Supreme Court Rules Pension Plans of Religiously Affiliated Organizations Exempt from ERISA

By René E. Thorne and Charles F. Seemann III

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ERISA's "church plan" exemption applies to pension plans *maintained* by church-affiliated organizations such as healthcare facilities, even if the plans were not *established* by a church, the U.S. Supreme Court has ruled unanimously, 8-0. *Advocate Health Care Network et al. v. Stapleton et al.,* Nos. 16-74; 16-86; 16-258 (June 5, 2017). (Justice Neil Gorsuch did not participate in the decision because the case was argued before he joined the Court.)

This reverses decisions in favor of the plaintiffs, pension plan participants, from the U.S. Courts of Appeals for the Third, Seventh, and Ninth Circuits.

ERISA Provision

The Employee Retirement Income Security Act of 1974 regulates pension, health, and other welfare benefit plans for employees. A plan that qualifies as a "church plan" is exempt from the law's requirements.

ERISA originally defined a "church plan" as "a plan established and maintained ... for its employees ... by a church." Congress amended the exemption in 1980 by adding the provision at the heart of the cases before the Court. The new section provides: "[a] plan established and maintained ... by a church ... includes a plan maintained by [a principal-purpose] organization."

Disputed Interpretation

The parties agreed that under those provisions, a "church plan" need not be maintained by a church. They differed as to whether a plan must have been established by a church to qualify for the church-plan exemption.

The defendants, healthcare employers, asserted that their pension plans are "church plans" exempt from ERISA's strict reporting, disclosure, and funding obligations. While each of the plans at issue was established by the hospitals and not a church, each one of the hospitals had received confirmation from the IRS over the years that their plans, in fact, were exempt from ERISA under the church plan exemption because of the entities' religious affiliation.

The plaintiffs argued ERISA's church plan exemption was not intended to exempt pension plans of large healthcare systems where the plans were not established by a church.

Court Decision

Agreeing with the defendants, the Supreme Court ruled that ERISA's "church plan" exemption applies to pension plans *maintained* by church-affiliated organizations.

Writing for the Court, Justice Elena Kagan's analysis began by acknowledging that the term "church plan" initially meant only "a plan established and maintained ... by a church." But the 1980 amendment, she found, expanded the original definition to "include" another type of plan — "a plan maintained by [a principal-purpose] organization."

The Court concluded that the use of the word "include" was not literal, "but tells readers that a different type of plan should receive the same treatment (*i.e.,* an exemption) as the type described in the old definition."

Thus, according to the Court, because Congress included within the category of plans "established and maintained by a church" plans "maintained by" principal-purpose organizations, those plans — and all those plans — are exempt from ERISA's requirements.

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Although the Department of Labor, Pension Benefit Guaranty Corporation, and IRS had filed a brief in support of the defendants, the Court mentioned only briefly the agencies' long-standing interpretation of the exemption, and did not engage in any "Chevron-deference" analysis. Some observers may find this surprising, because comments during oral argument suggested that some of the Justices harbored concerns over the hundreds of similar plans that had relied on administrative interpretations for 30 years.

Analyzing the legislative history, the Court observed that "[t]he legislative materials in these cases consist almost wholly of excerpts from committee hearings and scattered floor statements by individual lawmakers — the sort of stuff we have called 'among the least illuminating forms of legislative history.'" Nonetheless, after reviewing the history, the Court rejected the plaintiffs' argument that the legislative history demonstrated an intent to keep the "establishment" requirement. The Court said, "[To do so] would have prevented some plans run by pension boards — the very entities the employees say Congress most wanted to benefit — from qualifying as 'church plans'.... No argument the employees have offered here supports that goal-defying (much less that text-defying) statutory construction."

Accordingly, the Court held that "[u]nder the best reading of the statute, a plan maintained by a principal-purpose organization therefore qualifies as a 'church plan,' regardless of who established it."

Justice Sonia Sotomayor filed a concurrence joining the Court's opinion because she was "persuaded that it correctly interprets the relevant statutory text." However, she was "troubled by the outcome of these cases." She noted, "Church-affiliated organizations operate for-profit subsidiaries, employee thousands of people, earn billions of dollars in revenue, and compete with companies that have to comply with ERISA." This concern appears to be based on the view that some church-affiliated organizations effectively operate as secular, for-profit businesses.

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This may not be the end of litigation over the church plan exemption. Numerous, large settlements have occurred before and since the Supreme Court agreed to take up *Advocate Health Care Network*. More settlements can be expected, albeit likely for lower sums.

Further, plan participants may continue pushing cases on the grounds that the entities maintaining the church plans are not "principal-purpose organizations" controlled by "a church."

Employers should consult with counsel to determine whether and how their particular pension plans are affected by *Advocate Health Care Network*. Please contact the Jackson Lewis attorney with whom you work.