

YES NO

EXHIBITS

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2021CH02663

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

MICHAEL FORTNER, individually and as the)
representative of a class of similarly-situated)
persons,)
)
Plaintiff,)
)
v.)
)
SUSANA A. MENDOZA, in her official)
capacity as Comptroller of the State of Illinois,)
)
Defendant.)

13527569

Case No.: 2021CH02663

CLASS ACTION COMPLAINT

Plaintiff, Michael Fortner, suing in his individual capacity as a former member of the Illinois General Assembly and as a representative of two Classes of similarly-situated persons (“Plaintiff”), by and through his attorneys, bring this action seeking relief against Susana A. Mendoza (“Mendoza” or “Defendant”), in her official capacity as Comptroller of the State of Illinois, state as follows:

NATURE OF THE ACTION

1. This case challenges the unconstitutional statutes passed by the Illinois General Assembly that changed members’ salaries mid-term in violation of the Illinois Constitution.
2. Plaintiff, on behalf of himself and the Classes, former or current members of the Illinois General Assembly, seeks to recover from Defendant Susana Mendoza, Comptroller of the State of Illinois, amounts of salary the Plaintiff and all Class members are entitled to receive pursuant to Article IV, Section 11 of the Illinois Constitution of 1970, but have been thus far withheld by the Defendant pursuant to certain Public Acts of the General Assembly that have been found to be facially unconstitutional and void *ab initio*.

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3. The Illinois Constitution prohibits mid-term manipulation of state legislators' salaries for personal or political gain. The Illinois Constitution of 1970 expressly – and unequivocally – prohibits any “changes” to the salaries of legislators during their terms of office. Ill. Const. 1970, art. IV, § 11.

4. In violation of this clear constitutional mandate, the Illinois General Assembly passed ten different Public Acts between 2009 and 2018 that changed General Assembly members' salary by eliminating, mid-term, their Cost-of-Living Adjustments (“COLA”).

5. The Illinois General Assembly also violated this clear constitutional mandate by passing five different Public Acts between 2009 and 2013 that changed General Assembly members' salary by imposing mid-term furlough days that reduced their pay.

6. Plaintiff files this Complaint on his own behalf and on behalf of all similarly-situated persons, seeking declaratory and other relief, specifically (i) a declaration that the Public Acts eliminating COLAs mid-term violate the Illinois Constitution; (ii) a declaration that the Public Acts imposing furlough days mid-term violate the Illinois Constitution; (iii) an order enjoining Comptroller Mendoza from enforcing these unconstitutional Public Acts; and (iv) issuance of a writ of mandamus ordering Comptroller Mendoza to remedy those constitutional violations by paying Plaintiffs and a class of similarly-situated persons impacted by the unconstitutional conduct the salaries to which they are entitled.

7. Plaintiff and the class members are all taxpayers in the State of Illinois.

JURISDICTION AND VENUE

8. Jurisdiction is proper pursuant to Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, because an actual controversy exists between Plaintiffs and Defendant involving the application of the Illinois Constitution of 1970.

9. Venue is proper in this judicial district pursuant to 735 ILCS 5/2-101 because the Comptroller maintains a governmental office in Cook County. Further, the impact of the unlawful conduct this Complaint challenges has occurred within this judicial district, as well as throughout Illinois.

PARTIES

10. Plaintiff Michael Fortner (“Fortner”), is a former elected member of the Illinois House of Representatives who represented the 95th and 49th Districts from January 2007 to January 9, 2019.

11. Defendant, Susana A. Mendoza (“Mendoza”), is the Comptroller of the State of Illinois. Article V, Section 17 of the Illinois Constitution provides that “the Comptroller, in accordance with the law, shall maintain the State’s central fiscal accounts and order payments into and out of the funds held by the Treasurer.” As Comptroller, Mendoza is responsible for payment of the compensation due to members of the General Assembly. Comptroller Mendoza is sued in her official capacity only.

ILLINOIS SUPREME COURT RULE 19

12. This Complaint challenges the constitutionality of provisions of the Illinois Compiled Statutes. Accordingly, Plaintiffs will provide notice of this Class Action Complaint to the State pursuant to Illinois Supreme Court Rule 19.

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS

13. Article IV, Section 11 of the Illinois Constitution of 1970 provides:

SECTION 11. COMPENSATION AND ALLOWANCES

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.

14. Article V, Section 17 of the Illinois Constitution of 1970 provides:

SECTION 17. COMPTROLLER – DUTIES

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.

15. Section 1 of the General Assembly Compensation Act, 25 ILCS 115/1, provides in relevant part that legislators’ salaries shall be paid in “12 equal monthly installments.”

16. In 1990, the Compensation Review Act (25 ILCS 120/1, *et seq.*) conferred upon the Compensation Review Board the authority to determine compensation for, among others, the members of the Illinois General Assembly.

17. The Compensation Review Board submitted in 1990 a report to the General Assembly providing for automatic COLA increases for legislators. On July 13, 1990, the 86th General Assembly adopted Senate Joint Resolution 192. In accordance with the provisions of the Compensation Review Act, Senate Joint Resolution 192 approved providing a COLA salary adjustment on July 1 of each year for certain public officials, including members of the General Assembly.

FACTUAL BACKGROUND

I. Plaintiff’s Terms of Office.

18. Article 4, Section 2(a) of the of the Illinois Constitution of 1970 provides for staggered elections for state senators, with each Senate district electing its members to serve two four-year terms and one two-year term each decade.

19. Article 4, Section 2(b) of the Illinois Constitution of 1970 provides that elections for state representatives are held every two years and that elected representatives serve for two-year terms.

20. Article III, Section 6 of the Illinois Constitution of 1970 provides that members of the General Assembly “are elected on the Tuesday following the first Monday of November in even-numbered years or on such other day as provided by law.”

21. While the Illinois Constitution provides for the election of members of the General Assembly in even-numbered years, terms for Senate and House members commence the following January, and thus the terms run January to January of odd-numbered years.

22. Fortner served six (6) days in January 2007 as a member of the Illinois House of Representatives during the 94th General Assembly. He was also elected to six successive terms of office and served twelve years as a member of the Illinois House of Representatives during the 95th, 96th, 97th, 98th, 99th, and 100th General Assemblies. During the 95th, 96th, and 97th General Assemblies, Fortner represented the 95th Representative (or House) District, which spanned the years of January 2007 through January 2013. During the 98th, 99th, and 100th General Assemblies, Fortner represented the 49th Representative (or House) District, which spanned the years of January 2013 through January 2019. Fortner did not run for reelection as Representative of the 49th District at the 2018 General Election, but he did complete his term of office as a member of the 100th General Assembly through January 2019 and is no longer a member of the General Assembly.

II. The General Assembly Unconstitutionally Changed Plaintiff’s and the Class Members’ Salaries by Eliminating Their COLA.

23. In 1990, the 86th General Assembly adopted Senate Joint Resolution 192. That resolution approved, *inter alia*, providing a COLA salary adjustment on July 1 of each year for public officials, including members of the General Assembly.

24. As provided by law pursuant to Senate Joint Resolution 192, all members of the General Assembly, including Fortner, were entitled to the COLA payments as part of their salary as members of the legislature for the entire duration of their service.

25. Accordingly, Fortner received COLA payments in 2007 and 2008 as provided by law pursuant to Senate Joint Resolution 192.

26. In 2009, the General Assembly enacted Public Act 96-800 (codified in relevant part at 25 ILCS 120/5.6), which eliminated the COLA that members of the General Assembly were entitled to for the fiscal year running from July 1, 2009 to June 30, 2010.

27. Public Act 96-800 states in relevant part:

FY10 COLA's prohibited. 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. That cost of living adjustment shall apply again in the fiscal year beginning July 1, 2010 and thereafter.

(Source: P.A. 96-800, eff. 10-30-09.)

The relevant text of P.A. 96-800 is attached hereto as **Exhibit A**.

28. Public Act 96-800, which was enacted in 2009 and eliminated the COLA for the fiscal year beginning July 1, 2009, made a change in Fortner's salary that took effect immediately and entirely within his two-year term of office running from January 2009 to January 2011.

29. Public Act 96-800 therefore violates Article IV, Section 11 of the Illinois Constitution because it changed the salary of Fortner and every other member of the 96th General Assembly who was serving on or after July 1, 2009, during the term of office for which he and other members of the General Assembly were elected.

30. Every year from 2010 through 2019, the Illinois General Assembly enacted a Public Act eliminating the COLA salary payment for a one-year period for each successive fiscal year during the term of office for which members of the General Assembly were elected.

31. These Public Acts were essentially the same as Public Act 96-800, except for changing the fiscal year for which the COLA elimination would apply, and except that certain of the bills did not contain a last sentence similar to that of Public Act 96-800. (The relevant text of these 9 Public Acts that unconstitutionally eliminated the COLA is attached hereto as **Exhibits C – K.**)

32. Below is a chart that sets forth each of the relevant statutes that eliminated the COLA, in violation of Article 4, Section 11 of the of the Illinois Constitution of 1970, as well as the time period the statute applied, the two-year House term(s) affected and the four-year Senate term(s) affected:

STATUTE	APPLICABLE FISCAL YEAR and DATE RANGE	TWO-YEAR TERM(S) AFFECTED	FOUR-YEAR TERM(S) AFFECTED
25 ILCS 120/5.6 (P.A. 96-800)	FY 2010 7/1/09 – 6/30/10	1/2009 – 1/2011	1/2009 – 1/2013
25 ILCS 120/5.7 (P.A. 96-0958)	FY 2011 7/1/10 – 6/30/11	1/2009 – 1/2011; 1/2011 – 1/2013	1/2009 – 1/2013
25 ILCS 120/5.8 (P.A. 97-0071)	FY 2012 7/1/11 – 6/30/12	1/2011 – 1/2013	1/2009 – 1/2013
25 ILCS 120/5.9 (P.A. 97-0718)	FY 2013 7/1/12 – 6/30/13	1/2011 – 1/2013; 1/2013 – 1/2015	1/2013 – 1/2017
25 ILCS 120/6.1 (P.A. 98-0030)	FY 2014 7/1/13 – 6/30/14	1/2013 – 1/2015	1/2013 – 1/2017
25 ILCS 120/6.2	FY 2015	1/2013 – 1/2015	1/2013 – 1/2017

(P.A. 98-0682)	7/1/14 – 6/30/15	1/2015 – 1/2017	
25 ILCS 120/6.3 (P.A. 99-0355)	FY 2016 7/1/15 – 6/30/16	1/2015 – 1/2017	1/2013 – 1/2017
25 ILCS 120/6.4 (P.A. 99-0523)	FY 2017 7/1/16 – 6/30/17	1/2015 – 1/2017 1/2017 – 1/2019	1/2013 – 1/2017 1/2017 – 1/2021
25 ILCS 120/6.5 (P.A. 100-25)	FY 2018 7/1/17 – 6/30/18	1/2017 – 1/2019	1/2017 – 1/2021
25 ILCS 120/6.6 (P.A. 100-587)	FY 2019 7/1/18 – 6/30/19	1/2017 – 1/2019 1/2019 – 1/2021	1/2017 – 1/2021

33. As the chart above shows, the COLA eliminations for fiscal years 2010 through 2019 were enacted and took effect, on a mid-term basis, during the term of office of members of the General Assembly for which they were elected.

34. Because each of the above listed statutes unconstitutionally changed General Assembly members' salaries by eliminating COLA increases during the terms of office for which they were elected—on a mid-term basis—contrary to Article IV, Section 11 of the Illinois Constitution of 1970, each statute is void *ab initio* in its entirety.

35. Because the statutes are void, Fortner is entitled to receive his full COLA salary adjustments for the period from July 2009 to January 2019—spanning all of fiscal years 2010 through 2018 and the first six months of fiscal year 2019.

36. Because the statutes are void, every class member is entitled to receive his or her full COLA salary adjustments for the period of time each served while the statutes were in effect, from July 1, 2009 through June 30, 2018—spanning all of fiscal years 2010 through 2018, and the first six months of fiscal year 2019.

II. The General Assembly Unconstitutionally Changed Plaintiffs' and the Class Members' Salary by Mandating Unpaid Furlough Days.

37. In 2009, the General Assembly enacted Public Act 96-45 (codified in relevant part at 25 ILCS 115/1.5), which mandated that every member of the General Assembly were required to forfeit 12 days of compensation for fiscal year 2010, which ran from July 1, 2009 to June 30, 2010.

38. Public Act 96-45 states in relevant part:

Fiscal year 2010 compensation. 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, 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.

(Source: P.A. 96-45, eff. 7-15-09.)

The relevant text of P.A. 96-45 is attached hereto as **Exhibit B**.

39. Pursuant to Public Act 96-45, the Comptroller reduced Fortner's salary for fiscal year 2010 – during his January 2009 to January 2011 term – by twelve days of compensation

40. Public Act 96-45 changed the salary mid-term of Fortner and every other member of the General Assembly who was serving a term during fiscal year 2010, which ran from July 1, 2009 to June 30, 2010.

41. Contrary to the General Assembly's self-serving statement that "forfeiture required by this Section is not considered a change in salary", the requirement for Fortner and other General Assembly members to give up multiple days of compensation did cause a change in salary during each of the years this requirement was in place.

42. Public Act 96-45 therefore violates Article IV, Section 11 of the Illinois Constitution because it changed General Assembly members' salaries during the terms for which they were elected.

43. Every year from 2009 through 2013, the Illinois General Assembly passed a Public Act mandating either six or twelve furlough days for Fortner, and every other member of the General Assembly for a one year period for each successive fiscal year. (The relevant text of each of the Public Acts that unconstitutionally mandated furlough days for Plaintiff and those similarly-situated is attached as **Exhibits B – F.**)

44. Below is a chart that sets forth each of the relevant statutes that wrongfully mandated furlough days on a mid-term basis for Fortner and other members of the General Assembly, each statute's Public Act number, and the number of furlough days that were mandated:

STATUTE	APPLICABLE FISCAL YEAR and DATE RANGE	NUMBER OF FURLOUGH DAYS	TWO-YEAR TERM(S) AFFECTED	FOUR-YEAR TERM(S) AFFECTED
25 ILCS 115/1.5 (P.A. 96-0045)	FY 2010 7/1/09 – 6/30/10	12 days – One Per Month for the Fiscal Year	1/2009 – 1/2011	1/2009 – 1/2013
25 ILCS 115/1.6 (P.A. 96-0958)	FY 2011 7/1/10 – 6/30/11	6 Days – One Per Month for the First Six Months of the Fiscal Year	1/2009 – 1/2011; 1/2011 – 1/2013	1/2009 – 1/2013
25 ILCS 115/1.7 (P.A. 97-0071)	FY 2012 7/1/11 – 6/30/12	12 Days – One Per Month for the Fiscal Year	1/2011 – 1/2013	1/2009 – 1/2013
25 ILCS 115/1.8 (P.A. 97-0718)	FY 2013 7/1/12 – 6/30/13	6 Days – One Per Month for the First Six Months of the Fiscal Year	1/2011 – 1/2013; 1/2013 – 1/2015	1/2013 – 1/2017
25 ILCS 115/1.9 (P.A. 98-0030)	FY 2014 7/1/13 – 6/30/14	12 Days – One Per Month for the Fiscal Year	1/2013 – 1/2015	1/2013 – 1/2017

45. The mandated furlough days for fiscal years 2010 through 2014 were enacted and took effect, on a mid-term basis, during the terms of office for which Fortner was elected. Fortner is therefore entitled to receive the compensation that he was required to forfeit due to the furlough days.

46. For all other members of the General Assembly, the mandated furlough days for fiscal years 2010 through 2014 were enacted and took effect, on a mid-term basis, during one or more of the terms of office for which members of the General Assembly were elected. Members of the General Assembly are therefore entitled to receive the compensation that they were required to forfeit due to the furlough days.

47. Between 2009 and 2014, the Comptroller wrongfully reduced Fortner's salary by forty-eight days of compensation, in violation of Article IV, Section 11 of the Illinois Constitution.

48. Between 2009 and 2014, the Comptroller wrongfully reduced the salary of members of the General Assembly by one or more furlough days while serving elected terms of office during the time period of July 1, 2009 through June 30, 2014, when each of the statutes mandating furlough days was in effect.

49. The Comptroller's reduction in Fortner's salary during terms of office he had been elected, as well as the salary of every other member of the General Assembly who was serving a term at any time from July 1, 2009 through June 30, 2014, violated Article IV, Section 11 of the Illinois Constitution.

50. Because each of these statutes unconstitutionally changed General Assembly members' salaries during the terms of office for which they were elected—on a mid-term basis—

contrary to Article IV, Section 11 of the Illinois Constitution of 1970, each statute is void *ab initio* in their entirety.

51. Because the statutes are void, Fortner is entitled to receive reimbursement of the forty-eight days of compensation that was wrongfully withheld from 2009 to 2014.

52. Because the statutes are void, every class member is entitled to receive reimbursement of the compensation wrongfully withheld as a furlough day from July 1, 2009 through June 30, 2014.

III. Prior Lawsuit.

53. On June 1, 2017, Plaintiff Michael Noland, a former member of the Illinois General Assembly, filed a Complaint for Declaratory Judgment and Issuance of a Writ of Mandamus in the Circuit Court of Cook County, Illinois, against Comptroller Susana Mendoza, in her official capacity, seeking declarations that the statutes eliminating the COLA and the statutes mandating the unpaid furlough days were unconstitutional, in violation of Article IV, Section 11 of the Illinois Constitution of 1970, and seeking reimbursement of the salary to which he was entitled. The case was styled, *Michael Noland v. Susana Mendoza*, Case No. 17 CH 07762.

54. On May 8, 2018, Noland added former Illinois state Senator James Clayborne, Jr. as a plaintiff in a jointly-filed amended complaint.

55. In a July 2, 2019 Order (amended July 8, 2019), the trial court granted summary judgment to Plaintiffs on certain of their counts, declaring the statutes enacted between 2009 and 2017 violated Article IV, Section 11 of the Illinois Constitution.

56. On April 8, 2021, the trial court granted summary judgment to Plaintiffs on their counts for writs of mandamus ordering Comptroller Mendoza to disburse payments to Plaintiffs for the unconstitutional statutorily imposed COLA restrictions and furlough days.

57. On May 6, 2021, the trial court entered final judgment in Case No. 17 CH 07762, declaring that all statutes challenged in this lawsuit – 25 ILCS 120/5.6; 25 ILCS 120/5.7; 25 ILCS 120/5.8; 25 ILCS 120/5.9; 25 ILCS 120/6.1; 25 ILCS 120/6.2; 25 ILCS 120/6.3; 25 ILCS 120/6.4; 25 ILCS 120/6.5; 25 ILCS 120/6.6; as well as 25 ILCS 115/1.5; 25 ILCS 115/1.6; 25 ILCS 115/1.7; 25 ILCS 115/1.8; and 25 ILCS 115/1.9 – violate Article IV, Section 11 of the Illinois Constitution, are facially unconstitutional, and ordering the Comptroller to issue warrants for payments to the Plaintiffs. The Final Judgment Order and the Court’s October 31, 2018, July 8, 2019, November 21, 2019 and April 8, 2021 orders incorporated therein are attached hereto as **Group Exhibit K**.

CLASS ALLEGATIONS

58. Plaintiff brings this action as a Class action on behalf of himself and on behalf of two classes of similarly situated individuals, defined as follows:

- (a) All former or current members of the Illinois General Assembly who served any part of a term at any point in time between July 1, 2009 through and including June 30, 2019, and who had COLA payments withheld during that time. (“**Class A**” or the “**COLA Class**”).
- (b) All former or current members of the Illinois General Assembly who served any part of a term at any point in time between July 1, 2009 through and including June 30, 2014, and who were required to take furlough days for which they were not paid during that time. (“**Class B**” or the “**Furlough Class**”).

The following are excluded from the Classes: (1) any Judge presiding over this action and members of his or her family; (2) persons who properly execute and file a timely request for exclusion from the Class; (3) persons whose claims in this matter have been finally adjudicated on

the merits or otherwise released; (4) Plaintiff's counsel and Defendant's counsel; and (5) the legal representatives, successors, and assigns of any such excluded persons.

59. This action is brought and may properly be maintained as a Class action pursuant to 735 ILCS 5/2-801.

60. **Numerosity:** On information and belief, each Class consists of more than 100 people and, thus, is so numerous that joinder of all members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiff, but can be obtained from Defendant's records or the records of third parties. Given the number of persons, the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation.

61. **Commonality and Predominance:** There are well-defined common questions of fact and law that exist as to all members of the Classes and that predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any class member include, but are not limited to, the following:

- (a) Whether the statutes eliminating the COLA and mandating unpaid furlough days took effect "during the terms" of the members of the General Assemblies that passed the statutes;
- (b) Whether COLA payments and furlough days are components of a legislator's "salary" as defined in Article IV, Section 11 of the Illinois Constitution;
- (c) Whether the statutes eliminating the COLA and mandating unpaid furlough days constituted "changes in the salary" of members of the General Assembly violative of Article IV, Section 11 of the Illinois Constitution;
- (d) **Class A only:** Whether the statutes eliminating the COLA are unconstitutional and thus void *ab initio*;

- (e) **Class B only:** Whether the statutes mandating unpaid furlough days are unconstitutional and thus void *ab initio*;
- (f) Whether Defendant Comptroller has a nondiscretionary duty under the Illinois Constitution and state law to pay Plaintiff and all other members of the Illinois General Assembly for their full terms in office, including COLA payments and furlough days;
- (g) Whether Defendant Comptroller is required to reimburse Plaintiff and other Class members the salary to which they are entitled.

62. **Adequacy of Representation:** Plaintiff has retained and is represented by qualified and competent counsel who are experienced in complex and class action litigation. Plaintiff and his counsel are committed to vigorously prosecuting this class action. Neither Plaintiff nor his counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Classes. Plaintiff is able to fairly and adequately represent and protect the interests of such Classes. Plaintiff has raised viable claims of the type reasonably expected to be raised by members of the Classes, and will vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Classes or additional claims as may be appropriate.

63. **Prosecution of Separate Claims Would Yield Inconsistent Results:** Even though the questions of fact and law in this action are predominately common to Plaintiff and the putative Class members, separate adjudication of each Class member's claims would create the risk of inconsistent or varying adjudications for individual members of the Classes. Such inconsistent rulings would create incompatible standards for future General Assemblies if/when Class members bring additional lawsuits concerning the same wrongful statutes and changes in salary mid-term.

64. **Class Action Appropriate to Adjudicate this Controversy:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every

member of the Classes could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Classes. Plaintiff anticipates no difficulty in the management of this action as a class action.

COUNT I

(On behalf of Class A)

Declaratory Judgment – Violation of the Illinois Constitution
By Eliminating the COLA Payments

65. Plaintiff re-asserts and re-alleges paragraphs 1 through 64 as if fully recited herein.

66. This Court should declare that the Comptroller's actions in withholding Fortner's and the Class A members' COLA increases at any time from July 1, 2009 through June 30, 2019 constitute a violation of the Illinois Constitution.

67. The Illinois Constitution 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.

68. COLA increases for legislators are established "as provided by law" by Senate Joint Resolution 192 and the General Assembly Compensation Act, 25 ILCS 115/1, *et seq.*

69. The Comptroller violated Article IV, Section 11 of the Illinois Constitution of 1970 by withholding COLA salary adjustments from Fortner's and other General Assembly members who served at any time from July 1, 2009 through June 30, 2019.

WHEREFORE, Plaintiff, Michael Fortner, respectfully requests that this Court enter an

Order:

- (a) Declaring that Illinois statutes 25 ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, 25 ILCS 120/6.4, 25 ILCS 120/6.5, and 25 ILCS 120/6.6 violate Article IV, Section 11 of the Illinois Constitution of 1970 and are therefore void *ab initio* with respect to all members of the General Assembly who had their COLA salary adjustments withheld during their terms of office;
- (b) Declaring that the Comptroller's actions in withholding Fortner's COLA salary adjustments for the period from July of 2009 to January of 2019 pursuant to 25 ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, 25 ILCS 120/6.4, 25 ILCS 120/6.5, and 25 ILCS 120/6.6 changed Fortner's salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (c) Declaring that the Comptroller's actions in withholding payment of COLA salary adjustments to all other members of the Illinois General Assembly for the period of July of 2009 to January of 2019 pursuant to 25 ILCS 120/5.6, 25 ILCS 120/5.7, 25 ILCS 120/5.8, 25 ILCS 120/5.9, 25 ILCS 120/6.1, 25 ILCS 120/6.2, 25 ILCS 120/6.3, 25 ILCS 120/6.4, 25 ILCS 120/6.5, and 25 ILCS 120/6.6 changed their salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (d) Enjoining the Comptroller from enforcing these unconstitutional statutes; and
- (e) Granting such further relief as is just and equitable.

COUNT II
(On behalf of Class B)

Declaratory Judgment – Violation of the Illinois Constitution
By Withholding Payment for the Furlough Days

70. Plaintiff re-asserts and re-alleges paragraphs 1 through 64 as if fully recited herein.

71. This Court should declare that the Comptroller’s actions in withholding forty-eight days of compensation from Fortner from July 1, 2009 through June 30, 2014 constitute a violation of the Illinois Constitution.

72. The Illinois Constitution 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.

73. The Comptroller violated Article IV, Section 11 of the Illinois Constitution of 1970 by withholding forty-eight days of compensation from Fortner from 2009 to 2014, which constituted a mid-term change in salary.

WHEREFORE, Plaintiff, Michael Fortner, respectfully requests that this Court enter an Order:

- (a) Declaring that Illinois statues 25 ILCS 115/1.5, 25 ILCS 115/1.6, 25 ILCS 115/1.7, 25 ILCS 115/1.8, and 25 ILCS 115/1.9 violate Article IV, Section 11 of the Illinois Constitution of 1970 and are therefore void *ab initio*;
- (b) Declaring that Comptroller’s actions in withholding forty-eight days of compensation from Fortner from 2009 to 2014 changed Fortner’s salary in violation of Article IV, Section 11 of the Illinois Constitution of 1970;
- (c) Declaring that Comptroller’s actions in withholding from all other members of the General Assembly payment for furlough days that were imposed mid-term changed

the salary of all of these other members of the General Assembly in violation of Article IV, Section 11 of the Illinois Constitution of 1970;

- (d) Enjoining the Comptroller from enforcing these unconstitutional statutes; and
- (e) Granting such further relief as is just and equitable.

COUNT III

(On behalf of both Classes A and B)

Petition for a Writ of Mandamus
Based on the Comptroller’s Violation of the Illinois Constitution
By Failing to Make Full Salary Payments

74. Plaintiff re-asserts and re-alleges paragraphs 1 through 73 as if fully recited herein.

75. Plaintiff is entitled to relief pursuant to the Illinois Constitution and Senate Joint Resolution 192, which mandate that Plaintiff and all the other members of the General Assembly are entitled to a salary that cannot be changed mid-term.

76. The Comptroller has a duty to make payments to Plaintiff and other members of the General Assembly that include all components of their salaries, including COLAs and furlough days.

77. The Comptroller’s duty to issue the payments is both non-discretionary, because it is mandated by the Illinois Constitution and by state law, and ministerial. The Comptroller’s failure to make these payments is in violation of the Illinois Constitution and state law.

WHEREFORE, Plaintiff, Michael Fortner, respectfully requests the following relief:

- (a) That this Court declare that Comptroller has the nondiscretionary duty under the Illinois Constitution and state law to make the salary payments to Plaintiff and to all other members of the Illinois General Assembly whose salaries were changed mid-term by eliminating COLAs and/or mandating unpaid furlough days; that Plaintiff and all other members of the Illinois General Assembly whose salaries

were changed mid-term had a clear right to be paid the COLAs and/or furlough days as provided under the Illinois Constitution and state law; and that the Comptroller had the duty under the Illinois Constitution and state law to comply with the requested relief;

- (b) That this Court enter a Writ of Mandamus ordering and directing the Comptroller to pay Plaintiff – and all the other members of the Illinois General Assembly whose salaries were changed mid-term – the COLAs and/or furlough days which have been withheld and to which they are entitled under the Illinois Constitution and state law;
- (c) That this Court declare that Comptroller must inform Plaintiff and all other members of the Illinois General Assembly whose salaries were changed mid-term that they can choose to opt out of payments of the withheld COLAs and/or unpaid furlough days, thereby donating all or some of the withheld salary payments back to the State of Illinois; and
- (d) That this Court order such other and further relief as the Court shall deem just.

Date: June 1, 2021

Respectfully submitted,

PLAINTIFF MICHAEL FORTNER,
individually as the representative of a class
of similarly-situated persons,

By: /s/ Michael J. Scotti III
One of Plaintiff's Attorneys

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