SVEEN V. MELIN

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Constitutional Law, Contracts, Divorce, Eight Circuit, Estate Planning, Insurance, Probate, SCOTUS, Trusts, Wills
Minnesota, Oklahoma
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off

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ABSTRACT

Case Name: *Sveen v. Melin*, 138 S. Ct. 1815 (2018).
Jurisdiction: Supreme Court of the United States.
Plaintiff(s): Ashley SVEEN, et al.,
Defendant(s): Kaye MELIN.
Concepts: Wills; Trusts; Estate Planning; Revocation-on-divorce statutes; Contracts Clause under the Constitution.
Nature of Case: Does the retroactive application of a revocation-on-divorce statute to contracts entered into prior to the enactment of the statute violate the Contracts Clause of the Constitution?[1]
Lower Ct. Decision: The U.S. District Court for the District of Minnesota granted summary judgment for the Sveen children.[2]
Appellate Decision: The Court of Appeals for the Eighth Circuit reversed. It held that a "revocation-upon-divorce statute like [Minnesota's] violates the Contract Clause when applied retroactively."[3]
Sup. Ct. Decision: The Supreme Court ruled 8-1 that the Minnesota revocation-on-divorce

statute did not violate the Contracts Clause as applied in the *Sveen* case.[4] Reversing the judgment of the Court of Appeals and remanding the case for further proceedings.

INTRODUCTION

In 1997, Mark Sveen bought a life insurance policy insuring his life; later on that year he married Kaye Melin. In 1998, Sveen named Melin as primary beneficiary on the policy with his two children from a prior marriage (Ashley and Antone Sveen) as contingent beneficiaries. Sveen and Melin divorced in 2007. Sveen took no action then or later, to revise his beneficiary designations, even as many other assets were divided as part of the Sveen-Melin divorce decree.[5]

In 2002, Minnesota amended its revocation-on-divorce statute previously only applied to wills executed prior to dissolution or annulment of marriage, to include "any revocable … disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse[.]"[6]

Sveen died in 2011, the life insurance company requested judgment on who should be the recipient of the life insurance proceeds.[7] Sveen's children moved for summary judgment, arguing that the revocation-on-divorce statute[8] automatically revoked the policy's designation of Melin as primary beneficiary, leaving Sveen's children to take the proceeds. Melin asserted that she should receive the proceeds based on the argument that the retroactive application of the Minnesota statute violated the Contracts Clause in the US Constitution.[9]

The U.S. District Court for the District of Minnesota granted summary judgment for the Sveen children, awarding them the insurance proceeds.[10] The court reasoned that the beneficiary of a life insurance policy has no vested interest in the policy until the insured dies.[11] Without a vested interest, Melin had no "protectable contractual relationship, and thus [there was] no impairment of contract."[12]

The U.S. Court of Appeals for the Eighth Circuit reversed and remanded.[13] The Eighth Circuit was bound by its decision in the *Whirlpool* case, in which the court found that a similar revocation-divorce statute in Oklahoma violated the Contracts Clause when applied retroactively.[14] The *Whirlpool* facts were virtually identical to those in Sveen, and the Eighth

Circuit found that in the *Whirlpool* case "[the policyholder] was entitled to expect that his wishes regarding the insurance proceeds, as ascertained pursuant to this then-existing law, would be effectuated."[15] The court found that the policyholder's ability to opt out of the law by predesignating his now ex-wife as the beneficiary of the policy did not resolve the constitutional issue because the statute's effect still "directly alter[ed]" expectations of the policyholder.[16]

BACKGROUND

Legislation usually applies only prospectively, ensuring people have fair warning of the law's demands.[17] In regards to legislation affecting contracts, the Constitution hardens the presumption of prospectivity into a mandate.[18] James Madison even acknowledged the "inconvenience" a categorical rule could sometimes entail "but thought on the whole it would be overbalanced by the utility of it."[19] The Court followed the absolute line construed the Contracts Clause in this light for many years.[20] However, the Clause also left room for legislatures to address changing social conditions, as long as substantive contractual rights are protected (The "Obligation of Contracts" that the Clause protects.)[21]

The Court must consider several factors when analyzing potential Contract Clause violations.[22] First, the question is whether the law "operated as a substantial impairment of a contractual relationship." Factors include "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights."[23] If a court finds substantial impairment of a contractual relationship, the court must then decide whether the law was "drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."[24]

This Supreme Court has recognized that when a State alters life insurance contracts by undoing their beneficiary designations it surely "substantially impairs" them. Holding that a law "displac[ing] the beneficiary selected by the insured … and plac[ing] someone else in her stead … frustrates" a scheme designed to deliver proceeds to the named beneficiary.[25]

But it should be noted that the legal system has often used default rules to resolve estate litigation in a way that conforms to decedents' presumed intent.[26] Courts reasoned that the average person would prefer that allocation to the one in the old will, given the intervening life

events.[27] Changes in society have brought about changes in the laws governing revocation of wills. From removing gender distinctions to enacting statutes giving a new spouse or child a specified share of the decedent's estate while leaving the rest of his will intact.[28] As divorce became more prevalent in the 1980s, the majority of States enacted revocation-on-divorce statutes,[29] treating an individual's divorce as voiding a testamentary bequest to a former spouse. Like the common-law rule, those laws rest on a "judgment about the typical testator's probable intent."[30]

States over time have extended their revocation-on-divorce statutes from wills to "will substitutes," such as revocable trusts, pension accounts, and life insurance policies.[31] Asserting that the typical decedent would no more want his former spouse to benefit from his pension plan or life insurance than to inherit under their will. So a decedent's failure to change his beneficiary probably resulted from "inattention," not "intention."[32]

CASE DESCRIPTION

The Contracts Clause restricts the power of States to disrupt contractual arrangements including insurance policies.[33] But not all laws affecting pre-existing contracts violate the Clause.[34]

In *Sveen* we must look to whether the State law has "operated as substantial impairment of a contractual relationship"[35] and if the law interferes with a party's reasonable expectations, preventing the party from safeguarding or reinstating his rights.[36] If such factors show a "substantial impairment", we then look to whether the State law is an "appropriate" and "reasonable" way to advance "a significant and legitimate public purpose."[37]

The Court held that Minnesota's revocation-on-divorce statute does not substantially impair pre-existing contractual arrangements. Melin argued, the "whole point" of buying life insurance is to provide the proceeds to the named beneficiary.[38] But three aspects of Minnesota's law, taken together, defeat Melin's argument that the change it effected "severely impaired" her ex-husband's contract.

First, the Minnesota statute furthers the policyholder's intent the drafters reasonably thought most typical. Legislatures have long made judgments about a decedent's likely testamentary intent after substantive life changes[39] (particularly divorce) and enacted statutes revoking

earlier-made wills by operation of law. This is because they accurately reflect the intent of most divorcing parties. “The insured’s failure to change the beneficiary after a divorce is more likely the result of neglect than choice. And that means the Minnesota statute often honors, not undermines, the intent of the only contracting party to care about the beneficiary term. The law no doubt changes how the insurance contract operates. But does it impair the contract? Quite the opposite for lots of policyholders.”[40]

Secondly, the Minnesota law is unlikely to upset a policyholder’s expectations at the time of contracting, because an insured cannot reasonably rely on a beneficiary designation remaining in place after a divorce. Divorce courts have wide discretion to divide property between spouses when a marriage ends, and here the insurance policy was not included in the Sveen-Melin divorce decree[41] even though it could’ve been.

Thirdly, the law puts in place a presumption about “what an insured wants after divorcing”. But if the presumption is wrong, the insured may overthrow it with the simple act of sending a change-of-beneficiary form to his insurer, or agree to a divorce settlement continuing his ex-spouse’s beneficiary status. “That action restores his former spouse to the position she held before the divorce – and in so doing, cancels the state law’s operation. The statute thus reduces to a paperwork requirement (and a fairly painless one, at that): File a form and the statutory default rule gives way to the original beneficiary designation.”[42]

The Court has held for many years that laws imposing such “minimal paperwork burdens” do not violate the Contracts Clause.[43] Importantly, here, when Sveen does not redesignate his ex-spouse as beneficiary, his right to insurance does not lapse, it is that his contingent beneficiaries (here, his children) receive the money.

Melin urged the Court to distinguish between two ways a law can affect a contract. She argued Minnesota law “operate[s] on the contract itself” by “directly chang[ing] an express term” (the insured’s beneficiary designation).[44] In contrast, the recording statutes “impose a consequence” for failing to abide by a “procedural” obligation extraneous to the agreement (the State’s recording or notification rule).[45] The difference, in Melin’s view, parallels the line between rights and remedies: The Minnesota law explicitly alters a person’s entitlement under the contract, while the recording laws interfere with his ability to enforce that entitlement against others.[46]

The Court rejected this argument stating that the Minnesota statute also "impose[s] a consequence" for not satisfying a burden outside the contract[47] as the law overrides a beneficiary designation only when the insured fails to send in a form to his insurer, and the laws above enable a party to safeguard those benefits by taking an action.

Justice Gorsuch, dissenting, followed a strict (Federalist)[48] interpretation of the constitution, stating that "[b]ecause legislation often disrupts existing social arrangements, it usually applies only prospectively. This longstanding and 'sacred' principle ensures that people have fair warning of the law's demands."[49] Further, that the Constitution hardens the presumption of prospectivity into a mandate with the Contracts Clause categorically prohibiting state from passing "*any* … Law impairing the Obligation of Contracts."[50]

CONCLUSION

The Supreme Court held that the retroactive application of a Minnesota statute that revokes spousal beneficiary designations in insurance policies upon the spouses' divorce does not violate the Contracts Clause of the United States Constitution. Determining two tests to this end. First, whether the state law has "operated as a substantial impairment of a contractual relationship," considering the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. Second, If such factors show a substantial impairment, is the state law drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose.

The Court concluded that Minnesota's law does not substantially impair pre-existing contractual arrangements. Stopping at the first step and citing three reasons for its conclusion: (1) the statute is unlikely to disturb any policyholder's expectations at the time of contracting because an insured cannot reasonably rely on beneficiary designation remaining in place after a divorce; (2) the statute is designed to reflect a policyholder's intent and to support the contractual scheme; and (3) the statute supplies a mere default presumptive rule, which the policyholder can undo at will.

The Supreme Court reversed the judgment of the Court of Appeals for the Eighth Circuit and remanded the case for further proceedings.

1. U.S. Const., Art. I, § 10, cl. 1. ↵
2. *Metro. Life Ins. Co. v. Melin*, 2016 WL 9000457 at *2 (D. Minn. Jan. 7, 2016). App. to Pet. for Cert. 9a-16a. ↵
3. 853 F.3d 410, 412 (2017). ↵
4. Justice Neil M. Gorsuch filed a dissenting opinion. ↵
5. Judgment and Decree in 14-cv-5015 (D Minn.), p. 51 (awarding Melin, among other things, a snowmobile and all-terrain vehicle). ↵
6. Minn. Stat. § 524.2-804, subdiv. 1 (2002). Note also revisions to the Uniform Probate Code (UPC) which expanded the application of its revocation-on-divorce provision from wills to revocable living trusts, life insurance policies, retirement accounts, transfer-on-death accounts, and similar accounts. *See* Unif. Prob. Code § 2-804 (2013). The provision also automatically revokes similar designations involving an ex-spouse's relatives (e.g., in-laws) and severs joint tenancy between spouses, changing property ownership to tenants in common. This expansion was an attempt to unify the law of probate and non-probate transfers." By 2018, 26 states had adopted the UPC revocation-divorce provision or a similar statute. ↵
7. *Metro. Life Ins. Co. v. Melin,* 2016 WL 9000457 at *2 (D. Minn. Jan. 7, 2016). ↵
8. *Id.* ↵
9. The Contracts Clause in the US Constitution restricts the power of States to disrupt contractual arrangements. It provides that "[n]o state shall … pass any … Law impairing the Obligation of Contracts." U.S. Const., Art. I, § 10, cl. 1. ↵
10. *Metro. Life Ins. Co. v. Melin*, 2016 WL 9000457 (D. Minn. Jan. 7, 2016). ↵
11. Unif. Prob. Code § 2-804 (2013). ↵
12. *Id.* ↵
13. *Metro. Life Ins. Co. v. Melin*, 853 F.3d 410 (2017). ↵
14. *Whirlpool Corp. v. Ritter*, 929 F.2d 1318 (8th Cir. 1991). ↵
15. *Id.* ↵
16. *Id.* ↵
17. *Reynolds v. McArthur,* 2 Pet. 417, 434, 7 L.Ed. 470 (1829); 3 H. Bracton, De Legibus et Consuetudinibus Angliae 530-531 (1257) (T. Twiss ed. 1880). It also "prevents majoritarian legislatures from condemning disfavored minorities for past conduct they are powerless to change." *See*, *e.g., Landgraf v. USI Film Products,* 511 U.S. 244, 266, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994); Vermeule, Veil of Ignorance Rules in Constitutional Law, 111 Yale L.J. 399, 408 (2001). ↵

18. The Contracts Clause categorically prohibits states from passing "*any* … Law impairing the Obligation of Contracts." Art. I, § 10, cl. 1 (emphasis added). Ensuring that all persons could count on the ability to enforce promises lawfully made to them — even if they or their agreements later prove unpopular with some passing majority. *Sturges v. Crowninshield,* 4 Wheat. 122, 206, 4 L.Ed. 529 (1819). Note that States may take otherwise unconstitutional action when "absolutely necessary," if "actually invaded," or "wit[h] the Consent of Congress." Cls. 2 and 3. ↵
19. Kmiec & McGinnis, The Contract Clause: A Return to the Original Understanding, 14 Hastings Const. L.Q. 525, 529-530 (1987). ↵
20. "Any legislative deviation… from a contract's obligations", "however minute, or apparently immaterial," violates the Constitution. *Green v. Biddle,* 8 Wheat. 1, 84, 5 L.Ed. 547 (1823). "All the commentators, and all the adjudicated cases upon Constitutional Law agree[d] in th[is] fundamental propositio[n]." *Winter v. Jones,* 10 Ga. 190, 195 (1851). ↵
21. *Ogden v. Saunders,* 12 Wheat. 213, 262, 6 L.Ed. 606 (1827). They could retroactively alter contractual *remedies,* so long as they did so reasonably. Sturges, at 200. And perhaps they could even alter contracts without "impairing" their obligations if they made the parties whole by paying just compensation. *See West River Bridge Co. v. Dix*, 6 How. 507, 532-533, 12 L.Ed. 535 (1848); El Paso v. Simmons, 379 U.S. 497, 525, 85 S.Ct. 577, 13 L.Ed.2d 446 (1965) (Black, J., dissenting). ↵
22. *Sveen*, *supra*, at 1821–1822, *citing Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). ↵
23. *Id.* at 1822. ↵
24. *Id*. ↵
25. *Hillman v. Maretta*, 569 U.S. 483, 494, 133 S.Ct. 1943, 186 L.Ed.2d 43 (2013) (*quoting Wissner v. Wissner*, 338 U.S. 655, 659, 70 S.Ct. 398, 94 L.Ed. 424 (1950). Justice Washington se, legislation "changing the objects of [the donor's] bounty … changes so materially the terms of a contract" that the law can only be said to "impair its obligation." *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 662, 4 L.Ed. 629 (1819) (concurring opinion). ↵
26. Kent, Commentaries on American Law 507, 512 (1830). In common law, marriage automatically revoked a woman's prior will, while marriage *and* the birth of a child revoked a man's. Or applying the laws of intestate succession (generally prioritizing children and current spouses) when controlling the estate's distribution. See 95 C. J. S., Wills §448, pp. 409–410 (2011); R. Sitkoff & J. Dukeminier, Wills, Trusts, and Estates 63 (10th ed. 2017). ↵

27. T. Atkinson, Handbook of the Law of Wills 423 (2d ed. 1953). If he'd only had the time, the thought went, he would have replaced that will himself. ↵
28. Sitkoff & Dukeminier, Wills, Trusts, and Estates, at 240. ↵
29. Ala. Code §30–4–17 (2016); Alaska Stat. §13.12.804 (2016); Ariz. Rev. Stat. Ann. §14–2804 (2012); Colo. Rev. Stat. §15–11–804 (2017); Fla. Stat. §732.703 (2017); Haw. Rev. Stat. §560:2–804 (2006); Idaho Code Ann. §15–2–804 (2017 Cum. Supp.); Iowa Code §598.20A (2017); Mass. Gen. Laws, ch. 190B, §2–804 (2016); Mich. Comp. Laws Ann. §700.2807 (West 2018 Cum. Supp.); Minn. Stat. §524.2–804 subd. 1 (2016); Mont. Code Ann. §72–2–814 (2017); Nev. Rev. Stat. §111.781 (2015); N. J. Stat. Ann. §3B:3–14 (West 2007); N. M. Stat. Ann. §45–2–804 (2014); N. Y. Est., Powers & Trusts Law Ann. §5–1.4 (West 2018 Cum. Supp.); N. D. Cent. Code Ann. §30.1–10–04 (2010); Ohio Rev. Code Ann. §5815.33 (Lexis 2017); 20 Pa. Stat. and Cons. Stat. Ann. §6111.2 (2010); S. C. Code Ann. §62–2–507 (2017 Cum. Supp.); S. D. Codified Laws §29A–2–804 (2004); Tex. Fam. Code Ann. §9.301 (West 2006); Utah Code §75–2–804 (Supp. 2017); Va. Code Ann. §20–111.1 (2016); Wash. Rev. Code §11.07.010 (2016); Wis. Stat. §854.15 (2011). ↵
30. *See,* n. 28 at 239. ↵
31. Langbein, The Nonprobate Revolution and the Future of the Law of Succession, 97 Harv. L. Rev. 1108, 1109 (1984). States followed the lead of the Uniform Probate Code, including revoking on divorce not just testamentary bequests but also beneficiary designations to a former spouse. See, §§2–804(a)(1), (b)(1), 8 U. L. A. 330, 330–331 (2013). Aiming to "unify the law of probate and non-probate transfers." §2–804, Comment; *Id*. at 333. ↵
32. Statement of the Joint Editorial Bd. for Uniform Probate Code, 17 Am. College Trust & Est. Counsel 184 (1991). ↵
33. U.S. Const., Art. I, § 10, cl. 1. *See*, *Keystone Bituminous Coal Assn. v. DeBenedictis,* 480 U.S. 470, 502-503, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987). But the Clause applies to any kind of contract. *See, Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 244-245, n. 16, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978). ↵
34. *El Paso v. Simmons,* 379 U.S. 497, 506-507, 85 S.Ct. 577, 13 L.Ed.2d 446 (1965). ↵
35. *Allied Structural Steel Co.,* 438 U.S. at 244 (1978). ↵
36. *See*, *Id.* at 246; *El Paso,* 379 U.S. at 514-515; *Texaco, Inc. v. Shor*t, 454 U.S. 516, 531 (1982). ↵
37. *Energy Reserves Group, Inc. v. Kansas Power & Ligh*t Co., 459 U.S. 400, 411-412 (1983). ↵
38. Brief for Respondent at 16. ↵
39. *Sveen*, *supra* at 1822. ↵
40. Justice Kagan, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, Ginsburg, Breyer, Alito, and Sotomayor, JJ., joined. ↵

41. Judgment and Decree in 14-cv-5015 (D Minn.), p. 51. ↵
42. *Id.* With only "minimal" effort, a person can "safeguard" his contractual preferences. *Texaco,* 454 U.S. at 531. And here too, if he does not "wish to abandon his old rights and accept the new," he need only "say so in writing." *Gilfillan,* 109 U.S. at 406. ↵
43. *Jackson v. Lamphire,* 3 Pet. 280, 7 S.Ct. 679 (1830). The Court rejected a Contracts Clause challenge to a New York law granting title in property to a later rather than earlier purchaser whenever the earlier had failed to record his deed. *See also*, *Vance v. Vanc*e, 108 U.S. 514, 2 S.Ct. 854, 27 S.Ct. 808 (1883), the Court upheld a statute rendering unrecorded mortgages unenforceable against third parties — even when the mortgages predated the law. And more recently, in *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982), the Court held that a statute terminating pre-existing mineral interests unless the owner filed a "statement of claim" in a county office did not "unconstitutionally impair" a contract. ↵
44. Brief for Respondent 51; Tr. of Oral Arg. 57. ↵
45. Brief for Respondent 51; Tr. of Oral Arg. 58. ↵
46. *See* Tr. of Oral Arg. 57-59. ↵
47. Brief for Respondent 51. ↵
48. *See,* The Federalist No. 7 (Alexander Hamilton), The Federalist No. 44 (Alexander Hamilton), The Federalist No. 84 (Alexander Hamilton) (*emphasis added*). ↵
49. *Reynolds v. McArthur,* 2 Pet. 417, 434, 7 S.Ct. 470 (1829); 3 H. Bracton, De Legibus et Consuetudinibus Angliae 530-531 (1257) (T. Twiss ed. 1880). It also prevents majoritarian legislatures from condemning disfavored minorities for past conduct they are powerless to change. See, *e.g., Landgraf v. USI Film Products,* 511 U.S. 244, 266, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994); Vermeule, Veil of Ignorance Rules in Constitutional Law, 111 Yale L.J. 399, 408 (2001). ↵
50. *See*, Brief amicus curiae of Professor James W. Ely, Jr. filed. (Distributed) In The Federalist No. 7., Charles Pinckney characterized Article I, section 10, as "the soul of the Constitution," insisting: "Henceforth, the citizens of the states may trade with each other without fear of tender-laws or laws impairing the nature of contracts." ↵

Posted by Steven J. Reading

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