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IN THE SUPREME COURT OF THE UNITED STATES

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JACQUELINE HILLMAN, :

Petitioner : No. 11-1221

v. :

JUDY A. MARETTA :

- - - - - x

Washington, D.C.

Monday, April 22, 2013

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

DANIEL H. RUTTENBERG, ESQ., Vienna, Virginia; on behalf of Petitioner.

STEFFEN N. JOHNSON, ESQ., Washington, D.C.; on behalf of Respondent.

ELAINE J. GOLDENBERG, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; for United States, as amicus curiae, supporting Respondent.

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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument first this morning in Case 11-1221, Hillman v. Maretta. Mr. Ruttenberg?

ORAL ARGUMENT OF DANIEL H. RUTTENBERG
ON BEHALF OF THE PETITIONER

MR. RUTTENBERG: Mr. Chief Justice, and may it please the Court:

Congress intentionally designed FEGLIA so that the Federal interest ends once the insurance proceeds are paid out. FEGLIA was established to enable Federal employees to carry out their responsibilities to their families.

And Congress knew that some of its employees would get divorced, and it was depending upon State laws to help make sure that these family duties and obligations were carried out because Congress doesn't want to get into the -- the business of regulating the divorce.

JUSTICE SCALIA: Why did it make an exception then only for divorce decrees?

MR. RUTTENBERG: Justice --

JUSTICE SCALIA: I mean, there is an express exception in the statute that the beneficiary can be

1 changed by a decree of divorce.

2 MR. RUTTENBERG: Yes.

3 JUSTICE SCALIA: Now, why would Congress say
4 that while at the same time believing that the
5 beneficiary can effectively be changed without a decree
6 of divorce?

7 MR. RUTTENBERG: Justice Scalia, because
8 Congress knew that one of the main purposes behind
9 FEGLIA was to help the insureds or enable the insureds
10 to carry out responsibilities to their families.

11 And that is a mechanism to help do that, but
12 it wasn't --

13 JUSTICE GINSBURG: But it's written -- but
14 it's written in such precise terms, it must be
15 incorporated in a divorce decree, and the decree must be
16 filed with the employee agency pre-death. What you're
17 saying is this specific exception, rightly cabined, is
18 generalized so that in all cases, the second wife will
19 prevail over the first.

20 MR. RUTTENBERG: Justice Ginsburg, I believe
21 that the requirements that it get filed in -- it being a
22 divorce decree and it get filed before death, are an
23 example of Congress intending to preempt the field of
24 interference with the FEGLI plan.

25 It -- Congress did this in several

1 occasions. If you wanted to do a beneficiary
2 designation, you have to do it before -- in order for it
3 to be honored, it's got to be filed before death. The
4 same thing with an assignment. An irrevocable
5 assignment has to be done before death.

6 These are all examples of Congress saying we
7 don't want States interfering with the administration of
8 FEGLIA plans, but I don't think it is a statement that
9 Congress is saying we don't want States to regulate
10 domestic relations when it comes to FEGLI benefits.

11 The -- the intent of Congress with regard to
12 FEGLI benefits needs to be gained from a review of the
13 entire statute of FEGLIA.

14 JUSTICE GINSBURG: Why should it be
15 different than the outcome in *Wissner* and *Ridgway* and
16 one -- one case that you cite quite often is the
17 *Hisquierdo* case for -- you -- you cite it for deference
18 to State domestic relations law, but what was the
19 outcome in that case?

20 MR. RUTTENBERG: The outcome in that case
21 was the preemption prevailed in that case. I -- I was
22 citing the -- the case of *Hisquierdo* because I think it
23 very well lays out the presumption against preemption of
24 family law. And -- and while that presumption can be
25 overcome, as it was in *Ridgway*, and as it was in

1 Hisquierdo, it -- it still is there.

2 And it's -- it's a statement that Congress
3 generally is not looking to regulate divorce. Not that
4 Congress can't do it when it wants to, but that this
5 Court normally starts its analysis assuming that
6 Congress didn't intend to do that, unless they find
7 direct -- a direct enactment saying this is -- we want
8 to preempt all other State laws.

9 That -- that was the -- the purpose behind
10 citing Hisquierdo. But to answer your first question --

11 JUSTICE SCALIA: But, you know, the -- the
12 exception suggests another thing besides the fact that
13 it suggests that the only way the second spouse prevails
14 is by a divorce decree. It also suggests that
15 Congress's sole purpose -- that Congress did not have
16 the sole purpose in this statute to make it easy for the
17 insurance company that has to pay out the proceeds to
18 know whom the -- who the beneficiary will be.

19 If that were the case, there wouldn't be
20 this exception for a divorce decree because the
21 insurance company is going to have to look to see if
22 there's a divorce decree on the books, blah, blah, blah,
23 blah, blah. That obviously shows that Congress in this
24 statute not only had a concern about efficiency of
25 payment, but also had a concern about who gets the

1 payment, right?

2 There's no other way to explain the -- the
3 exception for divorce decrees.

4 MR. RUTTENBERG: Well, the exception for
5 divorce decrees I would analogize to the Rose case, when
6 this case was -- when this Court was addressing
7 veterans' benefits. And in the Rose case, this Court
8 distinguished Ridgway and Wissner because the purpose
9 behind the Veterans' Benefits Statute this Court
10 determined was in part to take care of the veterans'
11 families and it looked at -- it looked at the text.

12 It looked at the Senate report that said
13 that, but it also looked at the text. And the text had
14 in Rose a -- a provision which said the Veterans
15 Administration can apportion a part of those benefits
16 for the benefit of the noncustodial children. And it
17 was argued in that case that that's Congress's statement
18 that this is the only exception and further exceptions
19 shouldn't be applied and Congress was trying to regulate
20 this area.

21 But this Court said that's not what Congress
22 was doing there. That was Congress showing that they
23 cared about -- that those benefits were there to help
24 take care of the family members. And FEGLIA is the same
25 way.

1 JUSTICE GINSBURG: What -- what was the
2 issue? What was the issue in Rose?

3 MR. RUTTENBERG: In Rose, there was
4 veterans' benefits and those -- he was being sued in
5 State court for enforcement of child support and those
6 were his only assets.

7 JUSTICE GINSBURG: Now, they were taking
8 them from him to support his family.

9 MR. RUTTENBERG: Correct.

10 JUSTICE GINSBURG: Which is quite something
11 different. This is taking it from the designated
12 beneficiary and giving it to somebody who isn't
13 designated.

14 MR. RUTTENBERG: That's correct, Your Honor.
15 But I -- I think when you look at the purpose, the
16 stated purpose of FEGLIA, which is to help insureds
17 carry out their responsibilities to their families --

18 JUSTICE SCALIA: And you think that's the --
19 that's the purpose of this exception for divorce
20 decrees?

21 MR. RUTTENBERG: I think that --

22 JUSTICE SCALIA: In your experience, a man
23 usually has more children or children in his second
24 marriage than he did in his first?

25 MR. RUTTENBERG: No, Your Honor.

1 JUSTICE SCALIA: No, I don't think so,
2 either. I -- I think if Congress was concerned about
3 money for the kids, it would have left the money with
4 the first wife.

5 MR. RUTTENBERG: I think what Congress was
6 doing is Congress was making a statement -- I don't
7 think they were trying to say they were looking at this
8 divorce law in particular. I think what Congress was
9 saying is that, we're just going to look to the States
10 and let the States use their benefit and wisdom to
11 determine which divorce laws should apply and which
12 shouldn't apply.

13 So that in this case in particular, there --
14 there are benefits and detriments possibly to section D,
15 but what this Court I think would be appropriate to do
16 would to -- to pass a bright-line rule that said State
17 laws that interfere with the administration of a plan
18 are preempted, but after that, after the money has been
19 paid out, laws that affect the benefits are not
20 preempted, and that -- that allows the States to
21 be --

22 JUSTICE KENNEDY: In other words, they're
23 preempted, but the whole purpose of the preemption can
24 be thwarted.

25 MR. RUTTENBERG: Justice Kennedy, it's not

1 the purpose of the preemption. Section D was a response
2 to this Court's opinion in Egelhoff. And at first blush
3 it looks like, especially with the language, that that's
4 what the States are trying to do, trying to end run
5 preemption.

6 But that -- when you look at it closely,
7 that's not what was going on. In -- in Egelhoff, this
8 Court found that Congress intended to preempt a
9 Washington statute very similar to section A, but what
10 Congress was preempting was a State interfering with the
11 administration of the plan. It wasn't preempting a
12 State domestic relations equitable remedy designed to
13 protect the people to whom the Federal employee owed a
14 duty of support.

15 It wasn't that -- that the States were not
16 listening to Congress or this Court, and they're not
17 sticking their fingers in their ears going la, la, la, I
18 can't hear you. A good example of this would be if a
19 State had a estimated tax payment law that said when you
20 get insurance, you've got to pay 10 percent into the
21 court or into the State, that wouldn't be preempted.
22 But if the State thereafter had a law, enacted a law
23 that said we want a withholding requirement and if that
24 money is withheld then you don't have to do the
25 estimated tax payment, well, that would clearly be

1 preempted because it interferes with the administration
2 of the plan. But the first law would still be fine. It
3 shouldn't per se be preempted because it enacted the
4 second law that is preempted because it's interfering
5 with the administration of the plan.

6 JUSTICE SCALIA: Once again, the divorce
7 exemption blows away that -- that explanation, that all
8 Congress is concerned about is efficient administration
9 of the plan so long as the insurer will know. You know,
10 just look at the -- look at the -- at the contract, the
11 named beneficiary, pay the money to the named
12 beneficiary, and you're home free. That -- that is
13 blown away by the exception for divorce decrees. The
14 insurer is going to have to check that there hasn't been
15 a divorce since the contract was signed, right?

16 MR. RUTTENBERG: Well, they're -- they're
17 not going to have to check unless it's been properly
18 filed, but --

19 JUSTICE SCALIA: Okay. They have to check
20 to see if it has been properly filed, right?

21 MR. RUTTENBERG: Yes, yes. But the Federal
22 Government has no -- it -- there is no interest that the
23 Federal Government would have in saying that a divorce
24 decree that was properly filed has -- should be --
25 should be honored, but one that hasn't been properly

1 filed shouldn't be. They want State laws there.

2 JUSTICE KENNEDY: But -- but quite apart
3 from -- from that, it -- it seems to me that under your
4 proposal the Congress would actually have accepted a
5 situation where one spouse sues a former spouse. In
6 other words, you have a -- that's the whole design of
7 this statute.

8 Would the insurance company -- if you were
9 representing the insurance company, would you tell the
10 insurance company that they were completely safe in
11 paying the benefits to the first spouse even if there's
12 going to be a suit afterwards.

13 MR. RUTTENBERG: Absolutely, Your Honor.

14 JUSTICE KENNEDY: Or would the insurance
15 company itself be under some liability?

16 MR. RUTTENBERG: Justice Kennedy, that's
17 the -- the whole point, is that the insurance company
18 isn't --

19 JUSTICE KENNEDY: That's the design of the
20 statute.

21 MR. RUTTENBERG: That's the design of the
22 statute.

23 JUSTICE KENNEDY: But I'm just wondering
24 whether under State law the insurance company, if it --
25 if it knows this doesn't have some duty to refrain from

1 making the payment or to put it in escrow or to
2 interplead.

3 MR. RUTTENBERG: Not at all. The statute's
4 specifically written so that the former spouse becomes
5 personally liable to the widow or whoever was entitled
6 to it. It's designed to make the --

7 JUSTICE KENNEDY: And if you're representing
8 the insurance company, you wouldn't say you better
9 interplead to be on the safe side?

10 MR. RUTTENBERG: I think this Court can
11 establish the -- I think they have established under the
12 Kennedy case that they have a duty to pay the designated
13 beneficiary. In Kennedy, with regards to ERISA and
14 whether or -- it was very clear that the insurance --
15 the plan administrator has to pay. So I think that
16 there is no concern at all for the insurance company.

17 JUSTICE GINSBURG: Mr. Ruttenberg, how do
18 you get to this notion that administrative convenience
19 is all that is involved? After all, this is an
20 employee's life insurance and the Government is saying
21 to the employee, the beneficiary is your free choice,
22 you can pick anyone, your spouse, a charity, it's your
23 choice, but we want you to know that, although you make
24 it and you can change it any time you want, if you don't
25 change it that will be it.

1 That -- so it's giving, the employee,
2 control over the proceeds of his or her life insurance.
3 Why isn't that a purpose along with administrative
4 convenience?

5 MR. RUTTENBERG: I believe that the purpose
6 of FEGLIA was -- the other main stated purpose was that
7 Congress was trying to offer life insurance similar to
8 what was being offered by private companies, and they're
9 acting as an employer in this regard. And just like
10 with private group life insurance, most people think
11 that the beneficiary designations are going to control
12 where that money goes and -- and the same with FEGLIA.

13 But also, most everyone expects when they
14 get divorced that their assets are going to be subject
15 to State divorce law. And I'm not suggesting that
16 Congress wasn't concerned with employees carrying out
17 their responsibilities to their families. I'm
18 suggesting Congress is using the State law. Congress
19 doesn't want to be the one that makes sure that those
20 responsibilities are carried out. They're relying on
21 State law and they've developed a scheme that allows
22 State law to help make sure those duties are carried
23 out.

24 JUSTICE ALITO: If an insured, after making
25 a designation of a beneficiary, writes a will and leaves

1 the insurance proceeds to a different person, the
2 Federal law would still, as interpreted by the State
3 Supreme Court, require the money to be paid to the
4 designated beneficiary, wouldn't it?

5 MR. RUTTENBERG: Yes, Your Honor.

6 JUSTICE ALITO: And what does that say about
7 Congress's supposed desire to ensure that the money goes
8 to the person that the insured wants it to go to?

9 MR. RUTTENBERG: Well, Justice Alito, after
10 the money has been paid out in a case like that, it is
11 possible that there are State laws involved that -- that
12 would allow someone to have a suit -- institute a suit
13 against who received that. But Congress doesn't want
14 OPM or MetLife to have anything to do with that. They
15 just want OPM and MetLife to be able to do the job of --
16 of paying out.

17 JUSTICE ALITO: Well, the point is if
18 Congress's objective, if one of its objectives in
19 addition to administrative convenience was to effectuate
20 the will of the insured, then I don't see why it would
21 provide for Federal law to override a subsequent will
22 which directly expresses the desire of the insured.

23 MR. RUTTENBERG: I don't think FEGLIA says
24 that. What it says is --

25 JUSTICE GINSBURG: You would agree with

1 that? I assume you would agree with what Justice Alito
2 just said?

3 MR. RUTTENBERG: Yes.

4 JUSTICE GINSBURG: That it has only to do
5 with administrative convenience?

6 MR. RUTTENBERG: Well, I don't want to say
7 that it has only to do with that. That's one of the --
8 the -- that's the reason, though, that everything ends
9 once the benefits are paid out.

10 JUSTICE GINSBURG: Why should this scheme be
11 treated differently than the National Service Life
12 Insurance and the successor law in Wissner and Ridgway?
13 Those operated the same way. They said the person who
14 designates says who gets it and if you -- the only way
15 you can change it is to have a change of beneficiary
16 form filed with your employer, if you don't do that,
17 whatever you've said is where the money goes.

18 MR. RUTTENBERG: There's -- there's a -- you
19 have to compare the FEGLIA and the SGLIA to get the
20 intent of Congress. You want to -- this Court should
21 look at the text of FEGLIA and it should look at the
22 legislative history, and there's five main differences I
23 can point to which suggest that Congress intended
24 something different.

25 The first is that FEGLIA doesn't have an

1 anti-attachment provision.

2 JUSTICE GINSBURG: But the two decisions
3 that dealt with the anti-attachment, they gave that as
4 an alternative ground of decision. It was quite
5 separate and discrete from saying what's on the
6 beneficiary, the designation that controls. And they
7 say, and also there's this anti-attachment.

8 MR. RUTTENBERG: Absolutely, Your Honor.
9 But when it did the holding regarding the order of
10 precedence, it didn't just look at the order of
11 precedence. It looked at all of SGLIA and it looked at
12 the differing provisions, and one of the provisions I
13 think that indicates Congress's intent in SGLIA is the
14 anti-attachment provision.

15 So if the second holding was not there at
16 all with regards strictly to the anti-attachment
17 provision, Ridgway still would have held the way it held
18 because it was looking at all of SGLIA.

19 But that's not the only difference. There's
20 also the divorce provision which they have in Federal
21 group life insurance and they -- they didn't put that
22 into the servicemen's group life. They let FEGLIA
23 people assign their benefits. There's a limited express
24 preemption provision in FEGLIA which they didn't feel
25 was needed in SGLIA. And when you --

1 JUSTICE GINSBURG: In -- in your briefs in
2 this case, you put in the assignment provision as -- as
3 an afterthought. I think you did not put it in your
4 main brief. It came up only in your reply brief, and
5 you didn't put it in the appendix to your main brief.

6 MR. RUTTENBERG: That's correct, Your Honor.

7 JUSTICE GINSBURG: So you -- you seem to
8 assign lesser importance to it.

9 MR. RUTTENBERG: I do assign less importance
10 to the assignment provision than I would to the -- the
11 lack of an anti-attachment provision or the -- the
12 divorce provision or the express preemption provision or
13 even the legislative history. But I do still think that
14 it is a factor to be looked at.

15 And in this case, again pointing to the Rose
16 case, in the Rose case, they were dealing with the same
17 anti-attachment provision in Rose and even there
18 determined that Congress did not intend that those
19 dollars should be kept away from the -- the family
20 members in that case.

21 So I would again analogize that to this case
22 because in the Rose case, they specifically
23 distinguished those two cases on those grounds.

24 JUSTICE SCALIA: I keep -- I keep coming
25 back to the explicit divorce provision, which says when

1 there's a divorce decree, only properly filed, it,
2 without a change by the beneficiary, goes to the new
3 wife, okay. And you're telling us that even without a
4 divorce decree, the new wife will effectively get the
5 money so long as there is a State law that says all --
6 all proceeds from insurance companies for policies
7 entered into before the -- before the -- the decedent
8 was divorced will go to the new wife.

9 It seems to me that is such a -- such a
10 blatant frustration of the -- not just the purpose of --
11 of the very text of the divorce provision in the law,
12 which says only if there is a decree properly filed will
13 it go to the new wife. And you're saying, well, it
14 doesn't really matter so long as there's a State law
15 which says it will go to the new wife without a -- you
16 know.

17 MR. RUTTENBERG: There -- there are two --
18 two points I'd like to make there. One, I don't think
19 Congress was trying to get involved in the field of
20 divorce. I don't think Congress with that law was
21 saying all other domestic relations laws don't apply, we
22 only want to apply these laws. There's so many other
23 domestic relations laws like community property rights
24 and waivers. And children even in these divorce
25 decrease can't file it, and then children would lose out

1 if their parents didn't know enough to file those
2 things. So the first point is that I don't think that
3 that's what Congress was trying to do there with that
4 provision.

5 And the second point is that it's not a
6 superfluous provision. If I had a divorce decree, I
7 would much rather file it with the court so that I knew
8 it would get paid directly to me than have to deal with
9 it after it's been paid out. So I think it is -- it
10 absolutely serves a purpose, but it doesn't serve the
11 purpose of trying to -- to get -- I think Congress was
12 trying to make a statement, we want these benefits to be
13 subject to State laws, not that we want these
14 benefits --

15 JUSTICE SOTOMAYOR: So why not just say
16 that? If that was Congress's intent, why limit it to a
17 specific form of State borders involving divorce,
18 annulment, et cetera? Why not just simply say in 80 --
19 80705(e) that any court order could change the order of
20 precedence, if that was Congress's intent?

21 MR. RUTTENBERG: I believe that's basically
22 what they did because the other type of court orders
23 such as a waiver wouldn't make sense to put in there.
24 You -- you would not -- if I was paying attention if
25 I -- if I had filed -- if I had a divorce decree that

1 said my ex-wife waived a right to my insurance, it
2 doesn't make sense that I'd do that additional filing
3 because that wouldn't add anything to it.

4 So Congress was saying that court orders can
5 -- that direct where money goes does that. And the
6 other types of laws, like community property laws or
7 waivers or this type of law, they would have to have a
8 separate section for each of them to draft it in such a
9 way that it wouldn't interfere -- it would make it easy
10 on OPM to know where to pay the money.

11 And I think what they were doing is they
12 weren't saying any types of State laws can come in
13 because they didn't -- they wanted to deal with the ones
14 that were clear, that were easy for them to deal with,
15 so that they -- so that OPM and MetLife knows where to
16 pay the money.

17 JUSTICE GINSBURG: Mr. Ruttenberg, what
18 about the interest, which was an interest in Wissner and
19 in Ridgway, of uniformity under this Federal insurance
20 scheme? That is, one of the hypotheticals in the briefs
21 was the deceased dies domiciled in Virginia. Wife
22 number 1 comes from X State, not Virginia, wife number 2
23 two from Y State, and they all have different --
24 different rules. The employee, in the course of her
25 career, may move around from here to there.

1 But if you follow the Federal law, then it's
2 going to be the same for every employee. These are the
3 rules for every employee no matter where he or she
4 lives, no matter the location of the spouse. And then
5 we don't have these messy problems with choice of law.

6 MR. RUTTENBERG: Congress was definitely
7 concerned with -- and -- and as, again, I keep referring
8 to the Rose case because I think it worded it well, it
9 was concerned with the uniformity of the administration
10 of the policy. And they wanted OPM and MetLife to
11 uniformly, no matter where anyone lived, be able to pay
12 those out.

13 But just like a private employee, people
14 expect their assets to be subject to divorce laws after
15 they're paid out. And OPM is not involved in anything
16 messy, MetLife is not involved in anything messy after
17 it's paid out. They're treating them just like any
18 other employee in a private company.

19 And -- and Congress stated that the purpose,
20 the other -- there are two main purposes. The other
21 main purpose of FEGLIA was to create an insurance plan
22 that was on par with, not the special kind of insurance
23 that we're offering to servicemen. Congress with
24 Servicemen's Group Life took out a magic wand and said,
25 we're going to make these insurance proceeds special,

1 and gave special characteristic -- characteristics to
2 the Servicemen's Group Life Insurance proceeds.

3 But they did not do that -- well, the reason they
4 did that with Servicemen's Group Life Insurance is
5 because they wanted servicemen, no matter how much they
6 messed up their finances, to know that they could leave
7 some asset to whoever they wanted to, regardless of --

8 JUSTICE SCALIA: Why don't they just say,
9 look, if the -- if the State law says so, the -- the new
10 wife gets it? Why didn't they just say that instead
11 of -- you're telling me they set up this -- this sick
12 system in which the -- the former wife or the new wife
13 has to sue the former wife to get the money that was
14 paid to the former wife. I mean, my goodness. What --
15 our courts are crowded with -- with suits between, you
16 know -- why -- why don't they just say, if the State law
17 says it, it goes to the new wife.

18 MR. RUTTENBERG: The -- the first reason is
19 because I don't think they wanted to try and come up
20 with every permutation of divorce law. The second
21 reason, you -- you characterize this as a -- a "sick
22 law," but 48 States incorporate laws which have this
23 concept. They say, in your will, reference to your
24 former spouse are deemed divorced, they just haven't
25 because the nature of asset transfers in probate has

1 developed over time -- not all the States have caught
2 up, only 18 have.

3 But if I may reserve the rest of my time for
4 rebuttal.

5 CHIEF JUSTICE ROBERTS: Thank you, counsel.
6 Mr. Johnson.

7 ORAL ARGUMENT OF MR. STEFFEN N. JOHNSON
8 ON BEHALF OF THE RESPONDENT

9 MR. JOHNSON: Thank you, Mr. Chief Justice,
10 and may it please the Court:

11 On two separate occasions, this Court has
12 held that order of precedence provisions like those
13 found in FEGLIA grant the insured an absolute personal
14 right to, quote, "direct that the proceeds belong to the
15 named beneficiary and no other."

16 In fact, Congress enacted FEGLIA just four
17 years after this Court's decision in *Wissner*, where this
18 Court held that the MISLA order of precedence was the
19 controlling section of the Act, was forceful and clear
20 in defining the scope of this Federal right, preempted
21 post-distribution efforts to nullify the insured's
22 choice, quote, "whether directed at the very money it
23 received from the Government or an equivalent amount."
24 And *Ridgway*, of course, extended *Wissner* to SGLIA, which
25 contained the very same text at issue here.

1 Now, for a number of reasons we think that
2 this case is even easier than Wissner and Ridgway.
3 First of all, we are not dealing with the generally
4 applicable body of law, we are dealing with something
5 that is quite openly an attempt to do an end run on
6 preemption. The only thing that triggers section D is
7 being a former spouse and receiving the proceeds. The
8 statute doesn't make any inquiry into intent, into
9 whether there has been a tort or an independent
10 contract. It simply reallocates the proceeds. It
11 substitutes a new beneficiary.

12 CHIEF JUSTICE ROBERTS: Of course, if the
13 ex-wife were in bankruptcy proceedings this money would
14 not necessarily go to her, right? It would go to the
15 bankruptcy estate?

16 MR. JOHNSON: It -- it might, Your Honor.

17 CHIEF JUSTICE ROBERTS: So -- so why is the
18 State law any different --

19 MR. JOHNSON: Well, Congress --

20 CHIEF JUSTICE ROBERTS: -- with respect to
21 divorces?

22 MR. JOHNSON: Well, one reason, Your Honor,
23 is 8705(e). Congress has spoken specifically to the
24 question of divorce in this context, and I think, as
25 Justice Scalia's and Justice Sotomayor's questions

1 indicate, it didn't simply say that the existence of a
2 decree or the fact of divorce would result in a change
3 in who receives the proceeds. It said a very specific
4 type of divorce decree would change the result.

5 JUSTICE ALITO: Well, my problem with this
6 case is, other than administrative convenience, I don't
7 see what purpose Congress could have thought that this
8 provision serves.

9 MR. JOHNSON: Your Honor, there is certainly
10 elements of administrative convenience in the statute.

11 JUSTICE ALITO: What else -- what other --
12 what other objective do you think Congress was trying to
13 achieve?

14 MR. JOHNSON: It was trying to provide a
15 benefit to Federal employees, and that benefit was to be
16 able to provide benefits, life insurance proceeds, to
17 the person of their choice.

18 JUSTICE ALITO: Why would it override the
19 expressed will of an insured in -- the express desire of
20 an insured in, for example, a will that's executed after
21 the time of the assignment --

22 MR. JOHNSON: In the case of --

23 JUSTICE ALITO: -- and the designation of
24 the beneficiary.

25 MR. JOHNSON: In the case of a will, Your

1 Honor, 8705(a) makes specific provision for the filing
2 of a will with the employing officer, OPM. And so
3 Congress has taken account of wills and it's rejected
4 the idea of just a free-floating inquiry into intent.
5 There were pre -- I should add that the will language of
6 8705(a) was added to the statute in 1966. There had
7 been some lower court cases that had sort of taken this
8 approach to wills contrary to the regulations that
9 existed that said -- that designated beneficiary
10 provision should govern. Congress rejected a
11 free-floating inquiry into intent.

12 JUSTICE ALITO: But why? You've got a --
13 you've got a designation of the beneficiary in 1975,
14 let's say, and then you have a will that's executed in
15 2005. Why would Congress want the -- the designation of
16 the beneficiary so far in the past to override the
17 expression of the desire of the insured in the
18 subsequent will?

19 MR. JOHNSON: Congress wanted a simple rule,
20 and it determined that the best evidence of intent is
21 the actual naming of the beneficiary. Section D doesn't
22 make --

23 JUSTICE ALITO: How can that be the best
24 designation of intent? You have a designation long in
25 the past, then you have a will that says that, the

1 insurance proceeds I'm leaving to a different person.
2 How is the earlier designation of a beneficiary a better
3 expression of intent?

4 MR. JOHNSON: Well, I think you can debate
5 what the better policy default is, but when you have a
6 long-standing policy that says to Federal employees,
7 this is what we take account of and we give top -- top
8 billing, top priority to the naming of the
9 beneficiary --

10 JUSTICE GINSBURG: Mr. Johnson, that -- that
11 is in the OPM manual, but I think Mr. Ruttenberg pointed
12 out that it's 106-some-odd pages. How are employees
13 covered by this insurance, how are they informed about
14 what the beneficiary designation means?

15 MR. JOHNSON: The simplest answer, Justice
16 Ginsburg, is the form itself. It's Form SF-2823. This
17 form says, "Keep your designation current. Submit a new
18 one if your intentions change, for example, due to a
19 change in family status such as marriage, divorce, et
20 cetera."

21 So it's not simply the OPM handbook. It's
22 the form itself. And this form is publicly available,
23 of course, on -- on OPM's website, but also was
24 substantially the same and contained this language at
25 the time of Warren Hillman's designation in this case.

1 JUSTICE BREYER: Well, why do you resist --
2 I'm just curious. I -- I would have thought that to
3 answer Justice Alito you were going to say the answer is
4 it isn't more accurate. If you write a will and say I
5 want these proceeds now to go to my second wife, that is
6 a better expression of the person's intent. But if you
7 open that door, you'll get other wills that aren't quite
8 so clear. And that's the problem that Congress faced.

9 MR. JOHNSON: That's exactly right, Your
10 Honor. And of course there is an --

11 JUSTICE BREYER: Is that right?

12 MR. JOHNSON: Well -- well, it is true that
13 if you open the door you'll have this be problem.
14 Congress wanted a clear, simple, and certain rule,
15 and -- and it spoke both to the issues of wills in
16 8705(a) and to the issues of divorce decrees in 8705(e).

17 JUSTICE ALITO: Well, that provides a
18 simple -- that provides a -- a simple rule for the
19 people who are affected by this dispute, and those are
20 the people who are -- who stand to benefit either under
21 the designation of the beneficiary or under the will.
22 But what -- why does Congress care about that? There
23 are a lot of messy domestic relations issues out there
24 in the States. That's what Congress was doing?

25 They said, you know, these -- that State

1 domestic relations law leads to a lot of nasty and
2 difficult disputes -- you know, Bleak House. Let's
3 intervene and let's simplify this with a simple rule.
4 Do you think that's what was involved here?

5 MR. JOHNSON: I think that's part of what
6 was involved here. I think -- I think they wanted to
7 ensure uniformity for Federal employees who might work
8 in different jurisdictions or move around. I think, you
9 know, you have a situation where wills are addressed in
10 the statute, divorce decrees are addressed in the
11 statute, and I would note that section D doesn't make
12 any inquiry into intent. It's simply -- it's just an
13 automatic blunt rule that the divorce itself has the
14 effect of rerouting the proceeds.

15 This Court has taken a very practical and
16 realistic approach to issues of preemption in a -- in a
17 wide variety of context, just this term in the Wos case,
18 we said, the Court said, that -- that it's not simply a
19 matter of semantics. In Free v. Bland, one of this
20 Court's precedents involving U.S. savings bonds, there
21 was a dispute between the husband of the decedent, who
22 had an absolute right of survivorship under Federal laws
23 governing the U.S. savings bond, and a son who would
24 have taken under a will, and the -- the Texas Supreme
25 Court, as the case came to it, said, we can simply honor

1 title by saying, yes, the husband does have an absolute
2 right of survivorship, but we'll order the husband to
3 reimburse the -- the estate.

4 And this is what this Court said in
5 reversing, "Viewed realistically, the State has rendered
6 the award of title meaningless. If the State can
7 frustrate the party's attempt to use the bond's
8 survivorship provision through the simple expedient of
9 requiring the survivor to reimburse the estate, the
10 State has interfered directly with the legitimate
11 exercise of the power of the Federal Government."

12 JUSTICE BREYER: If he is right, if the only
13 consideration that led Congress to make this absolute
14 rule and so forth the underlying the previous holdings,
15 if the only consideration were ease of administration by
16 the Federal administrator, this statute wouldn't
17 undermine it. So -- so isn't that true?

18 I mean, the Federal administrator writes the
19 check to the person that's on the list. This is a
20 matter after the check gets mailed, or this doesn't
21 undermine it at all, there is no problem.

22 MR. JOHNSON: If the question is whether
23 it's possible to comply with the mandate to pay the
24 named beneficiary --

25 JUSTICE BREYER: Yes. And if that were the

1 only consideration, administration, this doesn't
2 interfere with Federal administration. So in order to
3 find something to -- to interfere with, we have to
4 figure that they are trying to protect an interest like
5 the following, the person is married twice. He secretly
6 wants to leave the insurance in the name of his first
7 wife while pretending to the second wife it was just an
8 oversight.

9 (Laughter.)

10 JUSTICE BREYER: I mean, that's what we have
11 to make up in order to --

12 CHIEF JUSTICE ROBERTS: He's -- by the time
13 the issue comes up.

14 JUSTICE BREYER: Is there anything else?

15 MR. JOHNSON: In -- in many cases, Your
16 Honor, the former spouse will have the care of children.
17 There are lots of reasons why one might want to leave
18 benefits to a former spouse.

19 JUSTICE BREYER: Well, maybe we should say,
20 look, this is a statute that is absolute. There is no
21 interest. All this does is run around, without being
22 too pejorative, it runs around the earlier cases, which
23 is your basic point. It's absolute.

24 MR. JOHNSON: And that would be -- and that
25 would be a short route to affirmance, Your Honor.

1 JUSTICE BREYER: Right.

2 MR. JOHNSON: This Court has spoken to
3 the -- the nature of language like this. SGLIA is
4 essentially identical. Wissner in fact predates the
5 adoption of FEGLIA, and so Congress had the benefit of
6 that ruling when it was deciding to enact an -- an order
7 of precedence in this statute. The only real difference
8 between the order of precedence here and the order of
9 precedence in Wissner is that the range of choice is
10 even broader. Wissner --

11 JUSTICE KAGAN: But I guess the question,
12 Mr. Johnson, is whether we just got it wrong there.
13 Because if you look at this statute, it seems -- you
14 know, if you were just doing it as a matter of first
15 impression, that what Congress wanted was a clear and
16 uniform rule to allow it to pay benefits quickly and
17 easily without any discussion or investigation of a
18 person's true intent.

19 But that after that, why does Congress have
20 an interest any further? And if a State has a law that
21 says, really, we think the better measure of intent is
22 something else, then we should let the States go ahead
23 with their law.

24 MR. JOHNSON: It's conceivable, Your Honor,
25 but at a minimum, I think this -- this Court has said

1 repeatedly that when this Court's ruled on the meaning
2 of language and -- and a similar language is adopted in
3 a new statute, it's given the judicial interpretation
4 unless Congress says otherwise. But here --

5 JUSTICE SCALIA: Yes, I guess -- I guess you
6 might -- you might respond also that, you know, it's
7 characterized by -- by your -- your friend as a -- a
8 State law having to do with -- with marriage and -- and
9 so forth. Maybe.

10 But maybe it's just a State law having to do
11 with discernment of intent. And here you have a Federal
12 statute and I guess the Federal Congress's assertion of
13 what's the best discernment of intent, in the natural
14 order of things, ought to prevail over the State's
15 assessment of what's -- what's the clearest expression
16 of intent, right?

17 I don't know why it's a family law provision
18 as much as it is a provision of what the presumed intent
19 of -- of a decedent is. And here the -- the Federal
20 Government has spoken to it with respect to a Federal
21 statute, and I don't know why it isn't intruding upon
22 State family law for -- for the Federal Government to --
23 to assert, in its own right, intent under this statute
24 is -- is determined this way.

25 MR. JOHNSON: Either way, it's preemptive,

1 Your Honor. If that is the purpose behind it, Congress
2 has a very different means of determining intent. And
3 as the Court's repeatedly said, where you have
4 conflicting means, you have preemption. But Section D
5 doesn't call for any inquiry into intent. It makes an
6 assumption about intent, and then based on that
7 assumption, the rule is automatic.

8 So whether it's a statute about intent, it's
9 preempted because Congress says the best evidence of
10 intent is what you do on the beneficiary form, or
11 whether it's about -- about divorce, it's preempted
12 because Congress has spoken to when divorce will affect
13 the enjoyment of proceeds by the beneficiary.

14 JUSTICE GINSBURG: Mr. Johnson, there are at
15 least one case where the State law would override the
16 beneficiary designation and that's obviously if the
17 beneficiary murdered the -- the insured. So how does
18 this scheme to displace the beneficiary designated in
19 the policy in the Slayer case requires State law? Is
20 that --

21 MR. JOHNSON: Your Honor, I believe -- I do
22 agree with the premise of your question was that the --
23 which is that the Slayer would not be paid. The path to
24 that is, I think, as follows. I think if the Slayer
25 Statute looks like a typical Slayer Statute, then it's

1 going to speak to -- it's going to relate to life
2 insurance and the express preemption provision would
3 probably kick in and it would call for a different
4 result, it would be preempted.

5 But there's a longstanding Federal common
6 law rule, and the lower courts addressing this situation
7 have also held that -- that that informs the Federal
8 statute here. The leading case from this Court is an
9 1886 decision, National Mutual Life Insurance v.
10 Armstrong, and it is such a well-established rule that I
11 think Congress can be viewed as having incorporated that
12 rule under the statute by not having specifically
13 overridden it.

14 JUSTICE GINSBURG: So you would get there by
15 a Federal common law rule, but then who would get the
16 proceeds? If the designated beneficiary is out because
17 of the Federal common law that excludes a Slayer, where
18 would you go next? You'd go to State law, right?

19 MR. JOHNSON: No, it would go to the order
20 of precedence. So --

21 JUSTICE GINSBURG: The next one is -- it
22 would be --

23 MR. JOHNSON: It would be the widow or
24 the -- then the children and so forth -- in that
25 scenario.

1 If I may speak to Petitioner's argument
2 about the Rose v. Rose case, I think that that case is
3 really doubly inapposite. First of all, as this Court
4 acknowledged in Rose, the statute there was designed to
5 benefit dependents as well as the veteran. And it
6 distinguished Wissner and Ridgway as cases involving a
7 situation where Congress wanted to give an absolute
8 right to the -- the insured to ensure that they would
9 enjoy the benefits.

10 Second of all, at the -- at the State law
11 level, again, there's no guarantee that -- that the
12 operation of Section D will result in the proceeds going
13 to one's family. It could end up going to a perfect
14 stranger under the next of kin provision. And in many
15 cases, of course, the former spouse would be the one
16 caring for children. So it's really, I think, doubly
17 inapposite.

18 JUSTICE KENNEDY: In the -- in the Wissner
19 case, there was a community property State. Do you
20 know, under the statute we're dealing with here, is
21 community property in those States also preempted so
22 that the -- the insured is the sole owner of the policy?

23 MR. JOHNSON: I think that would be right,
24 Your Honor. I mean, that is the holding of --

25 JUSTICE KENNEDY: Because it was a specific

1 provision on that point in *Wissner*, and I -- or the
2 Court so read it. And I take it the same provision
3 applies -- exists in this statute?

4 MR. JOHNSON: Yes. The *Wissner* court said
5 that the order of precedence there was the controlling
6 provision of the Act, and it said the same thing again
7 in *Wissner* concerning SGLIA's order of precedence and it
8 said it displaces inconsistent State law. *Wissner*, of
9 course, in that case it was community property law. In
10 *Ridgway*, it was State constructive trust law.

11 I would like to speak to the anti-attachment
12 provision. As Justice Ginsburg noted, that was an
13 alternative holding of the Court in these earlier cases,
14 and the Court referred to the order of precedence
15 provision as controlling. *Rose v. Rose* itself
16 acknowledged that the anti-attachment provision was an
17 alternative holding of the Court. And we think that
18 that is sufficient to -- the order of precedence
19 provision is sufficient to resolve this issue.
20 Certainly, Congress, looking at the Court's opinion in
21 1954 when it enacted FEGLIA, would have been likely to
22 conclude that.

23 In -- in summary, Your Honors, this case is
24 not a difficult case for a finding of preemption under
25 this Court's precedence. It's really a much easier

1 case. It's not dealing with generally applicable law.
2 It's governed squarely by precedent, and the statute at
3 issue here, Section D, is effectively an attempt to do
4 an end run on the will of Congress.

5 If there are no further questions, I'll
6 defer to Ms. Goldenberg.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.
8 Ms. Goldenberg.

9 ORAL ARGUMENT OF ELAINE J. GOLDENBERG,
10 FOR UNITED STATES, AS AMICUS CURIAE,
11 SUPPORTING RESPONDENT

12 MS. GOLDENBERG: Mr. Chief Justice, and may
13 it please the Court:

14 Section D seeks to substitute a new
15 beneficiary in place of the one that Federal law
16 mandates, and it does that through an attempted end run
17 around Federal preemption. I'd like to start off by
18 talking about the purpose of the Federal law, which
19 several of the Court's prior questions spoke to.

20 The purpose here is to get benefits to the
21 designated beneficiary for that person's beneficial
22 enjoyment. That's the purpose that the Court found in
23 very similar language in *Ridgway* and *Wissner*. And
24 that's --

25 CHIEF JUSTICE ROBERTS: Well, how far -- how

1 far does that go? Obviously, the benefit becomes the
2 property of the named beneficiary, but it's not like to
3 her enjoyment. She may want to spend it on something,
4 but it's going to be -- have to go through bankruptcy,
5 it's going to have to go through other claims like any
6 other property under State law.

7 MS. GOLDENBERG: That's true, Your Honor,
8 but the designated beneficiary is benefiting in a sense
9 when that money is used to pay that person's
10 obligations. So we don't deny that because there's no
11 anti-attachment provision here, the designated
12 beneficiary could be subject to a contracts judgment, a
13 tort judgment, it could have to pay other outstanding
14 obligations that that person has.

15 But that is extremely different than a law
16 like the one we have here that says, in effect, to the
17 designated beneficiary, you know what, we don't really
18 think you're entitled to this money. We don't really
19 think you deserve it. We don't think you have, in
20 effect, equitable title to it. We think that belongs to
21 somebody else and so we're just going to transfer the
22 proceeds to that other person. That's an extremely
23 different situation.

24 JUSTICE ALITO: Well, why would Congress
25 want to make sure that the money goes to the designated

1 beneficiary where there is a very clear expression of
2 intent on the part of the insured that the money go
3 someplace else.

4 MS. GOLDENBERG: Well, I think there are a
5 number of purposes served by that, and that speaks to
6 the will question that Your Honor asked earlier.

7 For one thing, it creates certainty in the
8 process, not only for the insured, but also for the
9 beneficiary, who's not going to have to face some kind
10 of long legal contest over the money that may eat up the
11 proceeds in attorney's fees and costs.

12 And that was a purpose that Congress
13 specifically articulated when it made the 1966 amendment
14 to the statute.

15 It also --

16 JUSTICE ALITO: These arguments seem to be
17 circular. You're saying that the -- the reason for
18 making sure that the designated beneficiary gets the
19 money instead of the person whom the insured has
20 subsequently and very clearly said he or she wants to
21 get the money is to make sure that the designated
22 beneficiary gets the money, and gets it without any
23 hassle.

24 MS. GOLDENBERG: Well, it creates a clear
25 and uniform set of rules that everyone can abide by.

1 And also, I think in the case of a will, it protects the
2 insured from fraud. That was another purpose that
3 Congress gave in 1966. They don't want a situation
4 where someone is going to find a will after the fact and
5 say: Look, this shows what this person really thought.

6 The designated beneficiary form is the
7 expression of -- of the person's intent, and that's
8 particularly true here, where you have a very clear
9 network of rules set up by the Federal Government that
10 tells insureds what they must do if they want to change
11 their beneficiary designation, and tells them that their
12 beneficiary designation is going to --

13 JUSTICE KENNEDY: But your -- your concern
14 is there might be fraudulent wills?

15 MS. GOLDENBERG: It's possible that if you
16 are looking outside the designated -- the beneficiary
17 designation form, that you may have people trying to
18 come up with some other expressions of intent. It could
19 be a will, it could be a letter, it could be other
20 things.

21 JUSTICE KENNEDY: Well, it seems to me
22 that's grasping at straws.

23 MS. GOLDENBERG: Well, Your Honor, that's,
24 as I say, one of the purposes that Congress gave when it
25 passed that amendment in 1966 that said you don't

1 conduct this free-floating inquiry into the insured's
2 intent. You don't ask, what would the insured have said
3 if someone had asked them in the last moment of their
4 life what they had -- what would they want.

5 You look at the designated beneficiary, you
6 look at the beneficiary designation form. And as I was
7 saying, in -- in part, that's because it's so easy to
8 change. It's a one-page form. It's very simple. And
9 insureds are told over and over again, you have to keep
10 your beneficiary designation up to date. Divorce
11 doesn't --

12 JUSTICE ALITO: When are they told -- when
13 are they told over and over again?

14 MS. GOLDENBERG: Well, they --

15 JUSTICE ALITO: They -- they get the form
16 when they -- when they sign up for the life insurance,
17 so they periodically get notices from OPM saying, now,
18 remember, you've designated so-and-so as your
19 beneficiary, you know, annually, like in the open
20 season? Do you really want to keep this person as your
21 beneficiary?

22 MS. GOLDENBERG: OPM actually does instruct
23 agencies to periodically remind employees that they must
24 keep their beneficiary designations up to date.
25 Obviously, there is no way to know exactly what

1 Mr. Hillman was told here --

2 JUSTICE ALITO: Nobody has told me that in
3 many years.

4 (Laughter.)

5 MS. GOLDENBERG: I hope it's clear at this
6 point.

7 CHIEF JUSTICE ROBERTS: Well, but I mean, we
8 do get these cases over and over again. I mean, it is
9 the sort of thing that -- it may be very easy to do, but
10 it is the sort of thing that people often overlook.

11 MS. GOLDENBERG: That may be, but,
12 nevertheless, Federal law sets up the rules and expects
13 people to abide by them. And what you can't have is the
14 opposite rule because that just creates tremendous
15 confusion. And I think the conflict here is very
16 starkly illustrated when you think about what somebody
17 who designated their spouse and got divorced and then
18 wanted to keep that person as their beneficiary would
19 hear from the Federal Government if they went and said,
20 what should I do? I really want my ex-spouse to keep
21 being the beneficiary. What ought I to do?

22 And if they were to consult the FEGLIA
23 handbook, if they were to ask OPM, they would be told,
24 do nothing. That beneficiary designation is valid, it's
25 going to remain valid until you change it yourself.

1 Now, that person's intent would be overridden by section
2 D, which would essentially pluck the benefits right out
3 of the hand of the ex-spouse that that person meant them
4 to go to and transfer them over to somebody else.

5 And that makes essentially the focus of the
6 Federal law on the designated beneficiary meaningless.
7 It makes the award of the proceeds to that person a
8 meaningless gesture. That's the language that this
9 Court used in *Free v. Bland*, which was a case about
10 ownership of Federal bonds. And that can't be what
11 Congress intended. And you can't have these two
12 different default rules operating together and -- and
13 have a system that works.

14 JUSTICE ALITO: Do you think that situation
15 comes up a lot, where an -- an insured wants to make
16 sure that a former spouse gets more money than the
17 spouse is entitled to under the divorce decree?

18 MS. GOLDENBERG: I certainly think it's
19 possible, Your Honor. I think every person is
20 different, every divorce is different.

21 JUSTICE ALITO: Well, everything is
22 possible. Do you think that's a common situation?
23 That's what Congress was --

24 MS. GOLDENBERG: I don't know --

25 JUSTICE ALITO: -- was concerned about?

1 MS. GOLDENBERG: -- I don't know if I can
2 speak to how common it is, but, as we said in our brief,
3 there may be many reasons why somebody would want to
4 give their ex-spouse the insurance proceeds. And I
5 think what Congress was concerned with was effectuating
6 the intent of the insured as expressed in their
7 designated -- in their designation form -- so that there
8 would be a clear system, a uniform system.

9 And again, so that the beneficiary would be
10 protected against actions much like this one, that
11 create all this confusion over who is actually entitled
12 to the proceeds, and may -- may eat them up in -- in
13 legal fees.

14 In addition, I'd point out that if
15 Petitioner is correct, then you could have other State
16 laws that are like this one that try to rewrite the
17 order of precedence. And essentially, the Federal order
18 of precedence could be completely undone by State law.

19 You'd also have a situation in which Federal
20 employees attempting to figure out where their benefits
21 are really going to go would have to make themselves
22 familiar with State law. As Justice Ginsburg pointed
23 out earlier, there may be serious choice of law problems
24 there. The vast majority of these employees are not
25 attorneys and this is a tremendous burden to place on

1 them.

2 It's much simpler and clearer to have the
3 system that we have under Federal law, and that's why
4 that system was set up.

5 If there are no further questions --

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Ruttenberg, you have 3 minutes
8 remaining.

9 REBUTTAL ARGUMENT OF DANIEL H. RUTTENBERG

10 ON BEHALF OF THE PETITIONER

11 MR. RUTTENBERG: Thank you, Your Honor.

12 First, a quick point about the -- the FEGLI
13 handbook. The FEGLI handbook came out in July 2008.
14 Warren Hillman died in July 2008. So what the FEGLI
15 handbook said -- I don't know that it applies in this
16 case.

17 But even if it did, what it says is a
18 recitation of the Egelhoff holding. All it says is, "a
19 divorce does not invalidate a designation that means
20 your former spouse is a beneficiary." It says nothing
21 about domestic relations laws not applying after that,
22 and that's exactly what -- this Court found in Egelhoff.

23 Another -- another point that my friend made
24 was with regard to Servicemen's Group Life Insurance and
25 the holding in Ridgway was based on the fact that these

1 insurance proceeds belong to the designated beneficiary
2 to the exclusion of all others. That was one of the
3 main purposes this Court depended upon in ruling that
4 the -- the State law was preempted.

5 And you can't say that in this case because
6 those proceeds can belong to -- there's express
7 enactments which allow to you assign it, and allow a
8 Federal -- a divorce decree to direct where those go.
9 So it can't be said in -- with FEGLIA that those
10 proceeds belong to the designated beneficiary to the
11 exclusion of all others.

12 And the example that Mr. Chief Justice gave
13 with regard to bankruptcy, the -- in the case of a
14 bankruptcy, that's not benefiting the designated
15 beneficiary because all their debts are being discharged
16 anyways. So in that situation, it's solely benefiting
17 the creditors.

18 I also wanted to address one of Justice
19 Scalia's comments. Justice Scalia was suggesting that
20 this is not a divorce law and is not subject to the
21 preemption. But the preemption analysis with regards --
22 there were I think two reasons he suggested that. One
23 was it's a Federal act, and they applied in Ridgway,
24 which was dealing with the Federal Act, the Servicemen's
25 Group Life Insurance, they did apply the preemption

1 analysis there. It was overcome, but they applied it.

2 And this Court's case in Egelhoff also
3 recognized that the statute, very similar section A, the
4 Washington version of section A, was a divorce/probate
5 type of law, both of which are historical police powers.

6 The -- the only other comment I would like
7 to make is with regard to the Slayer statutes. Many
8 State Slayer statutes are drafted with the identical
9 language of section D, which says if preempted, then
10 there can be a State law cause of action. They're --
11 they're based on the same uniform code, and they use the
12 same language.

13 And if there are no other questions, I just
14 would like to say what an honor it's been today and cede
15 the rest of my time.

16 CHIEF JUSTICE ROBERTS: Thank you, counsel.

17 The case is submitted.

18 (Whereupon, at 11:00 a.m., the case in the
19 above-entitled matter was submitted.)

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