CAUSE NO. _____

HOUSTON POLICE OFFICERS' UNION	§	**IN THE DISTRICT COURT OF**
	§	
	§	
Plaintiff	§	**HARRIS COUNTY, TEXAS**
	§	
	§	
VS.	§	
	§	**_____JUDICIAL DISTRICT**
CITY OF HOUSTON, TEXAS; and HOUSTON PROFESSIONAL FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 341,	§	
	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL VERIFIED PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Houston Police Officers' Union ("HPOU") files this Original Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and in support thereof would respectfully show the Court as follows:

I. INTRODUCTION AND SUMMARY

1. HPOU, a property taxpayer in the City of Houston (the "City"), brings this lawsuit to prevent the unlawful expenditure of taxpayer dollars in connection with an unconstitutional amendment to the Houston City Charter mandating pay parity between fire fighters and police in violation of state law.

2. In 2017, the City was presented with a petition that sought to amend the City Charter to require compensation for fire fighters to be "at least equal" with compensation for police (the "Pay-Parity Amendment"). As explained herein, the Pay-Parity Amendment was constitutionally infirm and void from the start.[1] Nevertheless, in accordance with its ministerial duty, the City submitted the Pay-Parity Amendment to voters at the November 6, 2018 election.

3. The City estimates that the Pay-Parity Amendment will cost between 85 and 98 million dollars a year, requiring drastic cuts to City services, including first responders like fire fighters and police. Leading up to the election, interests across the political spectrum, including the Greater Houston Partnership, the *Houston Chronicle*, Mayor Sylvester Turner, HPOU, the Houston Realty Business Coalition and the C Club of Houston, voiced opposition to the measure and its projected negative impacts on City services.

4. On election day, the measure was presented to the voters verbatim as crafted by the petitioners, without any reference to its cost implications. It passed by a vote of 59% to 41%. But what the voters were asked to pass was never capable of becoming a valid law.

5. While Houston's voters certainly have the power to amend the City's charter, that power is not unlimited; it is subject to the restrictions of state law. Article

[1] One might wonder why HPOU did not challenge the Pay-Parity Amendment before the election. The answer is simple; Texas law does not permit courts to intervene prior to an election, no matter how infirm a prospective law. *E.g., City of Cleveland v. Keep Cleveland Safe*, 500 S.W.3d 438 (Tex. App.—Beaumont 2016, no pet.). Accordingly, HPOU appears before this Court at its first legally available opportunity to challenge the Pay-Parity Amendment.

XI, Sec. 5(a) of the Texas Constitution expressly prohibits home-rule city charters that "contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State," whether those provisions be enacted by the municipality itself or by its voters. TEX. CONST. ART. XI, § 5(a). Moreover, the Legislature can, by state law, completely remove certain matters from the operative field of the voter initiative process.

6. Pursuant to the Texas Uniform Declaratory Judgments Act, TEX. CIV. PRAC. & REM. CODE §§ 37.001 *et seq.* (the "Declaratory Judgments Act"), HPOU seeks a declaration that the Pay-Parity Amendment is invalid, unconstitutional, and void, for at least four reasons:

- It directly conflicts with Section 174.021 of the Texas Local Government Code, which mandates that fire fighter pay in the City of Houston be set by reference to **private sector** jobs of similar skill and training, not by reference to other municipal workers;

- It concerns matters - namely fire fighter compensation - that the Legislature has removed from the operative field of the voter initiative process through the Fire and Police Employment Relations Act ("FPERA");

- Alternatively, the City lacked authority to submit the Pay-Parity Amendment to the voters because the underlying petition process failed to comply with Section 141.043 of the Texas Local Government Code, which, if not entirely nullified by the FPERA, prescribes the exclusive, limited means by which voters can petition the City to place a measure on fire fighter pay before the voters; and

- The Pay-Parity Amendment violates the public policy of the State of Texas in that it impermissibly burdens the collective bargaining rights of HPOU's members by forcing their bargaining efforts to encompass fire fighters.

7. HPOU also seeks a temporary restraining order and temporary and permanent injunctions against the implementation of the Pay-Parity Amendment. Texas law has long recognized the right of property taxpayers to enjoin a prospective illegal expenditure of public funds. Absent injunctive relief, HPOU, which pays property taxes in the City of Houston, will suffer imminent and irreparable harm through the unlawful expenditure of its taxpayer dollars to implement the unconstitutional Pay-Parity Amendment.

II. DISCOVERY PLAN

8. This case should be governed by a Level 3 discovery plan under Texas Rule of Civil Procedure 190.4.

III. RULE 47 STATEMENT

9. HPOU seeks solely non-monetary declaratory and injunctive relief.

IV. PARTIES

10. HPOU is a non-profit Texas organization that is the sole and exclusive majority bargaining agent for and on behalf of all police officers of the City of Houston Police Department. As a property taxpayer in the City of Houston, HPOU has direct standing to obtain a declaration of the Pay-Parity Amendment's unconstitutionality and to enjoin the City from illegally expending public funds. HPOU also has associational standing because (i) its members possess individual standing as City of Houston taxpayers, (ii) its members have suffered particular injuries distinct from those of the general public in that their collective bargaining rights have been improperly burdened by the Pay-Parity Amendment, (iii) the interests that HPOU seeks to protect by this suit

are germane to HPOU's purpose, and (iv) neither the claims asserted nor the relief requested herein requires the participation of individual members of HPOU in this lawsuit.

11. Defendant the City is a home-rule municipality located in all or parts of Harris, Fort Bend, and Montgomery Counties in Texas, with its principal place of government located in Harris County. The City may be served with process by serving its mayor, clerk, secretary, or treasurer in accordance with Section 17.024(b) of the Texas Civil Practice and Remedies Code.

12. The City does not possess governmental immunity from the claims asserted herein, because Section 37.006(b) of the Declaratory Judgments Act clearly and unambiguously waives governmental immunity for claims challenging the validity of municipal ordinances.

13. Defendant Houston Professional Fire Fighters Association, IAFF Local 341 ("HPFFA") is a non-profit corporation and is the exclusive collective bargaining agent for fire fighters employed by the City of Houston Fire Department. HPFFA is made a party to this proceeding pursuant to Section 37.006(a) of the Declaratory Judgments Act, because its interests may be affected by the declarations sought herein. HPFFA may be served through its registered agent for service of process, Patrick M. Lancton, 1907 Freeman Street, Houston, Texas 77009.

14. In accordance with Section 37.006(b) of the Declaratory Judgments Act, because this action alleges that a municipal charter amendment is unconstitutional,

HPOU will serve the Texas Attorney General with a copy of this petition addressed to Ken Paxton, Attorney General of Texas, 300 W. 15th Street Austin, Texas 78701.

V. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to Article V, Section 8 of the Texas Constitution and Section 65.021 of the Texas Civil Practice and Remedies Code.

16. Venue is proper in Harris County, Texas, because this action seeks injunctive relief with respect to a municipality that is located in Harris County, Texas, and alternatively, because the events or omissions giving rise to this claim occurred in Harris County. *See* TEX. CIV. PRAC. & REM. CODE §§ 65.023; 15.002(a).

VI. BACKGROUND

A. Houston Voters Adopted a State Statutory Scheme - FPERA - to Govern Fire Fighter Pay.

17. In 1948, the voters of the City adopted a set of civil service laws for police and fire fighters that have since been codified as Chapter 143 of the Texas Local Government Code (the "Civil Service Act"). The Civil Service Act allows for collective bargaining, and, as the result of successful collective bargaining efforts, HPOU and the City currently operate under a meet and confer agreement that addresses wages, salaries, rates of pay, and other terms of employment for police officers.

18. Fire fighters in the City are subject to a different set of laws that goes beyond just the Civil Service Act. In 2003, voters in the City petitioned for and adopted

the Firefighters and Police Employee Relations Act, Chapter 174 of the Texas Local Government Code (the "FPERA") with respect to fire fighters.

19. The opening paragraphs of the FPERA, Section 174.002, make clear that its underlying policy was to tie fire fighter pay to that in comparable **private sector** employment:

> (a) The policy of this state is that a political subdivision shall provide its fire fighters and police officers with compensation and other conditions of employment that are substantially the same as compensation and conditions of employment prevailing in **comparable private sector employment**.
>
> (b) The policy of this state is that fire fighters and police officers, like employees in the **private sector**, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize and bargain collectively would lead to strife and unrest, consequently injuring the health, safety, and welfare of the public.

TEX. LOC. GOV'T CODE § 174.002 (emphasis added).

20. To achieve that policy goal, the FPERA establishes a comprehensive system for determination of fire fighter pay. That system includes the following key aspects and remedies:

- A prohibition on strikes and lockouts and penalties for such conduct, *Id.* §§ 174.201-.205;
- A mandate that fire fighter pay **"shall"** be "substantially equal to compensation and other conditions of employment that prevail in comparable employment in the **private sector**" and "based on prevailing **private sector** compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and may be performed under the same or similar conditions," *Id.* § 174.021 (emphasis added);

- A requirement that fire fighters, through their bargaining agent, and the City "shall" bargain collectively, *Id.* § 174.105;

- A presumption that the terms of any collective bargaining agreement satisfy the FPERA's requirement for pay substantially equivalent to the private sector, *Id.* § 174.022(a);

- A right of either party to request arbitration in the event that collective bargaining efforts reach an impasse, *Id.* § 174.153;

- A presumption that the terms of any arbitration award satisfy the FPERA's requirement for pay substantially equivalent to the private sector, *Id.* § 174.022(b); and

- A right of fire fighters, in the event they request arbitration and the City refuses, to seek judicial review to enforce the Section 174.021 requirement for pay substantially equivalent to comparable **private sector** employment, *Id.* § 174.252.

21. In addition to establishing a comprehensive scheme for the determination of fire fighter pay, the FPERA expressly "**preempts all contrary local ordinances, executive orders, legislation, or rules adopted by** the state or by a political subdivision or agent of the state, including a personnel board, civil service commission or **home-rule municipality.**" *Id.* § 174.005 (emphasis added).

B. The City and HPFFA Reached an Impasse Under FPERA and HPFFA Exercised Its Right to Judicial Enforcement in a Lawsuit that is Still Pending.

22. HPFFA has been recognized as the exclusive collective bargaining agent for fire fighters employed by the City of Houston Fire Department. Pursuant to the FPERA, the City and HPFFA have previously collectively bargained, which resulted in an executed agreement addressing wages, salaries, rates of pay, and other terms of employment for fire fighters. However, that agreement is believed to have expired on June 30, 2017. The City and HPFFA attempted to collectively bargain for terms that

would extend beyond June 30, 2017, but, upon information and belief, they reached an impasse.

23. On June 28, 2017, the City passed Ordinance No. 2017-462 setting fire fighter pay in the absence of a collective bargaining agreement. That same day, HPFFA exercised its judicial remedy under the FPERA by filing suit to obtain judicial enforcement of the FPERA's private sector employment standard. That case remains pending. *See* Cause No. 2017-42885, *Houston Professional Firefighters' Association, Local 341 v. City of Houston, Tex.*; in the 234th District Court of Harris County, Texas.

C. The Pay-Parity Petition Was Presented to the City Pursuant to Section 9.004 of the Texas Local Government Code.

24. In 2017, while HPFFA's judicial remedy action was pending, a petition was circulated among voters of the City entitled "Petition for a City of Houston Charter Amendment to Require Parity in the Compensation Provided to Houston Firefighters Compared to the Compensation Provided to Houston Police Officers" (the "Petition"). It was addressed "[t]o the Mayor and City Council of the City of Houston" and provided that "We, the undersigned registered voters of the City of Houston, Texas, under Section 9.004 of the Texas Local Government Code, hereby petition for an election to amend the Charter of the City of Houston to add the following as a separate section of our Charter, to read as follows:

> The City of Houston shall compensate City firefighters in a manner and amount that is at least equal and comparable by rank and seniority with the compensation provided City police officers including:

a. Persons employed in the following firefighter classifications shall receive the same base pay as persons of like seniority employed in the following, similarly numbered police officer classifications:

Firefighters	Police Officers
Probationary Firefighter	Probationary Police Officer
Firefighter	Police Officer
Engineer/Operator	Senior Police Officer
Captain, Inspector, Investigator, Communications Captain, Mechanic	Sergeant
Senior Captain, Senior Inspector, Senior Investigator, Communications Senior Captain, Shop Supervisor	Lieutenant
District Chief, Assistant Arson Investigator, Chief Inspector, Chief Communications Officer, Master Mechanic	Captain
Deputy Chief, Arson Investigator, Assistant Fire Marshal, Deputy Chief Communications Officer	Captain (with an additional 15% for parity)
Assistant Fire Chief, Fire Marshal	Assistant Police Chief
Executive Assistant Fire Chief	Executive Assistant Police Chief

In the event the title of any of the above classifications shall be changed, the new classification most similar in terms of qualifications and duties to the old shall be substituted therefore, to achieve pay parity.

b. Firefighters employed in fire suppression shall receive the same incentive pay as police officers, of like seniority, employed as patrol officers.

c. Firefighters shall receive the same training pay as police officers of like seniority.

d. Firefighters employed as arson investigators shall receive the same investigative incentive pay as police officer investigative personnel of like seniority and investigative experience.

e. Firefighters who serve as Field Training Officers shall receive the same Field Training Officer training pay as police officers who serve as Field Training Officers.

f. Firefighters shall receive mentoring pay in the same amount and on the same basis as police officers.

g. Firefighters classified as arson investigators, inspectors, communications captain, senior inspectors, senior investigators, communications senior captain, assistant arson investigator, chief inspector or chief communications officer shall receive the same weekend premium and shift differential pay in the same amount and on the same basis as police officers qualified to receive such pay.

h. Firefighters shall receive educational incentive pay in the same amount and on the same basis as police officers entitled to receive such pay.

i. Firefighters shall receive college tuition reimbursement in the same amount and on the same basis as police officers entitled to receive such reimbursement.

j. Firefighters shall receive the same clothing allowance (or similar benefit) paid to police officers, in addition to any protective clothing and equipment provided by the City.

k. Firefighters shall receive the same equipment allowance (or similar benefit) paid to police officers.

l. The City shall make the same contribution to the Houston Professional Firefighters Association Medical Trust that it does to the Texas Police Trust.

m. To the extent that the names of any of the forms of pay or benefits identified above are changed, the requirement of parity for firefighters to police officers shall continue to apply. In addition, if any new form of pay or benefit is provided to police officers, the same shall also be provided to firefighters."

25. The Petition was submitted under Section 9.004 of the Texas Local Government Code, which provides that the "governing body shall submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified voters of the municipality equal to at least five percent of the number of qualified voters of the municipality or 20,000, whichever number is the smaller." TEX. LOC. GOV'T CODE § 9.004(a).

26. On May 3, 2018, the City Secretary issued a memorandum to the Mayor and City Council confirming that the Petition submitted under Section 9.004 of the Texas Local Government Code was supported by signatures of at least 20,000 qualified voters. As a result, on August 8, 2018, the City Council adopted an ordinance ordering a special election to submit the Pay-Parity Amendment to the voters.

27. On November 6, 2018, the Pay-Parity Amendment was submitted to the voters and passed, with 59% of the vote. On November 19, 2018, the City completed its canvass of the election results. On November 28, 2018, the City Council approved an ordinance declaring the adoption of the Pay-Parity Amendment and ordering the City Charter be amended to reflect it.[2]

28. As a result, the Pay-Parity Amendment is now law and its implementation is certain. Because the City pays fire fighters with taxpayer dollars, the implementation of the Pay-Parity Amendment will result in the illegal expenditure of taxpayer funds, absent action by this Court.

VII. CAUSES OF ACTION

29. As and for its causes of action, HPOU asserts the following:

FIRST CAUSE OF ACTION FOR DECLARATORY JUDGMENT THAT THE PAY-PARITY AMENDMENT IS UNCONSTITUTIONAL BECAUSE IT CONFLICTS WITH SECTION 174.021 OF THE FPERA

30. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

[2] A copy of that ordinance is attached hereto as **Exhibit 1**.

31. The Pay-Parity Amendment is invalid and unconstitutional because it is preempted by and directly conflicts with Section 174.021 of the FPERA requiring that fire fighter pay be substantially equivalent to comparable private sector employment, not other public sector jobs.

32. Section 174.021 of the FPERA provides that the political subdivision **"shall"** provide fire fighters with "compensation and other conditions of employment that prevail in comparable employment in the **private sector.**" TEX. LOC. GOV'T CODE § 174.021 (emphasis added). Moreover, the compensation and conditions of employment shall be "based on prevailing **private sector** compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and may be performed under the same or similar conditions." *Id.* (emphasis added).

33. The Pay-Parity Amendment poses an irreconcilable conflict with Section 174.021, because it ties fire fighters' compensation and conditions of employment to those of other **public sector** employees, namely police officers. As a result, fire fighters' compensation and conditions of employment are based on the public, not private, sector. The Pay-Parity Amendment also conflicts with Section 174.021 because police officers' jobs do not "require the same or similar skills, ability, and training" as fire fighters.

34. Texas law is clear that no city charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State. TEX. CONST. ART. XI, § 5(a).

35. Because Section 174.005 of the FPERA expressly preempts any contrary ordinances, legislation or rules adopted by a home-rule municipality, and because the Pay-Parity Amendment directly conflicts with Section 174.021, the Pay-Parity Amendment is preempted and invalid. *See* TEX. LOC. GOV'T CODE § 174.005.

36. Likewise, because the Pay-Parity Amendment is in conflict with the general laws of the state, it is unconstitutional. *See* TEX. CONST. ART. XI, § 5(a).

37. HPOU respectfully requests that the Court enter a judgment declaring the Pay-Parity Amendment unconstitutional and invalid on these grounds.

SECOND CAUSE OF ACTION FOR DECLARATORY JUDGMENT THAT THE PAY-PARITY AMENDMENT IS VOID BECAUSE THE FPERA REMOVES FIRE FIGHTER PAY FROM THE OPERATIVE FIELD OF THE INITIATIVE PROCESS

38. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

39. The setting of compensation for fire fighters has been withdrawn from the operative field of the initiative or petition process as a result of the Legislature's enactment of the FPERA.

40. The initiative process affords direct popular participation in lawmaking where citizens who exercise their rights under initiative provisions become the legislative branch of the municipal government. However, the field in which the initiative process is operative is not unlimited and it may be limited by state law, either expressly or by implication.

41. The FPERA makes clear that its statutorily provided remedies "must be expeditious, effective, and binding" in order to "maintain the high morale of fire

fighters . . . and the efficient operation of the departments in which they serve." *See* TEX. LOC. GOV'T. CODE § 174.002(e). Among those remedies is judicial enforcement of the FPERA's requirement for pay that is commensurate with the private sector. The Legislature's provision of this "expeditious" and "binding" judicial remedy in order to "maintain efficient operations" of the fire department impliedly removes the setting of fire fighter pay from the field in which voters can exercise the initiative process.

42. Were voters permitted to legislate fire pay, there would be no way for fire fighters to obtain the judicial enforcement promised them by the FPERA. A court could not order the voters to "make the affected employees whole as to the employees past losses," or "declare the compensation or other conditions of employment required by Section 174.021 for the period, not to exceed one year, as to which the parties are bargaining" or award the fire fighters "reasonable attorney's fees." TEX. LOC. GOV'T CODE § 174.252(b).

43. By providing a substantive standard for fire fighter pay in the FPERA and prescribing the specific remedies for a municipality's failure to meet that standard, which remedies cannot be enforced against the voters, the Legislature has impliedly removed fire fighter pay from the field in which voters may exercise the initiative process.

44. In addition, a subject can be withdrawn from the initiative process where there is some preliminary duty that has been made a prerequisite to the exercise of legislative power by statute or charter which is impossible to fulfill in an initiative proceeding. In other words, the power of the people to legislate directly does not extend

where prerequisites are required prior to the passage of a measure. By requiring the City to bargain collectively before it can set fire fighter compensation — a prerequisite that voters cannot fulfill — the Legislature further removed fire fighter pay from the field of matters on which voters may have a say.

45. This is not to say that the voters of the City of Houston may never legislate fire fighter pay. Should they desire to do so, however, the voters must first repeal their prior adoption of the FPERA, as permitted by Section 174.053 of the Texas Local Government Code. The voters have not done so, and until they do, the FPERA removes fire fighter pay from the field of the initiative process.

46. HPOU respectfully requests that the Court enter a judgment declaring the Pay-Parity Amendment invalid and void because its subject matter has been removed from the field of matters on which the voters of the City may legislate.

THIRD CAUSE OF ACTION FOR ALTERNATIVE DECLARATORY JUDGMENT THAT THE PAY-PARITY AMENDMENT IS VOID BECAUSE THE CITY LACKED AUTHORITY TO SUBMIT THE MEASURE TO THE VOTERS DUE TO AN INVALID PETITION PROCESS

47. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

48. In the alternative to the declarations sought in the preceding paragraphs, HPOU seeks a declaration that the Pay-Parity Amendment is void because the City lacked authority to submit the Pay-Parity Amendment to the voters. In the event fire fighter pay has not been completely removed from the operative field of the initiative process, HPOU asserts that the Legislature has strictly limited the process by which

voters may petition the City to increase fire fighter salaries. Because the Pay-Parity Amendment was not submitted to the City in accordance with that prescribed process, the City never had authority to submit it to the voters.

49. Section 141.034 of the Texas Local Government Code states that the qualified voters of a municipality with a population of more than 10,000 may petition the governing body of the municipality to increase the minimum salary of each member of the fire or police department. As outlined in Section 141.034, the Legislature has mandated certain prerequisites that must be fulfilled, both by the petitioners and the governing body of the municipality.

50. The petition must "(1) state the amount of the proposed minimum salary for each rank, pay grade, or classification; (2) state the effective date of the proposed salary increase; (3) designate five qualified voters to act as a committee of petitioners authorized to negotiate with the governing body of the municipality under Subsection (g) [of Section 141.034]; and (4) be signed by a number of qualified voters equal to at least 25 percent of the voters who voted in the most recent municipal election." TEX. LOC. GOV'T CODE § 141.034(b). The statute's use of the word "must" necessarily "creates or recognizes a condition precedent." TEX. GOV'T CODE § 311.016(3); TEX. LOC. GOV'T CODE § 1.002 (adopting the Code Construction Act as applying to the Local Government Code).

51. Once a proper petition has been filed under Section 141.034, additional prerequisites arise: "[T]he governing body shall (1) adopt the proposed minimum salary stated in the petition; (2) offer an alternative minimum salary proposal under

Subsection (g); or (3) call an election on the proposed minimum salary as provided by this section." TEX. LOC. GOV'T CODE § 141.034(c), (g).

52. If the governing body chooses to offer an alternative minimum salary proposal, then the "governing body of the municipality shall confer with the committee of petitioners designated in the petition and offer the alternative salary proposal." TEX. LOC. GOV'T CODE § 141.034(g). If the alternative salary is accepted, then the governing body is not required to call an election. *Id.* But if an election is held or an alternative salary proposal is accepted, then a petition for another election under Section 141.034 may not be filed for one year. *See id.* § 141.034(h).

53. It is undeniable that the interactive prerequisites of Section 141.034 cannot be completed by the public. The voters cannot submit a petition **and** make a counter proposal to themselves. As a result, the Legislature has clearly withdrawn the subject of increasing the minimum salary for fire fighters from the general initiatory process of Section 9.004 that was used for the Pay-Parity Amendment.

54. This is consistent with the Code Construction Act, as applicable to the Local Government Code. *See* TEX. GOV'T CODE Ch. 311; TEX. LOC. GOV'T CODE § 1.002. Under the Code Construction Act, where a general and special provision irreconcilably conflict, the special provision prevails, subject to exceptions that do not apply here. TEX. GOV'T CODE § 311.026.

55. Section 9.004 and Section 141.034 irreconcilably conflict, as they each address a petition process to be initiated by the voters with the former providing a general process and the latter prescribing a specific process for setting fire fighter pay.

The general - Section 9.004 - must yield to the specific - Section 141.034. Any other reading would render Section 141.034 superfluous in violation of Texas law.

56. In the event that the FPERA does not completely withdraw fire fighter pay from the initiative process, then Section 141.034 is the only mechanism by which voters can petition the City to increase the minimum salary for fire fighters. It is unquestionable that the Petition supporting the Pay-Parity Amendment did not meet the mandatory requirements of Section 141.034. The face of the Petition and public statements related thereto confirm that it was circulated and filed pursuant to Section 9.004.

57. Because the Petition failed to comply with Section 141.034, the City was without authority to submit the Pay-Parity Amendment to the voters. As a result, the election is void and the Pay-Parity Amendment is invalid.

58. HPOU respectfully requests that the Court enter a judgment declaring the Pay-Parity Amendment invalid and void on these grounds.

FOURTH CAUSE OF ACTION FOR DECLARATORY JUDGMENT THAT THE PAY-PARITY AMENDMENT IS VOID BECAUSE IT VIOLATES PUBLIC POLICY

59. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

60. In the words of the Texas Legislature:

> The policy of this state is that fire fighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize

> and bargain collectively would lead to strife and unrest, consequently injuring the health, safety, and welfare of the public.

TEX. LOC. GOV'T CODE § 174.002(b). There is nothing "fair and practical" about the Pay-Parity Amendment.

61. The voters of the City have given police officers, as represented by HPOU, the right to meet and confer — independently — with the City on matters relating to wages, salaries, and rates of pay, among other terms of employment for police. *See generally* TEX. LOC. GOV'T CODE Ch. 143.

62. The Pay-Parity Amendment undermines and interferes with HPOU's right to collectively bargain, because both HPOU and the City are forced to consider the economic effect of a third-party's interjecting interests. This burdens the police-City collective bargaining process with outside factors that inherently increase the economic impact of any benefit HPOU seeks on behalf of its membership. Police effectively lose their "fair and practical" method for determining compensation and other conditions of their employment.

63. The Pay-Parity Amendment also puts HPOU in the position of representing fire fighters who have neither chosen HPOU to represent them nor have the same interests or job responsibilities as police officers. This is contrary to the public policy of this state, as expressed in Section 174.103 of the Texas Local Government Code, which mandates that associations representing employees in the fire and police departments of a political subdivision are **separate** collective bargaining units unless they **voluntarily** join together for collective bargaining with the public employer. There

is nothing voluntary about the restrictions placed on HPOU's ability to collectivity bargain as a result of the Pay-Parity Amendment.

64. The Pay-Parity Amendment's effect is to deny police officers, and in turn HPOU, their voter-given right to meaningfully collectively bargain with the City without restraint.

65. HPOU respectfully requests that the Court enter a judgment declaring the Pay-Parity Amendment void for violation of Texas public policy.

VIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

66. HPOU also seeks a temporary restraining order, temporary injunction, and at the conclusion of trial, a permanent injunction, to prevent the City from implementing the Pay-Parity Amendment because it would result in the illegal expenditure of public funds.

A. Application for Temporary Restraining Order

67. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

68. HPOU requests that the Court enter a temporary restraining order prohibiting the City from expending taxpayer funds on the implementation of the Pay-Parity Amendment.

69. The verified facts plead herein justify the imposition of the requested temporary restraining order, because HPOU has adequately plead causes of action for declaratory judgment that the Pay-Parity Amendment is invalid and unconstitutional.

The verified facts also demonstrate that, absent a temporary restraining order, HPOU, as a taxpayer, will suffer probable, imminent, and irreparable harm through the unlawful expenditure of its taxpayer dollars to implement the unconstitutional and invalid Pay-Parity Amendment.

70. The City Council has adopted the Pay-Parity Amendment and ordered the City Charter to be amended accordingly. The Pay-Parity Amendment is now law and the City's implementation of it through the expenditure of taxpayer dollars is imminent and certain. Because the Pay-Parity Amendment is invalid, void and unconstitutional, any delay in the issuance of the temporary restraining order will result in the illegal expenditure of HPOU's taxpayer dollars. Once spent, taxpayer dollars cannot be recovered. As such, HPOU faces an imminent risk of irreparable harm for which there is no adequate remedy at law.

71. HPOU has joined all necessary or indispensable parties in accordance with Texas Rule of Civil Procedure 39.

72. HPOU is willing and able to post a reasonable bond, as ordered by the Court.

B. Request for Temporary Injunction

73. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

74. HPOU requests that the Court set its application for temporary injunction for hearing, and after hearing the application, issue a temporary injunction against the

City based on the foregoing information as well as any additional information or evidence as may be properly submitted to the Court for consideration.

75. HPOU asks that the temporary injunction enjoin the City to the same extent as the temporary restraining order sought herein.

C. Request for Permanent Injunction

76. HPOU hereby incorporates the allegations contained in all preceding paragraphs as if fully set forth herein.

77. HPOU also asks the Court to set its request for a permanent injunction for a full trial, and after the trial, issue a permanent injunction against the City to the same extent as the temporary restraining order sought herein.

IX. CONCLUSION

WHEREFORE, Plaintiff HPOU respectfully prays that the Court enter a temporary restraining order prohibiting the City from expending public funds to implement the Pay-Parity Amendment.

HPOU further requests that upon hearing, a temporary injunction be issued, and that upon final disposition of this matter a permanent injunction against the City be issued, all to the same effect as the temporary restraining order sought herein.

HPOU further prays that upon the final disposition of this matter, HPOU be awarded a judgment declaring that:

- The Pay-Parity Amendment is invalid and unconstitutional because it directly conflicts with Section 174.021 of the Texas Local Government Code;

- The Pay-Parity Amendment is void because its subject matter has been removed from the operative field of the voter initiative process by the Legislature through the FPERA;

- Alternatively, the Pay-Parity Amendment is void because the City lacked authority to submit the Pay-Parity Amendment to the voters due to the use of an invalid petition process; and

- The Pay-Parity Amendment is void because it violates the public policy of this State.

HPOU further prays that it be awarded such other and further relief, whether special or general, at law or in equity, to which HPOU may be justly entitled.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

By: */s/ Kelly Sandill*

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ATTORNEYS FOR PLAINTIFF HOUSTON POLICE OFFICERS' UNION

VERIFICATION

STATE OF TEXAS §
§
HARRIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Joseph Gamaldi, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is Joseph Gamaldi. I am capable of making this verification. I have read the foregoing petition and application for injunctive relief. The facts stated therein are within my personal knowledge and are true and correct."

Joseph Gamaldi
President
Houston Police Officers' Union

SWORN TO AND SUBSCRIBED before me by Joseph Gamaldi this 30th day of November, 2018.

NOTARY PUBLIC IN THE STATE OF TEXAS

My Commission expires: 7/3/20

TINA DREWKE
129042105
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JULY 3, 2020