal, two of the original Individual Plaintiffs voluntarily withdrew from the case. (*See* August 22, 2022 order.)

claims under the Pension Protection Clause (Count I), the Contracts Clause (Count II), and the Takings Clause (Count III) of the Illinois Constitution. (C 89–94.) It requested a declaration that the Act is unconstitutional and an injunction barring Defendants from implementing it. (*Id.*)

Each count was based on common allegations that the Act diminishes and impairs Plaintiffs' "pension benefits" because, before the Act took effect, (1) the Plaintiff Funds could "exclusively manage and control their investment expenditures and income"; and (2) the Individual Plaintiffs' "voting power and say in the selection of investment managers, investments, risks, rates of return, costs and expenses" was "undiluted" by the participation of members of other local funds; and (3) the Plaintiff Funds must "ultimately bear" the transition costs associated with the consolidated funds, including repayment of transition loans by the IFA of up $7.5 million for each Investment Fund. (C 76–77, 89–94.)

Defendants' Motion to Dismiss

Defendants moved to dismiss Plaintiffs' claims on various grounds. (C 99–160.) Among other things, Defendants challenged the Plaintiff Funds' standing, arguing that the Pension Protection Clause gives rights only to "members" of public retirement systems; the Plaintiff Funds' claims under the Takings Clause and Contracts Clause were "derivative" of, and thus depended on the validity of, their claims under the Pension Protection Clause; and all of their claims were barred by the doctrine of legislative supremacy. (C 111–13.)

Defendants also moved to dismiss the Contracts Clause claims by all Plaintiffs for failure to state a valid cause of action. (C 115–17, 120–21.) The circuit court granted Defendants' motion to dismiss on all of these grounds (C 370–71), and Plaintiffs do not challenge those rulings on appeal.

Summary Judgment Against the Individual Plaintiffs

On May 25, 2022, the circuit court entered summary judgment against the Individual Plaintiffs on their remaining claims under the Pension Protection and Takings Clauses. (A 1–15.) After surveying relevant precedent, the circuit court held that the "benefits" in the Pension Code protected by the Pension Protection Clause are limited to those that affect the "value" of "payments" to members. (A 10–11.) The court reasoned:

> [A]ll of the cases using the "broad protection" and "all benefits" language when holding that an act of the General Assembly violated the Pension Clause (*Carmichael*, *In re Pension Reform Litigation (Heaton)*, *Kanerva*, *Buddell*, *Jones*) involve Plaintiffs who were denied a "benefit" that could be directly tied to a change in the value of their future retirement payments. These included, for example, removal from membership in IMRF (*Williamson*), changing health insurance premium subsidies for retirees (*Kanerva*), changing the time-period to purchase military service credit from the State University Retirement System (*Buddell*), and the right to earn service credit on a leave of absence to work for a local labor organization (*Carmichael*).
>
> Thus, the seemingly expanding language suggesting there is more than one benefit ("benefits") and that "all rights" should be "broadly" protected has, in practice, not been applied as Plaintiff argue it should. Instead, it has been applied only to public acts

> that directly affect the value of a plaintiff's pension benefit. . . . In this case, the Court finds that it cannot extend the term "benefits" beyond the reach of prior Illinois Supreme Court cases . . . to find the challenged legislation unconstitutional against the Pension Clause's protections.

(*Id.*)

With respect to the Individual Plaintiffs' Takings Clause claim, the circuit court, relying on the Supreme Court's decision in *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62 (2008), held that the Takings Clause "appl[ies] only to government action against real property," and that the Act therefore did not implicate the Takings Clause. (A 13–14.) The Court added:

> [T]here are no allegations or evidence presented that Plaintiffs currently drawing their pension benefit have suffered a present or will suffer a future loss in benefit payment. . . . Finally, there is no argument or evidence presented that the monies transferred from the Local Funds to the [Investment] Funds are being used for a different public use (funding road improvement) that impacts Plaintiffs' present or future retirement benefits.

(A 14.) This appeal followed. (A 16–17.)

ARGUMENT

I. Summary of Argument

The circuit court correctly entered judgment against Plaintiffs on their claims challenging the Act's constitutionality under the Pension Protection Clause and Takings Clause of the Illinois Constitution.

First, Plaintiffs have forfeited any challenge to the circuit court's holding that the Plaintiff Funds, which are not "members" of a public retirement system, lack standing to assert any of the constitutional claims included in the Complaint. That holding is correct in any event.

Second, the circuit court correctly held that because the Act does not reduce the amount of any monetary benefits the Individual Plaintiffs are entitled to receive, it does not violate their rights under the Pension Protection Clause. The Supreme Court has repeatedly held that the Pension Protection Clause protects such monetary benefits for pension plan members but does not prohibit changes in the Pension Code that affect funding for those benefits. The Act affects only pension system funding, by changing the administration of local fund investments, without affecting the amount of members' monetary benefits or the process for determining those benefits. The Act affects pension system funding by lowering expenses and allowing higher investment returns, thereby reducing the tax burden on local municipalities and their residents without reducing members' benefits or their employer's legal obligation to pay them.

Third, the Individual Plaintiffs' Takings Clause claim is without merit for two reasons. The Individual Plaintiffs have a right to receive their promised benefits, which the Act does not affect, but they have no property right in how local fund assets are invested, or who invests them. And even if the Individual Plaintiffs had such a property right, the Act did not effect a "taking" of that property. The Act does not divert local fund assets to the government's use, and instead preserves the same use for those assets: paying benefits to fund members. And the changes it makes in the management of those assets are typical of economic legislation that does not rise to the level of a constitutional taking.

Fourth, the circuit court's judgment in favor of the IFA's Executive Director should be affirmed because the Act does not cause any injury to the Plaintiffs that is fairly traceable to his actions.

II. Standard of Review

The circuit court's judgment is subject to *de novo* review for several reasons. That standard applies to orders granting a motion to dismiss for lack of standing, *Lyons v. Ryan*, 201 Ill. 2d 529, 534 (2002), and granting summary judgment, *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20. It also governs rulings on the constitutionality of a statute. *Walker v. Chasteen*, 2021 IL 126086, ¶ 30. In addition, the Court can affirm the circuit court's judgment on any ground supported by the record. *Ultsch v. Ill. Mun. Ret. Fund*, 226 Ill. 2d 169, 192 (2007); *In re Willow M.*, 2020 IL App (2d) 200237, ¶ 16.

III. The Plaintiff Funds Have Forfeited Any Argument that the Circuit Court Wrongly Held They Lack Standing and, Regardless, that Ruling Was Correct.

After briefing on the issue, the circuit court dismissed the Plaintiff Funds' claims, including their claims under the Pension Protection and Takings Clauses, on the ground that they lack standing to pursue those claims. (C 370.) Plaintiffs' opening brief does not argue that this holding was wrong; the Appendix to their brief does not include the circuit court's order dismissing the Plaintiff Funds' claims for lack of standing; and their notice of appeal challenges only the circuit court's later summary judgment order. (A 17.) Consequently, Plaintiffs have forfeited that issue and cannot raise it later in this appeal, including in their reply brief or at oral argument. *See* Ill. S. Ct. Rule 341(h)(7), (j); *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 2014 IL 116023, ¶ 43; *Lisle Sav. Bank v. Tripp*, 2021 IL App (2d) 200019, ¶ 27. Thus, the only issues before this Court concern the circuit court's entry of summary judgment against the Individual Plaintiffs on their Pension Protection and Takings Clause claims.[12]

The circuit court's holding that the Plaintiff Funds lack standing to challenge the Act's constitutionality was correct in any event. As Defendants explained in the circuit court, the Plaintiff Funds are not "members" of a public retirement system and therefore have no rights under the Pension

[12] In their opening brief, Plaintiffs also elect not to challenge the circuit court's dismissal of their Contracts Clause claim, which is forfeited for the same reason.

Protection Clause, which protects the benefits of "membership" in such a retirement system. (C 111–12.) In addition, the doctrine of legislative supremacy generally prevents political subdivisions of the State from bringing constitutional claims against the State, including claims contesting the validity of a state law affecting them. *E. St. Louis Fed'n of Teachers, Local 220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel*, 178 Ill. 2d 399, 412–13 (1997); *Meador v. Salem*, 51 Ill. 2d 572, 578 (1972); *Supervisors of the County of Boone v. Vill. of Rainbow Gardens,* 14 Ill. 2d 504 (1958); *People ex rel. Taylor v. Camargo Cmty. Consol. Sch. Dist. No. 158*, 313 Ill. 321, 324–25 (1924).

In the circuit court, Plaintiffs responded to these arguments by asserting that even if the Plaintiff Funds' claims were dismissed, the Individual Plaintiffs' claims would remain. (C 271.) That is what the circuit court did, holding that only the Individual Plaintiffs had standing to proceed on their claims under the Pension Protection and Takings Clauses. (C 370.) That ruling was correct on the merits.

IV. Public Act 101-0610 Does Not Violate the Individual Plaintiffs' Rights Under the Pension Protection Clause Because It Does Not Diminish or Impair the Monetary Benefits They Receive.

The Individual Plaintiffs do not dispute that the Act has no effect whatsoever on the financial benefits that local fund members are entitled to receive (e.g., annuities, disability benefits, death benefits) under the Pension Code, or any other Illinois statutes, based on their membership in a local fund.

(Pl. Br. at 1–20.) The Individual Plaintiffs nonetheless contend that the "benefits" protected by the Pension Protection Clause are not limited to the financial benefits that pension fund members are entitled to receive, but extend more broadly to anything in the Pension Code that a member might describe as a "benefit," including members' ability to vote for the people who invest fund assets. (*Id.* at 12–17.) The circuit court correctly rejected that contention and held, in line with extensive precedent, that while the Pension Protection Clause provides an ironclad protection for the financial benefits promised to members of a public retirement system, it does not also protect procedural provisions of the Pension Code with no effect on financial benefits, including provisions governing the investment of fund assets or the selection of the people who make those investments.

As described below, every case holding that a law violated the Pension Protection Clause involved a reduction in the monetary benefits received by retirement system members. And the Supreme Court has repeatedly used the term "benefits" in this context to refer only to such monetary benefits. Further, the Court has expressly held that protected "benefits" do not include Pension Code provisions governing the funding of public pension plans. Taken together, these decisions establish that the Pension Protection Clause did not prohibit a change in the Pension Code's pre-Act procedural provisions that relate to the investment of pension fund assets and the selection of who makes those investments, but that have no effect on the monetary benefits that fund

members are legally entitled to receive, and that their employers are legally obligated to provide.

A. Presumption that the Act is Constitutional

Legislative enactments, such as Public Act 101-0610, enjoy a "strong presumption of constitutionality," and courts must resolve all reasonable doubts in favor of a statute's constitutionality. *People v. Dabbs*, 239 Ill. 2d 277, 291 (2010). Accordingly, "[t]he party challenging the statute . . . bears the burden of rebutting the presumption by clearly demonstrating the statute's constitutional infirmity." *In re Marriage of Miller*, 227 Ill. 2d 185, 195 (2007) (cleaned up).

B. The Pension Protection Clause Establishes a Limited Exception to the Principle that Statutes Do Not Establish Vested Rights Immune from Later Legislative Change.

As a general matter, "[t]here is no vested right in the continuance of a law," and "[t]he legislature has an ongoing right to amend a statute." *Envirite Corp. v. Ill. E.P.A.*, 158 Ill. 2d 210, 215 (1994); *see also Jones*, 2016 IL 119618, ¶ 39; *A.B.A.T.E. of Ill., Inc. v. Quinn*, 2011 IL 110611, ¶¶ 39-40; *People ex rel. Sklodowski v. State of Ill.*, 182 Ill. 2d 220, 231-32 (1998). For members of a public pension fund, the Pension Protection Clause creates a limited exception to this principle for the "benefits" of the contractual relationship established by membership in the fund. Ill. Const. art. XIII, § 5; *see Sklodowski*, 182 Ill. 2d at 228-33. The circuit court correctly held that this limited exception does not apply to the procedural provisions of the Pension Code invoked by the

Individual Plaintiffs here, which govern the investment of local fund assets but do not affect members' monetary benefits.

C. The Supreme Court Has Consistently Held That the Pension Protection Clause Protects Only Pension System Members' Rights to the Monetary Benefits They Receive.

As the circuit court observed (A 8–11), every decision finding a violation of the Pension Protection Clause involved a reduction in the financial benefits that pension plan members are entitled to receive. These include:

> (1) a reduction in retirement annuities due to (a) changes in the formula for calculating those annuities, *In re Pension Reform Litig. (Heaton v. Quinn)*, 2015 IL 118585, ¶¶ 27, 43 ("*Heaton*"); *Felt v. Bd. of Trustees of the Judges Ret. Sys.*, 107 Ill. 2d 158, 162–63 (1985); *Kraus v. Bd. of Trustees of the Police Pension Fund*, 72 Ill. App. 3d 833, 844–48 (1st Dist. 1979); (b) changes in the right to obtain additional service credits, *Carmichael v. Laborers' & Ret. Bd. Emps.' Annuity & Benefit Fund of Chicago*, 2018 IL 122793, ¶¶ 10, 23; *Buddell v. Bd. of Trustees, State Univ. Ret. Sys.*, 118 Ill. 2d 99, 105–06 (1987); or (c) changes in the eligibility criteria for continued participation in, and corresponding ability to earn service credits in, a public pension fund, *Williamson County Bd. of Comm'rs v. Bd. of Trustees of Ill. Mun. Ret. Fund*, 2020 IL 125330, ¶¶ 1, 5, 8, 33–36;
>
> (2) a reduction in retirement system disability benefits, *Schroeder v. Morton Grove Police Pension Bd.*, 219 Ill. App. 3d 697, 698–701(1st Dist. 1991) (cited with approval in *Heaton*, 2015 IL 118585, ¶ 46); and
>
> (3) a reduction in state financial contributions toward the cost of health insurance coverage for retired retirement system members, *Kanerva v. Weems*, 2014 IL 115811, ¶¶ 1, 40.

See also Heaton, 2015 IL 118585, ¶ 46 (surveying Pension Protection Clause cases). In each case, the constitutionally protected benefit involved a statutory provision affecting the value of the fund members' monetary benefits. *See id.*, ¶ 50 ("Illinois courts have determined that *benefit calculation formulas* are entitled to constitutional protection") (cleaned up, emphasis added); *Pisani v. City of Springfield*, 2017 IL App (4th) 160417, ¶ 31 ("[t]he pension contract was *the formula*, with its variables") (emphasis in original). Plaintiffs have not identified a single Illinois decision holding that the Pension Protection Clause extends a constitutional protection beyond such financial benefits to members. (*See* also below, at 32–37.)

It is significant, too, that the Supreme Court has uniformly used the term "benefits" in these cases to refer to monetary benefits. These decisions not only equate the "benefits" protected by the Pension Protection Clause with the monetary benefits that members are entitled to receive based on the statutory provisions in effect during their public employment, but also made clear that those are the *only* benefits protected by the Clause. For example, in *Matthews v. Chicago Transit Authority*, 2016 IL 117638, the Court explained that "[t]he primary purpose of article XIII, section 5, was to eliminate any uncertainty surrounding the *payment* of public pension *benefits* and to clarify that state and local governments were obligated to provide pension benefits to their employees." *Id.*, ¶ 57 (emphasis added); *see also Jones*, 2016 IL 119618, ¶ 43 ("The whole purpose of establishing the clause was to eliminate any

uncertainty as to whether state and local governments were obligated to *pay pension benefits* to their employees. . . . *How the benefits would be financed* was a matter left to the other branches of government.") (cleaned up, emphasis added). Similarly, in describing the types of benefits protected by the Pension Protection Clause, the Court has listed only monetary benefits received by members. *See*, *e.g.*, *Carmichael*, 2018 IL 122793, ¶ 25 ("The benefits protected by the pension protection clause include those benefits attendant to membership in the State's retirement system, such as subsidized health care, disability and life insurance coverage, and eligibility to receive a retirement annuity and survivor benefits . . . ."); *Jones*, 2016 IL 119618, ¶ 36 (same); *Kanerva*, 2014 IL 115811, ¶¶ 3, 39, 52 (same).

D. In the Context of Pension Plans, the Term "Benefits" Refers to Monetary Benefits.

The Supreme Court's consistent use of the term "benefits" in the Pension Protection Clause, limiting its meaning to monetary benefits, is not surprising because the term has that established meaning in the context of employee benefit plans, including pension plans. *See Webster's Third New International Dictionary* 204 (2002) (defining "benefit" as "payment, gift, as **a** : financial help in time of sickness, old age, or unemployment . . . [or] **c** : a cash payment or service provided for under an annuity, pension plan, or insurance policy"); *American Heritage Dictionary* (5th ed., 2020) (defining "benefit" as "[a] form of compensation, such as paid vacation time, subsidized health insurance, or a pension, provided to employees in addition to wages or salary

as part of an employment arrangement"). The Individual Plaintiffs' claims here are based on provisions of the Pension Code, making that context, and associated meaning of the term "benefits," applicable here. That is especially true because pension funds established by the Pension Code are "traditional defined benefit plans under which members earn specific benefits based on their years of service, income and age." *Heaton*, 2015 IL 118585, ¶ 4; *see also Jones*, 2016 IL 119618, ¶ 4. And a "defined-benefit pension plan" means "[a] pension plan in which the employer commits to paying an employee a specific benefit for life beginning at retirement," and "[t]he amount of the benefit is based on factors such as age, earnings, and years of service." Black's Law Dictionary 1294 (9th ed. 2009).

That meaning also aligns with common usage of the term "benefits" in the Pension Code itself. The Code, enacted in 1963, gathered in one place the law governing the many public pension funds and retirement systems in Illinois. And both before and after adoption of the Pension Protection Clause in 1970, the Pension Code has consistently used the term "benefits" to refer exclusively to monetary benefits. *See*, *e.g.*, Ill. Rev. Stat. ch. 108½, par. 3-147 (1963) ("None of the benefits provided in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a police officer."); *Id.*, par. 13-213 (1963) (providing that "[a]ll allowances, annuities and benefits granted under this Article shall be exempt from attachment or garnishment process . . . ."); *id.*,

par. 3-144 (1963) (describing manner in which "[a]ll annuities, pensions and other benefits granted" by a previously existing pension fund made subject to Article 3 "shall be paid" by its board of trustees).[13]

That common usage for "benefits" in this context is further reflected in newspaper articles (C 460, 488–90), and in case law describing pension benefits as a form of "deferred compensation," *see In re Marriage of Hackett*, 113 Ill. 2d 286, 292-93 (1986); *see also People ex rel. Schmidt v. Yerger*, 21 Ill. 2d 338, 344 (1961). Federal law relating to pension plans, including Internal Revenue Code provisions governing "qualified" plans and ERISA, also use the term "benefits" to refer to monetary benefits. *See*, *e.g.*, 26 U.S.C. §§ 401(a)(4), (12) to (16), (33), (34), 431, 432; 29 U.S.C. §§ 1002(19), (23), (25), (33) to (36), 1053 to 1056, 1391.

---

[13] *See also* Ill. Rev. Stat. ch. 108½, pars. 9-184, 11-180 (1963) (directing Article 9 and Article 11 funds to "estimate the amounts required each year to pay for all annuities and benefits and administrative expenses"); *id.*, par. 14-177 (1963) (authorizing SERS board "[t]o consider and pass on all applications for annuities, allowances and benefits"); *id.*, par. 10-103 (stating that Article 10 pension fund board shall "allow the same annuities, refunds and benefits for employees of the district as are made and allowed for employees of the county"); *id.*, par. 3-108 (providing, in now-repealed provision, that "[a]dopted children shall be eligible for benefits only if the judicial proceedings for adoption were commenced at least one year prior to the death or disability of the police officer"); 40 ILCS 5/3-108.3 (defining "Beneficiary" as "[a] person receiving benefits from a pension fund"); 40 ILCS 5/1-119(c)(5) (referring to receipt of a "percentage of any retirement system benefit").

E. The Purpose of the Pension Protection Clause Was to Ensure the Payment of Promised Monetary Benefits to Public Retirement System Members.

Perhaps most importantly, this meaning of the term "benefits" in the context of pension plans conforms to the specific purpose for adopting the Pension Protection Clause, which is relevant to determining the plain meaning of its terms. *See Gregg v. Rauner*, 2018 IL 122802, ¶ 23. Before 1970, public pension plans with mandatory employee participation and contributions did not create contractual rights, and the legislature was free to reduce or eliminate promised benefits. *Sklodowski*, 182 Ill. 2d at 228. The Pension Protection Clause changed this status to ensure the payment of promised benefits. As the Supreme Court observed in *Matthews*: "The primary purpose of article XIII, section 5, was to eliminate any uncertainty surrounding the *payment* of public pension *benefits* . . . ." 2016 IL 117638, ¶ 57 (emphasis added). Thus, if there were any uncertainty about the meaning of the Pension Protection Clause, its language, considered "in light of the history and condition of the times, the objective to be attained, and the evil to be remedied," *Gregg*, 2018 IL 122802, ¶ 23, confirms that it secured the right to receive financial benefits.

F. Supreme Court Precedent that Funding for Public Pension Funds is not Protected by the Pension Protection Clause Defeats Plaintiffs' Claim Challenging the Act's Changes to the Management of Local Fund Assets.

The principle that the Pension Protection Clause protects only monetary benefits received by pension fund members is further confirmed by

consistent Supreme Court precedent holding that the benefits protected by the Clause do not include Pension Code provisions governing the *funding* of public retirement systems, which determines the level of assets in those systems, as opposed to the financial benefits guaranteed to members, which are protected. That precedent emphasizes that "the pension protection clause creates enforceable contractual rights *only to receive benefits, not control funding*." *Sklodowski*, 182 Ill. 2d at 228-232 (emphasis added); *see also McNamee v. State*, 173 Ill. 2d 433, 438-46 (1996) ("Section 5 of article XIII creates an enforceable contractual relationship that *protects only the right to receive benefits*.") (emphasis added).

In *McNamee*, the plaintiffs claimed that amendments to the Pension Code lowering government contributions to Article 3 pension funds "violated their constitutionally protected right to the '*benefit*' of a more secure fund created by the prior funding method." *McNamee*, 173 Ill. 2d at 439 (emphasis added). Rejecting this broad definition of a protected "benefit" under the Pension Protection Clause, the Court reaffirmed its prior holding that the Pension Protection Clause "does not create a contractual basis for participants to expect a particular level of funding, but only a contractual right 'that they would *receive the money due them* at the time of their retirement.'" *McNamee*, 173 Ill. 2d at 444 (quoting *People ex rel. Ill. Fed'n of Teachers v. Lindberg*, 60 Ill. 2d 266, 271 (1975)); *see also id.* at 439, 444 ("Any uncertainty in the protection afforded by section 5 of article XIII is easily dispelled by an

examination of the history of the provision and the evils it was intended to address. . . . The clearly expressed intention of the framers was to protect public pension benefits, but not to control funding."). Summarizing its holding, the Court stated: "Section 5 of article XIII creates an enforceable contractual relationship that *protects only the right to receive benefits*. Plaintiffs do not contend that the amendment to section 3-127 diminished their right to receive pension benefits." *Id.* at 446 (emphasis added).

Sklodowski addressed a similar claim challenging Pension Code amendments that changed the amount of contributions to several public pension funds. 182 Ill. 2d at 222–24. Holding that the claim had no merit, the Court reaffirmed the principle "that the pension protection clause 'creates an enforceable contractual relationship that protects only the right to *receive* benefits.'" *Id.* at 231 (quoting *McNamee*, 173 Ill. 2d at 446, emphasis added). That protection, the Court clarified, does not "'control funding,'" *id.* (quoting *McNamee*, 173 Ill. 2d at 440), except in the extreme situation where a retirement system is "'on the verge of default or imminent bankruptcy' such that benefits are in immediate danger of being diminished." *Id.* at 232–33 (quoting 4 Record of Proceedings, Sixth Ill. Constitutional Convention 2926, comments of Delegate Kinney). Thus, the Court held: "The framers of the Illinois Constitution were careful to craft in the pension protection clause an amendment that would create a contractual right to benefits, while not freezing the politically sensitive area of pension financing." *Id.* at 233.

More recently, in *Jones*, the Supreme Court held that an improved funding formula for retirement system benefits was not a constitutionally protected "benefit" to members. 2016 IL 119618, ¶¶ 35–38. Building on the holdings in *McNamee* and *Sklodowski*, *Jones* confirmed that the Pension Protection Clause protects only pension system members' right to receive benefits, not the means to fund those benefits. *Jones* explained that in *McNamee*, "the plaintiffs claimed that amendments to the statutory scheme 'violated their constitutionally protected right to the *'benefit' of a more secure fund* created by the prior funding method,'" but that in *McNamee* and *Sklodowski* the State, relying on the Court's precedent, responded "that the 'pension protection clause creates enforceable contractual rights only to receive benefits, not control funding,' (*Sklodowski*, 182 Ill. 2d at 229), and 'does not encompass how those benefits are funded' (*McNamee*, 173 Ill. 2d at 439)." *Jones*, 2016 IL 119618, ¶ 37 (emphasis added). The Court then held:

> This court agreed with the State and rejected the plaintiffs' claims. After an exhaustive review of the constitutional convention debates regarding the purpose of the clause, we explained that "[t]he framers of our constitution simply did not intend that [the pension protection clause] control the manner in which the state and local governments fund their pension obligations." *McNamee*, 173 Ill. 2d at 446. Rather, "the purpose of the amendment was to clarify and strengthen the right of state and municipal employees to receive their pension benefits, but not to control funding." *Id.* at 440. We held that the clause "creates an enforceable contractual relationship that protects only the right to receive benefits." *Id.* at 446.

Id., ¶ 38.

That reasoning applies directly here. And it defeats the Individual Plaintiffs' expansive reading of the Pension Protection Clause to include, within the benefits it protects, procedural provisions of the Pension Code that affect pension system funding but not the monetary benefits members receive.

The Supreme Court's reasoning in *Sklodowski*, *McNamee*, and *Lindberg* also disposes of the Individual Plaintiffs' argument that the Act diminishes or impairs the "benefit" they "enjoyed" of not having their local funds' assets subject to administrative costs incurred by the Investment Funds, including their local funds' share of principal and interest payments on the Investment Funds' startup loans. (Pl. Br. at 17–18.) These cases establish that retirement system members have no constitutional right to continuation of Pension Code provisions relating to the source of their benefit payments, including the funding of those payments. Even if the Act reduced local fund assets instead of increasing them, the Individual Plaintiffs' desire for a "more secure fund" to pay their benefits is not protected by the Pension Protection Clause. *Jones*, 2016 IL 119618, ¶ 37. It necessarily follows that *de minimis* changes in the administrative costs incurred by, or charged to, a local fund — which in this case include startup loans by the Investment Funds for about *one-thousandth* of the value of the local funds' assets, offset by lower going-forward costs than the local funds historically incurred (C 131, 471–73, 569–71) — do not implicate a constitutionally protected "benefit" of fund members.

G. The Circuit Court Properly Distinguished Supreme Court Decisions Invalidating Statutory Reductions in Pension Fund Members' Monetary Benefits.

Relying on isolated statements in *Kanerva* and *Williamson County*, the Individual Plaintiffs nonetheless insist that their pre-Act ability to vote for the persons who invest their local funds' assets is included in the term "benefits," as used in the Pension Protection Clause. (Pl. Br. at 12–17.) The circuit court properly rejected this contention. (A 9–11.)

Critically, the Individual Plaintiffs overlook the fact that both *Kanerva* and *Williamson County* involved reductions in the monetary benefits that pension plan members would receive. *Kanerva* involved a statute that reduced the State's contributions to the cost of health insurance for retired plan members, thereby increasing the members' premiums. 2014 IL 115811, ¶¶ 1, 12–13. And *Williamson County* involved a change in membership eligibility criteria that eliminated the right of existing members in a public retirement system to remain members and accrue future service credits. 2020 IL 125330, ¶¶ 5–13, 48. Accordingly, neither case establishes precedent for the proposition that a statutory provision with no effect on members' monetary benefits is a benefit covered by the Pension Protection Clause.

The precedent established by a decision is determined by the specific issues actually raised in the case based on the facts presented. *See People v. Palmer*, 104 Ill. 2d 340, 345–46 (1984) ("the precedential scope of a decision is limited to the facts before the court"); *accord People v. Yost*, 2021 IL 126187,

¶ 62; *Blount v. Stroud*, 232 Ill. 2d 302, 324 (2009). Thus, neither *Kanerva* nor *Williamson County*, nor broad statements in either decision unconnected to the specific issues presented, serve as binding precedent beyond those issues or for materially different facts, including situations involving claimed "benefits" with no financial impact on members. *See Schweihs v. Chase Home Fin.*, LLC, 2016 IL 120041, ¶ 41 ("'general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used'") (quoting *Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (Marshall, C.J.); *Blount*, 232 Ill. 2d at 324 ("Notwithstanding the broad language in the *Mein* opinion, the precedential scope of our decision is limited to the facts that were before us.") (citing *Palmer*); *Somers v. Quinn*, 373 Ill. App. 3d 87, 94 (2d Dist. 2007) ("A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts . . . .") (cleaned up).

In any event, when read in context, the statements in *Kanerva* and *Williamson County* on which the Individual Plaintiffs rely do not support their position. In *Kanerva*, there was no dispute that the challenged legislation — which lowered state contributions to retired pension fund members' health insurance, and thus increased their premiums — reduced a monetary benefit to fund members. 2014 IL 115811, ¶¶ 1, 3–6, 12–14, 35, 40. The only question was whether this monetary benefit, established by legislation *outside* the

Pension Code, was within the scope of Pension Protection Clause's protection. *Id.*, ¶ 38 ("the question presented is whether a health insurance subsidy provided in retirement qualifies as a benefit of membership"). Holding that the plaintiffs had asserted a valid constitutional claim, the Supreme Court ruled that the Pension Protection Clause protects benefits that are "conditioned on" and "attendant to" membership in a public retirement system, including such benefits granted to system members by the legislature outside the Pension Code. *Id.*, ¶¶ 40, 41, 49. And in describing those benefits, the Court referred only to monetary benefits, in addition to wages and salary, traditionally associated with public employment, i.e., "subsidized health care, disability and life insurance coverage, eligibility to receive a retirement annuity and survivor benefits." *Id.*, ¶ 39.

This context for the Court's holding in *Kanerva* explains the relevance of its comment, on which the Individual Plaintiffs rely (Pl. Br. at 15), that the drafters of the Illinois Constitution did not "intend[] to protect *only* core pension *annuity* benefits and to exclude the various other benefits state employees were and are entitled to receive as a result of membership in the State's pensions systems." *Id.*, ¶ 41 (emphasis added). Consistent with its holding, the Court was merely explaining that monetary benefits such as health care subsidies conferred on public pension fund members that are conditioned on their membership are constitutionally protected benefits, even if they are not traditional retirement system annuities specified in the Pension

Code. And because *Kanerva* did not question, much less purport to overrule, *McNamee*, *Sklodowski*, or *Jones*, nothing in *Kanerva*'s holding or rationale supports Plaintiffs' position that administrative provisions of the Pension Code that affect system funding or assets, but do not affect members' monetary benefits, are protected "benefits" under the Pension Protection Clause.

Nor does *Williamson County* provide any support for Plaintiffs. In that case, the plaintiffs became members of the Illinois Municipal Retirement Fund in accordance with the then-applicable eligibility criteria in the Pension Code, which the General Assembly later amended in a way that would terminate their continued membership and corresponding right to accrue pension benefits. 2020 IL 125330, ¶¶ 1, 5–8, 13, 30, 48. The plaintiffs challenged the amendment, and the Supreme Court affirmed the circuit court's judgment in their favor, holding that applying the amendment to them violated the Pension Protection Clause because it took away their previously established status as members of the Fund and corresponding right to accrue benefits based on that membership. *Id.*, ¶¶ 33, 47–52.

The Court explained that in previous cases it had invalidated legislative changes eliminating existing pension fund members' right to obtain service credits under Pension Code provisions in effect after they became members. *Id.*, ¶¶ 42–47. The Court then ruled that, as a constitutional matter, changing the membership eligibility criteria for pension fund members after they

became members in a way that prevented them from receiving benefits under the earlier Pension Code provisions was no different. *Id.*, ¶¶ 33–41; *see also id.*, ¶ 41 ("Our case law instructs that the pension protection clause did create one very simple *de facto* vesting rule: Public employees' rights to benefits are constitutionally protected when they begin their jobs.") (cleaned up). And the linchpin of the Court's reasoning was that "the termination of plaintiffs' continued IMRF participation . . . predicated on the new requirements of section 7-137.2(a), decreased their service credits and negatively impacted their annuity benefit calculation." *Id.*, ¶ 48 (citations omitted, emphasis added). Thus, *Williamson County* expressly tied the constitutional flaw in the challenged legislation to its effect on the monetary benefits of existing fund members after their constitutional rights as members had vested. That is not the case here.

The Court in *Williamson County* did say, as Plaintiffs note (Pl. Br. at 14), that the Pension Protection Clause does not prohibit only "*immediate and direct diminishments* to public pension benefits," even though this was the situation presented in "many of our prior decisions." *Id.*, ¶ 40 (emphasis added). But the Individual Plaintiffs misinterpret the significance of that statement, made in response to the defendant's argument that the Court's prior decisions invalidated only laws under which "affected parties had lesser benefits *as soon as* the applicable statutory changes became effective." *Id.*, ¶ 38 (emphasis added). Rejecting that characterization of its precedent, the

Court pointed to its decisions in *Buddell* and *Carmichael*, both of which involved Pension Code changes that adversely affected existing members' right to obtain service credits used to calculate their future annuities. *Id.*, ¶¶ 42–47. Here, by contrast, the Individual Plaintiffs do not, and cannot, claim that the Act has *any* adverse effect — immediately, or at any future time — on the monetary benefits they receive. *Williamson County* thus does not support their strained interpretation of the Pension Protection Clause.

H. The Act's Change in the Individual Plaintiffs' Role in Selecting Who Invests Local Fund Assets Has No Effect on the Monetary Benefits They Receive, and Therefore Does Not Implicate the Pension Protection Clause.

Because the benefits protected by the Pension Protection Clause include only the monetary benefits received by fund members, the Individual Plaintiffs' focus on the Act's alleged "dilution" of their ability to vote for the persons responsible for investing local fund assets — formerly the member-elected trustees of the local funds, now the member-elected trustees of the Investment Funds (Pl. Br. at 12, 16–17) — is misplaced. Any impact on such voting rights could be constitutionally significant only if it affected the monetary benefits received by fund members, but the Individual Plaintiffs do not make that claim here. And even before the Act, those voting rights were subject to dilution whenever an employer hired additional police officers or firefighters. Under the Act, the Individual Plaintiffs still vote, as before, for the trustees of their local funds' boards of trustees (with the weight of their votes changing as new members are hired or leave active service), and those

boards continue to make all decisions regarding the amount of the Individual Plaintiffs' monetary benefits (e.g. retirement and disability benefits). And, as noted, the investment of the local funds' assets has absolutely no effect on the amount of those monetary benefits, which, as a constitutional matter, must be paid regardless of the performance of those investments. *Jones*, 2016 IL 119618, ¶¶ 42-45. Arguably, the situation might be different if a change in the Individual Plaintiffs' voting rights for members of their local boards affected the monetary benefits the Individual Plaintiffs received. But the Act does not have such an effect, as the Individual Plaintiffs concede. Thus, their "dilution of voting rights" theory involves a procedural matter without constitutional significance because they have no rights in the manner of funding their benefit payments or in any particular level of such funding (see above at 27–31), and therefore can have no rights in the process governing the selection of the people who, acting as fiduciaries, invest local fund assets used to make those payments. *See Jones*, 2016 IL 119618, ¶¶ 37–38; *Sklodowski*, 182 Ill. 2d at 228-232; *McNamee*, 173 Ill. 2d at 438–46.

* * *

In short, the circuit court correctly held that the Pension Protection Clause does not prohibit changes in Pension Code provisions that govern the investment of retirement system assets but have no effect on members' monetary benefits, and that the Act therefore does not violate the Pension Protection Clause.

V. The Circuit Court Properly Held that Public Act 101-0610 Does Not Violate the Takings Clause.

This Court should also affirm the circuit court's judgment against the Individual Plaintiffs on their Takings Clause claim for two reasons. *See Ultsch*, 226 Ill. 2d at 192 (circuit court's judgment may be affirmed on any ground in the record). The Act does not take any property from the Individual Plaintiffs because they do not have a "property right" in the amount of their local funds' assets or how those assets are managed. And, in any event, the Act's change in the manner of administering those assets is not a "taking." As the circuit court recognized, the Individual Plaintiffs did not allege or present any evidence that any of them "currently drawing their pension benefit have suffered a present or will suffer a future loss in benefit payment," or that "those still employed will suffer a similar fate when they eventually retire." (A 14.)

The Takings Clause of the Illinois Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. art. I, § 15. Language in the Illinois Takings Clause that is identical to its federal counterpart is given the same meaning. *Hampton v. Metro. Water Reclamation Dist.*, 2016 IL 119861 ¶¶ 12–16, 31. The Clause's purpose is to prevent "Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005) (citation and internal quotation marks omitted); *see also*

Murr v. Wisconsin, 137 S. Ct. 1933, 1943 (2017); *N. Ill. Home Builders Ass'n, Inc. v. County of Du Page*, 165 Ill. 2d 25, 31 (1995). That purpose is not implicated here because the Act simply changes the custody and management of the local funds' assets while continuing to dedicate the use of those assets to paying member benefits.

A. Public Act 101-0610's Changes in the Administration of Local Fund Assets Do Not Affect any Property Right of the Individual Plaintiffs.

State law determines what constitutes "property" for purposes of the Takings Clause. *Canel v. Topinka*, 212 Ill. 2d 311, 332 (2004) (citing *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998)); *see also Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2075–76 (2021). And here, although the Individual Plaintiffs have a constitutional right to receive the benefit payments promised to them, which the Act does not change, they do not have a property right to any particular level of assets used to pay those benefits, or in the manner in which those assets are invested. *See Jones*, 2016 IL 119618, ¶ 36; *Sklodowski*, 182 Ill. 2d at 229–31. Therefore, the Individual Plaintiffs' Takings Clause claim fails at the threshold, for they have no property right under Illinois law that is affected by the Act. *See Degan v. Bd. of Trustees of Dallas Police & Fire Pension Sys.*, 956 F.3d 813, 814–15 (5th Cir. 2020) (plaintiffs failed to state Takings Clause claim against statutory change in manner of withdrawing funds in "deferred retirement option plan" where, under state law, they had no property interest in the manner for withdrawing

them under prior law); *Castellano v. Bd. of Trustees of Police Officers' Variable Supplements Fund*, 937 F.2d 752, 757–58 (2d Cir. 1991) ("While there is no question that plaintiffs have an entitlement under New York law to receive their pension payments — which they are receiving — they have no entitlement to, or right to direct the retention of, the particular assets that are held for investment purposes in the pension fund.") (cleaned up); *Molloy v. Monsanto*, 30 V.I. 164, 183–84 & nn.56–57 (D.V.I. June 9, 1994) (rejecting Takings Clause claim based on public pension fund members' claimed property right in earnings on their fund contributions); *State ex rel. Horvath v. State Teachers Ret. Bd.*, 697 N.E.2d 644, 652 (Ohio 1998); *Bd. of Trustees of Employees' Ret. Sys. of City of Baltimore v. Mayor & City Council of Baltimore City*, 562 A.2d 720 (Md. 1989) (holding that ordinance requiring city pension funds to divest from companies doing business in South Africa was not "taking" of beneficiaries' property, even though it would likely reduce investment earnings, and noting that "the governmental action in this case does not involve the government appropriating the beneficiaries' money for its own use or for the use of others"); *State Bd. of Ret. v. Boston Ret. Bd.*, 460 N.E.2d 194, 196 (Mass. Sup. J. Ct., Suffolk, 1984).

The Individual Plaintiffs insist they have a property right in the local fund assets used to pay for the transition costs necessary to implement the Act's transfer of local fund assets to the Investment Funds. (Pl. Br. at 19.) That is wrong. As explained above, the Individual Plaintiffs have no property

right in the manner of funding the benefits they are entitled to receive, and thus have no right in how local fund assets are generally administered or invested, or in controlling the means by which reasonable administrative costs are incurred. (*See* above at 27–31.) Thus, even if the local funds were exposed to higher cumulative administrative fees and costs under the Act than before (which the record refutes, C 471–73, 569–71), that still would not implicate a property interest of the Individual Plaintiffs in local fund assets.[14]

B. The Act Does Not Effect a "Taking" of the Individual Plaintiffs' Property for a Public Use.

The Individual Plaintiffs' Takings Clause claim also fails on the independent ground that the Act does not constitute a "taking" of their property for public use. Instead, the Act merely changes the procedures by which local fund assets are managed without changing the ultimate use of those assets to pay benefits to local fund members.

Although the Individual Plaintiffs do not make the point explicitly, their Takings Clause claim necessarily contends that the Act effects a "regulatory taking" of their property, not a direct appropriation of it for the government's own use, as is the case for traditional takings such as the condemnation of

---

[14] The Individual Plaintiffs' claimed interest in the cost to manage local fund assets is misplaced as a practical matter, too. The Act significantly *reduces* the administrative fees and costs associated with managing local fund assets, thereby increasing local fund assets and decreasing local taxes necessary to fund benefit payments. And the temporary loans the Investment Funds may take out to fund their startup costs — for about *one-thousandth* of the local funds' assets (C 131) — will be quickly exceeded by the cost savings resulting from this transition. (*See* C 471–73, 569–71.)

private property to build a road. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 361 (2015) ("Our cases have stressed the 'longstanding distinction' between government acquisitions of property and regulations.") (quoting *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 323 (2002)); *see also Davis v. Brown*, 221 Ill. 2d 435, 443 (2006). The Act did not "appropriate" any local fund assets for the government's use. It merely transferred the custody and management of those assets while maintaining the same use: paying member benefits.

States have broad police powers to "adjust rights for the public good," *Murr*, 137 S. Ct. at 1943 (cleaned up), and regulations that affect the use of private property without compensation violate the Takings Clause only in very limited circumstances, *id.*; *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 223–25 (1986); *Kaukas v. City of Chicago*, 27 Ill. 2d 197, 203 (1963); *see also Sherman-Reynolds, Inc. v. Mahin*, 47 Ill. 2d 323, 326 (1970). Two categories of regulation, not relevant here, constitute *per se* takings: (1) regulations that allow the government to "physically invade or permanently appropriate [private] assets for its own use," *Connolly*, 475 U.S. at 225; *see also Lingle*, 544 U.S. at 538, and (2) "regulations that completely deprive an owner of *all* economically beneficial use of her property," *Lingle*, 544 U.S. at 538 (emphasis in original; cleaned up).

Outside those two situations, whether a regulation exceeds the State's police powers depends on the severity of "'the economic impact of the

regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations,''' and "the 'character of the government action,'" including whether it "merely affects property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good.'" *Lingle*, 544 U.S. at 528–29 (quoting *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)); *see also Connolly*, 475 U.S. at 224–25; *Davis*, 221 Ill. 2d at 443–44. These factors serve "to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.

A key aspect of the inquiry is "the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Lingle*, 544 U.S. at 540; *see also id.* at 539 ("each of [the regulatory takings] tests focuses directly upon the severity of the burden that government imposes upon private property rights"); *Penn Central*, 438 U.S. at 136. That inquiry takes into account the extent to which the owner's property rights were already subject to state regulation. *Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645–46 (1993); *Connolly*, 475 U.S. at 227. And only "severe" economic impacts on owner's property interests can constitute a taking. *See Murr*, 137 S. Ct. at 1949; *Lingle*, 544 U.S. at 544; *Concrete Pipe*, 508 U.S. at 645 ("our cases have long established that mere diminution in the value of property, however serious, is

insufficient to demonstrate a taking"); *Goldblatt v. Town of Hempstead, N. Y.*, 369 U.S. 590, 592 (1962) ("If [an] ordinance is otherwise a valid exercise of . . . police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional."); *Forest Pres. Dist. of Du Page County v. W. Suburban Bank*, 161 Ill. 2d 448, 457 (1994) ("only the most severe governmental regulation amounts to a taking requiring just compensation"); *Strauss v. City of Chicago*, 2021 IL App (1st) 191977, ¶ 57, *aff'd on other grounds*, 2022 IL 127149. In *Concrete Pipe*, for example, the United States Supreme Court rejected the plaintiff's Takings Clause claim despite evidence that complying with the challenged law would require it "to pay out 46% of shareholder equity," and the Court observed that it had upheld, against Takings Clause claims, regulations that resulted in 75% and 92.5% diminutions in value, respectively. 508 U.S. at 645; *see also Goldblatt*, 369 U.S. at 594 (approving decision "where a diminution in value from $800,000 to $60,000 was upheld" under ordinance prohibiting brick manufacturing within certain areas of city).

Here, neither the character of the Act's changes to the Pension Code nor the severity of those changes' effects on any purported property right claimed by the Individual Plaintiffs is sufficient to establish a taking. Courts have routinely rejected Takings Clause claims challenging similar laws that "adjust[]the benefits and burdens of economic life to promote the common good," *Lingle*, 544 U.S. at 528–29 (cleaned up), and that had much greater

impacts on private property rights, *see*, *e.g.*, *Concrete Pipe*, 508 U.S. at 644–46; *Connolly*, 475 U.S. at 221–28 (upholding, against "as applied" Takings Clause claim, statute imposing on employers that withdraw from multiemployer pension plans financial liability for their proportionate share of funds' actuarial funding deficiency); *Connolly*, 475 U.S. at 225–28 (upholding same law against "facial" Takings Clause challenge); *Goldblatt*, 369 U.S. at 592–97 (upholding ordinance that prohibited excavation below water table and prevented plaintiff from continuing mining operation in existing quarry); *see generally Connolly*, 475 U.S. at 223 ("In the course of regulating commercial and other human affairs, Congress routinely creates burdens for some that directly benefit others. . . . Given the propriety of the governmental power to regulate, it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another.").

Critically, the character of the Act's contested provisions bears no resemblance to a taking of private property for public use. To the contrary, the Act preserves the use of local fund assets to pay member benefits, and it simply changes the custody and administration of those assets to better accomplish that use. *See Connolly*, 475 U.S. at 224 ("the United States has taken nothing for its own use").

Further, the Act has not severely impaired any investment-based expectations that the Individual Plaintiffs might claim in their local funds'

assets. Before the Act, the Pension Code extensively regulated, and from time to time modified, the procedures governing the administration and investment of local fund assets. (*See* above at 5–7.) The Act's changes in those procedures therefore fell well within the scope of changes that could readily be anticipated as part of the General Assembly's efforts to improve local fund operations for the benefit of members and local taxpayers alike. *See Concrete Pipe*, 508 U.S. at 645–46; *Connolly*, 475 U.S. at 227. And any short-term financial impact that these changes had on local fund assets, including transition loans for approximately one-thousandth of their value, are miniscule compared to the economic effects that courts have held do not to amount to a taking. (*See* above at 11, 31.) Moreover, the long-term cost savings that the Act makes possible will quickly exceed those transition costs, consistent with the Act's express purpose to "streamline investments and eliminate unnecessary and redundant administrative costs, thereby ensuring more money is available to fund pension benefits for the beneficiaries of the transferor pension funds." 40 ILCS 5/22B-114, 22C-114.

In sum, the Act's salutary purpose — to improve the local funds' fiscal position, thus reducing local taxes without reducing any benefits paid to members — undoubtedly reflects a valid legislative goal that does not plausibly implicate the Takings Clause.

VI. The Circuit Court Properly Entered Judgment Against Plaintiffs on their Claims Against the Executive Director of the Illinois Finance Authority Because They Lack Standing to Pursue Those Claims.

The circuit court's judgment in favor of Meister, Executive Director of the IFA, should be affirmed on the alternate ground that the Individual Plaintiffs lack standing to pursue their claims against him because there is no distinct and palpable injury to them that is fairly traceable to any action of the IFA.[15] The Individual Plaintiffs' alleged injuries — resulting from the Plaintiff Funds' loss of control over the investment of their assets, and the related diminution in the Individual Plaintiffs' voting power over the selection of the people who invest those assets — are not traceable to the IFA.

To have standing to maintain a suit against Meister, Plaintiffs must show that they suffered a "distinct and palpable" injury "fairly traceable to [his] actions." *Carr v. Koch*, 2012 IL 113414, ¶¶ 28, 31; *Ill. Ass'n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 26; *Wexler v. Wirtz Corp*., 211 Ill. 2d 18, 26-27 (2004). As a matter of law, the opposite is true — the IFA loans to the Investment Funds authorized by the Act do not diminish or impair the Individual Plaintiffs' benefits.

As noted, the Act authorizes the IFA to make loans to the Investment Funds. 20 ILCS 3501/801-40(z); 40 ILCS 5/22B-120(h), 22C-120(h). The

[15] Because this argument applies only to the IFA Defendants, it is advanced by the IFA, its Executive Director, and their counsel and is included in this joint brief for purposes of efficiency and convenience.

Individual Plaintiffs have no duty to repay those loans, and their pension benefits and contributions are not modified by any borrowing by the Investment Funds. *See*, *e.g.*, 40 ILCS 5/3-111, 40 ILCS 5/4-109 ("Nothing in this amendatory Act of the 101st General Assembly shall cause or otherwise result in any retroactive adjustment of any employee contributions."). Thus, the IFA has no recourse against the Individual Plaintiffs for loan repayments, and the Act creates no relationships or obligations between them and the IFA. At the same time, the IFA does not manage, administer or have a security interest in the funds held by the Investment Funds. Under the challenged statute, the IFA cannot, has not, and will not diminish or impair the Individual Plaintiffs' pension benefits. Accordingly, summary judgment in favor of Meister should be affirmed for the independent reason that the Individual Plaintiffs are not able to establish an injury fairly traceable to the IFA sufficient to give them standing to maintain a case against its Executive Director.

CONCLUSION

For the foregoing reasons, the circuit court's judgment should be affirmed.

October 7, 2022

Respectfully submitted,

JOSEPH M. BURNS
TAYLOR E. MUZZY
DAVID HUFFMAN-GOTTSCHLING
Jacobs, Burns, Orlove, and Hernandez, LLP
1 N. La Salle St., Ste. 1620
Chicago, IL 60602
(312) 327-3443
jburns@jbosh.com
tmuzzy@jbosh.com
davidhg@jbosh.com

Attorneys for the Board of Trustees for the Police Officers' Pension Investment Fund

KWAME RAOUL
Attorney General, State of Illinois

JANE ELINOR NOTZ
Solicitor General

/s/ *Richard S. Huszagh*
RICHARD S. HUSZAGH
Assistant Attorney General
ARDC No. 6185379
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601
(312) 814-2587 (office)
(773) 590-7076 (cell)
CivilAppeals@ilag.gov (primary)
richard.huszagh@ilag.gov (secondary)

Attorneys for Defendants-Appellees Illinois Governor JB Pritzker and Dana Popish Severinghaus, Acting Director of the Illinois Department of Insurance

RICHARD F. FRIEDMAN
LANGDON D. NEAL
Neal & Leroy, LLC
20 S. Clark St., Suite 2050
Chicago, IL 60603
(312) 641-7144
rfriedman@nealandleroy.com
lneal@nealandleroy.com

Attorneys for Christopher B. Meister, in his official capacity as Executive Director of the Illinois Finance Authority

MICHAEL A. SCODRO
BRETT E. LEGNER
Mayer Brown LLP
71 South Wacker Drive
Chicago, IL 60606
(312) 701-8886
mscodro@mayerbrown.com
blegner@mayerbrown.com

Attorneys for the Board of Trustees for the Firefighters' Pension Investment Fund

Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and the matters to be appended to the brief under Rule 342(a), is 50 pages.

/s/ *Richard S. Huszagh*

Certificate of Filing and Service

I certify that on October 7, 2022, I electronically filed this Brief of Defendants-Appellees with the Clerk of the Illinois Appellate Court, Second District, by using the Odyssey eFileIL system.

I further certify that counsel for the other participants in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and will be served via the Odyssey eFileIL system.

Amanda J. Hamilton amanda@konicekdillonlaw.com

Under penalties as provided by law pursuant to section 1–109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Richard S. Huszagh*
Assistant Attorney General