

Reproduced with permission from Pension & Benefits Reporter, 43 BPR 830, 7/5/16. Copyright © 2016 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Church Plans

Deny Hospital Church Plan Status, Groups Tell 10th Circuit

The multimillion-dollar battle over whether hospital pension plans can claim a religious exemption from federal law heated up this week, when retiree and religious freedom industry groups told an appellate court to rule against Colorado-based Catholic Health Initiatives (*Medina v. Catholic Health Initiatives*, 10th Cir., No. 16-1005, *amicus briefs filed 6/29/16*).

The three-year-old litigation effort seeking to force religiously affiliated hospitals to run their pension plans in accordance with federal law has led to mixed rulings in the district courts and two appellate court losses for the hospitals. In a series of amicus briefs, industry groups like AARP and the American Civil Liberties Union urged the U.S. Court of Appeals for the Tenth Circuit to join the Third and Seventh circuits in holding that hospital pension plans don't qualify as "church plans" exempt from the Employee Retirement Income Security Act.

The Tenth Circuit is reviewing a 2015 district court decision allowing CHI to run its pension plan as an ERISA-exempt church plan. A group of hospital workers challenged this designation in a proposed class action, arguing that the hospital's erroneous interpretation of ERISA allowed the pension plan to become underfunded by \$893 million.

Groups that favor allowing hospitals like CHI to run ERISA-exempt church plans will have until mid-August to file briefs with the Tenth Circuit.

Constitutional Arguments, Policy Arguments. In a joint brief, the ACLU and Americans United for Separation of Church and State argued that CHI's expansive reading of ERISA's church plan exemption violates the Establishment Clause. That's because it unduly burdens third parties by jeopardizing hospital workers' retirement benefits, they allege.

The Freedom From Religion Foundation echoed and amplified this argument. According to the foundation,

the entire church plan exemption is an unconstitutional advancement of religion in violation of the Establishment Clause, because it represents preferential treatment of religion by the government.

For its part, the Pension Rights Center argued that CHI's reliance on the church plan exemption rests on a misreading of ERISA's statutory text and the pertinent legislative history.

AARP focused its arguments on the effect church plan status has on the participants in a given pension plan. In particular, AARP contended that church plan participants are vulnerable to benefit cuts and mismanagement by plan fiduciaries, because they lack the statutory protections given to participants in ERISA-governed plans.

The groups filed their briefs on June 28 and 29. The Tenth Circuit hasn't announced if and when it will hear oral arguments in this dispute.

A decision on ERISA's church plan exemption is also expected from the Ninth Circuit, which heard oral arguments in a case involving Dignity Health in February.

By JACKLYN WILLE

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bna.com

To contact the editor responsible for this story: Jo-el J. Meyer at jmeyer@bna.com

Text of the ACLU's brief is at http://www.bloomberglaw.com/public/document/Medina_v_Catholic_Health_Initiatives_et_al_Docket_No_1601005_10th. Text of the Freedom From Religion Foundation's brief is at http://www.bloomberglaw.com/public/document/Medina_v_Catholic_Health_Initiatives_et_al_Docket_No_1601005_10th/1. Text of the Pension Rights Center's brief is at http://www.bloomberglaw.com/public/document/Medina_v_Catholic_Health_Initiatives_et_al_Docket_No_1601005_10th/2. Text of the AARP's brief is at http://www.bloomberglaw.com/public/document/Medina_v_Catholic_Health_Initiatives_et_al_Docket_No_1601005_10th/3.