

No. 14-1735

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARILYN OVERALL,
on behalf of herself, individually, and on behalf of all others similarly situated,
Plaintiff-Appellant,

v.

ASCENSION HEALTH, a non-profit corporation; ASCENSION HEALTH ALLIANCE, a non-profit corporation; CATHOLIC HEALTH INVESTMENT MANAGEMENT COMPANY, a non-profit corporation; DEREK BEECHER; JEAN DEBLOIS; ERIC FEINSTEIN; WILLIAM FINLAYSON; TIMOTHY FLESCH; TRENNIS JONES; KATHLEEN KELLY; ELLEN KRON; TOM LANGSTON; LAURA LENTENBRINK; PATRICK MCGUIRE; JOSEPH O. MURDOCK; THERESA PECK; BARBARA POTTS; LARRY SMITH; ANTHONY TERSIGNI; HERBERT VALLIER; DOUGLAS WAITE; FRANK WARNING; CAROL WHITTINGTON; UNITED STATES OF AMERICA; and JOHN and JANE DOES 1-20,
Defendants-Appellees.

On Appeal from the
United States District Court Eastern District of Michigan
No. 13-cv-11396-AC-LJM
Honorable Avern Cohn

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
PENSION RIGHTS CENTER
IN SUPPORT OF APPELLANT
AND URGING REVERSAL**

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INTRODUCTION

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Pension Rights Center (“Amicus”) hereby respectfully moves for leave to file the attached brief as amicus curiae in support of Plaintiff-Appellant. This motion is accompanied by Pension Rights Center’s proposed brief amicus curiae as required by Rule 29.

ARGUMENT

A. Interest of Amicus

Established in 1976, after the enactment of the Employee Retirement Income Security Act (“ERISA”), the Pension Rights Center is a Washington, D.C. non-profit, consumer organization whose mission is the protection and promotion of the pension rights of workers, retirees and their families. For the past 38 years, the Center has provided legal representation, informal assistance and information to tens of thousands of pension plan participants and beneficiaries seeking to recover benefits and ensure that their plans are adequately funded and prudently managed. It has also advocated over the years for improvements in pension plan protections for workers and their families, both before Congress and the Federal agencies.

This resolution of this appeal will determine whether employees, retirees and their families in certain pension plans are entitled to the basic protections that Congress enacted into law in 1974, as part of ERISA. Those protections include

requiring employers to adequately fund their pension plans and to purchase federal pension insurance coverage for plan benefits in the event of plan and employer insolvency. Without these protections, participants run a risk that they will not be paid the retirement benefits they had been promised. The Appellees in this case claim that the Appellant does not deserve these basic protections because the Appellee has a relationship with the Catholic Church. The appeal raises the narrow issue of whether an exemption in ERISA for pension plans sponsored by churches for their employees and employees of their affiliated agencies should also be construed to exempt pension plans sponsored by religiously-affiliated nonprofit agencies.

Over the last four years, the Center has been contacted by dozens of employees and retirees who are concerned that they will lose substantial portions of their retirement benefits if their employers—who like Appellee have a relationship to a church but are not themselves churches—are able to walk away from their promises to their employees. Unlike actual churches, which so far as we know have never permitted their pension plans to fail, the Appellee in this case and other similar employers, are not financially backed by churches, are uninsured, and disclaim legal responsibility for the sound funding and administration of their plans. In some cases, these non-church agency plans have terminated their underfunded plans, paying participants a small percentage of the retirement

benefits they had earned. We believe the retirement security of several million retirees, workers and their families will turn on the outcome of the legal issues raised in this case.

The Center has over the last 38 years developed considerable expertise on the purposes and structure of ERISA, the centrality of the statute to the assurance that pension plans will be able to meet their commitments to their participants, and the design and implementation of pension plans more generally. We have also devoted considerable effort over the last four years to studying and understanding the history of ERISA's church exemption and its use by non-church entities. And through our work with participants and advocacy before government agencies, we have developed an important perspective and store of knowledge that we believe can assist the Court in determining the proper scope of the ERISA church-plan.

B. Reasons Why An Amicus Brief is Desirable and Relevant to the Disposition of the Case.

Amicus's brief is both relevant and desirable. *See* Fed. R. App. P. 29(B)(2). The legal issues presented in this appeal are of great importance to the employees and retirees whose interests the Pension Rights Center seeks to advance. ERISA was a major reform statute enacted to ensure that participants in pension plans could count on their promised benefits. Prior to ERISA participants could not depend on their pension plans to pay the benefits they had earned. Companies both large and small sometimes failed to adequately fund their pension plans and when

those plans failed disclaimed responsibility for ensuring that the plan satisfy the promises made to its participants. Moreover, plans were not required to purchase insurance to protect their participants' benefits in the event of plan insolvency. Thus, when a plan failed, participants sometimes received only pennies on each promised dollar of benefit.

Congress enacted ERISA to address these and other problems. Since 1974, employers that sponsor pension plans must fund those pension plans under statutory minimum funding standards, must purchase insurance from the Pension Benefit Guaranty Corporation, and must adhere to minimum vesting, accrual, disclosure, and spousal protection rules. And the statute has worked well. Today, despite the recession, most pension plans are well funded and pay the benefits earned by the participants, with the Pension Benefit Guaranty Corporation stepping in and paying plan benefit obligations when the plan and sponsoring employer cannot.

ERISA did, however, include exemptions from the statute for governmental plans and church plans. The exemption for church plans, which is at issue in this case, exempts plans established and maintained by a church or a convention or association of churches for employees of the church.

The exemption included a grandfather clause, which allowed church plans to cover employees of church-affiliated agencies until 1982 (if the plans were covering them as of ERISA's enactment date.)

In 1980, Congress amended the definition of church plan at the urging of "The Church Alliance for Clarification of ERISA," a group of 27 religious denominations formed to advocate changes in ERISA relevant to churches. The Church Alliance argued that ERISA created two major problems for church plans: first, that it would create complications for church plans to stop covering agency employees in 1982; and second that some church plans were maintained by separate organizations known as church pension boards. The Alliance was concerned that the IRS might view plans maintained by such boards as not maintained by the church and thus would be outside the scope of the exemption. As a result of the Alliance's activities, Congress amended the statute to allow plans established by churches to continue to cover employees of affiliated agencies and provided that a church plan would not lose the benefit of the exemption if it were maintained by an organization separate from the church.

This case involves the question of whether the 1980 amendments not only authorized church plans to cover agency employees, but also authorized those agencies to establish their own exempt plans. The resolution of this issue affects several million individuals who work for church-affiliated agencies. The Appellee

alone employees over 150,000 employees, many of whom participate in Appellee's pension plans.

The attached brief offers the Court relevant matter that would not otherwise be brought to the Court's attention. *See Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm'n.*, 801 F.2d 1120, 1125 (9th Cir. 1986) *citing Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203, 204 (9th Cir.1982). The brief puts the church exemption in the context of ERISA's statutory scheme, addresses the legislative goals of the statute, and describes how the district court's errors thwart Congress's purposes in enacting ERISA and put the retirement benefits of millions of Americans at risk. This amicus curiae brief thus will provide a distinct and relevant analysis of the issues presented on appeal.

CONCLUSION

For the foregoing reasons, Amicus respectfully request that the Court grant its motion to file the attached amicus curiae brief.

Dated: September 29, 2014

Respectfully Submitted,

s/ Karen W. Ferguson _____

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