

No. 12-1351

IN THE
Supreme Court of the United States

MEDTRONIC, INC.,

Petitioner,

v.

RICHARD STENGEL AND MARY LOU STENGEL,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITIONER'S RESPONSE TO SUGGESTION OF DEATH

Petitioner Medtronic, Inc. agrees with respondent that the petition for a writ of certiorari continues to present a live case or controversy ripe for this Court's review. Respondent acknowledges that the "question presented . . . continues to apply to respondent's loss of consortium claim," which, under Arizona law, "survive[s] [Mr. Stengel's] death." Resp. Suggestion of Death 1-2. The Ninth Circuit considered respondent's loss-of-consortium claim, and held that it was not expressly or impliedly preempted. *See* Pet. App. 18a-21a. Moreover, as respondent further recognizes, if Mr. Stengel's son seeks leave to allege a wrongful-death claim, that claim will be subject to the same preemption defenses as Mr. Stengel's personal-injury claim. Resp.

Suggestion of Death 2 (citing *Diaz v. Magma Copper Co.*, 950 P.2d 1165, 1171 (Ariz. Ct. App. 1997)).

Respectfully submitted.

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