

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. SUPREME COURT**

ON CERTIFIED QUESTION  
From the United States District Court  
for the District of South Carolina

The Honorable Mary Geiger Lewis  
District Court Case No. 3:22-cv-03898-MGL

Appellate Case No. 2024-001240

William M. Luce, on behalf of himself and all similarly situated  
natural persons, ..... Plaintiff,

v.

Lexington County Health Services District, Inc., Brian D. Smith in both his  
official and individual capacity, and Lynn Coggins in both her official and  
individual capacity, ..... Defendants.

FINAL BRIEF OF PLAINTIFF

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## **CERTIFIED QUESTION PRESENTED**

Are the Wages in Controversy, as defined in the Joint Stipulation of Facts, Luce and other Putative Class Members earned during employment with LCHSD “earnable compensation” subject to employer deductions under S.C. Code Ann. § 9-1-1020?

## **STATEMENT OF THE CASE**

This case arises from Defendants misclassifying wages payments to Plaintiff (“*Luce*”) and other SCRS members as “earnable compensation” upon which SCRS retirement benefits are determined, resulting in Defendants unlawfully withholding and diverting wages from Luce and other similarly situated employees. On August 15, 2023, Plaintiff filed his Amended Complaint seeking declaratory relief under 28 U.S.C. § 2201, injunctive relief, and monetary awards pursuant to 42 U.S.C. § 1983 and the South Carolina Payment of Wages Act. (R. pp. 7-30). Defendants timely answered on August 29, 2023. (R. pp. 31-49).

Following preliminary motions practice, the remaining parties entered a Joint Stipulation of Facts with Exhibits (R. pp. 50-78) and asked the United States District Court for the District of South Carolina to certify the central legal question of the case to this Court due to a lack of judicial precedent construing S.C. Code Ann. § 9-1-10(8) and S.C. Code Ann. § 9-1-1020 following the South Carolina General Assembly’s adoption of 2012 S.C. Acts 278 (“*2012 Act*”) and the further restriction of “earnable compensation” provided in the 2012 Act. On July 25, 2024, the Honorable Mary Geiger Lewis issued an order certifying the question above to this Court and forwarded a true copy of the parties’ pertinent pleadings and Joint Stipulation of Facts with Exhibits. (R. pp. 2-6).

On October 7, 2024, the parties jointly moved this court for leave to file a Record on Appeal. On November 13, 2024, this Court entered an Order allowing the parties to submit a Record on Appeal, including a sealed volume, along with Plaintiff’s Final Brief on November 20, 2024.

## STANDARD OF REVIEW

This Court’s standard of review when answering a certified question depends on the context of the case. Sullivan Mgmt. v. Fireman's Fund Ins. Co., 437 S.C. 587, 590, 879 S.E.2d 742, 743 (2022). “In construing a statute, it is [this court’s] duty to determine and effectuate legislative intent.” State v. Grissett, 442 S.C. 183, 187, 898 S.E.2d 139, 141 (2024) (answering certified question under S.C. Code Ann. § 24-21-560(C)). “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Doe v. Keel, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023) (internal quotes omitted) (answering certified question). “The plain language of a statute is the best evidence of legislative intent. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.” Id.

## STATEMENT OF THE FACTS

Lexington County Health Services District, Inc., doing business as Lexington Medical Center (“**LCHSD**”), is a regional health services district formed by Lexington County under the authority of S.C. Code § 44-7-2010. (R. p. 50 ¶1). At all times relevant to the question LCHSD was an “employer” as defined in S.C. Code § 9-1-10(14). (*Id.*) During that time, LCHSD employed Lynn Coggins (“**Coggins**”) as its Accounting Manager and Brian D. Smith (“**Smith**”) as its Vice President of Human Resources or Senior Vice President of Human Resources. (R. p. 50 ¶2).

LCHSD employed Luce as a Certified Registered Nurse Anesthetist (“**CRNA**”), as defined in S.C. Code § 40-33-20(19), from October 20, 2019, to June 23, 2023 (the “**Relevant Employment Period**”). (R. p. 50 ¶3). Defendants concede that Luce, an exempt employee under 29 U.S.C. § 201, et seq. (the “**FLSA**”), was never eligible for any mandatory “overtime compensation”. (R. pp. 50-51 ¶4).

**1. Luce’s regular salary base and normal pay rate is defined on his pay stub.**

Throughout the Relevant Employment Period, LCHSD paid Luce wages on a biweekly basis, and it delivered Luce a paystub reflecting his earnings and LCHSD’s deductions from his earnings. (R. p. 51 ¶5). LCHSD labeled Luce’s salary on his paystubs as his “Regular Base Pay.” (R. p. 50 ¶6; pp. 75-78). This “Regular Base Pay” for 80 hours of work is the same as the biweekly “Pay Rate” LCHSD defines on each of his pay stubs. (R. pp. 75-78). As of October 20, 2019, LCHSD set Luce’s regular salary base at “\$8,319.00 biweekly;” beginning on May 15, 2022, LCHSD increased Luce’s regular salary base to “\$8,480.00 biweekly.” (R. p. 51 ¶7).

**2. Luce’s wages exceeding his regular salary base are itemized on his pay stub.**

During the Relevant Employment Period, Luce had the opportunity to earn wages at a different pay rate and in excess of his regular salary base when he agreed to do one or more of the following: (a) work additional shifts beyond his regularly scheduled shifts in a biweekly pay period; (b) work when called back to LCHSD’s premises after a scheduled shift; (c) be on call; or (d) work less desirable shifts (e.g., nights, weekends, holidays, and 24-hour shifts). (R. p. 51 ¶8.) Specifically, as Luce’s paystubs demonstrate, Luce earned the following additional wages at a rate other than his “Regular Base Pay” on or after October 20, 2019 (the “*Wages in Controversy*”):

- Premium Pay: an additional wage that LCHSD pays for a CRNA working additional shifts beyond those normally scheduled. LCHSD described this pay category on Luce’s paystubs as “CRNA Premium Pay”. During Luce’s Relevant Employment Period, Luce earned at a pay rate between \$130 per hour to \$175 per hour for Premium Pay. (R. p. 53 ¶ 8(f)).
- Call Back Pay: an additional wage LCHSD pays when an employee is called back to work, e.g., in case of a disaster alert. LCHSD described this pay category on Luce’s paystubs as “CRNA Call Back”. At all times during Luce’s Relevant Employment Period, Luce earned

at a pay rate of \$130 per hour that he worked after being called back following the end of his shift. (R. p. 53 ¶8(e)).

- On-call: an additional wage LCHSD pays for being available while off LCHSD premises, to return to work in appropriate dress and in condition to work within a reasonable length of time (as determined by the department manager) if called. LCHSD’s written policy states: “On-call hours do not constitute working time and will not be used in computing overtime payments.” LCHSD described this pay category on Luce’s paystubs as “CRNA On Call”. At all times during Luce’s Relevant Employment Period, Luce earned at a pay rate of \$20.00 per hour that he was on call for LCHSD. (R. pp. 52-53 ¶8(d)).
- Shift Differential: an additional wage LCHSD pays certain employees for the time spent working outside of the time of day that LCHSD classifies as “day shift.” LCHSD described this pay category on Luce’s paystubs as “CRNA PM Shift Diff”. At all times during Luce’s Relevant Employment Period, Luce earned at a pay rate of an additional \$5.00 per hour when he worked at least 5 hours after 3:00 p.m. for LCHSD. (R. p. 52 ¶8(a)).
- Weekend Differential: an additional wage LCHSD pays certain employees for the time spent working during the portion of the work week that LCHSD classifies as the weekend. LCHSD described this pay category on Luce’s paystubs as “CRNA Weekend Diff”. At all times during Luce’s Relevant Employment Period, Luce earned at a pay rate of an additional \$10.00 per hour he worked for LCHSD between the hours of 7:00 a.m. on Saturday and 7:00 a.m. on Monday. (R. p. 52 ¶8(b)).
- Holiday Differential: an additional wage LCHSD pays a CRNA for working either New Year’s Day, Thanksgiving Day, or Christmas Day. LCHSD described this pay category on Luce’s paystubs as “CRNA Holiday Differential”. At all times during Luce’s Relevant

Employment Period, Luce earned at a pay rate of an additional \$10.00 per hour he worked on either New Year's Day, Thanksgiving Day, or Christmas Day for LCHSD. (R. p. 52 ¶8(c)).

**3. LCHSD's withholding of SCRS contributions from wages other than the regular salary base of Luce, other CRNAs, and certain other employees.**

The South Carolina Retirement System ("SCRS") is a defined benefit pension plan that promises eligible members a set benefit at retirement. (R. p. 53 ¶ 9). The retirement benefit an eligible member may receive is determined on either the twelve (12) highest or twenty (20) highest consecutive quarters of earnable compensation. (Id.).

LCHSD withheld 9% of Luce's Regular Base Pay each time that LCHSD paid Luce wages during the Relevant Employment Period, and LCHSD delivered these sums to the South Carolina Public Employee Benefits Authority ("**PEBA**") for use by SCRS pursuant to S.C. Code §§ 9-1-1020 and 9-1-1085. (R. p. 54 ¶11). Additionally, on each occasion during the Relevant Employment Period that Luce earned the Wages in Controversy, LCHSD withheld 9% of Luce's Wages in Controversy and delivered these sums to PEBA for use by SCRS. (R. p. 54 ¶12).

Luce began objecting to LCHSD's improper diversion of 9% of his Wages in Controversy in April 2022. (R. p. 54 ¶13.) Initially, Luce communicated with LCHSD employees in the payroll department and disputed LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy due to him. (Id.). In May 2022, Luce communicated with Coggins regarding LCHSD's practice of withholding and contributing to SCRS 9% of the Wages in Controversy. (R. p. 54 ¶14.) In August 2022, Luce emailed LCHSD's Vice President of Operations and asked to discuss the LCHSD's withholding from the Wages in Controversy considering the 2012 Act; but Luce was directed to Smith. (R. p. 54 ¶15.) Therefore, Luce discussed LCHSD's practice of

withholding and contributing to SCRS 9% of the Wages in Controversy with Smith in August and September 2022. (R. p. 54 ¶16.)

Despite Luce’s objections, LCHSD continued its practice of withholding and contributing to SCRS 9% of Luce’s Wages in Controversy until Luce finally resigned his employment with LCHSD effective June 23, 2023. (R. p. 54 ¶17). Since Luce’s resignation, LCHSD continues to withhold 9% of the Wages in Controversy earned by CRNAs and certain other employees. (R. pp. 54-55 ¶ 17). LCHSD has not delivered to Luce the contributions directed to Luce’s account at SCRS that LCHSD withheld from Luce’s Wages in Controversy. (R. p. 55 ¶17).

### **ARGUMENT**

**I. Under the unambiguous language of S.C. Code Ann. § 9-1-10(8) and S.C. Code Ann. § 9-1-1020, the Wages in Controversy are payments exceeding Luce’s regular salary base and, therefore, the Wages in Controversy are excluded from SCRS deductions.**

**A. The pertinent statutory provisions regarding employer deductions to SCRS.**

In S.C. Code Ann. § 9-1-10(8), the South Carolina General Assembly defines “earnable compensation,” which is the basis of the “average final compensation” from which a SCRS member’s retirement allowance is calculated. S.C. Code Ann. §§ 9-1-10(4); S.C. Code Ann. § 9-1-1550(A)-(C). In S.C. Code Ann. § 9-1-1020, the General Assembly directs employers to deduct contributions only from a member’s “earnable compensation” - which for FLSA-exempt members like Luce are the wages paid for his “normal working time;” and the General Assembly expressly forbids contributions from “any other payments not considered a part of the regular salary base” (except for a 45-day termination payment discussed more fully below). In S.C. Code Ann. § 9-1-1085, the General Assembly dictates to employers the applicable rates of deductions from members and the rates for the additional employer contributions mandated in S.C. Code Ann. § 9-1-1050. These statutes are part of one legislative scheme and must be read together to reach a

harmonious result. Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 41, 659 S.E.2d 125, 127 (2008) (“When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.”)

**B. The General Assembly restricts the scope of what may be included in a member’s “average final compensation” to protect the actuarial soundness of SCRS, and this Court has adhered to the General Assembly’s intentions.**

This Court has long recognized that SCRS is "administered under an elaborate statutory and constitutional scheme designed to protect the independence, integrity and actuarial soundness of the funds." Duvall, 377 S.C. at 41, 659 S.E.2d at 127 (quoting Wehle v. South Carolina Ret. Sys., 363 S.C. 394, 399, 611 S.E.2d 240, 242 (2005)). To ensure the actuarial soundness of SCRS, the General Assembly has, for many years, excluded from “earnable compensation” any payments to an employee other than those wages paid for that employee’s “normal working time.” S.C. Code Ann. §9-1-10(8)(a). Specifically, S.C. Code Ann. § 9-1-1020 plainly states, “Payments for unused sick leave, single special payments at retirement, bonus and **incentive-type payments, or any other payments not considered a part of the regular salary base** are not compensation for which contributions are deductible.” (emphasis added).

When amending the SCRS, the General Assembly has consistently restricted the types of wages subject to SCRS deductions and used to calculate that employee’s retirement benefits under SCRS. For example, from the inception of SCRS in 1945 to 1978 and as a matter of policy, SCRS chose to give a retiring employee credit for an unlimited amount of unused annual leave when calculating that employee’s “average final compensation.” Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 343, 549 S.E.2d 243, 245 (2001). In response, the General Assembly amended the SCRS statute in 1978 to restrict this practice and allow only forty-five days of unused annual leave to be

subject to SCRS deductions and used when calculating a member's "average final compensation."  
Id.

In accordance with the General Assembly's efforts to control the amount "average final compensation" used to determine members' benefits, this Court has interpreted the SCRS statute in a manner that restricted, rather than expanded, the scope of "average final compensation" in both Kennedy and Duvall.

In Kennedy, the members argued that the General Assembly's amendment to the SCRS should be construed to require the value of the unused annual leave be added to the "average final compensation" equation after the average had been taken. This Court rejected the members' argument and construed the SCRS amendment to require that "average final compensation" be calculated by totaling the 12 highest consecutive quarters, adding the termination payment for up to 45 days of unused annual leave, and then taking the average. Kennedy, 345 S.C. at 348, 549 S.E.2d at 248 This Court reasoned that the member's construction, if adopted, would increase SCRS's liabilities beyond the member's salaries, and stated, "It must be assumed the legislature intends to maintain the soundness of the State Retirement System." Id. at 351, 549 S.E.2d at 294.

In Duvall, the member contended that the SCRS statute permitted his first and second quarter payouts of certain unused annual leave to be included as part of his salary and separate from the inclusion of the value of 45 days of unused leave he possessed at retirement. 377 S.C. at 40, 659 S.E.2d at 127. This Court held that the member's interpretation would improperly inflate the member's "average final compensation" and his resulting SCRS benefit. Id. Therefore, this Court rejected the member's construction and adopted the more restrictive interpretation of the SCRS statute to avoid a result unintended by the Legislature. Id.

Since this Court's decisions in Kennedy and Duvall, the General Assembly has further restricted the inclusion of wages that would otherwise inflate members' "average final compensation." In 2012, the General Assembly enacted significant SCRS benefits reform through the 2012 Act. In passing the 2012 Act, the General Assembly found that the financial stability and long-term viability of the various state retirement systems were threatened by a negative funding ratio, negative returns, poor actuarial assumptions, and increases in member benefits. 2012 S.C. Acts 278, Section 1, part B. To address the risks to SCRS, one of the stated purposes of the 2012 Act was "to further define 'earnable compensation' with respect to overtime pay." See Duvall, 377 S.C. at 47, 659 S.E.2d at 130 (citing Demas v. Convention Motor Inns, 268 S.C. 186, 190, 232 S.E.2d 724, 726 (1977) (noting that it is proper for this Court to discern legislative intent from the title of an Act).

Specifically, the General Assembly added section (b) to S.C. Code Ann. § 9-1-10(8) through the 2012 Act, which reads, "(b) For work performed by a member after December 31, 2012, earnable compensation does not include any overtime pay not mandated by the employer." Through this amendment, the General Assembly prohibited non-FLSA-exempt members from being able to inflate their "earnable compensation" and thereby their "average final compensation," by working voluntary overtime. In the 2012 Act, the General Assembly amended S.C. Code 9-1-1020 to take away Class Three employees' right to include any termination pay for unused annual leave in their wages subject to SCRS deductions and contributions.

In the passing of the most recent amendment to the SCRS statute - the Retirement System Funding and Administration Act of 2017 - the General Assembly did not implement further benefit reform. Rather, the General Assembly enacted SCRS funding reform, including the adoption of an increase to the SCRS employee contribution rate to 9% under S.C. Code Ann. § 9-1-1085.

Collectively, the reforms passed since Kennedy and Duvall demonstrate the General Assembly's desire and intent to restrict the scope of "earnable compensation" and use contribution rate increases to ensure the actuarial soundness of SCRS.

**C. Permitting LCHSD to treat the Wages in Controversy of Luce, other CRNAs, and other certain employees as subject to SCRS deductions violates the General Assembly's intent in the SCRS laws.**

"If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning." Creswick v. Univ. of S.C., 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021). "It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language." Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 62, 744 S.E.2d 547, 550 (2013) (internal quotes and citations omitted).

The language of S.C. Code Ann. §§ 9-1-10(8) and 9-1-1020 is unambiguous, and no patently absurd result could occur by this Court giving the language its literal meaning. With the exceptions of possible payments of the termination pay to Class I and II employees and "overtime pay" "mandated by the employer," the General Assembly expressly limits an employer's deductions of SCRS contributions to a member's "regular salary base" paid for "normal working time." The General Assembly expressly prohibits employers from deducting contributions from a member's payment when it is an incentive-type payment or any other payment that is not part of the employee's regular salary base. Except for the limited circumstances defined that involve mandatory overtime and termination pay, the General Assembly's plain intent is to prevent employers from deducting SCRS contributions from any wages exceeding members' base pay for normal work, and thereby avoiding inflation of the retirement benefits SCRS owes members.

Luce is a salaried, FLSA-exempt employee, and the parties have stipulated that his salary is the “regular base pay” LCHSD stated on each paystub. (R. p. 51 ¶6). Likewise, Luce’s normal “pay rate,” as stated by LCHSD stated on each of Luce’s pay stubs, is this same “regular base pay” amount. (R. pp. 75-78). Therefore, Luce’s regular salary base and normal pay rate was \$8,319.00 biweekly until it increased to \$8,480.00 biweekly on May 15, 2022. (R. p. 51 ¶7).

In contrast, each of the Wages in Controversy are either incentive-type payments or other payments not considered a part of the regular salary base. Tellingly, Luce’s pay rate for each of the Wages in Controversies differs from his regular biweekly “pay rate.” (R. pp. 52-53 ¶8(a)-(f)). The Wages in Controversy cannot be payments to Luce for his working employer-mandated overtime, as LCHSD stipulates that Luce is an FLSA-exempt employee who does not receive overtime payments, and none of the Wages in Controversy are paid at the overtime rate required in 29 U.S.C. § 207. (R. pp. 50-51 ¶4). Rather, the Wages in Controversy are paid at various rates to Luce whenever he is on call or picks up less desirable shifts or shifts in excess of his normal working hours. (R. p. 51 ¶8). Therefore, the Wages of Controversy cannot be subject to SCRS contribution deductions under S.C. Code Ann. § 9-1-1020.

If the Legislature intended to allow a salaried member and his employer to treat additional wages earned when the member is on call or picks up extra or less desirable shifts for extra money to be subject to deductions under S.C. Code Ann. § 9-1-1020, then the Legislature would have said so when it amended the definition of “earnable compensation” and amended S.C. Code Ann. § 9-1-1020 in passing the 2012 Act. *See Lawrence v. Gen. Panel Corp.*, 425 S.C. 398, 402, 822 S.E.2d 800, 802 (2019) (“First, if the Legislature intended the date of substantial completion always to be the date of issuance of a certificate of occupancy, the obvious best step to achieve that purpose would be to amend the definition of the term.”); Duke Energy Carolinas, LLC v. S.C. Office of

Regulatory Staff, 434 S.C. 392, 435, 864 S.E.2d 873, 896 (2021) (quoting Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 134, 492 S.E.2d 103, 106 (1997) for the principle: “if the Legislature had intended a certain result in a statute, it would have said so.”); Gov't Emples. Ins. Co. v. Poole, 424 S.C. 1, 6, 817 S.E.2d 283, 286 (2018) (“If the General Assembly intended to require the allocation of punitive damages, it could have done so with clear, express language”).

Instead, the General Assembly used limiting and exclusionary language when it amended S.C. Code Ann. § 10-8-10(8) in the 2012 Act to allow only mandatory overtime, confirming the General Assembly’s intent to exclude from contributions “any other payment that is not part of the employee’s regular salary base.” Likewise, the General Assembly amended S.C. Code Ann. § 9-1-1020 in the 2012 Act to remove the 45-day termination pay as subject to contributions for Class III employees. The General Assembly’s amendments in 2012 indicate its intention to further restrict, rather than expand, the wages subject to contribution deductions and included in members’ “average final compensation.” See Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue, 383 S.C. 334, 348, 679 S.E.2d 913, 920 (2009) (holding that “by expressly excluding only general bond indebtedness from the exemption, the General Assembly by implication included the lease/installment-purchase payments within the definition of ‘school operating purposes.’”); Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002), stating:

The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed.

(citations omitted); W. Va. Pulp & Paper Co. v. Riddock, 225 S.C. 283, 288, 82 S.E.2d 189, 190 (1954) (“The inclusion in the statute of certain specified exclusions leaves the inference that the Legislature intended no other exclusions from the exemption.”); *see also* Kinard v. Moore, 220

S.C. 376, 388, 68 S.E.2d 321, 325 (1951) ("The court has no right to add the words they omitted, nor to interpolate them 'on conceits of symmetry and policy.'").

Accordingly, it would be contrary to the General Assembly's intent to construe S.C. Code Ann. § 9-1-1020 to permit LCHSD from treating the Wages in Controversy paid to Luce, other CRNAs, and certain other employees as compensation subject to SCRS deduction and contribution and to be included in the determination of those members' "average final compensation."

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully asks this Court to issue an opinion denying the Certified Question and confirming that the Wages in Controversy, as defined in the Joint Stipulation of Facts, Luce and other Putative Class Members earned during employment with LCHSD is not "earnable compensation" subject to employer deductions under S.C. Code Ann. § 9-1-1020.

s/ Shaun C. Blake

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