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U.S. Supreme Court Interprets ERISA Church Plan Exemption In Favor of Religious Charities

In a highly anticipated opinion consolidated as *Advocate Health Care Network v. Stapleton* (https://www.supremecourt.gov/opinions/16pdf/16-74_5i36.pdf), previewed last year in our August (http://www.stradley.com/insights/publications/2016/08/nonprofit-alert-august-2016) and December (http://www.stradley.com/insights/publications/2016/12/nonprofit-alert-december-2016) Alerts, the U.S. Supreme Court dealt a blow to the nationwide wave of coordinated class actions challenging the long-standing interpretation of the "church plan" exemption under the Employee Retirement Income Security Act of 1974 (ERISA). The Court answered the threshold question posed by the employee classes – must a church establish a pension plan in order for it to qualify as exempt under ERISA? – with a decisive "no." The Court confirmed what religious charities and government agencies responsible for administering ERISA have known for decades: ERISA does not require a "church" to originally establish a pension plan in order for it to qualify as exempt from ERISA regulation. Rather, as a result of the 1980 amendments to ERISA, organizations that are "controlled by or associated with a church or a convention or association of churches," can establish and maintain a pension plan that qualifies for ERISA's "church plan" exemption.

The Court's opinion, penned by Justice Elena Kagan, is chiefly one of straightforward statutory interpretation. The exemption, codified at 29 U.S.C. §1002(33)(A), defines a church plan as a plan "established and maintained" by a church, including a convention or association of churches. Following a 1977 IRS decision that a hospital run by Catholic Sisters was not a church and thus could not qualify for exemption, along with other concerns about the impacts of ERISA in other denominations, Congress amended ERISA in 1980 to expand the definition of the "church plan" as follows:

> (C) For purposes of this paragraph—
>
> (i) ***A plan established and maintained for its employees*** (or their beneficiaries) by a church or by a convention or association of churches ***includes a plan maintained by an organization***, whether a civil law corporation or otherwise, 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***.

While the Third, Seventh and Ninth Circuit Courts of Appeals each (unanimously) held that the word "includes" in §1002(33)(C)(i) did not obviate the statutory need

for a church to first "establish" a qualifying plan under §1002(33)(A), the unanimous Supreme Court found otherwise, concluding that Congress' use of the term "includes" means "that the original definitional phrase will now 'include' another—'a plan maintained by [a religiously affiliated principal-purpose] organization.'" Thus, Congress' modification "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," as Congress is apt to do.

The plain language of the statute, as interpreted by the Court, favors the universal exemption of pension plans maintained by any and all religiously-affiliated entities, not just those in the health care space. That the Court adhered to traditional canons of statutory construction only strengthens the bright-line rule announced by Justice Kagan. And, that interpretation avoids an unconstitutional result by accommodating the variety of U.S. religious traditions.

But the story does not end here. The Court was clear that this case only dealt with the statute's construction and did not resolve other questions, such as the necessary close connection between the hospitals and the church, or whether the internal pension committees were legally permitted to maintain the church plans. Justice Sonia Sotomayor's concurrence notes the possibility of further litigation surrounding the associational aspects between hospital systems and their churches. While Justice Kagan found the legislative history of the 1980 amendment bolstered the Court's ultimate conclusion, Justice Sotomayor observed that the defendant hospitals "bear little resemblance to the [entities] Congress considered when enacting the 1980 amendment," expressing doubt that "Congress would take the same action today with respect to some of the largest health-care providers in the country."

The next chapter may turn upon challenges to whether a hospital is "religious" enough to qualify for the exemption. Such arguments will invite inquiries into the steps that churches have taken to maintain the religious mission of their affiliated hospitals, buttressed by the protections of the First Amendment that prevent civil government from intruding upon religious rights of autonomy and self-governance or favoring one form of religious structure over another. Accordingly, while the Supreme Court handed a victory to religious health care in this opening round, religiously affiliated entities should remain vigilant to the developing landscape around ERISA's church plan exemption.

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