

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

ILLINOIS RETIRED TEACHERS  
ASSOCIATION,

Plaintiff,

v.

THE BOARD OF TRUSTEES OF THE  
TEACHERS' RETIREMENT SYSTEM OF  
THE STATE OF ILLINOIS, THE ILLINOIS  
DEPARTMENT OF CENTRAL  
MANAGEMENT SERVICES, JANEL  
FORDE, Director of the Illinois Department of  
Central Management Services, in her official  
capacity, J.B. PRITZKER, Governor of the  
State of Illinois, in his official capacity,  
SUSANA MENDOZA, Comptroller of the  
State of Illinois, in her official capacity,  
MICHAEL FRERICHS, Treasurer of the State  
of Illinois, in his official capacity, EMANUEL  
"CHRIS" WELCH, Speaker of the Illinois  
House of Representatives, in his official  
capacity, and DON HARMON, President of the  
Illinois Senate, in his official capacity,

Defendants.

Case No.

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff, the Illinois Retired Teachers Association, by its attorneys Tabet DiVito & Rothstein LLC, respectfully states as follows:

**NATURE OF THE CASE**

1. This is a lawsuit under the Pension Protection Clause of the Illinois Constitution (Art. XIII, § 5) to save the Teacher Health Insurance Security Fund from imminent collapse.
2. The Pension Protection 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.” See Ill. Constitution, Art. XIII, § 5.

3. The benefits of membership in a State pension or retirement system include health insurance benefits. See *Kanerva v. Weems*, 2014 IL 115811, ¶¶ 52-57.

4. Through their membership in the Teachers’ Retirement System of the State of Illinois (“TRS”), retired Illinois teachers are entitled to receive health and prescription drug insurance benefits for themselves and their dependents.

5. Those health and prescription drug insurance benefits are protected by the Pension Protection Clause of the Illinois Constitution.

6. Those health and prescription drug insurance benefits are administered primarily by the Teachers’ Retirement Insurance Program (“TRIP”).

7. TRIP participants who are eligible for Medicare also are entitled to participate in a healthcare program called Total Retiree Advantage Illinois (“TRAIL”). That program provides Medicare-eligible members and their covered dependents with comprehensive medical and prescription drug coverage, which also is protected by the Pension Protection Clause of the Illinois Constitution.

8. Those health and prescription drug insurance programs are funded by the Teacher Health Insurance Security Fund (sometimes referred to below as the “Fund”).

9. The Teacher Health Insurance Security Fund is on the verge of default or imminent insolvency.

10. If the Teacher Health Insurance Security Fund becomes insolvent or defaults, TRS annuitants’ and their dependents’ health and prescription drug insurance benefits will be diminished or impaired.

11. To protect its members and their dependents from the imminent diminishment or impairment of their constitutionally protected health and prescription drug insurance benefits, the Illinois Retired Teachers Association brings this action for declaratory and injunctive relief.

12. The drafters of the Illinois Constitution envisioned as early as 1970 that “if a pension fund would be on the verge of default or imminent bankruptcy, a group action could be taken to show that these rights should be preserved.” *See* Record of Proceedings, Sixth Illinois Constitutional Convention, at 2926 (July 21, 1970) (remarks of Del. Helen Kinney).

13. This is such an action.

14. The fund that makes health and prescription drug benefits available to many thousands of retired teachers and their dependents across Illinois will grow insolvent imminently, and constitutionally protected health and prescription drug insurance benefits will be diminished or impaired, unless this Court grants the relief requested in this complaint.

15. Accordingly, the Illinois Retired Teachers Association requests that this Court grant the declaratory and injunctive relief requested in this complaint, bring the Teacher Health Insurance Security Fund back from the verge of default, and save retired teachers’ constitutionally protected health and prescription drug insurance benefits from being diminished or impaired.

### **PARTIES**

16. The Illinois Retired Teachers Association (the “Association”) is a not-for-profit corporation whose purpose is to safeguard the interests of retired teachers, particularly including their constitutionally protected right to their retirement health and prescription drug insurance benefits.

17. The Association’s members would otherwise have standing to sue in their own right because, as alleged below, their constitutionally protected health and prescription drug insurance

benefits will be imminently diminished or impaired by the default or insolvency of the Teacher Health Insurance Security Fund.

18. The interests the Association seeks to protect are germane to the Association's purpose.

19. Neither the claims asserted nor the types of relief requested in the complaint require the participation of individual Association members as parties to this lawsuit.

20. Defendant Board of Trustees of the Teachers' Retirement System of the State of Illinois ("TRS Board") is responsible for the general administration of TRS.

21. Defendant Illinois Department of Central Management Services ("CMS") is an administrative agency of the State of Illinois.

22. CMS is "responsible for administering a program of health benefits for TRS benefit recipients and TRS dependent beneficiaries . . . ." 5 ILCS 375/6.5(b).

23. Defendant Janel Forde is the Director of CMS. She is named as a defendant in her official capacity.

24. Defendant J.B. Pritzker is the Governor of the State of Illinois. He is named as a defendant in his official capacity.

25. Defendant Susana Mendoza is the Comptroller of the State of Illinois. She is named as a defendant in her official capacity.

26. Defendant Michael Frerichs is the Treasurer of the State of Illinois. He is named as a defendant in his official capacity.

27. Defendant Emanuel "Chris" Welch is the Speaker of the Illinois House of Representatives. He is named as a defendant in his official capacity.

28. Defendant Don Harmon is the President of the Illinois Senate. He is named as a defendant in his official capacity.

### **JURISDICTION AND VENUE**

29. This Court may exercise personal jurisdiction over the TRS Board and CMS under 735 ILCS 5/2-209(a)(1) because this action arises from the TRS Board's and CMS's transaction of business within Illinois. Alternatively, this Court may exercise personal jurisdiction over the TRS Board and CMS under 735 ILCS 5/2-209(a)(7) because this action arises from the making or performance of a contract or promise substantially connected with Illinois.

30. This Court may exercise personal jurisdiction over Director Forde, Governor Pritzker, Comptroller Mendoza, Treasurer Frerichs, House Speaker Welch and Senate President Harmon because they reside or are domiciled in Illinois.

31. Venue is proper in this Court under 735 ILCS 5/2-101 because each defendant resides in or does business in Sangamon County.

### **BACKGROUND**

**A. CMS's fiscally irresponsible decisions have pushed the Teacher Health Insurance Security Fund to the verge of default or imminent insolvency.**

32. The Teacher Health Insurance Security Fund subsidizes the provision of health and prescription drug insurance benefits to TRS annuitants and their dependents.

33. Recent decisions by CMS setting contribution rates to the Teacher Health Insurance Security Fund have been fiscally irresponsible and, in combination with other factors, have pushed the Fund to the verge of default or imminent insolvency.

34. The State Employees Group Insurance Act of 1971 (the "Act"), 5 ILCS 375/1 *et seq.*, entitles TRS annuitants and their dependents to certain health insurance and prescription drug insurance benefits.

35. The Act also outlines the process by which contribution rates to the Teacher Health Insurance Security Fund are annually certified by the TRS Board.

36. Each fiscal year, CMS determines the Teacher Health Insurance Security Fund contribution rate, which is defined as a percentage of salary paid to actively employed TRS members. 5 ILCS 375/6.6(a).

37. CMS also determines the employer Teacher Health Insurance Security Fund contribution rate for each fiscal year. 5 ILCS 375/6.6(a-5)(4).

38. Both the active member contribution rate and the employer contribution rate cannot exceed 105% of the previous fiscal year's contribution rate. 5 ILCS 375/6.6(a), 375/6.6(a-5)(4).

39. The TRS Board must certify to the Governor, the Director of CMS, and the State Comptroller an estimate of the total amount paid by actively employed TRS members. 5 ILCS 375/6.6(c). The amount certified shall be adjusted by the amount that the actual active teacher contributions either fell short of or exceeded the estimate used by the TRS Board in making the certification for the previous fiscal year. *Id.*

40. The State of Illinois's contribution amount is equal to the amount certified by the TRS Board and is appropriated from the General Revenue Fund to the State Comptroller for deposit into the Teacher Health Insurance Security Fund. 40 ILCS 15/1.3. In other words, the State contribution rate matches the active member contribution rate.

41. For Fiscal Year 2022, CMS determined that the active member contribution rate was 1.3% of active TRS members' salaries and the employer contribution rate was 0.96% of active TRS members' salaries.

42. On October 30, 2020, the TRS Board certified \$143,369,061 as the required Fiscal Year 2022 State contribution to the Teacher Health Insurance Security Fund. This amount reflects about 1.3% of active TRS members' salaries.

43. On June 25, 2021, however, the TRS Board purported to "recertify" the State contribution to the Teacher Health Insurance Security Fund for Fiscal Year 2022.

44. The TRS Board reduced the State's contribution from \$143,369,061 to \$97,722,920.

45. This reduction reflects a decrease in the State contribution rate from 1.3% to 0.90% of active TRS members' salaries.

46. On October 29, 2021, the TRS Board passed a resolution to revoke the June 25, 2021 "recertification" and to reinstate the October 30, 2020 certification of the State's contribution.

47. For Fiscal Year 2023, however, CMS slashed the active member contribution rate to 0.90% of active TRS members' salaries and slashed the employer contribution rate to 0.67% of active TRS members' salaries.

48. On October 29, 2021, the TRS Board certified \$106,328,858 as the required Fiscal Year 2023 State contribution to the Teacher Health Insurance Security Fund. This amount reflects about 0.90% of active TRS members' salaries.

49. These slashes in contribution rates, combined with other factors, have pushed the Teacher Health Insurance Security Fund to the verge of default or imminent insolvency.

50. Because the active member and employer contribution rates by statute cannot exceed 105% of the previous fiscal year's contribution rate (5 ILCS 375/6.6(a), 375/6.6(a-5)(4)) and because the State contribution amount equals the active members' certified amount (40 ILCS 15/1.3), the defendants' actions have detrimentally impacted the funding of the Teacher Health

Insurance Security Fund and, combined with other factors impacting the Fund, will diminish and impair the health insurance benefits of TRS benefit recipients and dependent beneficiaries.

51. The Teacher Health Insurance Security Fund will soon have insufficient assets to cover health and prescription drug insurance benefit payments to TRS annuitants and their dependents.

**B. An actuarial study establishes that the Teacher Health Insurance Security Fund will grow insolvent sometime between Fiscal Years 2023 and 2026.**

52. The imminent default or insolvency of the Teacher Health Insurance Security Fund is documented in a report by actuary Brian M. Septon of the Terry Group, an actuarial and employee benefits consulting and research firm.

53. A true and correct copy of Mr. Septon's report is attached hereto as Exhibit A.

54. Mr. Septon's report is incorporated in this complaint by reference.

55. Mr. Septon is qualified to offer professional opinions on the funding of pension and retiree health insurance benefits.

56. Mr. Septon's report states the following:

a. The recent reductions in contribution rates to the Fund will reduce the Fund's expected revenues by over \$750 million in Fiscal Years 2022 through 2027.

b. The Fund is expected to have negative cash flows (*i.e.*, where deductions exceed revenues) starting as early as Fiscal Year 2022.

c. These negative cash flows will result in a total depletion of the Fund's assets at some point during Fiscal Year 2023.

d. The Fund will have no money left to pay any expected benefits by Fiscal Year 2026 at the latest.

e. There is a strong likelihood that the Fund will have insufficient assets to cover benefit payments beginning in two to four years.

f. The State's contribution to the Fund would need to increase to as much as 4.93% of pay should the State decide to increase its contribution to a level that would enable the Fund to cover benefits payments and its operating expenses.

g. While Mr. Septon analyzes various alternative scenarios, his expected projection (starting with the recertified and partially reinstated Fiscal Year 2022 contribution rates) is that the Teacher Health Insurance Security Fund will have net assets of *negative* \$1.4 billion by Fiscal Year 2027.

57. The projections described in the preceding paragraph are fair, accurate, and rest on a sound analysis by a well-qualified actuary.

**C. Without judicial intervention, the constitutionally protected benefits of TRS annuitants and their dependents will be imminently diminished or impaired.**

58. Within the next two to four years, the Teacher Health Insurance Security Fund will be unable to make benefit payments.

59. When that happens — and it will happen imminently without judicial intervention — retired TRS members' and their dependents' health and prescription drug insurance benefits will be diminished or impaired, in violation of Article XIII, § 5 of the Constitution of the State of Illinois.

60. A “beneficiary need not wait until benefits are actually diminished to bring suit under the [pension protection] clause” of the Illinois Constitution. *People ex rel. Sklodowski v. State*, 182 Ill. 2d 220, 232 (1998) (citing *McNamee v. State*, 173 Ill. 2d 433, 446-47 (1996)).

61. The Illinois Appellate Court has recognized that a pension fund is on the verge of default or imminent insolvency if expert opinion testimony establishes that the fund will grow

insolvent within seven to nine years. *Bd. of Trustees of the City of Harvey Firefighters' Pension Fund v. City of Harvey*, 2017 IL App (1st) 153074, ¶¶ 56, 157–95; see also *id.*, ¶ 75 (another expert suggested the pension fund would grow insolvent within five years).

62. Comparatively, the outlook for the Teacher Health Insurance Security Fund is far more dire.

63. None of the defendants have done anything to save the Fund from its imminent default or insolvency.

64. The Association therefore seeks declaratory and injunctive relief that will forestall the imminent default or insolvency of the Teacher Health Insurance Security Fund.

#### **COUNT I: DECLARATORY JUDGMENT**

65. The Association repeats and realleges all of the allegations stated above.

66. Due in substantial part to CMS's irresponsible recent decisions concerning contribution rates, the Fund is on the verge of imminent default or insolvency, and the Association's members' health insurance and prescription drug benefits are in immediate danger of being diminished or impaired.

67. This case presents an actual controversy between the parties concerning the defendants' actions in pushing the Fund to the verge of default or imminent insolvency or allowing the Fund to be pushed to such a state of imminent fiscal crisis.

68. The defendants' actions violated the Pension Protection Clause (Art. XIII, § 5) of the Illinois Constitution by causing an imminent diminishment or impairment of the Association's members' health insurance and prescription drug coverage benefits.

69. The Association's members have a tangible legal interest in the protection of their health insurance and prescription drug coverage benefits.

70. As demonstrated by their own actions, the defendants have opposing interests.

71. There is an immediate need for a judicial determination as to this controversy.

WHEREFORE, Plaintiff prays that this Court:

(a) enter a declaratory judgment, under 735 ILCS 5/2-701, that the defendants are constitutionally required to effectuate contributions to the Teacher Health Insurance Security Fund in an amount sufficient to forestall the Fund's insolvency, which amount shall be determined by the Court; and

(b) award such further relief as the Court deems proper pursuant to 735 ILCS 5/2-701(c).

#### **COUNT II: INJUNCTIVE RELIEF**

72. The Association repeats and realleges all of the allegations stated above.

73. The Association has no adequate remedy at law for the defendants' violation of the Pension Protection Clause of the Illinois Constitution.

74. The Association's members have a protectible legal interest in their health insurance and prescription drug coverage benefits.

75. The Plaintiff has, at the very least, a reasonable likelihood of success on the merits of its claims.

76. The Association's members, who are retired Illinois teachers and their dependents, will be irreparably harmed if the Teacher Health Insurance Security Fund is allowed to grow insolvent and, consequently, the Association's members' health insurance and prescription drug benefits are diminished or impaired.

77. This Court is vested with the power to grant temporary, preliminary and permanent injunctive relief to remedy the defendants' violation of the Pension Protection Clause of the Illinois Constitution.

WHEREFORE, Plaintiff prays that this Court:

- (a) enter temporary, preliminary and permanent injunctive relief to compel the defendants to effectuate contributions to the Teacher Health Insurance Security Fund in an amount sufficient to forestall the Fund's insolvency, which amount shall be determined by the Court; and
- (b) award such further relief as the Court deems proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

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Respectfully submitted,

**ILLINOIS RETIRED TEACHERS  
ASSOCIATION**

By: /s/ John M. Fitzgerald  
One of Its Attorneys