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

MICHAEL NOLAND, AN INDIVIDUAL, AND JAMES CLAYBORNE, JR., INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE ILLINOIS SENATE, Plaintiffs, v. SUSANA A. MENDOZA, IN HER CAPACITY AS COMPTROLLER OF THE STATE OF ILLINOIS, Defendant.	Case No. 2017 CH 07762 Calendar 03 Honorable Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Plaintiffs, Michael Noland and James Clayborne's Motion for Partial Summary Judgement on Counts I through IV of their Amended Complaint and Defendant, Susana A. Mendoza, in her capacity as the Comptroller of the State of Illinois' Cross-Motion for Summary Judgment on all counts of Plaintiffs' Amended Complaint. For the reasons that follow, Plaintiffs' motion is granted and Defendant's motion is granted in part and denied in part.

INTRODUCTION

In 2009, the State of Illinois was in the midst of a budget crisis.[1] That year, the General Assembly passed a statute that eliminated the Cost of Living Adjustments for members of the General Assembly and a statute that required each member of the General Assembly to forfeit twelve days of compensation beginning in 2009. This case presents a challenge to the constitutionality of the statutes.

BACKGROUND

Plaintiff, Michael Noland ("Noland") was a member of the Illinois Senate from 2007 to 2017. Plaintiff, James Clayborne Jr. ("Clayborne") was a member of the Illinois Senate from 1995 to January 2019. Defendant, Susana A. Mendoza ("Mendoza") is the Comptroller of the State of Illinois. As Comptroller, among other responsibilities, Mendoza is responsible for payment of compensation due to members of the General Assembly.

[1] Pursuant to Rule 201 of the Illinois Rules of Evidence, the Court may, *sua sponte*, take judicial notice of the fiscal conditions of the State of Illinois in 2009. See Ill. R. Evid. 201(b)(1), (c) (eff. Jan. 1, 2011) (a court, in its discretion, may take judicial notice of adjudicative facts when the judicially noticed fact is generally known within the territorial jurisdiction of the trial court).

On July 13, 1990, the 86th General Assembly adopted Senate Joint Resolution 192. That resolution approved, *inter alia,* making Cost-of-Living Adjustments ("COLA") on July 1 of each year to the salaries of public officials, including members of the General Assembly. Noland, as member of the General Assembly, was entitled to the COLA payment as part of his salary for the duration of his service. Noland, however, only received the COLA salary payment that he was entitled to from July 2007 through June 2009.

In 2009, the General Assembly enacted Public Act 96-800,[2] which eliminated the COLA to which Noland and other members of the General Assembly were entitled for the fiscal year running from July 1, 2009 to June 30, 2010. Public Act 96-800 took effect immediately.

As provided by Joint Resolution 192, Clayborne was also entitled to the COLA payment as part of his salary as a member of the General Assembly for the duration of his service. Clayborne did not receive the COLA salary payment from July 2009 through June 2018.

Every year from 2010 through 2016, the 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.

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 affected Noland for his last six months in office, from July 2016 to January 2017.

As provided by Senate Joint Resolution 192, Clayborne was entitled to COLA payment as part of his salary as a member of the legislature for the entire duration of his service. Clayborne did not receive a COLA from July 2009 through June 2018.

In 2009, the General Assembly enacted Public Act 96-45,[3] which mandated that Noland, Clayborne, and every other member of the General Assembly were required to forfeit twelve (12) days of compensation for the fiscal year July 1, 2009 to June 30, 2010. Pursuant to Public Act 96-45, the Comptroller reduced Plaintiffs' salary for fiscal year 2010 by twelve (12) days of compensation.

Every year from 2009 through 2013, the Illinois General Assembly passed a bill between mandating either six (6) or twelve (12) furlough days for Noland and every member of the Illinois General Assembly for a one-year period for each successive fiscal year.

The mandated furlough days for fiscal years 2010 through 2014 fell entirely within one term for which Noland and Clayborne were elected.

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[2] Codified in relevant part at 25 ILCS 120/5.6.

[3] Codified in relevant part at 25 ILCS 115/1.5.

On June 1, 2017, Noland filed a Complaint for Declaratory Judgment and Issuance of a Writ of Mandamus (the "Complaint") against Mendoza in her capacity as the Comptroller of the State of Illinois (hereinafter "Defendant"), alleging that the bills changing the salary and COLA mid-term violated the Illinois Constitution. Counts I and II sought declarations that the bills imposing furlough days and eliminating COLAs mid-term violate the Illinois Constitution; Count III sought an order enjoining Defendant from enforcing these unconstitutional bills; and Count IV sought a writ of mandamus ordering Defendant to remedy those constitutional violations by paying Noland and other impacted individuals.

Defendant moved to dismiss the Complaint pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure. In its 2-619 motion, Defendant argued that Noland lacked standing to bring the claim since he was no longer a member of the General Assembly at the time he filed his Complaint. The Court agreed and granted the motion. Noland asked for leave to file an amended complaint to substitute in a new party. Defendant did not object to this request. Without any objection, the Court granted the motion.

On May 8, 2018, Noland and Clayborne (collectively, "Plaintiffs") filed a ten-count First Amended Complaint for Declaratory Judgment and A Writ of Mandamus, adding James Clayborne as a Plaintiff. Count I brought by Noland seeks a declaration that the Illinois statutes eliminating COLA payments were unconstitutional and that Defendant's action in withholding Noland's COLA salary adjustments for the period from July 2009 to January 2017 changed Noland's salary in violation of the Illinois Constitution. Count II brought by Clayborne makes the same allegations as Count I. Count III brought by Noland seeks a declaration that the bills imposing furlough days and eliminating COLAs mid-term violate the Illinois Constitution. Count IV brought by Clayborne makes the same allegations as Count III. Count V brought by Noland and Clayborne seeks a writ of mandamus compelling Defendant to make payments to Plaintiffs and other members of the General Assembly that include the COLAs. Count VI brought by Noland and Clayborne seeks a writ of mandamus compelling Defendant to make payments to Plaintiffs and other members of the General Assembly for the furlough days. Counts VII through X are re-pled by Noland as former member of the Illinois Senate to preserve for appeal the Court's dismissal of Counts I, II, III and IV of his original Complaint.

Defendant filed an Answer to Plaintiffs' First Amended Complaint denying the material allegations, and asserted the affirmative defense of lack of standing. Specifically, Defendant contends that Noland, as per the Court's Order of May 1, 2018, lacks standing to sue in his official capacity as a former member of the Illinois Senate, and that Clayborne also lacks standing since his current term of office expires in January 2019 and he did not seek re-election in 2018.

Plaintiffs subsequently filed a motion for partial summary judgment on Counts I through IV of their First Amended Complaint. Defendant, in turn, filed a cross-motion for summary judgment on all counts of Plaintiffs' First Amended Complaint. The fully briefed motions are before the Court.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). That is, summary judgment is appropriate when there is no dispute as to any material fact but only as to the legal effect of the facts. *Dockery ex rel. Dockery v. Ortiz*, 185 Ill. App. 3d 296, 304 (2d Dist. 1989). The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *Land v. Board of Education of City of Chicago*, 202 Ill. 2d 414, 421 (2002). Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts. *Performance Food Grp. Co., LLC v. ARBA Care Ctr. of Bloomington, LLC*, 2017 IL App (3d) 160348, ¶ 14. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Id.*

A party seeking summary judgment bears the burden of making a prima facie showing that there are no genuine issues of material fact. *Williams v. Covenant Med. Ctr.*, 316 Ill. App. 3d 682, 689 (4th Dist. 2000). The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant. *Medow v. Flavin*, 336 Ill. App. 3d 20, 28 (1st Dist. 2002). While the non-moving party is not required to prove his or her case in response to a motion for summary judgment, he or she must present a factual basis that would arguably entitle him or her to judgment under the applicable law. If the party moving for summary judgment supplies facts that, if left uncontroverted, would entitle him or her to judgment, the party opposing the motion may not rely on her pleadings alone to raise issues of material fact. *Safeway Ins. Co. v. Hister*, 304 Ill. App. 3d 687, 691 (1st Dist. 1999).

In ruling on a motion for summary judgment, the court is required to strictly construe all evidentiary material submitted in support of the motion for summary judgment and liberally construe all evidentiary material submitted in opposition. *Kolakowski v. Voris*, 83 Ill. 2d 388 (1980). In deciding a motion for summary judgment, the court may draw inferences from undisputed facts to determine whether a genuine issue of material fact exists. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2d Dist. 2009). However, where reasonable persons could draw divergent inferences from undisputed facts, the issue should be decided by a trier of fact and the motion for summary judgment should be denied; the trial court does not have any discretion in deciding the matter on summary judgment. *Loyola*, 146 Ill. 2d at 272.

The denial of summary judgment is not tantamount to a finding that the opponent is entitled to summary judgment. Rather, the denial of summary judgment reflects the court's judgment that one or more material facts are in dispute or that the facts relied on in the motion do not entitle the movant to judgment as a matter of law. See *Hotel 71 Mezz Lender LLC v. National Retirement Fund*, 778 F.3d 593, 602 (7th Cir. 2015).

Where cross-motions for summary judgment are filed, the parties acknowledge that only a question of law is at issue and invite the court to decide the issues based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). However, even where parties file cross-motions for summary judgment, the court is not obligated to grant summary judgment. *Mills v. McDuffa*, 393 Ill. App. 3d 940, 949 (2d Dist. 2009). It is possible that neither party alleged facts, even if undisputed, that were sufficient to warrant judgment as a matter of law. *Id.* It is also possible that, despite the parties' invitation to the court to decide the issues as questions of law, a genuine issue of material fact may remain. *Id.*

DISCUSSION

Whether Clayborne Has Standing

At the conclusion of Defendant's cross-motion for summary judgment on Plaintiffs' First Amended Complaint, Defendant argues that there is no genuine issue of fact that both Plaintiffs lack standing in their official capacity and thus cannot assert any claims on behalf of the Illinois General Assembly.[4] Defendant contends that Clayborne does not have standing because he resigned from office on December 31, 2018, and thus is no longer a member of the Senate.

Plaintiffs retort that Clayborne still has standing in his official capacity. Plaintiffs note that at the time the First Amended Complaint was filed, Clayborne brought his claims both individually and in his official capacity as a member of the Illinois Senate. Plaintiffs contend that "the jurisdiction of a court over a cause depends on the state of facts at the time the action is brought; [and] that after jurisdiction has...vested it cannot be divested by subsequent events," citing *Fiore v. City of Highland Park*, 93 Ill. App. 2d 24, 31 (2d Dist. 1968).

Defendant replies that Clayborne no longer has standing to bring any claims in his official capacity since he retired as a State Senator at the end of 2018. While Clayborne was a member of the Illinois Senate at the time he filed the First Amended Complaint, argues Defendant, he must maintain his standing throughout the course of the litigation, citing *Keep Chicago Livable v. City of Chicago*, 913 F.3d 618 (7th Cir. 2019). Defendant also contends that *Karcher v. May*, 484 U.S. 72 (1987), a case cited by the Court upon ruling on the Defendant's previous motion to dismiss, is dispositive of this issue.

Standing is a basic constitutional inquiry, essential to the justiciability requirement which enables the circuit court to adjudicate a case or controversy. See *In re Estate of Burgeson*, 125 Ill. 2d 477, 485-86 (1988). Thus, the Court must first consider whether Clayborne has standing to assert any claims in his official capacity prior to the resolution of the other issues raised by the parties.

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[4] Defendant notes that the Court previously held that Nolan lacked standing to sue in his official capacity as former member of the Illinois Senate. Noland has re-pled those claims in the First Amended Complaint for purposes of preserving his appeal.

The Court notes that the First Amended Complaint names Clayborne both individually and in his official capacity as a member of the Illinois Senate. However, none of the counts specific to Clayborne identify whether they are brought in either his individual or official capacity, or both. The Court thus construes each count as being brought in both Clayborne's individual and official capacities.[5]

Standing is determined on a case-by-case basis. *Id.* at 485. The Illinois Supreme Court has defined standing as requiring that a plaintiff have "some injury in fact to a legally recognized interest." *Glazewski v. Coronet Insurance Co.*, 108 Ill. 2d 243, 254 (1985). The purpose of the doctrine is "to insure that issues are raised and argued only by those parties with a real interest in the outcome of the controversy." *People v. M.I.*, 2011 IL App (1st) 100865, ¶ 86. Furthermore, the doctrine is meant to ensure that a plaintiff "assert his own legal rights and interests, instead of basing his claim for relief upon the rights of third parties." *Amtech Sys. Corp. v. Illinois State Toll Highway Auth.*, 264 Ill. App. 3d 1095, 1103 (1st Dist. 1994).

The Court finds that Plaintiffs' response to Defendant's standing argument conflates the doctrine of standing with jurisdiction. The two, however, are distinct legal concepts. Standing requires that a plaintiff sustain or be in imminent danger of sustaining a direct injury, and the injury must be: "(1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Duncan v. FedEx Office and Print Services, Inc.*, 2019 IL App (1st) 180857, ¶ 22. "Jurisdiction," on the other hand, can refer to subject matter jurisdiction, *i.e.* a court's authority to hear a particular case, or personal jurisdiction, *i.e.* a court's authority to litigate in reference to a particular individual. See *Belleville Toyota v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 334 (2002); *In re Possession & Control of Commissioner of Banks*, 327 Ill. App. 3d 441, 463 (1st Dist. 2001). Under Article VI, Section 9 of the Illinois Constitution, the circuit court has original jurisdiction of all justiciable matters.

Therefore, the issue before the Court is one of standing, not one of jurisdiction. Defendant argues that it is undisputed that Clayborne is no longer a member of the General Assembly. As such, reasons Defendant, Clayborne lacks standing to bring any claims in his official capacity as a State Senator. The Court agrees with Defendant that Clayborne does not have standing in his official capacity. The Court also finds that Defendant's cited case, *Karcher v. May*, 484 U.S. 72 (1987), is instructive on this issue.[6]

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[5] The briefs were not helpful to the Court in the resolution of this issue, as Defendant does not reference a particular count, and in Plaintiffs' response, they do not address whether each count is asserted by Clayborne in his individual or official capacity.

[6] The Court observes that *Karcher* is a United States Supreme Court case reviewing a federal district court case. Illinois courts approach the standing doctrine differently from federal courts. *In re Estate of Burgeson*, 125 Ill. 2d at 484 (noting that while federal courts are courts of limited jurisdiction, Illinois courts have original jurisdiction over all justiciable matters); see also *Greer v. Illinois Housing Dev. Auth*, 122 Ill. 2d 462, 491 (1988) (noting that Illinois courts are not bound to follow federal law on issues of justiciability and standing). The practical difference in the difference between Illinois and federal courts regarding the issue of standing evidences itself in Illinois' courts "greater liberality [of the standing doctrine]; state courts are generally more willing than federal courts to recognize standing on the part of any plaintiff who shows that he is in fact aggrieved[.]" *Greer*, 122 Ill. 2d at 491. As such, in

In *Karcher*, two state legislators intervened in a federal lawsuit when it became apparent that neither the state attorney general nor any other named government defendant would defend the challenged statute. The challenged legislation was a recently enacted New Jersey statute that required primary and secondary public schools to observe a minute of silence at the start of each school day. The plaintiffs alleged that the statute violated the establishment clause of the First Amendment under the Federal Constitution. The federal trial court ruled against the public officials. They appealed the decision, and lost on appeal. *Id.* at 76.

Prior to appealing the decision to the United States Supreme Court, the plaintiff intervenors lost their positions as the presiding officers of the state legislature, and the new presiding officers chose not to proceed with the appeal. *Id.* The court held that while the new Speaker of the House and President of the Senate could continue the litigation in place of their predecessors, their predecessors no longer had standing to litigate as presiding officers on behalf of the legislative bodies. *Id.* at 78.

Here, as in *Karcher*, the named legislator, Clayborne, is no longer a member of the Illinois Senate pursuant to his resignation of December 31, 2018. Therefore, Clayborne does not satisfy the requirements for standing to bring a claim in his official capacity as he cannot, as a former member of the Illinois Senate, allege a distinct and palpable injury that would be redressed by his requested relief. Further, the First Amended Complaint does not name any other plaintiffs who are current members of the Illinois General Assembly.

The Court also finds the only case cited by Plaintiffs, *Fiore v. City of Highland Park*, 93 Ill. App. 2d 24 (2d Dist. 1968), distinguishable. In *Fiore*, a plaintiff property owner seeking to build an apartment building brought a regulatory takings claim against a municipality. *Id.* at 26. The plaintiff claimed that a restrictive "Office and Research" zoning ordinance served no public purpose and deprived the land of considerable value. *Id.* at 27. The trial court ordered the city to permit the plaintiff to build multiple-family dwellings. *Id.* However, during the appeal process, the city passed legislation changing the zoning to allow single-family dwellings only and denied the plaintiff's multiple-family zoning request. *Id.* at 29. The court ruled that even though the city subsequently addressed the issue with legislation, the court maintained its jurisdiction over the parties and the litigation, and thus the ruling was valid. *Id.* Consequently, *Fiore* is distinguishable from the instant case because the Court's jurisdiction over the subject matter and parties to this litigation is not at issue.

Accordingly, the Court finds that Defendant has met its burden of establishing that there is no genuine issue of fact that Clayborne does not have standing to bring this litigation in his official capacity. Thus, Defendant is entitled to summary judgment on all counts asserted by Clayborne to the extent that such counts are brought in his official capacity.

Illinois, a plaintiff is not required to allege facts to establish that he or she has standing to sue; "it is the defendants' burden to plead and prove lack of standing." *Chicago Teachers Union, Local 1 v. Board of Educ. of Chicago*, 189 Ill. 2d 200, 206-07 (2000).

Whether the Statutes Eliminating the COLA Payments are Unconstitutional (Counts I through IV)

In Counts I and II, Plaintiffs seek a declaratory judgment that the statutes eliminating their COLA payments are unconstitutional and void *ab initio*. In Counts III and IV, Plaintiffs seek a declaratory judgement that the statutes imposing mandatory furlough days are unconstitutional and void *ab initio*.

Plaintiffs argue that they are entitled to partial summary judgment[7] on Counts I through IV of Plaintiffs' First Amended Complaint because there is no genuine issue of material fact that the challenged statutes are facially invalid and thus void *ab initio*.

Plaintiffs assert that the Illinois Constitution does not grant the legislature the power to change legislative salaries mid-term, citing Article IV, Section 11 of the 1970 Constitution. Article IV, Section 11, according to Plaintiffs, is clear and unambiguous and states in mandatory terms 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.

There is no dispute, insist Plaintiffs, that each of the relevant statutes, all of which had an effective date mid-year of the year in which the public act was passed, reduced Plaintiffs' salaries mid-term. As such, reason Plaintiffs, the statutes unconstitutionally changed the salary mid-term of every one of the then sitting members of the General Assembly. Therefore, conclude Plaintiffs, each of the statutes is facially unconstitutional and thus void *ab initio*, citing *Jorgensen,* 211 Ill. 2d 286 (2004) in support.

It is further undisputed, argue Plaintiffs, that COLA payments and furlough days are components of a legislator's "salary" as defined in Article IV, Section 11 of the Illinois Constitution, citing *Jorgensen v. Blagojevich,* 211 Ill. 2d 286 (2004). The imposition of furlough days, contend Plaintiffs, also implicates the legislative "salary" provision of the Illinois Constitution. The furlough statutes, note Plaintiffs, direct the Comptroller to "deduct" amounts from the "annual compensation" or "annual salary" of each member.

Plaintiffs maintain that under the plain meaning of the term "changes" in Article IV, Section 11, both mid-term increase and decreases in legislator's salaries are prohibited. The term "change," note Plaintiffs, is defined by Black's Law Dictionary as "an alteration; modification or addition, substitution of one thing for another." Pls. Mot., p. 7. The New Oxford American Dictionary, observe Plaintiffs, defines "change" as "to make or become different" and "the act or instance of making or becoming different." Pls. Mot., p. 7. The voters who ratified this provision, contend Plaintiffs, would have understood the term "changes" in accordance with this common definition, to wit: any alteration.

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[7] In support of their motion, Plaintiffs submit the following exhibits: (1) First Amended Complaint, Exhibit A; (2) Defendant's Answer to the First Amended Complaint and Affirmative Defense, Exhibit B; (3) 25 ILCS 120/6.6, Exhibit C; and (4) the Memorandum Opinion and Order in *Cullerton v. Quinn*, 2013 WL 5366345, Exhibit D.

Article IV, Section 11, insist Plaintiffs, is clear, explicit, and unambiguous. Plaintiffs maintain that Section 11 states, in mandatory terms, that no salary changes may take effect during the term for which the member is elected. This provision, according to Plaintiffs, is absolute and contains no limitations. Therefore, reason Plaintiffs, it must be enforced in accordance with its express terms. As such, any change in salary, posit Plaintiffs, whether an increase or decrease, is prohibited. Plaintiffs cite to an, admittedly non-binding, Circuit Court of Cook County opinion, *Cullerton v. Quinn,* No. 13 CH 17921 (Cir. Ct. Cook County, September 26, 2013), in support of the proposition that Article IV, Section 11 prohibits any changes, not just increases in the salaries of members of the General Assembly.

Plaintiffs further posit that if the framers of the Illinois Constitution intended to limit Article IV, section 11 only to prohibit salary increases, they would have done so. By analogy, Plaintiffs point to other salary provisions in the Illinois Constitution which prohibits mid-term reductions in salary, citing Article VI, Section 14 and Article VIII, Section 3(a). A comparison of the various constitutional salary provisions, submit Plaintiffs, further supports the conclusion that the prohibition on "changes" to legislative pay precludes both increases and decreases, citing *Foreman v. People*, 209 Ill. 567 (1904).

Alternatively, argue Plaintiffs, the statutes are unconstitutional as applied to Plaintiffs. There is no dispute, according to Plaintiffs that the relevant statutes effected mid-term changes in Plaintiffs' salary. Therefore, submit Plaintiffs, should this Court refrain from declaring the relevant statutes facially invalid, they should be declared unconstitutional as applied to Plaintiffs.

Last, Plaintiffs assert that they are entitled to an order directing the Defendant to pay their COLAs and withheld furlough day compensation. In addition, note Plaintiffs, after Clayborne became a plaintiff in this matter, 25 ILCS 120/6.6 went into effect, which eliminated Clayborne's COLA for the first half of the fiscal year beginning on July 1, 2018. While not specifically requested in the First Amended Complaint, note Plaintiffs, this statute should also be declared unconstitutional and that Defendant should be ordered to pay Clayborne the COLA eliminated by 25 ILCS 120/6.6.

Defendant[8] counters that the motion should be denied as the challenged statutes are constitutional, and that the Court should grant Defendant's own motion for summary judgment. Defendant argues that, contrary to Plaintiffs' assertion, the term "changes" in Article IV, Section 11 is ambiguous. The constitutionality of a statute, Defendant posits, is a question of law and all statutes enjoy a strong presumption of constitutionality, citing *People by Foxx v. Agpawa*, 2018 IL App (1st) 171976, and *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64 (2002).

Here, it is not clear, according to Defendant, if the constitutional provision applies to increases in salaries, decreases in salaries, or both. Because the term "changes" is ambiguous,

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[8] In support of Defendant's response and cross-motion, Defendant submits: (1) Defendant's Answer and Affirmative Defense to Plaintiffs' First Amended Complaint, Ex. 1; (2) a copy of Senator James F. Clayborne's Letter of Resignation to the Office of the Illinois Comptroller, dated January 2, 2019, Ex. 2; and (3) a copy of the Report of Proceedings before the Court on October 31, 2018, Ex. 3.

reasons Defendant, it should be construed in light of the framers' concern with the possibility that legislators would increase their salaries for the term while they were in office. The purpose of this constitutional prohibition, suggests Defendant, is to curtail any corruption or fraud by denying public officials the ability to increase their salaries, citing *People ex. rel. McDavid v. Barrett*, 370 Ill. 478 (1939). As such, contends Defendant, the concerns that animate the purpose of the statutes are not present in this situation.

Continuing with its contention that Article IV, Section 11 is ambiguous, Defendant maintains that it is proper to consider constitutional language in light of the history and condition of the times, and the particular problem which the convention sought to address, citing *Kanerva v. Weems*, 2014 IL 115811. The debates at the Illinois Constitutional Convention, according to the Defendant, revealed that the particular problem which the convention sought to address was to allow legislators to increase their salaries and to provide protections to the public against abuse of that power. The delegates, according to the Defendant, were not concerned with the possibility that a General Assembly may vote to decrease members' salaries. Taking the history and constitutional debates into consideration, posits Defendant, it is clear that the framers were concerned with the legislators increasing their salaries mid-term after they were elected. The same concern, insists Defendant, is not present where the General Assembly takes action to decrease their own salaries. Defendant submits that *Rock v. Burris*, 139 Ill. 2d 494 (1990), is instructive on this issue.

Next, Defendant asserts that if the framers of the Illinois Constitution intended for Article IV, Section 11 to prohibit legislators from either increasing or decreasing their salaries mid-term, they could have used the identical language contained in Article VII, Section 9(b) which provides that "an increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected." Instead, observes Defendant, the framers specifically used the ambiguous term "changes."

Defendant maintains that Plaintiffs' interpretation of Article IV, Section 11 is unfounded. Defendant reasons that if the statutes in question do in fact constitute an unconstitutional mid-term salary change, then logically, the annual COLA payments Plaintiffs seek to recover would equally be deemed an unconstitutional mid-term salary change.

Defendant also posits that the challenged statutes are constitutional because they do not implicate a separation of powers concern, citing *Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004) and *Russell v. Blagojevich*, 367 Ill. App. 3d 530 (4th Dist. 2006) as instructive. As for Plaintiffs' reliance on *Cullerton*, Defendant submits that *Cullerton* is of no import because it is not binding and is factually distinguishable. As to the former argument, Defendant points out that *Cullerton* is a circuit court case and not an appellate court decision. As to the latter, Defendant notes that in *Cullerton*, unlike this case, the executive branch decreased the salaries of another branch of government, the legislative branch, and thus implicated a separation of powers concern.

In their reply,[9] Plaintiffs counter that there is no ambiguity in Article IV, Section 11. The term "changes," according to Plaintiffs, is not restricted to a salary increase, but rather encompasses both an increase and a decrease. The common understanding of the term "changes," in Article IV, Section 11, posit Plaintiffs, prohibits any mid-term alteration or modification in a legislator's salary. Illinois courts, Plaintiffs assert, that have interpreted the 1870 Illinois Constitution have consistently found that the term "change," as used in a legislative salary provision, prohibits mid-term salary increases and decreases, citing *Foreman v. People*, 209 Ill. 567 (1904) and *Peabody v. Russel*, 301 Ill. 439 (1922).

Turning to Defendant's argument that the COLA payments that Plaintiffs seek to recover would constitute an unconstitutional mid-term salary change, Plaintiffs retort that changes in compensation generated under a fixed formula are not increases or decreases so long as they are not the result of a mid-term change in the law, citing *Brissenden v. Howlett*, 30 Ill. 2d 247 (1964), and an Illinois Attorney General opinion, 1978 Ill. Att'y Gen. Op. S-1366 (1978).

Next, Plaintiffs also contend that Defendant incorrectly argues that the legislative salary provision is ambiguous because the term "changes" can purportedly refer to the frequency of payments, timeliness of payments, or the types of currency used. Pls. Resp., p. 6. Article IV, Section 11, note Plaintiffs, is entitled "Compensation and Allowances." This provision, conclude Plaintiffs, addresses changes to a legislator's salary. As the constitutional prohibition is clear, reason Plaintiffs, no further inquiry by the Court is necessary. However, posit Plaintiffs, should the Court look to the Illinois Constitutional Convention for the intent of the framers, those proceedings support Plaintiffs' interpretation.

Last, Plaintiffs take aim at Defendant's contention that the constitutional bar on changes to legislative salaries only applies where there is a separation of powers concern. Defendant's cited authority, according to Plaintiffs, is irrelevant to determining whether Article IV, Section 11 is unconstitutional. In *Jorgenson*, Plaintiffs note, the Illinois Supreme Court construed Article VI, Section 14, a different provision of the Illinois Constitution, and did not address the scope of the legislative pay concern at issue here. In *Russell*, Plaintiffs continue, the court held that the office of the state's attorney was not protected by any constitutional provision that prohibited decreases in salary. Last, in *Cullerton*, Plaintiffs maintain that the court did not consider separation of powers issues because the court held that the Governor was acting in a legislative, rather than executive, capacity at the time of the Governor's line-item veto.

In its reply in support of its cross-motion, Defendant maintains that the challenged statutes are valid and that the term "changes" is ambiguous, citing *Quinn v. Bd. of Educ. of City of Chicago*, 2018 IL App (1st) 170834. Defendant reiterates that the term "decrease" is absent

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[9] In support of their reply, Plaintiffs submit: (1) a copy of an Illinois Attorney General opinion, 1978 Ill. Att'y Gen. Op. S-1366 (1978), Ex. A; (2) a Record of Proceedings for the Sixth Illinois Constitutional Convention, Ex. B; (3) a copy of the Sixth Illinois Constitutional Convention's Style, Drafting and Submission Committee Proposal Number 15, Ex. C; (4) a Record of Proceedings for the Sixth Illinois Constitutional Convention, Committee Proposals and Member Proposals, Ex. D; and (5) a Record of Proceedings for the Sixth Illinois Constitutional Convention, Committee Proposals and Member Proposals, Ex. E.

from the dictionary definition of "changes," and that because of this ambiguity, the Court may consider extrinsic evidence in its construction of Article VI, Section 11, citing *Walker v. McGuire*, 2015 IL 117138.

According to Defendant, Plaintiffs primarily rely on statements by Delegate Gierach at the Constitutional Convention in support of their contention that "changes" prohibits both mid-term salary increases and decreases. However, notes Defendant, these comments are irrelevant as they were made at the time that the delegates were discussing and contemplating the executive salary provision, not the legislative salary provision. Other delegates, according to Defendant, expressed concerns that interpretations of Article IV, Section 11, similar to the Plaintiffs' here, would strip the General Assembly of the ability to adapt to changing economic conditions, which would be inconsistent with the framers' intent and purpose.

Further, Defendant reiterates, none of the challenged statutes impermissibly increased the legislators' salaries during the term in which they were office; rather, they were only decreased. Defendant further distinguishes Plaintiffs' reliance on *Foreman* and *Russell*, as neither case involved legislation seeking to decrease the salaries of the members of the General Assembly. Last, Defendants conclude that Plaintiffs' reliance on *Brissenden v. Howlett* and a 1978 Illinois Attorney General Opinion is also unpersuasive.

The threshold issue before the Court is whether Plaintiffs' challenge to Public Acts 96-800 and 96-45 constitutes a facial or as-applied challenge. Plaintiffs maintain that Public Acts 96-800 and 96-45 are facially unconstitutional, or alternatively, as applied to Plaintiffs, because the statutes violate Article IV, Section 11 of the Illinois Constitution. Defendant, on its cross-motion, insists that both public acts are constitutional.

A facial challenge requires a showing that the statue is unconstitutional under any set of facts, *i.e.,* the specific facts related to the challenging party are irrelevant. *People v. Rizzo*, 2016 IL 118599, ¶ 24. A facial challenge to a legislative act is the most difficult to mount successfully because the challenger must establish that under no set of facts would the challenged act be valid. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 33. The fact that the statute might operate unconstitutionally under some set of conceivable circumstances is insufficient to render it wholly invalid. *Id.* The burden on the challenger is particularly heavy when a constitutional challenge is presented. *Bartlow v. Costigan*, 2014 IL 115152, ¶ 18. So long as there exists a situation in which the statute could be validly applied, a facial challenge must fail. *People v. Davis*, 2014 IL 115595, ¶ 25.

An as-applied challenge, by contrast, requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. *People ex. rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 31. Thus, an as-applied challenge, by definition, "is reliant on the application of the law to the specific facts and circumstances alleged by the challenger." *Id.* "[Without] an evidentiary hearing and sufficient factual findings, a court cannot properly conclude that a statute is unconstitutional as applied. *Id.*, ¶ 32. Here, the Court has not held an evidentiary hearing. Therefore, Plaintiffs' challenge as to the constitutionality of the statutes can only be facial and not as-applied.

The Court begins with the constitutional provision at issue, specifically Article IV, Section 11. Article IV, Section 11 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 (Emphasis added).

The interpretation of constitutional provisions is governed by the same general principles that govern construction of statutes. *Blanchard v. Berrios*, 2016 IL 120315, ¶ 16. When construing a constitutional provision, the court's primary goal is to ascertain and give effect to the common understanding of the citizens who adopted the provision, and courts first look to the plain and generally understood meaning of the words used. *Kanerva v. Weems*, 2014 IL 115811, ¶ 36. To determine the common understanding, courts look to the common meaning of the word used. *Committee for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996). Where the language of a constitutional provision is unambiguous, it will be given effect without resort to other aids of construction. *Kanerva*, ¶ 36. If doubt as to the meaning of the provision exists after the language has been considered, it is appropriate to consult the drafting history of the provision, including the debates of the delegates to the constitutional convention. *Id.*

Public Act 96-800 states, in relevant part:

> 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.

25 ILCS 120/5.6 (West 2016) (Emphasis added).

Public Act 96-45 states in relevant part:

> 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 [25 ILCS 115/1], 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.

25 ILCS 115/1.5 (West 2016).

Statutes are presumed to be constitutional, and the party challenging the validity of a statute bears the burden of rebutting this presumption. *Hope Clinic for Women, Ltd v. Flores*, 2013 IL 112673, ¶ 33. When assessing the constitutional validity of a statute, courts must begin with the presumption of its constitutionality. *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 351 (1999).

Plaintiffs argue that the statutes are unconstitutional because the statutes changed their salaries during their term in office in violation of Article IV, Section 11. Defendant, on the other hand, contends that the term "changes" refers only to increases and not reductions in salaries, and therefore, the statutes do not violate of Article IV, Section 11. The Court's resolution of this issue turns on the meaning of the term "changes."

The term "changes" is not defined in the Illinois Constitution. In construing a constitutional provision, a court relies on the common understanding of the voters who ratified the provision. *Committee for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996). To determine that common understanding, a court looks to the common meaning of the words used. *Id.* In determining the plain, ordinary, and popularly understood meaning of a term, courts may look to a dictionary to give meaning to the term. *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 29. Turning to the dictionary, the Court notes that Webster's Dictionary defines "change" as "to make different." *Change*, *Webster's Dictionary* (11th ed. 2003). Black's Law Dictionary defines "change" as "alter." *Change*, *Black's Law Dictionary* (10th ed. 2014). Thus, the plain meaning of the term "change" is to make different or alter. As such, Article IV, Section 11 prohibits the alteration of the salaries of the members of the General Assembly during the term for which the member has been elected.

The next issue is whether the statutes altered the Plaintiffs' salaries during the term for which they were elected. Defendant does not deny that the effect of the statutes was to decrease the salaries of the members of the General Assembly. Rather, Defendant insists that the term "changes" is ambiguous and that Article IV, Section 11 only prohibits an increase, not a decrease in salaries. The Court disagrees.

It is undisputed that the effect of the statutes was to alter or change the salaries of the members of the General Assembly during their term of office. The fact that the Public Acts did not "increase" the salaries is of no import. Defendant argues that had the drafters intended to prohibit decreases in salary of the members of the General Assembly, they knew how to do so based on the plain language of other constitutional provisions, specifically Article VII, Section 9(b) of the Illinois Constitution. While that may be true, the use of the term "changes" in Article IV, Section 11 evinces an intent to encompass a broader prohibition on any alterations, modifications, or substitutions to salary changes.

To be clear, Article VI, Section 11 of the Illinois Constitution does *not* prohibit legislators from increasing, or decreasing for that matter, their own salaries. What Article VI, Section 11 does prohibit is the alteration of the legislators' salary structure which would take effect during the same term in which the changes were approved. See *Rock v. Burris*, 139 Ill. 2d 494 (1990).

While not binding, the Court also finds *Cullerton v. Quinn,* No. 13 CH 17921, 2013 WL 5366345 (Cir. Ct. Cook County, September 26, 2013), persuasive on this issue. In *Cullerton*, members of the General Assembly brought suit against then Governor Quinn after Governor Quinn exercised his line-item veto power on an appropriations bill in an attempt to eliminate General Assembly members' salaries. *Cullerton*, No. 13 CH 17921, 2013 WL 5366345, at *1 (Cir. Ct. Cook County, September 26, 2013). The plaintiffs alleged, among other things, that the Governor's actions violated Article IV, Section 11. *Id.*, at *1. The parties filed cross-motions for summary judgment. *Id.*, at *2. The plaintiffs argued that the line-item veto violated Article IV, Section 11 as it constituted a "change" in the legislator's salaries during their term of office. *Id.*, at *4. Governor Quinn, on the other hand, maintained that the term "changes" refers only to increases in salaries and therefore, his line-item veto did not violate Article IV, Section 11. *Id.*, at *4.

The trial court disagreed with the governor. *Id.*, at *5. The court began by noting that in construing a constitutional provision, it was required to ascertain the common understanding of the voters who ratified the provision. *Id.*, at *4. To that end, the court turned to the dictionary for the common understanding of the term "change." *Id.*, at *5. The dictionary, noted the court, defined "change" as "to make or become different" and "the act or instance of making or becoming different." *Id.*, at *5. Applying that definition to "changes," the court found that Article IV, Section 11 prohibits any alteration, be it an increase or decrease, of a General Assembly member's salary during the term for which he or she is elected. *Id.*, at *5. Having found the term "changes" unambiguous, the court declined the governor's invitation to consider the debates during the constitutional convention to ascertain the meaning of "changes." *Id.*, at *5.

Defendant maintains that *Cullerton*, in addition to not being binding on this Court, is distinguishable. The distinction, according to Defendant, is that in *Cullerton*, the executive branch sought to unilaterally decrease the salaries of members of another branch of government, the legislative branch. In this case, unlike *Cullerton*, insists Defendant, the members of the General Assembly enacted legislation that decreased their own salaries.

However, the Court finds that this is a distinction without a difference. Article IV, Section 11's prohibition is not based on which branch of government seeks to change the salary, but rather prohibits *any* change to a legislator's salary. As to the authority cited by the Defendant, the Court agrees with Plaintiffs that those cases are distinguishable.

In *Russell v. Blagojevich*, 367 Ill. App. 3d 530 (4th Dist. 2006), the General Assembly passed Public Act 92-607, which prohibited a cost-of-living adjustment to various government officials, including State's Attorneys. The plaintiff, the elected State's Attorney of Boone County, filed a lawsuit against the Governor, alleging that Public Act 92-607 was

unconstitutional as applied to a State's Attorney's salary. *Id.* at 532. The Illinois Supreme Court affirmed the trial court's dismissal of the plaintiff's complaint. *Id.* at 535-36. The Court found no constitutional provision prohibiting the legislature from diminishing the salary of a State's Attorney. *Id.* at 536. On the other hand, observed the court, the Illinois Constitution did prohibit changes to the salary of a legislator during the term for which he had been elected. *Id.* at 535-36. The court noted that "when the drafters intended for a particular salary not to be subject to change mid-term, that intent appears in the Article creating the provision." *Id.* at 535.

Jorgensen v. Blagojevich, 211 Ill. 2d 286 (2004), is also distinguishable. *Jorgensen* was a class-action lawsuit filed by Illinois judges against former Governor Blagojevich and the Illinois Comptroller in their official capacities, seeking a declaration that the Governor's use of the veto to block judicial pay raises was unconstitutional. *Id.* at 293-94. At issue was whether the General Assembly and Governor violated the Illinois Constitution when they attempted to eliminate the COLAs to judicial salaries provided by law for the 2003 and 2004 fiscal years. *Id.* at 287. The court held Public Act 92-607, which suspended the 2003 COLA, constitutionally invalid and void *ab initio*. *Id.* at 309. The court found that both the statute prohibiting cost-of-living increases for judicial salaries and the Governor's reduction veto, which removed funding for a cost-of-living increases, violated the constitutional provision prohibiting the diminishment of judicial salaries because the cost of living increases has already vested. *Id.* at 315-17. The court held that it would not violate the separation of powers, and it had authority to order payment and compel the Comptroller to pay, despite the lack of a specific legislative appropriation, "pursuant to the inherent right of the court to order payment of judicial salaries within the state as required by the [Illinois] Constitution." *Id.* at 315.

The Court further observes that much of Defendant's argument rests on the contention that because, according to the Defendant, the term "change" is ambiguous, the Court should consider the history and legislative intent in enacting Article IV, Section 11, through examination of various excerpts of the floor debates prior to the enactment of the relevant provision. However, no such examination is necessary when "the words of the constitution are clear, explicit, and unambiguous." See *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523 (2009). While the debates and legislative history of the relevant provision are certainly useful for construing an *ambiguous* provision, such statements will not have an effect on transforming unambiguous constitutional language into something it is not. See *Committee for Educ. Rights v. Edgar*, 174 Ill. 2d at 13. Accordingly, having found that Article IV, Section 11 is unambiguous, the Court need not consider any extrinsic evidence to ascertain the meaning of the term "changes."

Accordingly, the Court finds that Plaintiffs have met their burden on their motion as to Counts I through IV of the First Amended Complaint in establishing that there is no genuine issue of material fact that the statutes are facially unconstitutional. Accordingly, Plaintiffs' motion is granted, and Defendant's cross-motion is denied.

Whether Mandamus Relief is Improper (Counts V-VI)

In Counts V and VI, Plaintiffs request that the Court issue an order of mandamus

ordering the Defendant to pay Plaintiffs the amounts which were allegedly wrongfully withheld as a result of the unconstitutional legislation.

Defendant contends that it is entitled to summary judgment on Counts V and VI of Plaintiffs' First Amended Complaint because mandamus is not a remedy that may be used to direct a public official or officer to exercise its discretion in a particular manner. The Comptroller, notes Defendant, is charged with the constitutional and statutory mandate to maintain the State's fiscal accounts and order payments into and out funds held by the State Treasurer. This mandate, according to Defendant, requires the exercise of discretion. As such, reasons Defendant, mandamus, which cannot be used to direct a public official to exercise its discretion in a particular manner, is inappropriate. In addition, argues Defendant, Plaintiffs are not entitled to mandamus as said counts are premised on the unconstitutionality of the statutes.

Assuming the Court grants Plaintiffs' motion for summary judgment as to Counts I through IV, posits Defendant, the Comptroller should have the opportunity to comply with the court order. Mandamus, insists Defendant, would only be proper if the Comptroller refuses to comply with the court order. Plaintiffs, in their response, fail to address Defendant's cross-motion on Counts V and VI. Defendant, in its reply, does not address Plaintiffs' failure to address the issue of mandamus.

Mandamus is an extraordinary remedy used to compel a public officer to perform official nondiscretionary duties when plaintiff has demonstrated a clear right to this relief. *People ex. rel. Senko v. Meersman*, 2012 IL 114163, ¶ 39. In order to obtain a mandamus remedy, the plaintiff must establish a clear right, a clear duty of the public officer to act, and clear authority of the public officer to comply with the order. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 36.

In support of the proposition that the Comptroller has general discretionary authority, Defendant cites to Article V, Section 17 of the Illinois Constitution and the State Comptroller Act. Article V, Section 17 of the Illinois Constitution provides: "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." Ill. Const. 1970, art. V, § 17.

This constitutional provision, however, does nothing to advance Defendant's contention that the Comptroller has discretion regarding payment of General Assembly members' salaries. Nor does the State Comptroller Act fare any better. To begin with, Defendant does not direct the Court to any specific provision of the State Comptroller Act that lends support to Defendant's claim. Nor does Defendant cite any case law that supports this interpretation. Rather, Defendant only cites the State Comptroller Act generally, and not any specific provision thereof, to support its argument that mandamus cannot be used to direct a public official to exercise its discretion in a particular manner.

Defendant, as the movant on Counts V and VI, has the burden of establishing that it is entitled to judgment as a matter of law. The Court finds that Defendant has failed to meet its burden in establishing that the remedy of mandamus is improper because payment of the salaries of the members of the General Assembly by the Comptroller is a discretionary act.

Further, while Defendant argues that a mandamus action would only be proper if the Comptroller refuses to draw warrants after the statutes in question are declared unconstitutional, Defendant cites no authority for the proposition that the Court cannot issue an order declaring a statute unconstitutional and a writ of mandamus simultaneously. As Defendant has failed to meet its burden on summary judgment, Defendant's cross-motion as to Counts V and VI is denied.

CONCLUSION

Based on the foregoing reasons, the Court grants Plaintiffs, Michael Noland and James Clayborne's Motion for Partial Summary Judgment on Counts I through IV of their Amended Complaint, and grants in part and denies in part Defendant, Susana A. Mendoza, in her capacity as the Comptroller of the State of Illinois' Cross-Motion for Summary Judgment on all counts of Plaintiffs' Amended Complaint. The next status date shall be August 7, 2019 at 10:00 a.m. in Courtroom 2402.

ENTERED:

ENTERED
JUDGE FRANKLIN ULYSSES VALDERRAMA-1968
JUL 02 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Franklin U. Valderrama
Judge Presiding

DATED: July 2, 2019