IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al.*	)	
	)	Case No. 17-CH-02157
Plaintiffs,	)	
v.	)	Hon. Franklin U. Valderrama
	)	
BRUCE RAUNER, *et al.*	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

INTRODUCTION

Plaintiffs' extensive rhetoric cannot obscure the fact that their Illinois Civil Rights Act ("ICRA") claims have no legal merit. Plaintiffs now admit that this case is about teacher pension funding, not the State's statutory school funding system, which allocates substantially more education funding to CPS than the other school districts in Illinois: 24% percent, even though CPS has less than 20% of the State's students. While plaintiffs assert that the State's pension funding unfairly favors TRS over CTPF, they have brought no constitutional claims, presumably because they have concluded that such claims would fail. Instead, plaintiffs rely improperly on ICRA, a state statute which does not support their claims.

Plaintiffs' claims against the State of Illinois are barred by sovereign immunity—the *Chicago Urban League* decision is not "wrong," as plaintiffs claim. Plaintiffs' claims against ISBE fail because they do not dispute that ISBE plays no role with respect to pension funding. Plaintiffs concede that they have not stated claims against the Governor or Comptroller. And contrary to what plaintiffs say, ICRA cannot be used to challenge the Illinois General Assembly's decisions about how much pension funding to appropriate for CTPF or to strike down another state statute (here, the Pension Code).

Plaintiffs' "disparate funding" claim (Count I), which challenges the legislature's appropriations, runs afoul of separation of powers principles. Plaintiffs do not even address defendants' separation of powers cases, but instead try to divert attention to a case challenging how the City of Chicago responded to 911 calls—if this case has any relevance at all, it only provides an additional reason why plaintiffs' claim should be dismissed. Finally, plaintiffs' "disparate pension-funding requirements" claim (Count II) should be dismissed because plaintiffs concede that ICRA and the Pension Code do not "irreconcilably conflict," and therefore ICRA cannot override the Pension Code.

ARGUMENT

I. PLAINTIFFS CANNOT AVOID THE STATE'S SOVEREIGN IMMUNITY BY CLAIMING THAT *CHICAGO URBAN LEAGUE* IS "WRONG."

Plaintiffs' claims against the State of Illinois are barred by the doctrine of sovereign immunity. (Def. Mem. at 7-9) In *Chicago Urban League v. State of Illinois*, the court rejected arguments similar to plaintiffs' here, and specifically held that the State is immune from suit under ICRA. 2009 WL 1632604, at *11 (Cir. Ct. Ill. Apr. 15, 2009). ICRA waives immunity only for "units" of State, county, and local government. 740 ILCS 23/5(a). While plaintiffs claim that that the State itself is a "unit" of State government, the court rejected this position: "Since the Civil Rights Act does not provide an explicit waiver of the State's sovereign immunity, but only the sovereign immunity held by units of state, county, and local government, ***the State cannot be made a party to a Civil Rights Act claim under the doctrine of Sovereign immunity***." *Id.* (emphasis added). Likewise, the court rejected the position, also espoused by plaintiffs here, that it should "look to the legislative history" in assessing whether the State is immune from suit. *Id.* This would be improper because there can be no waiver of immunity absent "an explicit statement in a statute." *Id.*

Faced with this directly on-point decision, plaintiffs claim that *Chicago Urban League* is "wrong" and "no longer good law." (Pls. Resp. at 9) In doing so, they (1) misinterpret ICRA and ignore the "clear and unequivocal" standard for waivers of sovereign immunity, which requires that any ambiguity be interpreted in favor of the State's immunity; (2) rely on the stray comments of one legislator, when the case law precludes consideration of legislative history in this context; (3) fail to recognize that their Title VI cases are inapposite because Title VI contains precisely the type of express waiver ("[a] State shall not be immune...") that is missing from ICRA; and (4) incorrectly claim that *Chicago Urban League* has been implicitly overruled by a case in which the State of Illinois was not even a defendant and in which there was no ICRA disparate impact claim.

First, plaintiffs misinterpret ICRA and ignore the applicable standard for assessing waivers of sovereign immunity. In their response, plaintiffs quibble with the *Chicago Urban League* court's (and defendants') interpretation of ICRA, relying on a fallacious "reductio ad absurdum" argument. Plaintiffs argue that if the State is *not* considered a "unit" of State government (as defendants contend), then counties and cities cannot be considered units of local government, creating a "bizarre patchwork" in which ICRA claims could not be asserted against counties and cities. (Pls. Resp. at 4)

But this does not follow. Because there is only one "State of Illinois," but numerous counties and cities, there nothing unreasonable about concluding that the State is not a unit of State government, while at the same time saying that counties and cities are units of local government subject to suit under ICRA. The Act's reference to "local government" should be read to mean the concept of local government "as a whole," so that counties and cities are indeed units of local government. Because the State Lawsuit Immunity Act applies to "the State of

Illinois," but not to counties or cities, 745 ILCS 5/1, the State is immune from suit under ICRA while counties and cities are not.

Critically, plaintiffs' argument ignores that waivers of the State's immunity must be "clear and unequivocal." *In re Special Educ. of Walker*, 131 Ill. 2d 300, 303, 305 (1989). The parties may disagree about how to interpret ICRA, but any ambiguity must be resolved in favor of the State's immunity. In *Walker*, the Illinois Supreme Court held that a provision of the Illinois Code of Civil Procedure authorizing the imposition of post-judgment interest against local governments, school districts, community college districts, "or any other governmental entity" was not a "sufficiently clear reference" to the State so as to waive its immunity. *Id.* at 304. Likewise, in *Mowen v. Department of Veterans Affairs*, the court held that the State was immune from suit under the Illinois Human Rights Act when there was "something to be said" for each of the parties' competing interpretations of the Act. 2013 Ill. App. (4th) 120603-U, at ¶30 (May 7, 2013).[1] "If a statute is susceptible to more than one reasonable interpretation, including an interpretation that preserves sovereign immunity," then the Court should "conclude that the state has not waived its sovereign immunity." *Id.*, citing *Sossamon v. Tex.*, 563 U.S. 277, 287 (2011); *see also U.S. v. Nordic Vill.*, 503 U.S. 30, 37-38 (1992) (holding that if there is a "plausible reading" of a statute supporting immunity then it should be accepted); *Dellmuth v. Muth*, 491 U.S. 223, 232 (1989).

[1] The facts of *Mowen* are instructive. The Illinois Human Rights Act defines "employer" to include the State; permits aggrieved parties to file charges against employers with the Department of Human Rights; and requires the Department, if it finds substantial evidence of a violation, to notify aggrieved parties that they may file suit in Circuit Court. *Id.* at ¶¶18-28. The plaintiff argued that an interpretation of the Act preserving the State's sovereign immunity would be "absurd," because the Department would be required to "mislead complainants" and "sent out deceptive notices." *Id.* at ¶¶28. The court acknowledged that the plaintiffs had a point, and that their inference was "reasonable," but noted that sovereign immunity is the "default assumption" and cannot be overcome absent a "clear and unequivocal waiver, which is more than a reasonable inference." *Id.* at ¶29.

Mowen is also relevant here for another reason. In their response, plaintiffs cite to an earlier Fourth District decision, *Martin v. Giordano*, 115 Ill. App. 3d 367 (4th Dist. 1983), as somehow supporting their position here. (Pls. Resp. at 4) In *Martin*, the court correctly noted that the State's consent to suit must be "clear and unequivocal" and "cannot be inferred or implied," but then went on to find that the State had waived its immunity in the Workers' Compensation Act. *Id.* at 369-370. While plaintiffs' precise purpose for citing *Martin* is not clear, their reliance on the opinion is misplaced. In *Mowen*, the Fourth District explained that its analysis in *Martin* "went astray." 2013 Ill. App. (4th) 120603-U, at ¶38. *Martin* did not present an issue of waiver of immunity, and its discussion of waiver was "irrelevant," "a red herring," and "in retrospect, superfluous." *Id.* at ¶¶38, 41, 43.

Second, plaintiffs improperly base their argument on the legislative history of ICRA. (Pls. Resp. at 5-6) They cite a handful of stray comments by one legislator, but none of them explicitly address the issue of the State's sovereign immunity, and in any event, such comments are irrelevant here. As the Illinois Supreme Court has stated, any waiver of immunity "must appear in affirmative statutory language."[2] *In re Spec. Educ. of Walker*, 131 Ill. 2d at 305. *Chicago Urban League* was correct in noting that any waiver of immunity must appear in the text of ICRA, not the legislative history. 2009 WL 1632604, at *11. Plaintiffs' resort to the stray comments of one legislator only confirms that the text of ICRA does not clearly and unequivocally waive the State's immunity from suit.

[2] Also, in the Eleventh Amendment context (the federal analog to State sovereign immunity), the United States Supreme Court has made clear that legislative history is off-limits in assessing whether there has been a waiver or abrogation of State immunity. *See Nordic Vill., Inc.*, 503 U.S. at 37 (explaining that legislative history has "no bearing" on the waiver analysis because the required "unequivocal expression" of waiver must occur "in statutory text" and "[i]f clarity does not exist there, it cannot be supplied by a committee report"); *Dellmuth*, 491 U.S. at 230 ("Legislative history generally will be irrelevant to a judicial inquiry into whether Congress intended to abrogate the Eleventh Amendment.").

Third, plaintiffs' discussion of the "historical context" of ICRA does not establish a "clear and unequivocal" waiver of the State's sovereign immunity. (Pls. Resp. at 6-8) While it is broadly correct to say that ICRA was enacted to "fill the void" after the Supreme Court held that there is no private right to enforce Title VI's disparate-impact regulations, plaintiffs ignore that ICRA and Title VI differ in an important respect for purposes of the immunity analysis. Unlike ICRA, Title VI *does* explicitly abrogate the State's immunity from suit. (Def. Mem. at 8 n.3, citing 42 U.S.C. § 2000d-7 ("[a] State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court . . .")) ICRA has no such "clear and unequivocal" waiver, which is precisely why the State has retained its sovereign immunity under ICRA.

Because of this important difference between the two statutes, plaintiffs' citation to a handful of Title VI cases in which a state was a defendant (Pls. Resp. at 6-7) does not establish a waiver of the State's immunity under ICRA. Title VI is Spending Clause legislation, which is contractual in nature: "in return for federal funds, the recipients agree to comply with federally imposed conditions." *See Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002). No such bargain exists with respect to ICRA.

Fourth, plaintiffs are wrong in claiming that *Chicago Urban League* is "no longer good law following *Hasbrouck*." (Pls. Resp. at 9) In *Grey v. Hasbrouck*, the State of Illinois was not even a defendant and the plaintiffs did not assert an ICRA disparate impact claim. 2015 Ill. App. (1st) 130267 (May 22, 2015). *Hasbrouk* was a class action against the Director of the Department of Public Health alleging violations of the Vital Records Act and the Illinois Constitution. *Id.* at ¶¶3-4. The parties resolved the case through a consent decree, and the plaintiffs sought attorneys' fees under 740 ILCS 23/5(c), a subpart of ICRA that allows fees to

prevailing parties in actions brought to enforce rights arising under the Illinois Constitution as well as ICRA. *Id.* at ¶¶4-5. The defendant opposed the fee request on sovereign immunity grounds, but the court disagreed, emphasizing that the defendant did "not dispute" that he could have been sued under section 5(a) of ICRA as a "unit" of State government. *Id.* at ¶18. The court held that because the defendant was subject to suit under section 5(a), he could also be liable for attorneys' fees under section 5(c).

Hasbrouck did not address the issue presented here and has no effect on the validity of *Chicago Urban League*. Defendants *agree* that "units" of State government, including the Department of Public Health, are subject to claims under section 5(a) of ICRA, and the attorneys' fees provision in section 5(c) of ICRA is not at issue here. In this case, the question is whether ICRA's reference to "units" of State government amounts to a "clear and unequivocal" waiver of the State's immunity. *Hasbrouk* does not address this issue (again, the State was not even a defendant), notwithstanding some loose language in the opinion conflating the Department of Public Health (an undisputed "unit" of State government) and the State. *Chicago Urban League* remains good law and supports defendants' position.

In sum, the claims against the State are barred by sovereign immunity and should be dismissed. ICRA has been in place for more than a decade, and plaintiffs do not, and cannot, cite a single case holding that the State itself is a proper defendant under ICRA. Absent a "clear and unequivocal" waiver in the text of the statute itself, which does not exist here, the State is immune from claims under ICRA.

II. PLAINTIFFS' CLAIMS AGAINST ISBE SHOULD BE DISMISSED BECAUSE THEY DO NOT DISPUTE THAT ISBE PLAYS NO ROLE WITH RESPECT TO TEACHER PENSION FUNDING.

Plaintiffs' response also confirms that they have not stated claims against ISBE, Chairman Meeks, and Superintendent Smith (collectively, "ISBE"). Plaintiffs do not, and cannot, dispute the two key facts requiring dismissal of their claims against ISBE. First, plaintiffs do not dispute that ISBE plays no role with respect to TRS or CTPF pension funding—the gravamen of plaintiffs' complaint. (Def. Mem. at 10, citing 105 ILCS 5/18-17) Second, plaintiffs do not dispute that according to their own allegations, when State pension contributions are excluded, CPS receives ***significantly more*** State funding than other districts (CPS receives 24% of the State's educational funding despite having less than 20% of the State's students, or, put another way, $1.24 for every dollar that goes to a non-CPS student). (*Id.* at 4-5, 10) Taken together, these two undisputed facts require dismissal of the claims against ISBE, because they show that plaintiffs' alleged injury is not attributable to ISBE. (*Id.* at 9-12)

Plaintiffs virtually concede the point. They admit at the outset of their response that this case is really about an alleged disparity in "pension funding," which is governed by the Pension Code and which ISBE does not administer. (Pls. Resp. at 1) (claiming that there is a disparity in "funding the cost of teacher pensions" and that this alleged "disparity in pension funding" produces a disparity in the funds "available for" education). They do not and cannot identify any specific "criteria" or "methods of administration" *utilized by ISBE* with regard to pension funding (or even education funding), as required to state an ICRA claim, and they do not address defendants' argument that they have no standing against ISBE because they have not alleged an injury "fairly traceable" to its actions. (Def. Mem. at 9-11)

While plaintiffs offer little in support of their claims against ISBE, the handful of sentences in their response relating to ISBE merit comment. First, plaintiffs assert at page 12 of their response: "As the Attorney General herself acknowledges, ISBE exercises discretion over some education funding. (D. Mem. 11.) ISBE, therefore, could exercise its discretion in ways that reduce the impact on Plaintiffs." (Pls. Resp. at 12) But defendants did *not* "acknowledge" that ISBE has discretion over education funding. Defendants' brief says exactly the opposite. (Def. Mem. at 11) ("[t]he amount of educational funding that ISBE distributes to CPS each year is ***not*** within ISBE's discretion") (emphasis added). And plaintiffs' complaint does not identify, much less challenge, *any* discretionary conduct by ISBE.

Plaintiffs also reference ISBE at page 19, the last page of their response. They assert that defendants' argument "depends upon [their] contention that State education funding, including teacher pension costs, cannot be considered in the aggregate." (Pls. Resp. at 19) Plaintiffs do not develop the point further, except to refer the Court to their reply in support of their motion for preliminary injunction. Yet their reply does not mention ISBE at all—not even once—and makes no attempt to explain why ISBE is a proper defendant in this case, given that it plays no role with respect to pension funding, and that the education funding it disburses actually favors CPS over other districts. By "aggregating" pension funding (which is governed by the Pension Code and which ISBE does not disburse) with educational funding (which is governed by the statutory school funding system and which ISBE does disburse), plaintiffs seek to improperly hold ISBE liable for an alleged disparity for which it has no responsibility.

Plaintiffs save their most remarkable assertion for the second-to-last sentence of their response. There, plaintiffs finally reveal that their reason for naming ISBE as a defendant relates to their requested relief, not any ICRA violation on ISBE's part. Without any support, plaintiffs

announce that "[o]ne remedy available to this Court is to enjoin the allocation and distribution of State education funding from any source, including funding that ISBE allocates and distributes." (Pls. Resp. at 19)[3] Even if plaintiffs could prevail on the merits (they cannot), such relief would be both improper and counterproductive. It would be improper because plaintiffs do not challenge the statutory school funding system that ISBE administers, nor could they, given *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1 (1996), holding that objections to the school funding system "must be presented to the General Assembly." (Def. Mem. at 11 n.5, 12) And it would be counterproductive because any relief barring ISBE from distributing educational funding (which, again, favors CPS) would harm not only the more than 300,000 students in CPS, but also all of the students in every other school district in Illinois, none of which are before the Court. Plaintiffs cannot seek such drastic relief as a means to pressure the legislature to reform teacher pension funding.

III. PLAINTIFFS CONCEDE THAT THEY HAVE NOT STATED CLAIMS AGAINST GOVERNOR RAUNER OR COMPTROLLER MENDOZA.

Plaintiffs' claims against Governor Rauner and Comptroller Mendoza also should be dismissed. Plaintiffs filed this lawsuit shortly after the Governor vetoed Amended Senate Bill 2822, which would have provided an additional State contribution of $215 million to assist CPS in meeting its pension obligations. (Def. Mem. at 2) Plaintiffs named the Governor as a defendant and their complaint repeatedly refers to his veto. (Compl. at ¶¶9-10, 15, 19, 27, 51-52, 54-55) But in their response, plaintiffs make clear that they "do not challenge" the Governor's veto, which is the only conduct by the Governor alleged in the complaint. (Pls. Resp. at 18)

[3] Plaintiffs recognize that their request for relief may not implicate ISBE. "If, as the State contends, pension funding must be considered separate and distinct from other portions of education funding, then the State should be enjoined from making any further pension payments to TRS until such time as the State makes a true-up payment to CPS for its pension funding." (Pls. Resp. at 15) Because pension funding is in fact "separate and distinct" from the education funding that ISBE administers, as each is governed by different Illinois statutes, this confirms that ISBE should be dismissed.

Plaintiffs concede that the Governor's veto is "not at issue in this case," and they do not dispute that any claim challenging the Governor's veto would be barred by separation of powers principles. (*Id.*; Def. Mem. at 13-14) The Governor should not have been sued, and the claims against him should be dismissed.

Likewise, plaintiffs do not dispute that they have not stated a valid ICRA claim against Comptroller Mendoza. (Def. Mem. at 14) While plaintiffs contend that the Comptroller "issues the checks" and therefore must be subject to the Court's jurisdiction "[t]o effect meaningful relief" (Pls. Resp. at 19), plaintiffs do not dispute that there is no reason for the Comptroller to be a party at this time. (Def. Mem. at 14 n.6) Plaintiffs' claims against the Comptroller should be dismissed.

IV. PLAINTIFFS' RESPONSE CONFIRMS THAT ICRA CANNOT OVERRIDE THE LEGISLATURE'S FUNDING DECISIONS OR THE STATE'S PENSION LAWS.

A. Plaintiffs' "disparate pension funding" claim is barred by separation of powers principles and should be dismissed.

Plaintiffs admit that their "disparate funding" claim (Count I) seeks to override the Illinois General Assembly's decisions about how much pension funding to appropriate to CTPF. (Def. Mem. at 15; Pls. Resp. at 14-15) Plaintiffs explain that their claim purports to challenge the legislature's appropriations for teacher pension funding. (Pls. Resp. at 14-15) They complain that in "the past several years" the legislature has elected to "continue funding TRS in full" while "declining to provide any material funding for CTPF." (*Id.* at 15) They are challenging the legislature's purported "practice" of appropriating only a small fraction of the State's teacher pension contributions to CTPF. (*Id.*)

But as defendants noted in their opening brief, the legislature's appropriations decisions for CTPF are not specific "criteria" or "methods of administration" that could support an ICRA

claim. (Def. Mem. at 15) Plaintiffs respond that they have stated a claim because the "bottom line" funding disparity they allege "results from only one factor; there is nothing else the State has identified." (Pls. Resp. at 15) But even if this were true, it is "not enough" to "point to a generalized policy that leads to [a disparate] impact." *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 717 (7th Cir. 2012). Plaintiffs have not isolated a sufficiently specific policy or practice. *See Swan v. Bd. of Educ. of City of Chicago*, 2013 WL 4401439, at *19 (N.D. Ill. Aug. 15, 2013) ("concept of underutilization" not a "specific policy or practice" for purposes of an ICRA claim challenging school closures).

More fundamentally, plaintiffs' claim challenging the legislature's appropriations is barred by separation of powers principles. (Def. Mem. at 16) Plaintiffs do not dispute that under the Illinois Constitution, the General Assembly has the *exclusive* authority to appropriate funds and "no other branch of government holds such power." (*Id.*, citing *State (CMS) v. AFSCME*, 2016 IL 118422, ¶42 (2016)) But they fail to recognize that their "disparate funding" claim, which would require this Court to second-guess the legislature's discretionary decisions regarding appropriations for CTPF, runs afoul of this principle. Ill. Const., art. II, § 1 ("The legislative, executive, and judicial branches are separate. No branch shall exercise powers properly belonging to the other."); *see also People ex rel. Carr v. Chicago & N.W. Ry. Co.*, 308 Ill. 54 (1923) ("The courts, as a rule, will not interfere with the legislative discretion as to making appropriations.").

Rather than addressing the separation of powers cases cited by defendants, plaintiffs assert that their "short answer" is that ICRA expressly creates a cause of action to be heard and decided in state court. (Pls. Resp. at 16) In other words, plaintiffs argue that by enacting ICRA in 2003, the legislature at that time subjected the appropriations decisions of itself and all future

legislatures to judicial review under ICRA. Of course, there is no evidence that the legislature ever intended for ICRA to operate in this manner, nor would this be permissible. "[T]he actions of one legislature cannot bind future legislatures." *A.B.A.T.E. of Ill., Inc. v. Giannoulias*, 401 Ill. App. 3d 326, 335 (4th Dist. 2010) (rejecting a claim arguing that the legislature's transfer of funds violated a state statute). The General Assembly "is not required to—and cannot—adopt 'standards' to control its legislative discretion." *Choose Life Ill., Inc. v. White*, 547 F.3d 853, 858 n.4 (7th Cir. 2008).

Plaintiffs also try to sidestep their separation of powers problem by citing an inapposite case challenging how the City of Chicago responded to 911 calls. (Pls. Resp. at 16, citing *Central Austin Neighborhood Ass'n v. City of Chicago*, 2013 Ill. App. (1st) 123041 (2013)) In *Central Austin*, the plaintiffs alleged that the City's policies for the deployment of the police in response to 911 calls disparately impacted minorities, and the court held that their complaint did not present a non-justiciable political question. *Id.* at ¶¶1, 25. *Central Austin* does not address the separation of powers issues present here: the case involved an ICRA claim against a unit of local government and did not purport to challenge the Illinois General Assembly's appropriations or any state statute.

To the extent that *Central Austin* has any bearing at all on the issues presented here, it supports defendants' position. As the court recognized in *Central Austin*, "[p]rominent in the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Id.* at ¶¶16, 18, quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962). This principle was not relevant to the City's 911 policies, but it applies here and further confirms that plaintiffs' claims should be dismissed. Here, the Illinois Constitution includes a "textually demonstrable" commitment of appropriations

authority to the legislature. Ill. Const., art. VIII, § 2(b) ("The General Assembly by law shall make appropriations for all expenditures of public funds by the State."). Thus, not only are plaintiffs' claims barred by the separation of powers doctrine, but they are also barred by the political question doctrine.

B. Plaintiffs' "disparate pension-funding requirements" claim should be dismissed because there is no "irreconcilable conflict" between ICRA and the relevant provisions of the Pension Code.

Plaintiffs' "disparate pension-funding requirements" claim (Count II) fares no better and also should be dismissed. (Def. Mem. at 16-18) Plaintiffs' claim reflects a fundamental misunderstanding of the difference between a *constitutional* claim and a *statutory* claim. Plaintiffs have not asserted any constitutional claims here. Yet they attempt to "constitutionalize" ICRA by claiming that it can be used to strike down ("invalidate," they say) another state statute. (Pls. Resp. at 11) Plaintiffs' claim is incorrect. Both the United States and Illinois Constitutions can invalidate a state law. So can a *federal* statute, under the Supremacy Clause.[4] But one state statute cannot trump another state statute, even if, as plaintiffs claim, one legislator made a comment not written into the statute itself. The proper inquiry here is not whether ICRA "invalidates" the State's pension laws, but instead whether ICRA and the Pension Code "irreconcilably conflict," and if so, which one should control. (Def. Mem. at 17-18, citing *Ill. Native Am. Bar Ass'n v. Univ. of Ill. (INABA)*, 368 Ill. App. 3d 321 (1st Dist. 2006))

Defendants argued that there is no conflict between ICRA and the Pension Code, but "if there were," the Pension Code should control. (Def. Mem. at 18) In a misdirected attempt to rebut defendants' contingent "*if* there were a conflict" argument, plaintiffs concede that there is "no such irreconcilable conflict" between ICRA and the Pension Code. (Pls. Resp. at 13) This

[4] For this reason, plaintiffs' reliance on Title VI cases involving challenges to state laws is misplaced. (Pls. Resp. at 10)

undermines plaintiffs' claim; if the two statutes do not conflict, then ICRA cannot "invalidate" the Pension Code, and plaintiffs have no claim. *INABA*, 368 Ill. App. 3d at 328; *see also Munguia v. State of Ill.*, 2010 WL 3172740 (N.D. Ill. Aug. 11, 2010).

Finally, plaintiffs fall short in attempting to distinguish *INABA* and discredit *Munguia*. They claim that *INABA* does not apply because the plaintiffs there did not adequately allege discrimination. (Pls. Resp. at 11) But this misses the point. In *INABA*, the court affirmed dismissal of an ICRA claim alleging a conflict between the University of Illinois Act, which endorsed "Chief Illiniwek," and ICRA. 368 Ill. App. 3d at 238. Although the court found it "questionable" that the plaintiffs had stated a claim under ICRA, the court made no "further inquiry" into the issue precisely because the lack of a conflict between the two statutes was so clear. 368 Ill. App. 3d at 328.

Plaintiffs' only answer to *Munguia* is that the federal decision is "neither persuasive nor binding on this Court." (Pls. Resp. at 12) In *Munguia*, the plaintiffs alleged that public transit funding disparately impacted minorities. 2010 WL 3172740, at *7. After finding no conflict between the RTA Act and ICRA, the court in *Munguia* added that if there were a conflict, the RTA Act, as the later-passed and more-specific statute, would govern. *Id.* According to plaintiffs, this shows that *Mungia* must be wrong, because under the same logic, a state law allocating "$100 for every white child in Illinois and nothing at all for every child who is not white" would not (as the later-passed, more specific statute) be susceptible to an ICRA challenge. (Pls. Resp. at 12) But it is plaintiffs who are mistaken. Plaintiffs' hypothetical statute may not be subject to an ICRA claim, but it would be subject to a constitutional claim, and plaintiffs here have not asserted any constitutional claims. Plaintiffs' "disparate pension-funding" requirements claim should be dismissed.

CONCLUSION

For the foregoing reasons, and those stated in defendants' memorandum in support of their motion to dismiss, plaintiffs' complaint should be dismissed with prejudice pursuant to 735 ILCS 5/2-619 and 735 ILCS 5/2-615.

Dated: April 10, 2017

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Respectfully submitted,

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