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4 Takeaways From High Court's ERISA Exemption Ruling

By **Jeannie O'Sullivan**

Law360, New York (June 5, 2017, 8:59 PM EDT) -- The U.S. Supreme Court's decision Monday to extend ERISA's religious exemption to church-affiliated, even if not church-established, benefit plans alleviated a major financial burden for hospitals that sought to avoid the statute's restrictions, though it may have opened up a new front for litigation over employee retirement plans.

The court sided with New Jersey, California and Illinois hospitals in upending federal circuit decisions for employees who sought the law's protections. However, such plans could still face state challenges in state court since no Employee Retirement Income Security Act preemption defense exists, and issues remain to be litigated with the specific plans that the cases cover, attorneys told Law360.

Still, the ruling, which was authored by Justice Elena Kagan, maintained a status quo of a 37-year-old provision specifying that plans maintained by church-affiliated organizations count as "church plans" qualifying for the exemption, one expert said.

"This, to me, is a sign that the church-plan argument is a sound one and has been a sound one since the 1980 change to the law," said Howard Shapiro, a partner in the New Orleans office of Proskauer Rose LLP.

Here are four takeaways from the Supreme Court's ruling.

The hospitals dodged a costly bullet

The employees who sparked the litigation worked for religious-affiliated hospitals — Saint Peter's Healthcare System in New Jersey, Dignity Health in California and Advocate Health Care Network in Illinois — and wanted their retirement funds to be shielded by the protection of ERISA, the 1974 law setting forth minimal funding, insurance and disclosure requirements for benefit plans.

Had the justices ruled in favor of the employees, the hospitals would have faced a $4 billion shortfall in funding the pensions of 300,000 workers, according to Mayer Brown LLP partner Brian Netter, a member of the firm's litigation and dispute resolution practice in its Washington, D.C., office and a co-leader of the firm's Supreme Court and appellate group.

"This widely anticipated decision has substantial implications for the health care industry, where religiously affiliated hospitals, following longstanding [Internal Revenue Service] advice, have treated

their plans as exempt from ERISA — which means that they have deviated from ERISA's system for prefunding pension obligations," Netter said after the ruling.

Church plans could still face state-level challenges

Organizations with church-affiliated benefit plans may be free of ERISA compliance obligation in light of the justices' 8-0 ruling, but they're also bereft of an ERISA preemption defense in the event of a legal challenge at the state court level, according to McDermott Will & Emery LLP partner Joseph K. Urwitz, an employee benefits lawyer and partner in the firm's Boston office.

"This is just speculation, but states could enact legislation that could permit participants in church plans to bring suit based on nonpayment or underfunding," Urwitz told Law360.

Justice Sonia Sotomayor in a concurring opinion agreed with her fellow jurists' interpretation of the amendment at issue but suggested the "current reality" of the multibillion-dollar business of health care might prompt Congress to rethink how broadly the exemption should apply.

But Shapiro doesn't think so, given the current political makeup of the House and Senate.

"This is a Congress that is more interested in religiously infused entities given the Republican majorities in both houses," he said.

"Church plan" definition is now clear, but other issues remain

While the ruling addressed an issue that unified three different cases challenging the ERISA exemption, the litigation isn't over, given remaining issues that pose individual questions with respect to the hospitals and the plans' internal benefit committees, according to Tess S. Gee, a member in the ERISA and employee benefits litigation practice in the D.C. office of Miller & Chevalier Chtd.

The 1980 amendment at the core of the dispute provided that a "church plan" includes those not only established and maintained by a church but also those maintained by an organization that is controlled by or associated with a church and whose principal purpose or function is the administration or funding of the plan.

While it's now clear that plan needn't be established by the church to qualify for the exemption, terms like "organization," "administration or funding," "controlled by," "associated" and "principal purpose or function" will require a separate analysis probing their legal interpretation, as well as the structure of an organization's internal plan committee and its operation, members, functions and relationship to the church, according to Gee.

"Further, this analysis will be unique for each 'organization.' Justice Kagan made quite clear the interpretation of these terms 'are not before us and nothing we say in this opinion expresses a view of how they should be resolved,'" Gee said.

The ruling may be a boon for religious freedom or bust for retirement

The ruling is a solution for organizations seeking to exercise and express their beliefs that may run contrary to federal regulations, noted Stuart J. Lark, partner at the Colorado Springs office of Sherman & Howard LLC.

“In the immediate context of ERISA pension plans, exemptions for church plans recognize that extensive regulation of how churches provide for their employees in retirement risks excessive entanglement between the government and churches,” Lark said.

Employment law generally prohibits organizations from requiring their employees to share their religious beliefs, Lark added. Additional examples of regulation that could tread upon religious beliefs are requirements for health care coverage for abortions and public accommodation rules mandating a church to host weddings inconsistent with an organization’s definition of marriage, along with regulatory requirements pertaining to spousal benefits that, again, may not fall in line with the group’s beliefs.

However, Americans United for Separation of Church and State, which filed an amicus brief in the litigation, felt the religious freedom in this case came at the cost to employees. The ruling put the retirement of hundreds of thousands of Americans at risk, according to Richard B. Katskee, the group’s legal director.

“Religious freedom is a fundamental American value. And the ability to retire with financial security is an important part of the American dream. Our country can and should deliver both,” Katskee said.

The cases are Advocate Health Care Network et al. v. Maria Stapleton et al., case number 16-74; Saint Peter’s Healthcare System et. al. v. Laurence Kaplan, case number 16-86; and Dignity Health et. al. v. Starla Rollins, case number 16-258, in the Supreme Court of the United States.

--Editing by Christine Chun and Bruce Goldman.
