Supreme Court Blesses Church-Affiliated Nonprofits With ERISA Exemption Decision

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Resolving a closely watched battle over the applicability of ERISA to pension plans sponsored by three church-affiliated nonprofits that run hospitals and healthcare facilities, the U.S. Supreme Court unanimously ruled on June 5, 2017 in favor of the church affiliates, finding that their defined benefit pension plans fall under ERISA's "church plan" *exemption*. This victory for the hospitals means that the pension plans they sponsor are exempt from the array of ERISA rules and regulations governing pension plans, including ERISA's reporting and disclosure obligations, participation and vesting requirements, and funding standards, among others. Calling a church-associated entity within the context of ERISA 3(33)(C)(i), 29 U.S.C. §1002(33)(C)(i), a "principal-purpose organization," Justice Kagan, writing for the Court, found that a plan maintained by a principal-purpose organization qualifies as a "church plan" regardless of who established it, and is exempt from ERISA's requirements.

The decision confirms that a church need not have originally *established* a plan for it to qualify for exemption from ERISA's comprehensive regulations. Indeed, under the statute certain plans for employees of churches or church-affiliated nonprofits are exempt "church plans" even though not actually administered by a church. In *Advocate Health Care Network v. Stapleton*,[1] the Court ruled that "ERISA provides (1) that a 'church plan' means a 'plan established and maintained … by a church' and (2) that a 'plan established and maintained … by a church' is to 'include[] a plan maintained by' a principal-purpose organization … [which] qualifies as a 'church plan,' regardless of who established it."

ERISA'S "CHURCH PLAN" EXEMPTION

ERISA generally obligates private employers which offer pension plans to adhere to rules designed to safeguard the solvency of the plan, as well as protect the plan participants and beneficiaries. In enacting ERISA, Congress made an important exception, legislating that "church plans" are exempt from ERISA's mandates and need not comply with its requirements. From the beginning, ERISA provided that a "church plan" means a plan "established and maintained" by a church, or by a convention or association of churches, for its employees. §1002(33)(A). Congress later amended the statute in 1980, by expanding the definition and deeming that additional plans fall within it. An "employee of a church" was then to include an employee of a church-affiliated organization. §1002(33)(C)(ii)(II). Congress also added a provision that:

> "A plan established and maintained for its employees … by a church or by a convention or association of churches includes a plan maintained by an organization … the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches." 1002(33)(C)(i).

The so-called "principal-purpose organization" (everything after the word "organization" in the third line of the above quote, according to Justice Kagan), describes the particular kind of church-associated entity defined. The main task of a "principal-purpose organization," as the statute explains, is to fund or manage a benefit plan for the employees of churches or church affiliates.

The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC), the federal agencies responsible for administering ERISA, have long read these provisions to exempt plans like the hospital plans at issue in *Advocate Health Care* from ERISA's mandates. The agencies have long-believed that the quoted provision above expanded the "church plan" definition to include any plan maintained by a principal-purpose organization, regardless of whether a church initially established the plan. The agencies' expressed belief has been that the internal benefits committee of a church-affiliated nonprofit counts as an *exempt* principal-purpose organization. As the Court noted, that interpretation has appeared in hundreds of private letter rulings and opinion letters, including several provided to the hospitals actually involved in *Advocate Health Care*.

A recent wave of litigation, including dozens of class-action lawsuits, however, sought to challenge the agencies' view of the "church plan" status of church-related nonprofit organizations that operate hospitals and other healthcare facilities. Those challenges will now founder in light of *Advocate Health Care*.

THE *ADVOCATE HEALTH CARE* DECISION

Advocate Health Care involved three church-affiliated nonprofits that run hospitals and other healthcare facilities. The defined-benefit pension plans they offer to their employees were established by the hospitals themselves – not by a church – and internal employee-benefits committees manage the plans. Current and former employees of the hospitals filed class actions alleging that their employers' pension plans do not fall within ERISA's "church plan" exemption and, therefore, must satisfy the statute's requirements. The employees claimed that because these pension plans were not established by a church, ERISA applies, because even as amended, ERISA demands that all "church plans" must have the *establishment* origin.

The District Courts handling the three class actions agreed with the employees' positions, holding that the hospitals' plans must comply with ERISA. The Courts of Appeal for the Third, Seventh, and Ninth Circuits affirmed these decisions finding ERISA applicable. The Third Circuit, in *Kaplan v. Saint Peter's Healthcare System*,[2] ruled first, holding that there are two requirements for the "church plan" exemption – "establishment and maintenance" – and that only maintenance is expanded by the use of "includes" in subparagraph (C)(i) of the expanded definition. The Seventh and Ninth Circuits relied on similar reasoning, now found faulty by the Supreme Court, which reversed these Circuit Court judgments.

Holding that ERISA does not require an exempt "church plan" to have been originally established by a church, the Court concluded that the language of the 1980 amendment brought within the definition as eligible for ERISA's "church plan" exemption, all pension plans maintained by a principal-purpose organization, regardless of whether a church initially established them or whatever their origins. Because Congress deems the category of plans "established and maintained by a church" to "include" plans "maintained by" principal-purpose organizations, such plans are "church plans" exempt from ERISA, whether or not "established" by a church.

The Court noted that for purposes of its decision it assumed that the three hospital systems at issue all had the requisite association with a church and that their internal benefit committees were principal-purpose organizations, but recognized that those factual issues were not before it and remain to be resolved.

Justice Sotomayor, in a concurring opinion, agreed with the unanimous majority opinion (Justice Gorsuch did not participate), that the ERISA statutory text compelled the result, but expressed the view that she was, nevertheless, troubled by the outcome. Given the lack of clear legislative history endorsing the result and the fact that for-profit subsidiaries of the organizations at issue, despite their relationship to churches, compete in the secular market with companies that must bear the cost of ERISA, she speculated that current reality might prompt Congress to take a different path today towards effecting ERISA's broad remedial purposes. For now, however, the Supreme Court has clarified that ERISA's "church plan" exemption means a plan "established and maintained" by a church, and also includes a plan "maintained by a principal-purpose organization."

If you have questions or would like more information on the "church plan" exemption or any other ERISA-related matter, please contact Elizabeth A. Venditta (vendittae@whiteandwilliams.com; 215.864.6392).

[1] *Advocate Health Care Network v. Stapleton*, Nos. 16-74, 16-86, and 16-258, 581 U.S. ___, ___ S. Ct. ____, 198 L. Ed. 2d 96, 108 (2017).[1]

[2] *Kaplan v. St. Peter's Healthcare System*, 810 F.3d 175, 177 (3d Cir. 2015)