

CAUSE NO. D-1-GN-19-000710

**DALLAS POLICE RETIRED
OFFICERS ASSOCIATION,**

Plaintiff,

v.

**TEXAS PENSION REVIEW BOARD
and STEPHANIE LEIBE, in her
official capacity as Chair of the Texas
Pension Review Board**

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

**PLEA TO THE JURISDICTION
OF DEFENDANTS TEXAS PENSION REVIEW BOARD AND
STEPHANIE LEIBE IN HER OFFICIAL CAPACITY AS CHAIR
OF THE TEXAS PENSION REVIEW BOARD**

TO THE HONORABLE JUDGE OF THE COURT:

Defendants, Texas Pension Review Board (“State Pension Review Board) and Stephanie Leibe,¹ in her official capacity as Chair of the Texas Pension Review Board (“Chair”), file this Plea to the Jurisdiction and asks this Court to dismiss Plaintiff’s claims against the Board for lack of subject-matter jurisdiction.

INTRODUCTION

The Plaintiff in this case is the Dallas Police Retired Officers Association (“DPROA”), who represents certain retired police officers, firefighters, and retiree widows who receive benefits from the Dallas Police and Fire Pension System. The Dallas Police and Fire Pension System’s governing statutes—Tex. Rev. Civ. Stat. articles 6243a-1, §§ 1.01, *et. seq.*—mandate how the Dallas Police and Fire Pension System calculates pension

¹ Stephanie Leibe has succeeded Josh McGee as Chair of the State Pension Review Board.

benefits and other payments due to the pensioners of the Dallas Police and Fire Pension System.

In 2017, in House Bill 3158 (“HB 3158), the Texas Legislature made major amendments to Article 6243a-1, including amending Articles 6243a-1, §§6.12 and 6.13, dealing respectively with the method of calculation of certain adjustments to pension benefits and the eligibility criteria for supplements to pensions. As a consequence of the amendments to the law, the Dallas Police and Fire Pension System’s method of calculating adjustments and determining supplements changed, impacting DPROA’s members.

In this lawsuit, DPROA asserts that the amendments to Articles 6243a-1, §§6.12 and 6.13, impair the amount of adjustments and supplements that its members would otherwise receive from the Dallas Police and Fire Pension System—“effectively abolish[ing] the existing annual increase” under Section 6.12 and “abolish[ing] the benefits outlined in section 6.13” for certain pensioners. *Id.* at 6–7. DPROA brings a claim under the Uniform Declaratory Judgment Act (Tex. Civ. Prac. & Rem. Code §§ 37.001, *et. seq.*)(“UDJA”), seeking to have those statutes declared unconstitutional in violation of Article XVI, § 66 of the Texas Constitution as to retirees and those that could have retired on or before September 1, 2017 and their qualified survivors. *Plaintiff’s Original Petition for Declaratory Relief and Request for Disclosures*, 7–9. Plaintiff also seeks attorney’s fees under the UDJA. *Id.* at 9.

But rather than bring this action against the Dallas Police and Fire Pension System—the governmental entity that actually implements and enforces the challenged statutes—DPROA has brought these claims against the State Pension Review Board and its Chair, a

state agency and its appointed head that have no authority under Texas law to implement or enforce the challenged statutes.

The State Pension Review Board is a state agency charged with monitoring whether Texas public retirement systems are complying with certain reporting or information providing requirements imposed by Texas Government Code Chapters 801 and 802. The State Pension Review Board and its Chair do not administer individual member benefits or pay out any pension benefits, supplements, or adjustments for any Texas public retirement system, nor does it have any authority under Texas law to enforce or prohibit the mode of administration of individual member benefits or payment of any pension benefits, supplements, or adjustments by any Texas public retirement system. The State Pension Review Board and its Chair specifically do not implement or enforce Articles 6243a-1, §§6.12 or 6.13.

As detailed below, DPROA's petition fails to affirmatively demonstrate this Court's subject matter jurisdiction over the declaratory judgment claims asserted against the State Pension Review Board and its Chair because of a lack of standing, the lack of a justiciable controversy, and a lack of redressability. DPROA's petition pleads no facts to establish: (1) DPROA's standing to bring its claims against the State Pension Review Board; (2) any actual justiciable controversy between the State Pension Review Board or its Chair and the DPROA; or (3) that the requested relief against the State Pension Review Board or its Chair will redress DPROA's complaint. DPROA does not plead any facts demonstrating any actual injury to DPROA traceable to any conduct by the State Pension Review Board or its Chair. DPROA does not plead any facts demonstrating a justiciable controversy between the parties, because the State Pension Review Board and its Chair do not enforce or

implement the statutes challenged in DPROA’s petition—these statutes are enforced and implemented by the Dallas Police and Fire Pension System. Finally, DPROA does not plead any facts demonstrating that any requested relief against the State Pension Review Board or its Chair could redress DPROA’s complaint; DPROA has pled no facts demonstrating that the State Pension Review Board and its Chair have any authority under Texas law to mandate the Dallas Police and Fire Pension System to enforce or not enforce, implement or not implement, comply or not comply with, the provisions of either of the statutes which DPROA challenges.

Plaintiff’s petition wholly fails to plead any cause of action against the State Pension Review Board or its Chair for which this Court has subject matter jurisdiction. Accordingly, DPROA’s declaratory judgment claims against the State Pension Review Board and its Chair should be dismissed.

BACKGROUND

I. THE DALLAS POLICE AND FIRE PENSION SYSTEM AND ARTICLES 6243A-1, §§ 6.12 AND 6.13

The Dallas Police and Fire Pension System is a public pension system established by the City of Dallas that provides retirement, disability, and death benefits for Dallas police officers and firefighters and their qualified beneficiaries. The Dallas Police and Fire Pension System is governed by its own System Board and is subject to the provisions of article 6342a-1 (“Pension system for police and firefighters in certain cities”).² *See* Tex. Rev. Civ. Stat. articles 6243a-1, §§ 1.01, *et. seq.* Among the benefits administered by the

² Although titled “Pension system for police and firefighters in certain cities,” the only city that Article 6243a-1 is applicable is Dallas, and the only pension system that Article 6243a-1 applies to is the Dallas Police and Fire Pension System.

Dallas Police and Fire Pension System are monthly pension benefits to pensioners and their qualified survivors and, for some pensioners and qualified survivors, monthly supplements. *See* Tex. Rev. Civ. Stat. articles 6243a-1, §§ 6.12; 6.13.

In 2017, the Texas Legislature made numerous changes to article 6342a-1 and amended Sections 6.12 (“ADJUSTMENTS TO RETIREMENT AND DISABILITY PENSION BENEFITS”) and 6.13 (“SUPPLEMENT TO CERTAIN RECIPIENTS 55 YEARS OF AGE OR OLDER”) that altered how pension systems governed by Article 6243a-1, including the Dallas Police and Fire Pension System, were permitted to calculate certain adjustments and supplements and who was entitled to those adjustments and supplements. *See* Tex. Rev. Civ. Stat. articles 6243a-1, §§ 6.12; 6.13; Act of May 30, 2017, 85th Leg., R.S., ch.318, §1.41, 2017 Tex. Gen. Law 639, 694–95. As a result of the 2017 Legislative amendments to Dallas Police and Fire Pension System’s governing statutes, the adjustments and supplements made by Dallas Police and Fire Pension System to DPROA’s members were impacted.

II. THE STATE PENSION REVIEW BOARD AND ITS CHAIR

The State Pension Review Board is a Texas state agency governed by Chapters 801 and 802 of the Government Code. Its general duties are to:

- (1) conduct a continuing review of public retirement system, compiling and comparing information about benefits, creditable service, financing, and administrations of systems;
- (2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit and equitable distribution of benefits in one or more public retirement systems;
- (3) provide information and technical assistance on pension planning to public retirement systems on request; and

(4) and to recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

Tex. Gov't Code § 801.202. The Board is made up of seven members, including the chair, who are appointed by the governor. Tex. Gov't Code §§ 801.102, 801.103, 801.110.

A. Texas Government Code Chapters 801 and 802 set out the general duties and authority of the State Pension Review Board.

Chapters 801 (“State Pension Review Board”) and 802 (“Administrative Requirements”) set out the statutory scheme for the operations of the State Pension Review Board and how those affect Texas public retirement systems. Under this scheme, in Chapter 802, Texas public retirement systems are required to comply with a number of requirements to ensure their actuarial soundness and are required to provide certain reports, forms, and information to the State Pension Review Board.³ The State Pension Review Board is required to publicize some of the provided information⁴ and to create reports or analyses for state officials using some of the information.⁵ To carry out its functions, the

³ See Tex. Gov't Code §§ 802.101(c)(actuarial studies and reports); 802.1012(j)(2) (audit reports); 802.1014(b-1) (actuarial experience study); 802.103(b) (annual financial reports); 802.104 (annual report of number of members and numbers of retirees); 802.105(a) (registration form); 802.106(h) (summarized information provided to members); 802.108(a) (report of investment returns and assumptions); 802.2015(g)(funding soundness restoration plan); 802.2016(g)(funding soundness restoration plan for certain public retirement systems); 802.202(d)(3),(4) (written investment policy and changes); 802.302(a)(actuarial analyses for public retirement system affected by a bill or resolution); and 802.305(a) (reports, analyses, and actuarial impact statements for certain bills and resolutions).

⁴ See Tex. Gov't Code § 801.209(a), requiring that the State Pension Review Board to post the most recent data from reports received from Texas public retirement systems under Sections 801.101, 802.103, 801.104, 802.105, 802.108, 802.2015 and 802.2016 the State Pension Review Board's website on its website, or on a publicly available website that is linked to its website.

⁵ See Tex. Gov't Code §§ 801.203(a) (reports to Legislature and Governor); 802.301(c) (actuarial impact statements); 802.302(e) (preparation of actuarial analysis); 802.305((e), (f), (g) (reports, analyses, and actuarial impact statements for certain bills and resolutions).

State Pension Review Board has the authority to inspect the books, records, or accounts of Texas public retirement systems, has subpoena power, and, during the legislative session, it may make certain requests to Texas public retirement systems for reports and analyses. Tex. Gov't Code §§ 801.204, 801.205; § 802.305.

If a retirement system fails to timely comply with any statutory requirement to provide reports or information to the State Pension Review Board, the State Pension Review Board may:

- (1) post a list of non-compliant retirement systems on the State Pension Review Board's website; and
- (2) inform the governor and Legislative Budget Board of the lack of a timely submission by certain retirement systems; or
- (3) for other retirement systems, notify the governing body of the political subdivision of which members of the public retirement systems are employees.

Tex. Gov't Code § 801.209(b),(c). The State Pension Review Board may also bring a writ of mandamus to compel a retirement system to comply with the reporting requirements of Chapter 802. Tex. Gov't Code § 802.003.

B. HB 3158 provided some additional reporting requirements specifically applicable to the Dallas Police and Fire Pension System and additional duties by the State Pension Review Board to monitor the Dallas Police and Fire Pension Systems actuarial soundness and report to the Legislature.

When the Texas Legislature amended Article 6243a-1 in HB 3158 in 2017, in an effort to increase the Dallas Police and Fire Pension System's financial soundness, the Legislature included specific reporting and filing requirements on the part of the Dallas

Police and Fire Pension System to the State Pension Review Board,⁶ and specific duties on the part of the State Pension Review Board to review items submitted by the Dallas Police and Fire Pension Systems to ensure accuracy and compliance with state mandated funding and amortization period requirements, to make reports to the Legislature, and to select an independent auditor to conduct an actuarial analysis.⁷

HB 3158 also gave the State Pension Review Board the limited and temporary responsibility of determining by August 31, 2017, if the Dallas Police and Fire Pension System was complying with certain distribution provisions and the limited and temporary authority to provide notice of any such violation to the Dallas Police and Fire Pension System, the Dallas City Council and Mayor, and to publish any violation on the State

⁶ See Tex. Rev. Civ. Stat. articles 6243a-1, §§ 3.02(j-9) (requiring provision of the information that it provides to the public); 3.02(r)(2) (requiring the filing of a copy of its code of ethics or any amendments); § 2.025 (requiring the provision of a copy of an independent actuarial analysis and by 2024, the provision of any rules that adopt a plan that complies with state required funding and amortization period requirements); 3.02(j-6), (j-7) (requiring the provision of any proposed rules considered to increase benefits); and Tex. Gov't Code § 810.002(e) (requiring the filing of all reports due under Chapter 802 if an alternative benefit plan is established).

⁷ See Tex. Rev. Civ. Stat. articles 6243a-1, §§ 3.02(j-9) (requiring review of the information that the Dallas Police and Fire Pension System provides to the public for accuracy); 2.025 (requiring that the State Pension Review Board select an independent actuary to perform an actuarial analysis; requiring the review of such analysis and of the summary of any rules adopting a plan that complies with state required funding and amortization period requirements; and requiring the submission of a report of such analysis and summary of rules to the Legislature); 3.02(j-8) (requiring the review of any proposed rules considered to increase benefits and determination of whether such rule would cause the amortization period of the unfunded actuarial accrued liability of the combined pension plan or any plan established under article 6243a-1 by the Dallas Police and Fire Pension System to exceed 35 years, after taking into account implementation of the rule); and Tex. Gov't Code § 810.002(f) (requiring the State Pension Review Board to conduct a review and validate the determination of the qualified actuary that after the establishment and implementation of an alternative benefit plan, the pension system would continue to comply with the funding and amortization period requirements of state law.)

Pension Review Board’s website and in the Texas Register. Act of May 30, 2017, 85th Leg., R.S., ch.318, § 3.02(b),(c), 2017 Tex. Gen. Law 639, 712–13.

ARGUMENTS AND AUTHORITIES

I. PLAINTIFF BEARS THE BURDEN OF AFFIRMATIVELY DEMONSTRATING THE COURT’S SUBJECT-MATTER JURISDICTION

Subject-matter jurisdiction is essential to the authority of a court to decide a case. *Texas Ass’n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). Subject-matter jurisdiction requires that the plaintiff have standing, that there be a live controversy between the parties, and that the claim asserted be justiciable. *State Bar of Texas v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994). Without subject-matter jurisdiction, a court’s decision is an advisory opinion, which is prohibited by the Texas Constitution. *Id.*; *Texas Ass’n of Business*, 852 S.W.2d at 444.

A plea to the jurisdiction challenges a court’s authority to decide a claim. *Heckman v. Williamson County*, 369 S.W.3d 137, 149 (Tex. 2012). It is the plaintiff’s burden to affirmatively demonstrate the court’s jurisdiction. *Id.* at 150. The standard of review for determining whether a trial court has jurisdiction has traditionally depended on the nature of the jurisdictional question at issue.

When there is a question of pleading sufficiency—whether the plaintiff has pled sufficient facts to support a claim for which a court would have jurisdiction—the Court reviews the pleadings to determine whether the plaintiff has sufficiently pled facts that affirmatively demonstrate the trial court’s jurisdiction. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–27 (Tex. 2004); *James v. Underwood*, 438 S.W.3d 704, 708 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (per curiam). The burden is on the

plaintiff to “alleg[e] facts and fram[e] legal arguments that would affirmatively demonstrate the trial court’s jurisdiction to hear [the plaintiff’s] claims.” *James*, 438 S.W.3d at 716.

Alternatively, when a plaintiff pleads sufficient facts to support a claim within the trial court’s jurisdiction over the claim, but the defendant challenges the existence of those facts, that type of jurisdictional challenge is reviewed under a standard that parallels a summary judgment standard. *Miranda*, 133 S.W.3d at 227. In such a challenge, evidence can be submitted by the parties to the court on the jurisdictional question. *Id.* If the evidence creates a fact question regarding the jurisdictional issue, the court cannot grant the plea to the jurisdiction. *Id.* at 228.

To establish standing, a plaintiff must show: (1) that it has suffered a concrete and particularized injury which is actual or imminent; (2) the injury is “fairly traceable to the defendant’s conduct;” and 3) there is a “substantial likelihood that the requested relief will remedy the alleged injury in fact.” *Heckman*, 369 S.W.3d at 154-56. A plaintiff must demonstrate standing separately for each type of relief sought. *Id.* at 156.

For a controversy to be justiciable, there must be a real controversy between the parties that will actually be resolved by the relief sought. *Gomez*, 891 S.W.2d at 245. If the opinion being sought is advisory or is an adjudication of a political question, there is no justiciable controversy. *Gilligan v. Morgan*, 413 U.S. 1, 9 (1973). The controversy must be “a real and substantial conflict of tangible interests and not merely a theoretical or hypothetical dispute.” *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). There must be a live controversy between the parties at all stages of the proceedings for a court to maintain jurisdiction. *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001).

II. THE UDJA DOES NOT CONFER SUBJECT-MATTER JURISDICTION

The UDJA does not create or expand a trial court's jurisdiction; it merely provides a remedy where subject-matter jurisdiction already exists. *Texas Ass'n of Business*, 852 S.W.2d at 444. It is essentially a procedural device for deciding matters that are already within the court's subject-matter jurisdiction. *Id.*

A. Subject Matter Jurisdiction For Claims Against The State Under The UDJA Challenging Statutes Is Limited To Claims Challenging The Validity Of A Statute.

Sovereign immunity from suit defeats a trial court's subject-matter jurisdiction unless the State expressly consents to suit. *Texas Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

Section 37.004 of the UDJA provides that:

A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

TEX. CIV. PRAC. AND REM. CODE § 37.004(a). As against the State, the language of section 37.004 is further limited by that of section 37.006, which provides:

In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.

TEX. CIV. PRAC. AND REM. CODE § 37.006(b). The Texas Supreme Court has explained that sovereign immunity does not bar suits against the State challenging the constitutionality of a statute and seeking only equitable relief. *See Patel v. Texas Dep't of*

Licensing and Regulation, 469 S.W.3d 69, 76–77 (Tex. 2015) (holding that the UDJA waives sovereign immunity for claims challenging the validity of statutes). Conversely, claims asserted against the State under the UDJA which do not challenge the validity of a statute—such as claims which seek the construction of a statute—remain barred by sovereign immunity. *See Texas Dep’t of Transp. v. Seftik*, 355 S.W.3d 618, 621 (Tex. 2011).

B. Subject Matter Jurisdiction Under The UDJA Also Requires Standing On The Part Of The Plaintiff And A Justiciable Controversy Between The Parties That Will Actually Be Resolved By The Relief Sought.

Even when a claim against the State under the UDJA challenges the validity of a particular statute, as in all cases, the court must still have subject-matter jurisdiction over the case to have the authority to hear it. *Texas Ass’n of Business*, 852 S.W.2d at 443. Accordingly, when there is no justiciable controversy between the parties that will actually be resolved by the relief sought, the trial court has no subject-matter jurisdiction to hear a declaratory judgment claim. *Bonham State Bank*, 907 S.W.2d at 467. Likewise, when a plaintiff seeking a declaratory judgment has no standing to bring a particular claim, the court has no subject-matter jurisdiction to hear the claim. *Texas Ass’n of Business*, 852 S.W.2d at 443–44. If a court lacks subject-matter jurisdiction over a declaratory judgment claim, that claim must be dismissed for want of jurisdiction. *Bland Independent School District v. Blue*, 34 S.W.3d 547, 558 (Tex. 2000).

III. DPROA HAS FAILED TO PLEAD FACTS AFFIRMATIVELY DEMONSTRATING THIS COURT’S SUBJECT MATTER JURISDICTION OVER DPROA’S CLAIMS AGAINST THE STATE PENSION REVIEW BOARD AND ITS CHAIR

A. DPROA’s Claims Against the State Pension Review Board and its Chair

In its UDJA claims, DPROA seeks declarations that:

- (1) “Tex. Rev. Civ. Stat. art. 6243a-1, §§6.12 and 6.13 as adopted by the Legislature and signed into law by Governor Abbott on May 31, 2017 are void, illegal, unenforceable, or unconstitutional in violation of Tex. Const. Art. XVI, §66 as to retirees and those that could have retired on or before September 1, 2019 and their qualified survivors[;]” and
- (2) “other declarations the Court may determine to be proper and in substantial conformity with the relief here requested.”

Plaintiff’s Original Petition for Declaratory Relief and Request for Disclosures, p.9.

DPROA also seeks “just, fair, equitable and reasonable attorneys’ fees under the Declaratory Judgments Act,” costs of court and applicable post-judgment interest on any attorney’s fees award; and “such other and further relief both at law an in equity to which it may show itself justly entitled.” *Id.*

B. DPROA’s Claims Under The UDJA Are Limited by Sovereign Immunity to Challenges to the Validity and Constitutionality of Articles 6243a-1, §§ 6.12 and 6.13.

The UDJA waives sovereign immunity for a declaratory action against a state entity that challenges the constitutionality of a statute, but not for a general declaration of rights against the State which do not challenge the validity of a statute. *See Sefzik*, 355 S.W.3d at 621. In its petition, DPROA challenges the constitutionality of Articles 6243a-1, §§ 6.12 and 6.13. To the extent that DPROA seeks any declaration other than the validity or constitutionality of Articles 6243a-1, §§ 6.12; 6.13—such as its vague request for “other declarations”—such a claim would not fall within the narrow waiver of sovereign

immunity provided by the UDJA and should be dismissed for want of jurisdiction. *See Sefzik*, 355 S.W.3d at 621; *see also* TEX. CIV. PRAC. AND REM. CODE § 37.004(a) (“A person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under *the* . . . statute[.]”) (emphasis added); § 37.006(b) (“if *the* statute . . . is alleged to be unconstitutional . . .”) (emphasis added).

Accordingly, the only declaratory judgment claims which fall within the waiver of sovereign immunity provided by the UDJA are DPROA’s claims challenging the validity and constitutionality of Articles 6243a-1, §§ 6.12 and 6.13. Only those claims need be further examined to determine whether the DPROA has affirmatively pled facts to demonstrate this Court’s subject matter jurisdiction in regard to standing, a justiciable controversy between the parties, and redressability with respect to the State Pension Review Board and its Chair.

C. DPROA Has Failed To Affirmatively Demonstrate This Court’s Jurisdiction Over DPROA’s Challenges Against the State Pension Review Board and its Chair Regarding The Constitutionality of Articles 6243a-1, §§ 6.12 and 6.13

1. DPROA has failed to plead facts affirmatively demonstrating standing to bring its claims against the State Pension Review Board and its Chair.

In order to demonstrate standing to bring its claims against the State Pension Review Board and its Chair, DPROA must show that it suffered a concrete and particularized injury (actual or imminent), traceable to the State Pension Review Board’s or its Chair’s conduct, and that there is a substantial likelihood that the requested relief against the State Pension Review Board or its Chair will remedy the injury in fact. *See Heckman*, 369 S.W.3d at 154-56. But in its petition, DPROA does not does not trace any injury to the conduct of the

State Pension Review Board or its Chair nor does it demonstrate that the requested relief against the State Pension Board or its Chair will remedy any alleged injury.

In this suit, DPROA claims that its members have been injured by the 2017 Legislative amendments to Articles 6243a-1, §§ 6.12 and 6.13 because such amendments “effective[ly] abolish[]” the adjustment under Section 6.12 and the supplement under section 6.13 for certain pensioners and so “impair[] the vested benefits” that its members would “have otherwise received and would continue to receive” from the Dallas Police and Fire Pension System. *Plaintiff’s Original Petition for Declaratory Relief and Request for Disclosures*, pp.1–2. As is apparent from Plaintiff’s petition and the relevant statutes, it is the Dallas Police and Fire Pension System who is implementing and enforcing Articles 6243a-1, §§ 6.12 and 6.13 and causing an impact to the adjustments or supplements to the pensions received by DPROA’s members from the Dallas Police and Fire Pension System. DPROA’s asserted injury is that its members are not receiving all the adjustments or supplements that they deserve to from the Dallas Police and Fire Pension System because the Dallas Police and Fire Pension System is calculating adjustments and supplements according to the amended Articles 6243a-1, §§ 6.12 and 6.13.

DPROA has wholly failed to plead any facts demonstrating that any conduct *on the part of the State Pension Review Board or its Chair* caused DPROA’s members to not receive the adjustments or supplements from the Dallas Police and Fire Pension System that they believe they deserve. Because DPROA has not pled sufficient facts to demonstrate that the alleged injury is traceable to conduct on the part of State Pension Review Board or its Chair, it has failed to establish any standing to bring this claim against them. *See Heckman*, 369 S.W.3d at 154-56.

Furthermore, DPROA has pled no facts demonstrating that there is a substantial likelihood that the requested relief against the State Pension Review Board or its Chair will remedy the injury in fact. *See Heckman*, 369 S.W.3d at 154-56. DPROA has pled no facts demonstrating that the State Pension Review Board or its Chair any statutory or constitutional authority to implement or enforce the challenged statutes.

Nor could it. Neither the challenged statutes themselves, nor the State Pension Review Board's governing chapters, nor HB 3158, provide the State Pension Review Board or its Chair with the power to implement or enforce Articles 6243a-1, §§ 6.12 and 6.13. Rather, the statutory scheme of Article 6243a-1 provides that the Dallas Police and Fire Pension System is to implement and enforce its provisions. *See Tex. Rev. Civ. Stat. article 6243a-1, §§ 1.01. et. seq.* Likewise, the statutory scheme that governs the State Pension Review Board and its Chair does not provide either any enforcement authority over the Dallas Police and Fire Pension System's implementation or enforcement of Articles 6243a-1, §§ 6.12 and 6.13. *See Tex. Gov't Code §§ 801.001–.211; 802.001–802.305.*

Finally, without any facts demonstrating that the alleged injury to DPROA or its members was traceable to the State Pension Review Board or its Chair, DPROA's requested relief against the State Pension Review Board or its Chair could not possibly remedy DPROA's alleged injury. As noted *supra*, any declarations regarding Articles 6243a-1, §§ 6.12 and 6.13 would not affect any actions by the State Pension Review Board or its Chair as neither defendant enforces or implements either statute. Nor could the State Pension Review Board or its Chair take any action against the Dallas Police and Fire Pension System regarding the enforcement or implementation of Articles 6243a-1, §§ 6.12

and 6.13—Texas law provides no such authority to the State Pension Review Board or its Chair.

Have failed to establish a concrete, particularized injury to DPROA or its members that is fairly traceable to the State Pension Review Board or its Chair, or that the requested relief against the State Pension Review Board or its Chair would remedy any alleged injury in fact, DPROA has failed to plead sufficient facts demonstrating that it has any standing to bring a declaratory judgment claim against the State Pension Review Board or its Chair regarding the constitutionality of Articles 6243a-1, §§ 6.12 and 6.13. DPROA's claims against the State Pension Review Board and its Chair should therefore be dismissed for want of jurisdiction.

2. DPROA has failed to plead facts affirmatively demonstrating an actual justiciable controversy exists between DPROA and the Board or that its requested relief against the Board will actually resolve DPROA's complaint.

For the same reasons noted *supra*, DPROA petition fails to plead facts demonstrating an actual justiciable controversy exists between DPROA and the State Pension Review Board or its Chair as needed for this Court to have jurisdiction over the declaratory judgment claim. *See Bonham State Bank*, 907 S.W.2d at 467. DPROA has not pled “a real and substantial conflict of tangible interests and not merely a theoretical or hypothetical dispute” between the DPROA and the State Pension Review Board or its Chair. *See id.* Since the Dallas Police and Fire Pension System is the only legal entity with the authority to enforce and implement Articles 6243a-1, §§ 6.12 and 6.13, any actual controversy that may exist regarding these statutes lies between DPROA and the Dallas Police and Fire Pension System. It is the Dallas Police and Fire Pension System who must

be named as a defendant to a declaratory judgment action challenging the constitutionality of Articles 6243a-1, §§ 6.12 and 6.13. *See Gilmer Indep. Sch. Dist. v. Dorfman*, 156 S.W.3d 586, 588 (Tex. App.—Tyler 2003, no pet.) (holding that party with authority to enforce statute must be named in declaratory judgment suit challenging statute or else opinion would be advisory; deciding that when statutory scheme had “dozens of enforcement mandates assigned to the commissioner by the legislature” relating to the challenged statutes, education commissioner was indispensable party); *Lone Starr Multi Theatres, Inc. v. State*, 922 S.W.2d 295, 297–98 (Tex. App.—Austin 1996, no writ) (holding that in “declaratory judgment action, there must exist *between the parties* a justiciable controversy that will be determined by the judgment,” and dismissing suit against the Attorney General who had no authority to enforce challenged statutes)(emphasis in original).

In the present case, because the State Pension Review Board and its Chair lack any implementation or enforcement authority in regard to Articles 6243a-1, §§ 6.12 and 6.13, they have no real controversy with the DPROA, and are not the proper defendants in this declaratory judgment action. Because DPROA has failed to plead sufficient facts to demonstrate a real controversy between DPROA and the State Pension Review Board or its Chair, this Court lacks subject matter jurisdiction over DPROA’s claims against the State Pension Review Board and its Chair, and the claims should be dismissed. *See Bonham State Bank*, 907 S.W.2d at 467.

For the same reasons, any decision rendered in this action against the State Pension Review Board and its Chair will not redress DPROA’s complaint, which is with the enforcer and implementer of the statutes—the Dallas Police and Fire Pension System. The State Pension Review Board and its Chair have no authority under State law to force the

Dallas Police and Fire Pension System to not to enforce or implement the challenged statutes. For actual relief, DPROA would need to seek a court order against the Dallas Police and Fire Pension System. Because the DPROA has failed to plead sufficient facts to demonstrate that the requested relief against the State Pension Review Board and its Chair would actually resolve DPROA's complaint, this Court has no subject matter jurisdiction over DPROA's claims against the State Pension Review Board or its Chair and those claims should be dismissed.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants, State Pension Review Board and Stephanie Leibe, in her official capacity as Chair of the State Pension Review Board, pray this Court to grant their Plea to the Jurisdiction and dismiss Plaintiff's claims against the Defendants in their entirety.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2019, the foregoing pleading was filed and served on all parties of record via EFileTexas.gov.

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