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Supreme Court Broadly Interprets the Scope of ERISA's Church Plan Exemption

In a June ruling, the high court held that a plan maintained by an organization that is affiliated with a church qualifies as a church plan regardless of who established it, and is thus exempt from ERISA.

BY STEPHEN ROSENBERG AND CAROLINE FIORE

In 1974, when the Employee Retirement Income Security Act was enacted, the federal statute exempted "church plans" from its regulation of employee benefit plans. For practical purposes, this exemption meant that a church plan, defined as a "plan *established and maintained* ... for its employees ... by a church," was exempt from complicated ERISA rules and regulations which protect plan participants and guarantee plan solvency.

Shortly after the legislation was passed, the IRS held that the exemption did not reach hospitals established by an order of Catholic nuns because such hospitals did not involve religious functions. Consequently, in 1980, Congress amended ERISA to augment the definition of church plan, and thus the breadth of the exemption, to state that "[a] plan *established and maintained* for its employees ... by a church" also "includes a plan *maintained* by an organization ... the principal purpose ... of which is the administration or funding of [such a] plan ... for the employees of a church..., if such organization is controlled by or associated with a church."

However, the 1980 amendment drew a peculiar and perplexing line between plans that are exempt and those that are not. While the amendment initially quotes the original 1974 language regarding the definition of a church plan (which states that is a "plan established and maintained" by a church), it further provides that this definition includes a "plan maintained ... by an organization" that is associated with a church. The amendment, by its plain language, created a conundrum under which a church plan must be both established and maintained by a church, yet somehow includes church-affiliated plans which need only be "maintained" by the church-affiliated organization.

For years after the 1980 amendment was passed, the IRS, Department of Labor and Pension Benefit Guaranty Corporation, which are the federal agencies mandated to administer ERISA, interpreted the statutory provisions at issue as exempting defined benefit plans offered by non-profits that run hospitals and other health care facilities affiliated with religious organizations. According to the agencies, the original definition of a church plan was expanded by the 1980 amendment in order to include any plan maintained by those types of affiliated organizations, regardless of whether a church initially established the plan or it was instead initially established by the affiliated organization — such as a hospital — itself. Federal agencies have applied this interpretation in hundreds of private letter rulings and opinion letters issued since 1982.

SUPREME COURT'S JUNE DECISION

There has been a spate of litigation in recent years challenging the three agencies' interpretation of the pertinent ERISA statutory provisions regarding the original definition, as well as the subsequent expanded definition, of "church plan." After extensive examination and analysis, however, federal trial and appellate courts arrived at inconsistent conclusions regarding the meaning of the church plan exemption. Given the financial stakes at issue and the inconsistent outcomes in the courts, it always appeared to be simply a matter of time before the Supreme Court accepted one of those appellate decisions for review.

In Advocate Health Care Network v. Stapleton (137 S.Ct. 1652 (2017)), the Supreme Court considered three different cases in which current and former employees of hospitals filed class actions alleging that their employer's pension plans did not fall within the scope of ERISA's church-plan exemption. The main crux of the employees' argument in the three cases was that the pension plans were not established by a church; the employees argued that ERISA, as amended, requires that all "church plans" originally be established by a church, and that the 1980 amendment to the definition of "church plans" did not mean that pension plans that were, instead, established directly by a hospital, or other entity affiliated with a religious organization, could also qualify for the exemption.

The federal district courts in the three cases consolidated for review by the Supreme Court all originally agreed with the interpretation offered by the employees, *i.e.*, that the amended definition permits organizations affiliated with religious entities to *maintain* such plans in lieu of the church or other religious institution itself doing so, but did not alter the requirement that the religious entity *establish* the pension plan in the first instance.

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Subsequently, the Courts of Appeals for the 3rd, 7th and 9th Circuits affirmed the decisions issued by the district courts. (See *Kaplan v. Saint Peter's Healthcare System*, 810 F.3d 175 (3rd Cir.2015); *Stapleton v. Advocate Health Care Network*, 817F.3d 517 (7th Cir.2016); *Rollins v. Dignity Health*, 830 F.3d 900 (9th Cir.2016).)

The petitioners before the Supreme Court in *Advocate Health Care Network* identified themselves as church-affiliated non-profit organizations that run hospitals, as well as other health care facilities, and offer their employees DB plans. Their adversaries on the other side of the case were current and former hospital employees.

Parties' Positions

Both sides agreed that a "church plan" need not be maintained by a church, but could also be maintained by an affiliated organization and still qualify for the church plan exemption. However, the parties disagreed regarding whether a plan maintained by such an affiliated organization must still have been originally established by the religious entity itself to qualify for the church plan exemption. The hospitals answered in the negative, arguing that Congress amended the exemption for the specific purpose of including *all* pension plans maintained by an organization, such as a hospital, affiliated with a religious entity, regardless of who originally established — or, in other words, created — the pension plan.

On the flip side, the employees answered that the plain text of the 1980 amendment states that a pension plan can be maintained by either, but only established in the first instance by a church.

Oral Argument

The argument before the Supreme Court focused on the seeming oddity of the language chosen by Congress for expanding the church plan definition in 1980, as well as on the costs to the church-affiliated plans if the employees were correct that the plans were not subject to the exemption. During oral argument, several justices focused on the confusion caused by the statutory amendment, noting that it could have been drafted more explicitly. Justice Kagan noted that, "[t]here would be a simple way of accomplishing what [the hospitals] think this provision accomplishes ... [i]t's very odd language, this statutory language, and I'm wondering why you think that Congress chose to do what you think it chose to do in this perplexing way rather than in a straightforward way."

It was also clear during oral argument that the justices were concerned about the adverse financial consequences of ruling against the health care providers. Counsel for the hospitals argued that the employees' complaints sought penalties from her clients of $66 billion. Furthermore, the justices appeared concerned about retroactively imposing such liabilities on the hospitals after they had

relied, in good faith, on the federal agencies' own view that the plans fell within the scope of the church plan exemption. In fact, Justice Kennedy expressly asked, "aren't there hundreds of IRS letters approving [these plans]?" Justice Kennedy went on to note that this fact "shows that an entity that had one of these plans ... where there was doubt was proceeding in good faith with the ... assurance of the IRS that what they were doing was lawful."

A Unanimous Decision

The Supreme Court issued its decision in *Advocate Health Care Network* on June 5, 2017, siding with the hospitals and holding that a plan maintained by an organization, such as a hospital, that is affiliated with a church qualifies as a "church plan," regardless of who established the pension plan in the first instance, and is thus exempt from the strictures of ERISA.

Justice Kagan wrote the opinion for a unanimous court — a rarity these days — reversing the judgments of all three Courts of Appeals, while Justice Sotomayor filed a concurring opinion. Justice Kagan's opinion for the Court acknowledges the unwieldy nature of the text of the 1980 amendment, but finds that the most rational interpretation of the language is that Congress intended to place such plans within the scope of the exemption regardless of whether a church, or its affiliated entity, originally established the pension plan at issue.

The opinion rests on the statutory language itself, finding that it means simply that a church plan is "a plan established and maintained ... by a church," and that a "plan established and maintained ... by a church" must be understood to also "include[] a plan maintained by [an] organization" affiliated with a church. In other words, Justice Kagan and the Court concluded that the exemption expressly applies to any pension plan "established and maintained" by a church, and that Congress, by its 1980 amendment, meant only to bring within the definition of "established and maintained" by a church any plan maintained by a church's affiliated entity, without regard to who originally established it.

The Court concluded that, although the language of the 1980 amendment could conceivably be interpreted otherwise, the most reasonable and logical conclusion was that Congress, in passing the statutory amendment, did not want to create a requirement that a church must have originally established the pension plan of the affiliated entity, such as a hospital, for the plan to be exempt from regulation under the church plan exemption.

Justice Sotomayor, in her concurrence, noted that she joined the Court's opinion because she agreed that the statutory text in question compelled the Court's conclusion. However, she wrote separately because she was troubled by both the relative paucity of convincing legislative history and the resulting policy implications of the decision. Justice Sotomayor noted the size and scale of the hospitals claiming shelter under the exemption, pointing out that in the case before the Court, those entities "operate for-profit subsidiaries ... employ thousands of employees ... earn billions of dollars in revenue; and compete in the secular market with companies that must bear the cost of complying with ERISA." Justice Sotomayer noted that, given the current reality of the exemption's use, it was not at all clear that Congress would "take the same action today with respect to some of the largest health-care providers in the country."

CONCLUSION

While the unanimous opinion of the Court in *Advocate Health Care Network* established the meaning of the language at issue, it does not mean that litigation over the application of the exemption to the sizable health care operations run by entities nominally affiliated with religious entities is at an end. As the Court itself noted, the decision does not address other issues raised by the employees, such as whether the hospitals even "have the needed [degree of] association with a church" to invoke application of the exemption at all. Instead, technically, the decision only resolves the question of whether those hospitals can rely on the exemption regardless of who established their pension plans in the first place. If the history of other Supreme Court decisions addressing only a limited part of an ERISA case brought before it is any guide, this decision will not be the last decision issued by a court on this subject. PC

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