1   IN THE SUPREME COURT OF THE UNITED STATES

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3 JACQUELINE HILLMAN,   :

4   Petitioner   :   No. 11-1221

5   v.   :

6 JUDY A. MARETTA   :

7 - - - - - - - - - - - - - - - - - x

8   Washington, D.C.

9   Monday, April 22, 2013

10

11   The above-entitled matter came on for oral

12 argument before the Supreme Court of the United States

13 at 10:05 a.m.

14 APPEARANCES:

15 DANIEL H. RUTTENBERG, ESQ., Vienna, Virginia; on behalf

16   of Petitioner.

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

18   of Respondent.

19 ELAINE J. GOLDENBERG, ESQ., Assistant to the Solicitor

20   General, Department of Justice, Washington, D.C.; for

21   United States, as amicus curiae, supporting

22   Respondent.

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1   C O N T E N T S

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1   P R O C E E D I N G S

2   (10:05 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   first this morning in Case 11-1221, Hillman v. Maretta.

5   Mr. Ruttenberg?

6   ORAL ARGUMENT OF DANIEL H. RUTTENBERG

7   ON BEHALF OF THE PETITIONER

8   MR. RUTTENBERG: Mr. Chief Justice, and may

9   it please the Court:

10   Congress intentionally designed FEGLIA so

11   that the Federal interest ends once the insurance

12   proceeds are paid out. FEGLIA was established to enable

13   Federal employees to carry out their responsibilities to

14   their families.

15   And Congress knew that some of its employees

16   would get divorced, and it was depending upon State laws

17   to help make sure that these family duties and

18   obligations were carried out because Congress doesn't

19   want to get into the -- the business of regulating the

20   divorce.

21   JUSTICE SCALIA: Why did it make an

22   exception then only for divorce decrees?

23   MR. RUTTENBERG: Justice --

24   JUSTICE SCALIA: I mean, there is an express

25   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   exception 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 is 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 the designated.

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 is 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 confirmed 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 did'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, references 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   contains 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 a 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 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 issue 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, so 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 have 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'd have to be dead

13   by the time 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 State 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,

34

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 for

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 you to 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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