In The Illinois Appellate Court
No. 16-2356 (Consolidated with 16-2357)

Michael W. Underwood, Joseph M. Vuich, Raymond Scacchitti, Robert McNulty, John E. Dorn, William J. Selke, Janiece R. Archer, Dennis Mushol, Richard Aguinaga, James Sandow, Catherine A. Sandow, Marie Johnston, and 337 other Named Plaintiffs listed in Exhibit 23, Plaintiffs,	)	
vs.	)	From the Circuit Court of Cook County, Chancery Division
CITY OF CHICAGO, a Municipal Corporation, Defendant,	)	
and	)	Case No. 2013 CH 17450
Trustees of the **Policemen's Annuity and Benefit Fund** of Chicago;	)	Calendar No. 5
Trustees of the **Firemen's Annuity and Benefit Fund** of Chicago;	)	Judge: Hon. Neil H. Cohen
Trustees of the **Municipal Employees' Annuity and Benefit Fund** of Chicago; and	)	Previous Nos. in Cook County Circuit Court
Trustees of the Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago Defendants.	)	01 CH 4962
	)	87 CH 10134

Plaintiffs-Appellants' Petition for Rehearing of the Court's June 30, 2017 Opinion

Oral Argument Requested

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Points and Authorities

I. The Opinion's Restrictive View of the Protected Benefits Conflicts with the Supreme Court's Direction to Construe Pension Provisions Liberally in Favor of the Pensioners.

The Court's decision adopts a restricted view that the only benefits protected by Article XIII, Section 5 are the explicit statutory subsidy provisions, applying the Seventh Circuit's *dicta*, expressing its traditional hostility to retirement benefits[1], rather than the Illinois Supreme Court's direction in *Kanerva v. Weems*, 2014 IL 115811, *that pension provisions are to be construed liberally in favor of the pensioners:*

> ¶36 In addition, 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 ***." *Client Follow-Up Co. v. Hynes*, 75 Ill. 2d 208, 216, 390 N.E.2d 847, 28 Ill. Dec. 488 (1979)). "Moreover, *** to the extent there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner." *Prazen v. Schoop*, 2013 IL 115035, ¶ 39, 998 N.E.2d 1, 375 Ill. Dec. 709 ; *accord Shields v. Judges' Retirement System*, 204 Ill. 2d 488, 494, 791 N.E.2d 516, 274 Ill. Dec. 424 (2003); *Matsuda v. Cook County Employees' & Officers' Annuity & Benefit Fund*, 178 Ill. 2d 360, 365-66, 687 N.E.2d 866, 227 Ill. Dec. 384 (1997)
>
> …
>
> ¶55. Finally, we point out again a fundamental principle noted at the outset of our discussion. Under settled Illinois law, where there is any question as to legislative intent and the clarity of the language of a pension statute, it must be liberally construed in favor of the rights of the pensioner. This rule of construction applies with equal force to our interpretation of the pension protection provisions set forth in *article XIII, section 5*. Accordingly, to the extent that there may be any remaining doubt regarding the meaning or effect of those provisions, we are obliged to resolve that doubt in favor of the members of the State's public retirement systems.

[1] In the federal circuit split over whether the federal ERISA statute presumes for or against healthcare vesting, the Seventh Circuit has long adhered to the presumption *against* vesting of retiree healthcare benefits. See *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. *en banc* 1993)(4-2-4 opinion adopting "weak no-vest presumption", but with dissent by Judge Easterbrook, espousing strong anti-vest presumption, which he suggests in his Underwood dicta.). With all due respect to Judge Easterbrook's *dicta*, it is simply neither controlling nor in compliance with our Supreme Court's direction for interpreting our Illinois Constitution.

A. Interpreting the Benefits to be Protected as Just the Statutory Subsidy, Misunderstands *Kanerva* - Article XIII, Section 5 Protects *Benefits* Not Just a Statutory Subsidy.

> ¶ 38 Article XIII, section 5, provides that "[m]embership in any pension or retirement system of the State *** shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. Under the language of this provision, …, it is clear that if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the State's pension or retirement systems, it cannot be diminished or impaired.

While the issue presented in *Kanerva* was whether a statutory healthcare subsidy to former State employees is or is not a protected benefit, which could be legislatively reduced, ("Thus, the question presented is whether a health insurance subsidy provided in retirement qualifies as a benefit of membership." *Id*.), *Kanerva*'s definition of what is protected is not limited to the subsidy, or even to the Pension Code[2], but embraces and protects whatever benefits participants receive by their being participants in an Illinois retirement system:

> ¶ 39 As noted above, Illinois law affords most state employees a package of benefits in addition to the wages they are paid. These include subsidized health care, disability and life insurance coverage, eligibility to receive a retirement annuity and survivor benefits. These benefits were provided when article XIII, section 5, was proposed to Illinois voters for approval, as they are now.
>
> ¶ 40 Although some of the benefits are governed by a group health insurance statute and others are covered by the Pension Code, eligibility for all of the benefits is limited to, conditioned on, and flows directly from membership in one of the State's various public pension systems. Giving the language of article XIII, section 5, its plain and ordinary meaning, all of these benefits, including subsidized health care, must be considered to be benefits of membership in a pension or retirement system of the State and, therefore, within that provision's protections. See Duncan v. Retired Public Employees of Alaska, Inc., 71 P.3d 882, 887 (Alaska 2003) (giving

[2] The statutory provision there (5 ILCS 375/10) was a subsidy for former state employees. Despite its not being a Pension Code provision, it was still protected as a benefit of participation by Article XIII, Section 5.

> comparable provision of Alaska constitution "its natural and ordinary meaning," there "is little question" that it encompasses "health insurance benefits offered to public employee retirees").

¶ 41 No principle of statutory construction supports a contrary view.

B. While the Issue Before *Kanerva* was the State Subsidy for State Employees Retiree Healthcare, the Court's Language Makes it Clear that the Constitutional Protection is Not Limited to the Subsidy.

If indeed this Court's enforcement of the 1983 and 1985 Statutes is the Protected Benefit, then the Protected Benefit is far more than just the City's parsimonious and meager subsidy amount.

While the subsidy is what this Court focuses on, the Statute, particularly for Police and Fire, requires far more, imposing a duty on the Fund's Board (i.e., the Trustees) to provide group health insurance for all of their annuitants:

> (b) *The Board shall contract with one or more carriers to provide group health insurance for all annuitants*. Such group health insurance shall provide for protection against the financial costs of healthcare expenses incurred in and out of hospital including basic hospital-surgical-medical coverages and major medical coverage. The program may include such supplemental coverages as …. The group health insurance programs may also include:…
>
> (c) the group contract shall be on terms deemed by the board to be in the best interest of the fund and its annuitants, based on, but not limited to, such criteria as administrative costs factors, the service capabilities of the carrier, and the premiums charged. Complaint Exhibit 8, 1983 Pension Code Group health benefit provisions 5-167.5 (Police), and 6-164.2 (Firemen).

(Emphasis added). And, while the 1985 Pension Code Group Health Care Plan provisions for Municipal (8-164.1) and Laborers (11-160.1) were permissive, nonetheless, all four Funds asserted that they had, in fact, contracted for the City to affirmatively act as the actual Health insurance provider. (*See* the four Funds' counter claims, Exhibits 3 to Participants' Third Amended Complaint, SRC 64-180). And, that is

precisely why Judge Green (Complaint, Ex. 5, May 16, 1988 transcript, at 63-66, SRC 218-286) declared that it was "well within the ambit of the city's authority to provide healthcare benefits to retired employees." He correctly found it illogical to believe that the City's paying health claims made on behalf of approximately 26,000 persons for millions of dollars over a period of seven years could have occurred without the affirmative action of appropriation, and finding the funds involved as far too substantial to have slipped through the cracks.

> "What is relevant is that over this period of years the city must have repeatedly contemplated and made provisions for the availability of these monies with which it paid the annuitants' claims and provided insurance to them."
>
> Finally this court finds that the defendants have adequately stated a claim for equitable estoppel and that the city's argument that claims of equitable estoppel could not lie against it is a government entity will not defeat defendants [the Funds and participants] claims…"

Accordingly, this Court's rejection of the contract claim (supported by the Funds' original Korshak filings) (Complaint Ex. 3, SRC 64-180) ignores that there was a contract, from which *the Funds themselves asserted that they had a contract with the City*, for which the Retirees were intended beneficiaries, under which the City had *affirmatively agreed to and did act*[3] as an insurer of the retirees, contractually charging a premium set to the amount of the statutory Fund Subsidy, which the Fund paid; thus the benefit was that (a) for police and firemen, the annuitant paid only for spouse and dependent coverage, and (b) for municipal and laborers, that they paid only the amount in excess of their Fund subsidy.

[3] Course of dealing and the parties' conduct serves as a basis for evidence of a contract and terms of a contract. *Technology Solutions Co. v. Northrop Grumman Corp.*, 356 Ill. App. 3d 380, 385 (1st Dist. 2005).

And there was good reason for that contract to be enforceable, and for the City and Funds be estopped from denying it, because the core classes here, almost all began their work for the City before April 1, 1986, so none of their City work entitles them to any qualifying quarters for the federal Medicare program. This court ignores that as well.

C. The Contract Claim - The City as a Provider.

The Opinion, at ¶¶ 30 and 48-50, discounts the existence of any written agreement. But what the court overlooks, from our complaint (SRC 1) at ¶¶ 68-70 and 71-75, and Exhibits 8A-E, SRC 348-393, is that the 1983 and 1985 statutes did not merely provide a subsidy; the statutes squarely required the Four Annuity and Benefit Funds to provide health insurance for all annuitants (Complaint ¶68, SRC 1), and had done so, by contracting with the City to act as the insurer, charging premiums at the amount of the Police and Fire subsidies (*Id*. at ¶69), which is precisely what the Funds alleged in their original Korshak countercomplaints (*Id.* at ¶¶68-79 and Exhibit 3, SRC64-180), each of them asserting that the City had affirmatively acted taking the role of insurer, issuing plan Handbooks (Exhibit 6, SRC 292) and affirmatively informing employees that coverage under the City Annuitant Health Benefits Plan was a term of their employment. (Exhibits 3, Countercomplaints, Police Fund at SRC 180, ¶20, Fire at SRC 81, ¶19, Municipal at SRC 65, ¶22 and Laborers at SRC 99, ¶22).

And further asserting claims based on estoppel, that the City had engaged in a continuous pattern of affirmative acts over the past ten years, and that each Fund and its annuitants have reasonably relied on the City's Plan covering all costs in excess of the subsidy. (Police Countercomplaint, SRC 180, at Count IV, themselves originally asserted that they had an enforceable contract with the City, under which the City agreed

to be the insurance provider for their retirees, with premiums priced at the Police and Fire Subsidy amounts, thus paid for the annuitant for life by their Fund (and this is supported by the Police Fund's handbook (Complaint, SRC 1, ¶¶30-31, and Exhibit 7, SRC 333).

Handbooks need not say "lifetime" (*Kanerva* at ¶53-55, the statute there did not use the word either); they need only list something as a benefit for which eligibility is determined by one's being an annuitant. Consequently, the **City of Chicago Annuitant Medical Benefits Plan Handbook** states:

> ELIGIBILITY
> You will be eligible for coverage if you are: …
>
> -An Annuitant, of the City of Chicago. "Annuitant" means a former employee who is receiving an age and service annuity from one of four retirement funds. (Complaint Exhibit 6, at 2, SRC 292)

And, the Police Annuity and Benefit Fund Handbook "Your Service Retirement Benefits", (Complaint Ex. 7 at 10, SRC 333, 342) just stated it as a benefit:

> The hospitalization premium for the Retired employee
> is paid by the Retirement Board.

This Court's focus on the lack of the words "for life" ignores that *Kanerva* had no such language of qualifying permanence other than being a "former employee"; and the Handbooks, both for the City of Chicago Annuitant Health Benefit Plan and the Police Fund Annuitant Handbook, (the Fund pays the Annuitant's premium) required only that the person be an "annuitant", a state that continues for life.

City Annuitant Medical Benefits Plan Handbook: Notwithstanding this Court's attraction to the Seventh Circuit's presumptions *against* vesting of healthcare benefits, an employer's reservation of a right to amend or terminate a health plan must be explicit and

clear. Here there is no such reservation, and the mere allusion accepted by this court is wrong.

Namely, the Termination of Coverage provision in the City's handbook, (Complaint Ex. 6, at p.3, SRC 292), while saying that coverage for you will terminate the date that the Plan is terminated, does not list the conditions under which it could be terminated. In the Federal Circuits which, like *Kanerva*, at ¶ 55, favored construing the plan liberally, and with the presumption in favor of retirees, the reservation had to be explicit and clear. (*See* our opening brief at 21-22, 33, 37-38). It was only in those Circuits, like the Seventh, with a presumption against ERISA vesting, that an explicit reservation was not required.

And indeed, when the City later decided to add a reservation to amend or terminate, it did so explicitly. Recently obtained by FOIA request, the City amended the Plan adding an explicit reservation effective January 1, 1992. (Attached, hereto as Ex. 1, to which the Court can take judicial notice.) From the Amendment, the City's Annuitant Medical Health Benefits Plan, established in 1983, and 1985, and not amended in this regard until 1992, the explicit reservation of a City right to amend or terminate could be effective only for Participants first hired after 1991.

D. Estoppel and the Subclass 3a – People Who Began Before 4/1/1986

The Court's dispatching the estoppel claim ignores the fact that participants who began their city work prior to April 1, 1986, were uniquely vulnerable and needed to rely on the City and Funds promises because they uniquely did not earn any qualifying quarters for the Medicare program, no matter how long they worked for the City, nor how old they become. Complaint, SRC 1, at ¶7, fn 5; Plaintiffs' Opening Brief at 32-38; SA

302-816 and 3613 SR 329-839. Consequently, they were uniquely entitled to rely on the City's repeated assurances to them that they were earning lifetime coverage with the City, and needn't worry about their not having Medicare coverage. The assurance of coverage negated City employee participants' need to accrue Medicare quarters. Indeed, between the courts' rulings in *Dell v. Village of Streator* (applying estoppel) and *Matthews v. CTA* (declaring that employees generally cannot rely on estoppel to bind a municipality, in the absence of official action) basic fairness would support applying *Matthews* declaration only *prospectively*; especially with people (first hired by April 1, 1986) who have nowhere else to go, because none of their City employment qualifies them for coverage under the federal Medicare program.

Moreover, this Court ignores the Funds' assertions in their countercomplaints that the City had engaged in continuous affirmative actions; recognized by even Judge Green in the City's affirmatively agreeing to be the insurer, not merely a subsidizer, is sufficient affirmative municipal action to support the estoppel claim, certainly at the pleading stage. Complaint Ex. 3, SRC 64-180.

E. *Patrick Engineering* Does Not Preclude as a Matter of Law.

Also, this Court's (Opinion at ¶52) treating *Patrick Engineering* as preclusive at the pleading stage, against years of presenters presenting the City's Annuitant Medical Benefits Plan as a permanent plan, covering all premiums for the annuitant is documented, and over a period of time that is undisputed; such that, as Judge Green ruled back in 1988, it could not have been done without actual authority.

II. The Court's Extension of the Protected Class to the 2003 Agreement's Execution Date Needs Correcting.

A. Plaintiffs' position is that correctly interpreted, the Agreement extended the protected class dating through the 2003 agreement's expiration at 6/30/2013; or at least its *Approval* date (June 16, 2003), not its execution date (April 4, 2003).

While we agree with the Court's holding that the 2003 Agreement (Complaint Ex.13, SRC 439) carries the tolling entitlement to a later time, there are two aspects which would direct a different ending date for the entitled class.

First, the effective date of the Agreement should be the date of its final approval (June 16, 2003), rather than its "execution" date. As a class agreement, it could not become effective until finally approved by the court, and by the terms of the settlement requiring legislative action and formal approvals by the parties.

But, the Agreement itself, *Id.* at ¶ II.H, continues the covered class members to be anyone who is or will become a present or future annuitant (i.e. a participant by hired date) by the Agreement's explicit expiration of June 30, 2013. *Id.* at ¶J.

> H. The "Settlement Class" or "Class Members" consists of: all current annuitants of the Funds, who are receiving an annuity based on City Service and who are enrolled in City healthcare plans, and their eligible dependents; and all current and former City employees who will become one of the Funds' Future Annuitants on or before June 30, 2013, and their eligible dependents.

We think as well, that the City's unilateral May 2013, extension of the Agreement's benefits to the end of 2016, supports the conclusion that all persons who were "participants" (i.e. hire date) on or before December 31, 2016 should be included in the class.

III. The 2003 Agreement Did Not Permit the City to Amend *Existing* Plans; the Authority to Amend or Terminate was Just for "*Additional*" Plans the City Might Enact.

The court's declaration at ¶¶ 35-37 that the 2003 Agreement acknowledged a City right to amend or terminate existing retiree healthcare plans is also wrong.

Rather, the 2003 Agreement (*Id.* at ¶IV.H), because it explicitly permitted the City to create additional plans, gave the City the right to amend those *additional* plans, not *existing* plans:

> H. The City may offer additional healthcare plans at its own discretion and may modify, amend, or terminate any of such additional healthcare plans at its sole discretion. Any additional healthcare plans that the City may implement will not be subject to review by the RHBC and the City reserves full discretion to modify, amend or terminate any additional healthcare plans.

Indeed, the only authority the City had to modify even settlement-period Plans was with the advance approval of the dubious Retiree Health Benefits Commission (*Id.* at IV. G. 3 (b):

> After July I, 2008, the City may make changes to the design of the Settlement Healthcare Plans only with the approval of a majority of the members of a commission, the Retiree Health Benefits Commission ("RHBC"), impaneled by the City to consider proposed plan design changes. The RHBC will consist of experts who will be objective and fair-minded as to the interests of both retirees and taxpayers. The RHBC will also consist of a representative of the City of Chicago and a representative of the Funds.

which was never convened after its January 11, 2013[4] Report, since its chairman, then-City Comptroller Amer Ahmad, resigned in July 2013, following which he was indicted and pled guilty to a kickback scheme from his previous employment by the State of Ohio, fled the country, but was then extradited back in 2015, and is serving his sentence in federal prison.

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4 https://www.cityofchicago.org/content/dam/city/depts/fin/supp_info/Benefits/RHBC/ReportToMayor/RHBC_Report_to_the_Mayor.pdf

Accordingly, the City's actions in unilaterally reducing and terminating the healthcare benefits after the 2003 Agreement's expiration, without seeking or obtaining RHBC approval actually violate the Agreement itself.

IV. Which brings us to remind the Court that we have requested class certification from the beginning, but been continued, rather than granted or denied, such that this Court is making determinations purporting to bind city fund participants, the vast number of whom have had neither notice nor knowledge of these proceedings.

As stated in Plaintiffs' Opening Brief and Reply, the court below has continuously deferred actually addressing class certification, which has been pending, unruled upon, since 2013 despite rendering decision on each class's rights without the due process protected by the Code of Civil Procedure's "as soon as practicable" and notice provisions to protect the interests of the class members. 735 ILCS 5/2-802 and 803.

On Rehearing, and remand, the Court should either Order class certification as to the following classes or Order Class Certification be promptly addressed:

> Certify the case as a class action for City of Chicago Retiree Healthcare Plan Participants, with the following proposed classes (each of i, ii, and iii, with sub-sub class of pre-4/1/1986 hireds):
>
> i. Korshak subclass-12/31/1987 annuitant participants,
>
> ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,
>
> iii. Pre-8/23/1989 Hirees,
>
> iv. Participants – First hired date after 8/23/1989;

all represented by undersigned Counsel.

The 2-802 and 2-803 provisions are mandatory because class certification is necessary to provide due process notice to the class members of the case, and give

counsel the knowledge of who is being represented. As "soon as practicable after the commencement…the court shall determine" requires hearing of class certification to provide dues process for the entire class. The never-ending delay and deferral serves only defendant and against the class and class counsel.

V. The Court Should Hold Oral Argument in this Case, Without it the Court Disserves our Justice System, and Erodes Respect for the Court's Process.

The Court's repeated determination to rule without oral argument, despite the repeated requests by all of the briefing parties, displays an unfortunate disrespect for these retirees who have served this community with their lives and careers.

Although Supreme Court Rule 352(a) authorizes the court, even where the parties have all requested oral argument, to dispose of the case without oral argument, that provision is to be exercised "sparingly" where no substantial question is presented:

> **Rule 352. Conduct of Oral Arguments**
> **(a) Request; Waiver; Dispensing With Oral Argument.** A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested. ….If any party so requests, all other parties may argue without an additional request.
> …….
> After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power should be exercised sparingly.

This is no such case. The nearly thirty thousand retirees were promised and assured that one of their benefits of employment was lifetime healthcare coverage, paid by their Fund. Whether this court agrees with them or not, this case has not, has never been a "no substantial question presented" case, and these retirees should be treated with the respect of an oral argument, even if the court chooses not to enforce the City's and Funds' promises to them. It is an important aspect of retirees' (indeed all parties) perception that they have received due process, that their claims have been at least listened to, by the

Court's actually conducting a hearing; especially where the court adopts such a restricted view of the enforceable benefit[5].

VI. Equal Protection and Special Legislation.

After declaring that all the class members (defined as all participants at the 2003 Agreement's execution) have the same protected benefit (Opinion at ¶ 39-40), we do not understand the Court's then ignoring the denial of equal protection, in the City's recognizing its obligation to pay at least 55% of healthcare costs for the 8/23/1989 retirees, ignoring its disavowal of those benefits for the other 8/23/1989 participants.

And again, the Order ignores the unique vulnerability of those retirees who began working for the City before April 1, 1986, so none of their City employment qualified them for federal Medicare coverage.

As well, the court totally ignores the violation of the Constitution's prohibition of Special Legislation, in statutorily defining retiree health benefits "by reason of employment by [a named City] Chicago".

Conclusion

This court should grant Rehearing and actually hear this case, and correct its June 29, 2017 decision. Rendering the decisions in this matter without hearing oral argument, despite the requests by all parties, disserves our justice system, and erodes respect for the Court's process.

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[5] The court's expressed sentiment that both sides will be unhappy (presumably suggesting the parties explore settling the matter), ignores the Decision's actual impact - although increasing the number of covered retirees, it so diminishes the benefit, that the City's annual obligation has been reduced from $137 million, to a mere $10 million per year. Retirees face getting older, getting sick and dying, forced to obtain healthcare as outside buyers on their own, with nothing to show for their years of service, some subjected to premiums exceeding their pension annuity. The City, on the other hand has been rewarded by the Court's reducing its obligation by more than 90%.

The retirees are people, with needs, vulnerabilities, and the real health ravages that retirees face. They have served this community over their lives and careers and they deserve better, than being treated as mere mail recipients of Court decisions.

This Court's decision would allow the City to escape accountability for promises made to its employees over many years, some of them uniquely vulnerable, because they relied on the City's honesty, precisely because their City work could not qualify them for federal Medicare coverage. And, this Court leaves them dumped and without a life preserver, putting the burden now on *them* to have challenged the authority of the City's pre-retirement seminar speakers over many years.

Accordingly, this Court should grant rehearing, and actually grant oral argument, and reverse the decisions below and order the Circuit court to issue a Preliminary Injunction, restoring coverage under the City's Annuitant healthcare Plan, and restore the rates and/or the appropriation to the 2013 levels, until this litigation has concluded, and make the following declarations of law and directions on remand to the Circuit Court:

A. **Certify the case as a class action** for City of Chicago Retiree Healthcare Plan Participants, with the following proposed classes (each of i, ii, and iii, with sub-sub class of pre-4/1/1986 hireds):

   i. Korshak subclass-12/31/1987 annuitant participants,

   ii. Window subclass-retired Post-Korshak, but pre-8/23/1989,

   iii. Pre-8/23/1989 Hirees,

   iv. Participants –First hired date after 8/23/1989;

   all represented by undersigned Counsel;

B. Declare the pre 8/23,1989 retiree participants' entitlement, the 8/23/1989 terms of the City of Chicago Annuitant Medical Benefits Plan, is a benefit protected by 1970 Illinois Constitution, Article XIII, Section 5, and Order resumption of the

fixed-rate subsidized $55/$21 monthly premium retiree healthcare plan, fully subsidized by the Funds;
and/or

C. Declare that retirees vest for life in the retiree healthcare terms at the best of their hire or retirement date;

D. Declare that the 1989 and later statutory annuitant healthcare statutory amendments are invalid, for (i) unconstitutionally stripping the benefits of the protections of Article XIII, Section 5, (ii) invalidly diminishing their benefits by their time limitations, and (iii) invalidly limiting their benefits to persons who are annuitants "by reason of employment by the City of Chicago".

E. Enjoin the City and Funds from reducing the group health benefits provided to class members from the level any of them have been provided as a participant, from when plaintiffs and the class members began their participation in the Plan to the present and order the City to restore the appropriated funds for annuitant healthcare to their 2013 levels pendent lite or permanently;

F. Order the City to restore the post-2013 premium rates charged back to the levels charged in the lowest levels for any participant, and refund all premiums collected in excess of those amounts

G. Award Plaintiffs' Attorneys fees and costs;

H. Any and all other relief the Court deems just and proper.

Dated: July 20, 2017

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Certificate of Service

I, Kenneth T. Goldstein, an attorney, on oath state that on **July 20, 2017** I caused the foregoing **Petition for Rehearing** to be electronically filed/served on Defendants and upon the Illinois Appellate Court.

s/Kenneth T. Goldstein

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Certification of Compliance

I certify that this brief conforms to the requirements of Rule 341(c) and 367. The length of this brief, excluding the pages containing the cover, the statement of point and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 15 pages, and 4,646 words.

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EXHIBIT 1

City of Chicago
Amended and Restated
Annuitant Medical Benefits Plan
For Medicare Ineligible Annuitants

PURPOSE

The purpose of the City of Chicago Annuitant Medical Benefits Plan For Medicare - Ineligible Annuitants (hereinafter referred to as the "Plan") is to provide medical benefits to Medicare-Ineligible Annuitants and their Dependents.

This Plan was established on September 1, 1985 and was subsequently amended on June 30, 1988. Current law requires that this Plan, as in effect on June 30, 1988 be offered to Annuitants and their Dependents through December 31, 1997, subject to increases in cost to the Annuitant under this Plan.

This Plan is hereby amended and restated, effective January 1, 1992.

This Plan document describes the medical benefits offered by the City of Chicago (hereinafter referred to as "City"), effective January 1, 1992, to Medicare-ineligible persons receiving annuity benefits from the retirement funds covering City employees. The City is not obligated to continue these benefits for any period, nor at any particular level or cost, nor in whole or in part and hereby reserves the right to amend, modify or terminate the benefits provided under this Plan in any manner at any time, subject to applicable law. Current law requires that the City health care plan available as of June 30, 1988 be offered to Annuitants and their Dependents through 1997, though the cost to Annuitants may increase. This Plan is the same medical plan that has been offered to Annuitants since 1985.

The City may supplement this Plan for any reason, including but not limited to changes in benefit levels and changes in the law. Changes in the Plan will be available from the City Benefits Management Office upon the request of the Annuitant.

This Plan is available for review in the City Benefits Management Office, or the Municipal Reference Library, during regular business hours.