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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 :

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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 --

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.

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

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

25                   JUSTICE ALITO: If an insured, after making

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

6 MR. RUTTENBERG: Yes, Your Honor.

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

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

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

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

1 JUSTICE GINSBURG: You would agree with  
2 that? I assume you would agree with what Justice Alito  
3 just said?

4 MR. RUTTENBERG: Yes.

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

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

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

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

1           The first is that FEGLIA doesn't have an  
2 anti-attachment provision.

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

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

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

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

1 was needed in SGLIA. And when you --

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

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

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

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

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

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

25 JUSTICE SCALIA: I keep -- I keep coming

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

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

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

1 decrease can't file it, and then children would lose out  
2 if their parents didn't know enough to file those  
3 things. So, the first point is that I don't think that  
4 that's what Congress was trying to do there with that  
5 provision.

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

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

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

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

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

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

18 JUSTICE GINSBURG: Mr. Ruttenberg, what  
19 about the interest, which was an interest in Wissner and  
20 in Ridgway, of uniformity under this Federal insurance  
21 scheme? That is, one of the hypotheticals in the briefs  
22 was: The deceased dies domiciled in Virginia. Wife No.  
23 1 comes from X State, not Virginia, Wife No. 2 two from  
24 Y State, and they all have different -- different rules.  
25 The employee, in the course of her career, may move

1 around from here or there.

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

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

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

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

1 we're going to make these insurance proceeds special,  
2 and gave special characteristic -- characteristics to  
3 the Servicemen's Group Life Insurance proceeds.

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

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

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

1 the nature of asset transfers in probate has developed  
2 over time -- not all the States have caught up; only 18  
3 have.

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

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Johnson.

8 ORAL ARGUMENT OF MR. STEFFEN N. JOHNSON

9 ON BEHALF OF THE RESPONDENT

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

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

17 In fact, Congress enacted FEGLIA just 4  
18 years after this Court's decision in *Wissner*, where this  
19 Court held that the MISLA order of precedence was the  
20 controlling section of the Act, was forceful and clear  
21 in defining the scope of this Federal right, preempted  
22 post-distribution efforts to nullify the insured's  
23 choice, quote, "whether directed at the very money it  
24 received from the Government or an equivalent amount."  
25 And *Ridgway*, of course, extended *Wissner* to SGLIA, which

1 contained the very same text at issue here.

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

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

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

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

20 MR. JOHNSON: Well, Congress --

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

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

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

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

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

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

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

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

23 MR. JOHNSON: In the case of --

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

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

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

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

24                   JUSTICE ALITO: How can that be the best  
25 designation of intent? You have a designation long in

1 the past, then you have a will that says that: The  
2 insurance proceeds I'm leaving to a different person.  
3 How is the earlier designation of a beneficiary a better  
4 expression of intent?

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

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

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

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

1 the time of Warren Hillman's designation in this case.

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

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

13 JUSTICE BREYER: Is that right?

14 MR. JOHNSON: Well -- well, it is true that  
15 if you open the door you'll have this be problem.  
16 Congress wanted a clear, simple, and certain rule,  
17 and -- and it spoke both to the issues of wills in  
18 8705(a) and to the issues of divorce decrees in 8705(e).

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

1 in the States. That's what Congress was doing?

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

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

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

1 have taken under a will, and the -- the Texas Supreme  
2 Court, as the case came to it, said: We can simply  
3 honor title by saying, yes, the husband does have an  
4 absolute right of survivorship, but we'll order the  
5 husband to reimburse the -- the estate.

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

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

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

24 MR. JOHNSON: If the question is whether  
25 it's possible to comply with the mandate to pay the

1 named beneficiary --

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

11 I mean, that's what we have to make up in  
12 order to --

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

15 JUSTICE BREYER: Is there anything else?

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

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

25 MR. JOHNSON: And that would be -- and that

1 would be a short route to affirmance, Your Honor.

2 JUSTICE BREYER: Right.

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

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

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

25 MR. JOHNSON: It's conceivable, Your Honor,

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

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

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

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

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

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

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

22           MR. JOHNSON:  Your Honor, I believe -- I do  
23 agree with the premise of your question was that the --  
24 which is that the Slayer would not be paid.  The path to  
25 that is, I think, as follows.  I think if the Slayer

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

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

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

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

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

24 MR. JOHNSON: It would be the widow or  
25 the -- then the children and so forth, in that 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 that  
18 is sufficient to -- the order of precedence provision is  
19 sufficient to resolve this issue. Certainly, Congress,  
20 looking at the Court's opinion in 1954 when it enacted  
21 FEGLIA, would have been likely to conclude that.

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

1 It's governed squarely by precedent, and the statute at  
2 issue here, Section D, is effectively an attempt to do  
3 an end run on the will of Congress.

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

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Ms. Goldenberg.

8 ORAL ARGUMENT OF ELAINE J. GOLDENBERG,

9 FOR UNITED STATES, AS AMICUS CURIAE,

10 SUPPORTING RESPONDENT

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

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

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

24 CHIEF JUSTICE ROBERTS: Well, how far -- how  
25 far does that go? Obviously, the benefit becomes the

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

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

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

23 JUSTICE ALITO: Well, why would Congress  
24 want to make sure that the money goes to the designated  
25 beneficiary where there is a very clear expression of

1 intent on the part of the insured that the money go  
2 someplace else.

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

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

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

14 It also --

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

23 MS. GOLDENBERG: Well, it creates a clear  
24 and uniform set of rules that everyone can abide by.  
25 And also, I think in the case of a will, it protects the

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

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

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

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

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

22 MS. GOLDENBERG: Well, Your Honor, that's,  
23 as I say, one of the purposes that Congress gave when it  
24 passed that amendment in 1966 that said you don't  
25 conduct this free-floating inquiry into the insured's

1 intent. You don't ask, what would the insured have said  
2 if someone had asked them in the last moment of their  
3 life what they had -- what would they want.

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

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

13 MS. GOLDENBERG: Well, they --

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

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

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

3 (Laughter.)

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

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

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

21 And if they were to consult the FEGLIA  
22 handbook, if they were to ask OPM, they would be told:  
23 Do nothing; that beneficiary designation is valid; it's  
24 going to remain valid until you change it yourself.  
25 Now, that person's intent would be overridden by section

1 D, which would essentially pluck the benefits right out  
2 of the hand of the ex-spouse that that person meant them  
3 to go to and transfer them over to somebody else.

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

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

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

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

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

24 JUSTICE ALITO: -- was concerned about?

25 MS. GOLDENBERG: -- I don't know if I can

1 speak to how common it is, but, as we said in our brief,  
2 there may be many reasons why somebody would want to  
3 give their ex-spouse the insurance proceeds. And I  
4 think what Congress was concerned with was effectuating  
5 the intent of the insured as expressed in their  
6 designated -- in their designation form -- so that there  
7 would be a clear system, a uniform system; and again, so  
8 that the beneficiary would be protected against actions  
9 much like this one, that create all this confusion over  
10 who is actually entitled to the proceeds, and may -- may  
11 eat them up in -- in legal fees.

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

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

25 It's much simpler and clearer to have the

1 system that we have under Federal law, and that's why  
2 that system was set up.

3 If there are no further questions --

4 CHIEF JUSTICE ROBERTS: Thank you, counsel.

5 Mr. Ruttenberg, you have 3 minutes  
6 remaining.

7 REBUTTAL ARGUMENT OF DANIEL H. RUTTENBERG

8 ON BEHALF OF THE PETITIONER

9 MR. RUTTENBERG: Thank you, Your Honor.

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

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

21 Another -- another point that my friend made  
22 was with regard to Servicemen's Group Life Insurance and  
23 the holding in Ridgway was based on the fact that these  
24 insurance proceeds belong to the designated beneficiary  
25 to the exclusion of all others. That was one of the

1 main purposes this Court depended upon in ruling that  
2 the -- the State law was preempted.

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

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

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

25 And this Court's case in Egelhoff also

1 recognized that the statute, very similar section A, the  
2 Washington version of section A, was a divorce/probate  
3 type of law, both of which are historical police powers.

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

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

14           CHIEF JUSTICE ROBERTS: Thank you, counsel.  
15           The case is submitted.

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

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