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 FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), preempts the use of state law to override ERISA beneficiary designations made pursuant to the terms of ERISA plans.

2. Whether ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1), which generally precludes alienation or assignment of ERISA pension plan benefits, preempts state laws that purport to deprive designated ERISA beneficiaries of their benefits under an ERISA pension plan.

PARTIES TO THE PROCEEDING

The caption contains the names of all of the parties to the proceeding in the court below.

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Washington (Pet. App. 1a-28a) is reported at 139 Wash. 2d 557, 989 P.2d 80 (1999). The opinion of the Court of Appeals of Washington (Pet. App. 29a-44a) is reported at 93 Wash. App. 314, 968 P.2d 924 (1998). The summary judgment orders of the Superior Court of Washington for Pierce County (Pet. App. 45a-46a, 47a-48a) are not reported.

JURISDICTION

The judgment of the Supreme Court of Washington was entered on November 18, 1999. This Court granted the petition for a writ of certiorari on June 19, 2000. The jurisdiction of this Court rests upon 28 U.S.C. § 1257(a).

In their brief in opposition, Respondents argued that the judgment below is not final for purposes of this Court's jurisdiction under 28 U.S.C. § 1257(a) because "it remains to be seen" whether the state trial court will comply with the mandate of the Supreme Court of Washington awarding Respondents the ERISA plan benefits at issue here. Br. in Opp. 4. As this Court correctly recognized in granting certiorari, Respondents' finality argument is without merit.

The law is clear that a state supreme court's judgment is not deprived of finality merely because the state trial court retains authority to implement the appellate court's mandate. *See, e.g., Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306-07 (1989) (finality requirement satisfied where "all that remains is the straightforward application of [the state appellate court's] clear directive . . . ."); *Pope v. Atlantic Coast Line R.R. Co.*, 345 U.S. 379, 382 (1953) (finality requirement satisfied where "nothing remains to be done but the mechanical entry of judgment by the trial court"); *see generally* R. STERN ET

AL., SUPREME COURT PRACTICE § 3.6 (7th ed. 1993). The court below squarely and unambiguously held that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." Pet. App. 28a. As between the parties to this case, therefore, there is nothing more to be decided in the state courts, and the judgment below is final.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to this Court's Rule 24.1(f), the pertinent constitutional and statutory provisions are set forth in the appendix to this brief.

STATEMENT OF THE CASE

I. Factual Background

Petitioner Donna Rae Egelhoff is the former spouse of David A. Egelhoff. During their marriage, Mr. Egelhoff was employed by The Boeing Company. Boeing provided Mr. Egelhoff certain employee benefits pursuant to benefit plans subject to ERISA, including life and accidental death insurance plans (collectively, the "insurance plans") and a pension plan. Mr. Egelhoff designated Petitioner as his beneficiary under these ERISA plans. Pet. App. 2a-3a. The plan documents for both the insurance plans and the pension plan specify that, in the event of a participant's death, plan benefits are to be paid to the person listed on the participant's designated beneficiary form on file with the plan administrator.[1]

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[1] *See* J.A. 35 ("The [life insurance] benefit will be paid to [the plan participant's] beneficiary in the event of [his or her] death. . . . [The plan participant] may change [his or her] beneficiary any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office."); J.A. 36 ("In the event of [the plan partici-

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Mr. Egelhoff and Petitioner separated in 1993 and filed for divorce later that year. Pet. App. 2a-3a; Clerk's Papers (No. 94-4-01619-1) at 87. Their divorce was finalized by a decree of dissolution entered on April 22, 1994. J.A. 31-34. The decree of dissolution listed the property awarded to Mr. Egelhoff, including "100% of his Boeing retirement 401K and IRA," but it did not mention the insurance plans, nor did it purport to address the rights of beneficiaries under any of the ERISA plans. Pet. App. 3a; J.A. 31-34.

Thereafter, Mr. Egelhoff was injured in an automobile accident and ultimately died intestate. At the time of his death, Petitioner was the designated beneficiary of his insurance and pension plan benefits. Pet. App. 4a.

II. Proceedings Below

Respondents, who are Mr. Egelhoff's children from a prior marriage, are his statutory heirs under Washington state law. Respondents asserted claims against Petitioner in two separate proceedings in Washington state court seeking the insurance and retirement benefits payable under the Boeing-sponsored ERISA plans, notwithstanding the fact that Petitioner was the designated beneficiary of those plans. Pet. App. 4a-6a; J.A. 24-28 (insurance plans); Clerk's Papers (No. 94-4-01619-1) at 1-2 (pension plan). Respondents' claim of entitlement to those ERISA plan benefits was based on a Washing-

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pant's accidental] death, [the plan participant's] beneficiary will receive the full principal sum . . . ."); J.A. 39-40 ("In the event of [the plan participant's] death, [his or her] designated beneficiary will be entitled to the full value of all [of his or her] [pension plan] accounts . . . . The [pension plan] Office will only recognize beneficiary designations and changes that are filed on the official [pension plan] beneficiary designation form . . . .").

ton statute providing that employee benefit plan beneficiary designations made prior to a divorce are "revoked" and that employee benefit plan assets pass upon the employee's death as if the former spouse had predeceased the employee. WASH. REV. CODE § 11.07.010 (2)(a) & (5)(a).

After the parties stipulated to the relevant facts (Pet. App. 2a & n.2; J.A. 20-23), the state trial courts granted summary judgment for Petitioner in both cases. Pet. App. 45a-46a, 47a-48a. The courts held that the Boeing employee benefit plans at issue "should be administered in accordance with [ERISA]" rather than § 11.07.010, and accordingly concluded that Petitioner, as "the designated beneficiary" under each of the plans, was entitled to "all legal rights" thereto. Pet. App. 46a, 48a.

Respondents appealed. The state court of appeals consolidated the two cases and reversed in a published opinion. Pet. App. 29a-44a; J.A. 2, 4. Noting the trial courts' holdings "that ERISA preempted state law" (Pet. App. 29a (footnote omitted)), the court of appeals expressly rejected that conclusion. The court placed principal reliance upon *Emard v. Hughes Aircraft Co.*, 153 F.3d 949 (9th Cir. 1998), *cert. denied*, 525 U.S. 1122 (1999), in which the Ninth Circuit approved another attempt to use state law to override an ERISA plan beneficiary designation. Pet. App. 37a-42a. The court of appeals held that "ERISA does not preempt [§] 11.07.010, a statute similar to the one at issue in *Emard*," and accordingly concluded that Respondents "are entitled to the proceeds" of the pension and insurance plans. *Id.* at 42a.

Petitioner sought review in the Supreme Court of Washington, which affirmed the judgment of the court of appeals. Pet. App. 1a-28a. The supreme court began its analysis by asserting that *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), had "signaled a significant retreat from" the previously "expansive reading" of ERISA's

preemption provision. Pet. App. 12a. The court expressed the view that "ERISA's preemptive reach" has been limited to ordinary field and conflict preemption. Pet. App. 13a-14a (citing *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 336 (1997) (Scalia, J., concurring)).

The supreme court then addressed Respondents' claim of entitlement to the proceeds of David Egelhoff's insurance plans. Pet. App. 15a-17a. Noting that the insurance plans are "welfare benefit plan[s]" rather than "pension benefit plan[s]," the court held that the plans are exempt from ERISA's anti-alienation provision, 29 U.S.C. § 1056(d), which requires "pension" plans to "include provisions prohibiting the alienation of 'pension' benefits." Pet. App. 16a-17a. The court concluded that § 11.07.010 is valid as applied to the insurance plans and that "Respondents . . . are entitled to the proceeds of [the] employment-based life insurance policy." Pet. App. 17a (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988)).

The supreme court also determined that § 11.07.010 governs the distribution of David Egelhoff's pension plan benefits. Pet. App. 17a-27a. The court began its analysis of this issue by citing the Ninth Circuit's decision in *Emard* for the proposition that "'ERISA's preemption clause no longer has the power to transmute into a federal question every issue that brushes against the periphery of an ERISA plan.'" Pet. App. 18a (quoting 153 F.3d at 961). Against that backdrop, the court reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption." Pet. App. 21a.

The supreme court also held that there is no conflict between § 11.07.010 and ERISA's anti-alienation provision, which it recognized was applicable to the pension plan. Pet. App. 17a, 23a-27a. In the court's view, even though the effect of § 11.07.010 is to nullify certain

beneficiary designations made in accordance with the terms of ERISA plans, the statute is saved from preemption by the fact that it does not nullify *all* aspects of a particular plan's benefit allocation scheme. *Id.* The court accordingly concluded that "Respondents . . . are entitled to receive the benefits under [David Egelhoff's] pension plan and the proceeds of his life insurance." *Id.* at 28a.

SUMMARY OF ARGUMENT

Revised Code of Washington § 11.07.010 is preempted by ERISA's express preemption provision, § 514(a), 29 U.S.C. § 1144(a), and by traditional principles of conflict preemption. Section 11.07.010 "relates to" and has a "connection with" an ERISA plan, and thus falls within the preemptive scope of § 514(a). In addition, § 11.07.010 directly conflicts with ERISA's text and purposes, thus requiring preemption for that reason as well.

I. ERISA § 514(a) preempts all state laws that "relate to" an ERISA plan. ERISA 514(a), 29 U.S.C. § 1144(a). As this Court has explained, a state law "relates to" an ERISA plan within the meaning of § 514(a) if it has a "connection with" such a plan, as determined by reference 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 Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 325 (1997) (citation omitted). Section 11.07.010 clearly has a prohibited "connection with" an ERISA plan when considered in light of these factors.

Section 11.07.010 purports to "revoke" ERISA plan beneficiary designations and to mandate payment of plan benefits to someone other than the designated beneficiary. It thus has a prohibited effect on ERISA plans by "mandat[ing] employee benefit structures or their

administration" and "bind[ing] plan administrators to [a] particular choice." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658, 659 (1995). Moreover, in contrast to the types of state laws that this Court has upheld against preemption challenges, § 11.07.010 directly regulates the determination of beneficiary status and the payment of ERISA plan benefits—functions that lie at the very heart of ERISA's concerns. Congress's intent that such a state law must yield to ERISA's preemptive reach is manifestly clear.

Section 11.07.010 also has a "connection with" an ERISA plan because it would lead to inconsistent state regulation of ERISA plans and thus frustrate ERISA's objective of "avoid[ing] a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657. If states were permitted to enforce laws like § 11.07.010, ERISA plans would be prevented from employing a uniform administrative scheme for determining beneficiary rights, and would instead be required to determine beneficiary status and pay plan benefits in a different manner in different jurisdictions, depending on which state's law was thought to apply and on what effect the relevant state(s) had decided to give to a divorce decree. The administrative difficulties and uncertainties created by the need to monitor and comply with the often inconsistent laws of more than fifty jurisdictions regulating these core functions of ERISA plans would directly frustrate Congress's goal of "'ensur[ing] that plans and plan sponsors would be subject to a uniform body of benefits law.'" *Travelers*, 514 U.S. at 656 (citation omitted).

II. Section 11.07.010 is also preempted under traditional conflict preemption analysis because it "conflicts with the provisions of ERISA" and "operates to frustrate its objectives." *Boggs v. Boggs*, 520 U.S. 833, 841 (1997).

ERISA's primary objective is the protection of plan participants and their beneficiaries. "Th[is] general policy is implemented by ERISA's specific provisions." *Boggs*, 520 U.S. at 845. Thus, ERISA specifies that beneficiary status is to be determined by reference to the plan participant's beneficiary designation form or the terms of the plan. ERISA requires plan fiduciaries to administer ERISA plans in accordance with the applicable plan documents, which must specify the method for determining benefit payment rights and be available for review by plan beneficiaries. ERISA also provides that plan fiduciaries must administer plans for the exclusive benefit of plan participants and their beneficiaries, and provides beneficiaries with a federal cause of action to enforce compliance with the terms of the applicable ERISA plans. These provisions clearly establish Congress's intent that plan administrators must determine beneficiary status and distribute plan benefits by reference to the plan participant's designation of beneficiary pursuant to the terms of the plan documents. Section 11.07.010—by nullifying ERISA plan beneficiary designations and requiring payment of benefits to persons other than the designated beneficiary in violation of the terms of ERISA plan documents—directly conflicts with these specific provisions and with ERISA's policy of protecting beneficiaries.

With respect to the pension plan at issue here, § 11.07.010 is preempted for an additional reason: It conflicts with ERISA's anti-alienation provision, which requires that pension plan benefits "may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056 (d)(1). As this Court explained in *Boggs*, ERISA's prohibition against alienation "is mandatory and contains only two explicit exceptions . . . which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Neither of those exceptions is implicated here. Thus, by purporting to require pension plan benefits to be transferred from the designated beneficiary, § 11.07.010 conflicts directly with ERISA's anti-alienation provision.

ARGUMENT

I. SECTION 11.07.010 IS PREEMPTED BY ERISA'S EXPRESS PREEMPTION PROVISION BECAUSE IT "RELATES TO" AN ERISA PLAN

ERISA's express preemption provision provides that ERISA "shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan." ERISA § 514(a); 29 U.S.C. § 1144(a). Thus, any state law that "relates to" an ERISA plan must give way to ERISA's preemptive reach. This Court has "long acknowledged that ERISA's pre-emption provision is 'clearly expansive.'" *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A.*, 519 U.S. 316, 324 (1997) (quoting *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)). It has a "'broad scope,' and an 'expansive sweep,' and . . . it is 'broadly worded,' 'deliberately expansive,' and 'conspicuous for its breadth,'" *Dillingham*, 519 U.S. at 324 (citations omitted).[2] As this Court reaffirmed in *Travelers*, "§ 514 indicates Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern.'" *Travelers*, 514 U.S. at 656 (citation omitted); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)

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[2] *See also* 120 CONG. REC. 29197 (1974) (statement of Rep. Dent) ("[ERISA] applie[s] this [preemption] principle in its broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, [§ 514(a)] would reach any rule, regulation, practice or decision of any State . . . which would affect any [ERISA] plan."); 120 CONG. REC. 29933 (1974) (statement of Sen. Williams) ("This [preemption] principle is intended to apply in its broadest sense to all actions of State or local governments . . . which have the force or effect of law.").

("[Section 514] demonstrates that Congress intended to . . . establish pension plan regulation as exclusively a federal concern.").

A state law "relates to" an employee benefit plan within the meaning of § 514(a) if it has a "connection with" or "reference to" such a plan. *Dillingham*, 519 U.S. at 324 (citation omitted). This Court has rejected an "uncritical literalism" in interpreting the terms "relate to" and "connection with," because "[r]eally, universally, relations stop nowhere." *Travelers*, 514 U.S. at 655-56 (citation omitted); *id.* at 656 (just as "infinite relations cannot be the measure of pre-emption, neither can infinite connections"). Accordingly, to determine whether a state law has a "connection with" an ERISA plan, courts look both 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." *Dillingham*, 519 U.S. at 325 (quoting *Travelers*, 514 U.S. at 656, 658-59).

Revised Code of Washington § 11.07.010 plainly has a "connection with" ERISA plans when considered in light of these factors. The Washington statute purports to override ERISA plan beneficiary designations and to direct payment of plan benefits to someone other than the designated beneficiary. It thus has a prohibited "effect . . . on ERISA plans," *Dillingham*, 519 U.S. at 325 (citation omitted), by mandating plan administration and "bind[ing] plan administrators to [a] particular choice," *Travelers*, 514 U.S. at 659. Section 11.07.010 also has a "connection with" an ERISA plan because it would lead to inconsistent state regulation of ERISA plans and thus frustrate the "'objectives of the ERISA statute,'" *Dillingham*, 519 U.S. at 325 (citation omitted), "to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans," *Travelers*, 514 U.S. at 657. Moreover, unlike the state laws that this Court has upheld against claims

of ERISA preemption in the past, § 11.07.010 directly regulates the determination of beneficiary status and the payment of ERISA plan benefits—functions that lie at the very heart of ERISA's concerns. Congress's intent that such a state law must yield to ERISA's preemptive reach is manifestly clear.[3]

A. Section 11.07.010 Has A "Connection With" An ERISA Plan Because It Mandates Plan Administration And Binds Plans To A Particular Choice Regarding Matters Of Core ERISA Concern

As this Court has explained, Congress clearly intended ERISA to preempt state laws that "mandate[] employee benefit structures or their administration." *Travelers*, 514 U.S. at 658. Directing the management of ERISA plans is thus one of the prohibited effects on ERISA plans that has a "connection with" such plans and requires preemption of state law. *Id.* If the state law "bind[s] plan administrators to any particular choice and thus function[s] as a regulation of an ERISA plan itself," the state law necessarily has a "connection with" an ERISA plan and is therefore preempted. *Travelers*, 514 U.S. at 659; *see also Dillingham*, 519 U.S. at 332-34 (concluding that a state prevailing wage law was not preempted because it "d[id] not bind ERISA plans to

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[3] Thus, it is not surprising that numerous courts have squarely held that ERISA preempts state laws purporting to nullify an ERISA plan beneficiary designation. *See, e.g., Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 865 (4th Cir. 1998); *Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998); *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 15 (2d Cir. 1993); *Metropolitan Life Ins. Co. v. Hanslip*, 939 F.2d 904, 906 (10th Cir. 1991); *Brown v. Connecticut General Life Ins. Co.*, 934 F.2d 1193, 1195 (11th Cir. 1991).

anything," was not "tantamount to a compulsion upon [ERISA plans], and "d[id] not dictate the choices[] facing ERISA plans").

It is readily apparent that § 11.07.010 has a "connection with" ERISA plans and is therefore preempted under the analysis employed in *Travelers* and *Dillingham*. By its express terms, § 11.07.010 purports to override an otherwise valid ERISA plan beneficiary designation by "revoking" upon divorce a participant's designation of his or her spouse as a plan beneficiary. Thus, § 11.07.010 attempts to bind a plan administrator to a particular choice of rules for determining beneficiary status, compelling the administrator to identify beneficiaries and pay ERISA plan benefits according to the approach dictated by state law, contrary to the beneficiary determination and benefit disbursement method set forth in the plan documents. Because § 11.07.010 would thereby mandate the administration of an ERISA plan, "bind[ing] [the] plan administrator[] to a[] particular choice," the state law clearly has a "connection with" an ERISA plan and is preempted. *Travelers*, 514 U.S. at 659.

Section § 11.07.010 not only seeks to mandate the administration of an ERISA plan, but it does so in a manner that strikes at the very heart of ERISA—the determination of beneficiary status and the disbursement of plan benefits to beneficiaries. Unlike the state prevailing wage law at issue in *Dillingham*, which involved issues "quite remote from the areas with which ERISA is expressly concerned," 519 U.S. at 330, the determination of beneficiary status pursuant to plan terms is a core administrative function of any ERISA plan. Indeed, as this Court has recognized, "the concept[] of . . . beneficiary" is part of the "axis around which ERISA's protections revolve," and "the principal object of the statute is to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845, 854 (1997); *see* ERISA § 2(b), 29 U.S.C. § 1001(b) ("[It is] the policy of this

Act to protect . . . the interests of . . . beneficiaries" in ERISA plans); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987) (explaining that ERISA plans are "obligat[ed] . . . [to] determin[e] the eligibility of claimants").

Similarly, the payment of plan benefits to participants and beneficiaries in accordance with the terms of the applicable plan documents is fundamental to the operation of an ERISA plan and is a central concern of ERISA's statutory scheme. Section 404(a)(1) of ERISA, for example, provides that "a fiduciary shall discharge his duties with respect to a[n] [ERISA] plan . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the plan . . . ." 29 U.S.C. § 1104(a)(1); *see also* ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1) (plan assets, with limited exceptions, are "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan"); *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 991 (10th Cir. 1999) ("the allocation of benefits under an employee benefits plan goes to the core of ERISA").

Indeed, the determination whether particular claimants are entitled to obtain plan benefits as beneficiaries is so crucial to the entire federal scheme created by ERISA that this Court has applied the doctrine of "complete preemption" to such claims. ERISA § 502(a)(1)(B) creates a federal cause of action for all claims seeking plan benefits, without regard to the underlying theory of the claim. *See* § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (granting beneficiaries a federal cause of action "to recover benefits due to [them] under the terms of [their] plan[s]"). As this Court has explained, "a suit by a beneficiary to recover benefits from a covered plan[] . . . falls directly under § 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of such disputes." *Metropolitan Life*

Ins. Co. v. Taylor, 481 U.S. 58, 62-63 (1987). Section 502(a)(1)(B) "lies at the heart" of ERISA and authorizes removal to federal court of claims to recover ERISA plan benefits, even if the suit "purports to raise only state law claims." *Taylor*, 481 U.S. at 65, 67. Accordingly, claims under § 11.07.010 for recovery of ERISA plan benefits "arise[] under the . . . laws . . . of the United States" and are completely preempted "by virtue of the clearly manifested intent of Congress" in enacting ERISA. *Taylor*, 481 U.S. at 67 (citation omitted).[4]

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[4] The fact that Respondents' claims in this case were brought against the designated beneficiary rather than the plan administrator does not change the fact that Respondents are seeking to recover ERISA plan benefits within the meaning of § 502(a)(1)(B). On its face, § 502(a)(1)(B) applies to all claims for ERISA benefits, and is not limited to claims brought against particular defendants. Some lower courts have concluded that § 502(a)(1)(B) claims may be brought only against plans (*see, e.g.*, *Gelardi v. Pertec Computer Corp.*, 761 F.2d 1323 (9th Cir. 1985)), but that conclusion is of questionable validity after this Court's decision in *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 120 S. Ct. 2180 (2000). *See id.* at 2187 (permitting § 502(a)(3) claims against non-fiduciaries because "§ 502(a)(3) [like § 502(a)(1)(B)] admits of no limit . . . on the universe of possible defendants"). In any event, regardless of whether § 502(a)(1)(B) authorizes suits against defendants other than ERISA plans, lawsuits seeking to recover ERISA benefits are subject to the complete preemption doctrine even if they name an improper defendant. *See Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1488-90 (7th Cir. 1996) (applying doctrine of complete preemption to permit removal of purported state-law claim, and then dismissing the claim on the ground that it was brought against an improper party under § 502(a)(1)(B)). Plainly, the applicability of ERISA preemption cannot vary depending on whether a plaintiff seeking to use state law to override an ERISA plan beneficiary designation sues the plan itself or instead sues the recipient of bene-

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Thus, Congress made clear in ERISA that the determination of beneficiary status and the payment of plan benefits to participants and beneficiaries are central to ERISA's protections and concerns. Congress intended to protect plan benefit entitlements, not only for participants, but also for any beneficiary "designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." ERISA § 3(8), 29 U.S.C. § 1002(8). By directing the manner in which a plan administrator must perform the core administrative function of determining and paying the beneficiary, § 11.07.010 has a "connection with" an ERISA plan in that it "mandat[es] employee benefit structures or their administration." *Travelers*, 514 U.S. at 658.[5]

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fits under the plan. Indeed, it is purely fortuitous that Respondents did not sue the plan administrator in this case, as they did in *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999). *See infra* note 13.

[5] The Supreme Court of Washington's reliance on *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988), is thus misplaced. *See* Pet. App. 17a. The *Mackey* Court held that "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA." *Mackey*, 486 U.S. at 834. But there is a crucial difference between state laws that provide procedural mechanisms for satisfying money judgments, which Congress did not intend to preempt, and state laws, such as § 11.07.010, that attempt to mandate the determination of *beneficiary status and rights* under ERISA plans. As discussed above, the determination of beneficiary status and the payment of plan benefits are core ERISA plan functions, which Congress clearly did not intend to permit state laws to usurp. As the *Mackey* Court was careful to point out, the state garnishment law in that case was merely "a 'procedural' mechanism for

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The state laws at issue in *Dillingham* and *Travelers*, by contrast, were addressed to "areas where ERISA has nothing to say," *Dillingham*, 519 U.S. at 330, and did not compel plans to do anything. In *Dillingham*, the state prevailing wage law created an economic incentive for apprenticeship programs to satisfy the state's apprenticeship program requirements so that apprentices participating in their programs would be eligible to work on public works projects at a lower wage. As the *Dillingham* Court explained, the state's "prevailing wage statute alter[ed] the incentives, but d[id] not dictate the choices, facing ERISA plans." *Dillingham*, 519 U.S. at 334. Similarly, the state law in *Travelers*, which provided economic incentives to purchase Blue Cross/Blue Shield insurance, had "an indirect economic effect on choices made by insurance buyers, including ERISA plans . . . [but did] not bind plan administrators to any particular choice." *Travelers*, 514 U.S. at 659.

Section 11.07.010 plainly has far more than an "indirect economic effect" on ERISA plans. Because the Washington statute purports to compel plan administrators to determine beneficiary status and dispense benefits in a manner prescribed by state law, § 11.07.010 is similar to state laws that this Court has found preempted for "mandat[ing] employee benefit structures or their administration." *Travelers*, 514 U.S. at 657-58 (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983), *FMC Corp. v. Holliday*, 498 U.S. 52, 60 (1990), and *Alessi v. Raybestos-Manhattan, Inc.*, 451

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the enforcement of judgments," and "d[id] not create the rule of decision in any case affixing liability." *Id.* at 835 n.10. Section 11.07.010, by contrast, is not a mere "procedural mechanism," but rather purports to supply the "rule of decision" for the core ERISA plan functions of determining beneficiary status and rights.

U.S. 504, 524 (1981)). In *Shaw*, for example, the state law at issue was preempted because it had the effect of requiring ERISA plans to pay specific benefits. *Shaw*, 463 U.S. at 97. In *Shaw*, *Holliday*, and *Alessi*, ERISA preempted state laws that attempted to prevent ERISA plans from structuring themselves to pay benefits in a certain manner. *Shaw*, 463 U.S. at 97; *Holliday*, 498 U.S. at 60; *Alessi*, 451 U.S. at 524. Like these laws, § 11.07.010 operates to require ERISA plans to pay certain benefits, and prevents ERISA plans from structuring their benefit payment systems in a certain manner. Consequently, § 11.07.010 has a "connection with" ERISA plans and is preempted.

B. Section 11.07.010 Has A "Connection With" An ERISA Plan Because It Interferes With The Nationally Uniform Administration Of Employee Benefit Plans

Section 11.07.010 also has a "connection with" ERISA plans because it would frustrate Congress's intent in ERISA "'to ensure that plans and plan sponsors would be subject to a uniform body of benefits law.'" *Travelers*, 514 U.S. at 656 (citation omitted). This core ERISA purpose—to ensure national uniformity in ERISA plan administration—is one of the "objectives of the ERISA statute [that serves] as a guide to the scope of the state law that Congress understood would survive," and to which courts must look in determining whether a state law has a "connection with" an ERISA plan. *Travelers*, 514 U.S. at 656.

As this Court explained in *Travelers*, "[t]he basic thrust of the pre-emption clause . . . was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans." *Travelers*, 514 U.S. at 657. ERISA preemption seeks to ensure that plan sponsors and administrators are subject to uniform regulation of employee benefit plans in each of the fifty States without the administrative and financial burden of complying with a hodgepodge of differing

and inconsistent state and local regulations. "'[T]he goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.'" *Travelers*, 514 U.S. at 656-57 (citation omitted).[6]

Because Congress intended ERISA to ensure uniformity in benefits regulation, this Court has "not hesitated to enforce ERISA's pre-emption provision where state law created the prospect that an employer's administrative scheme would be subject to conflicting requirements." *Fort Halifax*, 482 U.S. at 10. In *Shaw*, for example, ERISA preempted state law that would have exposed ERISA plans to inconsistent state regulation, requiring an ERISA plan either to structure all of its benefit payments in accordance with the state law, or to adopt different payment methods for beneficiaries inside and outside of the state. *Shaw*, 463 U.S. at 97; *see also Alessi*, 451 U.S. at 524 (same); *Holliday*, 498 U.S. at 60

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[6] This objective is highlighted in the legislative history of ERISA. *See, e.g.*, 120 CONG. REC. 29197 (1974) (statement of Rep. Dent) (describing ERISA's "crowning achievement" as the "reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, [ERISA] round[s] out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . . ."); 120 CONG. REC. 29933 (1974) (statement of Sen. Williams) ("It should be stressed that with the narrow exceptions specified in [ERISA], the substantive and enforcement provisions . . . are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.").

(preempting a state law that would have "frustrate[d] plan administrators' continuing obligation to calculate uniform benefit levels nationwide").

As in *Shaw*, *Holliday*, and *Alessi*, validation of state laws like § 11.07.010 would impose inconsistent state requirements on the administration of ERISA plans and thereby frustrate ERISA's clear purpose to "secur[e] national uniformity in the administration of employee benefit plans," *Boggs*, 520 U.S. at 842. As this Court explained in *Fort Halifax*:

> An employer that makes a commitment systematically to pay certain benefits undertakes a host of obligations, such as determining the eligibility of claimants . . . [and] making disbursements . . . . 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 differing States. A plan would be required to . . . process claims in a certain way in some States but not in others . . . .

Fort Halifax, 482 U.S. at 9.

Section 11.07.010 would create precisely the problems identified in *Fort Halifax* by requiring plans "to . . . process claims in a certain way in some States but not in others." 482 U.S. at 9. The ERISA plans at issue here employ a uniform administrative scheme with a standard procedure to guide processing of claims and disbursement of benefits: In the event of the participant's death, benefits are to be paid to the person named on the beneficiary designation form on file with the plan

administrator.[7] Section 11.07.010, however, would disrupt this uniform scheme by overriding ERISA plan beneficiary designations and requiring disbursement of funds to persons other than the designated beneficiary in circumstances where Washington state law applies. If states were permitted to enforce such laws, ERISA plans would be required to determine beneficiary status and pay plan benefits in a different manner in different jurisdictions, depending on which state's law is thought to apply and on whether the state has adopted a statute like § 11.07.010, a different statutory scheme, or none at all.[8]

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[7] *See* J.A. 35 ("The [life insurance] benefit will be paid to [the plan participant's] beneficiary in the event of [his or her] death. . . . [The plan participant] may change [his or her] beneficiary at any time by filing the appropriate change-of-beneficiary form that is available from the Boeing Group Insurance Office."); J.A. 36 ("In the event of [the plan participant's accidental] death, [the plan participant's] beneficiary will receive the full principal sum . . . ."); J.A. 39-40 ("In the event of [the plan participant's] death, [his or her] designated beneficiary will be entitled to the full value of all [of his or her] [pension plan] accounts . . . . The [pension plan] Office will only recognize beneficiary designations and changes that are filed on the official [pension plan] beneficiary designation form . . . .").

[8] For example, some states might decide to have divorce operate as a revocation of all beneficiary designations, *see, e.g.*, MONT. CODE ANN. § 72-2-814, while others might decide to create an exception for specific types of property, *compare, e.g.*, VA. CODE ANN. § 20-111.1 (exception for trusts), *with, e.g.*, 760 ILL. COMP. STAT. 35/1 (applies only to trusts). In addition, some states might apply the revocation only to former spouses, *see, e.g.*, OKLA. STAT. ANN. tit. 15, § 178, while others might revoke the beneficiary designations made in favor of the relatives of former spouses as well, *see, e.g.*, MONT. CODE ANN. § 72-2-814. Some might create exceptions if the divorce decree specifically says otherwise,

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Thus, § 11.07.010 would require ERISA plans "to accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits—*precisely the burden that ERISA pre-emption was intended to avoid.*" *Fort Halifax*, 482 U.S. at 10 (emphasis added).[9] Because § 11.07.010 (and other state laws that purport to override an ERISA plan beneficiary designation) would "result[] in a complex set of requirements varying from State to State . . . [this] result [would not] accord[] with [ERISA's] statutory scheme." *Boggs*, 520 U.S. at 851. The Washington state statute therefore has a "connection with" an ERISA plan and is preempted.[10]

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see, e.g., OHIO REV. CODE ANN. § 1339.63, or if the beneficiary designation expresses a contrary intent, *see, e.g.*, MO. REV. STAT. § 461.051, or if the beneficiary designation was made after the divorce, *see, e.g.*, OKLA. STAT. ANN. tit. 15, § 178, or if the plan participant and former spouse remarry, *see, e.g.*, OHIO REV. CODE ANN. 1339.63.

[9] Indeed, as discussed below, *see infra* at 31, ERISA requires plan fiduciaries to administer plans in accordance with the relevant plan documents, ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), which must specify in writing the method for determining beneficiary status and distributing plan benefits, ERISA §§ 402(a)(1), (b)(4), 29 U.S.C. §§ 1102(a)(1), (b)(4). These provisions enable ERISA plans to determine and pay beneficiaries by looking only to the terms of the plan and the valid beneficiary designation forms on file, and thus lead to the uniform and cost-effective administration of plans intended by Congress.

[10] Numerous court of appeals decisions support this view. *See, e.g., Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 16 (2d Cir. 1993) ("There is a strong interest in uniform, uncomplicated administration of ERISA plans, many of which function in a number of states. . . . It would be counterproductive to compel the Policy administrator to look beyond

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C. Neither The Traditional Role Of States In Regulating Domestic Relations Law Nor The Nature Of The Burdens Imposed On Plans Saves § 11.07.010 From Preemption

Despite the fact that § 11.07.010 would mandate the administration of an ERISA plan, bind the plan administrator to a particular choice, and frustrate Congress's intent to foster the nationally uniform administration of ERISA plans—each of which separately requires preemption—the Washington Supreme Court in this case held that the burden on ERISA plans "is too slight to overcome the presumption against preemption of state family and family property law." Pet. App. 21a-22a (citation and internal quotation marks omitted). In fields of

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[ERISA plan beneficiary] designations into varying state laws regarding wills, trusts and estates, or domestic relations to determine the proper beneficiaries of Policy distributions.") (citation omitted); *Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863-64 (4th Cir. 1998) (if state law were permitted to trump an ERISA plan beneficiary designation, "[it] would directly conflict with ERISA's goal of providing a nationally uniform plan administration .... [and] would also reduce the certainty of plan administration and increase litigation, along with associated costs. . . . *There could hardly be a more striking example of a state claim hindering the full accomplishment of congressional objectives.*") (emphasis added); *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (preemption of state law purporting to oust a designated beneficiary "fulfills the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application"); *Emard v. Hughes Aircraft Co.*, 153 F.3d 949, 963 (9th Cir. 1998) (Hall, J., concurring in part and dissenting in part) (permitting state law to affect ERISA plan beneficiary designations undermines "the intent of Congress that ERISA plans be uniform in their interpretation and simple in their application").

traditional state regulation, courts "work[] on the 'assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Travelers*, 514 U.S. at 655 (citation omitted). But, as this Court's precedents make clear, "ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, 519 U.S. at 330. One such area is "the regulation of employee welfare benefit plans," which "Congress[] inten[ded] to establish . . . 'as exclusively a federal concern.'" *Travelers*, 514 U.S. at 656 (citation omitted).

As the above discussion demonstrates, in circumstances such as those presented here—where a state law purports to override an ERISA plan's determination of beneficiary status and direct the payment of ERISA plan benefits in a manner contrary to the terms of the plan, thereby mandating ERISA plan administration and subjecting plans to a multiplicity of inconsistent regulation—Congress's intent that ERISA supersede such state law is clear and manifest. *See Travelers*, 514 U.S. at 656, 658. Indeed, where Congress felt it appropriate to permit state domestic relations law to intrude into the realm of ERISA beneficiary designations and rights, it enacted a precisely tailored and specific means of achieving that end. Under § 514(b)(7) of ERISA, a state court domestic relations order that meets the specific and detailed criteria of ERISA § 206(d)(3)(B)(i) is deemed a "qualified domestic relations order" ("QDRO") and is exempted from the scope of ERISA's express preemption provision. ERISA § 514(b)(7), 29 U.S.C. § 1144(b)(7) ("[the preemption provision] shall not apply to qualified domestic relations orders").[11]

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[11] As Respondents have correctly conceded, the divorce decree in this case does not qualify as a QDRO. *See* Respon-

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Congress's decision to create a limited exception to ERISA preemption in order to permit this carefully circumscribed type of state-law involvement in ERISA benefit allocation decisions confirms that, outside the context of QDROs, Congress intended ERISA to preempt all other attempts to use state domestic relations law to override ERISA plan beneficiary designations. *Inclusio unius, exclusio alterius. O'Melveny & Meyers v. F.D.I.C.*, 512 U.S. 79, 86 (1994).[12]

Contrary to the reasoning of the court below, moreover, the actual impact of § 11.07.010 on ERISA plans is far from the "'tenuous, remote, or peripheral' connection with covered plans" that Congress placed outside the scope of ERISA preemption. *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130 n.1 (1992) (citation omitted). As discussed above, the de-

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dent's Br. in Wash. Ct. App. at 11 ("It is conceded in the present case, the decree of dissolution between David Egelhoff, decedent, and his wife in this matter, Donna Rae Egelhoff, does not specifically meet the qualifications of a domestic relations order, or 'QDRO.'").

[12] In enacting the QDRO exception to ERISA's express preemption provision, Congress made clear its intent that, outside this narrow category of state court decrees, state laws impinging on the regulation of ERISA plans would continue to be preempted. *See* H. R. REP. NO. 655, Part I, 98th Cong., 2d Sess. 42 (1984) ("The inclusion of this specific exception reflects the Committee's judgment that ERISA's preemption rules should be amended to this *limited* extent in order to resolve the problems which have arisen in the domestic relations area. In making these amendments to section 514, the Committee emphasizes that, except as expressly provided, nothing in the bill is intended to limit or otherwise change the original broad intent behind ERISA's rule of preemption.") (emphasis added).

termination of beneficiary status and the payment of plan benefits are core plan functions regulated by ERISA. Section 11.07.010, however, directs the administration of plans and usurps these core functions. This "connection with" an ERISA plan is not "slight," but rather is fundamental to ERISA's purposes of protecting beneficiaries and ensuring that they receive the benefits to which they are entitled.

The court below reasoned that "the mere fact that [§] 11.07.010 may operate upon the beneficiary designation in an ERISA plan is not of itself a sufficient connection to require preemption." Pet. App. 21a. According to the Washington Supreme Court, § 11.07.010 "does not alter the nature of the plan itself, the administrator's fiduciary duties, or the requirements for plan administration." *Id.* But by purporting to "revoke" a valid ERISA plan beneficiary designation and thereby override the determination of beneficiary status and disposition of ERISA plan benefits mandated by the terms of the plan, § 11.07.010 fundamentally alters the primary functions of the ERISA plan. The terms of the plan—requiring payment of benefits to the person named on the beneficiary designation form on file with the plan administrator—would be ignored; the administrator would have to choose between complying with state law or fulfilling the fiduciary duty to follow the terms of the plan; and the administration of the plan would be mandated by state law in violation of the plan.

Section 11.07.010 would have other enormously burdensome effects on ERISA plans as well. As discussed above, plan administrators would be required to administer their plans differently in different jurisdictions based on varying and potentially inconsistent state laws. In many instances, moreover, it would be difficult, if not impossible, for plan administrators to determine which state's law governed, given the possibility that the contesting claimants, the plan administrator, the divorce court, and the probate proceedings could be lo-

cated in two or more different states. Thus, ERISA plans would face the administrative and financial burden of researching, complying with, and potentially litigating over the applicability and meaning of numerous state laws purporting to override beneficiary designations under the terms of ERISA plans—contrary to Congress's intent in enacting ERISA's preemption clause. *See, e.g.*, Br. of the National Coord. Comm. for Multiemployer Plans as *Amicus Curiae* at 1-5, 7-8, 18-19; Br. of Western Conf. of Teamsters Pension Trust Fund as *Amicus Curiae* at 15-21.

Plan administrators, moreover, do not automatically receive notice of the divorce of a plan participant and designated beneficiary, and thus often lack knowledge of the very facts that may trigger the applicability of state divorce-revocation laws. In addition, ERISA plans would be threatened with the substantial risk that they might find themselves paying the same benefits twice, once to a beneficiary designated under the plan and a second time to a different recipient designated by state law.[13] Similarly, as discussed below, ERISA plan administrators and others may face liability under ERISA's provisions for failure to comply with the terms of the applicable plan or for breach of fiduciary duty if they administer the plan in accordance with the state statute rather than the governing plan documents. 29 U.S.C. §§ 1104(a)(1)(D), 1132(a).

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[13] Indeed, this case provides a perfect illustration of that risk. The administrator of David Egelhoff's insurance plans distributed the plan benefits to Petitioner in accordance with the valid beneficiary designation form on file with the plans. Respondents subsequently brought suit in state court against the administrator, seeking to compel it to pay them the full amount of the insurance benefits as well. *Egelhoff v. Aetna Life Ins. Co.*, No. 99-2-08735-1 (Wash. Super. Ct., Pierce County, filed June 17, 1999).

Thus, the Washington Supreme Court's conclusion that § 11.07.010's burdens are "too slight" to justify preemption cannot withstand scrutiny. Quite simply, § 11.07.010 mandates plan administration on matters that are at the heart of ERISA's concerns, "bind[s] plan administrators to a[] particular choice and thus functions as a regulation of an ERISA plan itself," and subjects ERISA plans to inconsistent state laws. For each of these reasons, § 11.07.010 has a "connection with" an ERISA plan and must yield to federal preemption under § 514(a).

II. SECTION 11.07.010 IS PREEMPTED BECAUSE IT CONFLICTS WITH ERISA'S PROVISIONS AND OBJECTIVES

"Conventional conflict pre-emption principles require pre-emption 'where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Boggs*, 520 U.S. at 844 (citation omitted). Thus, where state law "conflicts with the provisions of ERISA or operates to frustrate its objectives," preemption is required even without regard to § 514(a)'s preemption provision. *Boggs*, 520 U.S. at 841. Because § 11.07.010 conflicts with both the text and the purposes of ERISA, it is preempted under traditional conflict preemption analysis. "'[I]n the case of a direct conflict, federal supremacy principles require that state law yield.'" *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 100 (1993) (citation omitted).

As discussed above, ERISA's primary objective is the protection of plan participants and their beneficiaries. *See, e.g., Boggs*, 520 U.S. at 845. "Th[is] general policy is implemented by ERISA's specific provisions." *Id.* Thus, ERISA specifies that beneficiary status is to be determined by reference to the plan participant's beneficiary designation form or the terms of the plan, and requires plan fiduciaries to administer ERISA plans

in accordance with the ERISA plan documents. ERISA also provides that plan fiduciaries must administer plans for the sole benefit of plan participants and their beneficiaries, and grants beneficiaries a federal cause of action to enforce compliance with the terms of the applicable ERISA plans.

These provisions clearly establish Congress's intent that plan administrators determine beneficiary status and distribute plan benefits according to a participant's designation of beneficiary pursuant to the terms of the plan documents. Section 11.07.010—by nullifying ERISA plan beneficiary designations and requiring disbursement of funds to persons other than the designated beneficiary in violation of the terms of ERISA plan documents—directly conflicts with these specific provisions and with ERISA's policy of protecting beneficiaries.

A. Section 11.07.010 Conflicts With Specific ERISA Provisions That Protect Beneficiaries

1. Section 11.07.010 Conflicts With ERISA's Definition Of "Beneficiary"

Section 11.07.010 directly conflicts with ERISA's definition of "beneficiary." In enacting ERISA "to protect . . . the interests of . . . beneficiaries" in ERISA plans, ERISA § 2(b), 29 U.S.C. § 1001(b), Congress carefully delimited the category of persons who qualify as plan beneficiaries entitled to the protections of ERISA. Section 3(8) of ERISA defines the term "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). In this case, it is undisputed that Petitioner was the "person designated by [the] participant" within the meaning of § 3(8). It is also undisputed that, under the terms of the applicable ERISA plans, benefits are to be distributed to the person listed on the plan participant's beneficiary designation form on file with the plan administrator. *See* J.A. 35, 36, 39-40. Thus, Petitioner

is the *only* individual who meets ERISA's definition of "beneficiary" and is entitled to receive benefits in this case, because she is the only "person designated by [the] participant" in accordance with "the terms of [the] employee benefit plan[s]." ERISA § 3(8), 29 U.S.C. § 1002(8).

Section 11.07.010 directly conflicts with ERISA's definition of "beneficiary" because it purports to "revoke" the beneficiary status of individuals whom ERISA classifies as beneficiaries. "[C]ompliance with both federal and state law regulations is a physical impossibility" in this context, because federal law treats the designated beneficiary as the "beneficiary" entitled to receive benefits, whereas state law purports to grant that status to others. It is difficult to imagine a more obvious and direct conflict between state and federal law, and accordingly § 11.07.010 is preempted by ERISA.

The court below reasoned that "[b]enefits under the plan remain to be distributed in accord with the plan documents under ERISA" because "[t]he statute operates under 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. But that "fiction" does not change the fact that § 11.07.010 purports to override beneficiary designations made by participants in accordance with the terms of ERISA plans. The reasoning of the court below would permit the rights of designated ERISA beneficiaries to be nullified at will by the simple ruse of promulgating a state law that assumes away the existence of any disfavored beneficiaries. That result is plainly impermissible; ERISA's solicitude for the protection of ERISA plan beneficiaries would be wholly illusory if beneficiary rights could be voided in this manner. The "fiction" relied upon by the court below is precisely that—a fiction—and provides no justification for the State's attempt to override ERISA's statutory scheme.

In determining whether a state law is preempted by ERISA, courts look not to "legal fictions," but to the actual "effect of the state law on ERISA plans." *Dillingham*, 519 U.S. at 325 (citation omitted). In this case, the effect of § 11.07.010 is clear—to override the plan participant's designation of beneficiary and to confer beneficiary status on other individuals, in violation of ERISA's definition of beneficiary. ERISA's statutory definition yields a clear result under the terms of the plans at issue here: The beneficiary is the person designated by the plan participant in accordance with the terms of the plan. Because § 11.07.010 purports to mandate a different result, it conflicts with ERISA's definition of beneficiary and is preempted.[14]

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[14] Similarly, § 11.07.010 also conflicts with ERISA's provisions that require plan fiduciaries to discharge their duties in the sole interest of plan participants and beneficiaries. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) ("a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries[,] . . . [and] for the exclusive purpose of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the plan . . . ."); ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1) (plan assets, with limited exceptions, are "held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."). Because § 11.07.010 purports to require a plan fiduciary to administer an ERISA plan for the benefit of persons other than plan participants and their designated beneficiaries, it directly conflicts with these ERISA requirements. "In the face of [a] direct clash between state law and the provisions and objectives of ERISA, the state law cannot stand." *Boggs*, 520 U.S. at 844.

2. Section 11.07.010 Conflicts With ERISA's Provisions Protecting Beneficiaries' Rights To The Benefits Due Under Plan Documents

Section 11.07.010 also violates various provisions of ERISA that protect the rights of beneficiaries to receive the benefits to which they are entitled under the terms of the applicable plan documents. ERISA expressly requires plan fiduciaries to administer plans in accordance with the plan documents, which must specify the method for determining benefit payment rights and be available for review by plan beneficiaries. ERISA reinforces these provisions by granting plan beneficiaries a federal cause of action to enforce their rights under the terms of the plan. Because § 11.07.010 purports to override a designated beneficiary's rights to receive the benefits to which she is entitled under the terms of the plan, § 11.07.010 clearly conflicts with these ERISA provisions.

ERISA § 404(a)(1)(D) provides that "a fiduciary shall discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title." ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). ERISA specifies that every employee benefit plan "shall be established and maintained pursuant to a written instrument," and that every such plan shall "specify the basis on which payments are made . . . from the plan." ERISA §§ 402(a)(1), (b)(4), 29 U.S.C. §§ 1102(a)(1), (b)(4); *see also* H.R. CONF. REP. No. 93-1280, 93d Cong., 2d Sess. 297 (1974) ("[T]he plan documents are to . . . specify the basis on which payments are to be made to participants and beneficiaries."). Thus, it is clear that Congress intended for ERISA plans to specify in the plan documents the method by which beneficiary rights are to be determined and plan benefits are to be paid. *Id.* Moreover, Congress confirmed its intent to give control-

ling force to these plan documents by requiring plan fiduciaries to follow the plan documents in administering ERISA plans. ERISA § 404(a)(1)(D).

ERISA's fiduciary liability and enforcement provisions reinforce this congressional insistence that ERISA plans must be administered in accordance with the governing plan documents. Sections 502(a)(1)(B) and (a)(3) of ERISA, for example, authorize plan beneficiaries to bring a civil action "to enforce [their] rights under the terms of the plan" and to "enjoin any act or practice which violates . . . the terms of the plan." 29 U.S.C. §§ 1132(a)(1)(B), (a)(3); *see also* ERISA § 409(a), 29 U.S.C. § 1109(a) (imposing liability for breach of fiduciary duty). By establishing a federal cause of action and imposing liability for failure to administer an ERISA plan in accordance with the plan documents, Congress left no doubt about its decision that ERISA plans are to be administered in accordance with the terms of the plan documents.

The congressional purpose behind these requirements is readily apparent—to protect plan participants and their beneficiaries by ensuring that they are aware of, and will receive, the plan benefits to which they are entitled under the terms of ERISA plans. As ERISA's "declaration of policy" provides, it is "the policy of this Act to protect . . . the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." ERISA § 2(b), 29 U.S.C. § 1001(b).

As part of this protection, Congress required ERISA plans to make plan documents available for review by plan participants and beneficiaries. *See* ERISA § 104(b)(2), 29 U.S.C. § 1024(b)(2) ("The administrator

shall make copies of the latest updated summary plan description . . . or other instruments under which the plan . . . is operated available for examination by any plan participant or beneficiary . . . ."); *id.* § 104(b)(4), 29 U.S.C. § 1024(b)(4) ("The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the . . . instruments under which the plan is . . . operated."); H.R. CONF. REP. NO. 93-1280, 93d Cong., 2d Sess. 259 (1974) ("[T]he . . . plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these . . . documents."); *see also* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (authorizing an ERISA plan participant or beneficiary to bring an action "to clarify his rights to future benefits under the terms of the plan").

As these provisions make clear, Congress intended that the rights of ERISA plan beneficiaries would be determined by reference to readily accessible ERISA plan documents, not on the basis of varying and potentially inconsistent state laws. Here, the plan documents specify that beneficiary status will be determined and benefits will be paid in accordance with the plan participant's designated beneficiary form on file with the plan administrator. J.A. 35, 36, 39-40. By attempting to nullify the ERISA plan participant's designation of beneficiary and requiring the payment of benefits to someone other than the person designated in accordance with the plan documents, § 11.07.010 directly conflicts with the text and structure of ERISA.[15]

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[15] Numerous court of appeals decisions support this analysis. *See, e.g., Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 863 (4th Cir. 1998) (holding that ERISA requires a plan fiduciary to pay benefits to the person designated on the

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B. Section 11.07.010 Conflicts With ERISA's Purpose To Protect Beneficiaries

Each of the specific ERISA provisions discussed above serves to implement ERISA's core purpose "to protect . . . the interests of participants in employee benefit plans and their beneficiaries." ERISA § 2(b), 29 U.S.C. § 1001(b). Contrary to Congress's express concern for protecting ERISA plan beneficiaries, § 11.07.010—by purporting to override ERISA plan beneficiary designations—prevents designated beneficiaries from receiving payments to which they are entitled under the terms of an ERISA plan. Such a denial of benefits to a designated beneficiary under an ERISA plan clearly interferes with the statute's purpose of protecting participants and their beneficiaries.

Only in "narrow circumstances delineated by its provisions," such as in the cases of a surviving spouse annuity or a QDRO, does ERISA confer beneficiary status on an individual who has not been designated as such by the participant or the terms of the plan. *Boggs*, 520 U.S. at 846 (citing ERISA § 205(a), 29 U.S.C. § 1055(a) and ERISA § 206(d)(3), 29 U.S.C. § 1056 (d)(3)). ERISA's surviving spouse annuity provision,

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beneficiary form, by virtue of the fiduciary's statutory duty to "discharge his duties with respect to a plan . . . in accordance with the documents and instruments governing the plan") (quoting 29 U.S.C. § 1104(a)); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 130 (6th Cir. 1996) (holding that, because "ERISA requires that a plan administrator discharge his duties 'in accordance with the documents and instruments governing the plan,'" the designation of beneficiary under the plan must control) (citation omitted); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (same); *McMillan v. Parrott*, 913 F.2d 310, 311 (6th Cir. 1990) (same).

§ 205(a), requires the provision of an annuity to a surviving spouse in some circumstances and thereby establishes the spouse as a beneficiary to this extent. *Id.* Section 206(d)(3)(J) similarly establishes that an alternate payee designated in a QDRO "shall be considered . . . a beneficiary under the plan." ERISA § 206(d)(3)(J), 29 U.S.C. § 1056(d)(3)(J). As the *Boggs* Court explained, Congress's enactment of these narrow provisions protecting specific interests of spouses and children indicates that other claims are "not consistent with the statutory scheme." *Boggs*, 520 U.S. at 847. The *Boggs* Court held that Congress intended to preempt the "nonbeneficiary, nonparticipant interests" of the claimants in that case, because they were neither participants nor beneficiaries, and their claims were not based "on a designation by [the plan participant] or under the terms of the retirement plans." *Id.* at 848, 851.

In this case, Respondents do not qualify as participants or beneficiaries entitled to receive benefits under the terms of the ERISA plans at issue here. Rather, their claim to plan benefits is solely dependent on the operation of state law purporting to oust the designated beneficiary. As the *Boggs* Court's analysis makes clear, a state law attempting to nullify the rights of a designated plan *beneficiary* in favor of a *nonbeneficiary, nonparticipant* is contrary to the purposes of ERISA and is therefore preempted. *Id.* at 850-51.

Simply put, if permitted to withstand ERISA preemption, § 11.07.010 would undermine ERISA's goal of protecting plan participants and their beneficiaries. But "[s]tates are not free to change ERISA's structure and balance." *Id.* at 844. Thus, because § 11.07.010 "conflicts with the provisions of ERISA [and] operates to

frustrate its objectives," federal preemption is required. *Id.* at 841.[16]

C. Section 11.07.010 Conflicts With ERISA's Anti-Alienation Provision

With regard to the pension plan at issue here, § 11.07.010 is preempted for an additional reason: It conflicts with ERISA's prohibition against alienation of retirement benefits. ERISA's anti-alienation provision, ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1), is a "spendthrift" clause that (subject only to enumerated exceptions not applicable here) unqualifiedly dictates that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1). This provision is designed to protect pension plan participants and their beneficiaries from the diversion of "undistributed pension benefits, which are intended to provide a stream of income to participants and their beneficiaries." *Boggs*, 520 U.S. at 852. By preventing transfers of pension rights, the anti-alienation provision ensures that these proceeds will remain available to sustain participants and their beneficiaries during the later years of life for which they are intended. *See id.* at 851-52; *id.* at 851

[16] As demonstrated above, § 11.07.010 similarly interferes with ERISA's other core purposes. By mandating ERISA plan administration and binding plan fiduciaries to a particular choice, § 11.07.010 frustrates ERISA's core function of determining beneficiary status and dispensing plan benefits. *See supra*, at 12-15. In addition, the Washington state statute—by purporting to override an ERISA plan beneficiary designation—likewise frustrates Congress's goal of ensuring the nationally uniform and cost effective administration of ERISA plans. *See supra*, at 17-21. Thus, whether analyzed under ERISA's express preemption provision or under traditional conflict preemption principles, § 11.07.010 cannot withstand scrutiny.

("Statutory anti-alienation provisions are potent mechanisms to prevent the dissipation of funds.").

Recognizing the strength of Congress's anti-alienation mandate, this Court has consistently upheld ERISA's anti-alienation provision against intrusions from state laws that would otherwise reflect traditional exercises of general police power. *See, e.g., id.* at 851-53 (anti-alienation provision preempts testamentary transfer, under state law, of pension plan benefits by the spouse of a plan participant who dies prior to the participant's retirement); *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 371-72 (1990) (anti-alienation provision bars use of an equitable constructive trust to seize pension plan benefits for repayment of amounts embezzled by a former union official); *Patterson v. Shumate*, 504 U.S. 753, 760 (1992) (anti-alienation provision is entitled to enforcement under Bankruptcy Code, and is not limited by state "spendthrift trust" law, thereby precluding individual pension plan interests from becoming assets of the bankruptcy estate subject to the claims of creditors). The policy of ERISA's anti-alienation clause has remained steadfast, in the Court's words, even when there have been "strong equitable considerations to the contrary." *Patterson*, 504 U.S. at 765 (citing *Guidry*, 493 U.S. at 376).

The same result is required here. As in *Boggs*, which presented a similar conflict between ERISA's anti-alienation clause and state domestic relations law, *see* 520 U.S. at 836-37, 51, § 11.07.010 is preempted "if [it] conflicts with the provisions of ERISA or operates to frustrate its objects." *Boggs*, 520 U.S. at 841. Both factors are present with respect to § 11.07.010, which violates both the text and purposes of the anti-alienation provision.

The text of the anti-alienation provision makes clear that pension plan benefits "may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1). On its face, this statutory language precludes the use of state

domestic relations law to transfer pension benefit rights from one individual to another. Moreover, as this Court explained in *Boggs*, ERISA's prohibition against alienation "is mandatory and contains only two explicit exceptions," *see* ERISA § 206(d)(2), 29 U.S.C. § 1056(d)(2) (dealing with plan loans), ERISA § 206(d)(3)(A), 29 U.S.C. § 1056(d)(3)(A) (involving QDROs), "which are not subject to judicial expansion." *Boggs*, 520 U.S. at 851. Unless an attempted transfer of pension benefits occurs through a plan loan or a QDRO, therefore, ERISA's anti-alienation provision expressly prohibits the transfer. *Boggs*, 520 U.S. at 851-52.

Section 11.07.010, by purporting to transfer pension plan benefits from the designated beneficiary to other persons without the use of a plan loan or QDRO, attempts to achieve the "assignment or alienation" of pension plan benefits and thus falls squarely within the prohibition of the anti-alienation provision. An "assignment or alienation" is defined, with certain exceptions not applicable here, as "'[a]ny direct or indirect arrangement whereby a party acquires from a participant or beneficiary' an interest enforceable against a plan to 'all or any part of a plan benefit payment, which is, or may become, payable to the participant or beneficiary.'" *Boggs*, 520 U.S. at 851 (quoting 26 C.F.R. § 1.401(a)-13(c)(1)(ii)). These requirements plainly are satisfied here; § 11.07.010 purports to be enforceable against ERISA plans and would require plan benefits to be paid to someone other than the plan participant's designated beneficiary. Because § 11.07.010 thus purports to "assign or alienate" pension plan benefits, it is incompatible with ERISA's anti-alienation provision.[17]

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[17] *See also Pettit*, 164 F.3d at 864 (ERISA "specifies how . . . an alienation or assignment should be accomplished in the domestic relations context—through a QDRO" and therefore preempts non-QDRO state law attempts to override beneficiary designations); *Mattei*, 126 F.3d at 809 ("Where there is no QDRO . . . awards of property pursuant to [state law] must fall before conflicting designations of ERISA beneficiaries.").

[Footnote continued on next page]

Indeed, plans may not give effect to attempted alienations not authorized by an express ERISA exception, whether purportedly imposed by state law or by some "generalized equitable exception." *Guidry*, 493 U.S. at 376; *see also Patterson*, 504 U.S. at 760 ("[T]his Court itself vigorously has enforced ERISA's prohibition on the assignment or alienation of pension benefits, declining to recognize any implied exceptions to the broad statutory bar."). In circumstances not governed by the plan loan or QDRO exceptions, the issue of beneficiary status is always to be determined under ERISA and not state law. *See Boggs*, 520 U.S. at 851-52.

ERISA is clear about the rules that govern beneficiary determinations for divorced spouses. Indeed, in the context of retirement plans providing annuity benefits, regulations issued by the Internal Revenue Service under ERISA's parallel Internal Revenue Code provisions expressly confirm the sanctity of beneficiary designations not altered by QDROs:

> If a participant divorces his spouse prior to the annuity starting date, any elections made while the participant was married to his former spouse remain valid, unless otherwise provided in a QDRO, or unless the participant changes them or is remarried.

26 C.F.R. § 1.401(a)-20, A-25(b)(3) (2000).[18] Although express regulatory interpretations are not available for

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[Footnote continued from previous page]

[18] The "elections" referenced in this passage are those in which the participant, with spousal consent, determines

[Footnote continued on next page]

plans providing retirement benefits in a form other than an annuity, ERISA does not distinguish between annuity and non-annuity plans with respect to the method for making or recognizing beneficiary designations.[19]

Because application of § 11.07.010 would require pension plan administrators to alienate pension benefits from designated beneficiaries in the absence of a plan loan or QDRO, § 11.07.010 conflicts with ERISA's anti-alienation provision. Quite simply, it would be impossible for the plan administrator in this case to comply with both ERISA and § 11.07.010, and the Washington statute is therefore preempted. *Boggs*, 520 U.S. at 844 (preemption is required "'where compliance with both federal and state regulations is a physical impossibility'") (citation omitted).

Section 11.07.010 also conflicts with Congress's intent to provide "rational rules for plan administrators" in this field, in the form of federal "guidelines for determining whether the exception to the [anti-alienation] rules applies." S. Rep. No. 575, 98th Cong., 2d Sess. 19 (1984), *reprinted in* 1984 U.S.C.C.A.N. 2547, 2565. When Congress "clarified" the law to "creat[e] a limited [QDRO] exception that permits benefits under a pension, etc., plan to be divided under certain circumstances," *id.*, it sought to "balance the needs of the former spouse for flexibility to provide appropriate support

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[Footnote continued from previous page]
whether and in what form the spouse or other designated beneficiary may receive annuity benefits. *See* ERISA § 205(c), 29 U.S.C. § 1055(c).

[19] The same regulation also specifies that former spouses are entitled to qualified joint and survivor annuity status "even if the participant and spouse are not married on the date of the participant's death, except as provided in a QDRO." 26 C.F.R. § 1.401(a)-20, A-25(b)(3) (2000).

[with] the plans' needs for clear rules." 130 CONG. REC. 13325 (1984) (statement of Rep. Rostenkowski). It therefore required plans to give effect to state domestic relations orders "*if and only if*" the statutory QDRO conditions are met. S. REP. NO. 575, *supra*, at 19, *reprinted in* 1984 U.S.C.C.A.N. 2565 (emphasis added); *see also* H.R. REP. NO. 655, Part I, 98th Cong., 2d Sess. 39 (1984) (in order to "minimize the burden on the plan," ERISA "makes clear that the orders have to meet specific requirements if they are to be honored by the plan").

When, as in this case, a state domestic relations order does not comply with the statutory QDRO requirements designed to assure clarity and ease of application, *see* ERISA § 206(d)(3)(C)-(D), 29 U.S.C. § 1056(d)(3)(C)-(D), ERISA requires that the plan be administered and benefits be paid without regard to the non-compliant order. The State of Washington cannot circumvent this statutory scheme by insisting on adherence to a legal mandate concerning non-QDRO dispositions of plan benefits upon divorce that conflicts with ERISA's anti-alienation provision. Thus, § 11.07.010 is preempted because it "conflicts with the provisions of ERISA [and] operates to frustrate its objects." *Boggs*, 520 U.S. at 841.

CONCLUSION

Section 11.07.010 is preempted by ERISA because it "relates to" and has a "connection with" an ERISA plan, and because it directly conflicts with ERISA's text, structure, and purposes. For all of the foregoing reasons, the decision of the Supreme Court of Washington should be reversed, and Petitioner's entitlement to the plan benefits at issue in this case should be confirmed.

Respectfully submitted.

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APPENDIX

STATUTORY APPENDIX

TITLE 29—LABOR

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS
SUBTITLE A—GENERAL PROVISIONS

* * * * *

§ 1001. Congressional findings and declaration of policy

* * * * *

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private

pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

* * * * *

§ 1002. Definitions

For purposes of this subchapter:

* * * * *

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means 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.

* * * * *

SUBTITLE B—REGULATORY PROVISIONS
Part 1—Reporting and Disclosure

* * * * *

§ 1024. Filing and furnishing of information

* * * * *

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

* * * * *

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

* * * * *

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description,[,] and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation pre-

scribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

* * * * *

SUBTITLE B—REGULATORY PROVISIONS
Part 2—Participation and Vesting

* * * * *

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

* * * * *

§ 1056. Form and payment of benefits

* * * * *

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2,

1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 of Title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of Title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

* * * * *

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures

promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

* * * * *

(H)

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v) -

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved, then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan.

* * * * *

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

* * * * *

Part 4—Fiduciary Responsibility

* * * * *

§ 1102. Establishment of plan

(a) Named fiduciaries

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument.

* * * * *

(b) Requisite features of plan

Every employee benefit plan shall—

* * * * *

(4) specify the basis on which payments are made to and from the plan.

* * * * *

§ 1103. Establishment of trust

* * * * *

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets

(1) Except as provided in paragraph (2), (3), or (4) or subsection (d) of this section, or under sections 1342 and 1344 of this title (relating to termination of insured plans), or under section 420 of Title 26 (as in effect on January 1, 1995), the assets of a plan shall never inure to the benefit of any employer and shall be held for the ex-

clusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

* * * * *

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

* * * * *

and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

* * * * *

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such

other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

* * * * *

Part 5—Administration and Enforcement

* * * * *

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

* * * * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * * * *

§ 1144. Other laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee

benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

* * * * *

(b) Construction and application

* * * * *

(7) Subsection (a) of this section shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title)

* * * * *

ILLINOIS COMPILED STATUTES ANNOTATED

CHAPTER 760—TRUSTS AND FIDUCIARIES
TRUSTS AND DISSOLUTIONS
OF MARRIAGE ACT

* * * * *

§ 35/1. [Effect on former spouse]

Sec. 1. (a) Unless the governing instrument or the judgment of judicial termination of marriage expressly provides otherwise, judicial termination of the marriage of the settlor of a trust revokes every provision which is revocable by the settlor pertaining to the settlor's former spouse in a trust instrument or amendment thereto executed by the settlor before the entry of the judgment of judicial termination of the settlor's marriage, and any such trust shall be administered and construed as if the settlor's former spouse had died upon entry of the judgment of judicial termination of the settlor's marriage.

* * * * *

REVISED STATUTES OF THE STATE OF MISSOURI

TITLE 31—TRUSTS AND ESTATES OF DECEDENTS AND PERSONS UNDER DISABILITY
CHAPTER 461—NONPROBATE TRANSFERS LAW

* * * * *

§ 461.051. Marriage dissolution or annulment--revocation of transfer to former spouse or relative of spouse, exception--remarriage to spouse, nullification of annulment, effect, relative of the owner's spouse, defined

1. If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse or a relative of the owner's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the beneficiary designation refers to marital status. The beneficiary designation shall be given effect as if the former spouse or relative of the former spouse had disclaimed the revoked provision.

2. Subsection 1 of this section does not apply to a provision of a beneficiary designation that has been made irrevocable, or revocable only with the spouse's consent, or that is made after the marriage was dissolved, or that expressly states that marriage dissolution shall not affect the designation of a spouse or relative of a spouse as beneficiary.

3. Any provision of a beneficiary designation revoked solely by this section is revived by the owner's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

4. In this section, "a relative of the owner's former spouse" means an individual who is related to the owner's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the owner by blood, adoption or affinity.

* * * * *

MONTANA CODE ANNOTATED

TITLE 72—ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS
CHAPTER 2—UPC – INTESTACY, WILLS, AND DONATIVE TRANSFERS
PART 8—GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS

* * * * *

72-2-814 Revocation of probate and nonprobate transfers by divorce -- no revocation by other changes of circumstances.

* * * * *

(2) Except as to a retirement system established in Title 19 or 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 the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by

law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian

* * * * *

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

* * * * *

PAGE'S OHIO REVISED CODE ANNOTATED

TITLE XIII—COMMERCIAL TRANSACTIONS – OHIO UNIFORM COMMERCIAL CODE
CHAPTER 1339—FIDUCIARY LAW

* * * * *

§ 1339.63 Termination of marriage revokes designation of spouse as beneficiary of death benefits; immunity.

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(B)(1) Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment.

(2) If the spouse who made the designation or on whose behalf the designation was made remarries the other spouse, then, unless the designation no longer can be made, the other spouse shall not be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is not revoked because of the previous divorce, dissolution of marriage, or annulment.

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OKLAHOMA STATUTES

TITLE 15—CONTRACTS
CHAPTER 3—INTERPRETATION OF CONTRACTS

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§ 178. Contracts designating former spouse as beneficiary or providing death benefits--Effect of divorce or annulment

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, retirement arrangements, compensation agreements, depository agreements, security registrations, and other contracts designating a beneficiary of any right, property, or money in the form of a death benefit), 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;

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.

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CODE OF VIRGINIA

TITLE 20—DOMESTIC RELATIONS
CHAPTER 6—DIVORCE, AFFIRMATION AND ANNULMENT

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§ 20-111.1. Revocation of death benefits by divorce or annulment

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.

The term *"death benefit"* includes any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement or other contract designating a beneficiary of any right, property or money in the form of a death benefit.

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.

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ANNOTATED REVISED CODE OF WASHINGTON

TITLE 11—PROBATE AND TRUST LAW
CHAPTER 11.07—NONPROBATE ASSETS ON DISSOLUTION OR INVALIDATION OF MARRIAGE

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§ 11.07.010. Nonprobate assets on dissolution or invalidation of marriage

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former

spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument af-

fected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liabil-

ity, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives

payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.