

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

BOARD OF EDUCATION OF THE  
CITY OF CHICAGO, *et al.*

Plaintiffs,

v.

BRUCE RAUNER, *et al.*

Defendants.

Case No. 17-CH-02157

Hon. Franklin U. Valderrama

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR MANDATORY PRELIMINARY INJUNCTION**

Defendants Bruce Rauner, Governor of Illinois, State of Illinois, Illinois State Board of Education, Rev. James T. Meeks, as Chair of the Illinois State Board of Education, Dr. Tony Smith, as Superintendent of the Illinois State Board of Education, and Susana A. Mendoza, Comptroller of Illinois, by and through their counsel, the Office of the Illinois Attorney General, submit this memorandum in opposition to Plaintiffs' motion for a mandatory preliminary injunction.

**INTRODUCTION**

Plaintiffs invoke the holding of *Brown v. Board of Education* to suggest the State of Illinois is discriminating against students in the Chicago Public School ("CPS") school district based on race. While Defendants understand Plaintiffs' invocation of *Brown* as a rhetorical device, the allegations in the Complaint simply do not bear out the citation. The State is not shortchanging CPS with regard to education funding. And CPS and State pension funding obligations have been separate for a very long time. CPS's immediate fiscal problems originated years ago because of decisions made by prior CPS administrations.

Plaintiffs' motion seeks the extraordinary remedy of a mandatory injunction compelling the State to pass new legislation appropriating additional pension funds for CPS, and in doing so seeks to compel a judicial override of Governor Rauner's December 1, 2016 veto of Amended Senate Bill 2822, which included a \$215 million payment to CPS to be used for the Chicago Teachers' Pension Fund ("CTPF"). As set forth below, while Plaintiffs seek to drastically shift the status quo that has been in place well before *Brown*, their request for mandatory injunctive relief fails because they cannot demonstrate an extreme urgency, irreparable harm, or a likelihood of success on the merits. Moreover, the balance of harms regarding the relief sought weighs heavily in favor of the 80% of students of the State who attend schools outside the CPS school district. In short, Plaintiffs' Motion for Injunctive Relief should be denied.

#### STATEMENT OF FACTS

**1. Plaintiffs Seek a Mandatory Preliminary Injunction Requiring the Legislature to Pass New Legislation Regarding CTPF Funding, or Requiring Governor Rauner to Approve \$215 Million in Funding for CPS.**

**a. Plaintiffs Do Not Seek Injunctive Relief Regarding the Illinois Education Funding Statutes**

Plaintiffs contend that their request for mandatory injunctive relief relates to "unequal systems for public education." Pls.' Br. at 2. But nowhere do Plaintiffs ever plead, or even suggest, that the Illinois education funding statute itself, 105 ILCS 5/18-8.05, violates the ICRA. That legal theory has already been brought against the State by Plaintiffs' same counsel and dismissed in *Chicago Urban League, et al. v. Illinois State Board of Education, et al.*, Case No. 08-CH-30490, 2009 WL 1632604 (Cir. Ct. Ill. Apr. 15, 2009) (dismissing Constitutional claims against State and State actors with regard to educational funding). Plaintiffs clearly understood the futility of such a claim, and therefore, did not bring it here.

Nonetheless, in an attempt to overstate their claim, Plaintiffs provide charts in their Complaint purportedly showing how CPS students receive less “educational funding” than all other students in Illinois. Complaint at ¶¶ 36, 37. Plaintiffs’ charts, however, are not a representation of the statutory State education funding that ISBE distributes. Rather, Plaintiffs’ charts combine yearly State education funding – comprised of General State Aid and additional mandated categorical education spending – with an additional, new line item -- pension funding. As Plaintiffs acknowledge, ISBE “is the unit of government responsible for overseeing, administering and disbursing funds appropriated for public education in Illinois.” Complaint ¶ 29. ISBE, however, does not oversee, administer or disburse pension funds for either the CTPF or the Teachers Retirement System (“TRS”), which is the pension fund for non-CPS teachers in the State. Affidavit of Robert L. Wolfe, ISBE CFO, attached as Exhibit 1, at ¶ 4; 105 ILCS 5/18-7 (State contributions to CTPF “appropriated directly to the Fund” since 1999 and State contributions to TRS “appropriated directly to the System” since 1996). No pension funds flow through ISBE. *Id.* at ¶¶ 20,21; 105 ILCS 5/18-7. Accordingly, ISBE does not incorporate pension funding into any chart relating to Illinois State public school funding. *Id.* at ¶ 5.

When pension funding is removed from Plaintiffs’ charts, the true numbers emerge relating to educational funding for CPS students and students in the rest of the State. The primary source of Illinois state education funding is General State Aid (“GSA”), which represents roughly two-thirds of state funds for elementary and secondary education in Illinois. *Id.* at ¶ 10. GSA includes two components: (a) an equalization formula grant, which ensures that the combination of state and local funding meets a minimum foundation level; and (b) the supplemental low income grant, which is based on the proportion of low income students in a

district. *Id.* Illinois school districts also receive funding from numerous local, state, and federal grant sources. *Id.*

In addition to GSA, CPS receives certain “block grants” with regard to mandated categorical education funds pursuant to Illinois statutes, including but not limited to funds for Special Education services, Transportation, Early Childhood Education, Regional Offices and School Services, Illinois Free Lunch/ Breakfast, and Truant Alternative and Optional Education. *Id.* at ¶ 16. The specific mandated categorical education funds which make up the block grants are set forth as Exhibit C to Mr. Wolfe’s affidavit.

The block grants were first introduced in 1995 and were based on the static percentage of annual appropriations of mandated categorical funds received by CPS students in that year. *Id.* at ¶ 17. So, starting in 1996, and continuing today, as part of the block grant, CPS students receive, each year, the same percentage of annual appropriations of mandated categorical funds. See *Id.* at ¶ 17, Exhibit C (column “Block %”).

In Fiscal 2015, CPS received more than \$255 million through the block grants than it would have if it filed claims and received funding like other school districts in the rest of the State. *Id.* at ¶ 18; Exhibit C. In Fiscal 2016, CPS received more than \$252 million through the block grants than it would have if it filed claims and received funding as all other school districts in the rest of the State. *Id.* at ¶ 19; Exhibit C.

ISBE’s Chief Financial Officer, Robert Wolfe, compiled a list of all educational funding sources, including GSA and block grants, which ISBE distributed for the Fiscal Years 2015 and 2016. *Id.* at ¶¶ 21-22, 24-25, Exhibits D, E. For Fiscal Year 2015, the State provided an average of \$4550 per pupil for CPS students, but only \$3048 per pupil for Illinois students outside of CPS. On average, therefore, CPS students received \$1.49 in educational funding per pupil

compared to \$1.00 dollar for students in the State of Illinois outside of CPS. *Id.* at ¶ 22. Put another way, in Fiscal Year 2015, CPS had 19% of the State's students but received 24% of the State's educational funding. *Id.* at ¶ 23. Similarly, for Fiscal Year 2016, on average, CPS students received \$1.25 in educational funding per pupil compared to \$1.00 dollar for students in the State of Illinois outside of CPS. *Id.* at ¶ 26. Put another way, in Fiscal Year 2016, CPS had 19% of the State's students but received 23% of the State's educational funding. *Id.* at ¶ 27.

Plaintiffs' blanket claim of a disparate impact to CPS students due to "education funding" is not based on the true education funding sources required by any Illinois education statute, but rather upon a made up calculation that incorrectly includes pension funding as part of statutory education funding. What is left is clear: Plaintiffs' claim relates solely to pension funding.

**b. Plaintiffs Do Not Seek Injunctive Relief Regarding the Long-Standing Historical Funding Differences Between the CTPF and the TRS Pension Systems**

**1. History of CTPF and TRS**

The CTPF was established in 1895 by state statute as a self-funded pension system. 40 ILCS 5/17. To fund pension contributions into CTPF, the City of Chicago put in place a property tax levy.<sup>1</sup> *Chicago Teachers' Pension Fund, Legislation Fact Sheet:* [http://ctpf.org/general\\_info/advocacy/HB3695\\_factsheet.pdf](http://ctpf.org/general_info/advocacy/HB3695_factsheet.pdf); Huber, Kevin (former Executive Director of the CTPF), "Setting the record straight on teachers' pension fund problems," *Chicago Report*, August 6, 2013. <http://chicagoreporter.com/set-record-straight-teachers-pension-fund-problems>. Historically, CPS has been responsible for the majority of employer funding for the CTPF. *Id.*; Complaint ¶ 7 ("CPS must fund the [CTPF]....").

<sup>1</sup> This Court may take judicial notice of the information obtained from the sources cited herein. *See, e.g.*, Ill. R. Evid. 201(b) (court may take judicial notice of information "capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"); *People v. Clark*, 406 Ill. App. 3d 622, 633 (2d Dist. 2010) (information acquired from "mainstream internet sites" is "reliable enough to support a request for judicial notice").

The Illinois State Teachers' Pension and Retirement Fund, the predecessor to the Teachers' Retirement System of the State of Illinois ("TRS"), was established in 1915. Burbridge, Chuck (Executive Director of the CTPF), *"Chicago Teachers' Pension Fund: Keeping the Promise"*, presentation to the Illinois School Funding Commission, December 21, 2016. TRS was established by State statute in 1939 to replace the 1915 fund. 40 ILCS 5/16-102. The funding mechanism for TRS is governed by Illinois statute, 40 ILCS 5/16-158. The separate funding mechanisms for the CTPF and the TRS pension funds have been the status quo for more than 100 years, and are not the cause of the alleged "crisis" that brought Plaintiffs to this Court seeking a mandatory preliminary injunction.

In 1995, under Public Act 89-0015, the Mayor's office obtained control of CPS. 105 ILCS 5/34-3. As part of this deal, several property tax levies were combined into one fund to provide CPS with more spending flexibility, including using previously earmarked pension funds for CPS operating expenses. The property tax designated for funding the Chicago Teachers' Pension Fund was eliminated. At the time its funding was changed, the CTPF funded ratio was approximately 80 percent. Huber, Kevin, "Setting the record straight on teachers' pension fund problems," Chicago Report, August 6, 2013. <http://chicagoreporter.com/set-record-straight-teachers-pension-fund-problems/>; Chicago Teachers' Pension Fund, Legislation Fact Sheet: [http://ctpf.org/general\\_info/advocacy/HB3695\\_factsheet.pdf](http://ctpf.org/general_info/advocacy/HB3695_factsheet.pdf). CPS also was provided a "pension holiday" and no employer contributions were made to CTPF between 1996 and 2005. Public Act 89-0015; Chicago Teachers' Pension Fund, Legislation Fact Sheet: [http://ctpf.org/general\\_info/advocacy/HB3695\\_factsheet.pdf](http://ctpf.org/general_info/advocacy/HB3695_factsheet.pdf). Absent the pension holiday, more than \$2 billion would have been contributed during that 10-year period. *Id.*

From Fiscal Year 2010 through Fiscal Year 2013, the Chicago Board of Education was required to cover only the normal cost of pension contributions in fiscal years 2011, 2012, and 2013 (less than \$150 million per year), down from approximately \$600 million needed per year to pay off the total pension costs needed to meet the funding plan to achieve the required 90 percent funded ratio, which was extended to 2059. Illinois Public Act 96-0889, available at: <http://www.ilga.gov/legislation/publicacts/96/PDF/096-0889.pdf>; *Public School Teachers' Pension and Retirement Fund of Chicago Actuarial Valuation and Review as of June 30, 2016, Segal Consulting*, [http://www.ctpf.org/general\\_info/financial\\_lists.htm](http://www.ctpf.org/general_info/financial_lists.htm). During this three-year period, the CTPF was underfunded by about \$1.2 billion. *Id.*; *Chicago Teachers' Pension Fund, Legislation Fact Sheet*: [http://ctpf.org/general\\_info/advocacy/HB3695\\_factsheet.pdf](http://ctpf.org/general_info/advocacy/HB3695_factsheet.pdf).

From Fiscal Year 2014 through Fiscal Year 2016, CPS paid the fully amortizing costs to the CTPF under PA 89-0015: \$561 million in fiscal year 2014; \$684 million in fiscal year 2015, and \$677 million in fiscal year 2016. *Public School Teachers' Pension and Retirement Fund of Chicago Actuarial Valuation and Review as of June 30, 2016, Segal Consulting*, [http://www.ctpf.org/general\\_info/financial\\_lists.htm](http://www.ctpf.org/general_info/financial_lists.htm); see generally Complaint ¶ 44.

The CTPF funded ratio based on the actuarial value of assets over the actuarial accrued liability as of June 30, 2016, was 52.4%. *Public School Teachers' Pension and Retirement Fund of Chicago Actuarial Valuation and Review as of June 30, 2016, Segal Consulting*, [http://www.ctpf.org/general\\_info/financial\\_lists.htm](http://www.ctpf.org/general_info/financial_lists.htm).

The TRS pension funded ratio based on the actuarial value of assets over the actuarial accrued liability as of June 30, 2016, was 39.8%. *Teachers' Retirement System of the State of Illinois Actuarial Valuation and Review of Pension Benefits as of June 30, 2016, Segal Consulting*, <http://www.trs.illinois.gov/pubs/actuarial/2016ActuarialValuationSegal.pdf>.

## **2. Plaintiffs Do Not Plead Any Imminent Harm From The State's Historic Pension Funding Statutes**

Plaintiffs allege in their Brief that from 2014 through 2016, “the State’s discriminatory funding has shortchanged CPS by \$1.1 billion.” Pls.’ Br. at 5. There is no evidentiary support for that statement, nor citation to any statute. Nonetheless, Plaintiffs did not seek Court intervention or emergency relief while allegedly being “shortchanged” during those years. Instead, Plaintiffs explain that to confront the cash flow crisis during that time period, CPS “relied upon a combination of new tax revenues, maximized to the extent allowable under state law, and massive borrowings through capital markets.” Pls.’ Br. at 5. Nothing has changed in Fiscal Year 2017 relating to the 100 year old funding mechanisms of CTPF and TRS. What has changed, and the sole reason Plaintiffs bring this motion for mandatory preliminary injunction, is that Governor Rauner vetoed Amended Senate Bill 2822 on December 1, 2016, and CPS did not receive \$215 million. The failure to receive those funds has caused the alleged harm and alleged extreme urgency for which Plaintiffs seek this extraordinary remedy.

### **c. Plaintiffs Seek Mandatory Preliminary Injunctive Relief “as a result” of Governor Rauner’s Veto of Amended Senate Bill 2822, Which Included a Contribution of \$215 Million to CPS.**

Plaintiffs’ own brief makes clear, again and again, that the reason they seek mandatory injunctive relief is because of Governor Rauner’s veto of Amended Bill 2822, which included a \$215 million payment to CPS:

- “Governor Rauner’s recent veto of additional funding for CPS will require draconian cuts in core educational services.” Page 2.
- “But on December 1, 2016, Governor Rauner vetoed the bill....**As a result**, CPS’ children – 90% children of color – are at risk of forever losing their one chance in life to receive a quality education.” Page 5 (emphasis added).
- “Governor Rauner’s veto has created a gap CPS cannot fill through additional borrowings.” Page 6.
- “However, on December 1, 2016, Governor Rauner’s veto threw CPS into another mid-year financial crisis.” Page 6-7.



As early as December 2, 2016, the day after Governor Rauner's veto, CPS CEO Forrest Claypool suggested that a lawsuit would be one course of action to try and compensate for CPS not receiving the \$215 million: "But I'm telling you our strategies now are to fight, and we'll fight on multiple fronts. We're first going to fight through the political process, and if necessary we'll be in the courts." *Governor Vetoes \$215 Million in Chicago Public Schools Funding*, Tribune News Service, December 2, 2016. Just two days ago, the Chicago Tribune reported that Claypool again admitted that CPS' "latest fiscal emergency was caused solely by Rauner's veto of a measure that would have provided the \$215 million." *Chicago Public Schools Chief Fires Back at Gov. Rauner*, Chicago Tribune, March 22, 2017.

## **ARGUMENT**

### **A. Standards On A Motion For Mandatory Preliminary Injunction**

The purpose of a preliminary injunction is to preserve the status quo. *See John Deere Co. of Moline v. Hinrichs*, 36 Ill.App.2d 255, 269, 183 N.E.2d 309, 315-16 (2d Dist. 1962) ("the status quo which will be so preserved by a preliminary injunction is 'the last actual, peaceable, noncontested status', which preceded the pending controversy"). A preliminary injunction is an extraordinary remedy (*Bd. of Edu. of Dolton Sch. Dist. 149 v. Miller*, 349 Ill.App.3d 806, 814, 812 N.E.2d 688, 695 (1<sup>st</sup> Dist. 2004)), and not meant to determine any controverted rights nor to decide the merits of a case. *John Deere Co. of Moline*, 36 Ill.App.2d at 269, 183 N.E.2d at 316.

Here, Plaintiffs do not seek to maintain any status quo, but instead seek to compel Defendants to do one of two things: (1) pass new legislation regarding state pension funding for the CTPF; or (2) override Governor Rauner's veto and pay \$215 million to CPS. Simply put, Plaintiffs seek a mandatory injunction. Mandatory preliminary injunctions are disfavored by the courts. *Lumberman's Mut. Cas. Co. v. Sykes*, 384 Ill.App.3d 207, 230, 890 N.E.2d 1086, 1106

(1<sup>st</sup> Dist. 2008) (mandatory injunctive relief available “only in those cases where an emergency exists and serious harm would result if an injunction were not issued to preserve the status quo”).

A mandatory injunction is not granted as a matter of right, but rather only in rare cases of great necessity or extreme urgency when sound judicial discretion requires the court to act. For the court to find such extreme urgency or great necessity, the need for such relief must be clearly established and free from doubt. Understandably, the requirements are even more stringent for the issuance of a mandatory preliminary injunction since the parties have not had the benefit of a full and final hearing. Thus it has been held that where complete relief may be afforded after a final hearing on the merits, the case is not a proper one for mandatory preliminary injunction.

*Grillo v. Sidney Wanzer & Sons, Inc.*, 26 Ill.App.3d 1007, 1012, 326 N.E.2d 180, 184 (1975) (citations omitted).

To obtain injunctive relief, Plaintiffs must demonstrate they: (1) have a certain and clear ascertainable right which must be protected; (2) will be irreparably injured in the absence of that protection; (3) have no adequate remedy at law for their injury; and (4) are likely to succeed on the merits. *Lumberman's*, 384 Ill.App.3d at 230, 890 N.E.2d at 1106. In addition, the court should balance the relative harms and benefits to the plaintiffs and defendants. *Vill. of Wilsonville v. SCA Services*, 86 Ill.2d 1, 28 (1981) (“a court of equity will not, as a matter of course, interpose by injunction but will consider all the circumstances, the consequences of such action and the real equity of the case”).

#### **B. Plaintiffs Seek to Upset The Status Quo But No Extreme Urgency Exists**

Plaintiffs do not allege an extreme urgency here with regard to educational funding or pension funding that requires the extraordinary remedy of a mandatory preliminary injunction. The CTPF has been predominantly self-funded for more than 100 years. And Plaintiffs' monetary woes and shortfalls, by their own admission, have existed for years. Plaintiffs admit they had serious cash flow problems from Fiscal Years 2014 through 2016, and had to borrow

\$1.1 billion in Fiscal Year 2016 (Complaint ¶¶ 50-51), but brought no emergency motion during that time frame. The only “extreme urgency” Plaintiffs latch onto stems from the possibility that the State might provide \$215 million in funding to CPS in late 2016 – but such funding was not required by any contract or Illinois statute, and Amended Senate Bill 2822 was ultimately vetoed by Governor Rauner two and a half months before Plaintiffs filed suit. Moreover, Plaintiffs do not seek to preserve the status quo; rather, they seek to judicially override the Governor’s veto, or mandate the Illinois legislature to appropriate new State funding for CTPF, and require Governor Rauner to sign such proposed legislation into law.

**C. Plaintiffs Have No Clear Right to a New Legislative Enactment Requiring State Funding for the CTPF or to the Payment of \$215 Million**

Plaintiffs claim they are seeking injunctive relief to “stop a unit of government from implementing discriminatory policies.” Pls. Br. at 8. As set forth in the Wolfe Affidavit, attached as Exhibit 1, in Fiscal Years 2015 and 2016, the State provided more funding by statute to CPS students than to other students throughout the State: CPS had approximately 19% of the State’s students but received more than 23% of the State’s educational funding pursuant to the Illinois legislative funding system. This case, therefore, is not about the alleged disparate impact of Illinois educational funding legislation, nor can it be. Plaintiffs have not and cannot cite a single case decided under ICRA allowing for mandatory injunctive relief in the form of new legislative enactment, or appropriation of funds not previously required under contract or statute, to remedy an alleged disparate impact relating to educational or pension funding.

Instead, Plaintiffs’ own pleading makes clear that their dispute centers on their own pension funding obligations and their displeasure at Governor Rauner’s veto of Amended Senate Bill 2822. Plaintiffs’ Complaint alleges that “[a]s a down-payment *on a promise* for fair funding, on June 30, 2016, the Illinois House amended Senate Bill 2822 to include an additional

State contribution of \$215 million to assist CPS to meet its required Fiscal Year 2017 teacher pension payment....[b]ut on December 1, 2016, Governor Rauner vetoed the bill.” Complaint at Pars. 9, 10 (emphasis added). Yet Plaintiffs cannot cite any contractual right or promise that entitles Plaintiffs to such funds as a matter of right. Nor can Plaintiffs cite any State statute which mandates such payment.<sup>2</sup>

There is no doubt that Plaintiffs are faced with a massive pension shortfall, caused by many potential factors – historical self-funding of the CTPF, years of pension funding “holidays” requested by the City of Chicago, and a pension funded ratio of slightly more than 50%. Plaintiffs claim that they have a protectable right to require the State Defendants’ to legislate “new” money to CPS through the enactment of new pension funding legislation. There is no such right, by contract, statute or otherwise, and a mandatory preliminary injunction is inappropriate.

#### **D. Plaintiffs Will Not Suffer Irreparable Injury**

Plaintiffs provide no evidence, and can only speculate about what potential harms may come to CPS students if the State doesn’t provide \$215 million in funding:

The next round of cuts **almost certainly** will require CPS to cut more days from the school year. **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.

Pls.’ Br. at 7 (emphasis added). The affidavit of Dr. Janice K. Jackson, CPS’ Chief Education Officer, is no more specific. In Paragraph 12 of her affidavit, Dr. Jackson opines that **if** the CPS school year ends early, and **if** students are not in class, those students cannot be compensated for

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<sup>2</sup> Section 5/17-127 of the Pension Code announces that the State’s “goal and intention” is to contribute to CTPF between 20% and 30% of the amount it contributes to TRS. *See* 40 ILCS 5/17-127. This precatory language confirms that the legislature did not intend to *guarantee* State contributions to CTPF in a specific amount. A stated “goal or intention” is not a protectable right that can be protected via mandatory injunction.

missed time. She further opines that **if** summer school is eliminated, certain students **are at risk** of falling further behind. *Id.*

Moreover, CPS does have an alternative avenue to keep the 2017 school year intact, and to maintain summer school in the midst of their funding problems. Simply put, Plaintiffs can borrow funds to “fill the \$215 million gap” that they allege.

Plaintiffs here claim to seek only that the State “provide[ ] funds to CPS in a manner and amount that does not discriminate against Plaintiffs.” (Pls.’ Br. at p.15) But CPS’ Chief Financial Officer admits that Plaintiffs’ current “crisis” is all about money:

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 the General Assembly with overwhelming bipartisan support. However, on December 1, 2016, Governor Rauner’s veto threw CPS into another mid-year financial crisis....

Bennett Aff. at ¶ 19.<sup>3</sup>

Plaintiffs do assert that “Governor Rauner’s veto has created a gap CPS cannot fill through additional borrowings.” Pls.’ Br. at 6. But CFO Bennett’s affidavit, which Plaintiffs cite for this proposition at ¶ 15, does not say that at all. In fact, CFO Bennett **admits** that CPS has the ability to borrow funds in 2017 to meet the cash flow requirements allegedly resulting from Governor Rauner’s veto:

**CPS, therefore, must re-balance its budget to fill the \$215 million hole and CPS also must arrange for hundreds of millions of dollars of additional borrowings to meet its cash flow requirements.**

Bennett Aff. at ¶ 22 (emphasis added). CFO Bennett further admits that CPS has already been able to rely upon “massive borrowings through the capital markets,” including

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<sup>3</sup> Plaintiffs rely upon cases involving a student with a service animal, or a disabled student seeking to participate in high school sports to support their claim of irreparable harm, but neither of those cases sought monetary relief, or enactment of new legislation, as Plaintiffs do here. *Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1116 (5<sup>th</sup> Dist. 2009) and *Makindu v. Ill. High Sch. Ass’n*, 2015 IL App (2d) 141201, ¶ 44.

borrowing \$1.1 billion in Fiscal Year 2016 to fund its operating budget. Bennett Aff. at ¶ 15. Nowhere do Plaintiffs provide any evidence that CPS cannot borrow additional funds to meet the “\$215 million hole.” While Plaintiffs admit that in 2016, CPS borrowed \$1.1 billion, Plaintiffs fail to disclose to the Court how much CPS has borrowed in Fiscal 2017. Accordingly, Plaintiffs have not demonstrated an irreparable injury, and injunctive relief is inappropriate.

#### **E. Plaintiffs Are Not Likely to Succeed on the Merits**

For the reasons set forth in Defendants’ accompanying Motion to Dismiss, Plaintiffs are not likely to succeed on the merits of their ICRA claims.

Additional reasons demonstrate why Plaintiffs will not succeed on the merits of their claims. First, should this case proceed past Plaintiffs’ emergency motion, Defendants will demonstrate that the Board of Education of the City of Chicago, as well as the individual plaintiffs, on behalf of CPS students, lack standing to bring claims relating to the funding of pensions for CPS teachers. In addition, as was true in the just-resolved litigation in *Chicago Urban League, et al. v. Illinois State Board of Education, et al.*, Case No. 08-CH-30490, expert analysis may be required to determine if any disparate impact is caused by the state funding system, and if so, whether that disparate impact is based on race, or instead, as defendants’ expert in the *Chicago Urban League* matter found, it is due to economic factors. These arguments further demonstrate why Plaintiffs will not prevail on the merits, and why mandatory injunctive relief is improper.

#### **F. The Balance of Harms and Equities Favor Denial of Plaintiffs’ Motion For a Mandatory Preliminary Injunction**

If they prevail on this motion, Plaintiffs ask the Court to “enter an order enjoining Defendants from distributing State funds for public education to any person or entity within the

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State until the State provides funds to CPS in a manner and amount that does not discriminate against Plaintiffs.” Pls.’ Br. at 15. In other words, unless and until Defendants pass new legislation regarding state funding for pensions and education, or until the State legislature appropriates and Governor Rauner agrees to pay \$215 million into the CTPF, Plaintiffs seek to stop **all** State education and pension funding, to the detriment of more than 80% of State students outside of CPS. There is no doubt that the balance of harms to the majority of the State students and teachers outweighs the harms that Plaintiffs claim will occur absent injunctive relief.

Moreover, none of the more than 80% of students across the State who would be harmed by Plaintiffs’ requested relief (nor the teachers, administrators, vendors, etc.) are currently represented in this action. Simply put, the relief requested by Plaintiffs would harm the vast majority of students of the State, without giving them an opportunity to contest that determination before this Court.

The Illinois Supreme Court has held very clearly that the judicial branch is not equipped to decide, in the context of a single lawsuit, how public education should be funded. “[T]he question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion.” *Comm. For Educ. Rights v. Edgar*, 174 Ill.2d 1, 29 (1996). All needed stakeholders cannot be heard in one lawsuit: “Solutions to problems of education quality should emerge from a spirited dialogue between the people of the State **and their elected representatives.**” *Id.* (emphasis added). This is all the more true when massive financial relief to the CTPF potentially impacting all of the State school districts is sought on a preliminary injunction.

Plaintiffs argue, nonetheless, that they do not seek additional monies, but rather seek to remedy the alleged disparate impact of the current education funding legislation. Pls.’ Br. at 13-

14. Despite claiming they do not want new funding, Plaintiffs cite caselaw for the proposition that “both state and federal courts have required units of government to preserve the status quo by supplying funding in excess of the amounts that have been appropriated.” Pls.’ Br. at 14. None of the cases cited by Plaintiffs stand for the proposition that the State legislature or Governor can be mandated to appropriate or pay new funds that were not required to be paid by contract or statute. Instead, unlike Plaintiffs’ request here, these cases maintain the status quo until a full resolution of the merits. *Seyller v. City of Kane*, 408 Ill. App. 3d 982, 992-93 (2d Dist. 2011) (Kane County clerk could use previously appropriated general funds for payment of count clerk employees); *AFSCME v. State of Ill.*, 2015 IL App (5<sup>th</sup>) 150277-U, at ¶20 (court maintained status quo by allowing payment of state workers under impairment of contract theory); *Ill. Hosp Ass’n v. Ill. Dep’t of Pub. Aid*, 576 F. Supp. 360, 372 (N.D. Ill. 1983) (Illinois Dept. of Public Aid required to pay pursuant to its prior determination of reasonable rates under Medicaid Act).

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**CONCLUSION**

For the foregoing reasons, Defendants respectfully ask this Court to deny Plaintiffs' motion for preliminary injunction.

Dated: March 24, 2017

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Respectfully submitted,

*/s/ Gary S. Caplan*

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