IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

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 THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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I.
PRELIMINARY STATEMENT

The National Coordinating Committee for Multiemployer Plans ("NCCMP")[1] submits this *amicus* brief to urge the Court to reverse the decision of the Supreme Court of Washington in the matter of *Egelhoff v. Egelhoff*.[2] In *Egelhoff*, the court held that a Washington statute,[3] which presumes that former spouses of employee benefit plan participants predecease participants upon divorce, is not preempted by the Employee Retirement Income Security Act ("ERISA"),[4] and does not violate ERISA's anti-alienation provision.[5] Parties to this action have unanimously consented to the NCCMP's filing of this *amicus* brief.

The NCCMP's members are multiemployer plans and related international unions, which provide retirement and health and welfare benefits to retirees, active employees, and their beneficiaries, in many different states. Multiemployer plans often provide benefits to participants and beneficiaries residing in multiple states. Consequently, the ability of trustees and fiduciaries to implement uniform administrative processes and procedures is of vital importance to the multiemployer plan community, and to the NCCMP. The NCCMP files this *amicus* brief because the decision below directly conflicts with ERISA's text and purpose, and threatens to seriously impede the ability of multiemployer plan trustees to administer plans in the manner prescribed by Congress.

As permitted under ERISA, trustees across the country have set forth in their plan documents how their participants may appropriately designate beneficiaries for those benefits which may be shared or passed on to designated beneficiaries. These provisions permit plan administrators to reference the documents on file with plans, which reflect participants' determinations as to proper beneficiaries of life insurance and pension benefits, when determining to whom specific plan benefits should be paid. The *Egelhoff* decision, unless repudiated by this Court, threatens to undermine such administrative uniformity, and would severely impair the ability of multiemployer plans to provide life insurance and retirement benefits to the designated beneficiaries of deceased plan participants.

Unless the decision below is rejected, the Washington statute at issue would require fiduciaries, in specific instances, to ignore the beneficiary designations of plan participants, and disregard explicit plan provisions, in violation of ERISA's command that fiduciaries administer plans in accordance with the terms of governing plan documents.[6]

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[1] /Counsel for *Amicus* were the sole authors of this brief. No person or entity other than *Amicus* made a financial contribution to this brief.

[2] /139 Wash.2d 557, 989 P.2d 80 (1999).

[3] /R.C.W. § 11.07.010.

[4] /29 U.S.C. § 1001 *et. seq.*

[5] /ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1).

[6] /ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

Moreover, unless repudiated, the decision below will subject employee welfare and retirement plans to differing, and often conflicting, state laws regarding the appropriate disposition of plan benefits. Plans would thus be required to expend significant inancial and administrative resources to assess and comply with state laws that purport to alter beneficiary designations, and to defend against litigation that will inevitably arise as a result of conflicts between state laws and plan provisions. Furthermore, the decision below, unless overruled, will require plans to establish administrative processes and procedures to monitor the marital status of their participants, and will delay payment of plan benefits while the impact of state laws on beneficiary designations is assessed.

II. STATEMENT OF THE NCCMP's INTEREST

A. Purpose and Interest

The NCCMP is a nonprofit, tax-exempt organization that was formed to participate in the development of employee benefits legislation and government regulations that implement ERISA and other laws affecting multiemployer plans. Currently, more than 240 multiemployer plans and related international unions, located in 37 states, are affiliated with the NCCMP. Their participants and beneficiaries reside throughout the country. The NCCMP is the only national organization devoted exclusively to protecting the interests of the more than nine million workers, retirees, and their families who rely upon multiemployer plans for retirement, health, and other benefits.

The NCCMP's purpose is to ensure an environment in which multiemployer plans may continue their vital role in efficiently providing retirement and welfare benefits to working men and women. The NCCMP's members encompass plans and plan sponsors in every major segment of the multiemployer plan universe. Because of the broad range of experience of the NCCMP's constituent organizations, and the NCCMP's close, ongoing contacts with hundreds of trustees charged with administering multiemployer plans, the NCCMP believes that it is uniquely qualified to represent the interests of the trustees, participants, and beneficiaries of such plans. For this reason, the NCCMP frequently participates as an *amicus curiae* in this Court, as well as in various courts of appeals.

B. Special Features of Multiemployer Plans

Multiemployer plans, whether large or small, provide a variety of benefits that often vary according to the geographic area, craft, employer contribution rate, and other factors. Multiemployer plan benefit packages are, typically, designed by the plans' trustees, rather than negotiated by the employers and unions that participate in the plans. Due to their large size and often decentralized administrative structures, multiemployer plans are administered quite differently from single-employer plans.[7] It is this unique nature of multiemployer plans that causes the NCCMP to be concerned with the Washington Supreme Court's ruling in *Egelhoff*.

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[7] Large, multistate, single-employer plans may share some of the benefit delivery features of multiemployer plans.

Employees in industries that contribute to multiemployer plans *e.g.*, the construction, shipping, and restaurant industries) often work for multiple employers in a calendar year. Due to their short tenure with any single employer, such employees would usually be ineligible for participation in employee benefit plans, but for the existence of multiemployer plans. Recognizing that transitory employment is an integral feature of industries that contribute to multiemployer plans, many multiemployer benefit plans offer various welfare and retirement benefit packages which include portability provisions that allow participants to continue accruing benefits under plans, even if they work for multiple contributing employers. Consequently, aside from receiving contributions from potentially hundreds, or thousands, of contributing employers in different states, the benefit structures of many multiemployer plans *facilitate* participants' employment with different employers in *different* states.

Morever, large national plans may comprise multiple plan units, which cover specific geographic areas in different states, and furnish a unique set of benefits to potentially tens of thousands of covered participants and beneficiaries in the respective geographic regions. Because multiemployer plans often provide benefits to large participant populations that are geographically dispersed, the uniform administration of such plans across state lines is of significant importance in providing for the timely payment of benefits at relatively low administrative costs. This is especially true with respect to divorced plan participants, who may have children and former spouses in states other than the state of the participant's residence.

The determination of the proper beneficiary of life insurance or pension benefits is currently straightforward: plan officials need only refer to beneficiary designations on file, which reflect participants' choices as to whom benefits are to be distributed, or refer to plan provisions that determine beneficiaries in the absence of participants' designations. Such simplicity allows multiemployer plans with participants and beneficiaries in multiple states to distribute benefits pursuant to a uniform standard. The *Egelhoff* decision threatens to undermine such administrative uniformity, and will, unless overruled, force plans to establish administrative procedures to monitor participants' marital status, and to assess the effect of the Washington law (and other states' laws) on potentially competing claims that participants' spouses, former spouses, and children may have to plan benefits.

For this reason, the NCCMP urges the Court to reverse the decision below.

III. SUMMARY OF ARGUMENTS

The Washington Supreme Court's decision in *Egelhoff* requires that plan fiduciaries disregard the designation of a participant's former spouse as a plan beneficiary, unless such a designation was affirmatively made by the participant following the dissolution of the marriage. The state law at issue in *Egelhoff* effectively overrides certain beneficiary designations and plan provisions, and thus directly conflicts with ERISA's purpose of designating beneficiaries in accordance with the terms of plan documents.[8]

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[8] */ See* ERISA § 3(8), 29 U.S.C. § 1002(8); § 206(d)(1), 29 U.S.C. § 1056(d)(1), § 402(b)(4), 29 U.S.C. § 1102(b)(4).

Furthermore, the decision below conflicts with this Court's decision in *Boggs v. Boggs.*[9] Similar to the state law at issue in *Boggs*, the Washington statute allows third parties, who are neither participants nor beneficiaries, to enjoy the proceeds of employee retirement plans by displacement of designated beneficiaries. As the Washington statute creates an alienation of benefits, proscribed by ERISA Section 206(d)(1),[10] the Washington "state law cannot stand."[11]

Even if the Court concludes that the Washington statute does not directly conflict with ERISA, the statute is nonetheless preempted by ERISA Section 514(a),[12] as the statute impermissibly "relates to" and has a "connection with" employee benefit plans.

The court below clearly misinterpreted this Court's holdings concerning the scope of ERISA Section 514, and the ruling below is inconsistent with this Court's decisions in *New York State Conference of Blue Cross & Blue Shield v. Travelers Ins. Co*. ("*Travelers")*,[13] and its progeny.[14] Specifically, by finding that the Washington statute's displacement of participants' beneficiary designations does not have a sufficiently direct impact on ERISA-covered plans, the Washington Supreme Court ignored the very real and obvious fact that displacement of named beneficiaries from their entitlement to plan benefits directly alters the terms and administration of employee benefit plans. *Travelers* clearly and unequivocally holds that state laws that alter the terms or administration of employee benefit plans are preempted by ERISA.[15]

The decision below threatens to seriously impair the uniform administration of multiemployer plans, which often comprise hundreds or thousands of contributing employers, and tens of thousands of participants and beneficiaries who reside in different states. Unless overruled, *Egelhoff* will require multiemployer plan fiduciaries to establish administrative structures to evaluate the effect of each state's laws, for purposes of determining whether state laws override plan participants' otherwise- valid beneficiary designations, and will force plans to expend significant resources to monitor participants' marital status, and to defend against litigation arising from conflicts between state laws and the terms of documents governing retirement and welfare plans.

As the decision below would subject employee benefit plans to a myriad of potentially conflicting state laws that directly impact the administration of plans, and would thereby undercut Congress's goal that plans be administered uniformly across state lines, the NCCMP urges the Court to reverse the judgment of the Washington Supreme Court.

IV. ARGUMENT

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[9] /520 U.S. 833 (1997).
[10] /29 U.S.C. § 1056(d)(1).
[11] /*Boggs*, 520 U.S. at 834.
[12] /29 U.S.C. § 1144(a).
[13] /514 U.S. 645 (1995).
[14] /*California Div. of Labor Standard Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997); *DeBuono v. NYSA-ILA Medical and Clinical Services Fund, et. al*., 520 U.S. 806 (1997); *Boggs, supra*; *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999).
[15] /*Travelers,* 514 U.S. at 658. *See also UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358, 378-79 (1999).

A. The Washington Statute Violates Congress's Intent that Employee Benefit Plans be Subject to a Uniform Body of Law.

This Court has recognized that in enacting ERISA's preemption provision, Congress sought to promote the "nationally uniform administration of employee benefit plans."[16] ERISA Section 514[17] serves:

> [T]o ensure that plans and plan sponsors would be subject to a uniform body of benefits law; *the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States* and the Federal Government . . . , [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.[18]

"The basic thrust of the preemption clause . . . [is] to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans."[19] ERISA Section 514 thus reflects "Congress's intent to establish the regulation of employee . . . benefit plans 'as exclusively a federal concern.'"[20]

1. The Decision Below Conflicts With This Court's Ruling in *Boggs*.

In holding that the Washington statute does not alienate retirement plan benefits, the court below misconstrued the effect of this Court's decision in *Boggs v. Boggs* ("*Boggs")*.[21] In *Boggs*, the Court held that ERISA preempts state community property laws that purport to allow a nonparticipant former spouse to transfer, by testamentary instrument, his or her interest in a participant's pension benefits. The Court ruled that ERISA's anti-alienation provision[22] prohibits the application of state laws that would allow a "nonbeneficiary, nonparticipant"[23] to have an enforceable interest in a pension plan's benefits. As *Boggs* noted, an assignment or alienation occurs whenever a third party acquires any direct or indirect right or interest to

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16 / *Travelers,* 514 U.S. at 646.
17 / 29 U.S.C. § 1144(a).
18 / *Travelers*, 514 U.S. at 656-57 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1995) (emphasis added)).
19 / *Id.* at 657.
20 / *Id*. (*quoting Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)).
21 / 520 U.S. 833 (1997).
22 / ERISA § 206(d) (1), 29 U.S.C. 1056(d)(1).
23 / *Boggs,* 520 U.S. at 851.

benefits payable under a plan.[24] Importantly, the Court specifically recognized that its ruling in *Boggs* would "affect . . . the right to make claims or assert interests based on the law of any State, whether or not it recognized community property."[25]

By its terms, ERISA carefully defines the class of individuals eligible for plan benefits by reference to the terms of individual plan documents,[26] rather than state laws.[27] ERISA defines a "beneficiary" solely 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*,"[28] and therefore does not, with the limited exceptions of Qualified Domestic Relations Orders ("QDROs") and Qualified Medical Child Support Orders ("QMCSOs"), permit reference to state laws for purposes of establishing benefit eligibility, unless permitted by the plan.[29] As the Court noted in *Boggs*, "[w]hen Congress has chosen to depart from the . . . framework [of protecting participants and beneficiaries]," by exempting state domestic relations laws from the parameters of ERISA's anti-alienation and preemption provisions, with respect to QDROs and QMCSOs, "it has done so in a careful and limited manner."[30] *Boggs* unequivocally holds that the very narrow and limited QDRO exception reflects Congress's desire to specify the *only* circumstance when nonparticipants and nonbeneficiaries may assert rights with respect to pension plan benefits,[31] thus preempting the field in which states may regulate.

The unmistakable effect of the Washington statute is to nullify beneficiary designations, codified in plan documents or elected by plan participants, insofar as the designated beneficiary is the former spouse of a plan participant. Indeed, the court below acknowledged that the statute " . . . invalidates [the] designation of a former spouse as beneficiary of a non-probate asset by creating the legal fiction that the spouse predeceased the now-deceased owner."[32] However, *Boggs* recognized that ERISA's anti-alienation provision is mandatory with respect to pension plans, and is "not subject to judicial expansion."[33]

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[24] */ Id.* (citing 26 C.F.R. § 1.401(a)-13(c)(1)(ii)).

[25] */ Id.* at 840.

[26] */ See* ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4) (requiring that every employee benefit plan specify the basis upon which payments may be made to and from the plan); ERISA § 3(7), 29 U.S.C. § 1002(7) (defining participants eligible for plan benefit as individuals who are, or who may become, eligible for benefits under an employee benefit plan), and ERISA § 3(8), 29 U.S.C. § 1002(8) (defining beneficiaries eligible for plan benefits).

[27] */ Boggs v. Boggs*, 520 U.S. 833, 850-51 (1997). *See also, e.g.*, *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Employers and other plans sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans"); *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996) (same); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 443 (1999) (same).

[28] */* ERISA § 3(8), 29 U.S.C. § 1002(8) (emphasis added).

[29] */ Boggs*, 520 U.S. at 850-54.

[30] */ Id*. at 854.

[31] */ Id.*

[32] */ Egelhoff v. Egelhoff*, 139 Wash.2d 557, 578 (1999).

[33] */ Id. See also Guidry v. Sheet Metal Workers National Pension Fund,* 493 U.S. 365 (1990); ERISA § 206(d)(1), 29 U.S.C. § 1056 (d)(1).

Moreover, the Washington statute permits participants to use state laws, such as divorce laws, to displace designated beneficiaries of plan benefits, *without* notifying plans of changes in beneficiary designations. The absence of notice as to changes in beneficiary designations imposes substantial administrative and financial burdens on plans, inasmuch as plans will be faced with competing claims for benefits, and will likely be forced to either interplead retirement and/or life insurance proceeds, or be named as defendants in lawsuits filed by claimants to such proceeds. Under either scenario, plans will be subject to "complex, expensive, and time-consuming litigation. Congress could not have intended that pension benefits from pension plans would be given to . . . attorneys for this purpose."[34] Unlike the payment of benefits pursuant to QDROs, which simply require plans to determine whether state domestic relations orders satisfy the minimum criteria set forth in ERISA,[35] *without* determining the factual or legal bases for the orders' issuance,[36] changes in beneficiary designations pursuant to state laws require that plans investigate participants' marital and familial status, establish the bases for the competing benefit claims, and opine as to the legal merits of such claims.[37] Such a result is incompatible with ERISA's express goal of providing *designated* beneficiaries with a stream of income. As fiduciaries are required to administer plans in accordance with their governing plan documents,[38] state laws that undermine the strength of plan documents conflict with ERISA's goal that plans be administered in accordance with their clear terms.

To the extent that the Washington statute nullifies beneficiary designations made in accordance with the terms of ERISA plans, the Washington statute clearly conflicts with ERISA's definition of a beneficiary,[39] ERISA's requirement that plans specify to whom benefits may be paid,[40] and ERISA's anti-alienation provision.[41] As such, the Washington statute conflicts with ERISA's objectives of providing *designated* beneficiaries with plan benefits,[42] and must therefore be preempted.

2. The Washington Statute Conflicts with ERISA's Anti-Alienation Provision

State laws that displace named beneficiaries from benefits available under the terms of a plan are inconsistent with ERISA's goal of protecting participants' and beneficiaries' interests in plans. *Boggs* noted that one of the principles underlying ERISA's enactment was to "protect plan *participants and beneficiaries*,"[43] and found that "[t]he axis around which ERISA's protections

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[34] */ Boggs*, 520 U.S. at 853.

[35] /ERISA § 206(d)(3)(C)-(D), 29 U.S.C. § 1056(d)(3)(C)-(D).

[36] /United States Department of Labor of Labor Advisory Opinion 92-17, *available at* 1992 ERISA LEXIS 18 (August 21, 1992).

[37] /Alternatively, plans could routinely interplead life insurance or pension plan benefits, thereby incurring substantial legal fees.

[38] /ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D)

[39] /ERISA § 3(8), 29 U.S.C. § 1002(8)

[40] /ERISA § 402(b)(4), 29 U.S.C. § 1102(b)(4)

[41] /ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1)

[42] */ Boggs*, 520 U.S. at 850-51.

[43] */ Id.* at 845 (emphasis added).

revolve is the concept of *participant and beneficiary*."[44] Indeed, *Boggs* held that "[i]t would be inimical to ERISA's purposes to permit [third party] recipients to acquire a competing interest in undistributed pension benefits, which are intended to provide a stream of income to *participants and their beneficiaries."*[45]

The court below erroneously concluded that the Washington statute does not conflict with ERISA's anti-alienation provision because the statute "does not impede the plan administrator's obligation to pay under the terms of the plan documents."[46] The mere fact that the Washington statute attempts to nullify a beneficiary designation through the legal fiction that a former spouse predeceases a plan participant is irrelevant, however, since the nullification's *effect* is the distribution of plan assets to nonparticipants and nonbeneficiaries.[47]

The consequence of the Washington statute is the same as that of the community property law at issue in *Boggs*. The Washington statute purports to transfer, to nonparticipants and nonbeneficiaries, interests in plan benefits that are, by the terms of documents and instruments governing ERISA-covered plans, designated for distribution to specified beneficiaries. Such a transfer of interests is impermissible under *Boggs*, inasmuch as:

> Reading ERISA to permit *nonbeneficiary* interests [in a pension plan], even if not enforced against the plan, would result in troubling anomalies. Either pension plans would be run for the benefit of only a subset of those who have a stake in the plan, or State law would have to move to fill in the apparent gaps between plan administration responsibilities and ownership rights, resulting in a complex set of requirements varying from State to State. *Neither result accords with [ERISA].*[48]

The Washington statute directly conflicts with ERISA's anti-alienation provision. In light of *Boggs'* holding that in the face of "a direct conflict between [a] state law and the provisions and objectives of ERISA, the state law cannot stand,"[49] the Court should reverse the decision of the Washington Supreme Court.

3. Compliance with the Washington Statute Requires that Fiduciaries Violate ERISA's Statutory Mandate that Plans Be Administered in Accordance with Plan Documents.

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44 /*Id.* at 854 (emphasis added).

45 /*Id*. at 852 (emphasis added).

46 /*Egelhoff v. Egelhoff*, 139 Wash.2d 557, 579 (1999).

47 /To determine whether a state law has an impermissible connection with ERISA-covered plans, courts look not only to ERISA's objectives as a guide to the scope of state law that Congress understood would survive preemption, but also "*to the nature of the effect of the state law on ERISA plans*." *California Div. of Labor Standards Enforcement v. Dillingham Construction, N.A*., 519 U.S. 316, 325 (1997) (emphasis added).

48 /*Boggs,* 520 U.S. at 850-51(emphasis added).

49 /*Id*. at 844.

To the extent that the Washington statute nullifies beneficiary designations either mandated by the terms of an employee benefit plan, or elected by plan participants pursuant to plan provisions, a fiduciary's distribution of plan benefits to a third party, as required by the Washington statute, would directly conflict with ERISA's command that fiduciaries administer a plan "in accordance with the documents and instruments governing the plan. . . ."[50]

As ERISA does not, with the limited exception of surviving spouse annuity provisions, designate beneficiaries of plan proceeds, plan sponsors and multiemployer plan trustees must adopt plan provisions detailing to whom pension and welfare benefits may be distributed, to which fiduciaries must adhere in the administration of the plan. To facilitate fiduciaries' compliance with plan provisions, Congress enacted ERISA Section 502(a)(1)(B),[51] providing plan participants and beneficiaries with a cause of action to "recover benefits due . . . under the terms of [a] plan . . . ."[52] Moreover, Congress imposed *personal liability* on fiduciaries who disregard plan provisions, or otherwise violate any of ERISA's fiduciary obligations.[53]

Considering that the Washington statute nullifies a participant's designation of a former spouse as the beneficiary of plan benefits, simultaneous compliance with the Washington statute and ERISA Section 404(a)(1)(D) is impossible, as the Washington statute requires that a fiduciary disregard beneficiary designations mandated by terms of a plan. Consequently, unless the decision below is reversed, plan fiduciaries face the Hobson's choice of either (1) complying with the Washington statute, subjecting themselves to personal liability for violating ERISA Section 404(a)(1)(D), or, (2) providing benefits in accordance with the terms of governing plan documents, and facing liability under state law.

Compliance with the Washington statute frustrates ERISA's mandate that the administration of plans be in conformity with their governing plan documents. As such, the Washington statute conflicts with ERISA, and should be preempted.[54]

B. The Washington Statute "Relates To," and Has a "Connection With," Employee Benefit Plans, Triggering Preemption Under ERISA Section 514(a).

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[50] /ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

[51] /29 U.S.C. § 1132 (a)(1)(B).

[52] /*Id.*

[53] /ERISA § 409(a), 29 U.S.C. § 1109(a), provides, in pertinent part, that:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by [Title I of ERISA] shall be *personally liable* to make good to such plan any losses to the plan resulting from such breach . . . .

(Emphasis added).

[54] /*Boggs*, 820 U.S. at 844.

Even if the Court finds that the Washington statute does not *directly* conflict with ERISA, it nonetheless alters the terms and administration of employee benefit plans, and is therefore preempted by ERISA Section 514.

1. The Decision Below Misconstrues This Court's Decision in *Travelers*.

The Washington Supreme Court's conclusion that the Washington statute is not preempted by ERISA Section 514 is largely based upon the court's flawed interpretation of this Court's decision in *New York State Conference of Blue Cross & Blue Shield v. Travelers Ins. Co*.[55] Although the *Egelhoff* court was correct that the *Travelers*' decision represented a departure from textual literalism with respect to ERISA Section 514,[56] *Egelhoff* nonetheless disregarded *Travelers'* admonition that, in interpreting Section 514, courts should look to Congress's objectives "as a guide to the scope of the state law that Congress understood would survive" preemption.[57]

While *Travelers* held that state-imposed surcharges on hospital bills covered by commercial insurers were not preempted, as the surcharges had only an indirect economic impact on employee benefit plans, and were outside the scope of traditional state laws that Congress intended to preempt, the Court nonetheless reaffirmed its previous rulings that state laws that mandate benefit structures, alter plan administration, or provide plan participants and beneficiaries with alternate civil enforcement mechanisms,[58] ". . . relate to ERISA plans, triggering preemption."[59]

In distinguishing the surcharges at issue in *Travelers* from other laws that the Court previously found
were subject to preemption, the Court specifically reaffirmed its ruling in *FMC Corp. v. Holliday* ("*Holliday*"),[60] which held that state antisubrogation laws "relate to" ERISA plans, and are therefore preempted. Specifically, *Travelers* noted with approval *Holliday's* holding that antisubrogation laws are preempted because they prohibit plans from structuring benefits in a manner requiring reimbursement in the event of third-party recoveries, and prevent multistate plans from providing uniform benefits to all plan participants.[61]

2. The Washington Statute Directly Impacts, and Alters, the Administration of Employee Benefit Plans.

Similar to the antisubrogation law at issue in *Holliday*, the Washington statute requires plans to pay benefits in a manner contrary to the terms of their governing plan documents, and contrary to the manner in which plans are administered in other states. Unless repudiated by this Court, *Egelhoff* would subject plans to a myriad of different, and potentially conflicting, state laws that

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55 /514 U.S. 645 (1995).
56 /*Egelhoff v. Egelhoff*, 139 Wash.2d at 557-568 (1999).
57 /*Travelers*, 514 U.S. at 656.
58 /*Id*. at 658.
59 /*Id.* (citing *Ingersoll-Rand Co. v. McClendon,* 498 U.S. 133 (1995)).
60 /498 U.S. 52 (1990).
61 /*Travelers*, 514 U.S. at 657-58 (emphasis added) (*quoting Holliday, supra*, at 60).

purport to define plan beneficiaries, thereby "requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction,"[62] which *Travelers* specifically prohibits.[63]

Unlike state-imposed surcharges on commercial insurers, the Washington statute directly and immediately impacts employee benefit plans by superceding plan document provisions concerning the designation of beneficiaries, and overriding participants' designations of former spouses as beneficiaries.[64] Moreover, the Washington statute forces plans to establish administrative procedures to monitor participants' marital status, and to assess the effect of the Washington law on potentially competing claims that participants' spouses, former spouses, and children may have to plan benefits. Indeed, a number of federal appellate courts have held, even *after* *Travelers*, that state laws that purport to displace named beneficiaries from their entitlement to plan benefits sufficiently "relate to" employee benefit plans as to fall within the scope of ERISA preemption.[65]

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[62] */ Id*. at 656-57 (*quoting Ingersoll-Rand Co. v. McClendon,* 498 U.S. 133, 142 (1995)).

[63] */ Id*.

[64] */ As described above, to accomplish its purpose, the Washington statute requires that fiduciaries violate their fiduciary obligations to administer plans in accordance with governing plan documents, thereby subjecting fiduciaries to personal liability under ERISA.

[65] */ Metropolitan Life Ins. Co. v. Pettit*, 164 F.3d 857, 862 (4th Cir. 1998) ("designating the beneficiary of an ERISA life insurance plan sufficiently relates to a plan to come within the scope of [ERISA's] preemption clause"); *Metropolitan Life Ins. Co. v. Pressley*, 82 F.3d 126, 129 (6th Cir. 1996) ("a designation of beneficiaries has a connection with or reference to an ERISA plan, preempting state law"). *See also*, *e.g.*, *Mattei v. Mattei*, 126 F.3d 794, 809 (6th Cir. 1997), *cert. denied*, 523 U.S. 1120 (1998) (property awards under state law that do not constitute QDROs "must fall before conflicting designations of ERISA beneficiaries"); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420 (6th Cir. 1997) (citing *Boggs v. Boggs*, ERISA preempts state laws that purport to displace designated beneficiaries from their entitlement to plan benefits).

3. The Washington Statute is Not a State Law of General Application, and Provides Individuals with Substantive Rights Against Plans.

It is critical to note that unlike "lawsuits against ERISA plans for run-of-the-mill state law claims such as unpaid rent, failure to pay creditors, . . . torts committed by an ERISA plan"[66] or general state statutes that permit the garnishment of participants' welfare plan benefits, which are not preempted by ERISA,[67] the Washington law substantively impacts the terms and administration of employee welfare and pension plans in a manner proscribed by ERISA.

In contrast to the general garnishment statute upheld by this Court in *Mackey v. Lanier Collections Agency,*[68] which was a procedural mechanism to enforce judgments against *welfare* plan participants, the Washington statute affords nonparticipants and nonbeneficiaries with *substantive* rights with respect to employee welfare *and pension* plans.[69] Indeed, the statute provides a cause of action against former spouses who are designated as plan beneficiaries, and plans themselves. Additionally, the statute provides third parties with relief and recovery in regard to welfare and pension plan benefits designated for distribution to former spouses, and clearly creates the rule of decision, and affixes liability, in any case that may arise concerning the disposition of plan benefits to former spouses of plan participants.[70]

As the Washington statute invests third parties with substantive rights against plans and plan beneficiaries, and creates the rule of decision with respect to the disposition of plan benefits, thereby
affixing liability, the statute is *not* a general or procedural state law similar to that upheld in *Mackey.*[71] Consequently, the Washington statute is preempted by ERISA.

4. *UNUM* Requires Preemption of the Washington Statute.

This Court has held, even *after Travelers*, that state laws which alter the administration of employee benefit plans are preempted. This Court's decision, in *UNUM Life Ins. Co. of America v. Ward* ("*UNUM*"),[72] confirms that the Washington statute at issue in *Egelhoff* impermissibly "relates to" employee benefit plans, and is therefore preempted.
In *UNUM*, the Court held that California's "*Elfstrom* rule," which deemed the plan sponsor of an insured employee benefit plan as the insurer's agent, was preempted by ERISA Section 514. Finding that the *Elfstrom* rule was a state law that affected "not merely the plan's bookkeeping obligations regarding to whom benefit checks must be sent, but [also] regulate[d] the basic

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66 /*Mackey v. Lanier Collections Agency*, 486 U.S. 825, 833 (1988).
67 /*Id*.
68 /*Id*. at 836-37.
69 /It is important to note that *Mackey* specifically held that ERISA § 206(d)(1) prohibits the alienation of pension plan benefits, even by operation of a general state garnishment statute. *Id.*
70 /*See id.*, at n. 10.
71 /*Id.*
72 /526 U.S. 358 (1999).

services that a plan may or must provide . . . [,]"[73] the Court ruled that the *Elfstrom* rule would have a "marked effect on plan administration,"[74] and was therefore preempted by ERISA.[75]

The Washington statute at issue in *Egelhoff* has a far greater, and more drastic, impact on plan administration than the *Elfstrom* rule. The Washington statute *mandates* to whom plans may pay benefits, by *nullifying* plan document provisions or beneficiary designations that would otherwise permit participants' former spouses to receive benefits. As state laws deeming a plan sponsor to be an insurer's agent are preempted, due to their "marked effect on plan administration,"[76] logic dictates that the Washington statute, with the far more drastic effect of displacing named beneficiaries from their entitlement to plan benefits, *must* be similarly preempted.

5. The Characterization of the Washington Statute as an Exercise in Traditional State Police Power Does Not Alter the Preemption Analysis.

In concluding that the Washington statute was not subject to ERISA preemption because the statute represented an exercise of Washington's historic police powers regarding domestic relations, the *Egelhoff* court misconstrued this Court's holdings in *Travelers*, and subsequent cases,[77] as to the scope of state laws that Congress intended to save from preemption.

While *Travelers* instructs that courts should begin a preemption analysis with the "presumption that ERISA did not intend to supplant" state law,[78] this Court has nonetheless held that when state laws conflict with specific provisions of ERISA, or would frustrate ERISA's objectives, the state law is preempted.[79] For example, in *Boggs,*[80] the Court found that even though "[s]tate community property laws, many of ancient lineage, . . . 'are not lightly to be abrogated or tossed aside[,]'"[81] such laws are nonetheless preempted to the extent that they attempt to confer rights with respect to retirement benefits on nonparticipants and nonbeneficiaries.[82]

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[73] */ Id.* at 379.
[74] */ Id*.
[75] */ Id*.
[76] */ Id*.
[77] */ California Div. of Labor Standard Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997); *DeBuono v. NYSA-ILA Medical and Clinical Services Fund, et. al*., 520 U.S. 806 (1997); *Boggs v. Boggs*, 520 U.S. 833 (1997); *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999).
[78] */ Dillingham Construction, N.A., Inc., supra*, 519 U.S. at 331-32.
[79] */ Boggs v. Boggs*, 520 U.S. 833 (1997).
[80] */ Id.*
[81] */ Id*. at 840 (*quoting* 1 W. de Funiak, *Principles of Community Property* 11 (1943)).
[82] */ Id*. at 851-52.

Applying *Boggs* to the statute at issue in *Egelhoff*, the mere fact that the Washington statute is a domestic relations law that is otherwise within the province of Washington's traditional police powers, does not shield the law from preemption, insofar as the statute's assignment of retirement plan benefits to nonparticipants and nonbeneficiaries conflicts with ERISA's provisions and objectives.[83]

V. CONCLUSION

The Washington statute impermissibly alienates retirement plan benefits, and requires that multistate employee benefit plans structure all benefit payments in accordance with the Washington statute, or adopt different payment formulae for participants and beneficiaries inside and outside of the State of Washington. The statute thus exercises a direct and substantive impact on the administration of employee benefit plans, and cannot survive ERISA preemption, even under *Travelers*.[84] Indeed, this Court has previously held that state laws with similar impact are preempted.[85] As the Court noted in *Shaw v. Delta Airlines*,[86]requiring plan sponsors and fiduciaries to satisfy the varied, and perhaps conflicting, requirements of state laws would impair the uniform administration of employee benefit plans and produce considerable inefficiencies, which Congress, through the enactment of ERISA Section 514, sought to prevent.

If *Egelhoff* is affirmed, its impact on multiemployer plans would be particularly acute, as plan participants and beneficiaries may reside in many different states.[87] Multiemployer plans would run the risk of being subject to conflicting laws in different states with respect to third parties who would, but for state laws, be ineligible for benefits. Should the court uphold *Egelhoff*, multiemployer plans, and multistate single-employer plans, would be compelled to administer their plans according to the jurisdiction in which plan participants, or their current or former spouses, marry, divorce, or reside.

As Congress enacted ERISA's preemption provision to ". . . avoid a multiplicity of regulation in order to permit the *nationally uniform administration* of employee benefit plans[,]"[88] the Court's reversal of *Egelhoff* is necessary to uphold Congress's goal of administrative uniformity.

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83 /While *Boggs* specifically addressed the applicability of community property laws to ERISA plans, the Court noted that its decision " . . . will affect as well the right to make claims or assert interests based on the law of any State, whether or not [the State] recognizes community property." *Id*. at 840.

84 /*Travelers*, 514 U.S. at 658.

85 /*Alessi v. Raybestos-Manhattan, Inc*., 451 U.S. 504 (1981). *See also Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 70-11 (1987).

86 /463 U.S. 85, 105 (1983).

87 /Moreover, multiemployer plans would bear the additional burden of establishing the applicable state law that governs disposition of conflicting benefit claims, if, for example, a participant was married and worked in one state, obtained a divorce from his or her spouse in a different state, and eventually retired elsewhere.

88 /*Travelers,* 514 U.S. at 657 (emphasis added).

The NCCMP therefore respectfully urges the Court to reverse the judgment of the Washington Supreme Court.

Respectfully submitted,

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