

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.

PLAINTIFF’S PETITION FOR REHEARING

Pursuant to Rules 221(a) and 240, SCACR, Plaintiff (“Luce”) requests rehearing of
Opinion No. 28294 filed August 6, 2025, as amended on August 18, 2025 (“Opinion”).

STANDARD FOR PETITION

To prevail on a petition for rehearing, a party “must demonstrate the Court overlooked or
misapprehended their argument.” Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322,
322 (2001); Rule 221(a), SCACR.

ANALYSIS

In the Opinion, this Court held that the wage payments Luce and similarly-situated salaried
healthcare workers receive for choosing to work more than 80 hours in their bi-weekly pay period,

for being on call, and for choosing to work less-desirable shifts (the “Wages in Controversy”) are “earnable compensation” under S.C. Code Ann § 9-1-10(8). The basis of this holding is summarized in the Court as follows:

Although the Wages in Controversy carry various labels stuck on them by LMC (e.g. “call back” and “shift differential”), *they are all pay for hours worked. Therefore, they constitute “earnable compensation within the meaning of §9-1-10(8).*

(Opinion, p. 6) (emphasis added). However, the Opinion overlooks S.C. Code Ann. § 9-1-10(8)(b) entirely, and its fails to address Luce’s argument that, by passing the 2012 Act and amending § 9-1-10(8), the General Assembly indicated a clear intent to *exclude* from “earnable compensation” all *pay for hours worked* beyond those hours tied to the employee’s regular salary base unless the employer mandated that “overtime.” By so amending the definition of “earnable compensation,” the General Assembly expressed an intention that directly contradicts the Opinion’s conclusion.

- 1. The Opinion violates the primary rule of statutory construction by ignoring the 2012 Act and the General Assembly’s restrictive modification to the definition of “earnable compensation” by concluding that “all pay for hours worked” constitutes “earnable compensation.”**

“The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly.” Creswick v. Univ. of S.C., 434 S.C. 77, 81, 862 S.E.2d 706, 708 (2021). “The best evidence of legislative intent is the text of the statute.” Id. § 9-1-10 and § 9-1-1020 are part of one legislative scheme and must be read together to reach a harmonious result. *See 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.”)

In passing the 2012 Act, the General Assembly found that the financial stability and long-term viability of SCRS was 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 these risks, 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 (noting that it is proper for this Court to discern legislative intent from the title of an Act). The General Assembly sought to protect SCRS by **excluding** pay for **extra** hours worked from the definition of “earnable compensation,” which limit SCRS’ future obligations to SCRS members.

Specifically, the General Assembly added a new subsection to § 9-1-10(8) 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 SCRS members from inflating their “earnable compensation” by choosing to work more than the “normal working time” associated with their “regular salary base.”

The Opinion, by defining “earnable compensation” as all “**pay for hours worked**,” nullifies an act of the General Assembly. This violates this Court’s embrace of the separation of powers. *See ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023) (“We do not sit as a superlegislature to second-guess the General Assembly's decisions.”); *see also State v. Slocumb*, 426 S.C. 297, 314, 827 S.E.2d 148, 157 (2019) (“Respect for separation of powers compels us to recognize that the General Assembly is the author of our state's public policy . . .”)

In contravention of the General Assembly’s clear intent, the Opinion invites a flood of claims against employers and SCRS by members who work for those employers that adhere to § 9-1-10(8)(b) and do not treat all “**pay for hours worked**” as “earnable compensation” subject to contribution deductions under § 9-1-1020. This Court’s deference to the General Assembly on the administration of SCRS cannot be dependent on whether “Luce’s position is unusual,” as the Opinion comments. (Opinion, p. 4); *see Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485

(2016) ("In honoring the separation of powers, we adhere to the principle that a court must not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.")

2. **The General Assembly's passage of the 2012 Act indicated a clear intention to align the definition of "earnable compensation" with the provision of S.C. Code § 9-1-1020 limiting SCRS deductions to the SCRS member's "regular salary base" rather than all "pay for hours worked."**

The wages and hours of Luce and the similarly-situated healthcare professionals are exempt from regulation under the FLSA, and so these SCRS members are not eligible to receive "overtime" as that term is understood under the FLSA. However, the Wages in Controversy – most obviously the "premium pay" that LMC offers when employees work more than the forty hours per week associated with their regular salary – are analogous to "overtime" payments for non-exempt employees. This is true because like FLSA "overtime," the Wages in Controversy are payments exceeding the employee's "regular salary base" that LMC uses to incentivize exempt employees to work more than forty hours per week and less-desirable shifts and to compensate these exempt employees for being within reach of LMC when they are not working.

In the 2012 Act, the General Assembly chose not to define the term "overtime" in § 9-1-10(b). In such situations, this Court interprets a word in a statute by its plain and ordinary meaning. State v. Gordon, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015) ("In interpreting a statute, words must be given their plain and ordinary meaning....") (internal quotations omitted). *Overtime*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/overtime> (last visited August 19, 2025) (defining "overtime" as "1. time in excess of a set limit: such as (a.) working time in excess of a standard day or week"). Given the plain, ordinary meaning of "overtime," it is apparent that the General Assembly's intent in passing the 2012 Act was to limit "earnable compensation" to the pay for the "full normal working time" associated with the SCRS member's "regular salary

base” unless an employer specifically mandated that “overtime” be worked by the SCRS member.

The Court cannot construe the General Assembly’s intention to only limit the “earnable compensation” of lower paid, non-managerial, and non-professional SCRS members who are protected under the FLSA. It would lead to an absurd result should this Court interpret the 2012 Act as allowing employees who hold management positions or who work highly compensated professional jobs to inflate their SCRS retirement benefits by choosing to do more work while discriminately preventing other non-exempt employees from doing the same. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.”). Therefore, this Court must give the SCRS Act, as amended by the 2012 Act, “a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *Id.* In this instance, that purpose is to restrict “earnable compensation” from being inflated by the choices of SCRS members to protect SCRS.

The Opinion gives considerable weight to the use of the term “full” in S.C. Code Ann. § 9-1-10(8)(a), the inclusion of which pre-dates the 2012 Act, stating: “The repeated use of the word “full” in § 9-1-10(8)(a) is significant, for it tells us that the statute is concerned with defining *the pay an employee has earned for all the hours he works.*” (Opinion, p. 5) (emphasis added). If the General Assembly never passed the 2012 Act, then the Opinion’s reasoning would be sound. The Opinion’s interpretation of “earnable compensation” as meaning the full pay a SCRS member received for “*all of the hours he works*” was undoubtedly the same position taken by many SCRS members and employers under § 9-1-10(8)(a) prior to the 2012 Act – hence the need for the General Assembly to intervene and add § 9-1-10(8)(b) to prevent SCRS members from inflating their “earnable compensation” beyond the “regular salary base” as stated in § 9-1-1020 by

choosing to work more hours.

It is well-established that this Court will not construe a statute by concentrating on an isolated word or phrase. Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control, 407 S.C. 583, 597, 757 S.E.2d 408, 416 (2014); see Laurens Cnty. Sch. Dists. 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992) ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent.") By isolating the word "full" and ignoring both § 9-1-10(8)(b) and the restriction of contributions to the SCRS member's "regular salary base" in § 9-1-1020, the Opinion fails to give effect to the General Assembly's intention in the SCRS Act to ***prevent*** "earnable compensation" from being interpreted as including "***all of the hours he works.***"

Following this Court's rules of statutory interpretation in Duval, *supra*, this Court must read the General Assembly's restrictive language in § 9-1-1020 stating, "incentive-type payments or any other payments not considered part of the regular salary base are not compensation for which contributions are deductible" *in pari materia* with the General Assembly's amendment to § 9-1-10(8) stating, "earnable compensation does not include any overtime pay not mandated by the employer." See Amisub of S.C., Inc., 407 S.C. at 598, 757 S.E.2d at 416 ("statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.") By so doing, it becomes apparent that the Opinion's expansive definition of "earnable compensation" as pay for "all hours an employee works" contradicts the General Assembly's intent expressed in the SCRS Act following the 2012 amendment.

CONCLUSION

Because the Opinion fails to consider or address Luce’s argument regarding the General Assembly’s intent as expressed through the 2012 Act and its restriction on “earnable compensation,” Plaintiff respectfully requests that this Court grant his Petition for Rehearing and issue an opinion denying the Certified Question and confirming that the Wages in Controversy, as defined in the Joint Stipulation of Facts, are not “earnable compensation” subject to employer deductions under S.C. Code Ann. § 9-1-1020. Alternatively, as discussed during oral argument in this matter, should the Court find that the record before it is not developed enough to apply the General Assembly’s intent to the Wages in Controversy, Plaintiff respectfully requests that this Court grant his Petition for Rehearing, withdraw the Opinion, and decline to answer the Certified Question due to the need for further factual development before the District Court.

s/ Shaun C. Blake

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