

To be argued by:
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15 minutes requested

New York County Clerk's Index No. 159317/2020

New York Supreme Court
Appellate Division: First Department

In the Matter of

Case No.
2021-03148

ANNE MARIE R. COLON,

Petitioner-Respondent,

against

TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW
YORK,

Respondent-Appellant,

and

YVONNE DAVALOS, in her capacity as Guardian of Minor
Child B.C.B,

Respondent.

BRIEF FOR APPELLANT

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May 18, 2022

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PRELIMINARY STATEMENT

One of the benefits provided to a member of the New York City Teachers' Retirement System (TRS) is a payment to the member's survivors in the event of his untimely death. The system has long provided for one of two kinds of benefits: an ordinary death benefit for all members, and a higher, accidental death benefit for members who die as a result of their work. Beyond the different amounts, the benefits are paid to different survivors. While an ordinary benefit goes to a beneficiary designated by the member, an accidental death benefit goes—and has always gone—to the highest-ranking survivor on a statutorily defined list.

In the early days of the COVID-19 pandemic, the New York State Legislature recognized that public employees required to report to work in person faced higher risks of contracting the life-threatening virus; and that it would be difficult for the employee to prove that in-person work, and not another source, caused the infection. Thus, the Legislature passed a law making it easier for a public employee who died from COVID-19 after reporting to work in person to obtain the higher accidental death benefit by creating

a presumption that the infection was contracted as a result of the performance of the employee's duties.

Louis Barcelo, a New York City teacher, was tragically one of the public employees lost to COVID-19. The new law entitled him to the accidental death benefit, which would be paid to his statutory beneficiary—in this case, his teenage daughter. But after TRS reached that conclusion, petitioner Anne Colon, his domestic partner and designated beneficiary, brought this action contending that an ordinary death benefit should instead be paid to her; and that, if the law was read to require payment of the accidental benefit, it violated the State Constitution's pension impairment clause. Supreme Court (Rakower, J.) granted the petition and ordered TRS to pay the ordinary benefit to Colon.

This Court should reverse. The agency's interpretation is eminently rational and the law itself straightforward. It provides that the accidental death benefit "shall" be paid to the statutory beneficiary so long as the prerequisites are met. The legislative history amply supports this reading as well, consistently revealing that the law was intended to provide accidental death benefits to

statutory beneficiaries. In ruling to the contrary, Supreme Court relied on a provision requiring the accidental benefit to be reduced if an ordinary benefit had already been paid, but that provision has no application here, where no ordinary death benefit had yet been paid. And, to the extent the court overrode the agency's rational interpretation of the statute it administers to achieve what it deemed a more equitable result, the court overstepped the bounds of Article 78 review.

The law, properly construed, does not violate the pension impairment clause either. Far from altering or impairing any of Barcelo's rights or entitlements under his pension plan, it merely made it easier to prove entitlement to the more generous accidental death benefit. Indeed, the distinction between accidental and ordinary death benefits, and the corresponding difference in the survivor entitled to each type, had been a feature of the system since well before Barcelo joined. The new law's intent and effect was to enhance the benefits available to TRS members, and it certainly did not diminish or impair them.

QUESTIONS PRESENTED

1. Did Supreme Court err in ordering an ordinary death benefit to be paid to petitioner where the law provides that an accidental death benefit “shall” be paid to Barcelo’s statutory beneficiary?

2. If the law is properly interpreted to require payment of the accidental death benefit to Barcelo’s statutory beneficiary, is it constitutional because it augments rather than impairs or diminishes the value of Barcelo’s pension rights?

STATEMENT OF THE CASE

A. Statutory background

1. **The longstanding distinctions between ordinary and accidental death benefits in the Teachers’ Retirement System**

Among the benefits to which a member of the Teachers’ Retirement System (TRS) is entitled is a payment, upon the member’s death, to surviving beneficiaries. If the member’s death results from the performance of his duties as a governmental employee, his beneficiary is granted a different, higher benefit, known as an accidental death benefit, than if he died from some other cause. *See Retirement & Social Security Law (RSSL) § 607.*

Accidental death benefits are superior to ordinary death benefits. The accidental death benefit is paid as an annuity, generally equal to half the member's wages during the final year of employment *id.* § 607(a); and recipients are also eligible for health coverage paid for by the City, N.Y.C. Admin. Code § 12-126(b)(2)(i). The purpose of the accidental death benefit annuity is to provide long-term support to the families of city employees who die in the line of duty. By contrast, the ordinary death benefit is a one-time lump sum that cannot exceed three times the member's annual salary and does not include health coverage. RSSL § 606(a)(2).

The law draws a distinction between a statutory beneficiary, sometimes referred to as an eligible beneficiary, and a designated beneficiary. A statutory beneficiary, as the name suggests, is defined by a ranked list provided in the statute, so that the member's highest-ranking relation receives the benefit. RSSL § 601(d). A member's surviving spouse is highest on this list, followed by the member's children under age 25. A designated beneficiary, by contrast, is a beneficiary "nominated by the member on a designation of beneficiary form." RSSL § 606-a. It has long

been the case that accidental death benefits go to the statutory rather than the designated beneficiary. *See, e.g.*, RSSL § 509, 607.

2. The Legislature’s extension of accidental death benefits to statutory beneficiaries of members who died of COVID-19

Near the outset of the COVID-19 pandemic, the State Legislature recognized that state and local governmental employees who “showed up to work on the front lines” during the ongoing public health emergency had been “critical to the functioning of New York” and that the “citizens of New York owe[d] an enormous amount of gratitude to each of them.” L 2020, Ch. 89, Introducer’s Memo. in Support of Bill No. S8427, at 3.

Reflecting that understanding, the law was altered to provide accidental death benefits to the statutory beneficiary of any member of various public employees’ pension systems who worked in person on or after March 1, 2020, and contracted a COVID-19 infection within 45 days of reporting to work that “caused or contributed to” the member’s death. RSSL § 607-i(a) (reproduced at

Record on Appeal (“R”) 210–33).¹ In those circumstances, the law provides that “such member’s statutory beneficiary shall receive an accidental death benefit, unless such statutory beneficiary elects to receive an ordinary death benefit.” *Id.* § 607-i(a)(3). The law was passed in May 2020 and made retroactive to March 1, 2020. L. 2020, Ch. 89, § 14.

Throughout the legislative history, the bill’s proponents reiterated that its purpose was to provide the enhanced benefit to members’ statutory beneficiaries. Thus, in the Introducer’s Memorandum in Support, Senator Gounardes explained that the law’s purpose was to “provide accidental death benefits to the statutory beneficiaries of all public employees” who died of COVID after reporting to work. Introducer’s Memo. in Support of Bill No. S8427, Bill Jacket, L 2020, Ch. 89, at 1. Likewise, in its summary of provisions, the memo explains that the “bill provides protections for statutory beneficiaries” and that it “specifies that the statutory

¹ The bill initially required that the member died before December 31, 2020. L. 2020, Ch. 89, § 14. A subsequent bill extended that limit to December 31, 2022. L. 2021, ch. 78, § 14.

beneficiary of any public employee ... will receive an accidental death benefit” as long as the requirements of proof are met. *Id.*

The law also included a provision to prevent a double recovery in the event that an ordinary death benefit had already been paid. RSSL § 607-i(b). In that case, any “amount payable as a result of this section” was to be reduced “by any amount paid by such member’s retirement system to any recipient of ordinary death benefits under this article.” *Id.* The fiscal note to the legislation indicates that the ordinary death benefit would be used “as an offset against the accidental death benefit” if it had “already been paid.” Legislative Bill Drafting Commission Report 12055-04-0, Fiscal Note, Bill Jacket, L 2020, Ch. 89, at 37.

B. TRS’s application of the law to provide the accidental death benefit to Barcelo’s statutory beneficiary

Louis Barcelo was a teacher who joined TRS in 1995 (R128). In 2017, he designated petitioner Anne Colon as the beneficiary for

his ordinary death benefit and his tax-deferred annuity accounts (R135).²

Sadly, Barcelo died from COVID-19 in April 2020 (R141). After his death, TRS sent a letter to the address on file for Barcelo explaining that it was taking the “steps necessary to process any death benefits” (R138). Shortly thereafter, Colon sent a handwritten note advising that communications should be sent temporarily to a different address (R140). Before the address was updated, TRS sent three letters to Colon: one requesting a certified or original copy of Barcelo’s death certificate, one regarding his tax-deferred annuity account, and one regarding the ordinary death benefit (R144–45, 147–48, 150–51). The latter two letters provided instructions for filing a claim for benefits. Once TRS received an authenticated death certificate from Colon, it sent her another letter explaining that was just the “first step” and that processing benefits that “may be payable” takes “from several weeks to several months to complete” (R155). While the letters were sent to her old

² Barcelo’s tax-deferred annuity account is not at issue in this proceeding, and Colon received the approximately \$627,000 that was in that account (*see* R147, 163).

address, she received copies of them by email shortly thereafter, on May 19 (R16–17, 19).

On May 28, having received no response, TRS sent additional letters to Colon explaining that she should log in to TRS’s site “as soon as possible” so that she could “fil[e] [her] benefit claim” (R160). But then, after the Legislature passed the law extending accidental death benefits to government workers who died from COVID-19 infections, TRS sent another letter explaining that, while previous correspondence “may also have indicated you are entitled to receive” an ordinary death benefit, “as a result of recent New York State legislation,” the processing of any claim must be suspended (R163). The new law, the letter explained, provided an accidental death benefit which is “payable to one or more ‘statutory’ beneficiaries as defined in the law” (*id.*). That change now required TRS to “contact [Barcelo’s] statutory beneficiaries about the accidental death benefit” (*id.*).

On June 22 Colon alleges that she tried to complete the filing of her claim (R19), but TRS had suspended claim processing while it considered the effect of the law. Colon objected to the suspension

and, following some additional discussions and correspondence between TRS and Colon’s counsel, TRS issued a final determination on August 10 (R198). The letter indicates that an accidental death benefit would “be paid out in lieu of the non-accidental death benefit” so long as TRS received an expected application from a statutory beneficiary—in this case, Barcelo’s daughter (*id.*; R200–04).³

C. Supreme Court’s decision granting Colon’s article 78 petition

Following TRS’s determination, Colon filed this article 78 petition challenging the determination and seeking an award of the ordinary death benefit to be paid to her (R11–26). Colon raised several arguments in support of her claim for relief, including that TRS’s decision was arbitrary and capricious and that the law extending accidental death benefits to public employees violated

³ TRS was aware that Barcelo’s daughter intended to claim the accidental death benefit. However, because she was then a minor, it took several months for her guardian to obtain the necessary guardianship over her property (R204).

the New York State Constitution’s pension impairment clause (R22–26).

At the conclusion of oral argument, Supreme Court granted the petition, reading the statute to permit the designated beneficiary to collect an ordinary death benefit and for the statutory beneficiary to collect any additional benefit (R261). The court reasoned that, because the law provided for a reduction in accidental death benefits that had already been paid, it should also provide for the same reduction for benefits that “should have been paid” (*id.*). Thus, while recognizing that “the Appellate Division will speak on” the issue, the court “direct[ed] the retirement system to pay the ordinary death benefit to the designated beneficiary, and adjust [the] accidental death benefit accordingly” (R262; *see also* R6).

ARGUMENT

POINT I

SUPREME COURT ERRED IN CONCLUDING THAT COLON WAS ENTITLED TO AN ORDINARY DEATH BENEFIT

TRS's determination that it was obliged to pay Barcelo's accidental death benefits to his statutory beneficiary flowed from a rational interpretation of the dictates of RSSL § 607-i. The statute provides that, for a member who meets its criteria, the accidental death benefit "shall" be paid to the member's statutory beneficiary. *Id.* § 607-i(a)(3). The only situation contemplated by the statute for altering this arrangement is where an ordinary death benefit had *already* been paid out. *Id.* § 607-i(b). Thus, Supreme Court erred in its determination that Colon was entitled to an ordinary death benefit.

Judicial review of an agency determination in an article 78 proceeding is limited to whether the challenged action is arbitrary, capricious, or lacks a rational basis. CPLR 7803(3); *Weill v. N.Y.C. Dep't of Educ.*, 61 A.D.3d 407, 408 (1st Dep't 2009). This rigorous standard is met only when an action is made "without sound basis

in reason” or “generally taken without regard to the facts.” *Roberts v. Gavin*, 96 A.D.3d 669, 671 (1st Dep’t 2012) (quotation marks omitted). But where a rational basis for the decision exists, a reviewing court “may not substitute its own judgment of the evidence for that of the administrative agency.” *Nelson v. Roberts*, 304 A.D.2d 20, 23 (1st Dep’t 2003) (quotation marks omitted). Here, TRS rationally applied the dictates of the law and determined that it was obligated to pay the accidental death benefit to Barcelo’s daughter.

A. The statute requires TRS to pay an accidental death benefit to Barcelo’s statutory beneficiary.

The analysis begins, as always, with the statute’s text. *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583 (1998). If the “language of a statute is clear and unambiguous, courts must give effect to its plain meaning.” *State of New York v. Patricia II*, 6 N.Y.3d 160, 162 (2006) (quotation marks omitted). And “[d]eference must be given to an agency’s statutory construction of statutes which the agency administers” so long as its construction is “not irrational, a principle which applies to

pension cases.” *Caruso v. Ward*, 160 A.D.2d 557, 557 (1st Dep’t 1990); *accord Kaslow v. City of New York*, 23 N.Y.3d 78, 88 (2014).

Here, the law is straightforward and TRS’s construction of it is rational. The text provides that, if a member who reported to work in person after March 1, 2020 contracted COVID-19 within the next 45 days and later died as a result, then “such member’s statutory beneficiary *shall* receive an accidental death benefit.” RSSL § 607-i(a) (emphasis added). Since there is no dispute that Barcelo met the statutory requirements or that his daughter was his statutory beneficiary, under the statute’s plain terms, TRS was required to pay his daughter an accidental death benefit. *Id.*; *see DeVera v. Elia*, 32 N.Y.3d 423, 435 (2018) (“[T]he use of ‘shall’ makes what follows mandatory” (quotation marks and alterations omitted)). TRS thus did not have the legal ability to process Colon’s claim after the law took effect, and instead was obliged to follow its dictates, alert Barcelo’s statutory beneficiary, and permit her to apply.

The law is hardly novel in this respect. It follows in the footsteps of other laws expanding eligibility for accidental death

benefits, streamlining and reducing the burden of proof for the higher benefit in certain circumstances—with the effect that the accidental death benefit goes to the statutory beneficiary, as the Legislature has consistently done for accidental death benefits, rather than the designated beneficiary. *See, e.g.*, RSSL § 507-b(f) (same scheme for a member who dies from “a qualifying World Trade Center condition”). Likewise, the Legislature often limits an individual’s ability to entirely control the distribution of their assets after their death. *See, e.g.*, Estates, Powers & Trusts Law § 5-1.1 (right of election by surviving spouse); § 5-3.1 (vesting certain property to surviving family rather than decedent’s estate).

While the law is clear on its face, the legislative history is also relevant, *Kimmel v. State of New York*, 29 N.Y.3d 386, 397 (2017), and it confirms TRS’s interpretation. Throughout the legislative history, the bill’s proponent explained that its purpose was to provide the accidental death benefit to members’ *statutory* beneficiaries. Thus, in the Introducer’s Memorandum in Support, Senator Gounardes explained that the law’s purpose is to “provide accidental death benefits to the *statutory beneficiaries* of all public

employees” who died of COVID after reporting to work. Introducer’s Memo. in Support of Bill No. S8427, Bill Jacket, L 2020, Ch. 89, at 1 (emphasis added). Likewise, in its summary of provisions, the memo explains that the “bill provides protections for *statutory* beneficiaries” and that it “specifies that the *statutory beneficiary* of any public employee ... *will receive* an accidental death benefit” if the statutory requirements of proof are met. *Id.* (emphases added). Both the statute’s text and history support TRS’s rational construction.

B. Supreme Court’s decision, and Colon’s arguments below, rest on misunderstandings of the statute.

Supreme Court’s contrary decision rests on a misapplication of a different and inapposite provision of the statute. That section reduces the amount of an accidental death benefit if an ordinary death benefit has already been “paid by such member’s retirement system to any recipient of ordinary death benefits.” RSSL § 607-i(d). But it has nothing to say about the circumstance where no ordinary death benefit has been paid. Indeed, the legislative history makes clear that provision applies only in circumstances where an

ordinary death benefit had “already been paid.” Legislative Bill Drafting Commission Report 12055-04-0, Fiscal Note, Bill Jacket, L 2020, Ch. 89, at 37.

Disregarding the agency’s rational construction of the statute it administers, Supreme Court in effect rewrote the statute to provide that, though no ordinary death benefit had yet been paid to Colon, one “should have been” paid to her (R261). Colon’s argument, which the court accepted, was that the ordinary death benefit was due to her and should have been paid before Barcelo’s statutory beneficiary had the opportunity to request accidental death benefits. But there is no basis in the law to support the conclusion that any ordinary death benefit “should have” been paid to Colon. Once the law went into effect, TRS was required to pay the accidental death benefit to Barcelo’s statutory beneficiary. RSSL § 607-i(a)(3); *DeVera*, 32 N.Y.3d at 435.

Had the Legislature intended to create the exception that the court engrafted into the statute, it had the means to do so at its ready disposal. Under the next section, governing a different class of members, the Legislature provided that the accidental death

benefit should be reduced by “any amounts paid *or payable*” to another beneficiary. RSSL § 607-i(e)(2). (emphasis added).⁴ By contrast, the provision on which Colon (and Supreme Court) relied only reduces the accidental benefit by any “amount paid,” not payable. *See Orens v. Novello*, 99 N.Y.2d 180, 187 (2002) (“When different terms are used in various parts of a statute or rule, it is reasonable to assume that a distinction between them is intended.”).

Colon also relied on TRS’s earlier communications indicating that she was entitled to the ordinary death benefit (R17–18). But those communications also explained that she had to submit a claim, which she did not attempt to do until well after the new law went into effect. And, even if she had, any claim would have been just that—a claim for benefits that “may be payable” and that TRS would have had to process, which, as it informed her, could have taken “several weeks to several months” (R89). Submitting a claim

⁴ That section governs members who retired between March 1 and July 1, 2020. Such member’s statutory beneficiary was granted the right to apply to convert a “service or disability retirement benefit into an accidental death benefit.” RSSL § 607-i(c)(2).

would have permitted TRS to “begin to process [her] request” for benefits (R153). Thus, there is no merit to her argument that the ordinary death benefit should have been paid to her before Barcelo’s statutory beneficiary had the opportunity to apply.

Colon also argued that, even after the law went into effect, TRS should have continued processing her application for benefits and disbursed a benefit to her before Barcelo’s statutory beneficiary had the opportunity to apply for accidental death benefits (*see* R103–04).⁵ She argued, in essence, that the law creates a race to file, and that TRS is obliged to process the claim of whoever is first to submit an application. But, as suggested by her lack of legal citation (*see id.*), the law does not support such a result. Instead, it provides that the accidental death benefit “shall” be paid to the statutory beneficiary, which necessarily implies that the retirement

⁵ Colon also contended that, if the original benefit letters had been sent to her correct address, she would have completed her claim and obtained the money before the law took effect (R18). But she was aware that she could make a claim no later than May 19, and she did not even attempt to finalize her claim until late June (R17–19). And, as TRS made clear, after the claim was submitted, processing benefits would have taken “from several weeks to several months to complete” (R155). Thus, there is no merit to her contention that TRS failing to instantaneously process her handwritten address change in the midst of the pandemic had any effect on the outcome here.

system must have the opportunity to contact the statutory beneficiary and permit them time to apply for benefits. *Cf. Matter of Goodson*, 231 A.D.2d 66, 69 (1st Dep’t 1997) (disfavoring a reading of the law that would create “a race to the courthouse”). And the law begins with the prefatory phrase “[n]otwithstanding any other provision of this article or of any general, special or local law to the contrary,” RSSL § 607-i(a), a clause which is a “verbal formulation frequently employed for legislative directives intended to preempt any other potentially conflicting statute, wherever found in the State’s laws,” including, here, the application of the law regarding ordinary death benefits. *People v. Mitchell*, 15 N.Y.3d 93, 97 (2010). After the passage of the law, it took some time to communicate with potential statutory beneficiaries and build a system to process COVID-19 accidental death benefit claims. To push through ordinary death benefit claims before the statutory beneficiaries could even apply would have inverted the Legislature’s stated statutory priority.

Likewise, there is no merit to Colon’s argument that her benefit “vested” on Barcelo’s death. She cites nothing to suggest

that a benefit immediately vests to a beneficiary, even before a determination as to whether accidental or ordinary death benefits apply. Instead, even under the preexisting statutory scheme, there is always a possibility that, at any point before payment of the ordinary death benefit, TRS could learn that the cause of death was accidental and would have to pay an accidental death benefit claim. Colon's benefit never "vested" such that an accidental death benefit claim could not be filed.

In sum, the statute's text and legislative history reinforce the conclusion that the accidental death benefit must be paid to Barcelo's statutory beneficiary. TRS could not process Colon's claim after the law took effect, and instead had to find and alert Barcelo's statutory beneficiary to permit her claim the accidental death benefit. Supreme Court's decision to split the difference, while an understandable attempt to reach what it perceived to be a more equitable result, has no home in the statutory text.

POINT II
THE STATUTE DOES NOT VIOLATE
THE STATE CONSTITUTION

Supreme Court adopted Colon’s contention that applying the statute to award the higher accidental death benefit to Barcelo would violate the State Constitution’s pension impairment clause (R254). But the statute does not remotely violate the clause. Quite the contrary, since—among other reasons—it applies the pre-existing distinction between accidental and ordinary death benefits, and enhances Barcelo’s benefits rather than diminishing or impairing them. There was no need to adopt the court’s incorrect interpretation to avoid a constitutional issue.

The State Constitution provides that membership in a retirement system “shall be a contractual relationship, the benefits of which shall not be diminished or impaired.” N.Y. Const. Art. V § 7. The law prohibits the “official action during a public employment membership in a retirement system which adversely affects the *amount* of the retirement benefits payable to the members.” *Civil Serv. Empl. Ass’n, Local 1000 v. Regan*, 71 N.Y.2d 653, 658 (1988) (emphasis added) (quotation marks omitted). But,

because the clause is concerned with a reduction in financial benefits, any “restriction of option or beneficiary choices does not diminish a pension.” *McDermott v. McDermott*, 119 A.D.2d 370, 382–83 (2d Dep’t 1986).

Here, the newly enacted law did nothing to impair or diminish Barcelo’s pension benefits. When he joined the pension system, there was already a distinction between ordinary and accidental death benefits—and, crucially, the law already provided that accidental death benefits were to be paid to a statutory beneficiary, rather than to his designated beneficiary. RSSL §§ 606, 607. The pension plan documents explain the same distinction with citations to the same provisions (R78–79) and for good measure refer to RSSL § 601, which defines statutory beneficiaries and their relative priority (R79). The only change made by the challenged law was to lower and streamline the proof required for entitlement to accidental death benefits for public employees who died from COVID-19. Thus, the law permitted easier access to more generous benefits, so its effect (and intent) was to enhance member’s benefits, not to impair or diminish them.

Assessing the change by whether it increased or diminished the benefits paid, rather than by considering the amount received by a particular putative beneficiary, comports with the Constitution, which protects against impairment in the sense of “the pension fund ... pay[ing] any lesser amount” of benefits than was set when the employee joined. *Majauskas v. Majauskas*, 61 N.Y.2d 481, 493 (1983). For this reason, courts have often upheld limitations on how a pension member may designate the disbursal of benefits and found no violation of the pension impairment clause. *Id.* at 493 (upholding order designating pension funds as marital property and requiring disbursal to ex-spouse). Thus, there may be no “reduction by the public employer of the financial benefits promised in the pension contract.” *McDermott*, 119 A.D.2d at 382; *see also Birnbaum v. N.Y.S. Teachers Ret. Sys.*, 5 N.Y.2d 1, (1958) (holding that the “constitutional amendment ... prohibits official action ... which adversely affects the amount of the retirement benefits payable”).

By contrast, the challenged law is not even a post-hoc restriction on Barcelo’s choice of beneficiaries. It did not alter his

ability to select a beneficiary for his ordinary death benefit or the precedence of beneficiaries for his accidental death benefits. Instead, the new statute merely made it easier to show that his death was the “natural and proximate result” of his exposure in the line of duty, entitling him to the accidental death benefit the law already provided. RSSL § 607. Nothing about that change implicates the pension impairment clause of New York’s Constitution.

CONCLUSION

Supreme Court's order should be reversed, Colon's article 78 petition should be denied and this proceeding dismissed.

Dated: New York, NY
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Respectfully submitted,

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PRINTING SPECIFICATIONS STATEMENT

This brief was prepared on a computer, using Century Schoolbook 14 pt. for the body (double-spaced) and Century Schoolbook 12 pt. for the footnotes (single-spaced). According to Microsoft Word, the portions of the brief that must be included in a word count contain 4,649 words.

STATEMENT PURSUANT TO CPLR 5531

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of

ANNE MARIE R. COLON,

Case No. 2021-03148

Petitioner-Respondent,

against

TEACHERS' RETIREMENT SYSTEM OF THE CITY
OF NEW YORK,

Respondent-Appellant,

and

YVONNE DAVALOS, in her capacity as Guardian of
Minor

Child B.C.B,

Respondent.

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1. The index number in the Court below is 159317/2020.
2. The full names of the original parties appear in the caption above. There have been no changes in the parties.
3. This action was commenced in Supreme Court, New York County.
4. This proceeding was commenced by notice of petition on October 30, 2020. Issue was joined by Respondent Teachers' Retirement System of the City of New York's verified answer on December 23, 2020.
5. Petitioner commences this proceeding pursuant to Article 78 of the CPLR to vacate, void and annul respondent Teachers' Retirement System of the City of New York final agency action, dated August 10, 2020, denying petitioner Anne Marie Colon's claim for TRS Qualified Pension Plan death benefits as the registered domestic partner of TRS member Louis S. Barcelo and designated beneficiary of his QPP Benefits.
6. This appeal is from an decision and order of the Honorable Eileen A. Rakower, Supreme Court, New York County, entered on July 14, 2021.

7. This appeal is being taken on a fully reproduced joint record.