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Church Plans

Amicus Briefs Filed in Church Plan Appeal, Organizations Debate Use of Exemption

The first challenge to the exemption of a religiously affiliated health-care organization's pension plan from federal regulation to reach the federal appellate courts has drawn the attention of a nonprofit consumer organization, two religious organizations and a nonprofit law firm dedicated to free expression of religion, all of which have filed amicus briefs with the U.S. Court of Appeals for the Sixth Circuit (*Overall v. Ascension Health*, 6th Cir., No. 14-1735, *amicus briefs filed 11/12/14*).

The brief filed by the Pension Rights Center urging the court to overturn the decision of the U.S. District Court for the Eastern District of Michigan focused on the legislative history of the Employee Retirement Income Security Act and the Multiemployer Pension Plan Amendments Act, arguing that Congress never intended to extend the church plan exemption to a plan established and maintained by a nonprofit hospital organization affiliated with a church such as Ascension Health.

Two of the other amicus briefs, one filed by GuideStone Financial Resources of the Southern Baptist Convention and the other filed by the Catholic Health Association of the United States, both urged the appellate court to affirm the district court's ruling on the grounds that the legislative intent, as shown through practice and later legislative action, was to exempt organizations such as Ascension Health.

Additionally, a brief filed by the Becket Fund for Religious Liberty argues that the church plan exemption as applied doesn't violate the establishment clause of the U.S. Constitution's First Amendment, but that a decision by the appellate court overturning the district court might.

The PRC filed its brief Sept. 29 and the other groups filed their briefs Nov. 12.

The case is currently before the Sixth Circuit after the district court dismissed a complaint from a class of Ascension Health employees that claimed that the hospital corporation, which claimed affiliation with the Roman Catholic Church, had underfunded its pension plan (41 BPR 1028, 5/13/14; 58 EBC 1885).

According to the district court, Ascension's plan was an ERISA-exempt church plan and, as a result, the class hadn't stated a claim under the federal statute.

Legislative Intent of ERISA Amendments. The source of the main disagreement among the amicus briefs in the case revolves around the intent of Congress when it amended provisions of ERISA and the tax code in 1980 as part of the MPPAA.

According to the PRC, a nonprofit consumer organization focused on rights and regulations under ERISA, the amendment to Section 3(33) of ERISA was included to make the church plan exemption a permanent feature of the law, to allow it to continue to apply it to plans that were sponsored by a church but that also covered employees of church agencies and also to plans that were established by a church in the first instance but were maintained by church pension boards.

The PRC argued in its brief that statements by the amendment's sponsors and the congressional floor debate supported the conclusion that the amendment didn't change the basic definition of a church plan from one that is "established and maintained" by "a church or by a convention or association of churches."

In defending this position, the PRC pointed to comments on the Senate floor by Sen. Herman Talmadge (D-Ga.) when he introduced the bill that would become the MPPAA in 1979. According to the amicus brief, Talmadge specifically expressed his belief that the amendments didn't change the basic definition of a church plan, but instead made the exemption permanent as it was set to expire in 1982.

Additionally, according to the PRC, the legislative history shows that the 1980 amendments were implemented as a means of expanding the definition of employee as it related to a church plan to include those individuals employed by a church agency, not expanding the definition of church plan to one not established by a church in the first instance.

Practice and Statutory Construction. Meanwhile, GuideStone, a Texas nonprofit corporation that serves as the church benefits board for the Southern Baptist Convention, pointed to the intent of the groups that formed the driving force behind the MPPAA amendments in the first place as support for the district court's reading of the church plan exemption.

According to the GuideStone brief, a group of officers and directors of religious benefit programs banded together in a group called the Church Alliance for Clarification of ERISA (CACE) in an effort "to preserve church plan status for the benefit plans of church agencies."

The brief pointed to the MPPAA's language, which included church agency employees as employees for

the purposes of a church plan, as evidence that this effort had been successful.

Additionally, the GuideStone brief pointed to the IRS practice of providing private letter rulings affirming the church plan status of the plans like the one sponsored by Ascension Health. According to the brief, this practice began with a general counsel memorandum in 1983 and had been followed in nearly every private letter ruling for the ensuing 30 years.

GuideStone listed 10 different instances when Congress amended laws after that 1983 memorandum to reference church plans as defined under ERISA and never once thought to amend the definition itself to address the private letter ruling interpretations of the statute.

Finally, the GuideStone brief referenced Section 3(32) of ERISA, which defines exempt governmental plans, as further evidence supporting the district court's reading of the statute.

The brief argues that this section used the word "includes" to add a list of plans as governmental plans that couldn't have been established by a federal or state government in the first instance in a similar way that Section 3(33)(C) uses the word "includes" to add to the church plan definition certain plans that weren't established by a church or convention or association of churches in the first instance.

Constitutional Considerations. The Catholic Health Association, in its brief, raised the specter of government involvement in religion in violation of the First Amendment as a reason to affirm the district court's ruling.

According to the CHA, the national leadership organization for the health ministry of the Roman Catholic Church, the health-care organizations like Ascension Health that are the defendants in various church plan cases across the country are the descendants of religious health-care ministries begun by the Ursuline Sisters in New Orleans in 1727.

The CHA provided a detailed history of the development of Catholic health-care ministry in its brief, arguing that overturning the district court's opinion would result in the court having to determine how closely connected an organization had to be to an actual congregation or church hierarchy before it qualified for exemption.

The brief claimed that such an inquiry would involve the courts being used to determine what constituted a "church," and potentially applying different definitions depending on the structure and polity of the organization.

According to the CHA, both of these actions would violate the free exercise and establishment clauses of the First Amendment and would go against the original congressional intent of the church plan exemption, which was to keep government out of the affairs of the church in the first instance.

The brief submitted by the Becket Fund, a nonprofit law firm dedicated to defense of religious freedom, agreed with this contention and also rebutted an argument presented by the class members that the church plan exemption as applied violated the establishment clause.

The Becket Fund's brief argued that recent Supreme Court cases interpreting the establishment clause re-

quired courts to look at historical practices and understandings before ruling that a certain government action violates the First Amendment.

According to the brief, church plans had existed long before even the oldest private employee benefit plans were created.

According to the Becket Fund, the exemption of church plans from ERISA from 1974 through 1980 and the subsequent amendments that made the exemption permanent meant that historically, the government had never regulated church plans despite such plans being around for nearly 300 years.

As a result, the brief argued, the church plan exemption wasn't a violation of the establishment clause.

The Sixth Circuit hasn't yet set an oral argument date for this case, one of two church plan cases currently facing an appeal to a federal appeals court, joining a proposed interlocutory appeal to the U.S. Court of Appeals for the Third Circuit in *Kaplan v. Saint Peter's Healthcare Sys.*, 3d Cir., No. 14-08125, petition for leave to appeal filed 9/29/14 (41 BPR 2051, 9/30/14).

A third appeal is expected to the U.S. Court of Appeals for the Ninth Circuit, after a decision by the U.S. District Court for the Northern District of California granted partial summary judgment to plan participants, interpreting the statute to not include a religiously affiliated health-care corporation's pension plan within the ERISA church plan exemption (*Rollins v. Dignity Health*, N.D. Cal., No. 3:13-cv-01450-TEH, motion for interlocutory appeal filed 11/10/14) (41 BPR 2364, 11/18/14).

The PRC was represented by Karen Ferguson of the Pension Rights Center, Washington.

GuideStone was represented by John D. Curran of Conner & Winters, Oklahoma City.

The CHA was represented by Mark E. Chopko of Stradley, Ronon, Stevens & Young, Washington.

The Becket Fund was represented by Helgi C. Walker of Gibson, Dunn & Crutcher, Washington, and Eric C. Rassbach of the Becket Fund for Religious Liberty, Washington.

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Text of the Pension Rights Center brief is at http://www.bloomberglaw.com/public/document/Marilyn_Overall_v_Ascension_Health_et_al_Docket_No_1401735_6th_Ci/1.

Text of the GuideStone Financial Resources brief is at http://www.bloomberglaw.com/public/document/Marilyn_Overall_v_Ascension_Health_et_al_Docket_No_1401735_6th_Ci/2.

Text of the Catholic Health Association brief is at http://www.bloomberglaw.com/public/document/Marilyn_Overall_v_Ascension_Health_et_al_Docket_No_1401735_6th_Ci/3.

Text of the Becket Fund brief is at http://www.bloomberglaw.com/public/document/Marilyn_Overall_v_Ascension_Health_et_al_Docket_No_1401735_6th_Ci.