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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

JOHN ALLEN CHIDSEY
Petitioner,

APPELLATE DIVISION
CASE NO: CACE21022257

v.

THE BOARD OF TRUSTEES,
CITY OF HOLLYWOOD POLICE
OFFICERS' RETIREMENT SYSTEM,

Respondent.
_____/

**RESPONDENT, BOARD OF TRUSTEES FOR THE CITY OF HOLLYWOOD POLICE OFFICERS' RETIREMENT SYSTEM'S, RESPONSE TO ORDER TO SHOW CAUSE**

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**ROBERT D. KLAUSNER**
Florida Bar No. 244082
**STUART A. KAUFMAN**
Florida Bar No. 979211
**BLANCA T. GREENWOOD**
Florida Bar No. 919004
**KLAUSNER, KAUFMAN JENSEN & LEVINSON, P.A.**
7080 N.W. 4th Street
Plantation, Florida 33317
Telephone: (954) 916-1202
Fax: (954) 916-1232

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## I. INTRODUCTION

Respondent, the Board of Trustees for the City of Hollywood Police Officers' Retirement System ("Board"), files this Response, pursuant to Rule 9.100(j) of the Florida Rules of Appellate Procedure, to the Court's Order Directing Respondent to File a Response to Petition for Writ of Certiorari, or in the alternative, for a Writ of Mandamus. For the reasons which follow, the Petition for Writ of Certiorari, or in the alternative, for a Writ of Mandamus filed by Petitioner, John Allen Chidsey ("Petitioner"), should be denied.

The City of Hollywood ("City") established the City of Hollywood Police Officers' Retirement System, ("Plan") to provide eligible police officers with retirement benefits. In accordance with City of Hollywood City Code §33.132 ("Ordinance"), the Board is responsible for administering the Plan as codified and is vested with the general administration and responsibility for the proper operation of the retirement system. The Board is obligated to manage the plan in accordance with its governing law; in this case, Chapter 185, Fla. Stat. and Chapter 33 of the Hollywood City Code of Ordinances. The Board accorded due process and observed the

essential requirements of law, and its Final Administrative Order Denying Request to Designate a Third Beneficiary, ("Final Order") is properly affirmed.

## II. STATEMENT OF THE CASE

This case is a Petition for Writ of Certiorari, or in the alternative, a Writ of Mandamus, seeking review of the Board's final administrative order denying Petitioner's request to designate a third beneficiary.

## III. STANDARD OF REVIEW

Petitioner has sought a writ of common law certiorari, or in the alternative, a writ of mandamus, to quash or reverse the Board's Final Order. This Court acts in its appellate capacity in reviewing the Board's Final Order and in considering whether to grant such a writ of certiorari. Consequently, the scope of review in this proceeding is narrowly prescribed. A circuit court sitting in its appellate capacity may only determine whether procedural due process is accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and

judgement are supported by competent substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982); *Pompano Beach Police and Firemen's Pension Fund v. Franza*, 405 So. 2d 446 (Fla. 4th DCA 1981); *City of Hollywood v. South Broward Hospital District*, 504 So. 2d 1308 (Fla. 4th DCA 1987). In this case, as the facts are not in dispute, and there is no claim of denial of procedural due process, the sole issue before the court as to certiorari is whether the Board's decision is contrary to the essential requirements of the law. Further, the use of common law certiorari to challenge the constitutionality of the governing statutes is beyond the scope of the court's review of a quasi-judicial matter.

As to the issue of mandamus, the sole question is whether the member has a clear legal right to the remedy requested. As he does not, mandamus should be denied. See *City of Miami v. State ex rel. Groner*, 164 So.2d 26 (Fla. 3d DCA 1964).

## IV. FACTS OF THE CASE

Pursuant to Chapter 185, Florida Statutes, the City of Hollywood has established a retirement plan for its police officers.

The retirement plan is codified in the City of Hollywood, Code of Ordinances, Chapter 33, Sections 125-138. Florida State Statutes, Section185.05(1) and Section185.06(4), grant the Board of Trustees sole responsibility for administering the trust fund and prevent the Board from amending any provision of the retirement plan without the approval of the City. The Petitioner is a retired police officer in receipt of benefits from the Fund. The Petitioner has changed his named beneficiary on two prior occasions. Following the death of his former spouse, the Petitioner requested to make a third change to add his new spouse. If the Board allowed a third designation, it would be in violation of state statute and City of Hollywood Ordinances.

## V. ARGUMENT

### A. The Board's Final Administrative Order observed the essential requirements of law.

It is well-established that pension benefits are determined by the terms of the governing ordinance and Florida Statutes. *City of Miami v. City of Miami Firefighters' and Police Officers' Retirement*

*Trust*, 249 So. 3d 709 (Fla. 3d DCA 2018) (trustees may not unilaterally act in derogation of the governing document); *City of Miami v. Shires*, 167 So.2d 22 (Fla. 3d DCA 1964) (pension board may only act in accordance with governing law).

Section 185.06, Florida Statutes gives the Board the authority to decide all claims for relief and provides that "the sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend the provisions of a retirement plan without the approval of the municipality."

The Petitioner's request is tantamount to asking the Board to unlawfully re-write state statute and include a provision in the governing ordinance allowing for additional beneficiary designations beyond what is permitted by Chapter 185. The Board does not have the power to amend, alter or otherwise change provisions the legislature has put in place governing the Plan and qualifications

contained therein. The Board must manage the plan in accordance with its governing law.

In *City of Miami v. City of Miami Firefighters' and Police Officers' Retirement Trust & Plan*, 249 So. 3d 709 (Fla. 3rd DCA 2018), where the Pension Board attempted to alter an existing Ordinance prior to a Final Order being issued by the Public Employees Relations Commission (PERC), the Third DCA reasoned that "[a]lthough, ultimately, the City may be required to rescind, modify or amend its 2010 pension ordinance to comply with any final order issued by PERC, the obligation and authority to do so rests with the City and not the Board." *Id.* Most recently, the Third District refused to expand language in a pension ordinance to create a contractual duty that was not expressly stated in the ordinance. *See City of Miami Firefighters' and Police Officers' Retirement Trust & Plan, et al., v. Lieutenant Jorge Castro, et al.*, 279 So.3d 803 (Fla. 3rd DCA 2019).

It is a basic principle of statutory construction that courts "are not at liberty to add words to statutes that were not placed there by

the legislature." *See Seagrave v. State,* 802 So. 2d 281, (Fla. 2001). "Courts must construe statutes to give each word effect, without limiting the statute's words or adding words not placed there by the legislature." *Martinez v. Golisting.com, Inc.,* 233 So. 3d 1190 (Fla. 3d DCA 2017). Additionally, the Court does not have the power to change the meaning of a plainly written law. *See Westphal v. City of St. Petersburg,* 194 So. 3d 311 (Fla. 2016).

Quoting *State v. Little*, 104 So. 3d 1263, 1264 (Fla. 4th DCA 2013), Petitioner acknowledges that in construing statues, it is impermissible for an administrative agency or a court to add words the Legislature did not. Yet, that is exactly what granting the petition would do. Designating a third beneficiary is not allowed anywhere in the statute, nor in the governing Ordinance of the plan.

Contrary to Petitioner's assertions, the requested relief is prohibited by Sections 185.161 and185.341, Fla. Stat.

Section 185.161 (b) and (c) read as follows:

(b) The police officer upon electing any option of this section must designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of the police officer's death, and may change such designation but any such change shall be deemed a new election and is subject to approval by the pension committee. Such designation must name a joint annuitant or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint annuitant or beneficiary and his or her retirement income benefits have commenced, he or she may change the designated joint annuitant or beneficiary but only if the board of trustees consents to such change and if the joint annuitant last designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint annuitant or beneficiary to any such change is not required. The board of trustees may request evidence of the good health of the joint annuitant being removed, and the amount of the retirement income payable to the police officer upon the designation of a new joint annuitant shall be actuarially redetermined taking into account the ages and gender of the former joint annuitant, the new joint annuitant, and the police officer. Each designation must be made in writing on a form prepared by the board of trustees and filed with the board of trustees. If no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in s. 185.162.

(c) Notwithstanding paragraph (b), a retired police officer may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 185.341 without the approval of the board of trustees or the

> current joint annuitant or beneficiary. The retiree need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

The Petition neglects to address Section 185.341 which more specifically limits post-retirement beneficiary changes and which is incorporated by reference in Section 185.161 (1)(c) reads as follows:

> (2)(a) If a plan offers a joint annuitant option and the member selects such option, or if a plan specifies that the member's spouse is to receive the benefits that continue to be payable upon the death of the member, then, in both of these cases, after retirement benefits have commenced, a retired member may change the designation of joint annuitant or beneficiary **only twice**. (*Emphasis added*).

The City of Hollywood plan has no provision for further beneficiary designations beyond those in Chapter 185. *See* City Code Section 33.136. In *Palermo v. City of Tampa*, 945 So. 2d 550 (Fla. 2006), the court, citing *Kephart v. Hadi*, 932 So. 2d 1086 (Fla. 2006), states the "legislative intent must be determined from the words used without looking to rules of construction or speculating

as to intent if the language of the statute is clear and unambiguous."

Chapter 185 is dispositive in this case and its clear and unambiguous language as it relates to this case can only be changed through legislative action. As the Florida Supreme Court said in *Overstreet v. State*, 629 So.2d 125, 126 (Fla. 1993):

> "'It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language.' *State v. Jett*, 626 So. 2d 691 (Fla.1993). If the legislature did not intend the results mandated by the statute's plain language, then the appropriate remedy is for it to amend the statute."

As there is no claim of a denial of due process or that the decision of the Board is not based on competent, substantial evidence, the sole issue is whether the Board's decision departs from the essential requirements of law. In order for Petitioner to meet this standard, he would have to establish that the decision was "a violation of a clearly established principle resulting in a miscarriage of justice." *Anchor Property and Casualty Insurance Company v. Tesini,* 319 So. 3d 129 (Fla. 3d DCA 2021). Certiorari is

to correct essential illegality but not legal error. *Lacaretta Restaurant v. Zepeda*, 115 So. 3d 1091, 1100 (Fla. 1st DCA 2013) citing *Haines City Community Development v. Heggs*, 658 So. 2d 523,527 (Fla. 1995).

### B. The Board has no Authority to Determine the Constitutionality of a Statute

The Petitioner's constitutional arguments are not properly before this court in its appellate capacity of a municipal, quasi-judicial agency decision[1].

An administrative agency such as the Board has no authority to determine the constitutionality of a statute. That is reserved

[1] Although a constitutional analysis is outside the scope of review, the Board would be remiss not to address the Petitioner's citation of an incorrect legal standard for constitutional analysis of classifications within a pension statute. The Fourth District has held on more than one occasion that equal protection analyses of pension classifications are judged on a rational basis. *Quicker v. City of Fort Lauderdale*, 354 So. 2d 400 (Fla. 4th DCA 1978), adopting the standard articulated in *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976). *Accord*, *Tiedemann v. Department of Management Services,* 862 So. 2d 845 (Fla. 4th DCA 2003). The Third District reached the same conclusion in *Wiggins v. State Department of Management*

solely to Article V judges. *Florida Public Employees Council 79, AFSCME v. Department of Children and Families*, 745 So. 2d 487 (Fla. 1st DCA 1999); *Metropolitan Dade County v. Department of Commerce*, 365 So. 2d 432 (Fla. 3d DCA 1978).

The Petitioner is not without a remedy. He could seek a declaration of constitutionality in the circuit court by suit for declaratory relief. *Smith v. Willis*, 415 So. 2d 1331 (Fla. 1st DCA 1982). In such an action, however, it is the state, and not the Board that is the real party in interest and has a statutory duty to defend (or decline to defend) its own statute. *Brown v. Butterworth*, 831 So. 2d 683 (Fla. 4th DCA 2002) (only truly indispensable party to action challenging constitutionality of statute is the Attorney General).

As to this petition, however, certiorari is not the proper procedural vehicle to challenge the constitutionality of a statute or ordinance. *Miami Dade County v. Omnipoint Holdings, Inc*, 863 So.

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*Services, Division of Retirement*, 882 So. 2d 1030 (Fla. 3d DCA 2004).

2d 195 (Fla. 2003) The constitutionality must be challenged in an original proceeding in the circuit court. *Id.* at 199.

### C. Mandamus is not Available in the Absence of a Clear Legal Right

In order to be entitled to a writ of mandamus, the Petitioner must have a clear legal right to the requested relief and no other remedy. *Huffman v. State*, 813 So. 2d 10 (Fla. 2000). In addition, the respondent must have an indisputable legal duty to perform the requested action. *Id*. at 11.

Petitioner's mandamus claim cannot be a ministerial act because it would require the officials to violate the law, not observe a clear legal duty. If the Board's duty, as Petitioner claims was clear, it would need a declaration as to the constitutionality of the governing law. A mandamus petition to compel a pension board to act contrary to its statutory regime was expressly rejected in *City of Miami v. State ex rel. Groner*, 164 So.2d 26 (Fla. 3d DCA 1964); *City of Miami v. Shires*, 167 So. 2d 22 (Fla. 3d DCA 1964); *Gallegos v. Bailey*, 180 So. 2d 210 (Fla. 3d DCA 1965) (trio of cases holding

retirement board cannot grant benefits in violation of statutory requirements governing the board).

Contrary to a clear legal duty to grant Petitioner's requested relief, the Board had a clear legal duty to *deny* the relief.

In *Crossings at Fleming Island Community Development District v. Echeverri*, 991 So.2d 793, 798 (Fla. 2009), the Florida Supreme Court reiterated the doctrine established in its earlier decision in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 84 Fla. 592, 94 So. 681, 683 (1922) that allowing a public officer to refuse to obey a law would be "nullification, pure and simple." *Id.* As a result the court held that an allegation of unconstitutionality is "unwarranted, unauthorized and affords no defense" in a mandamus proceeding. 94 So. at 685.

## VI. CONCLUSION

As noted in the final order, the Board sympathizes with its retiree and his desire to name his new spouse as a beneficiary. But, sympathy cannot excuse the Board's observance of its governing law. As noted in this response, the Petitioner may seek a

legislative remedy or challenge the statute in a proper proceeding where the state and the Attorney General, and not the Board, are the proper parties.

In this proceeding, however, Petitioner has wholly failed to demonstrate that the Board's Final Administrative Order Denying Request to Designate Third Beneficiary departs from the essential requirements of the law or, in the alternative that mandamus is an appropriate remedy.

WHEREFORE, Respondent, Board of Trustees respectfully prays that the Court deny the petition for certiorari or, in the alternative, petition for mandamus.

Respectfully Submitted,

**ROBERT D. KLAUSNER**
Florida Bar No. 244082
**STUART A. KAUFMAN**
Florida Bar No. 979211
**BLANCA T. GREENWOOD**
Florida Bar No. 919004
**KLAUSNER, KAUFMAN JENSEN & LEVINSON, P.A.**
7080 N.W. 4th Street

Plantation, Florida 33317
Telephone: (954) 916-1202
Fax: (954) 916-1232

By: ***/s/ Robert D. Klausner***
ROBERT D. KLAUSNER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the court via e-portal and furnished via e-mail to all parties below on this 27th day of January, 2022.

Kendell Coffey
Coffey Burlington
2601 South Bayshore Drive
Penthouse 1
Miami, FL 33133
kcoffey@corffeyburlington.com
lmaltz@coffeyburlington.com
service@coffeyburlington.com

By: ***/s/ Robert D. Klausner***
ROBERT D. KLAUSNER

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

By: ***/s/ Robert D. Klausner***
ROBERT D. KLAUSNER