No. 11-1221

In the Supreme Court of the United States

JACQUELINE HILLMAN, PETITIONER

v.

JUDY A. MARETTA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), 5 U.S.C. 8701 *et seq.*, and its implementing regulations state that FEGLI benefits "shall be paid" to the beneficiary properly designated by the insured, 5 U.S.C. 8705(a), and specify that the "right" of the insured to designate that beneficiary at any time cannot be waived or restricted, 5 C.F.R. 870.802(f). It is undisputed that FEGLIA preempts state laws like Section 20-111.1(A) of the Virginia Code, which purport to revoke automatically an insured's designation of his spouse as the beneficiary of his life insurance upon the entry of a divorce decree terminating the insured's marriage.

Section 20-111.1(D) of the Virginia Code provides that if Section 20-111.1(A)'s revocation-upon-divorce provision "is preempted by federal law" with respect to the payment of a death benefit and the insured's former spouse receives a death-benefit payment to which another person would have been entitled if Section 20-111.1(A) had "not [been] preempted," then the former spouse shall be "personally liable [to that other person] for the amount of the payment." The question presented is:

Whether FEGLIA and its implementing regulations preempt Section 20-111.1(D)'s authorization of a state-law cause of action against the insured's designated beneficiary to obtain the amount of life insurance benefits that FEGLIA required to be paid to the designated beneficiary.

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J. Rodney Johnson, *Wills, Trusts, and Estates*, 43 U. Rich. L. Rev. 435 (2008) 20

Office of Personnel Management:

FEGLI Program Booklet, 2004, http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/federalbooklet.pdf 4

Federal Employees' Group Life Insurance Program Handbook, 2008, http://www.opm.gov/insure/life/reference/handbook/feglihandbook.pdf 2, 4, 28

Life Insurance, http://www.opm.gov/insure/life (last visited Apr. 1, 2013) 1

Life Insurance: Designating a Beneficiary, http://www.opm.gov/healthcare-insurance/life-insurance/designating-a-beneficiary/#url=Forms-for-Designations (last visited Apr. 1, 2013) 4

Office of the Inspector General, *Final Audit Report No. 2A-II-00-09-065* (2010) 1

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INTEREST OF THE UNITED STATES

The question presented in this case is whether the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), ch. 752, 68 Stat. 736 (5 U.S.C. 8701 *et seq.*), and its implementing regulations preempt a state law relating to entitlement to federal insurance proceeds. The Office of Personnel Management (OPM) is a party to the life insurance contract that provides coverage for over four million federal employees and retirees pursuant to FEGLIA; it also plays a central role in administration of the life-insurance program, which distributes more than $2 billion every year to beneficiaries from a federal fund. See OPM, *Life Insurance*, http://www.opm.gov/insure/life; OPM, Office of the Inspector General, *Final Audit Report No. 2A-II-00-09-065*, at 2 (2010). Moreover, the federal government pays at least one-third of the premiums for an employee's basic in-

surance coverage under FEGLIA. See GAO, *Federal Employees' Group Life Insurance: Retirement Benefit and Retained Asset Account Disclosures Could Be Improved* 1-4, 12 (2011) (*GAO Report*). In response to this Court's invitation, the United States submitted a brief suggesting that the Court grant the petition for a writ of certiorari. Accordingly, the United States has a substantial interest in the resolution of this case.

STATEMENT

1. Congress enacted FEGLIA to provide "a low-cost group life insurance program to Federal employees." H.R. Rep. No. 2579, 83d Cong., 2d Sess. 4-5 (1954); accord S. Rep. No. 1654, 83d Cong., 2d Sess. 2, 5 (1954). FEGLIA authorizes OPM to purchase one or more group life insurance policies to provide benefits under the Act. 5 U.S.C. 8709(a). OPM has accordingly entered into a group life insurance contract (Group Policy No. 17000-G) with the Metropolitan Life Insurance Company (MetLife). See OPM, *Federal Employees' Group Life Insurance (FEGLI) Program Handbook* 1, 181 (2008) (*Handbook*), http://www.opm.gov/insure/life/reference/handbook/feglihandbook.pdf. MetLife pays all FEGLI benefits "according to [that] contract," 5 C.F.R. 870.102, by drawing on a federal fund, see *GAO Report* 12.

a. Congress has specified that FEGLI benefits "shall be paid" upon an insured employee's death to the employee's survivors under a statutory "order of precedence." 5 U.S.C. 8705(a); see 5 C.F.R. 870.801(a). If the employee has "designated" a "beneficiary * * * in a signed and witnessed writing received before death" in the appropriate federal office, the benefits "shall be paid" to that designated beneficiary. 5 U.S.C. 8705(a); see 5 C.F.R. 870.802(b). "[A] designation, change, or

cancellation of beneficiary in a will or other document not so executed and filed has no force or effect." 5 U.S.C. 8705(a). If the employee fails properly to designate a surviving beneficiary, the insurance proceeds "shall be paid" to the employee's relatives or estate in the order specified in 5 U.S.C. 8705(a). *Ibid.* After a designated beneficiary, a surviving widow or widower is next in the order of precedence. *Ibid.*; see 5 U.S.C. 8705(c) (providing for "payment * * * to the claimant who in the judgment of [OPM] is equitably entitled thereto" when no party in order of precedence has claimed payment for two years).

OPM's regulations (5 U.S.C. 8716(a)) provide that an insured employee has the "right" to "change his/her beneficiary at any time without the knowledge or consent of the previous beneficiary." 5 C.F.R. 870.802(f). "This right cannot be waived or restricted." *Ibid.*[1]

There is one exception to the insured's right of designation and the requirement of payment to the designated beneficiary. Under 5 U.S.C. 8705(e), which was added to the statute in 1998, if the government receives a "court decree of divorce, annulment, or legal separation" or a "court order or court-approved property settlement agreement incident to [such a] decree" requiring the insured's FEGLI benefits to be paid to a specific person, the benefits "shall be paid (in whole or in part)" to that person "to the extent expressly provided for in the terms of" the decree, order, or agreement. 5 U.S.C. 8705(e)(1). Such a court-ordered designation is effective, however, only if a certified copy of the relevant document "is received, before the date of the covered

[1] In certain circumstances the insured can assign his interest in the insurance, including his designation right, to someone else. See 5 U.S.C. 8706(f); 5 C.F.R. 870.901(a) and (i), 870.902.

employee's death," by the appropriate federal office. 5 U.S.C. 8705(e)(2); see 5 C.F.R. 870.801(d). If so received, it will (unless modified) prevent the insured employee from "designat[ing] a different beneficiary" without the consent of the person specified. 5 C.F.R. 870.802(i)(1).

b. OPM informs insured employees that (subject to the requirements of Section 8705(e)) a FEGLI "designation of beneficiary remains valid until" the insured "submit[s] a valid new designation" or assigns his ownership rights in an irrevocable "assignment of [the] insurance," or the insured's FEGLI coverage is cancelled or terminates. *Handbook* 168-169; see 5 C.F.R. 870.802(g); OPM, *FEGLI Program Booklet* 21-22, 2004 (*Booklet*), http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/federalbooklet.pdf. OPM accordingly advises insureds that FEGLI "[b]enefits will be paid based on a valid designation, regardless of whether that designation still reflects [the insured's] intentions." *Handbook* 160; see *id.* at 13. Of particular salience, OPM informs insureds that "[a] divorce does not invalidate a designation that names [the insured's] former spouse as beneficiary," and urges an employee who divorces to be "sure" that his designation is "ac curate and reflects [his] intentions" and to "consider completing a new designation form" to "remove a former spouse." *Id.* at 160; see *id.* at 164; *Booklet* 22; OPM, *Life Insurance: Designating a Beneficiary*, http://www.opm.gov/healthcare-insurance/life-insurance/designating-a-beneficiary/#url=Forms-for-Designations.

c. In 1980, Congress amended FEGLIA to include an express preemption provision. See 5 U.S.C. 8709(d)(1). Section 8709(d)(1) states that "[t]he provisions of any

contract under [FEGLIA] which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions." *Ibid.*

The group life insurance contract between OPM and MetLife pursuant to which FEGLI benefits are paid is not in the record in this case, but the United States sought to lodge it with the Court in connection with the response to the Court's invitation to submit the views of the Solicitor General at the petition stage. With respect to payment to beneficiaries, the contract echoes FEGLIA's basic requirements. It provides that a widow is entitled to benefits only "[i]f, at the death of the Employee, there be no designated Beneficiary." Contract 25; see *id.* at 18. It also provides that "[a]ny Employee insured hereunder may designate a Beneficiary and may, from time to time, change his designation" (without any need for "[c]onsent of the Beneficiary") by "filing written notice thereof, signed and witnessed, with" the appropriate federal office prior to his death. *Id.* at 25.

2. In 1996, Warren Hillman designated respondent—then his wife—as the beneficiary of his FEGLIA life insurance. Pet. App. 4a; J.A. 31. In 1998, Warren and respondent divorced. Pet. App. 4a. Neither the divorce decree nor the associated property settlement agreement required Warren to maintain respondent as his FEGLI beneficiary. Br. in Opp. 8. In 2002, Warren married petitioner. Pet. App. 4a. Despite his divorce and subsequent marriage, Warren never changed his 1996 beneficiary designation. *Ibid.*

In 2008, Warren died. Petitioner (Warren's widow) and respondent (his ex-wife) filed claims for FEGLI benefits. Consistent with the 1996 beneficiary designation, benefits totaling $124,558.03 were paid to respondent. Pet. App. 4a.

3. In 2009, petitioner filed this civil action against respondent in a Virginia court, alleging that, under Section 20-111.1 of the Virginia Code, respondent was liable to her in an amount equal to the amount that respondent received from Warren's life insurance. Pet. App. 4a; see also J.A. 14-16 (Complaint) (alleging that respondent "had no right to receive the proceeds of her ex-husband's [FEGLI] policy" and that petitioner is the "rightful recipient," and seeking an order of payment of "funds [respondent] received from Decedent's FEGLI policy, or * * * the sum received by [respondent] as proceeds of Decedent's FEGLI policy").

a. Section 20-111.1(A) (Section A) provides that the "entry of a decree of annulment or divorce" automatically "revoke[s]" any "revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party." Va. Code Ann. § 20-111.1(A); see also *id.* § 20-111.1(B) (defining "death benefit" to include "payments under a life insurance contract"). "A death benefit prevented from passing to a former spouse by [that provision] shall [instead] be paid as if the former spouse had predeceased the decedent." *Id.* § 20-111.1(A).

The parties agree that FEGLIA preempts Section A. Pet. App. 8a. If Section A had not been preempted, it would have revoked Warren's then-existing FEGLI beneficiary designation upon the entry of his divorce decree. That revocation would then have entitled peti-

tioner, as Warren's widow, to obtain his life-insurance benefits under FEGLIA's order of precedence. See 5 U.S.C. 8705(a).

Section 20-111.1(D) (Section D) expressly provides for a back-up remedy in the event that federal law is found to preempt Section A:

> If [Va. Code Ann. § 20-111.1] is preempted by federal law with respect to the payment of any death benefit, a former spouse who, not for value, receives the payment of any death benefit that the former spouse is not entitled to under [§ 20-111.1] is personally liable for the amount of the payment to the person who would have been entitled to it were [§ 20-111.1] not preempted.

Va. Code Ann. § 20-111.1(D). Under that provision, respondent would be "personally liable" to petitioner in the amount of the payment that she received as the designated beneficiary of Warren's life insurance.[2]

b. The trial court granted summary judgment in favor of petitioner. Pet. App. 35a-58a. The court held that FEGLIA does not preempt Section D, which "imposes a constructive trust on death benefit proceeds when [Section A] is preempted." *Id.* at 36a. The court thus de-

[2] A small minority of other States have adopted similar provisions. See Pet. Br. 21-23 & nn.7-8; see also Nev. Rev. Stat. Ann. § 111.781. In 2012, Virginia amended Section 20-111.1 to add Section E, which provides that decrees of divorce or annulment entered on or after July 1, 2012 must "contain the following notice in conspicuous, bold print: * * * If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation * * * . Otherwise, existing beneficiary designations may remain in full force and effect." Va. Code Ann. § 20-111.1(E).

termined that respondent was liable to petitioner in the amount of $124,558.03—the total FEGLI benefits paid to respondent—plus interest. *Id.* at 33a.

4. a. The Virginia Supreme Court reversed and rendered judgment for respondent. Pet. App. 1a-31a. The court concluded that FEGLIA and its implementing regulations preempt Section D because that provision conflicts with federal law. *Id.* at 8a-14a.

The court explained that FEGLIA effectuates Congress's "inten[t] to grant an insured the right to name without restriction * * * the person who will receive the benefits from a FEGLI policy," such that those benefits "belong to the designated beneficiary to the exclusion of all others." Pet. App. 8a-9a; see *id.* at 12a. The court also explained that Section D's establishment of a state cause of action against a named beneficiary to whom FEGLI benefits have been paid creates "'a beneficiary interest' in the policy proceeds" for someone other than the designated beneficiary. *Id.* at 13a (quoting *Ridgway* v. *Ridgway*, 454 U.S. 46, 60 (1981)). That state-created interest in the proceeds, the court concluded, "nullifies the [insured's] choice and frustrates the deliberate purpose of Congress," which "did not intend merely for the named beneficiary in a FEGLI policy to receive the proceeds, only then to have them subject to recovery by a third party under state law." *Ibid.* (quoting *Wissner* v. *Wissner*, 338 U.S. 655, 659 (1950)).

b. Justice McClanahan (joined by Justice Millette) dissented. Pet. App. 16a-31a. The dissent opined that FEGLIA's "order of precedence" was enacted for "the purpose of providing 'administrative convenience' * * * in processing claims and distributing benefits," and that the federal interest in the FEGLI proceeds ends once

they have been "paid out to the designated beneficiary." *Id.* at 22a-23a (citation omitted); see *id.* at 24a, 26a.

SUMMARY OF ARGUMENT

Section D of the Virginia Code applies only in the event that Section A is "preempted by federal law," and aims to achieve precisely the same result that Section A otherwise would: a reshuffling of the order of insurance beneficiaries established by federal law. Section D treats the federally mandated beneficiary as a mere conduit for transfer of the FEGLI proceeds to someone lower down in the order of precedence for payment.

In *Wissner* v. *Wissner*, 338 U.S. 655 (1950), and *Ridgway* v. *Ridgway*, 454 U.S. 46 (1981), this Court held that federal insurance laws analogous to FEGLIA preempted state laws that attempted to create a new beneficiary interest by shifting insurance proceeds out of the hands of a named beneficiary. Such state laws, the Court explained, impermissibly "nullif[y] the [insured's] choice and frustrate[] the deliberate purpose of Congress," regardless of whether the order is "directed at the very money received from the Government or an equivalent amount." *Wissner*, 338 U.S. at 659.

Those decisions are controlling here. FEGLIA and its regulations establish that the benefit of the insurance policy "belong[s] to the named beneficiary and no other," *Ridgway*, 454 U.S. at 56, gives the insured the power to name the beneficiary, and forbids any general inquiry into the insured's intent. Section D second-guesses the insured's designation based on an assumption about his likely intent, enforces a policy determination that the named beneficiary is not "entitled" to receive the benefits, and effectively substitutes a new beneficiary in her stead. Va. Code. Ann. § 20-111.1(D).

Section D thus stands as an obstacle to the accomplishment of the full objectives of the federal law.

Petitioner tries to ease that conflict by emphasizing that Section D comes into play only after federal insurance proceeds have already been paid to the named beneficiary. *Wissner* and *Ridgway*, which disapproved state laws that operated similarly, foreclose that argument. Any other rule would permit States readily to evade federal preemption principles, and would destroy the certainty and uniformity that federal law guarantees by requiring insureds to attempt to ascertain how state law would affect the force of their beneficiary designations.

Petitioner also attempts to distinguish *Ridgway* by pointing to various differences between that case and this one—but none of those differences aids her. The existence of an express-preemption provision in FEGLIA "does *not* bar the ordinary working of conflict pre-emption principles or impose a special burden." *Arizona* v. *United States*, 132 S. Ct. 2492, 2505 (2012). The 1998 amendment to FEGLIA addressing divorce—which provides that a divorce decree requiring payment of insurance proceeds to a particular person will be honored if timely filed in the appropriate federal office—specifies the sole conditions under which benefits may be paid to someone other than the designated beneficiary, and shows that Congress understood that the effect of divorce on FEGLIA's rules should be addressed in FEGLIA itself. And *Ridgway* did not turn on the presence of an anti-attachment provision, or on the fact that the insurance scheme at issue benefited members of the military rather than federal employees.

Finally, petitioner's insistence that federal and state law serve the same purposes is unavailing. Even if the

purposes did align, conflict preemption would still exist because federal law gives benefits to one person and state law takes them away and gives them to someone else. But the purposes in fact are different, since federal law refuses to make the assumptions about the insured's intent on which the state law rests. Moreover, petitioner's contention that the Virginia law effectuates an insured's "true" intent is questionable. A divorced federal employee might want an ex-spouse to receive insurance benefits, and an insured with a different intent can readily act on it, particularly in light of OPM's warnings that divorce does not invalidate an existing beneficiary designation.

Because Section D conflicts with federal law, there is no need in this case to address FEGLIA's express-preemption provision, which states that "[t]he provisions of any contract under [FEGLIA] which relate to * * * payments with respect to benefits" preempt "inconsistent" state law "which relates to group life insurance." 5 U.S.C. 8709(d)(1). Were this Court to take judicial notice of the contract and consider the question, however, Section D would fall for this reason as well. The contract echoes the key provisions of the statute on the insured's power to designate a beneficiary and the named beneficiary's right to payment; Section D is inconsistent with those contractual provisions because its entire purpose and effect is to change what the contract requires and to deprive the contractual "beneficiary" of any benefit at all. Section D is also "related to" group life insurance, since it specifically mentions insurance and beneficiary designations, is concerned with entitlement to a beneficiary's proceeds, and applies only where Section A is preempted by federal law, which generally regulates group plans.

ARGUMENT

A. Section D Is Preempted Because It Conflicts With Federal Law

A state law is preempted to the extent that it conflicts with federal law. See *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 372 (2000); *Fidelity Fed. Sav. & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982) ("Federal regulations have no less pre-emptive effect than federal statutes."). Such conflict preemption occurs "where it is impossible for a private party to comply with both state and federal law" or where state law "'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Crosby*, 530 U.S. at 372-373 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)); see *Arizona* v. *United States*, 132 S. Ct. 2492, 2500-2501 (2012).

Although federal law generally has "limited application * * * in the field of domestic relations," this Court, "even in that area, has not hesitated to protect * * * rights and expectancies established by federal law against the operation of state law, or to prevent the frustration and erosion of the congressional policy embodied in the federal rights." *Ridgway* v. *Ridgway*, 454 U.S. 46, 54-55 (1981). Accordingly, state law "governing the economic aspects of domestic relations * * * must give way to clearly conflicting federal enactments" regarding such federal rights. *Ibid.*; see also, *e.g.*, *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581-583 (1979) (preempting state community property law as to federal retirement benefits, which "from their very inception have federal overtones"); *Free* v. *Bland*, 369 U.S. 663, 666 (1962).

This Court has twice applied those conflict-preemption principles to prevent state law from effec-

tively changing the order of beneficiaries in a federal insurance scheme. See *Ridgway*, 454 U.S. at 54-60; *Wissner* v. *Wissner*, 338 U.S. 655 (1950). Application of the same principles in this case dictates the same result.[3]

1. **Wissner** ***and*** **Ridgway** ***preempted state laws with the effect of changing the order of beneficiaries under federal insurance laws***

This Court's decisions in *Wissner* and *Ridgway* are part of a long line of cases that have deemed state law affecting control over federally created property rights to be an obstacle to federal law.[4] Both of those decisions involved federal insurance laws analogous to FEGLIA, and both rejected attempts under state law to reallocate insurance proceeds after they had already been paid to the federally mandated beneficiary.

In *Wissner*, which was decided just a few years before FEGLIA's 1954 enactment, the Court concluded that the National Service Life Insurance Act of 1940 (NSLIA), 38 U.S.C. 801 *et seq.*, preempted a state-law action by the insured's widow to recover a portion of the

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[3] OPM's views are entitled to at least "some weight," due to the agency's "unique understanding" of FEGLIA—which it has administered for more than 50 years as a party to the relevant insurance contract, see 5 U.S.C. 8716—and "attendant ability to make informed determinations about how state requirements may pose an 'obstacle'" to federal purposes. *Wyeth* v. *Levine*, 555 U.S. 555, 576-577 (2009) (quoting *Hines*, 312 U.S. at 67). This brief reflects OPM's consistent and long-standing position. See U.S. Amicus Br. at 7-20, *Metropolitan Life Ins.* v. *Christ*, 979 F.2d 575 (7th Cir. 1992) (Nos. 91-2515, 91-2516).

[4] See, *e.g.*, *Hisquierdo*, 439 U.S. at 581-583 (Railroad Retirement Act pensions); *Free*, 369 U.S. at 666 (United States savings bonds); *McCune* v. *Essig*, 199 U.S. 382, 390 (1905) (homesteads on public lands).

proceeds that had been paid to the insured's designated beneficiary (his mother). The "controlling section of the Act," the Court explained, provided that the insured "'shall have the right to designate the beneficiary or beneficiaries of the insurance'" and shall "'at all times have the right to change the beneficiary or beneficiaries.'" 338 U.S. at 658. The Court considered that provision clear in its "direct[ion] that the proceeds [of the insurance] belong to the named beneficiary and no other." *Ibid.* And the Court found it "plain" that ordering a portion of the proceeds to be transferred away from the mother to the plaintiff-widow would improperly "substitute[]" a new beneficiary for "the beneficiary Congress directed shall receive the insurance money." *Id.* at 658-659. Such a substitution, the Court determined, would impermissibly "nullif[y] the [insured's] choice and frustrate[] the deliberate purpose of Congress," regardless of whether the order was "directed at the very money received from the Government or an equivalent amount." *Id.* at 659.

In *Ridgway*, the Court applied *Wissner* to hold that the Servicemen's Group Life Insurance Act of 1965 (SGLIA), 38 U.S.C. 765 *et seq.* (now 38 U.S.C. 1965 *et seq.*), and its implementing regulations preempted a state-law "constructive trust imposed upon [life-insurance] policy proceeds" that had been paid to a beneficiary under that Act. 454 U.S. at 47. The Court relied on SGLIA's statutory "order of precedence," which provided for the insurance proceeds to be paid first to "such 'beneficiary or beneficiaries as the [insured] . . . may have designated.'" 454 U.S. at 52. Through that provision, the Court held, "Congress has spoken with force and clarity in directing that the pro-

ceeds belong to the named beneficiary and no other." *Id.* at 56 (quoting *Wissner*, 338 U.S. at 658).

The Court recognized a "small difference[] between the SGLIA and the predecessor NSLIA" considered in *Wissner*: SGLIA did not state that the insured was permitted to change his designated beneficiary "at all times" and "without the consent" of a prior beneficiary. *Ridgway*, 454 U.S. at 57. But the Court concluded that SGLIA's "unqualified directive to pay the proceeds to the properly designated beneficiary" under the statutory order of precedence "clearly suggests that no different result was intended by Congress." *Ibid.* And "any possible ambiguity," the Court determined, was "eliminated" by SGLIA's regulations, which gave the insured the right to change beneficiaries "at any time and without the knowledge or consent of the previous beneficiary." *Ibid.* SGLIA and its regulations thus gave the insured "an absolute right to designate the policy beneficiary" and conferred the "power to create and change a beneficiary interest," and those provisions preempted a state-law action for a constructive trust on the proceeds. *Id.* at 59-60.

2. Under **Wissner** *and* **Ridgway***, Section D is preempted*

a. The statutory and regulatory provisions at issue in this case are strikingly similar to the beneficiary-related provisions considered in *Wissner* and *Ridgway*—indeed, the statute at issue in *Ridgway* was modeled on FEGLIA, see *Stribling* v. *United States*, 419 F.2d 1350, 1353 (8th Cir. 1969). FEGLIA's statutory "order of precedence" directs that FEGLI benefits "shall be paid" first to any beneficiary properly designated by the insured, and that the insured's widow is entitled to payment only "if there is no designated beneficiary." 5 U.S.C. 8705(a); see 5 U.S.C. 8705(c). OPM's implement-

ing regulations recognize the insured's associated "right" to designate a beneficiary "at any time without the knowledge or consent of the previous beneficiary." 5 C.F.R. 870.802(f).

The purpose of those provisions, as in *Wissner* and *Ridgway*, is to "direct[] that the proceeds belong to the named beneficiary and no other." *Ridgway*, 454 U.S. at 56 (quoting *Wissner*, 338 U.S. at 658); see also *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 85 (2006) (stating that "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates" intent to "incorporate" them) (citation omitted). Except in narrow circumstances not applicable in this case, federal law provides the insured with freedom of choice in selecting a beneficiary and honors his choice scrupulously. That ensures certainty (because a properly filed beneficiary form cannot be trumped except by filing a particular kind of divorce order with the appropriate federal office) and uniformity (because federal law identifying the rightful beneficiary is the same for every federal employee across the country). It also ensures that the selected beneficiary actually benefits from receipt of the funds, without "nullif[ication]" or "substitu[tion]." *Wissner*, 338 U.S. at 658-659.

In directing that insurance proceeds belong to the "*named* beneficiary," *Ridgway*, 454 U.S. at 56 (emphasis added), Congress barred a free-floating inquiry into the insured's intent. Contra, *e.g.*, Pet. Br. 25, 52-53. A 1966 amendment to FEGLIA provides that "a designation, change, or cancellation of beneficiary in a will or other document * * * has no force or effect" if it does not meet the requirements for a beneficiary designation—that is, "a signed and witnessed writing" that is "execut-

ed and filed" in the appropriate federal office. 5 U.S.C. 8705(a). That amendment rejected *Sears* v. *Austin*, 292 F.2d 690 (9th Cir.), cert. denied, 368 U.S. 929 (1961), and other decisions that had held that the "intent of the insured should control" in a "battle * * * between possible beneficiaries." *Id.* at 692-695; see also S. Rep. No. 1064, 89th Cong., 2d Sess. 2 (1966) (Senate Report) (stating that "[t]he equities in *Sears* may have prompted the court of appeals to disregard the * * * general intent of the statute" and explaining Congress's intent "to state clearly that the order of precedence * * * shall prevail over any extraneous document"). Congress thereby protected insured employees from ambiguity and fraud, see, *e.g.*, H.R. Rep. No. 508, 89th Cong., 1st Sess. 6 (1965), and shielded designated beneficiaries from legal contests over their right to the money, see Senate Report 2.[5]

b. Like the state laws at issue in *Wissner* and *Ridgway*, Section D is preempted. Federal law declares that the benefit of the insurance policy "belong[s] to the named beneficiary and no other." *Ridgway*, 454 U.S. at 56. Section D, by contrast, takes the amount of the insurance proceeds away from a named beneficiary, on the ground that a "former spouse is not entitled" to them, and gives the money to somebody else. Va. Code Ann. § 20-111.1(D); see J.A. 14-15 (Complaint alleging respondent "had no right to receive the proceeds of her ex-husband's [FEGLI] policy" and that petitioner is the "rightful recipient"). Federal law puts the power to

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[5] As petitioner apparently concedes (Pet. Br. 19, 25), and as *Wissner* and *Ridgway* confirm, the objectives of federal law encompass far more than administrative convenience, which cannot explain why the employee's choice of beneficiary is given the highest precedence. See 5 U.S.C. 8705(a).

make or unmake a beneficiary designation in the insured's hands, and forbids reliance on other indicia of intent or any consideration of the equities if a valid beneficiary designation exists. See 5 U.S.C. 8705(a) and (c); 5 C.F.R. 870.802(f). Section D, however, overrides a valid designation based on a general assumption about the insured's likely intent and a general judgment that a current spouse should benefit. See Pet. Br. 21.

Section D thus represents a transparent attempt to "create * * * a beneficiary interest" in the policy proceeds that does not exist in federal law. *Ridgway*, 454 U.S. at 60. The cause of action that Section D creates is not based on any wrongdoing by the insured or the named beneficiary. There is nothing inherently wrongful about receipt of insurance proceeds by an ex-spouse, see *Connecticut Mut. Life Ins. Co.* v. *Schaefer*, 94 U.S. 457, 462-463 (1877), and respondent in this case is not alleged to have violated any promise, to have committed any tort, or to owe any debt, see *Ridgway*, 454 U.S. at 62-63 & n.12 (noting that because "[t]he record discloses no wrong on [the beneficiary's] part" it is "possible that depriving her of the proceeds would be as inequitable as any other result"). She is subject to this suit purely because Virginia believes that the federal order of precedence is incorrect and should be adjusted. Indeed, petitioner candidly admits as much. See Pet. Br. 56 (explaining that "the recipient is sued so as to confer the benefits of the insurance" on a different party); see also, *e.g.*, *id.* at 30.

In short, Section D treats the named beneficiary as a mere conduit for transferring the insurance proceeds to someone lower down in the federal order of precedence. That creates an intractable conflict with federal law. See *Ridgway*, 454 U.S. at 60; *Wissner*, 338 U.S. at 658-

659 (barring state-law suit against "the beneficiary Congress directed shall receive the insurance money" in order to replace her with a "substitute"); see also, *e.g.*, *McCune* v. *Essig*, 199 U.S. 382, 388-390 (1905) ("The words of the [federal] statute are clear, and express who in turn shall be its beneficiaries. The contention of appellant reverses the order of the statute, and gives the children an interest paramount to that of the widow through the laws of the State."). The conflict here is stark and arises directly from the text of FEGLIA. See *Wyeth*, 555 U.S. at 590-591 (Thomas, J., concurring in judgment); see also, *e.g.*, *Foster* v. *Love*, 522 U.S. 67, 71 (1997).

c. That conflict is not eased by the fact that Section D, rather than intercepting the payment of proceeds in the first place, creates a cause of action against the named beneficiary only after she has received the benefits and only "for the amount of the payment" received. Va. Code. Ann. § 20-111.1(D). *Wissner* found preemption even though the question was whether a judgment could be entered against the designated beneficiary for the amount of benefits that had been (and would be) paid to her. 338 U.S. at 658. As the Court explained, "[w]hether directed at the very money received from the Government [by the designated beneficiary] or an equivalent amount" in the form of a judgment against her, the operation of state law would "nullif[y] the [insured's] choice and frustrate[] the deliberate purpose of Congress." *Id.* at 659; see *id.* at 658-659. And *Ridgway* found preemption even though the question was whether a constructive trust could be imposed on insurance proceeds that had already been distributed. See *Ridgway*, 454 U.S. at 47, 49-50, 60. This Court has reached the same conclusion in a number of other cases involving

federal rights. See, *e.g.*, *Free*, 369 U.S. at 669 (holding that permitting state-law suit against heir to federal bonds for "half of the value of the bonds" would "render[] the award of title meaningless"); *Hisquierdo*, 439 U.S. at 588-589; *McCune*, 199 U.S. at 388-390; see also *Boggs* v. *Boggs*, 520 U.S. 833, 854 (1997) (explaining that "[i]t does not matter that respondents have sought to enforce their rights only after the [ERISA] benefits have been distributed since their asserted rights are based on the theory that they had an interest in the undistributed pension plan benefits").

Any other result would permit States readily to evade federal preemption principles. See *Wos* v. *E.M.A*, No. 12-98 (Mar. 20, 2013), slip. op. 7-8 ("Pre-emption is not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect."); *Free*, 369 U.S. at 669 (preempting state law that "frustrate[d] the parties' attempt to use the [federal] bonds' survivorship provision through the simple expedient of requiring the survivor to reimburse the estate of the deceased co-owner"). Indeed, the Virginia statute does not hide its evasive intent. As petitioner explains, Section D was enacted as a way of circumventing this Court's decision in *Egelhoff* v. *Egelhoff*, 532 U.S. 141 (2001), which held that ERISA preempted a state law analogous to Section A. See *id.* at 146-152; Pet. Br. 5; J. Rodney Johnson, *Wills, Trusts, and Estates*, 43 U. Rich. L. Rev. 435, 441 (2008); Unif. Probate Code § 2-804, commentary (amended 2010). Section D thus applies *only* if Section A is "preempted by federal law." Va. Code Ann. § 20-111.1(D). And whereas Section A would revoke a benefi-

ciary designation naming an ex-spouse, Section D aims to bring about the same economic effect.

If a State could avert any conflict with federal law by whisking federal benefits away from the beneficiary after they have been paid, then a State could transfer the proceeds of a federal insurance policy to anyone at all. In theory, a State could even enact a law requiring a beneficiary to give some or all of the insurance proceeds directly to the State. See 5 U.S.C. 8705(d) (providing that unclaimed proceeds escheat to federal fund under certain circumstances); *United States* v. *Oregon*, 366 U.S. 643, 649 (1961). Like Section D itself, such laws would drain the FEGLIA order-of-precedence provision of its force. See *Wos*, slip. op. 8-9; *Engine Mfrs. Ass'n* v. *South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 255 (2004).

Permitting States to use devices like Section D would also place a heavy burden on FEGLI insureds, who would need to familiarize themselves with state laws affecting their beneficiary designations. An employee who moves from State to State would have to undertake the analysis anew with each new location. Insureds would also have to stay up to date on changes in state law; after all, Section D was enacted ten years after Mr. Hillman designated respondent as his beneficiary. See J.A. 8; Va. Code Ann. § 20-111.1. And insureds might even have to attempt to ascertain and apply the correct choice-of-law rules—where, for instance, an employee is separated from his current spouse, who lives in a different State than he does, while his ex-spouse lives in yet another State. See Restatement (Second) Conflict of Laws §§ 6, 192 & cmt. d, 221 (1971). Forcing insureds to shoulder such a burden would undermine the certainty and uniformity that federal law guarantees. Cf.

Egelhoff, 532 U.S. at 147-150 & n.3 (noting that revocation-on-divorce statute placed a "burden" on administrators "exacerbated by * * * choice-of-law problems," thus "pass[ing]" the "costs of delay and uncertainty * * * on to beneficiaries"); see also *Boggs*, 520 U.S. at 850-851, 853-854; *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 350-351 (2001).

3. Petitioner's contrary arguments are without merit

a. Petitioner's efforts to distinguish *Ridgway* and *Wissner* are unavailing.

First, petitioner points out (Br. 45-47) that FEGLIA has an express preemption provision, while the statutory schemes at issue in *Ridgway* and *Wissner* did not. As this Court has explained, however, "the existence of an express pre-emption provisio[n] does *not* bar the ordinary working of conflict pre-emption principles or impose a special burden that would make it more difficult to establish the preemption of laws falling outside the clause." *Arizona*, 132 S. Ct. at 2504-2505 (quoting *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 869-872 (2000)) (internal quotation marks omitted); see *Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 65 (2002). That rule is especially apt where, as here, Congress mandates that the provisions of a relevant contract "shall supersede and preempt" state law. 5 U.S.C. 8709(d)(1). Such a provision cannot be read to deprive FEGLIA *itself* of any preemptive effect whatever.

Second, petitioner argues (Br. 42-44) that FEGLIA is distinct from both SGLIA and NSLIA due to the 1998 amendment that addresses whether a divorce decree can supersede a beneficiary designation. See 5 U.S.C. 8705(e) (providing that "[a]ny amount which would otherwise be paid to a person determined under the order of precedence * * * shall be paid * * * to another

person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation," so long as the decree "is received, before the date of the covered employee's death," in the appropriate federal office). But that amendment does not aid petitioner's cause; rather, by specifying the precise (and sole) conditions under which benefits may be paid to someone other than the designated beneficiary, it cements the conclusion that FEGLIA preempts Section D. Congress specifically considered whether and how a divorce decree ought to affect a beneficiary's right to the insurance proceeds, and gave effect to such a decree only under narrow circumstances that do not apply in this case.[6] That reflects Congress's understanding that the application of FEGLIA's rules in the context of marital dissolution is a matter to be addressed in FEGLIA itself. See *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001); *Kennedy* v. *Plan Adm'r*, 555 U.S. 285, 301-302 (2009); *Hisquierdo*, 439 U.S. at 584-587. It also demonstrates that the mere *existence* of a divorce decree cannot alter a named beneficiary's right to enjoy the benefit of the proceeds. See 5 U.S.C. 8705(e); cf. 5 U.S.C. 8705(a) (stating that "designation, change, or cancellation of beneficiary in a will or other document not * * * executed and filed has no force or effect"); *Mansell* v. *Mansell*, 490 U.S. 581, 588-589 (1989).

Third, petitioner emphasizes (Br. 38-41) that the statutory scheme at issue in *Ridgway* contained an anti-attachment provision—prohibiting any "attachment,

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[6] Congress acknowledged that, absent the exception, federal law preempted enforcement of such decrees. See H.R. Rep. No. 134, 105th Cong., 1st Sess. 2 (1997) (stating that the conclusion that "divorce decrees * * * do not affect the payment of life insurance proceeds" was "required by 5 U.S.C. § 8705").

levy, or seizure by or under any legal or equitable process whatever," 38 U.S.C. 1970(g)—that lacks any analogue in FEGLIA. That fact does not distinguish *Ridgway* or do anything to diminish the conflict between FEGLIA and Section D. *Ridgway* held that SGLIA's anti-attachment provision preempted state constructive-trust law, because imposing a constructive trust would amount to "a forbidden 'seizure' of [insurance] proceeds." *Ridgway*, 454 U.S. at 60. But it also held that SGLIA's provision governing the order of precedence, which is virtually identical to the relevant FEGLIA provision, was independently sufficient to preempt the state law at issue. See *id.* at 55-60 (noting that *Wissner* also described anti-attachment provision "as an independent ground for the result reached"); see also *Wissner*, 338 U.S. at 658, 659. Even in the absence of the anti-attachment provision, then, *Ridgway* (and *Wissner*) would have been decided the same way. See *MacDonald, Sommer & Frates* v. *County of Yolo*, 477 U.S. 340, 346 n.4 (1986).

In any event, the absence of an anti-attachment provision in FEGLIA does not suggest that any state law survives preemption so long as it operates only after the federally mandated beneficiary has already received the insurance proceeds. To be sure, Congress permitted taxation of FEGLI proceeds, and also permitted creditors with a contract or tort claim against the beneficiary to reach the proceeds as part of any recovery.[7] Compare

[7] The FEGLI insurance policy therefore permits application of state tax law; it does not, despite petitioner's contrary statements (Pet. Br. 68), endorse "post-distribution equitable remedies" more generally. Petitioner's argument (Br. 69 n.28) that Section D amounts to a tax law is meritless, since it only creates a private cause of action.

Hisquierdo, 439 U.S. at 583-584. If the proceeds are used to satisfy a debt or some other obligation owed by the beneficiary, then she is "benefiting" from her receipt of them, even if she would prefer not to use them in that fashion. See, *e.g.*, *Free*, 369 U.S. at 669-671. But Congress's tolerance for those kinds of claims does not also signal tolerance for a specially created cause of action, not premised on the beneficiary's own conduct, that simply shifts the proceeds to a person who the State thinks should have received them in the first place. Congress did not need to enact an anti-attachment provision in order to bar such a cause of action; it is preempted by the provisions that establish the insured's right to select his beneficiary and the beneficiary's right, above all others, to payment. See *Ridgway*, 454 U.S. at 56.

Fourth, and relatedly, petitioner attempts (Br. 57) to distinguish between the constructive-trust action at issue in *Ridgway* and the cause of action created by Section D, which petitioner says makes her only a "general creditor" of the beneficiary. But this, too, is a distinction without a difference. See Pet. App. 36a-37a. A constructive trust captures specific money or property in the beneficiary's hands and creates a claim superior to creditors. The Virginia law manufactures a claim that focuses on the amount of the insurance proceeds rather than the proceeds themselves, and that may have parity with creditors' claims against the beneficiary. See generally Restatement of Restitution § 160 (1937) (Restatement); *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 212-216 (2002). Thus, the Virginia law leaves open the possibility that a sufficiently solvent beneficiary will pay the exact amount she received in FEGLIA proceeds by using different money

that she already had in her possession. But this Court has already ruled that a state-law claim that seeks to adjust the order of precedence in a federal insurance scheme frustrates Congress's purpose "[w]hether directed at the very money received from the Government or an equivalent amount." *Wissner*, 338 U.S. at 658-659; see also, *e.g.*, *Boggs*, 520 U.S. at 854. The Virginia law also leaves open the possibility that, if the beneficiary has limited funds and many creditors, the person Virginia would have preferred to receive the insurance proceeds in the first instance will not obtain the full amount. See Restatement § 160. But that does not change the fact that *any* sum recovered under Section D is a naked transfer away from the federally mandated beneficiary, based on a policy judgment that diverges from the judgment that federal law has already made.

Fifth, petitioner suggests (Br. 34-35, 48) that the purposes of the statute at issue in *Ridgway* are significantly different than the purposes of FEGLIA, on the ground that Congress sought in SGLIA to give extraordinary protections to members of the military to keep up their morale. *Ridgway* did not rest on the conclusion that morale-building was a critical congressional purpose, however; the Court noted that effect only in confirming the constitutional "authority of Congress to control payment of the proceeds of SGLIA policies" as "within the congressional powers over national defense." *Ridgway*, 454 U.S. at 56-57 (quoting *Wissner*, 338 U.S. at 660-661).

In addition, FEGLIA equally serves the overarching goal of improving morale. Federal employees "deliver the mail, fight forest fires, construct public buildings" and "engage in countless other tasks which affect virtually every phase of the country's well-being," *Amell* v.

United States, 384 U.S. 158, 162 (1966), and providing life-insurance benefits helps the government hire and retain able employees to carry out those functions.[8] See, *e.g.*, S. Rep. No. 1654, 83d Cong., 2d Sess. 2, 7-8 (1954) (noting goal to "assist the employee in increasing his morale and work productivity"). To the extent that Congress believed that members of the military were deserving of special solicitude, it expressed that belief though the anti-attachment provision it added to SGLIA in 1970. In both statutes, however, Congress put in place requirements for the payment of beneficiaries that preclude states from reshuffling the beneficiary list to suit their own preferences.

b. Finally, petitioner argues (Br. 19, 30, 35, 52-53) that Section D is not preempted because it furthers the objectives of federal law. In petitioner's view, federal law has the purpose of carrying out the insured's intent, and the Virginia law simply effectuates what must necessarily be the intent of every person who has failed to update his beneficiary designation after a divorce: to keep the proceeds away from an ex-spouse.

That argument lacks merit. Even if the federal and state law did serve the same purposes, that would not obviate the conflict between them, since federal law directs the benefits to "the named beneficiary and no other," but Section D "substitutes" in a different beneficiary. *Wissner*, 338 U.S. at 658-659; see, *e.g.*, *Crosby*, 530 U.S. at 379 (stating that "[t]he fact of a common end

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[8] Some members of the military are eligible for FEGLIA insurance for a limited period. See 5 U.S.C. 8706(d) (permitting federal employee who leaves employment for military service to elect FEGLI coverage); see also 5 U.S.C. 8702(c), 8714a(b)(1), 8714b(b)(1); 10 U.S.C 101(a)(13), 1580(a) (governing FEGLIA insurance for employees in combat zones).

hardly neutralizes conflicting means"); *Charleston & W. Carolina Ry.* v. *Varnville Furniture Co.*, 237 U.S. 597, 604 (1915) (stating that "a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go"). But even if the purposes of federal law and the Virginia law have similarities at some level of generality, they are not the same. Section D takes the money away from the named beneficiary on the assumption that the insured's intent is something other than what is written down in the beneficiary designation, while federal law privileges the named beneficiary by giving effect to intent expressed through a proper written designation rather than assuming a contrary intention.

In any event, petitioner errs in asserting that the Virginia law necessarily effectuates the insured's "true" intent. A divorced federal employee might want his ex-spouse to receive insurance proceeds for a number of reasons—out of a sense of obligation, remorse, or continuing affection, or to help care for children of the marriage that remain in the ex-spouse's custody. And the presumption that an insured has purposefully left such a beneficiary designation in place is strengthened by OPM's statement to employees to "consider completing a new designation form" to "remove a former spouse" since "[a] divorce does not invalidate a designation that names [the insured's] former spouse as beneficiary." *Handbook* 160, 164. It is also strengthened by the ease with which an insured can terminate an existing FEGLI designation. See *id.* at 167; *Kennedy*, 555 U.S. at 302-304. Federal law treats failure to take that action as intentional rather than inadvertent, and thereby bars the "chang[e in] the default rule," Pet. Br. 53, that has

been enacted by Virginia and a small number of other States.[9]

That conclusion does not foreclose a State from taking *any* steps to address the issue with which Section D is concerned. For instance, there is no conflict between federal law and a state law requiring that all parties be reminded during divorce proceedings to consider revisiting their insurance-beneficiary designations. Virginia has recently enacted just such a provision, mandating in a 2012 amendment to Section 20-111.1 that every divorce decree "contain the following notice in conspicuous, bold print: * * * If a party intends to revoke any beneficiary designation made payable to a former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation * * * . Otherwise, existing beneficiary designations may remain in full force and effect." Va. Code Ann. § 20-111.1(E). Such a notice serves to buttress, rather than undermine, federal law directing insurance proceeds to the named beneficiary.

B. Section D Is Inconsistent With the Governing Contract

FEGLIA's express-preemption provision establishes that "[t]he provisions of any contract under [FEGLIA] which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State * * * which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual

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[9] To be sure, Section D and similar laws do not exclude the possibility that an insured can direct benefits to an ex-spouse by re-designating that person after the divorce has become final. See Pet. Br. 53. But a state law is not "saved from pre-emption simply because it is * * * a default rule." *Egelhoff*, 532 U.S. at 150.

provisions." 5 U.S.C. 8709(d)(1). The Court need not reach the issue of express preemption in this case. The conflict-preemption analysis is straightforward—and this Court has previously resolved similar cases on conflict-preemption grounds, even in the presence of an express-preemption provision like the one at issue here, see *Boggs*, 520 U.S. at 841. Moreover, the court below did not pass on the express-preemption issue, see Pet. App. 13a n.3, and the contract between OPM and Met-Life governing payment of FEGLI benefits is not in the record (although the United States sought to lodge the contract with the Court at the certiorari stage).

Should the Court take judicial notice of the contract (Resp. Br. 52-53) and address express preemption, however, then Section D must fall on that ground as well—even under a "modest reading" of Section 8709(d)(1). *Empire HealthChoice Assurance, Inc.* v. *McVeigh*, 547 U.S. 677 (2006).[10] Section D relates to group life insurance, and it is inconsistent with the contract provisions granting beneficiary-designation rights to insureds and providing for payment in an "order of precedence" that privileges a designated beneficiary above a widow.

By using the broad phrase "relates to," Section 8709(d)(1) describes state laws that have a "connection

[10] In *Empire*, this Court gave a "modest reading" to a preemption provision that "renders preemptive contract terms in health insurance plans, not provisions enacted by Congress." *Id.* at 697-698. That provision sweeps more broadly than Section 8709(d)(1), since it does not require any inconsistency between the contract provisions and relevant state law, see 5 U.S.C. 8902(m)(1), and *Empire* addressed a subject-matter jurisdiction question. A similarly "modest reading" may therefore not be warranted here. In any event, "the plain wording of the clause * * * necessarily contains the best evidence of Congress' pre-emptive intent." *Sprietsma*, 537 U.S. at 62-63.

with, or reference to" group life insurance. *Rowe* v. *New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008) (emphasis and citation omitted); see also, *e.g.*, *Egelhoff*, 532 U.S. at 146-147. Section D is not a law of general applicability with only a "tenuous, remote, or peripheral" link to group life insurance. *Rowe*, 552 U.S. at 375. It mentions "payments under a life insurance contract" and "beneficiary designation[s]" specifically, Va. Code Ann. § 20-111.1(A) and (B), and goes straight to the heart of what group life insurance is most essentially about: benefiting a surviving beneficiary. Section D addresses "entitle[ment]" to life insurance proceeds, shifting them from one person to another, and subjecting the named beneficiary to a lawsuit in the process. *Id.* § 20-111.1(D). It also applies only where "federal law" preempts the beneficiary-revocation provision found in Section A, see *ibid.*, thus apparently contemplating application to the kinds of *group* plans that federal law regulates. The connection between Section D and group life insurance is manifest. See, *e.g.*, *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985).[11]

Section D is also "inconsistent with the contractual provisions" governing "payments with respect to benefits." 5 U.S.C. 8709(d)(1). The relevant contractual provisions mirror the key provisions of FEGLIA itself: the contract provides that the employee has the right to designate a beneficiary and to "change his designation" by filing the appropriate papers; that "payment shall be

[11] The legislative history of Section 8709(d)(1) does not dictate a different conclusion. See Pet. Br. 66-67. Regardless of what problem the provision was meant to solve, Congress chose "expansive" language, *Egelhoff*, 532 U.S. at 146, and that language governs, see, *e.g.*, *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998).

made" to the designated beneficiary; that a widow is entitled to benefits only "[i]f, at the death of the Employee, there be no designated Beneficiary"; and that payment to a "claimant * * * equitably entitled" to payment may be made only if no one in the order of precedence claims the money for several years. Contract 18, 25-26.[12]

Section D runs afoul of those provisions for the same reasons that it conflicts with federal law: it effectively reorders the list of beneficiaries so that the insurance proceeds are enjoyed by the widow *instead of* the named beneficiary, and it deprives the insured of the power to decide who will benefit from the insurance policy. To be sure, as petitioner points out (Br. 63-64), Section D has that effect only after the payment required by the contract has already been made. But the Virginia law nevertheless seriously undermines the contract, because it attempts to change what the contract requires and to deprive the contractual "beneficiary" of any benefit at all.

In an effort to show that the contract is compatible with "post-distribution equitable remedies," petitioner points (Br. 67-69) to a provision stating that beneficiaries are not relieved of their obligation to comply with state tax laws. But that provision simply reflects that FEGLIA does not have an anti-attachment provision protecting beneficiaries from any and all claims to a portion of their proceeds. It does not signify that the contract is consistent with a state law that automatically

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[12] The contract does not include several current provisions of FEGLIA that are not directly applicable to the case at hand—for instance, the 1998 amendment directing benefits to a person named in a divorce decree. See 5 U.S.C. 8705(e).

strips away a beneficiary's payment based on a policy judgment that someone else should have received it.

CONCLUSION

The judgment of the Virginia Supreme Court should be affirmed.

Respectfully submitted.

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