

Is Federal Preemption in Beneficiary Designation Cases Part of the Problem or Solution?

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John H. Langbein, [Destructive Federal Preemption of State Wealth Transfer Law in Beneficiary Designation Cases: Hillman Doubles Down on Egelhoff](#), 67 **Vand. L. Rev** 1665 (2014).

Those who practice in estate planning and probate law know all too well the problems associated with outdated plans. Specifically, we are frequently left to deal with disappointed family members who were expecting to receive certain property, only to find that, intentionally or unintentionally, the decedent did not include them. Statutes such as the elective share give surviving spouses protections against intentional omissions. Surviving spouses also benefit from rules of construction, such as pretermitted spousal share, and statutory protections, such as divorce revocation laws, that provide protection from unintentional omission based on stale plans. However, despite state efforts to protect them, surviving spouses remain vulnerable to stale beneficiary designations in life insurance policies and pension plans subject to federal regulation because of federal preemption.

[Professor Langbein](#) artfully challenges the long-standing principle of federal preemption of beneficiary designation in a pension plan or life insurance policy subject to federal regulation under the Employee Retirement Income Security Act (“ERISA”) or Federal Employees’ Group Life Insurance Act (“FEGSLIA”). Specifically, he challenges the reasoning and policy merits of federal preemption as applied to state divorce revocation statutes by providing a critical analysis of [Hillman v. Maretta](#), 133 S. Ct. 1943 (2013) and [Egelhoff v. Egelhoff](#), 532 U.S. 141 (2001).

The focus of Professor Langbein’s article is on divorce revocation rules as applied to beneficiary designations. These statutes provide for an automatic revocation of beneficiary designation for ex-spouses. Langbein points out that in our dual system of jurisdiction, state law typically determines property rights and the process of wealth transfers in both probate and divorce law. Further, state law has a set of comprehensive laws dealing with rules of construction in probate law while federal law does not typically address problems of construction.

Sixteen states have implemented divorce revocation statutes applicable to probate and nonprobate transfers. These rules are based on the presumption that a transferor would no longer intend for an ex-spouse to benefit from his property after death. In fact, Professor Langbein explains, it is appropriate to view the original designation as conditioned on the beneficiary remaining married to the decedent. This imputed condition is in keeping with a dominant wealth transfer principle, honoring a transferor’s intent. But until Congress directly addresses the transferor’s intent issue, the wealth transfer system will continue to be defined by contradictory federal and state rules.

When the Supreme Court addressed the issues of divorce revocation and transferor’s intent under ERISA and FEGSLIA in *Egelhoff* and *Hillman*, the Court held the beneficiary designations were regulated by federal statute and therefore preempted state law even though the federal statutes were silent on divorce revocation. Langbein questions whether ERISA should be treated as governing every aspect of beneficiary payments including matters in which ERISA is silent. Because ERISA nor FEGSLIA is not designed to deal with problems of construction, perhaps these issues should be left to state law.

Professor Langbein questions the court's justification for federal preemption, which is that a state divorce revocation statute "interferes with the nationally uniform plan administration." (P. 1675.) He argues that Congress could have included a comprehensive body of constructional law in ERISA and FEGLIA it but chose not to do so. Langbein suggests that by not doing so, Congress intended to defer to state law on such matters. Indeed, before *Egelhoff*, the federal courts almost uniformly enforced state court decrees. Langbein describes *Egelhoff* as disrespecting the longstanding allocation between the two jurisdictions by preempting state law on a traditional state law issue, and for no reason: federal law provides no direction about divorce revocation law and there is thus no significant federal interest to protect.

Next, Professor Langbein describes how the states fought back against the imposition of federal preemption. After *Egelhoff*, the Uniform Probate Code addressed the issue by providing that an ex-spouse who received a distribution from ERISA-based plans was personally liable to the person who would be entitled to the proceeds under the divorce revocation statute but for the preemption. A number of states followed suit, and state courts routinely held that pension funds were no longer entitled to ERISA protection after the funds were distributed. *Hillman* was the Supreme Court's reaction to these post-distribution relief laws.

Hillman preempted state post-distribution relief laws on the grounds that administrative convenience was not the sole goal of federal preemption. The court ruled that another important aspect was to ensure the named beneficiary could use the funds. Post-distribution relief interferes with that purpose. Professor Langbein challenges this reasoning and points out that Congress did not provide for specific preemption, nor was there any mention of this legislative intention elsewhere. He proposes that Congress more likely intended to defer to state law which already had comprehensive constructional law addressing these matters.

Professor Langbein concludes that both *Egelhoff* and *Hillman* contradict clear policy objectives in state law regarding wealth transfers. In fact, these cases did not even address the underlying policy objectives of the divorce revocation statutes. Now there will be more pressure to create more federal common law in areas already addressed extensively by state law. I agree with Professor Langbein that these rulings are problematic. Congress needs to act and specifically indicate whether federal preemption is preferred in cases when rules of construction are necessary to determine a transferor's intent. If preemption is preferred then Congress should provide specific laws rather than remain silent. Professor Langbein's article provides a great roadmap for Congress to identify the problems and propose reasoned solutions that will provide uniform results in both federal and state law, without destroying sound policy objectives.

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