IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES (OAPSE)/ AFSCME LOCAL 4, AFL-CIO c/o Joseph P. Rugola, Ex. Director/Treasurer 6805 Oak Creek Drive Columbus, OH 43229	:	Case No. Judge
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Plaintiffs,

v.

SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO
c/o Richard Stensrud, Executive Director
c/o Daniel L. Wilson, Board Chair
300 East Broad Street, Suite 100
Columbus, OH 43215-3746

OHIO ATTORNEY GENERAL MIKE DEWINE
30 East Broad Street, 14th Floor

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	:	
CAVANAUGH MACDONALD	:	
CONSULTING, LLC	:	
c/o Cogency Global, Inc., Statutory Agent	:	
3958-D Brown Park Drive	:	
Hilliard, OH 43026	:	**COMPLAINT FOR**
	:	**DECLARATORY**
Defendants.	:	**JUDGMENT**

Now appears Plaintiffs, Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO, Betty Simmons-Talley, Karen Holdridge, Cindy Perry, Mark Bailey, Marsha Tobin, Debra Basham, Lottie Goshay, Reatha Goshay, Karen Arnoto, Tommy Sue Adam, Lynda Mobley, Sylvia Holmes, Geneva Bates, Mary Ann Howell, Rosetta Dial, Patricia Allen, Tracy Shull, Barbara Turner, JoAnn Johntony, Lois Carson, Sandra Wheeler, Stephanie Wiley, Arnetta Banks, Jacqualine Leisure, Rosella Tope, Debora Adams, John Sindeldecker, Beverly Payne, Michael Lang, Sheila Dawkins-Flinn, Karen Jones, Renee Goebel, Carol Henderson, Barbara Ward, William Carrier, Melody Potter, Kathy Chamberlain, and Angela Klein by and through undersigned counsel, and do hereby state all of the following allegations as their complaint for declaratory judgment against Defendants, School Employees Retirement System (hereafter "SERS"), Ohio Attorney General Mike DeWine, and Cavanaugh Macdonald Consulting, LLC.

A. Introduction:

1. In the year 2000, the pension liability of SERS was funded at 102%. Upon reaching this high water mark, SERS administrators and its actuary, embarked on a series of give-a-ways: In 2001, the pension conversion formula (the multiplier) was increased from 2.1% to 2.2%, with an

additional 2.5% for each service year over 30; the benefit limit was increased to 100% of final average salary; Medicare Part B reimbursements were increased to $45.50 with a lump sum payment retroactive to 1993; and the health care surcharge to Employers was capped at 2% of payroll per Employer and 1.5% of statewide payroll. No new funding streams were authorized.

2. As a direct result of expanding benefits without providing for increased funding sources, by 2008 SERS had squandered its envious 102% pension funding ratio. In 2008 the funding ratio fell to 81%, still strong, but inadequate to withstand the turbulent financial markets that persisted through 2008 and 2009 ("The Great Recession"). As school districts shed employees through attrition, fewer and fewer active employees were contributing new revenues into the pension system, and with fewer and fewer employees, the Employer contribution diminished as well. By 2012 the pension funding ratio was down to 62%.

3. If nothing else, it should have become apparent to SERS administrators and its actuary, that paying out increased benefits without providing for new funding streams, and instead relying on investment returns, was at best a risky venture. To this very day, Employers pay the same 14% of payroll and active employee members contribute 10% of wages to SERS, a funding mechanism that has not been altered in some fifteen years.

4. During the period of time that SERS was expanding benefits, Plaintiff OAPSE was advising SERS that a more restrained approach to benefits

and investments was in order. For example, OAPSE advised that SERS should not be concerned about providing benefits for short term employees who contributed to the pension system for less than ten years.

5. OAPSE's cautions to SERS were met with a "we know better than you" attitude. Such an attitude was demonstrated in a letter written by SERS Executive Director Thomas R. Anderson and SERS President Mary E. Kasunic to OAPSE Executive Director Joseph P. Rugola on October 16, 2000. (See, Exhibit 1 attached hereto.)

6. The SERS letter of October 16, 2000, was intended to convince OAPSE and its leadership to support retirement and health insurance benefit enhancements as proposed under Senate Bill 270 of that year. Most obvious in the letter was the opinion that "the health care reserve fund, even with the SB 270 enhancements, will maintain a solid positive balance until at least 2016 and possibly longer." Unfortunately, that quoted forecast by SERS was indicative of its lack of forecasting accuracy, and within three years of the letter, SERS announced that its health care benefits were no longer sustainable.

7. The reliance of SERS and its actuary on investment returns has proven to be misplaced, primarily because of its own mismanagement of its portfolio.

8. An analysis of the Comprehensive Annual Financial Reports (CAFR's) prepared by SERS reveals very interesting data: In 2001 SERS had a fund balance of $8,316,716,597.00. By the end of fiscal year 2017, the SERS

fund balance was 13,702,752,983.00, an increase of 64%. Over the same period of time, the Dow Jones Industrial Average ("DJIA") grew from 10,522.81 to 21,891.12, an increase of 108.03%. Similarly, the Standard & Poor's 500 ("S&P 500") grew from 1,211.23 to 2,470.30, an increase of 103.95%. Thus, both the DJIA and the S&P 500 outperformed the SERS growth rate by over forty percent (40%). (See, data and chart attached hereto as Exhibit 2.)

9. The fact that the SERS pension fund growth rate, during the sixteen years from 2001 through 2017, was outperformed by straight market performance indexes is an incomplete picture of the mismanagement of the fund by SERS. Only when it is understood that SERS spent a whopping $852,393,157.00 on outside investment fund management fees, during the ten year time period beginning in 2007 to the present time, does the SERS mismanagement begin to come into focus. (See, data and chart attached hereto as Exhibit 2.)

10. SERS spent $852.39 million on investment external fund management to be outperformed simply by the market indexes. The $852.39 million only represents monies spent by SERS on external fund management consultants. SERS also hires internal investment consultants who are handsomely compensated and awarded large performance bonuses, which in 2017 amounted to $3.4 million.

11. The monies spent by SERS for outside investment consultants is at best a disgrace and at its worst evidences inept public policy choices, if not

outright criminal conduct, by SERS, its management, and actuary. For example, from the conclusion of fiscal 2007 through fiscal year 2009, the SERS fund value lost $3.5 billion dollars. For the privilege of losing $3.5 billion, SERS paid its external investment managers $137.5 million. Moreover, since 2001, while the SERS fund balance has increased by 64%, its external investment expenses have increased by over 213%. Somebody is getting rich here, and it is not the retirees who receive meager pensions from SERS. (See, data and chart attached hereto as Exhibit 2.)

12. On October 9, 2017, the SERS Board of Trustees voted to freeze the annual cost of living adjustment ("COLA") for retiree pensions for three years in order "to address immediate financial challenges and long-term funding goals." In other words, the SERS pension fund, with market value assets of some $13.7 billion, a fund that pays hundreds of millions of dollars to outside investment managers to make less than the market indexes, can't afford to pay retirees earning a small but meaningful pension of just some $1,223.33 per month an additional $30.58 a month.

13. Further evidencing investment portfolio mismanagement by SERS is the fact that SERS continues to invest in "hedge" funds, which have a higher risk of loss, have historically underperformed more traditional investments, and require higher commissions and fees than more traditional investments. Thus, while other institutional investors similarly

situated to SERS have exited the "hedge" fund market, SERS continues to spend excessively on "hedge" fund management fees and commissions.

14. After some seven years of near zero inflation, all the while paying a COLA to retirees, SERS now imposes a three year COLA freeze at a time when inflationary monetary policy is being advocated by the federal government. Thus, the COLA freeze is being imposed by SERS at a time when it will have the harshest effect on retirees.

15. This lawsuit challenges whether the SERS action freezing the COLA on October 9, 2017, complied with its authorizing statutory authority, Ohio R.C. 3309.374, as amended by HB 49, 132nd General Assembly, effective 9/29/2017. The authorizing statutory authority specifically provides that: "the retirement board may ***annually*** increase each allowance, pension, or benefit payable under this chapter by the percentage increase, if any, in the consumer price index, not to exceed two and one half per cent, as determined by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: "all items 1982-84=100") ***for the twelve-month period ending on the thirtieth day of June of the immediately preceding calendar year***. No increase shall be made for a period in which the consumer price index did not increase. [Emphasis Added.]" It is alleged herein that by authorizing a three year COLA freeze, SERS overlooked the statutory requirement for an annual review of the COLA.

16. Additionally, this lawsuit challenges whether by delegating the decision to confer a COLA to the SERS Board of Trustees, when the history of SERS COLA adjustments has been reserved to Ohio statutory law, the Ohio General Assembly improperly delegated its law-making function to SERS.

17. This lawsuit also challenges whether the legislation delegating the decision to confer a COLA to the SERS Board of Trustees, HB 49, 132nd General Assembly, effective 9/29/2017, violates the one-subject provision contained in Article II, Section 15(D) of the Ohio Constitution ("The One-Subject Rule"), as the amendment to R.C. 3309.374 was included in a massive State budget bill containing hundreds of provisions completely unrelated to SERS and COLA policy.

18. This lawsuit also challenges whether SERS improperly violated retirees' equal protection rights by arbitrarily creating different classifications of retirees. Depending on when a retiree retires, some retirees may have pension levels frozen for three or more years, some for two years, some for one year, and others may never have a pension freeze.

19. This lawsuit challenges whether the legislation purporting to allow SERS to determine "the number of anniversaries of the allowance, pension, or benefit" a retiree who retires after January 1, 2018, must wait to be eligible for a COLA violates the one-subject provision contained in Article II, Section 15(D) of the Ohio Constitution ("The One-Subject Rule") as it was included in Am. Sub. SB 8, 132nd General Assembly, effective 3/23/2018, appropriations effective 12/22/2017.

20. This lawsuit also challenges whether the October 9, 2017 action of the SERS Board of Trustees was procured through active fraud and misrepresentations by SERS administrators and its actuary by: failing to include the investment year 2017 market value investment returns of 12.98% in the financial analysis leading up to the COLA freeze vote; repeatedly misrepresenting the trustees' fiduciary duty when questioned by trustees, and using an aspirational policy standard for funding health insurance, that had no force of law, as a basis for enacting the COLA freeze.

B. Parties and Jurisdiction:

21. Defendant SERS is a political subdivision of the State of Ohio, organized as a multi-employer defined benefits plan, and is situated in Columbus, Franklin County, Ohio.

22. Contributing employers to SERS are all public school districts in the State of Ohio, community and technical colleges, and one State university (University of Akron). The Employer contribution is equal to 14% of employee wages.

23. Active employees, such as school bus drivers, cafeteria workers, custodians, educational aides, secretaries, administrative support staff, business managers, treasurers, and school board members, contribute 10% of their wages to SERS. The demographics for SERS members are very different from the other Ohio public pension systems. SERS members are

overwhelmingly female, begin working in the system later in life, retire at an older age, and are paid significantly less while working.

24. There are approximately 157,981 active working members of SERS contributing 10% of their wages to SERS. There are approximately 79,157 retirees earning an average monthly pension of $1,223.33.

25. Plaintiff Ohio Association of Public School Employees (OAPSE)/AFSCME Local 4, AFL-CIO is an unincorporated association acting as an employee association as that term is defined in Ohio R.C. 4117.01(D). OAPSE is a labor union comprised of over 34,0000 members who work for public school district boards of education, community colleges, boards of developmental disabilities, public libraries, and Head Start agencies throughout the State of Ohio. OAPSE is affiliated with the American Federation of State County and Municipal Employees (AFSCME) which numbers some 1.2 million members across the country. All of the individually named Plaintiffs herein are members of OAPSE who are employed by public school district boards of education and who contribute to SERS, or are retiree members of OAPSE who receive pension benefits from Defendant SERS.

26. Plaintiffs Betty Simmons-Talley, Karen Holdridge, Cindy Perry, Mark Bailey, Marsha Tobin, Debra Basham, Lottie Goshay, Reatha Goshay, Karen Arnoto, Tommy Sue Adam, Lynda Mobley, Sylvia Holmes, Geneva Bates, Mary Ann Howell, Rosetta Dial, Patricia Allen, Tracy Shull, and Barbara Turner are retirees from employment in Ohio public

school district boards of education. They are retiree members, or former members, of OAPSE. They are retiree members of SERS, and receive a monthly service retirement pension.

27. Plaintiffs JoAnn Johntony, Lois Carson, Sandra Wheeler, Stephanie Wiley, Arnetta Banks, Jacqualine Leisure, Rosella Tope, Debora Adams, John Sindeldecker, Beverly Payne, Michael Lang, Sheila Dawkins-Flinn, Karen Jones, Renee Goebel, Carol Henderson, Barbara Ward, William Carrier, Melody Potter, Kathy Chamberlain, and Angela Klein are employees of Ohio public school district boards of education. They are all OAPSE members and officers in the Union. They are "active" members of SERS, contribute ten per cent (10%) of their earnings to SERS, and upon meeting qualifications for service retirement will be retiree members of SERS.

28. The Ohio Attorney General, Mike DeWine, is a Constitutional Officer of the State of Ohio, charged with the duty to represent boards and agencies of the State, and to defend Ohio statutory law.

29. Defendant, Cavanaugh Macdonald Consulting, LLC ("CMC"), was, at all times relevant herein, the actuary to SERS, and is paid to provide actuarial analysis to SERS. CMC is a foreign LLC conducting business in Columbus, Franklin County, Ohio.

30. This Court possesses jurisdiction over the parties for the reasons set forth herein.

31. This Court possesses jurisdiction over the subject matter as the subject matter addresses issues of Ohio statutory law, Ohio Constitutional law, and Ohio common law.

C. Three Year COLA Freeze Exceeded SERS's Statutory Authority.

32. Ohio R.C. 3309.374, as amended by HB 49, 132nd General Assembly, effective 9/29/2017, provides that: "the retirement board may ***annually*** increase each allowance, pension, or benefit payable under this chapter by the percentage increase, if any, in the consumer price index, not to exceed two and one half per cent, as determined by the United States bureau of labor statistics (U.S. city average for urban wage earners and clerical workers: "all items 1982-84=100") ***for the twelve-month period ending on the thirtieth day of June of the immediately preceding calendar year***. No increase shall be made for a period in which the consumer price index did not increase. [Emphasis Added.]"

33. At a special meeting conducted on October 9, 2017, SERS adopted a three year freeze on the COLA beginning January 1, 2018.

34. Adopting a three year freeze of the COLA ignores the statutory requirement in Ohio R.C. 3309.374 that SERS review the COLA annually to determine whether to grant an increase, not to exceed 2.5% tied to the increase of the Consumer Price Index ("CPI") on June 30 of the preceding calendar year.

35. In using the word "annually" and tying the COLA to the annual CPI, the General Assembly expressed a clear and unambiguous requirement that

SERS review the COLA annually, not three years from October 9, 2017, or three years after January 1, 2018.

36. Because the action of the SERS Board of Trustees on October 9, 2017, exceeded its statutory authority, the action is void and should be declared to have no legal force and effect.

D. The General Assembly Improperly Delegated Its Law-Making Duties to SERS.

37. Eight times since 1971 the General Assembly has enacted legislation, which became law, granting SERS pension COLA's. The last time, in 2002, the SERS COLA was "fixed" at a statutory rate of 3% per year.

38. In each of those previous eight occasions, the General Assembly conferred a benefit to SERS retirees. The SERS COLA has never before been reduced or frozen, and never before has the ability to change or reduce the COLA been delegated to SERS.

39. Because the decision to confer a SERS COLA and the amount of the SERS COLA has been reserved for statutory law, the amendments to Ohio R.C. 3309.374 contained in HB 49, 132nd General Assembly, effective 9/27/2017, improperly delegated the General Assembly's law-making authority to SERS.

40. The amendments to R.C. 3309.374 contained in HB 49, confer discretion to SERS to grant a COLA if the CPI increases, up to 2.5%. Such determinations have always been subject to the statutory law-making power of the General Assembly (and the Governor). To grant the SERS

Board of Trustees the discretion over whether to allow a COLA abdicates the General Assembly's power to make laws.

41. For well over forty years the General Assembly has guarded its authority over the SERS COLA giving the decision whether to grant a SERS COLA the force of law. It cannot now delegate that law-making function to SERS.

42. Because the amendments of HB 49 purporting to convey discretion to the SERS Board of Trustees over whether to grant a COLA improperly delegated the General Assembly's law-making duties to SERS, the statute must be declared void, unconstitutional, and of no legal force and effect.

43. Consequently, if the amendments of HB 49 are of no legal force and effect, then the three year COLA freeze purportedly enacted pursuant to those amendments must likewise be declared of no legal force and effect.

E. COLA Provisions of HB 49 Violate One Subject Rule.

44. HB 49 created the Fiscal Year 2018-2019 operating budget for the State of Ohio. HB 49 violates the one-subject provision contained in Article II, Section 15(D) of the Ohio Constitution ("The One-Subject Rule"). The One-Subject Rule requires that legislation must address only a single subject and serve a single purpose. HB 49, however, which establishes the State's biennial budget, also contains provisions that are completely unrelated to the budget or to the appropriation of funds.

45. The SERS COLA provisions of HB 49 are such unrelated provisions. The General Assembly appropriates no funds, and makes no expenditures

furthering the payment of pensions by SERS. Pension payments are made from the SERS pension fund, which is constituted from contributions from employees and employers, and from the pension fund's investment earnings.

46. HB 49 is a massive piece of legislation containing nearly 3,400 pages. It contains hundreds of provisions, some appropriating funds, others not, and affected wide spread aspects of the operations of the State of Ohio, including: the Adjutant General, Department of Administrative Services, Department of Aging, Department of Agriculture, Ohio Air Quality Development Authority, Attorney General, Auditor of State, Office of Budget and Management, Capitol Square Review and Advisory Board, State Board of Career Colleges and Schools, Casino Control Commission, Department of Commerce, Ohio Consumers' Counsel, Controlling Board, State Cosmetology and Barber Board, Court of Claims, Ohio Dental Board, Development Services Agency, Department of Developmental Disabilities, Department of Education, Board of Embalmers and Funeral Directors, Environmental Protection Agency, Environmental Review Appeals Commission, Ohio Facilities Construction Commission, Ohio General Assembly, Office of the Governor, Department of Health, Department of Higher Education, Office of Inspector General, Department of Insurance, Department of Job and Family Services, Joint Committee on Agency Review, Joint Education Oversight Committee, Joint Legislative Ethics Committee, Joint Medicaid Oversight Committee,

Judiciary/Supreme Court, Lake Erie Commission, Liquor Control Commission, State Lottery Commission, Department of Medicaid, State Medical Board, Department of Mental Health and Addiction Services, Department of Natural Resources, Ohio Board of Nursing, Opportunities for Ohioans with Disabilities Agency, State Board of Pharmacy, Ohio Public Defender, Department of Public Safety, Public Utilities Commission, Ohio State Racing Commission, Department of Rehabilitation and Correction, Secretary of State, Department of Taxation, Department of Transportation, Treasurer of State, Department of Veterans Services, Local Governments, and others.

47. "[W]hen there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling [,] * * * the very evil the one subject rule was designed to prevent." *State ex rel. Dix v. Celeste* 11 Ohio St.3d 141, 145, 464 N.E.2d 153 (1984). An act may involve multiple topics, so long as they share a common purpose or relationship. However, where there is a "disunity of subject matter such that there is no discernible practical, rational or legitimate reason for combining the provisions in one Act," *State ex rel. Ohio Civ. Serv. Employees. Assn v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, the Court must invalidate the offending provisions of the law.

48. The SERS COLA provisions of HB 49 should be invalidated as offending the One-Subject Rule, and the offending provisions should be stricken, declared void and unenforceable, and permanently enjoined from enforcement.

F. The COLA Freeze Improperly Violates Retirees' Equal Protection Rights.

49. SERS is an agency of the State of Ohio.

50. By enacting the COLA freeze in the manner it did, SERS has improperly created various different classifications of retirees.

51. Depending on when a retiree retires, some retirees may have pension levels frozen for three years or more, some for two years, some for one year, and others may never have a pension freeze.

52. The legislation that purports to grant SERS discretion on determining how long a retiree who retires on or after January 1, 2018, must wait to be eligible for a COLA, does not even become effective until March 23, 2018. Am. Sub. SB 8, 132nd General Assembly, effective 3/23/2018, appropriations effective 12/22/2017. Accordingly, employees who retire between January 1, 2018 and March 22, 2018, might only have to wait one year for COLA eligibility, provided SERS issues a COLA. Further, nothing the legislation limits the discretion of SERS to determine "the number of anniversaries" new retirees must wait to be eligible for a COLA (notwithstanding the allegations in paragraph 13 of this complaint regarding the interpretation of the word "annually" in R.C. 3309.374(B) as amended).

53. Such arbitrary and unnecessary differences in the COLA eligibility of retirees, denies retirees the equal protection of the laws in this State in violation of the Ohio and United States Constitutions.

G. COLA Eligibility for New Retirees in Am. Sub. SB 8 Violate One Subject Rule.

54. Am. Sub. SB 8 is titled "Establish 1:1 School Facilities Option Program." Am. Sub. SB 8 violates the one-subject provision contained in Article II, Section 15(D) of the Ohio Constitution ("The One-Subject Rule"). The One-Subject Rule requires that legislation must address only a single subject and serve a single purpose. Am. Sub. SB 8, however, which establishes a 1:1 School Facilities Option Program, also contains provisions that are completely unrelated to the School Facilities Option Program or to the appropriation of funds.

55. The COLA eligibility for new retirees provisions of Am. Sub. SB 9 are such unrelated provisions. SERS COLA eligibility provisions are unrelated to and serve no common purpose with school facilities, community school sponsors, college credit for comparable coursework, transportation between county jail and courts, ex officio bailiff services, transportation financing districts, rural growth investment credit, sales tax exemptions for eyeglasses and contacts, tourism development district revenue, business income deduction for PEO-paid compensation, veterans organizations grant program, VoAg program funding, 4-H Club program funding, Wright State University earmarks, site and museum operations and State historical grants funding, Lupus awareness, Ohio River Valley

Jail Facility, Lakes in Economic Distress Revolving Loan Program, computer expenses, Trauma Assistance at Mt. Carmel West Hospital, or cash transfers to the General Revenue Fund.

56. In fact, most of the listed legislative topics in paragraph 51, above, serve no common purpose other than having been strewn together in Sub. Am. SB 8.

57. "[W]hen there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act, there is a strong suggestion that the provisions were combined for tactical reasons, i.e., logrolling [,] * * * the very evil the one subject rule was designed to prevent." *State ex rel. Dix v. Celeste* 11 Ohio St.3d 141, 145, 464 N.E.2d 153 (1984). An act may involve multiple topics, so long as they share a common purpose or relationship. However, where there is a "disunity of subject matter such that there is no discernible practical, rational or legitimate reason for combining the provisions in one Act," *State ex rel. Ohio Civ. Serv. Employees. Assn v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, the Court must invalidate the offending provisions of the law.

58. The SERS COLA eligibility of new retirees provisions of Am. Sub. SB 8 should be invalidated as offending the One-Subject Rule, and the offending provisions should be stricken, declared void and unenforceable, and permanently enjoined from enforcement.

H. Three Year COLA Freeze was Procured through Fraud and Misrepresentations.

59. SERS administrators and its actuary engaged in fraud and misrepresentation in a deliberate effort to get the SERS Board of Trustees to enact the COLA freeze. The fraud and misrepresentations consisted of: failing to include the investment year 2017 market value investment returns of 12.98% in the financial analysis leading up to the COLA freeze vote; repeatedly misrepresenting the trustees' fiduciary duty when questioned by trustees, and using an aspirational policy standard on health insurance funding, that had no force of law, as a basis for enacting the COLA freeze.

60. For the fiscal investment year of 2017, SERS had a market value investment return of 12.98%. That is nearly 5.5 percentage points better than the actuarial estimate of 7.5%. Such profitable and exceedingly good results were not presented as a basis for changing the actuarial assumptions leading up to the COLA freeze vote by the Board of Trustees.

61. Trustees voiced concerns about their potential personal liability if the COLA freeze was not enacted. Instead of being informed of applicable officers and directors liability insurance in effect, or being informed of the true nature of their fiduciary duty, trustees were told that they had a duty to protect the integrity of the pension, to follow the advice of actuary, and in the absence of specific alternatives to vote to freeze the COLA.

62. SERS has an internal aspirational policy, championed by the fund's actuary, that discourages contributions to the SERS health insurance fund

if the pension fund is funded at less than seventy per cent (70%). This aspirational policy has no force of law. It is not provided for in statute, and it is not codified and subject to legislative review. It is simply an aspirational internal policy demonstrating a preference for obtaining long term pension stability before funding other non-pension benefits, such as health insurance, provided by SERS.

63. Throughout the run up to the COLA freeze vote, and beginning as early as two years prior, SERS administrators and the actuary used the threat of not being able to fund health insurance for retirees as a basis to freeze the COLA. Such threats were blatantly fraudulent and misrepresented the nature of the health insurance funding policy. Moreover, the stability of SERS health insurance funding was more negatively affected by the 2001 capping of the Employer health care fund surcharge.

64. SERS administrators and the actuary have downplayed and misrepresented the wasteful spending of pension fund assets on external investment fees, large bonuses for investment consultants, and huge fees for hedge fund managers and now seeks to re-fund and stabilize the pension fund by freezing COLA for retirees who depend on those COLA increases to meet their living expenses.

65. Because the COLA freeze vote of October 9, 2017 was procured by fraud and misrepresentation, it is void and should be declared of no legal force and effect.

WHEREFORE, Plaintiffs respectfully requests the following relief: a declaratory judgment from this Court declaring that the October 9, 2017 COLA freeze enacted by SERS is void and is of no legal force and effect; an order from this Court prohibiting SERS from implementing any COLA freezes under its action of October 9, 2017; for a declaratory judgment from this Court declaring that the COLA provisions of HB 49, 132nd General Assembly, effective 9/29/2017, are void and unenforceable; for a declaratory judgment from this Court declaring that the COLA eligibility provisions for new retirees of Am. Sub. SB 8, 132nd General Assembly, effective 3/23/2018, appropriations effective 12/22/2017, are void and unenforceable; for an order awarding payment of all litigation costs, including attorney's fees; and, for any other relief this Court deems just.

/s/ *Thomas C. Drabick, Jr.*

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