

**BEFORE THE SUPREME COURT
STATE OF MISSOURI**

No.: SC92142

**THERESA BEARD, BETH CARLL AND THE
ESTATE OF LAURAL BEARD, DECEASED
Plaintiff/Appellant,**

v.

**MISSOURI STATE EMPLOYEE'S RETIREMENT SYSTEM
AND STATE OF MISSOURI
Defendant/Respondent.**

On Appeal from the Circuit Court of Cole County, Missouri

Cause No: 10AC-CC00238

The Honorable Jon Edward Beetem

**REPLY BRIEF OF APPELLANTS
THERESA BEARD, BETH CARLL AND THE ESTATE
OF LAUREL BEARD, DECEASED**

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POINTS RELIED ON

POINT I

The trial court erred in granting judgment against Plaintiffs/Appellants Theresa Beard, et. al. because Section 104.1030 RSMo. is unconstitutional on its face or as applied to vested members of the Missouri State Employee's Retirement System (MOSERS) who have filed for retirement and made the proper beneficiary elections but die before their annuity start date, without a surviving spouse or minor children, in that the Missouri Constitution protects an individual's natural right to the enjoyment of the gains from their own industry; provides that no person shall be deprived of their property without due process of law; and provides that no law shall impair the obligations of contracts.

In re Marriage of Woodson, 92 S.W.3d 780, 783 (Mo. 2003)

Washington v. Glucksberg, 521 U.S. 702, 720 117 S.Ct. 2258, 2267, 138 L.Ed.2d 772, 787 (1997)

Weinschenk v. State, 203 S.W.3d 201, 210-11 (Mo. 2006)

Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771, 774 (Mo banc 2003)

Section 1.020 RSMo.

Section 104.010 RSMo.

Section 104.330.1 RSMo.

Section 104.420 RSMo.

Section 104.1003 RSMo.

Section 104.1015 RSMo.

Section 104.1027 RSMo.

Section 104.1030 RSMo.

Section 104.1093 RSMo.

Mo. Const. of 1865, art. 1, sec. 1

Mo. Const. of 1875, art. 2, sec. 4

Missouri Constitution, Article 1, Section 2

Missouri Constitution, Article 1, Section 10

Missouri Constitution, Article 1, Section 13

POINT II

The trial court erred in granting judgment against Plaintiffs Theresa Beard, et. al. because Section 104.1030 RSMo. is ambiguous on its face and/or the trial court

wrongfully interpreted said statute which leads to an unjust, unreasonable and confiscatory result, in that Laurel Beard was a vested member of the Missouri State Employee's Retirement System (MOSERS), became ill and stopped working, but her designated beneficiaries were denied earned retirement benefits because she died shortly before her annuity starting date, without a surviving spouse or minor children.

Community Fed. Sav. & L. Ass'n v. Director of Revenue, 752 S.W.2d 794, 798 (Mo. banc 1988), *cert. denied*, 488 U.S. 893, 109 S.Ct. 231, 102 L.Ed.2d 221

Marre v. Reed, 775 S.W.2d 951, 953 (Mo. banc 1989)

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Section 1.020 RSMo.

Section 104.010 RSMo.

Section 104.330.1 RSMo.

Section 104.420 RSMo.

Section 104.1003 RSMo.

Section 104.1015 RSMo.

Section 104.1027 RSMo.

Section 104.1030 RSMo.

Section 104.1093 RSMo.

Mo. Const. of 1865, art. 1, sec. 1

Mo. Const. of 1875, art. 2, sec. 4

Missouri Constitution, Article 1, Section 2

Missouri Constitution, Article 1, Section 10

Missouri Constitution, Article 1, Section 13

ARGUMENT

I

**The trial court erred in granting judgment against Plaintiffs/Appellants
Theresa Beard, et. al. because Section 104.1030 RSMo. is unconstitutional on its face**

or as applied to vested members of the Missouri State Employee’s Retirement System (MOSERS) who have filed for retirement and made the proper beneficiary elections but die before their annuity start date, without a surviving spouse or minor children, in that the Missouri Constitution protects an individual’s natural right to the enjoyment of the gains from their own industry; provides that no person shall be deprived of their property without due process of law; and provides that no law shall impair the obligations of contracts.

(REPLY TO RESPONDENT’S ARGUMENT III)

- A. Plaintiff’s Second Amended Petition states a claim for violation of Plaintiffs’ constitutional rights and states numerous facts to support their contention that Section 104.1030, RSMo., is unconstitutional.**

Respondent wrongfully asserts that Appellant’s constitutional challenge to Section 104.1030 was not properly raised in the trial court.

Respondent’s first complaint is that Plaintiff/Appellants’ Second Amended Petition failed to allege **any** facts to support their contention that Section 104.1030 is unconstitutional. This contention is obviously without merit. As shown by Plaintiffs’ Second Amended Petition, (included in Reply Appendix) Plaintiffs submitted constitutional claims in Count III of the Second Amended Petition. Count III of Plaintiffs’ Second Amended Petition incorporates 42 separate facts as facts common to all counts and includes as follows:

1. Plaintiffs Theresa Beard and Beth Carll individually and as representatives of the Estate of Laurel Beard are residents of Randolph County, Missouri.

2. This case arises from an adverse administrative decision made by the Missouri State Employees Retirement System (hereinafter “MOSERS”) on August 5, 2009 and January 26, 2010.

3. The State of Missouri is a defendant and Laurel Beard’s employer.

4. The defendant known as the Missouri State Retirement System (commonly referred to as “MOSERS”) is a body politic, an agent and instrument of the State of Missouri.

5. Jurisdiction and venue is appropriate in Cole County Missouri.

6. MOSERS is the state office charged by law with the enforcement and administration of retirement benefits for Missouri State Employees and has an interest in this proceeding and issues herein involved.

7. MOSERS (hereinafter “retirement system”) was set up for the purpose of providing vested employees of the State of Missouri with employment retirement benefits as part of their employment compensation.

8. Laurel B. Beard (hereinafter “Ms. Beard”) worked for the State of Missouri, Department of Corrections for more than 26 years.

9. Ms. Beard was a regular employee of the State of Missouri as defined by section 36.010 RSMo.

10. Ms. Beard was a merit employee.

11. Ms. Beard was a member of the Missouri Correction Officers Association (commonly known as “MOCO”) (commonly known as “MOCO”))

12. MOCOA, through collective bargaining, entered an agreement with the State of Missouri covering the term February 1, 2007 through January 31, 2011.

13. Previous to the agreement in question, MOCOA and the State of Missouri had entered into prior similar agreements.

14. The present and prior agreements between MOCOA and State of Missouri were for the benefit of merit employees such as Ms. Beard.

15. Pursuant to section 104.330 RSMo. and as part of her contractual relationship and continued employment, Ms. Beard was a member of the retirement system, MOSERS.

16. In exchange for her labor and work Laurel Beard was entitled to certain and valuable consideration as part of the employment contract

17. The valuable consideration included certain vested retirement benefits.

18. Ms. Beard was vested in her retirement benefits.

19. Ms. Beard met the requirements of age and length of service for retirement.

20. Ms. Bread had a contractual right and/or a statutory right to her retirement benefits.

21. The retirement benefit at issue is a sum certain of money that on information and belief is in excess of Two Hundred Thousand Dollars (\$200,000.00).

22. By reason of her long and loyal service with the State of Missouri, Department of Corrections, her status as a regular employee, a merit employee, and as a beneficiary of the collective bargaining agreements, and also based upon her labor, work

and service, Ms. Beard had a protected property interest in her compensation, including her retirement benefits.

23. Ms. Beard had a protected property and liberty interest in reaping the fruits of her labor, to wit: the money owed as part of the contractual and/or statutorily vested retirement benefits, and had a protected property and liberty interest in transferring or disposing of her property to her beneficiaries, heirs and objects of her bounty Theresa Beard and Beth Carll, Plaintiffs herein.

24. The rights plead herein are protected by the Constitution of the State of Missouri and the Constitution of the United States and are part of the fundamental rights and liberties that are deeply rooted in our state and nation's history and implicit in the concept of ordered liberty.

25. On or about June 16, 2009, Ms. Beard learned that she had terminal cancer.

26. On June 18, 2009, Ms. Beard filed an application for retirement and signed a direct deposit authorization for the account to which the benefits were to be deposited.

27. On June 30, 2009, Ms. Beard designated her adult daughters, Theresa Beard and Beth Carll as her designated agents and beneficiaries for her Missouri State Retirement Plan Benefits.

28. On June 30, 2009, Laurel Beard signed a Retirement Election Form electing to receive the maximum lump sum payment and choosing benefit payment Option 3 indicating life income with 180 guaranteed payments to be paid to her daughters, Theresa Beard and Beth Carll, in the event of her death.

29. On July 1, 2009, MOSERS issued a memorandum to Ms. Beard congratulating her on her retirement. The letter also stated:

“You elected the Life Income with 180 Guaranteed Payments Option. Under this option, you will receive a monthly benefit for your lifetime. **If you die before receiving 180 payments, the remainder of the payments will be paid to your beneficiary(ies).**”

30. Ms. Beard died on July 29, 2009.

31. Theresa Beard and Beth Carll, applied for the vested retirement benefits of their mother, Laurel B. Beard, pursuant to the beneficiary designation executed by Ms. Beard.

32. On August 5, 2009, Senior Benefit Counselor, Anne Rapp, transmitted a denial of benefits based on section 104.401 RSMo. and section 104.420 RSMo. The denial of benefits dated August 5, 2009 is attached hereto as Exhibit A.

33. Plaintiffs and Ms. Beard’s estate, timely appealed Defendant MOSERS’ decision on October 5, 2009. Plaintiffs’ appeal and Statement of Facts and Suggestions in Support thereof is attached hereto as Exhibit B.

34. Plaintiffs appealed the decision issued on August 5, 2009, and offered sound reasoning as to why the decision should be reversed and a new decision issued awarding Ms. Beard’s benefits to her children, pursuant to her written designation.

35. A hearing on Plaintiffs’ appeal was scheduled for November 19, 2009.

36. MOSERS did not timely respond to Plaintiffs’ appeal. MOSERS waited to respond until seven (7) days before the scheduled hearing date, after which time

appellants were precluded from filing additional information to bring before the board according to MOSERS' Rule 1-2, Appeals to the Board. Defendant's response, attached hereto as Exhibit C, is dated November 12, 2009.

37. On January 26, 2010, the second denial of benefits from MOSERS was issued, a copy of which is attached hereto as Exhibit D. Plaintiffs received the denial on January 28, 2010.

38. In its new denial defendant MOSERS changed the basis for its denial, now relying on section 104.1030 RSMo.

39. The basis of the denials is legally and factually inconsistent, and both cannot be true, because the relevant statute sections pertain to two different retirement plans section 104.320 RSMO. et seq. (closed plan) and section 104.1003 RSMo. et seq. (year 2000 plan), that are administered by MOSERS.

40. Ms. Beard was a member of the closed plan.

41. Plaintiffs' Theresa Beard and Beth Carll are intended third party beneficiaries of the contract between Ms. Beard and defendants.

42. Plaintiffs Theresa Beard and Beth Carll have a protected property and liberty interest in the vested retirement benefits as the designated beneficiaries and sole legal heirs of their mother Laurel Beard and their rights are protected by the Constitution of the State of Missouri and the Constitution of the United States, and are part of the fundamental rights and liberties that are deeply rooted in our state and nation's history and implicit in the concept of ordered liberty.

Plaintiffs' also incorporate the improper denial of retirement benefits as alleged in Count I of the Second Amended Petition and paragraphs 47 through 49 regarding Plaintiffs' allegations of breach of contract.

Respondent wrongly and inappropriately allege that Appellants did not properly raise this challenge in the trial court. It is clear from a reading of the Second Amended Petition that the constitutionality claims were properly raised in the trial court from the beginning of the case with the filing of the Second Amended Petition. Furthermore, the constitutional issues were addressed by both parties in the trial court in trial motions and were argued at trial. (See transcript p. 21 line 24 through p. 24 line 8).

The Appellant's properly raised the constitutionality issue in the trial court at the earliest possible time, specifically addressing the constitutional provisions which were violated and the facts supporting those violations. Those constitutional issues have been thoroughly and substantially preserved throughout this litigation for appellate review.

B. Plaintiffs/Appellants have been deprived their constitutional rights.

1. Fundamental Rights

The Missouri Constitution provides that all persons have a natural right to life, liberty and the pursuit of happiness **and the enjoyment of gains from their own industry**. Mrs. Beard's retirement benefits were paid by the State of Missouri each pay period into the MOSER'S fund as part of her earned income. No other person earned those benefits—only Mrs. Beard. She had a fundamental right to the enjoyment of those benefits and the right to direct it to her beneficiaries of choice. In fact, she filed a proper beneficiary designation form designating her two adult daughters as her beneficiaries and there is nothing wrong with that designation.

Laurel Beard's retirement benefits are protected by the Missouri Constitution as she was entitled to the gains of her own industry. Because fundamental rights are at stake, strict scrutiny must be applied. *In re Marriage of Woodson*, 92 S.W.3d 780 (2003) citing *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). As a result, there must be a sufficiently important state interest and it must be closely tailored to effectuate those interests. *Komosa v. Komosa*, 939 S.W.2d 479, 482 (Mo. App. E.D. 1997). There is no evidence in this case of **ANY** compelling state interest in preventing Mrs. Beard's designated beneficiaries from receiving the earned benefits of Mrs. Beard's labor. While it is conceded that the State may have an interest in protecting a surviving spouse or minor, dependent children, the question becomes: If there are no dependent children or surviving children, what is the state interest in not paying those benefits to her properly designated beneficiaries. The money deposited into MOSER'S by the State of Missouri is not even returned to the State of Missouri for general revenue purposes. It does, however, continue to remain in the MOSERS fund to increase revenue for those profiting from the MOSERS investments. This is NOT a valid or sufficiently important state interest and is certainly not closely tailored to effectuate an important state interest.

Respondent continues to assert that Appellant does not have a fundamental right to the enjoyment of those retirement benefits. Respondents erroneously continue to rely on *State, ex rel Nixon v. Powell*, 167 S.W.3d 702, 705 (Mo. banc 2005) where Respondent misstated the holding in that case. The *Powell* case was an action filed by the Attorney General's Office against a prisoner inmate seeking reimbursements for cost of an inmate's care while incarcerated. The Supreme Court simply held that the inmate failed to demonstrate that use of his disability pension to pay for the cost of his care while incarcerated violated his right to

substantive due process and held that the prisoner provided no authority for holding that that disability pension was a fundamental right that was constitutionally protected. This court did not hold, as asserted by the Respondent, that the prisoner had no fundamental right to those benefits. This is a distinction made clear in the cited case and is merely an attempt by the Respondent to mislead this court.

Similarly, Respondent's reliance on *In Re Marriage of Woodson*, 92 S.W.3d 780 (Mo. banc 2003) is misplaced. While the case involved Public School Retirement System benefits, *Woodson* was an action by one party to assert his right to equitable division of his partner's retirement benefits which was analyzed under Missouri's "modified no fault" dissolution rules and held that equitable division of retirement benefits is not implicit in the concept of ordered liberty and therefore did not violate husband's right to substantive due process. *Woodson* is factually and legally distinct and not applicable to the case at hand.

In *Geary v. Missouri State Employee's Retirement System*, 878 S.W.2d 918, 925 (Mo. App. W.D. 1994) Respondents assert that the *Geary* plaintiffs claim was identical to Plaintiffs' claim. Clearly, again, the facts in *Geary* are not relevant to the facts in this case. The *Geary* plaintiff asserted that he was entitled to retirement benefits although he was still employed in an appointed state office. Although the retirement benefits were at stake, the case can be distinguished based on the facts and the interpretation of an entirely different statute. The *Geary* court reviewed the applicable provisions of the relevant statutes from a historical perspective which clearly demonstrated that the statutes had never authorized a former member of the General Assembly to be entitled to retirement benefits for past legislative services for any period during which that former legislature was serving as an elected or appointed state officer, whether

he was beyond normal retirement age or not. Such facts are clearly not relevant to the case at hand.

2. Appellants have been deprived of equal protection of law.

The courts undertake a two-part analysis to determine the constitutionality of a statute under either the state or federal equal protection clause. The first step is to determine whether the statute implicates a suspect class **or impinges upon a fundamental right explicitly or implicitly protected by the Constitution.** *Etlings v. Wesport Heating & Cooling Services, Inc.*, 92 S.W.3d 771, 774 (Mo. Banc 2003).

The statute in question as construed as by the trial court, is a violation of Appellant's equal protection because it treats Appellants unequally under the law. A person in Mrs. Beard's situation, who dies two days before her annuity start date with a surviving spouse or minor dependent children would benefit from her earned retirement benefits. It is unacceptable for another person, such as Mrs. Beard, who through different life situations or choices, is prevented from enjoying or distributing her earned benefits, simply because she was not married at the time of her death and no longer had children who were dependent upon her for support.

The second step of the analysis of equal protection is to apply the appropriate level of scrutiny to the challenged statute. As asserted and briefed herein, strict scrutiny is the appropriate level of scrutiny to be applied. This statute simply cannot be upheld because it is not supported by any sufficiently important state interest and is certainly not closely tailored to effectuate only those interests. *Weinschenk v. State*, 203 S.W.3d 301, 211 (Mo. 2006).

ARGUMENT

II

The trial court erred in granting judgment against Plaintiffs Theresa Beard, et. al. because Section 104.1030 RSMo. is ambiguous on its face and/or the trial court wrongfully interpreted said statute which leads to an unjust, unreasonable and confiscatory result, in that Laurel Beard was a vested member of the Missouri State Employee's Retirement System (MOSERS), became ill and stopped working, but her designated beneficiaries were denied earned retirement benefits because she died shortly before her annuity starting date, without a surviving spouse or minor children.

(REPLIES TO RESPONDENT'S POINT II)

The trial court erred by interpreting Section 104.1030 to provide no benefits for the Appellants.

Section 104.1030 RSMo. provides in relevant part that:

If a member with five or more years of credited service or a vested former member dies before such member's or such vested former member's annuity starting date, the applicable annuity provided in this section **shall** be paid.

104.1030.1 RSMo. (emphasis added).

As thoroughly analyzed in Appellant's brief, nothing in the remaining sections of 104.1030 contradicts the statement that a vested members' earned benefits shall be paid if the member dies before the annuity start date. The remaining sections merely provide for how benefits will be paid to a surviving spouse or minor child.

The statute, 104.1030 RSMo, is ambiguous on its face because it provides that the

retirement benefits shall be paid but then makes no further reference to a situation where an employee does not have a surviving spouse or surviving minor children. Further it does not mandate that if there is no surviving spouse or minor children that no benefits are to be paid, as the legislature clearly could have done.

Alternately, said statute or the trial court's interpretation of the statute leads to an unjust, unreasonable and confiscatory result by denying Mrs. Beard the gains of her own industry and the right to distribute those earned benefits to her designated beneficiaries in the manner of her choosing.

The primary rule of statutory construction is to ascertain the intent of the lawmakers by construing words used in the statute in their plain and ordinary meaning. *Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82, (Mo banc 1993). The law favors construction of a statute which avoids unjust or unreasonable results. *Maryland Cas. Co. v. General Elec. Co.*, 418 S.W.2d 115 (1967). Construction of a statute should avoid unjust, unreasonable, absurd or confiscatory results. *Taylor v. McNeal* 523 S.W.2d 148 (Mo. App. 1975). To disallow a person who dies two days prior to her annuity start date the ability to distribute the funds accumulated for her retirement to the beneficiaries of her choosing, simply because she did not have a surviving spouse or dependent children, is unjust, unreasonable, absurd and confiscatory.

Therefore, the trial court's judgment against Appellants should be reversed and Laurel Beard's earned retirement benefits distributed to her designated beneficiaries.

ARGUMENT

III

(REPLIES TO RESPONDENT'S ARGUMENT I)

Plaintiffs brief complies with all of the Missouri Supreme Court Rules of Civil Procedure including Rule 84.04(c) and 84.04(d) as follows:

A. Statement of Facts

Appellants' statement of facts are a fair and concise statement of the facts relevant to the questions presented for determination without argument in compliance with Rule 84.04(c). Further, Rule 84.04(f) provides that if the respondent is dissatisfied with the accuracy or completeness of the statement of facts in the Appellants' brief, the Respondent's brief may include a statement of facts.

Respondent wrongfully asserts that the Appellants' statement of facts does not comply with Rule 84.04(c) because it fails to mention the trial courts findings or judgment and does not recount the procedural history of the case. However, Rule 84.04(c) does not require such information. If Respondent is dissatisfied with the content of Appellant's statement of facts, Respondent's recourse is to include such information in Respondent's brief, pursuant to Rule 84.04(f) and 84.04(c).

However, Respondents are under the same duty to provide a statement of facts that are fair and concise and relevant to the questions presented for determination **without argument**.

Respondents' statement of facts is replete with argument and should be stricken from the brief and not considered by this court as an accurate, fair and concise statement of the facts relevant to the questions presented for determination as required by rule 84.04(f) and 84.04(c).

Respondent disputes Appellant's statement of facts, but takes inappropriate liberties by arguing its position within the Statement of Facts in Respondent's brief. Beginning on page six

of Respondent's brief, counsel disputes and argues six separate assertions as follows:

1. Laurel Beard's employment with the state terminated on July 29, 2009 not June 18, 2009.
2. Laurel Beard did not do everything required to receive retirement benefits.
3. MOSERS did not consider Laurel Beard's retirement application to be void.
4. MOSERS did not admit that Laurel Beard had any contractual relationship with the state entitling her to retirement benefits.

Each one of those statements are followed by pages of other statements that are purely argumentative and not statements of fact and not adequately supported with references to the legal file. Clearly Rule 84.04(c) has been violated as argumentative and narrative disputes are not part of the fair and concise statement of facts intended by the rule and are certainly not presented for determination without argument. As such, Respondent's statement of facts should be stricken from the record as not being a fair and concise statement of the facts and not presented without argument pursuant to Rule 84.04(c) and 84.04(f).

B. Appellants' Points Relied on are in Compliance with Rule 84.04(d).

Appellants' points relied on are in compliance with Rule 84.04(d). As stated by this court, "perhaps the most important objective of the requirement relative to the points relied on is the threshold function of giving notice to the party opponent of the precise matters which must be contended with and answers. *Thummel v. King*, 570 S.W.2d 679 (Mo. banc 1978). Clear statement of the point relied on facilitates full advocacy and affords the opportunity for clarification by meaningful questions directed to the issues stated in the points relied on. *Id.* at 686.

Appellants' Point I states as follows:

The trial court erred in granting judgment against Plaintiffs/Appellants Theresa Beard, et. al. because Section 104.1030 RSMo. is unconstitutional on its face or as applied to vested members of the Missouri State Employee's Retirement System (MOSERS) who have filed for retirement and made the proper beneficiary elections but die before their annuity start date, without a surviving spouse or minor children, in that the Missouri Constitution protects an individual's natural right to the enjoyment of the gains from their own industry; provides that no person shall be deprived of their property without due process of law; and provides that no law shall impair the obligations of contracts.

Point I is in compliance with Rule 84.04. The function of this rule is to give notice to the opposing party of the precise matters, which must be contended with and to inform the court of the issues presented for review. *Finnical v. Finnical*, 81 S.W.3d 554, 559 (Mo. App. W.D. 2002). Appellants' point provides notice to the opposing party and to this court that the constitutionality of Section 104.1030 RSMo. is at issue and that the reason it is an issue is because either on its face or as applied to the Appellant as a vested member of the Missouri State Retirement System was wrongfully denied retirement benefits and that that denial was unconstitutional. The point is in substantially the form set forth in Rule 84.04(d) and states in summary fashion why in the context of the case those reasons that support Appellants' claim of reversible error. Said point provides the threshold function of giving notice to Respondents of the constitutional issues of Section 104.1030 RSMo. and affords ample opportunity to

Respondent to address those issues.

Appellants' Point II states as follows:

The trial court erred in granting judgment against Plaintiffs Theresa Beard, et. al. because Section 104.1030 RSMo. is ambiguous on its face and/or the trial court wrongfully interpreted said statute which leads to an unjust, unreasonable and confiscatory result, in that Laurel Beard was a vested member of the Missouri State Employee's Retirement System (MOSERS), became ill and stopped working, but her designated beneficiaries were denied earned retirement benefits because she died shortly before her annuity starting date, without a surviving spouse or minor children.

Appellants' Point II also is in compliance with Rule 84.04(d) in that it is in substantially the form required by said rule and clearly and unequivocally puts Respondent on notice that it is Appellants' contention that the court wrongfully interpreted the statute and/or that the statute is ambiguous on its face with respect that Appellants' designated beneficiaries were denied earned retirement benefits because the Appellant died before her annuity start date, but did not have a surviving spouse or minor children that would have otherwise received a benefit of her retirement annuity. Respondent was put on notice of the precise matters alleged by the Appellants and had every opportunity to fully advocate for his client.

CONCLUSION

This appeal involves the interpretation and constitutionality of Section 104.1030. The interpretation and constitutionality of the statute have been issues in this case since the inception

of this case. Beginning with the filing of Plaintiffs' Second Amended Petition, the issues have been briefed by the parties in trial motions and argued before the trial court. Appellants' statement of facts and points relied on substantially comply with Rule 84.04 and meet the threshold function of giving notice to all parties and the court of the matters which must be considered in this appeal.

For the reasons stated herein and the evidence adduced at trial, the decision of the trial court should be reversed and Respondent ordered to pay to Laurel Beard's designated beneficiaries, the retirement benefits that she earned over 26 years of faithful service to the State

of Missouri.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies pursuant to Rule 84.06(c) that this Appellants' Reply Brief: (1) contains the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 5,420 words, exclusive of the Sections exempted by Rule 84.06(b)(2) of the Missouri Rules of Civil Procedure based on the word count that is part of Microsoft Word.

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on April 27, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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