2026 OK 20

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

DON KEENAN,

Plaintiff/Appellee,

v.

No. 122,686

TODD RUSS, in his capacity as the Treasurer of the State of Oklahoma,

Defendant/Appellant.

FOR OFFICIAL PUBLICATION

APPEAL FROM THE DISTRICT COURT FOR OKAHOMA COUNTY

¶ 0 Plaintiff filed suit in in the District Court and alleged the Energy Discrimination Elimination Act of 2022 (74 O.S. §§ 12001, et seq.) violated several provisions of the Oklahoma Constitution. Plaintiff requested an injunction to prevent the State Treasurer from following the Act. The Honorable Sheila D. Stinson, District Judge, granted plaintiff's motion for summary judgment on all of plaintiff's claims, and made the trial court's previous temporary injunction a permanent injunction The State Treasurer appealed and the Treasurer's motion to retain the appeal in the Supreme Court was granted. The Court holds: (1) Appellee's death after submission of the appellate cause to the Court for appellate adjudication does not deprive the Court of jurisdiction to hear Treasurer's appeal; and (2) The Energy Discrimination Elimination Act of 2022 (74 O.S. §§ 12001, et seq.) violates Okla. Const. Art. XXIII, §12, when applied to the Oklahoma Public Employees Retirement System.

JUDGMENT OF THE DISTRICT COURT AFFIRMED IN PART

Collin R. Walke, Hall Estill, Oklahoma City, Oklahoma, for Plaintiff/Appellee.

Gary M. Gaskins, II, and Zach West, and Will Flanagan, Office of the Oklahoma Attorney General, Oklahoma City Oklahoma, for Defendant/Appellant.

T. Matthew Smith, Criterion Legal, Oklahoma City, Oklahoma, for amicus curiae Oklahoma Retirees Association, in support of Plaintiff/Appellee.

Rachel L. Fried and Victoria Nugent, Washington, D.C., Democracy Forward Foundation, for amicus curiae Oklahoma Retirees Association, in support of Plaintiff/Appellee.

Ashley E. Quinn and Craig D. Martin, Morrison & Foerster, LLP, San Francisco, California, for amicus curiae Ceres, Inc., in support of Plaintiff/Appellee.

EDMONDSON, J.

¶1 We conclude the appeal may proceed based upon the appellate briefs and submission of the appeal to the Court before Keenan's death. We conclude Keenan, a retired employee who had previously made contributions to, and later received benefits from, the Oklahoma Public Employees Retirement System, possessed standing to seek injunctive relief in the District Court. We conclude the Energy Discrimination Elimination Act of 2022 (EDEA) (74 O.S.Supp.2025 §12001 - §12006, inclusive) is unconstitutional in its entirety when applied to the Oklahoma Public Employees Retirement System because the Act conflicts with Okla. Const. Art. XXIII, §12.[1] We affirm the District Court's summary judgment granting a permanent injunction against Treasurer to the extent the injunction prevents the Treasurer from enforcing or applying the EDEA to the Oklahoma Public Employees Retirement System (OPERS).

I. THE CONTROVERSY

¶2 Keenan filed suit in 2023 claiming the Energy Discrimination Elimination Act of 2022 (74 O.S. §12001 - §12006, inclusive, or the Act) was unconstitutional and requested an injunction to prevent the Treasurer for the State of Oklahoma from applying the Act to OPERS. The Act requires a company providing goods and services to a

[1] The version of the EDEA enacted in 2022 is identical to its codification at 74 O.S.Supp.2025, §§12001-12006.

governmental entity to verify (1) the company does not boycott energy companies, and (2) will not boycott during the term of the parties' contractual relationship.[2]

¶3 Keenan's petition alleged the Act violated five provisions of the Oklahoma Constitution, Art. II, §6 (barrier to court access), Art. II, §7 (due process), Art. II, §22 (freedom of speech), Art. V, §46 (special law prohibition), and Art. XXIII, §12 (exclusive purpose for trust). Keenan requested a temporary restraining order and a temporary injunction. The trial court granted a temporary injunction to preserve the status quo.

¶4 The District Court sustained Keenan's requests for partial summary judgment by orders filed September 20, 2024, October 29, 2024. The trial court's order filed September 20, 2024, made its previous temporary injunction a permanent injunction and prevented the Treasurer from enforcing the Act. The trial court concluded the Act violated: (1) Okla. Const. Art. XXIII § 12 (exclusive purpose of benefits clause for the public retirement system),[3] (2) Okla. Const. Art. II § 7 (due process clause) by being unconstitutionally vague; (3) Okla. Const. Art. II § 22 (free speech), Okla. Const. Art. V § 46 (special law prohibiting the creation of a special class of litigants), and Okla. Const. Art. II § 6 (impermissible barrier to the courts by assessing attorney's fees against anyone

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[2] 74 O.S.Supp.2025, §12005(B)(2) states:

2. Except as provided by paragraph 4 of this subsection, a governmental entity shall not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

a. does not boycott energy companies, and

b. will not boycott energy companies during the term of the contract.

[3] Okla. Const. Art. XXIII, §12:

All the proceeds, assets and income of any public retirement system administered by an agency of the State of Oklahoma shall be held, invested, or disbursed as provided for by law as in trust for the exclusive purpose of providing for benefits, refunds, investment management, and administrative expenses of the individual public retirement system, and shall not be encumbered for or diverted to any other purposes.

challenging the statute). The order of October 29, 2024, granted summary judgment on Keenan's remaining claims challenging the Act.

¶5 The Treasurer appealed the trial court's order, and this Court retained the appeal. Before addressing the merits of the Treasurer's arguments challenging the trial court's order, we must first address a procedural issue raised by the parties.

II. Death of Appellee After Submission of the Appeal

¶6 A motion to retain the appellate cause in the Supreme Court was granted in December of 2024, and assigned to the Supreme Court for an appellate decision on January 16, 2025. Motions concerning the appellate record, extensions of time, and requests for briefing and appearances of amici curiae were filed. Treasurer filed a motion for a briefing schedule. The Court set a briefing schedule for the parties but specifically excluded amici curiae briefs. The Court then suspended briefing on the merits prior to briefs being filed. Appellee's counsel filed a "notice of suggestion of death" stating the death of appellee and included a motion for substitution.

¶7 The Court invited briefs on the effect of Keenan's death on the appeal. Keenan's counsel suggested no substitution for Keenan was necessary. Keenan's counsel also suggested that if a substitution was necessary, then an individual, unnamed by counsel's filing, could be added as a substitute appellee with the Court's approval. The motion for substitution did not address the unnamed individual's specific cognizable legal interest in the litigation or in Keenan's legal interests. Treasurer suggested Keenan's counsel had no client before the Court, and that filings by Keenan's counsel were improper. Counsel for both parties suggest a lack of recent express authority on proper procedure for appellate substitution after a party's death.

¶8 Historically, a defendant could file a plea in abatement and plead a "plaintiff not *in rerum natura* (plaintiff not "in existence" or not "in the world [or things], of nature").[4] After a plea in abatement was sustained and if the action survived the death of the plaintiff, then plaintiff's personal representative could bring a new action.[5] Oklahoma and other states continued to examine survival of an action, but in reliance upon statutes the courts also identified a party to be substituted for the deceased in the original proceeding. Oklahoma revivor statutes between 1910 and 1965 allowed a revivor "on motion of the adverse party, or the representatives or successors of the party who died."[6]

¶9 Current appellate practice and procedure makes direct appellate review of a judgment or appealable order a part of, or continuation of, the "same trial court case."[7]

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[4] *See, e.g., Boston Type & Stereotype Foundry v. Spooner*, 5 Vt. 93, 95, (1833) ("The nonjoinder of a person who ought to have been made a plaintiff may be plead in abatement, and advantage may also be taken of it under the general issue...That there may be a plea in abatement, to the disability of a plaintiff, denying his existence, shewing that there is no such person *in rerum natura*, as that at the commencement of the suit he was a fictitious person is recognized in 1 *Com. Dig.* tit. abatement, E. 16; 1 *Chitty* pleadings, 435-6; *Guild vs. Richardson*, 6 Pick. 370 [23 Mass. 364, 1828]; *Doe vs. Penfield*, 19 John. 308." (material and citations omitted and partial citation added).

[5] *Glazier v. Heneybuss*, 1907 OK 112, 9 P. 872, 874 ("At common law the action abated upon the death of the party before trial or verdict, and, if the cause of action was of the character that did not survive, death put a final end to the suit. If the cause was one that did survive, or could survive, plaintiff or his personal representative was required to bring a new action...statutes have been adopted, in England and in the various states of the Union, providing that the representatives of the deceased party, within limitations and upon compliances with certain conditions, might be made parties to the suit and action proceed.").

[6] 12 O.S.1961, §1065 (statutory language quoted with an annotation *to Hopkins v. Nat. Bank*, 1920 OK 118, 188 P. 667, where the Court noticed the absence of a motion by the adverse party or representative of the deceased); *Glazier v. Heneybuss*, *supra* at note 5.

[7] *Tulsa Industrial Authority v. City of Tulsa*, 2011 OK 57, n. 28, 270 P.3d 113, 122 (an appeal is a continuation of the same case, proceeding, or controversy presented in the inferior tribunal), *Grider v. USX Corp.*, 1993 OK 13, 847 P.2d 779, 786 (same).

Further, a statute first enacted as Okla. Comp. Laws 1909, §5944, currently codified at 12 O.S.2021 § 1052, states in part: "No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander or malicious prosecution, which shall abate by the death of the defendant." Generally, this statute prevents an abatement for most causes of action, unless otherwise provided by statute or abatement due to the nature of the cause of action.[8]

¶10 Treasurer argues the Court may apply 12 O.S. §2025 to allow substitution in accordance with the statute. Treasurer states substitution requires a successor or representative of Keenan. Treasurer argues a former statute, 12 O.S. §1080, repealed in connection with the 1984 codification of the Oklahoma Pleading Code, was replaced by section 2025, and former section 1080 applied to appeals. Section 2025 states in part the following.

> The motion for substitution may be made by any party or by the successors or representatives of the deceased party . . . Unless the motion for substitution is made within ninety (90) days of service of the statement of death, the action shall be dismissed without prejudice as to the deceased party . . .
>
> In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Treasurer argues a 12 O.S. §2025 substitution is *required* for the Court to adjudicate this appeal.

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[8] *See, e.g., Johnson v. Snow*, 2022 OK 86, ¶11, 521 P.3d 1272, 1276 ("It has long been understood in Oklahoma that a cause of action for dissolution of marriage abates upon the death of either spouse before the entry of a final decree or final judgment.").

¶11 In *Campbell v. Campbell*, 1994 OK 84, 878 P.2d 1037, we stated that 12 O.S. §2025 was taken from Rule 25 of the Federal Rules of Civil Procedure (F.R.C.P.), and "we may look to the federal courts for guidance in interpretation and application of the rule" when applying 12 O.S. §2025. *Id.* ¶19, 878 P.2d at 1041-42. However, guidance from F.R.C.P. 25 has limited application since appellate substitution of a party in a federal appellate court is not by F.R.C.P. 25, but Federal Rule of Appellate Procedure 43 ("Substitution of Parties"). We note Rule 43 contains language similar to language in Rule 25.

¶12 Treasurer argues that if a proper substitution does not occur, then Keenan's underlying trial court cause of action adjudicated by the trial court must have abated upon death of appellee during the appeal. Treasurer states he previously objected to the legal standing of Keenan. Treasurer states he must have an opportunity to object to the legal standing of any individual offered as a substitute appellee for Keenan. Treasurer's argument also indicates that if substitution does not apply, then the Court must adopt a procedure that requires a new party to file a new action in the District Court. This would create a result similar to the common-law requirement and result of instituting a new action after a party's death. Treasurer indicates he is entitled to appellate relief requiring the trial court to vacate its orders in a post-mandate proceeding.

¶13 Counsel for Keenan argues a judgment was obtained and the Court may apply 12 O.S.1971 §1081,[9] and not language in repealed section 12 O.S.1971, §1080

[9] *See, e.g., Palmer v. Belford*, 1974 OK 73, ¶19. 527 P.2d 589, 591 (quoting 12 O.S.1971 §1081(b), in part ("If a plaintiff dies after verdict or after judgment and the verdict and judgment are in his favor, his representative or successor may be substituted for him upon motion of any party to the action with notice to the representative or successor, or substitution may be made upon motion of the representative or successor of the

providing for "a motion to substitute the representative or successor in interest of the decedent." Counsel for Keenan also argues no substitution is necessary for an appellate adjudication.

¶14 A portion of the parties' dispute requests an analysis of 12 O.S.1981, §1080, repealed 1984, 12 O.S.2021, §1081, and language in *Gardner v. Boston*, 1977 OK 201, 571 P.2d 437. In *Gardner* we stated: (1) 12 O.S.1971, §1080 applies to death of a party prior to final judgment, *"i.e.*, to actions pending in the trial court or cases pending on appeal," and (2) 12 O.S.1971, §1081 applies to death of a party after verdict or judgment, *"i.e.*, to those cases where a trial court judgment has become final without appeal or judgments that have become final on appeal." *Id.* ¶14, 571 P.2d at 440.

¶15 Treasurer correctly notes that: "Under Oklahoma law we have held that the authority of a deceased party's attorney ceases upon the death of that party." *Campbell v. Campbell*, 1994 OK 84, ¶25, 878 P.2d 1037, 1043. The authority of counsel for the deceased appellee (Keenan) to act for the legal interests and benefit of Keenan in this appeal ceased upon the death of Keenan. *Campbell v. Campbell*, *supra*. However, we note some courts have distinguished (1) an attorney's lack of authority to represent a deceased client, (2) an attorney's independent authority or obligation to notify a court of a party's death, and (3) an attorney's obligation file a motion for substitution when required. Courts have addressed circumstances when one or more of these three concepts may be either permissive or obligatory for counsel of the deceased.[10]

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decedent. Such motion may be made at any time before the judgment becomes dormant but it must be made before action is taken to enforce the judgment.").

[10] *See, e.g.*, *Brown v. Wheeler*, 437 So.2d 521, 523 (Ala. 1983), (discussing state's version of F.R.C.P. Rule 25, attorney's authority to act on behalf of a client ceases on the death

¶16 We may take judicial cognizance of the notice of Keenan's death in counsel's motion. We need not base our dispositional analysis of the procedural issue upon any other fact or conclusion of law raised by Keenan's counsel made in a filing after the death of Keenan. We analyze the procedural issue based upon Treasurer's filings. Treasurer raises a statute, now repealed 12 O.S.1971 §1080, and argues for application of 12 O.S. §2025 because (1) prior to its repeal §1080 applied when a party died during an appeal, and (2) §2025 was enacted when §1080 was repealed.

¶17 Treasurer's use of 12 O.S.1971 §1080 requires comment. This statute was created by Laws 1965 and included language similar to this Court's language in opinions prior to enactment in 1965. For example, section 1080 stated in part the following.

> (c) Any action which is taken after the death of a party and before the substitution of his representative or successor, including but not limited to ruling on motions, perfecting an appeal, and rendering judgment, shall be valid provided that the rights of any party are not prejudiced by the fact that the court proceeded without substitution of the personal representative.

12 O.S.1981, §1080(c). This language allowing perfecting a judgment and appeal in the absence of prejudice and substitution was not included in 12 O.S.Supp.1984, §2025. However, a court's examination of prejudice to a party and appellate adjudication after

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of that client, attorney continues to have a duty to the court after the demise of that client and inform the court and other parties of the death), *overruled on other grounds Hayes v. Brookwood Hosp.*, 572 So.2d 1251 (Ala. 1990) (rule-provided time for substitution was subject to excusable neglect standard); *Mullis v. Bone*, 143 Ga.App. 407, 238 S.E.2d 748 (1977) (attorney properly filed a notice of client's death and was not required to indicate identity of proper parties for substitution); *Farmers Ins. Group v. District Court of Second Judicial Dist.*, 181 Colo. 85, 507 P.2d 865, *cert. denied sub nom., Lambert v. Supreme Court*, 414 U.S. 878, 94 S.Ct. 156, 38 L.Ed.2d 123 (1973) (attorney's obligation to file a motion to substitute proper party).

death of a party allowed by12 O.S.1981, §1080(c) is found in procedures used by the Court prior to the statute's enactment in 1965.

¶18 Prior to enactment of section 1080, we explained death of a party during an appeal after submission for adjudication did not affect the correctness of the opinion and mandate of an appellate court,[11] and an appellate opinion could issue after the death of an appellee[12] with a direction to the Clerk of this Court to issue the mandate with a date the appellate cause was submitted for appellate adjudication. For example, we explained in *McKee v. Thornton*, 1921 OK 166, 198 P. 303, when a defendant in error (appellee) died after the submission of a cause in the Supreme Court and the appellate cause was decided after appellee's death, then the Court could render an opinion, and an appellate mandate would issue with the date the appeal was submitted. *Id.* at ¶¶1-2.

¶19 When a sole party appellant or appellee died after submission of an appeal, an appellate court could, "to preserve all rights thereunder," cause an appellate opinion to be filed without modification to its reasoning, but also modify its opinion, and when necessary recall its mandate, withdraw the Court's opinion; and in either case with or without modification, direct the Clerk of the Court to issue the mandate with the date the appellate cause was submitted to the Court.[13] Preserving rights was part of an analysis

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[11] *Boyes v. Masters*, 1911 OK 77, ¶5, 114 P. 710, 33 L.R.A.N.S. 576 ("Having heretofore decided...that the fact of the death of a defendant in error between the submission and decision of a cause in this court does not impair the validity of the judgment thereinafter rendered...we are of the opinion that the death of...did not affect the judgment of reversal by the Supreme Court of the territory of Oklahoma") (material and citation omitted).

[12] *Smith v. Kimsey*, 1943 OK 121, 138 P.2d 94 (appeal may be adjudicated without substituting a party for deceased appellee).

[13] *See, e.g., Kaw Boiler Works v. Frymyer*, 1924 OK 1151, 231 P. 1059 (death of defendant in error after submission and "in order to preserve all rights," mandate recalled, and the

examining prejudice to parties springing from the Court's applied procedure, an analysis similar to 12 O.S.1971, §1080(c), this approach was used by other states,[14] and these procedures were in effect at a time statutes were applied to substitute a party after the death of a party.

¶20 One of the various reasons for these procedures was the Court's recognition that an available statutory remedy for vacating an order included the death of a party: "The District Court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter: . . . Sixth. For the death of one of the parties before the judgment in the action." 12 O.S.2021, § 1031 (Sixth). Statutory proceedings for vacating judgments are "in the nature of independent actions" but may be brought in either the action where judgment was rendered or by a separate action.[15] The Court

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clerk directed to refile opinion with the date cause was submitted); G*oldsborough v. Hewitt*, 1910 OK 217, 110 P. 906 (death of defendant in error and to preserve parties' rights when opposing party advised no revivor was sought against the administrator of deceased's estate; appellate opinion was modified and clerk directed to file opinion with the date cause was submitted, *citing Bell v. Bell*, 181 U. S. 179, 21 Sup. Ct. 551, 45 L. Ed. 804 (1901); and opinions from Alabama, Illinois, Indiana, and California); *see also*, *House v. Gragg*, 1934 OK 601, 44 P.2d 832, 838 (Supp. Opn.) (death of plaintiff in error after submission of appeal and before decision required mandate to be issued with the date the cause was submitted); *Spencer v. Hamilton,* 1932 OK 87, 13 P.2d 81, 83 ("the fact of said death between the submission and decision does not impair the validity of the judgment").

[14] *Town of Jefferson v. Hicks*, 1912 OK 578, 41 L.R.A.N.S. 1053, 126 P. 739, 741 (appellate courts possess jurisdiction to vacate and correct after term time an erroneous judgment for death of one of the parties, and the death of one of the parties pending the appeal and before judgment does not make the judgment absolutely void) (citing opinions from California, Kentucky, Virginia, and Texas).

[15] *Amoskeag Sav. Bank v. Eppler*, 1938 OK 210, ¶18, 77 P.2d 1158, 1161, cf. *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶13, 280 P.3d 328, 334-35 (discussing grounds for vacating brought as a petition pursuant to 12 O.S.2011, §1033 when sought more than

stated an important public policy that a judgment of a court of record "ought to have some sanctity," and "a contrary doctrine would be fraught with great mischief and evil in its results" if a court stopped exercising appellate review jurisdiction *solely* due to the death of a party.[16] One reason is based upon the nature of a real party in interest adjudication. A judgment rendered after death of a party was not void and could be merely erroneous when such error "consisted of matters of fact," such as a real party in interest adjudication,[17] and matters or issues of fact are initially determined by a trial court and not a court exercising appellate jurisdiction.[18]

¶21 Generally, a party may make a prejudgment challenge to an opposing party's legal relationship to the alleged cause of action and request for judicial relief. A non-exhaustive list of such challenges includes issues relating to real party in interest, standing, necessary party, capacity, limitations, repose, setoff, counterclaims, recoupment, cross action, cross bill, and many others. These prejudgment challenges may require the trial court to focus on an issue of law, or issue of fact, or mixed issue of

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thirty days after a judgment or appealable order, and application of Rules for District Courts, 12 O.S., Ch. 2, App. Rule 19, vacation of final judgments).

[16] *Town of Jefferson v. Hicks*, *supra* note 14, 126 P. at 741.

[17] *Mosely v. Southern Mfg. Co.*, 1896 OK 80, 46 P. 508, 509 (1896), *cf. Kolp v. State ex rel. Comm'rs of Land Office*, 1957 OK 9, 19, 312 P.2d 483, 487 (an issue of fact resulting in an erroneous adjudication of fact that is merged into the judgment results in a merely erroneous and voidable judgment).

[18] *Matter of Estate of Crowl*, 1987 OK 13, ¶4, 737 P.2d 911, 913-14 (it is the role of the finder of fact to initially hear evidence and find facts, and an appellate court will not disturb an equity decree unless the decree is clearly contrary to the weight of the evidence).

law and fact.[19] A trial court is the proper court for making a first adjudication of a real party in interest adjudication.

¶22 An appellate court exercising appellate jurisdiction does not make first-instance determinations on an issue of fact based upon a fact appearing outside the certified appellate record, except in limited circumstances.[20] One of the circumstances occurs when a fact occurs during the pendency of the appeal and the fact adversely affects the court's capacity to administer effective relief.[21] Again, the death of a party does not, by itself, affect the jurisdiction of an appellate court to administer effective relief when the death occurred after the appeal was submitted to the appellate court.

¶23 The Court has allowed a substitution when (1) requested by either the person seeking to be substituted or a party, and (2) the opposing parties either agree to the request for substitution or a party has failed to timely object.[22] Treasurer objects to a

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[19] *See, e.g., America's Car Mart, Inc. v. Cantrell*, 2025 OK 73, ¶¶2, 6, 12-13, 578 P.3d 154, 155-57 (focus on the existence of the cause of action and concluding the cause of action did not exist when plaintiffs asserted a vehicle service warranty was insurance); *Bailey v. Campbell*, 1991 OK 67, ¶¶9-10 862 P.2d 461, 465-66 (focus on the identity of party and concluding failure to timely object to representative capacity waived right to contest the capacity).

[20] *House of Realty, Inc. v. City of Midwest City*, 2004 OK 97, ¶6, 109 P.3d 314, 317.

We are not presented with one of the circumstances involving the Court's inherent power to appoint a referee, master, or commissioner for the purpose of making findings of fact for the Court during an appeal. *See, e.g., In re Adopting of Baby G.*, 2008 OK 92, n. 195 P.3d 377, 378 (court has inherent power to appoint a special master); *Hadnot v. Shaw*, 1992 OK 21, ¶9, 826 P.2d 978, 982 (trial judge appointed to sit as appellate court's special master to clarify the record *nunc pro tunc*).

[21] *House of Realty, Inc. v. City of Midwest City, supra* note 20.

[22] *See, e.g., General American Oil Co. v. Wagoner Oil & Gas Co.*, 1925 OK 820, 260 P. 780 (after death of a surety on bond, mandate recalled on motion supported by affidavit, appeal revived, judgment on supersedeas bond granted against parties including executrix of the estate of deceased and executrix substituted as a party after failing to

substitution. No person has come forward and requested to be substituted for Keenan. We need not address who is a proper party for appellate party substitution.[23]

¶24 The Court may adjudicate an appellate cause based upon the date the cause was submitted to the Court by Treasurer and Keenan. *Amici curiae* have appeared but their filings on the issues shall not be considered. The appeal was brought pursuant to Rule 1.36, Oklahoma Supreme Court Rules, which provides for the trial court filings to serve as the appellate briefs.[24] A petition for rehearing, if any, may be filed within twenty (20) days this opinion is filed with the Clerk of this Court.[25] The final date for the Court's opinion and mandate shall be based upon the date the cause was submitted to the Court as provided in the Conclusion portion of this opinion.

¶25 The final date for the opinion and appellate mandate shall not prejudice Treasurer's right to raise in the District Court upon remand a cognizable legal claim or defense based, in whole or in part, upon Keenan's death. The final date for the opinion

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appear and object); *Henderson v. Pebworth*, 1924 OK 772, 232 P. 74 (party filed motion and Court recalled mandate, withdrew its opinion, corrected opinion to show substitution of party, filed corrected opinion with new mandate when during the appeal plaintiff died and appellate briefs failed to notice the substitution of the administratrix of deceased's estate).

[23] *Dank v. Benson*, 2000 OK 40, ¶7, 5 P.3d 1088, 1091 (the Court does not adjudicate hypothetical questions).

[24] *Sanders v. Turn Key Health Clinics*, 2025 OK 19, ¶24, 566 P.3d 591, 600-01; *Farley v. City of Claremore,* 2020 OK 30, ¶10, 465 P.3d 1213, 1221.

[25] *In re Oklahoma Turnpike Auth.*, 2018 OK 88, ¶7, 431 P.3d 59, 62 ("Rehearing, if any, shall follow Okla. Sup. Ct. Rule 1.13.").

and appellate mandate shall not prejudice a legally cognizable substitution, if any, for Keenan in the District Court upon remand.

III. Trial Court Proceedings, Appellate Review, Assignments of Error, and Standing

¶26 Treasurer sought dismissal of Keenan's petition, Keenan sought summary judgment on requests for injunctions, and injunctions were granted to Keenan by a summary judgment procedure. A summary judgment to a plaintiff determines the existence of a cause of action with a conclusion all elements of the action are present, and no defense has been successfully interposed.[26] Generally, the Court's appellate review of an order granting summary judgment is *de novo* by exercising a "plenary, independent, and non-deferential authority to determine whether the district court erred in its legal rulings."[27]

¶27 Appellate review of an order granting a preliminary injunction examines whether an abuse of discretion occurred, "when a decision is clearly against the weight of the evidence, contrary to law, or contrary to established principles of equity."[28] The award of a permanent injunction is a matter of equitable cognizance which does not disturb the trial court's decision unless it is (1) against the clear weight of the evidence,

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[26] *McGee v. Alexander*, 2001 OK 78, ¶ 23, 37 P.3d 800, 806 (absence of any one element used to define a cause of action is enough to defeat the action); *Akin v. Missouri Pacific Railroad Co.*, 1998 OK 102, ¶ 9, 977 P.2d 1040, 1044 (defendant must show either the absence of at least one essential element to plaintiff's cause of action, or the presence of all elements necessary to an affirmative defense to the cause of action).

[27] *Hirschfeld v. Oklahoma Turnpike Authority*, 2023 OK 59, ¶6, 541 P.3d 811, 817.

[28] *Latigo Oil & Gas, Inc. v. BP America Production, Co.*, 2024 OK 35, ¶14, 549 P.3d 1252, 1257.

or (2) contrary to law where the adjudicated law component is reviewed *de novo*.[29] The meaning of language in a statute or the Constitution is a question of law, subject to the Court's plenary, independent and non-deferential examination using a *de novo* standard of review that gives a plain and unambiguous meaning consistent with the intent of the Legislature and the People when the challenged language was created.[30]

¶28 The District Court found and concluded that the Act violated five (5) separate provisions of the Oklahoma Constitution. Treasurer's petition in error raises seven assignments of error. Appellate adjudication of the first three disposes of the appeal,[31] and they are: (1) Whether the District Court erred in granting summary judgment

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[29] *Independent Schl. Dist. No. 52 of Okla. Cnty. v. Walters*, 2024 OK 23, ¶7, 546 P.3d 875, 879-80 (grant of summary judgment in equity is granted *de novo* when resolving issues of law); *Tres C, LLC v. Raker Resources, LLC*, 2023 OK 13, ¶22, 532 P.3d 1, 14 ("In equitable cases like this, issues of fact are reviewable under the clearly-against-the-weight-of-the-evidence standard, but issues of law are reviewable under the de novo standard.").

[30] *In re Estate of Evans*, 2024 OK 65, ¶9, 556 P.3d 623, 627 (quoting *Inst. for Responsible Alcohol Pol'y v. State of Okla., ex rel. Alcoholic Beverage Laws Enf't Comm'n*, 2020 OK 5, ¶¶11-12, 14, 16, 457 P.3d 1050, 1055-56) ("Constitutional construction requires the Court to garner the drafter's intent, as well as the people adopting it, from the plain language of the provision."); *Farmacy, L.L.C. v. Kirkpatrick*, 2017 OK 37, ¶13, 394 P.3d 1256, 1259-60 (interpretation given to a statute is a question of law, subject to the Court's plenary, independent and non-deferential examination using a *de novo* standard of review).

[31] *Farley v. City of Claremore*, 2020 OK 30, ¶19, 465 P.3d 1213, 1225 (generally, any ground of several raised in the trial court may be used as a valid basis for affirming a judgment).

Keenan's standing is based upon his relation to OPERS. Application of Okla. Const. Art. XXIII, §12, disposes of Keenan's claim concerning OPERS. We expressly decline to expand the scope of our analysis to include additional provisions of the Oklahoma Constitution addressed by the District Court since their application is not necessary to adjudicate the EDEA's application to OPERS. We expressly decline to address application of the EDEA to state entities other than OPERS.

against the State; (2) Whether plaintiff possesses taxpayer standing when the challenged Act does not appropriate funds and plaintiff's petition does not include any allegations of the illegal expenditure of funds; and (3) Whether the Oklahoma Energy Discrimination Elimination Act violates Article XXIII, Section 12 of the Oklahoma Constitution.[32]

¶29 Treasurer filed a motion to dismiss and challenged Keenan's standing. Treasurer argued Keenan's alleged standing was based upon a threat of future economic loss and violation of the Oklahoma Constitution. Treasurer argued that: (1) Keenan lacked an immediate and direct injury, (2) Keenan's alleged injury was hypothetical, (3) Keenan's specific State pension will not be subject to financial market influences or forces,[33] and if Keean's plan becomes subject to financial market forces by application of the Act, then Keenan's pension plan may seek an exemption from the Act. Treasurer argued Keenan had no injury because Keenan was not a financial institution, or an energy company, or a political subdivision of the state. Treasurer argues the specific pension amount Keenan receives will not be impacted by enforcement of the Act. In Treasurer's reply in support of his motion to dismiss, he argued that "taxpayer standing" requires an allegation that a statute will result in illegal expenditure of public funds. He also argued

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[32] The remaining assignments of error are: (1) Whether the Act is unconstitutionally vague in violation of Okla. Const. Art. II, §7; (2) Whether the Act unconstitutionally infringes upon free speech in violation of Okla. Const. Art. II, §22; (3) Whether the Act is a special law violating Okla. Const. Art. V, §46; and (4) Whether the Act is a barrier to courts in violation of Okla. Const. Art. II, §6.

[33] Treasurer made an additional but similar standing assertion that Keenan failed to allege that any State divestment of interests involving entities in violation of the Act will impact his state pension.

the Act, specifically 74 O.S. §12002(D)(3) has the effect of depriving any person of standing on a claim the Act violates the State Constitution.[34]

¶30 Treasurer filed a response to Keenan's motion for "partial summary judgment." Treasurer states the Trustees of the Oklahoma Public Employees Retirement System voted to exempt the retirement system from the Act. He also states a purpose of the Act that "seeks to protect State funds by ensuring that the private entities managing those funds do not subordinate their fiduciary duty to activist political goals."[35] The Act requires a state entity to remove its funds/investments from financial companies that use ESG (environmental. social, and governance) principles for investment decisions.[36] Treasurer also stated concerning a financial institution's fiduciary duties: "that fiduciary duties should trump all."[37] Treasurer also recognizes a state entity possesses a fiduciary duty concerning supervision of public funds.

¶31 In summary, the Act states a state entity is required to divest from a financial institution that uses ESG as part of its investment strategy, but this investment strategy by a financial institution may result in a comparative greater, lesser, or equal financial return for the state entity than an institution not using ESG principles. Treasurer

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[34] 74 O.S. § 12002 (D)(3): "3. A state governmental entity shall not be subject to any requirement of this act if the state governmental entity determines that such requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets."

[35] O.R. Vol. I, Tab 13, p.1, Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, June 24, 2024.

[36] *Id.* at p. 1, 8-9.

[37] O.R. Vol. I, Tab 13, p.1, Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, June 24, 2024.

recognizes this circumstance and states the Act creates a dual duty for a state entity, (1) a state entity's duty to divest from certain financial institutions pursuant to the Act, and (2) a state entity's duty for maximizing investment return that is also consistent with all fiduciary obligations possessed by the state entity. Treasurer also notes the Act states that if a state entity determines its fiduciary duty conflicts with divestment of investments, then the state entity may delay divestment of the state's investment.[38] Treasurer indicates a financial institution's fiduciary duty requires a single focus on a single financial and fiduciary duty and the financial institution should not engage in boycotting based upon a non-fiduciary purpose. Treasurer also argues that while a state institution also possesses a fiduciary duty concerning public funds, a state entity should engage in a form of boycotting for non-fiduciary purposes if this non-fiduciary purpose is to prevent financial institution boycotting by the state entity implementing the Act.

¶32 Treasurer's response to Keenan's motion for summary judgment states the Act is designed to prevent financial institutions from boycotting or discriminating against energy companies.[39] Treasurer also argues the Act "was designed to ensure that State retirement money was invested solely for financial reasons, thus protecting retirees."[40]

¶33 Treasuer's argument may be summarized: A state entity exercising official discretion pursuant to the Act *must* divest its financial investments from certain financial institutions. However, a state entity *may* exercise an official discretion and create an

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[38] *Id.* at p. 10 (citing 74 O.S. §12003(D)(3)-(4)).

[39] O.R. Vol. II, Tab 21, p.1, Defendant's Response to Plaintiff's Motion for Summary Judgment.

[40] *Id.* at p.2.

exception to application of the Act and not immediately divest, or alternatively delay the divestment, in certain circumstances.

¶34 Treasurer argues Keenan has no standing because the official discretion exercised at this time has not created a divestment relating to the Oklahoma Public Employees Retirement System (OPERS). Keenan's argument is that Okla. Const. Art. XXIII, §12, prohibits *any* exercise of discretion required by the Act, and he possesses standing because of his public employee retiree status, OPERS claiming to exercise an official discretion pursuant to the Act, and Treasurer's efforts to change both the manner and result of the discretion exercised by OPERS pursuant to the Act.

¶35 In *Thomas v. Henry*, 2011 OK 53, 260 P.3d 1251, a party argued that taxpayer standing must be based upon an allegation that an alleged unconstitutional statute itself must be for the purpose of appropriating public funds or spending public funds illegally. *Id.* at ¶3, 260 P.3d at 1253. The Court expressly rejected this view of taxpayer standing: "We agree with the trial judge that there is a sufficient involvement of public funds at issue to warrant taxpayer standing . . . [and] [t]he Attorney General's interpretation that taxpayer standing can arise only when dealing with appropriated funds is too restrictive." *Id.* ¶7, 260 P.3d at 1254. Treasurer's argument that taxpayer standing must be based upon an appropriated fund or illegal expenditure is the same argument that was previously and expressly rejected as too restrictive. *Thomas, supra.*

¶36 In *Fent v. Contingency Review Board*, 2007 OK 27, 163 P.3d 512, the Curt explained: "A taxpayer also has a vital interest in (a) the unimpeded use of appropriated funds (b) by its destined recipient (c) for the purpose for which the fund was intended (d) without unlawful legislative interference. . . A taxpayer's challenge to the constitutionality

of legislation affecting the use of public funds is a matter of public right." *Id.* at ¶8, 163 P.3d at 520. In *Brandon v. Ashworth*, 1998 OK 20, 955 P.2d 233, we stated: "A taxpayer has standing to invoke a state court's jurisdiction 'to enjoin an illegal use of moneys by a municipal corporation.'" *Id.* at ¶7, 955 P.2d at 235. In *Independent School District No. 9 of Tulsa County v. Glass*, 1982 OK 2, 639 P.2d 1233, we noted a school district had a pecuniary interest in protecting the revenues used to support it so as to have standing to bring a proceeding for equitable relief and require a public entity to follow statutory refund procedures involving a tax refund to a third-party private entity. *Id.* ¶¶8-11, 639 P.2d at 1237-38.[41] Standing in *Brandon* was based upon allegation of "illegal use" of public funds, and in *Glass* an illegal use was alleged with regard to third parties where the illegal use could potentially lessen an amount of public funds available to plaintiff in the future. Legislation concerning the use of public funds may involve "a matter of public right." *Fent*, *supra*.

¶37 Treasurer refers to a decision by OPERS and states no injury will occur to Keenan for the purpose of standing. Keenan seeks relief against Treasurer. The record before us includes a letter from the Oklahoma State Pension Commission, signed by Treasurer as Chairman of the State Pension Oversight Commission, and addressed to the Executive Director and Board of Trustees for OPERS (Board). The letter states: "Pursuant to the EDEA, certain firms were identified as being engaged in such boycotts [against energy companies] . . . The Boards's actions were in opposition to the letter and

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[41] *See also*, *State ex rel. Ind. School Dist. No. 1 Okla. Cnty. v. Barnes*, 1988 OK 70, 762 P.2d 921 (school district has an interest in protecting revenue used to support it and has standing to compel compliance with state statute concerning unprotested ad valorem tax revenue).

spirit of the EDEA [Energy Discrimination Elimination Act], because the situation presented did not fall within the EDEA's narrow exceptions . . . The Board should immediately begin a new RFP process . . . hold another hearing at which the Board can make a decision that complies with the EDEA and its fiduciary duties."[42]

¶38 The Treasurer's letter states the Board should determine for all investment funds "how the up-front switching costs should be weighed against what appears to be long-term savings and superior performance."[43] The letter asserts the Board's decision concerning application of the EDEA was the result of an "incomplete process," with insufficient options and not presented "in a neutral fashion." The letter states: "First and foremost, the Board's actions were in opposition to the EDEA."[44] The letter also states two financial companies, of several used by the Board, are on the list of companies that boycott energy companies, but "the Board invoked two exceptions" and kept the companies as managers for funds, and this "result is clearly in opposition to the language and intent of the EDEA."[45]

¶39 The appellate record shows Treasurer's efforts to change the Board's decision, and for the Board to investigate and calculate, or reinvestigate and recalculate, all public funds paid as costs to the challenged financial companies. The letter also states the Board should accomplish financial divestment with specific companies. When

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[42] O.R. (Supp)., Tab 1, pg.1, 2 (Letter dated September 18, 2023), (material omitted and explanation added).

[43] *Id.* at Tab 1, pg.1.

[44] O.R. (Supp)., Tab 1, pg.13 (Letter dated September 18, 2023).

[45] *Id.* at Tab 1, p. 13-14.

responding to Keenan's motion for summary judgment, Treasurer takes issue with Keenan's assertion concerning costs associated with switching investments: "For OPERS, *several* funds would have included zero 'switching costs.'"[46]

¶40 Treasurer relies upon his letter to OPERS. Eight funds are identified in Treasurer's letter to OPERS. According to Treasurer repeating OPERS, three funds have a "near-zero switching cost" of $27K, $4K, and $1K. Four funds are identified as having an estimated percentage of the fund as a switching cost. The Treasurer's letter states three of these funds have a $5.88 million, $2.98 million, and a $577K cost for switching. Treasurer objects to these assessments and states "further analysis should have been conducted."

¶41 The District Court granted a temporary injunction, and the order's "Findings of Fact" includes: "The OPERS Board of Trustees ("Board") estimated the cost of commissions, taxes, and fees related to divestment activity mandated under the Act to be $9,700,000.00 to OPERS."[47] The order states this finding was based upon an affidavit submitted by plaintiff.

¶42 Treasurer objects to Keenan's statements of material fact raised in Keenan's quest for partial summary judgment where Keenan's recitation of facts is based upon the temporary injunction of the District Court. Treasurer states: "Objection. Statements made in an interlocutory order do not constitute material fact."[48]

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[46] O.R. Vol. 1, Tab 13, p.3, Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, (June 24, 2024) (emphasis added).

[47] O.R. Vol. 1, Tab 11, p.4, Order as to Plaintiff's Motion For Temporary Injunction," (May 7, 2024).

[48] O.R. Vol. 1, Tab 13, p.2-3, Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, (June 24, 2024).

¶43 A trial court may make an "interlocutory finding of fact," and the descriptive "interlocutory" is often made with reference to a finding that is (1) not subject to an immediate appeal,[49] or (2) used for a temporary enforceable order, which may be subject to an immediate appeal, but additional proceedings are necessary to make judicial relief permanent based upon either the earlier finding or additional findings.[50] Appellate review of evidence used for issuance of equitable relief examines whether the order was contrary to the clear weight of the evidence or whether there is no rational basis in the evidence for the ruling.[51] Generally, an interlocutory order may be modified at any time before final judgment or decree and reviewed on appeal from final judgment or decree, unless the interlocutory order was previously appealed and an issue became part of the settled law of the case for future proceedings.[52]

¶44 Again, in the context of summary judgment procedural burdens, a plaintiff's summary judgment must show all elements to the cause of action are present. *McGee v.*

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[49] *State ex rel. Blackhawk v. Dist. Crt. Of Osage Cnty.*, 1942 OK 114, 126 P.2d 255 (Court Syllabus).

[50] *See, e.g., Amoco Production Co. v. Lindley*, 1980 OK 6, ¶20, 609 P.2d 733, 739 (an interlocutory appeal from an order entering a temporary injunction made upon certain findings of fact).

[51] *Revolution Resources, LLC v. Annecy, LLC*, 2020 OK 97, ¶12, 477 P.3d 1133, 1140-41.

[52] *State ex el. Okla. State Dept. of Health v. Okla. Cnty. Criminal Justice Auth.*, 2025 OK 6, n. 26, 571 P.3d 114, 124 (interlocutory order may be reviewed on appeal from the judgment, and judicial economy is served by the settled-law-of-the-case doctrine when it bars relitigation of issues settled in a previous appeal) (*citing, In re Guardianship of Berry*, 2014 OK 56, ¶40, 335 P.3d 779, 792-93 and *Smedsrud v. Powell*, 2002 OK 87, ¶¶13-14, 61 P.3d 891, 896); *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶14, 396 P.3d 210, 216-17 (interlocutory order and may be revisited and modified by the trial court at any time prior to judgment).

Alexander, *supra*. Keenan uses an allegation of fact that costs would be incurred by OPERS if the Act was applied.

¶45 Treasurer's letter to OPERS was introduced as an exhibit during the District Court's hearing in February 2024 on Keenan's request for a temporary injunction. Treasurer's letter states concerning one fund, switching costs would occur but the amount, $28,000 was minimal when compared to the total amount of the fund invested. Two additional funds had a switching cost of $5,000 and less than $2,500, and Treasurer argued these amounts were minimal. Treasurer also analyzed "Funds with Meaningful Switching Costs." One conclusion by Treasurer was a recommendation for OPERS to switch from one entity to another and the projected costs of switching could be covered if the new entity receiving the funds "could continue to outperform . . . and erase the difference over time." Treasurer argued a switching cost of $575,000 could be overcome with savings over six years if funds were placed with a different entity. Treasurer stated a projected switching cost of "about $3 million" for one fund needed to be evaluated based upon the fund's performance and fee savings. Treasurer argued that based upon *past* performance in 2022 of Treasurer's recommended entity for receiving an investment instead of the one designated by OPERS, the fund could have saved more money than the switching costs had OPERS previously switched investments. Treasurer argued switching costs, and potentially more amounts, could be erased over time "as the fund grows" with the newly invested entity recommended by Treasurer. Treasurer argues Keenan will not suffer harm.

¶46 Keenan is a retired employee, and we noted concerning defined benefit plans: "in all defined plans is a lack of certainty" concerning assumptions for contributions

required and investment yields expected for future payments from the plan, and actuaries are typically employed to assist managers of a defined pension plan.[53] Keenan's alleged standing is based in part on challenging Treasurer's approach that costs to the pension funds will be offset by potential future yields. This part of Keenan's claim is that any switching costs for any fund, even if only one fund, would make the Act unconstitutional in its application to OPERS. Keenan argues there is a measurable risk of loss to funds where the risk is created by Treasurer when applying the EDEA to a public retirement system managed by OPERS.

¶47 Treasurer argued that switching costs were a disputed factual issue for the purpose of summary judgment. Treasurer had a summary judgment procedural burden to "respond with some evidentiary material that would demonstrate a need for a trial on the issue."[54] Treasurer attempted to meet this burden by stating switching costs could be recovered over time if (1) OPERS changed its managerial decisions with respect to factors considered previously important by OPERS, (2) OPERS adopted decision factors suggested by Treasurer, and (3) the entities recommended by Treasurer will perform as anticipated by Treasurer.

¶48 Keenan argued the Board's discretion was controlled and guided solely by a constitutionally specified duty with a constitutionally limited purpose for the funds at issue. Keenan sought an injunction alleging an unconstitutional official policy by the

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[53] *Stevens v. Fox*, 2016 OK 106, ¶2, 383 P.3d 269, 270-71 (explanation added). In a defined contribution plan "there can never be an insufficiency of funds to cover promised benefits." *Id.* at ¶3, 383 P.3d at 271.

[54] *Lowery v. Echostar*, 2007 OK 38, ¶16, 160 P.3d 959, 965.

Treasurer that sought to alter a discretion exercised by the Board when effectuating a purpose defined by the Oklahoma Constitution. Keenan's standing for his claim in equity against the Treasurer is not based upon an alleged breach of a fiduciary duty owed to him by OPERS, and we need not define, analyze, or adjudicate the scope of the "fiduciary duty" discussed by the parties.[55] Keenan sought an injunction "against an official policy," and alleged he suffered a "realistic threat" from the policy.[56] Employees who are members of OPERS make employee contributions to the funds that OPERS manages.[57] Keenan is a retired employee who made contributions to OPERS and receives funds from OPERS. Keenan's analogy compares (1) standing based upon a taxpayer making payments to State funds and alleging unconstitutional use of those funds, and (2) standing based upon an OPERS member having made payments to OPERS funds and alleging unconstitutional use of those funds. This part of Keenan's alleged standing is a claim similar to one made by a taxpayer alleging public funds are, or will be, administered contrary to mandatory law; and the taxpayer does not seek refund, but seeks to have a

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[55] Generally, a duty exists with a corresponding right. *Craig v. Craig*, 2011 OK 27, ¶18, 253 P.3d 57, 62 ("A legal 'right' possessed by one person does not exist "in the air," but exists only with a corresponding legal 'duty' possessed and required by another."); *cf.* David Partlett, *Asbestos Wars: In Three Parts*, 71 Wash. & Lee L. Rev. 759, 774 (When discussing theories for defining a legal relationship for legal liability the author noted: "Duty cannot exist in the air; it is a term of relation.").

[56] *Farley v. City of Claremore*, 2020 OK 30, ¶62, 465 P.3d 1213, 1241 ("When a plaintiff seeks an injunction against an official policy, plaintiff must 'credibly allege' a realistic threat to the plaintiff from the policy.").

[57] 74 O.S.Supp.2025, §919.1, provides for employee contributions to OPERS. This section has been amended many times between 1980 and 2024, and OPERS classifies these contributions made by each employee as "accumulated contributions," 74 O.S.Supp.2025, §902 (2).

legal judgment requiring a state agency to administer the mandatory law equally to all taxpayers.[58] *Keenan's standing was based upon the Treasurer's application of the EDEA to OPERS.* We conclude Keenan possessed standing to commence his request for injunctive relief in the District Court *for the purpose of challenging Treasurer's application of the EDEA to OPERS. Brandon, supra., Glass, supra.*, and *Fent, supra.*

IV. Okla. Const. Art. XXIII, §12, and the EDEA (the Act)

¶49 When a legislative act is unconstitutional in its entirety on one ground, the Court need not examine additional constitutional claims against the Act.[59] We conclude the EDEA is unconstitutional when it is applied to a public retirement system controlled by Okla. Const. Art. XXIII, §12, and need not examine the District Court's conclusion that the Act violated additional provisions of the Oklahoma Constitution.

¶50 The parties' controversy raises the issue whether the Energy Discrimination Elimination Act of 2022 (74 O.S. §12001 - §12006, inclusive) (EDEA, or the Act) is unconstitutional when the Act is applied to a public retirement system controlled by Okla. Const. Art. XXIII, §12. This provision states as follows.

> All the proceeds, assets and income of any public retirement system administered by an agency of the State of Oklahoma shall be held, invested, or disbursed as provided for by law as in trust *for the exclusive purpose of providing for benefits, refunds, investment management, and administrative*

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[58] *See, e.g., Branch Trucking Co. v. State ex rel. Okla. Tax Comm'n*, 1990 OK 41, 801 P.2d 686, 690-91 (Oklahoma Tax Commission was bound in subsequent litigation by two previous final District Court judgments construing the meaning a tax statute when Commission subsequently applied the same tax law to other taxpayers who were not parties to the previous proceedings).

[59] *White v. Stitt*, 2025 OK 68, ¶¶30-32, 579 P.3d 636, 646-47.

expenses of the individual public retirement system, and shall not be encumbered for or diverted to any other purposes.

Okla. Const. Article XXIII, § 12 (emphasis added). We must give effect to the intent of the constitution's framers and the people adopting the constitutional provision at issue.[60] We give effect to the intent of the framers and people by examining the language of the constitution to determine its meaning and application, *i.e.*, we examine "the text of the instrument itself," "and when the text is not ambiguous, the court may not look for a meaning outside its bounds."[61] When a statute is alleged to violate the constitution and a court has determined the meaning of the constitutional language, then the court examines the statutory language for constitutional conformity and the statute "will be upheld unless it is clearly, palpably and plainly inconsistent" with the meaning of the constitutional language.[62]

¶51 Where language in the constitution "'asserts a certain right or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law and is full authority for all that is done in pursuance of its provision. In short, if complete in itself, it executes itself.'"[63] Legislation may be desirable for supplementing or carrying into effect mandatory and self-executing constitutional language, but the legislation must not curtail any rights granted, or exceed limitations imposed, by the constitutional

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[60] *Liddell v. Heavner*, 2008 OK 6, ¶16, 180 P.3d 1191, 1199.

[61] *Id.*

[62] *Liddell v. Heavner*, *supra* note 60, at ¶16, 180 P.3d at 1200 (citing *Reherman v. Okla. Water Res. Bd.*, 1984 OK 12, ¶11, 679 P.2d 1296, 1300).

[63] *Williams v. City of Norman*, 1921 OK 337, 205 P. 144, 147 (*quoting Davis v. Burke*, 179 U. S. 399, 21 Sup. Ct. 210, 45 L. Ed. 249 (1900)).

language.[64] A provision of the constitution may possess self-executing language and also language that is not self-executing and needing legislative enactment for execution.[65]

¶52 We need not examine all circumstances creating mandatory and self-executing constitutional language. Historically, constitutional language expressing prohibition is classified as mandatory and self-executing.[66] A prohibition with additional limiting language is used in Art. XXIII, §12. The disputed language states an "exclusive purpose" for public funds, and this clause is joined to another stating this purpose "shall not" be diverted "to any other purposes." The term "shall" does not *by itself* show mandatory and self-executing language.[67] However, the term "exclusive" limits the "purpose" for public funds, and using "shall" with a negative "not" concerning these same funds when combined with "any other purposes," are together contextually sufficient to show mandatory and self-executing language stating the exclusive and sole purpose of these public funds controlled by Okla. Const. Art. XXIII, §12.

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[64] *Associated Industries of Oklahoma v. Oklahoma Tax Commission*, 1936 OK 156, ¶24, 55 P.2d 79, 85, *see also State v. Hejduk*, 1951 OK CR 78, 232 P.2d 664, 666 (self-executing provision "may be supplemented by appropriate laws designed to make it more effective, within the bounds reserved by the Constitution and not exceeding the limitations specified").

[65] *See, e.g., In re House Bill No. 145*, 1951 OK 288, 237 P.2d 624, 625 (describing and listing self-executing and mandatory language in a constitutional provision and a provision that was not self-executing).

[66] *See, e.g., State ex rel. Blankenship v. Freeman*, 1968 OK 54, ¶61, 440 P.2d 744, 756 (*quoting Ex parte Hudson*, 1910 OK CR 17, 106 P. 540 ("prohibitory clauses of a constitution are always self-executing and require no legislative provisions for their enforcement")).

[67] *In re House Bill No. 145*, supra note 65, at ¶¶15-18, 237 P.2d at 627 (simply using the term "shall" by itself in constitutional language is insufficient to create a mandatory and self-executing duty, limit, or power; and the term "shall" must be construed with the purpose and history of application, or context, and relate to the additional language in the provision).

¶53 Statutes may supplement the constitutionally mandatory "exclusive purpose" when the statutes make the exclusive purpose more effective. For example, 74 O.S.2021, §909.1 states in part: "The Oklahoma Public Employees Retirement System Board of Trustees shall discharge their duties with respect to the System *solely in the interest of the participants and beneficiaries* and: 1. *For the exclusive purpose* of: a. providing benefits to participants and their beneficiaries, and b. defraying reasonable expenses of administering the System." *Id.* §909.1(A) (1) (a) & (b) (emphasis added). But statutes may not change, amend, or alter the constitutionally specific self-executing "exclusive purpose" in Okla. Const. Art. XXIII, §12.[68]

¶54 A typical analysis of a constitutional provision examines whether the provision has "a distinct purpose."[69] Article XXIII, §12 states a purpose: the funds provide for benefits, refunds, investment management, and administrative expenses of the individual public retirement system.

¶55 Treasurer states, "There were two purposes behind the Act."[70] Treasurer argues the EDEA makes providing benefits, refunds, and investment management more effective by requiring a public pension system to divest from (1) an institution that boycotts energy companies, or (2) a company is one that "does business with" another company that engages in the statutorily prohibited boycott.[71]

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[68] *State v. Hejduk, supra* at note 64.

[69] *Zachary v. City of Wagoner*, 1930 OK 440, ¶17, 292 P. 345, 349.

[70] O.R. Vol. I, Tab 13, p.3, Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, June 24, 2024.

[71] 74 O.S. § 12002 (A)(1) & (2):
A. As used in the Energy Discrimination Elimination Act of 2022:

¶56 The EDEA provides a requirement that a "state governmental entity" shall "sell, redeem, divest, or withdraw all publicly traded securities of the financial company," acting in violation of the Act, with certain exceptions provided.

> 2. Not later than the ninetieth day after the date the financial company receives notice under paragraph 1 of this subsection, the financial company shall cease boycotting energy companies to avoid qualifying for divestment by state governmental entities. . . .
>
> 4. If, after the time provided by paragraph 2 of this subsection expires, the financial company continues to boycott energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described by subsection E of this section, according to the schedule provided under subsection D of this section.

74 O.S.Supp.2025, §12003(C)(2) & (4) (as enacted in 2022). Treasurer states this language requires OPERS to divest securities to implement the purpose of eliminating discrimination by financial companies.

¶57 The EDEA also contains the following language.

> B. With respect to actions taken in compliance with the Energy Discrimination Elimination Act of 2022, including all good-faith determinations regarding financial companies as required by this act, a state governmental entity and the Treasurer *are exempt from any conflicting statutory or common law obligations including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.*

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1. "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

a. engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or

b. does business with a company described by subparagraph a of this paragraph

74 O.S. §12002 (B) (emphasis added). A governmental entity is "exempt" from statutory or common law obligations that conflict with the Act when the state entity makes good faith decisions to implement the Act and divest securities. However, this same statute also provides the following.

> 3. A state *governmental entity shall not be subject to any requirement of this act if* the state governmental entity determines that *such requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets.*

74 O.S. §12002 (D)(3) (emphasis added). A state entity is not subject to a requirement in the Act if application to a particular financial entity is inconsistent with the state entity's fiduciary responsibility.

¶58 We construe, if possible, a statute as internally consistent and consistent with the constitution.[72] Reading this language as internally consistent gives the following: The Board's fiduciary duty is paramount, but if application of the Act does not cause a violation of a fiduciary duty, then the provisions of the Act apply even if contrary to all statutory and common law duties and obligations. Treasurer indicates the public funds after divestment will still exist for pension benefits and divestment will not destroy the "distinct purpose" of protecting public funds for Art. XXIII, §12 purposes. In summary, Treasurer's argument seeks to narrow the scope of the Board's "fiduciary duty" and constitutional purpose to preserving funds and a rate of return.

¶59 A constitutional conflict with this argument by Treasurer is that the constitutional language of "exclusive purpose" and "any other purposes" is expressly tied to the duty and authority of the Board's constitutionally recognized "investment

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[72] *Childers v. Arrowood*, 2023 OK 74, ¶20, 541 P.3d 825, 832.

management." Generally, "management" involves an exercise of discretion or decision-making authority.[73] Generally, an exercise of legal discretion is controlled by a legal principle. For example, a judge may possess a "judicial discretion" as part of a decision-making process and the exercise of this discretion is not a "capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles."[74] Article XXIII, §12 supplies a fixed or controlling legal principle for the discretion used when a public agency administers "any public retirement system administered by an agency of the State of Oklahoma," and that controlling principle is the "*exclusive purpose* of providing for benefits, refunds, investment management, and administrative expenses of the individual public retirement system." Okla. Const. Art. XXIII, §12.

¶60 We conclude that application of 74 O.S. §12003 to OPERS violates Okla. Const. Art. XXIII, §12 by creating a "dual purpose" for investment decisions made by OPERS when administering a public retirement system as opposed to the "exclusive purpose" OPERS must follow due to the express language of Okla. Const. Art. XXIII, §12.

¶61 The Energy Discrimination Elimination Act of 2022 (74 O.S. §12001 - §12006, inclusive) was created by Laws 2022, c. 231, § 1, eff. Nov. 1, 2022 (H.B. No.

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[73] *See, e.g., City of Okla. City v. Okla. Corp. Comm.*, 2024 OK 77, ¶¶44-5, 558 P.3d 1231, 1248-49 (Court explained one difference between (1) "corporate management" involving an exercise of sole managerial discretion, and (2) actions by a corporation outside the scope of this sole discretion when the discretion is regulated by the legislature because the corporation is a public service company).

[74] *Matter of B. H.*, 2022 OK 80, ¶8, 519 P.3d 91, 95 (quoting *Poff v. Lockridge*, 1908 OK 209, ¶16-18, 98 P. 427, 429; *cf. Christian v. Gray*, 2003 OK 10, ¶ 45, 65 P.3d 591, 609 ("When we speak of the discretion of the trial judge we do not mean that the decision of the trial judge is one without fixed principles by which its correctness may be determined upon appellate review.").

2034, Fifty-Eighth Legislature, 2022 Second Regular Session). No section of the Act contains a severability provision for any section or language determined to be unconstitutional. When a statute is unconstitutional and part of a statutory scheme without a severability clause upon enactment, then 75 O.S. § 11a (1) requires a severability analysis.[75] We must determine if the remaining portions of the Act are constitutionally valid and consider whether any remaining valid provisions, standing alone, are complete and capable of being executed in accordance with the intent of the Act.

¶62 The Act contains six statutes, and other than the initial section providing the name for the Act, all sections relate to the process of divesting funds held contrary to the Act as defined by the Act. In §12002, a section providing definitions "as used in the Energy Discrimination Elimination Act of 2022," a paragraph states several types of individuals as follows.

> D.1. A person . . . retiree . . . or any other person shall not sue or pursue a private cause of action against the state, a state governmental entity, . . .or any other officer of a state governmental entity, . . . for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, financial company

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[75] 75 O.S.2021, § 11a (1):

1. For any act enacted on or after July 1, 1989, unless there is a provision in the act that the act or any portion thereof or the application of the act shall not be severable, the provisions of every act or application of the act shall be severable. If any provision or application of the act is found to be unconstitutional and void, the remaining provisions or applications of the act shall remain valid, unless the court finds:

a. the valid provisions or application of the act are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or

b. the remaining valid provisions or applications of the act, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

communication, report, or other determination made or taken in connection with this act.

2. A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney fees of a person sued in violation of this section.

74 O.S.§12002(D)(1) & (2) (material omitted). Keenan asserts this language is unconstitutional.

¶63 We need not analyze or discuss differences involving statutes seeking to bar (1) different types of causes of action, (2) different types of remedies (*e.g.*, damages, positive and negative forms of equitable relief, declaration of rights, *etc.*), (3) different types of parties in claims involving the exercise of a governmental power or authority (*e.g.*, the state, state entities, state officials, private parties, *etc.*), or (4) Keenan's Okla. Const. Art. II, §6 claim[76] and the contours or scope of legislative restraint upon the exercise of judicial power. Rather, we examine the statutory language to determine if it is "operating together for the same purposes" as the constitutionally offensive language so "that it cannot be presumed that the Legislature would have passed the one without the other."[77] Our conclusion, based upon the language tying 74 O.S.§12002(D)(1) & (2) to performance of the EDEA, is that 74 O.S.§12002(D)(1) & (2) is part of a unified purpose for the elimination of a financial company's discrimination when boycotting energy-related companies, and both 74 O.S.Supp.2025, §12003(C)(2) & (4) and 74 O.S.Supp.2025,

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[76] Okla. Const. Art. II, §6: The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

[77] *Pioneer Tel. and Tel. Co. v. State*, 1914 OK 27, 138 P. 1033, 1036.

§12002(D)(1) & (2) would not have been enacted without each other both attempting the purpose of the EDEA.

¶64 We conclude Energy Discrimination Elimination Act of 2022 (74 O.S. §12001 - §12006, inclusive) the EDEA is unconstitutional in its entirety when applied to OPERS.

V. Conclusion

¶65 We conclude the appeal may proceed based upon the appellate briefs and submission of the appeal to the Court before Keenan's death. We conclude Keenan possessed standing to commence his request for injunctive relief in the District Court. We conclude Energy Discrimination Elimination Act of 2022 (74 O.S.Supp.2025 §12001 - §12006, inclusive) is unconstitutional in its entirety when applied to OPERS because it conflicts with Okla. Const. Art. XXIII, §12. We affirm the District Court's summary judgment granting a permanent injunction against Treasurer to the extent the injunction prevents the Treasurer from enforcing or applying the EDEA to the Oklahoma Public Employees Retirement System (OPERS).

¶66 We direct the Clerk of this Court to file the Court's opinion with the date received by the Clerk, and a petition for rehearing, if filed, may be filed within twenty days of the date the opinion is filed with the Clerk.

¶67 When issuance of mandate herein is required by the Rules and practice of this Court, unless a subsequent order of this Court modifies the Court's opinion, the Clerk of this Court shall withdraw the Court's opinion from the Court's docket and refile the opinion with issuance of the Court's mandate, and both opinion and mandate bearing the

same date on the docket of the Court, *i.e.*, the date the cause was submitted to the Court on January 16, 2025. The final date for the opinion and appellate mandate shall not prejudice a legally cognizable substitution for Keenan in the District Court upon remand. The Judgment of the District Court is Affirmed in Part as directed by the Court's opinion.

¶68 CONCUR: WINCHESTER, EDMONDSON, COMBS, GURICH, and DARBY, JJ.

¶69 DISSENT: ROWE, C.J., by separate opinion; KUEHN, V.C.J., by separate opinion; and KANE, J., by separate opinion.

¶70 RECUSED: JETT, J.