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 WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

BRIEF OF *AMICI CURIAE*, THE BOEING COMPANY, THE NATIONAL ASSOCIATION OF MANUFACTURERS AND THE CHAMBER OF COMMERCE OF THE UNITED STATES, IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Boeing Company ("Boeing") is an aerospace company that employs approximately 173,000 persons in business operations located in 45 states. Boeing sponsors various pension plans and welfare benefit plans that are subject to the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), and that provide benefits to Boeing employees. Through a delegation of authority from Boeing, a committee comprised of Boeing employees acts as the administrator of Boeing's ERISA plans. Boeing is the sponsor of the pension plan and of the life insurance plan that provided the employee benefits at issue in this case.

The National Association of Manufacturers (the "NAM") is the nation's oldest and largest broad-based industrial trade association. The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers and to improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding about the importance of manufacturing to America's economic strength.

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[1] Counsel for a party did not author this brief in whole or in part. No one, other than the *amici curiae* or their counsel, made a monetary contribution to the preparation or submission of this brief. Boeing has provided Petitioner Donna Rae Egelhoff with financial support in connection with her brief on the merits. Counsel for the parties have issued blanket consents for the filing of amicus briefs.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber has substantial membership in each of the 50 states, and through its federation of members represents more than 3,000,000 businesses and professional organizations of every size and in every sector of the economy. More than 95% are small businesses with 100 or fewer employees, and virtually all the nation's largest companies are also members of the Chamber. The Chamber thus serves as a principal voice of American business.

Boeing, the NAM and the Chamber submit this brief to express the viewpoints of employers and ERISA plan administrators[2] in connection with purported State regulation of beneficiary designations. This brief will address the unnecessary burdens and costs that such a patchwork of State regulation would impose on the beneficiary designation administration of ERISA-governed employee benefit plans. In addition, Boeing, the NAM and the Chamber are concerned that an unduly narrow application of ERISA preemption will, contrary to Congress's express intent in regulating employee benefit plans under a uniform national law, force employers to direct an increasingly greater amount of resources toward plan administration and litigation for resolving benefits entitlement under the laws of the 50 States, with fewer resources available for providing actual benefits.

SUMMARY OF ARGUMENT

If the Washington Supreme Court's decision below is allowed to stand, it will defeat the purposes of ERISA, it will impose real and substantial burdens on plan sponsors and

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[2] Employers that sponsor ERISA plans typically act as, or have authority over, the administrators of such plans.

administrators, thereby jeopardizing the future of many employer-sponsored pension and welfare plans, and it will hinder the ability of participants, beneficiaries and their advisors to make informed decisions about beneficiary status and rights. By expressly incorporating a preemption provision into the ERISA statute, Congress intended to avoid these outcomes.

ERISA preempts Revised Code of Washington § 11.07.010 because the Washington law, which in effect automatically revokes a spousal beneficiary designation upon divorce, conflicts with ERISA's substantive provisions and operates to frustrate ERISA's purpose. Preemption in this instance will serve to avoid State-by-State regulation of ERISA plan beneficiary designations and to prevent the type of administrative burden on ERISA plans that Congress has sought to avoid.

Boeing, the NAM and the Chamber ask the Court to confirm the uniform national law that ERISA plans should apply in making their beneficiary payment decisions. In this way, the Court can resolve the existing confusion, especially for employers with operations in multiple States. The Court should adopt the standard already in place under ERISA, which standard provides that an ERISA plan beneficiary is determined solely by the governing plan documents.

ARGUMENT

I. ERISA PREEMPTS REVISED CODE OF WASHINGTON § 11.07.010 BECAUSE COMPLIANCE WITH THIS AND SIMILAR STATE LAWS WOULD FRUSTRATE A FUNDAMENTAL PURPOSE OF ERISA.

The Court has previously enunciated the standard for ERISA preemption that is applicable to this case: a State law is preempted by ERISA if the State law "conflicts with the provisions of ERISA or operates to frustrate its objects." *Boggs v. Boggs*, 520 U.S. 833, 841 (1997). Likewise, where the "'law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress,' federal preemption occurs." *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 99 (1993) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)).

ERISA was enacted to protect the interests of employees and beneficiaries in employer-provided benefit plans. 29 U.S.C. § 1001(a). The safeguards contained in ERISA amount to formal obligations for the establishment, operation and administration of such plans. *Id.* Through ERISA's preemption clause, Congress sought a careful balance of the burdens created by the statute:

> Section 514(a) [ERISA's preemption clause] was intended to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government. Otherwise, the inefficiencies created could work to the detriment of plan beneficiaries.

Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142 (1990). Congress wished to avoid

> [a] patch-work scheme of regulation [that] would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to

> reduce benefits, and those without such plans to refrain from adopting them.

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987).

As the Court has thus recognized, a fundamental purpose of ERISA was to create a uniform national law for the efficient administration of employer-sponsored benefit plans. A uniform national law currently exists under ERISA for designating the beneficiary who is entitled to a participant's death benefit. In stark contrast, the patchwork of State regulation contemplated by the Washington Supreme Court's decision below would create precisely the type of administrative inefficiencies that would frustrate ERISA's uniform national law purpose.

A. Under ERISA, the Terms of a Pension or Welfare Plan Govern Beneficiary Status.

An ERISA pension plan, or an ERISA welfare plan that provides a death benefit, must set forth the beneficiary designation provisions that direct the payment of a death benefit. This payment scheme is essential to the operation of such plans, given the necessity of paying the death benefit to a beneficiary and given ERISA's definition of a "beneficiary" as "a person designated by a participant, or *by the terms of an employee benefit plan*, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8) (emphasis added). Notably, the ERISA statute is devoid of any reference to a designation of beneficiaries pursuant to State law. Again without referring to State law, ERISA § 502 provides the enforcement mechanism for benefits available to a beneficiary under the terms of a plan. *See* 29 U.S.C. § 1132(a)(1) (a beneficiary may bring a civil action to recover benefits due under the terms of a plan). To ensure compliance with the beneficiary designation provisions and other provisions of a plan, ERISA imposes on plan fiduciaries the obligation to discharge their duties in accordance with the governing plan documents. 29 U.S.C. § 1104(a)(1)(D).

Thus, the proper beneficiary under an ERISA plan can be identified by the simple process of reading the governing plan documents. *See Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 421 (6th Cir. 1997) (deciding the beneficiary of ERISA plan benefits is "directly within the scope of the plan's authority"). For example, the Boeing pension plan allows participants to designate a beneficiary on an appropriate form. Joint Appendix at 40. If a beneficiary is not properly designated or predeceases the participant, the Boeing pension plan states that benefits are paid to one of the following beneficiaries: the surviving spouse; if no surviving spouse, the children in equal shares; and if no surviving children, either to another relative designated by the Boeing pension plan administrator or to the participant's estate. *Id.* Thus, at the time of a participant's death, the designated Boeing pension plan administrator needs to undertake only the following two simple steps:

(1) determine whether the participant has a valid beneficiary designation form on file and

(2) if there is proper designation, direct payment to the designated beneficiary; if there is no proper designation or if the designated beneficiary has predeceased the participant, direct payment in accordance with the plan's beneficiary priority.

B. A Patchwork of State Regulation Would Impose Unnecessary Administrative Burdens on ERISA Plans.

ERISA's legislative history reveals a special concern for ensuring that a uniform national law would govern a plan's cognizance over designating and paying beneficiaries:

> Statements by ERISA's sponsors in the House and Senate clearly disclose the problem that the pre-emption provision was intended to address. . . .
>
> These statements reflect recognition of the administrative realities of employee benefit plans. An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as *determining the eligibility of claimants*, calculating benefit levels, making disbursements, monitoring the availability of funds for benefit payments, and keeping appropriate records in order to comply with applicable reporting requirements. *The most efficient way to meet these responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.* Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in different States. A plan would be required to

> keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.

Fort Halifax, 482 U.S. at 9 (emphasis added). State-by-State regulation of the beneficiary designation process is significantly more burdensome than ERISA's simple process of paying the beneficiary indicated by the governing plan documents. A patchwork of State regulation would require plan administrators to undertake many additional actions, as described below.

First, a State-regulated plan administrator would need to understand the applicable beneficiary law in all states in which the plan sponsor maintains operations or pays benefits (e.g., Boeing has operations located in 45 states and has paid benefits to participants who reside in all 50 states).[3] This monitoring would have to be repeated on a periodic or distribution-by-distribution basis.[4] Adding to the

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[3] The mere fact that employees can retire to States other than the State in which they worked for an employer imposes a potentially significant burden on plan administration, even for an employer with operations in a single State. Absent ERISA preemption, it is unclear, at best, whether the law of a foreign State with no connection to an ERISA plan other than the residence of a retired plan participant may govern that participant's beneficiary designation.

[4] The historical underpinning of Revised Code of Washington § 11.07.010 demonstrates the need to monitor existing law. The Washington Legislature enacted § 11.07.010 effective January 1, 1995. WASH. REV. CODE § 11.07.010(6). Immediately prior, Washington law was quite different. In *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 689 P.2d 46 (1984), the Washington Supreme Court

administrative burden would be the fact that the source of law in each State is not plain, potentially arising under common law or codified in probate, trust and estate, domestic relations, or community property statutes. A sampling of the beneficiary designation laws of just four States in which Boeing has operations—Arizona, Montana, Oklahoma and Virginia—demonstrates the potential diversity of sources and substance. ARIZ. REV. STAT. ANN. § 14-2804 (trusts and estates); MONT. CODE ANN. § 72-2-814 (probate); 15 OKLA. STAT. § 178 (contracts); VA. CODE ANN. § 20-111.1 (domestic relations).[5] If forced to deal with the diversity of

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created a judicial rule whereby a dissolution decree that clearly indicated an intent to divest a former spouse as a life insurance beneficiary would be operative as long as the participant acted to remove the former spouse as the designated beneficiary within a reasonable time (generally, one year); if the former spouse was not timely removed, then the court would conclusively presume the former spouse to be the named beneficiary. 102 Wn.2d at 662. Before 1984, the same issue in Washington was resolved under yet other standards. *Id.* at 660-62.

[5] Arizona Revised Statute § 14-2804(A) provides, in relevant part:

> Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between a divorced couple before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:
>
> 1. Revokes any revocable:
>
> (a) Disposition or appointment of property made by a divorced person to that person's former spouse in a governing instrument . . . .

A payor who relies in "good faith" on the validity of a beneficiary designation is not liable for making payment before the payor receives "written notice" of the divorce, annulment or remarriage. ARIZ. REV. STAT. ANN. § 14-2804(F). Written notice must be mailed to the payor's main office or home by certified mail, return receipt requested, or served on a payor in the same manner as a summons in a civil action. *Id.* § 14-2804(G).

Montana Code § 72-2-814 is substantially similar to Arizona Revised Statute § 14-2804. Even so, Montana law imposes supplemental requirements. For example, Montana law states that a payor is only liable for actions taken two or more business days after actual receipt of a written notice of the divorce, annulment or remarriage. MONT. CODE ANN. § 72-2-814(7)(a). Moreover, Montana law requires that the written notice contain a number of specific elements in order to be effective. MONT. CODE ANN. § 72-2-814(7)(b).

Oklahoma Statute, Title 15, § 178 provides, in relevant part:

> A. If, after entering into a written contract in which a beneficiary is designated or provision is made for the payment of any death benefit (including life insurance contracts, annuities [and] retirement arrangements . . .), the party to the contract with the power to designate the beneficiary or to make provision for payment of any death benefit dies after being divorced from the person designated as the beneficiary or named to receive such death benefit, all provisions in the contract in favor of the decedent's former spouse are thereby revoked. Annulment of the marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the decedent's former spouse shall be treated for all purposes under the contract as having predeceased the decedent.
>
> B. Subsection A of this section shall not apply:
>
> 1. If the decree of divorce or annulment is vacated;
>
> 2. If the decedent had remarried the former spouse and was married to said spouse at the time of the decedent's death;
>
> 3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;
>
> 4. If the decedent makes the contract subsequent to the divorce or annulment;

State laws, plan administrators would face burdens of paying for costly legal research, retaining local counsel in each State or pursuing other means of determining applicable State law.

If ERISA's simple scheme for determining plan beneficiaries was abandoned and replaced with a multitude of

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> 5. To the extent, if any, the contract contains a provision expressing an intention contrary to subsection A of this section; or
>
> 6. If the decedent renames the former spouse as the beneficiary or as the person or persons to whom payment of a death benefit is to be made in a writing delivered to the payor of the benefit prior to the death of the decedent and subsequent to the divorce or annulment.

Code of Virginia § 20-111.1 provides, in relevant part:

> Upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, 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 is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.
>
> . . . .
>
> This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

varied State regulatory schemes, the range of uncertainties faced by plan administrators would be significantly increased. Each State scheme would inevitably present its own unique set of uncertainties.

In fact, the Washington statute at issue in this appeal, Revised Code of Washington § 11.07.010, is itself not subject to simple interpretation. It contains several detailed subsections that create ambiguous standards for plan administrators. By way of example, one subsection in § 11.07.010 states that the payor will not be responsible for paying an employee benefit plan asset to a former spouse if the payor did not have "actual knowledge" of the marriage's invalidation at the time of payment. WASH. REV. CODE § 11.07.010(3)(a). The seemingly well-intended provision does not effectively assist many plan administrators with their payment decision-making. In particular, it is unclear whether the Boeing pension plan administrator would be deemed to have actual knowledge of a divorce for purposes of paying a death benefit if the participant had earlier removed her former spouse as a dependent under one of the dozens of Boeing medical plans. If so, and if the Boeing pension plan paid the benefits, the Boeing pension plan could be exposed to double payment liability under § 11.07.010(3)(a). The increased uncertainty and liability—arising from just one aspect of the law of just one State—indicate the magnitude of the potential burden for plan administrators if they are required to apply the diverse laws of up to 50 states.

After making the State law determinations, a State-regulated plan administrator would need to tailor the plan's beneficiary designation procedures and forms in accordance with varied State regulatory schemes. For example, procedures would need to be developed for ensuring that the plan pays the appropriate beneficiary under the various State laws. And administrative forms would need to address the effect of State law on who ultimately receives a death benefit, so that participants can make informed decisions about beneficiaries (and beneficiary changes) and so that beneficiaries and other claimants can understand the effect of past designations or revocations by participants.

Perhaps the most difficult task of all for State-regulated plan administrators would be that of sorting through a wide range of choice of law questions. Although an endless array of hypothetical situations could be developed, the actual facts in the case of *Hill v. AT&T Corp.*, 125 F.3d 646 (8th Cir. 1997), reflect the potential choice of law complications. The pertinent facts were as follows:

(1) John and Judy Hill married in the State of Missouri in 1970;

(2) while married and residing in Missouri, Judy was employed by AT&T;

(3) thereafter, the couple moved to the State of Washington where Judy continued her employment with AT&T;

(4) in 1979, Judy affirmatively designated John as her primary beneficiary under the AT&T savings plan;

(5) in July 1986, the couple separated and John returned to Missouri;

(6) Judy filed for divorce, and a Washington court granted a default divorce decree in November 1986;

(7) Judy never modified her designation of John as her primary beneficiary under the AT&T savings plan;

(8) following the divorce, Judy moved to the State of Rhode Island, where she died in 1991 while still employed by AT&T;

(9) John and the contingent beneficiary listed on the plan's beneficiary designation form both claimed entitlement to Judy's plan benefits;

(10) despite receiving notice of these competing claims, the plan paid benefits to the contingent beneficiary; and

(11) John then filed a lawsuit in Missouri.

Id. at 647-48. Under these facts, if State law were to govern ERISA plan beneficiary designations, arguments could be made for applying the law of Missouri, Washington or Rhode Island.[6] If a plan administrator were to pay benefits after an erroneous choice of law determination, the benefit plan would be at risk of double payment liability.[7]

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[6] John, the prevailing party, in fact argued that the beneficiary designation was governed by the application of Washington law at it existed prior to the enactment of Revised Code of Washington § 11.07.010 (*see supra* note 4). 125 F.3d at 648 n.4. The Eighth Circuit, however, declined to apply State law. The court instead held that the controlling law was the federal common law of ERISA, as developed in the Eighth Circuit, and that the divorce decree was not sufficiently specific to divest John of his beneficiary status. *Id.* at 648.

[7] *Hill v. AT&T Corp.* provides an example of this risk of double payment liability. There, the AT&T savings plan administrator was determined by the Eighth Circuit to have misapplied the law and was required to pay the benefits a second time. *Id.* at 650. Moreover, the facts presented to the Court by this petition also demonstrate this double payment liability risk. The insurer of the Boeing life insurance plan (Aetna) has already paid the policy benefits to Petitioner (the plan participant's former spouse, who is designated on the beneficiary form). The Respondents (the participant's children by a prior marriage who are contingent beneficiaries) have responded by filing suit against Aetna and seeking payment of those same benefits under Revised Code of Washington § 11.07.010.

The inevitable administrative burdens that would result from a patchwork of State regulation would frustrate ERISA's purpose of creating a uniform national law for the efficient administration of employer-sponsored benefit plans. To avoid this result, the Court should decide that ERISA preempts Revised Code of Washington § 11.07.010 and similar State laws. *See Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (citing decisions from the Federal circuits to support the conclusion that a State law governing the designation of an ERISA beneficiary is preempted by ERISA).

II. PLAN ADMINISTRATORS SHOULD BE ABLE TO RELY SOLELY ON THE GOVERNING PLAN DOCUMENTS IN DETERMINING ERISA PLAN BENEFICIARIES.

Plan sponsors and administrators around the country would benefit by avoiding a multiplicity of regulation over identifying the proper beneficiary under ERISA plans, especially in situations where a former spouse is designated as a beneficiary at the time of death but arguably waived some or all rights to the death benefits at the time of divorce. The Court would save countless costs and time expenditure by confirming the uniform national law for all ERISA plans.

Boeing, the NAM and the Chamber respectfully suggest that ERISA's existing simple scheme—determining beneficiaries solely by the provisions of the governing plan documents—offers the most administratively efficient standard for a uniform national law.[8] As stated above, ERISA

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[8] Although some lower courts have developed and applied a Federal common law under ERISA to determine similar beneficiary designation issues, *see, e.g., Manning*, 212 F.3d at 874, Boeing, the NAM and the Chamber

already contemplates that the terms of an ERISA pension or welfare plan document will designate, or create a means for designating, the plan's beneficiary. *See* 29 U.S.C. § 1002(8). Further administrative scrutiny of beneficiary designations is unnecessary. Such scrutiny would serve only to complicate and confuse the beneficiary designation process. *See, e.g.*, *Manning*, 212 F.3d at 874 (an ERISA beneficiary may waive his or her entitlement to the proceeds of an ERISA plan, provided that the waiver is "explicit, voluntary, and made in good faith") (citation and internal quotation marks omitted); *Hill v. AT&T Corp.*, 125 F.3d at 650 (a divorce decree must be sufficiently specific to convey the intent of the parties to divest one or the other, or both, of an ERISA beneficiary interest); *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990) (same proposition); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989) (same proposition). The objectives of ERISA will be properly served by the Court's confirmation that an ERISA plan beneficiary is determined solely by the governing plan documents—a particularly clear and concise statement of the law and a standard that will result in the efficient administrative process contemplated by Congress.

Finally, ERISA's beneficiary designation scheme of looking to the governing plan documents is not only the best result for plan sponsors and administrators, but also it favors the interests of plan participants. The simplicity of the ERISA scheme allows participants, as well as their legal and financial advisors, to determine from the plan documents whether a beneficiary designation in favor of a former spouse will remain valid until the participant changes it, regardless of divorce or other life events. This scheme is easy to

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nonetheless believe that resort to Federal common law is unnecessary when the ERISA statute already establishes a beneficiary designation scheme.

communicate and easy to understand. In addition, the efficiencies of a uniform national law that is simple in design and in operation will mitigate the potential for employers to decrease pension and welfare benefits in order to pay for increased administration and litigation costs arising from beneficiary disputes. *See Fort Halifax*, 482 U.S. at 11.

CONCLUSION

The judgment below should be reversed and the Court should hold that ERISA sets forth the uniform national law that ERISA plan administrators must apply to beneficiary designations.

Respectfully submitted,

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