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COURT OF APPEALS  
STATE OF NEW YORK

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COLON,

Appellant,

-against-

NO. 25

TEACHERS' RETIREMENT SYSTEM,

Respondent.

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20 Eagle Street  
Albany, New York  
February 15, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Chrishanda Sassman-Reynolds  
Official Court Transcriber



1 CHIEF JUDGE WILSON: Good afternoon. The first  
2 case on the calendar is a matter of Colon v. Teachers'  
3 Retirement System.

4 Counsel?

5 MS. MILLER: Good afternoon, Your Honors. And  
6 may it please the court, my name is Kirsten Miller on  
7 behalf of petitioner Anne Marie Colon. I would like to  
8 reserve five minutes for rebuttal, please.

9 CHIEF JUDGE WILSON: Yes.

10 MS. MILLER: A ruling in favor of petitioner will  
11 ensure that the hundreds of thousands of members of New  
12 York's public retirement system can have confidence to know  
13 that their beneficiary designations will be honored after  
14 their death. This court should reverse the First  
15 Department's ruling for three reasons. First, it is  
16 unconstitutional because it retroactively impaired members'  
17 rights to choose their own beneficiaries.

18 JUDGE GARCIA: So Counsel, let's stop first on  
19 the constitutional issue. If we were to agree with you,  
20 what would the effect of that ruling be? Would we be  
21 declaring the statute unconstitutional? What would we be  
22 doing?

23 MS. MILLER: Well, Your Honor, if you were to  
24 agree with me - - - part of our argument is that it was  
25 unconstitutional specifically because it applied

1 retroactively after Mr. Barcelo had already died. And so  
2 there is an opportunity for this court to recognize the  
3 very important - - -

4 JUDGE GARCIA: So who would it affect? Who would  
5 our ruling affect? What class of people would it affect?  
6 How far reaching would it be?

7 MS. MILLER: Well, if you were to rule on the  
8 fact that it impaired Ms. Colon's vested rights that were  
9 already vested to her at the time the law went into effect,  
10 again, it would only affect that very narrow group of  
11 people who were the designated beneficiaries at the time  
12 that someone died, and then a law went into effect after  
13 their death that retroactively took away those benefits  
14 from them.

15 JUDGE TROUTMAN: Is it that it took away the  
16 benefits, or it changed the bar for accidental recovery?  
17 And the accidental recovery beneficiaries were statutory;  
18 they were different, correct?

19 MS. MILLER: That is correct. There had always  
20 been - - -

21 JUDGE TROUTMAN: So before he died, there was a  
22 specified group of people who could collect? If he was - -  
23 - if he was deemed to have died accidentally, correct?

24 MS. MILLER: That is correct, Your Honor.

25 JUDGE TROUTMAN: Did that change with the law?

1 MS. MILLER: Your Honor, in our view, it did  
2 change with the law. Because prior to the amended law,  
3 accidental death benefits had only been paid in a very  
4 narrow set of circumstances in which there was always a  
5 causal connection between the job and the death. And what  
6 this law did for the very first time, was to sever that  
7 causal connection, so that it says that all deaths from  
8 COVID there is going to be an irrebuttable presumption - -  
9 -

10 JUDGE TROUTMAN: That is understood. But before  
11 they changed the law, beneficiaries who could recover were  
12 a specific category of people. So the beneficiary knew if  
13 he died, though - - - if it's deemed accidental, those are  
14 always the same people, right?

15 MS. MILLER: That is correct. It was always the  
16 same people. But I think it's important to recognize that  
17 members have the right to make plans, and they make plans  
18 based on calculated risks. And so if he - - -

19 JUDGE TROUTMAN: But accidental you don't plan  
20 for normally, right?

21 MS. MILLER: Well, as a teacher, I think people  
22 do generally have an idea of whether a sedentary job is  
23 expected to have - - - you know, a sudden, unexpected  
24 event.

25 JUDGE TROUTMAN: Well, could he not have planned

1 and made sure she was one of those specified persons to be  
2 covered by accidental?

3 MS. MILLER: I think people make plans based on  
4 their expectations of what the level of risk is. And what  
5 this job did was it took what, I think, was a very low  
6 level of risk for a teacher and turned it into a very high  
7 level of risk because there's now an irrebuttable  
8 presumption that all deaths from COVID are automatically  
9 going to be deemed to be - - -

10 JUDGE CANNATARO: Is this still your  
11 constitutional argument? Are you saying it was  
12 unconstitutional to expand the - - - the number of cases  
13 that qualify as accidental death?

14 MS. MILLER: We are saying that this is the first  
15 time that the law radically changed what it means to have  
16 an in-service accident. So he always knew that there was a  
17 chance, if he had an in-service accident, that the benefits  
18 would go to his statutory beneficiaries, but - - -

19 JUDGE GARCIA: But doesn't that really go to  
20 there's an - - - there's a risk you just can't quantify in  
21 a way because nobody expected this. I mean, this is a,  
22 please God, once-in-100-year episode. And all they did was  
23 react to that by place - - - putting this law in place that  
24 says within forty - - - if you were there within forty-five  
25 days, right, it's an accidental death. So what could you

1 do then in response to something like that? Their hands  
2 are just tied?

3 MS. MILLER: Well, I'm - - - I'm not sure I'm  
4 following what - - - could you - - -

5 JUDGE GARCIA: Yeah. What would the legislature  
6 do? They - - - they were reacting to this once in a  
7 hundred century event, and they said, okay, we're going to  
8 - - - we're going to just - - - to define this this way to  
9 provide these benefits. And now you're saying that was  
10 unconstitutional.

11 MS. MILLER: There are other ways that the  
12 legislature could protect - - -

13 JUDGE GARCIA: Sure.

14 MS. MILLER: - - - these people if they wanted to  
15 protect them that way. I think it's very important to  
16 remember that these benefits are part of a member's  
17 deferred wage.

18 JUDGE CANNATARO: It seems - - - it seems to me  
19 that if - - - if we accept your argument, then there can  
20 never be a change to what the - - - what constitutes an  
21 accidental death. Because if the members are making a  
22 calculated assessment between their designated beneficiary  
23 for regular death and their statutory beneficiary for  
24 accidental death, if - - - if the legislature at any point  
25 changes the definition of accidental, everyone's

1 expectations have been thrown off. So they're stuck. They  
2 can't - - - they can't change the law. Is that what you're  
3 saying?

4 MS. MILLER: That's not what we're saying. We're  
5 saying that the legislature should have made a rebuttable  
6 presumption, just as it did with all other circumstances,  
7 in which it made it easier to access the accidental death  
8 benefits. So for example, in the World Trade Center cases,  
9 it created a rebuttable presumption. The World Trade  
10 Center cases are similar to COVID in the sense that these  
11 are things that are difficult to trace. The injuries could  
12 be things like cancer or depression.

13 JUDGE RIVERA: I thought, you had a much more  
14 narrow argument, and I thought, that's what a member of the  
15 bench had asked you to begin with. I thought this was a  
16 problem in your view because the teacher passes away from  
17 COVID, and then the law is passed and made retro. So the  
18 teacher had no warning. It's not like the teacher was  
19 alive when they passed the statute and could then say, I  
20 better plan for this in case this looks like it might  
21 affect me. This might change who's going to get these  
22 benefits. And I want to make sure I take care of her. I  
23 thought that was - - - that you were focusing on that  
24 group, which may be quite a small group, I don't know.  
25 I'll ask and see if we know what these numbers are. Unless

1           you know what these numbers might be.

2                   MS. MILLER: Your Honor, that is our argument as  
3 well. That that was a second reason, in our view, why it  
4 was retroactively impaired. Because at the date of the  
5 death, the benefits were already due to the designated  
6 beneficiary. And then six weeks later - - -

7                   JUDGE HALLIGAN: But isn't that really a vesting  
8 argument, as opposed to an argument about the scope of the  
9 impairment clause and whether this - - - this is in the  
10 face of that?

11                   MS. MILLER: Well, Your Honor, in Cook, this  
12 court said that benefits vest upon the occurrence of  
13 retirement or death. So again, it's our view that the  
14 benefits vested and then the beneficiary - - - the member  
15 had no opportunity to make changes, to make alternative  
16 plans.

17                   JUDGE HALLIGAN: I take it you have a vest - - -  
18 a vested argument. But how does that line up with your  
19 argument about the scope of the pension impairment clause?  
20 I thought you were arguing that that would apply whether or  
21 not the member had passed away before the amendment or not;  
22 am I misunderstanding that?

23                   MS. MILLER: We have two separate arguments, Your  
24 Honor. The first is that any change that impairs a  
25 member's right to choose his or her own beneficiary



1 violates the pension impairment clause.

2 JUDGE HALLIGAN: Whether that change is made  
3 while the member is still alive or after the member has  
4 passed away, yes?

5 MS. MILLER: Yes, that's correct. But of course,  
6 it is especially acute in circumstances where the member  
7 has already passed away and can't - - -

8 JUDGE RIVERA: Well, it can't - - - that can't  
9 possibly be once they've passed away. I thought this  
10 argument was about their choice and planning.

11 MS. MILLER: I'm sorry. It was about their?

12 JUDGE RIVERA: I thought this argument was about  
13 the members' choice and planning. It has to be during  
14 their lifetime. Are you suggesting the estate has some  
15 right here? I'm - - - now I'm confused.

16 MS. MILLER: No. The - - - the argument is  
17 regarding the planning. And in Lippmann this court said  
18 that people need to be able to look forward to their  
19 pension benefits, that they - - - they understand the  
20 stability. They understand who they're going to. And  
21 certainly if a law is passed six weeks after someone has  
22 died, that person can no longer make any changes. He has  
23 no understanding that this law could go into effect.

24 JUDGE SINGAS: But no amount of planning would  
25 have changed the statutory beneficiaries, right?

1 MS. MILLER: No. The statutory beneficiaries are  
2 who they are.

3 JUDGE SINGAS: Right.

4 MS. MILLER: That's correct. There's no - - -  
5 there's no changing that. But at the same time - - -

6 JUDGE SINGAS: You can't plan the circumstances  
7 of your death, correct?

8 MS. MILLER: That is correct. But if this law  
9 had gone into effect at the time that he was still alive,  
10 he likely could have married her.

11 JUDGE TROUTMAN: But he could have married her  
12 before, so that she would have been always the statutory  
13 beneficiary; could he not?

14 MS. MILLER: He could have. But again, it goes  
15 back to the - - -

16 JUDGE TROUTMAN: So then she would be covered  
17 under either category of beneficiaries?

18 MS. MILLER: Of course. But Your Honor, in my  
19 view, it goes back to the calculated risk. If he had known  
20 that there was this - - -

21 JUDGE GARCIA: So you were saying - - - I'm  
22 sorry, I'm misunderstanding. I thought in response to, I  
23 think, Judge Halligan's question, you said you didn't think  
24 they could make this change, even if the beneficiary - - -  
25 even if the person was still alive who could make the

1 change. Is that your position or not your position?

2 MS. MILLER: Yes, that is our position. But  
3 again, the second argument is that this was especially an  
4 impairment after the person had already died, to make a law  
5 change that was retroactive after their death.

6 JUDGE HALLIGAN: I'm not sure I understand that.  
7 I mean, it seems to me that either something offends the  
8 pension impairment clause or it doesn't. And setting aside  
9 whether the right had vested, which I think is - - - I  
10 don't think is a constitutional argument - - - maybe I'm  
11 misunderstanding it, but I think it's an argument about  
12 whether he has the rights or not. Why does it matter in  
13 terms of the constitutional analysis, whether the member is  
14 still alive or has passed away? Either - - - doesn't it  
15 either impair a right that you have under the clause or  
16 not?

17 MS. MILLER: I go back to the planning and I go  
18 back to the risk. And I think that both of those are  
19 important.

20 JUDGE HALLIGAN: But where in the - - - where in  
21 the clause do we take that kind of distinction? I mean,  
22 could - - - are you arguing that we could hold that the  
23 pension impairment clause is violated as it applies only to  
24 members who had passed away - - - in that window, right?

25 MS. MILLER: Um-hum.

1 JUDGE HALLIGAN: Who are covered but passed away  
2 prior to the enactment of the statute, but that it doesn't  
3 apply as to anyone still living at the time of the - - - of  
4 the enactment of the statute? And if so how would - - -  
5 what would the reasoning be there?

6 MS. MILLER: I think that you could. And the  
7 reasoning is that going forward, people know what to  
8 expect. They - - - they would know automatically that  
9 their beneficiary - - -

10 JUDGE HALLIGAN: But if that's right, wouldn't -  
11 - - I - - - I wonder whether that almost proves too much.  
12 Because if that's correct, that an impairment turns on  
13 whether you have notice, then it seems like that would  
14 actually dilute the force of the cause, right? Because you  
15 could say, well - - - well, we're going to reduce your  
16 benefits or change who the eligible beneficiaries are, but  
17 because we're giving you notice and you can plan your  
18 financial affairs accordingly, it doesn't violate the  
19 clause. I would think that maybe it doesn't matter whether  
20 they're alive or have passed away.

21 MS. MILLER: But certainly once they pass away,  
22 they can't do that. And he would have no reason to expect  
23 that something that was entirely unrelated to work could  
24 now all of a sudden be deemed to be an in-service accident.

25 JUDGE TROUTMAN: But they could never control how

1 they were going to die, in any event.

2 MS. MILLER: That's correct. But the more you  
3 expand this - - - you know, if all of a sudden the  
4 legislature starts to say all deaths from cancer, all  
5 deaths from heart disease, no matter the connection to  
6 work, now, we've expanded this to the point where  
7 designating someone as a beneficiary is just an illusion.

8 CHIEF JUDGE WILSON: Well, is it - - - isn't it  
9 the case that there are a lot of disputes about whether a  
10 particular death is accidental or is not? I mean, I've  
11 seen court cases about that, and sometimes you don't know  
12 which way they're going to come out.

13 MS. MILLER: There are. Yes, Your Honor. There  
14 - - - there are many disputes.

15 CHIEF JUDGE WILSON: Because it's a little hard  
16 to predict that. I mean, I don't think you would say that  
17 if a court decision came out a different way than what the  
18 decedent had expected, it was unconstitutional.

19 MS. MILLER: No. We're not - - - we're not  
20 saying that just because it went a different way than the  
21 decedent expected, it was unconstitutional. But we're  
22 saying that people have a right to make plans to take care  
23 of their loved ones. And they have a right to expect that  
24 the legislature is going to keep their benefits in place  
25 under the same terms and conditions as when they joined the

1 system. And this radically changed the circumstances in  
2 which their benefits would go to a statutory beneficiary  
3 instead of their designated.

4 CHIEF JUDGE WILSON: Thank you.

5 MS. MILLER: Thank you.

6 MR. DAVIES: May it please the court. My name is  
7 Jamison Davies, for the respondent Teachers' Retirement  
8 System in the City of New York. This court should affirm  
9 the First Department's unanimous decision. The law  
10 provides that if a member who reported to work in person  
11 contracted - - -

12 JUDGE RIVERA: So do you know - - - I'm sorry.  
13 Over here. You heard me ask before; I don't know if you'll  
14 recall. Do you have a sense of how many people - - - how  
15 many members who are now deceased, obviously, would fall  
16 into this category where they pass away, the law then gets  
17 passed, and then the law, of course, applies retroactively.  
18 And so the person who's passed away is now part of the  
19 coverage of the amendment?

20 MR. DAVIES: Sure. I - - - I don't have a - - -  
21 a specific number. I don't think it's a very broad  
22 category of individuals who - - - because it just - - -  
23 you'd have to have passed away in a very narrow - - -

24 JUDGE RIVERA: Yes. Yes.

25 MR. DAVIES: - - - sort of time frame - - -



1 JUDGE RIVERA: And passed away from COVID?

2 MR. DAVIES: Correct, Your Honor.

3 JUDGE GARCIA: It's the first two months of the  
4 epidemic, though, right?

5 MR. DAVIES: Yeah. It was passed on the - - -  
6 end of May - - - May 30th and retroactive to March 1st.

7 JUDGE GARCIA: Right. So it's three months, but  
8 really - - - and busy months, unfortunately for - - - for  
9 COVID?

10 MR. DAVIES: Yes. And - - - and when it was very  
11 difficult to establish whether or not someone - - - you  
12 know might have contracted COVID on the job, that's part of  
13 the reason that the legislature was - - -

14 JUDGE RIVERA: But the group is even potentially  
15 smaller, right, because it would have to be someone who  
16 didn't pick one of the statutory beneficiaries.

17 MR. DAVIES: I'm sorry?

18 JUDGE RIVERA: It would have to be someone who  
19 didn't pick the statutory beneficiary?

20 MR. DAVIES: Correct.

21 JUDGE RIVERA: Like in this case?

22 MR. DAVIES: Yes. In - - - in many cases.

23 JUDGE RIVERA: So it's even a smaller group?

24 MR. DAVIES: In many - - - in many cases - - -

25 JUDGE RIVERA: Some people may choose the same

1 person.

2 MR. DAVIES: Yes. In - - - in many cases the  
3 statutory and designated beneficiaries are the same person.  
4 Probably in most cases.

5 JUDGE CANNATARO: Do you have a - - -

6 JUDGE HALLIGAN: Do you think that the - - -

7 JUDGE CANNATARO: Do you have a sense of that  
8 number? How many - - - how many cases involve a different  
9 designated beneficiary and statutory beneficiary?

10 MR. DAVIES: I don't have any statistics. I  
11 think, from what I understand from TRS that it's often the  
12 same person or it's - - - or it's within the same sort of  
13 family unit. But I don't have a specific - - -

14 JUDGE RIVERA: I mean, are there other challenges  
15 pending?

16 MR. DAVIES: Not that I'm aware of.

17 JUDGE HALLIGAN: So - - -

18 JUDGE SINGAS: Do you think that beneficiaries  
19 have independent rights under the pension impairment  
20 clause, or do they flow only from the member's rights?

21 MR. DAVIES: The - - - the rights of the  
22 beneficiaries flow only from the member's rights, Your  
23 Honor. I wanted to point out that the case, Cook, that  
24 they're citing, the rights are vested in the member at the  
25 time of death or at the time of retirement. There may be



1 rights that flow from that to a particular beneficiary, but  
2 the rights go to the member. It's - - - it's the person  
3 who is a member of the retirement system who is protected  
4 by the pension impairment clause.

5 JUDGE SINGAS: And have the member's benefits  
6 been impaired here?

7 MR. DAVIES: No, they haven't. They'd been  
8 increased here because it's undisputed that accidental  
9 benefits are - - - are - - -

10 JUDGE HALLIGAN: But isn't the question whether  
11 the right to designate the beneficiary is protected? I  
12 mean, the clause says that membership in the system shall  
13 be a contractual relationship, and you can't impair the  
14 benefits of the contractual relationship. So as a general  
15 matter, I would think if you have a contract, right, and  
16 the contract's - - - you know, A promises B that A will  
17 give C ten dollars, right? The notion that A can  
18 unilaterally change who then gets that benefit, is it C or  
19 is it somebody else, I would think that that's - - - that's  
20 an enforceable benefit of that contract. So why not so  
21 here?

22 MR. DAVIES: The reason it's not so here is  
23 because - - - in fact, the way it works is that at the time  
24 he entered into the contract, there were already the  
25 statutory and designated beneficiaries. So really what the

1 contract said when he entered into it is that in some  
2 circumstances I'll pay B, and in some circumstances, I'll  
3 pay C. And there was the potential for litigation. TRS  
4 has acknowledged that they had not made a determination  
5 over whether or not some of these deaths could be ruled  
6 accidental.

7 JUDGE HALLIGAN: Okay. So if it's a  
8 clarification of accidental death, I take your point. But  
9 do you agree that aside from that, could - - - could, for  
10 example, the legislature pass a statute that changes who  
11 counts as a statutory beneficiary and apply that to members  
12 already in the system?

13 MR. DAVIES: I think if you were to alter the  
14 priority or add a new statutory beneficiary in the list, I  
15 think that would be - - - you know, a much more difficult  
16 question. I think that's not what is presumed - - -

17 JUDGE HALLIGAN: So you, at least, agree that  
18 that the question of whether the right to designate is  
19 covered, you'd say maybe it's a - - - it's a harder  
20 question than what we have here. But you're not saying  
21 it's clearly unprotected?

22 MR. DAVIES: Well, I would say that in that  
23 circumstance, in your hypothetical, it's actually - - - I  
24 don't think it's the right to designate. You'd be altering  
25 the statutory list, which those are not designated

1 beneficiaries to start with. No cases have held that the  
2 right to designate a beneficiary is one of the rights  
3 that's protected by the pension impairment clause. There  
4 are statutory provisions that allow you to designate a  
5 beneficiary.

6 JUDGE CANNATARO: What about changes to the  
7 statutory beneficiary list? So for example, if there was a  
8 decision made to amend the statute to put domestic partners  
9 somewhere on the statutory beneficiary list, does that  
10 implicate impairment clause concerns?

11 MR. DAVIES: I think that would be a case that  
12 would much more directly implicate those kinds of concerns.  
13 I don't want to speculate as to how that would come out,  
14 but I think that would be a much closer case than what we  
15 have here because you'd be inserting people who were not on  
16 the list at the time the member joined the system. And the  
17 - - - the cases all say that you have to look at what the  
18 contractual relationship was when the member joined the  
19 system. Here, when you joined the system, there was  
20 already this statutory list in place. You can - - - the  
21 plan materials are in the record. They were provided to  
22 him. They explained in some circumstances - - -

23 JUDGE CANNATARO: So if domestic partners had  
24 been added to the list around the time that this accidental  
25 death definition was changed, the litigants in this case

1 would be on the opposite side of the V?

2 MR. DAVIES: That's possible. Or it's possible  
3 that someone who was on the statutory list in a different  
4 priority might be the other - - - the person who's bringing  
5 the claim.

6 JUDGE TROUTMAN: So with respect to the change  
7 here, did it do anything more than change the burden of  
8 proof required to establish the accidental death?

9 MR. DAVIES: We don't - - - we contend that it  
10 did not. It basically - - - as with many other laws in the  
11 past, lowered the burden of proof where proving causation  
12 of an on-the-job injury is difficult, and it made it so  
13 that members could more easily access enhanced accidental  
14 death benefits the same way the World Trade Center bills  
15 and the heart bills do. You know, it's - - - it's both  
16 broader and narrower than those bills in some respects.  
17 It's a - - - it's a much narrower time frame. It's broader  
18 in that there is no opportunity for TRS to dispute whether  
19 or not it was accidental, assuming the statutory factors  
20 are satisfied. I would like to point out that - - - you  
21 know, my friend talks about it being un rebuttable, but  
22 there is no case - - - they pointed to no case, and we are  
23 not aware of any case where beneficiaries basically go in  
24 and have an opportunity to rebut whether a death is  
25 accidental or not. That happens in the context of

1 litigation, usually against the retirement system, where it  
2 is ruled that a disability or a death is not accidental,  
3 and someone brings a claim to try to get the enhanced  
4 accidental death benefits. And this court has seen a lot  
5 of those cases. I would also point out that - - - you  
6 know, it's - - - it's not - - - there was always an open -  
7 - -

8 JUDGE RIVERA: Well, just to be - - - just to be  
9 clear, before you move on to whatever the other point is.  
10 Your position is that it does not vest until all the  
11 documents have been submitted and approved and the check is  
12 cut?

13 MR. DAVIES: Correct. That - - - that's when - -  
14 - that's when the beneficiary has some right. And until  
15 then there is a - - - there's a right in the member,  
16 certainly. And one of the rights - - -

17 JUDGE RIVERA: The member's deceased?

18 MR. DAVIES: Right. And then - - -

19 JUDGE RIVERA: Are you saying it's - - - it's  
20 then a right that the estate has?

21 MR. DAVIES: It can in some circumstances go to  
22 the - - -

23 JUDGE RIVERA: And the beneficiary has some kind  
24 of springing rights or whatever the estate is holding?

25 MR. DAVIES: I don't know if I would describe it



1 exactly in that way, but I think that is - - - is  
2 fundamentally right. I think until the claim is processed  
3 - - - I don't - - - I don't know if vesting even really  
4 works kind of here as a conceptual framework. Until the  
5 claim is processed by TRS, there is - - - or TRS receives a  
6 claim, there's really - - - there's no right that exists.

7 CHIEF JUDGE WILSON: So can you be a estopped? I  
8 think that's sort of the arguments being made about sending  
9 the letters to the wrong address over and over.

10 MR. DAVIES: Right. I don't think they're - - -  
11 they haven't raised directly a claim of estoppel. And I  
12 think for good reason, estoppel against the government is a  
13 very difficult claim to make. Their argument is basically  
14 based on the fact that the letters say, "due" - - - that  
15 there's some amount due. But if you look closely at the  
16 letters, they say the claims can take from weeks to months  
17 to process. So even if the - - - I think it's about four  
18 weeks of time between when the letters are sent to the  
19 wrong address and when they were received.

20 JUDGE RIVERA: Does that process mean how long it  
21 takes for the government to actually cut the check, as  
22 opposed to making a determination that indeed the money is  
23 due?

24 MR. DAVIES: I - - - I think there's an element  
25 of both. There was more documentation that needed to be

1 received from - - -

2 JUDGE RIVERA: What was - - - what was missing?

3 MR. DAVIES: There was, I think, distribution  
4 instructions were missing. There may - - - there may have  
5 been some other documents that were needed to be processed.

6 JUDGE RIVERA: Distribution sounds like you're  
7 owed the money, tell us where to send the check.

8 MR. DAVIES: Yes. But the claim - - - what's  
9 important is the claim - - - there was no claim. If you  
10 look at the documents specifically, they said that there -  
11 - - there was a claim that she needs to file. There was  
12 not a full claim at that point. And - - - and the statute  
13 is clear, once it was passed, it says the benefits shall go  
14 to the statutory beneficiary.

15 JUDGE HALLIGAN: Am I correct at some point that  
16 the daughter's, I think it was guardian, made clear that he  
17 or she planned to file a claim, but was waiting for  
18 whatever, I assume, with regard to the guardianship status  
19 to be confirmed to do that?

20 MR. DAVIES: Correct. Correct. And the claim  
21 was filed shortly thereafter, I believe in the end of July  
22 of 2020, on behalf of the daughter. It had to be filed by  
23 her mother because she was still a minor at that point.

24 JUDGE RIVERA: And did Ms. Colon receive some  
25 other benefits?

1 MR. DAVIES: Yes. I believe she received  
2 approximately 600,000 dollars from the - - - his other  
3 account is a tax-deferred annuity account. I just want to  
4 make one other point on the - - - on the vesting point,  
5 which is that when the member dies, there is an argument  
6 that the statutory and designated beneficiary have some  
7 right. I think you can't say it's vested until there's a  
8 determination made as to who is - - - the money is  
9 ultimately going to go to. Otherwise, it would just be a  
10 matter of who gets to file - - - who's first to file,  
11 essentially. And that is completely anathema to the  
12 orderly functioning of the Teachers' Retirement System. It  
13 also violates the provision of the law 607-1(D), which  
14 gives the system the right to make the rules and  
15 regulations to administer the benefit.

16 JUDGE RIVERA: Could you address what I  
17 understood the statutory argument - - - or at least this  
18 part of it to be, that - - - that the amendment anticipated  
19 this kind of circumstance and therefore she is entitled to  
20 money? Given that the - - - the way she's reading it, of  
21 course, that the statute and the legislature anticipated  
22 this and - - - and provided for someone like her. Can you  
23 address what - - - why, of course, from your perspective,  
24 that's an incorrect interpretation of the amendment?

25 MR. DAVIES: Sure. There are several reasons.



1 That's a reference to 607-1(B), which basically says if an  
2 amount - - - and it reflects the fact that the statute is  
3 retroactive. If an amount had already been paid, you can't  
4 claw that back. It just means that the accidental benefit  
5 is reduced. But that's only - - - I think the legislative  
6 history makes clear, that's only if it had already been  
7 paid. And also the statutory text and context make it  
8 clear because in other parts of the statute, it refers to  
9 claims paid or payable. In that section, it refers only to  
10 claims paid. They don't address the statutory argument at  
11 all in their reply brief. So the legislature used those  
12 terms advisedly. And I think if it's using "paid" in one  
13 instance and "paid or payable" in another instance that has  
14 significance. It also refers to the recipient as opposed  
15 to the beneficiary, in other parts of the statute. So the  
16 recipient, which means someone who has already received the  
17 money, versus the beneficiary, which is someone who has a  
18 future entitlement to money. So I think the legislative -  
19 - - legislative history, the text, and the context all make  
20 clear that that provision was only intended to cover if  
21 someone had already been paid before the law had gone into  
22 effect.

23 Unless the court has any other further questions,  
24 I'd urge affirmance.

25 CHIEF JUDGE WILSON: Thank you.



1 MR. DAVIES: Thank you, Your Honors.

2 JUDGE GARCIA: Counsel. I'm sorry. Before you  
3 start, I'd just like to go back to an original question I  
4 asked you. And - - - so if we assume, let's say it's a  
5 small group - - - a hundred people who died in this period  
6 and who have inconsistent beneficiaries, let's call it.  
7 And we were to find for you on constitutional statutory  
8 grounds, and it affects that group. What would happen in  
9 those instances? Would that automatically then be payable  
10 to, let's say beneficiary A in every case of those hundred?

11 MS. MILLER: Yes. It would be payable to the  
12 designated beneficiary. But I think you can also read - -  
13 -

14 JUDGE GARCIA: So what if the person who was  
15 making that calculation really wanted it that way? And  
16 thought - - - you know, if I do have some kind of  
17 accidental death, I want it to go to my minor child. But  
18 if it's a nonaccidental death because I'm pretty healthy  
19 and I don't think anything's going to really happen to me,  
20 I'm going to designate my partner and that'll be a nice -  
21 you know, thing for longer term, and it's - - - it's good  
22 for my relationship. But accidental, if I die suddenly  
23 really like that, I want my minor spouse to have it. If we  
24 do this, that gets undone in every case.

25 MS. MILLER: Well, I think if people are

1 concerned about dying in an accident and this court has  
2 made it clear, there's - - - there's no opportunity to - -  
3 - you know, figure out whether you will or you won't, then  
4 the person would have designated their - - - you know,  
5 their child, their spouse - - -

6 JUDGE GARCIA: But they did designate them. Like  
7 so B designated - - - designated to B is accidental. A is  
8 partner. Right? Let's do it that way. And they're  
9 inconsistent beneficiaries. They change the law. It's one  
10 of the hundred that have that. In every case, it goes to  
11 beneficiary A now.

12 MS. MILLER: Again, if - - - if they were  
13 concerned about dying from an accident, then they should  
14 have designated the statutory beneficiary to also be their  
15 designated beneficiary. They can make that choice.

16 JUDGE GARCIA: But I made the calculation. I  
17 think - - - you know, if it's an accident, I want my minor  
18 child to have it. If it's sudden - - - yeah, it could  
19 happen. It's a risk. The other risk to me is not so  
20 great. I have a partner, I'll designate that partner, and  
21 that's the way I want it. And if - - - and that  
22 calculation would be - - - include some once-in-a-lifetime  
23 pandemic. You know, if that happens, I would want my minor  
24 child to have it. But now, if we rule for you, that choice  
25 is wiped out, right?

1 MS. MILLER: Well, I think it's very difficult to  
2 start to get into the mind of the - - - the members in each  
3 case. But at the same time, if they were so concerned  
4 about that, they always could have designated that person  
5 they were concerned about because an accident can happen.

6 JUDGE GARCIA: Or they could have had an  
7 insurance policy, right?

8 MS. MILLER: That's correct. And again, that's  
9 what the supreme court recognized, was that - - -

10 JUDGE GARCIA: There was an insurance policy  
11 here, right?

12 MS. MILLER: That's not in the record. It's - -  
13 - it's unclear. And I'm not able to argue things outside  
14 of the record, Your Honor. But certainly, the child is  
15 protected in other statutes as well. There's Social  
16 Security benefits that go to children. There's the estate  
17 that goes to children. There's other ways that children  
18 are protected.

19 JUDGE SINGAS: But I think the point is, you  
20 can't say that that wasn't financial planning on their  
21 part, when they said, okay, I recognize that this is going  
22 to go to my statutory beneficiary, and here I'm going to  
23 designate someone else. I think that's Judge Garcia's  
24 point. That that is financial planning for them. So and  
25 your - - - your client could have done the same thing.

1 Like, we can't just upend that because now the person that  
2 you think should have gotten the money wasn't a statutory  
3 beneficiary. Like, you can't say that what - - - what  
4 happened before, other people hadn't planned specifically  
5 for this contingency. If I die accidentally, this person  
6 gets it. I understand that, it's a statutory beneficiary,  
7 and this is what I'm going to do financial planning for  
8 everyone else.

9 MS. MILLER: Well, he never expected that at any  
10 point that an accident - - - an in-service accident would  
11 be something that's not even connected to - - -

12 JUDGE SINGAS: I agree. I don't think anybody  
13 expects it. That's the point. I don't think anyone  
14 expects that they're going to be a victim of an accidental  
15 death on the job.

16 MS. MILLER: But at the same time, can we just  
17 say anything is an in-service accident at this point?  
18 Because that's what the legislature could do. It could say  
19 anything is now an in-service accident, even if it's not.

20 CHIEF JUDGE WILSON: You'd have to have a - - -  
21 you'd have to have a rational basis then, right? No? I  
22 mean, that could be reviewed. Any legislation that's  
23 passed can be reviewed for rational basis.

24 MS. MILLER: Well - - -

25 JUDGE HALLIGAN: And there's not really any

1           indication here, I think, that this was something other  
2           than an effort to - - - you know, ease the burden of proof  
3           because given the way COVID was transmitted, it would be  
4           exceedingly difficult, I would think, to prove that you  
5           were exposed at work as opposed to any place else. I mean,  
6           this does not seem like the sort of circumstance that  
7           you're - - - you're posing.

8                       MS. MILLER: I think a good example is if the CDC  
9           says that there's - - -

10                      CHIEF JUDGE WILSON: Continue.

11                      MS. MILLER: May I continue?

12                      CHIEF JUDGE WILSON: Please. Finish your answer.  
13           Yes.

14                      MS. MILLER: If the CDC says that there is a  
15           fourteen-day incubation period for COVID, this still  
16           requires us to accept a fiction that there could be a  
17           forty-five-day incubation period. So it's not at all  
18           connected to the work, even if there's scientific evidence  
19           surrounding that.

20                      CHIEF JUDGE WILSON: Thank you.

21                      MS. MILLER: Thank you.

22                      (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Colon v. Teachers' Retirement System, No. 25 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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