

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

MICHAEL NOLAND, in his official capacity as )  
a former member of the Illinois Senate, )  
 )  
Plaintiff, ) Case No.:  
 )  
v. )  
 )  
SUSAN MENDOZA, in her official capacity as )  
Comptroller of the State of Illinois, )  
 )  
Defendant. )

**COMPLAINT FOR A DECLARATORY  
JUDGMENT AND A WRIT OF MANDAMUS**

Plaintiff, Michael Noland, suing in his official capacity as a former member of the Illinois Senate, by and through his attorney Michael J. Scotti III, Special Assistant Attorney General, and Roetzel & Andress LPA, and for his Complaint against Susan Mendoza, in her official capacity as Comptroller of the State of Illinois, states as follows:

**NATURE OF THE ACTION**

1. Plaintiff, Michael Noland (“Noland”), suing in his official capacity as a former member of the Illinois Senate, was a member of the Illinois Senate from 2007 to 2017.
2. The Illinois Constitution prohibits mid-term manipulation of state legislators’ salaries for personal or political gain. The Illinois Constitution of 1970 expressly – and unequivocally – prohibits any “changes” to the salaries of legislators during their terms of office. Ill. Const. 1970, art. IV, § 11.
3. In violation of this clear constitutional mandate, the Illinois General Assembly passed eight different bills between 2009 and 2016 that changed Noland’s salary by eliminating mid-term Noland’s Cost-of-Living Adjustments (“COLA”).

4. The Illinois General Assembly also violated this clear constitutional mandate by passing five different bills between 2009 and 2016 that changed Noland's salary by imposing mid-term furlough days that reduced his pay.

5. Noland therefore seeks in this action: (i) a declaration that the bills imposing furlough days mid-term violate the Illinois Constitution; (ii) a declaration that the bills eliminating COLAs mid-term violate the Illinois Constitution; (iii) an order enjoining Comptroller Mendoza from enforcing these unconstitutional bills; and (iv) issuance of a writ of mandamus ordering Comptroller Mendoza to remedy those constitutional violations by paying Noland and all others impacted by the unconstitutional conduct the salaries to which they are entitled.

#### **JURISDICTION AND VENUE**

6. Jurisdiction is proper pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, because an actual controversy exists between Plaintiff and Defendant involving the application of the Illinois Constitution of 1970.

7. Venue is proper in this judicial district pursuant to 735 ILCS 5/2-101 because the Comptroller maintains a governmental office in Cook County. Further, the impact of the unlawful conduct this Complaint challenges has occurred within this judicial district, as well as throughout Illinois.

#### **PARTIES**

8. Plaintiff, Noland, was a duly elected member of the Illinois Senate representing the 22nd District from 2007 to January of 2017.

9. Defendant, Susan Mendoza, is the Comptroller of the State of Illinois. Article V, Section 17 of the Illinois Constitution provides that "the Comptroller, in accordance with the

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law, shall maintain the State's central fiscal accounts and order payments into and out of the funds held by the Treasurer." As Comptroller, Mendoza is responsible for payment of the compensation due to members of the General Assembly. Comptroller Mendoza is sued in her official capacity only.

**ILLINOIS SUPREME COURT RULE 19**

10. This Complaint challenges the constitutionality of provisions of the Illinois Code. Accordingly, Plaintiffs will provide notice of this Complaint to the State pursuant to Illinois Supreme Court Rule 19.

**RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS**

11. Article IV, § 11 of the Illinois Constitution of 1970 provides:

**SECTION 11. COMPENSATION AND ALLOWANCES**

A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

12. Article V, § 17 of the Illinois Constitution of 1970 provides:

**SECTION 17. COMPTROLLER – DUTIES**

The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.

13. Section 1 of the General Assembly Compensation Act, 25 ILCS 115/1, provides in relevant part that legislators' salaries shall be paid in "12 equal monthly installments."

14. In 1990, the Compensation Review Act (25 ILCS 120/1, *et seq.*) conferred upon the Compensation Review Board the authority to determine compensation for, among others, the members of the Illinois General Assembly. The Compensation Review Board submitted in 1990 a report to the General Assembly providing for automatic COLA increases for legislators. On July 13, 1990, the 86th General Assembly adopted Senate Joint Resolution 192. In accordance

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with the provisions of the Compensation Review Act, Senate Joint Resolution 192 approved providing a COLA salary adjustment on July 1 of each year for certain public officials, including members of the General Assembly.

**FACTUAL BACKGROUND**

**I. Noland's Terms of Office.**

15. Article 4, § 2(a) of the of the Illinois Constitution of 1970 provides for staggered elections for state senators, with each Senate district electing its members to serve two four-year terms and one two-year term each decade.

16. Noland was elected to three successive terms as Illinois Senator, as follows: a four-year term from January 2007 to January 2011, a two-year term from January 2011 to January 2013, and a four-year term from January 2013 to January 2017. Noland did not run for reelection to the Illinois Senate in 2016 and is no longer a member of the General Assembly.

**II. The General Assembly Unconstitutionally Changed Noland's Salary by Eliminating His COLA.**

17. On July 13, 1990, the 86th General Assembly adopted Senate Joint Resolution 192. That resolution approved, *inter alia*, providing a COLA salary adjustment on July 1 of each year for public officials, including members of the General Assembly. As provided by law pursuant to Senate Joint Resolution 192, Noland was entitled to the COLA payment as part of his salary as a member of the legislature for the entire duration of his service.

18. Noland only received the COLA salary payment to which he was entitled from July of 2007 through June of 2009.

19. The reason Noland received no further COLA salary payments was because in 2009 the Illinois General Assembly passed the first of a series of Public Acts that changed Noland's salary by eliminating the COLA mid-term.

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20. In 2009, the General Assembly enacted Public Act 96-800 (codified in relevant part at 25 ILCS 120/5.6), which eliminated the COLA that Noland and the other affected persons were entitled to for the fiscal year running from July 1, 2009 to June 30, 2010.

21. Public Act 96-800 states in relevant part:

FY10 COLA's prohibited. Notwithstanding any former or current provision of this Act, any other law, any report of the Compensation Review Board, or any resolution of the General Assembly to the contrary, members of the General Assembly, State's attorneys, other than the county supplement, the elected constitutional officers of State government, and certain appointed officers of State government, including members of State departments, agencies, boards, and commissions whose annual compensation was recommended or determined by the Compensation Review Board, are prohibited from receiving and shall not receive any increase in compensation that would otherwise apply based on a cost of living adjustment, as authorized by Senate Joint Resolution 192 of the 86th General Assembly, for or during the fiscal year beginning July 1, 2009. That cost of living adjustment shall apply again in the fiscal year beginning July 1, 2010 and thereafter.

(Source: P.A. 96-800, eff. 10-30-09.)

22. Public Act 96-800, which was enacted in 2009 and eliminated the COLA for the fiscal year beginning July 1, 2009, made a change in Noland's salary that took effect immediately and entirely within Noland's four-year term of office running from January 2007 to January 2011.

23. Public Act 96-800 therefore violates Article IV, Section 11 of the Illinois Constitution because it changed Noland's salary during the term for which he was elected.

24. Every year from 2010 through 2016, the Illinois General Assembly passed a bill eliminating the COLA salary payment for a one-year period for each successive fiscal year. These bills were essentially the same as Public Act 96-800, except for changing the fiscal year for which the COLA elimination would apply, and except that certain of the bills did not contain a last sentence similar to that of Public Act 96-800. (Attached as Exhibits A through H and

incorporated herein is the relevant text of each of the Public Acts that unconstitutionally eliminated Noland's COLA.)

25. Below is a chart that sets forth each of the relevant statutes that eliminated Noland's COLA, each statute's effective dates, and whether the change in Noland's salary occurred entirely within one of his terms in office, or whether it fell for six months within an old term of office and for six month in a new term of office.

<b>STATUTE</b>	<b>EFFECTIVE DATES</b>	<b>NOLAND'S TERM(S) IN OFFICE</b>	<b>MID-TERM EFFECT</b>
25 ILCS 120/5.6 (P.A. 96-800)	7/1/09 – 6/30/10	Jan. 2007 – Jan. 2011	Mid-Term Change During Existing 4 Year Term
25 ILCS 120/5.7 (P.A. 96-0958)	7/1/10 – 6/30/11	Jan. 2007 – Jan. 2011; Jan. 2011 – Jan. 2013	Mid-Term Change For The First 6 Months; Second Six Months Part of a New Term in Office
25 ILCS 120/5.8 (P.A. 97-0071)	7/1/11 – 6/30/12	Jan. 2011 – Jan. 2013	Mid-Term Change During Existing 2 Year Term
25 ILCS 120/5.9 (P.A. 97-0718)	7/1/12 – 6/30/13	Jan. 2011 – Jan. 2013; Jan. 2013 – Jan. 2017	Mid-Term Change For The First 6 Months; Second Six Months Part of a New Term in Office
25 ILCS 120/6.1 (P.A. 98-0030)	7/1/13 – 6/30/14	Jan. 2013 – Jan. 2017	Mid-Term Change During Existing 4 Year Term
25 ILCS 120/6.2 (P.A. 98-0682)	7/1/14 – 6/30/15	Jan. 2013 – Jan. 2017	Mid-Term Change During Existing 4 Year Term
25 ILCS 120/6.3 (P.A. 99-0355)	7/1/15 – 6/30/16	Jan. 2013 – Jan. 2017	Mid-Term Change During Existing 4 Year Term
25 ILCS 120/6.4 (P.A. 99-0523)	7/1/16 – 6/30/17	Jan. 2013 – Jan. 2017	Mid-Term Change For The First 6 Months

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26. As the chart above shows, the COLA eliminations for fiscal years 2010, 2012, 2014, 2015, and 2016 fell entirely within one term for which Noland was elected. The COLA elimination for fiscal year 2017 only effected Noland for his last six months in office, from July of 2016 to January of 2017.

27. The COLA eliminations for fiscal years 2011 and 2013 fell for six months within Noland's old term of office and for six month in a new term of office for Noland. However, because the relevant statutes (25 ILCS 120/5.7 and 25 ILCS 120/5.9) unconstitutionally change Noland's salary, they are void *ab initio* in their entirety. Thus, Noland is entitled to receive his full COLA increases for fiscal years 2011 and 2013.

28. Noland is therefore entitled to receive his full COLA salary adjustments for the period from July of 2009 to January of 2017.

**III. The General Assembly Unconstitutionally Changed Noland's Salary by Mandating Unpaid Furlough Days.**

29. In 2009, the General Assembly enacted Public Act 96-45 (codified in relevant part at 25 ILCS 115/1.5), which mandated that Noland and every other member of the General Assembly were required to forfeit 12 days of compensation for the fiscal year running from July 1, 2009 to June 30, 2010.

30. Public Act 96-45 states in relevant part:

Fiscal year 2010 compensation. During the fiscal year beginning on July 1, 2009, every member of the General Assembly is required to forfeit 12 days of compensation. The State Comptroller shall deduct the equivalent of 1/261 of the annual compensation of each member from the compensation of that member in each month of the fiscal year. For purposes of this Section, annual compensation includes compensation paid to each member by the State for one year of service pursuant to Section 1, except any payments made for mileage and allowances for travel and meals. The forfeiture required by this Section is not considered a change in salary and shall not impact pension or other benefits provided to members of the General Assembly.

(Source: P.A. 96-45, eff. 7-15-09.)

31. Pursuant to Public Act 96-45, the Comptroller reduced Noland's salary for fiscal year 2010 by twelve days of compensation.

32. Public Act 96-45, which was enacted in 2009 and mandated 12 furlough days for the fiscal year beginning July 1, 2009, made a change in Noland's salary that took effect entirely within Noland's four-year term of office running from January 2007 to January 2011.

33. Contrary to the General Assembly's self-serving statement that "forfeiture required by this Section is not considered a change in salary", the requirement for Noland to give up 12 days of compensation did change his salary for each of the years this requirement was in place.

34. Public Act 96-45 therefore violates Article IV, Section 11 of the Illinois Constitution because it changed Noland's salary during the term for which he was elected.

35. Every year from 2009 through 2013, the Illinois General Assembly passed a bill mandating either six or twelve furlough days for Noland and every other member of the General Assembly for a one year period for each successive fiscal year. (Attached as Exhibit I and Exs. B through E and incorporated herein is the relevant text of each of the Public Acts that unconstitutionally mandated furlough days for Noland.)

36. Below is a chart that sets forth each of the relevant statutes that wrongfully mandated furlough days for Noland, each statute's effective dates, the number of furlough days that were mandated, and whether the change in Noland's salary occurred entirely within one of his terms in office, or whether it fell for six months within an old term of office and for six month in a new term of office.

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STATUTE	EFFECTIVE DATES	NOLAND'S TERM(S) IN OFFICE	NUMBER OF FURLOUGH DAYS	MID-TERM EFFECT
25 ILCS 115/1.5 (P.A. 96-0045)	7/1/09 – 6/30/10	Jan. 2007 – Jan. 2011	12 days- One Per Month for the Fiscal Year	Mid-Term Change During Existing 4 Year Term
25 ILCS 115/1.6 (P.A. 96-0958)	7/1/10 – 6/30/11	Jan. 2007 – Jan. 2011	6 Days – One Per Month for the First Six Months of the Fiscal Year	Mid-Term Change During Existing 4 Year Term
25 ILCS 115/1.7 (P.A. 97-0071)	7/1/11 – 6/30/12	Jan. 2011 – Jan. 2013	12 Days – One Per Month for the Fiscal Year	Mid-Term Change During Existing 2 Year Term
25 ILCS 115/1.8 (P.A. 97-0718)	7/1/12 – 6/30/13	Jan. 2011 – Jan. 2013	6 Days – One Per Month for the First Six Months of the Fiscal Year	Mid-Term Change During Existing 2 Year Term
25 ILCS 115/1.9 (P.A. 98-0030)	7/1/13 – 6/13/14	Jan. 2013 – Jan. 2017	12 Days – One Per Month for the Fiscal Year	Mid-Term Change During Existing 4 Year Term

37. As the chart above shows, the mandated furlough days for fiscal years 2010 through 2014 fell entirely within one term for which Noland was elected. Noland is therefore entitled to receive the compensation that he was required to forfeit due to the furlough days.

38. Between 2009 and 2014, the Comptroller wrongfully reduced Noland's salary by forty-eight days of compensation, in violation of Article IV, Section 11 of the Illinois Constitution.

39. Noland is entitled to receive reimbursement of the forty-eight days of compensation that was wrongfully withheld from 2009 to 2014.

**COUNT I**  
**Declaratory Judgment – Violation of the Illinois Constitution**  
**By Eliminating the COLA Payments**

40. Noland re-asserts and re-alleges paragraphs 1 through 39 as if fully recited herein.

41. This Court should declare that the Comptroller's actions in withholding Noland's COLA increases from July of 2009 to January of 2017 constitute a violation of the Illinois Constitution.

42. The Illinois Constitution provides that a "member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected." Ill. Const. 1970, art. IV, § 11.

43. COLA increases for legislators are established "as provided by law" by Senate Joint Resolution 192 and the General Assembly Compensation Act, 25 ILCS 115/1, *et seq.*

44. Comptroller violated Article IV, Section 11 of the Illinois Constitution of 1970 by withholding Noland's COLA salary adjustments for the period from July of 2009 to January of 2017.

WHEREFORE, Plaintiff, Michael Noland, respectfully requests that this Court enter an Order:

- (a) Declaring that Illinois statues 25 ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, and 25 ILCS 120/6.4 violate Article IV, Section 11 of the Illinois Constitution of 1970 and are therefore void *ab initio* with respect to all members of the General Assembly who had their COLA salary adjustments withheld during their terms of office;
- (b) Declaring that Comptroller's actions in withholding Noland's COLA salary adjustments for the period from July of 2009 to January of 2017 pursuant to 25

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ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, and 25 ILCS 120/6.4 changed Noland's salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;

- (c) Declaring that Comptroller's actions in withholding payment of COLA salary adjustments to all other members of the Illinois General Assembly for the period of July of 2009 to January of 2017 pursuant to 25 ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, and 25 ILCS 120/6.4 changed their salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (d) Enjoining the Comptroller from enforcing these unconstitutional statutes; and
- (e) Granting such further relief as is just and equitable.

**COUNT II**

**Declaratory Judgment – Violation of the Illinois Constitution**  
**By Withholding Payment for the Furlough Days**

45. Noland re-asserts and re-alleges paragraphs 1 through 44 as if fully recited herein.

46. This Court should declare that the Comptroller's actions in withholding forty-eight days of compensation from Noland from 2009 to 2014 constitute a violation of the Illinois Constitution.

47. The Illinois Constitution provides that a "member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected." Ill. Const. 1970, art. IV, § 11.

48. Comptroller violated Article IV, Section 11 of the Illinois Constitution of 1970 by withholding forty-eight days of compensation from Noland from 2009 to 2014.

WHEREFORE, Plaintiff, Michael Noland, respectfully requests that this Court enter an Order:

- (a) Declaring that Illinois statutes 25 ILCS 115/1.5, 25 ILCS 115/1.6, 25 ILCS 115/1.7, 25 ILCS 115/1.8, and 25 ILCS 115/1.9 violate Article IV, Section 11 of the Illinois Constitution of 1970 and are therefore void *ab initio*;
- (b) Declaring that Comptroller's actions in withholding forty-eight days of compensation from Noland from 2009 to 2014 changed Noland's salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (c) Declaring that Comptroller's actions in withholding from all other members of the General Assembly payment for furlough days that were imposed mid-term changed the salary of all of these other members of the General Assembly in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (d) Enjoining the Comptroller from enforcing these unconstitutional statutes; and
- (e) Granting such further relief as is just and equitable.

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### COUNT III

#### **Petition for a Writ of Mandamus Based on the Comptroller's Violation of the Illinois Constitution By Failing to Make the COLA Payments**

49. Noland re-asserts and re-alleges paragraphs 1 through 48 as if fully recited herein.

50. Noland is entitled to relief pursuant to the Illinois Constitution and Senate Joint Resolution 192, which mandate that Noland and all the other members of the General Assembly are entitled to a COLA that cannot be changed mid-term.

51. The Comptroller has a duty to make payments to Noland and other members of the General Assembly that include the COLAs.

52. The Comptroller's duty to issue the payments is both non-discretionary, because it is mandated by the Illinois Constitution and by state law, and ministerial. The Comptroller's failure to make these payments is in violation of the Illinois Constitution and state law.

WHEREFORE, Plaintiff, Michael Noland, respectfully requests the following relief:

- (a) That this Court declare that Comptroller has the nondiscretionary duty under the Illinois Constitution and state law to make the COLA payments to Noland and to all other members of the Illinois General Assembly whose COLAs were eliminated mid-term; that Noland and all other members of the Illinois General Assembly whose COLAs were eliminated mid-term had a clear right to be paid the COLAs as provided under the Illinois Constitution and state law; and that the Comptroller had the duty under the Illinois Constitution and state law to comply with the requested relief;
- (b) That this Court enter a Writ of Mandamus ordering and directing the Comptroller to pay Noland – and all the other members of the Illinois General Assembly whose COLAs were eliminated mid-term – the COLAs which have been withheld and to which they are entitled under the Illinois Constitution and state law;
- (c) That this Court declare that Comptroller must inform Noland and all other members of the Illinois General Assembly whose COLAs were eliminated mid-term that they can choose to opt out of payments of the withheld COLAs, thereby donating all or some of the withheld COLA payments back to the State of Illinois; and
- (d) That this Court order such other and further relief as the Court shall deem just.

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**COUNT IV**  
**Petition for a Writ of Mandamus Based on the**  
**Comptroller's Withholding Payment for the Furlough Days**

53. Noland re-asserts and re-alleges paragraphs 1 through 53 as if fully recited herein.

54. Noland is entitled to relief pursuant to the Illinois Constitution and the General Assembly Compensation Act, which mandate that Noland and the other members of the General Assembly are entitled to a salary that cannot be changed mid-term.

55. The Comptroller has a duty to make payments to Noland and other members of the General Assembly that include payment for the mid-term furlough days that were imposed.

56. The Comptroller's duty to issue the payments is both non-discretionary, because it is mandated by the Illinois Constitution and by state law, and ministerial. The Comptroller's failure to make these payments is in violation of the Illinois Constitution and state law.

WHEREFORE, Plaintiff, Michael Noland, respectfully request the following relief:

- (a) That this Court declare that Comptroller has the nondiscretionary duty under the Illinois Constitution and state law to make payments to Noland and to all other members of the Illinois General Assembly who had furlough days imposed mid-term; that Noland and all other members of the Illinois General Assembly who had furlough days imposed mid-term had a clear right to be paid for the furlough days as provided under the Illinois Constitution and state law; and that the Comptroller had the duty under the Illinois Constitution and state law to comply with the requested relief;
- (b) That this Court enter a Writ of Mandamus ordering and directing the Comptroller to pay Noland – and all the other members of the Illinois General Assembly who

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had furlough days imposed mid-term – the payments for the furlough days, which they are entitled to under the Illinois Constitution and state law;

- (c) That this Court declare that Comptroller must inform Noland and all other members of the Illinois General Assembly who had furlough days imposed mid-term that they can choose to opt out of payments for the furlough days, thereby donating some or all of the payments for the furlough days back to the State of Illinois; and
- (d) That this Court order such other and further relief as the Court shall deem just.

Date: June 1, 2017

Respectfully submitted,  
Michael Noland

By: s/ Michael J. Scotti III  
One of His Attorneys

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