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Community Property Laws versus the Power of Congress as Conferred in Article I, Section 8

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COMMENTS

COMMUNITY PROPERTY LAWS VERSUS THE POWER OF CONGRESS AS CONFERRED IN ARTICLE I, SECTION 8

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The Constitution of the United States provides in article I, section 8, in part:

> "The Congress shall have power to . . . make rules for the government and regulation of the land and naval forces. . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers. . . ."

In the exercise of this power Congress passed the National Service Life Insurance Act in 1940, chapter 757, title VI, part I, section 602-a, 54 Stats. 1009, 38 U. S. C. A. sec. 802, Appendix page iii. This act provided that the serviceman who took out the insurance could designate the beneficiary from certain stated classes of relatives (see *infra*).

It is well-established law in the community property states that the proceeds of life insurance policies whose premiums are paid for with community funds are also community property. It is also well established in California that the earnings of a serviceman who is married are community property.

The Supreme Court of the United States has recently decided the case of *Wissner v. Wissner* (Feb. 1950), 70 S. Ct. 398, rehearing denied, 70 S. Ct. 619, involving the rights of a wife in the proceeds of a National Service Life Insurance policy, the premiums of which were paid by her husband from his army pay. The husband had named his mother the primary beneficiary and his father contingent beneficiary. In an opinion by Mr. Justice Clark, concurred in by Chief Justice Vinson and Justices Black, Reed and Burton, it was held that the designation of the beneficiary by the assured takes precedence over the wife's claimed community property interest in the proceeds under California law. Mr. Justice Minton dissents and Justices Frankfurter and Jackson join in the dissent on the ground that Congress did not intend to give the serviceman the right to take his wife's property and purchase a policy of insurance payable to his mother and thereby defraud the wife of her community interest under state laws.

The District Court of Appeal, Third Appellate District, speaking through Justice Adams, had held that if Congress had intended to give the serviceman the right to designate the beneficiary of such an insurance policy and to make the payments to the beneficiary provided for by the act, free from the claim of the wife under the California community property law

that such an intent on the part of Congress would be unconstitutional and in violation of the due process clause of the Fifth Amendment.

The National Service Life Insurance Act involved in the case provided: (Sections selected as relevant to the discussion herein and to show overall character of the act):

(a) Insurance shall be granted by the United States to persons on active service.[1]

(b) A person who dies within 120 days of entering active service without having insurance in effect in the amount of $5,000 shall be deemed to have applied for and been granted insurance in the sum of $5,000, to be paid to a restricted group of beneficiaries.[2]

. . . . . .

(e) Insurance shall be issued on the five-year level premium term plan with privilege of conversion on any date of premium payment to relate back to date of original issue.[3]

(f) "The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person *in loco parentis* if designated as beneficiary by the insured), brother or sister of the insured. *The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.*"[4]

. . . . . .

(h) If no beneficiary is designated or if the designated beneficiary does not survive the insured payments shall be made to beneficiaries specified in the act.[5]

(i) "The right of any beneficiary to payment of any installment shall be conditioned upon his or her being alive to receive such payments."[6]

(j) "*No person shall have a vested right to any installment or installments of any such insurance* and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary . . ."[7] provided for in the act.

(k) "No installments shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made."[8]

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[1] National Service Life Insurance Act of 1940, Oct. 8, 1940, chap. 757, title VI, part I, sec. 602(a) (54 Stat. 1009), 38 U. S. C. A. sec. 802(a).

[2] 54 Stat. 1009, 38 U. S. C. A. sec. 802(d) (2).

[3] 54 Stat. 1009 (38 U. S. C. A. sec. 802(f)).

[4] 54 Stat. 1009 (38 U. S. C. A. sec. 802(g)).

[5] 54 Stat. 1009 (38 U. S. C. A. sec. 802(i)).

[6] 54 Stat. 1009 (38 U. S. C. A. sec. 802(i)).

[7] 54 Stat. 1009 (38 U. S. C. A. sec. 802(i)).

[8] 54 Stat. 1009 (38 U. S. C. A. sec. 802(j)).

(m) The amount of the first premium may be advanced from current appropriations for active service pay.[9]

(n) Premiums may be waived during total disability.[10]

(o) Sums necessary to carry out the provisions of the act are appropriated from money in the treasury not otherwise appropriated.[11]

. . . . . .

(r) The United States shall bear the cost of administration.[12]

(s) The United States shall pay costs of excess mortality and waiver of premiums due to disability.[13]

(t) The Administrator shall execute the provisions of the act, make rules and decide all questions.[14]

. . . . . .

(v) *No State law providing for presumption of death shall be applicable.*[15]

. . . . . .

(x) *Payments of benefits due or to become due shall not be assignable.*[16]

(y) Payments made to, or on account of, a beneficiary:

(1) Shall be exempt from taxation.

(2) Shall be exempt from the claims of creditors.

(3) 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.

[All italics in the above sections supplied.—Ed.]

The majority of the court find that the act was intended by Congress to afford a uniform and comprehensive system of life insurance for members and veterans of the armed forces of the United States and states as follows:

"A liberal policy toward the serviceman and his named beneficiary is everywhere evident in the comprehensive statutory plan. Premiums are very low and are waived during the insured's disability; costs of administration are borne by the United States; liabilities may be discharged out of congressional appropriations.

"The controlling section of the act provides that the insured 'shall have the right to designate the beneficiary or beneficiaries of the insurance (within a designated class), . . . and shall . . . at all times have the right to change the beneficiary or beneficiaries . . .' 38 U. S. C. A. 802(g). Thus Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other. Pursuant to the congressional command, the Government contracted to pay the insurance to the insured's choice. He chose his mother. It is plain to us that the judgment of the lower

[9]54 Stat. 1009 (38 U. S. C. A. sec. 802(m)).

[10]54 Stat. 1009 (38 U. S. C. A. sec. 802(n)).

[11]54 Stats. 1011 (38 U. S. C. A. sec. 804).

[12]54 Stat. 1012 (38 U. S. C. A. sec. 806), Appendix page xi.

[13]54 Stat. 1012 (38 U. S. C. A. sec. 807(a) (b) (c)), Appendix page xii.

[14]54 Stat. 1012 (38 U. S. C. A. sec. 808).

[15]54 Stat. 1013 (38 U. S. C. A. sec. 810).

[16]Sec. 3, 49 Stat. 609 (38 U. S. C. A. sec. 454a).

court, as to one-half of the proceeds, substitutes the widow for the mother, who was the beneficiary Congress directed [should receive] the insurance money. We do not share appellee's discovery of congressional purpose that widows in community property states participate in the payments under the policy, contrary to the express direction of the insured. Whether directed at the very money received from the Government or an equivalent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand."

The court does not discuss or refer to other cases construing the act although there have been a large number. One of the leading cases on the subject is *White* v. *United States,* 270 U. S. 175, 70 Law Ed. 530, where the court, speaking through Justice Holmes, says:

"The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it, and the relation of the government to them, if not paternal, was at least avuncular. It was a relation of benevolence established by the government at considerable cost to itself, for the soldier's good. It was a new experiment in which changes might be found necessary, or at least, as in this case, feasible more exactly to carry out his will. If the soldier was willing to put himself into the government's hands to that extent no one else could complain. The only relations of contract were between the government and him. White's mother's interest at his death was vested only so far as he and the government had made it so, and was subject to any conditions upon which they might agree."

In *Von Der Lippi-Lipski* v. *U. S.,* 4 Fed. 2d 168, the court said:

"It has been held repeatedly that a beneficiary under such a contract of insurance did not have a vested interest in installments of insurance not accrued, and that such contract is not an ordinary contract of insurance, nor is it in the nature of a pension, but is rather of the character and nature of both. *It has also been held that the authority of the insured, expressly conferred by statute, to designate whomsoever he desired, within the permitted class, as beneficiary under such contract of insurance was effective, when exercised by the insured, as against those who would otherwise have been entitled to benefits thereunder.*" (Italics ours.)

In *Sizemore* v. *Sizemore's Guardian,* 222 Ky. 713, 2 S. W. 2d 395, the court said:

(2) "It is insisted upon this appeal that the amendment to the statute after the death of the soldier violated the Fifth Amendment to the Constitution of the United States, in that it deprived appellant of her property without due process of law. The argument proceeds upon the theory that the designated beneficiary had a vested right to all of the insurance, which could not be affected by later legislation. The argument is unsound. The beneficiary has no vested right in the installments not due or paid. His right to receive further installments ended at the death of the beneficiary, and *Congress possessed the power to provide where the insurance money should go in every contingency. The interest of the beneficiary was vested only so far as the soldier and the government had made it so, and was subject to any*

conditions, upon which they might agree. Congress, in creating the right, could annex conditions, and the beneficiary took the right subject to the conditions. White v. *U. S.*, 270 U. S. 175, 70 L. Ed. 530 annotated; *Helmholz* v. *Horst* (C. C. A.), 294 F. 417; *Cassarello* v. *U. S.* (D. C.), 271 F. 486, affirmed (C. C. A.) 279 F. 396; *Gilman* v. *U. S.* (D. C.), 300 F. 764, affirmed (C. C. A.), 300 F. 767; *Sutton's Ex'r.* v. *Barr's Adm'r*, 219 Ky. 543, 293 S. W. 1075." (Italics ours.)

The following cases contain express statements to the same effect:

Bradley v. *United States* (1944; C. C. A. 10th Okla.), 143 F. 2d 573 (cert. den. 1945, 323 U. S. 793, 89 L. Ed. 632);
Woods v. *United States* (1947; D. C. Ala.), 69 Fed. Supp. 760;
Lincoln Bank & T. Co. v. *United States* (1947; D. C. Ky.), 71 Fed. Supp. 745;
Dodd v. *United States* (1948; D. C. Ark.), 76 Fed. Supp. 991;
Citron v. *United States* (1947; D. C. Dist. Col.), 69 Fed. Supp. 830;
Owens v. *Owens* (Ky., 1947), 204 S. W. 2d 580.

In the case of *Lynch* v. *United States*, 292 U. S. 571, the court, speaking through Justice Brandeis, held that the 1933 economy act which repealed laws relating to veterans' insurance deprived a veteran of vested rights and was therefore in violation of the due process clause of the Fifth Amendment of the United States Constitution.

The Lynch case has been cited with approval in *United States* v. *Zazove*, 334 U. S. 602, 92 Law Ed. 601.

The supremacy clause of the United States Constitution provides that an act of Congress is the supreme law of the land and will take precedence over state rules of law to the contrary. This is subject, of course, to the proviso that the act of Congress itself must be constitutional, e. g., the Lynch case.

In the Wissner case the wife claimed to have a vested right in her husband's earnings under the community property laws of the State of California. The first attack which could be made upon this claimed vested right is the attack made because of the nature of the husband's earnings. The Supreme Court of the State of California in the case of *French* v. *French*, 17 Cal. 2d 775, 112 P. 2d 235, has held that the earnings of a member of the armed forces are community property. The Supreme Court of the United States, in considering the rights of members of the armed forces to their pay in *United States* v. *Williams*, 302 U. S. 46, has held that the enlistment of a minor in the army emancipates him from the state laws, which made his earnings the property of his parents and gave him full control of these earnings. The court said:

"Enlistment is more than a contract; it effects a change of status. It operates to emancipate minors at least to the extent that by enlistment they

become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay. Upon enlistment of plaintiff's son and until his death he became entirely subject to the control of the United States in respect of all things pertaining to or effecting his service."

The Supreme Court expressly refused to pass on this question in the Wissner case.

The next hurdle which the wife would have to get over in order to be entitled to recover under the California community property law is the provision in the federal act that "No person shall have a vested right to any installment or installments of any such insurance." Assuming that the California courts are correct and that the contract of marriage makes the earnings of the husband thereafter community property and that the pay received from the United States government is community property, can congressional enactment under the powers granted to the Congress in act 1, section 8, deprive a wife of her vested interest? This matter has been considered by the Supreme Court in a number of cases and the court has uniformly held that contracts between private individuals cannot create vested rights which will be protected under the due process clause of the Fifth Amendment. See, for example, *Louisville & Nashville Railroad Co.* v. *Mottley*, 219 U. S. 467, at page 485, where the court said:

"We forebear any further citation of authorities. They are numerous and are all one way. They support the view that, as the contract in question would have been illegal if made after the passage of the commerce act, it cannot now be enforced against the railroad company, even though valid when made. If that principle be not sound, the result would be that individuals and corporations could, by contracts between themselves, in anticipation of . . . legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived."

The wife then attempted to claim that while the federal government could undoubtedly control the property incidents in moneys delivered to it by the soldier and that the federal rules applied up to the time that the proceeds of the insurance policy were paid to her ex-husband's parents, that the federal government had no control over the proceeds after receipt by the parents and she was met with the exemption statute contained in the act of August 12, 1935, chapter 510, section 3 of 49 Statutes 609, 38 U. S. C. A. section 454a, which provides:

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans 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 . . ."

The provisions of this section against assignments have been upheld in *Robertson* v. *McSpadden*, 46 Fed. 2d 702; *Bradley* v. *United States*, 43 Fed. 2d 573; *Von Der Lippi-Lipski* v. *United States*, 4 Fed. 2d 168; *Lewis* v. *United States*, 56 Fed. 2d 563; *Murphy* v. *United States*, 5 Fed. Supp. 583; *United States* v. *Sterling*, 12 Fed. 2d 921; *Tompkins* v. *Tompkins*, 132 N. J. L. 217, 38 Atl. 2d 890; *Kauffman* v. *Kauffman*, 93 Adv. Cal. App. 966.

The provisions of this section exempting the proceeds from taxation were upheld in *Lawrence* v. *Shaw*, 300 U. S. 245, and considered not applicable to the situation presented in *United States Trust Co. of New York* v. *Helvering*, 307 U. S. 57.

The exemption from the claims of creditors was followed in *Culp* v. *Webster*, 25 Cal. App. 2d 759, 70 P. 2d 273. In *Pagel* v. *Pagel*, 291 U. S. 473, it was held under the previous wording of this section that this exemption did not extend to the funds after they became a part of the estate of the assured and the Congress immediately thereafter broadened the language to cover that situation. *In re McCormick's Estate*, 8 N. Y. S. 2d 179, 185-188; *Haley* v. *United States*, 46 F. Supp. 4, 7.

The widow attempted to overcome the force of these cases by relying upon alimony cases and cases involving support for minor children. See for example *Schlaefer* v. *Schlaefer* (1940), 71 D. C. App. 350, 112 F. 2d 177; *Tully* v. *Tully* (Mass., 1893), 34 N. E. 79; *Hodson* v. *New York City Employees' Retirement System* (1935), 243 App. Div. 480, 278 N. W. Supp. 16; *In re Guardianship of Bagnall* (Iowa, 1947), 29 N. W. 2d 597, and cases therein cited. There are, however, cases to the contrary, see for example *Brewer* v. *Brewer*, 19 Tenn. App. 209, 84 S. W. 2d 1022; *Maddox* v. *Elliott*, 248 Ala. 271, 27 So. 2d 498, 499; *Riker* v. *Riker*, 160 Misc. 117, 289 N. Y. S. 835, decided under the similar wording of the act of January 27, 1936, chapter 32, section 4, 49 Statute 1101 (38 U. S. C. A. 686c).

The Supreme Court in the Wissner case refused to resolve this conflict although admitting that there were support aspects to the community property principle. While the Supreme Court expressly refuses to resolve the conflict in the alimony and support money cases, the logical effect of its decision is to reaffirm the supremacy of an act of Congress passed pursuant to expressly delegated powers which conflict with state rules of law even though the state rules of law are in the field of so-called family law.