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If you have questions, please contact your regular Groom attorney or one of the attorneys listed below:

Sean C. Abouchedid
sabouchedid@groom.com
(202) 861-6605

Sarah M. Adams
sadams@groom.com
(202) 861-5432

Christie L. Babinski
cbabinski@groom.com
(202) 861-0170

Lars C. Golumbic
lgolumbic@groom.com
(202) 861-6615

Paul J. Rinefierd
prinefierd@groom.com
(202) 861-9383

In Victory for Religiously-Affiliated Hospitals, the Supreme Court Rules that Church Plans Need not be Established by Churches

On June 5, 2017, the United States Supreme Court held in *Advocate Health Care Network et al. v. Stapleton et al.* that a plan does not have to be established by a church in order to qualify for ERISA's church plan exemption. Instead, plans maintained by certain tax-exempt organizations that are controlled by or associated with a church may qualify as church plans. The decision was unanimous, with Justice Sotomayor filing a concurring opinion. Justice Gorsuch took no part in the decision. Although the Supreme Court resolved this key threshold question, the Court left open certain other legal issues under the church plan exemption that could lead to continued litigation in the lower courts.

Background

ERISA's definition of "church plan" states in relevant part: "The term 'church plan' means a plan established and maintained . . . for its employees (or their beneficiaries) by a church . . . which is exempt from tax under section 501 of title 26." 29 U.S.C. § 1002(33)(A). The statute goes on to say that:

> A plan established and maintained for its employees (or their beneficiaries) by a church . . . 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 . . . if such organization is controlled by or associated with a church. . . .

29 U.S.C. § 1002(33)(C)(i).

As described in greater detail in an earlier Groom article, beginning in 2013, dozens of lawsuits were filed across the country by plaintiffs claiming that the pension plans of church-affiliated hospitals and healthcare systems do not qualify for the church plan exemption. The complaints filed by these plan participants argued that, under the plain language of ERISA, only a "church" may establish a church plan, and the defendant church-affiliated healthcare providers are not churches. According to the plaintiffs, section 3(33)(C)(i) does not change this threshold requirement—it merely allows plans established by churches to be maintained by certain organizations controlled by or associated with a church. The plaintiffs claim that the plans at issue therefore were required to—but had not—adhered to ERISA's requirements, including minimum funding requirements, notice and disclosure requirements, and insurance requirements.

The defendants in these lawsuits, all of which are religiously-affiliated hospitals or healthcare systems, had interpreted the church plan exemption differently. Under the defendants' reading, a non-church—such as a church-affiliated hospital or school—may establish a church plan so long as the plan is maintained by an organization qualifying under section 3(33)(C)(i) that is controlled by or associated with a church. Before the recent wave of church plan lawsuits, the few courts that addressed the issue had agreed with the defendants' interpretation of the statute. Moreover, the Internal Revenue Service ("IRS"), the U.S. Department of Labor ("DOL"), and the Pension Benefit Guaranty Corporation ("PBGC") have unanimously interpreted the church plan exemption in this manner for over thirty years.

In 2015 and 2016, the Third, Seventh, and Ninth Circuits affirmed district court holdings that only a church may establish a church plan. *See 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 Supreme Court granted petitions for writs of certiorari in these three cases and consolidated the appeals in December 2016. The Court heard oral argument on March 27, 2017. The Deputy Solicitor General participated in the oral argument on behalf of the United States, which had filed an amicus curiae brief in support of the healthcare systems urging the Court to adopt the federal agencies' longstanding statutory interpretation.

The Supreme Court's Decision

Justice Kagan delivered the opinion of the Supreme Court, holding that a plan need not have been established by a church in order to qualify for the church plan exemption, so long as the plan is maintained by a "principal-purpose organization"—i.e., a tax-exempt organization whose principal purpose is administering or funding a benefits plan and that is controlled by or associated with a church. Thus, the Court's holding provides that a church plan may be established by a non-profit, church-affiliated healthcare system.

The Court found that the plain language of the statute compelled its holding. Put simply, the Court reasoned that, under the statute's text, because (1) a plan established and maintained by a church is a church plan, and (2) a plan established and maintained by a church <u>includes</u> a plan maintained by a principal-purpose organization, then (3) a plan maintained by a principal-purpose organization is a church plan. The Court noted that, if the plan participants' reading of the statute were correct, it would render superfluous the term "established and" in subsection (C)(i) of the statute. Had Congress intended the plan participants' interpretation, Justice Kagan wrote, Congress could easily have omitted the words "established and" from subsection (C)(i) and instead provided that "a plan maintained by a church includes a plan maintained by" a principal-purpose organization controlled by or associated with a church.

The Court also rejected the plan participants' "disabled veteran" hypothetical. In that hypothetical, Congress enacted a statute granting free insurance to a "person who is disabled and a veteran," and later amended the statute to provide that "a person who is disabled and a veteran includes a person who served in the National Guard." The plan participants argued that this hypothetical supported their reading of the church plan exemption because no one would understand a non-disabled person to be entitled to the insurance benefit, i.e., the term "includes" only modified the meaning of "veteran." The Court found this hypothetical inapposite, emphasizing that it played on the reader's pre-conceived notion of what the result should be.

The Court regarded the legislative history of the church plan exemption as largely unilluminating. But, to the extent it was illuminating, the Court found that the legislative history supported the Court's interpretation of the statute. For example, the Court wrote that, if the plan participants' statutory interpretation was correct, it would exclude from church plan coverage some of the plans Congress intended to include, such as plans established and maintained by church pension boards. Additionally, although the Court mentioned that the DOL, the IRS, and the PBGC have long read the church plan definition in the same manner as the healthcare systems, the Court did not comment on the degree of deference (if any) accorded to the agencies' statutory interpretation.

In her concurring opinion, Justice Sotomayor agreed with the majority's interpretation of the church plan exemption. She expressed reservations, however, with the implications of the Court's decision, insofar as it allowed the church plan exemption to apply to the plans of some of the larger healthcare systems in the country. Justice Sotomayor's reservations are, in our view, merely a suggestion that Congress should address the scope of the church plan exemption and not an expression of doubt that the Court's holding was correct.

Key Takeaways

The Supreme Court's decision unquestionably is a significant victory for religiously-affiliated non-profits and their pension plans. The Court resolved the threshold statutory interpretation question in their favor, holding that their plans can qualify as church plans exempt from ERISA's requirements.

The Court's opinion, however, leaves several issues concerning the church plan definition unresolved. The fact that these open issues remain is not surprising, given that certiorari was neither granted nor sought on them, but the Court was careful not to make dicta. For example, the Court did not reach the issue of what qualifies as a "principal-purpose organization" that may maintain a church plan. The Court also left open the question of what it means to be "controlled by" or "associated with" a church and did not opine on the definition of "church." Additionally, the Court did not reach the plan participants' claim that the church plan exemption is an unconstitutional accommodation under the First Amendment's Establishment Clause. At least for the time being, these unresolved issues are left to the lower courts to decide.