

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
STATE OF MISSOURI

PUBLIC SCHOOL RETIREMENT)
SYSTEM OF THE CITY OF ST. LOUIS,)

and)

JOSEPH W.B. CLARK, JR., individually)
and in his capacity as a member of the)
Board of Trustees of the Public School)
Retirement System of the City of St. Louis,)

and)

BOBBIE RICHARDSON, EURAL R.)
THOMAS, JR., PAULA BENTLEY,)
YVETTE A. LEVY, SHEILA P.)
GOODWIN, LOUIS C. CROSS III,)
ANGELA BANKS, CHRISTINA)
CAVAZOS BENNETT, RICHARD)
SULLIVAN, and DARNETTA)
CLINKSCALE, in their capacities as)
members of the Board of Trustees of the)
Public School Retirement System of the)
City of St. Louis,)

and)

WILLIAM ANDREW CLARK,)
individually,)

Plaintiffs,)

v.)

STATE OF MISSOURI,)

Serve: Joshua D. Hawley, Attorney General)
(In His Official Capacity))
207 West High Street)
Jefferson City, MO 65102)

and)

Case Number: 1722-CC/2044

Division No. 18

2017 DEC 29 AM 10:55

FILED
CLERK OF COURT
CITY OF ST. LOUIS

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SAINT LOUIS PUBLIC SCHOOLS,)
)
 Serve: Dr. Kelvin Adams)
 Superintendent, SLPS)
 801 N. 11th Street)
 St. Louis, MO 63101)
)
 and)
)
 CONFLUENCE ACADEMY,)
)
 Serve: Jeffrey D. Kuntze, registered agent)
 611 N. 10th Street Suite 525)
 Saint Louis, MO 63101)
)
 and)
)
 CONFLUENCE ACADEMY, d/b/a)
 GRAND CENTER ARTS ACADEMY)
)
 Serve: 611 N. 10th Street Suite 550)
 Saint Louis, MO 63101)
)
 Defendants.)

**PETITION FOR DECLARATORY
JUDGMENT, PRELIMINARY AND INJUNCTIVE RELIEF**

COME NOW Plaintiffs, and for their cause of action against Defendants, allege and state as follows:

NATURE OF THE ACTION

Plaintiffs bring this cause of action to declare Truly Agreed and Finally Passed Senate Bill 62 (“TAFP SB 62”) and its changes to § 169.460 and § 169.490 RSMo. unconstitutional and unenforceable, and enter a temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendant State of Missouri, their agents, or anyone acting on their behalf, from executing or enforcing TAFP SB 62.

The relief sought through this Petition is to prevent significant financial harm from being

suffered by the Public School Retirement System of the City of St. Louis (hereinafter "PSRSSTL" or "System") as a result of TAFP SB 62 and its changes to § 169.460 and § 169.490 RSMo., which could significantly impact the ability of the PSRSSTL to provide benefits, including retirement benefits, to its members and participants that they have worked many years to accrue.

PARTIES

1. Plaintiff PSRSSTL is the statutory retirement system for certain employees of the Saint Louis Public Schools and of Charter Schools operating in the City of St. Louis and was created pursuant to § 169.410 *et seq.*, RSMo. The PSRSSTL maintains its principle place of business at 3641 Olive Street, Suite 300, St. Louis, MO 63108-3601.

2. The System may sue and be sued in the name of the Public School Retirement System of the City of St. Louis. § 169.420 RSMo.

3. Plaintiffs Joseph W.B. Clark, Jr., Bobbie Richardson, Eural R. Thomas, Jr., Paula Bentley, Yvette A. Levy, Sheila P. Goodwin, Louis C. Cross III, Angela Banks, Christina Cavazos Bennett, Richard Sullivan, and Darnetta Clinkscale constitute the Board of Trustees of the PSRSSTL and are Plaintiffs in that capacity.

4. Plaintiff Joseph W.B. Clark, Jr. is a taxpayer and resident in the State of Missouri. Plaintiff Joseph W.B. Clark, Jr. resides within the City of St. Louis and is a retired member with the PSRSSTL, as defined in § 169.410(15)(c) RSMo, who is currently receiving retirement benefits.

5. Plaintiff Joseph W.B. Clark, Jr. is a Plaintiff in his capacity as a Trustee of the PSRSSTL and as an individual citizen.

6. Plaintiff William Andrew Clark is currently employed as the Executive Director of the PSRSSTL and is a taxpayer and resident in the State of Missouri. Plaintiff William Andrew

Clark resides within the City of St. Louis and is an active member, as defined in § 169.410(15)(a) RSMo, with the PSRSSTL and is currently an employee of an employer contributing to the System. Plaintiff William Andrew Clark is a Plaintiff as an individual citizen.

7. Defendant State of Missouri, through various officers, has enacted and intends to enforce unconstitutional and/or ineffective provisions of the law at issue in this Petition. Defendant State of Missouri is an entity formed as a state government by Act of Congress.

8. Defendant Saint Louis Public Schools ("SLPS") is a political subdivision and a public corporation owning, operating, and/or managing a district office and several primary and secondary schools within the City of Saint Louis, Missouri.

9. Defendant Confluence Academy ("Confluence Academy") is a non-profit corporation operating a charter school system with six charter schools within the City of St. Louis, with its principal place of business located at 611 N. 10th Street, Room 525, St. Louis, MO 63101.

10. Defendant Confluence Academy d/b/a Grand Center Arts Academy ("Grand Center Arts Academy") is a non-profit corporation operating a charter school within the City of St. Louis, with its principal place of business located at 611 N. 10th Street, Suite 550, St. Louis, MO 63101.

11. A copy of this Petition is served on the Attorney General pursuant to Missouri Supreme Court Rule 87.04.

JURISDICTION AND VENUE

12. This cause of action accrued in the State of Missouri as it involves the application and enforcement of unconstitutional Missouri statutes.

13. This Court has jurisdiction to consider this Petition as it requests a declaratory judgment.

14. Venue is proper in this Court.

15. This action is brought timely as required by § 516.500 RSMo.

DECLARATORY RELIEF

16. Plaintiffs seek a declaration pursuant to § 527.010 through § 527.130 RSMo. and Rule 87 of the Missouri Rules of Civil Procedure, as to Plaintiffs' rights, status, and other legal relations as affected by the unconstitutionality and effectiveness of TAFP SB 62 and various provisions relating to the PSRSSTL contained therein. The granting of declaratory relief will, pursuant to § 527.120, afford relief from uncertainty and insecurity with respect to the effectiveness and constitutionality of said statutes.

17. There exists a justiciable controversy because Plaintiffs have legally protected interests at stake, namely their rights secured under the Missouri Constitution and the financial harm that currently is and will be further sustained by the PSRSSTL as a result of TAFP SB 62. Said rights and interests can only be protected by the issuance of the injunctive and declaratory relief sought herein.

FACTS COMMON TO ALL COUNTS

18. Defendants Confluence Academy and the Grand Center Arts Academy (collectively "Charter School Defendants") are employers who are obligated to contribute to the PSRSSTL on their employees' behalf and are Charter Schools organized pursuant to the provisions of Chapter 160 RSMo. (the "Charter School Law").

19. The SLPS and each of the Charter School Defendants are each individually an "employer" as defined in § 169.410(13) RSMo.

20. Pursuant to § 160.420.3 RSMo., employees of charter schools, including the Charter School Defendants, participate in the System "subject to the same terms, conditions, requirements and other provisions applicable to personnel employed by the [SLPS]."

21. The SLPS and all charter schools operating within the City of St. Louis, including each of the Charter School Defendants, submit contributions to the PSRSSTL on behalf of participant employees, including both employee contributions deducted from employee pay pursuant to § 169.490 RSMo. (“Employee Contributions”) and employer contributions (“Employer Contributions”) pursuant to §§ 169.490 and 169.500 RSMo.

22. Currently, at least 18 charter schools organized pursuant to the provisions of Chapter 160 RSMo. operate within the City of St. Louis, participate in the System, and submit contributions pursuant to §§ 160.420.3, 169.490, and 169.500.

23. The rights and obligations of the Charter School Defendants are identical to the rights and obligations of the remaining charter schools operating within the City of St. Louis.

24. The PSRSSTL is currently the only retirement system affected by or subject to Sections 169.410 through 169.540.

25. Senate Bill 62 (“SB 62”) was introduced by Senator Dan Hegeman and was read for the first time on January 4, 2017. A copy of SB 62 is attached hereto as Exhibit A and incorporated by reference as if fully set out herein.

26. As originally proposed, SB 62 repealed section 104.1205. According to its title, it enacted “one new section relating to retirement of higher education employees.”

27. As originally proposed, SB 62 amended portions of section 104.1205 detailing contribution rates for outside employees who participate in a defined contribution plan with the Missouri state employees’ retirement system. As originally proposed, SB 62 did not pertain or relate to the PSRSSTL.

28. SB 62 was passed by the Missouri Senate, through a Senate Substitute for SB 62 ("SS SB 62"), on March 9, 2017. A copy of SS SB 62 is attached hereto as Exhibit B and incorporated by reference as if set out fully herein.

29. SS SB 62 contained some minor revisions to the version that was originally introduced regarding section 104.1205, but otherwise SS SB 62 was the same as SB 62 as originally introduced, with the same title.

30. SS SB 62 was then taken up by the Missouri House of Representatives who then referred SS SB 62 to the Committee on Pensions.

31. On April 13, 2017, the bill was reported "Do Pass" from the Committee on Pensions and recommended a House Committee Substitute for SS SB 62 ("HCS SS SB 62"). A copy of HCS SS SB 62 is attached hereto as Exhibit C and incorporated by reference as if set out fully herein.

32. HCS SS SB 62 repealed eight sections of the statutes, sections 50.1190, 52.290, 104.1205, 137.280, 137.345, 140.100, 169.141, and 169.715, and according to its title, enacted "nine new sections relating to public employee retirement."

33. None of the provisions contained within HCS SS SB 62 directly pertained to the PSRSSTL.

34. On April 26, 2017, the Missouri House of Representatives took up and adopted, or perfected, HCS SS SB 62 with six amendments. House Amendment No. 5 was offered by Representative Shamed Dogan and adopted by the House of Representatives.

35. House Amendment No. 5 contained amendments relating to sections 169.460 and 169.490, which sections pertain to the PSRSSTL and which the PSRSSTL is obligated to follow.

36. On May 5, 2017, the Missouri Senate refused to concur with HCS SS SB 62 and requested for the Missouri House to either recede or grant a conference committee.

37. On May 8, 2017, the Missouri House refused to recede and granted the Missouri Senate's request for a conference committee.

38. Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 62 ("CCS HCS SS SB 62") was offered by the Conference Committee on May 11, 2017.

39. CCS HCS SS SB 62 was then adopted by the Missouri Senate and the Missouri House and was truly agreed to and finally passed on May 11, 2017.

40. Governor Eric Greitens signed CCS HCS SS SB 62 as truly agreed to and finally passed by the General Assembly ("TAFP SB 62") on July 14, 2017. A copy of the final version of TAFP SB 62 passed by the General Assembly and signed into law by the Governor is attached hereto as Exhibit D and incorporated by reference as if fully set out herein.

41. TAFP SB 62 repeals fourteen sections of the statutes, sections 52.290, 86.207, 104.1091, 104.1205, 105.669, 137.280, 137.345, 140.100, 169.141, 169.324, 169.460, 169.490, 169.560, and 169.715, and according to its title, enacted "fifteen new sections relating to public employee retirement."

42. One of the amendments to section 169.460 contained within TAFP SB 62 expanded one of the eligibility requirements to a normal pension for members of the PSRSSTL from having "attained an age which when added to the number of years of credited service of such member shall total a sum not less than eighty-five" ("Rule of 85") to eighty ("Rule of 80").

43. TAFP SB 62 also changed the basis for the calculation for contributions to be paid to the PSRSSTL by employers contained within section 169.490.

44. Prior to the changes contained in TAFP SB 62, section 169.490 stated that the rate of Employer Contributions shall “be equal to a certain percentage of the total compensation of all members employed by that employer. The percentage shall be fixed on the basis of the liabilities of the retirement system as shown by the annual actuarial valuation.” Under TAFP SB 62 this provision is to expire on December 31, 2017.

45. TAFP SB 62 amended section 169.490 to state that after December 31, 2017, and beginning for calendar year 2018, the rate of the Employer Contribution shall no longer be determined by the actuary for the PSRSSTL, but shall instead be set at an arbitrary rate not bound to reason or reality of “equal to sixteen percent of the total compensation of all members employed by that employer” which “shall decrease one-half of one percent annually until calendar year 2032 when the rate of contribution payable by each employer shall equal nine percent.”

46. Pursuant to sections 169.450 and 169.490, the Board of Trustees of the PSRSSTL at a meeting on June 19, 2017, adopted the annual actuarial valuation report prepared by the actuary for the PSRSSTL and adopted an employer contribution rate determined by the actuary to be 19.10% of total compensation.

47. After December 31, 2017, the Board of Trustees through its actuary’s annual valuation report will no longer be able to adjust the contribution rate paid by employers to be fixed on the basis of liabilities of the retirement system to take into account benefit increases or fluctuations of investment returns.

**COUNT I: BENEFIT INCREASE TO THE RULE OF 80 CONTAINED WITHIN
TAFP SB 62 IS NOT EFFECTIVE UNTIL SECTIONS
105.660 to 105.685 ARE COMPLIED WITH**

48. Plaintiffs incorporate paragraphs 1 through 47 herein.

49. This Count is only brought against the State of Missouri.

50. Chapter 105 of the Missouri Revised Statutes, pertaining to public employee retirement plans, dictates that a “substantial proposed change in plan benefits shall not become effective until such time as the provisions of sections 105.660 to 105.685 are complied with.” § 105.685 RSMo.

51. Section 105.660(10) of Chapter 105 defines a substantial proposed change to include “a proposed change in future plan benefits which would . . . materially affect the actuarial soundness of the plan.” (emphasis added).

52. Section 105.684 of Chapter 105 states that “[n]otwithstanding any law to the contrary, no plan shall adopt or implement any additional benefit increase, supplement, enhancement, lump sum benefit payments to participants, or cost-of-living adjustment beyond current plan provisions in effect prior to August 28, 2007, which would, in aggregate with any other proposed plan provisions, increase the plan’s actuarial accrued liability when valued by an actuary using the same methods and assumptions as used in the most recent periodic valuation, unless the plan’s actuary determines that the funded ratio of the most recent periodic actuarial valuation and prior to such adoption or implementation is at least eighty percent and will not be less than seventy-five percent after such adoption or implementation.”

53. The PSRSSTL’s actuary prepared a cost statement, dated December 12, 2017, analyzing the effect of the changes contained within TAFP SB 62 pertaining to the PSRSSTL (“the Cost Statement”). A copy of the Cost Statement is attached hereto as Exhibit E and incorporated by reference as if set out fully herein.

54. In a supplemental calculation to the Cost Statement, generated on or about December 21, 2017, the PSRSSTL’s actuary determined that the change from the Rule of 85 to the Rule of 80 will result in the System receiving \$132,405,000 less in employer contributions

than actuarially required through 2033. A copy of the supplemental calculation to the Cost Statement is attached hereto as Exhibit F and incorporated by reference as if set out fully herein.

55. In the Cost Statement and in the supplemental calculation the PSRSSTL's actuary calculated that the change from the Rule of 85 to the Rule of 80 costs the System's market value of assets at least \$48,455,000.

56. In the Cost Statement and in the supplemental calculation the PSRSSTL's actuary calculated that the change from the Rule of 85 to the Rule of 80 increases the System's accrued liability by at least \$12,745,000 in 2018.

57. On January 1, 2018, 262 members of the PSRSSTL will be eligible under the Rule of 85 whereas 443 members of the PSRSSTL will be eligible under the Rule of 80.

58. Since August 28, 2017, 13 members have applied for retirements with the PSRSSTL who would otherwise not have been eligible for a normal retirement pension, but for the expansion of the eligibility from the Rule of 85 to the Rule of 80.

59. According to TAFP SB 62, the expansion of the eligibility for a normal pension for members from the Rule of 85, which was in effect prior to August 28, 2007, to the Rule of 80, became effective on August 28, 2017.

60. The most recent periodic actuarial valuation report prepared by the actuary for the PSRSSTL dated July 2017, and presented and approved by the Board of Trustees of the PSRSSTL at a meeting on June 19, 2017, determined that the System had an actuarial value funding ratio of only 73.7%.

61. In the Cost Statement, dated December 12, 2017, the System's actuary determined that the System's current funded ratio is only 71.62%. Likewise, the System's actuary calculated

that with the changes contained within TAFP SB 62 taken into account, the System's funded ratio is projected to be only 70.22% for 2018 and only 70.33% for 2019.

62. In the Cost Statement the System's actuary determined that with the changes contained within TAFP SB 62 taken into account, the System's funded ratio is projected to remain below 75% until 2029 and below 80% until 2033.

63. The expansion of the eligibility for a normal retirement pension from the Rule of 85 to the Rule of 80 contained in TAFP SB 62 is a substantial proposed change as defined in § 105.660(10) in that it materially affects the actuarial soundness of the System.

64. The expanding of the eligibility for a normal retirement pension from the Rule of 85 to the Rule of 80 contained in TAFP SB 62 is a "benefit increase, supplement, [or] enhancement" under § 105.684 that increases the actuarial accrued liability of the System.

65. Therefore, the Court must determine that under § 105.685, expanding of the eligibility for a normal retirement pension from the Rule of 85 to the Rule of 80 shall not become effective until such time as the System's "actuary determines that the funded ratio of the most recent periodic actuarial valuation and prior to such adoption or implementation is at least eighty percent and will not be less than seventy-five percent after such adoption or implementation." § 105.684.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

1. Declaring that the increase in the eligibility for a normal retirement pension from the Rule of 85 to the Rule of 80 shall not become effective until such time as the System's actuary determines that the funded ratio of the most recent periodic actuarial valuation and prior to such adoption or implementation is at least eighty percent and will not be less than seventy-five percent after such adoption or implementation.

2. Awarding Plaintiffs their costs incurred herein.
3. Awarding such other and further relief as the Court deems just and proper under the circumstances.

COUNT II: TAFP SB 62 CREATES AN UNFUNDED MANDATE IN VIOLATION OF THE HANCOCK AMENDMENT

66. Plaintiffs incorporate paragraphs 1 through 65 herein.
67. This Count pertains to all Defendants.
68. Plaintiffs have standing pursuant to either Article X, Section 23 of the Missouri Constitution, or § 169.597 RSMo.
69. Article X, Section 21 of the Missouri Constitution, commonly referred to as the "Hancock Amendment," provides:

Section 21. State support to local governments not to be reduced, additional activities and services not to be imposed without full state funding. - The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivision. *A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.* (italics added).

70. TAFP SB 62 along with § 169.460 and § 169.490, as amended by TAFP SB 62, require a new activity or service or increase the level of any activity or service beyond that required by existing law, by changing the eligibility formula for a normal pension from the Rule of 85 to the Rule of 80.

71. Prior to the passage of the Hancock Amendment in 1980 existing law in 1980 permitted a member to be eligible for a normal pension upon attaining (a) age sixty-five or (b) age sixty-two and having thirty of more years of creditable service.

72. Prior to TAFP SB 62, existing law permitted the PSRSSTL to fund any new activity or service as the PSRSSTL's actuary set the employer contribution rate on an annual basis as a percentage on the basis of the liabilities of the System, such as those liabilities associated with increases in benefits.

73. However, through TAFP SB 62, the State has prohibited the PSRSSTL from funding any new activities or services or an increase in the level of any activity or service, such as changing the normal retirement eligibility formula from the Rule of 85 to the Rule of 80, as the employer contribution rate will be capped at the rate set forth pursuant to the schedule contained in amended § 169.490.

74. TAFP SB 62 and § 169.460 and § 169.490, as amended, will cause the PSRSSTL to suffer increased costs.

75. In the Cost Statement the System's actuary calculated that pursuant to TAFP SB 62, and its amendments to § 169.460 and § 169.490, the System will receive \$232,533,000 less in employer contributions than actuarially required through 2033.

76. In the Cost Statement the System's actuary calculated that when compared to the pre-existing plan provisions, TAFP SB 62 and its amendments to § 169.460 and § 169.490, costs the System \$141,430,000 in its market value of assets.

77. Likewise, in the Cost Statement the System's actuary calculated that when compared with the pre-existing plan provisions, TAFP SB 62 will reduce the PSRSSTL's funded ratio by at least 10.1% by 2033.

78. The State has made no appropriation to pay the PSRSSTL for these increased costs generated by TAFP SB 62 and its amendments to § 169.460 and § 169.490. Rather, by imposing caps on the employer contribution rates in § 169.490 through TAFP SB 62, the State has prohibited

the PSRSSTL from paying for these increased costs, which will cause significant financial harm to the PSRSSTL and permanently damage its ability to provide benefits required by law to its members.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment as follows:

1. Declaring TAFP SB 62 and its changes to § 169.460 and § 169.490 unconstitutional.

2. Declaring pursuant to § 169.597 that such benefits and features required by TAFP SB 62 and its changes to § 169.460 and § 169.490 “shall be deemed not to have accrued and shall not be payable to members.”

3. Relieving the PSRSSTL from the unfunded mandates contained within TAFP SB 62, § 169.460, and § 169.490.

4. Awarding the PSRSSTL full funding to comply with the new activity or service or an increase in the level of any activity or service required by TAFP SB 62, § 169.460, and § 169.490, including requiring employers who contribute to the PSRSSTL to contribute at the rate set by the System’s actuary through the manner set by § 169.490 prior to its amendment by TAFP SB 62, beginning on January 1, 2018, and continuing thereafter, and for an award of interest at a rate of 9%, or a rate otherwise permitted by law, for any late payments.

5. Awarding Plaintiffs their costs incurred herein.

6. Awarding Plaintiffs their reasonable attorneys’ fees and costs incurred herein to be paid from the applicable unit of government pursuant to Article X, Section 23 of the Missouri Constitution.

7. Awarding such other and further relief as the Court deems just and proper under the circumstances.

**COUNT III: TAFP SB 62 VIOLATES THE MISSOURI CONSTITUTION'S
REQUIREMENT THAT LEGISLATION NOT BE CHANGED FROM ITS ORIGINAL
PURPOSE**

79. Plaintiffs incorporate paragraphs 1 through 78 herein.

80. This Count pertains to all Defendants.

81. The original purpose of TAFP SB 62 was changed during the legislative process in violation of Article III, Section 21 of the Missouri Constitution.

WHEREFORE, Plaintiffs respectfully request this Court to declare TAFP SB 62 unconstitutional and unenforceable and enter a temporary restraining order, preliminary injunction, permanent injunction, prohibiting Defendants, their agents, or anyone acting on their behalf, from executing or enforcing TAFP SB 62 in any way, for an award of Plaintiffs' costs incurred herein, and such other relief as the Court deems just and proper

Respectfully submitted,

HARTNETT GLADNEY HETTERMAN, L.L.C.

/s/ Matthew J. Gierse

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