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Church Plans

As Church Plan Debate Hits Next Level, 3rd Cir. Receives Competing Amicus Briefs

More than two years into a litigation effort challenging the way large hospitals run their pension plans, all eyes are on the U.S. Court of Appeals for the Third Circuit, which recently received a flood of amicus briefs arguing both sides of the debate (*Kaplan v. Saint Peter's Healthcare Sys.*, 3d Cir., No. 15-01172, appeal docketed 1/20/15).

In 12 lawsuits filed across the country, workers are accusing religiously affiliated health-care companies of violating the Employee Retirement Income Security Act by treating their pension plans as church plans exempt from ERISA's funding and disclosure requirements. The six district judges to have considered the issue are evenly split, and the Third Circuit's anticipated ruling could be the first decision in this line of cases by a federal appeals court.

The court—which hasn't yet announced a date for oral arguments—will have its work cut out for it, after receiving eight competing amicus briefs submitted by different organizations raising a host of different considerations.

In particular, the groups supporting Saint Peter's Healthcare System—which lost at the district court level (41 BPR 793, 4/8/14)—have encouraged the Third Circuit not to overlook the unique organizational structure employed by the Roman Catholic Church or the critical role that health care plays in the church's ministry.

Groups supporting the hospital workers have argued for a narrow church plan exemption that wouldn't apply to large hospitals, saying that a broader exemption would violate the First Amendment's Establishment Clause by extending special benefits to religious groups and burdening third parties such as hospital workers in the process. These groups also emphasized the large-scale nature of the defendant health-care companies, pointing to their market saturation and high revenues as evidence that they are businesses rather than churches.

One particularly noteworthy amicus brief was filed by Catholic Health East, a health-care company facing a similar lawsuit that likely will be decided by the Third Circuit's ruling in *Kaplan* (*Chavies v. Catholic Health E.*, E.D. Pa., No. 2:13-cv-01645, complaint filed 3/28/13 (40 BPR 831, 4/2/13)).

In that brief, Catholic Health East called the litigation effort—spearheaded by plaintiffs' firms Keller Rohr-

back LLP and Cohen Milstein Sellers & Toll PLLC—a “broad-based assault on Catholic healthcare institutions across the country” that “eschews the complex history, scripture, tradition, and religious convictions that form the basis of the Church's healing ministry.”

Not Just ‘Brick and Mortar.’ In supporting Saint Peter's, several groups affiliated with the Catholic Church argued that the concept of a church shouldn't be limited to a “brick-and-mortar place of worship.”

“It has always been the religious experience in the United States that ‘a church’ almost always extends past brick and mortar and beyond official ceremony to animate the surrounding community,” argued the Catholic Health Association of the U.S.

Catholic Health East raised similar arguments in its amicus brief.

In particular, Catholic Health East emphasized the important role that health care plays in the Catholic Church's mission, along with the “critical role of lay persons in carrying out the Church's ministry.”

The “healing mission of Jesus Christ was central to his work” and “remains central to the Church's mission today,” the company contended.

According to Catholic Health East, church-controlled, health-care companies like itself and Saint Peter's “carry out the mission of the Church, share religious bonds and convictions with the Church, and, as such, are an integral part of the Roman Catholic Church.”

The Catholic Health Association echoed this sentiment, saying that although the church's provision of health care has “matured” with the changing times, it has always “followed the example of Jesus to heal the sick.”

Religious Discrimination. The groups supporting Saint Peter's also argued that a narrow interpretation of ERISA's church plan exemption—like the one used by the district court below—would discriminate against churches that employ certain internal structures.

According to GuideStone Financial Resources of the Southern Baptist Convention, a nonprofit corporation that handles that church's employee benefits, the history of ERISA's church plan exemption makes clear that Congress intended to accommodate both churches that are organized hierarchically, or “top-to-bottom,” and those organized congregationally, such as through “voluntary cooperation and association.”

The district court's ruling would impermissibly favor hierarchical church governments over congregational ones, thereby violating the First Amendment of the U.S. Constitution, GuideStone alleged.

“GuideStone believes that construing the church plan definition in a way that would treat plans established by

employers within a congregationally-governed convention differently than plans established by a hierarchically-governed church would violate the Establishment Clause and unnecessarily entangle the government with religion,” it argued.

Catholic Health Association concurred, arguing that the district court’s ruling discriminates against religions like Roman Catholicism that employ particular organizational structures.

To that end, the lower court’s ruling that Saint Peter’s didn’t qualify as a church clashes with Roman Catholic Canon Law, which provides that a diocese and all its activities are considered one canonical entity, the association argued.

“Catholic agencies are not precisely like their counterparts in other faith communities,” it continued. “The Catholic Church is a constellation of agencies and actors bound together by bonds of faith, doctrine, practice, and principle.”

Avoid Religious Entanglement. Another group supporting Saint Peter’s, the Becket Fund for Religious Liberty, argued against any legal framework that requires a judicial determination of whether a particular entity qualifies as a church.

Specifically, the Becket Fund argued that a broad reading of ERISA’s church plan exemption would avoid “undue state intrusion into religion” and respect a church’s freedom to structure itself and decide how to carry out its faith.

On the other hand, a narrower church plan exemption like the one used by the district court would “force courts to opine unnecessarily on religious questions,” the fund said.

Exemption Unconstitutional? Taking up the other side of the debate, the Freedom From Religion Foundation filed an amicus brief urging the court to strike down the entire church plan exemption as unconstitutional under the First Amendment’s Establishment Clause.

According to the foundation, the exemption advances religion by giving churches an “exclusive benefit denied to their secular counterparts.”

“The exemption allows churches, and churches alone, to avoid all of the financial and regulatory burdens imposed by ERISA, effectively allowing churches to entice employees with promises of retirement protection, with no obligation to keep them,” the foundation said.

It added that, under the exemption, churches are able to “spend dollars that should be earmarked as pension funds on any number of things, including new steeples, mahogany pulpits, or to settle unbecoming lawsuits—all without the risk of fiduciary liability.”

“Their secular counterparts, however, are required to earmark funds every month to pay for PBGC insurance and to maintain minimum funding levels,” the foundation continued.

Moreover, the foundation argued that there was no clear justification for this disparate treatment, since ERISA’s requirements are “entirely financial and administrative in nature” and “do not touch upon sacred matters.”

Establishment Issues. In another brief supporting the hospital workers, Americans United for Separation of Church and State—along with the federal and New Jersey American Civil Liberties Union—argued that the

broad exemption proposed by Saint Peter’s would violate the Establishment Clause.

That’s because it would burden third parties by reducing the pension-related protections available to “significant numbers of employees who do not share the religious beliefs of St. Peter’s Healthcare System and who perform purely secular duties,” the groups argued.

Further, a broad church plan exemption would violate the Establishment Clause by creating a “nonprofit caste system,” the groups argued, reasoning that “religious nonprofits would be exempt from most regulations, while secular nonprofits would be forced to comply with them.”

Big Business. Other groups supporting the hospital workers emphasized that many organizations taking advantage of ERISA’s church plan exemption were “big businesses” rather than actual churches.

According to the brief filed by the AARP and the National Employment Lawyers Association, five of the nation’s 10 largest health-care systems in 2013 were “multi-million dollar corporations that fail to operate their pension plans in compliance with ERISA.” These corporations—many of which have been targeted by the instant litigation effort—had combined revenues exceeding \$46.3 billion in 2013, the groups alleged.

Americans United and the ACLU groups raised similar points, noting that Catholic hospitals care for one out of every six patients in the country and account for more than one in seven hospital beds. Rather than operating as traditional churches, these hospitals are “organized to make healthcare services, to compete with similar institutions which do not claim the church plan exemption for their pension plans, and to operate with primarily laypersons—including the CEO—to achieve their goals. Indeed, they are not organized to deliver religion and are not churches at all,” the AARP and the National Employment Lawyers Association contended.

The ACLU groups agreed, saying that “no theology degree is necessary to distinguish a house of worship from a hospital.”

Disadvantaged Workers. Several of the groups supporting the hospital workers argued that allowing the church plan exemption to extend to pension plans sponsored by large health-care firms would serve only to disadvantage these corporations’ employees.

According to the Freedom From Religion Foundation, this exemption “does not benefit the church employees whose retirement coffers have been emptied, but it does benefit the religious organizations who empty them.” The foundation cited a study finding that 90 percent of pension plans sponsored by Roman Catholic dioceses were “severely underfunded.” In the foundation’s view, this underfunding could mean that priests’ retirement benefits would ultimately be borne by taxpayers, causing non-Catholic Americans to subsidize religion.

Relatedly, the three worker-focused groups submitting briefs—the AARP, National Employment Lawyers Association and Pension Rights Center—devoted significant attention to the negative consequences borne by workers whose pension plans aren’t subject to ERISA’s protections.

In particular, the Pension Rights Center argued that a broad church plan exemption has “resulted in human tragedies for men and women who have done nothing wrong other than choosing to work for a religiously-affiliated nonprofit entity rather than a secular non-

profit entity.” The center pointed to one recent example of an alleged church plan terminating and paying only 40 cents on the dollar toward participants’ benefits.

Catholic Health Association’s brief was filed by Mark E. Chopko, Marissa Parker and Brandon Riley of Stradley Ronon Stevens & Young LLP, Washington, and Lisa Gilden of the Catholic Health Association, Washington.

The Becket Fund’s brief was filed by James A. Sonne and Jared M. Haynie of Stanford Law School Religious Liberty Clinic, Stanford, Calif.

GuideStone Financial’s brief was filed by G. Daniel Miller of Conner & Winters LLP, Washington, and Laurence A. Hansen and Hugh S. Balsam of Locke Lord LLP, Chicago.

Catholic Health East’s brief was filed by Jeremy P. Blumenfeld and Melissa D. Hill of Morgan, Lewis & Bockius LLP, Philadelphia and New York.

Freedom From Religion’s brief was filed by Patrick C. Elliott and Andrew L. Seidel of the Freedom From Religion Foundation, Madison, Wis.

The brief of the AARP and the National Employment Lawyers Association was filed by Roberta L. Steele of NELA, Oakland, Calif., and Mary Ellen Signorille of AARP Foundation Litigation, Washington.

The Pension Rights Center’s brief was filed by Richard H. Frankel, Karen W. Ferguson and Norman P. Stein of the Pension Rights Center, Washington.

The brief of Americans United and the ACLU groups was filed by Daniel Mach of the ACLU Foundation, Washington, and Ayesha N. Khan and Gregory M. Lipper of Americans United, Washington.

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Text of Catholic Health Association’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/4.

Text of the Becket Fund’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/6.

Text of GuideStone’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/5.

Text of Catholic Health East’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/7.

Text of Freedom From Religion’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/8.

Text of the brief filed by the AARP and NELA is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/9.

Text of the Pension Rights Center’s brief is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/10.

Text of the brief filed by Americans United and the ACLU groups is at http://www.bloomberglaw.com/public/document/Laurence_Kaplan_v_Saint_Peters_Healthcare_System_et_al_Docket_No_1/11.