No. 11-1221

In the Supreme Court of the United States

JACQUELINE HILLMAN, PETITIONER

v.

JUDY A. MARETTA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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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, require 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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INTEREST OF THE UNITED STATES

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the Court should grant the petition for a writ of certiorari.

STATEMENT

1. Congress enacted the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), ch. 752, 68 Stat. 736 (5 U.S.C. 8701 *et seq.*), to provide "a low-cost group life insurance program to Federal employees" to better enable those employees "to carry out their responsibilities to their families." 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 the Office of Personnel Management (OPM) to purchase one or more group life insurance policies to provide benefits under the Act. 5 U.S.C. 8709(a) (2006 & Supp. V 2011). 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) (*FEGLI 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, and administers FEGLI claims through one of the company's offices, known as the Office of Federal Employees' Group Life Insurance. 5 C.F.R. 870.101; *FEGLI Handbook* 1; see 5 U.S.C. 8709(b).

Congress has specified that, with one exception, 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 employing office" or OPM, 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 Section 8705(a). *Ibid.* After a designated beneficiary, a surviving widow or widower is next in the order of precedence. *Ibid.*

OPM's implementing 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]

The insured's right of designation is subject to the previously noted statutory exception to FEGLIA's order of precedence. Under that exception, if the government timely 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 FEGLI 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 decree, order, or agreement "is received, before the date of the covered employee's death, by the employing agency or, if the employee has separated from service, by [OPM]." 5 U.S.C. 8705(e)(2); see 5 C.F.R. 870.801(d). If so received, the decree, order, or agreement (unless modified) will prevent the insured employee from "designat[ing] a different beneficiary" without the consent of the person designated in the decree, order, or agreement. 5 C.F.R. 870.802(i)(1).

OPM informs insured individuals that 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. *FEGLI Handbook* 168-169; see 5 C.F.R. 870.802(g). OPM accordingly advises insureds that they

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[1] The insured, in certain circumstances, can assign his right of designation to another. See 5 U.S.C. 8706(f) (Supp. V 2011); 5 C.F.R. 870.901(a) and (i), 870.902; see also 5 C.F.R. 870.802(g)(2), 870.901(e), 870.909(a)(1).

must "ensure that [their] designation of beneficiary remains accurate and reflects [their] intentions," because FEGLI "[b]enefits will be paid based on a valid designation, regardless of whether that designation still reflects [the insured's] intentions." *FEGLI Handbook* 160. In particular, OPM informs insureds that "[a] divorce does not invalidate a designation that names [the insured's] former spouse as beneficiary" and that an employee who experiences a "significant change in [his] life, such as a * * * divorce," thus may "want to consider completing a new designation form." *Ibid.*

In 1980, Congress amended FEGLIA to include an express preemption provision. See 5 U.S.C. 8709(d). That provision 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." 5 U.S.C. 8709(d)(1).

2. In 1996, Warren Hillman designated respondent—who was his wife at the time—as the beneficiary of his FEGLIA life insurance. Pet. App. 4a. In 1998, Warren and respondent divorced. *Ibid.* Neither the divorce decree nor the associated property settlement agreement required Warren to maintain respondent as his FEGLI beneficiary. Br. in Opp. (Opp.) 8. In 2002, Warren married petitioner. Pet. App. 4a. Despite his divorce and subsequent marriage, Warren never changed his 1996 FEGLI 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, FEGLI benefits totaling $124,558 were paid to respondent. Pet. App. 4a.

3. In 2009, petitioner filed this civil action against respondent, alleging that, under Section 20-111.1(D) of the Virginia Code, respondent was liable to her in an amount equal to the amount that respondent received from Warren's FEGLIA life insurance. Pet. App. 4a.

a. Two subsections of Section 20-111.1 are presently relevant. First, Subsection A provides, in pertinent part, that, "[e]xcept as otherwise provided under federal law or [Virginia] law," 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) (Supp. 2012). "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." *Ibid.* The parties agree that FEGLIA preempts Subsection A. Pet. App. 8a. If, however, Subsection 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 petitioner as Warren's widow to obtain his life-insurance benefits under FEGLIA's order of precedence. See 5 U.S.C. 8705(a).

Second, Subsection D expressly addresses circumstances in which federal law preempts Subsection A. Subsection D provides that:

> If this section 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 this section is personally liable for the amount of the payment to the person who would have been entitled to it were this section not preempted.

Va. Code Ann. § 20-111.1(D) (Supp. 2012). Under that state-law 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.

b. The state trial court granted summary judgment in favor of petitioner. Pet. App. 35a-58a. The court held that FEGLIA does not preempt Section 20-111.1(D), which "imposes a constructive trust on death benefit proceeds when [Section 20-111.1(A)] is preempted." *Id.* at 36a. The court thus determined that respondent was liable to petitioner in the amount of $124,558—the amount of FEGLI benefits previously paid to respondent—plus interest. *Id.* at 33a.

4. a. The Virginia Supreme Court reversed and rendered judgment for respondent in a divided opinion. Pet. App. 1a-31a. The court concluded that FEGLIA and its implementing regulations preempt Section 20-111.1(D) because Subsection D's application to FEGLI benefits 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. FEGLIA and its regulations, the court determined, demonstrate "Congress' intent that 'only [the insured] [has] the power to create and change a beneficiary interest [in FEGLI benefits],' that the right to do so cannot be waived or re-

stricted, and that the FEGLI benefits belong to the named beneficiary." *Id.* at 12a (quoting *Ridgway* v. *Ridgway*, 454 U.S. 46, 60 (1981)) (third brackets added). The court further explained that Section 20-111.1(D)'s establishment of a state cause of action against a named beneficiary to whom FEGLI benefits have been paid "'create[s] a beneficiary interest' in the policy proceeds" for someone other than the designated beneficiary. *Id.* at 13a (quoting *Ridgway*, 454 U.S. at 60). That state-created interest in the proceeds, the court concluded, "nullifies the [insured's] choice and frustrates the deliberate purpose of Congress." *Ibid.* (quoting *Wissner* v. *Wissner*, 338 U.S. 655, 659 (1950)). "Congress," the court explained, "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.*

The court explained that it found this Court's decision in *Ridgway* "to be highly persuasive, if not binding." Pet. App. 9a. *Ridgway* concluded that a state-law constructive trust action for the proceeds from a serviceman's life insurance was preempted by "identical 'order of precedence' provisions" in the Servicemen's Group Life Insurance Act of 1965 (SGLIA), 38 U.S.C. 765 *et seq.* (1976), and implementing regulations similar to those under FEGLIA. Pet. App. 9a-12a (citation omitted). The court observed that its decision, while consistent with FEGLIA decisions by several federal courts of appeals, see *id.* at 9a, 14a, "st[ood] in contrast" to the "majority of state court decisions." *Id.* at 14a. The latter decisions have concluded that "FEGLIA does not preempt a state-law constructive trust on FEGLI proceeds for the benefit of someone other than the

named beneficiary." *Ibid.* (citing, *e.g.*, *McCord* v. *Spradling*, 830 So. 2d 1188 (Miss. 2002)).

b. Justice McClanahan dissented. Pet. App. 16a-31a. She opined that FEGLIA's "order of precedence" was enacted simply for "the purpose of providing 'administrative convenience' for [OPM] and the insurer in processing claims and distributing benefits" and that, once those benefits have been "paid out to the designated beneficiary," the federal interest in the FEGLI proceeds ends. *Id.* at 22a-23a (citation omitted). Because the liability established by Section 20-111.1(D) "impacts FEGLI benefits, if at all, only after the benefits have been paid to the designated beneficiary," *id.* at 26a, Justice McClanahan concluded that federal law did not preempt that provision, *id.* at 23a-24a (citing cases).

DISCUSSION

The Virginia Supreme Court correctly held that federal law preempts Virginia Code § 20-111.1(D)'s establishment of a state-law action against properly designated beneficiaries to whom the government's insurer has paid FEGLI benefits. The court's decision, however, deepens a pre-existing division of authority concerning whether FEGLIA and its implementing regulations preempt state-law actions for FEGLI proceeds after the distribution of those proceeds, in accordance with FEGLIA's requirements, to the designated beneficiary. This Court should grant certiorari to resolve that disagreement on an important legal issue governing the Nation's largest group-life-insurance program.

A. FEGLIA And Its Implementing Regulations Preempt State-Law Actions To Obtain FEGLI Proceeds From Properly Designated Beneficiaries To Whom Those Proceeds Have Been Paid

A state law is implicitly preempted to the extent that it conflicts with federal law. *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" and 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)). Under those principles, FEGLIA and its implementing regulations preempt state-law suits under Section 20-111.1(D) of the Virginia Code.

1. FEGLIA's statutory "order of precedence" directs that FEGLI benefits "shall be paid" first to any beneficiary properly designated by the insured, 5 U.S.C. 8705(a). OPM's implementing 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). Those provisions preempt Section 20-111.1(D)'s establishment of a state-law action for FEGLI proceeds after those proceeds have been distributed, per FEGLIA's requirements, to the insured's designated beneficiary. This Court has twice addressed materially similar provisions and held that they preempt such state-law actions.

First, in *Wissner* v. *Wissner*, 338 U.S. 655 (1950), the Court concluded that the National Service Life Insur-

ance Act of 1940 (NSLIA), 38 U.S.C. 801 *et seq*. (1946), preempted a state-law action by the insured's widow to recover a portion of the 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 (quoting 38 U.S.C. 802(g) (1946)). This Court considered that provision clear in its "direct[ion] that the proceeds [of the insurance] belong to the named beneficiary and no other." *Ibid.* The Court found it "plain" that ordering a portion of the proceeds to be transferred to the plaintiff-widow would improperly "substitute[]" her for "the mother, who was the beneficiary Congress directed shall receive the insurance money." *Id.* at 658-659. Such an order, the Court determined, would impermissibly "nullif[y] the [insured's] choice and frustrate[] the deliberate purpose of Congress," regardless whether the order was "directed at the very money received from the Government [by the designated beneficiary] or an equivalent amount." *Id.* at 659.

In *Ridgway* v. *Ridgway*, 454 U.S. 46, 47 (1981), the Court applied *Wissner* to hold that SGLIA, 38 U.S.C. 765 *et seq*. (1976) (now 38 U.S.C. 1965 *et seq*.), and its implementing regulations preempted a state-law "constructive trust imposed upon [life-insurance] policy proceeds" paid under that Act. The Court relied on SGLIA's statutory "order of precedence," which provided that the amount of insurance in force shall be paid first to "such 'beneficiary or beneficiaries as the [insured] . . . may have designated'" properly. 454 U.S. at 52 (quoting 38 U.S.C. 770(a) (1976) (now 38 U.S.C.

1970(a))). Through that provision, the Court held, "Congress has spoken with force and clarity in directing that the proceeds 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 SGLIA and the predessor NGLIA" considered in *Wissner* in that SGLIA lacked NSLIA's statutory text permitting the insured 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" per the statutory order of precedence "clearly suggests that no different result was intended by Congress." *Ibid.* And "any possible ambiguity" on that point, the Court determined, was "eliminated" by SGLIA's regulations, which expressly gave the insured the right to change beneficiaries "'at any time and without the knowledge or consent of the previous beneficiary.'" *Ibid.* (quoting 38 C.F.R. 9.16(e) (1980) (now 38 C.F.R. 9.4(b))). 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 paid to the designated beneficiary. *Id.* at 59-60.

2. *Ridgway* and *Wissner* compel the conclusion that FEGLIA and its implementing regulations preempt Section 20-111.1(D)'s establishment of a state-law action for the amount of FEGLI proceeds paid to the insured's designated beneficiary. Indeed, SGLIA's statutory order of precedence and regulatory right to change beneficiaries, found dispostive in *Ridgway*, are materially identical to their counterparts in FEGLIA. See 5 U.S.C.

8705(a); 5 C.F.R. 870.802(f). As in *Ridgway* and *Wissner*, Congress's direction that insurance proceeds "shall be paid" to the properly designated beneficiary means that those proceeds belong to that "beneficiary and no other." *Wissner*, 338 U.S. at 658; see *Ridgway*, 454 U.S. at 56 (quoting *Wissner*). Under those decisions, any state-law action by a competing claimant seeking FEGLI proceeds from the designated beneficiary conflicts with federal law and is preempted.

Ridgway and *Wissner* foreclose the rationale of the dissent below. The dissent believed that the federal interest embodied in FEGLIA is confined to "administrative convenience—the ability of the OPM and the insurer to simply pay the life insurance proceeds to the named beneficiary * * * and move on to the next claim." Pet. App. 23a (McClanahan, J., dissenting). That interest, the dissent reasoned, ceases upon initial payment of the benefits, "[r]egardless of what claims" may subsequently be "brought to recover the proceeds once they are paid out to the designated beneficiary." *Ibid.* (citation and emphasis omitted). As *Ridgway* and *Wissner* explain, however, the interest protected by the parallel provisions in SGLIA and NSLIA is not confined to mere administrative convenience. It encompasses the insured's "right" "freely to designate the beneficiary," such that "the proceeds belong to the named beneficiary and no other." *Ridgway*, 454 U.S. at 56 (quoting *Wissner*, 338 U.S. at 658).

Ridgway found preemption even though the question was whether a constructive trust could be imposed on insurance proceeds that had already been distributed. 454 U.S. at 47, 49-50, 60. *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 in *Wissner*, "[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, such a judgment would "nullif[y] the [insured's] choice and frustrate[] the deliberate purpose of Congress." *Id.* at 659. There is no basis to reach any different result with respect to FEGLIA. Rather, with FEGLIA, as with SGLIA and NSLIA, "Congress did not intend merely for the named beneficiary * * * to receive the proceeds, only then to have them subject to recovery by a third party under state law." Pet. App. 13a.

Petitioner's attempts (Pet. 28-36) to distinguish *Ridgway* are unpersuasive. First, petitioner contends (Pet. 28-30) that *Ridgway* gave "great weight" to SGLIA's national-defense-related purpose of increasing servicemembers' morale. But *Ridgway* noted that purpose only in the context of confirming the constitutional "*authority* of Congress to control payment of the proceeds of SGLIA policies" as "within the congressional powers over national defense." 454 U.S. at 56-57 (citation omitted; emphasis added). Petitioner has not questioned Congress's constitutional authority to enact FEGLIA.

Second, petitioner argues (Pet. 31-35) that although FEGLIA and SGLIA have "identical" order-of-precedence provisions, Congress's failure to enact an anti-attachment provision in FEGLIA like the one in SGLIA reflects an intent "to make FEGLI proceeds vulnerable to state domestic relations causes of action after the proceeds have been distributed." That is incorrect. SGLIA's anti-attachment provision broadly protects the statute's life-insurance proceeds by prohib-

iting "any 'attachment, levy, or seizure by or under any legal or equitable process whatever.'" *Id.* at 61 (quoting 38 U.S.C. 770(g) (1976) (now 38 U.S.C. 1970(g))). The absence of a similar provision in FEGLIA could speak, at most, to the extent to which FEGLI proceeds may be used generally to satisfy the unrelated obligations of the designated beneficiary. But it cannot fairly be read to evince an intent to permit claimants who seek FEGLI proceeds as would-be beneficiaries to displace Congress's deliberate choice in directing that those proceeds belong to the properly designated beneficiary.

Finally, petitioner argues (Pet. 35-36) that 5 U.S.C. 8705(e) distinguishes this case from *Ridgway*. Section 8705(e), however, merely allows certain court orders or court-approved agreements in divorce proceedings to displace a designated FEGLI beneficiary if the order or agreement expressly provides for a different beneficiary and is properly filed under FEGLIA before the insured's death. Far from suggesting that the designated beneficiary can be displaced in any other manner under state law, the provision specifies the precise (and sole) conditions in which the benefits may be paid to someone other than the designated beneficiary.

B. The Petition Presents An Important Question On Which Courts Of Appeals And State Supreme Courts Are In Conflict

Although the Virginia Supreme Court correctly held that federal law preempts Section 20-111.1(D) in this case, certiorari is warranted to decide whether FEGLIA and its implementing regulations preempt state-law causes of action for FEGLI proceeds once those proceeds have been distributed to the designated beneficiary. That important and recurring question has divid-

ed the courts of appeals and state supreme courts and warrants this Court's review.

1. Like the Virginia Supreme Court, several federal courts of appeals and one state court of last resort have held that FEGLIA and its implementing regulations preempt actions under state law that would divert FEGLI proceeds from the insured's designated beneficiary.

In *O'Neal* v. *Gonzalez*, 839 F.2d 1437 (11th Cir. 1988), the plaintiff, who claimed an entitlement to FEGLI proceeds even though the insured had properly designated another as the beneficiary, brought a state-law action against the designated beneficiary seeking a "constructive trust" that would have been imposed on the "proceeds of the FEGLIA policy once payment [was] made to the designated beneficiary." *Id.* at 1438-1439. The Eleventh Circuit held that FEGLIA and its implementing regulations preempted that action. *Id.* at 1439-1440. The court concluded that FEGLIA's statutory and regulatory provisions, which were adopted in part "for the benefit of designated beneficiaries," establish an "inflexible rule that the beneficiary designated in accordance with the statute would receive the policy proceeds" and thus confer a "substantive right of payment upon the designated beneficiary." *Ibid.* The "federal provisions regarding designation of beneficiaries," the court explained, give the insured "more than the right to do a meaningless act": They create a right to designate who is entitled to FEGLI proceeds. *Id.* at 1440 (citation omitted). A state-law action for a "constructive trust" on those proceeds, the court reasoned, would conflict with FEGLIA, because, "[i]f the proceeds [were permitted] to go to someone other than the designated beneficiary," the federal provisions governing the insured's

beneficiary designation would "serve[] no purpose." *Ibid.* (citation omitted).

The Alabama Supreme Court has also held that FEGLIA preempts a state-law constructive trust directing FEGLI proceeds to someone other than the designated beneficiary. *Metropolitan Life Ins. Co.* v. *Potter*, 533 So. 2d 589 (Ala. 1988). The First and Seventh Circuits are in accord. See *Metropolitan Life Ins. Co.* v. *Zaldivar*, 413 F.3d 119 (1st Cir. 2005); *Metropolitan Life Ins. Co.* v. *Christ*, 979 F.2d 575 (7th Cir. 1992).

In *Zaldivar*, the insured designated his second wife as his FEGLI beneficiary, notwithstanding an earlier divorce decree directing him to maintain his children from his first marriage as the beneficiaries. After the insured's death, MetLife was permitted to distribute the FEGLI proceeds to the second wife as the designated beneficiary. *Metropolitan Life Ins. Co.* v. *Zaldivar*, 337 F. Supp. 2d 343, 344-345 (D. Mass. 2004), aff'd, 413 F.3d 119 (1st Cir. 2005). Thereafter, the children advanced a claim for a "constructive trust" over the distributed proceeds on a state-law "unjust[] enrich[ment]" theory, *id.* at 346, but the First Circuit held that claim preempted. 413 F.3d at 120. Like *O'Neal*, *Zaldivar* reasoned that FEGLIA's order of precedence "direct[s] that the proceeds belong to the named beneficiary and no other," such that "alter[ing] the designation of a beneficiary * * * by imposing a constructive trust" would conflict with the statute. *Id.* at 121 (citations omitted); see *ibid.* (explaining that 5 U.S.C. 8705(e)'s provisions, which permit a divorce decree to displace FEGLIA's order of precedence in certain circumstances, were not followed).

The Seventh Circuit in *Christ* similarly held that FEGLIA preempts a state-law claim to impose a "constructive trust" on FEGLI proceeds under an "unjust[]

enrich[ment]" theory. 979 F.2d at 576. *Christ*, like *O'Neal*, concluded that FEGLIA establishes an "inflexible rule" that FEGLI proceeds must be paid to the "beneficiary designated in accordance with the statute" based on FEGLIA's provisions requiring proceeds to be paid according to the statute's order of precedence and specifying that beneficiary designations have "no force or effect" unless executed and filed under FEGLIA. *Id.* at 578-579 (quoting *O'Neal,* 839 F.2d at 1440). *Christ* accordingly held that the "imposition of a constructive trust," which would "require[] that [the] proceeds be paid to someone [else]," "inevitably conflict[s] with this mandatory federal scheme." *Id.* at 579.[2]

Several state courts have issued decisions in conflict with the aforementioned decisions. See Pet. 10-17. Of particular salience, the Supreme Courts of Indiana and Mississippi have held that FEGLIA does not preempt state-law actions that divert FEGLI proceeds to someone other the designated beneficiary after those proceeds have been paid to that beneficiary. See *Hardy* v. *Hardy*, 963 N.E.2d 470 (Ind. 2012); *McCord* v. *Spradling*, 830 So. 2d 1188 (Miss. 2002).

Hardy rejected the argument that imposing a constructive trust on FEGLI proceeds would conflict with FEGLIA's statutory and regulatory provisions governing the "order of precedence and designation of beneficiaries." 963 N.E.2d at 477. In the court's view, the

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[2] *Christ* also stated that its implied-preemption holding was "reinforce[d]" by the preemptive effect that 5 U.S.C. 8709(d)(1) expressly gives to the provisions of the FEGLI contract. 979 F.2d at 579. That policy "expressly incorporates FEGLIA's order of precedence" and, the court explained, a state-law constructive trust remedy is "inconsistent with the order of precedence incorporated in the policy." *Ibid.* (citing Section 11 of FEGLI policy at "App. 113-14").

"sole purpose" of those provisions is to reduce "administrative and legal hassles" in processing FEGLI claims by clearly designating "to whom the proceeds are directly paid" in the first instance. *Id.* at 477-478 (citation omitted). "[O]nce proceeds are paid out to a designated beneficiary," the court reasoned, "state law claims asserting an equitable interest in those proceeds" brought against the designated beneficiary "do not conflict" with FEGLIA: Such post-distribution claims burden "[n]either the insurance carrier nor the government" because the obligation of "pay[ing] the policy proceeds quickly and directly to the named beneficiary" is discharged once the initial distribution is made. *Ibid.* (citation omitted).

McCord similarly holds that, while "the insurer is directed to pay any benefits" to the "named beneficiary" by federal law, FEGLIA does not preempt "equitable claims to the funds [that have been] paid" to the designated beneficiary. 830 So. 2d at 1203; see *id.* at 1193-1203 (discussing decisions that the court found persuasive). The "distinction between beneficiary status" governed by FEGLIA and "ultimate equitable entitlement" to the proceeds after their initial distribution, the court determined, "obviates any issue of federal preemption" in state-law actions involving claims to obtain FEGLI proceeds from the designated beneficiary herself. *Id.* at 1203.

2. Respondent contends (Opp. 18-20) that review is unwarranted because, unlike decisions involving state-law constructive trust actions, this case concerns a state statute that generally permits suit against individuals who receive an ex-spouse's FEGLI benefits based on a beneficiary designation submitted before their divorce. In respondent's view (Opp. 19-20), constructive trust ac-

tions could be distinguished from this case because they are based (as a matter of state law) on allegedly wrongful conduct by the insured that gives rise to an equitable claim to FEGLI proceeds by non-designated individuals. That asserted state-law distinction concerning the reasons for a state-law action to obtain FEGLI proceeds does not counsel against review.

Respondent recognizes that cases like *Hardy* and *McCord* are "based upon an incorrect view of *federal law*." Opp. 19 (emphasis added). Those decisions, unlike the decisions of the Virginia Supreme Court and several federal courts of appeals, hold that FEGLIA and its implementing regulations only identify the persons to whom FEGLI benefits should be paid *in the first instance* in order to simplify and streamline the processing of FEGLI claims by the government and its insurer. See pp. 17-18, *supra*. If this Court were to agree with the Virginia Supreme Court that federal law confers upon insureds a right to direct the payment of FEGLI benefits such that the proceeds belong to the designated beneficiary—a right that could not be displaced by state law reflecting a different judgment about the ultimate allocation of life-insurance proceeds—this Court's decision would eliminate the predicate for decisions like *Hardy* and *McCord* holding that FEGLIA does not preempt constructive-trust actions. Likewise, if this Court were to disagree with the Virginia Supreme Court by accepting petitioner's interpretation of FEGLIA, even respondent appears to acknowledge (Opp. 20 n.8) that the Court's decision should resolve the conflict of authority. In other words, differences in state-law justifications for permitting suit against designated beneficiaries after the FEGLI proceeds have been distributed do not control the application of con-

flict-preemption principles, which instead turns on the proper interpretation of FEGLIA and its regulations.[3]

Moreover, the lower courts' disagreement has important practical significance. The FEGLI Program "is the largest group life insurance program in the world, covering over 4 million Federal employees and retirees, as well as many of their family members." OPM, *Federal Employees' Group Life Insurance*, http://www.opm.gov/insure/life/. Under the program, over $2.4 billion in benefits were distributed annually in FY2007 and FY2008. OPM, Office of the Inspector General, *Final Audit Report No. 2A-II-00-09-065*, at 2 (2010), http://www.opm.gov/oig/html/AuditReports.asp. A uniform national rule is essential to ensure that the benefits from this federal program can provide a low-cost and reliable means for federal workers to "carry out their responsibilities to their families," H.R. Rep. No. 2579, 83d Cong., 2d Sess. 5 (1954). Allowing post-distribution state-law actions against properly designated beneficiaries would impose significant litigation costs and delay upon the very persons intended to benefit from the program and would undermine OPM's longstanding advice to insureds that their designation of beneficiaries will control the distribution of FEGLI benefits. Cf. *Christ*, 979 F.2d at 578 (noting government's position).

3. Although the Virginia Supreme Court's holding rests on implied-conflict-preemption principles as set

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[3] The trial court's understanding that this case involves a "constructive trust" further confirms that this action is not meaningfully distinguished from state-law actions involving constructive trusts. See Pet. App. 36a-37a (Section 20-111.1(D) "imposes a constructive trust on [FEGLIA's] death benefit proceeds" by "making [respondent] personally liable to [petitioner] for the full amount of the benefit").

forth above, the court also observed in a footnote that FEGLIA's express preemption provision, 5 U.S.C. 8709(d)(1), made "Congress's preemptive intent * * * more apparent." Pet. App. 13a n.3. The court did not, however, purport to assess whether FEGLIA's express preemption provision would independently preempt Section 20-111.1(D). The parties addressed express preemption in their briefs before the Virginia Supreme Court. See, *e.g.*, Resp. Va. Br. 8-15, 19; Pet. Va. Br. 7-20, 44-47; Va. Reply Br. 3-8, 10-13. But because the Virginia Supreme Court did not address the issue, this case would not afford a highly suitable vehicle to examine—in the first instance—whether Section 20-111.1(D) is expressly preempted. See, *e.g.*, *Zivotofsky* v. *Clinton*, 132 S. Ct. 1421, 1430 (2012) (This Court "is a court of final review and not first view.") (citation omitted).

Additionally, the express-preemption provision grants preemptive force to the provisions of the contract between OPM and MetLife: "The provisions of any contract under [FEGLIA] which relate to the nature or extent of * * * 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 * * * is inconsistent with the contractual provisions." 5 U.S.C. 8709(d)(1). This Court's ability to review the applicability of express preemption in this case would be complicated by the fact that the contract has not been made part of the record. Cf. *Union Pac. R.R.* v. *Brotherhood of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment*, 130 S. Ct. 584, 595 (2009) ("respondent may * * * 'rely upon any mat-

ter appearing in the record in support of the judgment'") (citation omitted).[4]

While this Court could await a case presenting a more suitable vehicle for addressing express preemption in addition to implied conflict preemption, that consideration does not counsel against granting certiorari. The existence of an express-preemption provision does not affect the operation of conflict-preemption principles, *e.g.*, *Buckman Co.* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 352 (2001), and the Court accordingly has found preemption on such principles in lieu of addressing express preemption, *Boggs* v. *Boggs*, 520 U.S. 833, 841 (1997). That course is particularly appropriate here given that *Ridgway* and *Wissner* rested on conflict preemption in parallel statutory contexts and thus establish an appropriate and readily available framework for approaching this case. The lower courts have largely avoided any meaningful analysis of express preemption and have instead assessed whether FEGLIA preempts state-law actions against designated beneficiaries by reference to conflict-preemption principles, and the resulting division of authority concerns the application of those principles.

In addition, even if express preemption would resolve this particular case, its operation here would not necessarily address the broader disagreement among the lower courts. Section 8709(d) preempts "any law of any State * * * or any regulation issued thereunder" that "relates to group life insurance" and is "inconsistent with the contractual provisions." 5 U.S.C. 8709(d)(1).

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[4] Contemporaneously with the filing of this brief, the government is separately seeking to lodge the contract with the Court. If the Court grants certiorari and desires merits briefing on express preemption, it may wish to consider directing the parties to address that issue.

While Section 20-111.1(D), as a state statute, is a "law of [a] State" subject to express preemption, there would be a further question whether common-law actions—at issue in other conflicting lower-court cases, see pp. 17-18, *supra*—likewise involve a "law of [a] State." Compare *Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 63 (2002), with *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 522-523 (1992) (plurality opinion); *id.* at 549 (Scalia, J., concurring in the judgment in part and dissenting in part). Conflict-preemption principles, by contrast, would presumably encompass the cases making up the disagreement. See pp. 15-18, *supra*. Finally, the sole court of appeals decision to find express preemption did so in a manner that largely reiterated and mirrored that court's application of conflict-preemption principles to reach the same conclusion. See *Christ*, 979 F.2d at 579; note 2, *supra*.[5] For these reasons, in the view of the government, the Court should grant certiorari and resolve the disagreement on the application of conflict-preemption principles to FEGLIA in the circumstances of this case.

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[5] The FEGLI contract was contained in the record in *Christ*. J.A. at 109-220, *Christ*, *supra* (No. 91-2515). *Christ* relied on provisions in the contract (which remain materially unchanged) that mirror the "order of precedence" in FEGLIA. 979 F.2d at 579. Although *Potter* also discussed express preemption, it does not appear to have relied on express preemption as an independent basis for finding preemption. See 533 So. 2d at 593-594 (FEGLIA's express-preemption provision reinforces the conclusion that "*Ridgway* is dispositive.")

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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