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Church Plans

Amicus Brief Argues Church Plan Exemption Furthers Objectives of Establishment Clause

The recent influx of church plan litigation heated up Sept. 26, when the Becket Fund for Religious Liberty filed an amicus brief in federal district court arguing that the Employee Retirement Income Security Act's church plan exemption doesn't violate the Establishment Clause of the U.S. Constitution (*Rollins v. Dignity Health*, N.D. Cal., No. 3:13-cv-01450-TEH, *amicus brief filed* 9/26/13).

The proposed class action, filed April 1 in the U.S. District Court for the Northern District of California, alleges that Dignity Health, a nonprofit health care network, violated ERISA and the Establishment Clause by treating its defined benefit pension plan as a church plan exempt from many of ERISA's requirements. Dignity Health moved to dismiss the complaint in June, arguing that ''[m]ore than three decades of agency interpretations and court rulings'' have confirmed that plans sponsored by faith-based hospital systems qualify as church plans under ERISA. Four similar lawsuits are pending in other federal district courts.

The Becket Fund's amicus brief argued that the church plan exemption furthered the objectives of the Establishment Clause and that the exemption, once granted, couldn't be lost on the grounds that the plan sponsor was ''too ecumenical.''

Although appellate courts routinely receive amicus briefs, it's rare for a district court to receive an amicus brief from an interested party in pending litigation.

Becket Fund Brief. In the brief, written by professor Eugene Volokh of UCLA School of Law, the Becket Fund disputed the notion that Dignity Health's reliance on the church plan exemption violated the Establishment Clause. The Becket Fund argued that ERISA's church plan exemption furthered—rather than frustrated—the objectives of the Establishment Clause.

''When the government chooses not to regulate religion, that constitutes a worthy separation between church and state—itself a value promoted by the Establishment Clause—rather than a violation of the Establishment Clause,'' the Becket Fund said in its brief.

Moreover, the Becket Fund argued that the church plan exemption, once granted, couldn't be lost on the grounds that an entity was ''too ecumenical'' or, alternatively, ''too parochial.'' A decision that an entity qualifies for the church plan exemption ''must be the end of the inquiry,'' the Becket Fund argued, because allowing ''as-applied challenges'' to church plan status could lead to discrimination between religions and ''more government entanglement with religion, not less.''

''Forcing courts to determine whether a particular group's activities are too religious, too secular, or just religious enough would require that courts make judgments they are ill-equipped to make, inviting impermissible discrimination and entanglement,'' the Becket Fund said in the brief.

The brief, filed Sept. 26, hasn't yet been approved by the judge. The plaintiffs filed a motion opposing the brief Oct. 1, arguing that the brief was inappropriate at the motion-to-dismiss stage of litigation, because the Becket Fund couldn't present any ''unique information'' that would aid the court in ruling on the motion to dismiss.

At this time, no amicus briefs have been received in any of the other four cases. On Sept. 30, the U.S. Solicitor General filed notices of intervention in two of the suits. The Solicitor General said it declined to file briefs at this time, but would decide when and if to file briefs after further developments in the cases.

According to the brief, the Becket Fund is a nonprofit law firm dedicated to ''the free expression of all religious traditions.''

Attorneys Speak. Nicole A. Diller, a partner in Morgan Lewis's San Francisco office and counsel for Dignity Health, told Bloomberg BNA Oct. 1 that the Becket Fund's interest in the case ''shows that there are potentially far-reaching effects of the plaintiffs' claims,'' because the Becket Fund works to promote the free expression of all religions, not just Catholicism.

''The way the plaintiffs have currently voiced their complaint, they're targeting Catholic-affiliated health care systems, but their arguments would apply to other religiously-affiliated institutions that aren't considered places of worship—universities, soup kitchens and other not-for-profits associated with religious groups,'' Diller said.

''That explains the interest of the Becket Fund,'' Diller said. ''They're trying to ensure that there's no excessive government entanglement in the operation of a church or its ministries. The plaintiffs' complaint is saying that running hospitals based on Catholic principles of serving and healing the poor is not religious enough because it's not a place of worship, and as the Becket Fund points out, that would really impose a lot of entanglement in courts in assessing whether or not the religiously affiliated ministry is associated with the church within the meaning of the religion, rather than under the facially neutral law.''

Karen L. Handorf, a partner in Cohen Milstein's Washington office and counsel for the plaintiffs, told

Bloomberg BNA Oct. 2 that the Becket Fund's brief came ''way too early.''

''The government has intervened in these cases because of the constitutional issues involved, and even they say that it's too premature to take a position on this,'' Handorf said. ''Their position is that the court first needs to reach the statutory issues and that the factual development of the case may influence their position.''

Handorf also said that the brief's arguments missed the mark.

''It's directed at our arguments as if we were actually saying that a church can't have a church plan, which of course we aren't,'' Handorf said. ''We're just saying that these large health care systems aren't able to have a church plan exempt from ERISA coverage.''

Influx of Litigation. The *Rollins* case is one of five recent class action complaints challenging pension plan sponsors' reliance on ERISA's church plan exemption (138 PBD, 7/18/13; 40 BPR 1754, 7/23/13). The exemption, found at Section 3(33)(A), exempts plans established and maintained by churches or associations of churches from many of ERISA's obligations, including the funding and termination insurance requirements applicable to defined benefit pension plans.

In each case, the plaintiffs alleged that the relevant plans failed to qualify as church plans under ERISA, because they weren't ''established by a church or convention or association of churches,'' but rather by nonprofit hospital conglomerates, systems and networks.

The plaintiffs argued that the plan sponsors' mistaken reliance on the church plan exemption allowed the plans to become underfunded, with shortfalls ranging from $70 million to $1.2 billion per sponsor. Further, the plaintiffs alleged, the exemption prevented the plans from providing the protections ERISA affords to participants and beneficiaries, which they argued violated both ERISA and the First Amendment's Establishment Clause (62 PBD, 4/1/13; 40 BPR 831, 4/2/13).

The other cases include:

■ *Overall v. Ascension Health*, E.D. Mich., No. 2:13-cv-11396-AC-LJM, *complaint filed* 3/28/13;

■ *Chavies v. Catholic Health East*, E.D. Pa., No. 2:13-cv-01645-CDJ, *complaint filed* 3/28/13;

■ *Medina v. Catholic Health Initiatives*, D. Colo., No. 1:13-cv-01249, *complaint filed* 5/10/13;

■ *Kaplan v. Saint Peter's Healthcare System*, D.N.J., No. 3:13-cv-02941, *complaint filed* 5/7/13.

Practitioners and plan sponsors have been closely following these cases as they wind through the federal court system. A judicial ruling disallowing a pension plan's reliance on the church plan exemption would raise questions of compliance with minimum funding requirements, Pension Benefit Guaranty Corporation contributions, potential disqualification and potential retroactive correction, among others (189 PBD, 9/30/13; 40 BPR 2298, 10/1/13).

In an unrelated case involving long-term disability benefits, the U.S. District Court for the Northern District of Texas Aug. 8 rejected a participant's attempt to characterize her employer-sponsored health plan as a church plan exempt from ERISA (*Story v. Aetna Life Ins. Co.*, 2013 BL 217694, N.D. Tex., No. 4:13-cv-00149-A, 8/8/13 (158 PBD, 8/15/13; 40 BPR 2012, 8/20/13). The Texas federal court said that, although the plan was sponsored by a ''faith-based healthcare organization,'' it nevertheless qualified as an ERISA-governed plan, because the plan documents clearly indicated that the plan was intended to be ERISA-governed and that the health care organization imposed no religious requirements on its employees or patients.

The brief was filed by Eugene Volokh of UCLA Law School, Los Angeles.

By Jacklyn Wille

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The full text of the amicus brief is at http://www.bloomberglaw.com/public/document/Rollins_v_Dignity_Health_et_al_Docket_No_313cv01450_ND_Cal_Apr_01/1.

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