SUPREME COURT OF THE UNITED STATES

No. 99–1529

DONNA RAE EGELHOFF, PETITIONER *v.* SAMANTHA EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL PARENT KATE BREINER, AND DAVID EGELHOFF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

[March 21, 2001]

JUSTICE BREYER, with whom JUSTICE STEVENS joins, dissenting.

Like JUSTICE SCALIA, I believe that we should apply normal conflict pre-emption and field pre-emption principles where, as here, a state statute covers ERISA and non-ERISA documents alike. *Ante*, at 1 (concurring opinion). Our more recent ERISA cases are consistent with this approach. See *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund,* 520 U. S. 806, 812–813 (1997) (rejecting literal interpretation of ERISA's pre-emption clause); *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N. A., Inc.,* 519 U. S. 316, 334 (1997) (narrowly interpreting the clause); *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.,* 514 U. S. 645, 656 (1995) ("go[ing] beyond the unhelpful text [of the clause] and the frustrating difficulty of defining its key term, and look[ing] instead to the objectives of the ERISA statute as a guide"). See also *Boggs* v. *Boggs,* 520 U. S. 833, 841 (1997) (relying on conflict pre-emption principles instead of ERISA's pre-emption clause). And I fear that our failure to endorse this "new approach" explicitly, *Dillingham*, *supra*, at 336 (SCALIA, J., concurring), will continue to produce an "avalanche of litigation," *De Buono*, *supra*, at 809, n. 1, as courts struggle to interpret a clause

that lacks any "discernible content," *ante*, at 1 (SCALIA, J., concurring), threatening results that Congress could not have intended.

I do not agree with JUSTICE SCALIA or with the majority, however, that there is any plausible pre-emption principle that leads to a conclusion that ERISA pre-empts the statute at issue here. No one could claim that ERISA pre-empts the entire *field* of state law governing inheritance— though such matters "relate to" ERISA broadly speaking. See *Travelers*, *supra*, at 655. Neither is there any direct conflict between the Washington statute and ERISA, for the one nowhere directly contradicts the other. Cf. *ante*, at 7 (claiming a "direc[t] conflic[t]" between ERISA and the Washington statute). But cf. *ante*, at 4 (relying upon the "relate to" language in ERISA's pre-emption clause).

The Court correctly points out that ERISA requires a fiduciary to make payments to a beneficiary "in accordance with the documents and instruments governing the plan." 29 U. S. C. §1104(a)(1)(D). But nothing in the Washington statute requires the contrary. Rather, the state statute simply sets forth a default rule for interpreting documentary silence. The statute specifies that a nonprobate asset will pass at A's death "as if" A's "former spouse" had died first— *unless the "instrument governing disposition of the nonprobate asset expressly provides otherwise."* Wash. Rev. Code §11.07.010(2)(b)(i) (1994) (emphasis added). This state-law rule is a rule of interpretation, and it is designed to carry out, not to conflict with, the employee's likely intention as revealed in the plan documents.

There is no direct conflict or contradiction between the Washington statute and the terms of the plan documents here at issue. David Egelhoff's investment plan provides that when a "beneficiary designation" is "invalid," the "benefits will be paid" to a "surviving spouse," or "if there is no surviving spouse," to the "children in equal shares."

App. 40. The life insurance plan is silent about what occurs when a beneficiary designation is invalid. The Washington statute fills in these gaps, *i.e.*, matters about which the documents themselves say nothing. Thus, the Washington statute specifies that a beneficiary designation— here "Donna R. Egelhoff wife" in the pension plan— is invalid where there is no longer any such person as Donna R. Egelhoff, wife. See Appendix, *infra*. And the statute adds that in such instance the funds would be paid to the children, who themselves are potential pension plan beneficiaries.

The Court's "direct conflict" conclusion rests upon its claim that "administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents." *Ante*, at 5. But the Court cannot mean "identified *anywhere* in the plan documents," for the Egelhoff children were "identified" as recipients in the pension plan documents should the initial designation to "Donna R. Egelhoff wife" become invalid. And whether that initial designation became invalid upon divorce is a matter about which the plan documents are silent.

To refer to state law to determine whether a given name makes a designation that is, or has become, invalid makes sense where background property or inheritance law is at issue, say, for example, where a written name is potentially ambiguous, where it is set forth near, but not in, the correct space, where it refers to a missing person perhaps presumed dead, where the name was written at a time the employee was incompetent, or where the name refers to an individual or entity disqualified by other law, say, the rule against perpetuities or rules prohibiting a murderer from benefiting from his crime. Why would Congress want the courts to create an ERISA-related federal property law to deal with such problems? Regardless, to refer to background state law in such circumstances does not *directly* conflict with any explicit ERISA provision, for no provision

of ERISA forbids reading an instrument or document in light of state property law principles. In any event, in this case the plan documents *explicitly* foresee that a beneficiary designation may become "invalid," but they do not specify the invalidating circumstances. *Supra*, at 3. To refer to state property law to fill in that blank cannot possibly create any direct conflict with the plan documents.

The majority simply denies that there is any blank to fill in and suggests that the plan documents require the plan to pay the designated beneficiary under all circumstances. See *ante*, at 5, n. 1. But there is nonetheless an open question, namely, whether a designation that (here explicitly) refers to a wife remains valid after divorce. The question is genuine and important (unlike the imaginary example in the majority's footnote). The plan documents themselves do not answer the question any more than they describe what is to occur in a host of other special circumstances (*e.g.*, mental incompetence, intoxication, ambiguous names, etc.). To determine whether ERISA permits state law to answer such questions requires a careful examination of the particular state law in light of ERISA's basic policies. See *ante*, at 4–5; *infra*, at 5–8. We should not short–circuit that necessary inquiry simply by announcing a "direct conflict" where none exists.

The Court also complains that the Washington statute restricts the plan's choices to "two." *Ante*, at 8. But it is difficult to take this complaint seriously. After all, the two choices that Washington gives the plan are (1) to comply with Washington's rule or (2) not to comply with Washington's rule. What other choices could there be? A state statute that asks a plan to choose whether it intends to comply is not a statute that directly conflicts with a plan. Quite obviously, it is possible, not "'impossible,'" to comply with both the Washington statute and federal law. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 873 (2000).

The more serious pre-emption question is whether this state statute "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Ibid.* (quoting *Hines* v. *Davidowitz,* 312 U. S. 52, 67 (1941)). In answering that question, we must remember that petitioner has to overcome a strong presumption *against* pre-emption. That is because the Washington statute governs family property law— a "field of traditional state regulation," where courts will not find federal pre-emption unless such was the "'clear and manifest purpose of Congress,'" *Travelers*, 514 U. S., at 655 (quoting *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. 218, 230 (1947)), or the state statute does "'major damage' to 'clear and substantial' federal interests," *Hisquierdo* v. *Hisquierdo*, 439 U. S. 572, 581 (1979) (quoting *United States* v. *Yazell,* 382 U. S. 341, 352 (1966)). No one can seriously argue that Congress has *clearly* resolved the question before us. And the only damage to federal interests that the Court identifies consists of the added administrative burden the state statute imposes upon ERISA plan administrators.

The Court claims that the Washington statute "interferes with nationally uniform plan administration" by requiring administrators to "familiarize themselves with state statutes." *Ante*, at 6–7. But administrators have to familiarize themselves with state law in any event when they answer such routine legal questions as whether amounts due are subject to garnishment, *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 838 (1988), who is a "spouse," who qualifies as a "child," or when an employee is legally dead. And were that "familiarizing burden" somehow overwhelming, the plan could easily avoid it by resolving the divorce revocation issue in the plan documents themselves, stating expressly that state law does not apply. The "burden" thus reduces to a one-time requirement that would fall primarily upon the

few who draft model ERISA documents, not upon the many who administer them. So meager a burden cannot justify pre-empting a state law that enjoys a presumption against pre-emption.

The Court also fears that administrators would have to make difficult choice-of-law determinations when parties live in different States. *Ante*, at 6. Whether this problem is or is not "major" in practice, the Washington statute resolves it by expressly setting forth procedures whereby the parties or the courts, *not* the plan administrator, are responsible for resolving it. See §§11.07.010(3)(b)(i)–(ii) (stating that a plan may "without liability, refuse to pay or transfer a nonprobate asset" until "[a]ll beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer" or "[t]he payment or transfer is authorized or directed by a court of proper jurisdiction"); §11.07.010(3)(c) (plan may condition payment on provision of security by recipient to indemnify plan for costs); §11.07.010(2)(b)(i) (plan may avoid default rule by expressing its intent in the plan documents).

The Court has previously made clear that the fact that state law "impose[s] some burde[n] on the administration of ERISA plans" does not necessarily require pre-emption. *De Buono*, 520 U. S., at 815; *Mackey*, *supra*, at 831 (upholding state garnishment law notwithstanding claim that "benefit plans subjected to garnishment will incur substantial administrative burdens"). Precisely, what is it about this statute's requirement that distinguishes it from the "'myriad state laws'" that impose some kind of burden on ERISA plans? *De Buono, supra*, at 815 (quoting *Travelers*, 514 U. S., at 668).

Indeed, if one looks beyond administrative burden, one finds that Washington's statute poses no obstacle, but furthers ERISA's ultimate objective— developing a fair system for protecting employee benefits. Cf. *Pension Benefit Guaranty Corporation* v. *R. A. Gray & Co.,* 467 U. S.

717, 720 (1984). The Washington statute transfers an employee's pension assets at death to those individuals whom the worker would likely have wanted to receive them. As many jurisdictions have concluded, divorced workers more often prefer that a child, rather than a divorced spouse, receive those assets. Of course, an employee can secure this result by changing a beneficiary form; but doing so requires awareness, understanding, and time. That is why Washington and many other jurisdictions have created a statutory assumption that divorce works a revocation of a designation in favor of an ex-spouse. That assumption is embodied in the Uniform Probate Code; it is consistent with human experience; and those with expertise in the matter have concluded that it "more often" serves the cause of "[j]ustice." Langbein, The Nonprobate Revolution and the Future of the Law of Succession, 97 Harv. L. Rev. 1108, 1135 (1984).

In forbidding Washington to apply that assumption here, the Court permits a divorced wife, who *already* acquired, during the divorce proceeding, her fair share of the couple's community property, to receive in addition the benefits that the divorce court awarded to her former husband. To be more specific, Donna Egelhoff already received a business, an IRA account, and stock; David received, among other things, 100% of his pension benefits. App. 31–34. David did not change the beneficiary designation in the pension plan or life insurance plan during the 6-month period between his divorce and his death. As a result, Donna will now receive a windfall of approximately $80,000 at the expense of David's children. The State of Washington enacted a statute to prevent precisely this kind of unfair result. But the Court, relying on an inconsequential administrative burden, concludes that Congress required it.

Finally, the logic of the Court's decision does not stop at divorce revocation laws. The Washington statute is virtu-

ally indistinguishable from other traditional state-law rules, for example, rules using presumptions to transfer assets in the case of simultaneous deaths, and rules that prohibit a husband who kills a wife from receiving benefits as a result of the wrongful death. It is particularly difficult to believe that Congress wanted to pre-empt the latter kind of statute. But how do these statutes differ from the one before us? Slayer statutes– like this statute– "gover[n] the payment of benefits, a central matter of plan administration." *Ante*, at 5. And contrary to the Court's suggestion, *ante*, at 9–10, slayer statutes vary from State to State in their details just like divorce revocation statutes. Compare Ariz. Rev. Stat. Ann. §14–2803(F) (1995) (requiring proof, in a civil proceeding, under preponderance of the evidence standard); Haw. Rev. Stat. §560:2–803(g) (1999) (same), with Ga. Code Ann. §53–1–5(d) (1997) (requiring proof under clear and convincing evidence standard); Me. Rev. Stat. Ann., Tit. 18–A, §2–803(e) (1998) (same); and Ala. Code. §43–8–253(e) (1991) (treating judgment of conviction as conclusive when it becomes final); Me. Rev. Stat. Ann., Tit 18–A, §2–803(e) (1998) (same), with Ariz. Rev. Stat. Ann. §14–2803(F) (1995) (treating judgment of conviction as conclusive only after "all right to appeal has been exhausted"); Haw. Rev. Stat. §560:2–803(g) (1999) (same). Indeed, the "slayer" conflict would seem more serious, not less serious, than the conflict before us, for few, if any, slayer statutes permit plans to opt out of the state property law rule.

"ERISA pre-emption analysis," the Court has said, must "respect" the "separate spher[e]" of state "authority." *Fort Halifax Packing Co.* v. *Coyne,* 482 U. S. 1, 19 (1987) (quoting *Alessi* v. *Raybestos-Manhattan, Inc.,* 451 U. S. 504, 522 (1981)) (internal quotation marks omitted). In so stating, the Court has recognized the practical importance of preserving local independence, at retail, *i.e.*, by applying pre-emption analysis with care, statute by statute, line by

line, in order to determine how best to reconcile a federal statute's language and purpose with federalism's need to preserve state autonomy. Indeed, in today's world, filled with legal complexity, the true test of federalist principle may lie, not in the occasional constitutional effort to trim Congress' commerce power at its edges, *United States* v. *Morrison,* 529 U. S. 598 (2000), or to protect a State's treasury from a private damages action, *Board of Trustees of Univ. of Ala.* v. *Garrett,* 531 U. S. ___ (2001), but rather in those many statutory cases where courts interpret the mass of technical detail that is the ordinary diet of the law, *AT&T Corp.* v. *Iowa Utilities Bd.,* 525 U. S. 366, 427 (1999) (BREYER, J., concurring in part and dissenting in part).

In this case, "field pre-emption" is not at issue. There is no "direct" conflict between state and federal statutes. The state statute poses no significant obstacle to the accomplishment of any federal objective. Any effort to squeeze some additional pre-emptive force from ERISA's words (*i.e.,* "relate to") is inconsistent with the Court's recent case law. And the state statute before us is one regarding family property— a "fiel[d] of traditional state regulation," where the interpretive presumption against pre-emption is particularly strong. *Travelers,* 514 U. S., at 655. For these reasons, I disagree with the Court's conclusion. And, consequently, I dissent.

APPENDIX TO OPINION OF BREYER, J.

X 21609 REV 11/87

DESIGNATION OF BENEFICIARY FORM

ORGN. NO.	LAST NAME	FIRST	MIDDLE INITIAL	HOURLY ☒ SALARY ☐	SOCIAL SECURITY NO.
T.3200	EGELHOFF	DAVID	A		569-70-6114

BIRTH DATE	DATE EMPLOYED	DATE MARRIED	SINGLE, WIDOWED, OR DIVORCED
7-26-49	12-9-88	11-12-88	☐

Designated hereon is the beneficiary of beneficiaries for the Group Plan Benefits for which I am eligible under the Group Policies issued to The Boeing Company. This designation shall remain in effect until I revoke it in writing.

DOD 7-8-94

BENEFICIARY FOR GROUP LIFE AND ACCIDENTAL DEATH INSURANCE
(PLEASE PRINT) If married woman use first name

First Name	Middle Initial	Last Name	Relationship
DONNA	R	EGELHOFF	WIFE

TODAY'S DATE 12-7-88

Coverage Effective Date 2-1-88
FOR COMPANY USE ONLY

EMPLOYEE'S SIGNATURE David A. Egelhoff