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 *AMICUS CURIAE* OF AARP IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES & LEGISLATIVE MATERIALS

MISCELLANEOUS

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INTEREST OF *AMICUS CURIAE*[1/]

AARP is a nonprofit membership organization of more than 34 million persons age 50 or older that is dedicated to addressing the needs and interests of older Americans. AARP seeks through education, advocacy and service to enhance the quality of life for all by promoting independence, dignity and purpose. As a method of promoting independence, AARP attempts to foster the economic security of individuals as they

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[1/] No counsel for any party authored any portion of this brief. No party other than this *amicus curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

age by seeking to increase the availability, security, equity, and adequacy of public and private pension, health, disability, and other employee benefits.[2/]

AARP's members and other participants and beneficiaries in private, employer-sponsored employee benefit plans rely on the Employee Retirement Income Security Act (ERISA) to protect their rights under those plans. ERISA's protections, and the ability to enforce those protections, are of vital concern to older workers, retirees and their designated beneficiaries, since the quality of their lives depends heavily upon the security and amount of their pension and welfare benefits. State beneficiary designation laws, like the law from Washington State, take control from participants as to whom to leave their benefits, instead of allowing participants to follow their plan's rules and make their own designation. Thus, the decision in this case will have a direct and vital bearing on the economic security of AARP's members and other older Americans. In light of the significance to its members of the issues presented by this case, AARP respectfully submits this brief *amicus curiae*.[3/]

SUMMARY OF ARGUMENT

ERISA preemption analysis is no different from any other preemption analysis. *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. 86, 99 (1993). Any state law that directly conflicts with a federal law, either on its

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[2/] As part of its advocacy efforts to ensure, to the greatest extent possible, that participants and beneficiaries receive the benefit of ERISA's protections, AARP has participated as *amicus curiae* in numerous cases involving the breadth of ERISA's preemption clause. *See, e.g., UNUM Life Ins. Co. v. Ward*, 526 U.S. 358 (1999); *Boggs v. Boggs*, 520 U.S. 833 (1997); *California Division of Labor Standards Enforcement v. Dillingham Construction*, 519 U.S. 316 (1997); *John Hancock Mutual Life Ins. Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993).

[3/] The written consents of the parties have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

face or in application, must be preempted because it would frustrate Congress' purpose in enacting the federal law. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Through provisions in ERISA as amended by the Retirement Equity Act, Congress established a detailed procedure for receipt and distribution of pension benefits. S. REP. NO. 98-575 at 12 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2558. Accordingly, state laws that conflict with the substantive provisions of ERISA by regulating how pension benefits are to be paid and by creating specific requirements concerning distribution of pension benefits must be preempted. *E.g., Boggs v. Boggs*, 520 U.S. 833 (1997); *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985). Washington State's beneficiary designation law should be conflict preempted for pension benefits.

The primary objective of ERISA is to protect participants and beneficiaries. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). And, Congress enacted ERISA's preemption clause to eliminate the threat of conflicting and inconsistent state and local regulation in order to promote the uniform administration of employee benefit plans. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* (*"Travelers"*), 514 U.S. 645, 655-61 (1995). Accordingly, pursuant to *Travelers*, three types of state laws are always preempted: (1) laws that mandate employee benefit structures or their administration; (2) laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself; or (3) laws providing alternate enforcement mechanisms for employees to obtain ERISA plan benefits. *See Travelers*, 514 U.S. at 658; *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715, 723 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1468 (4th Cir. 1996). In this instance, protection of participants and their beneficiaries would be decreased if this state law is not preempted because participants could not decide to whom their benefits should be paid. Moreover, Washington State law not only mandates certain administrative practices, but also precludes uniform administrative practices by requiring

employee benefit plans to comply with designated beneficiary statutes in all 50 states. On this basis alone, Washington State's designated beneficiary law relates to employee pension and welfare benefit plans and should be preempted.

Even if the Court determines that the Washington State law does not fall within one of the categories of preempted state laws, because the Washington State law is a law of general application, whether it is preempted turns on the question of whether the relationship involved is one which is regulated by ERISA. ERISA should preempt state law claims as to those relationships which it regulates comprehensively (*e.g.*, between plan and plan participant, plan and employer, plan and trustee). *See Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d at 724; *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468. In this case, Washington State's designated beneficiary law regulates the relationship between the plan and the plan participant, that is, who should receive the benefits earned by the plan participant. Consequently, ERISA must preempt Washington's designated beneficiary statute because it relates to employee pension and welfare benefit plans. The decision below should be reversed.

ARGUMENT

I. WASHINGTON STATE'S DESIGNATED BENEFICIARY LAW MUST BE PREEMPTED BECAUSE IT DIRECTLY CONFLICTS WITH ERISA'S PENSION DISTRIBUTION SCHEME.

A. If State Law Conflicts with the Provisions of ERISA or Operates to Frustrate ERISA's Objectives, The State Law Must Be Preempted.

ERISA preemption analysis follows traditional preemption analysis. *John Hancock Mutual Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. at 99 ("[W]e discern no solid basis for believing that, Congress, when it designed ERISA, intended fundamentally to alter traditional preemption analysis."). "'[T]he purpose of Congress is the ultimate touchstone of preemption analysis.'" *Cipollone v. Liggett Group, Inc.*, 505

U.S. 504, 516 (1992) (*quoting Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978) (*quoting Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963))); *see* U.S. CONST. art. VI, cl. 2. Under traditional preemption analysis, any state law that directly conflicts with a federal law, either on its face or in application, must be preempted because it would frustrate Congress' purpose in enacting the federal law. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. at 230.

Following this traditional analysis, the Court in *Boggs v. Boggs*, 520 U.S. at 841-42, stated that the first question in ERISA preemption analysis is "if state law conflicts with the provisions of ERISA or operates to frustrate its objects." The Court further stated that if a court determined that a state law directly conflicted with ERISA's provisions, no further analysis was necessary. The *Boggs* majority stated that there was no need to analyze the "relates to" clause. *Id.* However, the Court did not specifically overrule *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 739, which held that state laws that conflict with the substantive provisions of ERISA obviously "relate to an employee benefit plan." Under either the *Boggs* or *Metropolitan Life* analysis, if a state law directly conflicts with ERISA's provisions, ERISA will preempt it.

State laws are preempted if they (1) regulate the types of benefits or terms of a plan, *e.g.*, *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992) (workers' compensation law prohibiting termination of health benefits of workers receiving workers' compensation benefits is preempted); (2) create specific requirements as to funding, reporting and disclosure, vesting, and the like, *e.g.*, *Hewlett-Packard Co. v. Barnes*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978) (state law regulating funding and disclosure requirements of ERISA plans is preempted); or (3) establish rules for the calculation of benefits, *e.g.*, *FMC Corp. v. Holliday*, 498 U.S. 52 (1990) (interference with calculation of benefits through state antisubrogation statute); *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) (prohibition of offset of workers' compensation benefits against retirement benefits). Failure to preempt such law would frustrate ERISA's objective to foster uniform administration of employee benefit

plans.[4/] *See Boggs v. Boggs*, 520 U.S. at 841-42; *cf. Travelers*, 514 U.S. at 668 (recognizing that laws having direct effects on plans are preempted).

B. Because ERISA Provides Uniform Standards Concerning The Form, Payment, and Distribution of Pension Benefits, Washington State's Statute Designating the Beneficiary of Benefits Paid from ERISA-Covered Employee Benefit Plans Is Conflict Preempted.

"ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). "The statute imposes participation, funding, and vesting requirements on pension plans." *Id.* at 91. ERISA also provides uniform minimum standards for the form, payment and distribution of pension benefits. ERISA §§ 201-11, 29 §§ 1051-1061. *See generally* D. McGill and D. Grubbs, Jr., FUNDAMENTALS OF PRIVATE PENSIONS, Chapters 4 - 6 (6th ed. 1989).

Congress mandated an extremely detailed procedure in order for participants and beneficiaries to receive pension benefits. Not only must a participant work a certain number of years to be vested, but even after the participant is vested, Congress decreed certain other requirements in order for the participant and beneficiaries to receive their benefits. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 90-91. ERISA § 205 requires that married participants can only receive a retirement benefit that does not provide for their spouses if their spouses provide a written consent to waive their rights, ERISA § 205, 29 U.S.C. § 1055; *see also* I.R.C. §§ 401(a)(11) & 417, 26 U.S.C. §§ 401(a)(11) & 417, and pension plans will lose their tax qualification if they do not include these provisions. I.R.C. §§ 401(a)(11) & 501(a), 26 U.S.C. §§ 401(a)(11) & 501(a).

[4/] *Amicus* notes that these cases were decided before *Boggs*, and none of them focused on the concept of conflict preemption, even though the state law at issue directly conflicted with ERISA provisions.

That section also requires the provision of a pre-retirement pension benefit to a surviving spouse unless the spouse has waived this benefit. ERISA § 205(e), 29 U.S.C. § 1055(e). This section sets forth when consent must be obtained and under what circumstances. ERISA §§ 205(g)(1) & (g)(2), 29 U.S.C. §§ 1055(g)(1) & (g)(2). ERISA § 206 not only permits the division of pension benefits upon divorce, but it permits a plan to pay some of these benefits directly to the spouse if a court order meets certain conditions. ERISA § 206(d), 29 U.S.C. § 1056(d); *see also* I.R.C. § 414(p), 26 U.S.C. § 414(p). Finally, these sections specify the minimum time frame by which the pension benefits must be paid. ERISA § 206(a), 29 U.S.C. § 1056(a).

Washington State's beneficiary designation law provides that a participant's employee benefit plan beneficiary designation made prior to a divorce is "revoked" and that benefits which a participant has earned from employee benefit plans pass upon the participant's death as if the former spouse had predeceased the participant. This law directly conflicts with ERISA's distribution of pension benefits distribution scheme set forth in Sections 205 and 206 because it creates specific requirements as to whom and how pension benefits are to be paid. Accordingly, the Washington State designated beneficiary law directly regulates pension benefits and must be preempted. *See Boggs v. Boggs*, 520 U.S. at 841-42; *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. at 739.

II. ERISA MUST PREEMPT WASHINGTON STATE'S DESIGNATION OF BENEFICIARY LAW BECAUSE IT UNDERCUTS CONGRESS' INTENT TO PROTECT PARTICIPANTS AND TO PROMOTE UNIFORM ADMINISTRATION OF EMPLOYEE BENEFIT PLANS.

Even if the Court finds that ERISA does not preempt Washington State's law under traditional conflict preemption analysis as to pension benefits, Washington State's designation of beneficiary law still must be preempted under ERISA § 514(a) as to all types of benefits because it relates to an

employee benefit plan.[5] In *Travelers*, the Court reiterated its holding that a state law relates to an employee benefit plan if it has a reference to or connection with a plan. 514 U.S. at 656, *quoting Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 96-97.[6] To determine whether a state law has a connection with a plan, a court must look to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans." *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. at 325.

The Court has stated that the general objective of ERISA is to protect participants and beneficiaries. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). The Court has also concluded that "the basic thrust of the pre-emption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 646.

Three types of state laws are always preempted: (1) laws that mandate employee benefit structures or their administration; (2) laws that bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself; and (3) laws providing alternate enforcement mechanisms for employees to obtain ERISA plan benefits. *See Travelers*, 514 U.S. at 658; *accord, Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d at 723; *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468.

[5] Section 514(a) states that ERISA "shall supersede any and all State laws insofar as they. . . relate to any employee benefit plan" covered by the statute.

[6] The Washington State statute specifically refers to employee benefit plans, among other assets, in its definition of non-probate assets. WASH. REV. CODE § 49.64 (West 2000). However, because the statute does not act exclusively on employee benefit plans and will apply to assets other than benefit plans, *amicus* submits that the Washington State statute would not be preempted under the "reference to" analysis.

Here, the *Travelers*' test for preemption of a state law dictates that ERISA should preempt the Washington State designation of beneficiary law. By directing how employee benefit plans will administer the method by which and to whom beneficiary's benefits are paid, Washington State law has "a marked effect on plan administration." *See UNUM Life Ins. Co. v. Ward*, 526 U.S. at 378. This law also binds plan administrators to particular choices as to how and to whom to pay benefits by overriding the provisions of the plan itself, thereby regulating the plan directly. *Id.*

Moreover, if ERISA does not preempt Washington State's designation of beneficiary law, that state law will undercut Congress' general objective in enacting ERISA as well as its reason for enacting the preemption clause. Failure to preempt this designation of beneficiary law would decrease protection of participants and their beneficiaries because it would wrest control from the participant of the decision to whom the participants' benefits should be paid. The state law would determine to whom the benefits should be paid instead of the participants themselves. *See Boggs v. Boggs*, 520 U.S. at 845; ERISA § 1001(b), 29 U.S.C. § 2(b). If the participants follow the plan provisions, they should be assured that their choices are followed.[7]

A conclusion by the Court that ERISA does not preempt these designation of beneficiary laws would run counter to Congress' intent to foster uniform administration of employee benefit plans. *See Travelers*, 514 U.S. at 645-46. Employee benefit plans would be required to comply with conflicting directives among 50 states, thereby increasing the administrative and financial burdens they face. Compliance

[7] This perspective places direct responsibility upon participants to review their beneficiary designations when they experience a life change such as marriage, divorce or widowhood, and follow the terms of their plan to make any changes.

with different laws in 50 states would also make administration of nationwide benefit plans more difficult and inefficient, which might lead sponsoring employers with benefit plans to reduce benefits or those employers without benefit plans to refrain from offering them. *See Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-12 (1987). Moreover, there would be no finality concerning payment of employee benefits. Instead, plans would become embroiled in state probate and other actions, also increasing their administrative costs. As a way to minimize their liability, pension plans might file interpleader actions to request court determinations concerning to whom payment will be made. *E.g., Stickney v. Muhlenberg College TIAA-CREF Retirement Plan*, 896 F. Supp. 412 (E.D. Pa. 1995).

ERISA must preempt Washington State's designation of beneficiary law in order to accomplish Congress' intent to protect participants and beneficiaries and promote uniform administration of employee benefit plans.

III. BECAUSE WASHINGTON STATE'S LAW REGULATES AN ERISA-GOVERNED RELATIONSHIP, IT IS PREEMPTED.

In an effort to further analyze whether ERISA preempts a state law, many Circuit Courts apply a "relationship" test. *See, e.g., Rutledge v. Seyfarth, Shaw, Fairweather & Geraldson*, 201 F.3d 1212, 1217, *opinion amended*, 208 F.3d 1170 (9th Cir. 2000). One version of the relationship test may be summarized as follows: where state law claims fall outside the three areas of concern identified in *Travelers*, *see* ARGUMENT in II, *supra*; arise from a state law of general application; do not depend upon ERISA; and do not affect the relationships between the principal ERISA entities, the state law claims are not preempted. *See Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d at 724; *see generally Mackey v. Lanier Collections Agency & Service*, 486 U.S. 825, 833 (1988) ("[L]awsuits against ERISA plans for run-of-the-mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan" are against the plan in a capacity

other than as a plan -- *i.e.*, as a commercial entity -- and are not preempted.)

Conversely, state laws that regulate an ERISA-governed relationship -- between the plan and participants, the plan and fiduciaries, the plan and sponsoring employer, the fiduciaries or plan administrator and participants, or the fiduciaries and plan administrator[8/] – will generally relate to an employee benefit plan, and therefore will be preempted. *See, e.g., Carpenters Local Union No. 26 v. United States Fidelity & Guaranty Co.*, 215 F.3d 136 (1st Cir. 2000); *Smith v. Provident Bank*, 170 F.3d 609 (6th Cir. 1998); *Arizona State Carpenters Pension Trust Fund v. Citibank*, 125 F.3d 715 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d 1457, 1468 (4th Cir. 1996); *Morstein v. National Ins. Services, Inc.*, 93 F.3d 715, 722-23 (11th Cir. 1996) (*en banc*); *Boyle v. Anderson*, 68 F.3d 1093, 1103 (8th Cir. 1995), *cert. denied*, 516 U.S. 1173 (1996); *Travitz v. Northeast Dept. ILGWU Health & Welfare Fund*, 13 F.3d 704, 709 (3d Cir.), *cert. denied*, 511 U.S. 1143 (1994); *General American Life Ins. Co. v. Castonguay*, 984 F.2d 1518, 1521-22 (9th Cir. 1993); *Memorial Hospital System v. Northbrook Life Ins. Co.*, 904 F.2d 236, 249 (5th Cir. 1990). State laws regulating these relationships are particularly likely to interfere with ERISA's regulatory scheme, and are presumptively preempted. *See General American Life Ins. Co. v. Castonguay*, 984 F.2d at 1521-22.

There can be nothing more central affecting the relationship between a plan and its participants than a state law dictating to whom benefits are paid. Under the relationship test, ERISA must preempt Washington State's designation of beneficiary law. *See Arizona State Carpenters Pension Trust Fund v.*

[8/] The relationship between the employer and employee is not an ERISA-governed relationship because that relationship concerns the employment relationship, which has been regulated historically by the states, *e.g., DeCanas v. Bica*, 424 U.S. 351, 356 (1976), not a relationship growing out of benefits. *See Rokohl v. Texaco*, 77 F.3d 126, 130 (5th Cir. 1996); *Forbus v. Sears Roebuck & Co.*, 30 F.3d 1402, 1406-07 (11th Cir. 1994), *cert. denied*, 513 U.S. 1113 (1995).

Citibank, 125 F.3d 715 (9th Cir. 1997); *Coyne & Delany Co. v. Selman*, 98 F.3d at 1468.

CONCLUSION

For the foregoing reasons, AARP urges the Court to reverse the decision of the Supreme Court of Washington.

August 10, 2000

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