No. 127040

IN THE
SUPREME COURT OF ILLINOIS

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 50, Plaintiff-Appellee, v. THE CITY OF PEORIA, a Municipal Corporation, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-19-0758 On Appeal from the Circuit Court of Peoria County, Illinois, No. 18-MR-00439 The Honorable Mark E. Gilles, Judge Presiding

ASSOCIATED FIREFIGHTERS OF ILLINOIS AND ILLINOIS AFL-CIO'S *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF-APPELLEE

Margaret Angelucci
Amanda Clark
Matt Pierce
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson, Suite 720
Chicago, Illinois 60606
312.263.1500 (phone)
maa@ulaw.com
arc@ulaw.com
mjp@ulaw.com

Attorneys for Amici Curiae
AFFI and Illinois AFL-CIO

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Carolyn Taft Grosboll
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INTEREST OF *AMICI CURIAE*

The Associated Firefighters of Illinois ("AFFI") serves as the Illinois state labor association of the International Association of Firefighters. The AFFI has approximately 224 associated member unions, representing firefighters, emergency medical technicians and paramedics all across the state of Illinois. All affiliated unions are engaged as the exclusive bargaining representatives of firefighters, emergency medical technicians and paramedics employed by municipalities or fire protection districts in the state of Illinois. The AFFI supports its affiliated unions and their members in matters that may impact their eligibility for benefits under the Public Safety Employee Benefits Act, 820 ILCS 320/1 *et seq.* ("PSEBA"). The firefighters, emergency medical technicians and paramedics represented by the AFFI associated member unions, are employees entitled PSEBA benefits.

The Illinois State Federation of Labor and Congress of Industrial Organizations ("Illinois AFL-CIO") is the statewide organization chartered to represent the interests of its more than 1,600 local union affiliates and their approximately 900,000 members. This organization is affiliated with international unions which represent employees in a wide variety of private and public sector jobs throughout the State of Illinois, including firefighters, paramedics, law enforcement officers, and other public safety employees. Each of Illinois AFL-CIO's affiliated unions exists to support and protect not only the wages and benefits of their members, but also the health, safety, and quality of life for those workers and their families.

One of the missions of the Illinois AFL-CIO is to provide a unified voice for labor in Illinois. To that end, the organization and its affiliates have strongly supported legislative

efforts that protect the health, safety, and well-being of their members and their families, and of the general public. One such legislative effort resulted in the passage of PSEBA, which provides for continuing health coverage and educational benefits for public safety employees and their families when a public safety employee is killed or catastrophically injured in the line of duty.

The attempts of Defendant-Appellant City of Peoria to change the manner in which benefits are awarded under PSEBA at the local level, which are at issue in this case, involve fundamental issues relating to the benefits guaranteed to firefighters, police officers, and other public safety employees when they agree to provide emergency response services, often at a cost to their own personal safety and overall health. The resolution of this case is of utmost concern to the AFFI, the Illinois AFL-CIO, their constituent unions, and their members, as public safety employees' statutory interests and rights to receive PSEBA benefits are directly at issue in this litigation. Further, if the arguments advanced by the Appellant were to be accepted by this Court, it would lead to an unprecedented shift in the balance of governmental powers in the State of Illinois, as well as a severe limitation both on the General Assembly's ability to pass statewide public safety legislation, and on this Court's ability to interpret and apply state laws. The AFFI and Illinois AFL-CIO request leave to address the allegations raised by Plaintiff-Appellant and the amicus briefs filed in support of Plaintiff-Appellant regarding the potential impact if the lower courts' decisions are reversed.

ARGUMENT

I. This Court's Prior Construction of PSEBA's Statutory Language Became Part of the Statute, and the General Assembly Has Not Chosen to Overrule This Court's Interpretation by Amending PSEBA

A. PSEBA Incorporates This Court's Statutory Construction from *Krohe*

The issue presented to the Court for determination in this case is whether the lower courts erred in holding that an ordinance adopted by Defendant-Appellant, the City of Peoria ("the City") – which explicitly sought to create new and different definitions for terms found in PSEBA and construed by this Court, in order to narrow the eligibility of employees to receive benefits under PSEBA – was an invalid use of the City's home rule authority. Despite the lengthy briefing submitted by the parties and the *amici*, most of this case can be decided on a single, fairly straightforward question: When the Illinois Supreme Court interprets the statutory language of a state law, does that interpretation become a binding part of the law? If the answer to this question is yes, then the City's PSEBA ordinance is unquestionably invalid, as is any other ordinance adopted by another municipality which seeks to substantively change PSEBA's statutory definitions as construed by this Court.

Luckily, the Supreme Court and the Appellate Court have been faced with this same question on numerous occasions. In every instance, the Courts have answered with a resounding "yes." As the Appellate Court in this case explained: "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.''" *Int'l Ass'n of Fire Fighters, Local 50 v. City of Peoria*, 2021 IL App (3d) 190758, ¶ 12 (quoting *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 19; *Mitchell v. Mahin*, 51 Ill. 2d 452, 456 (1972)).

Courts have long followed this axiom of statutory interpretation, which recognizes the judiciary's essential role in interpreting and construing statutory language in order to give effect to the General Assembly's legislative intent. *See, e.g., Kroger Co. v. Dep't of Revenue,* 284 Ill. App. 3d 473, 480 (1st Dist. 1996) ("A court's construction of a statute is considered part of the statute itself, unless and until the legislature amends it contrary to the interpretation.") (citing *Miller v. Lockett,* 98 Ill.2d 478, 483 (1983)); *Maitzen v. Maitzen,* 24 Ill. App. 2d 32, 37 (1st Dist. 1959) ("When a court or administrative agency construes a statute and that construction is not disturbed by subsequent legislation on the point decided, it is presumed that the court's construction is in harmony with legislative intent.") (citing *Bell v. S. Cook County Mosquito Abatement Dist.,* 3 Ill. 2d 353 (1954); *People ex rel. Spiegel v. Lyons,* 1 Ill. 2d 409 (1953)); *People v. Way,* 2017 IL 120023 ¶ 27 (judicial construction of a statute becomes a part of the law, and the General Assembly is presumed to act with full knowledge of previous judicial decisions).

In *People v. Way,* this Court was facing a similar situation regarding judicial interpretation of a statute and subsequent General Assembly actions. In that case, the matter before this Court was an issue involving the Illinois Vehicle Code. *People v. Way,* 2017 IL 120023. This Court had previously interpreted Section 11-501(d)(1)(C) and (F) of the Vehicle Code as requiring that the physical act of driving be the proximate cause of another's injury or death, not a driver's impairment. 2017 IL 120023 ¶ 26. This Court noted that since its interpretation of those provisions, the General Assembly had amended the statute in question, and even the Section in question, but had not amended the two subsections that the Court had previously interpreted. *Id.* at ¶ 27. This Court stated: "We assume not only that the General Assembly acts with full knowledge of pervious judicial

decisions but also its silence on an issue in the face of those decisions indicates its acquiesce to them." *Id.* (citing *In re Marriage of Mathis*, 2012 IL 113496, ¶ 25; *People v. Villa*, 2011 IL 110777, ¶ 36).

In its brief to this Court, the City fails to address or adequately respond to this well-established point of law. This is fatal to the City's appeal. As adopted in 1997, PSEBA included the term "catastrophic injury" but did not provide an express definition of that term. 820 ILCS 320/10(a). In 2003, the Illinois Supreme Court was asked to interpret and construe this statutory term. In *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003), the Court held that the term "catastrophic injury" in PSEBA was ambiguous, then resolved that ambiguity by concluding: "we construe the phrase 'catastrophic injury' as synonymous with an injury resulting in a line-of-duty disability under section 4–110 of the [Illinois Pension] Code." *Id.* at 400.[1] That construction then became a binding part of the statute, *Heelan*, 2015 IL 118170, ¶ 19, and courts are to presume that the *Krohe* holding is consistent with the General Assembly's legislative intent. *Maitzen*, 24 Ill. App. 2d at 37.

B. The General Assembly Has Chosen Not to Amend PSEBA in Response to *Krohe*, Confirming That This Court Accurately Construed the Legislative Intent Behind PSEBA

If the Supreme Court's interpretation in *Krohe* were in any way inconsistent with the legislature's intent, the General Assembly could have corrected that inconsistency by adopting an amendment to PSEBA that provided a different definition for "catastrophic injury." *See Heelan*, 2015 IL 118170, ¶ 19. The record is clear that PSEBA was never

[1] This Court's conclusion in *Krohe* was based on the clear and unambiguous statements of the Act's sponsors on the floor of the General Assembly as recorded in the official transcripts thereof. *See Advincula v. United Blood Services*, 176 Ill.2d 1, 19 (1996) ("valuable construction aides in interpreting an ambiguous statute are the provision's legislative history and debates, and the purpose and underlying policies.").

amended in response to *Krohe*. *City of Peoria*, 2021 IL App (3d) 190758, ¶ 12. That is not to say that individual legislators have not tried to pass such amendments – numerous bills have been introduced in the General Assembly seeking to legislatively overrule *Krohe*, but none of those bills actually become law.

Since this Court's *Krohe* decision, the General Assembly has not only rejected bills that would have limited the definition of catastrophic injury, but amended the Act to explicitly include emergency medical technicians and paramedics without changing the definition of "catastrophic injury."

In 2008, during the 95th General Assembly, HB 4690 was introduced for first reading on January 30, 2008.[2] HB 4690 attempted to amend PSEBA to add a definition of "catastrophic injury." Under the bill, the proposed definition was "consequences of an injury that permanently prevent an individual from performing any gainful work." *Id*. This definition is nearly identical to that which is in the City's ordinance at issue in this case. HB 4690 never made it out of committee and died *Session Sine Die*.

Two additional attempts were made at amending PSEBA during the 97th General Assembly. In February of 2011, HB 1900 was introduced.[3] This bill again sought to define "catastrophic injury" for the purposes of PSEBA. *Id.* The bill would have defined "catastrophic injury" as "a grievous or serious injury or impairment of a nature that is sufficient to permanently preclude the injured employee from performing any gainful

[2] HB4690, 95th Gen. Assemb., Reg. Sess. (Ill. 2008), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=4690&GAID=9&DocTypeID=HB&LegID=35396&SessionID=51&GA=95 (last accessed Aug. 2, 2021).

[3] HB1900, 97th Gen. Assemb., Reg. Sess. (Ill. 2011), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1900&GAID=11&DocTypeID=HB&LegID=59093&SessionID=84&GA=97 (last accessed Aug. 2, 2021).

work." *Id.* The bill further provided that the final determination of whether an employee had suffered a catastrophic injury "shall be made by the employer's corporate authorities or such person or persons as may be designated by ordinance adopted by the corporate authorities..." *Id.* Again, this bill sought what the City's ordinance and its *amicus* advocate for in this case. Again, this bill never made it out of committee and died *Session Sine Die*.

An identical bill was introduced in the second half of the 97th General Assembly in December of 2011 – HB 3909.[4] The bill had the same result as the identical bill in the 97th General Assembly. It did not make it out of committee and died *Session Sine Die*.

During the 97th General Assembly, SB 2014 was also introduced in the Senate.[5] This bill, as amended, attempted to modify the standard for qualifying for benefits under Section 10(a), from the employee having suffered a catastrophic injury, to the employee or his or her beneficiary being awarded a non-interim benefit under the federal Public Safety Officers' Death Benefits Act. *Id.* The federal Public Safety Officers' Death Benefits Act ("PSODBA") provides benefits to surviving spouses and eligible dependents if a public safety officer suffers a fatal line of duty injury or is permanently disabled. 34 U.S.C. § 10281. "Catastrophic injury" is defined under PSODBA as the individual is no longer able to perform "any gainful work." 34 U.S.C. § 10284(1). Again, SB 2014 sought to codify some of the exact same limitations that the City wants to implement through its ordinance.

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[4] HB3909, 97th Gen. Assemb., Reg. Sess. (Ill. 2013), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3909&GAID=11&DocTypeID=HB&LegID=62698&SessionID=84&GA=97 (last accessed Aug. 2, 2021).

[5] SB2014, 97th Gen. Assemb., Reg. Sess. (Ill. 2011), https://www.ilga.gov/legislation/fulltext.asp?DocName=09700SB2014sam001&GA=97&SessionId=84&DocTypeId=SB&LegID=58157&DocNum=2014&GAID=11&SpecSess=&Session= (last accessed Aug. 2, 2021).

SB 2014, like its counterparts in the House, did not make it out of committee and died *Session Sine Die*.

In the 98th General Assembly, HB 2224 was introduced which proposed amendments to PSEBA.[6] Again, the bill proposed changing the definition of "catastrophic injury." Under that bill, the definition of catastrophic injury would be defined as an injury or impairment of a nature that is "sufficient to permanently preclude the injured employee from performing any gainful work." *Id.* The bill also proposed that the final determination of whether or not an employee is catastrophically injured rest with the corporate authorities, or whoever such authorities would appoint through ordinance. *Id.* Again, this bill sought some of the exact same changes that the City made in its ordinance in this case; and again, HB 2224 did not make it out of committee and died *Session Sine Die*.

Another bill to amend PSEBA was proposed in the 99th General Assembly. HB5786 proposed that catastrophic injury be defined as "an injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work."[7] Once again, the bill proposed a limitation on PSEBA benefits almost identical to those in the City's ordinance in this case. This bill, like its predecessors, did not make it out of committee and died *Session Sine Die*. *Id.*

Another bill was introduced in the 99th General Assembly at the same time as HB 5786 – HB 6095 – that also proposed to define catastrophic injury as "an injury, the direct

[6] HB2224, 98th Gen. Assemb., Reg. Sess. (Ill. 2013), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2224&GAID=12&DocTypeID=HB&LegID=73514&SessionID=85&GA=98 (last accessed Aug. 2, 2021).

[7] HB5786, 99th Gen. Assemb., Reg. Sess. (Ill. 2016), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=5786&GAID=13&DocTypeID=HB&LegID=95249&SessionID=88&GA=99 (last accessed Aug. 2, 2021).

and proximate consequences of which permanently prevent an individual from performing any gainful work."[8] Just as HB 5786 died in committee, so did HB 6095.

In the 100th General Assembly, yet another bill was proposed to amend PSEBA. HB2352 contained the same proposed revision to the definition of catastrophic injury.[9] The bill would define catastrophic injury as "an injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work." *Id.* The bill never made it out of committee and died *Session Sine Die*.

A second bill was introduced in the 100th General Assembly regarding the definition of catastrophic injury under PSEBA – HB 3638. The bill contained language similar to the City's ordinance at issue in this case regarding the definition of "catastrophic injury." HB 3638 also proposed that "catastrophic injury" in PSEBA be defined as "an injury where the direct and proximate consequences of the injury permanently prevent the individual from performing any gainful work." Like all the other attempts at amendment, that bill also died in committee when the General Assembly adjourned in 2019.[10]

Of the nine bills that have been proposed in the General Assembly to limit the definition of "catastrophic injury" since this Court's decision in *Krohe*, none have been successful. In fact, none have even made it out of committee. When these bills were

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[8] HB6095, 99th Gen. Assemb., Reg. Sess. (Ill. 2016), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=6095&GAID=13&DocTypeID=HB&LegID=95625&SessionID=88&GA=99 (last accessed Aug. 2, 2021).

[9] HB2352, 100th Gen. Assemb., Reg. Sess. (Ill. 2017), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2352&GAID=14&DocTypeID=HB&LegID=102969&SessionID=91&GA=100 (last accessed Aug. 2, 2021).

[10] HB3638, 100th Gen. Assemb., Reg. Sess. (Ill. 2017), https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3638&GAID=14&DocTypeID=HB&LegID=105558&SessionID=91&GA=100 (last accessed Aug. 2, 2021).

proposed, the General Assembly is presumed to have known about this Court's decision in *Krohe*, which held that "catastrophic injury" for the purpose of PSEBA benefits was synonymous with a line of duty disability pension award. *People v. Way*, 2017 IL 120023 ¶ 27. However, the General Assembly did not take a single one of these bills to a floor vote, let alone pass one that altered the definition of catastrophic injury as established in *Krohe*.

The City, in this case, seeks from the Court what the legislature has refused to do on at least nine occasions. All bills sought a limitation on the definition of "catastrophic injury" as interpreted by this Court in *Krohe*. The General Assembly rejected each of these attempts for the last eighteen years. There is simply no support for such a change in interpretation in either the language of the statute or the actions of the General Assembly.

This does not mean that the General Assembly has left PSEBA unaltered since this Court's *Krohe* decision. During the 100th General Assembly, the same session during which two of the above bills were proposed, a bill was passed that amended PSEBA. Public Act 101-1132 passed on an override of the then Governor's veto in order to amend PSEBA to include paramedics, emergency medical technicians, emergency medical technician-intermediate, and advanced emergency medical technician employed by a unit of local government. PA 101-1132, 100th Gen. Assemb., Reg. Sess. (Ill. 2017). In the case of the expansion that the General Assembly voted for, it took four total votes of the House and Senate to get the PSEBA amended to cover EMTs. The initial votes to pass the amendment in each chamber were overwhelmingly in favor, in the House: 96 Yeas to 7 Nays; and in the Senate: 49 Yeas to 2 Nays. 100th Gen. Assemb., House Roll Call Vote, HB 127 (Ill. April 27, 2018); 100th Gen. Assemb., Senate Vote HB 127 (Ill. May 22, 2018). Two of those votes required a two-thirds majority of the House and Senate to override the

Governor's veto. The General Assembly has clearly shown through its actions that it has never intended to limit the benefits provided under PSEBA. Rather the General Assembly's only action taken with regard to PSEBA is to clarify that the benefits were to be extended to a broader group of public safety employees. If there were ever any question, the General Assembly clearly can take legislative action to amend statutorily guaranteed benefits. It has not taken those steps to limit the definition of catastrophic injury, and rejected any attempt to do so on multiple occasions.

The City and its *amicus* now seek to have this Court overturn its own precedent to accomplish through the Court what it has failed to gain through legislative action, a limitation and narrowing of the rights of public safety officers to PSEBA benefits. This cannot be allowed. As the General Assembly has not amended PSEBA to overrule *Krohe*, this Court's construction of the statutory language remains a binding part of PSEBA. Notably, the City concedes in its briefing that it is not seeking to overturn or invalidate *Krohe*. (City's Brief, p. 9) ("The City does not challenge *Krohe* but considers it inapplicable because it did not involve home rule legislation."). Because the City does not challenge *Krohe,* it must necessarily accept that *Krohe*'s statutory construction is a part of PSEBA. Accordingly, where PSEBA provides that a home rule municipality like the City "may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act," 820 ILCS 320/20, that means that the City may not provide PSEBA benefits in a manner inconsistent with *Krohe*. There is no question that the City's ordinance is inconsistent with the Supreme Court's decision, and it is therefore an invalid use of home rule authority. This dictates that the Appellate Court's opinion must be affirmed.

II. The City Asks This Court to Relinquish Its Constitutional Authority to Interpret State Laws, in Order to Grant Home Rule Municipalities the Ability to Preempt Any and All State Laws by Ordinance

Rather than directly addressing the well-established rules of law discussed in Section I, above, or expressly seeking to overturn *Krohe*[11] and the 18 years of jurisprudence that followed, the City instead asks this Court to fundamentally alter the balance of powers amongst the branches of government in Illinois, in order to grant home rule cities a new veto power over the Supreme Court. Not only would the outcome proposed by the City be inconsistent with the constitutional separation of powers between courts and the legislature, it would create chaos by allowing individual home rule units to opt out of all state-wide laws, even where the General Assembly has asserted its exclusive authority by including home rule-limiting language in the statute consistent with Article VII, §§ 6(h) and (i) of the Illinois Constitution.

A. The Separation of Powers Doctrine Grants the Courts, and Not Home Rule Municipalities, With the Authority to Interpret State Laws

According to the City and its supporting *amicus curiae*, where a state law includes language pursuant to Section 6(h) and (i) that expressly preempts home rule power by specifically limiting the concurrent exercise of power by home rule units, home rule

[11] The City does attempt to distinguish *Krohe*, but its arguments are unconvincing. The City notes that in *Krohe*, the municipality had not defined "catastrophic injury" via ordinance. (City's Brief, pp. 9, 25). There is no reason to believe that a home rule provision, or its absence, was relevant to this Court's analysis in *Krohe.* 204 Ill. 2d 392-400. This Court has never given an indication that home rule is relevant to the definition of "catastrophic injury." The argument is foreign to the substance of *Krohe*.

Similarly, the City argues that *Krohe's* silence on home rule somehow diminishes that case's relevance. (City's Brief, p. 25). Again, *Krohe* had no reason to address home rule and the Union in this case has never cited it on that issue. Instead, *Krohe* defined "catastrophic injury." *Krohe* is relevant because its controlling definition would be completely obliterated by the City's proposed redefinition. *Krohe* is controlling on the issue it addresses, and other authority addresses home rule.

municipalities are nevertheless free to concurrently legislate and opt out of any provisions of that law that have been construed by the courts. (City's Brief, pp. 8, 18-19; *Amicus Curiae* Brief of IPELRA, pp. 11-13). Under this reading of the law, the Supreme Court would no longer have the final say on how a state-wide statute is to be interpreted and applied, because home rule units would be empowered to subsequently ignore this Court's findings and for all practical purposes overrule this Court. As the City puts it, "If the *Krohe* Court could define 'catastrophic injury' in 2003 then why can the City not do so now?" (City's Brief, p. 24).

The answer to this question is that the constitutional authority to interpret and construe state laws is granted exclusively to the courts. Article II, Section 1 of the Illinois Constitution provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. Art. II, § 1. It is a basic tenet of this system of government that the legislative branch has the power to write the laws, but it is up to the judiciary to interpret those laws and give them meaning. In explaining that it is "the role of the court of last resort" to interpret state laws, this Court has stated:

> While the General Assembly has the power to draft legislation and to amend statutes prospectively if it believes that a judicial interpretation was at odds with its intent, it is the function of the judiciary to determine what the law is and to apply statutes to cases.

Roth v. Yackley, 77 Ill. 2d 423, 429 (1979) (internal citations omitted); *accord People ex rel. Billings v. Bissell*, 19 Ill. 229, 231 (1857) ("To the judiciary is confided the power and the duty of interpreting the laws and the constitution whenever they are judicially presented for consideration. Hence it becomes our duty to determine what is the meaning of the laws

passed by the legislature . . .”). Judicial opinions may not be treated as disposable or advisory.

Although the 1970 Constitution’s home rule provisions were intended to grant more freedom to home rule units to govern their own local affairs, those provisions do not grant home rule municipalities control over the judiciary, nor do they install home rule municipalities as courts of last resort above the Illinois Supreme Court. *See City of Carbondale v. Yehling,* 96 Ill. 2d 495, 502 (1983) (“Article VI of the 1970 Constitution does not contemplate nor does it authorize the exercise of any control over or permit the imposition of a burden on the judicial system by any local entity.”) (quoting *Ampersand, Inc. v. Finley,* 61 Ill. 2d 537, 542 (1975)). If this Court accepts the City’s position, it will effectively be handing over its own constitutional authority to interpret state laws to local authorities, and the holdings of this Court would have to relent to the whims of each and every home rule city, town, and village that decides that it prefers a different interpretation of a state law that includes home rule limiting language. The Court should reject this attempt to upend the separation and balance of governmental powers.

B. The City’s Position Would Allow Home Rule Municipalities to Opt Out of State Laws With Home Rule-Limiting Language

In addition to invading upon this Court’s power to interpret and apply laws, the City’s arguments, if accepted, would also greatly increase the power of home rule units as compared to the General Assembly, in a manner wholly inconsistent with the Illinois Constitution.

There is no question that home rule power is not absolute, and the General Assembly is expressly given the means to take away home rule authority by stating its intention to do so in a state law. *See* Ill. Const. Art. VII, § 6(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."); *id.* § 6(i) (home rule units may only exercise powers concurrently with the General Assembly "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.").

In adopting PSEBA, the General Assembly clearly exercised its right to limit home rule authority through Section 20 of the Act:

> 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**.

820 ILCS 320/20 (emphasis added). The City does not appear to argue that the General Assembly placed no limitation whatsoever on home rule power through PSEBA. Instead, the City claims that this limitation can only be applied to the original text of the Act, and not to any subsequent interpretation or "judicial gloss" construing the Act. (City's Brief, p. 18).

If an express limitation on home rule power like the one found in Section 20 of PSEBA could only apply to the plain text of the law as it was originally adopted, and not to any subsequent interpretation by courts, this would open the door to home rule municipalities excluding themselves from all state-wide statutes, or at least significantly limiting their application, through the adoption of contrary ordinances. According to the City's arguments, any statute with home rule-limiting language would prevent it and other

home rule units from enacting any ordinance that contradicts the original language of the statute in question, as such an ordinance would constitute a prohibited exercise of concurrent governing power. However, any "judicial gloss" coming from a court interpreting any language within the law or defining undefined terms in that statute would be fair game for a home rule unit to reject or opt out of, by enacting an ordinance that contradicts those court decisions.

This would allow home rule units to effectively opt out of the each and every law passed by the General Assembly, despite the inclusion of express statutory language limiting home rule power. And if all 216 of the State's home rule municipalities were to adopt their own different ordinances, the statutory rights of a majority of Illinois's citizens would be at risk.[12]

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[12] In the *amicus curiae* brief filed by the Illinois Public Employer Labor Relations Association ("IPELRA") in support of the City, the IPELRA states that "only" 216 of the 1,300 municipalities in the State of Illinois are home rule units, then concludes: "As a result, this case involves a very small subset of those Illinois public employers who employ firefighters and police officers." (IPELRA *Amicus* Brief, p. 11). This highly misleading statement must be considered in the proper context. While it is true that approximately 216 municipalities are home rule units, nearly all of the largest municipalities in the state are included in this group, since municipalities with a population greater than 25,000 become home rule by default. Ill. Const., Art. VII, § 6(a).

According to the list prepared by the Illinois Municipal League in January 2020, the total population of all home rule municipalities in Illinois, based on 2010 census figures, was roughly 8.1 million. *See Current Home Rule Municipalities*, Illinois Municipal League, dated Jan. 22, 2020, available at https://www.iml.org/file.cfm?key=15986 (last accessed Aug. 2, 2021). Per the 2010 census, the total population of the State of Illinois was roughly 12.8 million. *See QuickFacts Illinois*, U.S. Census Bureau, https://www.census.gov/quickfacts/IL (last accessed Aug. 2, 2021). This means that more than 63 percent of Illinois residents live within a home rule municipality (which does not even include those living within home rule counties). Thus, contrary to the IPELRA's suggestion, this case has the potential to impact the vast majority of people across the State of Illinois – approximately two-thirds of Illinois residents could be subjected to local inconsistencies if home rule units are allowed to overrule the Supreme Court and opt out of all state laws. Clearly, this case is not limited in its application to a very small subset of the state.

An example illustrates the absurdity of the City's position. The Public Construction Bond Act, 30 ILCS 550/0.01 *et seq.* ("PCBA"), provides in relevant part that "[a] county or municipality may not require a cash bond . . . from a builder or developer to guarantee completion of a project improvement when the builder or developer has filed . . . a current, irrevocable letter of credit . . . in an amount equal to or greater than 110% of the amount of the bid on each project improvement." 30 ILCS 550/3(a). The PCBA includes home rule-limiting language that is nearly identical to the language included in PSEBA:

> A home rule county or municipality may not require or maintain cash bonds . . . from builders or developers in a manner inconsistent with this Section. . . . This Section is a denial and limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by a home rule county or municipality of powers and functions exercised by the State.

30 ILCS 550/3(d).

The term "cash bond" is used in the PCBA but not defined in any section of that act. If there were ever any dispute as to the meaning of that term as it is used in this statutory provision, it would be within the province of the courts to construe and interpret this term, as discussed *supra*. However, if the City's arguments in this case were accepted, then even if this Court construed the term "cash bond" and gave it a clear and unambiguous definition (*e.g.*, a bond secured by payment of cash in any currency or denomination), the home rule-limiting language in Section 550/3(d) would only be applied to the text of the statute, and not to this Court's opinion interpreting that term. Accordingly, the City would be free to adopt a local ordinance defining "cash bond," as used in the PCBA, as only referring to bonds that are secured by the payment of U.S. Dollars, and not bonds that are secured by the payment of Euros. The City could then require all builders and developers to submit a bond, secured by the payment of Euros, equal to 300% of the value of the bid for each

construction project, even where the builder submits a letter of credit equal to 110% of the bid as required by the statute. The City could then take the position that its ordinance is a valid use of home rule authority because it is not "contrary to" the initial language of the statute – it is only contrary to the Supreme Court's interpretation of that language. This boundless power of home rule units to opt out of state laws with home rule-limiting language was clearly not intended with the adoption of the 1970 Constitution.

Any review of Illinois statutes reveals that the General Assembly does not provide explicit definitions for every single term used within each statute that it enacts. Such a requirement would be extremely inefficient, making every bill substantially longer and more cumbersome. Further, it would be impossible for the General Assembly to also provide definitions for every term used within those explicit definitions, so there would nonetheless be the potential for ambiguity and disagreement. And every time a court accurately construed a statute, the General Assembly would be required to rewrite and readopt the statute to incorporate the judicial ruling before the statute could be enforced against a home rule unit, which would be highly inefficient.

This is why it must fall to the courts to construe the statutory language used by the General Assembly, whether defined in the statute or not, and give the law its meaning – and to incorporate that construction into the law itself. If the City's arguments are accepted, then home rule units will be able to opt out of any and all state laws simply by targeting those portions of the laws that are either not expressly defined, or have been interpreted by the courts.

III. In Adopting PSEBA, the General Assembly Complied with Article VII, Section 6(i)'s Requirement That Home Rule Power May Only Be Limited "By Law"

Article VII, Section 6(i) of the Illinois Constitution provides that the General Assembly may, "by law," limit the ability of home rule units to concurrently exercise governmental powers. The phrase "by law", as used in this section, requires only an explicit textual limitation on home rule power, and the General Assembly included such a limitation in this case. The City relies on this "by law" language to argue that home rule power cannot be limited when the General Assembly limits home rule power, but this Court defines the term that sets the limit. (City's Brief, pp. 18-19, 25-26). This is erroneous. "By law" does not constrict the State government in this way. Instead, this language simply means that the General Assembly must invoke section 6(i) (or another relevant subsection) and state how the home rule unit's power is limited within the body of the statute seeking to limit home rule power. In *Scadron v. City of Des Plaines*, 153 Ill. 2d 164 (1992), this Court held that a limitation must be specific and clear to be valid. *Id.* at 186-88. The decision in *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281 (2001), similarly required specific language. *Id.* at 287-88. Each of those cases focused on the specific limiting language used.

Here, the General Assembly accomplished the specificity required. Section 20 of PSEBA provides that a home rule unit may not "provide benefits . . . inconsistent with the requirements of" PSEBA, and then specifically invokes Section 6(i): "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. This language is clear in what a home rule unit may not do: provide benefits inconsistent

with PSEBA's requirements. The phrase "by law" does not require the General Assembly to do more. Additionally, as discussed in Section I, *supra*, under *Heelan*, the judicial definition of "catastrophic injury" in *Krohe* is one of the requirements of PSEBA. Those requirements are not restrained to the text at the time a law was passed.

The City's "by law" argument has absurd implications. Under this theory, when a judicial opinion resolves an ambiguity, that is not a limitation "by law" on home rule units. Even when the home rule limitation is clear, and the judicial opinion decisive, the City's "by law" argument would demand the onerous pass-the-judicial-opinion-as-a-law process described above in Section II.B. No authority supports this.

The "by law" requirement means only that the General Assembly must delineate specifically what powers it is taking away from home rule municipalities. That is done here, in section 20 of PSEBA, 820 ILCS 320/20. The phrase "by law" cannot reasonably be interpreted to mean that judicial interpretations of ambiguous terms are not limitations "by law."

IV. PSEBA's Coverage Is Not Limited Solely to Public Safety Employees Who Are Killed in the Line of Duty

In its *amicus* brief in support of the City, IPELRA argues that PSEBA was only adopted in response to public safety employees being killed in the line of duty, seemingly advocating that the true purpose of this statute is to provide benefits solely for the families of slain employees, not for catastrophically-injured employees. (IPELRA *Amicus* Brief, pp. 4-5). However, it would violate the plain language of the Act to limit the provision of PSEBA benefits to only those that are killed in the line of duty. The plain language of the Act provides that a "full-time law enforcement, correctional or correctional probation

officer, or firefighter, who . . . suffers a catastrophic injury or is killed in the line of duty shall" be entitled to have the entire health insurance premium for "the injured employee, the injured employee's spouse, and for each dependent child of the injured employee . . ." 820 ILCS 320/10(a) (emphasis added).

If the General Assembly had only intended the Act to cover line-of-duty deaths, then there would be no need to note a catastrophically injured employee as something different than an employee killed in the line of duty. By using the word "or," the General Assembly was obviously denoting that the two categories of employees, catastrophically injured and those killed, were different conditions. To read them as the same would render "catastrophically injured" as well as the requirement to provide health benefits to the employee themselves, a nullity, and, as such, is not appropriate. *Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 256 (2004). Courts "must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous . . . avoiding an interpretation which would render any portion of the statute meaningless or void." *Sylvester v. Industrial Com'n*, 197 Ill.2d 225, 232 (2001) (citing *A.P. Properties, Inc. v. Goshinsky*, 186 Ill.2d 524, 532 (1999); *McNamee v. Federated Equipment & Supply Co.*, 181 Ill.2d 415, 423 (1998)).

Additionally, if the General Assembly had intended for PSEBA to only apply when a public safety employee is killed, then it would be entirely unnecessary for the Act to mention the payment of an employee's health insurance premium – if all covered employees were killed in the line of duty, then they would no longer have insurance premiums, and the benefit would only go to the deceased employee's family. But PSEBA specifically provides for the employer to pay the health insurance premiums "for the

injured employee, the injured employee's spouse, and for each dependent child of the injured employee . . ." 820 ILCS 320/10(a). Limiting that section's application to employees who are killed would render the references to the employee's premium a nullity.

Interpreting the statute in the manner argued for by both the City and its *amicus* would allow municipalities and local governments to do exactly what the plain language of the Act and the legislative history do not support. Under this interpretation, employers would be able to restrict a firefighter's ability to qualify for PSEBA benefits in such a way that he or she would only qualify if they were killed in the line of duty. The ordinance in question limits the definition of "catastrophic injury" as an injury which prevents an individual from performing any gainful work. (C 98) "Gainful work" under the ordinance in question is defined as "Full- or part-time activity that actually is compensated or commonly is compensated." (C 98) Such a broad definition of gainful work means that a firefighter who is a quadriplegic after being injured in the line of duty while responding to an emergency would still be denied PSEBA benefits, because he or she could still be "gainfully employed" as a telemarketer. This was not the intention of the statute.

Nor would it be appropriate for this Court to narrow PSEBA eligibility based on its purported cost to municipalities. In its *amicus* brief, the IPELRA asserts that an average health insurance premium for an Illinois family costs $20,659. (IPELRA *Amicus* Brief, p. 3, n.2). This is not a substantial burden to the City. In 2019, the City's estimated population was 110,417.[13] Each PSEBA denial, therefore, would save the City a mere $0.19 per resident per year. At the same time, however, each denial would force an individual who

[13] *Quick Facts, Peoria city, Illinois,* U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/peoriacityillinois,peoriacountyillinois/PST045219 (last accessed Aug. 3, 2021).

just lost his or her job due to a catastrophic injury to incur a $20,659 yearly expense by buying health insurance. This does not militate for a narrower reading of PSEBA.

Under an interpretation of the Act which would allow home rule municipalities to limit the definition of catastrophic injury in such a way as the City did here, with few, if any exceptions, a firefighter or other public safety employee would have to be dead before he or she could qualify for PSEBA. This would be against the plain language of the statute, render a portion of the statute meaningless, and conflict with the clear and unambiguous legislative history of the Act. Such a limitation is not in line with the canons of statutory interpretation that the courts of this state follow. It would also conflict with the actions of the General Assembly subsequent to this Court's decision in *Krohe* and the definition of catastrophic injury.

V. Modern Public Safety Initiatives Involve Incident Responses From Multiple Entities

The Illinois AFL-CIO and AFFI's affiliate locals often not only respond to incidents in their own municipalities, but also neighboring areas through various multi-jurisdictional agreements. Public safety officers frequently work side-by-side to protect the communities and citizens of Illinois. For example, in the fire rescue and EMS service, most Illinois communities take part in the Mutual Aid Box Alarm System ("MABAS"). A "box alarm" is a term used to describe an incident of such size or complexity that the local resources are insufficient and a request is made for neighboring agencies to respond to assist.[14]

[14] MABAS, *Frequently Asked Questions*, https://www.mabas-il.org/frequently-asked-questions/ (last accessed Aug. 2, 2021).

MABAS is an inter-governmental organization recognized by Illinois as the system for mutual aid responses and large-scale mobilizations of fire, EMS, and special team resources in the state. MABAS has 69 Divisions, nearly 1,200 member agencies throughout Illinois and is present in all of Illinois's 102 counties.[15] "Every MABAS participant agency has signed the same contract with their 1,200 plus counterpart MABAS agencies. MABAS agencies agree to standards of operation, incident command, minimal equipment staffing, fireground safety and on-scene terminology."[16] As described by the United States Department of Homeland Security:

> All jurisdictions in Illinois . . . provide each other with mutual aid through the Mutual Aid Box Alarm System, or MABAS. Automatic mutual aid through MABAS is available to participating jurisdictions for a variety of needs such as structure fires, specialty rescue, hazardous materials (HazMat) or fire investigations, to name a few. The type, quantity, and origin of mutual aid units for incidents of various sizes are recorded on box cards, which are developed by each fire department based on assessments of local fire hazards, staffing, and resources. MABAS is activated on a daily basis for both small emergencies and large-scale incidents, which promotes interoperability and rapid response.[17]

Annually, MABAS responds to over 800 local-extra alarm incidents throughout the state. MABAS members include the state's largest cities down to its smallest. At the state level, MABAS has been activated by the Illinois Emergency Management Agency for incidents such as the Tamara train derailment, Roanoke tornado, Utica and Harrisburg

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[15] *Id.*

[16] MABAS, *About*, https://www.mabas-il.org/about (last accessed Aug. 2, 2021).

[17] U.S. Dep't of Homeland Security, Lessons Learned Information Sharing, *Illinois's Mutual Aid Box Alarm System*, available at https://www.hsdl.org/?view&did=779674 (last accessed Aug. 2, 2021).

tornado disasters, and Louisiana Hurricanes Katrina, Gustav, and Ike.[18] One recent example of the reach of MABAS agreements is the June 2021 chemical fire in Rockton, Illinois. The emergency response included 26 different MABAS Divisions, 167 Fire Departments and over 350 personnel.[19]

In addition to MABAS, neighboring communities often enter into individual automatic aid agreements. "Automatic aid is assistance dispatched automatically by contractual agreement between two communities or fire districts to all first alarm structural fires. That differs from mutual aid or assistance arranged case by case."[20] In short, while a MABAS response has to be specifically requested by the Fire Department or Fire District in which the emergency is occurring, neighboring communities that are part of an automatic aid agreement are automatically dispatched to calls when local resources are insufficient to appropriately respond to an emergency call.

Similar systems are in place for law enforcement officers. The Illinois Law Enforcement Alarm System ("ILEAS") was formed in 2002 in response to the September 11th attacks as a joint venture of the Illinois Association of Chiefs of Police, the Illinois Sheriffs' Association, and the Illinois Emergency Management Agency. ILEAS is consortium of over 900 local government agencies. ILEAS membership includes hundreds

[18] MABAS, *About*, https://www.mabas-il.org/about (last accessed Aug. 2, 2021).

[19] MABAS, *News*, https://www.mabas-il.org/1176-2/ (last accessed Aug. 2, 2021).

[20] ISO Mitigation, *Automatic Aid*, https://www.isomitigation.com/ppc/technical/automatic-aid/ (last accessed Aug. 2, 2021).

of law enforcement agencies, representing over 95% of the officers and deputies in Illinois.[21]

Similar cooperative agreements can be found throughout the state. For example, the Northern Illinois Police Alarm System ("NIPAS") represents a joint venture of suburban municipal police departments in the Chicago metropolitan area. NIPAS member agencies include over 100 cities, villages, and towns in five counties.[22]

Modern firefighting, law enforcement and emergency response under MABAS, automatic aid agreements, ILEAS, NIPAS, or any other multi-jurisdiction agreement means that public safety officers from different governmental agencies work side-by-side on a daily basis. Adopting the Defendant-Appellant's argument in the instant matter would allow different municipalities and government employers to create different rules and standards for who is entitled to PSEBA benefits. This would lead to the absurd result that public safety officers who respond to the same emergency calls and are equally injured may not get receive equal benefits. Should public safety officers responding to the same incident be catastrophically injured in the exact same way responding to the same emergency, they should both be entitled to the same PSEBA benefits. The purpose of PSEBA, as made clear in the legislative history, was to protect public safety personnel in the instance of catastrophic injury.

The result, however, of allowing home rule municipalities to each establish its own definition of catastrophic injury under PSEBA means that there is no consistent protection

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[21] Ill. Law Enforcement Alarm System, *About ILEAS*, https://www.ileas.org/about-ileas (last accessed Aug. 2, 2021).

[22] Northern Ill. Police Alarm System, http://www.nipas.org/ (last accessed Aug. 2, 2021).

for our first responders who are severely injured in the line of duty while responding to an emergency. A public safety officer who becomes a quadriplegic because of an accident on a tactical rescue team or in response to a mass shooting who is employed by a municipality who has adopted a "gainful work" requirement for a catastrophic injury determination would not be entitled to benefits, because he could hypothetically find some gainful employment. A public safety officer who was injured in the same accident and also became a quadriplegic as a result but worked for a neighboring municipality that did not adopt the "gainful work" requirement for PSEBA benefits, would be qualified.

A geographic checkerboard approach to which public safety employees may qualify for PSEBA benefits and which may not, was never the intention of the General Assembly when it passed PSEBA. It is clear from the statements in the legislative history of the Act that the General Assembly intended to cover full-time law enforcement officers and firefighters killed or disabled in the line of duty, not just some officers and firefighters where the home rule municipality so chooses. *See* 90th Ill. Gen. Assemb., Senate Proceedings, May 16, 1997, at 192 (statements of Senator Donahue). This is also clear in the unambiguous restriction on home rule municipalities' ability to provide benefits in a manner inconsistent with the Act. 820 ILCS 320/20. The General Assembly has, as discussed above, rejected numerous bills that would result in just such an outcome.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the briefs of the Plaintiff-Appellee, the AFFI and the Illinois AFL-CIO respectfully request that this Court affirm the decision of the Appellate Court.

Dated: August 4, 2021.

Respectfully submitted,

/s/ Margaret Angelucci
Margaret Angelucci

/s/ Amanda Clark
Amanda Clark

/s/ Matt Pierce
Matt Pierce

Margaret Angelucci
Amanda Clark
Matt Pierce
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson, Suite 720
Chicago, Illinois 60606
312.263.1500 (phone)
312.263.1520 (fax)
maa@ulaw.com
arc@ulaw.com
mjp@ulaw.com

Attorneys for Amicus Curiae
Illinois AFL-CIO

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(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 27 pages or words.

By: /s/ Margaret Angelucci
Margaret Angelucci

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on August 4, 2021, a copy of the foregoing **Associated Firefighters of Illinois and Illinois AFL-CIO's *Amici Curiae* Brief in Support of Plaintiff-Appellee** was served on the following attorneys of record by the Odyssey eFileIL system and via email:

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

Robert J. Smith Jr.
Paul Denham
Clark Baird Smith LLP
6133 North River Road, Suite 1120
Rosemont, Illinois 60018
RSmith@CBSLawyers.com
PDenham@CBSLawyers.com

Jerry Marzullo
Joseph Weishampel
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd., Ste. 720
Chicago, IL 60606
jjm@ulaw.com
jw@ulaw.com

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

By: /s/ Margaret Angelucci
Margaret Angelucci