Nos. 16-74, 16-86, 16-258

In the Supreme Court of the United States

ADVOCATE HEALTH CARE NETWORK, *et al.*,
Petitioners,
v.
MARIA STAPLETON, *et al., Respondents.*

SAINT PETER'S HEALTHCARE SYSTEM,
et al., Petitioners,
v.
LAURENCE KAPLAN, *Respondent.*

DIGNITY HEALTH, *et al.*, *Petitioners*,
v.
STARLA ROLLINS, *Respondent.*

On Writs of Certiorari to the
United States Courts of Appeals for the
Third, Seventh, and Ninth Circuits

BRIEF OF AARP AND AARP FOUNDATION AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP fights to protect older people's financial security, health, and well-being. AARP Foundation — AARP's charitable affiliate — creates and advances effective solutions that help low-income individuals fifty and older to secure the essentials and to prevent them from falling into poverty during retirement. Among other things, AARP and AARP Foundation seek to increase the availability, security, equity, and adequacy of public and private pension, health, disability, and other employee benefits that countless members and older individuals receive or may be eligible to receive, including through participation as amicus curiae in state and federal courts.[2]

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[1] Amici state that no party's counsel authored this brief either in whole or in part, and further, that no party or party's counsel, or any person or entity other than AARP, AARP Foundation, AARP's members, and their counsel, contributed money intended to fund preparing or submitting this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented to this filing in letters on file with the Clerk's office.

[2] Amici either singly or jointly have participated as amicus curiae in numerous cases to protect the rights of workers and their beneficiaries under ERISA. *See, e.g.*, *Montanile v. Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan*, 136 S. Ct. 651 (2016); *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011); *LaRue v. DeWolff, Boberg & Assocs*., 552 U.S. 248 (2008); *Rollins v. Dignity Health*, 830 F.3d 900 (9th Cir. 2016); *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016); *Kaplan v. St. Peter's Healthcare Sys*., 810 F.3d 175 (3d Cir. 2015).

Congress enacted the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461 (2012), after assembling a record that showed a history and pattern of employers failing to provide promised employee benefits, a lack of disclosure and transparency, and varied and numerous financial abuses. Congress intended ERISA to protect "the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. § 1001(b); *see also*, *e.g.*, *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361-62 (1980). Although Congress did not require that every pension plan be covered by ERISA,[3] Congress did limit the exemptions to ERISA's coverage due to the abuses it uncovered and the remedial nature of the legislation.[4]

Participants and beneficiaries in private employer-sponsored employee benefit plans must be able to rely on promised pension benefits because the quality of these workers' lives in retirement depends

[3] Although amici's focus is the impact of the church plan exemption on pension plans due to the significant negative effects of underfunded plans, make no mistake that the loss of ERISA protections for participants in welfare plans is just as crucial. Many of these organizations cherry pick the use of the church plan exemption — asserting ERISA coverage when it benefits them particularly in welfare plans, but not when they must comply with pension requirements.

[4] *See generally* Norman Stein et al., *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, EMP. BENEFITS COMM. NEWSL. (ABA Section of Labor and Emp't Law, Chicago, Ill.), Summer 2014, https://goo.gl/wlYJbZ (noting that ERISA's predecessor, the Welfare and Pension Plan Disclosure Act, exempted all tax-exempt organizations from its coverage, whereas ERISA only exempts church and governmental plans).

substantially on their ability to obtain those benefits that they have been promised. As longevity and, as a result, the amount of money needed to live comfortably in retirement increases, retirement plans become more crucial to individuals' retirement security. Indeed, for many people, outside of Social Security, employee benefit plans are their main source of retirement income.[5]

Mid-career and older participants have the most to lose if exempt church plans have insufficient funds to pay benefits because these individuals have little time to make up any potential benefit shortfall.[6] When an employer reneges on its pension promises, it wreaks financial havoc upon older employees and their families by destroying a lifetime of working and planning for their retirement years.[7] Retirement typically occurs at an age when employees cannot

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[5] *See* Emp. Benefit Res. Inst., Sudipto Banerjee, *Income Composition, Income Trends, and Income Shortfalls of Older Households*, EBRI ISSUE BRIEF NO. 383, Feb. 2013, at 5, https://goo.gl/k4LeVA (pensions and annuities are the second-most important source of income for most older households).

[6] *See, e.g.*, Stephen Williams, *Hospital pension fund in trouble*, DAILY GAZETTE, Jan. 16, 2017, https://goo.gl/9K3hst; Danica Coto, *Puerto Rico church strips teachers of pension amid crisis,* ASSOCIATED PRESS, Apr. 12, 2016, https://goo.gl/QCEAZs.

[7] 120 CONG. REC. 29928 (1974) (statement of Sen. Williams) ("[T]oo many workers, rather than being able to retire in dignity and security after a lifetime of labor rendered on the promise of a future pension, find that their earned expectations are not to be realized"); *see also* S. REP. NO. 93-127, at 1-9 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4838-44.

start all over again in hopes of obtaining a new pension.[8] For those already retired, it is just too late.

These cases will have a significant impact on the funding and integrity of employee benefit plans, the ability of individual participants to obtain accurate information to make informed decisions concerning their benefits, and the ability of individual participants to obtain their promised retirement benefits. In light of the significance of the issues presented by this case, which directly bears on the retirement security of millions of Americans, including AARP members, amici respectfully submit this brief.

SUMMARY OF ARGUMENT

Petitioners are businesses, not churches. They deliver healthcare services on national, multi-state, or regional levels. They operate and compete for market share against other large non-profit health systems that are covered by ERISA. ERISA's protections are meant to apply to all employers offering employee plans, unless those plans meet the narrow exemption that Congress designed. 29 U.S.C. § 1003(b)(2). The necessity for such protections is well-known.

In the 1950s, after investigation and studies, Congress became cognizant of the widespread

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[8] *See, e.g.,* Eric Fontinelle, *Outliving Your Retirement Savings*, FORBES, May 24, 2010, https://goo.gl/MD1p40 ("Many retirees may not be able to go back to work due to failing health or lack of skills.").

damage that the loss of promised and earned pension benefits caused to workers' lives and their retirement security.[9] Congress concluded that current laws, including the Internal Revenue Code and state laws, were inadequate to protect employee benefit plans.[10] S. REP. NO. 93-127 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4842. Congress believed that if employees' rights to their accrued pension benefits are forfeitable, they have no assurances that they will ultimately receive a pension. *See Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004) (recognizing the "centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them"). Congress sought to prevent employers from pulling the rug out from under employees participating in a pension plan after they met the plan's eligibility requirements. *See Nachman Corp.*, 446 U.S. 359, 375 (1980).

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[9] *See Private Pension Plans, 1966: Hearings Before the Subcomm. on Fiscal Policy of the J. Econ. Comm.*, 89th Cong., 104-28 (1966) (statement of Clifford M. MacMillan, Vice-President, Studebaker Corp.) (describing the closing of the Studebaker automobile plant where approximately 7,000 employees lost some or all of their promised pension benefits).

[10] The Brief *amici curiae* of the Illinois Conference of the United Church of Christ, et al., states that church plans are regulated under the Internal Revenue Code and state laws. Indeed, some of the Internal Revenue Code sections cited were in effect prior to ERISA's enactment. This argument misses the point. Congress determined that pre-ERISA standards were insufficient to protect employee benefit plans.

In its statement of findings and declaration of policy, Congress noted that "despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans." 29 U.S.C. § 1001(a). Congress designed ERISA to prescribe minimum vesting and accrual standards in response to such problems. 29 U.S.C. §§ 1053, 1054. To ensure that employee pension expectations are not thwarted, ERISA establishes a comprehensive disclosure scheme, 29 U.S.C. §§ 1021-30; minimum rules for employee participation, 29 U.S.C. § 1052; funding standards to increase solvency of pension plans, 29 U.S.C. §§ 1081-1085; fiduciary standards for plan fiduciaries, 29 U.S.C. §§ 1101-1114; and an insurance program in case of plan termination, 29 U.S.C. §§ 1341-1348; *accord Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511 n.5 (1981). Congress also provided standards for benefit payments, 29 U.S.C. §§ 1055, 1056, and a procedure to dispute benefit denials, 29 U.S.C. § 1133.

None of these fundamental safeguards applies to church plans. Thus, church plans can design their pension plans in any way they desire. Pension provisions could certainly include, among other harmful possibilities, allowing for the elimination or reduction of accrued benefits, requiring five or even thirty years of service to achieve a non-forfeitable benefit (rather than ERISA's three years of vesting), providing disproportionate benefit accruals in the later years of a participant's employment, stopping accrual of a participant's benefits at age 65, or not

providing for a joint and survivor annuity. Extending ERISA's limited church plan exemption to non-churches like Petitioners creates significant risks and changes settled expectations for retiring workers. If this Court blesses their exemption from ERISA protections, pension provisions similar to those listed above undoubtedly will become more common and underfunding of these pensions will continue or increase, leaving plan participants with only their employers' empty promises.

ARGUMENT

I. PETITIONERS ARE BUSINESSES, NOT CHURCHES, AND THUS ARE NOT ENTITLED TO TAKE ADVANTAGE OF ERISA'S CHURCH PLAN EXEMPTION.

Congress enacted ERISA because, based on its studies and investigations, it did not trust businesses to protect and properly fund their pensions. Significantly, Congress did not exempt non-profit organizations, but treated them the same as any other business. *See supra* note 4. In contrast, in fashioning the church plan exemption, the legislative history demonstrated that Congress trusted churches to protect and properly fund the promised pension benefits for their employees due to the church's moral obligation to their employees. *See Miscellaneous Pension Bills: Hearings Before the Subcomm. on Private Pension Plans and Emp. Fringe Benefits of the S. Comm. on Fin.*, 96th Cong. 364 (Comm. Print Dec. 4, 1979) (statement of Sen. Herman E.

Talmadge, Member, S. Comm. on Fin.). Here, Petitioner hospitals are not churches, but businesses.

Congress designed ERISA's church plan exemption to apply narrowly. *See infra* Section II.C. As its label implies, the exemption was intended only to apply to actual churches. However, like Petitioners in this case, many of the organizations taking advantage of the church plan exemption are big businesses. They are organized to supply healthcare services, to compete with similar institutions, which do not claim the church plan exemption for their pension plans, and operate with primarily laypersons — including the CEOs — to achieve their goals. Indeed, they are not organized to deliver religious worship services.[11]

Petitioners illustrate an all-too-common distortion of the church plan exemption. These entities are not churches. They are big businesses, organized like similar non-profit health systems.

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[11] *See* Dignity Health, *About Us*, https://goo.gl/nnS2Ue (last visited Feb. 15, 2017) (describing Dignity as a health care delivery system); Advocate Health Care Network and Subsidiaries, Inc., *Consol. Fin. Statements and Supplementary Info., Years Ended December 31, 2015 and 2014 With Reports of Independent Auditors* 8 (2016), https://goo.gl/nBvPKD ("Substantially all expenses of [Advocate] are related to providing health care services."); Ronald C. Rak, Saint Peter's HealthCare System CEO, *Saint Peter's University Hospital meets the community's needs,* NJ.com, Nov. 23, 2016, https://goo.gl/d2i1dL (statement from CEO, describing Saint Peter's as the parent company of Saint Peter's healthcare delivery system).

Petitioners are all large employers organized to deliver healthcare services on national, multi-state, or regional levels.[12] They are managed by a board of directors[13] and pursue aggressive growth strategies through health[14] and non-health

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[12] Dignity employs approximately 60,000 people in 21 states. It is the fifth largest health system in the nation and the largest hospital provider in California. Dignity Health, *About Us, supra* note 11. Advocate is one of Chicago's largest employers with more than 35,000 associates, including 6,300 affiliated physicians and 11,000 nurses. It is the largest health system in Illinois, offering more than 450 sites of care, with 12 acute-care hospitals. Additionally, it has the State's largest physician network of primary physicians, specialists and sub-specialists. Advocate Health Care, *About Advocate*, https://goo.gl/DfXaBa (last visited Feb. 15, 2017). Saint Peter's employs over 3,300 employees, 1,028 credentialed physicians, and its children's hospital is one of the largest in New Jersey. *See* Ronald C. Rak, Saint Peter's Healthcare System CEO, *supra* note 11.

[13] Dignity Health, *Governance and Leadership*, https://goo.gl/Z3pwyL (last visited Feb. 15, 2017).

[14] In 2016, Dignity Health and Catholic Health Initiatives entered into merger talks. A full merger would create the nation's largest not-for-profit hospital company, with a combined revenue of $27.6 billion, and leave it trailing only Kaiser Permanente as the largest not-for-profit health system. David Barkholz, *Dignity and Catholic Health Initiatives are in merger talks*, MODERN HEALTHCARE, Oct. 24, 2016, https://goo.gl/CSMJpW; *see also* Chris Rauber, *Dignity Health's acquisition of U.S. HealthWorks quietly closes*, SAN FRANCISCO BUSINESS TIMES, Aug. 15, 2012, https://goo.gl/WGCXzl (reporting that Dignity's acquisition of U.S. HealthWorks "is part of Dignity's aggressive plans to . . . become a national player in the near future."); Beth Kutscher, *Dignity's acquisition of U.S. HealthWorks helped bolster fiscal 2013 revenue*, MODERN HEALTHCARE, Dec. 26, 2013, https://goo.gl/MzDqEF (At time of the merger, U.S. HealthWorks had 172 locations in 15 states,

ventures.[15] Global investments play a significant role in how these entities build revenue.[16] In particular, they all have financial accounts in the tax haven of the Cayman Islands.[17] Their enormous revenues evidence success in this regard.[18]

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which grew to 208 locations in 20 states a year after the merger.).

[15] *See* Dignity Health and Subordinate Corporations, *Consol. Fin. Statements as of and for the Years Ended June 30, 2015 and 2014 and Independent Auditors' Report* 10 (2015), https://goo.gl/OVpzDM ("Dignity Health also invests in alternative investments through limited partnerships. Alternative investments are comprised of private equity, real estate, hedge fund and other investment vehicles."); Advocate, *Consol. Fin. Statements*, *supra* note 11, at 40 (approximately $916 million in total assets in 2015, including: over $206 million in hedge funds, almost $100 million in private equity funds, and about $11 million in real estate investments); Dignity Health, *Form 990, Return of Org. Exempt From Income Tax* at 1 (2013), https://goo.gl/Goa0Qy (more than $23 million in revenue for business unrelated to "the delivery of affordable health care, advocacy for the poor and community partnerships"); Advocate Health and Hospitals Corporation, *Form 990, Return of Org. Exempt From Income Tax* at 1 (2014), https://goo.gl/ohNm3r (just short of $60 million in revenue for business unrelated to "serv[ing] health needs of communities . . .").

[16] Dignity has investments of over $2.1 billion in Central America and the Caribbean, and Europe, including Iceland and Greenland. Dignity Health, *Form 990* at Schedule F, Part I, https://goo.gl/Goa0Qy. Advocate has activities in Central America and the Caribbean. Advocate, *Form 990* at Schedule F, Part I, https://goo.gl/ohNm3r.

[17] *See* Dignity Health, *Form 990* at Schedule R, Part IV, https://goo.gl/Goa0Qy; Advocate, *Form 990* at Schedule R, Part IV, https://goo.gl/ohNm3r; Saint Peter's Healthcare System,

Although Petitioners claim religious affiliations, they operate much like other large non-profit health systems that are covered by ERISA. Petitioners do not rely on any funding from churches.[19] Instead, they all rely on revenue bonds to raise money, and have significant sums invested in, among other things, fixed-income securities, equity securities, and hedge funds.[20]

Patients pay for services as they would pay any health care provider that does not assert its retirement plan is a church plan — through, among other means, insurance, self-payment, Medicare, and

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Inc., *Form 990, Return of Org. Exempt From Income Tax* at Schedule R, Part IV (2014), https://goo.gl/jpEcfq.

[18] Dignity revenue: $8.6 billion in 2014. *See* Dignity Health, *Form 990* at 1, https://goo.gl/Goa0Qy. Advocate revenue: $4.3 million in 2014. *See* Advocate, *Form 990* at 1, https://goo.gl/ohNm3r. Saint Peter's revenue: $37 million in 2014. *See* Saint Peter's, *Form 990* at 1, https://goo.gl/jpEcfq.

[19] J.A. 258, 428, 777.

[20] *See* Advocate, *Consol. Fin. Statements*, *supra* note 11, at 23 (more than $5.4 billion in total investments); Dignity, *Consol. Fin. Statements*, *supra* note 15, at 18 (total investments and assets, limited as to use, amounted to $6.5 billion in 2015); Saint Peter's Healthcare System, Inc., *Consol. Fin. Statements and Supplementary Info., Years Ended December 31, 2015 and 2014 With Report of Independent Auditors* 22, 36 (2016), https://goo.gl/KnWlHf (fair value of more than $87 million in securities for 2015).

Medicaid.[21] Those in key leadership and management positions are filled primarily by lay people.[22] Like other chief executive officers of for-profit systems and large non-profit health care systems, the CEOs of these entities are well compensated.[23]

These entities are large corporations, they compete with similarly structured non-profit health systems and they bear no resemblance to churches. Petitioners are enormous conglomerates built to deliver health services — not religious worship. Congress surely did not intend for businesses, with investments in the Cayman Islands, well-compensated CEOs, and revenues in the billions, to

[21] *See* Advocate, *Consol. Fin. Statements*, *supra* note 11, at 16; Dignity, *Consol. Fin. Statements*, *supra* note 15, at 16; Saint Peter's, *Consol. Fin. Statements*, *supra* note 20, at 18.

[22] Dignity Board consists of thirteen members, 2 of which are not lay people). *See* Dignity Health, *Governance and Leadership*, *supra* note 13. All but one of twelve people on Advocate's leadership team is a layperson. Advocate Health Care, *Executive Profiles*, https://goo.gl/DfMYRD (last visited Feb. 15, 2017).

[23] Dignity's CEO received over $8 million in 2013, and at least nineteen officers or key employees received compensation in excess of one million dollars. Dignity, *Form 990* at Schedule J, Part II, https://goo.gl/Goa0Qy. Advocate's CEO received over $7.6 million in 2014, and at least eight officers or key employees received reportable compensation in excess of one million dollars. Advocate, *Form 990* at Schedule J, Part II, https://goo.gl/ohNm3r. Saint Peter's CEO received close to one million dollars in 2014, and at least three officers or key employees received reportable compensation in excess of half a million dollars. Saint Peter's, *Form 990* at Schedule J, Part II, https://goo.gl/jpEcfq.

claim ERISA's church plan exemption to the detriment of their employees.

II. CONGRESS ENACTED ERISA IN RESPONSE TO BROKEN PENSION PROMISES TO ENSURE THAT EMPLOYEES RECEIVE THEIR PENSIONS.

A. Employers Promise Pensions to Employees As Deferred Compensation.

Congress has consistently recognized that "the benefits the employers provide are a form of compensation." S. REP. NO. 85-1440, at 3 (1958), *as reprinted in* 1958 U.S.C.C.A.N. 4137, 4139 (legislative history of the Welfare and Pension Plans Disclosure Act of 1958 (WPPDA), ERISA's predecessor). "[T]he private pension plan is a means for transferring earnings during the working years into income for a decent living in the older years." 2 Legislative History of the Employee Retirement Income Security Act of 1974 ("Legislative History"), 94th Cong. (Comm. Print 1976). Quite simply, pensions are a form of deferred compensation, and their protection is crucial to employees' financial security. *See*, *e.g.*, S. REP. NO. 93-383, at 17, 25-26 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4890, 4903, 4910-11 (ERISA's legislative history describing pensions as "deferred wages"); S. REP. NO. 93-127, at 3 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4839 (same); *accord*, *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 445 (1999); *Lockheed Corp. v. Spink,*

517 U.S. 882, 893-94 (1999) ("[A]mong the … legitimate benefits that a plan sponsor may receive from the operation of a pension plan are attracting and retaining employees [and] paying deferred compensation."); John H. Langbein, *The Supreme Court Flunks Trusts*, 1990 SUP. CT. REV. 207, 209 (1991) (pension plan assets are placed in trust form to protect deferred wages).

B. Congress Enacted ERISA In Response To Broken Pension Promises.

At the behest of President Dwight D. Eisenhower, in 1954, Congress began investigating pension plans in order to protect these funds for the workers covered by these plans. Congress found extensive evidence of kickbacks, embezzlement, and mismanagement during its four years of hearings, studies, and investigation. It concluded that the solution was to provide disclosures and information to the participants "which will permit them to determine (1) whether the program is being administered efficiently and equitably, and (2) more importantly, whether or not the assets and prospective income of the programs are sufficient to guarantee the benefits which have been promised to them." S. REP. NO. 1440, 85th Cong., 2d Sess., 12 (1958); *see generally Malone v. White Motor Corp.*, 435 U.S. 497, 506-507 (1978). In response, Congress enacted the WPPDA. JOHN H. LANGBEIN, DAVID A. PRATT, & SUSAN J. STABILE, PENSION AND EMPLOYEE BENEFIT LAW 84 (Robert C. Clark et al. eds., 5th ed. 2010).

Subsequently, a confluence of incidents made it apparent that the WPPDA was inadequate to protect employees' pensions. The most spectacular incident was the failure of Studebaker Motor Company and its pension plan. *See* JAMES A. WOOTEN, ERISA: A POLITICAL HISTORY 8-10, 51-52, 80 (2004). It was not an accident that employees had no vesting rights in their Studebaker pension. *See* Symposium, "*The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 BUFFALO L. REV. 683, 694-695 (2001). At the time that Studebaker folded, its pension plan was not properly funded; as a result, many employees received no pension distribution. *Id.* at 695-697, 706, 716. Moreover, the kickbacks, embezzlement, and mismanagement that Congress had previously uncovered in other benefit plans had only become more egregious. *See* Langbein, *The Supreme Court Flunks Trusts*, *supra* at 210 (ERISA passed to curb looting and other abuses); JAMES A. WOOTEN, ERISA: A POLITICAL HISTORY at 118, 158 (citing examples such as Jimmy Hoffa receiving loans that Central States Pension Fund made for his benefit; a union officer and "trustee for life" diverting several million dollars from welfare and pension plans to Liberia and Puerto Rico; Tony Boyle accused of abusing position as United Mine Workers Funds trustee).

Congress understood that ERISA's predecessor was "weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards." H.R. REP. NO. 93-533, at 4 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4639, 4642; S. REP. NO. 93-127, at

4, 1974 U.S.C.C.A.N. at 4841. Indeed, the House Education & Labor and the Senate Labor & Public Welfare Committees' reports concluded:

> It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if the conditions were stated in a misleading or incomprehensible manner in plan booklets. Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished an explanation of his plan's provisions, often cannot comprehend them because of the technicalities and complexities of the language used.

H.R. REP. NO. 93-533, at 8, 1974 U.S.C.C.A.N. at 4646; S. REP. NO. 93-127, at 11, 1974 U.S.C.C.A.N. at 4847, *reprinted in* 2 Legislative History at 2348. These reports also emphasized problems caused by a lack of vesting, funding, and reinsurance provisions in the current law. 1974 U.S.C.C.A.N. at 4844-4847. Accordingly, Congress enacted ERISA over 40 years ago to protect retirement benefits and plan assets through a "comprehensive and reticulated" system, designed to assure that employer-sponsored pension plans actually pay employees the benefits they were promised. *Nachman Corp.*, 446 U.S. at 361, 374-75 (purpose of ERISA was to prevent the "great personal tragedy" suffered by employees whose retirement

benefits were not paid). This Court should affirm this construction.

C. Because Congress Intended That ERISA Cover The Majority Of Employee Benefit Plans To Ensure That Employees Receive Their Pensions, The Church Plan Exemption Should Be Narrowly Construed.

Ensuring that ERISA's protections remain in place throughout an employee's work life and retirement is crucial to an individual's retirement security. Congress sought to accomplish this in part by permitting only the most limited exemptions to ERISA's protections.[24] *See* 29 U.S.C. § 1003(b).

In other contexts, this Court has consistently held that exemptions to remedial statutes are to be narrowly construed. *See Rodriguez v. Compass Shipping Co.*, 451 U.S. 596, 614 (1981) ("The comprehensive character of the procedures outlined in the [Longshoremen's and Harbor Workers' Compensation Act] precludes the fashioning of an entirely new set of remedies to deal with an aspect of a problem that Congress expressly addressed"); *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980) (in construing the Federal Property and Administrative Services Act of 1949, the Court held that "where Congress explicitly enumerates certain

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[24] *See* Stein et al., *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, *supra* note 4.

exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of contrary legislative intent"); *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) ("Any exemption from such humanitarian and remedial legislation [such as the Fair Labor Standards Act] must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.").

It is clear that an employee benefit plan must meet all of ERISA's requirements if it does not meet the precise conditions of an exemption. This Court has narrowly construed other ERISA exemptions that limit participant protections. *See, e.g., John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank,* 510 U.S. 86, 97, 105-106 (1993) (acknowledging a "tight reading of exemptions from comprehensive schemes of this kind," but limiting exemption to the precise words of the statute); *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990) (declining to find an exception to ERISA's anti-alienation provision and asserting that "[i]f exceptions to this policy are to be made, it is for Congress to undertake that task"), *superseded by statute,* Mandatory Victims Restitution Act, 42 U.S.C. § 3663A (2010).

In construing the church plan exemption, the circuit courts have faithfully applied this Court's teachings. *See Stapleton v. Advocate Health Care*

Network, 817 F.3d 517, 526 (7th Cir. 2016) ("ERISA . . . was written to protect workers who have invested their retirement savings into employer-run financial plans. And, because it 'is a 'remedial statute' [it] should be 'liberally construed in favor of protecting the participants in employee benefit plans.'") (quoting *Kaplan*, 810 F.3d at 182); *Kaplan v. St. Peter's Healthcare Sys.*, 810 F.3d 175, 182 (3d Cir. 2015) ("construing plans established by church hospitals to be exempt 'would achieve quite the opposite' result of the canon directing us to construe exemptions narrowly"). This Court should affirm its teachings.

III. BROAD APPLICATION OF THE CHURCH PLAN EXEMPTION WOULD DEPRIVE EMPLOYEES OF SAFEGUARDS THAT CONGRESS ENACTED TO PROTECT EMPLOYEE PENSIONS.

ERISA's main purpose is to ensure that employees receive their promised employee pension and welfare benefits. 29 U.S.C. § 1001(a)-(b). For pension plans, Congress sought to achieve that purpose by providing various protections, including minimum funding protections and insurance guarantees, limitations on reducing or eliminating pension benefits, mandated fiduciary responsibilities, and a comprehensive disclosure scheme. *See supra* p. 6. Reading the church plan exemption broadly deprives these participants of each carefully crafted ERISA requirement and leaves them vulnerable to broken pension promises. *See Stapleton*, 817 F.3d at 526-527 (recognizing the perils of unregulated pension plans); *Kaplan*, 810 F.3d at 182 ("[E]xempt

church plans lack many of the protections associated with ERISA"); *A-T-O-Inc. v. Pension Benefit Guar. Corp.*, 634 F.2d 1013, 1020 (6th Cir. 1980) (ERISA should be interpreted to "protect employees' expectations in their vesting pension benefits"); LANGBEIN et al., PENSION AND EMPLOYEE BENEFIT LAW*, supra* p. 15, at 105 (providing examples of the poor financial health of exempt governmental plans).

A. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Minimum Plan Funding Protections And Insurance Guarantees.

ERISA arose in the wake of the failure of Studebaker Motor Company and its pension plan — a watershed moment in pension history. Studebaker had agreed to pension increases, but had not funded these pension promises. When the company failed, the pension was underfunded by over $15 million. Thousands of employees, including some who had worked their whole lives for the company, lost all or most of their pensions. *See* JAMES A. WOOTEN, ERISA: A POLITICAL HISTORY at 8-10, 51, 80; S. REP. NO. 93-127, 1974 U.S.C.C.A.N. at 4846-4847 (noting 683 pension plan terminations for the first seven months of 1972 affecting 20,700 pension participants).

Moreover, Congress found that many plans only funded their plans to the extent required by the Internal Revenue Service; that is, employers made contributions in an amount equal to that year's

annual pension liabilities. These contributions did not fund past service liabilities or make up for investment losses. "Without adequate funding, a promise of a pension may be illusory and empty." *Id.* at 4845-4846.

In response to these losses and the hardships it caused workers, Congress established minimum funding requirements for pension plans to ensure that they "will accumulate sufficient assets within a reasonable period of time to pay benefits to covered employees when they retire." H.R. CONF. REP. No. 93-1280, at 283 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 5038, 5064. Plan sponsors must make periodic contributions as participants accrue benefits and must certify that these contributions comply with ERISA's established standards. 29 U.S.C. §§ 1082, 1083.

As a safeguard, Congress also established a system of plan termination insurance to protect individuals against the loss of pension benefits, in the event a defined benefit pension plan terminates with insufficient assets or the employer becomes insolvent. This program guarantees the payment of pension benefits for individuals in these plans according to certain statutory limits. The Pension Benefit Guaranty Corporation ("PBGC") administers the program, which is financed exclusively through employer premiums, investment income, the assets of terminated plans, and recoveries on claims for termination liability. 29 U.S.C. §§ 1302, 1305-1307.

These minimum funding requirements do not apply to church plans. 29 U.S.C. § 1003(b); *see also Kaplan*, 810 F.3d at 182 ("These plans need not comply with a host of ERISA provisions, including fiduciary obligations and minimum-funding rules."). Thus, there is no guarantee that the employer will properly fund the plan. Moreover, if ERISA does not apply to these plans, employers will have no obligation to pay PBGC premiums. Thus, these retirement plan participants are currently ineligible for PBGC protection if the plan terminates with insufficient assets.[25] This would leave them in the same dire predicament as Studebaker employees were in over forty-five years ago — with broken promises, instead of their benefits.

This is not merely theoretical. To be sure, there are a number of cases where church plans, operating without ERISA's safeguards, are unable to fulfill their commitments to employees because of underfunding. By cutting pension benefits, plans break their promises to employees and take their deferred compensation. *See, e.g.*, St. Anthony Medical Center Retirement Plan (40% cut back on pension benefits for 1,900 participants when plan

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[25] Some of these "church" plans contain a "fund specific promise." Under a fund specific promise, only money in a fund designated by the employer is available to pay plan benefits. Thus, at termination, these plans will disburse pension benefits in a specified order until there are no more funds. Moreover, state law requires no more. ERISA bans these fund-specific promises for ERISA-covered retirement plans because they limit the money available for pensions to whatever the employer chooses to provide—which could be nothing. *See* LANGBEIN et al., PENSION AND EMPLOYEE BENEFIT LAW, *supra* p. 15, at 244.

terminated);[26] Pension Plan for Employees of Holy Cross Hospitals (HCH) (more than 50% loss in benefits, underfunded by $31 million)[27;] Ausburg Fortess, Publishing House for the Evangelical Lutheran Church in America (more than 60% shortfall in expected benefits);[28] Hospital Center at Orange Pension Plan (after eight-year internal review, IRS reversed decision recognizing Plan as a church plan; PBGC announced that it would cover $30 million in liabilities);[29] Retirement Plan for St. Mary's Hospitals in Passaic for Non-Union Employees (underfunded by $36 million in 2015, 1,100 participants told funds would be exhausted in the future);[30] Retirement Plan for Employees of The

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[26] *See* Adam Geller, Associated Press, *Workers find retirement money jeopardized by loophole treating hospitals, agencies as churches*, FOX NEWS, Oct. 5, 2013, https://goo.gl/GLR0JV.

[27] *See* Hazel Bradford, *Participants sue over church-plan status for Holy Cross Hospital pension fund*, PENSIONS & INVESTMENTS, June 7, 2016, http://goo.gl/780Bf5

[28] *See* Adam Geller, *supra* note 26.

[29] *See* Mary Williams Walsh, *I.R.S. Reversal on 'Church' Pension Plan Rescues a Fund*, THE NEW YORK TIMES, Apr. 1, 2013, https://goo.gl/l6ecS2; Press Release, Pension Benefit Guaranty Corporation, In Reversal, PBGC Covers Pension of Hospital Center at Orange (May 10, 2013), https://goo.gl/HSDt1v; Adam Geller, *supra* note 26 ("[T]he hospital . . . had unique circumstances. It was a nonreligious institution for nearly all its existence and paid insurance premiums to the PBGC for four decades.").

[30] *See* Mary Jo Layton, *Retirees from St. Mary's Hospital in Passaic may lose their pensions in sale,* THE RECORD, Apr. 26, 2013, https://goo.gl/QbH21o; Adam Geller, *supra* note 26.

Hospital of Saint Raphael (3,250 employees told they would receive reduced benefits based on revised formula due to Plan's $55 million underfunding);[31] St. Clare's Retirement Income Plan (underfunded by $35 million and expected to exhaust funds in the future).[32]

B. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Guarantee Of Pension Vesting.

Congress enacted ERISA "to make sure that if a worker has been promised a defined pension benefit upon retirement — and if he has fulfilled whatever condition are required to obtain a vested benefit – he actually will receive it." *Nachman Corp.*, 446 U.S. at 375. In ERISA's findings and declaration of policy, Congress stated, "many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans." 29 U.S.C. § 1001(a). To be sure, the lack of vesting standards in the Studebaker pension plan validated that finding. *See* Symposium, "*The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 BUFFALO L. REV. at 694-695. Moreover,

[31] *See* Mary E. O'Leary, *New Haven's St. Raphael workers face decision on pensions,* NEW HAVEN REGISTER, July 18, 2013, https://goo.gl/HSROJA.

[32] *See* Claire Hughes, *Retirees of Former Schnectady Hospital Face Pension Loss*, TIMES UNION, Jan. 10, 2017, https://goo.gl/AzPuuW.

Congressional reports found that at least 13 percent of private pension plans in the United States did not require vesting of benefits prior to retirement. S. REP. NO. 93-127, 1974 U.S.C.C.A.N. at 4845. Accordingly, Congress enacted vesting standards so that participants would have a legally enforceable right (that is, benefits are non-forfeitable and non-revocable) to their pensions after they had worked a specific amount of time. *See* 29 U.S.C. § 1053; *Alessi*, 451 U.S. at 510 n.5.

A broad application of the church plan exemption permits employers and plans to use any vesting rules, even none, that they so desire. For example, using a longer vesting schedule such as five years versus three years can make the difference between receiving a pension or not, especially for shorter service employees. Moreover, there would be no prohibition against these plans using a thirty-year vesting schedule, just like employers did before ERISA was enacted. *See* Michael S. Gordon, *Overview: Why Was ERISA Enacted?* in U.S. Sen. Special Comm. on Aging, 98th Cong., The Employee Retirement Income Security Act of 1974: The First Decade 16 (1984) (finding that numerous personal letters sent to government offices confirmed that workers were denied pension benefits despite many years on the job). This could leave employees in these plans without a legally enforceable right to a pension.

C. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Protection From Reductions To, Or Elimination Of, Their Pension Benefits.

Congress recognized that vesting requirements alone could not achieve the goal of protecting "employees' justified expectations of receiving the benefits their employers promise them." *Heinz*, 541 U.S. at 743; *see generally* 29 U.S.C. § 1001(a). Indeed, in a defined benefit plan, benefit accruals are one of the factors in determining a participant's final benefit.[33] Consequently, Congress established benefit accrual requirements, *see* 29 U.S.C. §§ 1002(23)(A), 1054, to work hand in glove with the vesting requirements. *See* 29 U.S.C. §§ 1002(19), 1053.

> ERISA's vesting provisions could be thwarted if employers were permitted too much latitude in defining accrued benefits. As Senator Williams, Chairman of the Senate Committee on Labor and Public Welfare, stated "The vesting provisions apply to whatever benefit an employee has accrued under a plan. It is, therefore, important to assure that a plan's accrual formula is

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[33] *Lockheed Corp. v. Spink*, 517 U.S. 882, 897 (1999) ("A reduction in total benefits due is not the same thing as a reduction in the rate of benefit accrual; the former is the final outcome of the calculation, whereas the latter is one of the factors in the equation.").

> not inconsistent with the statutory purpose reflected in the bill's vesting provisions. A basic concern was that a plan not be permitted to use an accrual formula . . . to subvert the statutory intent to provide meaningful vested rights. . . ." 120 CONG. REC. S15737 (daily ed. Aug. 22, 1974) (statement of Sen. Williams), *reprinted in* 1974 U.S.C.C.A.N. 5177.

Amato v. Western Union Int'l, Inc., 773 F.2d 1402, 1409 (2d Cir. 1985); *see also McDonald v. Pension Plan of NYSA-ILA Pension Tr. Fund*, 320 F.3d 151, 156 (2d Cir. 2003) (explaining difference between accrued and vested benefits).

The benefit accrual standards require that a participant's benefits must accrue relatively consistently on an annual basis and cannot accrue disproportionately at the end of her career, also known as back-loading. 29 U.S.C. § 1054(a), (b)(1). By these provisions, Congress intended to prohibit an employer from "providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and . . . concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement." H.R. REP. NO. 93-807, at 4688 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4688. Moreover, a plan cannot stop a participant's accrual of benefits, or lower the rate at which those benefits accrue, based on her age. 29 U.S.C. § 1054(b)(1)(H). Finally, ERISA requires

that a plan amendment cannot reduce or eliminate an earned benefit. 29 U.S.C. § 1054(g); *see also Heinz*, 541 U.S. at 743 (recognizing the "centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them").

A broad application of the church plan exemption results in these plans being able to reduce or eliminate accrued benefits, significantly back-load formulas, and lower the rate at which benefits accrue, based on the age of the participant. For example, the Saint Raphael Hospital informed over 3,200 workers that they would not receive their promised benefits. Instead, they will receive only a portion of their pension benefits — regardless of their vested rights or accrued benefits. *See* Mary E. O'Leary, *New Haven's St. Raphael workers face decision on pensions, supra* note 17. This reduction in benefits reflects the employer's broken promise to its employees, which is exactly the result that Congress was trying to prevent. *See also supra* notes 26-32 and accompanying text (providing examples of church plans cutting back on participant benefits).

D. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Fiduciary Protections Against Self-dealing, Mismanagement, And Abuses.

"[I]n the wake of more than a decade of Congressional investigation into looting and other

abuses of plans by some union leaders,"[34] Congress concluded that it would safeguard employee benefits "by establishing standards of conduct, responsibility, and obligation of fiduciaries of employee benefit plans." 29 U.S.C. § 1001(b). It had previously concluded that current federal law including Internal Revenue Code provisions and state laws were inadequate to protect pensions. S. REP. NO. 93-127 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4842. Thus, Congress imposed a federal fiduciary regime in order to eliminate abuses.

ERISA requires fiduciaries to manage and administer the plan and its assets. That means that these fiduciaries must act solely in the best interests of the participants. 29 U.S.C. § 1104(a)(1). Likewise, they must act for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in the administration of the plans. 29 U.S.C. § 1104(a)(1)(A). In addition, fiduciaries must discharge their duties with the highest level of loyalty and care known under the law and manage plan assets prudently. 29 U.S.C. § 1104(a)(1)(B). Plan assets must be held in trust, 29 U.S.C. § 1103, and investments must be diversified to avoid large losses to the plan. 29 U.S.C. § 1104(a)(1)(C). Finally,

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[34] *See* Langbein, *The Supreme Court Flunks Trusts*, *supra* p. 15, at 210; *accord* JAMES A. WOOTEN, ERISA: A POLITICAL HISTORY at 158 (citing examples such as Jimmy Hoffa received loans that Central States Funds made for his benefit; a union officer and "trustee for life" diverted several million dollars from pension and welfare funds to Liberia and Puerto Rico; Tony Boyle accused of abusing position as United Mine Workers Funds trustee).

fiduciaries must act in accordance with the provisions of the plan document and other instruments governing the plan, to the extent that they are consistent with Titles I and IV of ERISA. 29 U.S.C. § 1104(a)(1)(D).

In its review of pension plan abuses, Congress determined that certain types of transactions frequently gave rise to misconduct, such as transactions between the plan and the employer. 29 U.S.C. §§ 1106(a)(1), 1002(14)(c).[35] "Before ERISA's enactment in 1974, the measure that governed a transaction between a pension plan and its sponsor was the customary arm's-length standard of conduct." *Comm'r of Internal Revenue v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 160 (1993). Supplementing the general fiduciary duty requirements, and unlike state trust law requirements, Congress categorically prohibited plan fiduciaries from engaging in specific transactions that were "likely to injure the pension plan." *Id.* Therefore, Congress barred fiduciary self-dealing in plan assets and other conflict of interest transactions involving plan assets, and limited the types of assets that a plan may hold. 29 U.S.C. § 1106.

A broad application of the church plan exemption leaves such plans subject to minimal

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[35] The Studebaker pension plan invested plan assets in the company in order to keep it afloat. When the company failed, so did these investments, exacerbating the pension plan's underfunding. JAMES A. WOOTEN, ERISA: A POLITICAL HISTORY at n. 17 accompanying text at page 5. The employees were left without their jobs and their pensions.

federal and state oversight that Congress determined was inadequate to protect pensions. S. REP. NO. 93-127 (1973), *as reprinted in* 1974 U.S.C.C.A.N. 4838, 4842. Such plans would not be subject to any of ERISA's Title I fiduciary requirements. The managers of such plans do not have to meet ERISA's exacting fiduciary and prohibited transaction standards. Instead, they can ignore these rules, leaving participants unprotected from potential abuses and mismanagement.

E. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Disclosure Scheme.

Congress also sought to safeguard employee pensions by mandating "disclosure and reporting to participants and beneficiaries of financial and other information" and by requiring that "disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans." 29 U.S.C. § 1001; *see also Subcomm. on Labor of the S. Comm. on Lab. and Pub. Welfare, Legislative History of the Employee Retirement Income Security Act of 1974*: Pub. L. No. 93-406, Vol. III, 4668 (U.S. Gov't. Printing Off. 1976) (stating that the "availability of this information will enable both participants and the Federal Government to monitor the plans' operations…"). By enacting ERISA to provide for accurate, understandable, and timely disclosures, Congress used transparency to ensure that employers would provide the benefits that they

promised employees. *See* 29 U.S.C. § 1001; *Nachman Corp.*, 446 U.S. at 374-75;

ERISA requires that pension plans make certain disclosures to their participants, including: providing them access to the terms of the plan; financial, actuarial and investment information; and other information relating to the management and operation of the plan. *See, e.g.*, 29 U.S.C. §§ 1021-1022, 1024, 1054(h). Plan administrators must furnish certain periodic reports to participants. *See, e.g.*, 29 U.S.C. § 1022(b). In addition, a participant may request certain documents from the plan administrator in writing at any time. 29 U.S.C. § 1024(b)(4). No such requirements apply to church plans.

Similarly, ERISA requires that pension plans make certain disclosures concerning the financial condition and operation of the plan to the Internal Revenue Service, the Department of Labor, and the PBGC. These disclosures provide government agencies with sufficient information to meet their enforcement and oversight obligations under ERISA. *See, e.g.*, 29 U.S.C. §§ 1021, 1023-1024, 1054(h). No such oversight occurs for church plans.

A broad application of the church plan exemption leaves such plans without any obligation to inform participants of the plan's funding status. Indeed, some alleged church plans have admitted that they have not provided their plan participants with ERISA-compliant disclosures. *See, e.g.*, *Rollins v. Dignity Health*, No. 16-258, C.A. Supp. Excerpts of R.

SR-7-23. Without the benefit of disclosures that are accurate and understandable, participants are ill-equipped to make informed decisions concerning their benefits and employment. Significantly, participants do not receive the advantages of government oversight and protection that required disclosures to the government provide.

F. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Protections For Benefit Distributions.

To ensure that promised pension benefits are available at retirement, 29 U.S.C. § 1001(a), Congress established rules regulating the form and payment of benefits. For example, to protect the spouses of plan participants, certain plans are required to provide benefit payments in the form of qualified joint and survivor annuities, 29 U.S.C. § 1055(a); *see also Boggs v. Boggs*, 520 U.S. 833, 842-44 (1997) (discussing ERISA's spousal benefits), unless the spouse consents to an alternative form of payment. 29 U.S.C. § 1055(c)(2). ERISA also prohibits the assignment or alienation of benefits, except in the case of a qualified domestic relations order. 29 U.S.C. § 1056(d). A broad application of the church plan exemption leaves such plans with no obligation to provide benefits in this manner, leaving spouses without protection.

G. Broad Application Of The Church Plan Exemption Would Deprive Employees Of ERISA's Protections For Benefit Claims Disputes.

The participant safeguards that Congress enacted include a claims procedure to resolve disputes over benefit claims. 29 U.S.C. § 1133. Section 503 provides that when a participant's claim for benefits has been denied, a benefit plan shall provide adequate written notice to the participant. Such notice must set forth the specific reasons for the denial. And, the notice must be written in a manner to be understood by the participant.[36] *Id.*

Section 503 also states that the plan shall provide the participant with information needed for a meaningful opportunity for a full and fair review of the benefit denial. 29 U.S.C. § 1133. The information must include an adequate explanation of the denial of benefits and a record of what evidence the plan relied upon for its benefit denial. Moreover, the participant must have an opportunity to address the accuracy and reliability of that evidence, and to have the plan consider the participant's evidence prior to reaching its decision. *Grossmuller v. Int'l Union*, UAW, 715 F.2d 853, 858 n.5 (3d Cir. 1983).

A broad application of the church plan

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[36] Section 503's disclosure requirements are consistent with ERISA's objective of providing full disclosure to participants. 29 U.S.C. § 1001(a). Congress realized that only full disclosure would enable participants to vindicate their rights. *See* S. REP. NO. 93-127 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4863.

exemption leaves such plans with no obligation to offer any dispute resolution process to its participants or to provide a process that is full and fair.

CONCLUSION

For the foregoing reasons, the rulings in favor of the appellants below should be affirmed.

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