No. _____

IN THE
Supreme Court of the United States

ASHLEY SVEEN AND ANTONE SVEEN,
Petitioners,

v.

KAYE MELIN AND
METROPOLITAN LIFE INSURANCE CO.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

DANIEL DODA
DODA MCGEENEY
975 34th Ave NW
Suite 400
Rochester, MN 55901

ADAM G. UNIKOWSKY
Counsel of Record
EMMA P. SIMSON
JENNER & BLOCK LLP
1099 New York Ave., NW,
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

QUESTION PRESENTED

In 2002, Minnesota enacted legislation providing, in relevant part, that "the dissolution or annulment of a marriage revokes any revocable … beneficiary designation … made by an individual to the individual's former spouse." Minn. Stat. § 524.2-804, subd. 1. Thus, if a person designates a spouse as a life insurance beneficiary and later gets divorced, Minnesota law provides that the beneficiary designation is automatically revoked. At least twenty-eight other states have enacted similar revocation-upon-divorce statutes.

The question presented is:

Does the application of a revocation-upon-divorce statute to a contract signed before the statute's enactment violate the Contracts Clause?

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PETITION FOR WRIT OF CERTIORARI

Ashley Sveen and Antone Sveen petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision of the Eighth Circuit (Pet. App. 1a) is reported at 853 F.3d 410. The decision of the District Court (Pet. App. 9a) is unreported.

JURISDICTION

The judgment of the Eighth Circuit was entered on April 3, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contracts Clause, U.S. Const. art. I, § 10, cl. 1, provides: "No State shall … pass any … Law impairing the Obligation of Contracts."

Minnesota Statute § 524.2-804, subd. 1, provides:

> **Revocation upon dissolution.** Except as provided by the express terms of a governing instrument, other than a trust instrument under section 501C.1207, executed prior to the dissolution or annulment of an individual's marriage, a court order, a contract relating to the division of the marital property made between individuals before or after their marriage, dissolution, or annulment, or a plan document governing a qualified or nonqualified retirement plan, the dissolution or annulment of

a marriage revokes any revocable:

(1) disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument;

(2) provision in a governing instrument conferring a general or nongeneral power of appointment on an individual's former spouse; and

(3) nomination in a governing instrument, nominating an individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian.

INTRODUCTION

In 2002, Minnesota enacted legislation providing, in relevant part, that "the dissolution or annulment of a marriage revokes any revocable … beneficiary designation … made by an individual to the individual's former spouse." Minn. Stat. § 524.2-804, subd. 1. Thus, if a person designates a spouse as a life insurance beneficiary and later gets divorced, Minnesota's statute provides that the beneficiary designation is automatically revoked. The theory behind this statute is that people who get divorced typically do not intend to maintain their ex-spouses as their beneficiaries but may forget to change their beneficiary designations. Minnesota's statute ensures that this change occurs automatically. If a divorcing policyholder wants an ex-spouse to remain a beneficiary despite their divorce,

the policyholder must contact the insurer after the divorce to add the ex-spouse back to the policy. At least twenty-eight other states have enacted revocation-upon-divorce statutes similar to Minnesota's. *See infra* at 18.

This case presents an important question of constitutional law on which there is an acknowledged conflict of authority: whether the application of revocation-upon-divorce statutes to contracts signed before the statutes' enactment violates the Contracts Clause. The facts of this case are straightforward and undisputed. Mark Sveen married Respondent Kaye Melin in 1997. In 1998—before Minnesota adopted the relevant revocation-upon-divorce provision in 2002—Mark Sveen designated Respondent as the primary beneficiary of his life insurance policy. The couple later divorced in 2007, and Mark Sveen died in 2011.

Minnesota's revocation-upon-divorce statute—if applied according to its terms—requires that Respondent's status as Mark Sveen's beneficiary be revoked in light of their divorce. And, as a result, the statute requires that the policy proceeds go to Petitioners, Mark Sveen's children from a prior relationship and the contingent beneficiaries named on his policy.

In the decision below, however, the Eighth Circuit refused to apply Minnesota's revocation-upon divorce statute to revoke Respondent's beneficiary status. The sole basis for its decision was its holding that the statute is unconstitutional as applied to insurance policies signed prior to the statute's enactment. Adhering to its prior decision in *Whirlpool Corp. v.*

Ritter, 929 F.2d 1318 (8th Cir. 1991), the court held that applying Minnesota's statute to contracts executed before 2002 violated the Contracts Clause because it had the effect of "disrupt[ing] the policyholder's expectations and right to 'rely on the law governing insurance contracts as it existed when the contracts were made.'" Pet. App. 5a (quoting *Whirlpool*, 929 F.2d at 1323).

This case warrants the Court's review. As the Eighth Circuit acknowledged, there is a conflict of authority on the question presented. The Eighth Circuit's decision aligns with *Parsonese v. Midland National Insurance Co.*, 706 A.2d 814 (Pa. 1998). But it conflicts with *Stillman v. Teachers Insurance & Annuity Ass'n College Retirement Equities Fund*, 343 F.3d 1311, 1322 (10th Cir. 2003), which expressly held that *Whirlpool* was wrongly decided. It also conflicts with two state supreme court decisions that likewise expressly rejected *Whirlpool*'s reasoning. *In re Estate of DeWitt*, 54 P.3d 849 (Colo. 2002); *Buchholz v. Storsve*, 740 N.W.2d 107 (S.D. 2007).

This case is also unusually important. A decision invalidating a state statute on federal constitutional grounds has inherent jurisprudential significance. And that significance is heightened because Minnesota's statute is not unique. At least twenty-eight other states have adopted revocation-upon-divorce statutes that are substantively the same. *Infra* at 18. This case will therefore have ramifications across numerous jurisdictions.

Moreover, Minnesota's statute implements § 2-804 of the Uniform Probate Code. Fourteen other states

have adopted the same provision in nearly identical form. *Infra* at 18. These states include Utah, Colorado, and South Dakota—the states whose revocation-upon-divorce statutes were reviewed in *Stillman*, *DeWitt*, and *Buchholz* and found to be *constitutional* when applied to contracts signed before the statutes' enactment. The resultant conflict is especially troublesome because one of the primary purposes of the Uniform Probate Code—and the reason so many states have adopted its provisions—is to promote the stable and uniform treatment of probate matters across jurisdictions. That goal is thwarted when there is a conflict of authority regarding the circumstances in which a provision of the Code may be applied without running afoul of the federal Constitution. Yet such a conflict now exists: the Eighth Circuit has now held that Minnesota's statute implementing § 2-804 cannot be applied to contracts executed prior to its enactment, while three other courts have reached the opposite conclusion with respect to substantively identical provisions implementing § 2-804 in Utah, Colorado, and South Dakota.

The split in this case is particularly troublesome for a second reason: it includes a split between state and federal courts in the same jurisdiction. As noted above, the South Dakota Supreme Court, which lies within the Eighth Circuit, has expressly rejected *Whirlpool*'s reasoning and has concluded that South Dakota's revocation-upon-divorce statute (which is substantively the same as Minnesota's) *is* constitutional when applied to contracts predating its enactment. As such, the outcome of a life insurance dispute will depend on

whether the dispute is resolved in federal or state court, which will lead to incongruous results and forum-shopping.

This case is also an ideal vehicle to resolve the split. The case turns entirely on the constitutional question presented: whether the application of Minnesota's statute to contracts signed before its enactment violates the Contracts Clause. If such application is unconstitutional, Respondent gets the proceeds; if such application is constitutional, Petitioners get the proceeds.

Finally, the Eighth Circuit's decision warrants review because it is wrong. *Whirlpool* has been roundly criticized. The Joint Editorial Board for the Uniform Probate Code issued a statement characterizing *Whirlpool* as "manifestly wrong," *Stillman*, 343 F.3d at 1322, and *Whirlpool*'s reasoning has been squarely rejected by the Tenth Circuit and the Colorado and South Dakota Supreme Courts. And for good reason. A state statute does not violate the Contracts Clause unless it "operate[s] as a substantial impairment of a contractual relationship." *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411 (1983) (quotation marks omitted). Revocation-upon-divorce statutes do not meet that standard. The designated beneficiary of a revocable life insurance policy has no constitutionally protected interest because the beneficiary is not a party to the contract and the policyholder can change the beneficiary at will. Moreover, these statutes do not interfere with the *policyholder's* contractual rights because they do not affect the insurer's core obligation, *i.e.*, to pay a policy's

proceeds upon the policyholder's death. Additionally, to the extent there is any impairment of the policyholder's contractual rights, that impairment is minimal: if a policyholder really wants an ex-spouse to remain the beneficiary of a policy, despite their divorce, all the policyholder must do is re-designate the ex-spouse as the beneficiary. Finally, even if such statutes did "operate[] as a substantial impairment of a contractual relationship," they would serve a "significant and legitimate public purpose," *id.*—the purpose of effectuating most policyholders' likely intent.

Because this case presents a significant question of constitutional law on which there is an acknowledged conflict of authority, the Court should grant certiorari.

STATEMENT OF THE CASE

Mark Sveen purchased the life insurance policy at issue in this case in 1997. Pet. App. 2a. He married Respondent Kaye Melin later that year, and, in 1998, named her as the primary beneficiary of his life insurance policy. Pet. App. 2a, 9a. He named his two children from a prior relationship, Petitioners Ashley Sveen and Antone Sveen, as contingent beneficiaries. Pet. App. 9a-10a.

In 2002, while the couple was still married, Minnesota enacted the revocation-upon-divorce statute at issue in this case. In relevant part, the statute provides that "the dissolution or annulment of a marriage revokes any revocable … disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse

in a governing instrument." Minn. Stat. § 524.2-804, subd. 1. The "[p]rovisions of a governing instrument are given effect as if the former spouse died immediately before the dissolution or annulment." *Id.* § 524.2-804, subd. 2.

In 2007, the couple divorced, and, in 2011, Mark Sveen died. At the time of his death, Respondent was still named as the primary beneficiary of his life insurance policy. Pet. App. 2a-3a. Metropolitan Life, the company that issued his life insurance policy, subsequently commenced this interpleader action in the U.S. District Court for the District of Minnesota for a determination of who should receive the policy proceeds. Pet. App. 3a. Both Petitioners and Respondent filed claims. Pet. App. 3a.

The District Court granted summary judgment to Petitioners. It ruled that Minnesota's revocation-upon-divorce statute revoked Respondent's beneficiary status and that Petitioners were therefore entitled to the policy proceeds. In doing so, the court rejected Respondent's argument that the application of Minnesota's statute to a policy signed prior to its enactment would violate the Contracts Clause. Pet. App. 9a-16a.

On appeal, the Eighth Circuit reversed, holding that the application of Minnesota's revocation-upon-divorce statute to a policy signed before its enactment *would* violate the Contracts Clause. The court followed its previous holding in *Whirlpool*, which held that the application of a substantially similar Oklahoma statute to contracts signed before its enactment ran afoul of the Contracts Clause because it interfered with the

policyholder's contractual rights and expectations regarding beneficiary designations. Pet. App. 4a-5a. The court stated that both the Oklahoma and Minnesota statutes had "the same effect," namely, interfering with policyholders' contractual rights and expectations regarding beneficiary designations. Pet. App. 5a. The Eighth Circuit recognized that the Tenth Circuit had since disagreed with *Whirlpool*, but it found no basis to depart from its earlier decision. Pet. App. 7a. Accordingly, it found that Minnesota Statute § 524.2-804 did not revoke Respondent's beneficiary status. The Eighth Circuit and Justice Alito subsequently denied Petitioners' application for a stay of the mandate.

REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT OF AUTHORITY ON THE QUESTION PRESENTED.

As the Eighth Circuit acknowledged, Pet. App. 7a, there is a conflict of authority on the question presented. The Eighth Circuit's decision is consistent with a decision of the Pennsylvania Supreme Court. But it conflicts with decisions from the Tenth Circuit, the Colorado Supreme Court, and the South Dakota Supreme Court.

In the decision below, the Eighth Circuit followed its earlier ruling in *Whirlpool*, which held that the application of Oklahoma's revocation-upon-divorce statute to a policy signed before its enactment violated the Contracts Clause. In *Whirlpool*, James and Darlene Ritter married in 1972. 929 F.2d at 1319. In 1985, James enrolled in a group life insurance plan and

named Darlene as his beneficiary. *Id.* Two years later, Oklahoma enacted a revocation-upon-divorce statute similar to Minnesota's. The couple subsequently divorced in April 1989, and James promptly remarried. *Id.* at 1320. Months later, he was killed, allegedly at the hands of his ex-wife. *Id.* The group life insurance provider filed an interpleader action to determine the rightful beneficiary of James's policy proceeds. *Id.*

The district court concluded that the Oklahoma statute revoked Darlene's beneficiary status, but the Eighth Circuit reversed. It held that applying the statute to insurance contracts entered into prior to the statute's enactment would violate the Contracts Clause. It first concluded that the statute substantially impaired James's life insurance contract, explaining that "one of the primary purposes of a life insurance contract is to provide for the financial needs of a person (or persons) designated by the insured." *Id.* at 1322. Thus, it continued, "[w]hen the Oklahoma legislature changed the rules for interpreting insurance contracts and applied the new rules to completed transactions," such as James's, the legislature "effected a fundamental and pejorative change in the very essence of those contracts." *Id.*

The court then concluded that the impairment could not be justified as a reasonable means of effectuating an important public purpose. *Id.* at 1322-23. While acknowledging that Oklahoma and other states had adopted revocation-upon-divorce statutes with the understanding that divorcees will often intend to revoke beneficiary designations involving their former spouses but inadvertently fail to do so, the court

observed that it was plausible that such individuals *would* want to maintain benefits for their former spouses and, due to the same inattentiveness, fail to take the necessary steps to re-establish their former spouses as beneficiaries after the enactment of a revocation-upon-divorce statute. *Id.* at 1323. As a result, the court believed it was "inappropriate and unreasonable for the legislature to apply [the statute] to pre-existing contracts." *Id.*

The Eighth Circuit's decision is consistent with the Pennsylvania Supreme Court's decision in *Parsonese v. Midland National Insurance Co.*, 706 A.2d 814 (Pa. 1998). There, Francis Meyers and Patricia Parsonese married in 1991. *Id.* at 815. The following year, Meyers designated Parsonese as the primary beneficiary of an existing life insurance policy and designated his three children from previous marriages as the contingent beneficiaries. *Id.* Later that year, the Pennsylvania legislature adopted a revocation-upon-divorce statute similar to Minnesota's. *Id.* at 815-16. The couple then divorced in September 1993, and Meyers died in 1994. *Id.* at 815. At the time of his death, Meyers had not changed Parsonese's status as the named beneficiary of his life insurance policy.

Like the Eighth Circuit, the Pennsylvania Supreme Court concluded that the application of Pennsylvania's revocation-upon-divorce statute to alter the beneficiary designations in life insurance policies executed prior to the statute's enactment would violate the Contracts Clause. The court stated that such application would substantially impair those contracts, explaining that "[s]election of a beneficiary is the entire point of a life

insurance policy." *Id.* at 818. The court then found that the impairment was unreasonable, noting that there are circumstances in which a divorcee may wish to provide life insurance benefits to a former spouse. *Id.* at 818-19.[1]

The Eighth Circuit's decision conflicts, however, with *Stillman v. Teachers Insurance & Annuity Ass'n College Retirement Equities Fund*, 343 F.3d 1311, 1322 (10th Cir. 2003). The facts of *Stillman* are materially identical to the facts here. In 1965, Dale Bryner purchased two annuities and designated his wife, Marilyn Stillman, as the primary beneficiary of the policies' death benefits. *Id.* at 1312-13. The couple divorced in 1970. *Id.* at 1313. In 1998, the Utah legislature adopted § 2-804 of the Uniform Probate Code, a revocation-upon-divorce statute substantively identical to the Minnesota provision at issue here. Utah Code Ann. § 75-2-804(2). Bryner died a year after the statute was enacted. When he died, Stillman was still listed as the primary beneficiary of his annuities.

Before the Tenth Circuit, Stillman argued that the application of Utah's revocation-upon-divorce statute to revoke her beneficiary status would run afoul of the Contracts Clause. The Tenth Circuit disagreed, holding that the statute in no way interfered with contractual relationships. In doing so, the court

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[1] The Ohio Supreme Court reached the same conclusion as the Eighth Circuit and the Pennsylvania Supreme Court when analyzing Ohio's revocation-upon-divorce statute under the Ohio Constitution's Contracts Clause. *Aetna Life Ins. Co. v. Schilling*, 616 N.E.2d 893, 896 (Ohio 1993).

acknowledged that the Eighth Circuit and the Pennsylvania Supreme Court had held that the application of similar statutes in similar circumstances was unconstitutional, but it found that "[t]he *Whirlpool* line of cases ha[d] been persuasively criticized by other distinguished authorities." 343 F.3d at 1322. In particular, it highlighted the statement that the Joint Editorial Board for the Uniform Probate Code issued declaring *Whirlpool* "manifestly wrong." *Id.* (quoting *Joint Editorial Board Statement Regarding the Constitutionality of Changes in Default Rules As Applied to Pre-Existing Documents*, 17 Am. College Trust & Est. Couns. 184 (1991)[2] [hereinafter JEB Statement]). The court agreed with the Board's assessment that "[a] life insurance policy is a third-party beneficiary contract," and that, "[a]s such, it is a mixture of contract and donative transfer." *Id.* (quoting JEB Statement, *supra*). It further agreed that applying revocation-upon-divorce statutes to pre-existing life insurance policies and annuities does not impair the *contractual* component of those policies; after all, the policy providers still must pay the policy proceeds to whomever is deemed the proper beneficiary. *Id.* Instead, such application affects only the donative transfer component of the policies, which "raises no Contracts Clause issue." *Id.* (quoting JEB Statement, *supra*).

The Eighth Circuit's decision likewise conflicts with

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[2] The Joint Editorial Board's statement was reprinted in an addendum filed in the Eighth Circuit, which is available on PACER. Appellant's Addendum at 9, *Melin v. Sveen*, 853 F.3d 410 (8th Cir. 2017) (No. 16-1172) (docketed Mar. 2, 2016).

In re Estate of DeWitt, 54 P.3d 849 (Colo. 2002). There, in each of the cases consolidated for appeal, a husband had obtained life insurance and named his then spouse as the primary beneficiary of the policy. *Id.* at 853. The couples then divorced. In 1995, the Colorado legislature enacted a revocation-upon-divorce statute implementing Uniform Probate Code § 2-804. *Id.* at 852 (citing Colo. Rev. Stat. 15-11-804(2), and noting that the statute "is based on the Uniform Probate Code (UPC) section 2-804"). When the husbands later died, disputes arose as to the whether the revocation-upon-divorce statute could be constitutionally applied in determining the rightful beneficiaries of the husbands' life insurance policies.

The Colorado Supreme Court ruled that the application of the Colorado statute to policies signed before the statute's enactment did not violate the Contracts Clause. The court recognized that "there is a split of authority on this issue," and expressly rejected *Whirlpool* and *Parsonese*. *Id.* at 860 (stating "we do not agree with those courts that have held these statutes to be unconstitutional as violative of the contract clause," and citing, *inter alia*, *Whirlpool* and *Parsonese*). Instead, the court agreed with the Joint Editorial Board's assessment that life insurance contracts are "a mixture of contract and donative transfer" and that revocation-upon-divorce statutes like Colorado's "address[] the donative aspect of the insurance contract[s]" and do not interfere with the contractual components. *Id.* at 859-60. The court also added that because the statute "merely creates a default rule" and does not bar a policyholder from

"maintaining his former spouse as his designated beneficiary," it does not impair the insured's contractual rights. *Id.* at 860.

Finally, the Eighth Circuit's decision conflicts with *Buchholz v. Storsve*, 740 N.W.2d 107 (S.D. 2007). In that case, Linda Buchholz and Harold E. Storsve married in 1966. *Id.* at 109. In 1971, Buchholz named Storsve as the primary beneficiary on her state retirement plan. *Id.* Four years later, the couple divorced, and in 1979, Buchholz remarried. She remained married to her second husband until her death twenty-seven years later. *Id.*

In 1995, several years before Buchholz's death, South Dakota, like Minnesota, Utah, and Colorado, adopted § 2-804 of the Uniform Probate Code. *Id.* at 110 (citing S.D. Codified Laws 29A-2-804(b)). After Buchholz's death, Buchholz's surviving husband asserted he was entitled to the plan proceeds pursuant to the revocation-upon-divorce statute. Storsve filed a competing claim, arguing, as Respondent does here, that the South Dakota statute was unconstitutional as applied to life insurance contracts entered into prior to 1995. *Id.* at 109-10.

The South Dakota Supreme Court held that the application of the revocation-upon-divorce statute to determine the beneficiary of Buchholz's policy did not violate the Contracts Clause.[3] The court expressly

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[3] Although Storsve relied on South Dakota's Contracts Clause, the South Dakota Supreme Court cited both the federal and state Contracts Clause. *Id.* at 113 n.3. It also observed that they are "in substance and effect the same provisions," and that it therefore

rejected the Eighth Circuit's decision in *Whirlpool*, explaining that *Whirlpool* had been "persuasively criticized by both the Joint Editorial Board … and other court decisions," such as *Stillman* and *DeWitt*. *Id.* at 113. The court agreed with decisions finding that applying revocation-upon-divorce statutes in situations like the one before it does not impair an insured's contractual rights because "the essential elements of the bargained-for exchange remain intact"—the insured pays premiums and, in return, the insurer is "required to pay benefits." *Id.* at 114 (quotation marks omitted; alteration omitted). Moreover, the court agreed with previous decisions holding that because revocation-upon-divorce statutes like South Dakota's establish nothing more than a default rule, they do not substantially impair contractual rights. *Id.* And it further agreed that even if the statutes *did* substantially impair contractual relationships, the impairment would be justified on the grounds that they "serve[] important public purposes, including promoting uniformity among state law treatment of probate and non-probate transfers and implementing a rule of construction that reflects legislative judgment that ex-spouses often intend to change their beneficiaries." *Id.* (quotation marks omitted).

Thus, there is a clear conflict of authority on whether the application of revocation-upon-divorce

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"look[s] to the United States Supreme Court's analysis of the Federal Constitution's Contract Clause for guidance." *Id.* at 113 n.4. Thus, the South Dakota Supreme Court's decision forecloses a federal Contracts Clause challenge to a revocation-upon-divorce statute in South Dakota's state courts.

statutes to policies signed before their enactment violates the Contracts Clause.

II. THIS CASE WARRANTS THIS COURT'S REVIEW.

The Court should grant certiorari to resolve the conflict of authority. There is no need for additional percolation. *Whirlpool* was decided 26 years ago, and courts have debated its merits ever since. As a result, the arguments on both sides of the issue have now been fully aired.

Moreover, this case is as clean a vehicle as this Court will see. Minnesota's statute reflects an implementation of Uniform Probate Code § 2-804; there are no idiosyncrasies in Minnesota's statute that would warrant denying review. Further, there are no material facts in dispute. Mark Sveen expressly designated Petitioners as his contingent beneficiaries. As such, the District Court granted summary judgment to Petitioners. The Eighth Circuit reversed the District Court solely on the ground that the application of Minnesota's statute to a contract signed prior to its enactment is unconstitutional. Thus, this case squarely presents the constitutional question.

Further, several other aspects of this case make it a particularly compelling candidate for this Court's review.

First, the issue in this case is important. It is jurisprudentially significant: It is not every day that a federal court strikes down a duly-enacted state statute under the Contracts Clause. The issue is also practically significant. As noted above, Minnesota took

its revocation-upon-divorce statute from the Uniform Probate Code, a uniform act akin to the Uniform Commercial Code adopted by the National Conference of Commissioners on Uniform State Laws. Fourteen other states have similarly adopted the Uniform Probate Code in relevant part and therefore have revocation-upon-divorce statutes nearly identical to Minnesota's.[4] At least fourteen additional states have substantially similar revocation-upon-divorce statutes.[5] And at least one other state is considering adopting similar legislation.[6] Thus, the Court's ruling will have ramifications in numerous states.

Second, a conflict involving the Uniform Probate Code is especially troubling because the purpose of the Uniform Probate Code is to promote the uniform treatment of probate matters across multiple states. Uniform Probate Code § 1-102 states that one of the

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[4] Alaska Stat. Ann. § 13.12.804; Ariz. Rev. Stat. Ann. § 14-2804; Colo. Rev. Stat. Ann. § 15-11-804; Haw. Rev. Stat. Ann. § 560:2-804; Idaho Code Ann. § 15-2-804; Mass. Gen. Laws Ann. ch. 190B § 2-804; Mich. Comp. Laws Ann. § 700.2807; Mont. Code Ann. § 72-2-814; N.J. Stat. Ann. § 3B:3-14; N.M. Stat. Ann. § 45-2-804; N.D. Cent. Code Ann. § 30.1-10-04; S.C. Code Ann. § 62-2-507; S.D. Codified Laws § 29A-2-804; Utah Code Ann. § 75-2-804.

[5] Ala. Code § 30-4-17; Cal. Prob. Code § 5040; Fla. Stat. Ann. § 732.703; Iowa Code Ann. § 598.20A; Mo. Ann. Stat. § 461.051; Nev. Rev. Stat. Ann. § 111.781; N.Y. Est., Powers and Trusts Law § 5-1.4; Ohio Rev. Code Ann. § 5815.33; Okla. Stat. Ann. tit. 15, § 178; 20 Pa. Stat. and Cons. Stat. Ann. § 6111.2; Tex. Fam. Code Ann. §§ 9.301, 9.302; Va. Code Ann. § 20-111.1; Wash. Rev. Code Ann. § 11.07.010; Wis. Stat. Ann. § 854.15.

[6] *See* An Act Regarding Nonprobate Transfers on Death, H.P. 682, 128th Leg., 1st Sess. (Me. 2017).

"underlying purposes and policies" of the Code is "to make uniform the law among the various jurisdictions." *See also* Minn. Stat. § 524.1-102 (similarly stating that Minnesota's probate code intends "to make uniform the law among the various jurisdictions"). Yet, there is now a square conflict of authority over the constitutionality of a provision of the Uniform Probate Code: the Eighth Circuit invalidated Minnesota's version of Uniform Probate Code § 2-804 as applied to policies that predate its enactment, whereas, as explained above, the versions of Uniform Probate Code § 2-804 enacted in Utah, Colorado, and South Dakota have been upheld against the identical constitutional challenge. Only this Court can resolve that conflict of authority on this issue of federal law.

Third, the conflict is particularly troubling because it involves a conflict between state and federal courts in the same jurisdiction. As noted above, the Supreme Court of South Dakota, which lies within the Eighth Circuit, rejected the Eighth Circuit's decision in *Whirlpool*. As a result, South Dakota's state courts will apply South Dakota's revocation-upon-divorce statute to policies signed before its enactment, but South Dakota's federal courts will not. That scenario results in several undesirable consequences. For instance, the beneficiary of life insurance proceeds may turn on whether the requirements for diversity jurisdiction happen to be met in a particular case. There may also be a rush to the courthouse. A South Dakota resident can *file* a diversity case in South Dakota federal court, but may not *remove* a diversity case to South Dakota federal court. *See* 28 U.S.C. § 1441(b)(2) (no removal by

home-state defendant). Thus, a South Dakota resident who could benefit from the Eighth Circuit's rule will have an incentive to file a diversity-jurisdiction suit in federal court as quickly as possible following an ex-spouse's death. Finally, where, as here, the dispute is initiated through a life insurance company's interpleader action, the life insurance company may find itself in the awkward position of deciding who gets the money based on whether it files in state or federal court. These practical issues make this case an especially strong candidate for the Court's review.

III. THE EIGHTH CIRCUIT'S DECISION IS INCORRECT.

The Eighth Circuit erred in holding that the application of a revocation-upon-divorce statute to a contract signed before its enactment violates the Contracts Clause. As explained above, the *Whirlpool* rule has been criticized by multiple courts as well as the Joint Editorial Board for the Uniform Probate Code. For several reasons, those authorities are correct: the *Whirlpool* rule reflects an incorrect interpretation of the Contracts Clause.

In reviewing a Contracts Clause claim, "[t]he threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Energy Reserves*, 459 U.S. at 411 (internal quotation marks omitted). "This inquiry has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992). "If the state regulation constitutes a

substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem." *Energy Reserves*, 459 U.S. at 411-12 (citations omitted).

Under that standard, the application of Minnesota's revocation-upon-divorce statute to policies signed before its enactment complies with the Constitution. First, Minnesota's statute has not impaired a contractual relationship. As a threshold matter, and as the Eighth Circuit acknowledged, the statute could not have impaired any contractual relationship between *Respondent* and Metropolitan Life because no such relationship existed—the life insurance contract was between *Mark Sveen* and Metropolitan Life. Pet. App. 6a.

Even as between Mark Sveen and Metropolitan Life, there was no impairment of any contractual relationship, for several reasons. First, Metropolitan Life's contractual obligation was to pay out life insurance proceeds. The revocation-upon divorce statute did not affect that obligation. All the statute did was alter the identity of the recipient. That, however, did not constitute an impairment of the contract. As the Joint Editorial Board for the Uniform Probate Code explained:

> In [*Whirlpool*] and in comparable cases, there is never a suggestion that the insurance company can escape paying the policy proceeds that are due under the contract. The insurance company interpleads or pays the proceeds into court for distribution to the successful claimant. The

> divorce statute affects only the donative transfer, the component of the policy that raises no Contracts Clause issue.

Stillman, 343 F.3d at 1322 (quoting JEB Statement, *supra*).

Second, even if the statute impaired a contractual obligation, that impairment was not substantial. The statute did not prevent Mark Sveen from maintaining Respondent as his beneficiary; it "merely create[d] a default rule." *DeWitt*, 54 P.3d at 860. If Mark Sveen had wanted to retain Respondent as his beneficiary, all he had to do was contact the life insurance company after the divorce to re-designate her. This minimal additional burden did not substantially impair his contractual rights and expectations. Indeed, this case is a far cry from the types of impairments this Court has found "substantial." *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 504 (1987) (finding substantial impairment where a statute revived liabilities that had been previously extinguished by contract).

Third, even if the impairment were "substantial," there is "a significant and legitimate public purpose behind the regulation." *Energy Reserves*, 459 U.S. at 411. Revocation-upon-divorce statutes reflect the reality that divorcing spouses typically do not want their ex-spouses to receive their life insurance proceeds, but will sometimes forget to change their beneficiary designations after they get divorced. It is "legitimate" for the Minnesota Legislature to exercise its police powers to protect such individuals. *See Buchholz*, 740 N.W.2d at 114 (noting that any

impairment to contractual rights "is justified and reasonable in that it serves important public purposes," including "implementing a rule of construction that reflects legislative judgment that ex-spouses often intend to change their beneficiaries" (quotation marks omitted)).

This Court has recognized that, "[u]nless the State itself is a contracting party, … courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 412-13 (internal quotation marks omitted; second and third alterations in original). There is no reason for the Court to overturn the Minnesota legislature's reasonable judgment here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL DODA
DODA MCGEENEY
975 34th Ave NW
Suite 400
Rochester, MN 55901

ADAM G. UNIKOWSKY
Counsel of Record
EMMA P. SIMSON
JENNER & BLOCK LLP
1099 New York Ave., NW,
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

APPENDIX

Appendix A

United States Court of Appeals
For the Eighth Circuit

No. 16-1172

Metropolitan Life Insurance Company

Plaintiff

v.

Kaye Melin

Defendant - Appellant

Ashley Sveen; Antone Sveen

Defendant - Appellees

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: November 17, 2016
Filed: April 3, 2017

Before BENTON and SHEPHERD, Circuit Judges, and EBINGER,[1] District Judge.

BENTON, Circuit Judge.

Mark A. Sveen designated his then-wife, Kaye L. Melin, as the primary beneficiary of his life insurance policy, and his children as contingent beneficiaries. Later, Minnesota extended its revocation-upon-divorce statute to life insurance policies. The district court awarded the proceeds to the children, rejecting Melin's argument that applying the statute retroactively is an impermissible impairment under the Contract Clause. Having jurisdiction under 28 U.S.C. § 1291, this court reverses and remands.

I.

Sveen purchased the life insurance policy in 1997 and married Melin later that year. The following year, he named her as the primary beneficiary and his two adult children as contingent beneficiaries. Sveen had additional life insurance with his children as primary beneficiaries. Melin and Sveen divorced in 2007. Sveen never changed the beneficiary designation on the policy.

In 2002, Minnesota amended its probate code to apply the revocation-upon-divorce statute to life insurance beneficiary designations: "the dissolution or annulment of a marriage revokes any revocable . . . beneficiary designation . . . made by an individual to the

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[1] The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa, sitting by designation.

individual's former spouse." Minn. Stat. Ann. § 524.2-804.

When Sveen died in 2011, Melin was still the primary beneficiary on the policy. The insurance company filed an interpleader to determine whether the revocation-upon-divorce statute revoked this beneficiary designation. Sveen's children—the contingent beneficiaries—and Melin cross-claimed for the proceeds. The district court granted summary judgment to the Sveens. This court reviews constitutional claims de novo. *Walker v. Hartford Life & Accident Ins. Co.*, 831 F.3d 968, 973 (8th Cir. 2016).

II.

A.

The Sveens argue that Melin lacks standing to assert a constitutional challenge to the revocation-upon-divorce statute.

A non-party may assert a claim under a contract if the individual is a third-party beneficiary. *See Dayton Dev. Co. v. Gilman Fin. Servs., Inc.*, 419 F.3d 852, 855 (8th Cir. 2005). Third-party standing is appropriate where: (1) the litigant "suffered an 'injury in fact,' [ ] giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; (2) what the litigant seeks has a "close relation" to the rights of the absent party; and (3) there is "some hindrance to the [absent] party's ability to protect his or her own interests." *Powers v. Ohio*, 499 U.S. 400, 411 (1991), *quoting Singleton v. Wulff*, 428 U.S. 106, 112 (1976).

A contested beneficiary like Melin has standing because: (1) she would suffer the loss of policy proceeds, a concrete injury, if the statute were applied; (2) she seeks to enforce the contract as written, vindicating Sveen's written intent; and (3) Sveen's death hinders his ability to protect his interest to enforce the contract. *See, e.g.*, *Mearns v. Scharbach*, 12 P.3d 1048, 1055 (Wash. Ct. App. 2000) (holding former spouse had third-party standing to assert constitutional challenge to retroactive application of revocation-upon-divorce statute where policyholder's children were contingent beneficiaries).

B.

The Contract Clause prohibits a state law from "impairing the Obligation of Contracts." U.S. Const. art. I, § 10, cl. 1. The prohibition, though not absolute, encompasses laws that "operate[ ] as a substantial impairment of a contractual relationship" and do not serve a legitimate public purpose or are not "based upon reasonable conditions and [ ] of a character appropriate to the public purpose." *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410-12 (1983), *quoting first Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978), *then quoting U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 22 (1977).

This court has held that a revocation-upon-divorce statute like the one here violates the Contract Clause when applied retroactively. *Whirlpool Corp. v. Ritter*, 929 F.2d 1318, 1324 (8th Cir. 1991). There, the husband had designated his then-wife as his beneficiary before Oklahoma passed its revocation-upon-divorce statute. *Id.* at 1319-20. Two years after the statute was passed, they divorced. *Id.* The husband never updated the

beneficiary designation. *Id.* This court held that automatically revoking an ex-spouse's beneficiary designation made before enactment of the statute would violate the Contract Clause. *Id.* at 1322. The unconstitutionality turned on the *policyholder's* rights and expectations:

> [A]t the time James designated Darlene as his beneficiary, Oklahoma law provided that she would remain the beneficiary unless and until he designated someone else; thus, when James attempted to order his personal affairs, this rule of insurance contract construction became a part of the insurance contract's obligations. James was entitled to expect that his wishes regarding the insurance proceeds, as ascertained pursuant to this then-existing law, would be effectuated. By reaching back in time and disrupting this expectation, the Oklahoma legislature impaired James' contract.

Id.

"It is a cardinal rule in our circuit that one panel is bound by the decision of a prior panel." *Owsley v. Luebbers*, 281 F.3d 687, 690 (8th Cir. 2002). The *Whirlpool* case controls this case. The Sveens argue that *Whirlpool* is distinguishable or, alternatively, should not be followed.

Though *Whirlpool* addressed an Oklahoma statute, both it and the Minnesota statute have the same effect: to disrupt the policyholder's expectations and right to "rely on the law governing insurance contracts as it existed when the contracts were made." *Whirlpool*, 929

F.2d at 1323. The Sveens argue that *Whirlpool* is distinguishable in several ways.

First, factually: The beneficiary in *Whirlpool* was the mother of the policyholder's four minor children, while Melin and Sveen had no children together. *Id.* Though the *Whirlpool* court noted it was "plausible" that the policyholder would want to provide financial security for his children by designating their caregiver (not his new wife) as the beneficiary, this court was explaining that the statute was just as likely to "either effectuate or frustrate his intent." *Id.* The holding rested on the policyholder's right to "rely on the law governing insurance contracts as it existed when the contracts were made." *Id.* The holding did not depend on the age or number of children. *See id.*

Second, the Sveens note that Minnesota law gives a beneficiary no vested interest in the policy. *See McCloud v. Aetna Life Ins. Co.*, 21 N.W.2d 476, 478-79 (Minn. 1946). This, too, is beside the point. What matters are the policyholder's rights and expectations, not any interest of the beneficiary. *See Whirlpool*, 929 F.2d at 1323.

Third, the Sveens stress that the Minnesota statute has exceptions allowing the policyholder to "opt out of the default rule of revocation." Not only is this irrelevant to *Whirlpool*'s focus on the policyholder's right to rely on the law at the time of contract formation, but *Whirlpool* itself found a similar escape insufficient. *Id.* The Oklahoma statute allowed a policyholder to "rename" a former spouse as beneficiary, but: "This fact does not cure the constitutional infirmity." *Id.* Similarly, here, that the statute would have allowed him

to opt out does not remedy the violation of Sveen's rights that would occur by applying the statute to "directly alter[ ] the obligations and expectations of the contracting parties." *Id.*

The rest of the Sveens' attempted distinctions either mischaracterize *Whirlpool* or do not confront its rationale—maintaining the policyholder's expectations under the law that existed at the time of contracting.

According to the Sveens, *Whirlpool* "undercuts the policy reasons served by revocation upon divorce statutes" because "there is no justification for extending Contract Clause concerns to a statute that only affects the donative component of a life insurance policy." *See, e.g., Stillman v. Teachers Ins. & Annuity Ass'n Coll. Ret. Equities Fund*, 343 F.3d 1311, 1322 (10th Cir. 2003) (disagreeing with *Whirlpool* and citing criticism by the Joint Editorial Board for the Uniform Probate Code). *But see Mass. Mut. Life Ins. Co. v. Curley*, 459 F. Appx. 101, 106 (3d Cir. 2012) (relying on *Parsonese v. Midland Nat. Ins. Co.*, 706 A.2d 814 (Pa. 1998) to reach the same result as *Whirlpool*). The *Whirlpool* case rejects this argument:

> The legislature, in passing this statute, determined that people fail to consider the need to change their insurance policies after experiencing a change in family relations. . . . However, this same conclusion suggests that an individual could rely on the pre-existing law and neither know nor expect that the rules governing his policy have changed, and thus might fail to consider the need to investigate potential changes in the law.

Whirlpool, 929 F.2d at 1323. This court's previous opinion forecloses any conclusion other than that the statute here is unconstitutional when applied retroactively.

* * * * * * *

The judgment is reversed, and the case remanded for proceedings consistent with this opinion.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Metropolitan Life Insurance Company,	Civ. No. 14-5015 (PAM/LIB)
Plaintiff,	
v.	**MEMORANDUM AND ORDER**
Kaye Melin, Ashley Sveen, and Antone Sveen,	
Defendants/Cross-Claimants.	

This matter is before the Court on Defendants' cross-Motions for Summary Judgment in this insurance interpleader case. For the reasons that follow, the Court grants the Motion of Ashley and Antone Sveen and denies the Motion of Kaye Melin.

BACKGROUND

Defendants/Cross-Claimants Kaye Melin and Ashley and Antone Sveen dispute the distribution of the proceeds of a life insurance policy issued to Melin's ex-husband and the Sveens' father, Mark Sveen.

Melin and Mark Sveen married in December 1997. Each had grown children from a previous relationship; they had no children together. In April 1998, Sveen bought a life insurance policy from Plaintiff Metropolitan

Life Insurance Company (MetLife) and named Melin as his beneficiary, with Ashley and Antone as contingent beneficiaries.

In 2002, the Minnesota legislature amended the probate code to provide that a divorce decree operated to revoke the beneficiary status of the former spouse on instruments such as life insurance policies, unless certain enumerated exceptions applied. Minn. Stat. § 524.2-804. One of those exceptions is that the parties could provide for the continued beneficiary status of the former spouse in the divorce decree. *Id.*

In 2007, Melin and Sveen divorced. The divorce decree mentions nothing about the life insurance policy, and provides that it is the complete agreement of the parties with regard to marital property. Melin contends that sometime during the divorce proceedings she and Sveen discussed the policy and orally agreed that Melin would remain the beneficiary under the policy. Melin also contends that she maintained a life insurance policy for which Sveen was the beneficiary, and that the alleged oral agreement also required her to maintain Sveen as the beneficiary under her policy.

Sveen killed himself in 2011. Faced with competing claims to the more than $180,000 in policy proceeds, MetLife brought this interpleader action under 28 U.S.C. § 1335. As the interpleader statute provides, MetLife deposited the policy proceeds into the Court's registry, and MetLife and Defendants have resolved all of MetLife's claims in the case. (Docket No. 48.) Thus, MetLife is only a nominal party to the action.

Melin and the Sveens have cross-moved for summary judgment, each arguing their entitlement to the proceeds of Mark Sveen's life-insurance policy.

DISCUSSION

Summary judgment is proper if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court must view the evidence and inferences that may be reasonably drawn from the evidence in the light most favorable to the nonmoving party. *Enter. Bank v. Magna Bank*, 92 F.3d 743, 747 (8th Cir. 1996). However, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

Melin contends that she is entitled to the policy proceeds for two reasons. First, she argues that the Minnesota beneficiary-revocation statute operates as an unconstitutional impairment of contract rights. *See* U.S. Const. art.1, § 10, cl. 1 (providing that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts). Second, she asserts that the oral agreement she allegedly made with Sveen fits within the statute's exceptions and allows her to remain the beneficiary under the policy.

According to Melin, the Eighth Circuit's determination that the Oklahoma beneficiary-revocation statute was unconstitutional governs here. *Whirlpool Corp. v. Ritter*, 929 F.2d 1318 (8th Cir. 1991).

Whirlpool involved competing claims to a life-insurance policy by the decedent's ex-wife, to whom he had been married for 17 years and with whom he had four small children, and the decedent's new wife, whom he had married three weeks after divorcing his first wife and only three months before he died. *Id.* at 1319-20. The new wife was herself implicated in the decedent's death. *Id.* Oklahoma law enacted after the beneficiary designation but before the couple's divorce provided that a divorce operated to revoke beneficiary designations in favor of the policyholder's former spouse. Okla. Stat. tit. 15, § 178(A) (Supp. 1987). The Eighth Circuit determined that the Oklahoma statute was a retrospective substantial impairment of the decedent's contractual expectation that his first wife would be the policy beneficiary and was therefore unconstitutional. *Whirlpool*, 929 F.2d at 1322. The Oklahoma statute was subsequently amended to provide that it applied only to instruments signed after the date of its enactment. Okla. Stat. tit. 15, § 178(D) (1989). Perhaps because the statute was amended to eliminate any retrospective application of its terms, neither the Eighth Circuit nor any other federal court has revisited *Whirlpool*'s determination on the issue.

The *Whirpool* decision has been roundly criticized, however, including by the appellate court with jurisdiction over Oklahoma, the Tenth Circuit Court of Appeals. *See Stillman v. Teachers Ins. & Annuity Ass'n College Retirement Equities Fund*, 343 F.3d 1311, 1322 (10th Cir. 2003) (finding *Whirlpool* unpersuasive and determining that Utah's revocation-of-beneficiary statute, which is the same as Minnesota's,

is constitutional). And indeed, the Uniform Probate Code's Joint Editorial Board took the unusual step of issuing a critique of *Whirpool*, noting that although beneficiary-revocation statutes do affect rights under an insurance policy, those statutes affect donative rights, not contractual rights, and thus do not run afoul of the Contracts Clause. 17 Am. Coll. Tr. & Est. Couns. 184 app. II at 3 (1991).

Two decisions in this District have addressed challenges to the Minnesota beneficiary-revocation statute that are similar to the instant challenge, with different results.

In 2007, Judge Donovan W. Frank determined that the Minnesota statute was not an unconstitutional impairment of contracts. *Lincoln Benefit Life Co. v. Heitz*, 468 F. Supp. 2d 1062 (D. Minn. 2007). In *Heitz*, the couple divorced in March 2002, just before the effective date of the Minnesota beneficiary-revocation statute. *Id.* at 1065. Before the divorce, the wife had been the beneficiary of the husband's life-insurance policy. *Id.* at 1064. The divorce decree listed the policy, and stated that the husband was awarded "all right, title, interest and equity" in the policy insuring his life. *Id.* at 1065. The husband died in 2005, having never removed his ex-wife as the policy beneficiary. *Id.* Judge Frank determined that the Minnesota statute did not substantially impair any vested contractual right because the ex-spouse had no vested interest in the policy proceeds until the policy owner's death, which occurred after the revocation statute took effect. He noted the distinction between contract rights, which are as between the policy owner and the insurance company,

and donative rights, which are as between the policy owner and the designated beneficiaries. *Id.* at 1067. He determined that the statute affects only donative rights, not contractual rights, and thus is not unconstitutional. *Id.* at 1067-68.

Judge Richard H. Kyle disagreed with Judge Frank and found the Minnesota statute unconstitutional in *MONY Life Insurance Co. v. Ericson*, 533 F. Supp. 2d 921, (D. Minn. 2008). In *Ericson*, the couple divorced in 1986, but the policy beneficiary paid the premiums on his ex-spouse's life insurance policy for 20 years, until her death in 2006. Judge Kyle found that the *Whirlpool* decision compelled the conclusion that the application of the Minnesota revocation statute would unconstitutionally impair the beneficiary's settled contractual interest in the policy.

Neither *Heitz* nor *Ericson* perfected an appeal, and thus the Eighth Circuit has not resolved this split of authority. But this Court agrees with the reasoning in *Heitz*: the Minnesota beneficiary-revocation statute is not an unconstitutional impairment of contracts in this case.

The test for whether a state law unconstitutionally impairs a contract is a stringent one. The party seeking to hold the statute unconstitutional must establish that there is a contractual relationship, that the law impairs that relationship, and that the impairment is substantial. *Honeywell, Inc. v. Minn. Life & Health Ins. Guar. Ass'n*, 110 F.3d 547, 551 (8th Cir. 1997). In the absence of a vested contractual right, there can be no protectable contractual relationship, and thus no impairment of contract. A beneficiary has no vested interest in a life

insurance policy until the insured dies. As *Heitz* noted, "[i]f the mere act of naming a person a beneficiary conferred a vested right upon that person, no owner of a policy could ever change his or her designation without the consent of the beneficiary, and the courts would be inundated with cases alleging breach of contract." *Heitz*, 468 F. Supp. 2d at 1067. The Minnesota statute did not unconstitutionally impair Melin's interests under the policy, because those interests had not vested when the statute came into force.

Finally, Melin's contentions regarding the alleged oral contract for her to remain the policy beneficiary do not prevent the application of the beneficiary-revocation statute here. She has no proof whatsoever of this alleged agreement. She does not remember when she and Sveen made the agreement, or any terms of the agreement other than the alleged term that Melin would remain the beneficiary under the policy, ostensibly in perpetuity. Under Minnesota law, the party seeking to prove an oral agreement must do so with clear and convincing evidence. *Merickel v. Erickson Stores Corp.*, 95 N.W.2d 303, 305 (Minn. 1959). Melin's own self-serving testimony does not constitute such evidence. As in *Heitz*, where the ex-spouse similarly claimed an oral agreement to remain the policy's beneficiary, Melin "has not produced clear and convincing evidence of the existence of an oral contract, and her attempts to do so violate the statute of frauds and/or the parol evidence rule." *Heitz*, 468 F. Supp. 2d at 1069-70.

CONCLUSION

Minnesota Statutes section 524.2-804 does not unconstitutionally impair Melin's contractual interest in

her ex-husband's life-insurance policy, because she has no such contractual interest. Thus, the statute operated to revoke the policy designation of Melin as the beneficiary. Nor is her evidence of an alleged oral agreement to circumvent the application of the statute legally sufficient to make that showing.

Accordingly, **IT IS HEREBY ORDERED that**:

1. Defendant/Counter-Claimant Kaye Melin's Motion for Summary Judgment (Docket No. 43) is **DENIED**;
2. Defendants/Counter-Claimants Antone and Ashley Sveen's Motion for Summary Judgment (Docket No. 50) is **GRANTED**; and
3. Defendants/Counter-Claimants Ashley and Antone Sveen, as contingent beneficiaries under the policy, are entitled to immediate payment of the insurance proceeds on deposit with the Court.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 7, 2016

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge