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BENEFITS BRIEF

February 1, 2017 www.groom.com

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Federal Government Breaks Silence and Asks Supreme Court to Uphold Agencies' Long-Standing Interpretation of ERISA's Church Plan Exemption

For the first time since the wave of church plan lawsuits that began in 2013, the federal government has weighed in on the key statutory interpretation question of whether only a church may establish a church plan under ERISA. Since the current church plan definition was enacted in the early 1980s, the Internal Revenue Service (IRS), the U.S. Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC) – the federal agencies responsible for administering ERISA – have consistently and unanimously found that plans established by church-affiliated organizations can qualify as church plans. On January 24, 2017, the United States filed an amicus curiae brief in the U.S. Supreme Court in *Saint Peter's Healthcare System v. Kaplan*, *Advocate Health Care Network v. Stapleton*, and *Dignity Health v. Rollins*[1] asking the Supreme Court to adopt these agencies' well-established interpretation of the statute. Representatives of the IRS, DOL, PBGC, and Treasury Department signed the brief, along with representatives of the Justice Department.

The proceedings in the Supreme Court stem from a series of more than three dozen lawsuits filed across the country by plaintiffs claiming that the pension plans of church-affiliated hospitals and health care systems do not qualify for the church plan exemption because they were not established by churches. In three of those cases, the Third, Seventh, and Ninth Circuit Courts of Appeals sided with the plaintiffs, holding that only a church may establish a church plan. *Kaplan v. Saint Peter's Healthcare System*, 810 F.3d 175 (3d Cir. 2015); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016); *Rollins v. Dignity Health*, 830 F.3d 900 (9th Cir. 2016). The defendants in these cases argued that church plans may be established, not only by churches, but also by certain tax-exempt organizations that are controlled by or associated with a church or a convention or association of churches. On December 2, 2016, the Supreme Court granted petitions for writs of certiorari in *Kaplan*, *Stapleton*, and *Rollins* to decide that key statutory interpretation question. Before the issue reached the Supreme Court, the IRS, DOL, and PBGC had been silent on their position concerning the church plan definition.

In its amicus curiae brief, the federal government makes four primary arguments. First, the government asserts that the IRS, DOL, and PBGC's interpretation is the most natural reading of the text of the church plan exemption. Based on this plain language reading, the definition of a church plan includes a plan that is maintained by a church-affiliated organization, regardless of whether that plan was established by a church. Second, the

[1] The Supreme Court consolidated these three cases when it granted certiorari on December 2, 2016. *Advocate Health Care Network v. Stapleton*, 817 F.3d 517 (7th Cir. 2016), *cert. granted*, 85 U.S.L.W. 3039 (U.S. Dec. 2, 2016) (No. 16-74); *St. Peter's Healthcare System v. Kaplan*, 810 F.3d 175 (3d Cir. 2015), *cert. granted*, 85 U.S.L.W. 3052 (U.S. Dec. 2, 2016) (No. 16-86); and *Dignity Health v. Rollins*, 830 F.3d 900 (9th Cir. 2016), *cert. granted*, 85 U.S.L.W. 3080 (U.S. Dec. 2, 2016) (No. 16-258).

government argues that the context, history, and purpose of the church plan exemption reinforces this plain reading of the statute. For example, one of Congress's main goals in enacting the current church plan definition was to make clear that plans established by church pension boards and other church-affiliated organizations meeting the statutory requirements – not just plans established by churches – qualified as church plans. Third, the government points to the three decades' worth of consistent statutory interpretation by IRS, DOL, and PBGC finding that plans established by church-affiliated organizations qualify as church plans. The federal government argues that these agency interpretations are entitled to deference under the Supreme Court's ruling in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), particularly given that their interpretations were contemporaneous with the passage of the statute and have been adhered to consistently since then. Finally, the federal government asserts that there is no sound reason to upset decades of reliance on the federal agencies' interpretation by church-affiliated organizations.

The federal government's amicus curiae brief is a positive development for the Petitioners before the Supreme Court and for the defendants in the dozens of other church plan lawsuits across the country. Oral argument before the Supreme Court has not been set but is anticipated to be scheduled in March, with the Supreme Court likely to issue a ruling in June.