

No. _____

Supreme Court of the United States

DR. RALPH SLAUGHTER,

Petitioner,

versus

LOUISIANA STATE EMPLOYEES'
RETIREMENT SYSTEM,

Respondent.

**On Petition For A Writ Of Certiorari
To The State Of Louisiana Court Of Appeal,
First Circuit And The Louisiana Supreme Court**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the statutory scheme of the Louisiana State Employees' Retirement System ("LASERS") violate the Equal Protection Clause by defining earned compensation as excluding supplemental pay for purposes of calculating retirement benefits, where supplemental pay is included in the definition of earned compensation for state judges, law enforcement officers, teachers, and firefighters, thus treating them more favorably than those state employees other than judges, who are forced by law to participate in LASERS?

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court’s Rule 14.1(b)(iii), the following proceedings are related to this case:

LASERS informed Dr. Slaughter it intended to reduce retroactively his retirement benefit “due to an error made by Southern University in the reporting of your earnings.” LASERS maintained it may adjust benefits and further reduce the corrected benefit to recover overpayment within a reasonable number of months. Dr. Slaughter filed the instant suit against LASERS, seeking a writ of *mandamus*, injunctive relief, and a declaratory judgment confirming LASERS has no authority or ability to reduce his retirement benefits, asserting that his retirement benefits should be calculated based on the entirety of his earnings, including salary supplements as required by law.

After a bench trial, the district court granted Dr. Slaughter’s petition for declaratory judgment. Without reaching the merits of Dr. Slaughter’s arguments regarding the calculation of benefits, the court held LASERS was not entitled to reduce Dr. Slaughter’s retirement benefits because it had failed to follow the procedural requirements before initiating action to reduce and recoup Dr. Slaughter’s retirement benefits. LASERS appealed this ruling. The appellate Court affirmed the district court’s judgment. *Slaughter v. La. St. Employees’ Retirement System*, 13-2255 (La.App. 1 Cir. 12/4/14) 2014 WL 6854536 (unpublished).

STATEMENT OF RELATED PROCEEDINGS –
Continued

Upon LASERS' application, the Louisiana Supreme Court granted *certiorari* to review the correctness of that decision. *Slaughter v. La. St. Employees' Retirement System*, 15-324 (La. 6/1/15), 171 So.3d 258. The Louisiana Supreme Court reversed, finding only that LASERS had followed the required procedures before initiating its actions, and remanded the case to the district court for a decision on the merits. *Slaughter v. La. St. Employees' Retirement System*, 15-324 (La. 10/14/15), 180 So.3d 279.

On remand, the district court effectively found no error in LASERS' actions in reducing Dr. Slaughter's retirement benefits. Finding that the judgment lacked appropriate decretal language, the appellate court dismissed Dr. Slaughter's initial appeal for lack of appellate jurisdiction. *Slaughter v. La. St. Employees' Retirement System*, 2019 CA 0977 (La.App. 1 Cir. 6/1/20).

Thereafter, the trial court rendered judgment denying plaintiff's motions for a writ of mandamus, mandatory injunctive relief, and declaratory judgment, and dismissing with prejudice plaintiff's claims for a writ of mandamus, mandatory injunctive relief, and declaratory judgment. 19th Judicial District Court, *Slaughter v. La. St. Employees' Retirement System*, No. 612,525 (6/15/20). Dr. Slaughter timely appealed, and the appellate court affirmed the district court, ruling essentially that earned compensation means base

STATEMENT OF RELATED PROCEEDINGS –
Continued

pay and does not include salary supplements. *Slaughter v. La. St. Employees' Retirement System*, 2020 CA 0881 (La.App. 1 Cir. 3/25/21).

Dr. Slaughter applied to the Louisiana Supreme Court for a writ of certiorari. The Louisiana Supreme Court denied his writ application. *Slaughter v. La. St. Employees' Retirement System*, 2021-C-00567 (La. 6/22/21).

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PETITION FOR A WRIT OF CERTIORARI

Dr. Ralph Slaughter petitions for a writ of certiorari to review the judgment of the Louisiana Court of Appeal, First Circuit, and of the Louisiana Supreme Court denying discretionary review.

**CITATIONS OF REPORTS
OF OPINIONS IN THIS CASE**

Slaughter v. La. St. Employees' Retirement System, 13-2255 (La.App. 1 Cir. 12/4/14), 2014 WL 6854536 (unpublished).

Slaughter v. La. St. Employees' Retirement System, 15-324 (La. 6/1/15), 171 So.3d 258.

Slaughter v. La. St. Employees' Retirement System, 15-324 (La. 10/14/15), 180 So.3d 279.

Slaughter v. La. St. Employees' Retirement System, 2019 CA 0977 (La.App. 1 Cir. 6/1/20).

Slaughter v. La. St. Employees' Retirement System, 2020 CA 0881 (La.App. 1st Cir. 3/25/21).

Slaughter v. La. St. Employees' Retirement System, 2021-C-00567 (La. 6/22/21).

STATEMENT OF JURISDICTION

The Louisiana Court of Appeal, First Circuit, ruled essentially that earned compensation means base pay and does not include salary supplements, on March 25,

2021. The Louisiana Supreme Court denied discretionary review by order dated June 22, 2021. 28 U.S.C. § 1257 confers on this Court jurisdiction to review on a writ of certiorari the subject judgment or order, as the constitutionality of a Louisiana statutory scheme, including particularly La. R.S. 11:403, is drawn into question. The respondent, Louisiana State Employees' Retirement System ("LASERS"), is a state public retirement system.

RELEVANT CONSTITUTIONAL PROVISION

No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Amendment XIV, Section 1.

STATEMENT OF THE CASE

The Southern University Board of Supervisors appointed plaintiff, Dr. Ralph Slaughter, President of the Southern University System effective April 1, 2006, and approved his earned compensation consisting of salary and other emoluments at \$21,500.00 per month beginning April 1, 2006. In September 2007, Dr. Slaughter settled federal Title IX litigation with Southern University Board by means of two documents: (1) Settlement Agreement and (2) Employment

Agreement. Section 3 of the Employment Agreement reads:

3. For the services to be rendered by the President [Dr. Slaughter], his *Earned Compensation* shall be:
 - a) A base salary of \$220,000 per annum;
 - b) A vehicle allowance of \$1,000.00 per month;
 - c) The full use and control of the University Place located on the Baton Rouge Campus for official University functions. While not in residence in this University Place, he shall be paid a monthly housing/living allowance of at least \$3,000 per month, with reasonable adjustments made periodically to reflect costs of living increases; and
 - d) A *salary supplement* from Southern University System Foundation funds in the amount of \$200,000 per year.

Consistent with the approved employment agreement, the Southern University Board of Supervisors in September 2007 approved a resolution, in accordance with La. R.S. 17:3351(A)(10) and the related Board of Regents Administrative Salary Policy Guidelines, to increase Dr. Slaughter's "earned compensation" consisting of salary and other emoluments to \$39,000.00/month, effective July, 1, 2007. Two personnel action forms were signed and approved in September 2007 by the Chairman of the Board of Supervisors on behalf of the Board; the Human Resources Director, Lester

Pourciau; and the Comptroller's office. The Board paid Dr. Slaughter the sums which he was owed during the two years commencing on July 1, 2007 and ending on June 30, 2009, as set forth in the Employment Contract, including the \$200,000/yr. paid by the Southern University Foundation to the Southern University Board, and Dr. Slaughter paid income tax on same. Dr. Slaughter received 100% percent of his pay checks from the State of Louisiana/Southern University System, which submitted certified monthly retirement reports to LASERS in accordance with La. R.S. 11:531, reporting his monthly base pay and earned compensation as \$21,500 from March 2006 to June 2007, and \$39,000 from July 2007 to July, 2009, and included the retirement contribution amounts from the State and Dr. Slaughter. The certified earnings reports submitted by the State/SU to LASERS have never been amended or changed. Dr. Slaughter paid federal and state income taxes on the full amount of his monthly earned compensation. In July 2009, Dr. Slaughter retired as president of Southern University System and submitted his formal retirement application, which LASERS then audited and verified, including his certified earnings as reflected on the certified monthly reports submitted by the State of Louisiana to LASERS throughout Dr. Slaughter's 35.1 year tenure as a state employee.

On November 17, 2009, LASERS confirmed that Dr. Slaughter's final average compensation was \$30,135.42 for the final average compensation start date of August, 2006 through the final average compensation end

date of July, 2009, and confirmed that Dr. Slaughter's monthly retirement allowance is \$24,487.95/month. Dr. Slaughter began receiving his retirement check from LASERS in the amount of \$24,487.95/month. For the tax years 2009, 2010, 2011, and 2012, LASERS issued to Dr. Slaughter 1099-R forms reflecting Dr. Slaughter's retirement benefits received from LASERS, which confirm LASERS paid to him his retirement benefit of \$24,487.95/month. LASERS has never issued any amended or substitute 1099-R forms for the years of 2009 through 2012 or any other year.

In 2009, Dr. Slaughter sued the Board of Supervisors of Southern University and Agricultural & Mechanical College (Southern) for past due wages for terminal leave (the "wage case"). The district court ruled that Southern had miscalculated Dr. Slaughter's income base by including supplemental pay he had received from the Southern University Foundation and determined that his terminal pay (500 hours of unused leave) *and retirement* should have been calculated on only his \$220,000 annual base salary due from Southern. On appeal, Dr. Slaughter assigned as error the district court's holding that his retirement was miscalculated or at issue in the wage case.

On January 22, 2010, Southern University Board counsel Tracie Woods sent a letter to LASERS stating that "On December 3, 2009, Judge Kelly, 19th Judicial District Court, ruled the retirement should have been

calculated on the 220k base salary and should not have included any supplemental pay.”¹

Over a year later, in August 2011, the Louisiana First Circuit Court of Appeals affirmed the district court’s ruling in the wage case in *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 10-1049 (La.App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970. In January 2012, the Louisiana Supreme Court denied Dr. Slaughter’s writ application in the terminal leave wage case.

On April 27, 2012, LASERS sent a letter to Dr. Slaughter informing him it intended to reduce retroactively his retirement benefit starting June 1, 2012, “due to an error made by Southern University in the reporting of your earnings.” LASERS maintained it may adjust benefits and further reduce the corrected benefit to recover overpayment within a reasonable number of months, and advised Dr. Slaughter that his monthly gross benefit would no longer be \$24,487.95/mo., but beginning June 1, 2012, it would be \$14,615.91 for 60 months, after which the gross monthly benefit would be \$17,909.19. Dr. Slaughter then filed the instant suit against LASERS, seeking a writ of *mandamus*, injunctive relief, and a declaratory judgment

¹ Because the wage case was ongoing at the time, LASERS filed a concursus proceeding, seeking to deposit the disputed amount of Dr. Slaughter’s retirement benefits in the court’s registry pending resolution of the wage case. Dr. Slaughter filed an Exception of No Cause of Action, which the district court granted, dismissing the concursus proceeding with prejudice. LASERS did not appeal this judgment, and it is now final.

confirming LASERS has no authority or ability to reduce his retirement benefits, asserting that his retirement benefits should be calculated based on the entirety of his earnings, including salary supplements as required by law.

After a bench trial, the district court granted plaintiff's petition for declaratory judgment. Without reaching the merits of Dr. Slaughter's arguments regarding the calculation of benefits, the court held LASERS was not entitled to reduce Dr. Slaughter's retirement benefits because it had failed to follow the procedural requirements set forth in La. R.S. 11:407. LASERS appealed this ruling. The appellate Court affirmed the district court's judgment. *Slaughter v. La. St. Employees' Retirement System*, (La.App. 1 Cir. 12/4/14) (unpublished). Upon LASERS' application, the Louisiana Supreme Court granted *certiorari* to review the correctness of that decision, *Slaughter v. La. St. Employees' Retirement System*, 15-0324 (La. 6/1/15), 171 So.3d 258, and concluded that the courts below had erred in finding LASERS failed to prove that it followed the proper procedure before initiating action to reduce and recoup plaintiff's benefits, and reversed and remanded to the trial court for further proceedings consistent with the opinion. *Slaughter v. La. St. Employees' Retirement System*, 15-324 (La. 10/14/15), 180 So.3d 279.

On remand, the district court effectively found no error in LASERS' actions in reducing Dr. Slaughter's retirement benefits. Finding that the judgment lacked appropriate decretal language, the appellate court

dismissed Dr. Slaughter's initial appeal for lack of appellate jurisdiction. *Slaughter v. La. St. Employees' Retirement System*, 2019 CA 0977 (La.App. 1 Cir. 6/1/20).

Thereafter, the trial court rendered judgment with decretal language, denying plaintiff's motions for a writ of mandamus, mandatory injunctive relief, and declaratory judgment, and dismissing with prejudice plaintiff's claims for a writ of mandamus, mandatory injunctive relief, and declaratory judgment. Dr. Slaughter timely appealed, and the appellate court affirmed the district court, ruling essentially that earned compensation means base pay and does not include salary supplements. *Slaughter v. La. St. Employees' Retirement System*, 2020 CA 0881 (La.App. 1 Cir. 3/25/21). Dr. Slaughter applied to the Louisiana Supreme Court for a writ of *certiorari*. The Louisiana Supreme Court denied his writ application. *Slaughter v. La. St. Employees' Retirement System*, 2021-C-00567 (La. 6/22/21).

Dr. Slaughter raised the federal question sought to be reviewed here at the earliest possible opportunity, in his petition for a writ of *certiorari* to the Louisiana Supreme Court following the Louisiana appellate court's ruling affirming the district court and holding that earned compensation means base pay only, and does not include salary supplements. Specifically, Dr. Slaughter argued that the Equal Protection Clause is violated because for state judges, law enforcement officers, firefighters, professors, and teachers, earned compensation *includes* salary supplements

for purposes of calculating retirement benefits, but under the Louisiana courts' interpretation, earned compensation *does not include* salary supplements for state employees such as Dr. Slaughter, who are mandated to participate in LASERS. Included in the Appendix is Dr. Slaughter's writ application to the Louisiana Supreme Court, pp. iv-vi (footnote omitted) and pp. 6-7 (emphasis in original), which are the specific portions of the record where the federal question was raised. The Louisiana Supreme Court denied the writ application without commenting on Dr. Slaughter's argument that LASERS' statutory scheme violates the 14th Amendment's Equal Protection Clause.

Although the court below did not rule on the Equal Protection issue, Dr. Slaughter unquestionably raised the issue, which is the relevant consideration here. This Court has (in the absence of extraordinary circumstances) refused to consider only questions that were not *raised* in lower courts. "Only in exceptional cases will this Court review a question not raised in the court below." *Duignan v. United States*, 274 U.S. 195, 200 (1927); *Husty v. United States*, 282 U.S. 694, 701-02 (1931); *Lawn v. United States*, 355 U.S. 339, 362-63, n.16 (1958) "Ordinarily, this Court does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992). "In the ordinary course we do not decide questions neither raised nor resolved below." *Glover v. United States*, 531 U.S. 198, 205 (2001). "We ordinarily do not consider claims neither raised nor decided below." *Clingman v.*

Beaver, 544 U.S. 581, 598 (2005), citing *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 168-69 (2004). As Dr. Slaughter raised and argued the Equal Protection issue in his application for *certiorari* to the Louisiana Supreme Court, this is not a situation in which he is “devis[ing] additional questions at the last minute.” *See Taylor, supra*, 503 U.S. at 646. Dr. Slaughter timely and properly raised the federal question, and this Court has jurisdiction to review the judgment on a writ of *certiorari*.

REASONS FOR GRANTING THE WRIT

This Court should exercise its discretion to grant review on a writ of certiorari because a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court, as discussed below.

I. Louisiana Courts Hold That, for LASERS Members Other Than Judges, Earned Compensation Includes Only Base Pay and Excludes Supplemental Pay in the Calculation of Retirement Benefits.

The Louisiana State Employees’ Retirement System (LASERS) was established by an Act of the Louisiana Legislature in 1946. LASERS administers a qualified pension and retirement plan under section

401(a) of the Internal Revenue Code. The LASERS defined benefit plan is a trust fund created to provide retirement and other benefits for state officers, employees, and their beneficiaries. Membership in LASERS is mandatory for all state employees whose employing agencies are LASERS participants, except those exempted by state law. According to its website, LASERS has approximately 100,000 members, and the total gross-of-fee investment value of the fund as of July 31, 2021, exceeded \$13.9 billion².

LASERS pensions are funded through a combination of employer and employee contributions and investment earnings during the working life of an employee. For their State service, LASERS members do not pay the Social Security tax and are not eligible to draw benefits. State employees who retire with a LASERS pension and who earned a Social Security benefit from private employment will likely see a substantial reduction in their Social Security benefits due to the Windfall Elimination Provision federal offset. Also, a LASERS retiree whose spouse earned a Social Security benefit may completely lose that spousal benefit due to the federal Government Pension Offset.

Under the Louisiana courts' interpretation of LASERS' statutory scheme, the statutes violate the Equal Protection Clause of the United States Constitution, because state law classifications discriminate in favor

² For the sake of perspective, the gross domestic product (GDP) of Armenia is \$13.87 billion. <https://worldpopulationreview.com/countries/countries-by-gdp>

of state judges, teachers, law enforcement officers, and firefighters, and against other state employees who are mandatorily LASERS members, in the manner of calculating retirement benefits. The specific dispute involves the definition of “earned compensation.” Under the statutory schemes that apply to state judges, teachers, firefighters, and law enforcement officers, earned compensation is defined as including supplemental pay, or salary supplements; under LASERS’ statutory scheme, however, as interpreted by the Louisiana courts, earned compensation includes only base pay and *excludes* supplemental pay in the calculation of retirement benefits.

In this case, the Louisiana First Circuit Court of Appeal affirmed the trial court’s conclusion that “‘earned compensation’ as defined in La. R.S. 11:403(10) does not include plaintiff’s salary supplements,” based solely on its statement in Dr. Slaughter’s previous wage case, which *did not involve his retirement benefits* and *to which LASERS was not a party*. The First Circuit relied on the following passage from its ruling in the previous wage case, in which Dr. Slaughter had sued the Southern University Board of Supervisors for unpaid wages:

Retirement provisions in Title 11 of the Revised Statutes, applicable to LASERS and other retirement systems, also provide that retirement benefits are based on “average earned compensation.” The “earned compensation” as defined in La. R.S. 11:403(10) means “the base pay earned by an employee

for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes.” . . . As defined in La. R.S. 11:403(6), “base pay” means, “prescribed compensation for a specific position on a full-time basis, but does not include overtime, per diem, differential pay, payment in kind, premium pay, or any other allowance for expense authorized and incurred as an incident to employment.” The definition of base pay includes an exception for supplemental pay of sworn, commissioned law enforcement and fire protection officers, from any available funds of the state. See La. Const. art. X, § 10(A)(1)(b). From our reading of these particular retirement statutes, it is clear that the legislature did not intend for supplemental pay or expense allowances to be included in the calculation of compensation for employees who were not law enforcement officers or firefighters and did not fall within the exception.

(Footnote omitted). *Slaughter v. La. St. Employees' Ret. Sys.*, No. 2020 CA 0881, 11 (La.App. 1 Cir. 3/25/21), quoting *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 2010-1049 (La.App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970. The above language, however, on which the Louisiana appellate court below relied exclusively to support its ruling that Dr. Slaughter's supplemental pay should not be included in the

calculation of his retirement benefits, was nothing but *dicta*, as the same appellate court, in the wage case ruling in which the relied-upon language appears, expressly stated:

Herein, the issue is not one of the calculation of LASERS benefits or an interpretation of the retirement statutes for purposes of determining those benefits. Our analysis on the issue of determining the amount due (and the hourly rate) is limited solely to the facts and the issues in this case and does not address Dr. Slaughter's retirement benefit calculation.

Slaughter v. Bd. of Supervisors of Southern Univ., 76 So.3d 438, 453 (La.App. 1 Cir. 8/2/11), *writ denied*, 11-2110 (La. 1/13/12), 77 So.2d 970. The court below actually quoted the above statement from the case to which LASERS was not a party, and acknowledged that in that case “the question of whether plaintiff's supplemental pay should be included in plaintiff's retirement benefit calculation . . . [was] . . . not . . . directly at issue.” *Slaughter v. La. St. Employees' Ret. Sys.*, No. 2020 CA 0881, 11 n.7 (La.App. 1 Cir. 3/25/21).

II. Supplemental Pay Is Included in the Calculation of Retirement Benefits for Louisiana Judges, Law Enforcement Officers, Firefighters, and Teachers.

The Louisiana First Circuit Court of Appeal stated that the legislature intended for supplemental pay to be included in the calculation of compensation *only* for

law enforcement officers and firefighters and not for LASERS members such as Dr. Slaughter:

The definition of base pay includes an exception for supplemental pay of sworn, commissioned law enforcement and fire protection officers, from any available funds of the state. See La. Const. art. X, § 10(A)(1)(b). From our reading of these particular retirement statutes, it is clear that the legislature did not intend for supplemental pay or expense allowances to be included in the calculation of compensation for employees who were not law enforcement officers or firefighters and did not fall within the exception.

(Footnote omitted; emphasis supplied). *Slaughter v. La. St. Employees' Ret. Sys.*, No. 2020 CA 0881, 11 (La.App. 1 Cir. 3/25/21), quoting *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 2010-1049 (La.App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970. The court erred in focusing on the definition of "base pay," which is not the same thing as "earned compensation." In the ruling below, just before the passage quoted above, the court observed:

Retirement provisions in Title 11 of the Revised Statutes, applicable to LASERS and other retirement systems, also provide that retirement benefits are based on "***average earned compensation***." The "***earned compensation***" as defined in La. R.S. 11:403(10) means "the ***base pay*** earned by an employee for a given pay period as reported to the

system on a monthly basis by the agency ***which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes.***

Id. In its “Employer’s Guide to Retirement,” (revised August 2019), Chapter 2, pages 2.5-2.6, LASERS provides the following guidance:

Base Pay Versus Earnings

It is important to distinguish between a member’s base pay and earned compensation, or earnings. They are reported differently, but both play an important role in determining a member’s service credit. ***Incorrectly reporting a member’s base pay or earnings could result in an incorrect calculation of the member’s service credit.***

BASE PAY

The ***base pay for a full-time employee is the member’s annual full-time salary. . . .***

EARNINGS

“Earnings” or earned compensation is the base pay plus certain emoluments earned by an employee for a given time period that is reported to LASERS on a monthly basis. . . .

Eligible Wage Types

Determining what part of an employee’s compensation is retirement eligible can be challenging because there are numerous types of wages that an employee can earn. As a general rule, ***a wage type is considered***

retirement eligible if it is considered part of the employee's earned compensation. Emoluments are defined as cash compensation subject to federal and state income taxes, paid to an employee in addition to the employee's salary. They should also be included in the employee's base pay (refer to the section Base Pay in this chapter).

(Emphasis supplied). Dr. Slaughter's supplemental pay is cash compensation, subject to and on which Dr. Slaughter actually paid federal and state income taxes; it was paid to him in addition to his salary, and it does not include overtime, *per diem*, differential pay, premium pay, or payment in kind. It is not reimbursement of expenses, and it is not any other allowance for expense authorized and incurred as an incident to employment. Dr. Slaughter's supplemental payments were "permanent/recurring" and not "temporary/non-recurring," and are thus retirement eligible under LASERS' published policy. The supplemental pay fits LASERS' definition of emolument like a glove and should be considered a part of his earned compensation. The Louisiana courts' contrary decision causes material injustice and significantly affects the public interest, as there are tens of thousands of members of LASERS, including state judges, and there must be a consistent and coherent interpretation of the statutes which complies with the legislative intent to include supplemental payments as part of earned compensation for purposes of computing their retirement benefits, and which does not discriminate against LASERS members such as Dr. Slaughter and in favor of state

judges, teachers, law enforcement officers, and fire-fighters.

For Louisiana judges, *who are members of LASERS* (La. R.S. 11:551, *et seq.*), supplemental pay is *included* as a part of earned compensation, upon which retirement benefits are calculated. La. R.S. 13:10.3 provides in relevant part:

- A. The Judges' Supplemental Compensation Fund, hereinafter referred to as "the fund", is hereby created. The proceeds from the fund shall be used solely and exclusively for salary supplements to judges and commissioners, for related costs of state or municipal retirement funds, and for necessary and associated administrative expenses. . . .
- D. After making provisions for necessary and associated administrative expenses, the board shall authorize the judicial administrator to set aside and transmit monthly an amount to provide the additional employer's retirement contribution due by the state on the supplemental compensation to the State Employees' Retirement System on behalf of the judges who are members of the system. The board, through the judicial administrator, shall then distribute the proceeds from the fund monthly,

A record of the Judges Supplemental Compensation Fund for the years 2006 through 2012 is included in the Appendix. Louisiana courts inexplicably and unfairly distinguish between judges and other LASERS members, allowing supplemental pay to be included as

a part of judges' earned compensation but excluded for other LASERS members.

In *Fishbein v. State ex rel. Louisiana State University Health Sciences Center*, 898 So.2d 1260 (La. 2005), a member of the Teachers' Retirement System of Louisiana ("TRSL"), filed suit shortly before she retired against her employer and TRSL seeking a declaration that "all earnable compensation" paid to her "be found to be part of her average monthly compensation for purposes of retirement and DROP benefits along with the average base salary." Plaintiff also sought, among other things, the issuance of a writ of mandamus ordering that her average earnable compensation be certified to include both her base salary and her supplemental salary. The Louisiana Supreme Court found that plaintiff's supplemental salary should have been *included* as part of her earnable compensation as defined in La. R.S. 11:701(10), which reads:

"Earnable compensation" means the compensation earned by a member during the full normal working time as a teacher. Earnable compensation shall include any differential wage payment as defined by 26 U.S.C. 3401(h)(2) that is made by an employer to any individual performing qualified military service. Earnable compensation shall not include *per diem*, post allowances, payment in kind, hazardous duty pay, or any other allowance for expense authorized and incurred as an incident to employment, nor payments in lieu of unused sick or annual leave, nor retroactive salary increases unless such an increase was

granted by legislative Act or by a city or parish systemwide salary increase, nor payment for discontinuation of contractual services, unless the payment is made on a monthly basis. If a member is granted an official leave and he makes contributions for the period of leave, earnable compensation shall not include compensation paid for other employment which would not have been possible without the leave. The board of trustees shall determine whether or not any other payments are to be classified as earnable compensation.

The Louisiana Supreme Court stated:

Under the plain language of the statute, plaintiff's supplemental salary is earnable compensation if it was compensation earned by her, a member, "during the full normal working time as a teacher" and not otherwise excluded. We agree with the court of appeal's conclusion that plaintiff's supplemental salary should have been included as part of her earnable compensation.

Fishbein v. State ex rel. Louisiana State University Health Sciences Center, 898 So.2d 1260, 1271 (La. 2005). The Louisiana Supreme Court reasoned:

The second sentence of La. R.S. 11:701(10) that excludes several different types of pay from the definition of earnable compensation does not explicitly exclude supplemental salary. Further, like the court of appeal, we find it is not sufficiently analogous to any of the items of pay expressly excluded from the

definition to warrant its exclusion. . . . The clear words of the statute and the nature of plaintiff's supplemental salary convince us that supplemental salary should be included in the definition of earnable compensation. There is no evidence that the legislature intended to exclude supplemental salary from the definition.

898 So.2d at 1272 (La. 2005).

For LASERS members such as Dr. Slaughter, the statutory definition of "earned compensation," like the statute that applies to TRSL, similarly does not specifically exclude salary supplements, nor is there any evidence that the legislature intended to exclude supplemental pay from the definition of earned compensation. To the contrary, since Dr. Slaughter's supplemental pay was subject to federal and state income taxes which Dr. Slaughter actually paid, supplemental pay falls squarely within the pertinent definition of "emolument," which is expressly a part of "earned compensation" as defined by statute. ("'Earned compensation' means the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes and includes the full amount earned by an employee," La. R.S. 11:403(10)). Yet the Louisiana courts have determined that supplemental pay is *not* to be included in calculating retirement benefits for LASERS participants such as Dr.

Slaughter, although it is included for purposes of retirement benefit calculations for state judges, law enforcement officers, firefighters, and teachers.

The Louisiana Supreme Court has recognized that under the statewide Firefighters' Retirement System ("FRS"), earned compensation includes supplemental pay for purposes of retirement benefits calculations: "In La. R.S. 11:2252, which falls under Chapter 9 of Title 11 and governs FRS specifically, the legislature stated: ‘‘Earnable compensation’’ shall mean the full amount of compensation earned by an employee on a *regular tour of duty*, including supplemental pay paid by the state of Louisiana, but shall not include overtime.’ La. R.S. 11:2252(9)(a). (emphasis added).” *Dunn v. City of Kenner*, 187 So.3d 404, 409 (La. 2016). The court noted that both before and after the merger of its municipal retirement system for firefighters with FRS, “Kenner calculated firefighters’ pension contributions based on base pay and supplemental pay,” *Id.* at 406. See also *Slaughter v. La. St. Employees’ Ret. Sys.*, No. 2020 CA 0881, 11 (La.App. 1 Cir. 3/25/21), quoting *Slaughter v. Bd. of Supervisors of Southern Univ. & Agr. & Mech. Coll.*, 2010-1049 (La.App. 1 Cir. 8/2/11), 76 So.3d 438, *writ denied*, 11-2110 (La. 1/13/12), 77 So.3d 970. Yet for LASERS members such as Dr. Slaughter, Louisiana courts have held that supplemental pay is not included in earned compensation for purposes of calculating retirement benefits.

III. LASERS Statutory Scheme.

The issues raised herein are vitally important. LASERS is a statewide public retirement system providing retirement and other benefits for Louisiana's state officers, employees, and their beneficiaries. Membership in LASERS is mandatory for most state employees. There are approximately 100,000 members.

La. Const. Art. 10, sec. 29(E)(5) provides in relevant part: "The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired." Dr. Slaughter has a vested and accrued contractual right and constitutional property interest in his pension benefits. La. R.S. 11:403(33) specifically defines a "vested right" in the context of LASERS as "when a member obtains retirement eligibility as to age and service in accordance the provisions of this Chapter." "Retirement" is defined to mean "termination of active service, with a retirement allowance granted under the provisions of this Chapter." La. R.S. 11:403(24). "Termination" is defined to mean "complete cessation of employment with the state." La. R.S. 11:403(32).

Louisiana courts have consistently held that pension statutes must be liberally construed in favor of the intended beneficiaries. *Harrison v. Trustees of Louisiana State Employees' Retirement System*, 95-0048 at 7 (La.App. 1 Cir. 1995), 671 So.2d 385, 390. Denial of retirement benefits is not favored whenever there exists an otherwise reasonable construction. *Id.*; *West Monroe Police Pension and Relief Fund v. Lofton*, 356 So.2d 126

(La.App. 2d Cir. 1978). Accordingly, any ambiguity in such a statute must be resolved in favor of the retiree. *Harrison, supra*; *Swift v. St. of La.*, 342 So.2d 191 (La. 1977); *Groves v. Bd. of Trustees of the Teachers' Retirement System*, 324 So.2d 587 (La.App. 1st Cir. 1975), *writs denied*, 326 So.2d 378, 380 (La. 1976).

The Louisiana Supreme Court has recognized that retirement contributions represent “an increasingly important part of an employee’s compensation for his services.” In *T.L. James Co., Inc. v. Montgomery*, 332 So.2d 834 (La. 1976), the court concluded that an employer’s contribution into a retirement-type plan “is not a purely gratuitous act, but it is in the nature of additional remuneration to the employee who meets the conditions of the plan. The employer expects and receives something in return for his contribution, while the employee, in complying earns the reward. The credits to these plans, when made, are in the nature of compensation (although deferred until contractually payable).” *Id.* at 851. *See also Fishbein*, 898 So.2d at 1271; *Dunn*, 187 So.3d at 408.

Dr. Slaughter has reliance interests in his vested retirement benefits. In the Equal Protection context, this Court has recognized the importance of legitimate expectation and reliance interests:

This Court previously has acknowledged that classifications serving to protect *legitimate expectation and reliance interests* do not deny equal protection of the laws. “The protection of *reasonable reliance interests* is not only a legitimate governmental objective: it provides

an exceedingly persuasive justification. . . .”
Heckler v. Mathews, 465 U.S. 728, 746 (1984)
(internal quotations omitted).

Nordlinger v. Hahn, 505 U.S. 1, 13-14 (1992) (emphasis supplied); *see also Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 465 (1988); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 178 (1980); *New Orleans v. Dukes*, 427 U.S. 297, 305 (1976) (all discussed in *Nordlinger*).

The statute that defines earned compensation for purposes of LASERS is La. R.S. 11:403(10):

“Earned compensation” means the base pay earned by an employee for a given pay period as reported to the system on a monthly basis by the agency which shall include the cash value of any emolument of office in the form of paid compensation in lieu of salary which is subject to federal and state payroll taxes and includes the full amount earned by an employee, overtime, and per diem earned by an employee of the House of Representatives, the Senate, or an agency of the legislature, and expense allowances and per diem paid to members of the legislature, the clerk, or sergeant at arms of the House of Representatives and president and secretary or sergeant at arms of the Senate.

Under the Louisiana courts’ discriminatory interpretation of La. R.S. 11:403(10), excluding supplemental pay from the definition of earned compensation for members such as Dr. Slaughter, LASERS’ statutory

scheme violates the Equal Protection Clause. The Fourteenth Amendment to the United States Constitution, section 1, states in relevant part: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Equal protection forces a state to govern impartially – not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

1. The Classification Fails Strict Scrutiny Analysis.

“[W]e have treated as presumptively invidious those classifications that disadvantage a ‘suspect class,’ or that impinge upon the exercise of a ‘fundamental right.’ With respect to such classifications, it is appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest.” *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (footnotes omitted), citing, *inter alia*, *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964); *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667 (1966); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Louisiana courts’ interpretation – that Dr. Slaughter’s supplemental pay, on which he paid income taxes, in which he is vested, and which forms a part of his compensation, does not count as “earned compensation” for purposes of calculating his retirement benefits – deprives Dr. Slaughter of the use and control of his private

property. For nearly a century, this Court has consistently treated property as a fundamental right, forbidding the government from imposing arbitrary or irrational restrictions on its use. *See Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). As the legislative classification at issue impinges on a fundamental right, strict scrutiny analysis applies, and the State is required to show that the classification is narrowly tailored to accomplish a compelling governmental interest. No governmental interest whatsoever has been articulated.

There is no compelling governmental interest, or even any conceivable policy rationale, that justifies allowing supplemental pay to be included in earned compensation for state judges, law enforcement officers, firefighters, and teachers, but not for other state employees such as Dr. Slaughter who are members of LASERS. The legislative classification revealed in the operation of the respective statutes does not further any compelling governmental interest, or, if there is some as-yet-unidentified governmental interest at stake, such interest is not compelling, and the legislative classification is not narrowly tailored to achieve that interest.

2. The Classification Fails Intermediate Scrutiny Analysis.

The Equal Protection Clause demands that similarly situated persons be treated similarly under the law. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Under

intermediate scrutiny, which may apply in the absence of a suspect class or a fundamental right, the subject law “must serve important governmental objectives and must be substantially related to achievement of those objectives.” *Craig v. Boren*, 429 U.S. 190, 197 (1976).

“ . . . [W]e have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances, we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State.

Plyler v. Doe, 457 U.S. at 217-18. See also *Craig v. Boren*, 429 U.S. 190 (1976); *Lalli v. Lalli*, 439 U.S. 259 (1978).

A legislative retirement scheme allowing supplemental pay to count as earned compensation for state judges, law enforcement officers, firefighters, and teachers, but not for other state employees, fails intermediate equal protection scrutiny, because it is not substantially related to achievement of any important governmental objective. Such a law is not at all related to achieving any identifiable State interest.

3. The Classification Fails Rational Basis Scrutiny.

If Dr. Slaughter's retirement benefits are not deemed a fundamental right (triggering strict scrutiny analysis) and not deemed to give rise to recurring constitutional difficulties (giving rise to intermediate scrutiny analysis), then the Equal Protection Clause demands that the statutory scheme at least bear a rational relationship to a legitimate state purpose. The subject statutory scheme flunks even this more lenient "rational basis" test.

Perhaps the clearest statement of this Court's present approach to "rational basis" scrutiny may be found in *Johnson v. Robison*, 415 U.S. 361 (1974). . . . "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Id.* at 415 U.S. 374-75 (quoting *Reed v. Reed*, 404 U.S. 71, 404 U.S. 75-76 (1970), which, in turn, was quoting *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 253 U.S. 415 (1920)) (ellipses and brackets in original) (emphasis supplied). . . . the rational basis standard "is not a toothless one," *ibid.*, and will not be satisfied by flimsy or implausible justifications for the legislative classification, proffered after the fact by Government attorneys. See, e.g., *Jimenez v. Weinberger*, 417 U.S. 628 (1974); *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973); *United States Dept. of Agriculture v.*

Murry, 413 U.S. 508 (1973); *James v. Strange*, 407 U.S. 128 (1972).

United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166 (1980).

[E]ven in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between classification and objective gives substance to the Equal Protection Clause; it provides guidance and discipline for the legislature, which is entitled to know what sorts of laws it can pass; and it marks the limits of our own authority.

Romer v. Evans, 517 U.S. 620, 632 (1996).

No governmental objective whatsoever – not even a flimsy or implausible justification – has been identified for the subject statutory scheme, which is unreasonable and arbitrary on its face and in operation. The law as interpreted by Louisiana courts, excluding supplemental pay from earned compensation in the calculation of retirement benefits for LASERS members such as Dr. Slaughter, violates the Equal Protection Clause.

4. This Court Should Clarify Which Level of Scrutiny Applies.

It is not just the ultimate constitutionality of the statutory classification that is in serious doubt – even the level of scrutiny courts should apply in reviewing

the classification is unclear. Lower courts will undoubtedly struggle with the constitutionality of statutory schemes drawing apparently inconsistent lines among statewide retirement plans when even the applicable level of scrutiny is not clearly identified. This Court should clarify what level of scrutiny applies for review of the subject statutory classification under the Equal Protection Clause. Dr. Slaughter submits that the appropriate level of scrutiny is strict scrutiny, requiring the State to show that its challenged law serves a compelling interest and represents the least restrictive means for doing so. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).

CONCLUSION

For the foregoing reasons, this Court should issue a writ of certiorari to review the judgment of the Louisiana Court of Appeals and Louisiana Supreme Court.

Respectfully submitted,
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