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Principal Purpose Organization; An Exercise in Statutory Interpretation and First Amendment Analysis

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Section 4(b) of ERISA excludes from the provisions of Title I of ERISA a church plan described in Section 3(33) of ERISA[1] unless an election is made under Section 410(d) of the Internal Revenue Code of 1986 (as amended, the "Code").[2] The primary focus of this article will be on ERISA Section 3(33)(C)(i), a provision described by Justice Kagan in *Advocate Health Care Network v. Stapleton*[3] as "a mouthful for lawyers and nonlawyers alike." The cases addressing it provide an interesting illustration of statutory

interpretation. For some, determining whether an organization is a "principal-purpose organization" does not turn on terms of art or terms created by statute, but rather interpretations of everyday words such as "organization," "established," "maintain," "administration," "purpose," and "function." For others, the determination is informed by the ERISA principles inherent in the words of the statute.

In *Advocate Health Care Network v. Stapleton*, the Supreme Court held in an 8-0 decision (Justice Gorsuch not participating) that an entity (in *Advocate Health*, each entity is a hospital system) that is not a church, but is controlled by or associated with a church, could have an employee benefit plan qualified for ERISA's church plan exemption, provided the plan is ". . . maintained by an organization . . . the principal purpose or function of which is the administration or funding of an employee benefit plan for the employees of a church . . ., if such organization is controlled by or associated with a church . . ." [4] The Supreme Court expressly, however, declined to address the scope of a "principal-purpose organization," such as what constitutes the requisite level of association with a church, or whether an internal benefits committee of a hospital could be found to be "maintaining," the hospital system's benefit plans.[5] Those issues were addressed by the Court of Appeals for the Tenth Circuit in *Medina v. Catholic Health Initiatives* [6] which found, based on the facts and documents in that case, that a hospital's internal benefits committee qualified as a principal-purpose organization such that the hospital system's benefit plan was exempt from ERISA as a church plan.

Under the Tenth Circuit's analysis, an employer entity seeking to use the church plan exemption for plans maintained by principal-purpose organizations must satisfy a three-prong inquiry. First, is the entity a tax-exempt, nonprofit organization associated with a church? Second, if the answer to the first question is yes, is the entity's retirement plan maintained by a principal-purpose organization (*i.e.,* is the plan maintained by an organization whose principal purpose is administering or funding [7] a retirement plan for the entity's employees, deemed to be "church" employees). Third, if the answer to the second question is yes, is the principal-purpose organization itself associated with a church? [8]

With respect to the first prong, ERISA provides that "an organization . . . is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches." [9] On the surface, the hospital system easily satisfied this prong for the Court of Appeals in *Medina*. According to the decision, Catholic Health Initiatives (CHI), the hospital system, was the alter ego of the canon law public juridic person,[10] Catholic Healthcare Federation (CHF). CHF was accountable

to the Vatican in several ways, including the Vatican having to approve any changes in CHF's purposes, transfer of real property above a certain amount, and dissolution. CHI's articles of incorporation provided that it was organized and operated for the benefit of, and to carry out the purposes of, CHF. The same persons serve as trustees of CHI and members of CHF. Additionally, CHI is listed in the Official Catholic Directory and the IRS considers any organization listed in the Official Catholic Directory "associated with" the Roman Catholic Church for purposes of ERISA's church plan exemption.

The plaintiffs, hospital employees, for this first prong, asked the Tenth Circuit to apply the tests set forth by the Fourth Circuit in *Lown v. Continental Casualty Company* [11] and by the Eighth Circuit in *Chronister v. Baptist Health.*[12] In these cases, also involving hospital systems, the courts analyzed three nonexclusive factors, looking to (1) whether the religious denomination plays any official role in the governance of the hospital system, (2) whether the hospital system receives assistance from the religious denomination, and (3) whether a denominational requirement exists for any employee or patient/customer of the hospital system.[13] The Tenth Circuit in *Medina* rejected the application of the *Lown* factors, stating that, while those factors would establish association with a church, those factors were much narrower than the broad language of ERISA Section 3(33)(C)(iv).[14] Furthermore, the *Medina* panel found the *Lown* and *Chronister* cases were easily factually distinguishable, because the healthcare organizations in both of those cases had officially disaffiliated from the Baptist Convention, while the *Medina* panel found that CHI was regarded as an official part of the Catholic Church.

With respect to the second prong of the *Medina* inquiry, because *Medina* involved a challenge to the hospital system's internal committee, the Tenth Circuit panel needed to address the meaning of "maintained" and "organization." With respect to the former, the Court of Appeals panel noted that ERISA does not define "maintain," and "when a term goes undefined in a statute, we give the term its ordinary meaning."[15] The panel looked to Black's Law Dictionary[16] and Webster's Dictionary and concluded that when ERISA provides that a church plan includes a plan maintained by a principal-purpose organization, it simply means that the internal committee "cares for the plan for purposes of operational productivity." [17] Furthermore, the *Medina* panel noted, the plan specifically delegated to its internal subcommittee the power to "maintain" the plan. The Tenth Circuit panel similarly looked to Black's Law Dictionary and Webster's Dictionary to conclude that an internal committee could be an "organization."

Other courts might have taken the statutory interpretation analysis a step further. That is, in determining the plain meaning of a statute, in

addition to the dictionary definition of a term, a court will often look to the design, object, and policy of a statute.[18] Furthermore, a court might not have construed the term "maintain" in ERISA Section 3(33) in isolation, as the *Medina* panel did, because a statute must be read as a whole in order to ascertain the meaning of the language in the context of the desired goals envisioned by Congress.[19] The Tenth Circuit decision set a very low bar for "maintaining" a plan, one that on its face is broad enough to include a third-party administrator. Application of these other principles of statutory construction, discussed more fully below, as an alternative approach to the second prong of the *Medina inquiry* would not necessarily have produced a different result in the Tenth Circuit, but it would have made its decision more persuasive.

With respect to the third prong of the inquiry, the Tenth Circuit in *Medina* concluded that if CHI is associated with the Catholic Church, it follows that its internal committee, a division of CHI, is also similarly associated. Furthermore, the decision found that language of the plan documents reinforced this conclusion. The plan's operating rules stated that the internal committee "shares common religious bonds with the Roman Catholic Church and the Sponsoring Congregations of Catholic Health Initiatives."

An alternate approach with respect to the second prong of the *Medina inquiry* would be to look to the definition of "maintain" in ERISA, as that is the statute from which the hospital systems are claiming exemption.[20] Under the ERISA coverage definitions, to "maintain" is generally defined to determine whether one of the entities permitted by the statute to sponsor a benefit arrangement (*i.e.*, an employer, an employee organization, or both) takes "sponsoring" actions such that the arrangement becomes an ERISA-covered employee benefit plan. To "maintain" often means funding a benefit arrangement (*i.e.,* actions as simple as the employer making contributions into a plan, or being obligated to make contributions). In other contexts, "maintain" means at least that the entity has virtual control over the plan, such as having the authority to terminate, in a manner different from entities that administer plans such as third party administrators. In fact, that is similar to the description given by the Supreme Court in *Stapleton:*

> . . . for various purposes ERISA treats the terms "establish" and "maintain" interchangeably. See, *e.g.,* §1002(16)(B) (defining the "sponsor" of a plan as the organization that "establishe[s] or maintain[s]" the plan) . . . Establishment of a plan, after all, is a one-time, historical event; it is the entity *maintaining* the plan that has the primary ongoing responsibility (and potential liability) to plan participants. See Brief

> for United States as *Amicus Curiae* 31; *Rose* v. *Long Island R. R. Pension Plan*, 828 F. 2d 910, 920 (CA2 1987), cert. denied, 485 U. S. 936 (1988) ("[T]he status of the entity which currently maintains a particular pension plan bears more relation to Congress' goals in enacting ERISA and its various exemptions . . . than does the status of the entity which established the plan . . .").[21]

The *Stapleton* opinion's text (not *dicta* as sometimes described), on the meaning of "establish or maintain" for purposes of the issue decided by that case, gives a specific ERISA-based meaning to the phrase that should be instructive for other uses of the phrase. It does not seem likely, should the "principle-purposes" cases reach the Supreme Court that the Supreme Court would ignore its own ruling and reasoning, or devise another meaning for "establish" or "maintain" for purposes of the "principle-purpose" definition. [22] Defining the maintenance of a plan in terms of the primary ongoing responsibility to plan participants, however, does not explicitly define the activities that constitute maintaining a plan, which might be the type of guidance that lower courts would seek if the Supreme Court were to address this issue.

The statutory approach was taken in *Rollins v. Dignity Health*,[23] where the district court for the Northern District of California applied the *Medina* three-prong inquiry, but reached a different conclusion.[24] In *Rollins*, the plaintiffs, also hospital employees, alleged that while an internal committee of the defendant employer, Dignity Health, also a hospital system, may administer the plan, it did not maintain it. The district court noted the language in *Advocate Health Care Network v. Stapleton* that "it is the entity maintaining the plan that has the primary responsibility (and potential liability) to plan participants."[25] The hospital employees' position was that the hospital system's internal subcommittee did not have "the primary ongoing responsibility (and potential liability) to plan participants" because it did not have the power to fund, continue and/or terminate the plan. The district court also noted the multiple uses of "establish" and "maintain" as paired terms in the definitional section of ERISA. With respect to the issue of whether an internal subcommittee of the hospital system could be a separate organization, the district court looked to the statutory language requiring that the organization be "a civil law corporation or otherwise." The district court's view was that the phrase "or otherwise" cannot simply encompass any possible entity, or else the statutory distinction would lose all meaning."[26]

Finally, the district court concluded that the hospital employees had plausibly alleged that *Dignity Health* was not associated with

a church, based on the *Lown* factors,[27] which the hospital system had urged the district court to reject. The hospital system, however, did not provide an alternative test and instead relied on the statutory language and the Oxford English Dictionary for purposes of establishing whether *Dignity Health* and its subcommittee were associated with a church.

The recent case of *Boden v. St. Elizabeth's Medical Center*,[28] decided by the district court for the Eastern District of Kentucky, followed and elaborated on the *Medina* analysis as interpreted by a district court in Illinois, *Smith v. OSF Health Care Systems,*[29] a decision that was subsequently vacated by the Seventh Circuit[30] (. . . we are not prepared, at this point, to commit ourselves to the *Medina* test, or at least to this district court's interpretation of *Medina)* as discussed further below.

With respect to the first *Medina* prong, the district court in *Boden* indicated that courts consider a number of factors in determining whether an employee benefit plan of an entity—particularly a health care entity—is exempt from ERISA as a church plan, in particular, whether the entity is associated with a church, including a church's recognition of the entity; the inclusion of language in key documents that evidence a relationship between the entity and a church; the presence of denominational requirements for board memberships, employees, or patients; a clear affiliation with a church through denominational chapels; evidence that the entity is guided by specific church religious principles; and requirements that certain decisions must be made by church leadership. In *Boden*, many of these factors were present, and the plaintiffs, hospital employees, did not question that the defendant employer, St. Elizabeth's Medical Center satisfied the first prong of the inquiry.

It was the second prong of the inquiry—the requirement that the hospital's retirement plan be maintained by a principal-purpose organization—that was the area to which the district court in *Boden* devoted most of its substantive attention. First, the hospital employees claimed that the internal committee that was assigned responsibility for the retirement plan by the Medical Center was not a principal-purpose organization because it was not a completely separate organization from the Medical Center. The district court disagreed. Although ERISA does not define the term "organization," the district court looked to the dictionary definition of organization and concluded that an organization was a group of persons with a specific purpose, and concluded that the committee satisfied this low bar to be an "organization."

The hospital employees next contended that even if the internal committee was such an organization, the committee did not "maintain" the plan. Here, the district court, while noting that the meaning of the term "maintain" has been explicated in other ERISA cases, did not look to that body of guidance because ERISA does not define the

term "maintain," for purposes of the church plan exemption.[31] Instead, the district court again looked to dictionaries, both legal and standard oriented, to conclude that "maintain" means ". . . to keep on an existing state; preserve from failure or inefficiency . . ." or to ". . . care for the plan for purposes of operational productivity. . ." In making this determination, after a lengthy analogy to what it means to "maintain" a library, the district court looked to the documents governing the pension plan for guidance and focused on the responsibilities delegated to the committee rather than its day-to-day functions, stating that the structure set out in the formal documents was more important than ". . . diving into the disputed facts . . ." The committee, for example, had a variety of powers and responsibilities including the determination of coverage, claims administration, plan interpretation, and oversight. The presence of these powers and responsibilities was sufficient to convince the district court that the committee was maintaining the plan within the meaning of ERISA 3(33), even though it was authorized to and did delegate several of its responsibilities, and even though the committee lacked the authority to amend or terminate the plan. Interestingly, it did not matter to the district court that the committee at issue only met a few times a year, and for few hours at each of those meetings, an issue that the Seventh Circuit believes may be of significance.[32]

Furthermore, although the *Boden* district court agreed with the employees that "maintenance" means more than administration, the district court distinguished the two terms. According to the district court, administration refers to steps taken to actively run the plan, such as evaluating benefit claims and paying out benefit claims. In contrast, the term "maintenance" is broader, connoting all things necessary to ensure the continuation of the plan. The district court also distinguished between the principal functions of an organization and the principal purpose. According to the district court, the day-to-day activities of an organization relate to the principal function of an organization, which had been largely delegated, while the principal purpose focuses on the duties and responsibilities set forth in plan documents. Finally, the district court rejected the employees' argument that only one organization can maintain a plan, and in this case that was their employer, St. Elizabeth's Medical Center. The district court disagreed, concluding that ERISA Section 3(33) did not preclude two organizations from maintaining a plan. Consequently, the district court concluded that the second prong of the three-prong *Medina* inquiry was satisfied.

The third *Medina* prong—establishing that the principal-purpose organization was associated with a church—was easily resolved by the district court because it had already concluded that St. Elizabeth's Medical Center was associated with a church, and therefore, the

committee, an internal subset of St Elizabeth's, *ipso facto* must also be associated with a church. The district court also reasoned that committee members had to believe in and follow the teachings of the Catholic Church and administer the plan in accordance with the tenets of the Catholic Church.

The district court's analysis thus agreed with St. Elizabeth's Medical Center that its plan met the terms of the ERISA church plan exemption pursuant to the Supreme Court's analysis in *Stapleton* and the Tenth Circuit's test set forth in *Medina.*

A recent decision by a panel of the Court of Appeals for the Seventh Circuit, in *Smith v. OSF Health Care Systems*,[33] suggests a more nuanced analysis than the *Medina* approach or, perhaps more precisely, the *Medina* approach, as interpreted by some district courts. The Seventh Circuit in *Smith v. OSF* reversed the lower court's summary judgment and laid out guidance for the court to follow on remand in resolving this church plan dispute. Because of the posture of the case, the Seventh Circuit was limited to providing only *dicta* on the applicability of the church plan exemption, but its reasoning is helpful to understand possible future limits and scope of the church plan exemption. In *Smith v. OSF,* over an 8-year period, the defendant hospital system's internal committee met for a combined period of seventy minutes. Thus, according to the plaintiffs, hospital employees, all of the functions of benefit plan maintenance and administration were performed by the hospital system itself, and therefore the hospital system, not its internal committee was "maintaining" the plan.

In *Smith v. OSF*, the Seventh Circuit panel held that the district court should not have granted summary judgment to the hospital system without allowing the hospital employees sufficient additional discovery to determine what the committee actually did during that seventy minutes, and should not have granted summary judgment without determining whether the committee actually maintained the benefit plan within the meaning of ERISA Section 3(33)(C)(i). The Seventh Circuit decision noted that the relevant documents established that the committee was intended to administer the plan, but that the structure on paper does not satisfy the requirements of the church plan definition. According to the panel's decision, a reading of ERISA Section 3(33)(C)(i) might reasonably be read to imply that a principal-purpose organization must actually administer the plan,[34] although the decision did not provide guidance to the district court as to the least level of activity that would be required to satisfy this bar.

The *Smith v. OSF* decision also highlighted that the "principle-purpose" requirement must be viewed in the context of the exemption and that excessive delegation of plan functions back to the hospital system

could amount to a failure of the committee to maintain the plan, " . . . a concept which in its ordinary meaning encompasses, but is not necessarily limited to, 'administration or funding'- as required by the statute." The decision made this point by again going to ERISA for definition and emphasizing the importance of differentiating an organization that has as its principal purpose the administration or funding of the plan and therefore is permitted under the statute to maintain the plan, from the secular entity, here a hospital system which, even if itself is associated with the Church, is not permitted to maintain the plan because its "principal purpose" is not administering the plan, but is the enterprise that employs the people who participate in the plan.[35]

The plaintiff employees in all of these hospital cases raised an interesting alternative approach to the availability of the church plan exemption, suggesting that meeting the definition of an organization would require a wholly independent body, constituted with the principal purpose of administering or funding a retirement plan, and endowed with the power to modify or terminate the plan. Commenting on that structure, the Tenth Circuit in *Medina* indicated "there may be some organization out there that is structured like that, but it certainly is not the most intuitive way to do it. Also, it is not clear what the advantage of such a structure would be, or why Congress could have required it."[36]

The Seventh Circuit concurred with this portion of the *Medina* decision, but strongly suggested that the *Medina* approach on what it means to "maintain" a plan, at least as *Medina* was interpreted by the district court in *Smith v. OSF*, was inadequate for the statutory purpose it was intended to serve.

It remains to be seen whether other federal courts will apply the same analysis to determine whether an organization is a principal-purpose organization as the Tenth Circuit in *Medina*, or whether other courts might tweak the analysis in a manner similar to that suggested in *dicta* by the Seventh Circuit in *Smith v. OSF Health Care System.*

Although it has obtained little traction for a variety of reasons[37] and appears unlikely to succeed,[38] an unrelated challenge to the church plan exemption is that it violates the Establishment Clause of the First Amendment.[39] First, a party challenging the constitutionality of the church plan exemption must have constitutional standing, and the Supreme Court has held that the injury in fact component of constitutional standing[40] applies to challenges to the Establishment Clause.[41] Applying this principle, the district court in *Sanzone v. Mercy Hospital*[42] held that the plaintiff hospital employees lacked standing to challenge the church plan exemption as a violation of the Establishment Clause in the absence of specific allegations that they would have a better-funded pension plan if the church plan exemption did not apply.[43]

The second preliminary issue is the constitutional avoidance doctrine.[44] As the Supreme Court stated in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*,[45] "Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress."[46] Applying the constitutional avoidance doctrine in the church plan context, any constitutional challenge by hospital employees is premature until a determination of church plan status is made.[47] That is, a party's Establishment Clause challenge is relevant only if a district court first determines that the plan is a church plan,[48] and the constitutional challenge[49] does not need to be addressed if a court finds that the church plan exemption does not apply.[50]

In response to plaintiff hospital employees'[51] Establishment Clause challenge, the Tenth Circuit in *Medina v. Catholic Health Initiatives*[52] followed the tripartite test from *Lemon v. Kurtzman*:[53] "As that test is applied in the Tenth Circuit, a government action does not violate the Establishment Clause if: "(1) it has a secular purpose,[54] (2) its principal or primary effect is one that neither advances nor inhibits religion, and (3) it does not foster an excessive government entanglement with religion. We interpret the first and second prongs of the *Lemon* test in light of Justice O'Connor's endorsement test. That is, we ask whether the government's actual purpose is to endorse or disapprove of religion, and whether, irrespective of government's actual purpose, the practice under review conveys a message of endorsement or disapproval. We evaluate the government's actions from the perspective of a reasonable observer, who is aware of the history, purpose, and context of the act in question."[55] A governmental action violates the Establishment Clause if it fails any of the three prongs.[56]

With respect to the first prong of the *Lemon* test—the secular purpose—the issue was whether the challenged government action was motivated by an intent to endorse religion.[57] In finding that the first prong was satisfied, the Tenth Circuit in *Medina* noted that there was nothing in the text of ERISA Section 3(33) showing an intent by Congress to favor one or all religions, and there was a plausible secular purpose, namely avoiding entanglement with religion.[58] As the Supreme Court stated in *Walz v. Tax Commission of New York City*,[59] a general exemption "simply sparing the exercise of religion" from a regulatory burden is not a "foot in the door" leading to an established church in violation of the Constitution.[60] With respect to the second prong of the test, the *Medina* decision concluded that ERISA's church plan exemption did not have the principal or primary effect of advancing religion, nor does exempting religious organizations from complying with a regulatory scheme

convey an impermissible message that religion is favored or preferred.[61] In this regard, the Supreme Court stated in *Walz* that "establishment" of religion, as understood by the drafters of the Establishment Clause, "connote[d] sponsorship, financial support, and active involvement of the sovereign in religious activity,"[62] none of which were found by *Medina* to be present under the ERISA church plan exemption. With respect to the third prong, the *Medina* panel concluded that "far from entangling the government in the affairs of religious institutions, the church plan exemption avoids the entanglement that would likely result in its absence."

CONCLUSION

If the arrangement in *Smith v. OSF* is ultimately held by the district court, or the Court of Appeals for the Seventh Circuit, not to be a church plan, there arguably will be a conflict between the Seventh Circuit and the Tenth Circuit that the Supreme Court could address to provide guidance with respect to the "principal-purpose" issue, although there is some question as to how the Tenth Circuit would have concluded had it been asked to address the fact pattern presented to the Seventh Circuit. Therefore, even if the decisions of the two Circuits were arguably in conflict, the Supreme Court might deem it worthwhile for this issue to be further addressed by lower courts before granting *certiorari*. Another approach for addressing this issue would be that suggested by Ms. Morrison, namely, for Congress to revisit the issue and provide a multifactor test for establishing whether an employee benefit plan qualifies for the church plan exemption.

NOTES

1 The parallel citation is 29 USC 1003(33). The initial enactment in 1974 only provisionally permitted secular church employees, at the time primarily nurses and teachers, to remain participants in a church's plan, with participation "sun setting" in 1980, and similarly the IRS read the initial enactment to apply only to "steeple" church organizations focused on worshipful or priestly activities. *See* General Counsel Memorandum 37266 (September 22, 1977). Congress retroactively amended and expanded the church plan exemption in Section 407 of the Multiemployer Pension Plan Amendments Act of 1980, P.L. 96-364, 94 Stat. 1208 (1980). After the 1980 amendment, the IRS revoked the 1977 memorandum in General Counsel memorandum 39007 (July 1, 1983). For additional discussion of the background of the 1980 amendment, *see* Emily Morrison, "Revisiting ERISA's Church Plan Exemption after *Advocate Health Care Network v. Stapleton*," 111 Northwestern Law Review, 1282, 1288–1291 (2017) (hereinafter Morrison, Revisiting ERISA's Church Plan Exemption).

2. Code Section 410(d) permits a church plan to make an irrevocable election to have certain provisions of the Code and ERISA apply to church plans. The procedures for making such an election are set forth in Treasury Regulation Section 410.1(d)-1(c).
3. 581 U.S.____, 137 S. Ct. 1652 (2017).
4. ERISA Section 3(33)(C)(i).
5. *Id*. at 1657, n.2 and 1658, n.3.
6. 877 F. 3d 1213 (10th Cir. 2017).
7. In most church plan cases involving an internal committee of the entity whose employees are covered by the plan, the relevant issue will be whether the internal committee is maintaining the benefit plan by administering the plan, rather than funding the plan.
8. *Id*. at 1222.
9. ERISA Section 3(33)(C)(iv).
10. *See* Morrison, "Revisiting ERISA's Church Plan Exemption," *supra*, note 1.
11. 238 F. 3d 543 (4th Cir. 2001).
12. 442 F. 3d 648, 653 (8th Cir. 2006). *Chronister* was reversed on other grounds in *Chronister v. Unum Life Insurance Co. of America*, 563 F. 3d 773 (8th Cir. 2009). The standard for determining whether an employee benefit plan is a church plan, however, is left undisturbed. The plans in *Lown* and *Chronister* were long term disability plans, rather than pension plans. Morrison, "Revisiting ERISA's Church Plan Exemption," *supra*, note 1.
13. 238 F. 3d at 548.
14. *See also* Suzanne K. Skinner, "The ERISA Church Plan Exception: Why the *Lown* Test is Improperly Narrow," 10 University of Pennsylvania Journal of Business and Employment Law 741 (2008).
15. *Taniguchi v. Kan. Pac. Saipan, Ltd*., 566 U.S. 560, 566 (2012).
16. The Court of Appeals for the Eleventh Circuit also looked to Black's Law Dictionary for the meaning of "establish" or "maintain" in the context of ERISA Section 3(1) in *Anderson v. Unum Provident Corp*., 369 F. 3d 1257 (11th Cir. 2004), but then applied a 7-factor test to determine, consistent with the Black's Law Dictionary definition, whether, in the ERISA context, the employer was "maintaining" the plan.
17. Black's Law Dictionary 1039 (9th ed. 2009).
18. *Crandon v. United States*, 494 U.S. 152, 158 (1990).
19. *King v. St. Vincents Hospital*, 502 U.S. 215 (1971).
20. In footnote 4 in *Medina*, the Tenth Circuit explained that it was interpreting the term "maintain" alone, stating it was taking no position on what "maintain" might mean in other provisions of ERISA, in which context could provide a different answer. Other courts may disagree, given that in the ERISA coverage provisions, ERISA 3(1), 3(2), the two terms are used together, and the *Stapleton* opinion describes the term "maintain," in ERISA 3(33) as often interchangeable with "establish."
21. 137 S. Ct. at 1661.
22. Some courts have relied on the caveat in footnote 2 of *Stapleton* to justify using the dictionary definition of the term "maintain" instead of using the definition expressed in *Stapleton. See infra,* note 28 and following text (describing the *Boden* decision). Other courts may read the caveat more narrowly—that the *Stapleton* footnote 2 does not foreclose using the definition

stemming from years of ERISA interpretation, but only indicates that the Court expresses no view on two other issues not before the Court—whether the hospital systems had sufficient association with a church, and whether the systems' internal committees counted as principle-purpose organizations.

23. 338 F. Supp. 3d 1025, 1035 (N.D. Cal. 2018). The *Rollins* case was subsequently settled by the parties so we will not have the benefit of the Ninth Circuit's view. Another "principal-purpose" case was settled by the parties after the district court denied the hospital's motion to dismiss. *Owens v. St. Anthony's Medical Center*, ___F.Supp.3d___, 2018 WL 4682337, 2018 EBC 357,350 (N.D. Ill 2018). A similar "principal-purpose" case was also settled by the parties while an appeal by the hospital employees from an adverse decision was pending. *Feathers, Bierman & Pratt v. SSM Health*, ____F.Supp.3d _____, 2018 WL 3536613 (E.D. Mo. 2018).
24. The difference between the two cases is attributable in part to the procedural posture. In *Medina*, the Court of Appeals was reviewing the district court's granting of the defendant's summary judgment motion, while in *Rollins* the district court was addressing defendant's FRCP 12(b)(6) motion to dismiss. On a summary judgment motion, a court considers the party's evidence, while on a 12(b)(6) motion the court is limited to the allegations in the complaint. The court in *Rollins* indicated that application of the statute to the facts learned in discovery might clarify the statute's meaning. The district court's statement is a technically correct statement although it is not clear how significant a factor that was for the *Rollins* court in distinguishing *Medina*.
25. 137 S. Ct. at 1661. As the district court noted in *Rollins*, the Supreme Court in *Stapleton*, however, expressly did not consider whether a plan is maintained as a church plan for purposes of ERISA Section 3(33).
26. 338 F. Supp. 3d at 1037. The Seventh Circuit in *OSF v. Smith*, 933 F. 3d 859 (7th Cir. 2019) disagreed, finding that the phrase "otherwise" was simply capacious and did not require any particular structure.
27. *See, supra*, notes 11 and 12 and accompanying text.
28. ____F. Supp.3d____, 2019 WL 3338850 (E.D. Ky. 2019).
29. 733 F. Supp. 3d 733(S.D. Ill. 2018).
30. 933 F. 3d 859 (7th Cir. 2019).
31. The district court also rejected using any part of the *Stapleton* statutory analysis for guidance because the Supreme Court had explicitly not addressed the definition of a principal-purpose organization. In contrast, the district court in *Rollins* considered language in *Stapleton* in determining the meaning of "maintain."
32. *See* note 33, *infra,* and accompanying text.
33. 933 F.3d 859 (7th Cir. 2019).
34. 933 F.3d at 870. The *Rollins* district court decision criticized the *Medina* decision and also suggested that some degree of plan administration might not be sufficient. Looking at how the term "maintain" is "paired" in ERISA with the term "establish," according to the decision, " . . . suggests a degree of responsibility not found in the word 'administer.'" 338 F. Supp. 3d at 1036.
35. 933 F.3d at 869.
36. It is difficult to understand the *Medina* court's view because the legislative history of ERISA 3(33)(C)(i) is replete with descriptions of independent principal-purpose

organizations—organizations described as boards of denominations created to maintain employee benefit plans for multiple congregations within the denomination. The Supreme Court in *Stapleton* noted the existence and advantages of such organizations, although the Court declined to make this definition exclusive for purposes of ERISA. The circumstances under which it is appropriate to take legislative history into account in interpreting a statute and the weight to be given to that legislative history are beyond the scope of this article. In *Stapleton*, the Supreme Court, however, stated, quoting *NLRB v. SW General, Inc*., 580 U.S.___, 137 S. Ct. 929, 943 (2017), that "excerpts from committee hearings and scattered floor statements by individual lawmakers" are "among the least illuminating forms of legislative history.". 137 S. Ct. at 1661.

37. The Seventh Circuit in *Smith v. OSP, supra,* stated: We have not forgotten Smith's Establishment Clause argument which she presents as an as-applied challenge. Because the factual picture remains too underdeveloped to decide even the application of the statute, we do not address the constitutional question now. Those issues can await further development. 933 F.3d at 870, footnote 4. *See infra* note 52 and accompanying text (*Medina* decision rejected the hospital employees' Establishment Clause challenge).
38. *See* Suzanne K. Skinner, "The ERISA Church Plan Exception: Why the *Lown* Test is Improperly Narrow," *supra* note 14 (There is a legitimate argument to be made for the idea that the ERISA Church Plan exception as a whole is unconstitutional.).
39. The First Amendment to the United States Constitution provides in relevant part that ". . . Congress shall make no law respecting the establishment of religion." Earlier courts that upheld the constitutionality of the church plan exemption include *Fischbach v. Cmty. Mercy Health Partners*, _____F.Supp.3d_____, 2012 WL 4483220 (S.D. Ohio 2012) and *Welsh v. Ascension Health*, _____F.Supp.3d____, 2009 WL 1444431 (N.D. Fla. 2009).
40. The other elements of constitutional standing under Article III are a sufficient causal connection between the injury and the conduct complained of and the likelihood that the injury can be redressed by a favorable court decision. *Spokeo, Inc. v. Robbins*, 578 U.S._____, 136 S. Ct. 1540 (2016).
41. *Valley Forge Christian College v Americans United for Separation of Church and State, Inc*., 454 U.S. 464, 489–90, cited in *Sanzone v. Mercy Hospital*, 326 F.Supp.3d795 (E.D. Mo. 2018), appeal pending (No 18-3574)(8th Cir. 2019).
42. *See also Overall v. Ascension*, 23 F. Supp. 3d 816,833 (E.D. Mich. 2014) (dismissing an Establishment Clause challenge to the church plan exemption because the allegations are "simply generic recitations of perceived harm"); and *Feathers, Bierman & Pratt v. SSM Health*, ____F.Supp.3d _____, 2018 WL 3536613 (E.D. Mo. 2018) (same).
43. A primary justification for the constitutional avoidance doctrine is to avoid unnecessary constitutional decisions. *See Rust v. Sullivan*, 500 U.S. 173, 190–191(1991), quoted in *Rollins v. Dignity Health*, 830 F.3d 700 (9th Cir. 2016), *reversed on other grounds in Advocate Health System v. Stapleton, supra note 3.*
44. 485 U.S. 568 (1988).
45. *Id.* at 575, quoted in *Martinez-Gonzalez v. Catholic Schools of Archdiocese of San Juan Pension Plan*, et al., 235 F. Supp. 3d 334 (D.P.R. 2017). *See also New Austin Municipal Utilities District No. One v. Holder*, 557 U.S. 193, 2005 (2009), quoting *Escambia County v. McMillan*, 466 U.S.

48, 51 (1984) (It is a well established principle governing the prudent exercise of [the federal court's] jurisdiction that normally the court will not decide a Constitutional question if there is some other ground upon which to dispose of the case.) and *St. Martin Evangelical Church v. South Dakota*, 451 U.S. 772, 780 (1981) (A statute, of course is to be construed, if such a construction is fairly possible, to avoid raising doubts of constitutionality.).

46. *Sheedy v. Adventist Health System*,___F. Supp 3d. ___, 2018 WL 3538441 (M.D. Fla. 2018).
47. *Rollins v. Dignity Health*, 338 F. Supp. 3rd 1025 (N.D .Cal. 2018). *See also Stapleton v. Advocate Health Care Network*, 817 F. 3d 517 (7th Cir.2016), *reversed on other grounds*, 581 U.S.___,137 S.Ct. 1652 (2017) (not necessary to address the constitutional issue, because the statutory interpretation that Defendant's plan was not a church plan provided Plaintiff with all the relief requested).
48. *See* Morrison, "revisiting ERISA's Church Plan Exemption," note 93, noting that defendants as well as plaintiffs raise constitutional arguments in church plan litigation.
49. *Owens v. St. Anthony's Medical Center*, _____F.Supp.3d_____, 2015 WL 3819086 (N.D. Ill. 2015). *See supra* note 23 (case settled before trial).
50. In many of these cases, both plaintiffs and defendants are making Establishment Clause challenges. The position of the defendants is that if there is no church plan exemption, then the government will be impermissibly entangled in the affairs of the church. In *Medina v. Catholic Health Initiatives*, *supra*, the Court of Appeals for the Tenth Circuit stated, arguably in *dicta*, that "we are persuaded that subjecting religious organizations to ERISA would foster impermissible entanglement."
51. 877 F. 3d 1231 (10th Cir. 2017).
52. 403 U.S. 602 (1971). The Supreme Court has concluded that comparable exemptions for religious institutions from similarly complex and detailed regulatory schemes are constitutional. *See, e.g.*, *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987) (upholding an amendment to Title VII of the Civil Rights Act of 1964 providing an exemption for religious organizations regarding discrimination in employment on the basis of religion, even in their secular nonprofit activities); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (recognizing a "ministerial exception" from antidiscrimination laws to accommodate the ability of religious employers to select who will convey the church's message and carry out its mission); and *Cutter v. Wilkinson*, 544 U.S. 709 (2005) (upholding Section 3 of the Religious Land Use and Institutionalized Persons Act that limits the government's ability to impose burdens of prisoners' religious practices as a 'permissible legislative accommodation of religion that is not barred by the Establishment Clause').
53. Having just one secular purpose is sufficient to pass the *Lemon* test. *Mayle v. United States*, 891 F. 3d 680, 685–686 (7th Cir. 2018). As the Seventh Circuit panel commented on the first prong of the *Lemon* test in that case, the issue was whether the challenged conduct was done for a "religious purpose or, put differently, whether its inclusion lacks a secular objective."
54. *Field v. City of Tulsa*, 753 F. 3d 1000, 1010 (10th Cir. 2014).
55. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).
56. *Am. Atheists, Inc. v. Davenport*, 637 Fed. 1095, 1118 (10th Cir. 2010).
57. The Supreme Court affirmed this position in *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335 (1987): "Under the *Lemon* analysis,

it is a permissible legislative purpose to alleviate significant government interference with the ability of religious organizations to define and carry out their religious missions." *See also* Morrison, "Revisiting ERISA's Church Plan Exemption," *supra* at 1310 (the root of the church plan exemption demonstrates that Congress intended to prevent government entanglement with religion.)

58. 397 U.S. 664 (1970).
59. *Id*. at 673–74,678.
60. Statutes that give special consideration to religious groups are not per se invalid. *Smith v. OSF Healthcare System*, 349 F.Supp.3d at 744, *rev'd and remanded on other grounds*, 933 F. 3d 859 (7th Cir. 2019).
61. 877 F.3d at 1233.
62. 397 U.S. at 668.