

SCALIA, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 99–1529

DONNA RAE EGELHOFF, PETITIONER *v.* SAMANTHA
EGELHOFF, A MINOR, BY AND THROUGH HER NATURAL
PARENT KATE BREINER, AND DAVID EGELHOFF

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF WASHINGTON

[March 21, 2001]

JUSTICE SCALIA, with whom JUSTICE GINSBURG joins,
concurring.

I join the opinion of the Court, since I believe that the “relate to” pre-emptive provision of the Employee Retirement Income Security Act of 1974 (ERISA) is assuredly triggered by a state law that contradicts ERISA. As the Court notes, “the statute at issue here directly conflicts with ERISA’s requirements that plans be administered, and benefits be paid, in accordance with plan documents.” *Ante*, at 7. I remain unsure (as I think the lower courts and everyone else will be) as to what else triggers the “relate to” provision, which— if it is interpreted to be anything other than a reference to our established jurisprudence concerning conflict and field pre-emption— has no discernible content that would not pick up every ripple in the pond, producing a result “that no sensible person could have intended.” *California Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.*, 519 U. S. 316, 336 (1997) (SCALIA, J., concurring). I persist in the view that we can bring some coherence to this area, and can give the statute both a plausible and precise content, only by interpreting the “relate to” clause as a reference to our ordinary pre-emption jurisprudence. See *ibid.*