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SUAA Mini Briefing

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Re-Cap of Public Act 98-599 Leading to Supreme Court Decision

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TIER 1 PARTICIPANTS AND BENEFICIARIES WIN PENSION BATTLE

In February of 2014, SUAA filed suit in Champaign County Court challenging the Constitutionality of Public Act 98-599, also known as the Pension Reform Law. That law gutted pensions for public employees and retirees, including those for members of the State Universities Retirement System. Eventually, on March 11, 2015, SUAA's lead attorney, Aaron Maduff, argued that case to the Supreme Court of Illinois. Last Friday, May 8, 2015, the Illinois Supreme Court issued an opinion which many have called its most important this millennium. That opinion confirms SUAA's arguments in *every respect*. The Pension Reform Law has now been permanently struck down as unconstitutional.

This *Mini Briefing* is lengthy because we want to provide the whole story with facts put in sequence so all SUAA members understand the importance of SUAA's roll in this landmark case. It is now time to tell the whole story. References to the Illinois Supreme Court opinion will be by ¶ number. And so we begin.

SUAA Joins the Fight

From the start, SUAA recognized that SURS members are different in many ways than other state employees. The money purchase plan available to SURS members faced a far more serious threat than the traditional pension plans available to other state employees. The nature of Community College and State University personnel positions are such that they faced difficult decisions that others would not face. The diversity of SURS members resulted in very different repercussions for their retirement plans not only as compared to other state employees, but even among themselves. This was a fight that SURS members and their organization, SUAA, had to take responsibility for themselves. This was not a fight that SUAA could entrust to anyone who had loyalties other than to SURS members. As the course of the case would show, it was with very good reason that we took responsibility for making this fight ourselves – and the result proves that point in spades.

The Initial Filing and the Motion for Injunction

SUAA first filed the case in Champaign County in February of 2014, and the State moved to transfer it to Sangamon County to be combined with cases filed by several other groups. In order to preserve its independence from the others, SUAA fought that motion. We lost that fight and the case was combined with four others in Sangamon County. That was the first *and only* battle we lost in this case.

The plaintiff groups in each of the five combined cases, tried to work together. But there were unfortunately different interests at stake. The first was the clear problem that SURS members were facing with the potential of losing refunds under the money purchase formula if they did not retire by June 1, 2014. While some groups felt that filing for an injunction to bar the law from going into effect was unnecessary and would cost resources for a fight that would be lost, SUAA could not afford the luxury of sitting back. We had to try. As a result of the changes to the money purchase formula which did not affect other state employees, numerous long time SURS members were facing the prospect of losing thousands of dollars, in one case nearly four hundred thousand dollars, in refunds of overpayments to the system. That was real money that belonged to individual people, and many SURS members were taking early retirement to avoid that disaster.

Working as quickly as we could, on May 2, 2014, SUAA filed a motion for a preliminary injunction asking that the law be held in abeyance until this case could be completed. That motion was supported by some 20 declarations from SURS members who were facing the terrible decision of retiring or losing their refunds. A few weeks later, the unions filed a similar motion, but it had only six declarations and did not include the money purchase arguments that SUAA's motion included. In the unions' defense, the majority of their members are not SURS members and did not face these issues. But it was one more reason why SUAA had to act for SURS members itself. On May 14, 2014, the Sangamon County Court entered the preliminary injunction and Public Act 98-0599 was shut down – and it was never revived.

The State's Defense and the Circuit Court's Final Ruling

The State's only real defense to this case was its claim that the State's reserved sovereign power ("police power") allowed it to violate the Constitution to preserve the health, morals, and welfare of the people. While there is legitimacy to the police power argument in certain contexts, the five plaintiff groups insisted that this was not one of them. The State wanted to spend years going through expert reports on economic forecasts, budgets, and other issues to prove its police power defense. The plaintiff groups insisted that this was unnecessary because the police power did not apply in the first instance. Eventually, SUAA filed a motion to strike that defense because it is inapplicable to the Pension Protection Clause of the Illinois Constitution. The other four groups followed with a "similar, but separate motion." (Opinion ¶ 38) SUAA also joined with the other groups in a motion for summary judgment on the facts with the State filing a summary judgment motion of its own. The State's motion

was denied and the three plaintiff motions were granted. The Sangamon County Court then entered a permanent injunction against the law.

The State's Appeal to the Supreme Court

The State took immediate appeal to the Illinois Supreme Court. The State's brief was filed in January of 2015 and two briefs were filed by the Plaintiff groups in opposition in February of 2015. Four groups filed a single brief and SUAA filed its own brief – and as it turns out, with good reason.

The State argued that it was taken by surprise by the economic downturn of the mid-2000s, and that if it did not pass Public Act-98-599, the State's credit rating would be hurt. But the problem is that the State itself failed to fund the pension systems for nearly a century. In the words of SUAA's attorney, Aaron Maduff, during oral argument before the Supreme Court, this was Lizzie Borden Defense: "I killed my parents. Have mercy on me, I'm an orphan." SUAA's brief to the Supreme Court began by addressing this State's surprise at the economic downturn:

Today the State blames its problem not on its lack of fiscal discipline, but on its feigned surprise that, after an economic boom in the 1990's and early 2000's, it faced a "Great Recession" from 2008-2010. It even goes so far as to suggest in its Statement of Facts that "the Act reduces future COLA's only to recover a portion of the liability attributable to the Great Recession" (St. Br. at 10), as though retired State employees are somehow responsible for the State being caught unaware that the economy has cycles. But history repeats itself. An economic boom in the early 1830's was followed by the recession of 1837, another boom was followed by the recession of 1873, and of course the roaring '20's were followed by the Great Depression. But mankind has known about economic cycles at least as early as Joseph's interpretation of Pharaoh's dreams. Genesis 41. (SUAA's brief, page 2. [_____](#))

The Illinois Supreme Court came to the same conclusion: "The circumstances presented by this case are not unique. Economic conditions are cyclical and expected, and fiscal difficulties have confronted the State before." (Opinion ¶153)

In response to the State's concern about its credit rating, Mr. Maduff pointed out during oral argument that if the State is permitted to simply renege on its financial obligations, the \$50 Billion market in Illinois' general revenue bonds would crash. The Supreme Court echoed that concern noting that "If financial markets were rational, this prospect would not buoy our economy, it would ruin it." (Opinion ¶134) And of course, the key words are found at the end of the opinion: "For the foregoing reasons, the judgment of the Circuit Court declaring Public Act 98-599 to be unconstitutional and permanently enjoining its enforcement is affirmed." (Opinion ¶198)

Throughout the opinion, the Supreme Court references portions of SUAA's brief and Mr. Maduff's oral argument before the Court. The Supreme Court also did a marvelous job doing its own research quoting extensively from legislative transcripts, U.S. Congressional hearings, and other sources. The result is an

opinion and order that is comprehensive, insightful, and provides a clear direction to the General Assembly. That direction is “You cannot avoid your pension obligations!”

What the Future Holds

When SUAA filed this case in February of 2014, pension members were behind the proverbial 8-ball. The State had been failing in its obligation to fund pensions for nearly a century. The General Assembly had already enacted legislation which the Governor signed into law that gave the State permission to simply default on pension obligations and to leave SURS members among others in the dust. The law was set to go into effect and people began to take early retirement as an emergency measure to preserve their pensions and refunds. A tsunami was washing upon the shores of retirement threatening to drown peoples’ plans for their future, plans resting on pensions they assumed they had earned and were earning by making life commitments to our Universities and Community Colleges. ... and SUAA had not raised a penny for legal defense.

Today, more than 14 months later, SUAA has stood its own ground with its own legal team. It has stood shoulder to shoulder with other groups fighting the storm. The tsunami has been turned away and pensions are left standing – for today.

But we shall not rest on our laurels. It is a fool who assumes the fight is over. The State still faces an unprecedented financial problem. Having ignored its obligations to the pensions for nearly a century, it now has a \$100 Billion bill to pay that continues to rise. That the Supreme Court has struck this law does not mean that the State will not make other efforts. Indeed, the final footnote of the opinion notes that “The legislature is, of course, free to reenact any provisions of Public Act 98-599 that do not violate the constitution.”

Even before the Supreme Court issued this opinion, Illinois’ new governor, Bruce Rauner, unveiled a plan to force current employees into a new, far less favorable pension – one that some experts have said would cost state employees more in real money contributions than they will eventually receive in real money pensions. Under those circumstances, people would be far better off without pensions in the first instance. There is simply no reason to believe that the Governor or the legislature has given up on efforts to undermine your pensions.

SUAA will continue to defend pensions and your benefits in the General Assembly and, if necessary, in the Courts. SUAA will be vigilant – ever watchful for these attacks. SUAA’s mission has never been clearer. We urge you to participate vigorously in SUAA’s efforts. Surprisingly, only thirty-one percent of the SUAA membership has given to the SUAA Legal Fund – our pillar of legal support. To those who have not contributed, we ask that you reconsider- contribute your share to SUAA’s Legal Fund – contributions that will go towards the continued legal defense to ensure pension futures remain intact. And most of all, we encourage you to believe in your pension rights and to fight for them as you have and are for higher education for the students of the State of Illinois.

To the Thirty One Percent of the Membership who contributed to the Legal Fund we salute you! Without you the ability to fight for you would not have been possible. We know for a fact that there would not have been any focus on SURS participants or beneficiaries. As explained in the *Mini Briefing*, SURS is the exceptional pension system. There were also additional contributions from people who are not members of SUAA, but thought our mission was important enough to support by contributing. We salute you as your contributions were very much needed.

Thank you for your participation – the need for a Legal Fund will not go away. We look for your continued support.

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