NO. 127040

IN THE
SUPREME COURT OF ILLINOIS

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

PLAINTIFF-APPELLEE'S RESPONSE BRIEF

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INTRODUCTION

The Illinois Public Safety Employee Benefits Act, 820 ILCS 320/1 *et seq.* ("PSEBA"), entitles a public employee to benefits if he or she suffers a "catastrophic injury" under section 10(a) of PSEBA that is, also, an "injury" under section 10(b) of PSEBA. In 2018, Defendant-Appellant City of Peoria ("City") passed Section 2-350 of the Peoria Municipal Code, which redefined those terms and introduced a completely new third term, "gainful work". Plaintiff-Appellee International Association of Firefighters, Local 50 ("Union"), whose members are public employees covered by PSEBA, filed a declaratory judgment action challenging the redefinitions. The Union argued that the redefinitions exceeded the City's home rule power, on two bases. On cross-motions for summary judgment, the circuit court granted the Union's motion and denied the City's. The appellate court affirmed. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the problem of providing for injured public employees "pertain[s] to" the City's government and affairs when the City does not experience the problem uniquely, the State has a significant interest, and the State alone has traditionally regulated the field.
2. Whether the City provides benefits "inconsistent with" the requirements of PSEBA when it redefines terms that are used in PSEBA and that have been defined in PSEBA's text and in judicial opinions.

3. Whether the City violates the Separation of Powers Clause in the Illinois Constitution of 1970, Article II, Section 1, when it redefines terms in PSEBA so as to overturn an Illinois Supreme Court decision.

JURISDICTION

The Union defers to the City's statement of jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Union defers to the City's statements of relevant legal authorities.

STATEMENT OF FACTS

I. Legal Framework

In 1997, three Illinois statutes protected firefighters who sustained on-the-job injuries: the Public Employee Disability Act, 5 ILCS 345/1 *et seq.* ("PEDA"); the Workers' Compensation Act, 820 ILCS 305/1 *et seq.* ("WC Act"); and the Illinois Pension Code, 40 ILCS 5/4-110 ("Pension Code"). The General Assembly surveyed this statutory scheme of protection and elected to provide additional safeguards to injured public safety officers, including the continuation of the health coverage they and their families would otherwise lose due to an injury that interrupted their chosen occupation. For that reason, the General Assembly passed the Public Safety Employee Benefits Act ("PSEBA"). PSEBA created new benefits, including the payment of health insurance premiums for an employee and his or her family, if that employee suffered an injury that resulted in death or was a "catastrophic injury" within the meaning of section 10(a) of PSEBA, and was also an

"injury" within the meaning of section 10(b) of PSEBA. 820 ILCS 320/10(a), (b); C 15-16 (A 14-15). The General Assembly forbade home rule interference with PSEBA's benefit scheme by exercising its preemption power in Section 20. 820 ILCS 320/20; C 21 (A 20). Sections 10(a), 10(b), and 20 have not been amended in the 23 years since PSEBA was passed.

The text of PSEBA does not define "catastrophic injury". 820 ILCS 320/10(a); C 15 (A 14). However, during legislative hearings, the House and Senate sponsors of the bill that would become PSEBA both stated that it would continue health benefits for an employee who was killed or "disabled in the line of duty." 90th Ill. Gen. Assem., House Proceedings, April 14, 1997 at 180 (statement of Representative Tenhouse); 90th Ill. Gen. Assem., Senate Proceedings, May 16, 1997 at 192 (statement of Senator Donahue). After Governor Edgar vetoed the bill, *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 399 (2003), the House voted to override. During post-veto hearings in the Senate, the bill's sponsor explained, "[I]t is our intent to define 'catastrophically injured' as a police officer or firefighter who, due to injuries, has been forced to take a line-of-duty disability." 90th Ill. Gen. Assem., Senate Proceedings, November 14, 1997 at 136 (statement of Senator Donahue). The Senate overrode the veto 58 to 1. *Krohe*, 204 Ill. 2d at 398.

In *Krohe*, 204 Ill. 2d 392 (2003), this Court was asked to define "catastrophic injury" as used in section 10(a) of PSEBA. Of note, the *Krohe* defendant, like the City here, was a home rule unit. This Court acknowledged that "catastrophic injury" was ambiguous: it was not defined in PSEBA's text, and the parties offered six different definitions for the term. *Krohe*, 204 Ill. 2d at 393-97. Unable to resolve the case on statutory text, this Court turned to legislative history, and found it decisive. *Id.* at 398.

Based in part on the above-quoted comments, this Court held that "catastrophic injury" was synonymous with an injury resulting in a line-of-duty disability pension. *Id.* at 400. This Court has repeatedly affirmed *Krohe* and has rejected invitations to retreat from it. *See, e.g., Vill. of Vernon Hills v. Heelan*, 2015 IL 118170; *Nowak v. City of Country Club Hills*, 2011 IL 111838 (2011). Therefore, multiple judicial decisions by this Court provide an unambiguous definition of "catastrophic injury".

The text of section 10(b) of PSEBA states that in order to receive PSEBA benefits, a public employee's injury must have occurred under one of four circumstances. 820 ILCS 320/10(b); C 16 (A 15). All four circumstances relate to the manner in which the employee was acting, *i.e.* "fresh pursuit"; none relate to the nature of the injury. 820 ILCS 320/10(b); C 16 (A 15). No other PSEBA provision addresses this subject matter, *see* 820 ILCS 320/1 *et seq.* No court has ever suggested that additional circumstances are relevant. Numerous cases have provided judicial gloss on this definition of "injury". *See, e.g., Gaffney v. Bd. of Trustees of Orland Fire Prot. Dist.*, 2012 IL 110012; *Richter v. Vill. of Oak Brook*, 2011 IL App (2d) 100114. Due to these and other decisions, "injury" retains no ambiguity.

II. Facts Of This Case

On June 12, 2018, the City passed the Ordinance. Peoria, IL Code of Ordinances Sec. 2-350; C 11-14 (A 10-13). Section 2-350(b), the only provision relevant to this dispute, redefines "catastrophic injury" and "injury" in a manner facially inconsistent with the definitions those terms carry under PSEBA. Peoria, IL Code of Ordinances Sec. 2-350(b); C 11 (A 10). Section 2-350(b) also introduces the term "gainful work", which is not found in PSEBA and is not relevant to PSEBA benefits. Peoria, IL Code of Ordinances Sec. 2-350(b); C 11 (A 10). These redefinitions are more restrictive than the PSEBA

definitions of "catastrophic injury" and "injury" and would greatly reduce the number of employees who would receive PSEBA benefits. For example, an employee who suffered a "catastrophic injury" under *Krohe*, *Nowak*, and *Heelan*, but could perform part-time "gainful work", would be disqualified from receipt of benefits under the City's redefinitions, even if that "gainful work" did not provide any form of health insurance. Peoria, IL Code of Ordinances Sec. 2-350(b); C 11 (A 10). Similarly, an employee who suffered an "injury" under section 10(b) would be disqualified under the redefinitions if he or she suffered a strain injury, no matter its severity. Peoria, IL Code of Ordinances Sec. 2-350(b); C 11 (A 10). The redefinitions impose requirements that are more difficult to satisfy than PSEBA's.

The Union initiated this suit by filing a declaratory judgment complaint ("Complaint"). C 4-21. The Complaint sought a judgment declaring that (1) the redefinitions of "catastrophic injury" and "injury" were inconsistent with PSEBA, beyond the home rule power of the City, and should be declared invalid, null, and void; and (2) the Ordinance's term "gainful work" should be stricken as surplusage. C 4-21. The Complaint raised solely legal issues. C 4-21. The City answered and denied all legal conclusions drawn by the Union. C 36-45.

The case proceeded to cross-motions for summary judgment. C 54-310. The parties briefed the issues of ripeness, standing, the definitions of "catastrophic injury" and "injury" in PSEBA, and the City's home rule power. C 54-310. The trial court granted the Union's motion and denied the City's, ruling for the Union on all counts and granting its requested relief. C 311-312. The trial court held 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 the [j]udicial opinions construing and defining those terms." C 311-312. The trial court held that the City "does not have the home [r]ule authority to redefine the terms 'catastrophic injury' and 'injury' as it has in the [Ordinance]." C 311-312. The City timely appealed. C 315-316.

In an opinion filed February 1, 2021, the Appellate Court of Illinois, Third Judicial District, affirmed the trial court in favor of the Union. *International Association of Fire Fighters, Local 50 v. City of Peoria*, 2021 IL App (3d) 190758 ("*Local 50*", "appellate court decision", or "decision below"). The City did not brief standing or ripeness, the appellate court did not analyze them, and they are waived. *See Local 50*, 2021 IL App (3d) 190758 at ¶¶ 6-12. On the merits, the court rejected the City's arguments. *Id.* at ¶¶ 7-12. The court recognized that in *Krohe*, this Court pronounced a binding definition for "catastrophic injury." *Id.* at ¶ 9. This definition became a part of PSEBA, as this Court would later recognize in *Heelan*. *Id.* at ¶12; *Heelan*, 2015 IL 118170 at ¶ 19. PSEBA's home rule limitation forbids even a home rule unit employer from providing benefits "in a manner inconsistent with the requirements of" PSEBA. 820 ILCS 320/20; *Local 50*, 2021 IL App (3d) 190758 at ¶ 11. *Krohe* set the "requirements of" PSEBA on the "catastrophic injury" question, so the contrary redefinitions could not stand. *Local 50*, 2021 IL App (3d) 190758 at ¶¶ 12-15.

ARGUMENT

I. Standard Of Review

All three of the Issues Presented for Review, *see supra*, raise questions of statutory and/or constitutional interpretation. Therefore, all of them are subject to the *de novo* standard of review. *Accettura v. Vacationland, Inc.*, 2019 IL 124285, ¶ 11.

II. Summary Of Argument

The City improperly attempts to redefine "catastrophic injury" and "injury". As a matter of law, "catastrophic injury" is synonymous with an injury resulting in a line-of-duty disability pension. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 400 (2003). No case has seriously questioned *Krohe*. "Injury" is defined in the text of the Public Safety Employee Benefits Act ("PSEBA"), and judicial opinions have added specific gloss. The only criterion for an "injury" is the capacity in which the injured employee was acting, not the nature of the injury. These definitions are well-established, unambiguous, and easy to apply. The City's redefinitions clash irreconcilably with these definitions; would create extensive ambiguity and resolve none; would require additional legal proceedings; and would disqualify numerous employees. Even more dangerous, the City's claim to enjoy the power to use home rule authority to make these legislative changes permits each home rule unit to amend PSEBA in a manner that would destroy decades of uniformity of benefits among the various municipalities of Illinois. Neither 820 ILCS 320/20 nor the holding of this Court in *Village of Vernon Hills v. Heelan*, 2015 IL 118170, permits this chaotic result.

The City lacks the home rule power to redefine these terms, for two independently-sufficient reasons. First, under the "constitutional analysis", the Illinois Constitution of 1970 granted the City (and other similar political units) home rule power. However, a home rule unit (such as the City) "may exercise any power and perform any function **pertaining to its government and affairs**". Ill. Const. 1970, art. VII, sec. 6(a) (emphasis added). The problem of providing benefits to injured public safety employees is a State problem which requires a State solution and does not "pertain[] to" the City's government and affairs. Provision of these benefits is and has historically been treated as a matter for

State regulation unimpeded by local amendments. Second, under the "statutory analysis", PSEBA's home rule limitation forbids the redefinitions. 820 ILCS 320/20. The General Assembly validly limited home rule power in section 20 of PSEBA. Ill. Const. 1970, art. VII, sec. 6(i). Section 20 prohibits even a home rule unit employer from "provid[ing] benefits … inconsistent with the requirements of" PSEBA, which is what the redefinitions would do. 820 ILCS 320/20.

Moreover, the City's radical assertion of home rule power violates the Separation of Powers Clause in the Illinois Constitution, Ill. Const. 1970, art. II, sec. 1. The City's argument would allow it to overrule a legitimate exercise of judicial power, or to exercise judicial power itself. The judiciary, not the City, defines terms in a State statute, and the City violates its authority when it sweeps those judicial definitions aside. The Union should prevail and this Court should affirm.

III. The Terms "Catastrophic Injury" And "Injury," As Used In PSEBA, Are Well-Defined And Unambiguous, And Their Definitions Are Completely Incompatible With The Redefinitions In The Ordinance

The terms "catastrophic injury" and "injury," as used in PSEBA, are well-defined and unambiguous, and their definitions are completely incompatible with the redefinitions in the Ordinance. These definitions were prescribed and reiterated by this Court in a number of decisions beginning with *Krohe* in 2003, continuing with *Nowak v. City of Country Club Hills*, 2011 IL 111838 (2011), *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, and *Heelan* in 2015. To the present day, these definitions stand unchanged. During this period, the General Assembly has made no effort to alter the definitions contained in these decisions. As this Court wrote in the context of PSEBA, when a court construes a statute and the legislature does not amend it, "[W]e

presume that the legislature has acquiesced in the court's exposition of legislative intent." *Heelan*, 2015 IL 118170 at ¶ 19. Such a construction, this Court noted, becomes "**a part of the statute**", which the General Assembly alone may change. *Id.* at ¶ 27 (emphasis added). In *Heelan*, this Court specifically confirmed that *Krohe's* definition of "catastrophic injury" had become part of PSEBA. *Id.* at ¶¶ 19, 27-28. Judicial definitions become part of statutes, and they are no less a part of those statutes than the legislatively-supplied definitions. "Catastrophic injury" and "injury" do not remain ambiguous, and their definitions may not be swept aside by home rule units. The definitions of these terms under PSEBA cannot possibly co-exist with the redefinitions; only one may prevail.

A. "Catastrophic Injury," as Used in PSEBA, 820 ILCS 320/10(a), is Synonymous With an Injury for Which an Employee is Awarded a Line-Of-Duty Disability Pension, and the Ordinance's Redefinition of That Term is Incompatible with the PSEBA Definition of That Term

As used in section 10(a) of PSEBA, 820 ILCS 320/10(a), "catastrophic injury" is synonymous with an injury for which an employee is awarded a line-of-duty pension, and the Ordinance's redefinition of that term is incompatible with the PSEBA definition.

1. Legislative history illuminates the meaning of "catastrophic injury"

Section 10(a)'s text does not define "catastrophic injury". However, the General Assembly intended to define "catastrophic injury" as synonymous with an injury resulting in a line-of-duty disability pension under the Illinois Pension Code ("Pension Code"). As stated *supra*, "Statement Of Facts," both sponsors said that PSEBA's beneficiaries would be employees "that are killed *or disabled in the line of duty*." 90th Ill. Gen. Assem., House Proceedings, April 14, 1997, at 180 (statement of Representative Tenhouse); 90th Ill. Gen. Assem., Senate Proceedings, May 16, 1997, at 192 (statement of Senator Donahue) (both

emphases added). Senator Donahue later clarified that the General Assembly intended "to define 'catastrophically injured' as a police officer or firefighter who, due to injuries, has been forced to take a line-of-duty disability." 90th Ill. Gen. Assem., Senate Proceedings, November 14, 1997 at 136 (statement of Senator Donahue). The General Assembly understood the term "catastrophic injury" as synonymous with an injury resulting in a line-of-duty disability pension, and passed PSEBA with that understanding in mind. *Heelan*, 2015 IL 118170, ¶ 21.

2. *Krohe v. City of Bloomington*, 204 Ill. 2d 392 (2003), defined "catastrophic injury"

This Court first construed "catastrophic injury" in *Krohe*. There, a firefighter and line-of-duty disability pension recipient asserted his right to PSEBA benefits. 820 ILCS 320/10(a); *Krohe*, 204 Ill. 2d at 394. The employer argued that the firefighter had not suffered a "catastrophic injury" under section 10(a). *Krohe*, 204 Ill. 2d at 394. This Court considered whether "catastrophic injury" was "synonymous with an injury resulting in a line of duty disability under section 4-110 of the Illinois Pension Code", and unanimously answered "yes". *Id.* at 394, 400.

This Court noted that PSEBA's text did not define "catastrophic injury". *Id.* at 395. The employer argued that the term clearly encompassed "only those injuries that 'severely limit the earning power of the affected employee,'" *Id.* at 396, similar to the redefinition here. This Court rejected that definition because it "d[id] nothing to resolve section 10's ambiguity". *Id.* at 397. This Court found that many definitions were consistent with the statutory text, but none were demanded by it. *Id.* at 395-98. Thus, "catastrophic injury" was ambiguous, and this Court looked beyond the text to interpret the term. *Id.*

This Court concluded that PSEBA's legislative history "could not be clearer." *Id.* at 398. Senator Donahue's post-veto remarks "were delivered **for the sole purpose of defining** for the record 'catastrophic injury'." *Id.* at 398 (emphasis added). As this Court noted, "[B]oth of the Bill's sponsors were concerned from the outset with line-of-duty disabilities, explicitly informing their colleagues of the Bill's focus immediately prior to every vote." *Id.* at 400. This Court concluded that "catastrophic injury" was synonymous with an injury that resulted in a line-of-duty disability pension, *Id.* at 400, and expressly rejected all other proposed definitions, *Id.* at 395-97, 400.

The City argues that legislative intent cannot abrogate its home rule powers. But the Union does not argue that legislative intent directly abrogates those powers. Instead, this Court's definition of "catastrophic injury" in *Krohe* defeats the redefinitions. The fact that *Krohe* rested on legislative intent does not give it some lesser force.

3. Subsequent cases have affirmed *Krohe*'s definition of "catastrophic injury" without wavering

Subsequent cases have affirmed *Krohe's* definition of "catastrophic injury" without wavering. Few definitions have been affirmed as consistently. Every case considering the issue has affirmed *Krohe*; none have called it into question. *See, e.g.*, *Heelan*, 2015 IL 118170; *Nowak*, 2011 IL 111838. If "catastrophic injury" was ever ambiguous—a point the Union does not concede—*Krohe* extinguished that ambiguity.

Krohe was most directly affirmed in *Heelan*, 2015 IL 118170. There, a village argued that an officer who had been awarded a line-of-duty disability pension had not suffered a "catastrophic injury" under section 10(a). *Heelan*, 2015 IL 118170 at ¶¶ 7-9. The village sought to depose the doctors who examined the officer during his pension application, but the trial court barred their depositions and testimony. *Id.* at ¶¶ 5-10.

On appeal, the Village invited this Court to hold that *Krohe* did not automatically equate every line-of-duty disability pension with a "catastrophic injury". *Id.* at ¶ 22. This Court rejected that invitation and wrote, "[T]hat is *exactly what this court held in* Krohe *and subsequent cases*." *Id.* at ¶ 23 (emphasis added). This Court clarified that a line-of-duty disability pension conclusively established a "catastrophic injury" and satisfied section 10(a), and did so "*as a matter of law*". *Id.* at ¶¶ 23, 25, 28 (emphasis in original). Because the officer had been awarded a line-of-duty disability pension, he had irrefutably established a "catastrophic injury" and no further fact-finding, discovery, or evidence on that subject was necessary or permitted. *Id.* at ¶¶ 25, 28.

Moreover, this Court clarified the effect of *Krohe* on PSEBA. *Krohe's* definition of "catastrophic injury", this Court wrote, "is considered *part of the [PSEBA] statute itself* until *the* legislature amends it. *Id.* at ¶ 27 (emphases added). The General Assembly ("the legislature") had not amended *Krohe* in relevant part, so this Court concluded that it acquiesced to *Krohe*. *Id.* at ¶¶ 19, 27.

Remarkably, the City skirts *Heelan*. City's Brief, "Statements Points and Authorities", pp. i-vi. The City makes one passing reference to *Heelan* and does not engage with its core holding. The City's silence is deafening. This Court unequivocally held that the grant of a line-of-duty disability pension establishes a "catastrophic injury" as a matter of law, not as a matter of estoppel. *Heelan* utterly refutes the redefinition and the City does not try to say otherwise.

Heelan was not the first case to affirm *Krohe*. In 2011, this Court decided *Nowak*, 2011 IL 111838, which asked when an employer's obligation to a catastrophically injured employee attaches. *Nowak*, 2011 IL 111838 at ¶ 1. In its analysis, this Court reaffirmed

Krohe's definition of "catastrophic injury". *Id.* at ¶ 12. Based on legislative history, this Court in *Nowak* held that PSEBA was intended to continue a post-employment benefit for retired employees. *Id.* at ¶¶ 14-16. PSEBA could not do so until employment was terminated by a disability pension. *Id.* at ¶ 17.

Nowak, too, ties a "catastrophic injury" to a line-of-duty disability pension. Under *Nowak*, an injury is recognized as "catastrophic" at the instant a line-of-duty disability pension is granted. Further, these decisions establish the intimate connection between the benefits made available to public safety officers who are the victims of disabling illnesses, accidents and injuries. They demonstrate that pension benefits and health insurance benefits are intertwined in a uniform system of statewide, not local, concern. The General Assembly's intent to create a statewide statutory system is clear.

This Court has affirmed *Krohe* on multiple other occasions. *See Gaffney*, 2012 IL 110012 at ¶¶ 5-6, 54; *Vaughn v. City of Carbondale*, 2016 IL 119118, ¶ 24; *see also Bremer v. City of Rockford*, 2016 IL 119889 at ¶¶ 1-3, 21-22, 26, 33-34 (affirming *Krohe's* holding with respect to a line-of-duty disability pension repeatedly). Numerous appellate court cases have followed *Krohe*. *See, e.g., Talerico v. Vill. of Clarendon Hills*, 2021 IL App (2d) 200318, ¶ 20*; Marquardt v. City of Des Plaines*, 2018 IL App (1st) 163186, ¶ 20; *Pyle v. City of Granite City*, 2012 IL App (5th) 110472, ¶ 20; *Richter*, 2011 IL App (2d) 100114 at ¶ 16. No case has departed from *Krohe*'s core holding. Case law establishes that the meaning of "catastrophic injury" from *Krohe* is clear, unambiguous, easy to apply, uniform on a statewide basis, and unchallenged.

4. The General Assembly has not amended PSEBA in a way that would call *Krohe's* holding into question

Since *Krohe*, the General Assembly has not amended PSEBA in a way that would call *Krohe's* holding into question. The General Assembly's response to *Krohe* and its progeny has been silent assent. The General Assembly is aware of *Krohe*'s definition of "catastrophic injury", and has taken no action whatsoever to amend PSEBA in relevant part. *Krohe*'s definition is, therefore, a part of PSEBA, *accord Heelan*, 2015 IL 118170 at ¶ 19, and will remain a part of PSEBA unless and until the General Assembly amends it.

5. The Ordinance's redefinition of "catastrophic injury" clashes irreconcilably with PSEBA's definition and cannot coexist symbiotically with it

The Ordinance's redefinition of "catastrophic injury" clashes facially and irreconcilably with that term's definition as used in PSEBA, and cannot coexist symbiotically with it. The Ordinance redefines "catastrophic injury" as "[a]n injury, the direct and proximate consequences of which permanently prevent an individual from performing any gainful work." Peoria, IL Code of Ordinances, Sec. 2-350(b). The redefinition ignores the award of a line-of-duty disability pension, the sole appropriate criterion under *Krohe*. Instead, the redefinition imposes requirements related to "direct and proximate consequences", permanence, and "gainful work", all of which are irrelevant to PSEBA. The redefinition would, and is intended to, deny PSEBA benefits to many employees who qualify under the correct PSEBA definition of "catastrophic injury". It is not possible to read the PSEBA definition and the redefinition in harmony, or to read the redefinition as somehow "supplementing" the PSEBA definition. The redefinition does not resolve an ambiguity because there is none to resolve. The Ordinance restricts

eligibility for benefits and limits the catastrophically injured employees to such a degree that it is "… inconsistent with the requirements of this act [PSEBA]." 820 ILCS 320/20.

The Ordinance also introduces the term "gainful work". Peoria, IL Code of Ordinances, Sec. 2-350(b). Because it is not used in PSEBA, "gainful work" cannot possibly clarify an existing ambiguity. It exists strictly to deprive employees of benefits, since an individual who performs "gainful work" does not have a "catastrophic injury". Further, the test it creates is likely narrow. An individual performs "gainful work" when he or she does anything that someone else might pay for. This departs dramatically from PSEBA. A firefighter suffers a "catastrophic injury" when he or she receives a line-of-duty disability pension. *See* 40 ILCS 5/4-110. For this pension, a firefighter need only be disabled from performing firefighting duty, not "gainful work". Firefighting duty is very heavy physical demand level work. A firefighter unable to perform firefighting duty, and "catastrophic[ally] injur[ed]" under PSEBA, may still be able to perform "gainful work" such as telemarketing or store greeting. A disabled firefighter may even choose to volunteer in his or her community, but if another individual would be paid for that volunteer work, this would render the firefighter ineligible for PSEBA benefits under the Ordinance. These positions typically pay much lower wages than firefighting, and typically do not offer employment-derived health insurance. Such individuals are entitled to PSEBA coverage. This is not a "windfall", it is precisely the intent of the General Assembly.

The General Assembly intended for PSEBA to protect the injured employee and his wife and minor children. *Nowak,* 2011 IL 111838 at ¶¶ 14-16. The General Assembly is aware that some firefighters receive disability pensions despite being able to perform other gainful work. The General Assembly intended to include, not exclude, these

individuals within PSEBA's coverage. The redefinition of "catastrophic injury" defeats that intent. The redefinition denies continued payment of benefits to individuals who have permanently lost the ability to secure such benefits in an employment setting.

If these employees had not suffered "catastrophic injur[ies]", they would still be working as firefighters and receiving employment-derived health insurance. Through no fault of their own, they were rendered unable to continue their careers. PSEBA would continue their health insurance benefits. But the Ordinance would deprive them of those benefits if they could work any job. Further, "gainful work", has no body of case law and could be interpreted broadly to include babysitting or cashiering. The redefinition of "catastrophic injury" cannot be reconciled with, and does not supplement, "catastrophic injury" under PSEBA. And PSEBA cannot accommodate the definition of "gainful work".

Senator Donahue's comments, *Krohe*, *Heelan*, and the General Assembly's decision not to amend PSEBA all univocally reject the redefinition of "catastrophic injury" and the introduction of "gainful work". Those definitions cannot be accommodated.

6. The redefinition of "catastrophic injury" and introduction of "gainful work" would cause, not resolve, ambiguities

The City's redefinition of "catastrophic injury", and its introduction of "gainful work", do not fill a gap or resolve an ambiguity, but they would cause many. No gap or ambiguity exists in the definition of "catastrophic injury". If a pension board has awarded a line-of-duty disability pension, the employee has suffered a "catastrophic injury". If it has denied such a pension, then the employee has not. There is no gap or ambiguity. The City's arguments that PSEBA's text in isolation is ambiguous and its citations to the pre-*Krohe* state of the law are irrelevant and will be refuted *infra,* section VII.

The redefinition of "catastrophic injury" and the introduction of "gainful work" raise settled questions, create ambiguities, and resolve nothing. As this Court noted in *Krohe*, a definition of "catastrophic injury" as "only those injuries that 'severely limit the earning power of the affected employee'" would "d[o] nothing to resolve section 10's ambiguity". 204 Ill. 2d at 396-97. Here, the City proposes the same definition, which would re-create the ambiguity extinguished in *Krohe*.

Moreover, the Ordinance would likely lead to difficult adjudications. Adjudicating a PSEBA claim would involve determining whether the injury would be "permanent", or whether the employee could perform "gainful work" decades later. It would involve determining whether work was "commonly compensated", a nebulous term. It would involve determining whether a condition was the "direct and proximate consequence[]" of an employee's injury. There are no existing authorities to interpret any of these terms. The City seeks to abandon PSEBA's clarity and create ambiguity in service of its actual goal: denying PSEBA benefits.

Ultimately, the City is attempting to evade any court's jurisdiction by redefining a term that has a judicially-supplied definition that the City does not like. This Court has given "catastrophic injury" a clear, unambiguous definition. The City's redefinition of "catastrophic injury" conflicts irreconcilably with the PSEBA definition and cannot stand.

B. "Injury," As Used in PSEBA, 820 ILCS 320/10(b), Is Defined in the Text of PSEBA As Requiring One of Four Scenarios, and the More Restrictive Redefinition of That Term in the Ordinance Is Incompatible With the Definition of "Injury" In PSEBA's Text and Relevant Case Law

The term "injury," as used and defined in section 10(b) of PSEBA, is satisfied under one of four scenarios. The Ordinance's more restrictive redefinition that ignores PSEBA's

text and case law, and institutes more restrictive qualifications, is incompatible with the definition of "injury" under PSEBA.

1. Statutory text

The text of section 10(b) sets forth the definition of "injury" by demanding that an injury must be suffered when an employee is acting in one of four ways. 820 ILCS 320/10(b). These criteria solely address the capacity in which the employee is acting when he or she sustains his or her injury. PSEBA does not set forth, contemplate, or suggest other "injury" requirements, and specifically does not contemplate any restriction on benefits based on the type of injury that the employee suffers.

2. Case law

PSEBA's "injury" requirement has given rise to an extensive body of case law. In *Gaffney*, a firefighter was proceeding through a room in a live-fire training exercise when his hose unexpectedly became hooked around a loveseat. *Gaffney*, 2012 IL 110016 at ¶ 6. He attempted to move the loveseat and suffered a catastrophic shoulder injury. *Id.* Even though the firefighter was only training, he encountered an unexpected circumstance in a low-visibility, live-fire scenario and reasonably believed that his situation was an emergency. *Id.* at ¶¶ 64-69. These facts satisfied section 10(b)'s "injury" requirement. *Id.* at ¶ 69.

In *Marquardt*, a police officer stopped an overweight truck and, following procedure, climbed the truck's ladder to inspect its load. *Marquardt*, 2018 IL App (1st) 163186 at ¶ 3. The officer felt a "pop" in his knee. *Id.* The court found that overloading the truck was an unlawful act and the officer was injured as a result of that unlawful act. *Id.* at ¶¶ 23-25. These facts satisfied section 10(b)'s "injury" requirement. *Id.* at ¶ 25.

In *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, a firefighter suffered disabling hearing loss from a siren while he was removing equipment from the road after a call. *Pedersen*, 2014 IL App (1st) 123402 at ¶¶ 6, 11. The court held that the firefighter was still responding to what he reasonably believed to be an emergency, even though he was cleaning up rather than extinguishing a fire or rendering aid. *Id.* at ¶ 60. These facts satisfied section 10(b)'s "injury" requirement. *Id.*

Courts have refused to add criteria to section 10(b)'s "injury" requirement. In *Richter*, a firefighter became disabled due to both sinus injuries and shoulder injuries. *Richter*, 2011 IL App (2d) 100114, ¶¶ 3-4. The employer argued that section 10(b) required the firefighter to prove that one injury was the sole cause of his disability. *Id.* at ¶ 21. The court rejected that argument and affirmed the proximate cause standard, requiring that the injury only be a contributing cause of the disability. *Id.*

In *Senese v. Village of Buffalo Grove*, 383 Ill. App. 3d 276 (2nd Dist. 2008), a police officer was seated in his squad car when it was struck from behind by another vehicle. *Senese*, 383 Ill. App. 3d at 277. The employer argued that section 10(b)'s "injury" requirement required some elevated level of risk, perhaps one uniquely associated with police work. *Id.* at 280. The court rejected that argument and enforced the "unlawful act perpetrated by another" requirement without demanding elevated risk. *Id.* at 281.

Four principles emerge. First, and most obviously, "injury" *is* defined in the text of PSEBA and its definition is facially complete. Second, an "injury" analysis considers only how the employee was acting at the time he was hurt. Third, facts other than those relevant to the situations listed in section 10(b) play no role in the analysis. Fourth, the nature or manifestation of the injury is irrelevant in a section 10(b) analysis.

3. The Ordinance

In redefining "injury," the Ordinance invents numerous, more-restrictive criteria that are incompatible with PSEBA. Peoria, IL Code of Ordinances Sec. 2-350(b). PSEBA does not demand that an "injury" must be a traumatic wound. PSEBA does not demand that an "injury" must be a physical wound. PSEBA demands only a showing of proximate cause, not "direct[] and proximate[] cause[]," a nebulous but higher standard. PSEBA does not demand an external force. But the redefinition demands all of these showings.

The redefinition of "injury" would rewrite case law by disqualifying four of the five employees in the cases listed above, even though they all satisfied section 10(b). The injuries in *Gaffney* and *Marquardt* did not involve an external force. *Pedersen* would likely fail for the same reasons, as a siren is dissimilar from the redefinition's list of external forces. The *Richter* firefighter would likely fail the "direct[] and proximate[] cause[]" requirement. Strangely, the *Senese* officer would likely satisfy the redefinition, even though his actions were more like those of a "civilian" than any other plaintiff.

The redefinition of "injury" does not address any gaps or ambiguity in PSEBA, because there are none. Section 10(b) is clear and complete on its face. The cases cited, which are part of PSEBA, have filled gaps and brought even greater clarity. Moreover, the PSEBA definition of "injury" is easy to apply. It only asks what an employee was doing at the time of his or her injury. This is readily determined without specialized knowledge.

The redefinition opens a new field of inquiry involving the nature of the "injury". Not only does this violate PSEBA, it would create administrative difficulty. A civil servant adjudicating a PSEBA case would have to apply an unfamiliar "direct[] and proximate[]" cause standard, and determine whether an injury was caused by stress or strain. These are

determinations that even specialists may disagree on. The City wants to use this test, instead of the simple "injury" test in section 10(b), solely to disqualify PSEBA recipients.

The Union will address why the City's redefinitions cannot stand *infra*. For now, the redefinitions clash fundamentally and irreconcilably with PSEBA. The redefinitions do not compliment PSEBA. They do not fill gaps. There is no symbiosis. The "gaps" the City points to have been filled by two decades of unwavering case law. If the City wanted clarity, it would simply use PSEBA's definitions of PSEBA's terms.

What the City really wants is to change PSEBA by replacing its clear, unambiguous definitions with ambiguous redefinitions more to its liking in order to disqualify PSEBA recipients. The City is trying to use its home rule power to rewrite State law. This brief now considers whether the City has that power.

IV. The Grant Of Home Rule Power In The Illinois Constitution Of 1970, Article VII, Section 6(a), Does Not Empower The City To Redefine PSEBA Terms

The City does not have the home rule power to redefine PSEBA terms. This is so for two independently sufficient reasons, as set forth pursuant to a "constitutional analysis" and a "statutory analysis". While a court generally does not decide a case on a constitutional basis if it is possible to decide it on other grounds, the Union presents the constitutional analysis first because it analytically precedes the statutory analysis. *See Palm v. 2800 Lake Shore Drive Condominium Association*, 2013 IL 110505. This Court is, of course, free to affirm based on the statutory analysis, as the appellate court did.

A. The Constitutional Text, its Contemporary Legal Commentary, and Case Law Reveal that Home Rule Power Has Significant Limitations

The grant of home rule power in the Illinois Constitution of 1970, article VII, section 6(a), does not empower the City to redefine PSEBA terms. The text of the Illinois

Constitution of 1970, contemporary legal commentary, and case law reveal that home rule power has significant limitations. The Constitution permits a home rule unit to "exercise any power and perform any function *pertaining to* its government and affairs." Ill. Const. 1970, art. VII, sec. 6(a) (emphasis added). Subsequent subsections in section 6 set forth limitations on this general home rule power, *see, e.g.*, Ill. Const. 1970, art. VII, sec. 6(h)-(i), but do not themselves grant that power. Section 6(a) sets the outer bounds of the power. Therefore, if the challenged home rule action does not "pertain[] to" the home rule unit's government and affairs, the attempted exercise of home rule power fails immediately. A granular examination shows that that is what happens here.

As Professor Baum wrote, section 6(a)'s "pertaining to" language "unquestionably limit[s]" home rule power to less than the State's full legislative power. David Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. ILL. L.F. 137, 153, 156-57 (hereinafter "Baum, *Survey*"). A Constitutional Convention report explained that "[T]he powers of home-rule units relate to their own problems," not those more competently solved by the State. 7 Record of Proceedings, Sixth Ill. Constitutional Convention (hereinafter "Proceedings") at 1621. Certain problems do not "pertain[] to" local government and affairs, thus lying beyond section 6(a)'s grant of home rule power. Proceedings at 1652, *cited in Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 540-41 (1975). Home rule power does not extend to regulating mortgage rates "because of the extensive federal and state regulation of credit institutions". *Ampersand*, 61 Ill. 2d at 540-41. Home rule power does not extend to regulating telephone rates because of "[l]ong standing state regulation of utility rates". *Id.* The "pertaining to" language allows judicial intervention if home rule "interfere[s] … with vital state policies." Baum, *Survey* at 137, 153, 156-57.

Thus, the City's legislative power is not equal to the State's. The City may only legislate over matters "pertaining to" local government and affairs.

This Court has enforced the "pertaining to" language to limit excessive home rule power. In *People* ex rel. *Bernardi v. Highland Park*, 121 Ill. 2d 1 (1988), this Court reversed a Second District decision, 135 Ill. App. 3d 580, 583 (2nd Dist. 1985), which had held that Highland Park could exercise its home rule power to avoid the Illinois Prevailing Wage Act because the construction project involved was solely within the City's borders. This Court held that Highland Park could not depart from the wage-setting terms of the Prevailing Wage Act, even for such a project, because the regulation of rates of pay for workers on public projects was not a matter of strict local concern. *Bernardi*, 121 Ill. 2d at 12. This Court explained that the use of home rule to circumvent labor standards established by the State would have grave impact throughout the county and the State. *Id.* at 13. To permit home rule units to exercise power in the field of local labor conditions would create "a confederation of modern feudal estates seeking to placate local economic and political expediencies". *Id.* at 16. This course of action "would in time destroy the General Assembly's carefully crafted and balanced economic policies." *Id.* Seeking to "avoid a chaotic and ultimately ineffective labor policy," this Court recognized the State's "far more vital interest in regulating labor conditions" than the home rule unit's. *Id.* This Court, accordingly, rejected the exercise of home rule power. *Id.*

Other cases also rejected exercises of home rule power. In *Ampersand*, 61 Ill. 2d 537, 538, 542-43 (1975), this Court held that a home rule unit could not impose court filing fees, because the administration of justice was "a matter of statewide concern"; and a home rule unit could not burden that system with fees. In *Bridgman v. Korzen*, 54 Ill. 2d 74, 75-

78 (1972), this Court held that a home rule unit could not change the due dates for real estate taxes where that home rule unit collected those taxes both for itself and for other taxing bodies. In *People* ex rel. *Lignoul v. City of Chicago*, 67 Ill. 2d 480, 485-86 (1977), this Court held that a home rule unit could not permit branch banks, because bank regulation was a State matter. In all these cases, the "pertaining to" language in section 6(a) formed the basis for this Court's rejection of home rule power.

The City argues that the 1970 Constitution intended a "sea change" in home rule power. But all of these cases were decided after this "sea change". This Court correctly enforced section 6(a)'s "pertaining to" language in each case, and should do so again here.

B. *City of Chicago v. StubHub, Inc.* and its Three-Part Test Militate in Favor of the Union

This Court set forth the controlling section 6(a) analysis in *City of Chicago v. StubHub, Inc.*, 2011 IL 111127. Although *Palm* post-dates *StubHub*, this Court did not undertake a full section 6(a) analysis in *Palm* because the parties' positions did not demand it. *Palm*, 2013 IL 110505 at ¶ 37. In *Palm*, the party challenging home rule power raised no argument "on whether the City's ordinance pertains to local affairs or whether the legislature has expressly preempted home rule authority". *Id.* These are the two decisive home rule issues in this case—the constitutional analysis and the statutory analysis. But they were conceded, not analyzed, in *Palm*, so *StubHub* offers substantive guidance.

Palm provides this Court's overarching two-part home rule analysis (though not its section 6(a) analysis). The first part of the *Palm* analysis asks whether the exercise of home rule unit power "pertain[s] to" local government and affairs under section 6(a). *Id.* at ¶ 35. This is the constitutional analysis, set forth authoritatively in *StubHub*, which *Palm* did not change. The second part of the *Palm* analysis asks whether the General Assembly

preempted the exercise of home rule powers. *Id.* The Union refers to this as the statutory analysis. A home rule unit must prevail on both analyses for its ordinance to survive.

StubHub addressed whether municipalities could require electronic intermediaries to collect and remit amusement taxes on resold tickets. *StubHub*, 2011 IL 111127, ¶ 1. In *StubHub*, the city of Chicago asserted a section 6(a) home rule power to collect such a tax, including from ticket resellers and their agents. *Id.* at ¶¶ 4, 8. One agent, StubHub, challenged the city's home rule power to do so. *Id.* at ¶¶ 6-7, 9, 17.

Initially, this Court noted the judiciary's continued proper role in the field of home rule power, which was necessary in order to avoid reading "pertaining to" out of section 6(a). *Id.* at ¶¶ 18-22. This Court further noted that in some cases the State's interest would be so compelling that section 6(a) would not allow home rule legislation. *Id.* at ¶¶ 23-24.

This Court then set forth the controlling, three-part "pertaining to" analysis pursuant to section 6(a). *Id.* at ¶ 24. This Court considered the nature and extent of the problem, the units of government with the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it. *Id.* Like in *StubHub*, in the instant case all three parts of the *StubHub* analysis favor the Union and show that the redefinitions do not "pertain[] to" the City's government and affairs. The City omits a full *StubHub* analysis from its Brief—another revealing omission.

1. The nature and extent of the problem

In *StubHub*, the problem involved reselling and taxing tickets. In 2011, all five of Illinois' major sports teams played in Chicago. Chicago hosted a significant share of the State's live theater and music events. Chicago's situation was unique, its interest substantial, and local control would seem justified on these facts. However, this Court

found that Chicago's substantial financial interest was not determinative. *StubHub,* 2011 IL 111127 at ¶ 26. Instead, the State's history of legislating on ticket sales and resales showed that the nature and extent of the problem was statewide. *Id.* Similarly, in *Lignoul,* the problem involved independent banks and branch banks. *Lignoul,* 67 Ill. 2d at 487-88. There, too, Chicago's unique banking needs could have made that problem local in nature and extent. However, this Court again found that the problem was statewide. *Id.* Both *StubHub* and *Lignoul* presented statewide problems, regardless of the substantial effect of the problem on the home rule unit.

Bernardi involved the most analogous facts to this case. As this Court recognized there, permitting the exercise of home rule authority to effectively repeal provisions of the Prevailing Wage Act would lead to the creation of a confederation of modern feudal estates which would destroy the General Assembly's carefully crafted and balanced labor policies. 121 Ill. 2d at 16. The geographic limitation of the project was not determinative. *Id.*

Here, the problem of providing benefits to injured public safety employees is and has always been statewide in nature and extent. The State provided pensions under the Pension Code, including length of service and disability pensions; then added the Public Employee Disability Act, 5 ILCS 345/1 ("PEDA"); then Workers' Compensation, 820 ILCS 305/1 ("WC Act"), for which firefighters and police became eligible in 1975; and then PSEBA. The State has thus treated the problem as a statewide one by prescribing an intricate intertwined system of uniform benefits including technical "offset" provisions to coordinate the payment of the same. This complex, statewide statutory scheme ensures uniformity. It is examined in greater depth *infra.*

Additionally, public employees sustain injuries in substantially the same way across the State. Firefighting and policing are inherently dangerous occupations. Firefighters and police are exposed to hazards leading to serious accidents, injuries, and illnesses ranging from falling off an icy ladder to succumbing to cancer from occupational exposure. When such injuries happen, the employees' potential loss of salary, loss of benefits, and needs are substantially the same across the State.

Some injuries will happen to City employees, to be sure, but that does not make the problem local. The City argues that the problem is local because injured employees work locally, are injured locally, and live locally. But these are merely local manifestations of a statewide problem and do not make the problem a local one. Every problem, even a statewide one, will give rise to manifestations that can only be local. Every entertainment event in *StubHub* took place in some locality. Every bank in *Lignoul* was located in some municipality. Every court in *Ampersand* was located somewhere. If local manifestations made a problem local, no problem would be statewide and this analysis would cease to exist. The better question is whether the home rule unit experiences the problem differently from other home rule units. The City does not.

Nor does the City's role in paying PSEBA benefits make the problem local. Under *StubHub*, an economic interest cannot make the problem local, even if that interest is significant. The problem is not tied to the City and the City does not experience the problem in a unique way. This problem is statewide in nature and extent. It does not "pertain[] to" the City's government and affairs. Even if the redefinitions applied only within the City's borders, a policy or plan facially applicable only to a specific municipality has ramifications of a statewide nature.

The City asserts cavalierly that it and every other home rule municipality within the State of Illinois can exercise their home rule powers to amend the eligibility for, the duration of, and the scope of health insurance premium payments each unit will make for its permanently disabled public safety officers. The implication of this gratuitous assertion is significant. If the City is correct, nothing would prevent a home rule unit from changing the parameters for PEDA benefits, WC Act compensation, or pensions pursuant to the Pension Code. The City's argument would have catastrophic impact not only on PSEBA but an entire system of disability benefits.

The problem of benefits for injured public employers is statewide in nature and extent. It always has been. This factor favors the Union.

2. The units of government with the most vital interest in the solution to the problem

The second part of *StubHub*'s analysis asks whether State or local units of government have the most vital interest in solving the problem. In *StubHub*, this Court noted the State's decades-long history of legislating on ticket sales. *StubHub*, 2011 IL 111127 at ¶ 35. This Court also noted that the State statute regulated the entire field of ticket resales, resulted from months of negotiations, and set forth a complete regulatory scheme. *Id.* at ¶¶ 27-34. Those facts established an overwhelming State interest that outweighed the home rule unit's interest in tax revenue. *Id.* at ¶ 34. In concluding that the State had a greater interest in solving the taxation problem in *StubHub*, this Court reiterated StubHub's argument, which it eventually accepted:

> "StubHub also notes that if other municipalities followed the City's lead and required internet auctioneers to collect and remit amusement taxes, there could potentially be a patchwork of local regulations. The legislature considered

> such burdens, and decided not to impose them, preferring instead a more comprehensive and uniform approach."

Id. at ¶ 34.

Moreover, in *Ampersand* and *Lignoul*, this Court found vital State interests in the administration of justice and in regulating banks, respectively, each of which precluded home rule power. *Ampersand*, 61 Ill. 2d at 542; *Lignoul*, 67 Ill. 2d at 486. In *Bernardi*, the State's interest in non-depressed wages was so great as to preclude local legislation. *Bernardi*, 121 Ill. 2d at 16.

Here, the State's interest is far more vital than the City's. The PSEBA section "Declaration of State Interest" reads: "The General Assembly determines and declares that the provisions of this Act fulfill an important State interest." 820 ILCS 320/5. *StubHub*, *Ampersand*, and *Lignoul* had no similar language. The State statute here militates in favor of State power to an even greater extent than those cases.

The State has also shown its vital interest by repeatedly passing statutes that protect injured public employees. As mentioned, these include PEDA, the WC Act, the Pension Code, and the Line of Duty Compensation Act, 820 ILCS 315/1 *et seq*. These statutes pertain particularly to mitigating the economic harm suffered by firefighters, police officers, and their families when a severe injury or illness occurs. The State of Illinois has also asserted State power and jurisdiction over other aspects of the fire service reflecting that the provision of fire and police services are far more than a matter of local concern. In particular, the General Assembly has created the Illinois Emergency Management Agency ("IEMA"), 20 ILCS 3305/1 *et seq*. and a statewide Mutual Aid Box Alarm System ("MABAS"), in order to advance the State's interest that all emergency management programs are coordinated to the maximum extent with each other and with any federal

counterparts. 20 ILCS 3305/2. The State has repeatedly demonstrated its vital interest, and the City has done nothing.

The State's vital interest is not just in benefits, but in benefits pursuant to uniform, statewide formulae that are insulated from political currents in home rule units. The General Assembly preempted home rule power in the text of PEDA. 5 ILCS 345/1(g). The General Assembly preempted home rule power in the text of the Pension Code. 40 ILCS 5/4-142. The WC Act does not contain preemption language, but its benefits are set by statewide formulas. 820 ILCS 305/8(a). The text of PSEBA includes a home rule limitation addressed in depth *infra*. The General Assembly has repeatedly limited home rule power to create a benefit scheme that is uniform statewide. If allowed, the redefinitions would prevent this uniformity. Two firefighters from neighboring home rule units could fight the same fire, suffer the same injury, and face two entirely different sets of PSEBA eligibility requirements. So could a City firefighter injured in 2021 and one injured in precisely the same way after the next City election. This would also set PSEBA apart from PEDA, the WC Act, and the Pension Code. This would also create a patchwork of PSEBA requirements statewide, unravel PSEBA's carefully crafted statewide uniformity, and defeat the State's vital interest.

The City argues that it has a vital interest because it must pay PSEBA benefits. *StubHub* flatly refutes the idea that money establishes a vital local interest. The City offers no other. The City's argument applies equally to all of the other statutes listed above. The City pays workers' compensation benefits, pays PSEBA benefits, and contributes to a fund that pays all pensions, including regular retirement and disability pensions. The City's argument leads to the conclusion that the City, through home rule power, could alter the

eligibility for, timing for payment, and ultimately amount of all of these benefits. For the City's argument to prevail, this Court must grant the City precisely that power. This Court would also have to grant the City the power, through the exercise of its home rule power, to overrule a series of Supreme Court precedent dating back to 2003. The State interest here is overwhelming and favors the Union's position.

3. The role traditionally played by local and statewide authorities in dealing with the problem

Finally, the third part of the *StubHub* analysis considers the role traditionally played by local and statewide authorities in dealing with the problem. This element, too, favors State power. In *StubHub*, this Court found that the State's long history of regulating ticket sales was decisive on this issue. *StubHub*, 2011 IL 111127 at ¶¶ 35-36. In *Lignoul*, the State, not any local government, had traditionally and pervasively regulated banking. *Lignoul*, 67 Ill. 2d at 486-87. When there is a long and exclusive pattern of regulation by the State, exercises of home rule power are rejected. *See also Bernardi*, 121 Ill. 2d at 12-17, which recognized the role played by the State in regulating wages.

The City makes statements concerning PSEBA benefits that are simply not true. City's Brief, p. 16-18. As will be shown, the State has always played the central role in setting the amount, eligibility, and duration of all benefits payable to public safety officers. The State has always considered the benefit structure it has created to compensate public safety officers for injuries that are a matter of statewide concern. In this light, the statement on page 16 of the City's Brief that "benefits are wholly funded by local governments" is disingenuous at best. The pension funds which have been created by State law are only partially funded by individual municipalities; the employees themselves contribute to the fund through contributions deducted from every paycheck. Recently, Public Act 101-0610,

effective January 1, 2020, removed a great deal of control over these funds from municipalities, and placed it in the hands of the State. The moneys contributed to the funds have been consolidated for investment and administration in a statewide agency, known as The Firefighter Pension Investment Fund, 40 ILCS 22C-101 *et seq*. The City's argument that the money is local in nature is unpersuasive. All pensions are uniform throughout the State. Any connection between the City and its pension funds' money is attenuated.

The safety net of benefits that Illinois has made available to injured public safety employees proves that providing benefits to injured employees is strictly a matter of State concern. Any public safety employee who sustains a work-related injury or illness is entitled to numerous coordinated benefits provided strictly through State legislation. Such employees, like all others in the State, are entitled to WC Act benefits if they are injured at work. 820 ILCS 305/1 *et seq.* Firefighters and police officers are entitled under State law to benefits under PEDA, which pays a full twelve months of salary for a work-related injury. 5 ILCS 345/1 *et seq.* The General Assembly has specifically coordinated these PEDA benefits with WC Act benefits in order to avoid double payment by employers and double recovery by employees. 820 ILCS 305/8(j); 5 ILCS 345/1(d). These two statutes (and others below) have been found to be interrelated. *Mabie v. Vill. of Schaumburg*, 364 Ill. App. 3d 756 (1st Dist. 2006).

Additionally, a firefighter may be eligible for a disability pension under the Illinois Pension Code, 40 ILCS 5/4-101 *et seq*. The interaction among the Pension Code, PEDA, and the WC Act is complicated and labyrinthine. Findings made in proceedings pursuant to one of these statutes can be binding through collateral estoppel in proceedings held under the other statute. *McCulla v. Indus. Comm'n*, 232 Ill. App. 3d 517 (1st Dist. 1992). The

interweaving of benefits appears repeatedly in this State statutory scheme. Recovery of certain workers' compensation benefits results in a statutory "offset" against disability obligations of pension funds. *See* 40 ILCS 5/3-114.5 & 40 ILCS 5/4-114.2. The statutory offset provision has been the subject of considerable judicial interpretation. *See, e.g., Carr v. Bd. of Trustees of the Peoria Police Pension Fund*, 158 Ill. App. 3d 7, 8-10 (3rd Dist. 1987). Courts have instructed that these statutes must be read as a whole in light of their common purpose. *Luchesi v. Retirement Bd. of the Firemen's Annuity & Benefit Fund*, 333 Ill. App. 3d 543, 551-55 (1st Dist. 2002). Courts have also required that all of these benefit statutes be interpreted liberally in favor of conferring benefits upon injured public safety officers in order to accomplish the State legislative purpose. *Sottos v. City of Moline Firefighters' Pension Fund*, 2017 IL App (3d) 160481, ¶ 15; *Luchesi*, 333 Ill. App. 3d at 551; *Hahn v. Police Pension Fund of Woodstock*, 138 Ill. App. 3d 206, 211 (2nd Dist. 1985). All of these benefits are available to every firefighter throughout the State on a uniform basis. This establishes the State's exclusive role in providing uniform benefits. That exclusive role continued with PSEBA's passage in 1997, when the General Assembly decided to expand the protection of public safety officers and their families under circumstances in which the injury or illness was so severe that the injured officer could no longer continue in his/her chosen occupation. It is apparent that the General Assembly meant to enact a detailed legislative scheme to provide benefits to its public employees.

The legislative history behind PSEBA has been fully explored by this Court in its decisions in *Krohe, Nowak,* and *Heelan*. Any doubt that PSEBA was part and parcel of this extensive statewide scheme of benefits was set to rest in *Heelan*. As stated earlier in this Brief, this Court directly and unequivocally stated eligibility for PSEBA benefits

occurred, not as a matter of collateral estoppel, but as a matter of law once a public employee established eligibility for a line-of-duty disability pension. *Heelan*, 2015 IL 118170 at ¶¶ 23-25. These benefits do not present a matter of local concern. PSEBA is part of a statutory scheme that the General Assembly has been putting together for decades.

By contrast, the City does not cite any ordinance addressing this field prior to the challenged Ordinance, passed in 2018. The City asserts a role based on the idea that it would conduct PSEBA eligibility hearings pursuant to the Ordinance. But the question is the role *traditionally* played by State and local authorities. *StubHub*, 2011 IL 111127 at ¶ 24 (emphasis added). The City may not legislate a role for itself and then cite that role to support its home rule argument. The City has no traditional role. The City also asserts a role because it appoints two trustees to its police and fire pension boards. But those pension systems are State systems, governed by State statutes without home rule interference, and the State's role is expanding due to its investment authority. This confirms the statewide nature of these pension systems.

The Union prevails on all three parts of the *StubHub* analysis. The redefinitions do not "pertain[] to" the City's government and affairs. The redefinitions, therefore, are not within the scope of the grant of home rule power in section 6(a) of the Illinois Constitution. For this reason alone, the redefinitions must be declared invalid, null, and void.

C. Cases in Which this Court Upheld the Exercise of Home Rule Power Differ Dramatically From the Instant Case

When this Court does uphold an exercise of home rule power, it does so in cases that differ dramatically from this one. Key facts present in those cases are absent here.

In *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984), this Court upheld a home rule ordinance that banned operable handguns in a Chicago suburb. *Kalodimos*,

103 Ill. 2d at 501. The risks of gun ownership in a densely-populated suburb are dramatically different from the risks in a sparsely-populated rural community. *Id.* at 503. In *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101 (1981), this Court upheld a home rule landlord-tenant ordinance in "a densely populated and highly urbanized municipality with a large number of rental units". *Create*, 85 Ill. 2d at 104-05, 113. Those unique facts called for a locally-tailored solution. *Id.* at 113. In *Scadron v. City of Des Plaines*, 153 Ill. 2d 164 (1992), this Court upheld a home rule ordinance regulating billboards in a municipality which was crossed by two interstates. *Scadron*, 153 Ill. 2d at 175-76.

The contrast with the instant case is striking. *Kalodimos*, *Create*, and *Scadron* involved specific facts about the population, geography, or other characteristics of each home rule unit that made a local solution appropriate and fulfilled the purpose of home rule power. Here, both PSEBA and the redefinitions address the City's financial obligations, not any specific physical or social fact. Nothing about the City's population, geography, or any other characteristic causes it to experience the problem in a unique way. Nothing about the City even informs the redefinitions, which could be used as a template for any other home rule unit. Nothing calls for a unique, City-specific solution to this problem.

This Court also upheld home rule power in *Village of Bolingbrook v. Citizens Utilities Company of Illinois*, 158 Ill. 2d 133, 135-38 (1994), and *City of Chicago v. Roman*, 184 Ill. 2d 504, 508 (1998). Those cases are inapposite because they turned on section 6(a)'s explicit grants of home rule power over public health matters (*Bolingbrook*) and public safety (*Roman*). Section 6(a) does not explicitly grant home rule power over injured employees' benefits. Neither these nor any other cases militate for home rule power here.

D. The Limited Home Rule Power Acknowledged in *Pedersen v. Village of Hoffman Estates* Has Been Called into Question by *Englum v. City of Charleston*, and Ultimately, No Authority Supports the City's Assertion of Home Rule Power

Finally, the limited home rule power acknowledged in *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, has been called into question by *Englum v. City of Charleston*, 2017 IL App (4th) 160747, and ultimately, no authority supports the City's assertion of home rule power. As an initial matter, *Pedersen* and *Englum* are appellate court cases and therefore merely persuasive authority to this Court. They cannot carry the weight that the City places on them. Moreover, *Pedersen* and *Englum* run contrary to some of the findings this Court made in *Gaffney*. In any case, the City cannot help its arguments by citations to these decisions.

Pedersen is primarily relevant to the statutory analysis. As to this constitutional analysis, *Pedersen* cannot be read to establish any home rule power over PSEBA, much less home rule power over PSEBA's substance. *Pedersen*, 2014 IL App (1st) 123402 at ¶¶ 29-38. In *Pedersen*, the appellate court upheld a home rule ordinance that only established PSEBA adjudication procedures, explaining that PSEBA "does not provide any guidance on the proper procedure for seeking section 10 benefits." *Id.* at ¶ 37. The ordinance was limited to PSEBA adjudication procedures, and the court explicitly limited its holding to such ordinances. *Id.* The court flatly stated that an ordinance changing PSEBA's substance would not survive: "Section 20 [of PSEBA] precludes a home rule unit from providing benefits to persons covered under the Act 'in a manner inconsistent with the requirements of this Act.'" *Id.* (emphasis added), *citing* 820 ILCS 320/20. PSEBA has substantive requirements, and section 20 does not allow departure from them. *Pedersen*, 2014 IL App (1st) 123402 at ¶¶ 35-37.

Pedersen stands in tension (at least) with this Court's decision in *Gaffney*. There, this Court considered whether a fire protection district had the authority to create procedures to adjudicate PSEBA claims. *Gaffney*, 2012 IL 110012 at ¶¶ 31-45. The district was an administrative agency with certain enumerated powers, but no enumerated power to adjudicate a PSEBA claim. *Id.* at ¶¶ 37-45. For that reason, this Court rejected an administrative proceeding to establish PSEBA eligibility. *Id.* at ¶¶ 43-45. This Court even acknowledged PSEBA's silence on procedures, but nevertheless found that the district was powerless to create its own. *Id.* at ¶¶ 44-45.

Despite being confronted with this reasoning from *Gaffney*, and despite the lack of any other relevant case, the *Pedersen* court held that the village's home rule power allowed it to do what was disallowed in *Gaffney*: create adjudication procedures. The sole basis for the distinction was the village's home rule status. *Pedersen*, 2014 IL App (1st) 123402 at ¶ 31. *Pedersen* is, of course, an appellate decision, which this Court may disregard if it finds the distinction unavailing. The plaintiff in *Pedersen* did not appeal this adverse ruling because, despite it, he prevailed and was awarded PSEBA benefits. Thus, this Court never evaluated *Pedersen* in light of *Gaffney*. *Id.* at ¶ 60.

In any case, *Pedersen's* home rule relevance was sharply limited by an appellate court decision just three years later. In *Englum*, 2017 IL App (4th) 160747, a non-home-rule-unit city passed an ordinance creating procedures to determine PSEBA eligibility. *Id.* at ¶¶ 2, 47. The ordinance did not alter the substance of PSEBA. *Id.* at ¶¶ 14, 71-72. The *Englum* court examined *Gaffney* and *Pedersen* and found that neither was controlling. *Id.* at ¶ 57. Instead, it held that a non-home-rule unit has the same power to establish PSEBA procedures as a home rule unit. *Id.* at ¶¶ 67-69. The court recognized that PSEBA was

silent on procedure, so even without home rule power, the city could enact its own. *Id.* at ¶¶ 71-72.

Englum thus shows that home rule power was not determinative or even relevant in *Pedersen*. Because each ordinance was strictly procedural, and had no effect of the substantive provisions of PSEBA, it was authorized. Home rule considerations are irrelevant to whether a PSEBA-related ordinance may stand. Section 6(a) is not implicated. Neither *Pedersen* nor *Englum* provides any authority for the enactment of an ordinance such as this one. Substantive interference in the PSEBA benefit has been preempted by the General Assembly. 820 ILCS 320/20. PSEBA is not silent on the payment of group health insurance premiums and the type of injury that triggers the benefit.

Ultimately, the City advocates an analysis where *StubHub's* three-factor test is irrelevant, where the City is a General Assembly unto itself, and where "pertaining to" is read out of section 6(a). In the City's view, only a written statement from the General Assembly can limit its home rule powers. This is not the law. If it was, *StubHub*, *Lignoul*, *Ampersand*, *Bernardi*, and other cases would have upheld home rule power, as the State-level authorities there contained no textual home rule limitation. Yet despite the lack of such a limitation, this Court found that the home rule units in those cases failed a section 6(a) analysis. Here, the case against home rule power is at least as strong.

The redefinitions do not "pertain[] to" the City's government and affairs. The grant of home rule power in section 6(a) does not allow the City to redefine the substantive terms of PSEBA. This Court should affirm.

V. The Redefinitions Are Impermissible Because The Text Of PSEBA Forbids Even A Home Rule Unit From "Provid[ing] Benefits … Inconsistent With The Requirements Of This Act," And The Redefinitions Would Lead The City To Do Just That

Even if the City satisfies the foregoing constitutional analysis, it must also satisfy a statutory analysis, which it cannot. The appellate court correctly found that the redefinitions are impermissible because the text of PSEBA forbids even a home rule unit from "provid[ing] benefits … inconsistent with the requirements of" PSEBA, and the redefinitions would force the City to do just that. 820 ILCS 320/20; *Local 50*, 2021 IL App (3d) 190758. This is precisely what section 20 was written to prohibit. 820 ILCS 320/20. Yet this is precisely what the redefinitions would do.

A. The General Assembly Validly Limited Home Rule Power in Section 20 of PSEBA

The General Assembly may restrict even the concurrent exercise of home rule power. Ill. Const. 1970, art. VII, sec. 6(i) (a home rule unit may act "to the extent that the General Assembly by law does not specifically limit the concurrent exercise [of home rule power] or specifically declare the State's exercise to be exclusive"); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 131 (1993). Section 20 prohibits any employer, even a home rule unit, from "provid[ing] benefits … inconsistent with the requirements of this Act". 820 ILCS 320/20. Section 20 clarifies that this is a limitation "on the concurrent exercise" of power. *Id.* Even an otherwise-concurrent and otherwise-permissible exercise of power is forbidden if the employer provides benefits "inconsistent with" PSEBA's requirements as a result. *Id.* Section 20 states that it is a limitation under section 6(i). *Id.* The General Assembly invoked the appropriate constitutional mechanism to limit home rule power, and plainly set forth what is prohibited.

Even if section 20's language was somehow imperfect—a point the Union does not concede—it must be given effect. "[I]n case of conflict with local legislation, the state legislation *always prevails* when it *expresses the intent* to be exclusive and to preclude additional local regulation." *Lignoul*, 67 Ill. 2d at 486, *quoting* Proceedings at 1643 (emphases added by the Union). Section 20 clearly expresses the intent that PSEBA, not local legislation, should provide the substantive law with respect to the benefits it creates. 820 ILCS 320/20. There is no requirement of specific language to identify the preemption. It simply needs to be declared as was done in Section 20. Neither the Illinois Constitution nor the Statute on Statutes demands more than what the General Assembly has done.

B. Both PSEBA'S Text and Case Law Establish the "Requirements Of" PSEBA, and the Redefinitions, If Followed, Would Force the City to Provide Benefits "In a Manner Inconsistent With" Those Requirements

Both PSEBA's text and case law establish the "requirements of" PSEBA, and the redefinitions, if followed, would force the City to provide benefits "in a manner inconsistent with" those requirements. 820 ILCS 320/20. *Pedersen* recognized that PSEBA has "substantive requirements". 2014 IL App (1st) 123402 at ¶ 37. Those substantive requirements including finding a "catastrophic injury" when a line-of-duty disability pension is awarded, and paying benefits accordingly. 820 ILCS 320/10(a); *Krohe*, 204 Ill. 2d at 400. Those substantive requirements also include finding an "injury" when one of the conditions in 820 ILCS 320/10(b) is present, without reference to other facts. These terms are well-defined, whether in PSEBA's text or in judicial decisions which have become part of the statute. *Heelan*, 2015 IL 118170 at ¶ 19. To depart from these definitions is to provide benefits inconsistent with PSEBA's requirements, regardless of the content of that departure. As shown, the City's redefinitions are inconsistent with

these definitions, making them inconsistent with the "requirements of" PSEBA. The redefinitions create their own novel, substantive requirements. Section 20 prohibits this.

The City cannot evade section 20 merely by listing the state-level definitions and redefinitions side by side. Section 20's phrase "inconsistent with" is not so narrow. 820 ILCS 320/20. PSEBA **requires** the employer to pay benefits when the employee meets its qualifying criteria. *See* 820 ILCS 320/10(a) ("An employer … **shall pay** the entire premium") (emphases added). If a home rule unit could add additional requirements it claims are "consistent", why would section 20 exist? It was certainly not written to prevent home rule units from being more generous than PSEBA. Section 20 could only have been intended to prevent a home rule unit from substantively narrowing PSEBA's provisions—whether by redefining or adding criteria.

If the state-level definitions of PSEBA terms are not the "requirements of" PSEBA, PSEBA has no real requirements. If a home rule unit may redefine PSEBA's substantive terms, section 20 means nothing. Each home rule unit could redefine PSEBA's substance, creating a patchwork of PSEBA laws. *See supra*. Every home rule unit could veto this Court's precedent. *See infra.* No case allows this, especially where a State statute contains language as strict as section 20. Section 20 forecloses the City's attempt to rewrite PSEBA's substance.

C. *Pedersen* and *Englum* Confirm That a Locality May Make Only Procedural, Not Substantive, Changes to PSEBA, and Therefore Support the Union on This Point

Pedersen and *Englum* confirm that a locality may make only procedural, not substantive, changes to PSEBA. Therefore, they militate against the substantive changes the redefinitions would make, and support the Union. *Pedersen* and *Englum* permitted

ordinances that augmented PSEBA procedurally because PSEBA was silent on procedural matters. *Pedersen*, 2014 IL App (1st) 123402 at ¶ 37; *Englum*, 2017 IL App (4th) 160747 at ¶ 72. Section 20 did not prohibit those ordinances because they were not, and could not have been, inconsistent with PSEBA. *Id.* PSEBA does not address procedure even by implication; it is wholly silent on that matter. *Id.* But a home rule unit cannot deviate from PSEBA's substance, a matter about which PSEBA is not silent. *Pedersen*, 2014 IL App (1st) 123402, ¶¶ 35, 37, *citing* 820 ILCS 320/20. The *Pedersen* court drew a bright line between substance and procedure and confined its ruling to the latter.

In *Englum*, too, the court upheld an ordinance that augmented PSEBA procedurally and not substantively. *Englum*, 2017 IL App (4th) 160747, ¶¶ 72-73. The *Englum* court did not find the city's lack of home rule power decisive; it upheld the city's power to enact the ordinance. *Id.* at ¶ 72. For the *Englum* court, the controlling consideration was not home rule power; it was PSEBA's procedural silence. *Id.* at ¶¶ 54-55, 72. Section 20 of PSEBA, the court recognized, forbids local legislation that would cause the locality to act "inconsistent with the requirements of" PSEBA. *Id*. at ¶ 55. In the realm of procedure, PSEBA sets no requirements, so there was nothing to be inconsistent with. *Id.* at ¶¶ 54-55.

Plainly, the validity of a PSEBA-related ordinance does not depend on the home rule status of the entity that passed it, but on the subject matter it addresses. PSEBA is decidedly not silent on the terms the City redefines. "Catastrophic injury" is defined in case law that has become a part of PSEBA. *Krohe*, 204 Ill. 2d at 400; *Heelan*, 2015 IL 118170 at ¶¶ 19, 27. "Injury" is defined in PSEBA's text and in case law. 820 ILCS 320/10(b). These are PSEBA's requirements. *Pedersen* and *Englum* offer no way around

this conclusion. In fact, by limiting those decisions to procedural ordinances, those cases militate in favor of the Union. The redefinitions are prohibited by section 20.

The City argues that the General Assembly did not bar home rule units from legislating on substantive points impacting PSEBA benefits by, for example, filling gaps in PSEBA's legal framework. But that is precisely what the General Assembly did. 820 ILCS 320/20.

The plain text of section 20 forbids even a home rule unit employer from "provid[ing] benefits … inconsistent with the requirements of" PSEBA. 820 ILCS 320/20. Those "requirements" include the definitions PSEBA's terms carry, whether provided by PSEBA's text or unwavering case law. The redefinitions are facially inconsistent with the definitions the City is required to use. As a result, they must fall. This analysis—which the appellate court found decisive—provides an independently-sufficient basis to affirm.

VI. The City's Position Must Be Rejected Because It Would Allow A Home Rule Unit To Intrude Upon The Judiciary's Power To Define Terms In A Statute, Thus Violating The Separation Of Powers Clause In The Illinois Constitution Of 1970, Article II, Section 1

The City's position must be rejected because it would allow a home rule unit to intrude upon the judiciary's power to define terms in a statute. This would violate the Separation of Powers Clause in the Illinois Constitution of 1970, article II, section 1. The City admits that *Krohe's* holding defining "catastrophic injury" is good law, but argues that a home rule unit may readjudicate *Krohe* if it wishes. The City also argues that defining terms is a legislative task, and if it cannot overrule this Court, this Court would have legislated in violation of the Separation of Powers Clause. Ill. Const. 1970, art. II, sec. 1. The City is wrong, and its argument, not the Union's, violates that clause.

In *Krohe*, this Court defined the statutory term "catastrophic injury". 204 Ill. 2d at 400. Defining a statutory term is a basic function—perhaps the core function—of the judiciary. It has been for all of American history. *Accord Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is"). Such definitions are part of that statute, *Heelan*, 2015 IL 118170 at ¶¶ 19, 27, and are binding on all actors, for all purposes, unless and until amended, just as they always have been. If the Illinois Constitution of 1970 intended to eliminate, limit, or condition this long-held judicial power, it would have said so explicitly. But this was not done. Only an amendment by the legislature—the General Assembly, not a home rule unit—can overrule a controlling, state-level judicial decision. *Id.* at ¶ 27. This is not a "first in time, first in right" argument. The General Assembly limited home rule power, this Court defined "catastrophic injury" and gave gloss to "injury", and section 20 forbids the redefinitions. The City's argument would seize judicial power belonging to this Court.

The City's argument would itself create a Separation of Powers Clause violation. The City's argument gives judicial definitions lesser power than legislative definitions, because the latter could bind home rule units and the former could not. No precedent supports this. This shift of historical power also would have been set forth in the Constitution if it was intended, but it was not. The judiciary has always defined terms, but the City would—for the first time the Union is aware of—debase those definitions by placing them below home rule ordinances, while State statutes remained above.

The City misrepresents what legislatures do. Legislatures set criteria. They may also enact definitions, but that is not required. If a legislature has set criteria, it has discharged its function. Defining legislatively-set criteria, as this Court did in *Krohe*, is a

core judicial function that Illinois courts carry out every day without violating the Separation of Powers Clause. Here, the General Assembly set "catastrophic injury" as one PSEBA-qualifying criterion. 820 ILCS 320/10(a). It could have also defined "catastrophic injury" in PSEBA's text, but it fulfilled its legislative function merely by setting the criterion. Subsequently, this Court carried out a basic judicial function when it defined "catastrophic injury" in *Krohe*. That definition became part of the statute. This was not a judicial power grab, it was simply a day in the life of this Court. Absolutely none of these actions violated the Separation of Powers Clause.

Ultimately, the City's argument allows it to either (a) escape this Court's jurisdiction and ignore its rulings, or (b) exercise judicial power beyond this Court within its own borders. Either conclusion is a severe Separation of Powers Clause violation.

The redefinitions address terms that are already well-defined in the text of PSEBA and in case law. The City seeks to overwrite judicial decisions in which this Court legitimately exercised its power to define and provide gloss to the terms in question. This Court's actions do not constitute a violation of the Separation of Powers Clause. The City's redefinitions, on the other hand, do violate the Separation of Powers Clause by intruding on this Court's sole jurisdiction to define terms in State statutes.

VII. The City's Remaining Arguments Should Be Rejected

The City's remaining arguments should be rejected. The City's repeated references to "PSEBA's text" or "PSEBA as enacted" have no legal merit. No authority allows the City to strip away judicial gloss. *Heelan* rejected any separation between *Krohe* and PSEBA's definition of "catastrophic injury". 2015 IL 118170 at ¶¶ 19, 27. The same legislators who heard what "catastrophic injury" was intended to mean included section 20

to prevent home rule units from departing from that meaning. The City's argument would create two PSEBAs, one for home rule purposes and one for all other purposes. The City's argument would force the General Assembly to re-pass judicial rulings as legislation in order to bind home rule units, even when that was the General Assembly's clear intent all along. The City's argument would fail to overcome its lack of home rule power under section 6(a), while still creating a Separation of Powers Clause violation. Finally, the City's argument would raise a novel question: can this Court ever resolve ambiguity? The "PSEBA's text" argument fails on all these fronts.

Nor does the phrase "by law", as used in section 6(i), demand any more than has been done here. Ill. Const. 1970, art. VII, sec. 6(i). "By law" merely means that the General Assembly must, in the text of a state statute, provide clearly what a home rule unit may not do. This Court found fault with the limiting language in *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281 (2001), and *Scadron*, 153 Ill. 2d 164 (1992). Here, however, the limiting language is clear. 820 ILCS 320/20. PSEBA has substantive requirements. A home rule unit cannot provide benefits inconsistent with those requirements. The General Assembly so provided, "by law", when it wrote section 20, and section 20 itself is clear. The City's argument fails.

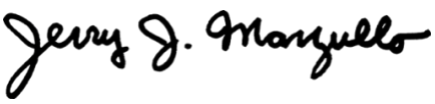
CONCLUSION

"Catastrophic injury" and "injury," as used in section 10(a) and 10(b) of PSEBA, respectively, carry specific definitions. The Ordinance redefines those terms in a manner inconsistent with PSEBA's definitions and introduces the superfluous term "gainful work." Harmony between the definitions is not possible. The redefinitions do not "pertain[] to" the City's government and affairs and are therefore outside the grant of home rule power

in the Illinois Constitution. Independently, section 20 of PSEBA forbids the redefinitions because they would cause the City to "provide benefits … inconsistent with" PSEBA's requirements. Finally, the redefinitions violate the Separation of Powers Clause by nullifying this Court's decisions, or by exercising judicial power.

WHEREFORE, the Union prays that the ruling of the appellate court be AFFIRMED.

Respectfully Submitted,



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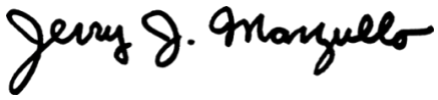
CERTIFICATE OF COMPLIANCE

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 47 pages.



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NOTICE OF FILING & CERTIFICATE OF SERVICE

I, Jerry J. Marzullo, attorney for Plaintiff-Appellee, hereby certify that I caused to be electronically filed and served the foregoing Response Brief of Plaintiff-Appellee 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 August 3rd, 2021:

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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.

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