SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Police Benevolent Association of the City of New York, Inc.; Sergeants Benevolent Association of the City of New York; Lieutenants Benevolent Association of the City of New York; Captains Endowment Association of the City of New York; Detectives' Endowment Association of the City of New York; Port Authority Police Benevolent Association Inc.; Port Authority Detectives' Endowment Association; Port Authority Lieutenants Benevolent Association; Port Authority Sergeants Benevolent Association; Supreme Court Officers Association; New York State Court Officers Association; New York State Police Investigators Association, Local No. 4 of the International Union of Police Associations, AFL-CIO; Bridge and Tunnel Officers Benevolent Association; Triborough Bridge and Tunnel Authority Superior Officers Benevolent Association; Metropolitan Transportation Authority Police Benevolent Association; Police Benevolent Association of New York State; and New York City Detective Investigators Association District Attorneys' Office, Plaintiffs, -against- The City of New York, Defendant.	Index No.: **COMPLAINT**

Plaintiffs Police Benevolent Association of the City of New York, Inc.; Sergeants Benevolent Association of the City of New York; Lieutenants Benevolent Association of the City of New York; Captains Endowment Association of the City of New York; Detectives' Endowment Association of the City of New York; Port Authority Police Benevolent Association Inc.; Port Authority Detectives' Endowment Association; Port Authority Lieutenants Benevolent

Association; Port Authority Sergeants Benevolent Association; Supreme Court Officers Association; New York State Court Officers Association; New York State Police Investigators Association, Local No. 4 of the International Union of Police Associations, AFL-CIO; Bridge and Tunnel Officers Benevolent Association; Triborough Bridge and Tunnel Authority Superior Officers Benevolent Association; Metropolitan Transportation Authority Police Benevolent Association; Police Benevolent Association of New York State; and New York City Detective Investigators Association District Attorneys' Office ("Plaintiffs"), by and through their undersigned attorneys, as and for their Complaint, allege as follows against Defendant The City of New York ("City"):

PRELIMINARY STATEMENT

1. This case challenges the City's enactment and prospective enforcement of Section 10-181 of the New York City Administrative Code ("Section 10-181"), passed by the City Council on June 18, 2020, and signed into law by Mayor Bill de Blasio on July 15, 2020. Section 10-181 criminalizes the use of any restraint that restricts the flow of air or blood "by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest."

2. The law has been widely criticized by District Attorneys, law enforcement officials and other experts in law enforcement. Flying in the face of centuries of American law and the State of New York's own Penal Code, Section 10-181 is a strict liability penal statute that lacks any intent or other mental state requirement. Nor does Section 10-181 require that the prohibited conduct actually cause any injury. Rather, any violation of its terms, even absent intent or resulting injury, exposes a police officer to prosecution as a Class A misdemeanor and up to a year in prison. This punitive municipal law threatens police officers with fines and imprisonment for doing their

jobs in good faith with no intent to harm a suspect, nor even any requirement that a suspect suffer injury. Section 10-181 thus goes far beyond a law governing police *mis*conduct.

3. But Plaintiffs do not bring this lawsuit to debate the merits of Section 10-181 as a matter of legislative policy. Rather, this lawsuit challenges the municipal law's validity under the New York State Constitution and Municipal Home Rule Law on two grounds.

4. First, Section 10-181 is preempted by State law. Section 10-181 (the preempted city law) and Section 121.13-a of the State Penal Code (which was signed into law less than a week before the passage of the City law) address identical areas of legislative concern: the restriction of air or blood circulation by a police officer in effecting an arrest. The State's decision to define the scope of criminal conduct in this field preempts municipal law that intrudes into exactly the same field. In addition, through Section 35.30 of the State Penal Code, the State has legislated and thus preempted the field of what constitutes the reasonable use of force by police officers, a field in which the City law also intrudes. Further, even if the City were permitted to legislate in these preempted fields, the inconsistency of Section 10-181 with State law governing the restriction of air or blood circulation by a police officer in effecting an arrest is an additional, independent reason for preemption.

5. Second, Section 10-181 violates due process. In particular, the law is void for vagueness because it does not enable police officers to adequately discern the scope of prohibited conduct. Plaintiffs bring this lawsuit to protect their members' rights and, in turn, to advance the public's right to the safety that Plaintiffs' members are sworn to protect.

6. Section 10-181, before and upon its enactment, has been met with great alarm by a number of District Attorneys, Police Chiefs, Commissioners, and Sheriffs, who also have questioned its validity. Manhattan District Attorney Cyrus Vance, for example, acknowledged

that "the City Council Bill may well be preempted by State law," and forecasted legal challenges for this reason and with respect to the statute's "ambiguity." Others have expressed concern that the regulation, which stands to criminalize lawful uses of force, threatens both police and public safety. Staten Island District Attorney Michael McMahon stressed that the law "defies common sense" and "is causing law enforcement to question how they can do basic functions of their job like make an arrest safely in this city." He has implored the City to "repeal or fix [the] law as soon as possible." In addition, Police Chiefs, Commissioners, and Sheriffs of neighboring counties have prohibited their officers from carrying out enforcement activity in the City to protect their members "from criminal prosecution for actions consistent with their training and Department policy."

7. Section 10-181 already has had a chilling effect on the ability of officers to carry out their functions consistent with their Department's procedures and State law. This chilling effect places officers and the public in harm's way and has imposed an immediate and particularized injury on officers unable to carry out their duties out of concern for an unintentional violation of Section 10-181.

8. Potential enforcement of Section 10-181 must be enjoined to mitigate these harmful effects and prevent them from continuing.

9. Plaintiffs also are entitled to a declaratory judgment finding Section 10-181 invalid as preempted by New York State law and as unconstitutionally vague under the Due Process Clause of the New York State Constitution.

10. State law preempts the City's attempt to regulate such restraints, *i.e.*, restraints that may obstruct blood circulation or air flow, through Section 10-181. The State's comprehensive and detailed penal code and its expressed policy underpinning Section 121.13-a of the State of New York's Penal Law, criminalizing "Aggravated Strangulation" by officers, evince an intent to

occupy the field and preempt local laws on the same subject. Section 10-181 is therefore field-preempted. Section 10-181 also disrupts the careful balancing of public safety interests that Section 121.13-a of the State Penal Law is designed to achieve, thereby inhibiting operation of the State law. Section 10-181 is therefore conflict-preempted too.

11. Section 10-181 also violates the New York State Constitution's Due Process clause because it is unconstitutionally vague. Section 10-181 fails to give officers notice of the precise sort of conduct not permitted when effecting an arrest. An ordinary police officer will be unable to discern whether many ordinary activities taken in the course of the apprehension and arrest of a suspect violate the statute. In fact, District Attorney Vance acknowledged that legal challenges with respect to the law's "ambiguity" were likely to be forthcoming. The absence of an intent or injury requirement from Section 10-181 aggravates the statute's Due Process infirmity by, among other things, increasing the risk of arbitrary and inconsistent enforcement. That some District Attorneys have spoken out about the difficulty in enforcing Section 10-181 and indicated that they do not intend to prosecute violations of its terms as written, magnifies this risk.

12. Accordingly, enforcement of Section 10-181 should be restrained temporarily and preliminarily and permanently enjoined, and a declaratory judgment should be entered finding Section 10-181 invalid and unenforceable.

PARTIES

13. Plaintiff Police Benevolent Association of the City of New York, Inc. ("PBA") is the duly certified collective bargaining representative of all officers of the New York City Police Department in the rank of Police Officer. PBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, PBA seeks to protect the interests of these and other PBA members.

14. Plaintiff Sergeants Benevolent Association of the City of New York ("SBA") is the duly certified collective bargaining representative of all officers of the New York City Police Department in the rank of Sergeant. SBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, SBA seeks to protect the interests of these and other SBA members.

15. Plaintiff Lieutenants Benevolent Association of the City of New York ("LBA") is the duly certified collective bargaining representative of all officers of the New York City Police Department in the rank of Lieutenant. LBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, LBA seeks to protect the interests of these and other LBA members.

16. Plaintiff Captains Endowment Association of the City of New York ("CEA") is the duly certified collective bargaining representative of all officers of the New York City Police Department in the rank of Captain, Deputy Inspector, Inspector, and Deputy Chief. CEA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, CEA seeks to protect the interests of these and other CEA members.

17. Plaintiff Detectives' Endowment Association of the City of New York ("DEA") is the duly certified collective bargaining representative of all officers of the New York City Police Department in the rank of Detective. DEA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, DEA seeks to protect the interests of these and other DEA members.

18. Plaintiff Port Authority Police Benevolent Association Inc. ("PAPD PBA") is the duly recognized collective bargaining representative of all officers of the Port Authority Police Department in the rank of Police Officer. PAPD PBA members would suffer a concrete and

particularized injury by enforcement of Section 10-181. By this action, PAPD PBA seeks to protect the interests of these and other PAPD PBA members.

19. Plaintiff Port Authority Detectives' Endowment Association ("PAPD DEA") is the duly certified collective bargaining representative of all officers of the Port Authority Police Department in the rank of Detective. PAPD DEA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, PAPD DEA seeks to protect the interests of these and other PAPD DEA members.

20. Plaintiff Port Authority Lieutenants Benevolent Association ("PAPD LBA") is the duly certified collective bargaining representative of all officers of the Port Authority Police Department in the rank of Lieutenant. PAPD LBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, PAPD LBA seeks to protect the interests of these and other PAPD LBA members.

21. Plaintiff Port Authority Sergeants Benevolent Association ("PAPD SBA") is the duly certified collective bargaining representative of all officers of the Port Authority Police Department in the rank of Sergeant. PAPD SBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, PAPD SBA seeks to protect the interests of these and other PAPD SBA members.

22. Plaintiff Supreme Court Officers Association ("SCOA") is the duly certified collective bargaining representative of all officers in the Courts of the City of New York, as well as Westchester, Rockland, Putnam, Orange, and Dutchess Counties. SCOA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, SCOA seeks to protect the interests of these and other SCOA members.

23. Plaintiff New York State Court Officers Association ("NYS Court Officers") is the duly certified collective bargaining representative of all Officers in the Courts of the State of New York within the confines of the five (5) boroughs of the City of New York. NYS Court Officers members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, NYS Court Officers seeks to protect the interests of these and other NYS Court Officers members.

24. Plaintiff New York State Police Investigators Association, Local No. 4 of the International Union of Police Associations, AFL-CIO ("NYSPIA") is the duly certified collective bargaining representative of Investigators, Senior Investigators, and Investigative Specialists within the Bureau of Criminal Investigation of the State of New York, Division of State Police. Members of NYSPIA are assigned throughout New York State generally and within the confines of New York City specifically. Members of NYSPIA would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, NYSPIA seeks to protect the interests of these and other NYSPIA members.

25. Plaintiff Bridge and Tunnel Officers Benevolent Association ("BTOBA") is the duly certified collective bargaining representative of all peace officers who patrol intrastate toll bridges and tunnels in the City of New York in the rank of officer. BTOBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, BTOBA seeks to protect the interests of these and other BTOBA members.

26. Plaintiff Triborough Bridge and Tunnel Authority Superior Officers Benevolent Association ("TBTA SOBA") is the duly certified collective bargaining representative of officers who patrol intrastate toll bridges and tunnels in the City of New York in the rank of Lieutenant or Sergeant. TBTA SOBA members would suffer a concrete and particularized injury by

enforcement of Section 10-181. By this action, TBTA SOBA seeks to protect the interests of these and other TBTA SOBA members.

27. Plaintiff Metropolitan Transportation Authority Police Benevolent Association ("MTA PBA") is the duly certified collective bargaining representative of Police Officers, Detectives, Sergeants, and Lieutenants who patrol the facilities and rails of the Metropolitan Transportation Authority. MTA PBA members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, MTA PBA seeks to protect the interests of these and other MTA PBA members.

28. Plaintiff Police Benevolent Association of New York State ("PBA of New York State") is the duly certified collective bargaining representative of members of the New York State Agency Police Services Unit, and the New York State University (SUNY) Police, the New York State Environmental Conservation Police, the New York State Park Police, and the New York State Forest Rangers. PBA of New York State members would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, PBA of New York State seeks to protect the interests of these and other PBA of New York State members.

29. Plaintiff New York City Detective Investigators Association District Attorneys' Office ("NYCDIA") is the duly certified collective bargaining representative of Detective Investigators, Senior Detective Investigators, Rackets Investigators, Senior Rackets Investigators, and Supervising Rackets Investigators within the District Attorneys' Offices of New York City. Members of NYCDIA are assigned throughout the five boroughs of New York City. Members of NYCDIA would suffer a concrete and particularized injury by enforcement of Section 10-181. By this action, NYCDIA seeks to protect the interests of these and other NYCDIA members.

30. Defendant the City of New York (the "City") is a municipal corporation organized and existing under New York state law. The City's principal place of business is located at City Hall, New York, New York 10007.

JURISDICTION AND VENUE

31. This action for declaratory and injunctive relief is brought against the City to challenge the enactment and restrain enforcement of Section 10-181 of the New York City Administrative Code.

32. This action is also brought against the City under the general original jurisdiction of this Court under Article VI, Section 7 of the New York Constitution.

33. This Court has personal jurisdiction over the City under CPLR § 301 because the City works in or conducts substantial business within New York.

34. The Court also has jurisdiction under CPLR § 3001.

35. Venue is proper in this Court under CPLR § 503(a).

36. The Unions have associational standing to sue here because (1) one or more of every unions' members has standing to sue; (2) the interests advanced by vindicating the rights of the members are sufficiently germane to the Plaintiffs' purposes to demonstrate that Plaintiffs will appropriately represent the members' interests; and (3) the participation of the individual members is not required to assert the claim or to afford the Plaintiffs complete relief.

BACKGROUND

A. Regulatory Text and Legislative History of New York City Administrative Law Section 10-181

37. Section 10-181, as a proposed introduction ("Int. No. 0536-2018"), was brought before the New York City Council in February 2018. Sponsored by Council Member Rory I. Lancman, Int. No. 0536-2018 was introduced and titled as "[a] Local Law to amend the

administrative code of the City of New York, in relation to chokeholds and other such restraints." Int. No. 0536-2018 was preceded by a bill also seeking a ban on chokeholds and introduced by Council Member Lancman in 2014. As drafted, Int. No. 0536-2018 would have established as a misdemeanor restraining a person via a "chokehold," defined by the bill as the act of "wrap[ping] an arm around or grip[ping] the neck in a manner that limits or cuts off either the flow of air by compressing the windpipe, or flow of blood through the carotid arteries on each side of a neck," in the course of effecting or attempting to effect an arrest.

38. On or about June 9, 2020, an amendment to Int. No. 0536-2018 was proposed to establish as a misdemeanor the act of "restraining an individual in a manner that restricts the flow of air or blood by compressing the windpipe, diaphragm, or the carotid arteries on each side of the neck in the course of effecting or attempting to effect an arrest" (with the amendment, referred to as "Int. No. 536-A"). A hearing on the bill, as Int. No. 536-A, was held on June 9, 2020.

39. On or about June 18, 2020, another amendment to the bill was introduced. As amended, the bill established as a misdemeanor the act of "restraining an individual in a manner that restricts the flow of air or blood by compressing the windpipe, diaphragm, or the carotid arteries on each side of the neck, *or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm in the course of effecting or attempting to effect an arrest*" (with the amendment, referred to as "Int. No. 536-B") (emphasis added).

40. A hearing on the amended bill was held on June 18, 2020. At the hearing, the bill was referred to as a law that would "make it illegal for an arresting officer to use a restraint that restricts the flow of air or blood by compressing another individual's windpipe or the arteries on the side of their neck, or putting pressure on the back or chest." (Transcript of the Minutes of the Stated Meeting held on June 18, 2020 ("June 18, 2020 Stated Hr'g Tr.") at 25:4-10.)

41. The City Council passed the bill on June 18, 2020, over objections concerning the lack of an intent requirement in the statute, the breadth of the statute beyond chokeholds, the absence of an express self-defense exception, and the existence of state penal law already covering the same field as Section 10-181. (*E.g.*, Transcript of the Minutes of the Committee of Public Safety held on June 9, 2020 at 60-62, 99-105, 135-136; June 18, 2020 Stated Hr'g Tr. at 71-72, 93-94.) The bill was passed less than one week after Governor Cuomo had signed into law Section 121.13-a, the State law that criminalizes the use of restraints that restrict blood circulation or air flow by police or peace officers, including "chokeholds," and includes intent and injury requirements.

42. Section 10-181, titled "Unlawful Methods of Restraint," was signed into law by Mayor Bill de Blasio on July 15, 2020. In its full form, Section 10-181 states:

> a. **Unlawful methods of restraint.** No person shall restrain an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest.
>
> b. **Penalties.** Any person who violates subdivision a of this section shall be guilty of a misdemeanor punishable by imprisonment of not more than one year or a fine of not more than $2,500, or both.
>
> c. Any penalties resulting from a violation of subdivision a of this section shall not limit or preclude any cause of action available to any person or entity injured or aggrieved by such violation.

43. By its terms, Section 10-181 criminalizes any instance in which, in the course of an arrest or attempted arrest, an officer restricts the flow of air or blood by placing pressure on the neck, or sitting, kneeling, or standing on the chest or back "in a manner that compresses the diaphragm."

44. On its face, Section 10-181 does not contain a *mens rea* requirement and is a strict liability statute. Nor does Section 10-181 include any requirement that the prohibited conduct cause actual injury.

45. Section 10-181 is subject to the justification defense of New York State Penal Law § 35.30. *See* N.Y. Penal Law §§ 10.00, 35.00; *see also* N.Y. Penal Law § 35.05.

46. Through its enactment of Section 10-181, the City nonetheless has attempted to legislate in the field of what constitutes the reasonable use of force by a police officer in effecting an arrest—a field that the State has already occupied through laws like Section 121.13-a and Section 35.30.

B. Widespread Concern Over Practical Effects of Section 10-181 and Its Potential Enforcement

47. New York District Attorneys and Police Chiefs, Commissioners, and Sheriffs have expressed great concern about the chilling effect of Section 10-181's passage and the prospect of its enforcement, particularly in light of its lack of an intent requirement and its lack of an injury requirement, and have acknowledged that Section 10-181 is likely to be subject to successful legal challenges.

48. Manhattan District Attorney Cyrus Vance has expressed that State law likely preempts Section 10-181 and that Section 10-181 is ambiguous. In an interview published on July 7, 2020, District Attorney Vance stated that "the City Council Bill may well be preempted by State law" because of the "chokehold bill passed at the State level specifically criminalizing use of chokeholds, up to a Class C violent felony in the case of death." District Attorney Vance also highlighted the fact that the City Council Bill is a "strict liability bill" that lacks elements of "intent," and forecasted that the City Council Bill would be subject to "legal challenges . . . that will be successful" and would place the bill "at risk as a statute because of preemption by the

State." He also acknowledged that, "certainly," there would be legal challenges with respect to the statute's "ambiguity." *See* https://www.ny1.com/nyc/all-boroughs/inside-city-hall-shows/2020/07/08/manhattan-district-attorney-cy-vance-on-the-recent-spike-in-gun-violence#, beginning at 17:00 (last accessed on August 5, 2020).

49. In a statement issued on July 24, 2020, Staten Island District Attorney Michael E. McMahon highlighted the law's potential chilling effect on law enforcement in carrying out their duties, stating: "[It] actually defies common sense in the restrictions it places on police officers who we expect and need to respond to dangerous and critical life and death situations," and that the law "is causing law enforcement to question how they can do basic functions of their job like make an arrest safely in this city." *See* https://www.silive.com/news/2020/07/da-mcmahon-citys-diaphragm-bill-defies-common-sense.html (last accessed on August 5, 2020). Pointedly, District Attorney McMahon asserted that the impact of the law "hurts every New Yorker and makes us all less safe," and urged the City to "repeal or fix [the] law as soon as possible." *Id.*

50. The President of the New York State Troopers Police Benevolent Association, Thomas H. Mungeer, on July 15, 2020, directed New York State Police Superintendent Keith Corlett, to "immediately remove all uniformed State Troopers" stationed in the City of New York "and cease any law enforcement activities within that jurisdiction." *See* https://www.nystpba.org/blog/breaking-news/pba-demands-removal-of-troopers-from-nyc/ (last accessed on August 5, 2020). President Mungeer expressed that this action was prompted by Section 10-181 which "*puts an undue burden*" on State troopers and "*opens them up to criminal and civil liability for restraining a person during a lawful arrest in a manner that is consistent with their training and is legal throughout the rest of the State*." *Id.*

51. Police Chiefs, Commissioners, and Sheriffs in multiple neighboring counties also have issued directives that prohibit their officers from conducting enforcement activities in New York City, in light of the risk of prosecution under Section 10-181. Copies of those directives are attached to this Complaint as Exhibit A.

52. Putnam County Sheriff Robert L. Langley Jr. issued a directive on July 20, 2020 that prohibited his department's officers from "conduct[ing] any enforcement activity within the confines of the City of New York," with the only exception being to pick up a person already in the custody of another agency. Ex. A at 14. Sheriff Langley's directive was "intended to protect" officers of the department "from criminal prosecution for actions consistent with their training and Department policy," given "the likelihood that the restraint of a non-compliant person during the course of effectuating a lawful arrest often requires some type of pressure to the chest or back of the subject for at least a brief period of time," and Section 10-181 "*criminalizes such actions without respect to intent or injury*." *Id.*

53. The Police agencies of the City of Yonkers and New Rochelle, among others, also have prohibited their officers from carrying out enforcement activities in the City of New York in light of Section 10-181. *See id.* at 1, 12. Commissioner John J. Mueller, of the City of Yonkers Police Department, expressed concern that "[d]espite our best efforts to minimize the use of force, it remains well possible that a police officer's knee may end up on the chest or back of a violent suspect during a scuffle or arrest, especially during a one-on-one situation." *Id.* at 1.

54. The Nassau County police agency also issued a directive prohibiting its officers from "conduct[ing] police business" in the City of New York absent prior approval and compliance with several other directives. *Id.* at 10-11. The Nassau County Policy Commissioner, Patrick Ryder, said in a statement on July 18, 2020 that the department would utilize "[i]ncreased

supervisory roles and notifications . . . as precautions," and expressed concern of its officers "hav[ing] to take police action in the confines of the City of New York." *See* https://www.newsday.com/long-island/nassau/nypd-diaphragm-law-1.47024321 (last accessed on August 5, 2020).

55. Accordingly, in addition to its effects on Plaintiffs' members, Section 10-181 has chilled enforcement activity authorized by Section 140.10 of the New York State Criminal Procedure Law, which confers on officers in any local jurisdiction the authority to effect arrests throughout the state. *See* N.Y. CPL § 140.10.

C. New York State Penal Law Criminalizing Use of Chokeholds and Restraints Obstructing Breathing or Blood Circulation

56. Section 10-181 has a New York State counterpart in, and is preempted by, Section 121.13-a of the New York State Penal Code, which appears in Article 121, on "Strangulation and Related Offenses." Section 121.13-a codifies the crime of "Aggravated Strangulation," which only applies to the conduct of police officers (defined in N.Y. CPL § 1.20(34)) or peace officers (defined in N.Y. CPL § 2.10). New York State Governor Andrew Cuomo signed Section 121.13-a into law on June 12, 2020, less than a week before the New York City Council passed Section 10-181.

57. Under Section 121.13-a, a police officer or peace officer will be guilty of aggravated strangulation: (a) when he or she "commits the crime of obstruction of breathing or blood circulation," as defined in Section 121.11 of the New York Penal Code; or (b) "uses a chokehold or similar restraint," as defined in Section 837-t(1)(b) under the New York Executive Law, and "thereby causes serious physical injury or death to another person." N.Y. Penal Law § 121.13-a. The crime of aggravated strangulation under Section 121.13-a is a class C felony.

58. Section 121.11 of the New York Penal Code defines "Criminal obstruction of breathing or blood circulation" as when, "with intent to impede the normal breathing or circulation of the blood of another person, he or she: (a) applies pressure on the throat or neck of such person; or (b) blocks the nose or mouth of such person." N.Y. Penal Law § 121.11. Criminal obstruction of breathing or blood circulation under Section 121.11, which has an express intent requirement, is a class A misdemeanor.

59. Section 837-t(1)(b) of the New York Executive Law, legislating use of force reporting, requires reporting to the division in every instance that a police or peace officer "uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduced intake of air." N.Y. Exec. Law § 837-t(1)(b).

60. Article 121 of the New York State Penal Code codifies three other strangulation-related crimes: Criminal Obstruction of Breathing or Blood Circulation (§ 121.11), Strangulation in the Second Degree (§ 121.12) and Strangulation in the First Degree (§ 121.13). However, Section 121.13-a was codified specifically to address the use of such force by a "police officer" (defined in N.Y. CPL § 1.20(34)) or "peace officer" (defined in N.Y. CPL § 2.10). Accordingly, Section 121.13 is tailored to the restriction of breathing or blood circulation, or use of chokeholds or other restraints, by a police officer.

61. The regulatory text and legislative history of Section 121.13-a make plain that it was enacted to restrict police forces from utilizing chokeholds or restraints that obstruct breathing or blood circulation in carrying out an arrest. Introduced by Assemblyman Walter T. Mosley and Senator Brian A. Benjamin (both of whom represent New York City districts) in the State Assembly and Senate, respectively, the Short Title refers to the law as the "Eric Garner anti-chokehold act." The "Justification" provided in the New York Committee Report for the New

York Assembly Bill (No. 6144) details the "chokehold" deaths of Anthony Baez and Eric Garner, which took place in New York City, respectively, in 1994 and 2014, and states that these deaths occurred despite the New York City Police Department's "ban" of chokeholds in 1993. The Committee Report further states: "It is clear that the NYPD's ban on the use of chokeholds is not sufficient to prevent police officers from using this method to restrain individuals whom they are trying to arrest." This legislative history indicates that Section 121.13-a was meant to place legislation on this use of force in the hands of the State to the exclusion of municipal law on the same subject—including laws like Section 10-181.

62. In addition, the New York State Penal Code confers on officers the authority to "use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person . . ." in the "course of effecting or attempting to effect an arrest," or "preventing or attempting to prevent the escape from custody." N.Y. Penal Law § 35.30; *see also* N.Y. Penal Law § 35.05 (enumerating circumstances in which conduct that would otherwise constitute an offense is justifiable and not criminal). The State therefore has also legislated comprehensively in the field of what constitutes the reasonable use of force by a police officer in effecting an arrest, and Section 10-181 intrudes into this area.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:
Field and Conflict Preemption, N.Y. Const. art. IX, § 2(c), N.Y. Mun. Home Rule Law § 10(1)(i), (ii)

63. Plaintiffs repeat and reallege the preceding paragraphs as if fully stated herein.

64. In the State of New York, a municipality may not enact any law that is inconsistent with any of the State's general laws, which include the State Penal Code. N.Y. Const. art. IX, § 2(c), N.Y. Mun. Home Rule Law § 10(1)(i), (ii).

65. Section 10-181 is preempted by the State Penal Code, and particularly by Sections 121.13-a and 35.30 of the State Penal Code.

66. Section 10-181 is invalid under the doctrine of implicit field preemption. A local government is precluded from legislating in a certain field where the state has enacted a comprehensive and detailed regulatory scheme that demonstrates an intent to preempt the field. Article 121, codifying crimes of Strangulation and Related Offenses, with its specific subpart, Section 121.13-a, criminalizing the use of such force by police or peace officers, is precisely the sort of comprehensive and detailed legislation that evinces an intent to occupy the field. With the addition of Section 121-13a, Article 121 codifies *four* types of strangulation-related crimes: Criminal Obstruction of Breathing or Blood Circulation (§121.11), Strangulation in the Second Degree (§ 121.12), and Strangulation in the First Degree (§ 121.13). Article 121 also provides an affirmative defense for conduct carried out "for a valid medical or dental purpose." N.Y. Penal Law § 121.14. Section 10-181 (the city law) and Section 121.13-a of the State Penal Code address identical areas of legislative concern: restriction of air flow or blood circulation by a police officer in effecting an arrest. Section 10-181 is therefore implicitly field-preempted.

67. Section 10-181 is also preempted because New York State policy evinces the legislature's intent to preempt local laws in the same field. Section 121.13-a was enacted to restrict police forces from utilizing strangulation or other forces that obstruct blood circulation or breathing in carrying out an arrest. Section 121.13-a also was enacted to place legislation on this use of force in the hands of the State to the exclusion of municipal law on the same subject. The New York State Legislature's decision to impose a uniform statewide standard in this particular field is underscored by Section 140.10 of the New York State Criminal Procedure Law, which confers on officers in any local jurisdiction the authority to effect arrests throughout the State.

68. Section 10-181 is also field-preempted for the additional and independent reason that the State has legislated comprehensively in the field of what constitutes the reasonable use of force by a police officer in effecting an arrest, and Section 10-181 intrudes into this area. In addition to defining an offense in Section 121.13-a, the New York State Penal Code acknowledges and confers on officers the authority to "use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person . . ." in the "course of effecting or attempting to effect an arrest," or "preventing or attempting to prevent the escape from custody." N.Y. Penal Law § 35.30. The State therefore has established statewide standards for what constitutes the reasonable use of force by a police officer in effecting an arrest. Municipal legislation in the same field threatens to muddle and disrupt the uniformity of this statewide regulatory scheme and is preempted regardless of whether the municipal law actually conflicts with the State law.

69. In addition to field preemption, Section 10-181 also is conflict-preempted because it is inconsistent with and inhibits the operation of the State Penal Law. Section 10-181 criminalizes nearly the same conduct as Section 121.13-a; however, its terms impose additional constraints on officers that are inconsistent with and inhibit the operation of the State provisions. This includes Section 10-181's criminalization of actions consistent with police training and procedures and not prohibited by State law. The municipal law's constraints also include the absence of an intent and injury requirement, which are present to at least some degree in the State law in an effort to balance the public safety interests at stake and avoid over-deterrence of lawful police activities.

70. Section 10-181 encroaches on a field fully occupied by the State legislature and, especially in absence of any intent or injury requirement, upsets the careful balance of public safety

interests that the State Penal Law is designed to achieve. The municipal law thus inhibits the operation of State law and is conflict-preempted for this reason too.

71. Section 10-181 inflicts a severe and unwarranted chilling effect on the ordinary performance of police duties of apprehensions and arrests. This chilling effect imposes a concrete and particularized injury on Plaintiffs, whose members thus far have been impeded from safely or at all carrying out their duties.

72. The Court should enjoin the enforcement of Section 10-181 because it is preempted by and impedes the operation of State law.

SECOND CAUSE OF ACTION:
Declaratory Judgment: Field and Conflict Preemption, N.Y. Const. art. IX, § 2(c), N.Y. Mun. Home Rule Law § 10(1)(i), (ii)

73. Plaintiffs repeat and reallege the preceding paragraphs as if fully stated herein.

74. In the State of New York, a municipality may not enact any law that is inconsistent with any of the State's general laws, which include the State Penal Code. N.Y. Const. art. IX, § 2(c), N.Y. Mun. Home Rule Law § 10(1)(i), (ii).

75. Section 10-181 is preempted by the State Penal Code, and particularly by Section 121.13-a of the State Penal Code.

76. An actual case or controversy exists between Plaintiffs and the City regarding the claims raised above.

77. Absent resolution by the Court, the dispute between Plaintiffs and the City is capable of, and likely to be, recurring.

78. Accordingly, Plaintiffs are entitled to a declaration that Section 10-181 is invalid and unenforceable as preempted by New York State law.

THIRD CAUSE OF ACTION:
Violation of the Due Process Clause of the New York State Constitution, N.Y. Const. art. I § 6

79. Plaintiffs repeat and reallege the preceding paragraphs as if fully stated herein.

80. An overly vague statute violates the Due Process Clause of the New York State Constitution, and is therefore invalid, where it fails to give fair notice to the ordinary citizen that the prohibited conduct is legal, and lacks minimal legislative guidelines, thereby permitting arbitrary enforcement.

81. Laws that impose criminal penalties, which include Section 10-181, are subject to a more stringent vagueness standard than civil regulations.

82. Section 10-181 is void for vagueness because an ordinary police officer will be unable to discern whether many ordinary activities taken in the course of the apprehension and arrest of a suspect violate the statute. For example, there is no intent requirement and no requirement that the prohibited conduct cause actual injury. In addition, compliance with the statute requires an officer to divine the meaning of "compresses the diaphragm"—an internal organ that contracts when air fills the lungs—and discern whether this internal organ is being "compresse[d]" while the officer is taking certain actions in the field.

83. The strict liability nature of the offense aggravates the due process problem by increasing both uncertainty from the officer's perspective and the risk of inconsistent and arbitrary enforcement by the legal system. In light of the lack of *mens rea* and injury requirements, unintentional violations of the law in effecting or attempting to effect an arrest—and uses of restraints consistent with department policies *and* State law—will expose officers to criminal liability.

84. That multiple District Attorneys have spoken out about the difficulty in applying the law, and concerns expressed by Police Departments regarding the same, amplifies the vagueness problem and the risk of inconsistent enforcement. Indeed, District Attorney McMahon, who is responsible for overseeing prosecutions under Section 10-181 has stressed that the law "defies common sense" and urged the city to "repeal or fix [the] law as soon as possible."

85. The Court should enjoin the enforcement of Section 10-181 because it violates the Due Process Clause of the New York State Constitution.

FOURTH CAUSE OF ACTION:
Violation of the Due Process Clause of the New York State Constitution:
Declaratory Judgment, N.Y. Const. art. I § 6

86. Plaintiffs repeat and reallege the preceding paragraphs as if fully stated herein.

87. Section 10-181 is unconstitutionally vague and violates the Due Process Clause of the New York State Constitution.

88. An actual case or controversy exists between Plaintiffs and the City regarding the claims raised above.

89. Absent resolution by the Court, the dispute between Plaintiffs and the City is capable of, and likely to be, recurring.

90. Accordingly, Plaintiffs are entitled to a declaration that Section 10-181 violates the Due Process Clause of the New York State Constitution and is therefore invalid and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter Orders and a Judgment:

1. Temporarily restraining and preliminarily and permanently enjoining the enforcement of Section 10-181;
2. Declaring that: (i) Section 10-181 is preempted by State law; (ii) Section 10-181 violates the Due Process Clause of the New York State Constitution; and (iii) Section 10-181 is invalid and unenforceable; and
3. Granting whatever other relief the Court deems necessary and just.

Dated: August 5, 2020
New York, New York

Respectfully Submitted,

DLA PIPER LLP (US)

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