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

BOARD OF EDUCATION OF THE CITY OF CHICAGO, ET AL.,	
Plaintiffs,	Case No. 2017 CH 2157
v.	Calendar 03 Honorable Franklin U. Valderrama
BRUCE RAUNER, ET AL.,	
Defendants.	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion to Dismiss Plaintiffs' Complaint pursuant to section 2-619.1 of the Code of Civil Procedure. For the reasons that follow, Plaintiffs' Motion for Preliminary Injunction is denied, Defendants' motion to dismiss pursuant to section 2-619 is denied, and Defendants' motion to dismiss pursuant to section 2-615 is granted.

I. INTRODUCTION

The State of Illinois, has the "primary responsibility for financing the system of public education" in the State of Illinois. Ill. Const. 1970 art. X, § 1. Notwithstanding this responsibility, the equitable funding of public education throughout Illinois remains elusive. Several cases[1] have been launched seeking to redress the inequitable funding of public education in Illinois. This case is yet another chapter in this important and ongoing conflict.

Public schools in Illinois are funded through various federal, State, and local sources. Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 5 (1996). Setting aside federal funding sources, under the Illinois School Code, 105 ILCS 5/1-1, *et seq.*, public school districts "are authorized to levy property taxes for various school purposes up to specified maximum rates." Id. at 5-6. The State of Illinois supplements local property tax revenues and other local sources of funding through two broad categories of financial assistance. Id. at 6. "First, the State provides assistance to school districts in the form of categorical grants for a variety of specific purposes" including, among many others, reading improvement programs, arts programs, teacher retirement benefits, driver education programs, and student transportation. Id.

"School districts also receive distributions of general state aid from the State's common school fund pursuant to the formula set forth in section 18-8 of the School Code . . . ." Id. "The general state aid formula is designed to enable districts with modest property tax bases to achieve

[1] See, e.g. Committee for Educational Rights v. Edgar, 174 Ill. 2d 1 (1996) and Chicago Urban League v. State of Ill., 2009 WL 1632604.

a certain minimum level of funding per pupil." Id. at 7. "This minimum funding level, commonly known as the 'foundation level,' is computed by the State Board of Education based on the amount available for distribution from the common school fund." Id. The State's property tax focused public school funding scheme under the School Code has faced significant criticism, but has nevertheless withstood numerous federal and State constitutional challenges. See, e.g., Carr v. Koch, 2012 IL 113414, ¶¶ (affirming dismissal of claim under the equal protection clause of the Illinois Constitution—article I, section 2—on the basis that the plaintiffs lacked standing); Lewis E. v. Spagnolo, 186 Ill. 2d 198, 210, 226, 227 (1999) (affirming dismissal of claims under the due process clauses of the U.S. and Illinois Constitutions as well as the education article of the Illinois Constitution); Committee for Educational Rights, 174 Ill. 2d at 23, 32, 39-40 (affirming dismissal of claims under the education article and the equal protection clause of the Illinois Constitution).

The School Code, however, does not govern public school teacher pensions. Instead, public school teacher pensions are governed by articles 16 and 17 of the Illinois Pension Code, 40 ILCS 5/1-101, *et seq*. Article 16 establishes and governs the Teachers' Retirement System ("TRS") "for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries." 40 ILCS 5/16-101 (West 2012). The State has the ultimate responsibility for funding TRS. 40 ILCS 5/16-158 (West 2012). Specifically, "[t]he State shall make contributions to [TRS] by means of appropriations from the Common School Fund and other State funds of amounts which, together with other employer contributions, employee contributions, investment income, and other income, will be sufficient to meet the cost of maintaining and administering [TRS] on a 100% funded basis in accordance with actuarial recommendations by the end of State fiscal year 2044." 40 ILCS 5/16-158(a) (West 2012).

Article 16, however, does "not apply to cities and school districts of more than 500,000 population as shown by the last preceding Federal census." 40 ILCS 5/16-102 (West 2012). Instead, article 17 establishes and governs a public school teachers' pension and retirement fund "[i]n each city with a population over 500,000." 40 ILCS 5/17-101 (West 2012). The revenues for a public school teacher pension fund governed by article 17 "consist of: (1) amounts paid into the Fund by contributors thereto and from employer contributions and State appropriations in accordance with this Article; (2) amounts contributed to the Fund by an Employer; (3) amounts contributed to the Fund pursuant to any law now in force or hereafter to be enacted; (4) contributions from any other source; and (5) the earnings on investments." 40 ILCS 5/17-127 (West 2012). The ultimate responsibility for funding a public school teacher pension fund governed by article 17 is the board of education for the city in which the fund is maintained and operated. 40 ILCS 5/17-129 (West 2012). "For fiscal years 2014 through 2059, the minimum contribution to the Fund to be made by the Board of Education in each fiscal year shall be an amount determined by the Fund to be sufficient to bring the total assets of the Fund up to 90% of the total actuarial liabilities of the Fund by the end of fiscal year 2059." 40 ILCS 5/17-129(b)(iv) (West 2012). "Beginning in fiscal year 2060, the minimum Board of Education contribution for each fiscal year shall be the amount needed to maintain the total assets of the Fund at 90% of the total actuarial liabilities of the Fund." 40 ILCS 5/17-129(b)(v) (West 2012).

II. BACKGROUND[2]

The Board of Education of the City of Chicago operates, manages and controls the public school district for the City of Chicago Public Schools ("CPS"). CPS enrolls approximately 20% of the students who attend public schools throughout Illinois. Approximately 90% of CPS students are children of color, while 10% of students are white. Approximately 38% of CPS students are African American, 47% of CPS students are Hispanic, and 6% are other students of color. For Illinois children attending a public school other than CPS, 58% are white, while 12% are African American, 21% are Hispanic, and 9% are other students of color. Approximately 42% of the State's African American public school children, 34% of the State's Hispanic public school children, and 4% of the State's white public school children attend CPS. Among public school students in Illinois, an African American child is approximately 11 times more likely than a white child to attend CPS, and a Hispanic child is approximately 9 times more likely than a white child to attend CPS.

Plaintiffs maintain that the predominately African American and Hispanic students at CPS, including the individual Plaintiffs, currently receive on average 78 cents from the State for every dollar that the predominately white students in the rest of Illinois receive. This disparity, according to the Plaintiffs, is derived in part from CPS' obligation to fund the pension fund for its teachers.

CPS, unlike all other school districts in the State, must divert a significant portion of its budget to funding its teacher pension system, the Chicago Teachers' Pension Fund ("CTPF"), created pursuant to and governed by article 17 of the Pension Code. CPS bears the ultimate responsibility for ensuring that CTPF is adequately funded. The State, on the other hand, bears the responsibility of ensuring adequate pension funding for TRS, which applies to all other school districts in Illinois. For Fiscal Year 2016, CPS contributed $676 million to CTFP, approximately 12% of CPS's operating budget. In Fiscal Year 2017, CPS must contribute $721 million to CTFP. By Fiscal Year 2020, CPS will need to contribute $811 million.

For Fiscal Year 2016, CPS adopted a balanced budget assuming that the State would provide a $480 million increase toward funding of CPS's pension obligation. When the State did not make this contribution, CPS imposed midyear reductions that cut spending by $173 million annually. Specifically, a $120 million cut to the school-based budgets from which principals fund their schools; a $45 million cut by eliminating 433 administrative and central office positions; and three furlough days to save approximately $30 million.

For Fiscal Year 2017, CPS anticipates that it will spend $1,891 per student of CTPF, while the State will have contributed $32 per student to CTPF. CPS estimates that other school district are spending $86 per student on TRS pensions, while the State is spending $2,437 per student.

CPS began Fiscal Year 2017 with a $300 million operating deficit. Through cuts, efficiencies, and an increase in City of Chicago taxes, CPS managed to pass a balanced annual

[2] The facts recited herein are derived from Plaintiffs' Verified Complaint and affidavits submitted in support of Plaintiffs' Motion for Preliminary Injunction.

budget, as State law requires. The balanced budget is essential to allow CPS access to the capital markets to continue to borrow large amounts of money to fund CPS's cash flow.

On June 30, 2016, the Illinois House amended Senate Bill 2822 to include an additional State contribution of $215 million dollars to assist CPS to meet its required Fiscal Year 2017 teacher pension payment of $721 million. The State's projected Fiscal Year 2017 payment to TRS is $4.0 billion. Amended Senate Bill 2822 passed both houses of the General Assembly.

The Fiscal Year 2017 budget included $215 million from the State in the form of pension relief, based on Senate Bill 2822 passing both chambers of General Assembly.

On December 1, 2016, Governor Rauner vetoed Amended Senate Bill 2822. When Governor Rauner vetoed Amended Senate Bill 2822, CPS went into a midyear financial crisis. To close the $215 million gap, CPS must make additional cuts to balance its budget.

Prior to the veto, CPS already had taken measures to meet its budget obligations and educate its students. At the end of Fiscal Year 2013, CPS had a positive general operating fund balance of $949 million. By the end of Fiscal Year 2016, CPS had depleted that reserve, leaving CPS with a negative general operating fund balance of $127 million. As such, CPS's general operating fund balance has declined by $1.1 billion in three years. Over the same three year period, CPS made required pension payments totaling $1.9 billion.

To address the decline in its operating budget, CPS has relied upon new tax revenues, maximized to the extent allowable under state law, and borrowings through the capital markets. In Fiscal Year 2016, CPS borrowed $1.1 billion to fund its operating budget. In Fiscal Year 2017, CPS planned to rely upon a combination of new tax revenue from the State, new tax revenue from the City of Chicago, and additional borrowings in the capital markets. CPS planned for the additional operating funds to permit CPS to meet its cash flow requirements to balance its budget. Before Governor Rauner vetoed the bill providing an additional $215 million funding contribution to CPS, CPS was working on cost-cutting measures to reduce Fiscal Year 2017 spending by approximately $300. Additionally, CPS was working on further borrowings in the capital markets to support cash flow.

On February 22, 2017, CPS amended its Fiscal Year 2017 budget to address the $215 million gap. Those measures, however, addressed only a portion of the $215 million gap. Unless CPS can obtain State funding, additional cuts will follow. If CPS ends the school year on June 1, instead of June 20, CPS could save approximately $91 million. If CPS cancels summer school for grade-school and middle-school students, CPS could save an additional $5 million. Without additional budget cuts, CPS cannot meet its statutory obligations to have a balanced budget and to make its required payment to CTPF, in the amount of $721 million, by June 30.

On February 14, 2017, Plaintiffs, CPS and several parents on behalf of their children who are CPS students, filed a two-count verified complaint (the "Complaint") against Governor Bruce Rauner, the State of Illinois, the Illinois State Board of Education ("ISBE"), Board Chair Rev. James T. Meeks ("Meeks"), Superintendent Dr. Tony Smith ("Smith"), and Comptroller Susana A. Mendoza ("Mendoza"). Plaintiffs' Complaint asserts two claims for violation of section 5(a)(2) of the Illinois Civil Rights Act ("ICRA"), 740 ILCS 23/1, *et seq*. Count I alleges

that the State's discriminatory funding for public education has a disparate impact on CPS and its students. Similarly, Count II alleges that the State's discriminatory pension funding requirements has a disparate impact on CPS and its students. Plaintiffs seek as relief for Defendants' alleged violations of ICRA: (1) a declaration that the State's system of funding education violates the Illinois Civil Rights Act of 2003; (2) a preliminary and permanent injunction against Defendants from distributing State funds to any person or entity within the State in a manner that discriminates against Plaintiffs'; (3) a declaration that the State's pension funding system violates the Illinois Civil Rights Act of 2003; (4) a preliminary and permanent injunction against Defendants from imposing on CPS a pension-funding obligation that discriminates against Plaintiffs; and (5) a monetary award in the amount of the costs and reasonable attorney fees and expenses Plaintiffs incur in connection with bringing this action.

On February 27, 2017, Plaintiffs filed a Motion for Preliminary Injunction asking the Court to enjoin Defendants from distributing State funds for public education to any person or entity within the State until the State provides funds to CPS in a manner and amount that does not discriminate against the Plaintiffs. On March 24, 2017, Defendants filed a memorandum in opposition to Plaintiffs' Motion for Preliminary Injunction and a Motion to Dismiss Plaintiffs' Complaint. The parties' fully briefed motions are before the Court.

Additionally, the Court granted leave to the Aldermanic Black Caucus, City of Chicago Faith Leaders, the Chicago City Council Latino Caucus, and various Business Community Members[3] to file amicus briefs in support of Plaintiffs.

III. PRELIMINARY INJUNCTION STANDARD

The Court begins with an overview of injunctions, focusing on the scope of relief available to Plaintiffs on their motion for preliminary injunction, as the Court has discerned significant confusion about the appropriate relief pursuant to a motion preliminary injunction and the nature of the hearing required thereon.

An injunction is an equitable remedy achieved through "'a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing . . . .'" In re A Minor, 127 Ill. 2d 247, 261 (1989) (quoting Wangelin v. Goe, 50 Ill. 459, 463 (1869)). There are two categories of injunctions by reference to the relief requested and "the effect the injunction as on the parties involved:" prohibitory or preventative on one hand—the most common—and mandatory on the other. Continental Cablevision of Cook County, Inc. v. Miller, 238 Ill. App. 3d 774, 789 (1st Dist. 1992). "An injunction is considered prohibitory when 'the thing complained of results from present and continuing affirmative acts, and the injunction merely orders the defendant from doing those acts.'" Id. (quoting 42 Am. Jur. 2d *Injunctions* § 17 (1969)). By contrast, "a mandatory injunction is one which commands the performance of a positive act." Id. Mandatory injunctions are particularly "disfavored by the courts, and are granted only in cases of

[3] The Business Community Members, as identified in their Amicus Brief, are: Jimmy Akintode, President & CEO, Ujamaa Construction, Inc.; Patrick Crotty, President, Beatha Group; Rita Dragonette, President, Dregonette Career Strategies; Nina Hancock, President, Hancock & Hancock, Kathryn Hayley; Carol McCarthy, President, Remedy Chicago; Langdon Neal, Principal & Owner, Neal & Leroy, LLC; Charles Smith, President, Insurance Strategies; Elzie L. Higginbottom, President and CEO, East Lake Management & Development Co.; Torrey L. Barett, President & CEO K.L.E.O Community Center; and Stanley C. Rakestraw, COO & VP, SCR Medical Transportation.

'great necessity or extreme urgency.'" Popp v. Cash Station, Inc., 244 Ill. App. 3d 87, 102 (1st Dist. 1992) (quoting Grillo v. Sidney Wanzer & Sons, Inc., 26 Ill. App. 3d 1007, 1012 (1st Dist. 1975)).

Further, there are there three types of injunctions by reference to the stage of the proceeding: temporary injunctions, preliminary injunctions, and permanent injunctions. Buzz Barton & Associates, Inc. v. Giannone, 108 Ill. 2d 373, 385 (1985). Temporary restraining orders and preliminary injunctions are "interlocutory" injunctions and afford immediate but durational relief pending the final resolution of a case on its merits. Paddington Corp. v. Foremost Sales Promotions, Inc., 13 Ill. App. 3d 170, 173 (1st Dist. 1973). Such interlocutory injunctions are governed by the Injunction Act, article XI of the Code of Civil Procedure, 735 ILCS 5/11-101, *et seq.* See 735 ILCS 5/11-101 (West 2012) (temporary restraining order); 735 ILCS 5/11-102 (West 2012) (preliminary injunction).

A temporary restraining order is an emergency remedy, the purpose of which "is to allow the trial court to preserve the status quo until the court can hold a hearing to determine whether it should grant a preliminary injunction." Stocker Hinge Mfg. Co. v. Darnel Industries, Inc., 94 Ill. 2d 535, 541 (1983). The hearing on a motion for a temporary restraining order is a summary proceeding based solely on the allegations in the pleadings. Passon v. T C R, Inc., 242 Ill. App. 3d 259, 263-64 (2d Dist. 1993).

A preliminary injunction, like a temporary restraining order, is an extraordinary remedy that may be used only "in situations where an extreme emergency exists and serious harm would result if the injunction is not issued." Beahringer v. Page, 204 Ill. 2d 363, 379 (2003). Whereas the purpose of a temporary restraining order is to preserve the status quo pending the court's determination of whether to issue a preliminary injunction, the purpose of a preliminary injunction is to preserve the status quo pending the final resolution of the case on its merits. Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western R.R., 195 Ill. 2d 356, 365 (2001).

Unlike interlocutory injunctions—both temporary restraining orders and preliminary injunctions—a permanent injunction extends or maintains "the status quo indefinitely after a hearing on the merits where it has been shown that the plaintiff is suffering irreparable harm and there is no adequate remedy at law." Gleicher, Friberg & Assocs., M.D., S.C. v. University of Health Sciences, 224 Ill. App. 3d 77, 88 (1st Dist. 1991). A permanent injunction may also alter the status quo. Skolnick, 191 Ill. 2d at 222; Dep't of Health Care & Family Servs. v. Cortez, 2012 IL App (2d) 120502, ¶ 13. Importantly, "[a] permanent injunction is of unlimited duration and . . . adjudicates rights between the interested parties." Skolnick v. Altheimer & Gray, 191 Ill. 2d 214, 222 (2000).

"In far too many cases the distinction between a temporary restraining order, a preliminary injunction, and a permanent injunction becomes blurred during the proceedings." Buzz Barton & Associates, Inc. v. Giannone, 108 Ill. 2d 373, 385 (1985). "What begins as a proceeding to obtain a temporary restraining order results in the issuance of an order that is in fact a preliminary injunction, and what starts as a proceeding to obtain a preliminary injunction results in an order that is in fact a permanent injunction." Id. "In a hearing on a motion for a preliminary injunction . . ., it is quite easy and tempting to expand the hearing into the merits of the ultimate question as to whether a permanent injunction should issue." Id. at 385-86. "Such a

temptation should be resisted, and the distinction between the two writs should be maintained." Id. at 386. "The purposes of the two writs are different and distinct" and "[t]he proof that is required to support them is not the same." Id.

In this case, Plaintiffs, having bypassed a motion for temporary restraining order, filed a motion for preliminary injunction in which they request that the Court prohibit Defendants from distributing all education and pension funds to all school districts throughout the State until the State distributes said funds in a non-discriminatory manner.

To obtain a preliminary injunction, the movant must establish: (1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law; and (4) a likelihood of success on the merits. Mohanty v. St. John Heart Clinic, S.C., 225 Ill. 2d 52, 62 (2006). The party seeking a preliminary injunction has the burden to raise a "fair question" that each of the elements is satisfied. Clinton Landfill, Inc., v. Mahomet Valley Water Authority, 406 Ill. App. 3d 374, 378 (4th Dist. 2010).

If the movant on a motion for preliminary injunction satisfies the elements for a preliminary injunction, then the court must the balance equities and relative inconvenience to the parties. Limestone Dev. Corp. v. Village of Lemont, 284 Ill. App. 3d 848, 853 (1st Dist. 1996). "'In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction.'" Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009) (quoting Schweickart v. Powers, 245 Ill. App. 3d 281, 291 (2d Dist. 1993)). A court may deny a motion for preliminary injunction where the burden on the defendant by granting the motion outweighs the burden on the plaintiff by denying it. Limestone Dev. Corp. v. Village of Lemont, 284 Ill. App. 3d at 853. "[T]he court should also consider the effect of the injunction on the public." Kalbfleisch, 396 Ill. App. 3d at 1119.

The nature of the hearing required on a motion for preliminary injunction is dependent upon the status of the pleadings. Five Mile Capital Westin N. Shore SPE, LLC v. Berkadia Commer. Mortg., LLC, 2012 IL App (1st) 122812, ¶ 22. In deciding a motion for preliminary injunction, the court may not decide contested factual issues or the merits of the case. Hartlein v. Illinois Power Co., 151 Ill.2d 142, 156 (1992). However, an evidentiary hearing on a motion for preliminary injunction is required when the party opposing the motion has filed a verified answer to the movant's pleading that denies the material allegations therein. Five Mile Capital, 2012 IL App (1st) 122812, ¶ 12. See also Kable Printing Co. v. Mt. Morris Bookbinders Union Local 65-B, 27 Ill. App. 3d 500, 504 (2d Dist. 1975) ("evidentiary hearing required where there is a question of material fact"). On the other hand, "[w]here no responsive pleading has been filed the injunction may be issued solely on the sufficiency of the complaint." Kable Printing, 27 Ill. App. 3d at 504.

In response to Plaintiffs' Complaint and motion for preliminary injunction, Defendants filed a motion to dismiss Plaintiffs' Complaint pursuant to section 2-619.1 of the Code of Civil Procedure, as opposed to a verified answer denying the material allegations of Plaintiffs' Complaint. As a result, there are no issues of material fact before the Court at this time because Defendants' have admitted the material allegations of Plaintiffs' Complaint for the purpose of their motion to dismiss. Therefore, an evidentiary hearing on Plaintiffs' motion for preliminary

injunction is unnecessary and Plaintiffs' motion for preliminary injunction may be resolved based on arguments with respect to the legal sufficiency of Plaintiffs' motion and Complaint.

Heeding the Illinois Supreme Court's admonition in Buzz Barton, the Court must evaluate Plaintiffs' motion for preliminary injunction with a narrow focus on whether the specific preliminary relief Plaintiffs request fulfills the fundamental purposes of a preliminary injunction and whether Plaintiffs have otherwise satisfied their burden to establish the requirements for a preliminary injunction.

IV. DISCUSSION

Plaintiffs argue that they are entitled to preliminary injunctive relief because they have satisfied all of the requirements therefor, whereas Defendants maintain that Plaintiffs' have not satisfied any of the requirements for the issuance of a preliminary injunction. The Court begins its analysis with whether Plaintiffs' motion for preliminary injunction fulfills the fundamental purposes of a preliminary injunction.

IV(A). Fundamental Purposes of a Preliminary Injunction

Defendants initially argue that the Court should deny Plaintiffs' motion for preliminary injunction because it does not fulfill the fundamental purposes of a preliminary injunction for two reasons: (1) no extreme emergency exists; and (2) Plaintiffs' requested preliminary injunction would not maintain the status quo, but would dramatically alter it. The Court addresses each argument in turn.

IV(A)(1). Extreme Emergency

To reiterate, a preliminary injunction is appropriate only "in situations where an extreme emergency exists . . . ." Beahringer, 204 Ill. 2d at 379. The nature of the emergency Plaintiffs' identify in support of their motion for preliminary injunction is that in the absence of a preliminary injunction, CPS will be forced to cut twenty days from the 2016-2017 school year, closing on June 1, 2017 instead of June 20, 2017. Additionally, Plaintiffs contend that CPS will be forced to cancel summer school for grade-school and middle-school students as well as make additional spending cuts that will further affect CPS students.

Defendants, on the other hand, argue that Plaintiffs fail to allege an urgent situation that requires the extraordinary relief of a preliminary injunction. Defendants assert that CPS's budgetary woes have existed for years and there is no emergency warranting a preliminary injunction. Specifically, Defendants contend that the Chicago Teachers Pension Fund has been predominately self-funded for more than 100 years. Defendants also note that CPS has had serious cash flow problems since at least its fiscal year 2014 and had to borrow $1.1 billion in fiscal year 2016. Instead, Defendants posit that the impetus for Plaintiffs' motion for preliminary injunction is the Governor's veto in late 2016 of legislation passed by the General Assembly that would have provided $215 million in funding to CPS.

Plaintiffs' reply in support of their motion for preliminary injunction does not address Defendants' argument that there is no emergency warranting a preliminary injunction.

Nevertheless, the Court finds that Plaintiffs have sufficiently alleged that an emergency exists. Namely, Plaintiffs have alleged that absent a preliminary injunction, CPS and its students will experience a shortened school year and severe cuts to educational programs. While the CPS' financial woes are not new, as noted by Defendants, CPS' alleged financial situation is dire and threatens to disrupt not only the balance of the 2016-2017 school year, but the classrooms as well. For purposes of this Motion, Defendants have admitted this allegation. As such, the Court finds that Plaintiffs have sufficiently alleged an emergency for purpose of their motion for preliminary injunction.

The Court next addresses whether the immediate relief Plaintiffs request in their motion for preliminary injunction fulfills the fundamental purpose of a preliminary injunction to maintain the status quo pending the resolution of the case on its merits.

IV(A)(2). Status Quo

Plaintiffs assert that the injunctive relief they seek maintains the status quo, citing Seyller v. County of Kane, 408 Ill. App. 3d 982 (2d Dist. 2011) and Illinois Hospital Ass'n v. Illinois Dep't of Public Aid, 576 F. Supp. 36 (N.D. Ill 1983).[4]

Defendants counter that the immediate relief Plaintiffs seek in their motion for preliminary injunction is a mandatory injunction that would not maintain the status quo pending the final resolution of this case on its merits but instead seeks to drastically alter the status quo. Specifically, Defendants insist that the relief Plaintiffs' request is for the Court to override the Governor's veto of the $215 million CPS funding bill or else to order the General Assembly and the Governor to enact legislation, particularly with respect to an appropriation to enable CPS to fund the Chicago Teachers Pension Fund.

Plaintiffs, however, expressly disclaim Defendants' characterization of the relief they request in their motion for preliminary injunction.[5] Plaintiffs insist that they do not, by their motion for preliminary injunction, seek a court order that overrides the Governor's veto of the $215 million CPS funding bill or that otherwise compels the General Assembly and the Governor to enact legislation that appropriates additional funds to CPS. Instead, Plaintiffs emphasize that the preliminary injunction they seek is simply to prohibit Defendants from distributing any funds to any public school or public school teacher pension fund statewide unless and until the State funds CPS in a nondiscriminatory manner consistent with ICRA.

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[4] Plaintiffs also cite AFSCME v. State of Illinois, 2015 IL App (5th) 150277-U, an unpublished order entered by the appellate court pursuant to Illinois Supreme Court Rule 23. Rule 23(e)(1) provides that an order entered under Rule 23 "is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Ill. Sup. Ct. R. 23(e)(1). Thus, under Rule 23(e)(1), AFSCME has no precedential value whatsoever. Additionally, Plaintiffs do not cite AFSCME to support a contention of double jeopardy, *res judicata*, collateral estoppel, or law of the case. Accordingly, the Court finds that Rule 23(e)(1) explicitly and unambiguously prohibits Plaintiffs' citation to AFSCME. Therefore, the Court will not consider AFSCME for any purpose.

[5] The Court notes that Plaintiffs address this issue only in their response to Defendants' motion to dismiss and not in their reply in support of their motion for preliminary injunction. See Pls. Resp. to Defs. Mot., at 15, 18.

As noted above, the fundamental purpose of a preliminary injunction is to preserve the status quo pending the final resolution of the case on its merits. Callis, Papa, Jackstadt & Halloran, 195 Ill. 2d at 365. "[T]he relief available under a preliminary injunction is provisional in nature" such that "courts are prohibited from issuing an order that alters the *status quo*." Electronic Design & Mfg. v. Konopka, 272 Ill. App. 3d 410, 415 (1st Dist. 1995). Therefore, courts may not enter a permanent injunction or to grant the ultimate relief sought by Plaintiffs after a hearing on a motion for preliminary injunction. Petrzilka v. Gorscak, 199 Ill. App. 3d 120, 123 (2d Dist. 1990).

The term "status quo" "'has been the subject of countless, often inconsistent, interpretations.'" Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4, 396 Ill. App. 3d 1105, 1117 (5th Dist. 2009) (quoting Konopka, 272 Ill. App. 3d at 415, n. 2). The most common definition of "status quo" is the last, actual, peaceable, uncontested condition that preceded the pending controversy. Postma v. Jack Brown Buick, Inc., 157 Ill. 2d 391, 397 (1993). "Another interpretation of the term, however, is the condition necessary to prevent a dissipation or destruction of the property in question." Kalbfleisch, 396 Ill. App. 3d at 1118. Thus, preserving the status quo is often "done by keeping all actions at rest, but sometimes it happens that the status quo is not a condition of rest but, rather, is one of action and the condition of rest is exactly what will inflict the irreparable harm." Id. at 1117.

Nevertheless, under any interpretation of the term status quo, the fundamental purpose of a preliminary injunction—to maintain the status quo—is fulfilled when the immediate but durational relief requested will "prevent a threatened wrong or the further perpetration of an injurious act." Kolstad v. Rankin, 179 Ill. App. 3d 1022, 1034 (4th Dist. 1989) cited with approval in Kalbfleisch, 396 Ill. App. 3d at 1118. Accordingly, the Court must analyze whether the relief Plaintiffs request in their motion for preliminary injunction would prevent a threatened wrong or the further perpetration of an injurious act.

As an initial matter, however, the Court notes that the parties vehemently disagree about even the scope of the relief that Plaintiffs request in their motion for preliminary injunction. As such, before the Court may analyze whether the relief Plaintiffs request in their motion for preliminary injunction would prevent a threatened wrong or the further perpetration of an injurious act, the Court must first address the scope of Plaintiffs' request for relief in their motion for preliminary injunction.

The Conclusion section of Plaintiffs' motion for preliminary injunction requests that the Court "enter an order enjoining Defendants from distributing State funds for public education to any person or entity within the State until the State provides funds to CPS in a manner and amount that does not discriminate against Plaintiffs." Pls. Mot., at 15.

Though Defendants inexplicably refuse to do so, the Court is bound to take Plaintiffs at their word that they have not asked the Court to override the Governor's veto of the $215 million CPS funding bill or to order the General Assembly and the Governor to enact legislation that appropriates additional funding to CPS. The Court agrees with Plaintiffs that Defendants' characterization of the relief they seek in their motion for preliminary injunction as requesting a judicial override of the Governor's veto or an order compelling the General Assembly and the

Governor to enact legislation merely sets up a straw man that does nothing but distract from the truly contested issues in this case.

Instead, consistent with Plaintiffs' position, the Court construes Plaintiffs' request as seeking an order prohibiting Defendants from distributing any funds to any public school or public school teacher pension fund statewide in the manner as currently adopted by the State on the basis that doing so likely constitutes a violation of ICRA. Thus, contrary to Defendants' protestations, the relief Plaintiffs request is not a mandatory injunction because it does not command the performance of a positive act. Continental Cablevision, 238 Ill. App. 3d at 789. Instead, the Court finds that the relief Plaintiffs' request is in the nature of the more common prohibitory injunction because it would merely prohibit Defendants from acting—distributing funds to any public school or public school teacher pension fund statewide. Id.

Yet, by a strict interpretation of the text of Plaintiffs' request for relief in their motion for preliminary injunction, Plaintiffs improperly seek a permanent injunction. This is so because the terms of Plaintiffs' request are not limited to the time of the final resolution of their claims on the merits but are instead of an indefinite and potentially unlimited duration—unless and until the State funds CPS in a nondiscriminatory manner consistent with ICRA. Compare Callis, Papa, Jackstadt & Halloran, 195 Ill. 2d at 365 (the purpose of a preliminary injunction is to preserve the status quo pending the final resolution of the case on its merits) with Skolnick, 191 Ill. 2d at 222 ("A permanent injunction is of unlimited duration and . . . adjudicates rights between the interested parties.") and Gleicher, Friberg & Assocs., 224 Ill. App. 3d at 88 ("The purpose permanent injunction is to extend or maintain the status quo indefinitely after a hearing on the merits . . . ."). Thus, Plaintiffs' request in their motion for preliminary injunction exemplifies the concern aptly described by the Illinois Supreme Court in Buzz Barton by blurring the distinction between a preliminary injunction and a permanent injunction. Buzz Barton, 108 Ill. 2d at 385-86.

Therefore, Plaintiffs' request is improper from a technical perspective because the text of the request asks the Court to issue an injunction against Defendants that is of at least indefinite and potentially unlimited duration. However, the Court will not elevate form over substance and will construe Plaintiffs' motion for preliminary injunction as requesting the Court to prohibit Defendants from distributing funds to any public school or public school teacher pension fund statewide pending the final resolution of Plaintiffs' claims on their merits.

Nevertheless, even construing Plaintiffs' request for relief in their motion for preliminary injunction as seeking to prohibit Defendants from distributing funds to any public school or public school teacher pension fund statewide pending the final resolution of Plaintiffs' claims on their merits, the Court finds that such relief would not fulfill the fundamental purpose of a preliminary injunction. By any interpretation of the term status quo, Plaintiffs do not seek to preserve it, but instead seek to alter it in dramatic fashion.

To reiterate, the Court's analysis as to whether Plaintiffs' motion for preliminary injunction fulfills the fundamental purpose of a preliminary injunction is whether the relief they seek in the motion is tailored "to prevent a threatened wrong or the further perpetration of an injurious act." Kolstad, 179 Ill. App. 3d at 1034.

Under a generous construction of Plaintiffs' arguments in their briefs and at the hearing at which the Court heard oral arguments, Plaintiffs contend that the request for relief in their motion for preliminary injunction serves the purpose of a preliminary injunction by seeking to prevent the perpetration of an injurious act. The injurious act Plaintiffs offer is the State's current funding system for public schools and public school teacher pensions that they allege in their Complaint violates ICRA.

However, Plaintiffs' argument on this point fails for a similar reason that the request for relief in their motion for preliminary injunction is improper under a strict construction of the text. By emphasizing the merits of their claims that the State's current funding system for public schools and public school teacher pensions violates ICRA, Plaintiffs improperly ask the Court to conclusively resolve the merits of Plaintiffs' Complaint and enter a permanent injunction against Defendants. The Court is not authorized to enter a permanent injunction or to grant the ultimate relief sought by Plaintiffs after a hearing on a motion for preliminary injunction. Petrzilka, 199 Ill. App. 3d at 123. Plaintiffs' argument is yet another example of Plaintiffs' failure to maintain the important distinctions between interlocutory injunctions and permanent injunctions. Buzz Barton, 108 Ill. 2d at 385. Instead, the proper inquiry on Plaintiffs' motion for preliminary injunction is whether the immediate relief they request will prevent the specific harms Plaintiffs allege are threatened or will be further perpetrated in the absence of a preliminary injunction. Beahringer, 204 Ill. 2d at 379.

The specific harms alleged by Plaintiffs as the basis for the emergency nature of their motion for preliminary injunction—that CPS faces the threat of being forced to end its 2016-2017 school year twenty days early, to cancel summer school for grade-school and middle-school students, and to make additional spending cuts that will further affect CPS students—all revolve around CPS's dire financial condition. However, the relief Plaintiffs' request in their motion for preliminary injunction—prohibiting Defendants from distributing funds to any public school or public school teacher pension fund statewide—would not abate or prevent any of those harms. Prohibiting Defendants from distributing any funds to any public school or public school teacher pension fund statewide would not prevent CPS from being forced to end its 2016-2017 school year twenty days early. Nor would Plaintiffs' proposed preliminary injunction prevent CPS from being forced to cancel summer school for grade-school and middle-school students. In short, the Court finds that prohibiting Defendants from distributing any funds to any public school or public school teacher pension fund statewide would do absolutely nothing to prevent the alleged effects of CPS's dire financial condition.

The cases cited by Plaintiffs, Sellyer v. County of Kane, 408 Ill. App. 3d 982 (2d Dist. 2011) and Illinois Hospital Ass'n v. Illinois Dep't of Public Aid, 576 F. Supp. 360 (N.D. Ill. 1983), do not support their position that the relief they seek in their motion for preliminary injunction is proper. In Sellyer, the appellate court found that the trial court's issuance of a preliminary injunction in favor of Kane County ordering the clerk of the circuit court of Kane County to meet its payroll obligations by using special funds preserved the status quo by preventing the imminent closure of the clerk's office and the courts as a result of lack of funding. Sellyer, 408 Ill. App. 3d at 985, 989-90, 993.

Similarly, in Illinois Hospital, the United States District Court for the Northern District of Illinois granted the plaintiffs' motion for preliminary injunction and ordered the Illinois

Department of Public Aid ("IDPA") to pay each Illinois hospital that participated in the Medicaid program its "Final Rate" for all unpaid claims for inpatient services to Medicaid recipients during fiscal year 1984, consistent with IDPA's existing regulations, as opposed to lower "Shortfall Rates" that were promulgated solely in response to the budgetary shortfall in the General Assembly's fiscal year 1984 inpatient services appropriation. Illinois Hospital, 576 F. Supp. at 363-64, 367-68, 372. Thus, the preliminary injunction issued by the court in Illinois Hospital merely prohibited IDPA from enforcing its regulations with respect to the Shortfall Rates and prevented the harm alleged by the plaintiffs of Medicaid reimbursement at arbitrarily and unreasonably low and illegal rates. Id. at 372.

In stark contrast to Sellyer and Illinois Hospital, the relief Plaintiffs' request in their motion for preliminary injunction—prohibiting Defendants from distributing funds to any public school or public school teacher pension fund statewide—would not prevent the harms alleged by Plaintiffs—the threat of being forced to end its 2016-2017 school year twenty days early, to cancel summer school for grade-school and middle-school students, and to make additional spending cuts that will further affect CPS students.

On the contrary, prohibiting Defendants from distributing any funds to any public school or public school teacher pension fund statewide would unquestionably perpetuate and exacerbate the harms alleged by CPS. This is so because by asking the Court to do so, Plaintiffs effectively ask the Court to eliminate all sources of State funding for public education and public school teacher pensions, at least until the final resolution of this case on its merits. And Plaintiffs' requested preliminary injunction would prohibit Defendants from distributing any funds to CPS and CTPF just as it would prohibit Defendants from distributing funds to any other public school or to TRS. Thus, while the relief Plaintiffs' request in their motion for preliminary injunction would equalize State funding of public schools and public school teacher pension funds by eliminating it in its entirety, there can be no question that eliminating all sources of State funding to CPS, even if only for the duration of this lawsuit, would perpetuate and exacerbate the source of Plaintiffs' alleged harms—CPS's dire financial condition.

The Court's holding that to fulfill the purpose of a preliminary injunction to maintain the status quo, the relief requested by the movant must prevent the specific harms the movant alleges are threatened or will be perpetuated in the absence of such relief is uniformly supported by Illinois caselaw. The Court's view is also particularly well illustrated by Washington v. Trump, 847 F.3d 1151 (9th Cir. 2017), in which the States of Washington and Minnesota challenged the constitutionality and legality of President Trump's Executive Order 13769 that banned "for 90 days the entry into the United States of individuals" from Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen. Washington, 847 F.3d at 1156. Executive Order 13769 also suspended for 120 days the United States Refugee Admissions Program and suspended indefinitely the entry of all Syrian refugees. Id. at 1157. Upon implementation on January 27, 2017, "[t]he impact of the Executive Order was immediate and widespread." Id. "[T]housands of visas were immediately cancelled, hundreds of travelers with such visas were prevented from boarding airplanes bound for the United States or denied entry on arrival, and some travelers were detained." Id.

On January 30, 2017, the State of Washington filed suit against the President, the Secretary of the Department of Homeland Security, the Secretary of State, and the United States (collectively, "the Government") in the United States District Court for the Western District of

Washington, alleging "that the Executive Order unconstitutionally and illegally stranded its residents abroad, split their families, restricted their travel, and damaged the State's economy and public universities in violation of the First and Fifth Amendments, the [Immigration and Nationality Act], the Foreign Affairs Reform and Restructuring Act, the Religious Freedom Restoration Act, and the Administrative Procedure Act." Id. "Washington also alleged that the Executive Order was not truly meant to protect against terror attacks by foreign nationals but rather was intended to enact a 'Muslim ban' as the President had stated during his presidential campaign that he would do." Id. As such, Washington asked the district court to declare the challenged sections of the Executive Order illegal and unconstitutional and to enjoin their enforcement nationwide. Id.

After amending its complaint to add the State of Minnesota as a plaintiff and to add a claim under the Tenth Amendment to the U.S. Constitution, Washington and Minnesota filed an amended emergency motion for temporary restraining order, seeking to enjoin the Government from enforcing the challenged sections of the Executive Order, which the district court granted. Id. at 1157-58.

The harm, actual and threatened, that the States alleged as a result of the Executive Order included that some of the States' residents were or would be stranded abroad, have their families split, and restricted in their right to travel. Id. at 1157. Further, the States alleged that the Executive Order had harmed or threatened to harm the States' economies and public universities. Id. The relief requested by the States in their motion for temporary restraining order was to prohibit the Government from enforcing the challenged sections of the Executive Order that (1) banned for 90 days entry into the United States of individuals from Iraq, Iran, Libya, Sudan, Somalia, Syria, and Yemen; (2) suspended for 120 days the United States Refugee Admissions Program; and (3) suspended indefinitely the entry of all Syrian refugees. Id. at 1156-57. In other words, the relief the States requested in their motion for temporary restraining order was to return the immigration and travel rights of immigrants and refugees from the affected countries as they existed prior to the Government's implementation of the Executive Order. As such, the States' motion for temporary restraining order fulfilled the fundamental purpose of an interlocutory injunction by preventing the threat of future alleged harm as well as the further perpetuation of the harms alleged.

However, the States' motion for temporary restraining order would have been entirely improper if the States had requested relief analogous to the relief Plaintiffs request in their motion for preliminary injunction in this case. For example, the States' motion for temporary restraining order would have been improper if the States asked the district court to prohibit all travel or entry into the United States from all foreign countries. Like the relief Plaintiffs request in their motion for preliminary injunction, such a request would not have prevented the threat or perpetuation of the harms alleged and, in fact, would have exacerbated the alleged harms.

As such, it is readily apparent to the Court that Plaintiffs do not and could not truly want to eliminate all sources of State funding for public schools and public school teacher pensions, including CPS and CPTF. Instead, Plaintiffs appear to be proceeding on the theory that as a result of a court ordered preliminary injunction prohibiting Defendants from distributing funds to any public school or public school teacher pension fund statewide, the General Assembly and the

Governor would have no choice but to enact legislation that alleviates CPS's dire financial condition and otherwise appeases Plaintiffs.

Thus, Defendants' concern that Plaintiffs improperly ask the Court to override the Governor's veto of the $215 million CPS funding bill or to order the General Assembly and the Governor to enact legislation that appropriates additional funds to CPS is not entirely without merit. However, in light of Plaintiffs' insistence that they do not ask the Court to order the General Assembly and the Governor to enact legislation that appropriates additional funds to CPS, Plaintiffs' expectation that the General Assembly and the Governor will do so as a result of the Court's issuance of the preliminary injunction they actually request is pure speculation. Plaintiffs do not and cannot allege that the issuance of the preliminary injunction they request would necessarily result in the enactment of legislation that alleviates CPS's dire financial condition by the General Assembly and the Governor. Likewise, Defendants have given no indication that any action by the General Assembly and the Governor is likely or even plausible if the Court issued the preliminary injunction Plaintiffs request.

Therefore, the Court finds that the relief Plaintiffs request in their motion for preliminary injunction—prohibiting Defendants from distributing funds to any public school or public school teacher pension fund statewide—does not fulfill the fundamental purpose of a preliminary injunction to maintain the status quo pending the final resolution of the case on its merits by preventing the harms, both threatened and continuing, alleged by Plaintiffs. Instead, the Court finds that issuance of Plaintiffs' proposed preliminary injunction would do nothing to prevent the harms Plaintiffs allege and, in fact, would exacerbate those harms by depriving CPS of all sources of State funding. Thus, the Court finds that the relief Plaintiffs request in their motion for preliminary injunction seeks to alter the status quo and is therefore inappropriate.

While the Court could end its analysis of Plaintiffs' motion for preliminary injunction at this point, for the sake of the completeness, the Court will proceed to consider the required elements for the issuance of a preliminary injunction.

IV(B). Requirements for a Preliminary Injunction

As previously noted, to obtain a preliminary injunction, Plaintiffs must raise fair question as to the existence of: (1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law; and (4) a likelihood of success on the merits. Mohanty v. St. John Heart Clinic, S.C., 225 Ill. 2d 52, 62 (2006). The Court will address each requirement in turn, beginning with whether Plaintiffs have raised a fair question as to the existence of a clearly ascertainable right in need of protection.

IV(B)(1). Ascertainable Right

Plaintiffs contend that they, and all children of color attending CPS, have a clear right under ICRA not to be subjected to any program or activity that discriminates against them. The essence of Plaintiffs' argument is that the State's education funding scheme provides less funds for CPS students than public school students in the rest of the State. The State's educational and pension funding requirements, according to CPS have a disparate impact on CPS and its students because CPS is required to spend more dollars for pension funding than school districts outside

of Chicago, which in turn reduces the amount of resources available to CPS for educational purposes.

Defendants retort that this case is not about an alleged disparate impact of Illinois educational funding but rather, it is about CPS' pension funding obligations. This contention, suggest the Defendants, is borne out by Plaintiffs' own Complaint in which the Plaintiffs complain about the Governor's veto of the State's $215 million contribution to assist CPS meet its Fiscal Year 2017 teacher pension payment. The Plaintiffs, argue Defendants, do not have any right that entitles Plaintiffs to the funds the Governor vetoed.

To establish a clearly ascertainable right in need of protection, a movant must raise a fair question that it has a substantive interest recognized by statute or common law. Delta Med. Sys. v. Mid-America Med. Sys., Inc., 331 Ill. App. 3d 777, 789 (1st Dist. 2002). A well-pleaded complaint for injunctive relief must contain on its face a clear right to relief and allege facts which establish the right to such relief in a positive, certain and precise manner. Sadat v. American Motors Corp., 104 Ill. 2d 105, 116 (1984).

It is important to note at the outset the rights that are allegedly at issue in this case. Plaintiffs' complaint asserts a claim under ICRA. The gravamen of the Complaint is that the State's distribution of education funding, which includes public school teacher pension funding, results in disparate impact discrimination against CPS students, approximately 90% of whom are children of color. Contrary to Defendants' characterization, this case is not about the Plaintiffs' right to have a court override the Governor's veto power or compel legislative appropriation of State funds to CPS. Even Plaintiffs concede that such a right does not exist. However, the Court finds the Plaintiffs have a right under ICRA to challenge a program or activity that results in disparate impact discrimination on the basis of race, color, national origin, or gender. As such, the Court finds that Plaintiffs have raised a fair question that under ICRA they have an ascertainable right, namely not to be subject to disparate impact discrimination on the basis of race, color, national origin, and gender.

The Court next addresses whether Plaintiffs have raised a fair question that they will suffer irreparable harm in the absence of a preliminary injunction.

IV(B)(2). Irreparable Harm

Plaintiffs contend that the injury they face is irreparable. Specifically, Plaintiffs allege that as a result of its pension obligations and budget shortfall, CPS will be forced to shorten the 2017 school year by twenty (20) days and cancel summer school for grade-school and middle-school students. Plaintiffs offer the affidavit of Dr. Janice K. Jackson, CPS' Chief Education Officer in support of this contention. Plaintiffs argue that Illinois courts have recognized that polices with the effect of denying students equal access to education or educational activities cause irreparable harm that cannot be remedied by damages, citing Kalbfleisch v. Columbia Community Unit School Dist. No. 4, 396 Ill. App. 3d 105 (5th Dist. 2009) and Makindu v. Illinois High School Ass'n. 2015 IL App (2d) 141201 in support of that proposition.

Defendants counter that Plaintiffs' claims about potential harms is speculative as Dr. Jackson's affidavit only talks about "if" the school year ends early and "if" the students miss

class. Moreover, Defendants suggest that CPS has an alternative to shortening the school year—to borrow funds to fill the $215 million dollar shortfall.

An irreparable injury is one, which cannot be adequately compensated in damages or be measured by any certain pecuniary standard. Diamond Sav. & Loan Co. v. Royal Glen Condo. Ass'n, 173 Ill. App. 3d 431 (2d Dist. 1988). However, irreparable injury does not necessarily mean injury that is great or beyond the possibility of repair or compensation in damages, but is the type of harm of such constant or frequent recurrence that no fair or reasonable redress can be had in a court of law. Bally Mfg. Corp. v. JS&A Group, Inc., 88 Ill. App. 3d 87, 94 (1st Dist. 1980).

Defendants' refrain to CPS's chronic underfunding dilemma for CPS to "simply borrow more money" is eerily reminiscent of a quote often attributed to the last French Queen, Marie Antoinette, to "let them eat cake" in response to her people's desperate plight for help in the midst of extreme hardship. A suggestion that the issues of chronic underfunding faced by a struggling inner-city school system responsible for the education and care of hundreds of thousands of children is easily remedied by simply "borrowing more money" is starkly out of touch with reality.

The Court finds that Plaintiffs have raised a fair question that they would suffer irreparable harm if an injunction is not issued. It can hardly be disputed that a child missing one day, let alone twenty days, from a school year constitutes irreparable harm. Nor can Defendants credibly contest that the cancellation of summer school and other budget cuts would not constitute irreparable harm to CPS students. Education is the gateway to success. To reduce a student's opportunity to attend school is to lessen a student's opportunity to succeed.

The Court next turns to whether Plaintiffs have raised a fair question that they do not have an adequate remedy at law.

IV(B)(3). Inadequate Remedy at Law

Plaintiffs' argument that they do not have an adequate remedy at law is rightfully intertwined with their argument on irreparable harm, above. The elements of irreparable injury and inadequate remedy at law required for a preliminary injunction are closely related. Happy R. Sec., LLC v. Agri-Sources, LLC, 2013 IL App (3d) 120509, ¶ 36. Defendants did not address this element in their memorandum in opposition to Plaintiffs' motion for preliminary injunction.

With respect to whether a party has an inadequate remedy at law, it is widely held that money damages constitute adequate compensation absent a showing that it would be impossible, rather than merely complicated, to ascertain the amount of damages. Wilson v. Wilson, 217 Ill. App. 3d 844, 856-59 (1st Dist. 1991). However, "the fact that plaintiffs' ultimate relief may be a money judgment does not deprive a court of equity the power to grant a preliminary injunction." All Seasons Excavating Co. v. Bluthardt, 229 Ill. App. 3d 22, 28 (1st Dist. 1992). Instead, "for a legal remedy to preclude injunctive relief, the remedy must be 'clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.'" In re Marriage of Hartney, 355 Ill. App. 3d 1088, 1090 (2d Dist. 2005).

Plaintiffs contend that money damages cannot remedy the harm Plaintiffs allege CPS students will suffer. The Court finds that Plaintiffs have satisfied their burden of raising a fair question that their remedy at law is inadequate. Next, the Court addresses whether Plaintiffs have established a likelihood of success on the merits.

IV(B)(4). Likelihood of Success on the Merits

Plaintiffs contend that they "raise a fair question regarding the existence of a claimed right under ICRA and a fair question that [they] will be entitled to the relief prayed for if the proof sustains the allegations," citing Kalbfleisch, 396 Ill. App. 3d at 1114. Plaintiffs argue that they have established that based on the State's education and pension funding scheme; CPS receives less state funds than the rest of the school districts in the state. 90% of CPS students, according to Plaintiffs, are children of color. As such, the State's scheme has a disparate impact upon a protected class. Plaintiffs allege that under ICRA, once a plaintiff has shown that the burdens of the government's policy fall disproportionally on members of particular racial groups, the State must advance a weighty justification for its policy, citing Central Austin Neighborhood Association v. City of Chicago, 2013 IL App (1st) 123041.

Plaintiffs assert that Defendants cannot advance a weighty justification of Illinois's separate and discriminatory systems of funding for education. Plaintiffs posit that whatever amount the State chooses to spend on education, ICRA prohibits the State from allocating those funds in a discriminatory manner. Plaintiffs maintain that Defendants cannot show that they do not have other alternatives to avoid severe disparate impacts on account of race, color or national origin.

Defendants, by contrast, argue that Plaintiffs have not raised a fair question that they are likely to succeed on the merits of the claims in their Complaint for the reasons stated in their motion to dismiss pursuant to section 2-619.

To show a likelihood of success on the merits, a party must: (1) raise a fair question as to the existence of the right claimed, (2) lead the court to believe that she will probably be entitled to the relief prayed for if the proof sustains her allegations, and (3) make it appear advisable that the positions of the parties stay as they are until the court has an opportunity to consider the merits of the case. Abdulhafedh v. Secretary of State, 161 Ill. App. 3d 413, 417 (2d Dist. 1987). An element of the likelihood of success on the merits is whether the complaint states a cause of action sufficient to withstand a 2-615 motion to strike. Strata Marketing, Inc. v. Murphy, 317 Ill. App. 3d 1054 (1st Dist. 2000).

Defendants rely on their arguments in their motion to dismiss to challenge Plaintiffs' likelihood of success on the merits of the claims in their Complaint as it relates to Plaintiffs' motion for preliminary injunction. As such, the Court's resolution of Defendants' motion to dismiss controls the Court's determination of Plaintiffs' likelihood of success on the merits. If the Court denies Defendants' motion to dismiss, the Court must find that Plaintiffs have established a fair question that they are likely to succeed on the merits of the claims in their Complaint. Conversely, if the Court grants Defendants' motion to dismiss, the Court must find that Plaintiffs have not established a fair question that they are likely to succeed on the merits of the claims in their Complaint.

Defendants' motion to dismiss is brought pursuant to section 2-619.1 of the Code of Civil Procedure. Section 2-619.1 is a procedural statute which allows a litigant to combine a section 2-615 motion to dismiss and a section 2-619 motion for involuntary dismissal in one pleading. Jenkins v. Concorde Acceptance Corp., 345 Ill. App. 3d 669, 674 (1st Dist. 2003), citing 735 ILCS § 5/2-619.1 (2010). However, this statute is not a legislative authorization for hybrid motion practice. Id. Section 2-619.1 specifically provides that a combined motion shall be divided into parts and each part shall be limited to and specify a single section of the Code under which relief is sought. Storm & Assocs. v. Cuculich, 298 Ill. App. 3d 1040, 1046 (1st Dist. 1998), citing 735 ILCS 5/2-619.1 (2010). Meticulous practice dictates that the movants clearly state the section of the Code under which a motion to dismiss is brought. Wheaton v. Steward, 353 Ill. App. 3d 67, 69 (1st Dist. 2004). The failure to do so may not always be fatal, but reversal is required if prejudice results to the nonmovant. Jenkins, 345 Ill. App. 3d 669, 674.

The Court will first address Defendants' motion pursuant to section 2-619.

IV(B)(4)(i). Defendants' Section 2-619 Motion to Dismiss

Defendants only explicitly raise one argument pursuant to section 2-619—Defendants maintain that Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller is barred by sovereign immunity. However, as explained below, the Court finds that two other arguments made by Defendants, though raised in their motion pursuant to section 2-615, are properly raised under section 2-619: (1) that Plaintiffs' claims against the Governor are barred by separation of powers principles; and (2) that Plaintiffs' lack standing to pursue a claim against ISBE.

Section 2-619 allows for disposal of issues of law or easily provided issues of fact. Williams v. Bd. of Ed. of the City of Chi., 222 Ill. App. 3d 559, 562 (1st Dist. 1991). A section 2-619 motion admits all well-pleaded facts in the complaint but does not admit conclusions of law or conclusions of fact unsupported by specific allegations. Melko v. Dionisio, 219 Ill. App. 3d 1048, 1057 (2d Dist. 1991). In reviewing a section 2-619 motion to dismiss, the court must construe all documents presented in the light most favorable to the non-moving party and if no disputed issue of material fact is found, the court should grant the motion. Id. A motion brought under section 2-619 must satisfy a rigorous standard, and may be granted only where "no set of facts can be proven that would support the plaintiff's cause of action." Nosbaum v. Martini, 312 Ill. App. 3d 108, 113 (1st Dist. 2000).

There are nine enumerated bases for dismissal under section 2-619. See 735 ILCS 5/2-619 (West 2012). Section 2-619(a)(1) permits involuntary dismissal where the court lacks subject matter jurisdiction over the plaintiff's cause of action. 735 ILCS 5/2-619(a)(1) (West 2012). Section 2-619(a)(9) permits involuntary dismissal where the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9) (West 2012). Affirmative matter in a section 2-619(a)(9) motion is something in the nature of a defense that completely negates the cause of action. Alpha Sch. Bus. Co. v. Wagner, 391 Ill. App. 3d 722, 744 (1st Dist. 2009). Consequently, the moving party admits the legal sufficiency of the complaint, but asserts an affirmative defense or some other matter to defeat the plaintiff's claim. Id. A defendant has the burden of proving the affirmative

matter relied upon in its motion to dismiss. Meyer v. Murray, 70 Ill. App. 3d 106, 114 (1st Dist. 1979). A defendant that presents affidavits or other evidentiary matter supporting the asserted defense satisfies the initial burden of going forward on the motion and the burden then shifts to the plaintiff. Kedzie & 103rd Currency Exch., Inc. v. Hodge, 156 Ill. 2d 112, 116 (1993). A movant cannot merely rely upon evidence offered to refute well-pleaded facts, since well-pleaded facts must be taken as true for the purposes of a motion to dismiss under section 2-619. Meyer, 70 Ill. App. 3d at 114. In a 2-619 motion, the defendant is essentially saying "Yes, the complaint was legally sufficient but an affirmative matter exists that defeats the claim." Howle v. Aqua Ill., Inc., 2012 IL App (4th) 120207, ¶ 35. Once the movant satisfies its burden, the plaintiff must then establish by affidavit or other evidentiary matter that the asserted defense is either unfounded or requires the resolution of an essential element of material fact before it is proven. Kedzie, 156 Ill. 2d at 116.

The Court begins its analysis of Defendants' motion to dismiss pursuant to section 2-619 with Defendants argument that Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller is barred by sovereign immunity.

IV(B)(4)(i)(a). Sovereign Immunity

Defendants argue that the State Lawsuit Immunity Act (the "Immunity Act"), 745 ILCS 5/1, bars Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller because ICRA does not include an explicit waiver of the State's immunity from suit under the Immunity Act, citing In re Special Educ. of Walker, 131 Ill. 2d 300 (1989); People ex rel. Madigan v. Excavating & Lowboy Servs., Inc., 388 Ill. App. 3d 554 (1st Dist. 2009); and Chicago Urban League v. State of Illinois, No. 08 CH 30490, 2009 WL 1632604 (Ill. Cir. Ct. Apr. 15, 2009).In addition, contend Defendants, the Immunity Act likewise bars Plaintiffs' claims as pleaded against the Governor and the Comptroller because neither are units of State government as contemplated by ICRA but, instead, are identical to the State when they act in their official capacity as two of the six elected constitutional officers of the State's executive branch, citing Smith v. Jones, 113 Ill. 2d 126 (1986); and Sass v. Kramer, 72 Ill. 2d 485 (1978). As such, Defendants maintain that Plaintiffs' Complaint should be dismissed as against the State, the Governor, and the Comptroller pursuant to section 2-619 of the Code of Civil Procedure. So too, according to Defendants, should Plaintiffs' motion for preliminary injunction be denied as against the State, the Governor, and the Comptroller on the basis that Plaintiffs are not likely to succeed on the merits of their Complaint against the State, the Governor, and the Comptroller.

Plaintiffs retort that waiver of the State's immunity from suit under the Immunity Act need not be explicit or otherwise expressed in any particular way. On the contrary, according to Plaintiffs, the relevant inquiry is whether the legislature intended to impose liability on the State, citing Martin v. Giordano, 115 Ill. App. 3d 367 (4th Dist. 1983). Further, Plaintiffs assert that Defendants' construction of ICRA as it relates to the State's immunity to suit is inconsistent with the historical circumstances under which ICRA was passed, ICRA's legislative history, and binding caselaw construing ICRA, citing Grey v. Hasbrouck, 2015 IL App (1st) 130267. Plaintiffs also insist that Chicago Urban League is a non-binding circuit court order that was issued prior to and abrogated by the appellate court's decision in Grey.

In reply, Defendants emphasize their reliance on Chicago Urban League for the proposition that the State is immune from suit under the Civil Rights Act. Defendants also cite Mowen v. Dep't of Veterans Affairs, 2013 IL App (4th) 120603-U, to support their contention that, under ICRA, the State has not waived its immunity from suit pursuant to the Immunity Act because ICRA is susceptible to more than one reasonable interpretation on that issue.

As a preliminary matter, the Court notes that Mowen, cited by Defendants in their reply in support of their motion to dismiss, is an unpublished order entered the by the appellate court pursuant to Illinois Supreme Court Rule 23. Rule 23(e)(1) provides that an order entered under Rule 23 "is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case." Ill. Sup. Ct. R. 23(e)(1). Thus, under Rule 23(e)(1), Mowen has no precedential value whatsoever. Additionally, Defendants do not cite Mowen to support a contention of double jeopardy, *res judicata*, collateral estoppel, or law of the case. As such, the Court finds that Rule 23(e)(1) explicitly and unambiguously prohibits Defendants' citation to Mowen. Therefore, the Court will not consider Mowen for any purpose to resolve Defendants' section 2-619 motion to dismiss as it relates to the issue of sovereign immunity.

As a further procedural matter, the Court notes that neither party addresses the subsection of section 2-619 under which Defendants' sovereign immunity argument is raised. Nevertheless, a request for dismissal on the basis of sovereign immunity is a challenge to the Court's subject matter jurisdiction over the action and, therefore, is properly asserted pursuant to section 2-619(a)(1). Leetaru v. Bd. of Trs. of the Univ. of Ill., 2015 IL 117485, ¶ 41. Having found that Defendants' motion to dismiss as it relates to the State's immunity from suit under the Immunity Act is properly raised pursuant to section 2-619(a)(1), the Court will examine the scope of and limitations on the State's immunity from suit under the Immunity Act.

At common law, the doctrine of sovereign immunity "precluded suits against the government absent consent on behalf of the entity to be sued." People ex rel. Madigan v. Excavating & Lowboy Servs., 388 Ill. App. 3d 554, 558 (1st Dist. 2009). "The doctrine originates in the common law principle that 'the King can do no wrong,' and the more logical and practical principle that there can be no legal right against the authority that makes the law on which the right depends." In re Chicago Flood Litigation, 176 Ill. 2d 179, 190 (1997). Another (*post hoc*) rationale "advanced in support of the immunity rule . . . [was] the protection of public funds and public property," which corresponded "to the 'no fund' or 'trust fund' theory upon which charitable immunity is based." Molitor v. Kaneland Cmty. Unit Dist., 18 Ill. 2d 11, 22 (1959). That reasoning perhaps followed "the line that it is better for the individual to suffer than for the public to be inconvenienced." Id.

In any event, how the doctrine of sovereign immunity "ever came to be applied in the United States of America is one of the mysteries of legal evolution." Id. at 21. In fact, by "preserving the sovereign immunity theory, courts . . . overlooked the fact that the Revolutionary War was fought to abolish that 'divine right of kings' on which the theory is based." Id. at 21-22. Thus, in 1959, the Illinois Supreme Court in Molitor abolished the common law doctrine of sovereign immunity. Id. at 25.

Importantly, "[t]he doctrine of sovereign immunity was [also] abolished in Illinois by the 1970 Constitution '[e]xcept as the General Assembly may provide by law.'" Leetaru, 2015 IL 117485, ¶ 42 (quoting Ill. Const. 1970, art. XIII, § 4). Though, "[a]s it was authorized to do under this provision, the General Assembly subsequently reinstituted the doctrine through enactment" of the Immunity Act. Id. The Immunity Act provides that "the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2012). "Consequently, neither the State nor any of its departments can be sued in 'its own court or any other court without its consent.'" Excavating & Lowboy Servs., 388 Ill. App. 3d at 558 (quoting Welch v. Illinois Supreme Court, 322 Ill. App. 3d 345, 350 (2001)).

"[T]he overarching purpose of sovereign immunity is twofold, the protection of State functions from interference as well as the preservation and protection of State funds." Id. at 559. In accordance with those purposes, substance takes precedence over form with respect to the determination of whether sovereign immunity applies to a particular case. Leetaru, 2015 IL 117485, ¶ 44. "Whether an action is in fact one against the State . . . depends on the issues involved and the relief sought." Id. at ¶ 45.

In other words, "[t]hat an action is nominally one against the servants or agents of the State does not mean that it will not be considered as one against the State itself." Id. at ¶44. Thus, "[t]he prohibition 'against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested." Id. at ¶ 45 (quoting Healy v. Vaupel, 133 Ill. 2d 295, 308 (1990) (internal quotations omitted)). See also Parmar v. Madigan, 2017 IL App (2d) 160286, ¶ 20 ("sovereign immunity applies in the first instance only where the State is actually made a party in the case" and "is not circumvented by simple party designation."). Instead, "'[w]hen the State will be directly and adversely affected by the judgment or decree, making the State the real party against whom relief is sought, the suit is against the State.'" Grey v. Hasbrouck, 2015 IL App (1st) 130267, ¶ 24 (quoting Herget Nat'l Bank of Pekin v. Kenney, 105 Ill. 2d 405, 408-09 (1985) (internal quotations omitted)). "If a judgment for plaintiff could operate to control the actions of the State or subject it to liability, the action is effectively against the State and is barred by sovereign immunity." Westshire Retirement & Healthcare Ctr. v. Dep't of Pub. Aid, 276 Ill. App. 3d 514, 520 (1st Dist. 1995).

On the other hand, "there is a recognized presumption that the State or a department thereof cannot violate the constitution or the laws of the State." Grey, 2015 IL App (1st) 130267, ¶ 24. "Where such a violation takes place, the violation is 'deemed to be made by a State officer or the head of a department of the State, and such officer or head may be restrained by proper action instituted by a citizen.'" Id. (quoting Herget, 105 Ill. 2d at 411 (internal quotations omitted)). Thus, "[w]here the plaintiff is not attempting to enforce a present claim against the State but rather seeks to enjoin the defendant from taking actions in excess of his delegated authority, and in violation of the plaintiff's protectable legal interests, the suit does not contravene the immunity prohibition." Id. at ¶ 25.

This so-called officer suit exception "is premised on the principle that while legal official acts of state officers are regarded as the acts of the State itself, illegal acts performed by the officers are not." Leetaru, 2015 IL 117485, ¶ 46. "In effect, actions of a state officer undertaken without legal authority strip the officer of his official status." Id. "Accordingly, when a state

officer performs illegally or purports to act under an unconstitutional act or under authority which he does not have, the officer's conduct is not regarded as the conduct of the State." Id.

"Of course, not every legal wrong committed by an officer of the State will trigger this exception." Id. at ¶ 47. "For example, where the challenged conduct amounts to simple breach of contract and nothing more, the exception is inapplicable." Id. "Similarly, a state official's actions will not be considered *ultra vires* for purposes of the doctrine merely because the official has exercised the authority delegated to him or her erroneously." Id. "The exception is aimed, instead, at situations where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids." Id. "The purpose of the doctrine of sovereign immunity, after all is to 'protect[] the State from interference in its performance of the functions of government and preserve[] its control over State coffers.'" Id. (quoting S.J. Groves & Sons Co. v. State, 93 Ill. 2d 397, 401 (1982)). "The State cannot justifiably claim interference with its functions when the act complained of is unauthorized or illegal." Id.

"For similar reasons, the courts of Illinois have consistently held that an action to enjoin the State or its agents from taking actions in excess of their authority and in violation of plaintiff's protectable legal interests does not contravene the immunity problem." Id. at ¶ 48. "Even where the nominal defendant is the State or an agency of the State, sovereign immunity will not bar the action because the action is not considered against the State itself." Id. "By the same token, the fact that the named defendant is an agency or department of the State does not mean that the bar of sovereign immunity automatically applies." Id. at ¶ 44. "In appropriate circumstances, plaintiffs may obtain relief in circuit court even where the defendant they have identified in their pleadings is a state board, agency or department." Id.

Thus, plaintiffs may properly "seek injunctive relief in circuit court to prevent unauthorized or unconstitutional conduct by the State, its agencies, boards, departments, commissions and agents or to compel their compliance with legal or constitutional requirements." Id. at ¶ 48.

Accordingly, the threshold issue with respect to whether the State is immune from suit under the Immunity Act in any particular case is whether, by reference to the substance of the issues involved and the relief sought, the State is the real party against whom the plaintiff seeks relief, particularly where the relief sought would control the actions of the State or subject the State to monetary liability.[6]

Neither Plaintiffs nor Defendants, however, addresses whether the State is the real party against whom Plaintiffs seek relief or whether the substance of the issues raised in Plaintiffs'

[6] The Court notes that the U.S. Supreme Court's recent opinion in Lewis v. Clarke, 581 U.S. ___ (2017), on the issue of tribal sovereign immunity is consistent with the Court's application of Illinois law on the issue of the State's immunity from suit under the Immunity Act. Specifically, the U.S. Supreme Court noted, "courts should look to whether the sovereign is the real party in interest to determine whether sovereign immunity bars suit" because "[t]he identity of the real party in interest dictates what immunities may be available." Lewis v. Clarke, 581 U.S. ___ (2017) (slip op., at 5, 7). The U.S. Supreme Court continued, "In making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine *in the first instance* whether the remedy sought is truly against the sovereign." Id. (slip op., at 5) (emphasis added).

Complaint or the relief sought therein would control the actions of the State or subject the State to liability. Instead, the parties merely dispute whether the State has waived its immunity from suit under the Immunity Act, thereby taking for granted, without justification, that the Immunity Act applies to Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller.

As the movants, Defendants bear the burden, pursuant to section 2-619 of the Code of Civil Procedure, to establish that the affirmative matter of the State's immunity from suit under the Immunity Act bars Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller. Doe v. Univ. of Chi. Med. Ctr., 2015 IL App (1st) 133735, ¶ 37. Further, a motion brought under section 2-619 must satisfy a rigorous standard, and can be granted only where "no set of facts can be proven that would support the plaintiff's cause of action." Nosbaum v. Martini, 312 Ill. App. 3d 108, 113 (1st Dist. 2000). Thus, the Court could deny Defendants' motion to dismiss as it relates to the Immunity Act on the simple basis that Defendants have failed to satisfy their burden to establish, or even to address the threshold matter that the State's immunity from suit pursuant to the Immunity Act applies to Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller because the State is the real party against whom Plaintiffs seek relief.

Nevertheless, the Court will proceed to analyze whether the Immunity Act applies to Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller based on the substance of the issues raised and the relief sought in Plaintiffs' Complaint. The prayer for relief in Plaintiffs' Complaint states:

> Plaintiffs respectfully request that the Court grant the following relief:
>
> A. Declare unlawful the State's separate and unequal systems of funding for public education in Illinois – one for Chicago and one for the rest of the [sic] Illinois – as violating the Illinois Civil Rights Act;
>
> B. Preliminarily and permanently enjoin Defendants from distributing State funds to any person or entity within the State in a manner that discriminates against Plaintiffs;
>
> C. Declare unlawful the State's separate and unequal pension funding obligations – one for CPS and one for the rest of the State – as violating the Illinois Civil Rights Act;
>
> D. Preliminarily and permanently enjoin Defendants from imposing on CPS a pension-funding obligation that discriminates against Plaintiffs;
>
> E. Award Plaintiffs their costs and reasonable attorneys' fees and expenses incurred in connection with bringing this action; and
>
> F. Grant Plaintiffs such other relief as the Court deems just and equitable.

Pl. Compl., at 24-25.

The prayer for relief in Plaintiffs' Complaint thus requests three types of relief: (1) declaratory judgments that the State's funding schemes for public education and public school teacher pensions violate ICRA; (2) an injunction that prohibits distribution of education-related State funds or pension funding obligations in a manner that violates ICRA; and (3) a monetary award in favor of Plaintiffs in the amount of their costs and reasonable attorney fees and expenses incurred in connection with bringing this action under ICRA.

The Court emphasizes that an action is deemed to be against the State as the party vitally interested in the outcome of the action for purposes of the State's immunity from suit pursuant to the Immunity Act when "a judgment for plaintiff could operate to control the actions of the State or subject it to liability." Westshire, 276 Ill. App. 3d at 520. It goes without saying that neither the declaratory relief sought by Plaintiffs in paragraphs A and C of the prayer for relief in their Complaint nor the injunctive relief sought by Plaintiffs in paragraphs B and D would subject the State to monetary liability.

The Court also finds that the declaratory or injunctive relief sought by Plaintiffs would not control the actions of the State. This is so because the specific relief requested is merely a declaration that the State's current schemes for education-related funding and public school teacher pension funding violate ICRA and an injunction prohibiting enforcement of those schemes. Though Plaintiffs, in a footnote in their response in opposition to Defendants' motion to dismiss, reserve the right to seek a mandatory injunction requiring the State to distribute funds already approved for public school teacher pensions in a way that does not violate ICRA, even that relief would not control the actions of the State. This is so because, similar to the preliminary injunctive relief Plaintiffs seek, Plaintiffs do not request or reserve the right to request any ultimate relief that would force the State to enact any particular schemes for education-related funding or public school teacher pension funding. Furthermore, the Immunity Act simply does not apply to such prospective declaratory and injunctive relief. As previously noted, "an action to enjoin the State or its agents from taking actions in excess of their authority and in violation of plaintiff's protectable legal interests does not contravene the immunity problem." Leetaru, 2015 IL 117485, ¶ 48.

Therefore, the Court finds that the Immunity Act does not apply to the declaratory or injunctive relief sought by Plaintiffs in paragraphs A, B, C, or D of the prayer for relief of their Complaint as pleaded against the State, the Governor, and the Comptroller.

The monetary award that Plaintiffs seek in paragraph E in the prayer for relief of their Complaint for their costs, attorney fees, and expenses incurred in connection with bringing this action under ICRA, on the other hand, would subject the State to monetary liability at least to the extent that the Complaint is pleaded against the State. Therefore, the Court finds that the Immunity Act applies to Plaintiffs' request for a monetary award at least to the extent the Complaint is pleaded against the State. Nevertheless, even assuming that the Immunity Act applies to the extent the Complaint is pleaded against the Governor and the Comptroller as the functional equivalents of the State as well, the Court is bound to find that the State has consented to be subjected to liability for the costs, attorney fees, and expenses of a plaintiff that is a prevailing party in any action brought under ICRA pursuant to the appellate court's decision in Grey v. Hasbrouck, 2015 IL App (1st) 130267.

The Immunity Act recognizes exceptions to the State's immunity from suit "as provided in the Illinois Public Labor Relations Act [5 ILCS 315/1 *et seq.*], the Court of Claims Act [705 ILCS 505/1 *et seq.*], the State Officials and Employees Ethics Act [5 ILCS 430/1-1 *et seq.*], and Section 1.5 of this Act [745 ILCS 5/1.5]." 745 ILCS 5/1 (West 2012). Beyond the exceptions to the State's immunity from suit recognized in the Immunity Act, the General Assembly may also, by statute, waive the State's immunity from suit and thereby consent to be sued. In re Special Education of Walker, 131 Ill. 2d 300, 303 (1989). "The State's consent must be, however, 'clear and unequivocal.'" Id. (quoting Martin v. Giordano, 115 Ill. App. 3d 367, 369 (4th Dist. 1983)). In other words, "the State's waiver of immunity must be expressed through specific legislative authorization and must appear in affirmative statutory language." Id. at 304.

Only at this point do the parties' arguments as to whether the State has waived its immunity from suit under to the Immunity Act become relevant. Plaintiffs, in pertinent part, argue that the appellate court in Grey ruled that the State has waived its immunity from suit under the Immunity Act for claims brought against it pursuant to ICRA. The Court agrees, especially with respect to a claim for costs and attorney fees incurred in pursuing a claim brought pursuant to ICRA.

In Grey, transgender persons who were born in Illinois brought a class action lawsuit against the Director of Public Health and the State Registrar of Vital Records, alleging that the defendants violated the Vital Records Act and the plaintiffs' rights to due process and privacy under the Illinois Constitution by denying the plaintiffs' applications to change the sex designation on their birth certificates because they had not undergone genital surgery. Grey, 2015 IL App (1st) 130267, ¶¶ 3-4. The plaintiffs sought declaratory and injunctive relief, and an award of costs and reasonable attorney fees pursuant to section 5 of ICRA. Id. at ¶ 4. The parties ultimately resolved the substantive issues raised in the complaint pursuant to a consent decree. Id.

After conducting a hearing on the plaintiffs' request for an award of attorney fees as provided under ICRA, the circuit court awarded the plaintiffs costs and attorney fees in the amount of $135,000.00 as the prevailing party. Id. at ¶ 5. The appellate court affirmed, finding that "[t]he legislature subjected the State to the provisions of the Civil Rights Act" and thereby waived sovereign immunity under ICRA. Id. at ¶ 20. The appellate court continued, "*Section 5(a)* specifically refers to the 'State' as an entity of government that can be sued under *section 5(b)*." Id. "*Section 5(c)*," found the appellate court, "provides that the court may award attorney fees and costs to a party who prevails in any action brought pursuant to *section 5(b)*, or to enforce a right arising under the Illinois Constitution." Id. The appellate court noted, "After allowing the State to be sued under the Civil Rights Act, the legislature, had it wished to exempt the State from the obligation of paying attorney fees and costs as provided therein, could have done so," but it did not. Id. Therefore, the appellate court concluded, "Construing *section 5* of the Civil Rights Act as a whole, the State consented to be sued and, therefore, consented to pay attorney fees and costs to the prevailing party. Sovereign immunity does not bar an award of attorney fees and costs pursuant to *section 5(c)* of the Civil Rights Act against the State." Id. at ¶ 21.

Plaintiffs' Complaint is brought pursuant to section 5(b) of ICRA and alleges violations of section 5(a)(2). Section 5(c) provides that a court may award attorney fees and costs to a party who prevails in any action brought pursuant to section 5(b). Under Grey, the State, under section 5(c) of ICRA, has consented to pay attorney fees and costs to the prevailing party in an action brought against it pursuant to section 5(b) and, therefore, such an award is not barred by the Immunity Act.

Lastly, the Court addresses Defendants' significant reliance on Chicago Urban League v. State of Illinois, No. 08 CH 30490, 2009 WL 1632604 (Ill. Cir. Ct. Apr. 15, 2009). As an initial matter, the Court notes that Chicago Urban League is a circuit court ruling and, therefore, is not binding authority on this Court. Instead, Chicago Urban League is at most persuasive authority. However, the Court does not find Chicago Urban League persuasive for two reasons.

First, the relief sought by the plaintiffs in Chicago Urban League is significantly distinguishable from the relief sought by Plaintiffs in this action. It is true that the plaintiffs in Chicago Urban League also sought relief similar to that requested by Plaintiffs in this action. To wit, in counts II through V of their complaint, the plaintiffs requested "preliminary and permanent injunctive relief preventing the State from implementing the current funding system" for public education in Illinois. Chicago Urban League, 2009 WL 1632604, at *10. This type of relief, of course, is generally consistent with the relief that Plaintiffs seek in this action, a declaration that the State's current schemes for education-related funding and public school teacher pension funding violate ICRA and an injunction prohibiting enforcement of those schemes.

However, according to the court in Chicago Urban League, the plaintiffs in counts III through V of their complaint also sought to "require the State to reform the funding system to ensure that each school receives the funding it deserves." Id. at *10. The court in Chicago Urban League observed that such a mandate "would touch not only the legislative and administrative functions of state government, but the state's purse-strings by demanding a re-allocation of resources." Id. Indeed, a request for such relief implicates the fundamental purposes of the State's immunity from suit under the Immunity Act because it is directly targeted to control the State's core legislative functions and would also impinge on the State's ability to protect and preserve its coffers. Excavating & Lowboy Servs., 388 Ill. App. 3d at 559.

Therefore, consistent with the maxim that substance takes precedence over form with respect to the determination of whether the State's immunity from suit under the Immunity Act applies to a particular case, the court in Chicago Urban League correctly held that sovereign immunity applied to bar counts II through V based on the totality of the issues involved and the relief sought. But the same cannot be said of the issues involved or the relief sought in Plaintiffs' Complaint in this action because Plaintiffs' requests do not implicate the fundamental purposes of the State's immunity from suit under the Immunity Act. On the contrary, Plaintiffs' request for a declaration that the State's current schemes for education-related funding and public school teacher pension funding violate ICRA and an injunction prohibiting enforcement of those schemes is "an action to enjoin the State or its agents from taking actions in excess of their authority and in violation of plaintiff's protectable legal interests [that] does not contravene the immunity problem." Leetaru, 2015 IL 117485, ¶ 48.

Second, the conclusion of the court in Chicago Urban League that the plaintiffs' claim under ICRA in count I as pleaded against the State was barred by the doctrine of sovereign immunity on the basis that the State had not expressly and unequivocally waived it's immunity from suit for claims brought under ICRA is presumably though not explicitly predicated upon the prior finding that the Immunity Act applied in the first instance based on the totality of the issues involved and the relief sought in the case. However, as previously explained, the Court finds that the totality of the issues involved and the relief sought in Plaintiffs' Complaint in this action do not implicate the purposes of the State's immunity from suit under the Immunity Act such that the Court concludes that the Immunity Act does not apply in this case.

Finally, the court's conclusion in Chicago Urban League that ICRA does not provide an explicit waiver of the State's immunity from suit under the Immunity Act and only explicitly waives the immunity from suit "held by units of state, county and local government" is irreconcilable with the appellate court's opinion in Grey, which is binding authority on this Court. The appellate court in Grey, in no uncertain terms, held that "[t]he legislature subjected the State to the provisions" of ICRA on the basis that "[*s*]*ection 5(a)* specifically refers to the 'State' as an entity of government that can be sued under *section 5(b)*." Grey, 2015 IL App (1st) 130267, ¶ 20.

Accordingly, the Court finds that Plaintiffs' Complaint as pleaded against the State, the Governor, and the Comptroller is not barred by the Immunity Act and, therefore, denies Defendants' motion to dismiss pursuant to section 2-619(a)(1). The Court now turns to Defendants' motion to dismiss based on standing.

IV(B)(4)(i)(b). Standing

Within Defendants' first argument on their motion to dismiss pursuant to section 2-615, Defendants also assert that Plaintiffs do not have standing to pursue a claim against ISBE. Though Defendants' standing argument is raised within their motion to dismiss pursuant to section 2-615, the Court notes that lack of standing is an "affirmative matter" that is properly raised under section 2-619(a)(9). Glisson v. City of Marion, 188 Ill. 2d 211, 220 (1999).

Meticulous practice dictates that motions to dismiss should be properly designated. Wheaton, 353 Ill. App. 3d at 69. The failure to do so may not always be fatal, but reversal is required if prejudice results to the nonmovant. Jenkins, 345 Ill. App. 3d at 674.

The Court finds that to the extent Defendants' argue that Plaintiffs' do not have standing to assert a claim against ISBE, Defendants do not rely on affidavits or other evidentiary material that would prejudice Plaintiffs. However, the Court notes that Plaintiffs do not respond to Defendants' standing argument. Thus, the Court finds that Defendants' misdesignation of their standing argument under section 2-615 as opposed to section 2-619 has prejudiced Plaintiffs. While the Court could deny Defendants' motion to dismiss ISBE based on Plaintiffs' lack of standing on the basis that Defendants' argument is misdesignated, the Court will nevertheless proceed to address the merits of Defendants' standing argument.

"The doctrine of standing insures that issues are raised only by those parties with a real interest in the outcome of the controversy." Carr v. Koch, 2012 IL 113414, ¶ 28. As a general

matter, "standing requires some injury in fact to a legally cognizable interest." Glisson, 188 Ill. 2d at 221. "The claimed injury may be actual or threatened, and it must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." Id. Additionally, "'[w]here the effect of the challenged action is generalized, speculative or *de minimus*, the complaining party will not have standing.'" Amtech Sys. Corp. v. Ill. State Toll Highway Auth., 264 Ill. App. 3d 1095, 1103 (1st Dist. 1994) (quoting Helmig v. John F. Kennedy Sch. Dist. 129, 241 Ill. App. 3d 653, 658 (3d Dist. 1993)).

"[D]etermining whether a plaintiff has standing depends on the allegations in the complaint . . . ." Maglio v. Advocate Health & Hosps. Corp., 2015 IL App (2d) 140782, ¶ 21. However, "the plaintiff need not allege facts in the complaint that establish standing." Id. "Rather, a plaintiff's lack of standing is an affirmative defense and, as such, must be pleaded and proven by the defendant." Id. "Where standing is challenged by way of a motion to dismiss, a court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that can reasonably be drawn in the plaintiff's favor." Int'l Union of Operating Eng'rs, Local 148 v. Ill. Dep't of Empl. Sec., 215 Ill. 2d 37, 45 (2005).

The Court notes that Defendants' arguments regarding Plaintiffs' failure to state a claim under ICRA and Defendants' arguments that Plaintiffs do not have standing to sue are intermingled. Moreover, Defendants' standing argument is wholly undeveloped. Defendants merely assert that Plaintiffs do not have standing to pursue a claim against ISBE, Meeks and Smith, because ISBE does not administer pension funding and therefore, Plaintiffs have not traced their alleged injury to criteria or methods of administration used by the ISBE. Defendants, however, do not argue that such an assertion is in itself sufficient to establish that Plaintiffs lack standing to pursue the present action.

Defendants' argument hinges on the second element that courts consider when evaluating the alleged harm. Defendants' argument is simply that the harm Plaintiffs claim cannot be traced to ISBA, Meeks and Smith, because the ISBA does not administer pension funding in Illinois. However, Defendants' reliance on this argument is misplaced. Plaintiffs allege, in Count I of their Complaint, that the harm they suffer is due to the alleged inequality in "education funding" which includes pension funding, but is not exclusively pension funding. Additionally, although Count II of Plaintiffs' Complaint relates to pension funding exclusively, that does not mean that ISBA, Meeks and Smith are not proper Defendants in the present action, by virtue of the harm alleged by Plaintiffs in Count I. In other words, standing requires that the harm a plaintiff claims be fairly traceable to the defendant's actions, not *exclusively* traced to the defendant's actions.

Crucially, Defendants fail to address the essence of the standing issue, which is, whether Plaintiffs are or will be in imminent danger of sustaining a direct injury. In fact, Defendants entirely fail to address how the standing issue affects each of the individual Plaintiffs in this action. It bears mentioning that standing is an inquiry as to whether *a plaintiff* has a real interest in the outcome of the controversy. In conclusion, Defendants' standing argument—which consists of a single sentence in their motion to dismiss—fails as Defendants do not satisfy their burden to show that Plaintiffs lack standing in the present action. As such, the Court denies Defendants' motion to dismiss for lack of standing. The Court now turns to Defendants' motion to dismiss based on the separation of powers doctrine.

IV(B)(4)(i)(c). Separation of Powers

Defendants argue that Plaintiffs' claims against Governor Rauner must be dismissed because the relief Plaintiffs seek violates the separation of powers doctrine. Defendants note that Plaintiffs allege that Governor Rauner vetoed Amended Senate Bill 2822, which would have provided an additional $215 million to aid CPS for funding teachers' pensions. It was the Governor's veto, posit Defendants, that Plaintiffs claim has caused CPS' current fiscal dilemma. What the Plaintiffs want, according to the Defendants, is for this Court to override the Governor's veto. While a court may determine whether a veto complied with constitutional procedures or otherwise violated the constitution, a court may not, assert the Defendants, override the Governor's veto as such action would violate the separation of powers doctrine citing Jorgensen v. Blagojevich, 211 Ill. 2d 286 (2004).

Plaintiffs respond that ICRA expressly creates a cause of action for a plaintiff to bring a claim before the Court, and that the Attorney General does not have the power to withdraw that express grant of jurisdiction, citing 740 ILCS 23/5(b) (West 2012). Plaintiffs suggest that Defendants' characterization of their argument as a "violation of separation of powers" rather than as a "political question" stems from the fact that the Illinois Appellate Court already rejected a similar argument, citing Central Austin Neighborhood Ass'n v. City of Chicago, 2013 IL App (1st) 123041. Moreover, Plaintiffs note that their request for relief is not a judicial intervention on Governor Rauner's power to veto.

Defendants reply that Central Austin is distinguishable from this case and that, to the extent that it is applicable, it actually supports Defendants' contention that political questions prohibit the judiciary from deciding a matter delegated to a political branch of government. Also, Defendants posit that Plaintiffs' response evidences that they seek to override the General Assembly's decision about pension funding. Defendants further assert that Plaintiffs wrongly argue that ICRA operates by subjecting the appropriations decisions of the legislature to judicial review, citing A.B.A.T.E. of Ill., Inc. v. Giannoulias, 401 Ill. App. 3d 326, 335 (4th Dist. 2010); Choose life Ill., Inc. v. White, 547 F.3d 853, 858 (7th Cir. 2008). As such, Defendants conclude, Plaintiffs' claims are barred by separation of powers principles and the political question doctrine.

As an initial matter, the Court notes that Defendants raise their separation of powers argument within their motion to dismiss pursuant to section 2-615. However, the Court finds that invocation of the separation of powers doctrine is not properly raised pursuant to section 2-615 because it does not challenge the sufficiency of Plaintiffs' Complaint to state a cause of action under ICRA. Instead, Defendants assert the doctrine of separation of powers to defeat part of the relief that Defendants insist Plaintiffs seek—a judicial override of the Governor's veto. Therefore, the Court finds that Defendants' separation of powers argument is properly raised pursuant to section 2-619(a)(9). However, the Court finds that Plaintiffs were not prejudiced by Defendants' mis-designation such that the Court will address Defendants' invocation of the separation of powers doctrine on its merits.

"The separation of powers clause of the Illinois Constitution provides: 'The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging

to another.'" In re Derrico G., 2014 IL 114463, ¶ 75 (quoting Ill. Const. 1970, art. II, § 1). The Illinois Constitution "does not attempt to define legislative, executive and judicial power, as it is neither practicable nor possible to enumerate the myriad powers of government and to declare that a given power belongs exclusively to one branch for all time." Id. "In both theory and practice, the purpose of the provision is to ensure that the whole power of two or more branches of government shall not reside in the same hands." Id.

"The separation of powers provision was not designed to achieve a complete divorce among the three branches of our system of government; nor does it prescribe a division of governmental powers into rigid, mutually exclusive compartments." Id. at ¶ 76. "'By necessity, the branches of government do not operate in isolation, and between them there are some shared or overlapping powers.'" Id. (quoting People v. Hammond, 2011 IL 110044, ¶ 52) (internal quotations omitted). "Inevitably, there will be areas in which the separate spheres of government overlap, and in which certain functions are shared." Id. "Put simply, the three branches of government are 'parts of a single operating government, and . . . the separation of powers clause was not designed to achieve a complete divorce between them.'" Id. (quoting County of Kane v. Carlson, 116 Ill. 2d 186, 208) (internal quotations omitted).

"The separation of powers doctrine applies when one branch seeks to exert a substantial power belonging to another." In re General Order of October 11, 1990, 256 Ill. App. 3d 693, 696 (1st Dist. 1993). "The determination of when, and under what circumstances, a violation of the separation of powers doctrine has occurred remains with the judiciary." Derrico G., 2014 IL 114463, ¶ 76.

The lawmaking power is vested in the legislature. People v. Tibbits, 56 Ill. 2d 56, 58 (1973). The quintessential power of the legislature is to declare what the law shall be—to create and enact the laws of the State of Illinois. General Order of October 11, 1990, 256 Ill. App. 3d at 696. In other words, "the State constitution is not a grant of power to the legislature but is a limitation upon its powers, and that the legislature possesses every power not delegated to some other department or to the Federal government or not denied to it by the constitution of the State or of the United States." Fenske Bros., Inc. v. Upholsterers' Int'l Union, 358 Ill. 239, 250 (1934). Thus, "[i]t is well settled that the legislature may, in the exercise of the police power of the State, enact those measures which have a tendency to promote the public comfort, health, safety, morals or welfare of society." Id.

With respect to the executive, the Illinois Constitution, in pertinent part, grants the Governor the "supreme executive power," who is "responsible for the faithful execution of the laws." Ill. Const. 1970, art. V, § 8. In particular, the Governor has the power to veto legislation passed by the General Assembly if he does not approve of it. Ill. Const. 1970, art. IV, § 9(b).

The judiciary has "'the power which adjudicates upon the rights of citizens and to that end construes and applies the law.'" People v. Joseph, 113 Ill. 2d 36, 41 (1986) (citing People v. Hawkinson, 324 Ill. 285, 287 (1927). As such, if a power is essentially judicial, the legislature may not exercise it. Id. Conversely, "the judiciary cannot legislate, nor can it enjoin the legislature from doing so [.]" Murphy v. Collins, 20 Ill. App. 3d 181, 194 (1st Dist. 1974). See also General Order of October 11, 1990, 256 Ill. App. 3d at 696 (holding general order entered by circuit court concerning procedures for the treatment of sick or injured minors was void as an

improper exercise of legislative power by the judiciary). Furthermore, although the judiciary may determine whether the laws or state constitution grant certain powers upon the executive branch, the judiciary may not usurp powers which are properly exercised by the executive. See W. Side Org. Health Servs. Corp v. Thompson, 73 Ill. App. 3d 179, 187-188 (1st Dist. 1979); People v. Watson, 347 Ill. App. 3d 181, 186-187 (1st Dist. 2004). Thus, the quintessential power of the judiciary is to declare what the law is or has been—to interpret and apply the U.S. and Illinois Constitutions and federal and State law as declared and enacted by the U.S. Congress and the General Assembly. General Order of October 11, 1990, 256 Ill. App. 3d at 696.

Thus, Defendants' characterization of Plaintiffs' Complaint as a challenge to the Governor's veto of the $215 million CPS funding bill indeed raises concerns with respect to the separation of powers doctrine. However, as discussed above, Plaintiffs are correct to label that characterization as a straw man because Plaintiffs expressly disclaim that they seek to challenge or override the Governor's veto. Instead, as the Court has repeatedly stressed, Plaintiffs insist that they seek nothing more than for the Court to declare the State's funding of public schools and public school teacher pensions in violation of ICRA and, as a result, to enjoin the State's distribution of funds to public schools and public school teacher pension funds unless and until such funds are distributed in a manner consistent with ICRA. Defendants are bound to accept the relief Plaintiffs seek for what it is and cannot mischaracterize that relief to serve their own ends. Accordingly, the Court denies Defendants' motion to dismiss the Governor based on the separation of powers doctrine.

In addition, although Defendants did not raise this issue in their motion to dismiss, and raised it for the first time in the reply, the Court nonetheless finds that this case does not present a "political question." When a court is presented with the task of deciding whether the implementation of a law or policy violates ICRA, such determination is proper for the Court to make, as the Court would not be deciding an issue constitutionally and exclusively delegated to the political branches. Central Austin, 2013 IL App (1st) 123041, ¶ 20. Nor as Plaintiffs note, does this case present the issue of lack of judicially discoverable criteria that would preclude the Court from adjudicating the matter. See Id. at 23; Baker v. Carr, 369 U.S. 186, 210 (1962).

Therefore, the Court denies Defendants' motion to dismiss pursuant to section 2-619 in its entirety and now turns to Defendants' motion to dismiss pursuant to section 2-615.

IV(B)(4)(ii). Defendants' Section 2-615 Motion to Dismiss

Defendants' first argument for dismissal pursuant to section 2-615 is that Plaintiffs fail to allege that ISBE utilizes any criteria or methods of administration that causes a disparate impact. Rather, note Defendants, the amount of educational funding that ISBE distributes to CPS is determined by statute and legislative appropriations. As such, according to Defendants, ISBE lacks discretion in the distribution of educational funds. Therefore, conclude Defendants, ISBE, Meeks, and Smith, are not liable under ICRA, citing Munguia v. State of Illinois, No. 10 C 0055, 2010 U.S. Dist. LEXIS 81495 (N. D. Ill. Aug. 11, 2010).

Plaintiffs respond that Defendants' contention that State education funding and teacher pension costs cannot be considered together is erroneous. Plaintiffs assert that the largest component in CPS' budget is compensation for teachers, of which teacher pensions are a part. As

for the Defendants' contention that ISBE cannot be liable under ICRA because it lacks discretion in the allocation of funds based on Munguia, Plaintiffs find that case supportive of their position. Defendants reply, unsurprisingly, that Munguia does not support Plaintiffs' position because their interpretation of Munguia is erroneous.

In Munguia, the plaintiffs brought a three-count class action complaint against the defendants, the State of Illinois, the Regional Transit Authority ("RTA"), and others, alleging that the defendants discriminated against minorities in the City of Chicago by disproportionately funding suburban mass transit over urban mass transit. Munguia v. State of Illinois, No. 10 C 0055, 2010 U.S. Dist. LEXIS 81495, at *2 (N. D. Ill. Aug. 11, 2010). Count III alleged a violation of ICRA. Id. The federal district court dismissed Count III to the extent that it was based on RTA's actions that fulfilled statutory mandates finding that RTA could not be liable under ICRA for such actions. Id. at *28-32. However, the federal district court found that RTA could be liable under ICRA to the extent RTA exercised discretion over funding and capital planning such that Count III was not dismissed in its entirety. Id. at *21.

The Court agrees with Plaintiffs that Munguia is not dispositive of this case for two reasons. First, with the exception of opinions of the United States Supreme Court on issues of federal statutory or constitutional law, decisions of federal courts are not binding or precedential on Illinois courts. Mekertichian v. Mercedes-Benz U.S.A., L.L.C., 347 Ill. App. 3d 828, 835-36 (1st Dist. 2004). Instead, federal court decisions are at most persuasive authority. Id. Further, unpublished federal court decisions are of less persuasive value than published decisions. See Kaufman v. Barbiero, 2013 IL App (1st) 132068, ¶ 46 (declining to consider unpublished federal district court decision).

Second, as noted by Plaintiffs, RTA's motion to dismiss Count III was only granted to the extent that Count III was based on RTA's actions that fulfilled statutory mandates, but was denied to the extent that Count III was based on RTA's exercise of discretion over funding and capital planning of mass transit projects in the Chicago metropolitan area. Munguia, 2010 U.S. Dist. LEXIS 81495, *19. Thus, the Court finds that to the extent Munguia is persuasive authority, it is only persuasive for the proposition, discussed in detail below, that section 5(a)(2) of ICRA applies only to discretionary administrative actions and does not apply to actions in compliance with statutory mandates.

Defendants continue that Count I—Plaintiffs' "disparate funding" claim—should be dismissed because the legislature's funding decisions cannot be considered "criteria" or "methods of administration" subject to ICRA. Defendants cite Swan v. Board of Education of the City of Chicago, 2013 WL 4401439 (N.D. Ill. Aug. 15, 2013), for this proposition. In fact, assert Defendants, rather than challenge a specific policy or practice as required by ICRA, Plaintiffs instead rely on a "bottom line" theory of disparate impact that courts have rejected, again citing Swan.

Plaintiffs counter that they are not challenging a "generalized policy" but rather, are challenging "the specific State practice of appropriating 99.7% of the State's teacher pension contributions to TRS, while directing 0.3% of those contributions to CTPF." Pls. Resp., at 14-15. Swan, posit Plaintiffs was concerned with a "bottom line" statistical imbalance which was caused by numerous factors. By contrast, assert Plaintiffs, in this case only one factor has caused

the bottom line disparity, to wit: the States' decision to continue funding TRS in full, while declining to provide any material funding for CTPF.

Defendants reply that Plaintiffs do not dispute that ISBE does not play a role regarding TRS or CTPF pension funding. Moreover, Defendants assert that Plaintiffs also do not dispute that excluding pension funding, CPS receives more funding than other school districts in Illinois. Plaintiffs have further failed, posit Defendants, to identify a specific policy or practice for which they can bring a claim under ICRA.

A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. Marshall v. Burger King Corp., 222 Ill. 2d 422, 429 (2006). The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. Beahringer v. Page, 204 Ill. 2d 363, 369 (2003). The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. Id. This determination requires an examination of the complaint as a whole, not its distinct parts. Lloyd v. County of Du Page, 303 Ill. App. 3d 544, 552 (2d Dist. 1999). In reviewing the sufficiency of a complaint, a court must accept all well-pleaded facts and all reasonable inferences that may be drawn from those facts. Burger King Corp., 222 Ill. 2d at 429. A complaint is deficient when it fails to allege facts necessary for recovery. Chandler v. Ill. Cent. R.R., 207 Ill. 2d 331, 348 (2003). A court should not dismiss a cause of action unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. Redelman v. Sprayway, Inc., 375 Ill. App. 3d 912, 917 (1st Dist. 2007).

As the Plaintiffs have brought their claims pursuant to section 5(a)(2) of ICRA, the Court begins its analysis by examining the relevant provisions of ICRA. Before doing so, however, the Court must place the origins of ICRA in context. ICRA was patterned after Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* ("Title VI"), see Weiler v. Vill. of Oak Lawn, 86 F. Supp. 3d 874, 889 (N.D. Ill 2014) ("ICRA was patterned on Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d).

"In 1964, as part of a groundbreaking and comprehensive Civil Rights Act, Congress prohibited recipients of federal funds from discriminating on the basis of race, ethnicity or national origin." Alexander v. Sandoval, 532 U.S. 275, 293 (2001) (Stevens, J., dissenting). Section 601 of Title VI of the Civil Rights Act of 1964 provides that "no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Section 602 of Title VI authorizes and directs all federal departments and agencies empowered to extend federal financial assistance to issue "rules and regulations, or orders of general applicability in order to effectuate § 601's mandate. 42 U.S.C. § 200d-1. The Department of Justice enacted regulations to enforce Title VI. The regulations provided that no recipient of federal funds could:

> Directly or through contractual or other arrangements, utilize criteria or other methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the

program with respect to the individuals of a particular race, color, or national origin.

28 C.F.R. § 42.104(b)(2)

Since the passage of Title VI, a body of caselaw developed that, while recognizing no explicit mandate establishing a private right of action, found an implied private right of action to enforce agency regulations under Section 602 of Title VI. See, e.g., Lau v. Nichols, 414 U.S. 563 (1974); Cannon v. University of Chicago, 441 U.S. 667 (1979); and Guardians Assn. v. Civil Service Comm'n of New York City, 463 U.S. 582 (1983). That all changed in 2001.

In 1990, Alabama ratified an amendment to its state constitution that proclaimed English as the official language of the State of Alabama. The Alabama Department of Public Safety subsequently adopted a policy of administering the state driver's license examinations only in English. A challenge was mounted as to the validity of the policy in Alexander v. Sandoval, 532 U.S. 275 (2001). The plaintiffs, who were non-fluent English speakers filed suit in the United States District Court for the Middle District of Alabama seeking to enjoin the Department's English-only policy arguing that it violated Section 602 of the Civil Rights Act of 1964 and its implementing regulations because it had a disparate impact on non-English speakers. Id. at 278-279. The district court agreed, rejecting the Defendants' contention that Title VI did not provide plaintiffs with a cause of action to enforce the regulation. Id. at 279. As such, the district court enjoined the policy and ordered the Department to accommodate non-English speakers. Id. The United States Court of Appeals for the Eleventh Circuit affirmed and the defendants appealed to the United States Supreme Court. Id.

The issue, as framed by the Supreme Court, was whether private individuals may sue to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act of 1964. Id. at 278. The Court, by a five-to-four decision, held that section 602 did not provide a private right of action to enforce the Department of Justice's regulations, including the prohibition of disparate impact discrimination. Id. at 293. The Court noted that private rights of action to enforce federal law must be created by Congress and the statute in question must evidence Congressional intent to create a private right of action. Id. at 286. Absent such an intent, stated the Court "a cause of action does not exist and courts may not create one, no matter how desirable that might be as policy matter, or how compatible with the statute." Id. 286-287. Next, the Court observed that although it had previously held that Congress intended Section 601 to be enforceable through a private right of action that right does not automatically extend to the statute's implementing regulations promulgated pursuant to section 602. Id. at 291. It is against this backdrop that ICRA was born.

Section 5 of ICRA provides, in pertinent part:

(a) No unit of State, county, or local government in Illinois shall:

(1) exclude a person from participation in, deny a person the benefits of, or subject a person to discrimination under any program or activity on the grounds of that person's race, color, national origin, or gender; or

(2) utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender.

(b) Any party aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a federal district court or State circuit court, against the offending unit of government. Any State claim brought in federal district court shall be a supplemental claim to a federal claim. This lawsuit must be brought not later than 2 years after the violation of subsection (a). If the court finds that a violation of paragraph (1) or (2) of subsection (a) has occurred, the court may award to the plaintiff actual damages. The court, as it deems appropriate, may grant as relief any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.

740 ILCS 23/5 (West 2012).

The Illinois General Assembly enacted ICRA in response to Sandoval. Illinois Native American Bar Association v. Univ. of Ill., 368 Ill. App. 3d 321, 327 (1st Dist. 2006). ICRA provides individuals with a cause of action under Illinois law for Title VI discrimination claims, including claims based on a disparate impact theory of liability. Illinois Native American Bar Association, 368 Ill. App. 3d at 327 (reviewing statements of ICRA's sponsors in the Illinois House of Representatives and Senate); Jackson v. Cerpa, 696 F. Supp. 2d 962, 964 (N.D. Ill. 2010) ("[ICRA] was expressly intended to provide a state law remedy that was *identical* to the federal disparate impact canon."). ICRA did not create new rights, but "merely created a new venue in which plaintiffs could pursue in the State courts discrimination actions that had been available to them in the federal courts." Illinois Native American Bar Association, 368 Ill. App. 3d at 327; see also Weiler v. Vill. of Oak Lawn, 86 F. Supp. 3d 874, 889 (N.D. Ill. 2014).

In construing a statute, a court's task is to "ascertain and give effect to the legislature's intent," the most reliable indicator of which is "the language of the statute, which is to be given its plain and ordinary meaning." Solon v. Midwest Med. Records Ass'n, 236 Ill. 2d 433, 440 (2010). To determine the plain meaning of statutory terms, a court should "consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it." Id. "When the statutory language is clear and unambiguous, it must be applied as written, without resort to extrinsic aids of statutory construction." Id. However, a court may consider extrinsic aids of construction if a statute is capable of being reasonably understood in two or more different ways. Id. An ambiguous statute should be construed "to avoid rendering any part of it meaningless or superfluous." Id. at 440-41. A presumption also exists "that the legislature did not intend absurd, inconvenient, or unjust consequences." Id. at 441.

Under the plain language of Section 5(a)(1) of ICRA, no unit of government in Illinois may exclude any person from participating in or deny the person the benefits of any program or activity based on that person's race color, national origin, or gender. Section 5(a)(1) is for all practical purposes the State counter-part to Section 601 of the Civil Rights Act of 1964. The Plaintiffs do not raise any claim under Section 5(a)(1).

Section 5(a)(2) of ICRA prohibits any unit of government in the State of Illinois from utilizing any criteria or method of administration in any program or activity that has the effect of subjecting individuals to discrimination on the basis of their race, color, national origin, or gender. Thus, section 5(a)(2) is essentially the State's analog to Section 602 of the Civil Rights Act of 1964 and its implementing regulations.

Plaintiffs in this case are comprised of CPS as well as individual Plaintiffs Marlon Gosa's children, Lisa Russell's children, Wanda Taylor's child, Vanessa Valentin's children and Judy Vazquez's children, each of whom identifies as African American or Hispanic. The Plaintiffs maintain that the State's educational funding violates ICRA because of its inequitable funding for education for CPS and its students, the majority of which are minority students. The State's pension funding, according to Plaintiffs, similarly violates ICRA because the State's system for pension funding education has a disparate impact on the Plaintiffs.

Plaintiffs' Complaint asserts a disparate-impact theory of liability under Section 5(a)(2) of ICRA. Since ICRA was patterned after Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Illinois courts "look to cases concerning alleged violations of federal civil rights statutes to guide our interpretation of [ICRA]." Central Austin, 2013 IL App (1st) 123041, ¶ 10. "In contrast to a disparate-treatment case, where a 'plaintiff must establish that the defendant had a discriminatory intent or motive,' a plaintiff bringing a disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified to a legitimate rationale." Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2513 (2015) (quoting Ricci v. DeStefano, 557 U.S. 557, 577 (2009)).

Federal courts apply a three-step analysis to discrimination claims raised under a disparate impact theory. Gallagher v. Magner, 619 F.3d 823, 833 (8th Cir. 2010), cited with approval in Central Austin, 2013 IL App (1st) 123041, ¶ 10. First, the plaintiff must establish a *prima facie* case, "which requires showing 'that the objected-to action[s] result[ed] in . . . a disparate impact upon protected classes compared to a relevant population.'" Gallagher, 619 F.3d at 833 (quoting Darst-Webbe Tenant Ass'n Bd. v. St. Louis Hous. Auth., 417 F.3d 898, 902 (8th Cir. 2005)). In other words, the plaintiff "'must show a facially neutral policy ha[d] a significant adverse impact on members of a protected minority group.'" Id. (quoting Oti Kaga, Inc. v. S.D. Hous. Dev. Auth., 342 F.3d 871, 883 (8th Cir. 2003)).

If the plaintiff establishes a *prima facie* case, "the burden shifts to the [defendant] to demonstrate that its policy or practice had 'manifest relationship' to a legitimate, non-discriminatory policy objective and was necessary to the attainment of that objective." Id. at 834 (quoting Darst-Webbe, 417 F.3d at 902) (internal quotations omitted). If the defendant satisfies its burden to show that its policy or practice is justified in the face of the plaintiff's *prima facie* case, "the burden shifts back to [the plaintiff] to show 'a viable alternative means' was available to achieve the legitimate policy objective without discriminatory effects. Id. (quoting Darst-Webbe, 417 F.3d at 902-03).

The question presented by Defendants' Section 2-615 motion to dismiss is whether the allegations of the Plaintiffs' Complaint, when viewed in a light most favorable to the Plaintiffs, are sufficient to state a cause of action under ICRA upon which relief can be granted.

Defendants argue that Count I of Plaintiffs' Complaint fails to sufficiently plead a cause of action under section 5(a)(2) of ICRA because Plaintiffs have not identified or alleged that Defendants' use any specific criteria or method of administering "education funding." Instead, assert Defendants, Plaintiffs' Complaint merely makes conclusory allegations that "the State's method of administering school funding has [a] forbidden discriminatory impact on Plaintiffs." Further, Defendants characterize "education funding" only to include general state aid, block grants, and categorical grants under the School Code. Defendants thus contend that the State's contributions to public school teacher pension funds pursuant are entirely separate and unrelated to any type of funding for public education.

Plaintiffs counter that they do not rely on a "bottom line" theory of disparate impact. Rather, assert Plaintiffs, they challenge the specific State practice of appropriating 99.7% of the State's contributions to public school teacher pension funds to TRS, while directing just 0.3% of those contributions to CTPF.

The Court's resolution of this issue requires an examination of the allegations in Plaintiffs' Complaint. Plaintiffs allege that "the State's discriminatory funding for public education has a disparate impact on CPS and its students." Plaintiffs' include the State's contributions to public school teacher pension funds as an integral part of education funding. Plaintiffs characterize "education funding" to include general state aid, categorical grants, block grants, as well as State contributions to public school teacher pension funds. Thus, conclude Plaintiffs, the State's education funding scheme violates section 5(a)(2) of ICRA because of the disparity between the percentage of total State public school and public school teacher pension funding CPS receives—approximately 15%—as compared to the percentage of Illinois public school students that CPS serves—approximately 20%.

To state a claim under section 5(a)(2) of ICRA, Plaintiffs must allege that Defendants "utilize criteria or methods of administration" that has the effect of subjecting them to discrimination because of their race, color, national origin, or gender. 740 ILCS 23/5(a)(2) (West 2012). Plaintiffs allege in their Complaint that CPS receives approximately 15% of total State funding for public schools and public school teacher pension funds while serving approximately 20% of the State's public school students. Further Plaintiffs' Complaint alleges that CPS's students are predominantly children of color whereas the majority of students in Illinois public schools other than CPS are white.

However, reviewing Plaintiffs' Complaint in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have failed to identify or allege any specific criteria or method of administering the State's funding of public schools and public school teacher pension funds that causes the disparate impact Plaintiffs allege. The "combination of state financial aid" alleged by Plaintiffs in Count I is a combination of general state aid, categorical grants, and block grants pursuant to the School Code on one hand, and State contributions to public school teacher pensions pursuant to the Pension Code and other appropriations on the other. Plaintiffs, however, do not allege that Defendants use specific, overarching criteria or methods of administering the various sources of funding public schools and public school teacher pensions that have a disparate impact prohibited by ICRA.

In fact, nowhere in the Complaint do Plaintiffs address, much less cite the School Code. The Complaint only addresses "education funding" as a whole, and as including general state aid, categorical grants, and block grants pursuant to the School Code as well as State contributions to public school teacher pensions pursuant to the Pension Code and other appropriations. Thus, Plaintiffs do not allege in the Complaint that Defendants administer the School Code's general state aid through criteria or methods that results in a disparate impact. Nor do Plaintiffs allege in the Complaint that Defendants administer the School Code's block grants or categorical grants through criteria or methods that results in a disparate impact. Even if such generalized "education funding" program existed, the Complaint does not identify the criteria or method through which the program is being administered under that results in a disparate impact upon Plaintiffs.

Plaintiffs do address in some form the State's contributions to public school teacher pension funds, TRS and CTPF, in their Complaint. But that narrow issue is duplicative of Count II of Plaintiffs' Complaint, which asserts a claim for disparate impact discrimination under section 5(a)(2) of ICRA based solely on the disparity in the State's contributions to TRS and CTPF. Nevertheless, as explained below, Plaintiffs' also fail to identify and allege that Defendants administer the State's contributions to public school teacher pension funds through specific criteria or methods of administration that results in a disparate impact on Plaintiffs.

The Court's conclusion is supported by cases interpreting ICRA.[7] For example, in McFadden v. Board of Education for Illinois School District U-46, 984 F. Supp. 2d 882 (N.D. Ill. 2013), a case cited in one of the amicus briefs filed in this matter, the plaintiffs brought suit against the Board of Education alleging that the Board's Student Assignment Plan and Gifted Student Program, amongst other things, violated ICRA because they had a disparate impact on minority students. McFadden, 984 F. Supp. 2d at 890. As to the Student Assignment Plan, the plaintiffs alleged that the plan had a disparate impact on minority students by forcing them to attend overcrowded schools that required the use of inferior mobiles to relieve the overcrowding. Id. The Board's use of mobiles to relieve overcrowding, according to plaintiffs, had a disparate impact on minority students. Id. As to the Board's Gifted Student program, the plaintiffs alleged that the program violated ICRA because it operated two separate gifted student programs. Id. at 897. The district court, following a bench trial, found that the plaintiffs failed to meet their burden that the mobile homes were inferior as to constitute a discriminatory impact on minority students. Id. at 892. However, the court found that plaintiffs met their burden as to the Gifted Student Program. Thus, in McFadden, the ICRA challenge was aimed at the Board of Education's administration of its Gifted Student Program.

Illinois Native American Bar Association, is another case consistent with this interpretation. There the plaintiffs ICRA complaint failed to identify a program or activity that violated ICRA. The plaintiffs filed a lawsuit against the University of Illinois, alleging that the performance by Chief Illiniwek during the halftime of University of Illinois football games violated ICRA. Illinois Native American Bar Association, 368 Ill. App. 3d at 321. Defendants moved to dismiss the complaint, arguing that the Illinois legislature specifically approved the University's use of the Chief when it passed a 1996 amendment to the University of Illinois Act, declaring the Chief an "honored symbol" of the University. Id. Plaintiffs countered that ICRA

[7] The ISBE's practice of proration was the subject of the Urban League case.

and the 1996 statute merely conflict and that ICRA was controlling. Id. The trial court granted the motion, finding no conflict and noted that the legislature specifically authorized the University's use of the Chief as its symbol or mascot. Id. at 322.

The appellate court affirmed the dismissal. Id. at 328. After examining the legislative purpose of ICRA, the court concluded there was no conflict between the two statutes. Id. at 326. The two statutes, observed the court, did not relate to the same subject. Id. at 328. The court found that plaintiffs' contention that the University's use of Chief Illiniwek constituted "discrimination" under ICRA was without authority. Id. In his concurrence, Justice Hoffman addressed plaintiffs' ICRA challenge and found that plaintiffs' claim was based on section 5(a)(1), not section 5(a)(2). Id. at 329 (Hoffman, J., concurring). After examining plaintiffs' complaint, Justice Hoffman observed that absent from plaintiffs' complaint was any allegation that the University excluded plaintiffs from participation in, or the benefits of, any program or activity based on their Native American heritage. Id. at 330. In the absence of any allegation that the plaintiffs had been denied admittance to any University program, activity, or event based upon race or color, Justice Hoffman questioned whether plaintiffs allegations in their amended complaint stated a claim of discrimination within the meaning of Section 5(a)(1) of ICRA. Id.

Plaintiffs maintain that Central Austin supports their position that their Complaint sufficiently alleges claims under ICRA. The Court, however, finds Central Austin inapposite to the Court's determination of whether Plaintiffs' have sufficiently pleaded disparate impact discrimination claims under section 5(a)(2) of ICRA.

In Central Austin, two organizations whose members included African-Americans and Hispanics filed a lawsuit against the City of Chicago alleging that the City's system of responding to 911 calls violated ICRA by having a disparate impact on African-American and Hispanic neighborhoods. Central Austin, 2013 IL App (1st) 123041, ¶ 1. Specifically, plaintiffs alleged that that, on average, persons in neighborhoods populated mostly by African-Americans and Hispanics wait longer than persons in neighborhoods populated mostly by whites for police to arrive in response to 911 calls. Id. The complaint sought a declaratory judgment that the City's administration of the 911 calls violated ICRA and an order requiring the City to submit to the court a plan detailing how the City will provide equal services in response to 911 calls to minority neighborhoods. Id. at ¶ 5. The City moved to dismiss the complaint, which the trial court granted finding that the complaint raised a non-justiciable political question. Id. at ¶ 6.

The appellate court reversed. Id. at ¶¶ 25, 28. Whether a case presents a non-justiciable political question immune from judicial review, observed the court, depends on the particular question. Id. at ¶ 19. The court noted that the fact that the City has primary responsibility for deciding how to deploy police officers in response to 911 calls, did not immunize the City's deployment decisions from judicial review. Id. at ¶ 20. ICRA, noted the court, gave courts power to declare that such deployment decisions are unlawful where the methods of administration have the effect of subjecting individuals to discrimination because of their race, color, or national origin. Id. Further, the court found that ICRA expressly empowered courts to grant injunctive relief to remedy violations of ICRA. Id. Thus, the court found that Illinois had not made a "'demonstrable constitutional commitment of the issue' presented by the plaintiffs' complaint to a final unreviewable determination by the City." Id. (quoting Baker v. Carr, 369 U.S. 186, 217 (1962)). Additionally, the court found that ICRA provided sufficient standards for

the trial court to apply to determine whether the City's deployment policies justify any disparate impact on African-Americans and Hispanics in terms of response times to 911 calls. Id. at ¶ 23. Accordingly, the court held that the complaint did not present a non-justiciable political question. Id. at ¶ 25.

While Central Austin involved an alleged violation of ICRA, the issue addressed by the appellate court did not turn on the sufficiency of the plaintiffs' complaint. Rather, as noted above, the issue was whether the plaintiffs' complaint invoked the political question doctrine. Nowhere in Central Austin does the court discuss whether the facts alleged sufficed to state a cause of action under ICRA. As such, the Court does not find Central Austin dispositive on the issue of whether Plaintiffs' have sufficiently pleaded violations of ICRA in their Complaint. The Court further finds Central Austin distinguishable from this case because the plaintiffs' claims under ICRA in Central Austin alleged that the Cities method of administering and deploying emergency services in response to 911 calls resulted in slower response times to predominantly African-American and Hispanic neighborhoods. By contrast, as the Court has found, Plaintiffs in their Complaint fail to allege that Defendants use any criteria or method of administering the State's funding of public schools pursuant to the School Code or public school teacher pension funds pursuant to the Pension Code that results in the disparate impact discrimination of which Plaintiffs' complain.

The *sine que non* of a section 5(a)(2) ICRA challenge, from this Court's perspective, is a program or activity by a unit of State government that utilizes criteria or methods of administration which results in a disparate impact on a protected class. Since Count I of Plaintiffs complaint fails to identify any program or activity that utilizes criteria or methods of administration, Plaintiffs fail to state a cause of action in Count I under ICRA.

Count II of the Complaint alleges that "[t]he State's discriminatory practices with respect to pension funding practices" have a disparate impact on the Plaintiffs. Consistent with their argument on Count I, Defendants counter that the Complaint does not allege an injury stemming from criteria or methods of administration that could support an ICRA claim, citing Coalition for Safe Chicago Communities v. Village of Riverdale, 2016 WL 1077293, at *13 (Ill. Cir. Ct. Feb. 25, 2016). Defendants contend that Plaintiffs rely on a "bottom line" theory of disparate impact that courts have rejected, citing Swan, 2013 WL 4401439, at *19. Plaintiffs reply, amongst other arguments, that they do not challenge a generalized policy but instead are challenging the specific State practice of appropriating 99.7% of the State's teacher pension contributions to TRS, while directing 0.3% of those contributions to CTPF.

Similar to the analysis in Count I, Plaintiffs do not tie their allegation to any program or activity, as required to state an ICRA claim. While the Complaint alleges "discriminatory practices," the Complaint fails to identify the alleged "discriminatory practices" and fails to link their allegation to any program or activity. Further, Plaintiffs do not connect the allegation to criteria or methods of administration. Instead, Plaintiffs merely recite the requirements of the Pension Code and posit that the Pension Code imposes discriminatory obligations on CPS. At bottom, the Complaint is, in effect, a challenge to the Pension Code. The Complaint is not a challenge to the method by which the Pension Code is administered or applied. Thus, Plaintiffs' fail to allege facts to sustain a cause of action under section 5(a)(2) of ICRA.

Accordingly, the Court grants Defendants' section 2-615 motion to dismiss Counts I and II of Plaintiffs' Complaint. As such, the Court also finds that Plaintiffs have failed to establish the required element on their motion for preliminary injunction of a likelihood of success on the merits of the claims in their Complaint. The Court, having found that Plaintiffs' motion for preliminary injunction fails to maintain the status quo and fails to allege facts to sustain a cause of action under ICRA and thus failed to meet the likelihood of success on the merits element, could end its analysis at this point. However, for the sake of completeness the Court will address the balancing of the harms and equities.

IV(C). Balance of Harms and Equities

Plaintiffs contend that a preliminary injunction should issue in this case because the harm to Plaintiffs outweighs any harm the State may claim as a result of a preliminary injunction, citing Clinton Landfill, Inc. v. Mahomet Valley Water Authority, 406 Ill. App. 3d 374, 378 (4th Dist. 2010), for that general proposition. Plaintiffs maintain that absent the Court's intervention, CPS already has made cuts that affect the classroom, and CPS will have no choice but to make more cuts. Plaintiffs allege that additional cuts, forced upon CPS by the State's discriminatory funding, deprive children of a quality education. Plaintiffs argue that there is no remotely comparable interest to be found on the other side of the balance. Plaintiffs suggest that any harm the State might suffer would be no more onerous than requiring the State to distribute funding for public education in a manner that does not discriminate against Plaintiffs. Plaintiffs ask the Court to enjoin "Defendants from distributing State funds for public education to any person or entity within the State until the State provides funds to CPS in a manner and amount that does not discriminate against the Plaintiffs."

Defendants, on the other hand, argue that what Plaintiffs want the Court to enjoin is all State education and pension funding. Such an action, according to Defendants, would detrimentally affect more than 80% of State students outside of CPS. As such, conclude Defendants, the balance of harms to the majority of the State students and teachers outweighs the harms Plaintiffs claim will occur absent injunctive relief.

Plaintiffs failed to meaningfully address this argument in their reply brief in support of their motion for preliminary injunction, other than to assert that Defendants offer no proof that other school districts will be harmed as a result of the relief they request in their motion for preliminary injunction.

If the movant on a motion for preliminary injunction satisfies the elements for a preliminary injunction, then the court must the balance equities and relative inconvenience to the parties. Limestone Dev. Corp. v. Village of Lemont, 284 Ill. App. 3d 848, 853 (1st Dist. 1996). "'In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction.'" Kalbfleisch, 396 Ill. App. 3d at 1119 (quoting Schweickart v. Powers, 245 Ill. App. 3d 281, 291 (2d Dist. 1993)). A court may deny a motion for preliminary injunction where the burden on the defendant by granting the motion outweighs the burden on the plaintiff by denying it. Limestone Dev. Corp. v. Village of Lemont, 284 Ill. App. 3d at 853. "[T]he court should also consider the effect of the injunction on the public." Kalbfleisch, 396 Ill. App. 3d at 1119.

The Court finds that, even if the Plaintiffs had satisfied the fundamental purpose and the required elements of a preliminary injunction, the balance of hardships does not favor granting the relief Plaintiffs request in their motion for preliminary injunction. As previously discussed, the relief Plaintiffs request in their motion for preliminary injunction—prohibiting Defendants from distributing funds to any public school or public school teacher pension fund statewide—does not fulfill the fundamental purpose of a preliminary injunction to maintain the status quo until the final resolution of the merits of the case by preventing the specific harms alleged by Plaintiffs—that CPS faces the threat of being forced to end its 2016-2017 school year twenty days early, to cancel summer school for grade-school and middle-school students, and to make additional spending cuts that will further affect CPS students. In fact, the relief Plaintiffs request in their motion for preliminary injunction would not only fail to redress the specific harms alleged by Plaintiffs, but would necessarily exacerbate the harms alleged by Plaintiffs by prohibiting Defendants from distributing any funds to CPS.

While it is true that Defendants themselves may not be harmed as a result of the relief Plaintiffs request in their motion for preliminary injunction, the Court must also consider the effect of the relief Plaintiffs request on the public. Plaintiffs' argument that Defendants have offered no proof that other school districts will be harmed by the relief they request in their motion for preliminary injunction defies common sense. Again, the relief Plaintiffs request is to prohibit Defendants from distributing funds to any public school or public school teacher pension fund statewide. A necessary result of the relief Plaintiffs request would be to deprive all public schools and public school teacher pension funds statewide of State funding. Thus, it is obvious the relief Plaintiffs request would spread the harms Plaintiffs allege to every public school and public school teacher pension fund across the State. In short, the relief Plaintiffs request would inject widespread chaos into the entirety of the State's public education system. Not surprisingly, Plaintiffs fail to cite, and this Court is unaware of any case in which a court granted a preliminary injunction where the injunction itself would not relieve or abate the alleged harm but instead, exacerbate the harm to the movant as well as spread the harm to innocent third parties. The Court agrees with the Defendants that the potential harm of enjoining all State education and pension funding outweighs the potential harm to Plaintiffs.

The Court is not oblivious to the fiscal challenges confronting CPS. Indeed, even the Defendants did not rebut the allegations in Plaintiffs' Complaint for the purposes of the motions before the Court. To say that the State's current scheme of funding public education is broken is to state the obvious. Plaintiffs' Complaint, however, as constituted is not the vehicle to redress this inequity.

CONCLUSION

For the foregoing reasons, the Court denies Plaintiffs' motion for preliminary injunction, denies Defendants' motion to dismiss pursuant to section 2-619, and grants Defendants' motion to dismiss pursuant to section 2-615. However, at this juncture, the Court does not find that Plaintiffs cannot plead a cause of action under section 5(a)(2) of ICRA. Accordingly, the Court grants Plaintiffs leave to file an amended complaint within 28 days, on or before May 26, 2017. The case is set for status on Friday, June 2, 2017 at 10:00 a.m.

ENTERED:

ENTERED
JUDGE FRANKLIN ULYSES VALDERRAMA-1968
APR 28 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Franklin U. Valderrama, Judge Presiding

DATED: April 28, 2017