



No. A09-349

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STATE OF MINNESOTA  
IN SUPREME COURT

GORDON WILLIAM ANGELL  
Appellant,

vs.

LORETTA MARIE ANGELL  
Respondent.

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APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## STATEMENT OF LEGAL ISSUES

- 1. Do anti-attachment provisions in federal statutes creating Servicemember's Group Life Insurance and death gratuity benefits prevent a Minnesota court from applying Minnesota's unfair hardship law in a dissolution action that orders a beneficiary to support her husband after the dissolution from non-marital funds?**

The District Court was not presented with this issue. The Minnesota Court of Appeals determined that Respondent was the designated beneficiary of the policy and that the anti-attachment provisions applied in this case. The apposite statutes and cases are as follows:

Minnesota Statutes § 518.58, subd. 2.  
Title 10 United States Code § 1475.  
Title 10 United States Code § 1477.  
Title 10 United States Code § 1478.  
Title 38 United States Code § 1970, subd. a.  
Title 38 United States Code § 1970, subd. g.  
Title 38 United States Code § 1975.  
Title 38 United States Code § 5301, subd. (a)(1).

*Rose v. Rose*, 481 U.S. 619 (1987).  
*Wetmore v Markoe*, 196 U.S. 68 (1904)

## STATEMENT OF THE CASE

This matter came before the Honorable Robert E. Macauley of the Carlton County District Court, Sixth Judicial District, pursuant to Loretta Angell's (Respondent) Petition for Dissolution. The court issued its Order, dated September 11, 2007, granting the dissolution and ordering Respondent to pay Gordon Angell (Appellant) \$150,000. The District Court based its decision on the following: (1) the payment's made to Respondent for her son Levi's Servicemember's Group Life Insurance proceeds totaling \$400,352.66 were a non-marital asset that were subject to apportionment pursuant to Minn. Stat. § 518.58, subd. 2; (2) ordering \$100,000 of Respondent's non-marital assets to be paid to Appellant; (3) the payments made to Respondent of the death gratuity payments totaling \$100,000 were a marital asset subject to division; and (4) that Appellant was entitled to fifty (50) percent of the marital assets. *See* Appendix, A-1.

Upon motion by Appellant, the District Court issued an Order Amending Findings of Fact, dated January 21, 2009. The District Court amended its findings to reflect that the death gratuity benefits were non-marital and that Respondent was entitled to \$150,000 of Appellant's non-marital property. *See* Appendix, A-19. Respondent appealed the District Court's decision to the Minnesota Court of Appeals. The Court of Appeals reversed, concluding that the insurance and death gratuity proceeds were the non-marital assets of Respondent, and that federal law preempted Minnesota Statute 518.58, subd 2. *See* Appendix, A-45. Appellant

petitioned for review to the Minnesota Supreme Court and review was granted through its Order, dated March 30, 2010. *See* Appendix A-38.

## STATEMENT OF FACTS

Appellant and Respondent filed for divorce in 2008, after a 27 year marriage. A son of the marriage, Levi Angell, was killed in active duty while serving in Iraq in 2004. Transcript, pg 16. Respondent was paid the proceeds of Levi's Servicemembers Group Life Insurance policy, and was paid the proceeds of a federal death gratuity program. *See* Transcript, pg 17-20. The proceeds of the insurance policy and the death gratuity benefits totaled \$500,352.66. *Id.*

Respondent had knowledge of her son's life insurance policy. Transcript, pg 24-25. Levi had told Respondent that he had an insurance policy and that she was the beneficiary, but never told Respondent that he did not intend Appellant to benefit from the proceeds or that he wanted Respondent to keep the Appellant from the proceeds. *See* Transcript 24-25. There is also evidence on the record that Respondent was the family's financial manager and that Levi knew that to be true. Transcript, pg 49-50, 70-71, 74, 75, 86. The record indicates that Respondent used a portion of the funds to support the family by giving gifts to the siblings of Levi, borrowing them money to pay expenses, and taking a family vacation. Transcript, pg 22-23.

## **ARGUMENT**

### **QUESTION PRESENTED:**

Do anti-attachment provisions in federal statutes creating Servicemember's Group Life Insurance and death gratuity benefits prevent a Minnesota court from applying Minnesota's unfair hardship law in a dissolution action that orders a beneficiary to support her husband after the dissolution from non-marital funds?

### **BRIEF ANSWERS:**

No. There is no actual conflict between the federal and state laws involved. Federal law should not be used as a tool to deprive a spouse from his legal right to family support.

### **FACTS:**

Appellant/Husband and Respondent/Wife divorced in 2008 after 27 years of marriage. A son of the marriage, Levi Angell, was killed in active duty while serving in Iraq in 2004. Levi had designated his mother as the sole beneficiary of his military life insurance policy (SGLI) and a related federal death-gratuity program. At the time Levi designated his beneficiary and at the time of his death, his parents were still married. Several years later, the parties divorced. At the time, the Appellant/Husband was unemployed, unable to work, and had no substantial assets.

The Petitioner received three payments as a result of Levi's death. The first, in April 2004, was paid pursuant to a federal death gratuity program in the amount of \$100,000. This program provides payment to the survivors of a member of the armed forces with died during active duty, pursuant to 10 U.S.C. §§ 1475-80. The second was paid in May 2005 pursuant to Levi's Servicemembers' Group Life Insurance (SGLI) policy in the amount of \$250,352. The final payment, in August 2005, was paid pursuant to another federal death gratuity program in the amount of \$150,000. This program provides for an additional payment for deaths that occurred during either Operation Enduring Freedom or Operation Iraqi Freedom, pursuant to Pub.L. No. 109-13, §1013(b), 119 Stat. 231, 247 (2005). After receiving the payments, the Respondent/Wife placed the proceeds into a bank account and several years later started the dissolution.

At trial, the district court divided the property of the parties and ordered that the SGLI and death gratuity proceeds were the non-marital property of Respondent/Wife, but ordered that Appellant/Husband was entitled to \$150,000 of Respondent/Wife's non-marital assets under Minnesota's unfair hardship law in dissolution actions. The Minnesota Court of Appeals reversed, ruling that federal anti-attachment provisions preempted Minnesota's unfair hardship law. This review was then initiated by Appellant/Husband.

#### **DISCUSSION:**

The Supremacy Clause dictates that federal law is the supreme law of the land and that Congress has the ability to preempt state law in certain situations.

See U.S.C. Const. Art. 6, cl. 2. State law can be preempted through any one of four methods: (1) express preemption; (2) implied preemption; (3) field preemption; and (4) conflict preemption. See *Morales v. Trans World Airlines*, 504 U.S. 374 (1992); *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Fidelity Fed. Savs. & Loan Ass'n. v. de la Cuesta*, 485 U.S. 141 (1982); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963). “Express preemption” occurs when Congress provides an express directive prohibiting state regulation in the area. See *Morales v. Trans World Airlines*, 504 U.S. 374 (1992). “Implied preemption” occurs when Congress provides an inference of its intent to prohibit state regulation in order to achieve Congressional objectives. See *Hines v. Davidowitz*, 312 U.S. 52 (1941). “Field preemption” occurs when Congress regulates so heavily in an area that it precludes state regulation in that particular area. See *Fidelity Fed Savs. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982). “Conflict preemption” occurs when Congress has remained silent on the State’s ability to regulate; conflict preemption requires that there be an actual conflict present between federal and state law. *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132 (1963). An actual conflict will arise when it is physically impossible to comply with both federal and state law, or the state law stands as an obstacle to accomplish full Congressional objectives. *Id.* Such is the situation in the incident matter.

In preemption analysis two guidelines must be followed. First, you must determine what the Congressional intent behind the federal legislation in question

is. See *Wyeth v. Levine*, 129 S. Ct. 1187 (2009). Second, when federal legislation encroaches on areas that have historically been left to the states, the analysis must start with the presumption that historic police powers are not to be superseded by federal law unless that was the clear and manifest purpose of Congress. *Id.* (citing *Rice v. Sante Fe Elevator Corp*, 331 U.S. 218 (1947)). In this incident proceeding, Congressional intent is found in the Congressional record which states the purpose of anti-attachment statutes is to protect proceeds from creditors so the deceased servicemember's family is provided for. And, domestic relations is an area historically left to the States. Plus, the U.S. Supreme Court has addressed an exception to anti-attachment laws in cases of domestic relations support obligations.

#### PART ONE: STATE AND FEDERAL LAW AND PURPOSE FOR THEM

Minnesota's unfair hardship law in dissolutions allows a court to award a portion of one spouse's non-marital property to prevent unfair hardship on the other spouse. Minnesota Statutes §518.58 subd 2 states:

If the court finds that either spouse's resources or property, including the spouse's portion of the marital property...are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property under section 518.003, subd. b, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party. Minn. Stat. § 518.58, subd. 2.

By the plain language of the statute, this provision creates a 'support obligation'; it is not a statute that is merely dividing property of the marriage. First, by the time the district court determines an 'unfair hardship', it has already completed the division of marital property, as the statute requires the district court consider the marital property awarded to each spouse. *Id.* Second, the court is apportioning non-marital property; property to which the spouse has no legal right. The district court makes a determination that unfair hardship will result based upon factors very similar to those outlined in Minnesota's spousal maintenance statute. *See, id.*; *See* Minn. Stat. § 518.522. In essence, the court is ordering one spouse to give up property that is legally only owned by that spouse because the seeking spouse does not have the assets or ability to obtain assets to adequately take care of themselves. This is a support obligation.

The Servicemember's Group Life Insurance Act (SGLIA), 38 U.S.C. §§ 1965-80, provides members of the military access to an affordable life insurance policy. The Act provides the following:

The district courts of the United States shall have the original jurisdiction of any civil action or claim against the United States founded upon this subchapter. 38 U.S.C. § 1975; and

Any amount of insurance under this subchapter...shall be paid...in the following order of precedence: First to the beneficiary...the member...may have designated....38 U.S.C. § 1970. subd. a;

Any payments...made to...a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 1970 subd. g.

Congress enacted SGLIA in 1965 to ensure adequate life insurance coverage was available to members of the uniformed services. *Ridgway v. Ridgway*, 454 U.S. 46, 53 (1981) (citing H.R.Rep.No. 1003, 89<sup>th</sup> Cong., 1st Sess., 7 (1965), U.S. Code Cong. & Admin. News 1965, 3232).

Over the years the SGLIA has been subjected to many statutory changes, increasing the amount of coverage available and adding the anti-attachment provision found in §1970, subd. g. Pub. L. 91-291, 84 Stat. 326 (1970). The Congressional Record indicates that the primary purpose of these changes was to ensure adequate coverage for the insured and their families. Cong. Rec., 91st Cong., 2nd Sess., Vol. 116, Part 10, pg. 14002-006 (Comment by Talmadge). The Senate Report, 91-938, that accompanied the bill to pass this change specifically states "there [was] a need for an adequate benefit that can be paid in a lump sum. It can enable the surviving family to pay off a debt which would have been repaid had the servicemen survived. It helps with all the substantial expenses of the family, and it can help see a child through school. It can be used to meet the unusual expenses associated with the death of the principal wage earner." S. Rept. 91-938 *reprinted in* 1970 U.S.C.C.A.N. 3317, 3319.

The death gratuity payments in this case were also granted by federal law. Title 10 and Title 38 of the United States Code provides:

Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of.. a member...who dies while on active duty. 10 U.S.C. §1475:

A death gratuity payable upon death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list: (1) his surviving spouse; (2) his children...;(3) if designated by him, any one or more of the following persons: (a) his parents.... 10 U.S.C. § 1477; and

The death gratuity payable under sections 1475 through 1477 of this title shall be \$100,000. 10 U.S.C. § 1478.

Any payments...made to...a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. 38 U.S.C. § 5301, subd. (a)(1).

This law was later amended by Public Law 109-13, 119 Stat. 231, 247 (2005) to allow an additional retroactive payment to be made for deaths that occurred either during Operation Enduring Freedom or Operation Iraqi Freedom, as is the case here. *Id.*

The Death Gratuity payment is a benefit provided by the federal government to ensure that the deceased member's family receives adequate compensation to help support the family. For example, the statute only allows the payment to be made to immediate family members of the deceased, regardless of whether or not that survivor is designated by the member. This shows that Congress intended the funds to be used for family support, because Congress made a restriction that the funds were to be paid only to family members. It's a support payment.

PART TWO: PRESUMPTION FAVORING STATE DOMESTIC RELATIONS LAWS

When federal legislation encroaches on areas that have historically been left to the states, the preemption analysis must start with the presumption that historic police powers are not to be superseded by federal law unless that was the clear and manifest purpose of Congress. *Wyeth v. Levine*, 129 S. Ct. 1187 (2009) (citing *Rice v. Sante Fe Elevator Corp.* 331 U.S. 218 (1947)). On the rare occasion when state family law has come into conflict with a federal statute, the Court's review is limited to a determination of whether Congress has "positively required by direct enactment" that state law is pre-empted. *Hisqueirdo v. Hisqueirdo*, 439 U.S. 572, 581 (1979), *superseded* by statute 38 U.S.C. § 231 (quoting *Wetmore v. Markoe*, 196 U.S. 68 (1904). "A mere conflict of words is not sufficient. State family and family-property laws must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand the state law be overridden." *Id.* (citing and quoting *United States v. Yazell*, 382 U.S. 341 (1968)).

Federal preemption does not apply when state domestic relations law involves a "deeply rooted moral responsibility," such as support obligations. In *Rose v. Rose*, 481 U.S. 619 (1987), the Appellant had been held in contempt for failing to comply with a child support order. The Appellant contended that the court order was invalid because federal law preempted state law from considering his veteran's benefits as a source of income for determinations of child support. *Id.* The Appellant contended that he was the intended beneficiary of the benefits, and that the benefits were protected by an anti-attachment provision that provided the

payments of benefits were “not liable to attachment, levy, or seizure by or under any legal or equitable process whatsoever...”*Id.* The Supreme Court ruled that federal law did not preempt the state’s child support laws. *Id.* The Court reasoned that “the whole subject of the domestic relations of a husband and wife, parent and child, belongs to the laws of the State and not to the laws of the United States.” *Id.* In order for a state domestic relations law to be overridden, it must do major damage to a clear and substantial federal interest. *Id.* The legislative history shows these benefits were paid to support disabled veterans and their families. *Id.* In *Rose* the requirement to use his benefits to pay child support did not do major damage because the benefits were also to be a means of support for his family. *Id.*

The Court went on to say that the Appellant in that case was not the sole intended beneficiary; however, even in the case of an intended beneficiary the Court, in the past, has identified an exception for cases involving support obligations. *Id.* The Court discussed that there was an important distinction to be made between cases involving the business-like distribution of property in a divorce, against those cases involving a deep rooted moral obligation to the family. *Id.* In that case the court required a direct beneficiary of veteran’s benefits to use those benefits to fulfill a support obligation. Since Minn. Stat. § 518.58, subd. 2 creates a support obligation, not a mere property division, the *Rose* case is directly on point.

A party cannot use federal law to shirk their duty to fulfill their support obligations. In *Wetmore v. Markoe*, 196 U.S. 68 (1904), a divorce action, the

husband was ordered to pay \$3,000 a year for alimony and \$1,000 a year for child support. *Id.* Subsequently, the husband attempted to have his support obligations discharged in bankruptcy. *Id.* The Court ruled that state law regarding family support obligations could not be preempted by federal law for two reasons. First, support obligations such as alimony and child support (and, presumably, unfair hardship cases) are not awarded as payment of a debt. They are awarded for the performance of a general duty of a spouse to support the other spouse. *Id.* at 74-75. It is a support obligation. The duty to support child and spouse continues under the law even after the discharge in bankruptcy occurs. *Id.* The obligation is no more than a duty devolved by law upon the husband to support his children, and is not a debt in any sense. *Id.* at 76. Second, federal law “should receive an interpretation as will effectuate its beneficent purposes, and not make it an instrument to deprive dependent wife and children of the support and maintenance due to them...” *Id.* at 76. “Unless positively required by direct enactment the courts should not presume a design upon the part of Congress...to make the law a means of avoiding enforcement of the obligation, moral and legal, devolved upon the husband to support his wife and to maintain and educate his children.” *Id.* In the incident case, the district court awarded Gordon Angell, the Appellant/Husband, \$150,000.00 of Respondent/Wife’s non-marital funds so that the husband could support himself. Those funds are a support obligation and should not be frustrated by federal law, similar to the ruling in the *Wetmore* case.

In Minnesota, the Court of Appeals ruled on a case identical to the issue in *Rose* (that federal anti-attachment laws cannot be used to frustrate family support obligations). In the unpublished opinion of *Schwagel v. Ward*, 2007 WL 2600747 (Minn. App. Sept. 11, 2007), the Appellant claimed that the district court erred when determining his income for purposes of establishing child support. *Id.* The Appellant's source of income was veteran's benefits that he claimed were protected by the anti-attachment provision of 38 U.S.C. §5301. The Appellant argued that the federal anti-attachment law preempted state law defines "income" for purposes of child support. *Id.* The Court, in discussing *Rose*, ruled that federal preemption did not apply in this case. *Id.* The Court reasoned that, just like in *Rose*, veteran's benefits are to be used to support the entire family and that the anti-attachment provision could not be a means of protection for an otherwise valid Court order requiring family support obligations, such as child support. *See, id.*

Minnesota has recognized that a spouse has a duty to support the other spouse. In *Warner v. Warner*, 219 Minn. 59 at 63 (1945), this Court said,

"We have held in many cases that alimony is purely a matter of statutory creation. It is awarded not as a penalty, but as a substitute for the husband's duty to provide his wife with adequate support, i.e., it is a substitute for marital support." (citing *Haskell v. Haskell*, 119 Minn. 484, 487 (1912)).

Presumably the opposite is true: that a wife has a duty to provide her husband with adequate support. This duty is a family support obligation, not a property issue.

The Federal Court of Appeals for the District of Columbia has also ruled that preemption does not apply when state domestic relations laws involve family support obligations. In *Schlaefter v. Schlaefter*, 112 F.2d. 177 (D.C. Cir., 1940), husband was ordered to pay \$60 a month in alimony. Husband claimed that his source of income was federal disability payments that were subject to an anti-attachment provision. *Id.* The Court ruled that federal law would not preempt state family support obligation laws. *See, id.* In ruling against the husband, the Court based its reasoning on the purpose of anti-attachments generally and the intentions of Congress in enacting them. The Court said:

The basic issue boils down to whether Congress intended to relieve the disabled insured to the extent of his disability payments from legally enforceable obligation to support his family and those legally dependent upon him. So far as general creditors are concerned the purpose is clear, with the exceptions stated, to make the disposition of these funds a matter solely for his judgment. Congress regarded it as better for creditors to go unpaid than to deprive the debtor and his dependents of this means of support when earning capacity would be cut off. Hence it used broad language prohibiting recourse to the funds by legal process. By removing it absolutely from reach of such claims, to this extent it protected the insured from want during disability and the public from danger of his becoming a public charge. In ordinary circumstances also the exemption works a like protection of his dependent and of the public from their pauperization by his loss of earning power. Furthermore, the usual purpose of exemptions is to relieve the persons exempted from the pressure of claims hostile to his dependents' essential needs as well as his own personal ones, not to relieve him of familial obligations and destroy what may be the family's last and only security, short of public relief. *Id.* at 158.

Wisconsin courts have also held that federal law does not preempt state family support obligations because there is no actual conflict involved and there is no actual attachment. In *Weberg v Weberg*, 463 N.W.2d 382 (Wis. Ct. App.

1990), the husband claimed, among a variety of reasons, that his disability benefits couldn't be considered income to determine alimony because they were protected by an anti-attachment provision. *Id.* at 384. The Court disagreed, stating that the income can be considered when determining maintenance; the disability income was not being divided as property in the divorce. *Id.* The Court reasoned that disability benefits are a "federally-provided replacement for earning capacity lost...and are income to the defendant, material only to his ability to pay alimony..." *Id.* In the incident matter, the district court simply considered Loretta Angell's federal benefits when determining Appellant/Husband's need for support from non-marital assets.

New Jersey has also found that federal anti-attachment laws do not apply to benefits involving family support obligations. In *Biles v. Biles*, 394 A.2d 153 (N.J. Super. Ch. 1978), the issue was whether a wife could require an insurance company to pay directly to her a portion of the husband's pension benefits, governed under ERISA, to satisfy his alimony obligations. *Id.* In discussing whether an exemption provision under federal law that is similar to the other general anti-attachment provisions, the court had this to say:

Regardless of the precise and restrictive wording of an exemption provision, the restraint created should not be a barrier against recourse to the fund when it provides the only reasonably accessible asset for support of the wife within her state of residence...The purpose of exemptions is to relieve the person exempted from the pressure of claims hostile not only to his own essential needs but also to those of his dependents. But the purpose cannot be one relieving him of familial obligations, perhaps destroying what may be the family's last and only security, short of public relief. *Id.* at 56-57.

The reviewing courts of numerous other states have held that federal benefits whose purpose is to support the beneficiary and their dependents are not protected from being considered in determining family support obligations. These courts have also held that the anti-attachment provisions do not shield these benefits from being considered in support obligation cases because the spouse is not considered a creditor under the statute. *In re Marriage of Wojick*, 838 N.E.2d 282 (Ill. App. 2 Dist. 2005) (citing *Allen v. Allen*, 650 So.2d 1019, (Fla.App. 1994); *In re Marriage of Anderson*, 522 N.W.2d 99 (Iowa App. 1994); *Steiner v Steiner*, 778 So.2d 771 (Miss. 2001); *Repash v Repash*, 528 A.2d 744 (Vt. 1987); *In re Marriage of Weberg*, 463 N.W.2d 382 (Wis. Ct. App. 1990)).

The U.S. Supreme Court has stated it would be appropriate for an exception to anti-attachment statutes to apply in cases involving family support obligations. In *Wissner v. Wissner*, 338 U.S. 655 (1950), a member of the army named his mother as the beneficiary of his National Service Life Insurance policy (the predecessor to SGLIA). After he died his estranged wife brought suit against the mother asking the Court to rule that the funds were a marital asset and asserted third-party rights against the funds. *Id.* The Court ruled that federal law preempted state community property laws because allowing the wife to take a portion would frustrate the Congressional purpose. *Id.* However, the Court went on to say that it would be appropriate for an exception to apply in cases involving family support obligations. *Id.* The court stated that community property principles rest upon the

business relationship between the husband and the wife and not on a principal of moral obligations imposed on a supporting spouse. *Id.* Again, in the incident case, Gordon Angell is not asking for a division of property; he is asking this Court to uphold the district court's ruling based on Loretta Angell's moral obligations as a supporting spouse to use her non-marital funds to prevent an unfair hardship.

In *Hisquierdo*, 439 U.S. 572, the Court again addressed whether a wife could frustrate an intended beneficiary of Railroad Retirement Act benefits in order to effectuate a community property award. *Id.* The Court again held that community property laws were not enough to frustrate the Congressional purpose; however, it again addressed that there would be an exception in cases involving family support obligations. *Id.* The Court focused on the portion of the Railroad Retirement Act that specifically outlined what a spouse could receive in benefits in the event of divorce. *Id.* The Court found that Congress had positively required through direct enactment that a spouse could not reach the funds, and that the business-like relationship was not enough to challenge that purpose. *See, id.* (There is no such language in the SGLIA or the death benefits act.) After this ruling, as discussed in the *Rose* case, Congress amended the Railroad Retirement Act to allow for a division of benefits under community property principals, showing that Congress never intended to impose of the family obligations imposed on a party by the state. *See* 45 U.S.C. §231 (m)(b)(2).

In *Ridgway v. Ridgway*, 454 U.S. 46 (1981), a soldier left the beneficiary of his SGLI policy to be 'designated by law'. The proceeds were then disbursed to

his second wife. Under the divorce decree from his first wife, he was to maintain an insurance policy to secure child support obligations. The wife from his first marriage brought suit claiming a right to the proceeds under the divorce decree. *Id.* The Court refused to frustrate the soldier's choice of his beneficiary designation and felt that Congress had been clear in allowing a service member the right to choose a beneficiary of his choosing. *Id.* *Ridgway* is easily distinguishable from this incident Angell matter because the beneficiary in *Ridgway* was a third party to the divorce; the second wife had no moral obligation to fulfill the service member's obligation to pay child support to his children from his first marriage. In this incident case, the Court is not being asked to require a third party to fulfill a family obligation- it is being asked to uphold the district court's ruling that Loretta Angell fulfill her own family support obligation to her husband.

As discussed above, the Courts have held that veteran's benefits can be considered when determining a servicemember's family support obligations, and that anti-attachment provisions don't apply in those situations. The US House of Representatives Report that accompanied the bill to increase the amount and add in the anti attachment provisions for the SGLIA included a letter from the Administrator of the Veteran's Administration. That letter specifically addresses the anti attachment provision:

"It is questionable whether the exemption provisions of 38 USC 3101 apply to SGLI payments to beneficiaries. The provisions of the law are administered by the VA; however, the benefits are paid by a private insurance company under a group life insurance policy purchased by the Administrator from the company...If the provisions of 38 U.S.C. 3101 are

held by the courts not to apply to SGLI payments, we will, in effect, have created a collection agency for various creditors, thus, depriving widows, orphans, and other dependents of benefits Congress intended them to receive...These benefits are not like private insurance derived solely from premium payments of the insured...SGLI payments, like other veteran's benefits should be similarly exempt from attachment, levy, seizure, or taxation." (emphasis ours) H.R. No. 91-1025, House Misc. Reports on Public Bills II, 918-1035, 91st Cong., 2nd Sess., Letter from Veteran's Administration, Office of the Administrator of Veteran's Affairs, Donald E. Johnson Administrator, dated September 17, 1969.

Congress clearly intended to treat SGLI benefits like any other veteran's benefits. Since many courts have ruled that the anti-attachment statutes for other veteran's benefits do not apply to family support obligations, anti-attachment statutes do not apply to SGLI benefits when courts consider such benefits for family support obligations. Since Minnesota's unfair hardship rule creates a family support obligation, not a division of property, Congress did not intend to pre-empt Minnesota's unfair hardship rule.

### PART 3: ANALYSIS OF LAW TO ANGELL CASE

Appellant/Husband Gordon Angell argues that federal anti-attachment statutes do not apply in this case because the funds were awarded to him by the district court as a family support obligation of the Respondent/Wife, not a property division, and are an exception to the anti-attachment statutes.

To determine if preemption applies, one must first determine if an actual conflict exists between Minnesota Statute §514.28 subd 2 (Minnesota's 'unfair hardship' rule) and the relevant federal anti-attachment statutes. In other words, is it impossible to comply with both the federal and state law, or would compliance

with state law stand as an obstacle to accomplish full Congressional objectives? If an actual conflict is found, preemption analysis does not require that the state law be overridden. When federal legislation encroaches on areas that historically have been left to the state, the analysis must start with the presumption that state law is not to be superseded unless it was the clear and manifest purpose of Congress to require preemption. *See, Part Two, above.* There is no evidence that Congress enacted the anti-attachment statutes to preempt State law concerning family support obligations. *Id.*

There is no actual conflict between the provisions of the SGLIA, the Death Gratuity statute, and Minnesota's unfair hardship rules. First, it is not physically impossible to comply with the provisions of all laws involved. SGLIA provides that a service member can designate a beneficiary of his choice and that a beneficiary's right to the proceeds are not subject to the claims of creditors, and are not liable to attachment, levy, or seizure by or through any equitable process whatever. The Death Gratuity payment statute allows that the payment can be distributed to a service member's parents if designated by the service member. Minnesota's unfair hardship rule allows a court to reach into the non-marital assets of one spouse to prevent unfair hardship on the other spouse in supporting themselves. *See, Part One.*

The district court considered Loretta Angell's SGLI proceeds and death gratuity benefits when determining her unfair hardship support obligation to Gordon Angell, which is permissible. Such a determination did not frustrate the

servicemember Levi Angell's right to designate his beneficiary. The divorce decree did not effectively change the beneficiary of the SGLI policy. The district court simply decided that the unfair hardship rule applied in this situation and considered the proceeds in making that decision. *See*, Part One; Part Two.

Of course, case law holds that a divorce decree cannot interfere with an insured's right to designate a beneficiary under SGLIA by requiring payment of the proceeds to someone else other than the designated beneficiary. There is a key distinction in those cases from the incident case: The Courts have only made those holdings in cases where the designated beneficiary is a third party to the divorce. That is not the situation in this incident case. The Appellant/Husband is a party to this divorce, and the divorce decree is simply requiring Respondent/Wife to fulfill *her* family obligations, not the obligations of a third party. Additionally, the facts in the trial record indicate that Respondent/Wife was the financial book-keeper of the family, and that Levi knew that his mother handled all of the family affairs. There is evidence that Levi anticipated his mother use the money to support the entire family, and in fact, that is exactly what the Respondent/Wife did- she disbursed a portion of the money to Levi's brothers and sisters.

To allow federal anti-attachment statutes to preempt Minnesota's unfair hardship rule would require this Court to rule that a beneficiary is no longer responsible for her own family support obligations that arise out of state domestic relations laws. Such a ruling would be appropriate if it was a third-party attempting to gain access to those funds. But Gordon Angell is not a third party -

he is the father of the deceased soldier, the husband of the beneficiary, and is entitled to support under Minnesota's hardship rule. The SGLI proceeds, like other veteran's benefits, are not subject the federal anti-attachment statutes in family support obligations. This same principal applies equally to the death gratuity payment. *See*, Part Two.

The federal anti-attachment statutes also protect the SGLI proceeds and the death gratuity payment from 'any legal or equitable process' as stated in the statute:

38 U.S.C. § 1970: Any payments...made to...a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary; and

38 U.S.C. § 5301: Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

The Appellant argues that the divorce decree subjected the proceeds of these payments to an equitable process, and therefore is in conflict with the federal anti-attachment provision that governs the proceeds. The Appellant relies on 38 U.S.C. §1970, subd. g claiming absolute protection of the proceeds under SGLIA, and relies on 38 U.S.C. § 5301 for absolute protection of the proceeds under the Death Gratuity Statute.

*Wetmore* (196 U.S. 68) makes it clear that family support obligations arising out of the dissolution of a marriage are not debt; therefore, there is no creditor and federal anti-attachment statutes do not apply. According to *Wetmore*, a divorce decree is not an instrument that creates a debt; it is a means of establishing one party's rights to support as provided by law. Without the divorce decree, the obligation of one party to provide family support outside of the marriage cannot be established until that marriage is ended. *See*, Part One: Part Two.

For Minnesota's unfair hardship rule to be in conflict with federal anti-attachment statutes, this Court must determine either: 1) that the district court's application of Minnesota's unfair hardship rule in its divorce decree creates an attachment, levy, or seizure by or under a legal or equitable process, or, 2) the SGLI proceeds and death gratuity benefits ("Proceeds") are exempt from any legal or equitable process regardless of whether or not an attachment, levy, or seizure occurs.

First, the divorce decree does not create an attachment, levy, or seizure of the proceeds. The divorce decree simply grants Appellant/Husband the right to family support. It does not specifically require that Respondent/Wife pay the obligated amount from the insurance proceeds. The district court, in its decree, simply considered the Respondent/Wife's non-marital asset (the proceeds) in determining if Appellant/Husband was owed a duty of family support by the Respondent/Wife. Case law, as discussed *supra*, has indicated that considering

federal disability benefits in determining whether or not a duty to support is owed does not constitute a seizure. *See*. Part Two.

Second, the anti-attachment statutes state that the proceeds cannot be “liable to attachment, levy, or seizure by or under any legal or equitable process.” There is no evidence that Congress, by enacting this law, created a ‘fourth’ form of protection for the proceeds by stating “any legal or equitable process.” The language protects beneficiaries from third parties who may seek remedies through the courts to impose an attachment, levy, or seizure. Gordon Angell is not a creditor. He is a family member who is owed an obligation under Minnesota’s unfair hardship rule. Historically the court has applied the anti-attachment statutes to general creditors, and not to support obligations that arise out of family law. *See*. Part One; Part Two.

Since it is not physically impossible to comply with both federal and state law, the next question is: will enforcing Minnesota’s unfair hardship law stand as an obstacle to accomplish full Congressional objective? The answer is: no. The Senate report that resulted in the anti-attachment provision clearly shows Congress’ purpose in protecting the proceeds from creditors was necessary to ensure that the surviving family could support themselves. It is also clear that Congress intended the funds to be used for family support. The Minnesota unfair hardship law requires that a spouse who owes a duty to support the other does not escape that duty simply because her property is labeled as non-martial. Both federal anti-attachment statutes and Minnesota’s unfair hardship rule have the

same purpose—to ensure that family members are supported financially and do not end up on public welfare assistance. *See*, Part One.

Even if this Court finds an actual conflict between federal and state law, domestic relations law (especially those involving family support obligations) are clearly within those areas historically left to the states. Therefore, in this scenario, Minnesota's unfair hardship rule is presumed to take precedence over the federal provisions of the SGLIA and death gratuity payments. The Respondent/Wife cannot show that the clear and manifest purpose of Congress when enacting the anti-attachment provisions of the SGLIA and the death gratuity benefits were intended to override state family support obligations. Showing a mere conflict in words is not enough. There must be a showing that Minnesota's unfair hardship law does major damage to a clear and substantial federal interest. This cannot be shown. *See*, Part Two.

Neither Minnesota nor the U. S. Supreme Court has addressed whether a beneficiary of SGLIA proceeds or death gratuity benefits can escape her own family obligations by hiding behind the anti-attachment provisions of those laws. *Rose* clearly holds that a direct beneficiary of veteran's disability benefits is still obligated to support his family. *See*, Part Two. Courts have ruled on numerous occasions that anti-attachment provisions do not apply to other forms of veteran's benefits or other federal laws when the issue involved a family support obligation. *See*, Part Two. The Court's reasoning was that either (1) the proceeds were not being 'seized' as that term is defined, but merely considered; (2) family support

obligations are not ‘debt’ and cannot be discharged; or (3) the purpose of the benefit was to provide support for both the beneficiary and her family members. *See*, Part Two. The U.S. Supreme Court has also stated that an exception could apply to the provisions of SGLIA if the case involved something more than the division of property. The Court has said repeatedly that in cases of alimony or child support that an exception could apply because support obligations are deeply rooted moral obligations. *See*, Part Two. The federal anti-attachment statutes do not relieve a spouse from family support obligations under Minnesota’s unfair hardship rule.

Case law has established that federal law cannot be used to deprive family members of their legal right to family support. Case law cited above generally treats these anti-attachment statutes as a means to shelter a beneficiary from creditors, not as a means to deprive dependents of their legal right to support or to relieve a beneficiary of her family obligations, and many States agree with this position. The district court’s consideration of Loretta Angell’s non-marital assets when determining a support obligation to Gordon Angell under Minnesota’s unfair hardship rule does not conflict with federal law.

### **Conclusion**

Minnesota’s unfair hardship law in dissolution actions creates a family support obligation that is not subject to anti-attachment provisions of federal law that grants proceeds to a beneficiary of a deceased servicemember.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Radosevich", written over a horizontal line.

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