No. 99-1529

IN THE

Supreme Court of the United States

DONNA RAE EGELHOFF,

Petitioner,

v.

SAMANTHA EGELHOFF, A Minor, By and Through Her Natural Parent Kate Breiner, and DAVID EGELHOFF,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Washington

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

For the following reasons, Respondents respectfully suggest that the Petition for a Writ of Certiorari should be denied.

STATEMENT

This case involves the proceeds of pension and life insurance plans (collectively, "the plans") held by David Egelhoff ("David") before his death. The plans provided that benefits would be distributed upon David's death to the named beneficiary or, if the named beneficiary predeceased David, to David's heirs. At the time that David was married to Petitioner Donna Rae Egelhoff ("Petitioner"), he named her as the beneficiary. This dispute arises because David subsequently divorced Petitioner and died soon thereafter without changing the plans' beneficiary designations. Washington state law

deems Donna to have "predeceased" an ex-spouse such as David for purposes of the disposition of all of the decedent's "nonprobate assets." RCW 11.07.010. Petitioner nonetheless claims the benefits as the plans' named beneficiary. Respondents Samantha Egelhoff and David Egelhoff, Jr. ("Respondents"), David's children by a prior marriage and his statutory heirs, claim on the ground that Petitioner "predeceased" David as a matter of state law.

After David died and Petitioner collected the life insurance benefits, Respondents filed a conversion suit in state court to recoup the benefits. Respondents also moved in the state probate proceedings regarding David's estate to collect the pension plan proceeds. The trial courts in both cases held that ERISA preempted the state law invoked by Respondents and entered summary judgment for Petitioner. In a consolidated appeal, the Washington Supreme Court reversed and remanded.

As interpreted by the Washington Supreme Court in this case, Washington state law provides that, with respect to a decedent's "nonprobate assets" (whether those assets involve ERISA plans or not), a divorce decree creates "the legal fiction that the former spouse did not survive the decedent, having died at the time of entry of the decree of dissolution." Pet. App. 21a (quoting RCW 11.07.010) (alterations omitted). The statute's obvious purposes are to discourage divorce and to prevent unjust enrichment in a case exactly like this one, where a person divorces but dies before having the opportunity to arrange for alternate disposition of nonprobate assets that would otherwise default to the divorced spouse. The Washington Supreme Court explained that although this Court had narrowed its view of ERISA preemption in a trilogy of recent decisions, Pet. App. 12a-15a (citing *DeBuono* v. *NYSA-ILA Med. & Clin. Servs. Fund*, 520 U.S. 806 (1997); *California Div. of Labor Stands. Enforce.* v. *Dillingham Constr., N.A.*, 519 U.S. 316 (1997); *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514

U.S. 645 (1995)), preemption remains the rule when, *inter alia*, state law "mandates plan benefit structures or some aspect of their administration" and thus "directly or indirectly invades the core functions of ERISA regulation." *Id.* 20a. But, the court explained, the state law in this case does no such thing. It does not direct the award of benefits to any specific person at all, much less order the transfer of benefits from the named beneficiary to some third party. Instead, state law simply deems Petitioner to have predeceased David and directs the plans' administrators to distribute the proceeds on whatever basis the plans themselves provide in light of this legislatively determined "fact." *Id.* at 21a. That conclusion was particularly manifest in light of this Court's admonition that ERISA was not intended to supplant "the historic police powers of the States," *Dillingham*, 519 U.S. at 325, and "Washington's sovereign interest in exercising its traditional police powers in the area of domestic relations and family law," Pet. App. 15a.

Having reversed the entry of summary judgment in favor of Petitioner, the Washington Supreme Court remanded the case to the lower courts. After the remand, the pension plan administrator separately filed suit in federal district court alleging that, notwithstanding the Washington Supreme Court's decision, the plan remains obligated to distribute the funds to Petitioner as the named beneficiary. See *Boeing Co. Volun. Invest. Plan et al.* v. *Egelhoff et al.*, No. C99-2064, Complaint for Declaratory Relief and Interpleader ¶¶ 16-17 (W.D. Wash. filed Dec. 20, 1999) ("Among the fiduciary duties that the [plaintiff] Committee owes to Plan participants and beneficiaries pursuant to ERISA is the duty to comply with 'documents and instruments governing the plan.' 29 U.S.C. § 1104(a)(1)(D). The Committee submits that the decedent's beneficiary designation in favor of Donna Rae Egelhoff is such a governing document or instrument for purposes of this fiduciary duty. The Washington Supreme Court lacks jurisdiction to rule on fiduciary claims under Part 4 of Title I of

ERISA, and *its above-referenced decision therefore does not resolve whether ERISA's fiduciary duties require the Plan to pay benefits to the Egelhoff children [Respondents here]*, nor does this decision protect the Committee from potential fiduciary liability." (emphasis added)).

ARGUMENT

Certiorari should be denied. The state court judgment in question is not final and may be mooted by collateral federal court proceedings. Nor does the decision below conflict with decisions of this Court, federal courts of appeals, or state courts of last resort. Instead, it presents an infrequently recurring issue that is principally one of state law.

1. The procedural posture of these cases makes certiorari inappropriate. Petitioner asserts that this Court has jurisdiction to review the Washington Supreme Court's judgment under 28 U.S.C. § 1257(a), which applies to "[f]inal judgments or decrees rendered by the highest court of a State." But no "final judgment" has yet been entered in these consolidated cases. Instead, the Washington Supreme Court merely reversed the trial courts' entry of summary judgment in favor of Petitioner. Although Respondents believe that the court's statement that they "are entitled to receive the benefits," Pet. App. 28a, should result in the entry of a judgment in their favor, it remains to be seen whether, on remand, both of the trial courts will do so or will instead permit Petitioner to assert further defenses and/or demand a trial. See generally Robert L. Stern et al., Supreme Court Practice §§ 3.3, 3.6 (7th ed. 1993); *id.* at 94 ("The fact that the aggrieved party concedes it has nothing left to present at further proceedings in the state trial court is not decisive of the finality question, particularly where the Court is not otherwise convinced that the outcome of further proceedings is certain or will not affect the federal issues."). The dispute over the pension proceeds in particular is a subset of the larger state court probate proceedings relating to the disposition of David's entire estate.

Again, Respondents view is that the probate proceedings *should* now be closed, and indeed that may be likely, but the matter is not free from doubt. Such uncertainties, of course, are precisely the reason this Court awaits a "final judgment" before reviewing a state court ruling.

Certiorari also is inappropriate in light of the pending collateral federal court attack against the Washington Supreme Court's ruling. The federal suit brought by the plan administrator could result in a federal court judgment that Petitioner is entitled to the plans' proceeds. There is, accordingly, a real prospect that this case could moot during its pendency in this Court. See *Anderson* v. *Green*, 513 U.S. 557, 569 (1995) (per curiam) (explaining that Court was unable to reach the merits of the case before it because collateral proceeding voided the underlying governmental action (citing *Hall* v. *Beals*, 396 U.S. 45 (1969)). At the very least, assuming that the question presented merits this Court's attention at all, doubts about finality and the risk of mootness counsel in favor of awaiting a petition for certiorari from the federal court proceedings or from another case, see, e.g., *infra* note 1.

2. The decision below involves only an infrequently recurring question entirely bound up with issues of state law and does not present a conflict meriting this Court's review. The Washington Supreme Court held in this case that when Petitioner divorced David, she predeceased David as a matter of state law for purposes of receiving his "nonprobate assets," including life insurance or pension benefits (whether the proceeds of ERISA plans or not). Petitioner asserts that this issue recurs frequently, but cites to similar statutes of only *four* states and to *no* state court decisions interpreting those statutes. Pet. 24 n.7. The obvious reason is that there are few such statutes and essentially no decisions to cite. The Montana and Oklahoma state supreme courts have never even addressed their analogous statutes. The Ohio and Pennsylvania supreme courts have only ever considered whether their states' statutes may be applied retroactively, concluding that

they may not, rulings that have nothing to do with the question presented here. *Aetna Life Ins. Co.* v. *Schilling*, 616 N.E.2d 893 (Ohio 1993); *Parsonese* v. *Midland Nat'l Ins. Co.*, 706 A.2d 814 (Pa. 1998). It is not surprising that this issue is the subject of essentially no judicial authority: the question can arise only if an individual (a) lives in one of the few states with statutes providing that an ex-spouse "predeceases" a decedent for purposes of disposing of nonprobate assets, (b) holds an ERISA plan and has designated the ex-spouse as the beneficiary, and (c) divorces but dies before he or she can amend the beneficiary designation on plan documents.[1]

Petitioner therefore attempts to describe the question presented by her Petition as frequently recurring at a very high level of generality, stating that–"whether through statutes like § 11.07.010, state-law divorce decrees, testamentary transfer law, community property law, or the law of constructive trusts–numerous states have sought to impose varying and inconsistent restrictions on the ability of ERISA plan participants to designate beneficiaries in accordance with the applicable ERISA plans." Pet. 24-25 (footnote omitted). But this

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[1] So far as we are aware, this issue has only ever been decided *once* prior to this case by either the state of federal courts, and that decision was nearly ten years ago, long before this Court's substantial reformulation of its ERISA preemption doctrine. *See infra* at 8-9. Division Five of the Colorado Court of Appeals has subsequently indicated its disagreement with the Washington Supreme Court's rationale in this case. *In re. MacAnally*, No. 99CA0120, 2000 Colo. App. LEXIS 561 (Mar. 30, 2000). But Colorado's statute differs materially from Washington's and the Colorado court accordingly was correct in stating that the decision below is "distinguishable." Specifically, Colorado does not deem a former spouse to have "predeceased" the plan holder but rather provides that the plan is to be administered "as if the former spouse and relatives of the former spouse disclaimed" their interests in the plan proceeds. In any event, we are advised that a petition for rehearing is pending before the Colorado Court of Appeals, and an appeal to that state's Supreme Court is anticipated. Any subsequent conflict with the decision in this case can be resolved by a Petition for a Writ of Certiorari in *MacAnally*.

is simply a back-handed concession by Petitioner that the statutes and court decisions she invokes involve "numerous," "varying" circumstances and applications of state law, not conflicting judgments on a federal issue that require this Court's intervention.

The decisions cited by Petitioner confirm the absence of any relevant conflict. All but one of the cited cases are properly distinguished because they involve divorce decrees, codicils to wills, or similar instruments, by or between private individuals, that purport to change the beneficiary designations of ERISA plans. In other words, they involve circumstances in which private parties attempt to name a particular person as the beneficiary of an ERISA plan without relying on the plans' provisions and when, in fact, the plans themselves purport to designate someone else. The courts in those cases therefore did not even consider, much less resolve, whether preemption applies when benefits still will be distributed under the plans' terms (the critical distinction on which the Washington Supreme Court's decision rests) and when the State has a substantial interest in the operation of its sovereign law. Moreover, in each, the plan administrator was required to ascertain the existence of, acquire, and interpret an individual divorce decree, will, or similar document; no such burden exists in this case. See *infra* at 10-11.[2]

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[2] The only post-*Travelers* cases cited by Petitioner are *Metropolitan Life Ins. Co.* v. *Pettitt*, 164 F.3d 857, 859 (CA4 1998) (resolving the effect of a "property settlement agreement that [an ex wife] entered into with [the decedent] in connection with their divorce"); *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949, 954 (CA9 1998) (effect of allegation that decedent's "failure to alter the [plan] designation of beneficiary form was a mistake"), *cert. denied sub nom. Stencil* v. *Emard*, 525 U.S. 1122 (1999); *Mattei* v. *Mattei*, 126 F.3d 794, 796 (CA6 1997) (effect of "antenuptual agreement" which provided that spouse would receive a weekly payment but "surrendered all other claims to [the decedent's] estate"), *cert. denied,* 523 U.S. 1120 (1998); *Metropolitan Life Ins. Co.* v. *Marsh*, 119 F.3d 415, 416 (CA6 1997) (effect of a "divorce decree [that the district court incor-

Almost all of the cases cited by Petitioner, in fact, predate this Court's trilogy of decisions avowedly narrowing the breadth of ERISA preemption: *DeBuono* v. *NYSA-ILA Med. & Clin. Servs. Fund*, 520 U.S. 806 (1997); *California Div. of Labor Stands. Enforce.* v. *Dillingham Constr., N.A.*, 519 U.S. 316 (1997); *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645 (1995) ("*Travelers*").[3] And, only one pre-*Travelers* decision of the

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rectly found] did not constitute a qualified domestic relations order ('QDRO')").

[3] *Metropolitan Life Ins. Co.* v. *Pressley*, 82 F.3d 126, 128 (CA6 1996) (resolving the effect of a "Divorce Decree [that] does not qualify as a domestic relations order expressly exempt from ERISA preemption"), *cert. denied,* 520 U.S. 1263 (1997); *Equitable Life Assur. Soc.* v. *Crysler*, 66 F.3d 944, 946 (CA8 1995) (effect of a "divorce decree that allegedly prohibited beneficiary changes"); *Brandon* v. *Travelers Ins. Co.*, 18 F.3d 1321, 1322 (CA5 1994) (effect of a "divorce decree [that] provided that each spouse would separately retain his or her own employment benefits"), *cert. denied,* 513 U.S. 1081 (1995); *Krishna* v. *Colgate Palmolive Co.*, 7 F.3d 11, 13 (CA2 1993) (effect of a "Codicil superseding [a prior will] and the revocation of the power of attorney previously granted"); *Ablamis* v. *Roper*, 937 F.2d 1450, 1452 (CA9 1991) (effect of an attempt by "a wife who dies while her husband is still living [to] leave half his current or future pension benefits to a third party in her will"); *Brown* v. *Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1194 (CA11 1991) (effect of divorce decree that "provided '[t]hat the Defendant [Stirling Brown] shall keep the Plaintiff [Katharine Brown] as beneficiary on the life insurance now in effect on his life for as long as she remains unmarried" (alterations in original)); *McMillan* v. *Parrott*, 913 F.2d 310, 311 (CA6 1990) (effect of divorce settlement which "contained a broad waiver clause in which each spouse relinquished 'any and all' claims he or she might have against the other"), *reh'g granted,* 922 F.2d 841 (CA6 1990) (remanding case for proceedings consistent with initial opinion); *Fox Valley & Vicinity Constr. Workers Pension Fund* v. *Brown*, 897 F.2d 275, 278 (CA7) (effect of "marital property settlement agreement in which Laurine seemingly waived her right to any benefits from the Fund"), *cert. denied,* 498 U.S. 820 (1990); *MacLean* v. *Ford Motor Co.*, 831 F.2d 723, 725 (CA7 1987) (question whether plan "assets pass with the residue of the decedent's estate under the terms of his will or whether the [plan] assets are distributed to the designated beneficiary of his life insurance pol-

Tenth Circuit involves a state law that parallels the Washington statute in this case. *Metropolitan Life Ins. Co.* v. *Hanslip*, 939 F.2d 904 (CA10 1991). With all due respect to the one dissenting judge cited by Petitioner who disagrees, Pet. 15 (citing *Emard* v. *Hughes Aircraft Co.*, 153 F.3d 949 (CA9 1998) (Hall, J., dissenting), *cert. denied sub nom. Stencil* v. *Emard*, 525 U.S. 1122 (1999)), the courts uniformly have acknowledged that this Court's *Travelers* decision and its progeny represent a marked change in the application of ERISA preemption. Of note, the Washington Supreme Court made clear that it would have ruled in Petitioner's favor prior to *Travelers*, Pet. App. 12a, 15a, 27a, and it remains to be seen whether the courts cited by Petitioner will adhere to their earlier holdings (all but one of which in any event relate to inapposite state laws). It is to be expected that in the wake of such a substantial change in this Court's approach to ERISA preemption some disagreements would emerge in the lower courts that are fully capable of resolution over time without this Court's further intervention.

The distinctions between the Washington Supreme Court's decision and the rulings cited by Petitioner make this case an inappropriate vehicle to resolve any supposed broader conflict regarding whether and when state law may "displace" ERISA plan beneficiary designations. The Washington Supreme Court's construction of RCW 11.07.010 as merely creating the "fiction" that Petitioner "predeceased" David is for all purposes binding on this Court and accordingly is the premise on which this case would have to be decided. The

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icy in accordance with the terms of the employee pension plan"); *Stackhouse* v. *Russell*, 447 N.W.2d 124, 124 (Iowa 1989) (effect of a "dissolution of marriage decree" which "directed the husband to provide life insurance (death benefits under a collective bargaining agreement) in favor of the two daughters of the parties"); *Brown* v. *Brown by Beacham*, 422 S.E.2d 375, 379 (Va. 1992) (question whether ex-spouses "notarized waiver was insufficient to constitute the required notarized spousal consent" to change designation).

cases cited by Petitioner, by contrast, involve different effects on plan designations and plan administration.

We can illustrate this point by reference to so called "slayer" statutes, which provide that an individual who causes the death of his or her spouse may not then receive the spouse's assets. Although such statutes displace the beneficiary designations of ERISA plans, no one even suggests that such statutes are preempted by ERISA. See IRS Letter Ruling 8908063 (Nov. 30, 1988). That presumably is so because (a) the state has a substantial interest in discouraging spousal homicide, and (b) such statutes impose only a minor burden on ERISA plan administrators. The same rationales underlie the ruling below that the Washington statute in this case is not preempted by ERISA. A decision on such issues is unlikely to illuminate, much less resolve, a disagreement over the circumstances in which private agreements and testamentary devices, or other unrelated state laws, may alter ERISA plan designations. If the broad conflict asserted by Petitioner merits resolution by this Court, certiorari should be granted in a case that directly presents the issue, as in a dispute over the effectiveness of a divorce decree or will codicil. See *supra* notes 2, 3.

3. The decision below is absolutely faithful to this Court's precedents. The decision below carefully analyzes this Court's precedents. In particular, the Washington Supreme Court was cognizant of this Court's change in approach to ERISA preemption in *Travelers* and its progeny. At the same time, the court recognized the continuing breadth of preemption doctrine, holding that state law is invalid if it "mandates plan benefit structures or some aspect of their administration" and thus "directly or indirectly invades the core functions of ERISA regulation." Pet. App. 20a.

Petitioner asserts that the decision below nonetheless conflicts with *Boggs* v. *Boggs*, 520 U.S. 833 (1997). That is not correct. The question in *Boggs* was whether ERISA preempted an attempt "to transfer by testamentary instrument an

interest in undistributed pension plan benefits." 520 U.S. at 836. The applicable ERISA provision granted a surviving spouse a "statutory entitlement to an annuity," which Louisiana community property law purported to trump by permitting a testamentary transfer to a third party. *Id.* at 843-44. Such an arrangement, the Court held, flatly contradicted ERISA's anti-alienation provision. But as the Washington Supreme Court explained, no such concern arises in this case. A prohibited "assignment or alienation" occurs only through an "arrangement whereby a party acquires *from a participant or beneficiary* an interest enforceable against a plan." *Boggs*, 520 U.S. at 852 (alterations omitted). Neither David nor Petitioner transferred any interest to Respondents, who are entitled to benefits only under the terms of the plans themselves, just as if Petitioner had actually predeceased David. And the rationale behind the anti-alienation provision–ensuring that a beneficiary is not deprived of benefits without his or her knowledge and consent–is completely absent in this case as well: Petitioner was perfectly cognizant of the effect of her divorce from David (and indeed the divorce decree expressly granted David 100% of the pension plan proceeds); to allow Petitioner to collect benefits would simply facilitate her unjust enrichment.

Nor does the decision below conflict with the principle that ERISA preempts state laws that "mandate employee benefit structures or their administration," *Travelers*, 514 U.S. at 658. Any suggestion that the decision below imposes a substantial burden on ERISA plan administrators is seriously overblown. As noted, Respondents are entitled to receive benefits only based on the terms of the plans themselves. Furthermore, Petitioner acknowledges that, prior to disbursing benefits, a plan administrator must determine (a) whether the plan beneficiary had divorced from the decedent, and (b) whether that divorce was embodied in a qualified domestic relations order ("QDRO"). In the State of Washington, the inquiry simply *stops* at step (a) and the plan administrator

treats the named beneficiary as if he or she already had died. This is hardly a "complex set of requirements varying from State to State," *Boggs*, 520 U.S. at 851, that merits invoking ERISA to invalidate a sovereign state law.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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