

members of the Association have otherwise received and would continue to receive as a result of years of work as police officers and fire fighters for the City of Dallas.

DISCOVERY CONTROL PLAN

1. Discovery in this case will be conducted under Level 3, Rule 190.4 of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff Dallas Police Retired Officers Association is a voluntary-membership association of retired Dallas police officers and fire fighter affiliate members. The Association's mission and purpose is to be a legitimate and proactive voice to protect and advocate for the retirement benefits and interests of retired Dallas police officers and fire fighters, and their widows, survivors, disabled dependents, and family members. The individual members of the Association have standing to bring this suit as they are individually affected by the application of HB 3158 to pension payments. By this litigation, however, the Association seeks to protect its members' interests, consistent with the Association's purpose to advocate for and protect the members' retirement benefits. The participation of any individual members is therefore not necessary since the Association only seeks declaratory relief regarding the validity of the changes to Tex. Rev. Civ. Stat. art. 6243a-1, §§ 6.12 and 6.13, and does not require determination or an award of any individual member's damages.

3. Defendant Texas Pension Review Board ("the Board") is an agency of the State of Texas. It can be served with process by serving its executive director, Anumeha Kumar, at 300 West 15th Street, Suite 406, Austin, Texas 78701 or wherever else she may be found.

4. Defendant Josh McGee is sued in his official capacity as Chair of the Texas Pension Review Board. He may be served with process at 300 West 15th Street, Suite 406, Austin, Texas 78701 or wherever else he may be found.

JURISDICTION AND VENUE

5. This suit seeks declaratory relief pursuant to the Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Chapter 37. This Court has subject matter jurisdiction over the Board and McGee pursuant to Tex. Civ. Prac. & Rem. Code § 37.004.

6. This is an action against a state agency. The constructive domicile of the Board and the residence of its Chair, in the performance of his duties, is in Travis County. Therefore, venue is proper in Travis County, the seat of the state government.

7. In compliance with Rule 47, Plaintiff seeks nonmonetary relief in the form of a declaratory judgment.

FACTS

8. The Board is charged with overseeing all Texas public retirement systems, both state and local, to ensure compliance with state law, including the Texas Constitution. To effectuate its purpose, the Board interacts with the Legislature and with individual public retirement systems.

9. The Dallas Police and Fire Pension System (the “System”) is one of several local pension systems throughout the state of Texas subject to the oversight of the Board. The System is further governed by Tex. Rev. Civ. Stat. Art. 6243a-1.

10. The Association’s members are retired Dallas police officers, retired fire fighters, and retiree widows who draw pension benefits. These members are entitled to receive benefits

from the System and are adversely affected and have been adversely affected by the changes made pursuant to HB 3158 and would be protected from such changes under Article XVI, § 66 of the Texas Constitution. Retired police officers and fire fighters who receive pension benefits from the System are referred to as “pensioners” in Art. 6243a-1. Their qualified survivors are also referenced in Art. 6243a-1 *et seq.*

11. In 2003, the Texas Constitution was amended to include Section 66 of Article XVI. Section 66 provides in relevant part:

(d) On or after the effective date of this section, a change in service or disability retirement benefits or death benefits of a retirement system *may not reduce or otherwise impair benefits accrued by a person* if the person:

(1) could have terminated employment or has terminated employment before the effective date of the change; and

(2) would have been eligible for those benefits, without accumulating additional service under the retirement system, on any date on or after the effective date of the change had the change not occurred.

(e) Benefits granted to a retiree or other annuitant before the effective date of this section and in effect on that date may not be reduced or otherwise impaired.

Tex. Const. art. XVI, § 66 (emphasis added).

12. The legislative motivation for this amendment was to reverse the effects of a Depression-era Texas Supreme Court case, *City of Dallas v. Trammel*, in which a retired Dallas police officer’s pension was reduced by more than half after his retirement. Through adoption of section 66, Texas voters guaranteed retired public servants and their qualified survivors could rely on the financial promises made to them prior to retirement by precluding

impairment of benefits. Indeed, the Legislative Budget Board's Fiscal Note analyzing the impact of Section 66 explained that the preclusion of an impairment of benefits

would mean recent design plan changes such as low retirement eligibility, Deferred Retirement Option Plans (DROPs), and *automatic post-retirement benefit increases greater than inflation can't be changed*.

Fiscal Note, Tex. HJR 54, 78th Leg., R.S. (2003)(emphasis added).

13. When the bill to amend the Constitution and add Section 66 was adopted, municipalities were given the chance to opt out. Certain municipalities exercised that option, including Denison, Houston, and Galveston, but the City of Dallas did not. Accordingly, the language of Article XVI, § 66, following adoption by Texas voters in 2003, applies to the System.

14. In 2017, House Bill 3158 was introduced in the Texas Legislature. The bill purported to change several aspects of the System, including the calculation of the annual increase pensioners and beneficiaries would receive on their monthly pension payments as well as the monthly supplement pensioners and beneficiaries over the age of 55 would receive. HB 3158 was signed into law by Governor Gregg Abbott on May 31, 2017 and went into effect on September 1, 2017.

Change to Annual Increase

15. Prior to June 2017, Tex. Rev. Civ. Stat. 6243a-1, § 6.12 read as follows:

(a) Annually on the first day of October, a retirement pension ... currently in pay status, or pending board approval on the last day of September, will be increased by an amount equal to four percent, not compounded, of the original amount of the retirement [] benefit.

16. Effective September 1, 2017, section 6.12 was amended. Among other provisions, the amendment altered the rate at which a retirement pension referenced in Subsection (a) would be annually increased, as follows:

- (b) Except as provided by Subsection (d) of this section, annually on the first day of October, the pension system may increase the base pension of a benefit described by Subsection (a) of this section by a percentage equal to the average annual rate of actual investment return of the pension system for the five-year period ending on the December 31 preceding the effective date of the adjustment less five percent.
- (c) An adjustment under this section may not be less than zero percent or exceed four percent of the applicable base pension benefit.
- (d) The pension system may only make an adjustment to benefits under this section if the ratio of the amount of the pension system's market value of assets divided by the amount of the pension system's actuarial accrued liabilities, after giving effect to the adjustment, is not less than .70.

Tex. Rev. Civ. Stat. 6243a-1, §§ 6.12(a)–(d). The result of this amendment was to effectively abolish the existing annual increase by changing the adjustment amount from 4% to 0%. Section 6.12 was further amended to only allow for such an increase, if any, after the earlier of three (3) years following retirement or when the pensioner or qualified survivor reached the age of 62. *Id.* at § 6.12(f).

17. The System's analysis of this provision noted "it is unlikely the criteria for the Board to grant an [annual increase] will be achieved for many years."

Change to Benefit Supplement

18. Prior to June 2017, Tex. Rev. Civ. Stat. 6243a-1, § 6.13 read as follows:

If a pensioner had at least 20 years of pension service under any plan adopted pursuant to Article 6243a or this article, or if a pensioner is receiving a service-connected disability pension, the pensioner, the pensioner's qualified surviving spouse who is eligible to receive benefits under this article, or the pensioner's qualified surviving children, as a group, under Section 6.06(o) of

this article are entitled to receive, when the pensioner or qualified surviving spouse attains 55 years of age, the greater of a monthly supplement equal to \$50 or three percent of their total monthly benefit, and for years beginning on and after January 1, 1991, the monthly supplement will be equal to the greater of \$75 or three percent of their total monthly benefit.

19. Like its effect on section 6.12, HB 3158 abolished the benefits outlined in section 6.13 as well. More specifically, effective September 1, 2017, section 6.13 eliminated the monthly supplement for a pensioner or qualified survivor not receiving it prior to September 1, 2017. Accordingly, any pensioner who retired prior to September 2017 with twenty years of service or receives a disability pension, but who had not yet reached the age of 55, or the qualified survivor, will no longer be entitled to the additional \$75 or three percent per month previously promised under § 6.13.

CAUSE OF ACTION AND RELIEF REQUESTED

**Current Sections 6.12 and 6.13 are Invalid and Unenforceable
Under the Texas Constitution**

20. Pursuant to the Declaratory Judgments Act, Plaintiff seeks a declaration that Tex. Rev. Civ. Stat. art. 6243a-1, §§ 6.12 and 6.13, as revised by HB 3158, are void, illegal, unenforceable, or unconstitutional in violation of the Texas Constitution.

21. Plaintiff's requested relief is available under the Declaratory Judgments Act, which provides that 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]." Further, "person" under the Code Construction Act includes a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Tex. Gov't Code § 311.005(2).

22. Art. XVI, § 66 of the Texas Constitution provides that the benefits to retirees and other annuitants (such as qualified survivors) shall not be reduced or impaired. Most of Plaintiff's members were receiving or were entitled to pension benefits prior to the enactment of HB 3158. Those benefits are protected by Art. XVI, § 66.

23. Pension benefits to Plaintiff's members included an annual 4% increase in their pension payments. By adoption of HB 3158, the Legislature has decreased that annual amount to 0%, and such impairment of benefits will continue in the future. Such a decrease is a void, illegal, unenforceable, or unconstitutional reduction and impairment of pensioners' and qualified survivors' benefits originally granted to them. Further, any percentage increase under the amendment to Tex. Rev. Civ. Stat. art. 6243a-1, § 6.12 less than 4% is a void, illegal, unenforceable, or unconstitutional reduction and impairment of vested benefits.

24. Pension benefits to Plaintiff's members also included a monthly supplement of three percent or \$75, whichever was greater, once they reached the age of 55. The current section 6.13 completely abolishes that benefit for anyone who reaches the age of 55 after September 1, 2017. Though some pensioners or qualified survivors may not have been receiving such a supplement prior to the enactment of HB 3158, they were promised that supplement upon reaching the age of 55 as part of their retirement benefit and the rights were sufficiently vested in them.

25. Accordingly, the changes to sections 6.12 and 6.13 adopted by the Legislature are in violation of Article XVI, § 66 of the Texas Constitution in that they reduce and impair the benefits that were already earned, promised to, and vested in the Association's members.

26. The Association therefore requests this Court declare under the Declaratory Judgments Act that Tex. Rev. Civ. Stat. art. 6243a-1, §§ 6.12 and 6.13 as adopted by the

Legislature and signed into law by Governor Abbot 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, 2017 and their qualified survivors. The Association further requests other declarations the Court may determine to be proper and in substantial conformity with the relief here requested.

27. Pursuant to the Declaratory Judgments Act, this Court may award attorney's fees as are fair and just in addition to other relief requested, for which the Association now sues.

REQUEST FOR DISCLOSURE

28. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a)-(1).

PRAYER

Accordingly, Plaintiff prays that

- (1) Defendants be cited to appear and answer;
- (2) The Court grant Plaintiff relief under the Declaratory Judgments Act determining that Tex. Rev. Civ. Stat. art. 6243a-1, §§ 6.12 and 6.13, effective September 1, 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, 2017 and their qualified survivors;
- (3) Plaintiff be awarded just, fair, equitable and reasonable attorneys' fees under the Declaratory Judgments Act;
- (4) Plaintiff recover all costs of court and applicable post-judgment interest on any attorney's fees award; and,
- (5) Plaintiff have such other and further relief both at law and in equity to which it may show itself justly entitled.

Respectfully submitted,

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