IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-01249-REB-KLM

JANEEN MEDINA, individually, and on behalf of all others similarly situated, and on behalf of the CHI Plans,

Plaintiff,

v.

CATHOLIC HEALTH INITIATIVES, *et al.*,

Defendants.

EXPERT REPORT OF DANIEL I. HALPERIN

INTRODUCTION

I have been engaged in this matter by Keller Rohrback LLP, counsel for Plaintiff, to provide my analysis and conclusions with respect to the scope of the "church plan" exemption from the federal Employee Retirement Income Security Act of 1974 ("***ERISA***") as it was amended in 1980. My report focuses in particular on the position of the United States Department of the Treasury ("***Treasury***"), and on my testimony on behalf of Treasury during Congressional hearings in 1979 and 1980 concerning proposed amendments to ERISA. Those hearings, in part, addressed the question of whether a retirement plan that was a "church plan" would continue to be allowed to cover non-church employees – that is, employees of entities that are not themselves churches, but simply agencies that are related to churches – and so deprive those non-church employees of the protections of ERISA. Defendants in this case argue that the amendments that were ultimately adopted, in addition to opening church plans to employees of certain non-church entities, also permanently changed the definition of a "church plan" so that a plan that was not even established by a church would be exempt from ERISA. As I explain below, the defendants have incorrectly characterized the nature of the problem being addressed by the amendments, and have relied on a misreading of my testimony to support an interpretation of the amendments that is both incorrect and illogical. I concluded at the time of my testimony in 1979 and 1980, and I continue to conclude, that only a church or a convention or association of churches can establish a "church plan" that is exempt from compliance with ERISA.

Expertise

I am the Stanley S. Surrey Professor at Harvard Law School, where I have taught since my appointment in 1996. I have worked on pension plan tax policy and related issues for almost my entire career, beginning years before ERISA was adopted in 1974. My *curriculum vitae* is attached as Exhibit A. In summary, I began my legal career working on pension plans in private practice in New York City in the early 1960s, and have twice served in the Office of Tax Policy at the U.S. Treasury Department (1967-70 and 1977-80), including service as Deputy Assistant Secretary of the Treasury from 1978-80. While at Treasury I participated in the drafting and analysis of numerous tax statutes, including the amendments to ERISA at issue here. I taught at University of Pennsylvania Law School from 1970-1977, and at Georgetown Law School from 1981-1996. At times during my academic career I have been privately retained to consult on ERISA compliance and pension issues. I am currently Vice Chairman of the Board of the Pension Rights Center, an Affiliated Scholar with the Urban Institute, and a member of the advisory board for the Urban Institute's "Project on Tax Policy and Charities".

Publications

I have written extensively about qualified pension plans and retirement savings, as well as nonprofit organizations and the timing of income and deductions under the Internal Revenue Code. My first article analyzing ERISA was published in 1976 (Halperin, Daniel L., "Retirement Security and Tax Equity: An Evaluation of ERISA," 17 *Boston College Industrial and Commercial Law Review* 739 (1976)), and last year I participated in a Drexel University School of Law symposium on "ERISA at 40: What Were They Thinking?" for which I contributed a retrospective article on my involvement in the development of pension law over the past fifty years (Halperin, Daniel I., "Fifty Years of Pension Law," in *Drexel Law Review*, Vol. 6, No. 2 (Drexel University School of Law, Philadelphia, Spring 2014)). A comprehensive list of my publications is attached as Exhibit B.

Prior Testimony and Terms of Engagement

I testified before Congressional committees on approximately fifty occasions while I was employed by Treasury, including the testimony about proposed amendments to ERISA that is specifically discussed in this report. During the past four years I have given no deposition or trial testimony.

I have agreed to provide my services in this case without charge.

Documents Reviewed

In connection with conducting my analysis of the matters in this report and rendering my opinions, I have reviewed motions and responses filed in this and other cases setting out defendants' position on the history and meaning of the church plan exemption, and I have reviewed transcripts of my testimony in Congress on behalf of Treasury. A list of documents and information I reviewed in connection with conducting my analysis and rendering the opinions in this Declaration is attached as Exhibit C.

Opinions as to the Scope of the Church Plan Exemption to ERISA

I. Background.

During 1979 and 1980 I was the Deputy Assistant Secretary for Tax Policy at the United States Department of the Treasury, where I was the senior person at Treasury in charge of Treasury's analysis of Senate bills S.1090, S.1091, and S.1092 dealing with amendments to ERISA. The proposed amendments included changes related to "church plans." An employee retirement benefit plan that meets the ERISA definition of "church plan" is exempted from complying with ERISA, so that employees who are participants in or beneficiaries of a "church plan" do not receive the pension protections that ERISA was established to provide. In my capacity as Deputy Assistant Secretary for Tax Policy, on December 4, 1979, I testified before the Subcommittee on Private Plans and Employee Fringe Benefits of the Senate Finance Committee (the "***Senate Finance Subcommittee***"). The testimony in part presented Treasury's views on S.1090 (which proposed to amend ERISA) and S.1091 (which proposed to make identical amendments to the corresponding provisions of the Internal Revenue Code ("***IRC***")).

In recent years a number of lawsuits have raised the question of whether a church plan must be established by "a church or a convention or association of churches,"[1] or whether a church plan can, in addition, include a stand-alone plan established and maintained by an organization that is related to a church. This determination depends on the meaning of one of the sections amended by S.1090 and S.1091: 26 U.S.C. § 414(e)(3)(A) of the Internal Revenue Code, and its identical ERISA counterpart, ERISA § 3(33)(C)(i), which is codified at 29 U.S.C. §1002(33)(C)(i)). Defendants in this case and in other similar cases have incorrectly relied on my testimony to the Senate Finance Subcommittee, as well as my statements at the Senate Finance Committee markup session of June 12, 1980,[2] to support their claim that Treasury understood that these sections allow such stand-alone plans to be considered church plans.

I believe that by far the most natural reading of I.R.C. §414(e)(3)(A) and ERISA §3(33)(C)(i) would reject this interpretation and support the conclusion that to be a church plan, the plan must be established by a church.

Briefs by the parties and amici in these cases have carefully parsed the statutory language as justification for their conflicting conclusions. Rather than repeat these

---

[1] The phrase "a church or a convention or association of churches" is contained in the definition of "church plan" at IRC § 414(e)(1), ERISA §3(33)(A). In this report, to avoid unnecessarily complicated syntax, I sometimes use the word "church" as shorthand for the phrase "a church or a convention or association of churches." Using the full phrase throughout would not change my analysis in any way.

[2] Transcript of United States Senate Committee on Finance Executive Session, June 12, 1980 (the "***1980 Markup Session Transcript***").

arguments I will limit my statement to my understanding of the actual meaning of my testimony, as based on my seven years' experience at Treasury.

II. The Status of Church Plans and Their Permitted Participants Upon Enactment of ERISA in 1974.

In 1974, Congress exempted church plans from the provisions of ERISA. A church plan was defined as a plan established and maintained for its employees by a church or a convention or association of churches (this definition, which is unchanged from its initial adoption in 1974, is currently codified at IRC § 414(e)(1), ERISA §3(33)(A)).

In addition, a special temporary rule provided that if a plan was in existence on January 1, 1974, it would be treated as a church plan if it was established and maintained by a church AND one or more agencies of such church, for the employees of such church AND the employees of one or more such agencies. This temporary rule did not apply to any plan maintained by an agency alone nor did it apply to any plan year beginning after December 31, 1982. In other words, the employees of church agencies that were already participating in church plans when ERISA took effect were "grandfathered" in, and allowed to continue to participate in church plans, during a transition period that ended in 1982.

III. The Amendments Under S.1091 Addressed Only Whether the "Grandfathered" Church Agency Employees Could Continue to Participate in Church Plans.

As noted in my testimony on December 4, 1979,[3] under the 1974 ERISA law, after 1982, employees of church agencies could no longer participate in church plans and would become entitled to the full protection provided by ERISA. Treasury felt this to be beneficial and my testimony voiced the Treasury's objections to the provision of S. 1090 and S.1091 that, by defining an employee of a church to include an employee of an organization that is controlled by or associated with a church, would continue to deny ERISA protection to church agency employees in plans established by churches. However, Congress chose to reject our position and enacted IRC section 414(e)(B)(ii), ERISA § 3(33)(C)(ii)(II).

At the Senate Finance Committee Markup session of June 12, 1980, I orally voiced Treasury's opposition as follows:

> *Mr. Chairman, we have objected to certain provisions of that bill, and let me just point out what we see as the most serious concern.*

---

[3] Transcript of Hearings before the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Finance Committee, December 4, 1979 (the "***1979 Subcommittee Transcript***"), at 222, 223 (testimony of Daniel I. Halperin, Deputy Assistant Secretary of the Treasury).

> *What that bill would permit, it would exclude church agencies from the protection of ERISA, and that would mean that if somebody works for a hospital or a school that happens to be affiliated with a church it would permissible for that plan to provide no retirement benefits unless they work until age 65, for example.*

1980 Markup Session Transcript at 40-41. As I understood it, the intent of the proponents of S. 1091 was to make the grandfather provision of ERISA permanent and to extend it to cover the employees of church agencies that were added to the church plan after January 1, 1974. To quote my testimony of December 4, 1979, "Therefore, we oppose the provision of S.1091 which would extend the temporary rule relating to church agencies" which would, as my comment at the Senate Finance Committee stated, make it permissible to exclude church agency employees from the protection of ERISA. 1979 Subcommittee Transcript at 223.

The proposed legislation, by making the grandfather clause permanent, would permanently exclude employees of a church agency from the protection of ERISA, something that would not have been permitted under the original ERISA legislation. This was what I objected to both at the June 12, 1980 markup session, and in my oral testimony at the December 4, 1979 hearing, when I stated: "we see no justification for expansion of the complete exemption from ERISA from churches to church-related agencies." 1979 Subcommittee Transcript at 190.

Defendants now claim, however, that the exclusion from ERISA would apply even if the church agency alone established the plan rather than participating in a plan established by a church. They have relied on my statement at the June 12, 1980 markup session, quoted above, to justify their contention that this was understood to be the intent of the legislation by both the proponents and its critics.

If I had anticipated any dispute over whether any entity other than a church could establish a church plan, I could have clarified what I meant by inserting the additional words in my oral statement shown in bold below, as follows.

> What the bill would permit, it would exclude church agencies from the protection of ERISA, **if they were participating in a plan established by a church**.

It is an enormous and erroneous leap, however, to suggest that the failure to include those qualifying words meant that I and everyone else understood the provision applied even if the church agency established a stand-alone plan, something not permitted under the 1974 legislation. There is no reason to believe that the ability to establish stand-alone plans which were not allowed under ERISA as it was enacted in 1974 was on my radar. I was focused on extension of the grandfather clause allowing church agency employees to participate in a plan established by a church. As stated in my testimony, "these provisions would effectively make the temporary rule contained in current law permanent." I have reviewed the legislative material cited by the defendants. All of it refers to the difficulty of having to separate plans which now covered both the employees of the church itself and employees of an agency into two separate plans,

one of which would be subject to ERISA. I found no specific reference to the potential problem for stand-alone plans.

Importantly, just a minute before my remarks at the June 12, 1980, markup session, Senator Talmadge, the sponsor of the legislation, clearly stated the legislation's purpose was to make the grandfather protection permanent:

> *Under current law, both ERISA and the Internal Revenue Code, define [church]... plans to include not only church plans covering church employees but also plans covering employees of church affiliated organizations.*
>
> *For example, the church plan might cover the employees of a church-related hospital, university or retirement home. As you might expect, this is common practice of many churches throughout the United States. However, unless we act to preserve the longstanding definition of church plans,* ***the law as it currently reads will phase out this definition beginning in 1983.***
>
> *S. 1090 and S. 1091 make the amendments necessary* ***to continue the current church plan definition.***

1980 Markup Session Transcript at 39-40.(emphasis added.)

My remarks must be understood as an objection to the goal that had just been stated by Senator Talmadge. If I had believed, as the defendants claim I did, that the proposed legislation was intended to allow stand-alone agency plans to be considered church plans (which would have permitted plans that were subject to ERISA under the original 1974 ERISA legislation to now deny ERISA protection to their employees), it is inconceivable to me that we would not have made Treasury's objection to that effort more explicit. It is not credible that I would have relied on my listeners to have understood this from the statement I made.

IV. My Testimony on Behalf of Treasury Was Based on the Understanding That the Amendments Under S. 1090 and S. 1091 Do Not Authorize Stand-Alone Plans Established by Church Agencies To Be Treated As Church Plans.

The basis of defendants' claim that stand-alone plans are church plans is apparently IRC §414(e)(3)(A) (ERISA §3(33)(C)(i)), which reads as follows:

> For purposes of this subsection–
>
> (A) Treatment as church plan
>
> 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.

(Emphasis added)

I understood, as I testified to the Subcommittee on December 4, 1979, that this provision was intended ONLY to "allow a program of a church pension board to be considered a church plan." Even today, I can recall a number of discussions with the Treasury staff about plans maintained by church pension boards. Many commentators on the Treasury's proposed regulation and on the pending legislation asked for this change and we agreed that this provision was appropriate.

To again quote Senator Talmadge's remarks at the June 12, 1980 markup session:

S. 1090 and S. 1091 make the amendments necessary ***to continue the current church plan definition.*** *The definition would also* ***be expanded*** *to include church plans which rather than being maintained directly by a church are instead maintained by a pension board maintained by a church.*

1980 Markup Session Transcript at 40 (emphasis added)

In other words the proposed legislation would continue the definition under the grandfather clause and expand it to include plans maintained by a pension board. Nothing more. Treasury understood the words I emphasized in bold in the statute quoted above - "***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,"*** IRC §414(e)(3)(A) (ERISA §3(33)(C)(i)) - to be intended to describe plans maintained by a church pension board. As so limited, we found it non-objectionable.

V. My Testimony on Behalf of Treasury Was Based on the Understanding That the Only Non-Church Entity That Could "Maintain" a Church Plan that had been Established by a Church Was a Special-Purpose Entity Like a "Pension Board."

Treasury understood that the amendment to the definition of a church plan only allowed a "pension board" or similar special-purpose entity to maintain a plan that had been established by a church. If the intent of the amendment had been to permit a plan to be maintained by a hospital or other church agency, IRC §414(e)(3)(A) (ERISA §3(33)(C)(i)) could be greatly simplified, completely omitting the words "***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,"*** so that the statute would simply read as follows

For purposes of this subsection–

(A) Treatment as church plan

> 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, if such organization is controlled by or associated with a church or a convention or association of churches.

Of course, the addition of the requirement that ***the principal purpose or function of the organization be the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits*** makes it difficult to argue that it allows for stand-alone plans maintained by a church agency. These words describe the purpose of a church pension board. They do not in any way reflect the purpose of a hospital, retirement home or school.

Defendants contend this language means that, even though a non-church entity like a hospital (whose principal purpose is providing healthcare) cannot itself maintain a "church plan," the hospital can simply appoint its own internal committee to "maintain" the hospital's plan as a church plan. To fit Defendants' theory within the words of the law as it was enacted, it becomes essential for Defendants to make a two-part argument. First, Defendants must argue that the hospital's retirement plan is "maintained" by the hospital's own retirement committee. Second, Defendants must argue that that internal committee has as its principal purpose or function the "administration" of the plan. So interpreted it would seem the statutory requirement of an entity "the principal purpose or function of which is the administration or funding of a plan" is meaningless. Virtually every single-employer retirement plan is administered by such a committee, and so virtually every single-employer retirement plan would therefore meet a requirement that was intended to distinguish "church plans" from other plans. The only meaningful requirement for church plan status would then be that the employer be "*controlled by or associated with a church or a convention or association of churches.*" If Treasury had believed that the amendments proposed by S.1090 and S.1091 could have allowed an entity like a hospital to appoint a special-purpose committee of itself in order to claim "church plan" status for its retirement plan, my testimony in Congress would have highlighted and strongly opposed such an expansion.

I have had seven years of experience at Treasury during which I participated in helping to draft amendments to the Internal Revenue Code. Until it was explained to me by others I could not figure out how the statute as drafted could possibly be read to support the Defendants' position. Not only does it take a convoluted reading of this provision to claim that it permits a plan to be maintained by a church agency, it also assumes the insertion of a requirement which as interpreted by the Defendants would complicate the law while having no ascertainable purpose. We should not lightly assume that this path was intended.

Conclusion

My testimony in 1979 and 1980 on behalf of Treasury with respect to S. 1090 and S. 1091 demonstrates Treasury's understanding that the purpose of the changes to the church plan provisions concerned only (1) whether the employees of a church agency could continue, after 1982, to be allowed to participate in church plans, permanently continuing their grandfathered status, a change that Treasury opposed; and (2) whether a church pension board could maintain a plan that had been established by a church, a change that Treasury did not oppose.

20th EXECUTED under penalty of perjury at Middlesex County, Massachusetts, this day of April, 2015.

Daniel I. Halperin

EXHIBIT A

DANIEL I. HALPERIN

Employment

July 1996 to present	Professor Harvard Law School
January 1981 - June 1996	Professor, Georgetown University Law Center
1993-94	Visiting Professor, Harvard Law School
1985 - 1986	Visiting Professor, Yale Law School
May 1977 - January 1981	Department of Treasury, Deputy Assistant Secretary (Tax Legislation) from August 1978
1970 - 1977	Professor, University of Pennsylvania Law School, Philadelphia, Pennsylvania
1967 - 1970	Office of Tax Legislative Counsel, Department of Treasury, Deputy Tax Legislative Counsel, 1969-70
1961 - 1967	Kaye, Scholer, Fierman, Hays & Handler, New York City (Associate)

Education

J.D., Harvard Law School, 1961 (m.c.l.)
B.B.A., City College of New York, 1957 (m.c.l.)

Selected Publications

Incentives for Conservation Easements: The Charitable Deuction or a Better Way, 74 *Law and Contemporary Problems* 29 (2011

Is Income Tax Exemption for Charities a Subsidy? 64 *Tax Law Review* 283 (2011)

Tax Policy and Endowments –Is Excessive Accumulation Subsidized?
Part I 67 *Exempt Org. Tax Rev.*17 (2011)
Part II 67 *Exempt Org. Tax Rev.*125 (2011)

Mitigating the Potential Inequity of Reducing Corporate Rates, 126 *Tax Notes* 641 (2010)

Rethinking the Advantage of Tax Deferral (2009 Erwin N. Griswold Lecture Before the

American College of Tax Counsel), 62 *The Tax Lawyer* 535 (2009)

Income Taxation of Mutual Nonprofits, 59 *Tax Law Review* 133 (2006)

Ensuring Retirement Income for All Workers in *The Evolving Pension System: Trends, Effects, and Proposals for Reform* 155 (Brookings Institution Press, 2005) (with Alicia H. Munnell)

Employer-Based Retirement Income-The Ideal, The Possible And The Reality, 11 Elder L.J. 37 (2003)

A Charitable Contribution of Appreciated Property and the Realization of Built-In Gains, 56 Tax L.R. 1 (2002)

Regulating Tax Qualified Pension Plans in a Hybrid World, Chapter 5 New York University 58th Institute on Federal Taxation--Employee Benefits and Executive Compensation (2000) (With Marla Schnall)

Saving the Income Tax: An Agenda for Research for Research, Tax Notes Nov. 24, 1997 and XXIV O .Northern L. Rev. 493 (1998)

Assumption of Contingent Liabilities on Sale of A Business, 2 Fl Tax Rev. 673 (1996).

Special Tax Treatment for Employer Based Retirement Programs: Is It "Still" Viable as a Means of Increasing Retirement Income? 49 Tax Law Review 1 (1993) (published 1995)

Commentary- A Capital Gain Preference Is Not Even a Second Best Solution, 48 Tax L. Rev. 381 (1993)

Valuing Personal Consumption: Cost Versus Value and the Impact of Insurance, 1 Fl Tax Rev 1 (1992)

Indexing the Tax System for Inflation, in Uneasy Compromise Problems of a Hybrid Income-Consumption Tax (Aaron, Galper, Pechman eds.) at 347 (1988) (with Eugene Steuerle)

Interest in Disguise: Taxing the Time Value of Money, 95 Yale L.J. 506 (1986)

Broadening the Base -- The Case of Fringe Benefits, XXXVII National Tax Journal 271 (1984)

Business Deductions for Personal Living Expense, 122 U. Pa. L. Rev. 859 (1974)

Selected Activities

American Law Institute Project on Corporate Integration (Consultant)
Member Technical Panel on Trends and Issues in Retirement Savings to advise 1994 Advisory Council on Social Security 1994-95
Vice Chair of the Board, Pension Rights Center, Washington D.C.
Member of Panel on Privatization of Social Security, National Academy of Social Insurance 1996-98

Laurence N. Woodworth Memorial Lecture in United States Tax Law and Policy, November 7, 1997

Member Board of Advisors, NYU, National Center on Philanthropy and the Law (1998-2001)

Personal

Born: January 2, 1937 Brooklyn, NY

Marital Status: Married, 3 children

EXHIBIT B

HARVARD LAW SCHOOL

Daniel I. Halperin

Stanley S. Surrey Professor of Law

halperin@law.harvard.edu
Hauser 316
617-496-5505
Assistant: Bradford Conner / 617-496-1763

- Faculty Disclosures re: Related Outside Interests and Activities

Representative Publications

Bibliography

Shorter Works in Collection

Halperin, Daniel I. "Retirement Income Security After the Fall" in *New York University Review of Employee Benefits and Executive Compensation* 11-1 (Matthew Bender & Co., Inc., 2009).

Halperin, Daniel I. "Comment on "The Tax Code, Employer-Sponsored Insruance, and the Distribution of Subsidies"" in *Using Taxes to Reform Health Insurance* 64 (Brookings Insitution, 2008).

Halperin, Daniel I. & Ethan Yale. "Deferred Compensation (Under Section 409A) Revisisted" in *Proceedings of the New York University Institute on Federal Taxation* 20-1 (Matthew Bender & Co., Inc., 2007).

Halperin, Daniel I. "Concluding Comments" in *Taxing Capital Income* 309 (Urban Institute Press, 2007).

Halperin, Daniel I. & Alicia H. Munnell. "Ensuring Retirement Income for All Workers" in *The Evolving Pension System: Trends, Effects, and Proposals for Reform* 155 (Brookings Institution Press, 2005).

Halperin, Daniel I. & Marla Schnall. "Regulating Tax-Qualified Pension Plans in a Hybrid World" in *Proceedings of the Fifty-Eighth Institute on Federal Taxation: Employee Benefits and Executive Compensation, New York University* (Matthew Bender, 2000).

Halperin, Daniel I. & Eugene Steuerle. "Indexing the Tax System for Inflation" in *Uneasy Compromise: Problems of a Hybrid Income-Consumption Tax* 347 (Aaron, Galper & Pechman eds., 1988).

Halperin, Daniel I. "Tax Reform Act of 1986 and the Equity of the Nation's Retirement System" in *1987 Proceeding of the Eightieth Annual Conference, National Tax Association* 93 (Tax Institute of America, 1988).

Halperin, Daniel I. "Tax Policy and Retirement Income: A Rational Model for the 21st Century" in *Search for a National Retirement Income Polisy, Pension Research Council* 159 (Richard D. Irwin Publ., 1987).

Halperin, Daniel I. "Cash or Deferred Profit Sharing Plans and Cafeteria Plans" in *Proceeding of the Forty-First Annual New York University Institute on Federal Taxation* 39-1 (Matthew Bender & Co., Inc., 1983).

Halperin, Daniel I. "Federal Income Taxation of Banks" in *1971 Proceedings of the Sixty-Fourth Annual Conference* 320 (National Tax Association, 1972).

Halperin, Daniel I. "Private Foundations - Definition and Termination" in *Proceeding of the Twenty-Ninth Annual New York Univeristy Institute on Federal Taxation* 1783 (Matthew Bender & Co., Inc., 1971).

Articles in a Periodical

Halperin, Daniel I. "Fifty Years of Pension Law," 6 *Drexel Law Review* 503 (2014).

Halperin, Daniel I. & Alvin C. Warren. "Understanding Income Tax Deferral," 67 *Tax Law Review* 317 (2014).

Halperin, Daniel I. "Tax Expenditure: Budget Control and the Nonprofit Sector," 134 *Tax Notes* 447 (2012).

Halperin, Daniel I. "Is Income Tax Exemption for Charities a Subsidy?" 64 *Tax Law Review* 283 (2011).

Halperin, Daniel I. "Tax Policy and Endowments - Is Excessive Accumulation Subsidized?" 67 *The Exempt Organization Tax Review* 17 (2011).

Halperin, Daniel I. "Incentives for Conservation Easements: The Charitable Deduction or a Better Way," 74 *Law & Contemporary Problems* 29 (2011).

Halperin, Daniel I. "Tax Policy and Endowments - Is Excessive Accumulation Subsidized? (Part II)," 67 *The Exempt Organization Tax Review* 125 (2011).

Halperin, Daniel I. "Mitigating the Potential Inequity of Reducing Corporate Rates," 126 *Tax Notes* 641 (2010).

Halperin, Daniel I. "Rethinking the Advantage of Tax Deferral (2009 Erwin N. Girswold Lecture Before the American College of Tax Counsel)," 62 *The Tax Lawyer* 535 (2009).

Halperin, Daniel I. & Ethan Yale. "Deferred Compensation Revisited," 114 *Tax Notes* 939 (2007).

Halperin, Daniel I. "Fun and Games with the Roth IRA," 112 *Tax Notes* 167 (2006).

Halperin, Daniel I. "Income Taxation of Mutual Nonprofits," 59 *Tax Law Review* 133 (2006).

Halperin, Daniel I. "The Unrelated Business Income and Payments from Controlled Entries," 109 *Tax Notes* 1443 (2005).

Halperin, Daniel I. "The Case Against Privatization," 65 *Ohio State Law Journal* 75 (2004).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "A Fairer and More Effective Approach to Deferred Compensation," 103 *Tax Notes* 1187 (2004).

Halperin, Daniel I. "Employer-Based Retirement Income: The Ideal, the Possible and the Reality," 11 *Elder Law Journal* 37 (2003).
Full text: WWW || LEXIS || WESTLAW
(Reprinted as Chapter 12 in *The New York University Review of Employee Benefits and Executive Compensation*, 2003)

Halperin, Daniel I. "A Charitable Contribution of Appreciated Property and the Realization of Built-In Gains," 56 *Tax Law Review* 1 (2002).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "Comment on Seago Special Report on Financial Accounting," *Tax Notes*, December 7, 2001.

Halperin, Daniel I. "Comment on Willis Special Report on Financial Accounting," *Tax Notes*, December 7, 2001.

Halperin, Daniel I. & Alicia H. Munnell. "Ensuring Retirement Income for All Workers in ERISA After 25 Years: A Framework for Evaluating Pension Reform," *published on the Internet*, 2003.
Full text: WWW

Halperin, Daniel I. "Why Pension Reform Legislation is a Bad Idea," 89 *Tax Notes* 958 (2000).

Halperin, Daniel I. "Fundamental Tax Reform," 48 *Emory Law Journal* 809 (1999).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "I Want a Roth IRA for Xmas," 81 *Tax Notes* 1567 (1998).

Halperin, Daniel I. "Saving the Income Tax: An Agenda for Research," *Tax Notes*, Nov. 24, 1997.
Full text: WWW
(Reprinted in XXIV *Northern Law Review* 493, 1998)

Halperin, Daniel I. "Assumption of Contingent Liabilities on Sale of a Business," 2 *Florida Tax Review* 673 (1996).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "Are Anti-Abuse Rules Appropriate?" 48 *Tax Lawyer* 807 (1995).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "Special Tax Treatment for Employer Based Retirement Programs: Is It "Still" Viable as a Means of Increasing Retirement Income?" 49 *Tax Law Review* 1 (1995).
Full text: HEIN (Harvard Users) || HEIN || LEXIS || WESTLAW

Halperin, Daniel I. "Ninth Circuit's Decision in Albertson's is Outrageous," *Tax Notes*, Feb. 21, 1994.

Halperin, Daniel I. "Albertson's: More "Outrage"," 63 *Tax Notes* 1771 (1994).

Halperin, Daniel I. "Commentary: A Capital Gain Preference Is Not Even a Second Best Solution," 48 *Tax Law Review* 381 (1993).

Halperin, Daniel I. "Valuing Personal Consumption: Cost Versus Value and the Impact of Insurance," 1 *Federal Law Tax Review* 1 (1992).

Halperin, Daniel I. "Commentary: Will Integration Increase Efficiency? The Old and New View of Dividend Policy," 47 *Tax Law Review* 645 (1992).

Halperin, Daniel I. "Interest in Disguise: Taxing the Time Value of Money," 95 *Yale Law Journal* 506 (1986).

Halperin, Daniel I. "The Time Value of Money," 23 *Tax Notes* 751 (1984).

Halperin, Daniel I. "Broadening the Base: The Case of Fringe Benefits," 37 *National Tax Journal* 271 (1984).

Halperin, Daniel I. "Retirement Security and Tax Equity: An Evaluation of ERISA," 17 *Boston College Industrial and Commercial Law Review* 739 (1976).

Halperin, Daniel I. "Business Deductions for Personal Living Expenses: A Uniform Approach to an Unsolved Problem," 122 *Univerity of Pennsylvania Law Review* 859 (1974).

Halperin, Daniel I. "Capital Gains and Ordinary Deductions: Negative Income Tax for the Wealthy," 12 *Boston College Industrial and Commercial Law Review* 387 (1971).

Halperin, Daniel I. "Carryovers of Earnings and Profits," 18 *Tax Law Review* 289 (1963).

Presentations

Halperin, Daniel I. Nonprofits and Charities, New York University (2001).

Halperin, Daniel I. Emerging Changes in the Tax System, University of San Diego Law School; Invited Conference Participant (March 1999).

Halperin, Daniel I. Laurence N. Woodworth Memorial Lecture in United States Tax Law and Policy (November 7, 1997).

Halperin, Daniel I. Vulnerabilities in the Employer Pension System, National Academy of Social Insurance, 5th Annual Conference (January 28, 1993).

Halperin, Daniel I. Inaugural Compensation Policy Lectureship, ALI-ABA: 'Superadvanced' Pension-Compensation Program (August 18, 1989).

Internet Publications

Halperin, Daniel I. *The Tax Exemption Under Section 501(c)(4)* (2014).
Full text: WWW
(Published online by the Urban Institute)

Halperin, Daniel I. *The Charitable Contribution Deduction: Section 170 Reorganized* (2013).
Full text: WWW
(Published electronically by the Urban Institute (Washington, D.C.))

Works in Progress

Halperin, Daniel I. *Can Cash Accounting Be Correct?* (2013).

Halperin, Daniel I. *Section 501(c)(4) - Where Does It Fit?* (2013).

Representative Publications

EXHIBIT C

Exhibit C

Materials Reviewed

1. Defendants' Opposition to Motion for Partial Summary Judgment in *Rollins v. Dignity Health*, U.S. District Court, N.D. Cal., No. 3:13-cv-1450-TEH, ECF #114 (04/21/14)
2. Defendants' Motion for Partial Summary Judgment and Opposition to Plaintiff's Motion for Partial Summary Judgment in *Rollins v. Dignity Health*, U.S. District Court, N.D. Cal., No. 3:13-cv-1450-TEH, ECF #137 (05/02/14)
3. Defendants' Motion to Dismiss in *Lann v. Trinity Health Corporation*, U.S. District Court, D. Md., No. 8:14-cv-02237-PJM, ECF #40-1 (10/06/14)
4. Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment in *Medina v. Catholic Health Initiatives*, U.S. District Court., D. Colo., No. 1:13-cv-01249-REB-KLM, ECF #154 (03/05/14)
5. Defendants' Objections to Recommendation of Magistrate Judge in *Medina v. Catholic Health Initiatives*, U.S. District Court., D. Colo., No. 1:13-cv-01249-REB-KLM, ECF #207 (07/30/14) and Order Sustaining Objection
6. Appellants' Opening Brief in *Kaplan v. St. Peter's Healthcare System*, U.S. Court of Appeals for the Third Circuit, No. 15-1172 (03/16/2015)
7. Senate Committee on Finance, Executive Session Minutes, June 12, 1980 Markup Session, at pp. 39-41
8. Testimony and written statement of Daniel I. Halperin before the Subcommittee on Private Plans and Employee Fringe Benefits of the Senate Finance Committee, December 4, 1979
9. Testimony and written statement of Gary Nash before the Subcommittee on Private Plans and Employee Fringe Benefits of the Senate Finance Committee, December 4, 1979 and related documents
10. S. 1090, S. 1091, and S. 1092 (96th Cong., 1st. Session)
11. Section 3(33) and other relevant sections of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829, as enacted
12. 26 U.S.C. §414(e)(3)(A) and other relevant sections of the Internal Revenue Code
13. ERISA §3(33)(C), codified at 29 U.S.C. §1002(33)(C), and other relevant sections of ERISA
14. Memorandum Opinion and Order in *Stapleton v. Advocate Health Care Network*, U.S. District Court, N.D. Ill., No. 14-C-01873, ECF #64 (12/31/14)
15. Brief of Defendants-Appellees and attached exhibits in *Overall v. Ascension Health*, U.S. Court of Appeals for the Sixth Circuit No. 14-1735, ECF #46 (11/05/2014)
16. Amicus Curiae Brief of the Pension Rights Center in Support of Appellants in *Overall v. Ascension Health*, U.S. Court of Appeals for the Sixth Circuit No. 14-1735, ECF #35 (9/29/2014)

17. Declaration of Gary S. Nash in *Rollins v. Dignity Health*, U.S. District Court, N.D. Cal., No. 3:13-cv-1450-TEH, ECF #128 (4/21/14)

18. Norman Stein, "An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans." ABA Section of Labor and Employment Law Employee Benefits Committee Newsletter (Summer 2014)

19. G. Daniel Miller. "The Church Plan Definition: A Reply to Norm Stein," ABA Section of Labor and Employment Law Employee Benefits Committee Newsletter (Fall 2014)

20. IRS General Counsel Memorandum GCM 39007, 1983 WL 197946 (Nov. 2, 1983)