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Tenth Circuit Agrees with District Court that Catholic Health Initiative's Plan is a 'Church Plan'

On December 19, 2017, the Tenth Circuit in *Medina v. Catholic Health Initiatives* unanimously affirmed the decision of District of Colorado Judge Robert Blackburn entering summary judgment in favor of the defendants. Groom Law Group represented Catholic Health Initiatives ("CHI") and the other defendants throughout this lawsuit and in the appeal. The Tenth Circuit's ruling is the first major development in church plan litigation since the Supreme Court's June 2017 decision in *Advocate Health Care Network v. Stapleton*, which held that a church plan does not have to be established by a church. The *Medina* decision deals a significant blow to plaintiffs in church plan lawsuits pending around the country.

Importantly, the Tenth Circuit directly addressed several key issues left open by the Supreme Court in *Advocate Health*, including (1) whether an internal plan administrative committee can qualify as a "principal-purpose organization" that maintains a church plan, (2) what it means to "maintain" a plan for purposes of the church plan exemption, and (3) whether the church plan exemption is constitutional under the First Amendment's Establishment Clause. The Tenth Circuit was the first appellate court to rule on these issues—others had only commented in dicta. As discussed further below, the Tenth Circuit decided each of these issues favorably to CHI and other religiously-affiliated healthcare systems.

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).

Beginning in 2013, dozens of lawsuits were filed across the country by plaintiffs claiming that the pension plans of church-affiliated healthcare systems do not qualify for the church plan exemption. The complaints filed by these plan participants were primarily based on the same statutory interpretation argument: under the plain language of ERISA, only a "church"

may establish a church plan, and the defendant church-affiliated healthcare systems are not churches. The plaintiffs claim that the plans at issue therefore were required to—but had not—adhered to ERISA's requirements, including minimum funding and vesting requirements, notice and disclosure requirements, and Pension Benefit Guaranty Corporation ("PBGC") insurance requirements.

In *Medina*, the district court rejected the plaintiff's threshold statutory interpretation argument, holding that a church plan need not be established by a church if it was maintained by a church-affiliated organization whose principal purpose was administering or funding the plan. Applying the facts to this legal standard, the court entered summary judgment for the defendants in the first decision on the merits in a church plan case. The court also rejected the plaintiff's claim that the church plan exemption violated the Establishment Clause. See Groom's prior summary for more details.

Other courts took a different view of the statutory interpretation issue, however. In the months following the *Medina* opinion, 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 issue proceeded to the Supreme Court and, on June 5, 2017, Justice Kagan delivered a unanimous opinion holding that a plan need not have been established by a church in order to qualify for the church plan exemption. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017). Rather, a plan established by a non-church may qualify, 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. The Court's holding thus made clear that a church plan may be established by a non-profit, church-affiliated healthcare system. Although the Supreme Court's decision unquestionably marked a significant victory for religiously-affiliated nonprofits and their pension plans, the opinion left several issues concerning the church plan exemption unresolved (see Groom's prior summary for more details). The Tenth Circuit became the first Court of Appeals to answer these outstanding questions.

The Tenth Circuit's Opinion in *Medina*

In its opinion affirming the district court's ruling, the Tenth Circuit began by framing the analysis of the issues remaining after *Advocate Health* as a "three-step inquiry":

1. Is the entity offering the plan a tax-exempt nonprofit organization associated with a church?
2. If so, is the entity's retirement plan maintained by a principal-purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees?
3. If so, is that principal-purpose organization itself associated with a church?

First, in determining whether CHI is "associated with" the Catholic Church, the Tenth Circuit focused on the language of 29 U.S.C. § 1002(C)(iv), which defines the phrase to mean sharing "common religious bonds and convictions" with a church. The court declined to rely on three factors applied by the Fourth and Eighth Circuits in *Lown v. Continental Casualty Co.* and *Chronister v. Baptist Health* in assessing whether an organization is associated with a church: (1) whether a religious institution plays any official role in the governance of the organization; (2) whether the organization receives assistance from the religious institution; and (3) whether a denominational requirement exists

for any employee or patient/customer of the organization. The Court observed that the *Lown* factors were of "uncertain derivation" and "cannot be the exclusive means of determining whether an organization is 'associated with a church.'" These factors "may *suffice* to establish that an organization is associated with a church," but "an organization does not *need* to satisfy the . . . factors in order to be associated with a church." The Tenth Circuit ultimately agreed with the district court that CHI is "associated with" the Catholic Church because of, among other things: CHI's relationship with Catholic Health Care Federation, a "public juridic person" created by an arm of the Vatican under canon law, and the Church's listing of CHI in the Official Catholic Directory on an annual basis.

Second, the Tenth Circuit considered what it means to "maintain" a plan under 29 U.S.C. § 1002(C)(i). Drawing from *Black's Law Dictionary* and other sources of the ordinary meaning of the term, the Court concluded that to "maintain" a plan means that an entity "cares for the plan for purposes of operational productivity." The court disagreed with the plaintiff that to "maintain" a plan means to have the power to modify or terminate the plan, finding no support for that view. Based on its definition of "maintain," the Tenth Circuit agreed with the defendants and the district court that the CHI Defined Benefit Plan Subcommittee (the "Subcommittee"), which administers the CHI Plan, is a "principal purpose organization" that "maintained" the CHI Plan for purposes of the church plan exemption.

Third, the Tenth Circuit determined that the Subcommittee is an "organization," rejecting the plaintiff's argument that the Subcommittee could not be an "organization" because it is a committee within CHI, not a distinct legal entity. The court found, instead, that a committee satisfies the common sense definition of "organization" as "[a] body of persons . . . formed for a common purpose." In reaching this conclusion, the court discussed at length the illogic of the plaintiff's position that only a separately constituted entity can maintain a church plan and the impact it would have on plans trying to satisfy the church plan exemption.

Fourth, the Tenth Circuit concluded that the Subcommittee was "associated with" the Catholic Church because it is a subdivision of CHI, which is associated with the Church. The court also relied on language in the CHI Plan document declaring that the Subcommittee, appointed by CHI, shares "common religious bonds and convictions" with the Catholic Church and must be mindful of the teachings of the Catholic Church.

Fifth, the Tenth Circuit rejected the plaintiff's argument that too many participants in the CHI Plan were not "employees of a church." To qualify as a church plan, "substantially all" participants in a plan must be "employees of a church." 29 U.S.C. § 1002(33)(B)(ii). The statute then defines "employee of a church" to include employees of a tax-exempt organization controlled by or associated with a church. 29 U.S.C. § 1002(33)(C)(ii)(II). The plaintiff's main argument on this issue was that the CHI Plan includes participants employed by Centura Health, a joint venture between CHI and a Seventh-day Adventist organization. In rejecting the plaintiff's argument, the Tenth Circuit found that the participants in a church plan need not be employees of an organization associated with a single church. Rather, under the Tenth Circuit's reasoning, a church plan may include employees of multiple organizations associated with different churches.

In addition to holding that the CHI Plan satisfies the statutory requirements to be a church plan, the Tenth Circuit rejected the plaintiff's claim that the church plan exemption as applied to the CHI Plan violates the Establishment Clause. The court relied on the Supreme Court's seminal decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which held that a government action is constitutional under the Establishment Clause if: (1) it has a secular purpose; (2) its primary effect is one that neither advances nor inhibits religion; and (3) it does not foster an excessive government entanglement with religion. The Tenth Circuit held that the church plan exemption satisfies the three *Lemon* factors because: (1) it has a secular purpose of avoiding excessive government entanglement with religious organizations by not subjecting them to intrusive oversight under ERISA; (2) it does not convey an impermissible message that the

government is endorsing a particular religion or religion generally; and (3) it prevents, rather than fosters, excessive government entanglement. In holding that the church plan exemption passes muster under the Establishment Clause, the Tenth Circuit noted that Congress has often exempted religious organizations from generally applicable laws and regulations that burden them, and the courts have regularly upheld such accommodations under the Establishment Clause.

Key Takeaways

The Tenth Circuit's opinion in *Medina* bolsters the litigation positions of religiously-affiliated healthcare systems across the country as they continue to defend their church plans after *Advocate Health*. Since the *Advocate Health* decision, plaintiffs have filed amended complaints in a number of church plan cases, and have focused on expanding allegations that internal plan committees like CHI's Subcommittee cannot qualify as "principal-purpose organizations," do not "maintain" church plans, and are not associated with a church under the narrow *Lown* factors. Adding alternative state law breach of contract and breach of fiduciary duty claims has also become common, though such claims were found to be preempted by the plaintiffs' ERISA claims and dismissed in another recent case, *Smith v. OSF Healthcare*, in the Southern District of Illinois.

Although plaintiffs are expected to continue pressing existing church plan lawsuits, the Tenth Circuit has provided defendants with compelling support in seeking to dismiss the claims against them.