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AARON B. MADUFF
ILLINOIS ♦ OHIO ♦ MINNESOTA
COLORADO ♦ DISTRICT OF COLUMBIA

August 8, 2014

Joint Committee on Administrative Rules
Illinois General Assembly
% Vicki Thomas, Executive Director
700 Stratton Office Building,
Springfield, Illinois 62706
VIA EMAIL” vthomas@ilga.gov

I write to you today as counsel for the State University Annuitant’s Association (“SUAA”). SUAA represents the interests of SURS members on numerous issues, specifically including pension benefits. And it is that issue about which I write you today.

On July 1, 2014, the Department of Central Management Services, pursuant to Public Act 97-695 issued an emergency amendment to 80 Ill Adm. Code 2200; 37 Ill. Reg. 14440. That rule increases deductions made from pension distributions to offset health insurance premiums.

I understand that at your meeting on Tuesday, August 12, you will be reviewing that rule. It is item 37 on the agenda noted as “State Employees Group Insurance Program Retiree Premium Contributions (80 Ill. Adm. Code 2200.) In July of 2013, CMS began deducting a percentage of health premiums from public pension distributions pursuant to PA 97-695. That had a profound effect on thousands of SURS members and others. This new emergency rule doubles the amount to be deducted for health insurance premiums from pension members’ annuities, making bad situations worse.

At the outset, we do not believe that this emergency rule meets the definition of an emergency under the Illinois Administrative Procedures Act. Emergency is defined as a threat to the public interest, safety, or welfare of the citizenry. The amount of money at issue here, while very significant to the individuals involved, is hardly enough to warrant emergency action and delay by a few months to go through proper procedures would be no threat to the public interest.

As you are aware, a suit was filed in Sangamon County challenging the Constitutionality of PA 97-695 as violative of the Pension Protection Clause of the Illinois Constitution, Article XIII, Sec. 5. That clause states:

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

The suit was generally styled *Kanerva et. al., v. Weems, et al.*, (“*Kanerva*”). To our disappointment, that litigation was dismissed by the Circuit Court of Sangamon County for failure to state a claim on the basis that (among others), the Pension Protection Clause does not protect health care benefits. On July 3, 2014, however, the Illinois Supreme Court reversed the Sangamon County Circuit Court finding that the health insurance at issue is indeed a pension benefit entitled to protection under the Pension Protection Clause and that case has now been remanded. See *Kanerva v. Weems*, 2014 IL 115811.

In that ruling, the Supreme Court clearly held that indeed health benefits of pension members are protected by the Pension Clause. It stated:

The text of the provision proposed to and adopted by the voters of this State did not limit its terms to annuities, or to benefits conferred directly by the Pension Code, which would also include disability coverage and survivor benefits. Rather, the drafters chose expansive language that goes beyond annuities and the terms of the Pension Code, defining the range of protected benefits broadly to encompass those attendant to membership in the State's retirement systems. Then, as now, subsidized health care was one of those benefits. For us to hold that such benefits are not among the benefits of membership protected by the constitution would require us to construe article XIII, section 5, in a way that the plain language of the provision does not support. We may not rewrite the pension protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve. See *Prazen*, 2013 IL 115035, ¶¶ 37–38, 375 Ill.Dec. 709, 998 N.E.2d 1.

2014 IL 115811 *11.

Even beyond that, the *Kanerva* opinion makes clear that the State cannot abridge those rights for any reason, including a threat to the public interest, safety, or welfare of the citizenry — a threat which, as already noted, simply does not exist. More than 75 years ago, in *People ex rel. Lyle v. City of Chicago*, 360 Ill. 25 (1935), the Supreme Court had already held that no emergency permits the State to abridge Constitutional limitations:

Legitimate methods of relieving the situation [a financial shortfall resulting from the Great Depression] are commendable, and where the law, either by express provision or by necessary implication, provides for an emergency departure from its terms, it is permissible to accommodate the law to such emergencies, but in order to justify such a departure the justification must be found within the law. It does not arise from the emergency, but, as existing under the law, is applied when the emergency happens. *Home Building & Loan Ass'n v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A. L. R. 1481. Neither the Legislature nor any executive or judicial officer may disregard the provisions of the Constitution even in case of a great emergency.

Id. at 29.

Kanerva clearly holds that the Pension Clause is a Constitutional limitation on the State's power to act, specifically its ability to impair or diminish pension benefits:

[A]rticle XIII, Section 5, was intended to eliminate the uncertainty that existed under the traditional classification of retirement systems and to guarantee that retirement rights enjoyed by public employees would be afforded contractual status and *insulated from diminishment or impairment by the General Assembly*.

2014 IL 115811*13 (Emphasis added.)

That language, “insulated from diminishment or impairment by the General Assembly” is a statement of Constitutional limitation against the State. No less so is the Pension Clause itself, the last phrase of which is clear in its language “...the benefits of which *shall not* be diminished or impaired.”


At this point, it remains only for the Circuit of Sangamon County to enter an order effecting the Supreme Court's opinion. We fully expect that that order will be a finding that Public Act 97-695 is unconstitutional and void. That will also have the effect of depriving CMS of the authority to adopt its emergency amendment or any other amendment which would cause deductions to be made to public pension disbursements.

Most SURS members are on fixed incomes and rely on their pensions to meet their expenses. They have already worked hard to adjust to the cut in their pension benefits from last year. Forcing them to adjust for another cut is a double hardship. Meanwhile, there is nothing to be gained by the State in deducting the monies as SURS members and others will be entitled to a recoupment as soon as the Circuit Court of Sangamon County enters the order we anticipate.

I understand that “it is the policy of the Committee to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings.” I recognize that analysis of *Kanerva* and other relevant case law is complex and I cannot possibly set forth all of it in a letter such as this. This issue is very important to tens of thousands of SURS members and we ask that you demand that CMS withdraw the aforementioned emergency rule. I trust that a review of this letter and the comments I have made herein, sufficiently appraises you of the law — or that you will be able to locate applicable law as appropriate — such that the need to demand that CMS withdraw this rule is an obvious one. Of course, your policies are always subject to your own changes and I am more than happy to address any questions you may have orally on August 12 (or otherwise) if you deem it appropriate.

Thank you for your consideration of this matter.

Very truly yours,


Aaron B. Maduff

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COLORADO ♦ DISTRICT OF COLUMBIA

August 8, 2014

Simone McNeil
Department of Central Management Services, State of Illinois
% Jacqueline Salgado
Stratton Building, Room 715
401 South Spring Street
Springfield, Illinois 62706-4100
VIA EMAIL: jacqueline.salgado@illinois.gov

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afforded contractual status and *insulated from diminishment or impairment by the General Assembly.*

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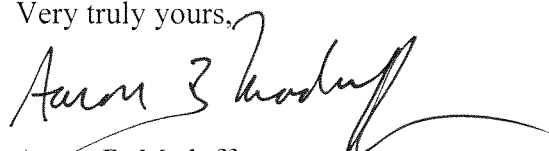
At this point, it remains only for the Circuit of Sangamon County to enter an order effecting the Supreme Court’s opinion. We fully expect that that order will be a finding that Public Act 97-695 is unconstitutional and void.

Most SURS members are on fixed incomes and rely on their pensions to meet their expenses. They have already worked hard to adjust to the cut in their pension benefits from last year. Forcing them to adjust for another cut is a double hardship. Meanwhile, there is nothing to be gained by the State in deducting the monies as SURS members and others will be entitled to a recoupment as soon as the Circuit Court of Sangamon County enters the order we anticipate.

I recognize that analysis of *Kanerva* and other relevant case law is complex and I cannot possibly set forth all of it in a letter such as this. This issue is very important to tens of thousands of SURS members and we ask that you immediately withdraw the aforementioned emergency rule. I trust that a review of this letter and the comments I have made herein, sufficiently appraises you of the law — or that you will be able to locate applicable law as appropriate — such that the need to withdraw this rule is an obvious one. I am of course available to answer any questions you or your staff may have on this matter.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink that reads "Aaron B. Maduff". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Aaron B. Maduff

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August 8, 2014

The Honorable Patrick Quinn, Esq.
Office of the Governor, State of Illinois
207 State House
Springfield, IL 62706
VIA FAX: 217/524-4049

James R. Thompson Center
100 W. Randolph, 16-100
Chicago, IL 60601

Governor Quinn:

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Last week you should have received a letter from SUAA Executive Director, Linda Brookhart in which she expressed her concerns about the emergency rule at issue. As SUAA's attorney, I wanted to more specifically explain our view from a legal perspective in the hope that you will act to stop this emergency rule and any further deductions from pension distributions.

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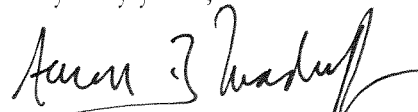
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