To Be Argued By:
Robert S. Smith
Time Requested: 15 Minutes

APL-2019-00032
New York County Supreme Court Clerk's Index No.: 157286/15

Court of Appeals
State of New York

PATRICK LYNCH, as President of the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., on behalf of the Police Officers Who Have Been or May in the Future Be Aggrieved, and the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Plaintiffs-Appellants,

-against-

THE CITY OF NEW YORK, the NEW YORK CITY POLICE PENSION FUND and THE BOARD OF TRUSTEES of the New York City Police Pension Fund,

Defendants-Respondents.

REPLY BRIEF

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Date Completed: July 23, 2019

COURT OF APPEALS
STATE OF NEW YORK

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PATRICK LYNCH, as President of the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., on behalf of the Police Officers Who Have Been or May In The Future Be Aggrieved, and the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Plaintiffs-Movants,

-against-

THE CITY OF NEW YORK, the NEW YORK CITY POLICE PENSION FUND, and THE BOARD OF TRUSTEES of the New York City Police Pension Fund,

Defendants-Respondents.

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STATEMENT PURSUANT TO COURT OF APPEALS RULE 500.1(f)

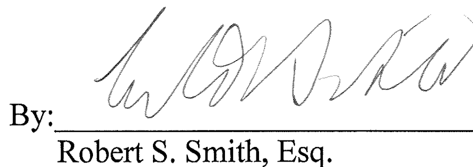
New York County
Index No. 157286/2015

Plaintiffs, PATRICK LYNCH, as President of the POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. f/k/a the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, on behalf of the Police Officers Who Have Been or May In The Future Be Aggrieved, and the POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. f/k/a the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, as and for their statement pursuant to 22 NYCRR § 500.1(f), hereby state as follows:

Police Benevolent Association of the City of New York, Inc. f/k/a the Patrolmen's Benevolent Association of the City of New York certifies that Police Benevolent Association of the City of New York, Inc. f/k/a the Patrolmen's Benevolent Association of the City of New York does not have any parents, subsidiaries or affiliates.

Dated: New York, New York
Dated: July 23, 2019

Respectfully submitted,
FRIEDMAN KAPLAN SEILER &
ADELMAN LLP



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COURT OF APPEALS
STATE OF NEW YORK

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PATRICK LYNCH, as President of the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., on behalf of the Police Officers Who Have Been or May In The Future Be Aggrieved, and the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.,

Plaintiffs-Movants,

-against-

THE CITY OF NEW YORK, the NEW YORK CITY POLICE PENSION FUND, and THE BOARD OF TRUSTEES of the New York City Police Pension Fund,

Defendants-Respondents.

--X

STATEMENT PURSUANT TO COURT OF APPEALS RULE 500.13(a)

New York County
Index No. 157286/2015

Plaintiffs, PATRICK LYNCH, as President of the POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. f/k/a the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, on behalf of the Police Officers Who Have Been or May In The Future Be Aggrieved, and the POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. f/k/a the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, as and for their statement pursuant to 22 NYCRR § 500.13(a), hereby state as follows:

Although it is our understanding that the following is not within the scope of Rule 500.13(a)'s disclosure requirement, it is provided in the interest of full disclosure. Another case (Index No. 655831/2016) involving the applicability of certain purchase, buyback, and transfer service credit provisions of the New York State Retirement & Social Security Law and New York City Administrative Code to Tier 3 members of the New York City Police Pension Fund is currently pending before Supreme Court, New York County (Chan, J.). Justice Chan issued a decision on July 9, 2019. In that case, the PBA submitted a Request for Judicial Intervention (RJI) identifying this action (Index No. 157286/2015, APL-2019-00032) as a related case. Also, both cases involve as Plaintiffs, Patrick J. Lynch, as President of the Patrolmen' s Benevolent Association of the City of New York, Inc., on behalf of his members, and Patrolmen's Benevolent Association of the City of New York, Inc. Furthermore, both cases involve as Defendants, the City of New York, the New York City Police Pension Fund, and the Board of Trustees of New York City Police Pension Fund, among other parties.

Dated: New York, New York
July 23, 2019

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PRELIMINARY STATEMENT

Our previous brief demonstrated that the Child Care Credit Law means what it says: the benefits provided by that law are available to "any member" of the New York City Police Pension Fund, regardless of tier. The City's response boils down to the unfounded, but often-repeated, assertion that "[t]he substantive benefits of Tier 3 officers are governed *exclusively* by [RSSL] Article 14". (Brief for Respondents ("City Br.") at 1 (emphasis added); *see id.* at 6, 11, 18, 19, 42, 48-49, 50, 57). Thus, according to the City, no statutory language, no matter how plain, can extend a benefit to Tier 3 officers unless that language is found in Article 14.

But nowhere in its brief does the City cite a statute or case that says, or can fairly be read to imply, that Article 14 is "exclusive" in this sense. There is no evidence whatever, in the text of Article 14, its legislative history or anywhere else, that the 1976 Legislature, when it enacted Article 14, intended to disable future legislatures from granting substantive benefits except by an amendment to that article. And of course, the 1976 Legislature could not have bound future legislatures even if it had tried to do so. The controlling legislative intent is that of the 2000 Legislature, which conferred the child care benefit on "any member", and made no exception for Tier 3 members. The City's attempt to write in such an exception should be rejected.

ARGUMENT

THE CITY FAILS TO DEMONSTRATE THAT ARTICLE 14 IS THE EXCLUSIVE SOURCE RIGHTS FOR TIER 3 MEMBERS

A. The City Misconceives The Statutory Scheme

The City's "exclusivity" theory is based initially on the assertion that Article 14, which created Tier 3, was enacted in 1976 as a "comprehensive plan" (City Br. at 5) – i.e., a "stand-alone retirement structure of benefits and contributions" for all public employees in Tier 3 (id. at 6). The City contrasts Article 11, governing Tier 2, which the City says is "an overlay Tier that largely incorporated the structure and benefits of the Administrative Code..." Id. at 5. The idea of a legally significant difference between "stand-alone" and "overlay" tiers is not supported by any statutory text, legislative history or decision involving New York's public pension system, but emanates from the legal imagination of the Corporation Counsel. It appears in briefs filed by the City in other cases (see, e.g., Kaslow v City of New York, Brief for Respondent-Appellant., 2012 WL 13129210 (NYAD 2 Dept.) at 7), but no court has ever adopted it.

Even assuming the "stand-alone" concept could be a correct characterization of Tier 3 when it was established by Article 14 in 1976, it is a totally illogical leap to say that it was "exclusive", in the sense that no later legislation could provide

new benefits to Tier 3 members except by amending Article 14. The leap becomes still more illogical when the overall structure of this State's public employee pension system is understood. That system is governed by two complementary, co-cqual legislative regimes: the New York City Administrative Code (Code), which contains provisions specific to each fund (the New York City Police Pension Fund (NYCPPF), the Fire Department Pension Fund, etc.) and the RSSL, which, with certain exceptions, applies generally to members of the various pension funds but distinguishes members by tiers. See PBA Br. at 3; compare New York City Administrative Code §§ 13-201 to 13-267.1 (NYCPPF) with RSSL § 440(a). In other words, the Code is fund-specific, and the RSSL is tier-specific.

Under this statutory scheme, the Legislature would normally be expected to alter the rights of all the members of a particular fund by amending the Code, as it did for NYCPPF members in the case of the Child Care Credit Law. See Code § 13-218 (h); L 2000, ch 594. Conversely, the Legislature, if it wanted to specify the rights of all members of a particular tier, would most naturally do so by amending the RSSL – as it did when it created Tier 3 in 1976.

This structure was explained in the PBA's original brief ("PBA Br.") at page 3. The City's brief nowhere disputes, or directly addresses, that explanation. This undermines the fundamental basis for the City's argument – its ipse dixit assertion that the inclusion of Tier 3 police officers in a benefit provided by the Code would

be inconsistent with the structure of the State's pension legislation. The Child Care Credit Law's application to "any member" of the NYCPPF is completely consistent with that structure.

B. The City's Position Lacks Support In The Statutory Text

The City's theory that the RSSL is the exclusive source of pension rights for Tier 3 members finds no support whatsoever in the text of Article 14.

The only statute the City cites as providing such support is RSSL § 519(1). The City quotes a snippet from section 519(1),[1] but avoids quoting the whole section, which reads:

> "Any other provision of this chapter, of the state education law or of the administrative code of the city of New York, or rules and regulations thereunder, relating to the reemployment of retired members, transfer of members and reserves between systems and procedural matters shall apply to members covered under this Article during the duration thereof unless inconsistent herewith."

RSSL § 519(1).

As this text makes clear, Section 519(1) has nothing to do with the supposed "exclusivity" of Article 14 benefits. The statute contains no words of exclusion. It simply incorporates by reference certain portions of the RSSL, the Code, the

[1] The City only quotes "relating to the reemployment of retired members, transfer or members and reserves between systems and procedural matters." See City Br. at 6-7, 21-22.

Education Law and their implementing regulations, none of which are relevant here. Section 519(1), in short, has nothing to do with this case, and the City betrays the weakness of its argument by relying so heavily on that section. See City Br. at 6-7, 11. 21-23, 24, 51, 53 n.4, 57.

In fact, there is evidence in the statutory text that contradicts the City's exclusivity theory. Section 500(a) of the RSSL, which the Appellate Division relied on, says: "In the event that there is a conflict between the provisions of this article and the provisions of any other law or code, the provisions of this article shall govern" (emphasis added). This presupposes that other laws will apply to members subject to Article 14 where there is no conflict – and there is none here. See PBA Br. at 18.[2] The logical inference from section 500(a) is that Article 14 is not an "exclusive" source of rights.

In fact, the Legislature has provided substantive benefits to Tier 3 members through the Code rather than through RSSL Article 14. See, e.g., Code § 13-232 (creating the variable supplement fund); 13-696(h)(providing a cost of living adjustment to retirement benefits, which applies to Tier 3 members, unless the "escalation provided" by Article 14 is greater); 13-234(i)(4)(similar). The

[2] As the PBA argued previously, if there were a conflict, the Child Care Credit Law, a later-enacted and more specific statute that has a similar "In the event of conflict" clause, would prevail. PBA Br. at 18-20. Without any support, the City responds with a convoluted explanation of how Child Care Credit Law, even though it was passed after all the other laws at issue, should not be deemed as later enacted. City Br. at 53-54.

Legislature amended the Code to create the variable supplement fund, which gives retired members an annual lump sum payment in addition to their regular pension benefits - a substantive benefit available to Tier 3 members. See Code §§ 13-232, 13-268 through 277. (292)

When the Legislature decides that Tier 3 members should not be subject to a Code provision, it expressly exempts them, which it would not need to do if, as the City incorrectly argues, substantive Code provisions apply to Tier 1 and 2 members exclusively. See Code § 13-256.1; see also Code § 13-234(h)(4) (expressly exempting any NYCPPF "member who is subject to the provisions of [Article 14]" from the special interest rate awarded "to the individual account of each member"). Thus in 2011, the Legislature established the rights of discharged or dismissed officers in Section 13-256.1 of the Code. The Legislature expressly exempted from this regime members "to which Article fourteen of the retirement and social security law is applicable". See Code § 13-256.1(b); see also Code § 13-256.1(c)

The City argues that Article 14's definitions of "credited service" and "creditable service" render the Child Care Credit Law ineffective as applied to Tier 3 members. The gist of its argument is that "credited" and "creditable" service are defined in Article 14, specifically in RSSL § 501(3) and (4), "by reference to" RSSL § 513; section 513(a)(2) says that, with certain exceptions, "a member shall

not receive retirement credit for any day that he is not on the payroll of the state"; and therefore, the City concludes, the Child Care Credit Law could not allow retirement credit to Tier 3 members for time spent on child care leave unless it expressly amended Article 14. City Br. at 11, 26-27.

The flaw in this argument is that, if accepted, it would nullify the Child Care Credit Law not only as to Tier 3 members, but also as to members of Tier 1 and Tier 2, because Article 11, governing Tier 1 and Tier 2 members, is identical in relevant respects to Article 14. RSSL Article 11 contains, verbatim, the language from Article 14 on which the City relies: "a member shall not receive retirement credit for any day that he is not on the payroll of the state". RSSL § 446(a)(2). If the Child Care Credit Law is nullified by that language, then it is a complete nullity. The City makes no attempt to explain why it thinks the Child Care Credit Law is nullified by identical language in one article but not the other. The unavoidable inference from the text is that the Legislature intended the words "credited service" to have the same meaning in both Articles.[3]

Before leaving the text of Article 14, it is worth reflecting on what could be there, but is not. The 1976 Legislature could have said: "This article shall be the exclusive source of benefits for members to whom it applies. No provision of law

[3] The PBA's original brief described the essential identity of RSSL §§ 446 and 513, contained in Articles 11 and 14 respectively. PBA Br. at 22-23. As noted there, the definition of "creditable service" is found not in subsection (a)(2) of the two statutes, which the City relies on, but in subsection (c), captioned "Creditable service".

making any substantive change in benefits shall be deemed applicable to such members unless it specifically refers to this article." Even this language could not have bound future legislatures, but it would certainly have been relevant to the interpretation of future statutes. What is relevant here is that no such language, and nothing resembling it, exists in Article 14.

C. The City's Position Finds No Support In The Relevant Legislative History

The statutes relevant to this case are, first, the Child Care Credit Law, the statute the Court is called upon to interpret; and, secondly, RSSL Article 14, the basis for the City's erroneous "exclusivity" theory that would make the Child Care Credit Law inapplicable to Tier 3 members. The City's brief offers nothing in the legislative history of either statute that supports its view of the law.

As to the legislative history leading to the enactment of the Child Care Credit Law in 2000, the City's brief is utterly silent, for good reason. As the Appellate Division acknowledged, "[t]he legislative history of [the Child Care Credit Law] does not reflect any intent to distinguish between the tiers in the pension system." (328) On the contrary, the legislative history identifies those to be benefited by the law as "police officers" generally. See PBA Br. at 15.

As to the legislative history of Article 14, the City can cite nothing that says or implies that that article is to be forever the exclusive source of benefits for

members of Tier 3. The City relies on statements that the bill "creates a new retirement system," providing "uniform benefits for all public employees" and "eliminating costly special treatment of selected groups." See Governor's Message of Approval, 1976 McKinney's Session Laws of NY, at 2455. The bill accomplished this purpose. But there is no evidence that the 1976 Legislature intended to prevent a future legislature from making a different policy choice by providing a fund-specific benefit in the Code.

Nor could it. This Court and the United States Supreme Court have repeatedly held that a Legislature cannot limit the policy choices of future legislatures. See, e.g., Karedes v Colella, 100 NY2d 45, 50 (2003) (holding that "[e]lected officials must be free to exercise legislative and governmental powers in accordance with their own discretion and ordinarily may not do so in a manner that limits the same discretionary right of their successors to exercise those powers"); Brearley School v Ward, 201 NY 358, 369 (1911) (the Legislature "could not limit the power of succeeding Legislatures to alter or repeal such legislation"); Lang v Lutz, 180 NY 254, 259 (1905) ("[t]he power of the Legislature, supreme within constitutional limitations, cannot be fettered by any prior legislative act"); Mongeon v People, 55 NY 613, 618-19 (1874) ("[t]he Legislature could not declare in advance the intent of subsequent Legislatures or the effect of subsequent legislation upon existing statutes"); see also Reichelderfer v Quinn, 287 US 315,

318 (1932) (one Congressional act "expressed no more than the will of a particular Congress which does not impose itself upon those to follow in succeeding years"); Newton v Mahoning, 100 US 548, 559 (1879). As mentioned above, the 1976 Legislature could at most have expressed a non-binding intention to create an exclusive source of pension rights, and established a rule of construction for future statutes. But the 1976 Legislature did not do even that.

Finding no support for the exclusivity theory in the legislative history of either relevant stature, the City relies on a much weaker reed – the legislative history of two statutes enacted years after the Child Care Credit Law. The City's misplaced reliance on that history is addressed in Section E below.

D. Case Law Does Not Support the City's Position

The City relies on three cases to support the proposition that Tier 3 NYCPPF members cannot receive any substantive pension benefits not specified in Article 14: Lynch v City of New York (23 NY3d 757 [2014]) ; Matter of Kaslow v City of New York (23 NY3d 78 [2014]); and Wertheim v New York City Teachers' Retirement System (91 AD2d 514, 516 [1st Dept 1982], aff'd for reasons stated below 58 NY2d 1043 [1983]). See City Br. at 7, 23, 43. None supports the City's position.

The City relies most heavily on Lynch, which it cites as though it adopted the City's exclusivity theory (See City Br. at 11: "the only substantive benefits

available to Tier 3 members are those included in Article 14. Lynch, 23 N.Y.3d at 773.") But Lynch does not even discuss that question.

In Lynch, the issue was whether an Increased-Take-Home-Pay (ITHP) benefit, found not in the Code but in Article 11 of the RSSL, and enacted in 1974, before Tier 3 existed, was extended by RSSL § 480(b) (also enacted originally in 1974) to Tier 3 members. The Court, to the extent that it was relevant in Lynch, noted that a Code provision governing an ITHP-related calculation had expressly carved out Tier 3 members. See Lynch, 23 NY3d at 774 (quoting Code § 13-638.2[g][3])). Lynch did not interpret the term "any member", but the term "any program", used in RSSL § 480(b). The Court's holding, based on a minute analysis of a complex series of enactments, was that the word "program" referred to ITHP as it existed before the creation of Tier 3, and thus that the program did not benefit Tier 3 members. The language the City quotes at page 20 of its brief ("the legislature would have been required to *include*..."), read in context, has nothing to do with the supposed "exclusivity" of Article 14. The words "exclusive" and "exclusivity" appear nowhere in Lynch, and the concept is not discussed.

Indeed, to the extent that Lynch is relevant here at all, it contradicts the City's theory. Code § 13-638.2(g)(3), quoted by the Lynch Court, carves out Tier 3 members. The carve-out would have been unnecessary if, as the City argues,

substantive benefits in the Code could not apply to Tier 3 members in the first place.

The City relies on Kaslow for the Court's statement that Kaslow's pension was defined "in its entirety" by the definition of "credited service" contained in Article 14. See City Br. at 23 (quoting 23 N.Y. 3d at 80). Again, the City is quoting out of context. In context, the words it quotes do not suggest that Article 14 is the exclusive source of benefits for Tier 3 members.

The petitioner in Kaslow, a corrections officer, elected to retire after 20, rather than 25, years of service by joining the optional Tier 3 CO-20 retirement plan. The Court held that Tier 3 members who, like Kaslow, were hired after December 19, 1990 and elected to join this optional retirement plan could not count non-uniformed service toward the 20 years of service, even though other Tier 3 members could do so. Id. at 86 (citing RSSL § 504-a [b][4]). As in Lynch, the Court's conclusion was based on a detailed and case-specific analysis of various enactments.

In making that analysis, the Court deferred to a consistent administrative interpretation of an Article 14 section defining "credited service" that incorporated an Article 11 provision by reference. Under that interpretation, Article 14's definition section "specifies the entire pension benefit for participants in the Tier 3 CO-20 plan." In the introduction to its opinion, the Court summarized its

conclusion by saying that Kaslow's pension "is defined in its entirety by Retirement and Social Security Law § 504-a (c) (2)." This holding, like the holding in Lynch, is case-specific; it had nothing to do with any supposed "exclusivity" of Article 14. In Kaslow, as in Lynch, the words "exclusive" and "exclusivity" do not appear.

Indeed, in Kaslow, as in Lynch, the Court's approach is inconsistent with the City's exclusivity theory, under which Code provisions cannot affect Tier 3 benefits. Kaslow relied on Code § 13-155(a). The Court rejected his argument not by saying that Code provisions are irrelevant to Tier 3 members, but by saying that Kaslow was misreading the Code:

> "section 13-155 (a) of the Administrative Code, which Kaslow relies on, specifies that credited service is '*allowable service rendered in the uniformed correction force*' (emphasis added), and the pension formula in section 13-155 (a) (3) uses the word 'credited' with reference to a correction officer's uniformed service, and the word 'acquired' – not 'credited' – with respect to City-service (see Administrative Code § 13-155 [a] [3] [a]-[c])."

Id. at 87. This discussion would have been completely inapposite if the Court had believed, as the City now argues, that Code provisions have no bearing on the benefits Tier 3 members may receive.

The City also quotes from Kaslow the Court's rejection of what it called Kaslow's "pick-and-choose approach"; the Court said that Kaslow was trying to

take advantage of the most favorable aspects of both the Code and the RSSL. City Br. at 23, quoting 23 N.Y.3d at 88. That language has no bearing here, because the PBA is not picking and choosing. It is arguing that one simple and clear Code provision means what it says: the benefits afforded by the Child Care Credit Law are available to "any member" of the NYCPPF.

Finally, the City misreads Wertheim. The issue in that case was the validity of an internal rule of the New York City Teachers Retirement System (NYCTRS) that barred a teacher in Tier 3 from taking advantage of a Code provision that allowed Tier 1 members to join a particular retirement plan though they had previously missed an opportunity to do so. Wertheim, 91 AD2d at 516. The Court upheld the NYTRS rule as not "arbitrary" or "illusory." Id. at 516. Nothing in the Appellate Division's brief opinion, adopted by this Court, suggests the sweeping conclusion that Tier 3 members are ineligible for substantive benefits in the Code. On the contrary: the NYCTRS rule upheld by the Court provided that a Tier 3 member could enjoy the substantive benefits of the Code, as long as he or she returned to membership within five years of resigning. Id. at 516. Wertheim had not done so; but if she had, she would have been subject to Article 14 *and* received the benefit of the Code provision - precisely what the City says cannot happen.

The cases give no support to the exclusivity theory on which the City's argument rests.

E. The Legislative History of Later Statutes Cannot Change the Plain Meaning of the Child Care Credit Law.

The City never adequately justifies its and the Appellate Division's reliance on legislative history of legislation post-dating the Child Care Credit Law. The PBA's earlier brief explains why such post-enactment evidence is not a reliable guide to the meaning of earlier legislation. See PBA Br. at 30. In response, the City doubles down, arguing that "it is entirely proper for [courts] to consider legislative enactments – and the legislative history surrounding those enactments – even when they postdate the statute immediately at issue." City Br. at 37 (citing People v Rodriguez y Paz, 58 NY2d 327, 334 [1983]; Roosevelt Raceway, Inc. v Monaghan, 9 NY2d 293, 305-306 [1961]; People v Smith, 69 NY 175, 186-87 [1877]); see City Br. at 31. But in none of these cases was the subsequent legislative history so tenuously connected to the issue before the Court as it is here, where the City relies on it to show the intent behind an unrelated statute enacted years – in the case of the 2012 legislative history, more than a decade – earlier. And the City does not address the cases (cited in PBA Br. at 29-30) in which this Court and others, including the United States Supreme Court, have refused to rely on post-enactment "history.

Even if it is true, as the City says, that the materials it relies on show that the 2005 and 2012 Legislatures, when they enacted correction-officer pension

legislation in those years, accepted the City's "exclusivity" theory, that cannot alter the result in this case. If the issue here were the meaning of the 2005 and 2012 legislation, that legislative history from those years might be relevant – though even then it could not overcome text as plain as the words "any member" in the Child Care Credit Law. But here, the 2005 and 2012 legislative history, read as the City reads it, is the only evidence the City has to support its interpretation – indeed, nullification – of statutory text enacted in 2000. The exclusivity theory has no support in the text of any statute, none in any case, and none in the legislative history of the relevant provisions. The 2005 and 2012 legislative history, we submit, is entitled to little weight, if any.

F. The City's Policy Argument is Insubstantial

The City adds a makeweight public policy argument at the end of its brief, asserting that rejection of its exclusivity theory "would collapse the tiered pension system." City Br. at 57. It would do nothing of the kind.

No harm will come to the tiered pension system if this Court rejects a formalistic doctrine, evidently of recent invention, that would prohibit the Legislature from altering the benefits of Tier 3 members without amending RSSL Article 14. The City's rule would do nothing to protect the public fisc: it is no more difficult to amend Article 14 than to amend the Code. Both can be accomplished by action of both houses of the Legislature, with the approval of the Governor.

All that adopting the City's exclusivity doctrine in this case would do would be to frustrate the policy goal sought by the 2000 Legislature: to permit "any member" of the NYCPPF to take time off work to care for a child without being forced to lose pension benefits. The City may not like that policy choice, but this Court should not accept the City's invitation to defeat it by re-drafting the Child Care Credit Law.

CONCLUSION

This Court should reverse the order of the Appellate Division, grant plaintiffs' motion for summary judgment to the extent of declaring that defendants have violated and continue to violate Code § 13-218(h) by refusing to permit police officers hired on or after July 1, 2009 to avail themselves of the benefits afforded by the Child Care Credit Law, and deny the City's cross-motion for summary judgment dismissing the complaint.

Dated: July 23, 2019

Respectfully submitted,
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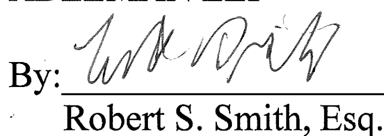
By: 
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: ss.:
COUNTY OF ALBANY)

JANE K. HARTNETT, being duly sworn, states:

I am not a party to the action, am over 18 years of age, and reside in Washington County, New York.

On the 23rd day of July, 2019, I served the foregoing **Reply Brief** of Plaintiffs-Appellants upon the following attorney(s) on behalf of the following party(ies) at the following address(es) designated by said attorney(s) for that purpose upon the last paper served in this action, and in the following manner:

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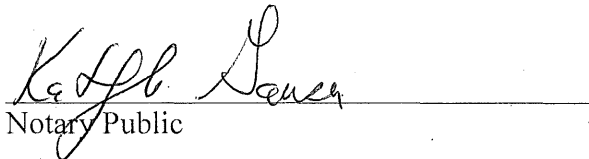
by depositing three (3) true copies of same, enclosed in a first-class postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

JANE K. HARTNETT

Sworn to before me this
23rd day of July, 2019.



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