HALTING THE EXTENSION OF ERISA'S CHURCH PLAN EXEMPTION TO RELIGIOUSLY AFFILIATED HOSPITALS

Justin Caresia*

I. INTRODUCTION

From 1974 to 1998, Mary Rich worked first as a registered nurse and then as a healthcare executive in the now-defunct Hospital Center at Orange in Orange, New Jersey.[1] During that time, hospital administrators consistently assured her and 700 of her colleagues that their pensions were safe and fully funded.[2] Their assurances were well founded because the hospital's pension plan was regulated and protected by the Employee Retirement Income Security Act of 1974 ("ERISA").[3] The foundation on which their assurances rested disappeared in 1998 when the secular inner-city hospital succumbed to continued financial struggles and was bought out by Cathedral Healthcare System, a Catholic faith-based organization.[4] The new Vice President of Human Resources called a meeting of all hospital employees and announced that the Internal Revenue Service, at her request, had changed its classification of the hospital's pension plan to a "church plan."[5] She informed Rich and her colleagues that because the plan was now a "church plan," the hospital was no longer required by federal law to contribute to it or to disclose information to employees about its status.[6] She also informed them that the plan was no longer insured by the federal government and would likely be drained within a few years unless the hospital's financial situation improved.[7]

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* A special thank you to my beautiful wife, Morgan, who encouraged me to submit this for publication and sacrificed many Saturday mornings to make it possible.

1. *Workers Covered by Church Plans Tell Their Stories*, 9 PENSION RTS. CTR., http://www.pensionrights.org/publications/fact-sheet/workers-covered-church-plans-tell-their-stories (last visited Mar. 20, 2017).
2. Mary Williams Walsh, *I.R.S. Reversal on "Church" Pension Plan Rescues a Fund*, N.Y. TIMES (Apr. 1, 2013), http://www.nytimes.com/2013/04/02/business/an-irs-reversal-rescues-a-pension-fund.html?_r=0.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*

Suddenly, the financial benefits that Rich and her colleagues worked their entire lives to make secure were in danger.

An exception in the otherwise far-reaching federal regulatory scheme of ERISA, commonly known as the church plan exemption, permitted Cathedral Healthcare System to remove Hospital Center at Orange's pension plan from ERISA's reach.[8] When the IRS converted the plan from an ERISA plan to a church plan, it effectively placed the plan out of the federal government's reach and put hundreds of employees' pensions at risk of default. Thankfully, the story of Rich and her colleagues had a happy ending. In 2013, after an eight-year battle, the IRS took the highly unusual step of reversing its original decision to grant the hospital church plan status.[9]

But there is no guarantee that the stories of thousands of hospital employees in similar situations across the United States will end the same way. Since Congress amended the church plan language in 1980, the federal government has broadly and uniformly applied the statutory language of ERISA's church plan exemption to the pension plans of religiously affiliated hospitals.[10] However, two surprising rulings from the District Court for the Northern District of California[11] and a subsequent flurry of lawsuits filed throughout the United States have shaken the solid ground on which the government's interpretation once rested.

This Comment argues that administrative agencies and courts that have extended the statutory language of ERISA's church plan exemption to religiously affiliated hospitals have violated the unambiguous intent of Congress. It calls for special attention to be given to the analytical framework courts use in their analysis of the issue because courts that have ruled on the issue since 2013 have used a narrow analytical framework that has proven incomplete and caused some courts to reach the wrong result. Ideally, Congress would do away with the present chaos surrounding the church plan exemption by finally revisiting its language, scope, and policy implications. It is Congress' duty to consider the policy implications of legislation it passes, and it is past time for Congress to adequately consider whether extending ERISA's church plan exemption to religiously affiliated hospitals is what is best for the American people. By employing a cost-benefit analysis, Congress would likely realize that this extension is poor policy because the cost of allowing religiously affiliated hospitals, most of which more closely resemble

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8. *Id.*

9. However, the IRS took careful note to insist that the circumstances at the hospital at Orange were "unique" and that it "was not setting a precedent." *Id.*

10. 29 U.S.C. § 1003(b)(2) (2012).

11. Rollins v. Dignity Health, 59 F. Supp. 3d 965 (N.D. Cal. 2014) (summary judgment ruling); Rollins v. Dignity Health, 19 F. Supp. 3d 909 (N.D. Cal. 2013) (motion to dismiss ruling).

corporate conglomerates than they do churches, to escape ERISA by hiding behind the church plan exemption far outweigh its benefits.

Congressional intervention seems unlikely, so the task of resolving the church plan confusion will likely belong to the judiciary. Courts that will be called upon to revisit the church plan issue should approach it with a more expansive framework than has been used up to this point. This framework should start with a comparison of the original and amended church plan language and include analysis of the current language using specific, relevant canons of statutory construction. Once courts utilize this new, more expansive framework, they will likely discover that extending the church plan exemption to religiously affiliated hospitals goes against the unambiguous statutory language and Congress's intent.

Part II offers helpful context through an overview of ERISA, the church plan exemption, the 1980 amendments to the church plan exemption, and the arguments for and against extending the exemption to religiously affiliated hospitals. Part III introduces each of the recent court rulings on the issue and explains their holdings and rationale. Part IV calls on Congress to fix the issue, or in the alternative, for and the judiciary to analyze the church plan exemption's application to religious hospitals using common tools of legal analysis and statutory construction. It ultimately argues that the extension is wrong and should be discontinued.

II. BACKGROUND

A brief overview of ERISA and its corresponding church plan exemption is necessary to put the current dispute over the church plan exemption's extension to religiously affiliated hospitals in the proper context. Part II.A contains a brief overview of ERISA and its historical development. Part II.B introduces the reader to ERISA's church plan exemption and its own complex historical development. Part II.C analyzes the district court rulings on the issue since 2013 and the statutory, constitutional, and policy arguments on both sides of the debate.

A. ERISA

In December 1963, the Studebaker-Packard Corporation, a large United States automobile manufacturer, shut down its South Bend, Indiana facility

and declared bankruptcy.[12] In addition to shutting down the facility, Studebaker defaulted on its pension plan obligations in excess of fifteen million dollars and was unable to provide a full pension to its 4,000 employees, some of whom had worked for the company for forty years.[13] Ex-employees over the age of sixty received their full promised pension, ex-employees between the ages of forty-one and fifty-nine received fifteen percent of their promised pension, and ex-employees under the age of forty received nothing.[14] This highly publicized failure provided the impetus for meaningful pension plan reform.

Congress responded to the highly publicized pension failures by passing The Employment Retirement Income Security Act of 1974,[15] commonly known as ERISA. The Act created a broad, comprehensive regulatory scheme for pension plans established by private employers.[16] It protects pensions from the "elimination or severe reduction in retirement benefits as a result of mismanaged funds, bad investments, inadequate funding, plant closures, market changes, company purchases and mergers, bankruptcies, and fraud."[17]

To prevent catastrophic private sector pension plan defaults like that experienced by Studebaker, ERISA imposes duties of disclosure and reporting upon pension plan administrators,[18] reduces the amount of time that must pass before an employee's pension rights vest,[19] requires employers to have the plan funded at or above certain levels,[20] imposes fiduciary duties upon plan administrators,[21] preempts state pension laws and endows employees with standing in federal court,[22] regulates group health plans once they are established,[23] and insures private sector plans under the Pension Benefit Guaranty Corporation ("PBGC").[24] The PBGC, which operates much

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12. James A. Wooten, *"The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 BUFF. L. REV. 683, 683–84 (2001).

13. *Id.* at 730–31.

14. *Id.* at 731.

15. 29 U.S.C. §§ 1001–1461 (2012).

16. *Id.* It is important to note that ERISA does not require a private employer to establish a pension plan—it only requires it to abide by certain guidelines and regulations once it does so.

17. Timothy Liam Epstein, *Surviving Exemption: Should the Church Plan Exemption to ERISA Still Be in Effect?*, 11 ELDER L.J. 395, 398 (2003).

18. §§ 1021–31.

19. *Id.* §§ 1051–61.

20. *Id.* §§ 1081–85(a).

21. *Id.* §§ 1101–14.

22. *Id.* § 1132.

23. *Id.* §§ 1161–69.

24. *Id.* §§ 1301–10.

like the Federal Deposit Insurance Corporation ("FDIC") does for banks, requires minimum employer contributions (known as "premiums") on a periodic basis.[25]

B. The Church Plan Exemption

Notwithstanding the broad scope of ERISA, church plans are expressly exempt from its coverage under 29 U.S.C. § 1003. This section, which defines the extent of ERISA's coverage, provides that "[t]he provisions of this subchapter shall not apply to any employee benefit plan if . . . such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26."[26] In other words, ERISA does not apply to church plans, as defined by section 1002(33), unless an organization whose plan would otherwise qualify as a church plan elects to subject it to ERISA anyway. The purpose behind exempting church plans from ERISA is not entirely clear, but most commentators suspect that Congress exempted church plans because of First Amendment concerns.[27] Excerpts from the relevant legislative history appear to confirm that suspicion.[28]

The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."[29] It strictly prohibits the federal government from establishing a religion (Establishment Clause) or preventing its citizens from exercising their religious convictions (Free Exercise Clause). The clause that appears to be implicated by the church plan exemption is the Establishment Clause. The Supreme Court established a test for determining when a law violates the

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25. *Id.* §§ 1306–07.

26. *Id.* § 1003(b).

27. *See, e.g.*, Kristofer C. Neslund, *ERISA's Church Plan Exemption: Freedom of Religion Overreached—Part 1*, 26 TAX'N EXEMPTS 36, 37 (2014). It must be noted that there is surprisingly little scholarship on the congressional purpose behind the exemption. One author noted that "[t]he church exemption to ERISA was brought up during the committee meetings and floor debates in the Senate and House, but each time, the 'exemption' was simply a passing reference, with no actual discussion of why the exemption existed. . . . There is a significant discussion in the Congressional Record as to why government plans are exempt . . . . Yet, no reasoning or justification is given as to why church plans are also exempt." Epstein, *supra* note 17, at 401–02.

28. In 1978, while addressing the House of Representatives regarding the future of the church plan exemption, Representative Barber B. Conable stated: "In 1974, when we enacted the Employee Retirement Income Security Act of 1974, . . . we exempted church plans from the provisions of the act to avoid excessive government entanglement with religion in violation of the first amendment to the Constitution." 124 CONG. REC. 12,051, 12,106 (1978).

29. U.S. CONST. amend. I.

Establishment Clause in the landmark case of *Lemon v. Kurtzman*.[30] In that case, the Court held that for legislation to be constitutional under the Establishment Clause of the First Amendment, it "must have a secular legislative purpose; . . . its principal or primary effect must be one that neither advances nor inhibits religion; [and it] must not foster 'an excessive government entanglement with religion.'"[31] Three factors are relevant in determining whether legislation creates excessive entanglement with religion: (1) "the character and purposes of the institutions that are benefited"; (2) "the nature of the aid that the State provides"; and (3) "the resulting relationship between the government and the religious authority."[32]

The actual language of the exemption is not as speculative as its purpose. Congress defined what plans qualify as church plans in 29 U.S.C. § 1002(33)(A): "[t]he term 'church plan' means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention . . . of churches which is exempt from tax under section 501 of Title 26."[33] Had Congress stopped there, the scope of the exemption would have been clear.

But Congress did not stop there. It instead muddied the waters by defining what is *not* a church plan in 29 U.S.C.§ 1002(33)(B). A plan is not a church plan if it is "established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of Title 26)" *or* "if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries)."[34]

Subparagraph (C) contains over a page and a half of definitions related to the church plan exemption. The history behind the most important definitions in that section is covered briefly in the following Section because it is critical to the debate over whether the exemption should extend to religiously affiliated hospitals.

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30. Lemon v. Kurtzman, 403 U.S. 602 (1971).
31. *Id.* at 612–13.
32. *Id.* at 615.
33. 29 U.S.C. § 1002(33)(A) (2012).
34. *Id.* § 1002(33)(B)(i)–(ii).

1. Pre-1980

When ERISA was originally enacted in 1974, it defined a church plan as a plan that was "established and maintained . . . by a church or by a convention or association of churches."[35] Thus, a plan could qualify for church plan status in three ways: it had to be a plan established and maintained by (1) a church; (2) a convention of churches; or (3) an association of churches. This language was accompanied by a temporary exception for employees of religiously affiliated organizations.[36] In relevant part, the temporary exemption read: "a plan in existence as of January 1, 1974 shall be treated as a 'church plan' if it is established and maintained by a church . . . for the employees of such church and the employees of one of more agencies of such church."[37] It explicitly stated that "this [exemption] shall not apply with respect to any plan for any plan year beginning after December 31, 1982."[38]

2. 1980 Amendments

Two years before the temporary exemption for employees of religiously affiliated organizations was set to expire, Congress amended the language of 29 U.S.C. § 1002(33)(C). The legislative record dealing with the amendments from both the House and the Senate suggest that Congress amended the language to extend church plan status to plans administered by specialized pension boards.[39] The result of the amendments was the current statutory language. The section now reads in relevant part:

> For purposes of this paragraph . . . [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

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35. 29 U.S.C. § 1002 (1974).
36. *See* H.R. Rep. No. 93-1280, at 5044 (1974) (Conf. Rep.).
37. 29 U.S.C. § 1002(33)(C) (1974).
38. *Id.*
39. *See, e.g.*, 125 CONG. REC. 9963, 10,052–53, (1979) (statement of Sen. Talmadge) ("the church plan definition is so narrowly drawn that it does not in many ways even approximate the way church plans are organized or operated . . . [m]ost church plans of congregational denominations are administered by a pension board. . . . A plan or program funded or administered through a pension board, whether a civil law corporation or otherwise, will be considered a church plan, provided the principal purpose or function of the pension board is the administration or funding of a plan . . . ."). It is curious that the words "pension board" were omitted from the final amendment.

> 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.[40]

Most of the current debate focuses on this language. Interestingly, when the language was originally amended, there was little to no debate over its scope. From the time ERISA was amended in 1980 until 2013, government agencies,[41] courts,[42] and scholars[43] interpreted the amended language as permanently expanding the breadth of the church plan exemption to nearly all religiously affiliated organizations, including hospitals. But in the past three years, district courts in different areas of the country have split on the scope of the extension, with some affirming the original interpretation and others calling it into question.[44]

40. 29 U.S.C. § 1002(33)(C)(i) (2012) (emphasis added).

41. *See, e.g.*, I.R.S. Gen. Couns. Mem. 39,007 (July 1, 1983) (outlining the IRS' interpretation that following the 1980 amendments, the church plan exemption applies to non-profit organizations that are "controlled by or associated with" a church, including hospitals operated by Roman Catholic religious orders).

42. *See* Lown v. Cont'l Cas. Co., 238 F.3d 543, 547 (4th Cir. 2001) ("[A] plan established by a corporation associated with a church can still qualify as a church plan."); *see also* Thorkelson v. Publ'g House of the Evangelical Lutheran Church, 764 F. Supp. 2d 1119, 1125–29 (D. Minn. 2011); Welsh v. Ascension Health, No. 3:08cv348/MCR/EMT, 2009 WL 1444431, at *7 (N.D. Fla. May 21, 2009); Catholic Charities of Me. v. City of Portland, 304 F. Supp. 2d 77, 84–85 (D. Md. 2004).

43. *See* Suzanne K. Skinner, *The ERISA Church Plan Exception: Why the* Lown *Test is Improperly Narrow*, 10 U. PA. J. BUS. & EMP. L. 741, 746–47 (2008) ("Certain civil organizations can also qualify for the church plan exemption. As outlined in the language of the statute, the employees of a civil organization that is exempt from tax (for example, a charity or a hospital), and is controlled by or associated with a church or an association of churches, are considered church employees. Employee benefit plans created for or used by these organizations can thus qualify as church plans for the purpose of being excepted from the requirements of ERISA."); Alison M. Sulentic, *Happiness and ERISA: Reflections on the Lessons of Aristotle's Nicomachean Ethics for Sponsors of Employee Benefit Plans*, 5 EMP. RTS. & EMP. POL'Y J. 7, 25 (2001) (The 1980 amendments broaden "the scope of the term 'church plan' far beyond a plan maintained for the benefit of the pastor, the director of religious education and the other members of a church's operational staff."); Peter J. Wiedenbeck, *ERISA's Curious Coverage*, 76 WASH. U.L.Q. 311, 348 (1998) (as amended, ERISA's church plan exemption "goes far beyond exempting plans covering religious personnel or church employees, exempting plans covering employees of religiously-affiliated charitable organizations such as hospitals, schools, and group homes").

44. *See infra* Part III.A & Part III.B.

III. Recent District Court Rulings on the Church Plan Exemption's Application to Religiously Affiliated Hospitals

The 2013 *Dignity* rulings sparked several lawsuits throughout the country challenging the extension of the church plan exemption to religiously affiliated hospitals.[45] District courts that have ruled on the issue since 2013 are evenly split.[46] The primary arguments on each side of the debate and the court decisions that adopt them follow.[47]

A. Pro-Church Plan Extension Arguments and Cases

Those who favor extending church plan status to religiously affiliated hospitals insist that the plain language of ERISA supports their position.[48] Proponents generally focus on the statutory language of 29 U.S.C. § 1002(33)(C), as amended:

> For purposes of this paragraph–[a] plan established and maintained for its employees . . . by a church or by a convention or association of churches includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits . . . if such organization is *controlled by* or *associated with* a church or a convention or association of churches.[49]

They assert that religious hospitals are controlled by and associated with a church, and that their pension plans are therefore exempt. They also point out that the statute states:

> The term employee of a church or a convention or association of churches includes . . . [a]n employee of an organization, whether a

45. *See* Rollins v. Dignity Health, 59 F. Supp. 3d 965 (N.D. Cal. 2014); Rollins v. Dignity Health, 19 F. Supp. 3d 909 (N.D. Cal. 2013).

46. *See* Stapleton v. Advocate Health Care Network, 817 F.3d 517 (7th Cir. 2016); Kaplan v. Saint Peter's Healthcare Sys., 810 F.3d 175 (3d Cir. 2015); Lann v. Trinity Health Corp., No. PMJ 14–2237, 2015 WL 6468197 (D. Md. Feb. 24, 2015); Medina v. Catholic Health Initiatives, No. 13–cv–01249–REB–KLM, 2014 WL 4244012 (D. Colo. Aug. 26, 2014); *Rollins*, 59 F. Supp 3d 965; Overall v. Ascension Health, 23 F. Supp. 3d 816 (E.D. Mich. 2014).

47. The arguments themselves are simply too numerous and too complex to analyze in an article of this length. Nevertheless, because the chief argument of this paper is that extending the "church plan" exemption to religiously affiliated hospitals is wrong, the reader must have a general idea of the arguments that each side puts forward.

48. Almost all of the plain language statutory interpretation deals with 29 U.S.C. § 1002(33).

49. 29 U.S.C. § 1002(33)(C)(i) (2012) (emphasis added).

> civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of churches . . . .[50]

After all, the statute also states that "[a]n organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches."[51] Thus, those in favor of extending the church plan exemption to religiously affiliated hospitals argue those plans are church plans under the plain language of Section (33)(C) so long as the hospital is associated with a church and shares common religious beliefs with that church.[52]

The proponents of extending the church plan exemption to religiously affiliated hospitals undoubtedly have precedent on their side. Since Congress amended the church plan language in 1980, the Department of Labor (DOL) and the IRS have issued various administrative rulings reflecting their position that the 1980 amendment extended the exemption to religiously affiliated hospitals.[53] Courts that addressed the issue before 2013 ruled in like fashion.[54] Proponents of broadening ERISA's church plan exemption also turn to legislative history to bolster their stance. They point to certain statements in the record that purportedly support their position.[55]

Since 2013, three of the six district courts that have considered whether the pension plan of a religiously affiliated hospital can qualify as a church

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50. *Id.* § 1002(33)(C)(ii)(II) (emphasis added).

51. *Id.* § 1002(33)(C)(iv).

52. Defendant's Reply to Opposition to Motion to Dismiss at 1, Rollins v. Dignity Health, 19 F. Supp. 3d 909 (N.D. Cal. 2013) (No. 13-C-1450).

53. An entire paper could be written about the level of deference that courts should give these administrations' interpretation of the church plan exemption under *Chevron v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). In that case, the Supreme Court established a two-step test for determining whether judicial deference to administrative interpretations is appropriate—"[f]irst, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter . . . . If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute . . . . [I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 842–43. Proponents of extending the church plan exemption to religiously affiliated hospitals argue that the analysis stops here.

54. *See, e.g.*, *supra* note 42.

55. *See, e.g.*, 124 CONG. REC. 12,107 (1978) (during the debates over the 1980 amendments, the following was said: "[p]resent law fails to recognize that the church agencies are parts of the church in its work of disseminating religious instruction and caring for the sick, needy, and underprivileged.").

plan under ERISA have sided with precedent and ruled that it can.[56] The most in-depth of these rulings was issued by the District Court for the Eastern District of Michigan in *Overall v. Ascension* in 2014.[57] In that case, former employees of St. John Health Providence System ("St. John"), a religiously affiliated hospital conglomerate in the Detroit metro area whose pension plan was administered by the Ascension Health Pension Committee ("Ascension"), sued Ascension over its pension plan classification as a church plan.[58] The ex-employees argued that the pension plan was not a church plan and that the hospital was violating numerous ERISA provisions by treating it as such.[59] After reviewing the statutory language, the legislative history, the position of the IRS, and prior case law, the court dismissed all of plaintiffs' claims for failure to state a claim upon which relief could be granted.[60]

In the most in-depth portion of its ruling, the court rejected plaintiffs' argument that Section 33(A) acts as a "gatekeeper" to Section 33(C) and agreed with the defendant's reading of the statutory language in its entirety.[61] It concluded that "as amended in 1980, the church plan exemption includes plans sponsored by church-affiliated organizations, such as hospitals or schools, if these plans are administered by plan committees (1) whose principal function is to administer the plan, (2) if the plan committee is controlled by or associated with a church."[62] The court also pointed out that St. John's pension plan was therefore a church plan because Ascension met both of these requirements.[63] Finally, it also tersely dismissed plaintiffs' constitutional claims for lack of standing.[64] The case settled while on appeal to the Sixth Circuit.[65]

Later that same year, the District Court for the District of Colorado was presented with the same issue and reached the same result in *Medina v.*

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56. *See* Lann v. Trinity Health Corp., No. 14-2237, 2015 WL 6468197 (D. Md. Feb. 24, 2015); Medina v. Catholic Health Initiatives, No. 13-1249, 2014 WL 4244012 (D. Colo. Aug. 26, 2014); Overall v. Ascension Health, 23 F. Supp. 3d 816 (E.D. Mich. 2014).

57. *Overall*, 23 F. Supp. 3d 816.

58. *Id.* at 820–21.

59. *Id.* at 821–22.

60. *Id.* at 833.

61. *Id.* at 827–29.

62. *Id.* at 829.

63. *Id.* at 829–832.

64. *Id.* at 833.

65. Order and Final Judgment, Overall v. Ascension Health at 1, 23 F.Supp.3d 816 (E.D.Mich. 2015) (No. 13-cv-11396-AC-LJM).

Catholic Health Initiatives.[66] As in *Overall*, the plaintiffs in *Medina* were ex-employees of a religious hospital conglomerate, Catholic Health Initiatives ("CHI"). In *Medina*, a magistrate judge performed an initial screening of the arguments and recommended that the court rule that only a church may establish a church plan.[67] The district court subsequently rejected the magistrate's interpretation and insisted that it was contrary to the plain meaning of the statutory language.[68] It ruled that "established and maintained" is one element, not two.[69] Not surprisingly, the court granted summary judgment for CHI, finding that its plan was covered by the church plan exemption.[70]

In early 2015, the District Court of Maryland became the third district court since 2013 to rule that a religious organization that is not a church may nevertheless establish a church plan.[71]

B. Anti-Church Plan Extension Arguments and Cases

Those who oppose the DOL and IRS extending church plan status to religiously affiliated hospitals also insist that ERISA's text supports their stance. They argue that the plain language of 29 U.S.C. § 1002(33)(A) only allows churches (i.e., places of worship) to establish church plans.[72] After all, ERISA is a remedial statute, and exceptions to remedial statutes must be interpreted narrowly.[73] They further argue that 29 U.S.C. § 1002(33)(A), not 33(C), is the controlling provision, and that it acts as a "gatekeeper" that only allows churches to *establish* church plans.[74] That section states that "[t]he term 'church plan' means a plan established and maintained . . . by a church or by a convention or association of churches which is exempt from tax under

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66. Medina v. Catholic Health Initiatives, No. 13-cv-01249-REB-KLM, 2014 WL 4244012, at *2–3 (D. Colo. Aug. 26, 2014).

67. *Id.* at *2.

68. *Id.*

69. *Id.*

70. Medina v. Catholic Health Initiatives, 147 F. Supp. 3d 1190, 1205 (D. Colo. 2015).

71. Lann v. Trinity Health Corp., No. 14-cv-02237, 2015 WL 6468197 (D. Md. Feb. 24, 2015). The District Court for the District of Maryland issued a very short ruling, stating in effect that Fourth Circuit precedent, primarily that found in *Lown*, dictated that a non-church could establish a church plan if it met the statutory requirements. *Id.* at *1.

72. *See* Plaintiff's Response in Opposition to Defendants' Motion to Dismiss at 9–16, Overall v. Ascension Health, 23 F. Supp. 3d 816 (E.D. Mich. 2014) (No. 2:13-cv-11396).

73. *See, e.g.*, Cobb v. Contract Transport, Inc., 452 F.3d 543, 559 (6th Cir. 2006); S. REP. NO. 93-127, at 18 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4854.

74. See Plaintiff's Response in Opposition to Defendants' Motion to Dismiss at 6–12, Lann v. Trinity Health Corp., 2015 WL 6468197 (D. Md. 2015) (No. 14-cv-02237).

section 501 of Title 26."[75] Those who disagree with extending the exemption to religiously affiliated hospitals insist that, if the plan in question does not meet this requirement, it is not a church plan and therefore subject to ERISA. Opponents also claim to find statements in the Congressional record that purportedly illustrate that Congress intended that the 1980 amendments to expand the duration, not the scope, of the exemption.[76]

Opponents of the extension also make several constitutional arguments under the First Amendment. Most relevant for purposes of this paper is their argument that an ERISA exemption for religiously affiliated hospitals violates the *Lemon* test because it causes greater entanglement of church and state than requiring those organizations to abide by ERISA's requirements would.[77] They argue that the church plan exemption, as applied to religiously affiliated hospitals, is unconstitutional under the First Amendment because it has no secular legislative purpose and it results in "excessive entanglement between government and religion" by giving preference to religiously affiliated organizations over similarly situated secular organizations.[78]

Three of the six district courts that have considered the issue since 2013 have ruled that only a church may establish a church plan that is exempt from ERISA and that pension plans established by religiously affiliated hospitals must therefore comply with ERISA's requirements. All three of those decisions have been affirmed by their respective federal appellate courts. The two district court rulings—one on a motion to dismiss and the other on summary judgment—that first broke from precedent were issued by the District Court for the Northern District of California in *Rollins v. Dignity Health.*[79]

The first ruling came on December 12, 2013, when the District Court for the Northern District of California denied defendant Dignity Health's ("Dignity") motion to dismiss plaintiff Starla Rollins' church plan challenge.[80] The court took on a defiant tone in ruling for Rollins, stating that

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75. 29 U.S.C. § 1002(33)(A) (2012).

76. *See, e.g.*, 124 CONG. REC. 12,107 (1978) (during the debates over the 1980 amendments, the following was said by the bill's sponsors: "the churches must by 1982 divide their plans into two parts, one covering employees of the church and one covering employees of church agencies").

77. Plaintiff's Response in Opposition to Defendant's Motion to Dismiss at 28, Overall v. Ascension Health, 23 F. Supp. 3d 816 (E.D. Mich. 2014) (No. 2:13-cv-11396-AC-LJM), 2013 WL 10740036.

78. Lemon v. Kurtzman, 403 U.S. 602, 614 (1971).

79. Rollins v. Dignity Health, 59 F. Supp. 3d 965 (N.D. Cal. 2014) (summary judgment ruling); Rollins v. Dignity Health, 19 F. Supp. 3d 909 (N.D. Cal. 2013) (motion to dismiss ruling).

80. *Rollins*, 19 F. Supp. 3d at 917–18.

"the Court declines to defer to the IRS's interpretation of the ERISA statute here . . . [it] instead conducts its own independent analysis of the statute."[81] It then emphasized that its independent analysis would begin with 29 U.S.C. § 1002(33)(A) and that "[a] straightforward reading of [that] section is that a church plan 'means,' and therefore by definition, *must be* 'a plan established . . . by a church or convention or association of churches.'"[82] The court chastised Dignity for not looking at the statute as a whole and insisted that section 33(C) does not render section 33(A) meaningless.[83] It refrained from ruling on the constitutional issues raised by Rollins at that stage.[84]

Seven months later, the court granted plaintiff Rollins' motion for partial summary judgment on the issue of whether Dignity's plan was a church plan exempt from ERISA.[85] It found that no genuine issue of material fact existed as to whether Dignity's predecessor, Catholic Health West ("CHW"), (1) established the plan and (2) was a church.[86] After considering all relevant facts, the court concluded that "[t]here is no genuine dispute of material fact that CHW established the Plan here, and that CHW is not a church."[87] The Ninth Circuit affirmed, holding that "in order to qualify for the church-plan exemption under subparagraph (C)(i), a plan must have been established by a church *and* maintained either by a church or by a principal-purpose organization."[88] Dignity appealed to the Supreme Court.[89]

After *Rollins*, two other district courts followed suit. The first court to do so was the District Court for the District of New Jersey in *Kaplan v. Saint Peter's Healthcare System*.[90] In denying defendant Saint Peter's' motion to dismiss plaintiff Kaplan's church plan challenge, the court stated that "the interpretive question here is whether a non-profit entity, purportedly controlled by or associated with a church, may both establish and maintain a church plan. Based on the plain text of the statute, the simple answer is no."[91] Its analysis of the statutory language was similar to that performed by the

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81. *Id.* at 913.
82. *Id.*
83. *Id.* at 913–14.
84. *Id.* at 917.
85. Rollins v. Dignity Health, 59 F. Supp. 3d 965, 974 (N.D. Cal. 2014).
86. *Id.* at 970.
87. *Id.* at 974.
88. Rollins v. Dignity Health, 830 F.3d 900, 905 (9th Cir. 2016), *cert. granted*, 137 S. Ct. 547 (2016).
89. Dignity Health v. Rollins, 137 S. Ct. 547 (2016).
90. Kaplan v. Saint Peter's Healthcare Sys., No. 13–2941 (MAS)(TJB), 2014 WL 1284854 (D.N.J. Mar. 31, 2014).
91. *Id.* at *5.

Northern District of California.[92] In its view, there are two ways that a plan qualifies as a church plan: it is either (1) established and maintained by a church, or (2) established by a church and subsequently maintained by a tax-exempt organization that meets the specified requirements.[93] Like the courts before it, it also refrained from ruling on the constitutional issues.[94] The Third Circuit ultimately affirmed, finding that "[h]ere, the statute has a plain meaning, and that meaning sets the result. . . . [B]ecause the terms of the statute are unambiguous, we need go no further."[95] Saint Peter's appealed to the Supreme Court.[96]

The final district court to rule that only a church can establish an ERISA-exempt church plan was the Northern District of Illinois. In *Stapleton v. Advocate Health Care Network*, the court denied Advocate's motion to dismiss plaintiff Stapleton's church plan challenge.[97] It ruled, similar to the courts in *Rollins* and *Kaplan*, that the words "establish" and "maintain" mean two different things and that prior courts' rationale for combining them does not make sense because "those two words have separate, ordinary meanings."[98] The court found that the language of subsection 33(C) "does nothing to render inoperative subsection 33(A)'s underlying requirement that the plan first be established by a church."[99] On March 17, 2016, the Seventh Circuit affirmed, ruling that a religiously affiliated organization cannot establish a church plan.[100] It refused to defer to the IRS' interpretation of the statute because it found that the statutory language at the heart of the lawsuit was unambiguous.[101]

92. *See id.* ("Starting with subsection A, it is clear that Congress intended for a church plan—first and foremost—to be ***established*** by a church. Once the church establishes the plan, the church must also ***maintain*** it.") (alteration in original); *see also id.* at *8 ("On the other hand, a recent decision from the Northern District of California is more persuasive. In *Rollins v. Dignity Health*, plaintiff brought similar ERISA claims as Mr. Kaplan . . . . The *Rollins* court's interpretation of the church plan definition is in accord with this Court's decision.").

93. *Id.* at *5.

94. *Id.* at *10.

95. Kaplan v. Saint Peter's Healthcare Sys., 810 F.3d 175, 180–83 (3d Cir. 2015).

96. Saint Peter's Healthcare Sys. v. Kaplan, 137 S. Ct. 546, *cert. granted*, (2016).

97. Stapleton v. Advocate Health Care Network, 76 F. Supp. 3d 796, 797 (N.D. Ill. 2014).

98. *Id.* at 802.

99. *Id.* at 801–02.

100. Stapleton v. Advocate Health Care Network, 817 F.3d 517, 519 (7th Cir. 2016).

101. *Id.* at 527.

IV. ANALYSIS

The threshold question surrounding ERISA's church plan dilemma is whose responsibility it is to solve it. Part IV.A argues that since Congress originally passed ERISA and its corresponding church plan exemption, Congress is responsible for fixing it. Ideally, Congress would revisit the exemption, apply a cost-benefit analysis, and realize that exempting religiously affiliated hospitals from ERISA is too costly to justify. Part IV.B argues that because there has been no indication that Congress is willing to do this, the burden of solving the problem will likely continue to fall to the judiciary. As such, courts need a workable but complete framework for approaching the problem. This framework should begin with a comparison of the original church plan exemption and the amended church plan exemption, followed by an examination of several canons of statutory construction. Its implementation will likely reveal that part of Congress' unambiguous intent when it amended the church plan exemption was to discontinue its extension to religiously affiliated hospitals.

A. Congress should revisit the church plan exemption and find that extending the church plan exemption to religiously affiliated hospitals is poor policy.

The debate surrounding the extension of the church plan exemption implicates serious policy issues, and it is "the exclusive province of the Congress . . . to formulate legislative policies."[102] Congress should step in and resolve the confusion surrounding the church plan exemption. If it does so, it will likely discover that exempting religiously affiliated hospitals from ERISA is poor policy and should be discontinued for two reasons: (1) it is too costly; and (2) the hospitals that currently benefit from the exemption are not churches.

One of Congress' primary roles is to decide the policies it believes are best for the American people. It presumably seeks to fulfill this role by asking itself whether the policy in question would be beneficial or detrimental for the country. The question Congress should ask itself in revisiting the church plan exemption is the same. It should ask whether for the majority of American people the benefits of extending ERISA's church plan exemption to religiously affiliated hospitals outweigh the costs.

Congress will probably find that the answer to this question is no. Extending the church plan exemption to religiously affiliated hospitals is

102. Tenn. Valley Auth. v. Hill, 437 U.S. 153, 193 (1978).

obviously beneficial to those hospitals because it saves them significant amounts of money. For example, employers that would otherwise incur substantial costs in having to make periodic contributions to the PBGC do not have to contribute anything. But for society, the benefits of extending the exemption to church-affiliated hospitals are minimal to nonexistent.

The costs of extending the church plan exemption to religiously affiliated hospitals are significant. Millions of hospital workers nationwide who would otherwise have an insured pension with vested rights simply do not have one, despite the fact that their counterparts in secular hospitals throughout the country do. That is a significant societal cost—whether the pensions are in fact adequately funded or not. One scholar has noted that "[e]ven if there is no danger to church retirement plans . . . it appears that with a lack of ERISA protection of church pensions, the danger will not be realized until the problem is upon the Church and its workers."[103] The significant costs of insulating these hospitals is magnified when one considers the distinction between hospital employees who work for a hospital who converts its plan from an ERISA plan to a church plan, and hospital employees who choose to work for a new hospital that establishes a church plan from its inception. The exemption is unfair for both groups, but it is especially unfair to the employees who work for a hospital whose plan is converted from an ERISA plan to a church plan. Through no fault of their own, a pension that they have been working their entire life to secure suddenly goes from fully insured to entirely uninsured. A policy that severely punishes millions of American workers who have done nothing wrong is too costly for society.

The only apparent societal benefit to exempting a church plan is preserving the separation between church and state. That benefit is significantly diminished, however, when the entity in question is a hospital and not a church. It is disingenuous indeed to suggest that society is truly concerned about the federal government encroaching on the separation between church and state by regulating religious hospitals. If Congress revisits this issue and applies a balancing test, it will probably discover that the costs of allowing religiously affiliated hospitals to hide behind the church plan exemption outweighs the benefits. It is bad policy to put the pensions of millions of workers at risk by cutting religious hospitals a deal.

It is also bad policy to extend the exemption to religiously affiliated hospitals because religiously affiliated hospitals are not churches. This is true despite the fact that they are associated with a church. Regardless of the implications surrounding defining what is and is not a "church," it is a strain on the common sense conception of a church to assert that a religiously

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103. Epstein, *supra* note 17, at 424.

affiliated hospital qualifies as such. To be sure, religiously affiliated hospitals have religious missions, and likely consider the healing they provide to be a key component of that mission. But the reality is that most religiously affiliated hospitals, including those involved in recent church plan litigation, more closely resemble multi-billion dollar corporate conglomerates than they do churches. For example, Catholic Health Initiatives, the hospital conglomerate being sued in Colorado, generated revenues of almost $13.9 billion in fiscal year 2014, and as of March 2015, owned assets worth $21.8 billion.[104] Dignity Health, the hospital conglomerate being sued in California, reported profits of $885 million in 2014.[105] Such organizations, religious missions notwithstanding, should not be given the same protection as churches. The purpose of a church is to give individuals a place where they may practice their religious beliefs. The purpose of a hospital is to provide individuals with medical care. Individuals do not go to hospitals to worship or exercise their religion. This makes them distinctly different institutions from churches, and the same rule should not apply to them.

B. Courts will likely find that extending the church plan exemption to religiously affiliated hospitals goes against the unambiguous intent of Congress.

For practical reasons, it is most likely that the judiciary will be responsible for resolving the church plan dispute. Given that the issue surrounds statutory language and that language has been interpreted by multiple administrative agencies, courts will inevitably find themselves on a potential crash-course with *Chevron*.[106] Under that case, courts have two possible paths when determining the appropriate level of deference they should give to a government agency's interpretation of a statute. If Congress' intent with the statute is clear, "that is the end of the matter . . . the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[107] Alternatively, if Congress has not directly addressed the precise

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104. Press Release, Michael Romano, National Director, Media Relations, Catholic Health Initiatives, *Catholic Health Initiatives Shows Positive Second-Quarter Financial Results* (Mar. 31, 2015), http://www.catholichealthinitiatives.org/documents_public/news%20releases/2015-03-31_CHIFinancesRELEASEFINAL.pdf.

105. *See, e.g.*, Chris Rauber, *Dignity Health 2014 Profits Rise 9 Percent to $885 Million*, S.F. BUS. TIMES (Sept. 25, 2014, 2:20 PM), http://www.bizjournals.com/sanfrancisco/blog/2014/09/dignity-health-profits-michael-blaszyk-lloyd-dean.html.

106. Chevron v. Nat. Res. Def. Counsel, Inc., 467 U.S. 837 (1984).

107. *Id.* at 842–43.

question, the court's analysis is confined to "whether the agency's answer is based on a permissible construction of the statute."[108] The crucial question becomes whether Congress' intent behind the church plan exemption is unambiguous. A side-by-side analysis of the original language with the amended language, bolstered by several canons of statutory construction, reveals that Congress' intent behind the church plan exemption is unambiguous. Under *Chevron*, courts should rule in harmony with that unambiguous intent.

The courts' analysis should begin with the statutory language. The most telling indicator of why Congress exempted church plans from ERISA is found in a side-by-side comparison of the two different versions of the church plan language that it has enacted. The first version was from 1974 when ERISA was first enacted, and it read:

> (33)(A) The term 'church plan' means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 or (ii) a plan described in subparagraph (C).
>
> (C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence as of January 1, 1974, shall be treated as a 'church plan' if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.[109]

This language provides that a plan was an ERISA-exempt church plan if a church established it for its employees and/or employees of one or more of its agencies. This exemption was set to expire on December 31, 1982. The pending expiration of the church plan prompted Congress to amend the language in 1980. The amended language now reads:

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108. *Id.* at 843.
109. 29 U.S.C. §§ 1002(33)(A), (C) (1974).

> (33)(A) The term 'church plan' means a plan established and maintained (to the extent required in clause (ii) of subparagraph B) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of Title 26.
>
> (C) For purposes of this paragraph--
>
> (i) 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.[110]

Any mention of the word "agency" is conspicuously absent from the amended church plan exemption language. A provision that once explicitly excluded church agency employees from ERISA if the plan was established by a church now only provides that a plan also qualifies as a church plan if it is maintained by an entity whose principal function is to maintain the plan. In analyzing a statute, there is a "strong presumption that Congress expresses its intent through the language it chooses."[111] This is especially true when it explicitly excludes language that was once present in the statute. By making no reference whatsoever to church agencies in the current language (i.e., hospitals, schools, etc.), Congress unambiguously expressed its intent to no longer extend the exemption to those agencies.

Further analysis of the amended statutory language supports this argument. Section 33(C) includes in the definition of a church plan a "plan established and maintained for its employees . . . by a church" as long as that plan is "maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits."[112] Plans maintained by religious hospital conglomerates do not fit this definition. Even hospitals are unlikely to assert that their principal purpose is to administer or fund pension plans. This is because the principal purpose of a hospital is to treat patients and administer medical care. This realization is further bolstered by what the Supreme Court

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110. §§ 1002(33)(A), (C) (2012).
111. I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 452 (1987) (Scalia, J., concurring).
112. § 1002(33)(C) (2012).

has termed the "cardinal canon" of statutory construction: "a legislature says in a statute what it means and means in a statute what it says there."[113] This reveals why proponents of extending the church plan to religiously affiliated hospitals are wrong to point to Section 33(C) to justify their position. The statute simply does not say anything about religiously affiliated institutions—it only mentions churches and entities whose primary purpose is maintaining pension plans.[114] Therefore, courts should stop allowing religious hospitals to use the language of Section 33(C) to justify their refusal to comply with ERISA.

Additional canons of statutory construction also support not extending the church plan language to religious hospitals. When interpreting statutory language, courts must "give effect, if possible, to every clause and word of a statute."[115] Both Sections 33(A) and (C) include the words "establish" and "maintain." Courts are required to give effect to each of those words. Strangely, at least one court that has recently ruled on the issue ruled that, as used in the statute, the words "establish" and "maintain" are one element, not two.[116] This ruling directly contradicts the canon of statutory construction that every word must be given its separate, due meaning. Violating that canon caused the court to issue a ruling that directly contradicts Congress' unambiguous intent. In analyzing this issue in the future, courts should remember that they must give every word of the statute its own meaning. That would likely lead to the realization that by including both "establish" *and* "maintain," Congress unambiguously expressed its intention to place two, equally important limits on what kind of entities may establish a church plan. This is why Section 33(A) mandates that "the term 'church plan' means a plan established and maintained . . . by a church."[117] At the very least, this language suggests that while Congress potentially intended to allow religiously affiliated organizations to maintain a plan (a notion that Section 33(C) proves is incorrect), it never expressed any intention to allow them to establish a plan.

In focusing almost exclusively on Section 33(C), parties and courts have violated the canon requiring due consideration of each word and clause of a statute in a second way. At its core, Section 33(C) provides an additional

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113. Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992).

114. *See* § 1002(33)(C).

115. Duncan v. Walker, 533 U.S. 167, 174 (2001) (quoting United States v. Menasche, 348 U.S. 528, 538–39 (1955)).

116. Medina v. Catholic Health Initiatives, No. 13-01249, 2014 WL 4244012, at *2 (D. Colo. Aug. 26, 2014).

117. 29 U.S.C. § 1002(33)(A) (2012).

route for an entity to claim church plan status for its plan. A plan does not automatically qualify as a church plan if it satisfies that definition. Section 33(B) provides that "[t]he term church plan does *not* include a plan which is established and maintained primarily for the benefit of employees of such church . . . who are employed in connection with one of more unrelated trades or businesses" (emphasis added).[118] Even if the plan of a religiously affiliated hospital qualified as a church plan under Section 33(C), it would not qualify as such under Section 33(B) because a hospital is an "unrelated business."

V. CONCLUSION

The recent flurry of litigation surrounding the extension of ERISA's church plan exemption to religiously affiliated hospitals has called the extension into question. In an ideal world, Congress would have resolved the confusion because it is a product of its legislation. By applying a cost-benefit analysis and acknowledging that these religious hospitals resemble corporate conglomerates and not churches, it would have likely realized that permitting these hospitals to hide from ERISA at the expense of millions of employees nationwide is poor policy.

However, the task of resolving the problem now belongs to the Supreme Court because it has accepted cert[119] and heard oral argument.[120] Three district courts have sided with precedent and held that the exemption extends to religiously affiliated hospitals that meet the statutory requirements. Three other district courts have deviated from precedent and held that the exemption does not extend to such hospitals because only churches can establish church plans and those hospitals are not churches. All three circuit courts of appeal that have ruled on the issue have correctly held that a religiously affiliated hospital cannot establish a church plan. Now, the Supreme Court will finally resolve the inevitable confusion that the different interpretations has caused.

The Supreme Court should begin its analysis by examining the statutory language. This examination will likely reveal that it was never Congress' intent to extend the church plan exemption as far as it has been extended, and that it unambiguously expressed this intent through the applicable statutory language. Any ambiguity is likely to vanish once the Supreme Court compares the original church plan language to the amended church plan

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118. *Id.* § 1002(33)(B)(i).

119. On December 2, 2016, the Court granted certiorari in *Stapleton*, *Kaplan*, and *Rollins* and consolidated the cases. *See*, respectively, Advocate Health Care Network v. Stapleton, 137 S.Ct. 546 (Mem) (2016); Saint Peter's Healthcare Sys. v. Kaplan, 137 S.Ct. 546 (Mem) (2016); and Dignity Health v. Rollins, 137 S.Ct. 547 (Mem) (2016).

120. The Court heard oral argument on March 27, 2017.

language. This side-by-side comparison reveals that Congress never intended to exempt religiously affiliated hospitals from ERISA. Combined with ERISA's own mandate that it be interpreted broadly, it is clear that it is time for the Supreme Court to honor Congress' unambiguous intention to narrow the scope of the church plan exemption. If the Supreme Court does so, it will be doing the American people a favor by no longer allowing the exemption to swallow the rule in quasi-religious contexts.