

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

WESTLAND RETAIL CENTER LLC,
individually and as representative of a class
of similarly-situated persons and entities,

Case No. 22- -CZ

Plaintiff,

v.

CITY OF WESTLAND, MICHIGAN,
a municipal corporation,

Defendant.

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr. (P70332)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
(248) 544-1500
ghanley@kickhamhanley.com
jwarrow@kickhamhanley.com
ekickhamjr@kickhamhanley.com
Attorneys for Plaintiff and the Class

John Spain (P67052)
30777 Northwestern Highway, Suite 301
Farmington Hills, MI 48334
(248) 254-1587
Co-Counsel for Plaintiff and the Class

There is no other pending or resolved civil action between these parties arising out
of the transaction or occurrence alleged in this Complaint.

**PLAINTIFFS' CLASS ACTION COMPLAINT
TO ENFORCE THE HEADLEE AMENDMENT
PURSUANT TO CONST 1963, ART 9, § 32**

**PURSUANT TO MCR 2.112(M), PLAINTIFF STATES THAT IT DOES NOT BELIEVE
THERE ARE ANY FACTUAL QUESTIONS THAT ARE ANTICIPATED TO
REQUIRE RESOLUTION BY THE COURT**

Plaintiff Westland Retail Center LLC, by its attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, states the following for its Class Action Complaint to Enforce the Headlee Amendment Pursuant to Const. 1963, Art 9, § 32 against the City of Westland, Michigan (the “City”):

INTRODUCTION

1. This is an action against the City challenging certain property taxes (the “Excess Taxes”) imposed by the City that have not been authorized by the City’s voters and therefore violate Art. 9, § 31 of the Michigan Constitution (the “Headlee Amendment”), which provides:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. ... [Const. 1963, art. 9, § 31]

2. The City imposes the Excess Taxes under the purported authority of the Michigan Fire Fighters and Police Officers Retirement Act, MCL 38.551 et seq. (“Act 345”). *See* Exhibit 1 hereto.

3. Act 345 authorizes a municipality to establish a police and fire employee pension plan and grants a municipality limited authority to impose new taxes to fund its obligations under the pension plan. Pursuant to Act 345, the City has established a police and fire pension plan (the “Police and Fire Pension Plan”). Under Act 345, a municipality may only impose taxes sufficient to fund the City’s actual contributions to the Act 345 pension plan. *See* MCL 38.559.

4. The City imposes taxes – purportedly pursuant to its taxing authority under Act 345 - - that generate millions of dollars more than is needed to fund the City’s actual annual contributions to the Act 345 pension plan. The extra dollars generated by the Excess Taxes are used to fund the City’s general obligations unrelated to the Police and Fire Pension Plan.

5. Act 345 is the only possible legal authorization for the Excess Taxes at issue. In other words, if the Excess Taxes are not authorized by Act 345, the City has no legal ability to impose the Taxes because it is otherwise at the limit of its charter taxing authority.

6. The City has been imposing the Excess Taxes since at least 2014 without voter approval. At some point, the City's voters apparently approved the creation of the City's Police and Fire Pension Plan. But the voters never approved a tax which raises millions of dollars more in revenues than is needed to fund contributions to the Police and Fire Pension Plan.

7. The Excess Taxes are unlawful because they are not authorized by Act 345. While the tax the City imposes to cover its actual contributions to its Police and Fire Pension Plan is lawful because it complies with Act 345, the Excess Taxes are not within the City's taxing authority under Act 345. The Excess Tax is a new tax that was not authorized by law or charter at the time the Headlee Amendment was ratified in 1978, and therefore violates Section 31 of the Headlee Amendment because it was not approved by the City's voters.

8. Because the Excess Taxes have been imposed in violation of Headlee, the City must disgorge and refund the Excess Taxes it has collected in the year prior to the filing of this action and all additional Excess Taxes it collects during the pendency of this action, and the Court should enjoin the City from continuing to impose and collect the Excess Taxes in the future.

JURISDICTION AND VENUE

9. Plaintiff is a property owner in the City which incurs the Excess Taxes. Plaintiff has paid the Excess Taxes at issue within one year of the filing of this lawsuit and seeks to act as class representative for all similarly-situated persons.

10. Defendant City of Westland (the "City") is a municipality located in Wayne County, Michigan.

11. This is an action filed pursuant to MCR 2.112(M). This Court is vested with original jurisdiction concurrent with the Court of Appeals to hear original actions challenging the validity of a tax pursuant to Article 9, Section 32 of the Michigan Constitution of 1963. This authority is codified by MCL 600.308a.

GENERAL ALLEGATIONS

12. Any Michigan municipality with a paid or part paid fire or police department can create a police and fire pension board in order to come under Act 345, provided it obtains voter approval to adopt the provisions of Act 345. In this regard, MCL 38.561 provides in pertinent part as follows:

At any time after this act shall become effective, any city, village or municipality having a paid or part paid fire or police department, may come under the provisions of this act and create a pension board hereunder by submitting the same to the electors of any such city, village or municipality at any regular or special election for adoption, in the manner provided by law for amending charters: Provided, that this act shall not become effective until the beginning of the next succeeding fiscal year after such adoption of the provisions of this act by any city, village or municipality. ...

13. Once approved by the municipality's voters, the Act allows a municipality to impose property taxes to finance its obligations under the Act. MCL 38.559(2) sets forth the conditions the municipality must comply with in order to impose such taxes:

(2) For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, **the amount required by taxation to meet the appropriations to be made by municipalities under this act shall be in addition to any tax limitation**

imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963. [Emphasis added.]

14. While MCL 38.559 authorizes additional property taxes, those taxes are subject to the following strict limitations:

- Any tax imposed must not exceed the amount necessary to “meet the appropriations” actually made by the municipality under the Act;
- The municipality’s “appropriations” must be **only** for “the payment of the pensions and other benefits payable as provided in this act;”
- The appropriations must be in an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries; and
- The treasurer of the municipality must deposit the appropriations “into the retirement system.”

15. Given that Act 345 allows only taxes for “the payment of the pensions and other benefits payable as provided” in the Act, it is necessary to identify what those benefits are. On this point, Section 6 of the Act, MCL 38.556, sets forth with great specificity the benefits that a municipality must provide under the Act. That section provides in pertinent part as follows:

(1) Age and service retirement benefits payable under this act are as follows:

(a) A member who is 55 years of age or older and who has 25 or more years of service as a police officer or fire fighter in the employ of the municipality affected by this act may retire from service upon written application to the retirement board stating a date, not less than 30 days or more than 90 days after the execution and filing of the application, on which the member desires to be retired. The retirement board shall grant the benefits to which the member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement. Upon the approval of the legislative body or the electors of a municipality under this act, a member under 50 years of age who has 25 or more years of service, or without the necessity for approval, a member 50 years of age or more who has 25 or more years of service, may leave service and receive the full retirement benefits payable throughout the member's life as provided in subdivision (e).

(b) A member who is 60 years of age or older shall be retired by the retirement board upon the written application of the legislative body, or board or official provided in the charter of the municipality as head of the department in which the member is employed. Upon retirement, the retirement board shall grant the benefits to which the

member is entitled under this act, unless the member continues employment. If the member continues employment, the member's pension shall be deferred with service years of credit until actual retirement.

(c) A member who is 65 years of age shall be retired by the retirement board on the first day of the month following attainment of 65 years of age.

(d) A member who has 10 or more years of service shall have vested retirement benefits that are not subject to forfeiture on account of disciplinary action, charges, or complaints. If the member leaves employment before the date the member would have first become eligible to retire as provided in subdivision (a) for any reason except the member's retirement or death, the member is entitled to a pension that shall begin the first day of the calendar month immediately after the month in which the member's written application for the pension is filed with the retirement board that is on or after the date the member would have been eligible to retire had the member continued in employment. The retirement board shall grant the member the benefits to which the member is entitled under this act, unless the member resumes service. If the member resumes service, the member's pension shall be further deferred with service years of credit until the member actually retires.

(e) **Upon retirement from service as provided in this subsection, a member shall receive a regular retirement pension payable throughout the member's life of 2% of the member's average final compensation multiplied by the first 25 years of service credited to the member, plus 1% of the member's average final compensation multiplied by the number of years, and fraction of a year, of service rendered by the member in excess of 25 years.** A municipality under this act, upon approval of the legislative body or the electors of the municipality, may increase the percentage of the payment from 2% up to a maximum of 2.5%. If an increase is approved, the increase shall not be reduced for members under the system at the time of the increase. The legislative body may also increase the percentage of employee contributions. If a retired member dies before the total of regular pension payments received by the member equals the total of the member's contributions made to the retirement system, the difference between the member's total contributions and the total of the member's regular retirement pension payments received shall be paid in a single sum to the person or persons the member nominates by written designation duly executed and filed with the retirement board. If there is not a person or persons surviving the retired member, the difference, if any, shall be paid to the retired member's legal representative or estate.

(f) As used in this section, "average final compensation" means the average of the highest annual compensation received by a member during a period of 5 consecutive years of service contained within the member's 10 years of service immediately preceding the member's retirement or leaving service. However, if so provided in a collective bargaining agreement entered into between a municipality under this act and the appropriate recognized bargaining agent, average final compensation may mean the average of the 3 years of highest annual compensation received by a member during the member's 10 years of service immediately preceding the member's retirement or leaving service. If the member has less than 5 years of service, average final compensation means the annual average compensation received by the member during his or her total years of service. ... [emphasis added].

16. In addition to pension payments, Act 345 also authorizes certain death and disability payments to plan participants. *See, e.g.*, MCL 38.556(2). These death and disability payments are the only “other benefits payable as provided” in this Act. MCL 38.559(2). Thus, a municipality’s “appropriations” under Act 345 – *i.e.*, the amounts that can be paid through the taxes authorized by Act 345 – are limited to the amounts necessary to fund pension, death and disability payments provided by the Act 345 pension plan.

17. The City employs actuaries to determine the annual “appropriations” it must make to the Police and Fire Pension Plan. The City’s consistent policy and practice since at least 2018 has been to make annual contributions to the Police and Fire Pension Plan in the precise amounts determined by the actuaries. *See* Exhibit 2 hereto at p. 65.

18. In the fiscal year ending June 30, 2021, the City made contributions to the Police and Fire Pension Plan in the amount of \$7,595,440. *See* Exhibit 2 hereto at p. 65. The City’s adopted budget for the fiscal year ending June 30, 2022 provided for \$8,681,077 in contributions to the Plan. *See* Exhibit 3 hereto at pp. 31 and 33 (\$4,505,369 for police and \$4,175,708 for fire). These amounts represent the amounts necessary to “meet the appropriations” the City has made under Act 345, and therefore are the maximum amounts that the City may fund through taxes imposed pursuant to its Act 345 taxing authority.

19. In the fiscal year ending June 30, 2021, however, the City, purportedly relying upon its Act 345 taxing authority, imposed 8.0 mills in property taxes in the total amount of \$13,157,388, which taxes generated \$5,561,948 in revenues beyond the limits provided by Act 345. *See* Exhibit 3 hereto at p. 6. The revenues of the total tax levy that exceed the Act 345 limits (roughly 3.4 mills) constitute Excess Taxes.

20. In the fiscal year ending June 30, 2022, the City, purportedly relying upon its Act 345 taxing authority, imposed 8.0 mills in property taxes in the total amount of \$13,595,163, which taxes

generated \$4,914,086 in revenues beyond the limits provided by Act 345. *See* Exhibit 3 hereto at p. 6. The revenues of the total tax levy that exceed the Act 345 limits (roughly 2.9 mills) constitute Excess Taxes.

21. The revenues generated by the Excess Taxes are not used to “meet the appropriations” required by Act 345 and therefore the Excess Taxes are not authorized by Act 345. Moreover, because the Excess Tax revenues were used by the City for expenses unrelated to the Police and Fire Pension Fund, the Excess Tax revenues did not become assets of the Police and Fire Pension Plan, as required by Act 345. *See* MCL 38.559 (requiring that “[a]ll deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations **into the retirement system**”) (emphasis added).

22. The Excess Taxes are not authorized by the City’s charter or by any other Michigan statute or law. As of July 1, 2021, the City was levying the maximum allowable millage levy for general operating purposes. *See* Exhibit 4 hereto (City’s 2021 Tax Rate Request showing levy of “maximum allowable millage levy”) and Exhibit 5 hereto at p. 32 (showing “maximum allowable levy” for operating purposes of 6.3851 mills and actual levy of 6.3851 mills for fiscal year 2020). Therefore, the City cannot rely upon any other taxing authority to justify the Excess Taxes.

23. The Excess Taxes were not “authorized by law or charter” at the time the Headlee Amendment was ratified in December 1978, and they were not authorized by a majority vote of the City’s citizens. *See* Exhibit 4 hereto (identifying the “date of election” for the Act 345 taxes as “N/A”). Therefore, the Excess Taxes have been imposed in violation of Article 29, Section 31 of the Michigan Constitution.

24. “The Headlee Amendment added Sections 25 through 34 to Article 9 of the Michigan Constitution.” *Michigan Ass’n of Home Builders v. Troy*, 504 Mich. 204, 208 n. 3, 934 N.W.2d 713 (2019). Section 25 of the Amendment dictates that “[p]roperty taxes and other local taxes and state taxation

and spending may not be increased above the limitations specified herein without direct voter approval.” Mich. Const. Art. 9, Sec. 25. In *Waterford School Dist. v. State Bd. of Ed.*, 98 Mich. App. 658, 663, 296 NW2d 328 (1980), the Court observed that: “[t]he Headlee Amendment grew out of the spirit of “tax revolt” and was designed to place specific limitations on state and local revenues. The ultimate purpose was to place public spending under direct popular control.”

25. This case specifically concerns Art. 9, § 31 of the Michigan Constitution, which provides in pertinent part as follows:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31]

26. “Section 31 prohibits units of local government from levying any new tax or increasing any existing tax above authorized rates without the approval of the unit’s electorate.” *Durant v Michigan*, 456 Mich 175, 183; 566 NW2d 272 (1997). Thus, a tax that was not authorized by law or charter in December 1978 and is imposed without voter approval “unquestionably violates” § 31. *Bolt v. City of Lansing*, 459 Mich. 152, 158 (1998).

27. The Headlee Amendment excludes from the voter approval requirement any tax “authorized by law or charter” at the time Headlee was ratified in December 1978. Therefore, any tax **authorized** by Act 345 is not subject to voter approval because the Act 345 taxing authority existed before December 1978.

28. The Supreme Court has held that “[t]he plain language of art 9, Sec. 31, excludes from its scope the levying of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified.” *American Axle & Mfg., Inc. v. Hamtramck*, 461 Mich. 352, 362, 604 N.W.2d 330 (2000). In *American Axle*, 461 Mich. at 357, the Supreme Court approved a line of Section 31 cases from this Court standing for the proposition “that the Headlee exemption of taxes authorized by law

when the section was ratified permits the levying of previously authorized taxes even where they were not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date.”

29. The Court of Appeals has observed that Act 345 “authorizes a municipality to collect property taxes ... for the purpose of **supporting a firefighters and police officers pension system.**” *Kinder Morgan Mich., LLC v. City of Jackson*, 277 Mich. App. 159, 161, 744 N.W.2d 184 (2007) (emphasis added). Therefore, the taxes the City imposes and collects **to cover its actual annual contribution to the Police and Fire Pension Plan** are lawful because they were “authorized by law” at the time the Headlee Amendment was ratified in December 1978.

30. The last amendment to Act 345 prior to the 1978 ratification of Headlee occurred in 1951. *See* Exhibit 6 hereto. At that time, the MCL 38.559 contained the following tax authorization:

(2) **For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable hereunder, the said city, village or municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or which might be payable on account of service performed and to be performed by active members and pensions being paid to retired members and beneficiaries.** Provided, That the appropriations to be made by the said city, village or municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries. Provided further, That in no event shall the amount of such appropriation in a fiscal year be less than 10 per cent of the aggregate pays received during that fiscal year by members of the retirement system unless by actuarial determination it is satisfactorily established that a lesser percentage is needed. All such deductions and appropriations shall be payable to the treasurer of said city, village or municipality and by him to be paid into the retirement system hereunder. Except in cities that are subject to the 15 mill tax limitation as provided by article 10, section 21 of the state constitution, **the amount required by taxation to meet the appropriations to be made by cities, villages and municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in such cities, villages and municipalities by charter provisions or by state law.** [Emphasis added.]

31. In *American Axle*, the concurring judge expressly recognized that the taxes authorized by Act 345 were the type of taxes that were exempt from Headlee because such taxes were “authorized

by law or charter” in 1978. *See American Axle*, 461 Mich. at 372-373 (Corrigan, J, concurring) (“Legislature has also authorized a tax to fund pensions for police and firefighters, MCL 38.559(2); MSA 5.3375(9)(2), and provided that, except in municipalities subject to the fifteen-mill limitation under the constitution, the amount required by taxation to meet appropriations ‘shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law,’ subject to Const. 1963, art 9, Sec. 25.”)

32. For the reasons discussed below, however, this authorization does not save the Excess Taxes, which constitute new taxes outside of the scope of the Act 345 taxing authority and which were not approved by the City’s voters.

33. The City’s use of its Act 345 taxing authority to finance obligations unrelated to its obligations under the Police and Fire Pension Plan constitutes a clear violation of Headlee. The checks provided by Headlee are particularly warranted here, where Act 345 allows a municipality to impose unlimited taxes, so long as those taxes are used to meet the municipality’s actual annual “appropriations” to its Act 345 pension fund. The courts must be vigilante that this broad power is not used in an attempt to solve other municipal financing difficulties by establishing millage rates that allow a municipality to not only cover its actual “appropriations” to its Act 345 pension fund but also cover unrelated expenses. That is precisely what the City is doing here.

34. Here are the reasons the Excess Taxes are **not** authorized by Act 345:

35. First and foremost, the only tax authorized by Act 345 is a tax that generates the “amount required ... to meet **appropriations**” under the Act. MCL 38.559(2) (emphasis added).

36. Second, the municipality’s “appropriations” to the Act 345 pension plan must be **only** for “the payment of the pensions and other benefits payable as provided in this act.” MCL 38.559(2).

37. Third, Act 345 requires a board of an Act 345 pension plan to “[c]ertify to the governing body of the city, village, or municipality the amount to be contributed by the city, village,

or municipality as provided in this act” (MCL 38.552(4)) and to “[d]isburse the pensions and other benefits payable under this act.” MCL 38.552(8).

38. Fourth, Act 345 specifically sets forth the methodology a retirement board must apply in order to determine the necessary “appropriations.” Indeed, the Supreme Court has held that the “Legislature has established a standard for arriving at an appropriate sum to be paid to the retirement board” to fund a municipality’s obligations under Act 345. *Shelby Township Police & Fire Retirement Bd. v. Shelby Township*, 438 Mich. 247, 256, 475 N.W.2d 249 (1991).

39. In *Shelby Township*, the Court held:

...the provisions [of Act 345] mandate that the board hire an actuary and then certify to the municipality an amount that covers current service costs as well as unfunded accrued liabilities. The express provisions of MCL 38.552(2), (4); MSA 5.3375(2)(2), (4), read in conjunction with MCL 38.559(2); MSA 5.3375(9)(2), clearly establish the authority and describe the methodology necessary for the board to make an actuarial determination of the funds needed to maintain the retirement system. [438 Mich. at 257-258.]

40. The *Shelby Township* Court ultimately summarized the obligations of an Act 345 pension board to satisfy its funding obligations as follows:

We conclude that MCL 38.559(2); MSA 5.3375(9)(2) mandates the township to annually contribute to the retirement system **an actuarially determined amount**, which will ensure that funds are available to cover pensions earned by active members for services to be performed (in the current year) earned by active members for services already performed, and actual pensions to be paid to retirees. [438 Mich. at p. 264 (emphasis added)].

41. Fifth, consistent with MCL 38.552 and MCL 38.559, the board of the Police and Fire Pension Plan has retained actuaries who determine the annual amounts the City must contribute to the Pension Plan in order to meet its obligations under Act 345. In its most recent financial statements, the City stated:

State law requires public employers to make pension contributions in accordance with an actuarial valuation. MERS and the City hire independent actuaries for this purpose and **annually contribute the amount determined to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability**. Employees are required to

make pension contributions based on amounts agreed upon in union contracts. The City's required contribution is determined after consideration of the required contribution rate of employees. [Exhibit 2, hereto at p. 47 (emphasis added)].

42. The retained actuaries "crunch the numbers" and calculate the amounts the City is required to contribute to "finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability." The actuarial calculation of this amount for the fiscal year ending June 30, 2019 is set forth at p. 19 of Exhibit 7 hereto. The actuaries represent that "[t]he Board of Trustees have confirmed that the employer contributions shown above represent the required contribution for the year covered." *See* Exhibit 8 hereto at p. 3.

43. Sixth, the City historically contributes to the Police and Fire Pension Plan the **exact amount** of the appropriations its actuaries determine are required under Act 345. *See* Exhibit 2 hereto at p. 65 (showing annual actual contributions equal to the "actuarially determined contribution" since 2018).

44. Seventh, the City did not impose taxes solely to "meet the appropriations" it actually made to the Police and Fire Pension Plan. Instead, the City, relying solely upon its Act 345 taxing authority, imposed taxes which generated millions of dollars more than the amounts required to meet those "appropriations."

45. In the fiscal year ending June 30, 2021, the City made contributions to the Police and Fire Pension Plan in the amount of \$7,595,440. *See* Exhibit 2 hereto at p. 65. Again, this was the precise amount the City's actuaries determined were necessary to meet the City's funding obligations for that fiscal year. *See* Exhibit 2 hereto at p. 65. The City's adopted budget for the fiscal year ending June 30, 2022 provided for \$8,681,077 in contributions to the Plan. *See* Exhibit 3, hereto at pp. 31 and 33 (\$4,505,369 for police and \$4,175,708 for fire). These amounts represent the amounts necessary to "meet the appropriations" the City has made under Act 345, and therefore are the maximum amounts that the City may fund through taxes imposed pursuant to its Act 345 taxing authority.

46. In the fiscal year ending June 30, 2021, however, the City, purportedly relying upon its Act 345 taxing authority, imposed 8.0 mills in property taxes in the total amount of \$13,157,388, which taxes generated **\$5,561,948** in revenues beyond the limits provided by Act 345. *See* Exhibit 3 hereto at p. 6. The revenues of the total tax levy that exceed the Act 345 limits (roughly 3.4 mills) constitute Excess Taxes.

47. In the fiscal year ending June 30, 2022, the City, purportedly relying upon its Act 345 taxing authority, imposed 8.0 mills in property taxes in the total amount of \$13,595,163, which taxes generated **\$4,914,086** in revenues beyond the limits provided by Act 345. *See* Exhibit 3 hereto at p. 6. The revenues of the total tax levy that exceed the Act 345 limits (roughly 2.9 mills) constitute Excess Taxes.

48. The revenues generated by the Excess Taxes are not used to “meet the appropriations” required by Act 345 and therefore the Excess Taxes are not authorized by Act 345. Moreover, because the Excess Tax revenues were used by the City for expenses unrelated to the Police and Fire Pension Plan, the Excess Tax revenues did not become assets of the Police and Fire Pension Plan, as required by Act 345. *See* MCL 38.559 (requiring that “[a]ll deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations **into the retirement system**”) (emphasis added).

49. While it does not matter what activities and expenses of the City are funded by the Excess Taxes, it appears that the City has used the bulk of the Excess Taxes to fund its obligation to provide something called Other Post-Employment Benefits (“OPEB”) – basically, health insurance – to retired employees. Even if this is the case, the Excess Taxes are still illegal.

50. First, Act 345 does not authorize an Act 345 pension plan to provide OPEB to members of the plan. *See* MCL 38.556. The “pensions and other benefits payable as provided in this act” consist solely of pensions, disability and death benefit payments. Thus, a municipality’s

“appropriations” under Act 345 – *i.e.*, the amounts that can be paid through the taxes authorized by Act 345 -- necessarily do not include amounts to fund OPEB.

51. Second, the City’s actual Act 345 pension plan, the Police and Fire Pension Plan, does not **in fact** provide OPEB and therefore none of the City’s “contributions” to that Plan actually fund – or could even potentially fund -- OPEB. The City states that the Police and Fire Pension Plan is “a single-employer plan” that provides “defined pension benefits to police and fire employees who meet eligibility requirements.” *See* Exhibit 9 hereto at p. 7. The City’s financial statements further note that the Plan provides only “retirement, disability and death benefits.” *See* Exhibit 2 hereto at p. 49.

52. The June 30, 2019 Actuarial Valuation Report for the Police and Fire Pension Plan (Exhibit 7 hereto) identifies the following benefits provided by the Fund:

- Normal Retirement – *i.e.*, payments based upon age at retirement and length of service.
- “Deferred Retirement”
- “Duty Disability”
- “Non-Duty Disability”
- “Duty Death in Service”
- “Non-Duty Death in Service”
- “Post-Retirement Increase”
- “Annuity Withdrawal” [*Id.* at pp. 26-27].

53. All of the benefits provided by the Fund are **payments** of either retirement pension, disability or death benefits. None of the benefits are OPEB – *i.e.*, health insurance benefits.

54. On the other hand, OPEB benefits are provided by a completely separate fund of the City administered by a different board:

The City provides Other Postemployment Benefits (OPEB) for all employees who meet eligibility requirements. The benefits are provided through the City of Westland Retiree Health Care Plan, a single-employer plan administered by the City of Westland. ... Benefits are provided through the City’s self-insurance program, and the full cost of the benefits is covered by the plan. [Exhibit 9 hereto at pp. 10-11.]

55. The City admits that its OPEB Plan is separate from the Police and Fire Pension Plan. *See* 2021 Summary Annual Report to Members of the City’s Policemen and Firemen Retirement

System (Exhibit 8 hereto) at p. 1 (“The Retirement System, which is managed by the Retirement Board of Trustees, is designed to help you meet your financial needs should you become disabled, retire or die. The City also supports a Retiree Health Insurance Program, **which is separate from the Retirement System**”) (emphasis added).

56. The City’s separate OPEB plan is not limited to retired police and fire employees. *See* Exhibit 2 hereto at pp. 52-53. Indeed, in addition to providing health care insurance benefits to retired police and firemen, the separate OPEB plan provides health care insurance benefits to dozens of the City’s non-police and fire retirees. *See* Exhibit 10 hereto at pp. 3 and 19.

57. Moreover, the OPEB Plan has different eligibility requirements for police and fire employees than the Police and Fire Pension Plan. Under the OPEB Plan, only police and fire employees hired prior to certain dates in 2014 are eligible for the retiree health care benefits under the OPEB Plan. *See* Exhibit 10 hereto at p. 20. As of June 2019, there were 142 active police and fire employees who were members of the Pension Plan (see Exhibit 7 hereto at p. 8), but there were only 100 active police and fire employees who were covered by the OPEB Plan. *See* Exhibit 10 at p. 17.

58. The OPEB benefits provided by the City clearly **cannot** be the type of benefits that fall within Act 345. The OPEB benefits simply are not obligations of the Police and Fire Pension Plan, which are the only obligations that can be financed through “appropriations” under Act 345. Moreover, the OPEB benefits are not even paid to Pension Plan participants: they are paid by the City to third-parties.

59. Moreover, the OPEB Benefits provided by the separate OPEB Plan cannot be deemed benefits provided by the Police and Fire Pension Plan because Act 345 mandates that all benefits provided by an Act 345 pension plan must be paid out of the Plan itself. In this regard, MCL 38.559(5) provides:

(5) All pensions allowed and payable to retired members and beneficiaries under this act **shall become obligations of and be payable from the funds of the retirement system.** [Emphasis added.]

60. Finally, separate and apart from the clear and unambiguous language of Act 345, OPEB benefits are not pension benefits as a matter of law. *See, e.g., Studier v. Michigan Public Schools Employees Retirement Bd.*, 472 Mich. 642, 698 N.W.2d 350 (2005) (distinguishing health care benefits from traditional pension benefits on the grounds that, among other things, health care benefits did not constitute “payments for past services” and, unlike pension payments, did not “increase or grow over time” based upon “the number of years of service”). *See also* Protecting Local Government Retirement and Benefits Act, MCL 38.2803(n) and (o) (distinguishing “Retirement Health Benefit” from “Retirement Pension Benefit”).

61. Because the Excess Taxes are not authorized by Act 345, they are unlawful because there is no other taxing authority the City can rely upon to justify the Excess Taxes.

62. As an initial matter, the City’s charter taxing authority is prescribed by the Home Rule City Act, MCL 117.1 et seq. MCL 117.3(g) requires that a city charter provide:

For annually laying and collecting taxes in a sum, except as otherwise provided by law, not to exceed 2% of the assessed value of the real and personal property in the city. Unless the charter provides for a different tax rate limitation, the governing body of a city may levy and collect taxes for municipal purposes in a sum not to exceed 1% of the assessed value of the real and personal property in the city, subject to section 1a of chapter 7 of the [Municipal Finance Act, MCL 137.1a; MSA 5.3188(45a)].

63. MCL 117.5(a) provides that a city does not have the power:

To increase the rate of taxation now fixed by law, unless the authority to do so is given by a majority of the electors of the city voting at the election at which the proposition is submitted, but the increase in any case shall not be such as to cause the rate to exceed 2%, except as provided by law, of the assessed value of the real and personal property in the city.

64. The City’s Charter here, enacted in 1964, provides the following limitations on the City’s powers of taxation:

Section 13.1. The City shall have the power to assess taxes and levy and collect rents, tolls, and excises. The annual ad valorem tax levy shall not exceed eight (8) mills of the assessed valuation of all real and personal property subject to taxation in the City as equalized by the State, exclusive of any levy required for the payment of principal and interest on outstanding bonds of the City and exclusive of any levy authorized by statute to be made beyond the Charter tax rate limitation. [Exhibit 11 hereto].

65. Application of the Charter provision here confirms that the City has no ability to impose the Excess Taxes in the absence of authority under Act 345 (which the City does not have). The City's voters have not authorized any increase in the 8-mill charter limitation. *See* Exhibit 4 hereto. Moreover, because of annual "Headlee rollbacks," the City's charter tax limitation is now just 6.3135 mills.¹ The City is levying 6.3135 mills – the maximum allowable millage levy. *See Id.* and Exhibit 5 hereto. Therefore, the City cannot squeeze the Excess Taxes into the City's charter limitation for general operating purposes.

CLASS ALLEGATIONS

66. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities who/which have incurred and/or paid the Excess Taxes during the relevant class period.

67. The members of the Class are so numerous that joinder of all members is impracticable.

68. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class it seeks to represent, and Plaintiff was injured by the same wrongful conduct that injured the other members of the Class.

69. The City has acted wrongfully in the same basic manner as to the entire class.

¹ The term "Headlee Rollback" became part of municipal finance lexicon in 1978 with the passage of the Headlee Amendment. In a nutshell, Headlee requires a local unit of government to reduce its millage when annual growth on existing property is greater than the rate of inflation. As a consequence, the local unit's millage rate gets "rolled back" so that the resulting growth in property tax revenue, community-wide, is no more than the rate of inflation.

70. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. Whether the Excess Taxes are authorized by Act 345;
- b. Whether the Excess Taxes were “authorized by law or charter” at the time the Headlee Amendment was ratified in 1978;
- c. Whether the taxes authorized by Act 345 are limited to taxes necessary to cover the City’s actual contributions to the Police and Fire Pension Plan; and
- d. Whether the City should be forced to disgorge the improperly collected Excess Taxes.

71. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action and has retained competent and experienced counsel to prosecute this action.

72. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. At the same time, it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. Plaintiff anticipates no difficulty in the management of this action as a class action.

COUNT I

VIOLATION OF THE HEADLEE AMENDMENT

73. Plaintiff incorporates Paragraphs 1 through 72 of this Complaint, inclusive, as if fully set forth herein.

74. The City is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

75. In particular, the City may not impose a tax in violation of Article 9, § 31 of the Michigan Constitution of 1963.

76. The Excess Taxes are unlawful taxes because they were not authorized by law or charter at the time the Headlee Amendment was ratified in 1978 and they were not approved by a majority of the City's voters.

77. The City has violated the Headlee Amendment by imposing and collecting the Excess Taxes.

78. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled.

79. As a direct and proximate result of the City's assessment of the Excess Taxes, Plaintiff and the Class have been harmed.

80. The City should be required to disgorge the Excess Taxes it has collected and refund these amounts to Plaintiff and the Class.

PRAYER FOR RELIEF

Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as Class Representative and Kickham Hanley PLLC and John Spain, Esq. designated as Class Counsel;

B. Define the Class to include all persons or entities who/which have paid the City or incurred Excess Taxes to the City at any time in the one year preceding the filing of this lawsuit and/or who/which pay Excess Taxes to the City or incur the Excess Taxes during the pendency of this action (the "Class Period");

C. Enter judgment in favor of Plaintiff and the Class and against the City;

D. Order and direct the City to disgorge and refund all Excess Taxes collected during the Class Period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Excess Taxes to which Plaintiff and the Class are entitled;

E. Find and declare that the Excess Taxes are unlawful taxes imposed in violation of the Headlee Amendment;

F. Permanently enjoin the City from imposing or collecting any Excess Taxes, unless those Taxes receive voter approval in conformance with the Headlee Amendment;

G. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

H. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

Gregory D. Hanley (P51204)

Jamie Warrow (P61521)

Edward F. Kickham Jr. (P70332)

32121 Woodward Avenue, Suite 300

Royal Oak, Michigan 48073

(248) 544-1500

Attorneys for Plaintiff and the Class

Date: June 10, 2022