

No. 127040

**IN THE
SUPREME COURT OF ILLINOIS**

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 50,

Plaintiff-Appellee,

v.

CITY OF PEORIA, a Municipal
Corporation,

Defendant-Appellant.

) On Appeal from the Appellate Court
) of Illinois, Third Judicial District,
) No. 3-19-0758
)

) There Heard on Appeal from the
) Circuit Court of Peoria County,
) Illinois, No. 18-MR-00439
)

) The Honorable Mark E. Gilles,
) Judge Presiding.
)
)

**BRIEF AND APPENDIX OF DEFENDANT-APPELLANT
CITY OF PEORIA**

Esther J. Seitz

#6292239

Hinshaw & Culbertson LLP

400 South Ninth Street

Suite 200

Springfield, Illinois 62701

eseitz@hinshawlaw.com

Attorney for Defendant-Appellant.

ORAL ARGUMENT REQUESTED

E-FILED

6/30/2021 4:31 PM

Carolyn Taft Grosboll

SUPREME COURT CLERK

**TABLE OF CONTENTS AND
STATEMENT POINTS AND AUTHORITIES**

ARGUMENT

NATURE OF THE CASE	1
ISSUE PRESENTED FOR REVIEW.....	1
JURISDICTION	1
Ill. S. Ct. R. 303 (eff. July 1, 2017)	1
Ill. S. Ct. R. 315 (eff. Oct. 1, 2020)	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
Ill. Const. 1970, art. VII, § 6	<i>Passim</i>
Ill. Const. 1970, art. II, § 1	3
The Illinois Public Safety Employees Benefits Act, 820 ILCS 320/1 et seq.....	3
Peoria Municipal Code § 2-350 (added June 12, 2018).....	3
STATEMENT OF FACTS	4
The Illinois Public Safety Employees Benefits Act, 820 ILCS 320/1 et seq.....	4, 6
820 ILCS 320/10.....	4, 6
820 ILCS 320/1-99.....	4
<i>Krohe v. City of Bloomington</i> , 204 Ill. 2d 392 (2003)	4-5, 7
Peoria Municipal Code § 2-350 (added June 12, 2018).....	5
34 U.S.C.S. § 10284.....	6
<i>International Ass’n of Fire Fighters Local 50 v. City of Peoria</i> , 2021 IL App (3d) 190758	7-8

ARGUMENT	8
I. Summary of Argument	8
<i>Krohe v. City of Bloomington</i> , 204 Ill. 2d 392 (2003)	8-9
II. Standard of Review	9
<i>Palm v. Lake Shore Drive Condominium Ass'n</i> , 2013 IL 110505	9
<i>Burns v. Municipal Officers Electoral Board of Elk Grove Village</i> , 2020 IL 125714	9
<i>Blanchard v. Berrios</i> , 2016 IL 120315	9-10
III. The City Has Home Rule Authority to Enact the Ordinance	10
A. <i>The Illinois Constitution Vests the City with Broad Powers to Legislate on Local Matters</i>	10
<i>Palm v. Lake Shore Drive Condominium Ass'n</i> , 2013 IL 110505	11, 13-14
<i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998)	11
820 ILCS 320/20.....	11, 13
<i>Schillerstrom Homes v. City of Naperville</i> , 198 Ill. 2d 281 (2001)	11-12
7 Record of Proceedings, Sixth Illinois Constitutional Convention 1605	12
<i>Scadron v. City of Des Plaines</i> , 153 Ill. 2d 164 (1992)	12-13
Katherine Beckett & Lindsey Beach, <i>The Place of Punishment in Twenty-First-Century America: Understanding the Persistence of Mass Incarceration</i> , 46 Law & Soc. Inquiry 1	12

<i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998)	12
<i>City of Chicago v. StubHub, Inc.</i> , 2011 IL 111127	13-14
5 ILCS 70/7	13
Pub. Act 90-535 (eff. Nov. 14, 1997)	13
820 ILCS 320/1 <i>et seq.</i>	13
<i>Souza v. City of West Chicago</i> , 2021 IL App (2d) 200047	13
B. <i>The Definitions Are a Valid Exercise of the City’s Broad Home Rule Authority</i>	14
820 ILCS 320/20.....	14
1. PSEBA benefits and the criteria triggering them pertain to the City’s government and affairs	14
<i>Schillerstrom Homes v. City of Naperville</i> , 198 Ill. 2d 281 (2001)	14-15
<i>Blanchard v. Berrios</i> , 2016 IL 120315	15
<i>Pederson v. Village of Hoffman Estates</i> , 2014 IL App (1st) 123402.....	15
<i>Englum v. City of Charleston</i> , 2017 IL App (4th) 160747	15
Peoria Municipal Code § 2-350 (added June 12, 2018).....	15-16
<i>Krohe v. City of Bloomington</i> , 204 Ill. 2d 392 (2003)	16
40 ILCS 5/4-121.....	16
40 ILCS 5/4-110.....	16

<i>Nowak v. City of Country Club Hills</i> , 2011 IL 111838	16
820 ILCS 320/10.....	16
<i>Cordrey v. Prisoner Review Board</i> , 2014 IL 117155	17
<i>Aurora Loan Services v. Kmiecik</i> , 2013 IL App (1st) 121700.....	17
2. The General Assembly did not preempt the City’s power to legislate on PSEBA benefits because the definitions in the Ordinance are not inconsistent with—and, indeed, co-exist symbiotically with—PSEBA’s text.....	18
820 ILCS 320/20.....	18-19
<i>Krohe v. City of Bloomington</i> , 204 Ill. 2d 392 (2003)	18-19, 24
5 ILCS 70/7	19
<i>Pederson v. Village of Hoffman Estates</i> , 2014 IL App (1st) 123402.....	20
<i>Englum v. City of Charleston</i> , 2017 IL App (4th) 160747	20, 23
820 ILCS 320/10.....	20, 22, 24
Peoria Municipal Code § 2-350 (added June 12, 2018).....	21-22, 24
34 U.S.C.S. § 10284.....	21
<i>Schillerstrom Homes v. City of Naperville</i> , 198 Ill. 2d 281 (2001)	23-24

<p>C. Krohe and Its Progeny Are Distinguishable because They Did Not Involve Home Rule Legislation Defining “Catastrophic Injury”</p>	25
<p><i>Krohe v. City of Bloomington</i>, 204 Ill. 2d 392 (2003)</p>	25
<p>D. The Appellate Court’s Holding that Krohe Supersedes the Definition Enacted by Ordinance Flouts the Constitution’s Explicit Reservation that Only the General Assembly “By Law” Can Preempt Home Rule</p>	25
<p>820 ILCS 320/20.....</p>	26
<p><i>International Ass’n of Fire Fighters Local 50 v. City of Peoria</i>, 2021 IL App (3d) 190758</p>	26
<p>E. The Appellate Court’s Analysis Also Violates Case Law Eschewing Judicial Preemption</p>	27
<p><i>Village of Bolingbrook v. Citizens Utilities Co.</i>, 158 Ill. 2d 133 (1994)</p>	27-28
<p><i>City of Chicago v. Roman</i>, 184 Ill. 2d 504 (1998)</p>	27, 29
<p><i>Palm v. Lake Shore Drive Condominium Ass’n</i>, 2013 IL 110505</p>	27-29
<p>David C. Baum, <i>A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict</i>, 1972 U. Ill. L.F. 559.....</p>	27
<p>David C. Baum, <i>A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations</i>, 1972 U. Ill. L.F. 137</p>	28
<p><i>Krohe v. City of Bloomington</i>, 204 Ill. 2d 392 (2003)</p>	28-29
<p><i>Village of Vernon Hills v. Heelan</i>, 2015 IL 118170.....</p>	29

<i>F. The Separation of Powers Doctrine Also Commands that the City's Definitions Must Supplant Judicially-Crafted Alternatives</i>	29
<i>Krohe v. City of Bloomington</i> , 204 Ill. 2d 392 (2003)	29
820 ILCS 320/20.....	30
<i>Fergus v. Marks</i> , 321 Ill. 510 (1926)	30
820 ILCS 320/10.....	30
<i>Lawrie v. Department of Public Aid</i> , 72 Ill. 2d 335 (1978)	30
<i>Scadron v. City of Des Plaines</i> , 153 Ill. 2d 164 (1992)	30-31
<i>International Ass'n of Fire Fighters Local 50 v. City of Peoria</i> , 2021 IL App (3d) 190758	31

NATURE OF THE CASE

This action concerns the constitutional power of home rule units of government to legislate on local matters which impact their communities and citizens. The City of Peoria defends an ordinance which supplements the Illinois Public Safety Employees Benefits Act by promulgating definitions for three words used in, but left undefined by, that statute.

The local firefighters' union challenged the ordinance arguing that the City exceeded its home rule power by adopting the definitions because the ordinance's definitions differ from definitions this Court supplied in another case. Faced with cross-motions for summary judgment, the trial court granted summary judgment for the union. The judgment is not based on a jury verdict. No questions are raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether a home rule municipality, which is required by a state statute to administer, and pay for, certain post-employment benefits, has the constitutional power to enact definitions for three words employed, but left undefined, by that statute or whether judicially-crafted definitions of the statutorily-undefined words preempt the municipality's constitutional power to so legislate.

JURISDICTION

The trial court disposed of this action on summary judgment and the City timely appealed. Ill. S. Ct. R. 303 (eff. July 1, 2017); C 311-312, 315-316 (A8-9, 21-22). The appellate court filed its opinion on February 1, 2021. (A2-7). Allowing the

City's timely petition for leave to appeal on May 26, 2021, this Court has jurisdiction under Illinois Supreme Court Rule 315. Ill. S. Ct. R. 315 (eff. Oct. 1, 2020).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

● **Ill. Const. 1970, art. VII, § 6. POWERS OF HOME RULE UNITS.**

- (a) [A]ny municipality which has a population of more than 25,000 [is a] home rule unit[]. . . . Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt. . .
- (g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.
- (h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.
- (i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive. . .
- (m) Powers and functions of home rule units shall be construed liberally.

● **Ill. Const. 1970, art. II, § 1. SEPARATION OF POWERS.**

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

- **The Illinois Public Safety Employees Benefits Act, 820 ILCS 320/1 *et seq.*** is provided in the Appendix at A 14-20; C 15-21.
- **Peoria Municipal Code § 2-350 (added June 12, 2018)** is provided in the Appendix at A 10-13; C 11-14.

STATEMENT OF FACTS

As relevant here, the Illinois Public Safety Employee Benefits Act, 820 ILCS 320/1 *et seq.*, (“PSEBA”) does two keys things (1) it grants firefighters and their dependents the right to receive health benefits, and (2) it compels cities to fund, administer and distribute those benefits. Specifically, PSEBA provides that a city must pay “the entire premium of [its] health insurance plan” for a firefighter, the firefighter’s spouse and dependents if a firefighter suffers a “catastrophic injury.” 820 ILCS 320/10; C 15 (A 14). The General Assembly enacted PSEBA more than two decades ago. C 15-16 (A 14-15).

PSEBA does not explain what constitutes a “catastrophic injury”—the type of injury necessary to trigger PSEBA benefits except to say that the injury must have occurred “as the result of the . . . firefighter’s response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act.” 820 ILCS 320/10(b); C 16 (A 15). The statute otherwise offers no guidance on what amounts to a “catastrophic injury” or “injury.” 820 ILCS 320/1-99; C 15-21 (A 14-20). However, the meaning of “catastrophic injury” matters because only such an injury qualifies for benefits under PSEBA. 820 ILCS 320/10; C 15 (A 14).

Given the legislative silence on what those words mean, this Court was asked to define “catastrophic injury” under PSEBA in *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003). The municipality in that case had not defined the term via ordinance. See *id.*; C 58-59. That is, *Krohe*’s factual backdrop was such that neither

the General Assembly nor a home rule unit had offered a legislative definition for “catastrophic injury.”

When considering PSEBA’s plain text, *Krohe* ruled the term “facial[ly] ambigu[ous].” *Id.* at 396-400; C 60. As a result, this Court resorted to consulting the statute’s legislative debates. *Id.* at 400; C 6, 58-60. Relying on statements by individual lawmakers, *Krohe* ultimately concluded that the term “catastrophic injury” is “synonymous with an injury resulting in a line-of-duty disability under . . . of the [Illinois Pension] Code.” *Id.* at 400; C 6, 58-60. This Court and the appellate court have consistently applied *Krohe*’s definition.

On June 12, 2018, the City established certain standards concerning its administration of PSEBA benefits by passing Section 2-350 of the Peoria Municipal Code (“Ordinance”). See Peoria Municipal Code § 2-350 (added June 12, 2018); C 11-14 (A 10-13). The Ordinance addresses various facets of the City’s statutory duties in processing applications for PSEBA benefits and determining benefit eligibility which the statute is silent on, such as when, and how, a firefighter may apply for benefits and how a local hearing officer must adjudicate a request for PSEBA benefits. *Id.* § 2-350; C 11-14 (A 10-13). The Ordinance also defines four terms used in the Ordinance, including “catastrophic injury,” “injury” and “gainful work.” *Id.* § 2-350(b); C 11 (A 10).

Specifically, the Ordinance defines “catastrophic injury” as “[a]n injury the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.” *Id.*; C 11 (A 10). This definition mirrors the

text of an analogous federal law, the United States Public Safety Officers' Death Benefits Act. 34 U.S.C.S. § 10284(1).

“Gainful work” is defined as “[f]ull- or part-time activity that actually is compensated or commonly is compensated.” *Id.*; C 11 (A 10). The Ordinance defines “injury” as

[a] traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, but does not include:

- (1) Any occupational disease; or
- (2) Any condition of the body caused or occasioned by stress or strain.

Id.; C 11 (A 10).

The Ordinance also confirms that “[a]ll benefits provided employees pursuant to the Public Safety Employee Benefit Act (Act) will be consistent with the Act.” *Id.* § 2-350(a); C 11 (A 10). Echoing statutory text, the Ordinance requires that an application for PSEBA benefits include information showing the applicant’s personal knowledge demonstrating how the injury directly resulted from response to what is reasonably believed to be an emergency or another’s unlawful act or participation during the investigation of criminal acts. Compare *id.* § 2-350(c)(2)(B); C 11 (A 10), with 820 ILCS 320/10(b); C 16 (A 15). If a hearing officer presiding over an administrative hearing deems a firefighter eligible for benefits, the Ordinance guarantees that “the benefits shall be consistent with the Act.” *Id.* § 2-350(e); C 13 (A 12).

Once the Ordinance passed, the International Association of Fire Fighters Local 50 (“Union”) initiated this lawsuit requesting a declaratory judgment that the Ordinance’s definitions of “catastrophic injury” and “injury” are invalid under PSEBA and that the definition of “gainful work” is unnecessary. C 4-10. The Union argues that the City exceeded its constitutional home rule authority in enacting those definitions. C 4-10. The Union challenges only the Ordinance’s definitions, not the entire Ordinance. C 4-10; C 54. To date, no Peoria firefighter has applied for, nor been denied, benefits under the Ordinance. See C 195, 250, 292.

The City’s answer defends the Ordinance’s definitions as a proper exercise of its home rule authority under PSEBA and the Illinois Constitution. C 36-43. The parties filed cross-motions for summary judgment. C 54-310. The trial court ruled for the Union by holding that the City lacked authority to define “catastrophic injury” and “injury” as it had done in the Ordinance. C 311-12 (A 8-9). Specifically, the trial court held that the terms “catastrophic injury” and “injury” as used in PSEBA are “not ambiguous when considering the full text of [section 10] along with the [j]udicial opinions construing and defining those terms.” C 311 (A 8). Thus, the trial court declared the City’s definitions invalid, null and void and struck the definition of “gainful work” as superfluous. C 311-12 (A 8-9).

The City appealed. C 315-16 (A 21-22). The Third District Appellate Court affirmed. *International Ass’n of Fire Fighters, Local 50 v. City of Peoria*, 2021 IL App (3d) 190758 (A 2-7). The appellate court held that *Krohe* had defined “catastrophic injury” for PSEBA purposes and because the General Assembly did

not amend PSEBA in response to *Krohe*, its judicial definition became part of the statute so as to preempt the City's subsequent definition of "catastrophic injury." *Id.* ¶ 12 (A 6).

ARGUMENT

I. Summary of Argument

This Court should reverse the lower courts' decisions which invalidated the City's definitions as exceeding constitutional home rule powers. Establishing the definitions constitutes a permissible exercise of the City's home rule authority because the Illinois Constitution envisions broad use of home rule authority by local officials. In fact, the constitution decrees that only the General Assembly—and not the judicial branch—may limit home rule "by law," and then only with express statutory language that specifically describes in what manner and to what extent the General Assembly bars home rule.

By adopting the definitions, the City properly carried out its duties of offering and administering PSEBA benefits, tasks the statute leaves to the City alone. The definitions assist the City in performing its statutory obligations of both rendering benefit eligibility determinations and providing PSEBA benefits. The definitions complement PSEBA's plain text by outlining how a firefighter can prove eligibility for benefits. No part of the definitions impinges on benefits promised by the statutory text.

The appellate court's decision hinges on a definition of "catastrophic injury," which this Court supplied in *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003).

The parties disagree on whether *Krohe's* definition of “catastrophic injury” trumps the City’s legislative determination or vice versa. The City does not challenge *Krohe* but considers it inapplicable because it did not involve home rule legislation.

The City defends its Ordinance on two constitutional bases: (1) the home-rule provision, and (2) the separation of powers provision. First, the Ordinance represents a proper exercise of the City’s home rule powers, because (a) a clear understanding of what constitutes a “catastrophic injury” is essential to the City’s statutory role of administering PSEBA benefits, and (b) the Ordinance’s definitions are consistent with the plain text of PSEBA. Second, separation of powers principles reserve (a) lawmaking for the legislative branch of government, and (b) preemption of home rule powers for the General Assembly, specifically. Therefore, if *Krohe's* definition does not surrender to the City’s terms, constitutional guarantees of home rule powers and separation of powers are flouted.

II. Standard of Review

This Court reviews orders granting summary judgment *de novo*. *E.g., Palm v. Lake Shore Drive Condominium Ass’n*, 2013 IL 110505, ¶ 28. *De novo* review is also proper because whether a local ordinance represents a valid exercise of home rule authority constitutes a question of law and constitutional interpretation. *Burns v. Municipal Officers Electoral Board of Elk Grove Village*, 2020 IL 125714, ¶ 10.

Ordinances, like state statutes, enjoy a presumption of constitutionality *Blanchard v. Berrios*, 2016 IL 120315, ¶ 14. Accordingly, courts apply the same standards that govern the construction of statutes in examining ordinances. *Id.* A

party attacking an ordinance bears the burden of rebutting that presumption. *Id.* Reviewing courts uphold ordinances as constitutional when reasonably possible. *Id.*

III. The City Has Home Rule Authority to Enact the Ordinance

The Ordinance represents a proper exercise of the City’s broad home rule authority.¹ The Illinois Constitution requires that, unless explicitly limited, home rule powers are co-extensive with the General Assembly’s power concerning local affairs. Ill. Const. 1970, art. VII, § 6(a), (g)-(i). The definitions are essential to the City’s efforts to satisfy its duty, under PSEBA, of providing health benefits to eligible, catastrophically injured firefighters.

PSEBA benefits represent primarily a local concern because they compensate local firefighters for local harm plus eligibility determinations, as well as all payments, are made entirely on the local level. While PSEBA bars home rule units from regulating benefits in a manner inconsistent with the statute, the Ordinance’s definitions are compatible with benefit requirements in PSEBA’s text. Therefore, the definitions must stand and cannot be preempted by judicial definitions.

A. The Illinois Constitution Vests the City with Broad Powers to Legislate on Local Matters

Article VII, section 6 of the Illinois Constitution (“Section 6”) fashions home rule liberally. Section 6(a) provides that “a home rule unit may exercise *any* power

¹ Home rule refers to a municipality’s or county’s right of self-government. In Illinois, a municipality which has a population of more than 25,000 or which chose by referendum to assume home rule status is a home rule unit. Ill. Const. 1970, art. VII, § 6(a).

and perform *any* function pertaining to its government and affairs,” including the power to regulate public health, safety and welfare. Ill. Const. 1970, art. VII, § 6(a) (emphasis added). Accordingly, unless the General Assembly explicitly preempts home rule, home rule units hold constitutionally-vested lawmaking authority equal to the state legislature on local matters. *Palm*, 2013 IL 110505, ¶ 32. This Court’s jurisprudence confirms that “home rule units thus have the same powers as the sovereign, except where such powers are limited by the General Assembly.” *City of Chicago v. Roman*, 184 Ill. 2d 504, 513 (1998). So, within city corporate limits, a municipal ordinance operates on par with state statute. *Id.* at 511.

While the constitution offers no less than seven ways in which the General Assembly may limit, or otherwise control, home rule powers, PSEBA’s restriction on home rule expressly arises under Section 6(i). Compare Ill. Const. 1970, art. VII, § 6(e), (g)-(l), with 820 ILCS 320/20. Section 6(i) decrees that a home rule unit “may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not *specifically* limit the concurrent exercise or *specifically* declare the State’s exercise to be exclusive.” Ill. Const. 1970, art. VII, § 6(i) (emphasis added). To double down on its promise that home rule powers are broad, the constitution establishes a default rule that the “[p]owers and functions of home rule units *shall* be construed liberally.” *Id.* § 6(m) (emphasis added).

Home rule derives from the philosophy that municipalities are governed best by addressing problems with solutions tailored to local needs. *Schillerstrom Homes*

v. City of Naperville, 198 Ill. 2d 281, 286 (2001); see 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1605 (“Local governments must be authorized to exercise broad powers and to undertake creative and extensive projects if they are to contribute effectively to solving the immense problems that have been created by the increasing urbanization of our society”). This Court elaborated on home rule’s underpinnings as follows:

Home rule is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem.

Scadron v. City of Des Plaines, 153 Ill. 2d 164, 176 (1992).

This policy is particularly appropriate today as urban, rural and suburban Illinoisans face different problems and frequently harbor divergent attitudes on how to solve them. See, *e.g.*, Katherine Beckett & Lindsey Beach, *The Place of Punishment in Twenty-First-Century America: Understanding the Persistence of Mass Incarceration*, 46 Law & Soc. Inquiry 1, 24 (“Whereas political divisions historically fell along state and regional lines, the new political divide is a stark division between cities and what remains of the countryside.”)

Home rule became effective in July 1971 as part of the 1970 Constitution. See *Roman*, 184 Ill. 2d at 519. Indeed, the current constitution marked a sea change in Illinois’ approach to local autonomy in that, before, “the balance of power between our state and local governments was heavily weighted toward the state.”

City of Chicago v. Stubhub, Inc., 2011 IL 111127, ¶ 18. The adoption of Illinois' present constitution drastically shifted that balance so that home rule units now enjoy "the broadest powers possible." *Scadron*, 153 Ill. 2d at 174.

Section 7 of the Statute on Statutes promises that restrictions on home rule powers are narrowly construed:

No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit, pursuant to paragraph[] . . . (i) . . . of [S]ection 6 . . . unless there is *specific* language limiting or denying the power or function and the language *specifically* sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.

5 ILCS 70/7 (emphasis added).

PSEBA was enacted in 1997. Pub. Act 90-535 (eff. Nov. 14, 1997) (adding 820 ILCS 320/1 *et seq.*). And so, its home rule limitation must contain specific statutory language identifying in what manner and to what extent it restricts the City's right to legislate. See 5 ILCS 70/7; 820 ILCS 320/20.

This Court applies a two-part test to evaluate whether a home rule enactment is constitutional. *Palm*, 2013 IL 110505, ¶ 35.² Under this test, the first query is whether the disputed exercise of home rule power pertains to local government and affairs as required under Section 6(a). *Id.* Next, if the exercise pertains to local government and affairs, the test asks whether the legislature preempted home rule powers in the area. *Id.* When the first part of the test is answered in the affirmative

² In *Palm*, this Court explained that *StubHub* revised the test from three to two prongs. *Palm*, 2013 IL 110505, ¶¶ 35-36; *Souza v. City of West Chicago*, 2021 IL App (2d) 200047, ¶¶ 55, 61 (acknowledging revision and applying two-part test).

and the second in the negative, home rule units “may exercise and perform concurrently with the State any power or function of a home rule unit.” Ill. Const. 1970, art. VII, § 6(i); *Palm*, 2013 IL 110505, ¶¶ 35-36, quoting *StubHub*, 2011 IL 111127, ¶ 22 n.2.

B. The Definitions Are a Valid Exercise of the City’s Broad Home Rule Authority

Submitting the Ordinance to the two-part test confirms that the definitions constitute a proper exercise of home rule authority. First, PSEBA benefits clearly pertain to local government and affairs because PSEBA benefits are intimately intertwined with the local communities which fund and administer them. Second, while PSEBA partially limits home rule powers by mandating that home rule units “may not provide benefits . . . inconsistent with [PSEBA’s] requirements,” it does not prohibit the City from defining “catastrophic injury” or otherwise adopting definitions that can be reconciled with PSEBA as enacted. 820 ILCS 320/20.

1. PSEBA benefits and the criteria triggering them pertain to the City’s government and affairs

PSEBA benefits pertain to the City’s government and affairs because they compensate for local harm sustained in an inherently local employment relationship and the City is the chief administrator and sole payor of PSEBA benefits. An ordinance pertains to local government and affairs if it addresses local, rather than state or national, problems. *Schillerstrom*, 198 Ill. 2d at 290. No magic formula exists to determine whether a specific issue is of local or statewide dimension. *Id.* Instead, courts apply a flexible test that considers the nature and extent of the

problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and state authorities in addressing it. *Id.*; see also *Blanchard*, 2016 IL 120315, ¶¶ 30-36 (applying same test).

Pedersen v. Village of Hoffman Estates acknowledges that PSEBA benefits pertain to local affairs by establishing that home rule units may enact their own administrative procedures for assessing eligibility for PSEBA benefits. 2014 IL App (1st) 123402, ¶¶ 35-37. Similarly, *Englum v. City of Charleston* reasons that because PSEBA’s “state statutory scheme . . . is not comprehensive” and neglects to provide “any guidance on the proper procedure for seeking section 10 benefits,” even a municipality that is not a home rule entity can “establish[] local procedures to address the statutory gap.” 2017 IL App (4th) 160747, ¶ 72. *Id.* *Englum* emphasizes that the local law under its review “facilitated” and “complemented” PSEBA because it set standards for how the city could satisfy PSEBA’s mandate of paying benefits—a critical point PSEBA leaves unaddressed. *Id.* at ¶ 73.

Here, too, the definitions of “catastrophic injury,” “injury” and “gainful work,” as those terms appear in PSEBA, pertain to the City’s government and affairs for each of the following reasons:

- **The definitions are an integral part of the City’s benefit administration.** As in *Englum*, the City’s definitions belong to a set of standards which the City enacted to assist in its statutorily-mandated administration of PSEBA benefits. For example, all hearings impacting PSEBA benefits are held locally and decided by local officials. Peoria Municipal Code § 2-350(d)&(e); C 12-13 (A 11-12). The State has

no input in selecting hearing officers who preside at administrative hearings awarding PSEBA benefits nor does the State represent either party in such hearings. In Peoria, the corporation counsel, with the advice and consent of the city council, appoints hearing officers to adjudicate hearings on PSEBA benefits subject to criteria set by the Ordinance. *Id.* § 2-350(d)(2); C 13 (A 12).

- **The State has never played a role in benefit eligibility determinations.**

Pension boards that award line-of-duty disability pensions and which, since *Krohe*, control firefighters' eligibility for PSEBA benefits, are selected at the local level. See 40 ILCS 5/4-121. The Illinois Pension Code dictates that the board of trustees of the City's firefighters' pension fund consists of two trustees appointed by the mayor (who was elected by the local citizens), two active fund participants elected by their peers (currently employed by the City) and one local annuitant firefighter (who retired from working for the City). *Id.*; 40 ILCS 5/4-110 (Pension Code provision governing line-of-duty disability pensions for firefighters). So, while the State promises PSEBA benefits, benefit eligibility has historically been locally decided by local pension boards and hearing officers and without state involvement. See, *e.g.*, *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 5.

- **Benefits are wholly funded by local governments.** The City alone pays for PSEBA benefits through local taxes paid by Peoria residents and levied by Peoria's city council. See 820 ILCS 320/10(a). The State pays nothing. In fact, state statute fails to establish a funding mechanism for PSEBA benefits. Local taxpayers are left to pay the entire tab.

- **Benefits compensate for local harm.** Firefighters work locally and are injured locally. Most City firefighters reside in the City pursuant to residency requirements in locally-negotiated labor contracts.³ As such, the harm, which PSEBA benefits are designed to compensate for, is local. Benefits are predominantly enjoyed locally, as recipients live, thrive and spend money in the City.

- **The employment relationship giving rise to benefits is local.** Firefighters' terms of employment are predominantly subject to local control as the City hires firefighters under local guidelines, the City pays the firefighters, and locally negotiated collective bargaining agreements control firefighters' employment. No uniform statewide practice governs the local hiring and employment of firefighters.

³ The City requests that the Court take judicial notice of the collective bargaining agreements between the parties which are published on the City's website and, as such, fall within the category of "readily verifiable" facts capable of instant and unquestionable demonstration for which judicial notice is appropriate. *Cordrey v. Prisoner Review Board*, 2014 IL 117155, ¶ 12; see also *Aurora Loan Services v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37 ("An appellate court may take judicial notice of readily verifiable facts if doing so will aid in the efficient disposition of a case, even if judicial notice was not sought in the trial court.") The City posts current and prior labor contracts with the Union on its human resources website at <http://www.peoriagov.org/human-resources/> (last visited June 28, 2021). Each of the three collective bargaining agreements that have been in place for the past decade contain a residency requirement in article 12. See http://www.peoriagov.org/content/uploads/2012/10/Fire-Contract-Local-50_1515450756_add.pdf (current contract) (last visited June 28, 2021); http://www.peoriagov.org/content/uploads/2012/10/Firefighter-contract-2013-thru-2016_1393278260_add.pdf (2013-2016 contract) (last visited June 28, 2021); http://www.peoriagov.org/content/uploads/2012/10/Firefighter_Contract_2011_2012_1383602230_add.pdf (2011-2012 contract) (last visited June 28, 2021).

As demonstrated, the City is directly involved in myriad facets of PSEBA and, as such, PSEBA benefits clearly constitute City business.

2. **The General Assembly did not preempt the City's power to legislate on PSEBA benefits because the definitions in the Ordinance are not inconsistent with—and, indeed, co-exist symbiotically with—PSEBA's text**

PSEBA's home rule limitation does not forbid local legislation on PSEBA benefits as long as benefits are provided consistent with statutory requirements. The Ordinance's definitions are permissible because they fill gaps in PSEBA's framework without curtailing benefits promised by the statute's text.

PSEBA's restriction on home rule power reads as follows:

Home rule. An employer, including a home rule unit, that employs a full-time . . . firefighter may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act. This Act is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise of powers and functions exercised by the State.

820 ILCS 320/20.

While PSEBA's home rule preemption expressly recognizes that the City may legislate concurrently with the General Assembly on PSEBA matters, it also prohibits the City from offering benefits "in a manner inconsistent with the requirements of this Act." *Id.* Critically, the restriction that concurrent home rule must comply with "requirements of this Act" refers to the Ordinance complying with PSEBA's express statutory language. The phrase "requirements of this Act" does not extend to judicial gloss such as *Krohe's* definition of "catastrophic injury,"

because, as discussed,⁴ the Illinois Constitution and the Statute on Statutes require *the General Assembly* to be specific in preempting home rule “by law” and with “language [that] specifically sets forth in what manner and to what extent” the General Assembly denies home rule. Ill. Const. 1970, art. VII, § 6(i); 5 ILCS 70/7. Put differently, both the constitution’s home rule article and Section 7 of the Statute on Statutes mandate that the express and specific preemption occur by way of statutory language and not judicial interpretations.

Specifically, Section 6(i) permits only “[t]he General Assembly by law” to “specifically limit the concurrent exercise [of home rule].” Ill. Const. 1970, art. VII, § 6(i). And Section 7 requires that any “law enacted” after January 12, 1977, which limits home rule “under . . . [Section 6(i), to include] . . . [(1)] specific language limiting or denying the power or function and . . . [(2)] language specifically set[ing] forth in what manner and to what extent [the enacted law] is a limitation on or denial of the power or function of a home rule unit.” 5 ILCS 70/7. *Krohe* simply is not an example of “the General Assembly [acting] by law.” Ill. Const. 1970, art. VII, § 6(i). Nor is it a “law enacted.” 5 ILCS 70/7.

PSEBA and the Ordinance are a model of mutualism; no inconsistency concerning benefits exists to justify preemption. See 820 ILCS 320/20. PSEBA promises certain health insurance benefits and establishes a framework within which home rule units may legislate to dispense those benefits. For example, home rule

⁴ part III, A, *supra*.

units may set procedures to assess whether a firefighter qualifies for PSEBA benefits. *Pedersen*, 2014 IL App (1st) 123402, ¶ 37; see *Englum*, 2017 IL App (4th) 160747, ¶¶ 72-73 (non-home rule municipalities have the same power). Likewise, the City may establish definitions for the terms “catastrophic injury” and “injury” if such definitions can reasonably co-exist within PSEBA’s plain text. The definitions set forth in the Ordinance can be reconciled with the text of PSEBA. Indeed, the definitions exist in symbiosis with PSEBA because the City must render benefit eligibility determinations, and a clear definition of “catastrophic injury” is necessary to perform that task.

The meanings of “catastrophic injury” and “injury” bear on a firefighter’s right to benefits under the statutory framework. 820 ILCS 320/10. Specifically, PSEBA requires the City to pay health insurance premiums for any firefighter, as well as the firefighter’s spouse and dependent children, if that firefighter suffers a catastrophic injury. 820 ILCS 320/10(a). Eligibility for this benefit is triggered only where “the injury. . . occurred as the result of . . . the . . . firefighter’s response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act.” 820 ILCS 320/10(b). PSEBA does not otherwise define “catastrophic injury” or “injury.”

The Ordinance defines “catastrophic injury” as “[a]n injury the direct and proximate consequences of which permanently prevent an individual from performing . . . [f]ull- or part-time activity that actually is compensated or commonly is compensated,” which mimics the definition of “catastrophic injury” in PSEBA’s

federal analog. Compare Peoria Municipal Code § 2-350(b); C 11 (A 10), with 34 U.S.C.S. § 10284(1). The Ordinance also defines “injury” as

[a] traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, but does not include:

- (1) Any occupational disease; or
- (2) Any condition of the body caused or occasioned by stress or strain.

Id. § 2-350(b); C 11 (A 10).

A hearing officer charged with making an eligibility determination can—and must—apply the Ordinance’s definitions concurrently with PSEBA’s directive that awards be limited to firefighters injured as a result of responding to a reasonably perceived emergency, unlawful act or while investigating a crime. *Id.* § 2-350(b)-(e); C 11-13 (A 10-12). Thus, the criteria for qualifying for PSEBA benefits in Peoria emanate from both the Ordinance’s definitions and PSEBA. So, to qualify for PSEBA benefits, a City firefighter must show that he suffered an injury that:

- occurred as a result of responding to what he reasonably believed to be an emergency, another’s unlawful act or during the investigation of a crime,
- permanently prevents him from performing full- or part-time activity that is actually or commonly compensated, and
- is a traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic

conditions, infectious disease, radiation, virus, or bacteria, [short of] occupational disease or a condition of the body caused or occasioned by stress or strain. Peoria Municipal Code § 2-350(b); C 11 (A 10); 820 ILCS 320/10; C 15-16 (A 14-15).

This three-factor test made up of requirements from the Ordinance and PSEBA demonstrates that the Ordinance and PSEBA co-exist in harmony. To be sure, the Ordinance dictates that PSEBA's terms be integrated into the City's adjudication of benefits. For example, the Ordinance warrants that "[a]ll benefits provided employees pursuant to the Public Safety Employee Benefits Act (Act) will be consistent with the Act." Peoria Municipal Code § 2-350(a) C 11 (A 10). An application for PSEBA benefits in Peoria must include the applicant's explanation of how the injury resulted from response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another or participation during the investigation of criminal acts, all factors derived from PSEBA. Compare *Id.* § 2-350(c)(2)(B); C 11 (A 10), with 820 ILCS 320/10(b); C 16 (A 15). The City's hearing officer must determine the application's merit "based on the evidence presented at the hearing," at which time the applicant can prove up PSEBA factors alleged in the application. Peoria Municipal Code § 2-350(d)(1)(h); C 12-13 (A 11-12). Moreover, if the hearing officer deems the applicant eligible, the benefits "shall be consistent with the [PSEBA]." *Id.* § 2-350(e); C 13 (A 12).

In essence, PSEBA erects a basic framework which compels municipalities to pay firefighters' health insurance premiums and grants catastrophically injured firefighters insurance premiums paid by the public. But the framework is so

elemental that it demands supplementation. *Englum* confirmed precisely that when it described PSEBA as so “not comprehensive,” that it requires local laws “to address [its] statutory gap.” *Englum*, 2017 IL App (4th) 160747, ¶ 72.

Because PSEBA does not define what constitutes a catastrophic injury, the term invites expounding. Nowhere did the legislature express an intention to preempt a home rule unit from defining that term if it does so in harmony with PSEBA. Where neither PSEBA nor any other state law determines how the City is to pay for or administer the unfunded, mandated benefits, much is left to the City to decide on its own.

Schillerstrom is apposite. There, a developer sued the City of Naperville asking the court to direct the city to approve a plat. *Schillerstrom*, 198 Ill. 2d at 283-86. A state statute and an ordinance both required Naperville to approve a final plat within 60 days. *Id.* at 288-89. While the statute and ordinance established the same requirement, their remedies diverged; the statute specifically established damages for a municipality’s willful failure to approve a final plat but the ordinance provided no remedy. *Id.*

Schillerstrom explored Naperville’s home rule powers by juxtaposing the developer’s contention that the ordinance operated concurrently with a state statute providing remedies with Naperville’s argument that its ordinance’s silence on remedies precluded the developer from recovering damages. *Id.* at 290-93. The developer won. This Court held that the ordinance and the state statute could co-

exist, and the statute’s specificity “simply fill[ed] a gap” in the ordinance’s framework. *Id.* at 293. Specifically, this Court reasoned that

the ordinance [] remains silent about what happens if the City allows the 60-day approval period to pass without a decision on the plat. The statute simply fills that gap by providing a recourse to stalled developers. The ordinance complements the statute; it does not limit *sub silencio* statutory remedies.

Id. at 293.

Schillerstrom applies the *in pari materia* doctrine of legislative construction commanding that two legislative acts on the same subject must, if possible, be construed harmoniously. *Id.* Accordingly, both the local ordinance and its more specific analog, the state statute, were given effect. *Id.*

Likewise, here, it is possible—and, thus, constitutionally compulsory—to construe PSEBA and the Ordinance in harmony. See Peoria Municipal Code § 2-350(b); C 11 (A 10); 820 ILCS 320/10; C 15-16 (A 14-15). The definitions complement PSEBA by defining terms undefined by the statute but crucial to its enforcement without disturbing benefits offered by PSEBA’s plain text. This Court should follow *Schillerstrom* and give full effect to the definitions because they fill a gap in PSEBA.

If the *Krohe* Court could define “catastrophic injury” in 2003 then why can the City not do so now? The appellate court’s reasoning hinges on a “first in time, first in right” principle which is misplaced here because it violates the constitutional command that home rule units have broad powers to legislate on local matters unless specifically limited by the General Assembly.

C. Krohe and Its Progeny Are Distinguishable because They Did Not Involve Home Rule Legislation Defining “Catastrophic Injury”

The City does not challenge *Krohe*. But *Krohe* is distinguishable on its facts. In *Krohe*—and in the many cases applying it—no legislative body had passed a law to define “catastrophic injury.” See *Krohe*, 204 Ill. 2d at 395-99.

This is a case of first impression because the City exercised its constitutional home rule power to define “catastrophic injury” as used in PSEBA. *Krohe* is silent on what would happen if a home rule unit enacted a definition, because it only addressed where one had not done so. In holding that *Krohe*’s definition of “catastrophic injury” preempts the Ordinance’s, the appellate court stretched *Krohe* to speak on a situation not before it, where, as here, a home rule unit, properly acted to supply a definition. In doing so, the appellate court profoundly misconstrued *Krohe*’s ruling.

D. The Appellate Court’s Holding that Krohe Supersedes the Definition Enacted by Ordinance Flouts the Constitution’s Explicit Reservation that Only the General Assembly “By Law” Can Preempt Home Rule

As discussed, Section 6 decrees that home rule powers can be limited only as provided in the text of Section 6 or by the General Assembly’s preemption of local power “by law.” Ill. Const. 1970, art. VII, § 6. Indeed, Section 6 makes at least seven references to the General Assembly’s right to expand or constrict home rule authority—each time emphasizing that the state legislature can do so only “by law.” *Id.* § 6(e), (g), (h), (i), (j), (k) & (l). PSEBA specifies that its limitation on home rule arises under Section 6(i), which decrees that home rule units and the State generally

share concurrent jurisdiction over local government and affairs and so permits State preemption only where “the General Assembly *by law* . . . specifically limit[s] the concurrent exercise” of home rule authority. 820 ILCS 320/20; Ill. Const. 1970, art. VII, § 6(i) (emphasis added).

The constitution’s insistence that *the General Assembly* must act “by law” highlights that home rule cannot be preempted by legislative *inaction*—that is, the General Assembly’s failure to pass a law in response to a judicial decision. But that is precisely what happened in the lower courts. Despite the patent constitutional reservation that only the General Assembly by law may preempt home rule, the appellate court held that a judicial construction of a state statute preempts home rule simply because the General Assembly “never amended [the statute] in response to [the judicial opinion].” *International Ass’n of Fire Fighters Local 50 v. City of Peoria*, 2021 IL App (3d) 190758, ¶ 12 (A 6).

The appellate court’s reasoning elevates a canon of statutory interpretation designed to glean meaning from legislative inaction in response to a judicial opinion over express constitutional mandate that the General Assembly must act “by law” to restrict home rule. The lower court’s analysis also ignores the constitution’s express default rule that the “[p]owers and functions of home rule units shall be construed liberally.” Ill. Const. 1970, art. VII, § 6(i). Because a canon of constitutional construction cannot trump clear constitutional text, reversal is warranted.

E. The Appellate Court's Analysis Also Violates Case Law Eschewing Judicial Preemption

This Court's home rule jurisprudence admonishes that limiting home rule powers is for the General Assembly alone. *E.g., Village of Bolingbrook*, 158 Ill. 2d at 141 ("The courts of this State have consistently refused to find implied preemption of home rule powers.") *Roman* explained that, "the 1970 Constitutional Convention was strongly opposed to judicial preemption" and courts should step in to bar home rule enactments only where the enactment clearly flouts a statute or "where vital state interests should be sacrificed by permitting the local legislation to prevail until the next session of the General Assembly." *Roman*, 184 Ill. 2d at 518. So where the General Assembly has declined to enact language expressly and specifically curtailing home rule authority, this Court has warned against "usurp[ing] a function accorded to the General Assembly by the Constitution." *Village of Bolingbrook*, 158 Ill. 2d at 142-43.

When stressing its distaste for preempting home rule "by judicial interpretation of unexpressed legislative intention," this Court frequently quotes Professor David Baum who served as counsel to the Committee on Local Government at the Sixth Illinois Constitutional Convention. *E.g., Palm*, 2013 IL 110505, ¶ 34, quoting David C. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict*, 1972 U. Ill. L.F. 559, 571. Professor Baum's writings underscore that the Illinois Constitution's home rule provisions are unique in that they place "almost exclusive

reliance on the legislature rather than the courts to keep home rule units in line.” *Palm*, 2013 IL 110505, ¶ 34. Accordingly, “[i]f the constitutional design is to be respected, the courts should step in to compensate for legislative inaction or oversight *only in the clearest cases of oppression, injustice, or interference by local ordinances with vital state policies.*” *Id.* (emphasis in original), quoting David C. Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. Ill. L.F. 137, 157.

For example, *Village of Bolingbrook v. Citizens Utilities Co.* reversed the lower courts’ misguided judicial preemption of home rule. 158 Ill. 2d 133 (1994). This Court’s exacting analysis of the Public Utilities Act’s language revealed that the General Assembly did not act with the specificity Section 6 demands. *Id.* at 142-143. Therefore, this Court declined to preempt local law and so “usurp a function accorded to the General Assembly by the Constitution.” *Id.*

PSEBA is incomplete because it neglects to define terms, such as “catastrophic injury,” which are crucial to the statute’s administration. That omission was the catalyst for *Krohe* where this Court had to formulate a definition for “catastrophic injury” based on ambiguous statutory text. *Krohe* held that a catastrophic injury occurred where a firefighter receives a line-of-duty disability pension under the Illinois Pension Code. *Krohe*, 204 Ill. 2d at 394. *Krohe*’s definition of “catastrophic injury” was necessary at the time that case was decided. And it remains applicable when no legislative body acting within its authority has

filled the definitional void of explaining what makes an injury catastrophic. See, *e.g.*, *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 28.

However, the moment the City defined catastrophic injury, the City exercised its constitutional lawmaking authority to fill in the framework outlined in PSEBA. And because the City’s authority to define the terms is co-extensive with that of the legislature so long as benefits are consistent with PSEBA’s text, the Ordinance’s definitions supersede *Krohe’s*. Put another way, *Krohe’s* definition cannot trump the City’s definitions lest this Court condone precisely the kind of judicial preemption that it has consistently cautioned against and which the Illinois Constitution plainly prohibits. *E.g.*, *Roman*, 184 Ill. 2d at 518-20. The Union cannot credibly argue that the Ordinance produces a clear case of “oppression, injustice” or “interference with a vital state policy”—the type of emergency needed to justify the judicial preemption of home rule authority. *Palm*, 2013 IL 110505, ¶ 34.

F. The Separation of Powers Doctrine Also Commands that the City’s Definitions Must Supplant Judicially-Crafted Alternatives

Principles guaranteeing separation of powers, equally, demand that the City’s legislative definition of “catastrophic injury” replaces *Krohe’s*. In other words, the General Assembly cannot constitutionally delegate to the courts its exclusive authority to preempt home rule. The Constitution’s separation of powers clause decrees that “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.” Ill. Const. 1970, art. II, § 1.

This appeal involves two functions which the Illinois Constitution deems legislative: (1) the power to preempt home rule, and (2) the power to pass laws. First, the power to preempt concurrent home rule—which PSEBA’s home rule limitation explicitly invokes—resides expressly with “the General Assembly [acting] by law.” Ill. Const. 1970, art. VII, § 6(i); see 820 ILCS 320/20. Second, the power to pass laws clearly resides with legislative bodies. *Fergus v. Marks*, 321 Ill. 510, 514 (1926). This is especially true for laws which set criteria for awarding public benefits. See 820 ILCS 320/10; see *Lawrie v. Department of Public Aid*, 72 Ill. 2d 335, 348 (1978) (“[I]t is not the function of this court to second guess the wisdom of the legislature or the state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.”)

Here, the General Assembly chose to forgo defining the terms “catastrophic injury” and “injury.” Yet, nowhere in its statutes did the legislature expressly state its intent to limit, deny or preempt the City’s power to define those terms or otherwise legislate on PSEBA matters so long as firefighters do not receive benefits “in a manner inconsistent with the requirements of [PSEBA].” 820 ILCS 320/20. Moreover, what type of an injury qualifies as sufficiently catastrophic to warrant health benefits is at heart a legislative concern which should be resolved by the General Assembly. Because the General Assembly declined to provide specifics, the City is free to define “catastrophic injury” with the caveat that it may not grant benefits inconsistent with benefits promised by the General Assembly through PSEBA. To be sure, courts cannot disregard valid ordinances. *E.g., Scadron*, 153

Ill. 2d at 174 (trial court lacked authority to impose a lower sentence than the minimum sentence prescribed by ordinance).

The decisions below used a judicial definition to displace the Ordinance's legislative definitions. C 311 (A 6, 8); *International Ass'n of Fire Fighters*, 2021 IL App (3d) 190758, ¶ 12 (A 6). In doing so, the courts blocked legitimate home rule definitions and usurped a function reserved for a legislative body. Separation of powers principles require that, because the City legislated within the scope of its constitutional authority, the definitions render moot alternatives created by courts.

CONCLUSION

The City respectfully requests that this Court reverse the circuit court's grant of summary judgment for the Union. This Court should declare that the Ordinance and its definitions constitute a valid exercise of the City's constitutional home rule powers because promulgating the definitions is City business and the definitions are consistent with PSEBA's text and, as such, trump prior judicial definitions.

Respectfully submitted,

/s/ Esther J. Seitz

Esther J. Seitz
HINSHAW & CULBERTSON, LLP
400 South Ninth Street, Suite 200
Springfield, IL 62701
217-528-7375
eseitz@hinshawlaw.com

Attorney for Defendant-Appellant

Dated: June 30, 2021

CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages or words contained in the Rule 34(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

/s/ Esther J. Seitz

APPENDIX

E-FILED
6/30/2021 4:31 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

TABLE OF CONTENTS TO THE APPENDIX

Table of Contents to the Appendix	A1
<i>International Ass'n of Fire Fighters, Local 50 v. City of Peoria,</i> 2021 IL App (3d) 190758	A2-A7
Circuit Court's Final Judgment Order filed November 14, 2019.....	A8-A9
Section 2-350 of the Peoria Code of Ordinances	A10-A13
820 ILCS 320/ Public Safety Employee Benefits Act.....	A14-A20
Notice of Appeal filed December 10, 2019	A21-A22
Table of Contents to the Record on Appeal.....	A23-A25

2021 IL App (3d) 190758

Opinion filed February 1, 2021

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2021

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 50,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-19-0758
)	Circuit No. 18-MR-439
THE CITY OF PEORIA, a Municipal Corporation,)	
Defendant-Appellant.)	Honorable Mark E. Gilles, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court, with opinion.
Presiding Justice McDade and Justice Lytton concurred in the judgment and opinion.

OPINION

¶ 1 The defendant, the City of Peoria (City), appeals from a grant of summary judgment in favor of the plaintiff, the International Association of Fire Fighters, Local 50 (Union), in a declaratory judgment action challenging the definitions in a City ordinance.

¶ 2 **FACTS**

¶ 3 The Public Safety Employee Benefits Act (Act) (820 ILCS 320/1 *et seq.* (West 2018)) provides that a city must pay “the entire premium of [its] health insurance plan” for a full-time firefighter, the firefighter’s spouse, and the firefighter’s dependents if the firefighter suffers a

catastrophic injury or is killed in the line of duty. 820 ILCS 320/10(a) (West 2018). The Act does not define the terms “injury” or “catastrophic injury.”

¶ 4 The City passed an ordinance on June 12, 2018, amending section 2-350 of the Peoria City Code. Peoria Ordinance No. 17584 (approved June 12, 2018). The ordinance amended the application procedures for those seeking the Act benefits in the City, and it also defined terms used but not defined in section 10 of the Act, specifically defining “injury,” “gainful work,” and “catastrophic injury.” Peoria City Code § 2-350(b) (amended June 12, 2018). “Catastrophic injury” is defined as “[a]n injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.” *Id.* “Gainful work” is defined as “[f]ull- or part-time activity that actually is compensated or commonly is compensated.” *Id.* “Injury” is defined as:

“A traumatic physical wound *** directly and proximately caused by external force ***, chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, but does not include:

- (1) Any occupational disease; or
- (2) Any condition of the body caused or occasioned by stress or strain.” *Id.*

¶ 5 After the City passed the ordinance, the Union filed a complaint seeking a declaratory judgment that the definitions were not consistent with the Act. The City responded that the definitions did not violate or contradict the Act, and the City had the power to define those terms pursuant to its home rule authority. The parties filed cross-motions for summary judgment. The circuit court held that the Union had associational standing and granted summary judgment in favor of the Union. The circuit court held that the terms “catastrophic injury” and “injury” as used in Act were “not ambiguous when considering the full text of [section 10] along with the [j]udicial

opinions construing and defining those terms.” Thus, the circuit court ruled that the City’s definitions of “catastrophic injury” and “injury” were invalid, null and void, and struck the definition of “gainful work” as superfluous. The City appealed.

¶ 6

ANALYSIS

¶ 7

The City argues that establishing the definitions constituted a permissible exercise of the City’s home rule authority and that the definitions did not contradict the statutory text of the Act. The Union contends that the term “catastrophic injury” as used in section 10 of the Act was judicially defined in 2003 as synonymous with an injury resulting in a line-of-duty disability pension. See *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003). The Union argues that the City’s attempt to redefine “catastrophic injury” and “injury” and to add a “gainful work” requirement was inconsistent with the Act. The Union contends that the City’s home rule authority did not give it the power to redefine those terms. We review *de novo* orders granting summary judgment. *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505, ¶ 28.

¶ 8

Section 10 of the Act, titled “Required health coverage benefits,” states:

“(a) An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who, on or after the effective date of this Act suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer’s health insurance plan for the injured employee, the injured employee’s spouse, and for each dependent child of the injured employee ***. ***

* * *

(b) In order for the law enforcement, correctional or correctional probation officer, firefighter, spouse, or dependent children to be eligible for insurance coverage under this Act, the injury or death must have occurred as the result of the officer’s response to fresh

pursuit, the officer or firefighter’s response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act.” 820 ILCS 320/10(a)-(b) (West 2018).

¶ 9 In *Krohe*, the Illinois Supreme Court found that the phrase “catastrophic injury” as used in section 10(a) of the Act was ambiguous. *Krohe*, 204 Ill. 2d at 397. In *Krohe*, a firefighter who had been awarded a line-of-duty disability pension brought a declaratory judgment action seeking to have the city pay his and his family’s health insurance premiums pursuant to section 10(a) of the Act. *Id.* at 394. The city declined to pay, arguing that the firefighter did not have a “catastrophic injury” as required by section 10(a) of the Act. *Id.* at 396. The court found that, while the statute was facially ambiguous, the legislative history was unambiguous, and the court ruled that the legislative intent was for the phrase “catastrophic injury” in section 10(a) of the Act to be synonymous with an injury resulting in a line-of-duty disability under section 4-110 of the Illinois Pension Code (Code) (40 ILCS 5/4-110 (West 2018)). *Krohe*, 204 Ill. 2d at 400.

¶ 10 The City seeks to distinguish *Krohe* on the basis that the City is a home rule municipality, and it passed its ordinance under its home rule authority. The City contends that its definition should trump the judicial interpretation in *Krohe*.

¶ 11 The City had the authority as a home rule unit to adopt procedures for determining claims under the Act. *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402. However, as specifically provided in section 20 of the Act, “[a]n employer, including a home rule unit, that employs a full-time law enforcement, correctional or correctional probation officer, or firefighter may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act.” 820 ILCS 320/20 (West 2018). The court in *Pedersen* distinguished the procedural requirements that the home rule unit could exercise concurrent control over the

substantive requirements of the Act. *Pedersen*, 2014 IL App (1st) 123402, ¶ 37; see also *Englum v. City of Charleston*, 2017 IL App (4th) 160747, ¶ 55; *Esser v. City of Peoria*, 2019 IL App (3d) 180702, ¶ 13 (city’s designation as high deductible plan as its “basic” plan under the Act was not inconsistent with procedures of the Act). The City, pursuant to its home rule authority and in accordance with section 20 of the Act, could define an administrative procedure for determining benefits under the Act, but it could not redefine the Act’s substantive terms to the extent that the City would provide benefits inconsistent with the Act.

¶ 12 After the Illinois Supreme Court has construed a state statute, “ ‘that construction becomes, in effect, a part of the statute and any change in interpretation can be effected by the General Assembly if it desires so to do.’ ” *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 19 (quoting *Mitchell v. Mahin*, 51 Ill. 2d 452, 456 (1972)). Pursuant to *Krohe*, “a pension board’s award of a line-of-duty disability pension establishes [as a matter of law] that the public safety employee suffered a catastrophic injury as required by section 10(a) of [the Act].” *Id.* ¶ 25. The Act was never amended in response to *Krohe*. Thus, if a firefighter is injured and awarded line-on-duty disability, he has a catastrophic injury pursuant to section 10(a) of the Act. We conclude that the City’s definitions of “catastrophic injury,” “injury,” and “gainful work” were inconsistent with the substantive requirements of the Act, and the ordinance was not a valid exercise of home rule authority.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Peoria County is affirmed.

¶ 15 Affirmed.

No. 3-19-0758

Cite as: *International Ass'n of Fire Fighters, Local 50 v. City of Peoria*,
2021 IL App (3d) 190758

Decision Under Review: Appeal from the Circuit Court of Peoria County, No. 18-MR-439;
the Hon. Mark E. Gilles, Judge, presiding.

**Attorneys
for
Appellant:** Esther J. Seitz, of Hinshaw & Culbertson LLP, of Springfield, for
appellant.

**Attorneys
for
Appellee:** Thomas W. Duda and Scott Moran, of Palatine, and Jerry
L. Marzullo and Joseph E. Weishampel,
of Puchalski Goodloe Marzullo, LLP, of Northbrook, for
appellee.

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY**

Filed
Robert M. Spears
November 14, 2019

IAFF Local 50,

Plaintiff,

Ò\^ \ [~-c@ Ôã&´ æÔ[´\c Ú^ [ãæÓ[´] c ÊÇã [ã

v.

Case No.: 18-MR-00439

City of Peoria, a municipal corporation
Defendant.

ORDER

This cause coming before the Court on October 17th, 2019 for hearing on Motions for Summary Judgment filed on behalf of both Plaintiff and Defendant on August 16th, 2019; the Court having considered all written pleadings, as well as arguments of Counsel, and being fully advised in the premises;

THE COURT HEREBY FINDS:

- 1. That this Declaratory Judgment action is ripe for adjudication.**
- 2. That Plaintiff, International Association of Fire Fighters, Local 50 has “associational” standing.**
- 3. That the meanings of the terms “catastrophic injury” and “injury” as used in 820 ILCS 320/10(a) and (b) are not ambiguous when considering the full text of those sections along with Judicial opinions construing and defining those terms.**
- 4. That the City of Peoria does not have the home Rule authority to redefine the terms “catastrophic injury” and “injury” as it has in Peoria, IL Code of Ordinances Sec. 2-350.**

THE COURT HEREBY ORDERS:

- A. That DEFENDANT’S MOTION FOR SUMMARY JUDGMENT is DENIED.**
- B. That PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT is GRANTED.**
- C. That the definitions of “catastrophic injury” and “injury” contained in Peoria, IL Code of Ordinances Sec. 2-350 enacted June 12, 2018, are invalid, null, and void.**

D. That, considering the provisions of Paragraph C. above, the definition of “gainful work” as contained in Peoria, IL Code of Ordinances Sec. 2-350 enacted June 12, 2018 shall be struck as surplusage.

E. That Plaintiff is entitled to a Judgment for its costs incurred herein.

ENTERED: 11/14/2019



JUDGE OF THE TENTH JUDICIAL CIRCUIT

Sec. 2-350. - Public Safety Employee Benefits Act.

(a) *Purpose.* The purpose of this section is to provide a fair and efficient method of determining the eligibility of a full-time employee for the benefits enumerated under the Public Safety Employee Benefits Act (820 ILCS 320/1 et seq.) through the process of initial evaluation of eligibility by the city's human resources department and administrative hearing when necessary. All benefits provided employees pursuant to the Public Safety Employee Benefits Act (Act) will be consistent with the Act.

(b) *Definitions.* For the purpose of this section, the following terms will have the following meanings:

Basic group health insurance plan. The city's high-deductible health insurance plan is designated as the basic group health insurance plan.

Catastrophic injury. An injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work.

Gainful work. Full- or part-time activity that actually is compensated or commonly is compensated.

Injury. A traumatic physical wound (or a traumatized physical condition of the body) directly and proximately caused by external force (such as bullets, explosives, sharp instruments, blunt objects, or physical blows), chemicals, electricity, climatic conditions, infectious disease, radiation, virus, or bacteria, but does not include:

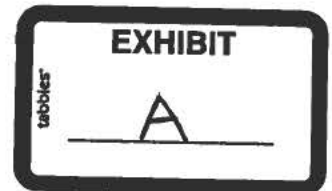
- (1) Any occupational disease; or
- (2) Any condition of the body caused or occasioned by stress or strain.

(c) *Application procedure.* As noted by the court in *Pedersen*, "the Act, however, does not provide any guidance on the proper procedure for seeking [PSEBA] benefits." ¶ 37. This section and the application procedure of this section establishes guidance on the proper procedure for public safety officers seeking PSEBA benefits in the city.

(1) Public safety officers, or family member(s) of an injured or deceased public safety officer, ("applicant") must file a full and complete PSEBA application in writing on a form provided by the human resources department, within 30 days of the granting of a line-of-duty disability pension or within 30 days of the date of the adoption of this section in the event that an applicant has filed for a PSEBA claim prior to the date of adoption of this section, whichever is later, if the applicant is seeking benefits under PSEBA. The city shall notify applicant if the PSEBA application is incomplete and applicant shall have five days to remedy their application. Failure to timely file the full and complete application shall result in a forfeiture of the benefits under PSEBA by failure to properly submit a complete application.

(2) A complete PSEBA application includes the following:

- a. The name of the applicant, date of hire, detailed information regarding the incident, including information relating to how the injury was sustained in the line of duty (date, time, place, nature of injury, and other factual circumstances surrounding the incident giving rise to said claim);
- b. The applicant's firsthand knowledge explaining, to the city's satisfaction, how the injury/death directly resulted from:
 - 1. Response to fresh pursuit;
 - 2. Response to what is reasonably believed to be an emergency;
 - 3. Response to an unlawful act perpetrated by another; or
 - 4. Participation during the investigation of a criminal act;
- c. A signed PSEBA medical authorization release which authorizes the collection of information related



- to the incident including, but not limited to, disability pension proceedings, worker's compensation records, and medical records and specifies the name and address for pertinent health care provider(s);
- d. A signed PSEBA general information release specifying the name and signature of the applicant or her/his authorized representative along with legal proof of said representation and name and signature of witness authorizing the collection of information pertinent to the incident review process;
 - e. The name(s) of witnesses to the incident;
 - f. The name(s) of witnesses the applicant intends to call at the PSEBA hearing;
 - g. Information and supporting pension documentation filed with the appropriate pension board;
 - h. Information supporting the PSEBA eligibility requirements; and
 - i. All sources of health insurance benefits currently enrolled in or received by the applicant and/or family members if the applicant is deceased.
- (3) The PSEBA application must be submitted to the human resources department in its entirety.
 - (4) The PSEBA application must be sworn and notarized to certify the truthfulness of the content of the information. A review of the application shall not occur until the application is complete.
 - (5) On the date that the PSEBA application is deemed complete by the city, the completed application shall then be submitted to the city as the preliminary record, and a copy of the same shall be date stamped and provided to the applicant.
 - (6) Upon receipt of a complete application for PSEBA benefits, the city shall set the matter for an administrative hearing before a hearing officer to make a determination on whether to grant the applicant PSEBA benefits based on the result of the administrative hearing.
 - (7) The applicant will be given written notice of the date for the scheduled administrative hearing to be served not less than ten days prior to the commencement of the hearing. If the applicant, upon receiving written notice of the administrative hearing, cannot attend said date, the applicant must contact the hearing officer in writing within seven days after being served. The hearing officer shall establish an alternative hearing date which is within 30 days of the original hearing date. Failure to appear at the administrative hearing shall result in denial of PSEBA benefits.
- (d) *Administrative composition.* The administrative hearing shall be scheduled and conducted by a hearing officer whose authority and limitations are as follows:
- (1) *Authority of the hearing officer.* The hearing officer shall have all of the authorities granted to her/him under common law relative to the conduct of an administrative hearing, including the authority to:
 - a. Conduct a hearing in a formal setting;
 - b. Preside over city hearings involving PSEBA;
 - c. Administer oaths;
 - d. Hear testimony and accept evidence that is relevant to the issue of eligibility under PSEBA;
 - e. Issue subpoenas to secure attendance of witnesses and the production of relevant papers or documents upon the request of the parties or their representatives;
 - f. Rule upon objections in the admissibility of evidence;
 - g. Preserve and authenticate the record of the hearing and all exhibits in evidence introduced at the hearing; and
 - h. Issue a determination based on the evidence presented at the hearing, the determination of which

shall be in writing and shall include a written finding of fact, decision and order.

- (2) *Hearing officer.* The corporation counsel, with the advice and consent of the city council, is hereby authorized to appoint a person to hold the position of hearing officer for each hearing on PSEBA benefits that shall come before this city. In making said selection, the following information should be considered, at a minimum:
- a. The individual's ability to comply with the job description as set forth herein; and
 - b. The individual must be an attorney licensed to practice law in the State of Illinois and have knowledge of and experience in employment and labor law, general civil procedure, the rules of evidence, and administrative practice.
- (e) *Administrative hearing.* The system of administrative hearings for the determination of eligibility for benefits under PSEBA shall be initiated either by the city or by the applicant after the submission of a full and complete PSEBA application. An administrative hearing shall be held to adjudicate and determine whether the applicant is eligible for benefits under PSEBA. If the applicant is found eligible, the benefits shall be consistent with the Act.
- (1) *Time and date.* Pursuant to subsection (c)(7), the applicant will be given written notice of the date for the scheduled administrative hearing to be served not less than ten days prior to the commencement of the hearing. If the applicant, upon receiving written notice of the administrative hearing, cannot attend said date, the applicant must contact the hearing officer in writing within seven days after being served. The hearing officer shall establish an alternative hearing date which is within 30 days of the original hearing date. Failure to appear at the administrative hearing shall result in denial of PSEBA benefits.
 - (2) *Record.* The city shall ensure that all hearings are attended by a certified court reporter and a transcript of all proceedings shall be made by said certified court reporter.
 - (3) *Procedures.* The city and the applicant shall be entitled to representation by counsel at said administrative hearing with each party bearing his/her own cost of counsel, and may present witnesses, testimony and documents, may cross-examine opposing witnesses, and may request the issuance of subpoenas to compel the appearance of relevant witnesses or the production of relevant documents.
 - (4) *Evidence.* The Illinois Rules of Evidence shall apply to the extent practicable unless, by such application, the hearing officer determines that application of the rule would be an injustice or preclude the introduction of evidence of the type commonly relied upon by a reasonably prudent person in the conduct of her or his affairs. Such determination shall be in the sole discretion of the hearing officer. The hearing officer must state on the record her or his reason for that determination.
 - (5) *Final determination.* A written determination by the hearing officer of whether the petitioning applicant is eligible for the benefits under PSEBA shall constitute a final administrative determination for the purpose of judicial review under the common law writ of certiorari.
 - (6) *Burden of proof.* At any administrative hearing, the applicant shall have the obligation and burden of proof to establish that the applicant is eligible and qualified to receive PSEBA benefits. The standard of proof in all hearings conducted under this section shall be by the preponderance of the evidence.
 - (7) *Administrative records.* All records pertaining to the administrative process shall be held in a separate file under the applicant's name with the city.
- (f) *Health insurance benefits.*
- (1) If the administrative hearing officer awards PSEBA benefits, the basic group health insurance plan, designated as the city's high-deductible health insurance plan, will be offered. The city's basic group health insurance plan may change from time to time. If the applicant chooses to enroll in a plan available

in the city other than the basic group health insurance plan, then the applicant must pay any difference in insurance premiums between the city's basic group health insurance plan and that of another plan on a monthly basis, due by the 15th of each month in which coverage is effective. Failure to pay said premium by the 15th of the month in which coverage is effective, may result in cancellation of the health insurance plan.

- (2) Individuals receiving benefits under PSEBA will only be able to change from one plan to another during the city's open enrollment period.

(g) *Other health insurance benefits.*

- (1) Health insurance benefits payable from any other sources will reduce the benefits payable from the city. Each applicant will be required to sign an affidavit attesting to the fact that he/she is not eligible for insurance benefits from any other sources.
- (2) It is the responsibility of the benefit recipient to notify the city within 30 days of any changes to other sources of health insurance benefits. Receipt of benefits in violation of this provision will require reimbursement to the city of any benefits received. The city reserves the right on an annual basis to have the benefit recipient provide another affidavit affirming whether other health insurance is available or payable to the applicant, his/her spouse and/or his/her qualifying dependent children.
- (3) The applicant is also required to notify the city when the applicant becomes Medicare eligible so the city can assist with the transition to Medicare cover and/or adjust health insurance benefits accordingly.

(Ord. No. 15532, § 1, 9-23-03; Ord. No. 16984, § 1, 6-25-13; Ord. No. 17462, § 1, 4-25-17; Ord. No. 17584, § 1, 6-12-18)

Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as [Public Acts](#) soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the [Guide](#).

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

EMPLOYMENT**(820 ILCS 320/) Public Safety Employee Benefits Act.**

(820 ILCS 320/1)

Sec. 1. Short title. This Act may be cited as the Public Safety Employee Benefits Act.

(Source: P.A. 90-535, eff. 11-14-97.)

(820 ILCS 320/3)

Sec. 3. Definition. For the purposes of this Act, the term "firefighter" includes, without limitation, a licensed emergency medical technician (EMT) who is a sworn member of a public fire department.

(Source: P.A. 93-569, eff. 8-20-03.)

(820 ILCS 320/5)

Sec. 5. Declaration of State interest. The General Assembly determines and declares that the provisions of this Act fulfill an important State interest.

(Source: P.A. 90-535, eff. 11-14-97.)

(820 ILCS 320/10)

Sec. 10. Required health coverage benefits.

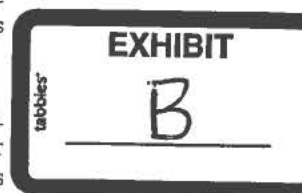
(a) An employer who employs a full-time law enforcement, correctional or correctional probation officer, or firefighter, who, on or after the effective date of this Act suffers a catastrophic injury or is killed in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support or the child is a full-time or part-time student and is dependent for support. The term "health insurance plan" does not include supplemental benefits that are not part of the basic group health insurance plan. If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for the surviving spouse until remarried and for the dependent children under the conditions established in this Section. However:

(1) Health insurance benefits payable from any other source shall reduce benefits payable under this Section.

(2) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided under this Section. A violation of this item is a Class A misdemeanor.

(3) Upon conviction for a violation described in item (2), a law enforcement, correctional or correctional probation officer, or other beneficiary who receives or seeks to receive health insurance benefits under this Section shall forfeit the right to receive health insurance

A014



benefits and shall reimburse the employer for all benefits paid due to the fraud or other prohibited activity. For purposes of this item, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(b) In order for the law enforcement, correctional or correctional probation officer, firefighter, spouse, or dependent children to be eligible for insurance coverage under this Act, the injury or death must have occurred as the result of the officer's response to fresh pursuit, the officer or firefighter's response to what is reasonably believed to be an emergency, an unlawful act perpetrated by another, or during the investigation of a criminal act. Nothing in this Section shall be construed to limit health insurance coverage or pension benefits for which the officer, firefighter, spouse, or dependent children may otherwise be eligible.
(Source: P.A. 90-535, eff. 11-14-97.)

(820 ILCS 320/15)

Sec. 15. Required educational benefits. If a firefighter, law enforcement, or correctional or correctional probation officer is accidentally or unlawfully and intentionally killed as specified in subsection (b) of Section 10 on or after July 1, 1980, the State shall waive certain educational expenses which children of the deceased incur while obtaining a vocational-technical certificate or an undergraduate education at a State supported institution. The amount waived by the State shall be an amount equal to the cost of tuition and matriculation and registration fees for a total of 120 credit hours. The child may attend a State vocational-technical school, a public community college, or a State university. The child may attend any or all of the institutions specified in this Section, on either a full-time or part-time basis. The benefits provided under this Section shall continue to the child until the child's 25th birthday.

(1) Upon failure of any child benefited by the provisions of this Section to comply with the ordinary and minimum requirements of the institution attended, both as to discipline and scholarship, the benefits shall be withdrawn as to the child and no further moneys may be expended for the child's benefits so long as the failure or delinquency continues.

(2) Only a student in good standing in his or her respective institution may receive the benefits under this Section.

(3) A child receiving benefits under this Section must be enrolled according to the customary rules and requirements of the institution attended.
(Source: P.A. 92-651, eff. 7-11-02.)

(820 ILCS 320/17)

Sec. 17. Reporting forms.

(a) A person who qualified for benefits under subsections (a) and (b) of Section 10 of this Act (hereinafter referred to as "PSEBA recipient") shall be required to file a form with his or her employer as prescribed in this Section. The Commission on Government Forecasting and Accountability (COGFA) shall use the form created in this Act and prescribe the content of the report in cooperation with one statewide labor organization representing police, one statewide law enforcement organization, one statewide labor organization representing firefighters employed by at least 100 municipalities in this State that is affiliated with the Illinois State Federation of Labor, one statewide labor organization representing correctional officers

and parole agents that is affiliated with the Illinois State Federation of Labor, one statewide organization representing municipalities, and one regional organization representing municipalities. COGFA may accept comment from any source, but shall not be required to solicit public comment. Within 60 days after the effective date of this amendatory Act of the 98th General Assembly, COGFA shall remit a copy of the form contained in this subsection to all employers subject to this Act and shall make a copy available on its website.

"PSEBA RECIPIENT REPORTING FORM:

Under Section 17 of the Public Safety Employee Benefits Act (820 ILCS 320/17), the Commission on Government Forecasting and Accountability (COGFA) is charged with creating and submitting a report to the Governor and the General Assembly setting forth information regarding recipients and benefits payable under the Public Safety Employee Benefits Act (Act). The Act requires employers providing PSEBA benefits to distribute this form to any former peace officer, firefighter, or correctional officer currently in receipt of PSEBA benefits.

The responses to the questions below will be used by COGFA to compile information regarding the PSEBA benefit for its report. The Act prohibits the release of any personal information concerning the PSEBA recipient and exempts the reported information from the requirements of the Freedom of Information Act (FOIA).

The Act requires the PSEBA recipient to complete this form and submit it to the employer providing PSEBA benefits within 60 days of receipt. If the PSEBA recipient fails to submit this form within 60 days of receipt, the employer is required to notify the PSEBA recipient of non-compliance and provide an additional 30 days to submit the required form. Failure to submit the form in a timely manner will result in the PSEBA recipient incurring responsibility for reimbursing the employer for premiums paid during the period the form is due and not filed.

- (1) PSEBA recipient's name:
- (2) PSEBA recipient's date of birth:
- (3) Name of the employer providing PSEBA benefits:
- (4) Date the PSEBA benefit first became payable:
- (5) What was the medical diagnosis of the injury that qualified you for the PSEBA benefit?
- (6) Are you currently employed with compensation?
- (7) If so, what is the name(s) of your current employer(s)?
- (8) Are you or your spouse enrolled in a health insurance plan provided by your current employer or another source?
- (9) Have you or your spouse been offered or provided access to health insurance from your current employer(s)?

If you answered yes to question 8 or 9, please provide the name of the employer, the name of the insurance provider(s), and a general description of the type(s) of insurance offered (HMO, PPO, HSA, etc.):

- (10) Are you or your spouse enrolled in a health insurance plan provided by a current employer of your spouse?
- (11) Have you or your spouse been offered or provided access to health insurance provided by a current employer of your spouse?

If you answered yes to question 10 or 11, please provide the name of the employer, the name of the insurance provider, and a general description of the type of insurance offered (HMO, PPO, HSA, etc.) by an employer of your spouse:"

COGFA shall notify an employer of its obligation to notify any PSEBA recipient receiving benefits under this Act of that recipient's obligation to file a report under this Section. A PSEBA recipient receiving benefits under this Act must complete and return this form to the employer within 60 days of receipt of such form. Any PSEBA recipient who has been given notice as provided under this Section and who fails to timely file a report under this Section within 60 days after receipt of this form shall be notified by the employer that he or she has 30 days to submit the report or risk incurring the cost of his or her benefits provided under this Act. An employer may seek reimbursement for premium payments for a PSEBA recipient who fails to file this report with the employer 30 days after receiving this notice. The PSEBA recipient is responsible for reimbursing the employer for premiums paid during the period the report is due and not filed. Employers shall return this form to COGFA within 30 days after receiving the form from the PSEBA recipient.

Any information collected by the employer under this Section shall be exempt from the requirements of the Freedom of Information Act except for data collected in the aggregate that does not reveal any personal information concerning the PSEBA recipient.

By July 1 of every even-numbered year, beginning in 2016, employers subject to this Act must send the form contained in this subsection to all PSEBA recipients eligible for benefits under this Act. The PSEBA recipient must complete and return this form by September 1 of that year. Any PSEBA recipient who has been given notice as provided under this Section and who fails to timely file a completed form under this Section within 60 days after receipt of this form shall be notified by the employer that he or she has 30 days to submit the form or risk incurring the costs of his or her benefits provided under this Act. The PSEBA recipient is responsible for reimbursing the employer for premiums paid during the period the report is due and not filed. The employer shall resume premium payments upon receipt of the completed form. Employers shall return this form to COGFA within 30 days after receiving the form from the PSEBA recipient.

(b) An employer subject to this Act shall complete and file the form contained in this subsection.

"EMPLOYER SUBJECT TO PSEBA REPORTING FORM:

Under Section 17 of the Public Safety Employee Benefits Act (820 ILCS 320/17), the Commission on Government Forecasting and Accountability (COGFA) is charged with creating and submitting a report to the Governor and General Assembly setting forth information regarding recipients and benefits payable under the Public Safety Employee Benefits Act (Act).

The responses to the questions below will be used by COGFA to compile information regarding the PSEBA benefit for its report.

The Act requires all employers subject to the PSEBA Act to submit the following information within 120 days after receipt of this form.

- (1) Name of the employer:

(2) The number of PSEBA benefit applications filed under the Act during the reporting period provided in the aggregate and listed individually by name of applicant and date of application:

(3) The number of PSEBA benefits and names of PSEBA recipients receiving benefits awarded under the Act during the reporting period provided in the aggregate and listed individually by name of applicant and date of application:

(4) The cost of the health insurance premiums paid due to PSEBA benefits awarded under the Act during the reporting period provided in the aggregate and listed individually by name of PSEBA recipient:

(5) The number of PSEBA benefit applications filed under the Act since the inception of the Act provided in the aggregate and listed individually by name of applicant and date of application:

(6) The number of PSEBA benefits awarded under the Act since the inception of the Act provided in the aggregate and listed individually by name of applicant and date of application:

(7) The cost of health insurance premiums paid due to PSEBA benefits awarded under the Act since the inception of the Act provided in the aggregate and listed individually by name of PSEBA recipient:

(8) The current annual cost of health insurance premiums paid for PSEBA benefits awarded under the Act provided in the aggregate and listed individually by name of PSEBA recipient:

(9) The annual cost of health insurance premiums paid for PSEBA benefits awarded under the Act listed by year since the inception of the Act provided in annual aggregate amounts and listed individually by name of PSEBA recipient:

(10) A description of health insurance benefit levels currently provided by the employer to the PSEBA recipient:

(11) The total cost of the monthly health insurance premium currently provided to the PSEBA recipient:

(12) The other costs of the health insurance benefit currently provided to the PSEBA recipient including, but not limited to:

(i) the co-pay requirements of the health insurance policy provided to the PSEBA recipient;

(ii) the out-of-pocket deductibles of the health insurance policy provided to the PSEBA recipient;

(iii) any pharmaceutical benefits and co-pays provided in the insurance policy; and

(iv) any policy limits of the health insurance policy provided to the PSEBA recipient."

An employer covered under this Act shall file copies of the PSEBA Recipient Reporting Form and the Employer Subject to the PSEBA Act Reporting Form with COGFA within 120 days after receipt of the Employer Subject to the PSEBA Act Reporting Form.

The first form filed with COGFA under this Section shall contain all information required by this Section. All forms filed by the employer thereafter shall set forth the required information for the 24-month period ending on June 30 preceding the deadline date for filing the report.

Whenever possible, communication between COGFA and employers as required by this Act shall be through electronic means.

(c) For the purpose of creating the report required under subsection (d), upon receipt of each PSEBA Benefit Recipient Form, or as soon as reasonably practicable, COGFA shall make a determination of whether the PSEBA benefit recipient or the PSEBA benefit recipient's spouse meets one of the following criteria:

(1) the PSEBA benefit recipient or the PSEBA benefit recipient's spouse is receiving health insurance from a current employer, a current employer of his or her spouse, or another source;

(2) the PSEBA benefit recipient or the PSEBA benefit recipient's spouse has been offered or provided access to health insurance from a current employer or employers.

If one or both of the criteria are met, COGFA shall make the following determinations of the associated costs and benefit levels of health insurance provided or offered to the PSEBA benefit recipient or the PSEBA benefit recipient's spouse:

(A) a description of health insurance benefit levels offered to or received by the PSEBA benefit recipient or the PSEBA benefit recipient's spouse from a current employer or a current employer of the PSEBA benefit recipient's spouse;

(B) the monthly premium cost of health insurance benefits offered to or received by the PSEBA benefit recipient or the PSEBA benefit recipient's spouse from a current employer or a current employer of the PSEBA benefit recipient's spouse including, but not limited to:

(i) the total monthly cost of the health insurance premium;

(ii) the monthly amount of the health insurance premium to be paid by the employer;

(iii) the monthly amount of the health insurance premium to be paid by the PSEBA benefit recipient or the PSEBA benefit recipient's spouse;

(iv) the co-pay requirements of the health insurance policy;

(v) the out-of-pocket deductibles of the health insurance policy;

(vi) any pharmaceutical benefits and co-pays provided in the insurance policy;

(vii) any policy limits of the health insurance policy.

COGFA shall summarize the related costs and benefit levels of health insurance provided or available to the PSEBA benefit recipient or the PSEBA benefit recipient's spouse and contrast the results to the cost and benefit levels of health insurance currently provided by the employer subject to this Act. This information shall be included in the report required in subsection (d).

(d) By June 1, 2014, and by January 1 of every odd-numbered year thereafter beginning in 2017, COGFA shall submit a report to the Governor and the General Assembly setting forth the information received under subsections (a) and (b). The report shall aggregate data in such a way as to not reveal the identity of any single beneficiary. The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, Minority Leader, and Clerk of the House of Representatives, the President, Minority Leader, and Secretary of the Senate, the Legislative Research Unit as required under Section 3.1 of the General Assembly Organization Act, and the State Government Report Distribution Center for the General Assembly as required under paragraph (t) of Section 7 of

the State Library Act. COGFA shall make this report available electronically on a publicly accessible website.

(Source: P.A. 98-561, eff. 8-27-13; 99-239, eff. 8-3-15.)

(820 ILCS 320/20)

Sec. 20. Home rule. An employer, including a home rule unit, that employs a full-time law enforcement, correctional or correctional probation officer, or firefighter may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act. This Act is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise of powers and functions exercised by the State.

(Source: P.A. 90-535, eff. 11-14-97.)

(820 ILCS 320/95)

Sec. 95. (Amendatory provisions; text omitted).

(Source: P.A. 90-535, eff. 11-14-97; text omitted.)

(820 ILCS 320/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

(Source: P.A. 90-535, eff. 11-14-97.)

**APPEAL TO THE ILLINOIS THIRD DISTRICT APPELLATE COURT
FROM THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
PEORIA COUNTY, ILLINOIS**

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 50,)	
)	
Plaintiff-Appellee,)	Case No. 18-MR-00439
)	
v.)	
)	
CITY OF PEORIA, a Municipal Corporation,)	
)	
Defendant-Appellant.)	

NOTICE OF APPEAL

Defendant-Appellant, the CITY OF PEORIA, a Municipal Corporation, by its attorney, Esther J. Seitz of Hinshaw & Culbertson LLP, appeals to the Illinois Third District Appellate Court under Illinois Supreme Court Rule 303. In support, Defendant-Appellant states as follows:

1. Defendant-Appellant appeals the order of November 14, 2019 entered by the Circuit Court of Peoria County, which denied Defendant-Appellant’s Motion for Summary Judgment and granted Plaintiff-Appellee’s Motion for Summary Judgment.
2. By this appeal, Defendant-Appellant will ask the Third District Appellate Court to reverse the order from November 14, 2019 and order that summary judgment be granted in Defendant-Appellant’s favor.

Dated: December 10, 2019

CITY OF PEORIA, a Municipal Corporation,
Defendant-Appellant

By: HINSHAW & CULBERTSON LLP

By: /s/ Esther J. Seitz
Esther J. Seitz
One of Its Attorneys

Esther J. Seitz 6292239
 eseitz@hinshawlaw.com
 Hinshaw & Culbertson LLP
 400 South Ninth Street
 Suite 200
 Springfield, IL 62701
 Phone: 217-528-7375
 Fax: 217-528-0075

CERTIFICATE OF SERVICE

Under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, I hereby certify that on December 10, 2019, I caused to be electronically filed with the Peoria County Circuit Court Clerk via the Odyssey eFileIL™ system a true and correct copy of the foregoing. I further certify that on December 10, 2019, I caused service of the foregoing document to be made via email to the following counsel of record:

Jerry Marzullo
 Joseph Weishampel
 Puschalski Goodloe Marzullo, LLP
 2100 Sanders Road, Suite 110
 Northbrook, IL 60062
jmarzullo@pgm-law.com

Thomas W. Duda
 Law Offices of Thomas W. Duda
 330 West Colfax Street
 Palatine, IL 60067
christina@zipduda.com

Kenneth M. Snodgrass, Jr.
 Kevin O. Sheahan
 Hasselberg Grebe Snodgrass
 Urban & Wentworth
 401 Main Street, Suite 1400
 Peoria, IL 61602-2321
ksnodgrass@hgsuw.com
ksheahan@hgsuw.com

/s/ Kathleen Benner
 Kathleen Benner

TABLE OF CONTENTS TO THE RECORD ON APPEAL

Certification of Record by Clerk of the Circuit Court	C1
Index to Record on Appeal.....	C2-C3
Complaint for Declaratory Judgment filed 7/23/18	C4-C21
30 Day Summons issued 11/20/18	C22-C24
Corporation Return of Service filed 12/07/18.....	C25-C28
Continuance Order for 2-26-19 at 1:15 pm filed 12/17/18.....	C29
Entry of Appearance (on Behalf Of City Of Peoria) filed 12/28/18	C30-C31
Appearance as Co-Counsel IAFF Local 50/Thomas Duda filed 2/08/19	C32
Notice of Filing of Appearance as Co-Counsel IAFF Local 50/Thomas Duda filed 2/08/19	C33-C34
Case Management Conference Order for 4-9-19 at 1:15 pm filed 2/26/19	C35
Answer of City of Peoria filed 3/27/19	C36-C45
Case Management Conference Order for 5-20-19 at 1:15 pm filed 4/09/19	C46
Case Management Conference Order for 7-9-19 at 1:15 pm filed 5/20/19	C47
Notice - Service of Discovery Documents by City of Peoria filed 7/02/19	C48-C49
Order - Agreed filed 7/10/19	C50
Notice of Service of Agreed Order filed 7/10/19.....	C51-C53
Plaintiff IAFF Local 50's Motion for Summary Judgment and Brief In Support of Motion for Summary Judgment filed 8/16/19	C54-C90
Exhibit 1	C91-C108

Exhibit 2.....	C109-C118
Notice of Filing of Plaintiff IAFF Local 50's Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment filed 8/16/19	C119-C120
Defendant City of Peoria's Motion for Summary Judgment filed 8/16/19	C121-C152
Defendant City of Peoria's Response to Plaintiff's Motion for Summary Judgment filed 9/13/19	C153-C184
Plaintiff IAFF Local 50's Response to Defendant's Motion for Summary Judgment filed 9/13/19	C185-C224
Notice of Filing of Plaintiff's Response to Motion for Summary Judgment filed 9/13/19	C225-C226
Exhibit 1 to Plaintiff's Reply Brief filed 9/27/19	C227-C228
Exhibit 2 to Plaintiff's Reply Brief filed 9/27/19	C229
Notice of Filing of Plaintiff's Reply Brief in Support of Its Motion For Summary Judgment filed 9/27/19	C230-C231
Plaintiff's Reply Brief in Support of Its Motion for Summary Judgment filed 9/27/19	C232-C257
Exhibit 1 to Plaintiff's Reply Brief filed 9/27/19	C258-C259
Exhibit 2 to Plaintiff's Reply Brief filed 9/27/19	C260
Notice of Filing of Plaintiff's Amended Reply Brief filed 9/27/19	C261-C262
Plaintiff's Amended Reply Brief in Support of Its Motion for Summary Judgment filed 9/27/19	C263-C289
Defendant's Response to Plaintiff's Motion for Summary Judgment filed 9/27/19	C290-C310
Order - Defendant's Motion is Denied, Plaintiff's Motion is Granted filed 11/14/19	C311-C312
Entry of Appearance of Esther Seitz on behalf of the City of Peoria filed 12/10/19	C313-C314

Notice of Appeal of the City of Peoria filed 12/10/19C315-C316

Notice to Prepare Record by the City of Peoria filed 12/16/19C317

Blank Order.....C318

Blank Order.....C319

Blank Order.....C320

Order filed 1/15/20 that Transcript Prepared by Deanna Gabbert is
Deemed Official Record For 10-17-19 HearingC321

CERTIFICATE OF SERVICE

I, Esther J. Seitz, attorney for Defendant-Appellant, hereby certify that I caused to be electronically filed and served the foregoing Brief of Defendant-Appellant with the Clerk of the Supreme Court of Illinois, and that I caused one copy to be served on the attorneys listed below via email on June 30, 2021:

Jerry Marzullo
Joseph Weishampel
Puschalski Goodloe Marzullo, LLP
2100 Sanders Road, Suite 110
Northbrook, IL 60062
jmarzullo@pgm-law.com

Thomas W. Duda
Law Offices of Thomas W. Duda
330 West Colfax Street
Palatine, IL 60067
christina@zipduda.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Esther J. Seitz
Esther J. Seitz

E-FILED
6/30/2021 4:31 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK