

SUPREME COURT OF LOUISIANA

No. 2005-CA-2548

**THE CITY OF NEW ORLEANS AND THE HONORABLE C. RAY NAGIN,
MAYOR, IN HIS INDIVIDUAL CAPACITY**

VERSUS

**THE LOUISIANA ASSESSORS' RETIREMENT AND RELIEF FUND AND
JOHN KENNEDY, TREASURER FOR THE STATE OF LOUISIANA,
IN HIS OFFICIAL CAPACITY**

ON APPLICATION FOR REHEARING

CALOGERO, Chief Justice, WOULD GRANT REHEARING AND ASSIGNS

REASONS:

Because I would grant the application for rehearing filed by the City of New Orleans and the Honorable R. Ray Nagin, Mayor, in His Individual Capacity (hereinafter referred to collectively as "the City"), I respectfully dissent from the majority's decision to deny the application. For the reasons set forth in detail in my dissent to the original opinion, I agree with the City's arguments that the current version of La. Rev. Stat. 11:1481, governing financing of the Louisiana Assessors' Retirement Fund ("LARF") is unconstitutional because it violates La. Const. art. VI, §§ 26(B) and 32, which prohibit the diversion of special and dedicated taxes.

In fact, the majority in this case admitted that the Louisiana Legislature is prohibited by the state constitution from diverting dedicated taxes, but nevertheless found that La. Rev. Stat. 11:1481 is constitutional because it does not require the diversion of special or dedicated taxes, but instead merely sets forth a formula for calculating the amounts due to LARF. As the City argues, that conclusion is inconsistent with the manner in which the statute has been interpreted and applied for decades by LARF, the 63 Louisiana parishes other than Orleans, and the Legislative

Auditor, all of which have interpreted and applied the statute to require the remittance of a percentage of dedicated and special taxes. As I noted in my dissent to the majority opinion, the record in this case contains the Legislative Auditor's report showing the calculation of the City's alleged liability to LARF for the 2005 tax year, and that report unequivocally demonstrates that the calculation includes 0.25 percent of all ad valorem taxes collectible by the city, including dedicated and special taxes. Further, as the City points out in its application for rehearing, LARF argued in this court, not that La. Rev. Stat. 11:1481 does not require the diversion of dedicated and special taxes, but that such diversion was authorized by La. Const. art. X, § 26(B). LARF also admitted that none of the 63 parishes other than Orleans have ever asserted that they were not allowed to divert a portion of dedicated and special taxes to LARF, indicating that those parishes routinely deduct and remit a portion of dedicated and special taxes to LARF.

As discussed below, my dissent sets forth the only reasonable interpretation of La. Rev. Stat. 11:1481. Further, as the City points out in its application for rehearing, the Legislative Auditor, LARF, and the officials in 63 Louisiana parishes agree with my interpretation of La. Rev. Stat. 11:1481. That being the case, this court should have applied the contemporaneous construction doctrine, recognized the unconstitutional nature of the statute and the unconstitutional manner in which it has been interpreted and applied, and granted the City's motion for summary judgment. Alternatively, if the majority believes that the record is insufficient to prove that the interpretation and application of the statute by such officials is unconstitutional, it should have recognized the existence of a genuine issue of material fact on the issue and remanded to the district court for development of a record.

Further, I agree with the City's argument that the court's holding that La. Rev. Stat. 11:1481 does not require the diversion of dedicated taxes, but simply establishes

a method for calculating the amount that must be paid LARF from non-dedicated taxes could lead to absurd results. The majority decision herein allows tax-recipient bodies to increase their millages, then places the sole obligation for paying the increase in the amount due to LARF on those containing non-dedicated taxes, which have no control over the increase in millages obtained by the tax-recipient bodies that receive only dedicated and special taxes. Thus, a tax-recipient body receiving dedicated and/or special taxes may increase its millages without consequence, while funds containing non-dedicated taxes are required to pay ever-increasing amounts to LARF, making it impossible for those funds to anticipate the amount of monies that might actually be available to pay for the fund's other responsibilities.

As I stated in my dissent to the original opinion, the *only* reasonable interpretation of La. Rev. Stat. 11:1481 is that it requires that 0.25 percent of the "taxes shown to be collectible on the tax rolls" be **deducted** by sheriff's and tax collectors and **remitted** to LARF. Thus, the plain and unambiguous language of the statute requires the diversion of dedicated and special taxes to LARF. In fact, as demonstrated in the above discussion of LARF's arguments in this court, all of the parties to this case recognized that the challenged statute requires the diversion of dedicated and special taxes. Although the majority found that diversion of such taxes is unconstitutional, it developed a new theory to support its conclusion that the statute was nevertheless constitutional, thereby ignoring the plain and unambiguous language of the statute and the interpretation and application of the statute by the state officials who administer it.

For the reasons stated in my dissent to the original majority decision, I also believe that La. Rev. Stat. 11:1481 is unconstitutional because it violated La. Const. art. VII, § 26, governing revenue sharing. Finally, I agree with the City's argument that the court should revisit the equal protection argument because the City presented

sufficient evidence to show the existence of a genuine issue of material fact sufficient to preclude summary judgment in favor of LARF on that issue.