No. 127040

IN THE
SUPREME COURT OF ILLINOIS

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 50,	)
	) On Leave to Appeal From
	) The Illinois Appellate Court, Third
Plaintiff-Respondent,	) District, No. 3-19-0758
	)
v.	) On Appeal From the Circuit Court
	) of Peoria County, Third
CITY OF PEORIA, a Municipal Corporation	) District, No. 18-MR-00439
	)
	) Honorable Mark E. Giles
Defendant-Petitioner.	) Judge Presiding
	)

AMICUS CURIAE BRIEF OF THE ILLINOIS PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION

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SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

Page(s)

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

INTRODUCTION

The Illinois Public Employer Labor Relations Association ("IPELRA") is a professional not-for-profit Illinois association comprised of more than 300 public sector management representatives responsible for formulating and executing the labor relations programs for their respective jurisdictions, impacting more than 200,000 Illinois public employees. IPELRA's members work for municipal, county and state governments as well as special districts, state university systems, and other forms of local government.

PSEBA is one of the most costly, if not the most costly, unfunded mandates passed by the Illinois General Assembly. In the experience of most taxing bodies and IPELRA member jurisdictions, PSEBA can result in significant liabilities. With family health insurance benefits often costing in excess of $20,000 per year, and factoring for the rapid pace of health care inflation, some PSEBA liabilities cost municipalities and other taxing districts more than $1-2 million over the course of the lifetime of former employees and their dependents.

It is also the experience of IPELRA member jurisdictions that this exponential growth in PSEBA liabilities is partially attributable to the Supreme Court's broad definition of "catastrophic injury," which as this Court noted in *Krohe v. City of Bloomington*, 204 Ill. 392 (2003) is an ambiguous term never defined by the State legislature. This additional unfunded liability has a direct impact on the financial stability of scores of Illinois units of local government and the taxpayers they represent.

IPELRA strongly believes that the Illinois Constitution endows home-rule municipalities with the authority to address this definitional gap. *See* Article VII, §6(i) of the Illinois Constitution. This is especially true where State lawmakers have <u>never</u>

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

exercised their political capital or legislative authority in developing a plain language definition of the term "catastrophic injury," and the home rule preemption provision in the PSEBA does not otherwise preclude home rule municipalities from enacting ordinances to govern its internal affairs with respect to the definition of "catastrophic injury."

ANALYSIS

As noted above, PSEBA is one of the most costly unfunded mandates passed by the Illinois State Legislature. As background, PSEBA provides taxpayer-funded health insurance premium benefits to a firefighter or police officer (and eligible dependents) who "suffers a catastrophic injury or is killed in the line of duty." 820 ILCS 320/10(a). The public employer must pay the entire premium for the health insurance benefits of the employee, the employee's spouse, and the employee's dependent children. *Id.*

While PSEBA has causation standards that are distinct from standards under the Illinois Pension Code, *see* 820 ILCS 320/10(b), this Court has linked the term "catastrophic injury" to individuals who receive a line-of-duty disability pension from a local police or fire pension fund. *See Krohe v. City of Bloomington*, 204 Ill.2d 392, 395 (2003). Since that decision, the litigation of PSEBA claims and pension benefit claims has become factually, legally and procedurally intertwined. *See Vill. of Vernon Hills v. Heelan*, 2015 IL 118170 (suggesting that a municipality waives its right to later contest the existence of a catastrophic injury under the PSEBA if it does not seek to intervene in the original pension proceedings); *Vill. of Alsip v. Portincaso*, 2017 IL App (1st) 153167 at ¶¶ 24-25 (finding municipality set forth a valid justification for intervention since line of duty benefit award would directly bind it). In fact, one Appellate Court has found that any

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

causation findings by the Pension Board likely will satisfy the causation element for PSEBA purposes. *See Cronin v. Vill. of Skokie*, 2019 IL App (1st) 181163.

In the experience of IPELRA members, PSEBA benefits typically involve costly long-term, ongoing, (and in some cases) lifetime[1] liabilities. With family health insurance benefits often costing in excess of $20,000 per year[2], and factoring for the rapid pace of

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[1] Illinois Appellate Courts have ruled that PSEBA benefits can be reduced or terminated when an employee becomes Medicare-eligible. *See McCaffrey v. Vill. of Hoffman Ests.*, 2021 IL App (1st) 200395, ¶ 52; *Pyle v. City of Granite City*, 2012 IL App (5th) 110472. Notwithstanding, according to survey data, 28.3% of 2020 PSEBA recipients still received PSEBA benefits despite being in their 60's, and 4.6% of PSEBA recipients were 70 years of age or older. *See Study of the Public Safety Employee Benefits Act Pursuant to P.A. 98-0561*, available at: https://www.ilga.gov/reports/ReportsSubmitted/2341RSGAEmail3990RSGAAttach2020%20PSEBA.pdf.

[2] The average annual family health insurance premium cost in Illinois was $20,659 in 2019, according to a study by the Kaiser Family Foundation. *See Average Annual Family Premium per Enrolled Employee For Employer-Based Health Insurance*, *available at*: https://www.kff.org/other/state-indicator/family-coverage/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

health care inflation,[3] some PSEBA claims cost municipalities and other taxing districts more than $1-2 million over the course of the lifetime of PSEBA recipients. In fact, an accumulation of multiple PSEBA claims over time could be devastating to a taxing body's budget. According to data collected by the Commission on Government Forecasting and Accountability ("CGFA"), state-wide PSEBA claims have risen at an alarming rate: growing from $488,853 in 2003 to $10,009,043 in 2019. *Study of the Public Safety Employee Benefits Act Pursuant to P.A. 98-0561*, available at: https://www.ilga.gov/reports/ReportsSubmitted/2341RSGAEmail3990RSGAAttach2020%20PSEBA.pdf.

A. The Political Impetus for Enacting PSEBA was Focused on Public Safety Employees Who Were Killed—Not Injured—in the Line of Duty.

While almost all of PSEBA litigation has focused on what type of "injury" qualifies for coverage under the Act, the political momentum that led to the enactment of PSEBA actually involved line-of-duty deaths.

At the time that PSEBA was introduced, bill sponsors told the media that the underlying purpose of the bill was related to a situation where the Village of Crest Hill allegedly discontinued health insurance coverage for the family of a slain police officer. *See* Ken O'Brien, *Bill Would Insure Families of Cops Killed on the Job*, CHI. TRIB., Nov. 15, 1996, 1996 WLNR 5251772 (stating "State Sen. Thomas Dunn (D-Joliet) proposed the

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[3] Over the last 10 years, national data shows that insurance premiums have grown on average by 5.49% per year. *See Kaiser Family Foundation 2020 Employer Health Benefits Survey*, *available at*: https://www.kff.org/report-section/ehbs-2020-summary-of-findings/.

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

legislation to help families such as that of Crest Hill Police Sgt. Timothy Simenson, who was killed during a late-night traffic stop in September 1994. . . Dunn said he has 'a long record' of opposing unfunded state mandates but said that Simenson's case is an exception 'because a public body has a responsibility to a police officer or firefighter who dies in the line of duty"); William Presecky, *Slain Cops' Families not Forgotten Measure to Pay Health Benefits to be Reintroduced*, CHI. TRIB., Feb. 29, 1997, 1997 WLNR 5842651 (stating "[t]he original legislation was sent to [Gov. Jim] Edgar on the last day of the 89th General Assembly in January. It was prompted largely by Crest Hill's decision in October to discontinue covering the cost of health benefits to the family of slain Police Sgt. Tim Simenson.").

Nevertheless, PSEBA as enacted (and currently worded) does not just apply to individuals who have been "killed." It also applies to certain individuals who have suffered what the statute ambiguously calls "catastrophic injuries." However, as repeatedly acknowledged by this Court, "the Act nowhere defines 'catastrophic injury'." *Vill. of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 21, *quoting Krohe v. City of Bloomington*, 204 Ill.2d 392, 395 (2003).

B. Faced with the Legislature's Failure to Define "Catastrophic Injury," this Court Ultimately Adopted an Extremely Broad Definition of the Term Based on Floor Statements By Two Legislators.

Of course, in enacting PSEBA, the legislature could have exerted its political will by defining the scope and breadth of the term "catastrophic injury." However, PSEBA clearly **does not** include an unambiguous plain language definition of the term that might show legislative intent. *Id.* (stating "the Act nowhere defines 'catastrophic injury.").

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

This oversight is significant based on the well-established tenet that: "[t]he best indicator of that [legislative] intent is the plain language of the statute, given its ordinary meaning." *Raab v. Frank*, 2019 IL 124641, ¶ 18, citing *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 460 (2006). Courts defer to "clear and unambiguous" language in a statute and "apply it as written. Only where the language is ambiguous [will a court] turn to extrinsic sources to determine legislative intent." *Id.* When a court "find[s] the statutory language plain and unambiguous, [it] may not resort to the legislative history or other aids of statutory construction." *Policemen's Benevolent Lab. Comm. v. City of Sparta*, 2020 IL 125508, ¶ 22.

Due to the lack of legislative intent reflected in the plain language of the term "catastrophic injury," courts soon began to grapple with the legislature's failure to define the term. Initially, the Illinois Appellate Court for the First District adopted a definition of the term that it believed was consistent with its "ordinary and properly understood meaning." *Villarreal v. Vill. of Schaumburg*, 325 Ill. App. 3d 1157, 1162 (1st Dist. 2001, *later reversed by Krohe v. City of Bloomington*, 204 Ill.2d 392, 395 (2003). Utilizing a dictionary definition of "catastrophe," as well as a federal statute that defined the same term, the *Villarreal* court determined that "'catastrophic injury' means consequences of an injury that permanently prevent an individual from performing any gainful work." *Id.* at 1164, *quoting* former statute 42 U.S.C. § 3796.

This Court disagreed by using the PSEBA's "unambiguous legislative history" to interpret the meaning of the term. *See* 204 Ill. 2d at 399-400 (analyzing 820 ILCS 320/10(a)). In particular, the *Krohe* decision expressly construed the phrase "catastrophic injury" as "synonymous with an injury resulting in a line-of-duty disability." This holding

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

has been reaffirmed on a number of occasions. *See Vill. of Vernon Hills v. Heelan*, 2015 IL 118170 (noting that in construing the term "catastrophic injury," the court has "expressly equated the determination of a catastrophic injury with the award of a line-of-duty disability pension"); *Bremer v. City of Rockford*, 2016 IL 119889, ¶¶ 23, 26 (reiterating that "catastrophic injury" is a "term of art meaning an injury resulting in a line-of-duty disability pension").

The legislative history cited in *Krohe* involved four remarks made by two different State legislators. In particular, Senator Donahue stated on the Senate Floor prior to the PSEBA's enactment that the term "catastrophic injury" applies to "a police officer or firefighter who, due to injuries, has been forced to take a line of duty disability." *Id.*, quoting 90th Ill. Gen. Assem., Senate Proceedings, November 14, 1997, at 136 (statements of Senator Donahue). Likewise, legislators repeatedly used the phrase "line of duty" on at least three other occasions. *Id.*, *quoting* 90th Ill. Gen. Assem., House Proceedings, April 14, 1997, at 180 (statements of Representative Tenhouse), 90th Ill. Gen. Assem., Senate Proceedings, May 16, 1997, at 192 (statements of Senator Donahue), 90th Ill. Gen. Assem., House Proceedings, October 28, 1997, at 16 (statements of Representative Tenhouse). Based on these remarks, this Court ultimately determined that a catastrophic injury is "synonymous with an injury resulting in a line-of-duty disability under section 4-110 of the [Pension] Code." *Id.* at 400 *(*referencing 40 ILCS §5/4-110).

Since the *Krohe* decision, this Court has issued several rulings and determinations that support a much narrower view of the term "catastrophic injury." For example, this Court has repeatedly held that PSEBA should be narrowly construed due to its departure from the common law. In particular, public employees have "no common law right to

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

employer-provided health insurance at all, let alone fully subsidized employer-provided health insurance." *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 19; *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 32.

Moreover, when a term is undefined within a statute, most courts usually rely upon the term's ordinary dictionary meaning. *See Beelman Trucking v. Illinois Workers' Comp. Comm'n*, 233 Ill. 2d 364, 373 (2009). As explained by this Court in *Beelman*:

> Undefined terms in a statute generally should be given their commonly accepted or popular meaning. Further, it is entirely appropriate to employ the dictionary as a resource to ascertain the meaning of undefined terms, and this court has done so in the past.

Id. Several courts, including this Court, have utilized ordinary dictionary definitions to define other PSEBA terms. *See Gaffney v. Bd. of Trustees of Orland Fire Prot. Dist.*, 2012 IL 110012, ¶¶ 60-61 (interpreting the word "emergency" as used in Section 10(b) of PSEBA by relying on the definition found in Webster's Third New International Dictionary); *Senese v. Vill. of Buffalo Grove*, 383 Ill. App. 3d 276, 279 (2d Dist. 2008) (consulting the Eighth Edition of Black's Law Dictionary to interpret the meaning of "unlawful act" in Section 10(b)).

C. The Broad Definition of "Catastrophic Injury" Under *Krohe* Has Led to Unfortunate Results and Increasing Liabilities Paid to Otherwise Healthy Individuals.

Krohe's reliance on the statements of two legislators has led to unfortunate results for IPELRA member jurisdictions and other taxing bodies. Again, it should be reiterated that this Court conceded that the term "catastrophic injury" in Section 10(a) is ambiguous. Based on this broad **judicial** interpretation, PSEBA liabilities have grown exponentially over the past two decades. In fact, according to the Illinois Commission on Government Forecasting and Accountability's December 2020 PSEBA report, approximately 150

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

municipalities paid $10.40 million in insurance premiums to 618 PSEBA recipients in Reporting Year 2018 alone. These figures have more than tripled in just ten years from Reporting Year 2008, when 100 municipalities paid $3.06 million in premiums to 282 recipients. *See* https://www.ilga.gov/reports/ReportsSubmitted/2341RSGAEmail3990RSGAAttach2020%20PSEBA.pdf.

This increase in PSEBA liabilities can be partially attributed to health insurance benefits paid to disabled pensioners who are still able to find gainful work in jobs outside of public safety. Of course, the job duties of a police officer and firefighter are rigorous, and there are numerous examples found in Illinois judicial decisions where individuals received lucrative disability pensions even though they only suffered from relatively minimal physical or mental restrictions. *See Lambert v. Downers Grove Fire Dep't Pension Bd.*, 2013 IL App (2d) 110824, ¶ 10, (finding individual could not work as a firefighter even though he could "could safely perform job duties up to the medium and occasionally heavy level"); *Vill. of Franklin Park v. Sardo*, 2020 IL App (1st) 191161, ¶ 13 (reversing pension board's decision to deny benefits for a police officer with a pre-existing PTSD condition based on combat experience, even though the applicant served as a police officer at "a very high level" for approximately 18 years); *Hampton v. Bd. of Trustees of Bolingbrook Police Pension Fund*, 2021 IL App (3d) 190416, ¶ 21 (reversing a pension board's determination to deny line-of-duty benefits for a police officer who reported a slight increase in pain in his shoulder during an FCE evaluation, even though the officer could otherwise demonstrate a physical demand level of "heavy"); *Ashmore v. Bd. of Trustees of Bloomington Police Pension Fund*, 2018 IL App (4th) 180196, ¶ 47 (reversing

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

a pension board's determination to deny line-of-duty benefits for a police officer who merely reported chronic pain in a shoulder).

In fact, based on the experience of IPELRA members, it is not uncommon for line-of-duty disability pension recipients to reenter the workforce in another field where they still have access to employer-sponsored health insurance. Of course, these individuals are also entitled to lucrative benefits under the Illinois Pension Code. In particular, under the Illinois Pension Code, police officers or firefighters who are permanently disabled from service are generally entitled to receive a line of duty disability pension equal to 65% of their monthly salary attached to their rank on the date the individual is removed from the payroll, among other benefits. *See* 40 ILCS 5/3-114.1(a), 4-110. The amount of the pension increases by 3.0% per year. *See* 40 ILCS 5/3-114.1(d), 4-109.1(c). This benefit continues for the duration of the public safety officer's life (unless he or she recovers from the disability). Under current tax codes, this benefit is tax-free under both state and federal law. 26 U.S.C. § 104(a)(1); 26 C.F.R. § 1.104-1(b).

Quite simply, pensioners who suffer from limitations unique to serving as a police officer or firefighter (*e.g*. the inability to shoot a service weapon, comply with rigorous physical demands of the job, lift at "very heavy" levels in excess of 100 pounds) usually also have the ability to obtain generous disability benefits under the Pension Code. Since this Court's *Krohe* decision, such individuals have also been able to obtain generous PSEBA benefits despite the lack of plain and ordinary statutory language linking PSEBA and the Pension Code, and even though such pensioners are able to obtain gainful employment in many other fields of work.

D. Home Rule Municipalities are Constitutionally Entitled to Take Legislative Action in this Area Where the State Legislature is Unable or Unwilling to Act.

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

IPELRA strongly believes that the Illinois Constitution endows home rule municipalities with the authority to address its internal affairs with respect to this aspect of PSEBA. *See* Article VII, §6(i), of the Illinois Constitution. Clearly, State lawmakers have **never** exercised their political capital or legislative authority to develop a plain language definition of the term "catastrophic injury." As a result, home rule municipalities have the Constitutional authority to enact laws or ordinances that address their internal affairs with respect to the definition of "catastrophic injury."

Generally, home-rule municipalities (*i.e.*, cities, villages, and incorporated towns with a population in excess of 25,000, or those units that have adopted home rule by referendum) have the right to "exercise any power and perform any function pertaining to [their] government and affairs" based on Article VII, §6, of the 1970 Illinois Constitution. According to the Illinois Municipal League, there are only 216 home rule municipalities in Illinois out of approximately 1,300 municipalities. *See* https://www.iml.org/homerule-municipalities. Many other governmental units that employ firefighters or police officers are non-home rule, including for example 838 fire protection districts and approximately 102 counties. See https://www.civicfed.org/inventory. As a result, this case involves a very small subset of those Illinois public employers who employ firefighters and police officers.

In addition, Article VII, §6(i), of the Illinois Constitution expressly provides that:

> 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.

Article VII, §6(i), of the Illinois Constitution.

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

Here, IPELRA's membership includes leaders and administrators in certain home rule jurisdictions that have a clear interest in exercising their political capital by enacting express statutory language that better defines the term "catastrophic injury." In exercising concurrent jurisdiction, such home rule municipalities will be able to limit PSEBA liability that the General Assembly never expressly mentioned in the four corners of the PSEBA. While there is no indication that any State legislator (other than Senator Donahue or Representative Tenhouse) ever intended to adopt the *Krohe* definition of "catastrophic injury," elected officials in home rule municipalities might want to exercise their political will in a different manner.

Granted, the PSEBA contains a figurative "home rule preemption" provision. However, that provision does not limit home rule communities from defining a "catastrophic injury." This is because Section 20 only limits a home rule community from providing "benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act." 820 ILCS 320/20. Defining "catastrophic injury" in a way that differs from the *Krohe* definition will still result in the provision of benefits consistent with the PSEBA in the sense of free health insurance premiums. The term "catastrophic injury" addresses only "eligibility" for benefits, not the "provision" of benefits. As a result, the General Assembly saw fit to allow home rule communities to retain their home rule discretion to address this aspect of the PSEBA.

Of course, there is nothing that would stop the State legislature from amending PSEBA to create a plain language definition of the term "catastrophic injury," or otherwise enacting clear and unambiguous home-rule preemption language. Until and unless that happens, however, courts do not have the ability to judicially define a term in situations

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

where a home rule municipality has exercised its concurrent jurisdiction. *See Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶¶ 33-34; *Village of Bolingbrook v. Citizens Utilities Co.*, 158 Ill. 2d 133, 141 (1994) (stating "[t]he courts of this State have consistently refused to find implied preemption of home rule powers.")

Quite simply, under the Illinois Constitution, the Supreme Court does not make State law. Under the Illinois Constitution, the State legislature and home-rule municipalities have the concurrent jurisdiction to make State law. Units of government throughout Illinois continue to struggle with funding PSEBA obligations in an already broken pension system. While certain non-home rule taxing districts (*e.g.* non-home rule municipalities, fire protection districts, etc.) might not have the ability to change this court's definition of "catastrophic injury," home rule municipalities may opt to utilize their concurrent Constitutional authority to act where the State legislature has failed to act. For that reason, this Court should find that the Peoria ordinance is legal.

E. Irrespective of the Peoria Ordinance, Ordinances that Create Administrative Processes Related to PSEBA are Important.

While it is IPELRA's understanding that this appeal relates only to one narrow aspect of Peoria's PSEBA ordinance, IPELRA wants to ensure that the Court understands the importance of a municipality's ability to enact, by ordinance, administrative procedures for investigating and hearing PSEBA claims. As acknowledged by the Second District Appellate Court, determining PSEBA eligibility is typically a "fact-specific endeavor." *Bremer v. City of Rockford*, 2015 IL App (2d) 130920, ¶¶48, 55, *vacated on other grounds*, 2016 IL 119889.

To better oversee the PSEBA process, some public employers have created administrative hearing processes to investigate claims and determine an employee's

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

eligibility to receive such benefits. Three decisions have established the following principles:

- Fire Protection Districts are not allowed to create an administrative hearing process for PSEBA benefits. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012;
- Home rule jurisdictions are allowed to create an administrative hearing process for PSEBA benefits. *Pedersen v. The Village of Hoffman Estates*, 2014 IL App (1st) 123402;
- Non-home rule municipalities are allowed to create an administrative hearing process for PSEBA benefits based on specific language found in the Illinois Municipal Code. *Englum v. City of Charleston*, 2017 IL App (4th) 160747.

Certain IPELRA members have found value in adopting such formal policies and procedures to the extent they help: (1) the jurisdiction collect pertinent information in order to make an informed decision; (2) ensure a consistent and fair process in determining PSEBA eligibility; (3) ensure that all public safety officers employed by the taxing body understand the benefits to which they may be entitled; (4) ensure that an eligible employees understand their responsibility in reporting information regarding other available insurance coverage or change-in-circumstances; and (5) reduce the potential for inappropriate municipal expenditures for applicants that are not entitled to this benefit.

Irrespective of the issues in this appeal related to Peoria's home rule ordinance , IPELRA respectfully asks that this Court not disturb precedent allowing municipal employers - both home rule and non-home rule alike – to adopt ordinances that create administrative PSEBA hearing processes.

SUBMITTED - 13884896 - Cynthia Harris - 7/8/2021 9:44 AM

CONCLUSION

In light of the foregoing arguments and authority, IPELRA respectfully requests that this Court allow home-rule municipalities, such as Peoria, to exercise their constitutional right to self-define the term "catastrophic injury" in the PSEBA.

Respectfully Submitted,

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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 15 pages.

/s/ Paul Denham

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