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God's (Pension) Plan: ERISA Church Plan Litigation in the Aftermath of *Advocate Health Care Network v. Stapleton*

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GOD'S (PENSION) PLAN: ERISA CHURCH PLAN LITIGATION IN THE AFTERMATH OF *ADVOCATE HEALTH CARE NETWORK v. STAPLETON*

Abstract: The Employee Retirement Income Security Act of 1974 (ERISA) protects the pensions of American workers by placing vesting, funding, and fiduciary obligations on plan sponsors. "Church plans" established and maintained by church organizations, however, are exempt from the provisions of ERISA to avoid entanglement between church and state. After the enactment of ERISA and its church plan exemption, federal agencies and courts long-debated which pension plans qualified as church plans, culminating in the 2017 U.S. Supreme Court decision in *Advocate Health Care Network v. Stapleton*. In *Stapleton*, the Supreme Court adopted a broad interpretation of a church plan, under which plans could either be established and maintained by a church or church-affiliated organization, or maintained by a qualifying church-affiliated organization, regardless of who established it. Since this decision, federal courts have largely refused claims brought by litigants who are members of church plans maintained by church-affiliated organizations. Many of these litigants have pursued alternative recourse, including settling out of court or seeking damages in state court. This Note demonstrates the limited options left for participants in and beneficiaries of church plans after the *Stapleton* decision, and examines several recent church plan cases to assess the strengths and weaknesses of various post-*Stapleton* strategies. This Note finally proposes a call for reform of the ERISA church plan exemption and a state statutory law response.

INTRODUCTION

In 2018, Karen Bradley learned that the entire pension on which she was relying for retirement was gone.[1] Ms. Bradley was a nurse for twenty-four years at St. Clare's Hospital of Schenectady, New York (St. Clare's), where her father had previously worked as a pharmacist.[2] Time and time again, St. Clare's promised her a pension, and she planned her retirement believing that

[1] Chris Arnold, *'Why Is There Nothing Left?' Pension Funds Failing at Catholic Hospitals*, NPR (Oct. 3, 2019), https://www.npr.org/2019/10/03/763512852/why-is-there-nothing-left-pension-funds-failing-at-catholic-hospitals [https://perma.cc/5GCB-VLKP]. Karen Bradley learned in a letter that St. Clare's Hospital of Schenectady, New York (St. Clare's) would no longer be able to provide her with a pension. *Id.*

[2] *Id.* Ms. Bradley was fifty-six years old at the time of her interview with NPR in 2019. *Id.*

she would have this source of income.[3] Ms. Bradley was not the only employee operating under this mistaken belief.[4] Another St. Clare's employee, Mary Hartshorne, purchased a small home on a lake for her retirement.[5] She, too, based her decision on the promise of receiving pension funds.[6] When Ms. Hartshorne discovered that she lost thirty percent of her anticipated pension, she sold her home because she was unable to maintain the mortgage payments.[7] In 2018, St. Clare's revealed that it would no longer be able to meet its pension obligations due to underfunding of the plan.[8] As a result, Ms. Bradley and Ms. Hartshorne, along with over 600 participants in the St. Clare's pension plan, lost their entire pension, and an additional group of participants over the age of sixty-two lost some part of it.[9] Soon thereafter, the AARP Foundation filed suit against the Roman Catholic Diocese of Albany, New York (Albany Diocese) on behalf of the former employees of St. Clare's in the N.Y. Supreme

[3] *Id.* (emphasizing that Ms. Bradley chose to work for such a long period of time at this hospital, at least in part, because of the promise of the pension when she retired). The St. Clare's pension plan was a defined-benefit plan. *See* Complaint at 21, Hartshorne v. Roman Catholic Diocese of Albany, N.Y., 129 N.Y.S.3d 268 (Sup. Ct. 2020) (No. 2019-1989) (recounting St. Clare's promise to pay defined-pension benefits to the plan beneficiaries). Employers generally determine private-defined-benefit pension plan distributions based off the number of years of employment, thus giving employees incentive to stay longer. *See Types of Retirement Plans*, U.S. DEP'T LAB., https://www.dol.gov/general/topic/retirement/typesofplans [https://perma.cc/4H78-BC67] (clarifying that a defined-benefit plan beneficiary receives a set amount of income per month during retirement, whereas a defined-contribution plan beneficiary receives a lump sum upon retirement).

[4] *See* Arnold, *supra* note 1 (profiling additional beneficiaries of St. Clare's pension plan). According to Dara Smith, an attorney with the AARP Foundation, several former St. Clare's employees were relying on their pension to be the sole source of their retirement income. *Id.* Therefore, when St. Clare's terminated the plan abruptly, it was "devastating." *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* Mary Hartshorne was part of a group of employees over the age of sixty-two who only lost part of their pensions. *Id.* NPR reported that Ms. Hartshorne became emotional when she spoke about losing the home in which she had planned to retire and admitted that the loss took a toll on her. *Id.*

[8] Complaint, *supra* note 3, at 19–21. The Roman Catholic Diocese of Albany, New York (Albany Diocese) was the original sponsor of St. Clare's, a not-for-profit corporation operated out of the Albany Diocese's offices. *Id.* at 6–7. The hospital operated by St. Clare's closed and transferred its assets to Ellis Hospital in 2008, and formally filed a petition for dissolution with the New York Attorney General on March 22, 2019, in accordance with Article 11 of New York's Not-For-Profit Corporation Laws. *Id.* at 9, 18; *see* N.Y. NOT-FOR-PROFIT CORP. LAW §§ 1101–1115 (McKinney 2019) (outlining the procedures for a judicial dissolution of a non-profit corporation in New York). It stated in its petition for dissolution that its only creditor was the St. Clare's Hospital Retirement Income Plan (St. Clare's Plan), to which it owed $53,500,000. Complaint, *supra* note 3, at 9. The New York Attorney General objected to the petition for dissolution, noting that the corporation promised pensions to 1,100 former employees, and additionally, that the directors of the corporation had a duty to act in accordance with the Catholic value of workers' rights as an element of their fiduciary duty of obedience. *Id.* at 9–10.

[9] Complaint, *supra* note 3, at 19–21.

Court, Schenectady County, alleging a breach of contract, a promissory estoppel claim, and a breach of fiduciary duty.[10]

In many ways, the St. Clare's plan was similar to other defined-benefit pension plans.[11] In a typical defined-benefit pension plan, an employer invests money on behalf of participating employees over the course of their employments, and then distributes regular monthly payments to the participating employees following their retirements.[12] Employees' rights to their pension benefits typically only vest, or become non-forfeitable, when they have worked for their employer for a certain length of time or reached a certain retirement age.[13] If a defined-benefit plan terminates, a federal agency, the Pension Benefit Guaranty Corporation (PBGC), may continue to pay beneficiaries their monthly retirement benefits.[14]

"Church plans," however, are exempt from the Employee Retirement Income Security Act of 1974 (ERISA), the federal law that creates and enforces rules for pension plans, including funding, vesting, insurance, and fiduciary obligations.[15] Generally, employers that are churches or church-affiliated organizations do not need to comply with ERISA.[16] St. Clare's Hospital Retire-

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[10] *Id.* at 4, 28; *see Docket: Employee Pensions and Benefits*, AARP FOUND. (Aug. 10, 2020), https://www.aarp.org/aarp-foundation/our-work/legal-advocacy/afl-docket-employee-benefits1.html?cq_ck=1450612867152 [https://perma.cc/UV6E-NYTW] (providing information about the AARP Foundation's work on this case). The plaintiffs in the suit were all former employees of St. Clare's. Decision/Order at 2, *Hartshorne*, 129 N.Y.S.3d 268 (No. 2019-1989); Complaint, *supra* note 3, at 4.

[11] *See* Complaint, *supra* note 3, at 21 (describing the agreement that St. Clare's made to the plaintiffs in written documents to pay pension benefits upon retirement on the condition of accrual of their services).

[12] COLLEEN E. MEDILL, INTRODUCTION TO EMPLOYEE BENEFITS LAW: POLICY AND PRACTICE 21 (5th ed. 2018). A defined-contribution plan is an alternative retirement plan that has been gaining popularity since the 1980s. *Id.* These plans work differently than defined-benefit pension plans. *Id.* at 21–22. A defined-contribution plan is more like a savings account, where an employer invests a portion of an employee's salary over time. *Id.* Then, upon retirement, the employee usually receives the income from this account in the form of a lump sum. *Id.* at 22.

[13] *Id.* at 11. Sections 202 and 203 of the Employee Retirement Income Security Act of 1974 (ERISA) regulate the area of pension vesting. 29 U.S.C. §§ 1052–1053 (2018). They establish the maximum vesting requirements an employer may impose, as well as how much of an employee's accrued benefits under a plan can be forfeited if the employee leaves the company before meeting the minimum vesting requirements. *Id.*

[14] *See* 29 U.S.C. § 1302 (establishing the Pension Benefit Guaranty Corporation (PBGC) within the Department of Labor (DOL)). A defined-benefit plan covered by the PBGC can terminate in two ways. *How Pension Plans End*, PBGC (last updated Apr. 22, 2020), https://www.pbgc.gov/about/pg/other/how-pension-plans-end [https://perma.cc/82QS-WEDZ]. In a standard termination, the plan has enough funds to cover its pension obligations. *Id.* In a distress termination, the PBGC uses its funds, as well as any remaining funds in the plan, to continue making payments to plan participants. *Id.*

[15] 29 U.S.C. §§ 1001(b), 1003(b)(2) (setting forth the statutory scheme of ERISA and establishing an exemption for church plans). Other exemptions from ERISA include governmental plans, plans that only exist to comply with disability insurance laws or workman's or unemployment compensation laws, plans administered outside of the United States for nonresidents, and unfunded excess benefit plans. *Id.* § 1003(b)(1), (3)–(5).

[16] *Id.* § 1003(b)(2).

ment Income Plan (St. Clare's Plan), because of its oversight by the Catholic Diocese, fell into the category of a church plan.[17] As a result, many of its employees lost their entire pension plans and were left with no recourse in federal court when St. Clare's dissolved.[18]

St. Clare's employees are not alone; according to one estimate, around a million Americans are participants in or beneficiaries of church plans run by Catholic-affiliated institutions, and consequently are left equally as vulnerable.[19] Part I of this Note discusses the political and social history of ERISA.[20] Part I also examines the protections of ERISA as they apply to covered retirement plans and the church plan exemption.[21] It then explores the U.S. Supreme Court's 2017 decision in *Advocate Health Care Network v. Stapleton* (*Stapleton II*), where the Court adopted a broad reading of the church plan exemption.[22] Part II outlines litigation post-*Stapleton II*, narrowing in on several representative case studies.[23] These case studies demonstrate the possible recourses available to litigants, including attempting to dispute church plan status in federal court, filing in state court, and settling outside of court altogether.[24] Finally, Part III argues that the options left for litigants post-*Stapleton II* offer little to no protections against misuse of their relied-upon pensions.[25] Part III proposes to resolve this problem through congressional legislative reform and a state-law response.[26]

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[17] Complaint, *supra* note 3, at 15. Around 1992, the Albany Diocese requested and received a Private Letter Ruling (PLR) from the Internal Revenue Service (IRS) declaring the St. Clare's pension fund to be a church plan. *Id.* Accordingly, St. Clare's was exempt from ERISA requirements, including minimum funding requirements and the mandate to purchase pension insurance through PBGC, the federally chartered corporation responsible for insuring pension plans under ERISA. *Id.*; *see* 29 U.S.C. §§ 1301–1461 (containing the provisions establishing the PBGC). In fact, the Albany Diocese received $88,000 from the PBGC for past insurance premiums that they paid before the PLR. Complaint, *supra* note 3, at 15–16.

[18] *See* Complaint, *supra* note 3, at 11, 15 (arguing that the St. Clare's church plan status left employee pensions unprotected).

[19] Scott James, *Faith in a 'Hidden Paycheck' That Could Vanish for Good*, N.Y. TIMES (Sept. 12, 2019), https://www.nytimes.com/2019/09/12/business/retirement/faith-in-a-hidden-paycheck-that-could-vanish-for-good.html [https://perma.cc/XJB8-VSU4]. As this figure does not include organizations affiliated with other religions, the number of Americans who are beneficiaries or participants in church plans is likely much higher than this figure. *See id.* (citing Dara Smith, a senior attorney with the AARP Foundation, who limited her estimate to Catholic-affiliated organizations).

[20] *See infra* notes 35–58 and accompanying text.

[21] *See infra* notes 59–112 and accompanying text.

[22] *See infra* notes 113–164 and accompanying text.

[23] *See infra* notes 165–223 and accompanying text.

[24] *See infra* notes 165–223 and accompanying text.

[25] *See infra* notes 224–272 and accompanying text.

[26] *See infra* notes 224–272 and accompanying text.

I. The Development of ERISA and Its Church Plan Exemption

ERISA regulates the provision of private employee-benefit plans, including retirement plans, through several different standards and requirements.[27] When enacting ERISA, however, Congress chose to exempt certain types of employee-benefit plans from coverage, including church plans.[28] Debate about the definition of a church plan led to extensive litigation and many administrative rulings, culminating in the Supreme Court's 2017 decision in *Stapleton II*.[29] Section A of this Part briefly discusses the legislative and political history behind the enactment of ERISA, as well as the basic protections it provides for typical private pension plans in federal courts.[30] Section B then focuses on the church plan exemption, including its purpose, function, and evolution over time.[31] Finally, Section C examines *Stapleton II* and explains that the Supreme Court adopted a broad interpretation of the definition of a church plan.[32] It also provides an overview of state-law claims remaining for church plan litigants post-*Stapleton II*.[33] Section C focuses on legislation in Rhode Island from 2019 that brought church plans under the annual reporting requirement of ERISA.[34]

A. ERISA: "A Minor Miracle"

Before Congress enacted ERISA in 1974, the federal government regulated pensions and employee benefits through several laws that were narrow in

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[27] 29 U.S.C. §§ 1001–1461 (setting forth ERISA's statutory scheme). Twenty-two percent of American workers participate in a defined-benefit pension plan. U.S. Dep't of Labor, Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in the United States, March 2018, at 2 tbl.2 (2018), https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf [https://perma.cc/2BZL-VTV9]. Fifty-five percent of workers participate in a general-workplace-retirement plan, suggesting that many workers may not participate in a private pension plan, but may still have a workplace-retirement savings plan. *See id.* (containing data on the retirement benefits of civilian American workers). The popularity of pension plans, however, has steadily decreased over the last several decades. *E.g.*, William J. Wiatrowski, *The Last Private Industry Pension Plans: A Visual Essay*, Monthly Lab. Rev., Dec. 2012, at 1, 3 (describing the current state of private-defined-benefit pension plans). More workers are relying on their own savings, social security, or 401(k) defined contribution plans, as plan sponsors have come to see defined-benefit plans as costly and risky, and the power of unions wane. *See* Nathan Bomey, *4 Reasons the Corporate Pension Is on Its Deathbed*, USA Today (Oct. 7, 2019), https://www.usatoday.com/story/money/2019/10/07/ge-pension-freeze-reasons-defined-benefit-plans-are-dead/3898630002/ [https://perma.cc/4K4B-KEHC] (describing the declining popularity of pension plans in the private sector).

[28] 29 U.S.C. § 1003(b) (describing the different exemptions to ERISA).

[29] *See* Advocate Health Care Network v. Stapleton (*Stapleton II*), 137 S. Ct. 1652, 1654 (2017) (resolving differences of interpretation at the district and circuit court levels as to the definition of a church plan).

[30] *See infra* notes 35–78 and accompanying text.

[31] *See infra* notes 79–112 and accompanying text.

[32] *See infra* notes 113–138 and accompanying text.

[33] *See infra* notes 113–138 and accompanying text.

[34] *See infra* notes 139–164 and accompanying text.

scope.[35] Initially, the Internal Revenue Service (IRS) indirectly regulated private pension plans through the Revenue Acts of 1921 and 1926, which both offered tax incentives to plan sponsors.[36] These statutes allowed employers to deduct their contributions to employee pension funds and enabled employees to defer recognition of the income from the growth of the fund until they received the money through a distribution upon retirement.[37] For a plan to receive this special tax treatment, it must meet tax qualification status by adhering to certain coverage and contribution requirements.[38] Under the Revenue Act of 1942, the IRS imposed stricter requirements for plan sponsors to receive tax qualification, including a disclosure mandate.[39] Congress subsequently passed the Welfare and Pension Plans Disclosure Act (WPPDA) in 1958, which required plan administrators to disclose certain information about the plan to beneficiaries.[40]

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[35] *See History of EBSA and ERISA*, EMP. BENEFITS SECURITY ADMIN., https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/history-of-ebsa-and-erisa [https://perma.cc/DJN5-5P2C] (noting that the IRS and DOL regulated pension plans under prior statutory frameworks).

[36] Revenue Act of 1926, Pub. L. No. 69-20, 44 Stat. 9; Revenue Act of 1921, Pub. L. No. 67-98, 42 Stat. 227; *History of EBSA and ERISA*, *supra* note 35.

[37] § 219(f), 44 Stat. at 33–34; § 219(f), 42 Stat. at 247; *History of EBSA and ERISA*, *supra* note 36. A similar type of tax qualification for pension funds exists today. *See* I.R.C. § 410(a) (2018) (setting forth the current requirements for tax qualification status). If ERISA covers a plan that complies with the requirements of § 410(a) of the Internal Revenue Code, it is a qualified plan, eligible for certain tax benefits. *Id.* This preferential tax treatment constitutes a tax expenditure on the part of the federal government, essentially forgoing some amount of immediate tax revenue to incentivize both employees to participate in retirement savings plans, and employers to bring their plans into compliance. *See Tax Expenditures for Retirement Plans*, PENSION RIGHTS CTR. (Jan. 22, 2018), https://www.pensionrights.org/publications/fact-sheet/tax-expenditures-retirement-plans [https://perma.cc/V2EW-93K6].

[38] *See History of EBSA and ERISA*, *supra* note 35 (describing how plans qualified for preferential tax treatment under the Revenue Acts of 1921 and 1926).

[39] Revenue Act of 1942, Pub. L. No. 77-753, 56 Stat. 798; *History of EBSA and ERISA*, *supra* note 35 (describing the Revenue Act of 1942).

[40] Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, § 5, 72 Stat. 997, 999 (1958) (repealed 1974). The Welfare and Pension Plans Disclosure Act (WPPDA) exempted churches from coverage. *Id.* § 4(b)(3). This was a result of the fact that it excluded plans administered by non-profit organizations described in § 501(c)(3) of the Internal Revenue Code, which included organizations operated exclusively for religious purposes. *Id.*; *see* I.R.C. § 501(c)(3) (West 2019) (allowing a federal tax exemption for certain non-profit organizations). The WPPDA's church exemption is the only exemption in the WPPDA that differs materially from the exemptions eventually included in ERISA. *Compare* 29 U.S.C. § 1003(b) (listing the comparable exemptions from ERISA coverage), *with* § 4(b)(1)–(4), 72 Stat. at 998–99 (listing exemptions from WPPDA coverage). Congress amended the WPPDA in 1962, largely focusing on the specific mechanics of the reporting and disclosure requirements. Welfare and Pension Plans Disclosure Act Amendments of 1962, Pub. L. 87-420, 76 Stat. 35; G. Robert Blakey, *Welfare and Pension Plans Disclosure Act Amendments of 1962*, 38 NOTRE DAME L. REV. 263, 264, 269–85 (1962–1963) (detailing the background and contents of the 1962 amendments). President John F. Kennedy also directed the formation of an executive committee to conduct studies to better understand the needs of private pensioners. *See, e.g.*, PRESIDENT'S COMM. ON CORP. PENSION FUNDS & OTHER PRIVATE RET. & WELFARE PROGRAMS, PUBLIC POLICY AND PRIVATE PENSION PROGRAMS: A REPORT TO THE PRESIDENT ON PRIVATE EMPLOYEE RETIREMENT PLANS

Although Congress had several motivations for enacting ERISA, one was the infamous story of Studebaker-Packard Corporation's (Studebaker-Packard) plant closing.[41] In 1963, Studebaker-Packard closed an automotive assembly plant in South Bend, Indiana.[42] At the time of the closing, the company's pension plan liabilities exceeded its assets by fifteen million dollars.[43] When United Auto Workers (UAW), a powerful labor union representing auto workers, negotiated the pension plan with Studebaker-Packard in 1949 and 1950, the parties decided that the plan should not give any vested rights to employees until they were eligible for retirement.[44] These limited vesting rights allowed

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app. c (1965) (containing President Kennedy's memorandum requesting the creation of a committee). In 1962, President Kennedy officially organized the President's Committee on Corporate Pension Funds. *Id.* He noted that the amendments to the WPPDA had already created an enforcement mechanism, including penalties for fund embezzlement, so the report focused on how appropriate funding and vesting requirements could assist pensioners. *Id.*

41 *See* Michael Allen, *The Studebaker Incident and Its Influence on the Private Pension Plan Reform Movement*, *in* JOHN H. LANGBEIN ET AL., PENSION AND EMPLOYEE BENEFIT LAW 78, 78 (5th ed. 2010) (characterizing the Studebaker-Packard Corporation (Studebaker-Packard) closing as the catalyzing event for federal regulation of employee benefits). Another event that spurred public interest in pension reform was the 1972 National Broadcasting Company documentary *Pensions: The Broken Promise*. *Id.* at 81; *Pensions: The Broken Promise* (NBC television broadcast Sept. 12, 1972). The broadcast profiled workers with private pension plans, and whose employers allegedly took away their pensions. *See ERISA 40 Timeline Alternate*, U.S. DEP'T LAB., https://www.dol.gov/featured/erisa40/timeline/alternative [https://perma.cc/N6T6-NF7J]. The broadcast was well-received and won a Peabody award. *Pensions: The Broken Promise*, PEABODY, http://www.peabodyawards.com/award-profile/pensions-the-broken-promise [https://perma.cc/CDA4-KXFW].

42 JAMES A. WOOTEN, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974: A POLITICAL HISTORY 51 (2004) [hereinafter WOOTEN, THE POLITICAL HISTORY OF ERISA] (outlining the Studebaker-Packard plant closing and the political history of ERISA generally). The automobile market in the United States was profitable after World War II, and the Studebaker Corporation (Studebaker) and Packard Corporation (Packard), two mid-sized automotive manufacturers, were independently successful. *Id.* at 53. But by 1953, car sales decreased due to a recession and reduction in defense spending. *Id.* at 53–54. Ford Motors responded by keeping production steady and lowering prices; however, smaller companies could not compete. *Id.* at 54. Studebaker and Packard merged in 1954, forming the Studebaker-Packard Corporationbecause of these outside pressures. *Id.* At the time of merger, however, both companies were struggling financially. *Id.* at 56.

43 James A. Wooten, *"The Most Glorious Story of Failure in the Business": The Studebaker-Packard Corporation and the Origins of ERISA*, 49 BUFF. L. REV. 683, 726 (2001) [hereinafter Wooten, *The Studebaker-Packard Story*] (discussing the role of the Studebaker-Packard plant's closing in the eventual enactment of ERISA).

44 WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 54. An employee "vests," or gains a non-forfeitable right to the pension fund, at a specified time. *See* H.R. REP. NO. 93-533, at 214–15 (1973) (listing vesting as the first of the major issues the then-titled Employee Benefit Security Act was designed to address). If they or their employer terminates employment before then, the employee has no interest in the fund and does not receive any retirement benefit. *Id.* ERISA includes provisions regulating minimum vesting requirements. 29 U.S.C. § 1053. For defined-benefit plans, employers can either impose five-year cliff vesting, whereby an employee is not vested in any portion of the fund until five years of employment, or a seven-year graduated vesting schedule, whereby an employee vests in a certain percentage of the fund with each year of service. *Id.*; *see also* MEDILL, *supra* note 12, at 141–42 (outlining the vesting requirements for different types of retirement plans). Therefore, the strict vesting requirements Studebaker-Packard imposed upon their employees (i.e. no

the corporation to pay higher pensions to eligible employees because fewer employees would qualify.[45] The negotiated contract did not obligate Studebaker-Packard, however, to actually pay out these retirement benefits; the contract simply required Studebaker-Packard to make regular contributions to the pension trust.[46] As a result, although retirement-age workers received their full pension in 1963, younger hourly workers received only a fraction of their contributions, and some received nothing.[47] In the end, Studebaker-Packard laid off 2,900 employees with no vested rights to the pension plan, and an additional 4,000 employees who received only a portion of their accrued benefits.[48]

An oft-discussed aspect of the Studebaker-Packard incident was that employees had no recourse under existing federal and state law.[49] Studebaker-Packard had lawfully contracted away any obligation to pay out retirement benefits, ensuring that the corporation could not be liable for a breach of contract claim under state law.[50] The company also did not engage in blatantly fraudulent or criminal behavior.[51] Some scholars have concluded that the un-

vesting until eligibility to retire) would be impermissible under plans subject to ERISA. *See* 29 U.S.C. § 1053 (setting forth ERISA's vesting requirements); WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 54 (describing the vesting requirements negotiated by the United Auto Workers (UAW) and Studebaker-Packard).

[45] WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 54–55.

[46] *Id.* at 53.

[47] *Id*. at 51. Notably, Studebaker-Packard previously terminated its pension plan for participants in the original Packard plan in 1958. *Id.* at 61. After the companies merged, Studebaker-Packard could no longer afford to fund both plans. *Id.*

[48] Allen, *supra* note 41, at 79 (describing the Studebaker-Packed termination agreement). Studebaker-Packard divided plan participants into three groups. *Id.* The first group was 3,600 participants who had reached sixty, the minimum retirement age. *Id.* They received their full lifetime annuities. *Id.* The second group was 4,000 employees who were below sixty but had a vested interest in the plan. *Id.* This group received approximately 15% of the value of their lifetime annuities in a lump sum payment. *Id.* The third group was approximately 2,900 employees who had no vested rights and received nothing. *Id.*

[49] *See* JOHN H. LANGBEIN ET AL., *supra* note 41, at 83 (noting that even when the overall company was solvent, participants in the plan did not have any recourse); *see also* WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 53 (explaining that Studebaker-Packard only promised to direct payments into the plan, but did not promise to distribute funds from the plan to the participants). In fact, participants in the Studebaker-Packard plan did not sue after the company terminated the plan. *See* Allen, *supra* note 41, at 79 (noting further that the only lawsuit resulting from the closure was based on a company health program).

[50] *See* JOHN H. LANGBEIN ET AL., *supra* note 41, at 83 (noting that companies at the time of Studebaker-Packard often formulated the plan contract to place the risk of plan funding onto the participants, rather than on the company, and then explaining that Studebaker-Packard complied with the contribution requirements); WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 53 (describing the Studebaker plan contract, where employees could retire at a minimum age of sixty, or a maximum age of sixty-eight).

[51] *See* WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 51 (noting specifically that Studebaker-Packard did not misuse plan funds).

derfunding of the Studebaker-Packard plan was a predictable consequence of what were common pension management practices at the time.[52]

The closing of the Studebaker-Packard plant became a catalyst for pension reform, including encouraging lawmakers to seriously consider creating a federal termination insurance system.[53] Additionally, although the UAW was previously reluctant to promote federal termination insurance, union leaders saw the Studebaker-Packard shutdown as an example of the dangers of the pension law status quo.[54] Union officials worked alongside Senator Vance Hartke of Indiana to introduce the Federal Reinsurance of Private Pensions Act in 1964.[55] As a result, when President Gerald Ford signed ERISA into law in 1974, the concept of termination insurance was a firmly established element of pension reform.[56] Yet, the story of Studebaker-Packard also helped eventually lead to the signing of ERISA, even in the face of initial opposition from labor unions as well as employers.[57] Consequently, in 1974, the New York Times called these reform measures a "minor miracle."[58]

ERISA, in its broadest sense, creates a federal standard for employer-provided retirement and health plans, preempts state laws related to employee benefits, provides consistent remedies, and gives litigants access to the federal court system.[59] The statute begins with a statement of congressional findings

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[52] *E.g.*, *id.* ("Studebaker and the United Auto Workers union agreed to plan terms that exposed younger workers to the risk that the plan would default. This default risk materialized when Studebaker closed the plant in South Bend.").

[53] Wooten, *The Studebaker-Packard Story*, *supra* note 43, at 733. Termination insurance requires employers with defined-benefit pension plans to pay premiums into an insurance fund. *General FAQs About PBGC*, PBGC, https://www.pbgc.gov/about/faq/pg/general-faqs-about-pbgc [https://perma.cc/G69Z-YLGB]. Then, if the plan terminates, the insurance fund continues to pay plan participants a set amount. *Id.* Pension plans may terminate by (1) standard termination, where the employer must demonstrate that it has enough money to pay all benefits, or (2) distress termination, if the plan is not fully funded and the employer is bankrupt or insolvent. *How Pension Plans End*, *supra* note 14 (describing methods by which pension plans covered by ERISA may end).

[54] *See* Wooten, *The Studebaker-Packard Story*, *supra* note 43, at 733 (quoting UAW leaders calling Studebaker-Packard a "focusing event" for pension reform). Union leaders were previously reluctant to call for pension reforms because negotiated features such as limited vesting or limited contractual duties on the part of the employer were a way to ensure that the maximum number of workers could receive a pension in some form. *See* AM. ENTER. INST. FOR PUB. POLICY RESEARCH, THE DEBATE ON PRIVATE PENSIONS: A SURVEY OF THE LEGISLATURE PROPOSALS AND PUBLIC POLICY ISSUES 42–43 (1968) (describing the catch-22 about pension negotiations, wherein immediate vesting for all participants could bankrupt the employer, but offering no pension plan at all that would hurt an employer's competitiveness in the marketplace).

[55] S. 3071, 88th Cong. (1964); Wooten, *The Studebaker-Packard Story*, *supra* note 43, at 734–35.

[56] *See* Wooten, *The Studebaker-Packard Story*, *supra* note 43, at 739 (emphasizing the role that the Studebaker closing had on Congressional and Executive considerations about employee pension protection).

[57] *See* Wooten, *The Studebaker-Packard Story*, *supra* note 43, at 733.

[58] *Pension Security*, N.Y. TIMES, Mar. 6, 1974, at 36.

[59] Kristofer C. Neslund, *ERISA's Church Plan Exemption: Freedom of Religion Overreached—Part 1*, 26 TAX'N EXEMPTS 36, 36 (2014).

and policy emphasizing that employee-benefit plans can affect the well-being and economic security of millions of Americans.[60] According to Congress, these plans do not just affect their beneficiaries; they also affect labor relations and the national public interest at large.[61] Therefore, Congress believed it had a legitimate interest in imposing reporting requirements, setting standards of conduct, and ensuring remedies.[62]

ERISA contains four separate titles.[63] First, Title I encompasses the bulk of ERISA's requirements, provides for a civil statutory enforcement mechanism, and sets forth provisions regarding preemption of state law.[64] Specifically, ERISA requires plan sponsors to furnish plan participants with a Summary Plan Description (SPD), to file annual reports with the Secretary of Labor, and to provide notice of modifications or changes to the plan.[65] ERISA also specifies the length of service an employer can require before an employee may begin to participate in a benefit plan or gain a vested interest in the employee's accrued benefits.[66] ERISA requires employee-benefit-plan sponsors to have a written document naming at least one officer who is bound by fiduciary obligations under ERISA.[67] For single-employer-defined-benefit plans, ERISA imposes minimum funding levels as calculated by the employer's minimum contribution amounts.[68] Beneficiaries and participants in a plan can bring a civil action for their benefits under this Title, and the government can impose criminal penalties on plan sponsors who willfully violate certain provisions.[69] Last-

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[60] *See* 29 U.S.C. § 1001(a) (asserting that the Commerce Clause of the U.S. Constitution empowers Congress to enact ERISA). The Commerce Clause gives Congress far-reaching authority to "regulate commerce" between states. U.S. CONST., art. I, § 8, cl. 3; *see Commerce Clause*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[61] *See* 29 U.S.C. § 1001(a) (noting further that pension plans affect the very revenue of the United States through their preferential tax treatment, thus invoking a particular congressional interest).

[62] *See id.* (justifying the enactment of ERISA under Congress's power to regulate interstate commerce and the federal taxing power).

[63] MEDILL, *supra* note 12, at 29; *see also* PATRICK PURCELL & JENNIFER STAMAN, CONG. RESEARCH SERV., SUMMARY OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) 6–7 (2009), https://digital.library.unt.edu/ark:/67531/metadc822611/m2/1/high_res_d/RL34443_2009May19.pdf [https://perma.cc/TB4C-GHAJ].

[64] 29 U.S.C. §§ 1001–1191c; MEDILL, *supra* note 12, at 29. In general, ERISA preempts any state law that addresses employee-benefit plans. 29 U.S.C. § 1144. Notably, any plans exempt from ERISA coverage are also exempt from ERISA preemption. *Id.* Therefore, state law regarding church plans is not preempted by ERISA. *See id.* (exempting from preemption any plans excluded under 29 U.S.C. § 1003(b)).

[65] 29 U.S.C. §§ 1021–1031.

[66] *Id.* §§ 1051–1061.

[67] *Id.* §§ 1101–1114.

[68] 29 U.S.C.A. § 1083 (West 2019).

[69] 29 U.S.C. §§ 1131–1151.

ly, Title I stipulates that ERISA supersedes all state laws relating to employee-benefit plans, except laws regulating insurance.[70]

Title II amends the Internal Revenue Code to align with the standards set forth in Title I, including its mandates for vesting and benefit accrual.[71] Title III establishes dual authority to enforce Titles I and II between the Department of Labor (DOL) and IRS, a bureau of the Department of Treasury (DOT).[72] Finally, Title IV addresses termination insurance and creates the PBGC to operate as a new federal pension insurance program.[73]

Just a few years after ERISA's enactment, President Jimmy Carter submitted the Reorganization Plan No. 4 of 1978 to the Senate.[74] The goals of the Reorganization Plan were to make division of enforcement authority over ERISA between the IRS and DOL more streamlined and to avoid bureaucratic confusion.[75] Specifically, this plan gave the DOT authority to regulate minimum standards for beneficiary vesting rights, participation, and funding, with the DOL maintaining veto power.[76] The DOL also obtained authority over fiduciary standards, such as enforcing prohibitions on certain transactions which would be

[70] *Id.* § 1144(a), (b)(2)(A). The preemption clause begins by superseding any state law relating to an employee-benefit plan, except plans exempt under 29 U.S.C. § 1003(a), including church plans. *Id.* § 1144(a). Next, the so-called "savings clause" allows state laws to regulate insurance, banking, and securities. *Id.* § 1144(b)(2)(A); MEDILL, *supra* note 12, at 727. This provision ends with the so-called "deemer clause," which nevertheless preempts state laws that construe an employee-benefit plan as an insurance company, unless the plan is otherwise exempt under 29 U.S.C. § 1003(a). 29 U.S.C. § 1144(b)(2)(B); MEDILL, *supra* note 12, at 727. The preemption provision is notoriously complicated; Justice Blackmun once referred to it as "perhaps . . . not a model of legislative drafting." Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985) (determining whether a Massachusetts statute regulated insurance within the meaning of the ERISA preemption exception). The purpose of the preemption clause is to facilitate consistent employee benefits law across the United States, in order to keep down costs for plan participants and encourage employers to offer these plans without fear of complex, inconsistent state laws. Katherine A. McAllister, *A Distinction Without a Difference? ERISA Preemption and the Untenable Differential Treatment of Revocation-on-Divorce and Slayer Statutes*, 52 B.C. L. REV. 1481, 1486 (2011).

[71] ERISA (Title II, Amendments to the Internal Revenue Code Relating to Retirement Plans), Pub. L. No. 93-406, 88 Stat. 898 (codified as amended at scattered sections of 26 U.S.C.); MEDILL, *supra* note 12, at 29.

[72] 29 U.S.C. §§ 1201–1242; MEDILL, *supra* note 12, at 29.

[73] 29 U.S.C. §§ 1301–1461; MEDILL, *supra* note 12, at 29–30. Notably, the PBGC does not insure defined-contribution plans, profit-sharing plans, 401(k), 403(b), thrift/savings plans, and stock-bonus plans. PURCELL & STAMAN , *supra* note 63, at 56.

[74] Reorganization Plan No. 4 of 1978, 43 Fed. Reg. 47,713, 47,713 (Aug. 10, 1978) (codified at 29 C.F.R. pt. 2510 (2020)) (dividing authority over the administration of ERISA).

[75] Statement on Congressional Action on Reorganization Plan No. 4 of 1978, 14 WEEKLY COMP. PRES. DOC. 1782–83 (Oct. 14, 1978) (containing a statement by President Jimmy Carter on the Reorganization Plan No. 4 of 1978).

[76] Reorganization Plan No. 4 of 1978, 43 Fed. Reg. at 47,713.

a conflict of interest for the employer.[77] In general, both the DOL and DOT share the power to carry out the requirements of Titles I and II of ERISA.[78]

B. The Church Plan Exemption

The provisions of ERISA apply to the vast majority of private pension plans.[79] A notable exception is the church plan exemption.[80] Scholars have proposed several rationales to help explain what motivated Congress to include a church plan exemption in ERISA.[81] First, a 1973 Senate report suggested that governmental control or examination of church finances could violate the Establishment Clause of the U.S. Constitution.[82] The Establishment Clause enshrines the principle of separation of church and state as well as forbids Congress from making laws with respect to the establishment of religion.[83] The

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[77] *Id.* at 47,713–14.

[78] *See* 29 U.S.C. §§ 1201–1242 (delegating dual authority over ERISA); MEDILL, *supra* note 12, at 29 (delineating the roles of the DOL and IRS in ERISA enforcement).

[79] *See* 29 U.S.C. § 1003(a) (defining the general scope of ERISA coverage).

[80] *See* 29 U.S.C.A. § 1002(33)(A) (defining a church plan); 29 U.S.C. § 1003(b) (listing the exemptions to ERISA coverage, including the church plan exemption, as well as the governmental plan exemption, and certain executive-deferred compensation plans). The governmental plan exemption applies to any plan administered or created by the United States federal government or any state or local government. 29 U.S.C.A. § 1002(32). Plans also exempt from ERISA include those "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws"; "maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens"; and unfunded "excess benefit plan[s]." 29 U.S.C. § 1003(b)(3)–(5).

[81] *See* Norman Stein, *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, EMP. BENEFITS COMMITTEE NEWSL. (A.B.A., Chi., Ill.), Summer 2014, https://www.americanbar.org/groups/labor_law/publications/ebc_news_archive/issue-summer-2014/page01/ [https://perma.cc/2M58-JTBE] (offering several possible congressional motivations behind the church plan exemption).

[82] *See* S. REP. NO. 93-383, at 81 (1973) (expressing concerns that looking into the records of a religious organization could compromise the organization's privacy in pursuing its religious activities). The report also noted that if a church organization decides to elect to fall under ERISA coverage, it should be able to receive termination insurance coverage with the PBGC. *Id.* The report proposed that a church plan should be covered by PBGC insurance even without making such an election, if it only covers employees engaged in non-religious trade or business. *Id.* ERISA currently does not contain a provision reflecting this proposal. *See* 29 U.S.C. § 1003(b)(2) (containing the church plan exemption provision, with no preservation of PBGC coverage for non-electing church plan sponsors).

[83] U.S. CONST. amend. I; S. REP. NO. 93-383, at 81. The Establishment Clause forbids Congress from making laws "respecting an establishment of religion." U.S. CONST. amend. I. What exactly constitutes "establishment" has been the subject of much debate. *See First Amendment and Religion*, U.S. CTS., https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion [https://perma.cc/6HMX-CVLW]. In 1971, the U.S. Supreme Court in *Lemon v. Kurtzman* set forth a three-part test for determining whether a government action violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . . ; finally, the statute must not foster 'an excessive government entanglement with religion.'" 403 U.S. 602, 612–13 (1971) (citation omitted) (quoting Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970)). The First Amendment also includes

report concluded that there could be an Establishment Clause issue if the federal government had the right to review records regarding a church organization's pension fund.[84] At least one commentator has also posited that legislators may have thought churches had a moral incentive to honor their promises to employees, and were therefore more likely to manage their pension plans responsibly.[85] Another potential factor contributing to Congress's decision to include a church exemption in ERISA was the improbability that a church in the 1970s would run into such serious financial trouble and cause it to inadequately fund its employee pensions.[86]

In its original form, the exemption for church plans only applied to plans "established and maintained . . . by a church."[87] It also stipulated—as it still does today—that churches could choose to accept ERISA coverage and forego the exemption when electing to be a church plan.[88] Once a church makes this irrevocable decision, its plan is subject to some Internal Revenue Code and ERISA provisions.[89] Otherwise, the church is exempt from Title I provisions,

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the Free Exercise Clause, which forbids Congress from "prohibiting the free exercise [of religion]." U.S. CONST. amend. I.

[84] *See* S. REP. NO. 93-383, at 81 (expressing concern with protecting the privacy of religious institutions from unwarranted government intrusion).

[85] Stein, *supra* note 81; *see also* 125 CONG. REC. S10,055 (daily ed. May 7, 1979) (statement of Sen. Talmadge) (entering into the record a letter from the Pension Fund of the Christian Church that emphasized its desire to follow Christian teachings in its economic practices).

[86] Timothy Liam Epstein, Note, *Surviving Exemption: Should the Church Exemption to ERISA Still Be in Effect?*, 11 ELDER L.J. 395, 407 (2004). Nowadays, however, churches are increasingly running into financial difficulties that put their pension plans at risk. *See id.* (describing the various reasons behind these financial difficulties, ranging from sexual abuse settlements to a reduction in religious participation). For example, even the well-established Archdiocese of Boston filed for bankruptcy after paying damages to victims of sexual abuse caused by priests. *See id.* (commenting on bankruptcy filings by dioceses in the United States).

[87] 29 U.S.C. § 1002(33)(A) (1976); Kaplan v. Saint Peter's Healthcare Sys., 810 F.3d 175, 179 (3d Cir. 2015), *cert. granted* 137 S. Ct. 546 (2016), *and rev'd sub nom. Stapleton II*, 137 S. Ct. 1652 (2017). In the original version of the statute, § 1002(33)(A) read: "The term 'church plan' means (i) a plan established and maintained for its employees by a church or by a convention or association of churches, which is exempt from tax under section 501 of title 26, or (ii) a plan described in subparagraph (C)." 29 U.S.C. § 1002(33)(A) (1976); *Kaplan*, 810 F.3d at 179. Subsection (C) then added that "a plan in existence on January 1, 1974, shall be treated as a 'church plan' if it is established and maintained by a church or convention or association of churches for its employees." 29 U.S.C. § 1002(33)(C) (1976); *Kaplan*, 810 F.3d at 179.

[88] 29 U.S.C. § 1003(b)(2) (2018) (allowing church plans to elect ERISA coverage under the terms of I.R.C. § 410(d)); 29 U.S.C. § 1003(b)(2) (1976); Stein, *supra* note 81 (noting that churches could elect ERISA coverage under the original formulation of the statute as well).

[89] *See* I.R.C. § 410(d) (noting that once a church plan makes the election, the provisions in Title I of ERISA apply). The church plan exemption is the only ERISA exemption that permits plan sponsors to choose to opt into ERISA coverage. Jeffrey A. Herman, *Resolving ERISA's "Church Plan" Problem*, 31 A.B.A. J. LAB. & EMP. L. 231, 250 (2016) (citing this fact as support for the broad interpretation of the definition of a church plan and explaining a narrow interpretation would force many church plans into ERISA coverage without the ability to exercise a choice to elect such coverage); *see* 29 U.S.C. § 1003(b) (2018) (containing the various exemptions from ERISA coverage).

such as minimum vesting and disclosure requirements.[90] Further, PBGC termination insurance under Title IV does not apply to church plans, unless the churches elect coverage.[91]

As originally written, this exemption applied narrowly to clergy and other direct church employees, but not to employees of agencies affiliated with a church, such as church-affiliated hospitals.[92] Additionally, a grandfather provision permitted plans covering employees of church agencies to be exempt until 1982.[93] Churches, worried by the 1982 exemption end date, began to lobby Congress for an extension of this provision.[94] To support these efforts, twenty-five churches formed a coalition called the Church Alliance for Clarification of ERISA.[95] The coalition argued that after 1982, churches would be forced to divide their pension plans between church employees and agency employees, which would be a cumbersome process and lead to different pension protections for various employees.[96] Adding fuel to the fire, in 1977, the IRS and DOT proposed changes to the Internal Revenue Code that would make religious organizations eligible for the church plan exemption only if they did not maintain the plan primarily for employees working in an "unrelated trade or business."[97]

In response to such lobbying, Congress amended ERISA's definition of a church plan in 1980 as part of the Multiemployer Pension Plan Amendments

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[90] 29 U.S.C. § 1003(b)(2).

[91] *Id.* § 1321(b)(3).

[92] Stein, *supra* note 81.

[93] *Id.* Therefore, after 1982, church plans would no longer include non-church employees. *Id.* Furthermore, plans maintained by church-affiliated agencies but not created by a church would not be eligible for the exemption. *Id.*

[94] 125 CONG. REC. S10,054–58 (daily ed. May 7, 1979) (statement of Sen. Talmadge) (containing letters submitted by churches in opposition to the sunset provision). Senator Herman Talmadge of Georgia expressed concern that churches would be unable to maintain their church plans if Congress subjected church plans maintained by church-affiliated organizations to ERISA by allowing the sunset provision to stand. *Id.* at 10,052. He argued that although businesses receive funds from other sources, churches rely upon tithes for their income, distinguishing church plans from other pension plans. *Id.*

[95] Stein, *supra* note 81; *see also History*, CHURCH ALLIANCE, https://church-alliance.org/history [https://perma.cc/GUQ4-PP7F] (discussing the origins of the Church Alliance for Clarification of ERISA, formed in 1975). This organization still exists today, and lists on its website several more recent pieces of legislation its leaders have championed, such as the Church Plan Parity and Entanglement Prevention Act of 1999, which then-Senator for Alabama Jefferson Sessions sponsored. Church Plan Parity and Entanglement Prevention Act of 1999, Pub. L. No. 106-244, 114 Stat. 499 (2000) (codified at 29 U.S.C. § 1144a); *History*, *supra*.

[96] Stein, *supra* note 81.

[97] Prop. Treas. Reg. § 1.414(e)-I, 42 Fed. Reg. 18,621, 18,622 (Apr. 8, 1977). According to the definition in the Internal Revenue Code, an "unrelated trade or business" is one that is "not substantially related . . . to the exercise of performance by such organization of its . . . purpose or function constituting the basis for its exemption under section 501." I.R.C. § 513(a). For a tax-exempt church, this suggests that the church organization would have to sponsor a pension plan mostly for employees fulfilling religious roles. *See id.*

Act (MPPAA).[98] Following the enactment of the MPPAA, subsection (A) of the church plan definition states that church plans include those plans that are both "established and maintained" by a tax-exempt church.[99] Subsection (C) clarifies that plans "established and maintained" by churches include plans maintained by organizations with the principal purposes of administering the plans, as long as the organizations are sufficiently associated with churches.[100]

The interplay between these two subsections spurred debate regarding whether a plan maintained by a church-affiliated organization could be a church plan even if a church did not establish the plan itself.[101] District courts that adopted a broad interpretation of both subsections held that church-affiliated organizations can maintain a church plan not established by a church.[102] On the other hand, circuit courts that construed a narrow interpretation held that subsection (A) read alone suggests that a church must have established a plan maintained by a church-affiliated organization for it to qualify as a church plan.[103]

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[98] *See* Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364 § 407(a), 94 Stat. 1208, 1303–04 (codified as amended at 29 U.S.C.A. § 1002(33)). The definition of a church plan, as amended, now reads in relevant part:

> (A) The term "church plan" means a plan established and maintained . . . by a church or by a convention or association of churches which is exempt from tax under section 501 of Title 26 . . . .
>
> (C)(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches 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 or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches . . . .

29 U.S.C.A. § 1002(33)(A), (C)(i).

[99] 29 U.S.C.A. § 1002(33)(A). A church is tax-exempt if it qualifies as a non-profit within the meaning of I.R.C. § 501(c)(3). *Id.*

[100] *Id.* § 1002(33)(C). In 2017, in her majority opinion in *Stapleton II*, Justice Kagan commented on the complexity of this provision. 137 S. Ct. at 1656. She drafted a "user-friendly" version of sections (A) and (C): "Under paragraph (A), a 'church plan' means a plan established and maintained . . . by a church. Under subparagraph (C)(i), 'a plan established and maintained . . . by a church . . . includes a plan maintained by a [principal-purpose] organization.'" *Id.* at 1658 (quoting 29 U.S.C.A. § 1002(33)(A), (C)(i)).

[101] Herman, *supra* note 89, at 232 (detailing the disagreements about the proper interpretation of a church plan in the district and circuit courts); *see* 29 U.S.C.A. § 1002(33)(A), (C)(i).

[102] *See, e.g.*, Overall v. Ascension, 23 F. Supp. 3d 816, 818–19, 825–27 (E.D. Mich. 2014) (adopting the broad definition of a church plan and focusing on the legislative intent behind the church plan exemption and its subsequent amendments, as well as the IRS's frequent adoption of the broad interpretation).

[103] *See, e.g.*, *Kaplan*, 810 F.3d at 177 (adopting the narrow interpretation of the church plan definition); Herman, *supra* note 89, at 232, 235 (explaining circuit court interpretations of subsection (33)(A)).

Historically, the IRS interpreted this provision in its Private Letter Ruling (PLR) process.[104] PLRs are statements that the IRS issues to taxpayers upon request that apply tax law to the taxpayer's purported situation.[105] The IRS has consistently endorsed the broad interpretation of the church plan definition through the PLR process. For example, in 2008, the IRS concluded in a PLR that a church plan must be "established and maintained" for its employees by a church *or* must be administered by a church-affiliated organization.[106]

Some employers seeking a PLR had previously operated as if their pension plans were subject to ERISA and had consequently paid premiums to the PBGC to insure their plans.[107] These employers could seek a refund of the

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[104] *See* Stein, *supra* note 81 (describing the IRS's broad interpretation adopted in its PLRs); Emily Morrison, Note, *Revisiting ERISA's Church Plan Exemption After* Advocate Health Care Network v. Stapleton, 111 NW. U. L. REV. 1281, 1292–93, 1315–22 (2017) (outlining the history and usage of the PLR process in church plan determinations, and advocating for a more stringent PLR process as a method of addressing the church plan exemption). The DOL has also consistently adopted a broad interpretation of the definition of a church plan through its process of issuing advisory opinions. Herman, *supra* note 89, at 251. The DOL issues individualized advisory letters either to individuals or organizations about their status under ERISA or to counsel them regarding what the effects of an action may be. *Filing Requests for ERISA Advisory Opinions: ERISA Procedure 76-1*, U.S. DEP'T LAB., https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/filing-requests-for-erisa-aos [https://perma.cc/Q63V-DDH7]. These notices only apply to the individual or organization who requests them. *Id.* For example, in a 2004 advisory opinion, the DOL stated that a plan established and also maintained by a church-affiliated non-profit corporation fell within the statutory definition of a church plan. Interpretation of Title I of ERISA, Advisory Opinion, Docket No. 2004-11A (Dep't of Labor Dec. 30, 2004), https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-11a [https://perma.cc/6MKM-NBBL]. This advisory letter was in response to an inquiry by counsel for the Pittsburgh Mercy Health System and the Mercy Life Center Corporation. *Id.* The DOL deferred to a PLR that the IRS had issued to Mercy Life Center Corporation in 2003, and consequently designated the plan as a church plan. *Id.* In addition, DOL administrative rulings often have turned on whether the IRS had chosen to issue a PLR. *See, e.g.*, *id.* (describing a DOL advisory opinion that chose to adopt the broad interpretation of a prior PLR). The PBGC has also shown significant deference to IRS PLRs because it does not typically make church plan determinations on its own. ENROLLED ACTUARIES PROGRAM COMM. & PENSION BENEFIT GUAR. CORP., 2011 ENROLLED ACTUARIES MEETING: QUESTIONS TO THE PBGC AND SUMMARY OF THEIR RESPONSES 25 (2011), https://www.pbgc.gov/sites/default/files/legacy/docs/2011bluebook.pdf [https://perma.cc/XYH3-7N28].

[105] *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, IRS (last updated Aug. 27, 2020), https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts [https://perma.cc/U4F3-4Q5J]. Although PLRs are personalized for the requesting taxpayer, they are generally available for public viewing. I.R.C. § 6110(a). Courts do not consider a PLR to be binding precedent on any party other than the taxpayer to whom the IRS issued the PLR. Herman, *supra* note 89, at 251–52.

[106] I.R.S. Priv. Ltr. Rul. 08-16-031 (Jan. 25, 2008). The IRS in this PLR offered little insight into its reasoning for adopting such a broad interpretation. *See id.* It simply wrote that either a church must have "established and maintained" a church plan, or a church-affiliated organization must have administered it. *Id.* The IRS defines church-affiliated organizations as organizations described in I.R.C. § 414(e)(3)(A). *Id.*

[107] *See* Refunds of Premiums, 58 Fed. Reg. 63,277, 63,406–07 (Dec. 1, 1993) (describing how an exempt plan could pay PBGC annual premiums without automatically forfeiting their exemption from Title I of ERISA, and also explaining how a plan could request a refund of its premiums).

premiums they had paid to the PBGC through a written request.[108] The IRS purportedly refunded nearly eighteen million dollars in premiums between 1999 and 2007 to eighty-six employers seeking exemption.[109] Under the era of PLR interpretation of church plans, employers could receive an exemption determination letter and not notify participants, even if participants had originally been told that the plan was subject to ERISA and insured by the PBGC.[110]

In 2009, the IRS announced a moratorium on new church plan PLRs.[111] Prior to such moratorium, the IRS consistently determined that a church plan did not need to be established by a church, and one could be maintained by an administrative committee rather than the employer.[112]

C. The U.S. Supreme Court Responds: Advocate Healthcare Network v. Stapleton

Following the IRS's mortarium on church plan PLRs, there was a rise in church plan litigation, which ultimately culminated in the 2017 Supreme Court case *Stapleton II*.[113] Before the Supreme Court's decision, federal district courts were inconsistent in their treatment of how narrowly or broadly to define church plan; over thirty lawsuits disputing this point were filed between 2013 and 2016.[114]

Each circuit court to address the church plan definition question chose to adopt the narrow interpretation.[115] For example, in 2015 in *Kaplan v. Saint Peter's Healthcare System*, the U.S. Court of Appeals for the Third Circuit affirmed The United States District Court for the District of New Jersey's denial

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[108] *Id.* at 63,407.

[109] Ellen E. Schultz, *IRS Nears Action on Church Pensions*, WALL STREET J. (June 5, 2010), https://www.wsj.com/articles/SB10001424052748704080104575286960632243300 [https://web.archive.org/web/20150703094857/https://www.wsj.com/articles/SB10001424052748704080104575286960632243300].

[110] *See* Stein, *supra* note 81 (noting that the IRS's PLR policy did not require the IRS to tell plan participants about their determination, nor did it require plan sponsors to tell the participants once they received a determination).

[111] *Id.* (attributing this moratorium on new PLRs to the IRS's concerns about the process). The IRS lifted this moratorium after it amended the PLR procedure in 2011. Rev. Proc. 2011-44, 2011-39 I.R.B. 447.

[112] *See supra* notes 105–106 and accompanying text (describing a representative IRS PLR and DOL advisory opinion).

[113] *See Stapleton II*, 137 S. Ct. at 1657 (describing the litigation response as a "wave" of litigation).

[114] Petition for Writ of Certiorari at 13–14, 14 n.8, *Stapleton II*, 137 S. Ct. 546 (No. 16-74).

[115] Rollins v. Dignity Health, 830 F.3d 900, 903 (9th Cir. 2016), *cert. granted*, 137 S. Ct. 547 (2016), *and rev'd sub nom. Stapleton II*, 137 S. Ct. 1652 (2017) (adopting the narrow interpretation of the definition of a church plan); Stapleton v. Advocate Health Care Network, 817 F.3d 517, 519 (7th Cir. 2016) (*Stapleton I*), *cert. granted*, 137 S. Ct. 546 (2016), *and rev'd sub nom. Stapleton II*, 137 S. Ct. 1652 (2017) (same); *Kaplan*, 810 F.3d at 177 (same).

of a motion to dismiss on behalf of the defendants.[116] The Third Circuit held that the plain language of § 1002(33)(A) and (C) mandates a narrow interpretation, where (A) is a threshold, or a gatekeeper, for (C).[117] In 2016, the U.S. Court of Appeals for the Seventh Circuit came to the same conclusion in *Stapleton v. Advocate Health Care Network (Stapleton I)*, again looking to the plain meaning of the statute, and emphasizing that the word "includes" in subsection (C) only modifies who may maintain a church plan.[118] Finally, the U.S. Court of Appeals for the Ninth Circuit also came to the same conclusion in *Rollins v. Dignity Health* in 2016.[119] Beginning with an analysis of the plain language of the statute, the Ninth Circuit also considered the legislative history of this provision.[120] According to the Ninth Circuit, the legislative history of subsection (C) lacked any indication that Congress intended to remove the requirement that churches establish church plans.[121] In conclusion, the Third, Seventh, and Ninth Circuits all held that a plan maintained by a church-affiliated organization under subsection (C) must also have been established by a church under subsection (A) to be exempt from ERISA.[122]

After years of debate among circuit and district courts, the Supreme Court finally spoke to the issue of what constitutes a church plan in its 2017 decision

[116] *Kaplan*, 810 F.3d at 187. St. Peter's Health Care System (St. Peter) is a healthcare system loosely affiliated with the Roman Catholic Church. *See id.* at 177 (describing the organization's connections to the Bishop of Metuchen, New Jersey). It operated its pension plan under ERISA for over thirty years, and requested a PLR from the IRS to confirm its church plan status in 2006. *Id.* at 177–78. Although the request was pending, employees filed a class action lawsuit alleging that St. Peter's failed to provide necessary plan information as required by ERISA, and that it underfunded the plan by upwards of $70 million. *Id.* at 178. While the lawsuit was still pending, the IRS confirmed St. Peter's church plan status through a PLR. *Id.* Although the court's narrow interpretation relied primarily on the plain text of ERISA, it also acknowledged that IRS PLRs have taken the opposite approach when making church plan determinations. *Id.* at 185. It chose, however, not to pay deference to these non-adjudicative memorandums. *Id.*

[117] *Id.* at 181 (citing Kaplan v. Saint Peter's Healthcare Sys., No. 13-2941 (MAS)(TJB), 2014 WL 1284854, at *5 (D.N.J. Mar. 31, 2014), *and aff'd*, 810 F.3d 175 (3d Cir. 2015), *and cert. granted*, 137 S. Ct. 546 (2016), *and rev'd sub nom. Stapleton II*, 137 S. Ct. 1652 (2017)).

[118] *Stapleton I*, 817 F.3d at 524–25. A merger between Lutheran General Health System and Evangelical Health Systems formed Advocate Health Care Network (Advocate) in 1995. *Id.* at 520–21. Advocate's connection with religious institutions is, therefore, only a contractual one. *Id.* For an in-depth discussion of the effects of mergers and acquisitions on religious affiliations, see Elizabeth Sepper, *Zombie Religious Institutions*, 112 NW. U. L. REV. 929, 930 (2018) (describing the phenomenon of the contractual creation of religious affiliations in the healthcare industry).

[119] *Rollins*, 830 F.3d at 903.

[120] *Id.* at 905–08. The U.S. Court of Appeals for the Ninth Circuit affirmed a grant of summary judgment for the petitioners. *Id.* at 903.

[121] *Id.* at 907–08.

[122] *See* 29 U.S.C.A. § 1002(33)(A), (C)(i) (establishing the definition of a church plan and the exemption of such plans from ERISA); 29 U.S.C. § 1003(b)(2) (establishing the definition of a church plan); *Rollins*, 830 F.3d at 903 (adopting the narrow interpretation of the definition of a church plan); *Stapleton I*, 817 F.3d at 519 (same); *Kaplan*, 810 F.3d at 177 (same).

in *Stapleton II*.[123] In a unanimous opinion authored by Justice Kagan, the Supreme Court embraced the broad interpretation of a church plan and held that a church plan need not have been established by a church to qualify for the ERISA exemption.[124] In this case, the employers from the three circuit court decisions appealed from the adverse circuit decisions that denied their inclusion in the church plan exemption.[125] The Court began by emphasizing that the amended version of § 1002(33)(C)(i) *expanded* the specific plans that could qualify for the church plan exemption.[126] Turning to statutory language, the Court leaned on a simplified portrayal of the logic problem central to interpreting the statute: "If A is exempt, and A includes C, then C is exempt."[127] The Court indicated that if Congress intended to merely qualify the requirement of subsection (A) that a church organization maintain the plan, it could have easily said so.[128]

The petitioners, employers who had been denied an exemption, offered a hypothetical scenario in their brief that the Court thought to be persuasive.[129] Theoretically, the government could offer a free insurance program to those who are disabled and veterans, with an amendment that a person who is disabled and a veteran consists of someone in the National Guard.[130] Therefore, a non-disabled member of the National Guard would likely be ineligible.[131] In the same way, the petitioners argued, a plan maintained by a church-affiliated organization but not established by a church is not eligible for church plan status.[132] The majority distinguished this hypothetical from the amendments to the church plan definition, and noted as in the hypothetical scenario, the two categories of "disabled and a veteran" are highly dissimilar, whereas plans "es-

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[123] *Stapleton II*, 37 S. Ct. at 1656–57.

[124] *Id.* at 1663.

[125] Reply Brief for Petitioners at 1–2, *Stapleton II*, 137 S. Ct. 546 (Nos. 16-74, 16-86, 16-258). Justice Sotomayor filed a concurrence. *Stapleton II*, 137 S. Ct. at 1663–64 (Sotomayor, J., concurring). Justice Gorsuch did not take part in the decision. *Id.* at 1655 (majority opinion).

[126] *Stapleton II*, 137 S. Ct. at 1656.

[127] *Id.* at 1659 (quoting *Overall*, 23 F. Supp. 3d at 828).

[128] *Id.* The majority opinion cites *Lozano v. Montoya Alvarez*, 134 S. Ct. 1224, 1235 (2014). *Stapleton II*, 137 S. Ct. at 1659. In *Lozano*, the Supreme Court held that if a legislature does not use language that would be a clear substitute, then courts could infer that they did not intend the substitute meaning. 134 S. Ct. at 1235 (resolving a dispute regarding the statute of limitations for a petition for the return of an abducted child under the Hague Convention).

[129] *Stapleton II*, 137 S. Ct. at 1659 (citing Brief for Respondents at 22, *Stapleton II*, 137 S. Ct. 1652 (Nos. 16-74, 16-86, 16-258)). This hypothetical scenario first appeared during oral arguments in 2015 before the U.S. Court of Appeals for the Third Circuit in *Kaplan v. Saint Peter's Healthcare System*, and the court cited the hypothetical scenario as persuasive in its decision. 810 F.3d at 181.

[130] *Stapleton II*, 137 S. Ct. at 1660 (citing Brief for Respondents, *supra* note 129, at 22).

[131] *Id.* at 1660–61.

[132] Brief for Respondents, *supra* note 129, at 41.130.

tablished and maintained . . . by a church" are not.[133] Further, the Court believed that the background knowledge in the hypothetical situation suggested that having a disability is a non-negotiable aspect of what Congress would have meant in that scenario, whereas in ERISA, it is not so clear.[134]

Justice Sotomayor filed a concurrence because she agreed with the statutory interpretation of the majority, but felt that the outcome had the potential for broad and unfortunate implications.[135] She emphasized that the current size and scope of large religiously-affiliated hospital organizations are different from those that existed at the time of ERISA's enactment.[136] Further, the scant legislative history of the exemption and its amendment worried Justice Sotomayor; she emphasized the impact of a church plan exemption that includes plans neither established nor maintained by an actual church.[137] She ended her concurrence by noting that, although the plain language of the statute requires the broad interpretation of the definition of a church plan, the wording in subsection (C) mandating that the church-affiliated agency maintaining the church plan be a "principal-purpose organization" could be subject to future litigation.[138]

D. Current State-Law Remedies for Church Plan Participants

After the Supreme Court adopted a broad interpretation of the definition of a church plan in *Stapleton II*, participants and beneficiaries of these plans have faced a higher bar when challenging the status of church plans in federal court.[139] If ERISA exempts a plan from coverage as a church plan, however, participants in the plan still have several traditional state-law remedies available to them.[140] Some scholars have argued that the most viable state-law claims are breach of contract, tortious breach of contract, fraud, and intentional infliction of emotional distress (IIED).[141] Subsection 1 briefly examines the ele-

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[133] *Stapleton II*, 137 S. Ct. at 1658–61 (first quoting 29 U.S.C.A. § 1002(33)(C)(i); then quoting *Kaplan*, 810 F.3d at 81).

[134] *Id.* at 1660–61. The Court also proposed an altered hypothetical scenario. *Id.* at 1660. Theoretically, the government could offer the free insurance to anyone who was enlisted and served in the Armed Forces, with the amendment that this includes someone who served in the National Guard. *Id.* In this hypothetical, a reader assumes that the person must have enlisted to get the insurance, not that the person just served in the Armed Forces or National Guard. *Id.* This hypothetical scenario, the Court concluded, is more akin to the language of the church plan exemption definition. *Id.*

[135] *Id.* at 1663.

[136] *Id.*

[137] *Id.*

[138] *Id.* at 1663–64.

[139] *See id.* at 1663 (holding that even if a church did not establish the church plan, it can still qualify for the exemption if a qualifying organization maintains a plan).

[140] *See* Maria O'Brien Hylton & Sophie Esquier, *The Future of ERISA's Church Plan Exemption After* Advocate Health*: Abolition or Robust State Law Contract Remedies, in* 2018 N.Y.U. REV. EMP. BENEFITS & EXECUTIVE COMPENSATION §§ 1.01, 1.06(2)(a) (advocating for state-law claims for church plan litigants).

[141] *Id.* § 1.06(2)(a).

ments of each of these claims and their viability for church plan litigants.[142] Subsection 2 discusses another emerging option: state-statutory-law responses, tailored to bring church plans in a given state into compliance with narrow provisions of ERISA.[143]

1. Traditional State-Law Causes of Action

Breach of contract is currently the most viable state-law claim for church plan litigants, as they can typically satisfy each element of the claim.[144] Although it can vary by jurisdiction, there are traditionally three elements that must be satisfied for a breach of contract claim to succeed: the formation of a valid contract, a breach of the promise, and a resulting injury.[145] In the case of pension plans, typically the employer promises in an employment contract that it will maintain the employee pension fund in exchange for the employee's service, with a promise to pay those funds to the employee upon retirement.[146]

A breach of contract can rise to the level of a tortious breach if it involves bad faith.[147] About half of all states recognize this cause of action.[148] If available, this cause of action can be particularly applicable to church plan litigants, as anyone with a fiduciary duty over the plan must act with a high standard of care.[149] Because this cause of action is a tort, more expansive types of damages—including punitive damages—are available.[150]

Another potential cause of action for church plan litigants is fraud.[151] The elements of fraud include misrepresentation, scienter, intent, reliance, and re-

[142] *See infra* notes 144–157 and accompanying text.

[143] *See infra* notes 158–164 and accompanying text.

[144] *See* O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(a) (focusing on the fact that church plan employers would not likely have plausible defenses against a breach of contract claim).

[145] *See, e.g.*, U.S. Nonwovens Corp. v. Pack Line Corp., 4 N.Y.S.3d 868, 871–72 (Sup. Ct. 2015) (outlining the requirements for a cause of action for a breach of contract claim under New York State law).

[146] *See* O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(a) (describing how employers routinely promise that they will pay a fixed sum to employees after they retire, and then break that promise).

[147] *Id.* § 1.06(2)(b)(i); *see* Richard J. Kohlman & Robert E. Cartwright, *Bad Faith Tort Remedy for Breach of Contract*, 34 AM. JUR. TRIALS 343, § 1 (originally published 1987) (2020) (noting that because there is a bad faith requirement for a tortious breach, there is often an implied covenant of good faith applicable to the contract).

[148] O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(b)(i).

[149] *See* RESTATEMENT (SECOND) OF TORTS § 874 (AM. LAW INST. 1979) (detailing, in general, who constitutes a fiduciary and the duties of these individuals). ERISA contains its own requirements for who constitutes a fiduciary, and what the duties of a fiduciary are. 29 U.S.C. §§ 1101–1114. Church plans are, however, exempt from these provisions of ERISA, meaning that they are subject to traditional common-law fiduciary laws. *See id.* § 1003(b)(2) (containing the church plan exemption); *id.* § 1144(a) (preempting state law except in the case of plans exempt under § 1003(b)).

[150] O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(b)(i).

[151] *Id.* § 1.06(2)(b)(ii).

sulting injury.[152] This cause of action may be applicable to church plan litigants, as exemption from ERISA's reporting and disclosure requirements has allowed several church plan sponsors to misrepresent the level of funding of their plans.[153] A wide range of damages are available in the context of fraud, including punitive damages.[154]

Finally, for a claim of IIED, litigants generally need to demonstrate extreme and outrageous conduct, a level of intent, and injury as a result.[155] Scholars have regarded this cause of action as the most far-fetched for church plan litigants because litigants must show serious lack of regard for the interests of plan participants.[156] It may nevertheless be viable for those who can demonstrate that the sponsor of the plan had the requisite intent and that sponsor's conduct was extreme.[157]

2. Emerging State-Law Legislation

Aside from these common-law remedies, states can also create statutes that directly speak to church plans.[158] ERISA exempts church plans not only from the provisions in Title I, but also from state-law preemption.[159] Therefore, states have an open door to create legislation that places affirmative duties on church plan sponsors.[160]

At least one state—Rhode Island—has already tried to enact this type of legislation.[161] Passed in 2019, the Rhode Island law mandates that all defined-

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[152] RESTATEMENT (SECOND) OF TORTS § 525 (AM. LAW INST. 1977); O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(b)(ii); *see, e.g.*, Found. Capital Res., Inc. v. Prayer Tabernacle Church of Love, Inc., No. 3:17-cv-00135 (JAM), 2018 WL 4697281, at *7 (D. Conn. Sept. 30, 2018) (outlining the elements of a fraud claim).

[153] O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(b)(ii) (arguing further that by failing to inform plan participants about the underfunding of the plan, church plan sponsors intentionally attempt to get plan participants to stay with their employer longer by promising a full pension).

[154] *Id.*

[155] RESTATEMENT (SECOND) OF TORTS § 46 (AM. LAW INST. 1965). Extreme and outrageous conduct is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* § 46 cmt. d.

[156] O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(b)(iii).

[157] *Id.* (emphasizing that employees may need to prove that they suffered the requisite level of emotional harm because of the non-receipt of their pension funds).

[158] *See* 29 U.S.C. § 1144(a) (containing the ERISA provision that permits states to legislate regarding exempted plans); *e.g.*, 28 R.I. GEN. LAWS § 28-7.1-4 (2019) (requiring church plans within Rhode Island to comply with certain provisions of ERISA).

[159] 29 U.S.C. § 1144(a).

[160] *Id.* ERISA places affirmative duties on sponsors of typical defined-benefit pension plans, such as duties to disclose financial information to plan participants periodically. *See* 29 U.S.C.A. § 1023(a)(1)(A). Church plan sponsors, however, are exempt from these requirements. 29 U.S.C. § 1003(b)(2).

[161] *See* 28 R.I. GEN. LAWS § 28-7.1-4 (codifying legislation encompassing church plans exempt from ERISA). The collapse of a church plan sponsored by St. Joseph Health Services of Rhode Island

benefit plans exempt from ERISA (except governmental plans) follow a specific disclosure requirement of ERISA that obligates employers to provide employees with an annual report about the plan fund.[162] The passage of this law appears to have gone by with little fanfare, but constitutes a new way of regulating church plans outside of ERISA.[163] As Rhode Island General Treasurer Seth Magaziner put it, this law works by closing a narrow loophole to ensure that plan sponsors must at least inform participants and beneficiaries about the financial status of the plan.[164]

II. POST-*STAPLETON II* LITIGATION

In the years since the U.S. Supreme Court's 2017 decision in *Advocate Health Care Network v. Stapleton* (*Stapleton II*), church plan pensioners have continued to face underfunding of their pension plans and a lack of disclosure about the financial health of the plan fund from their employers.[165] As a result of the Supreme Court's decision, they also face a higher bar to argue that their pension plan is not a church plan in order to sue under ERISA in federal

(St. Joseph) caused Rhode Island to take this legislative action. *See* Katie Mulvaney, *Class-Action Lawsuits Filed in St. Joseph's Pension Collapse*, PROVIDENCE J. (June 19, 2018), https://www.providencejournal.com/news/20180619/class-action-lawsuits-filed-in-st-josephs-pension-collapse [https://perma.cc/5HAU-B3FC] (detailing the St. Joseph pension fund collapse in 2018); David Powell, *Rhode Island Enacts Law to Require Church Defined Benefit Plans with at Least 200 Members to Provide Financial Information*, GROOM L. GROUP (July 8, 2019), https://www.groom.com/resources/rhode-island-enacts-law-to-require-church-defined-benefit-plans-with-at-least-200-members-to-provide-financial-information/ [https://perma.cc/AUF6-KBBT] (announcing the new Rhode Island law, and then attributing it to a hospital pension plan collapse in Providence).

[162] An Act Relating to Labor and Labor Relations–Non-ERISA Covered Pension Plans, ch. 52, § 1, 2019 R.I. Pub. Laws 147 (codified at 28 R.I. GEN. LAWS § 28-7.1-4). Specifically, the law mandates that all defined-benefit plans exempt from ERISA, except governmental plans, comply with 29 U.S.C. § 1024(b)(3). *Id.*; *see* 29 U.S.C.A. § 1024(b)(3) (relating to annual plan reporting). This provision of ERISA mandates that plan administrators must give a copy of statements and schedules to summarize their annual report to each participant in the plan each year. 29 U.S.C.A. § 1024(b)(3).

[163] *See* Hazel Bradford, *New Tactics Being Deployed in Challenging Church Plans*, PENSIONS & INV. (May 27, 2019), https://www.pionline.com/article/20190527/PRINT/190529878/new-tactics-being-deployed-in-challenging-church-plans [https://perma.cc/CH5P-WV7H] (framing this legislation as an example of a state court tactic for church plans).

[164] Press Release, Seth Magaziner, Office of General Treasurer, Treasurer Magaziner Commends Rhode Island Legislators for Passing Bills to Close "Church Run" Pension Loophole (May 22, 2019), https://www.ri.gov/press/view/35909 [https://perma.cc/G5C5-QZAW]. The Rhode Island House Majority Leader also characterized this law as a common-sense piece of legislation protecting workers in the state. *Id.*

[165] *See* Advocate Health Care Network v. Stapleton (*Stapleton II*), 137 S. Ct. 1652, 1656 (2017) (adopting a broad interpretation of the church plan definition, thereby making it harder for retirees to challenge the church plan status of their pension plan sponsor); *e.g.*, Boden v. St. Elizabeth Med. Ctr., Inc., 404 F. Supp. 3d 1076, 1083 (E.D. Ky. 2019) (deciding a case involving severe underfunding of a plan).

court.[166] Part II of this Note examines a few examples of litigation post-*Stapleton II*, with an emphasis on litigation strategies, new and unresolved issues, and success rates.[167] As these representative case studies demonstrate, litigants are now pursuing creative arguments in court, such as challenging the definition of a "principal-purpose organization," settling with their plan sponsors, and pursuing traditional state-law claims.[168]

A. The Principal-Purpose Debate: Boden v. St. Elizabeth Medical Center, Inc.

St. Elizabeth Medical Center, Inc. (St. Elizabeth) is a non-profit health care provider headquartered in Kentucky that operates throughout Northern Kentucky, Ohio, and Indiana.[169] The Franciscan Sisters of the Poor established St. Elizabeth in 1861.[170] In 2016, several former nurses who worked for St. Elizabeth and continued to participate in its defined-benefit pension plan sued St. Elizabeth, as well as members of the St. Elizabeth Medical Center Employee's Pension Plan Administrative Committee (Committee).[171] Unlike other church plan cases, the employer did not actually deny any employees of their pension benefits.[172] Rather, the participants sued because St. Elizabeth underfunded the plan by more than $166 million.[173] Prior to *Stapleton II*, the plaintiffs filed suit in the U.S. District Court for the Eastern District of Kentucky in 2016, claiming federal jurisdiction under the basis that St. Elizabeth did not have an ERISA-exempt church plan.[174] In their original complaint, the plain-

[166] *See Stapleton II*, 137 S. Ct. at 1656 (adopting the broad interpretation of the definition of a church plan).

[167] *See infra* notes 169–223 and accompanying text.

[168] *See infra* notes 169–223 and accompanying text (containing three representative case studies of post-*Stapleton II* church plan litigation).

[169] Amended Complaint at 5, *Boden*, 404 F. Supp. 3d 1076 (No. 2:16-cv-00049).

[170] *Boden*, 404 F. Supp. 3d at 1083.

[171] Amended Complaint, *supra* note 169, at 4–5. Each of the plaintiffs in this case were former nurses, and each worked for St. Elizabeth Medical Center, Inc. (St. Elizabeth) for at least seventeen years. *Id.* One of the plaintiffs worked for the medical center for thirty-one years. *Id.* at 4. As in other church plan cases, these pensioners had an incentive to work at St. Elizabeth for many years, as the terms of their defined-benefit plan calculated their retirement income in relation to their length of service and income while working. *See id.* at 2 (describing the terms of the St. Elizabeth plan).

[172] *See id.* at 2–3 (establishing the basis for a cause of action related to the underfunding of the plan).

[173] *Id.* (detailing the plaintiffs' claims, which sought to compel St. Elizabeth to comply with ERISA's funding, fiduciary, and notice requirement, as well as pay damages). Alternatively, if the plan was found to not be subject to ERISA, the plaintiffs would argue breach of contract and breach of duty under state law. *Id.* Additionally, in 2020, the U.S. Supreme Court decided *Thole v. U.S. Bank N.A.* 140 S. Ct. 1615, 1616 (2020). In that case, the question was whether plaintiffs have standing to sue in ERISA cases if they have not actually lost their retirement income. *Id.* at 1618–19. The Court ultimately held that the plaintiffs in *Thole* did not have Article III standing to sue because they had not actually been denied their retirement income. *Id.*

[174] Complaint at 1–2, *Boden*, 404 F. Supp. 3d 1076 (No. 2:16-cv-00049).

tiffs argued that the plan was neither established nor maintained by a church, but rather by St. Elizabeth, a church-affiliated health care organization.[175] After the plaintiffs filed an amended complaint, the district court granted a stay until the Supreme Court decided *Stapleton II*.[176] They argued that the plan, even under *Stapleton II*'s broad definition, was not a church plan because an organization maintained it whose principal purpose was the delivery of health care, and not the administration of pension funds.[177]

This argument did not persuade the district court.[178] The Supreme Court in *Stapleton II* clarified that a pension plan could simply be maintained by a principal-purpose organization controlled by or associated with a church, but it did not specify what qualified as a "principal-purpose organization."[179] The *Boden* district court adopted a three-part test, to determine whether a plan maintained by a principal-purpose organization met the *Stapleton II* church plan requirements.[180] First, the court must ask whether the entity in question is tax-exempt under I.R.C. § 501(c)(3) and affiliated with a church.[181] If so, the court must ask whether an organization—with the principal purpose of administering the plan—maintains the entity's plan.[182] Finally, the court asks whether the principal-purpose organization is affiliated with a church.[183]

As a threshold matter, the Eastern District of Kentucky found that St. Elizabeth satisfied the first prong of the test, as a tax-exempt non-profit with sufficient ties to the Catholic Church.[184] In addressing the second prong, the court decided that the Committee counted as an "organization," even though it

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[175] *Id.* at 2.

[176] *Boden*, 404 F. Supp. 3d at 1080. In fact, the defendants in *Boden v. St. Elizabeth Medical Center* filed an amicus brief in support of the *Stapleton II* petitioners. Brief of Amicus Curiae Saint Elizabeth Medical Center, Inc. in Support of Petitioners at 7, *Stapleton II*, 137 S. Ct. 1654 (Nos. 16-74, 16-86, 16-268). The defendants promoted a broad reading of ERISA, arguing that a narrow reading of the definition of a church plan would require the courts to be in the business of measuring the religiosity of church-affiliated institutions. *Id.* They further argued that a narrow reading would disadvantage church-affiliated non-profits that had relied upon IRS analyses of ERISA. *Id.* at 7–9.

[177] Amended Complaint, *supra* note 169, at 2.

[178] *See Boden*, 404 F. Supp. 3d at 1079–80 (granting the defendants' Motion for Partial Summary Judgment).

[179] Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. § 1002(33)I(i) (West 2019) (setting forth the requirement of a principal-purpose organization); *Stapleton II*, 137 S. Ct. at 1656–57 (interpreting this provision of ERISA, but failing to define a principal-purpose organization).

[180] *Boden*, 404 F. Supp. 3d at 1082 (citing Medina v. Catholic Health Initiatives, 877 F.3d 1213, 1222 (10th Cir. 2017)).

[181] *Id.*

[182] *Id.*

[183] *Id.*

[184] *Id.* at 1082–83. The Franciscan Sisters of the Poor founded St. Elizabeth in 1861, and the Bishop of Covington retains control over certain facets of St. Elizabeth's operations. *Id.* at 1083. Further, there are crucifixes in most rooms in St. Elizabeth's facilities, including every patient room, and it transmits a prayer through its hospitals twice a day. *Id.* at 1083–84.

was comprised of internal committees.[185] It found that the Committee indeed "maintained" the plan within the meaning of ERISA's church plan definition.[186] Based on the plain meaning of the word "maintained," as well as statutory structure and additional case law, the court determined that "maintained" meant something more than administered, but did not require the "ability to amend or terminate the plan."[187] Instead, the court concluded that "maintenance" included all the actions necessary to continue the plan.[188] Finally, the court determined that the Committee was associated with a church.[189] Accordingly, the court held that the Committee was a principal-purpose organization within the meaning of the church plan exemption.[190]

In the end, the court re-affirmed that St. Elizabeth's pension plan was an ERISA-exempt church plan.[191] This conclusion was largely based on the broad interpretation of a church plan adopted in *Stapleton II*.[192] The court dismissed the plaintiffs' claims, and as a result, waived jurisdiction over any additional claims, noting that the plaintiffs could re-file in state court if they so choose.[193]

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[185] *Id.* at 1084–93 (determining that the St. Elizabeth Medical Center Employee's Pension Plan Administrative Committee (Committee) was a principal-purpose organization). Because ERISA does not define the term "organization," the U.S. District Court for the Eastern District of Kentucky looked to the dictionary definition of the term. *Id.* at 1085. Under that definition, an "organization" need only be a group with a specified reason, and does not need to be completely separate from other entities. *Id.* The language of St. Elizabeth's plan documents describes the Committee as a group with a specified purpose, both requirements of the dictionary definition of an "organization." *Id.* at 1085–86.

[186] *Id.* at 1086–92.

[187] *Id.* at 1086–93 (first citing *Medina*, 877 F.3d at 1225; then citing Sanzone v. Mercy Health, 326 F. Supp. 3d 795, 795, 804 (E.D. Mo. 2018)).

[188] *Id.* Further, an internal-benefits committee can maintain a plan. *Id.* at 1088–89. A court may decide on whether such a committee maintains a plan within the meaning of ERISA by relying on formal plan documents instead of the actual day-to-day functioning of the committee. *Id.* at 1089–92.

[189] *Id.* at 1093–94. Specifically, the Committee's administration of the pension plan was its principal purpose. *Id.* at 1093. Again, looking to the dictionary definition of "principal purpose," the court defined the term as the primary goal or objective of the organization. *Id.* at 1092 (quoting 29 U.S.C.A. § 1002(33)(C)(i)). The court concluded because St. Elizabeth is associated with a church, and the Committee is a subset of St. Elizabeth, the Committee is associated with a church as well. *Id.* at 1093.

[190] *Id.*

[191] *Id.* at 1094; *see also* Danielle Nichole Smith, *Ky. Hospital Defeats ERISA Suit Over Church Plan Exemption,* LAW360 (July 25, 2019), https://www.law360.com/articles/1182187/ky-hospital-defeats-erisa-suit-over-church-plan-exemption [https://perma.cc/W4LG-M4S5] (reporting on St. Elizabeth's successful motion for partial summary judgment).

[192] *See Boden*, 404 F. Supp. 3d at 1081–82 (establishing *Stapleton II's* interpretation as the framework for analyzing St. Elizabeth's plan).

[193] *Id.* at 1095.

B. Settling Out of Court: Owens v. St. Anthony Medical Center, Inc.

In 2012, St. Anthony Medical Center, Inc. (St. Anthony) notified employees that it was terminating its employee pension plan.[194] Although the trust funding plan would continue to pay distributions, it would reduce benefits by up to forty percent for certain participants.[195] St. Anthony is associated with the Franciscan Sisters of Chicago Service Corporation, a non-profit corporation that runs assisted living and hospice facilities through a network of affiliates.[196] In or around 1989, the IRS sent St. Anthony a PLR verifying its church plan status, a determination that authorized St. Anthony to stop complying with ERISA's disclosure, insurance, and funding requirements.[197] In response to the plan termination, a group of former employees filed suit in 2014 against St. Anthony in the U.S. District Court for the Northern District of Illinois (Eastern Division).[198] The plaintiffs alleged that the plan was not a church plan under ERISA, along with other ERISA violations including a breach of fiduciary duty.[199] The defendant employer filed a motion to dismiss, which the court suspended pending resolution of *Stapleton II*.[200]

In 2018, the court reconsidered a new motion to dismiss by the defendants, with additional state-law claims.[201] This case was short-lived, however; in 2019, the parties reportedly settled for four million dollars.[202] According to the

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[194] Owens v. St. Anthony Med. Ctr., Inc. (*Owens II*), No. 14-cv-4068, 2018 WL 4682337, at *2–3 (N.D. Ill. Sept. 29, 2018). St. Anthony Medical Center, Inc. (St. Anthony) underfunded the plan by $35 million in 2009, but insisted that participants would still receive their benefits. *Id.* at *2.

[195] *Id.*

[196] *Id.* at *1.

[197] *Id.* at *2. In 1999, the Franciscan Sisters of Chicago Service Corporation sold St. Anthony to the Franciscan Alliance, and St. Anthony froze the pension fund before this sale, essentially disallowing any new employees from participating. *See id.* (describing the remaining interests in the pension plan for then-existing employees).

[198] Owens v. St. Anthony Med. Ctr., Inc. (*Owens I*), No. 14-cv-4068, 2015 WL 3819086, at *1 (N.D. Ill. June 18, 2015).

[199] *See id.* at *2 (outlining the plaintiffs' various claims). The U.S. District Court for the Northern District of Illinois (Eastern Division) denied the plaintiffs' first application from class certification in 2014, as the Supreme Court announced it would rule on the *Stapleton II* case. Danielle Nichole Smith, *Indiana Hospital Plan Participants Seek Cert. in Benefits Suit*, LAW360 (Nov. 1, 2018), https://www.law360.com/articles/1098213 [https://perma.cc/FM6D-C9EF].

[200] *Owens I*, 2015 WL 3819086, at *4.

[201] *Owens II*, 2018 WL 4682337, at *1, *6. The court only dismissed the unjust enrichment claim, but all other claims survived dismissal. *Id.* at *9; *see* Danielle Nichole Smith, *Indiana Hospital Can't Escape Suit Over Benefits Rollback*, LAW360 (Oct. 1, 2018), https://www.law360.com/articles/1087827 [https://perma.cc/2MKA-LK6N] (summarizing the decision to grant in part and dismiss in part the defendants' motion to dismiss in *Owens v. St. Anthony Med. Ctr., Inc.* (*Owens II*)). The district court dismissed the claim for unjust enrichment because the plaintiffs argued alternatively for breach of contract, and noted that an unjust enrichment claim rests on the idea that there was no formal contract. *Owens II*, 2018 WL 4682337, at *8. Therefore, the court concluded that the claims must be pled as alternatives to one another, which the plaintiffs failed to do. *Id.*

[202] Adam Lidgett, *Hospital to Shell Out $4M to Wrap Up Church Plan Suit*, LAW360 (Apr. 11, 2019), https://www.law360.com/articles/1148995?scroll=1&related=1 [https://perma.cc/XCP5-27UY].

plaintiffs, one million dollars of the settlement went to attorneys' fees and incentive awards for the named pensioners, and the other three million dollars went to the 1,900-member class of plan participants.[203]

C. (Re)turning to State Common Law: Hartshorne v. Roman Catholic Diocese of Albany, NY

The 2018 lawsuit brought by former employees of St. Clare's in *Hartshorne v. Roman Catholic Diocese of Albany, New York* is one of the newest and most notable examples of church plan litigation post-*Stapleton II*.[204] The complaint in this case raised three state-law claims under New York law: breach of contract, promissory estoppel claim, and breach of fiduciary duty.[205] The plaintiffs did not dispute that the plan at issue is a church plan, nor that the Albany Diocese manages St. Clare's.[206] In fact, the plaintiffs emphasized the involvement of the Albany Diocese in the management of St. Clare's, as it helped establish that the Albany Diocese is the party responsible for the mismanagement of funds.[207]

The plaintiffs began their complaint by noting that New York law considers retirement plans to be "wage supplements"; therefore, if an employer does not make payment under a retirement plan, a court can find it guilty of a misdemeanor.[208] Consequently, the employees could sue for these benefits in state court.[209]

The plaintiffs first raised a breach of contract claim.[210] According to the plaintiffs, the defendants breached their contract by representing in the plan documents and the SPD that St. Clare's would fund the plan—not change the plan in a way that would negatively affect benefits—and continue to abide by ERISA even though the plan was exempt from coverage.[211]

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[203] *Id.*

[204] *See* Complaint, *supra* note 3, at 4 (commencing the lawsuit by participants in the St. Clare's Plan against the Albany Diocese); Arnold, *supra* note 1 (describing the St. Clare lawsuit).

[205] Complaint, *supra* note 3, at 4.

[206] *See id.* (lacking a claim that the plan is not an ERISA-exempt church plan).

[207] *See id.* at 6–8. For instance, the complaint notes that St. Clare's was listed in the official Catholic directory, and that the Chairman of the St. Clare's Board of Directors was also employed by the Albany Diocese as a liaison to local Catholic hospitals. *Id.* at 8.

[208] *Id.* at 11; *see* N.Y. LAB. LAW § 198-c (McKinney 2019).

[209] *See* Complaint, *supra* note 3, at 11 (arguing that litigants can enforce their rights to their employee-benefit plans in state court because New York State law considers these plans to be "wage supplements").

[210] *Id.* To establish a breach of contract under the common law of New York, a plaintiff must demonstrate that it formed a contract with the defendant, the plaintiff performed its duties under the contract but the defendant failed to perform, and an injury resulted from such failure to perform. *Id.* (citing Clearmont Prop., LLC v. Eisner, 872 N.Y.S.2d 725, 728 (App. Div. 2009)).

[211] *Id.* at 21–22.

The plaintiffs then asserted a related claim for promissory estoppel.[212] To establish a promissory estoppel claim under New York common law, a plaintiff must show that although there was no contract, the plaintiff reasonably relied upon a clear promise made by the defendant to the plaintiff's detriment.[213] The plaintiffs emphasized that they had made decisions about their employment with the expectation that after five years of service, their right to pension benefits would vest—a fact that St. Clare's should have reasonably anticipated given its promises.[214]

Finally, the plaintiffs put forth a claim for a breach of fiduciary duty.[215] A fiduciary relationship exists under New York common law when an entity or person is under an obligation to act for the benefit of another within the scope of a special relationship.[216] To establish a breach of fiduciary duty, one must show that this special relationship of trust existed for the benefit of the plaintiff, that an entity or person breached their duty related to that trust, and that the plaintiff suffered an injury as a result.[217] The plaintiffs alleged that St. Clare's breached its fiduciary duties, specifically its duty of prudence in management of the plan and its duty of disclosure.[218]

Since filing their complaint, the plaintiffs in *Hartshorne* survived a motion to dismiss brought by the defendants.[219] In their motion, the defendants alleged that the plaintiffs' complaint did not set forth a case, that the complaint constituted inadmissible documentary evidence, and that the plaintiffs missed the statute of limitations for their breach of contract claims.[220] The N.Y. State Supreme Court, County of Schenectady rejected each of these arguments by the defendants.[221] The court's decision traced the history of the St. Clare's plan and emphasized the number of times St. Clare's promised plan participants that they would receive their pensions.[222] The court's rejection of a motion to

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[212] *Id.* at 22.

[213] *Id.* at 12 (citing Fleet Bank v. Pine Knoll Corp., 736 N.Y.S.2d 737, 742 (App. Div. 2002)).

[214] *Id.* at 22–23.

[215] *Id.* at 24. St. Clare's Plan participants argued that St. Clare's had its own self-imposed fiduciary duty stemming from the plan's Summary Plan Description. *Id.* at 13–14.

[216] *Id.* (citing EBC I, Inc. v. Goldman, Sachs & Co., 832 N.E.2d 26, 31 (N.Y. 2005)).

[217] *Id.* (citing Ne. Gen. Corp. v. Wellington Advert., Inc., 624 N.E.2d 129, 129–31 (N.Y. 1993)).

[218] *Id.* at 24–26. The plaintiffs alleged that St. Clare's and the Albany Diocese received a grant from New York State of $28.5 million to completely fund the pension plan in 2008. *Id.* at 18. Afterwards, in 2009, St. Clare's wrote to plan participants to assure them that they would receive their pension. *Id.* at 19. From 2010 to 2017, St. Clare's continued to send letters to the plaintiffs reassuring them of the health of the pension fund, even after the plan's deficit increased from around $13 million to $32 million in 2014. *Id.* In 2016, St. Clare's told participants for the first time that it may not be able to meet its pension obligations, but this letter and subsequent ones suggested participants would continue to receive payments for another nine years. *Id.* at 19–20.

[219] *See* Decision/Order, *supra* note 10, at 19.

[220] *Id.* at 2.

[221] *Id.* at 10–20.

[222] *Id.* at 2–10.

dismiss indicates that, in cases with a high level of reliance by plan participants on promises made by plan administrators, state courts are willing to at least decide on the merits for claims of breach of contract, promissory estoppel, and breach of fiduciary duty.[223]

III. CHURCH PLAN REFORM: A CALL AND A RESPONSE

Church plan litigation in the wake of the U.S. Supreme Court's 2017 decision in *Advocate Health Care Network v. Stapleton* (*Stapleton II*) demonstrates that the exemption exposes participants and beneficiaries of church plans to tremendous risk, with little recourse in federal or state courts.[224] This Part focuses on a path forward.[225] Section A is a call for reform.[226] It argues that the church plan exemption currently undermines the statutory intent of ERISA, that the exemption's justification has become irrelevant, and that competing incentives justify change.[227] Section B focuses on potential solutions, emphasizing the efficacy of state statutory law protections for church plan participants.[228]

A. The Call for Action

The church plan exemption undermines the purpose behind ERISA and congressional intent.[229] When enacting ERISA, Congress justified its action by citing its powers under the Commerce Clause of the U.S. Constitution.[230] And, indeed, the welfare of the U.S. pension system is a matter of national concern, affecting the security that Americans feel knowing that they can retire with dignity.[231] Indeed, the church plan exemption itself has an impact on the na-

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[223] *See id.* at 18 (noting that the plaintiffs in this case argued that the Albany Diocese and St. Clare's both knew the grant they received from the state of New York to cover the pension fund would not be enough to meet their obligations, and yet they continued to reassure participants about the health of the plan fund).

[224] *See, e.g.*, Boden v. St. Elizabeth Med. Ctr., Inc., 404 F. Supp. 3d 1076, 1094 (E.D. Ky. 2019) (holding that the plaintiffs were beneficiaries of a church plan, and therefore could not sue under ERISA in federal court).

[225] *See infra* notes 229–272 and accompanying text.

[226] *See infra* notes 229–250 and accompanying text.

[227] *See infra* notes 229–250 and accompanying text.

[228] *See infra* notes 251–272 and accompanying text.

[229] *See* 29 U.S.C. § 1003(b)(2) (2018) (containing the church plan exemption); Stein, *supra* note 81 (describing the legislative intent behind the church plan exemption).

[230] 29 U.S.C. § 1001(a); *see* U.S. CONST. art. I, § 8, cl. 3 (setting forth Congress's right "[t]o regulate [interstate] Commerce"). Congress also justified its action by referencing the federal taxing power. 29 U.S.C. § 1001(a); *see* U.S. CONST. art. I, § 8, cl. 1 (setting forth Congress's right to implement federal taxes). It specified that the regulation of retirement benefits in the United States falls under its taxing authority because benefit plans receive preferential tax treatment; therefore the regulation of these plans is important to protecting federal revenue streams. 29 U.S.C. § 1001(a).

[231] *See Survey Reveals Why Seniors Are Putting Off Retirement*, PROVISION LIVING, https://www.provisionliving.com/news/survey-reveals-why-seniors-are-putting-retirement [https://perma.cc/JP35-G9QT] (summarizing the findings of a 2019 study concerning attitudes toward retirement among

tional retirement system, as retirement plans are used by companies to compete for workers as part of a comprehensive benefits package.[232] Therefore, if one organization complies with ERISA and its obligations, including paying PBGC premiums, hiring additional plan administrators, and meeting ERISA's vesting and funding obligations, that organization is at a disadvantage compared to those that do not.[233] This creates a disincentive for church plans to opt in to coverage and gives religious plan sponsors an advantage in the marketplace.[234] Consequently, this undermines the congressional intent of regulating interstate commerce.[235]

Further, when church plan participants cannot avail themselves of ERISA's protections, they are placed in a similar position to Studebaker-Packard employees prior to the enactment of ERISA.[236] First, by allowing the church plan exemption to continue, Congress is placing countless workers in a position where they must seek state common-law protections when employers fail to fulfill pension obligations.[237] Before the enactment of ERISA, pensioners, such as Studebaker-Packard former employees, had to rely on the meager protection afforded by state-law claims.[238] Church plan litigants now face a similar lack of predictability and recourse related to their pensions, further highlighting how the church plan exemption cuts against the congressional intent of ERISA.[239] ERISA was also a direct congressional response to the real

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seniors). Provision Living's recent survey of over 1,000 seniors (between the ages of 65 and 85) found that their average anticipated age of retirement was 72 years old, and for the seniors who were still working, 62% of them indicated it was for financial reasons. *Id.* 37% of respondents listed their pension as one of their income sources during retirement, and 70% listed social security. *Id.*

[232] *See* Amended Complaint, *supra* note 169, at 3 (arguing that St. Elizabeth's received an advantage over its competition by not complying with ERISA, particularly by not paying PBGC premiums).

[233] *See id.*

[234] *See, e.g.*, *id.* (presenting just one example of a church organization allegedly having a competitive advantage over peer institutions because of its church plan status).

[235] *See id.* The congressional findings portion of ERISA emphasizes that employee-benefit plans affect industrial relations on an interstate level, and "stability of employment." 29 U.S.C. § 1001(a). If the goal of ERISA was to act upon Congress's power to regulate this kind of interstate economic activity, exempting church plans seems as if it would have the opposite effect, by de-stabilizing labor relations and employment security. *See id.*

[236] *See* WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 51 (describing the effect of the Studebaker-Packard plant's closing on participants in its pension plan).

[237] *See* O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(a) (noting that church plan plaintiffs seeking relief may need to turn to state-law claims).

[238] *See* WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 51 (describing the Studebaker-Packard case, wherein workers lost their pensions with no recourse in federal law, and noting that because they were unprotected by pension insurance, they were left to pursue state-law claims).

[239] *See* Complaint, *supra* note 3, at 20–21 (recounting the St. Clare's case, wherein 600 workers lost some or all of their pension with no recourse in federal court because of the church plan exemption).

human effects of the Studebaker-Packard plant's closing.[240] In that case, employees faced the same issues church plan pensioners do now: lack of accountability from their employer, as well as a lack of recourse if something goes awry.[241] The real human effects are not only retirees left without their expected post-retirement income, but also retirees who remained at a job offering a defined-benefit plan specifically because of its financial reassurance.[242]

Recent church plan litigation demonstrates that the reality of modern church organizations undermines the intent behind the church plan exemption itself.[243] Most modern church plan litigation centers around Catholic-affiliated hospital networks.[244] The Catholic Church is currently suffering worldwide financial difficulties because of priest sexual abuse allegations.[245] With church organizations in a precarious financial state, protecting retirees relying upon pension plans managed by these organizations becomes even more important.[246]

Additionally, when Congress enacted the church plan exemption, one justification given was that churches would handle these funds in a more ethical manner than other organizations.[247] Not only is confidence in the ethical behavior of churches eroding, but church organizations have demonstrated through their (mis)management of employee pension funds and failure to opt

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[240] *See* Wooten, *The Studebaker-Packard Story*, *supra* note 43 at 684 (demonstrating the effect of the Studebaker-Packard plant's closing and the impact on the pension plans of retirees, which motivated lawmakers to enact ERISA).

[241] *See id.* (recounting Studebaker-Packard's role in ERISA's legislative and political history).

[242] *See* Emily Brandon, *Staying at a Job for the Retirement Plan: Workers with 401(k)'s Are More Likely to Job Hop Than Employees with Pensions*, U.S. NEWS & WORLD REP., (Dec. 14, 2010), https://money.usnews.com/money/blogs/planning-to-retire/2010/12/14/staying-at-a-job-for-the-retirement-plan [https://web.archive.org/web/20131023013019/https://money.usnews.com/money/blogs/planning-to-retire/2010/12/14/staying-at-a-job-for-the-retirement-plan] (reporting that 59% of pensioners stay at their current job at least in part because of the promise of their pension plan).

[243] *See* 29 U.S.C. §§ 1001(a), 1003(b)(2); *e.g.*, Morrison, *supra* note 104, at 1292–93, 1315–22 (advocating for closer IRS fact-finding in the PLR process when reviewing a plan sponsor's degree of religious connection).

[244] *See, e.g.*, *Boden*, 404 F. Supp. 3d at 1076 (describing St. Elizabeth's connection with the Catholic Church). Furthermore, the prevalence of Catholic hospitals in church plan litigation is no surprise; Catholic healthcare systems make up a sizable portion of the U.S. healthcare system. *See* LOIS UTTLEY & CHRISTINE KHAIKIN, MERGERWATCH, GROWTH OF CATHOLIC HOSPITALS AND HEALTH SYSTEMS: 2016 UPDATE OF THE MISCARRIAGE OF MEDICINE REPORT 1 (2016), http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf [https://perma.cc/646B-AG5S] (noting that in 2016, the Catholic Church owned or operated 14.5% of the acute care hospitals in the United States).

[245] *See* Tom Gjelten, *The Clergy Abuse Crisis Has Cost the Catholic Church $3 Billion*, NPR (Aug. 18, 2018), https://www.npr.org/2018/08/18/639698062/the-clergy-abuse-crisis-has-cost-the-catholic-church-3-billion [https://perma.cc/NG8E-JPPL] (reporting that as of 2018, the Catholic Church nationally has paid out $3 billion in sexual abuse settlements, and at least nineteen dioceses in the United States have been forced to file for bankruptcy as a result).

[246] *See id.* (describing the financial state of Catholic institutions).

[247] *See* Stein, *supra* note 85 (recounting a letter in the Congressional Record from the Pension Fund of the Catholic Church emphasizing its intention to manage these funds with Christian values).

in to ERISA compliance that they can fail to reliably fund and insure promised pension plans.[248]

Finally, the reality is that many modern church organizations are healthcare organizations that are only loosely connected to a religious mission.[249] Therefore, the Establishment Clause's concern of maintaining separation of church and state becomes less important for these organizations.[250]

B. The Response

This Note joins with others to ultimately advocate for Congress to narrow the church plan exemption to plan sponsors who have pension plans for employees carrying out essential religious work.[251] Such a response, however, may be too far off and not politically feasible.[252] Therefore, in the meantime, there is another approach: states should step in and create legislation around church plans.[253]

Of course, church plan litigants can sue under traditional state laws, using causes of action such as breach of contract or breach of fiduciary duty.[254] These remedies, however, only provide recourse *after* an employer falls short of its obligations by, for example, failing to fund a plan, creating a prohibitively high vesting requirement, or failing to report and disclose the financial status of the plan.[255] In contrast, ERISA places affirmative duties upon the sponsors of traditional defined-benefit pension plans, which protect pensioners before anything goes awry, and if the plan participants have no other recourse

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[248] *See* Jeffrey M. Jones, *Many U.S. Catholics Question Their Membership Amid Scandal*, GALLUP (Mar. 13, 2019), https://news.gallup.com/poll/247571/catholics-question-membership-amid-scandal.aspx [https://perma.cc/92AY-8XCY] (reporting that in the aftermath of priest sexual abuse scandals, 37% of Catholics in the United States "questioned whether [they] would remain in the Catholic [C]hurch" as of 2019); Jeffrey M. Jones, *U.S. Church Membership Down Sharply in Past Two Decades*, GALLUP (Apr. 18, 2019), https://news.gallup.com/poll/248837/church-membership-down-sharply-past-two-decades.aspx [https://perma.cc/9CKZ-853U] (reporting that only half of all Americans belong to a church, a number that was 70% in 1999).

[249] *See, e.g.*, *supra* notes 194–203 and accompanying text (describing the case of *Owens v. St. Anthony Medical Center, Inc.*).

[250] *See* S. REP. NO. 93-383, at 81 (1973) (commenting on the Establishment Clause's motivations behind the church plan exemption).

[251] *See* O'Brien Hylton & Esquier, *supra* note 140, § 1.06(1) (advocating for Congress to abolish the church plan exemption except in cases where regulation would result in a substantial entanglement of religious affairs). *But see* Morrison, *supra* note 104, at 1309–10 (noting that one potential problem with limiting church plan coverage to churches "in the brick-and-mortar sense only" would result in a favoring of religions with hierarchical structures as opposed to congregational structures).

[252] O'Brien Hylton & Esquier, *supra* note 140, § 1.06(1).

[253] *See, e.g.*, 28 R.I. GEN. LAWS § 28-7.1-4 (2019) (codifying legislation encompassing ERISA-exempt church plans).

[254] *See supra* notes 144–157 and accompanying text (outlining various traditional state-law remedies for church plan litigants).

[255] *See, e.g.*, Complaint, *supra* note 3, at 4 (containing the state-law claims by former employees of St. Clare's after they discovered that they would no longer receive their pension).

against their plan sponsor under state laws.[256] Pensioners under such plans can work and retire with more confidence in their plan funds.[257] These employees have confidence their employer is being forthcoming about the status of the pension fund and that they will be covered by pension insurance if the plans terminate.[258] This is a stark contrast to church plan litigants, who are forced to file class action lawsuits after suddenly learning that their employers will no longer pay their pensions.[259]

A promising and innovative option to protect church plan litigants is the enactment of narrowly tailored state-law legislation that places affirmative duties on church plan sponsors.[260] Rhode Island is the trailblazer on this type of legislation, passing a law in 2019 that brought church plans under ERISA's annual reporting requirement.[261] Rhode Island officials explain the benefits of such legislation are numerous.[262] First, state laws can be narrowly tailored to address the specific needs of church plan beneficiaries in a particular region.[263] For example, legislation could bring plans under the funding or vesting requirements of ERISA instead of annual reporting, if that better fit the needs of a given jurisdiction.[264] Second, state-law legislation such as Rhode Island's avoids Congress's Establishment Clause concerns about looking into church finances.[265] If plan sponsors only give annual reports to plan participants, and not to the government, then participants are equipped with the knowledge they

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[256] 29 U.S.C. §§ 1001–1191c (containing the requirements imposed by Title I of ERISA); *see* JOHN H. LANGBEIN ET AL., *supra* note 41, at 83 (noting that Studebaker-Packard had not actually breached any elements of its contracts with employees or engaged in blatantly fraudulent behavior, allowing the corporation to avoid liability under typical state-law breach of contract).

[257] *See* 29 U.S.C. §§ 1001–1191c (placing a myriad of affirmative duties on traditional employee-benefit plan sponsors).

[258] *See id.*

[259] *See, e.g.*, Owens v. St. Anthony Med. Ctr., Inc., No. 14-cv-4068, 2018 WL 4682337, at *2–3 (N.D. Ill. Sept. 29, 2018) (describing the origins of the St. Anthony lawsuit).

[260] *See, e.g.*, 28 R.I. GEN. LAWS § 28-7.1-4 (codifying legislation encompassing ERISA-exempt church plans).

[261] *See id.*; *supra* notes 158–164 and accompanying text (describing the recent Rhode Island legislation).

[262] *See* Press Release, Seth Magaziner, Office of General Treasurer, *supra* note 164 (quoting several Rhode Island officials commenting on this law).

[263] *See, e.g.*, 28 R.I. GEN. LAWS § 28-7.1-4 (narrowly imposing an annual reporting requirement on church plans); Press Release, State of Rhode Island General Assembly, Assembly Approves Bill to Require Religious Organizations to Provide Pension Fund Updates (June 20, 2019), http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31%2D3c10%2D431c%2D8dcd%2D9dbbe21ce3e9&ID=370441&Web=2bab1515%2D0dcc%2D4176%2Da2f8%2D8d4beebdf488 [https://perma.cc/5J4W-EDWG] (commenting that St. Joseph in Rhode Island allegedly failed to be transparent about the funding of the plan, leading to the passage of state legislation bringing church plans under the narrow reporting requirements of ERISA).

[264] *See* 28 R.I. GEN. LAWS § 28-7.1-4 (bringing church plans only under an annual reporting requirement, and not any of ERISA's other provisions).

[265] *See* S. REP. NO. 93-383, at 81 (commenting on the Establishment Clause's motivations behind the church plan exemption).

need, without any mingling of church and state.[266] Finally, statutes such as these give a clear cause of action to church plan litigants; these litigants no longer need to try to fit their claims into existing state-law causes of action such as a breach of contract claim.[267]

One could argue that this legislation does not go far enough.[268] A reporting and disclosure requirement may not be helpful if church plans are still not subject to vesting and funding standards, or are not covered by PBGC insurance.[269] If plan participants can catch problems with funding early on, however, this could protect workers while putting pressure on employers.[270] Workers could have the option to make different employment decisions earlier if they knew that the employer was underfunding its pension plan.[271] State-law regulation of church plans is a step in the right direction, and sends the message to employers that if they avoid ERISA coverage, then they expose themselves to state regulation.[272]

CONCLUSION

When Congress enacted ERISA in 1974, lawmakers intended to protect the rights of workers who receive employee benefits, particularly pensions. Congress barely discussed or justified the church plan exemption, but it has led to extensive administrative and judicial debate, as well as the loss of anticipated benefits for countless pensioners. Litigation following the Supreme Court's 2017 decision in *Advocate Health Care Network v. Stapleton* demonstrates that

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[266] *See* 29 U.S.C.A. § 1024(b)(3) (West 2019) (containing the annual reporting provision of ERISA that the Rhode Island law cites); 28 R.I. GEN. LAWS § 28-7.1-4 (citing the annual reporting requirement of ERISA).

[267] *See* WOOTEN, THE POLITICAL HISTORY OF ERISA, *supra* note 42, at 53 (describing how Studebaker-Packard avoided state-law liability in the formulation of their pension plan); O'Brien Hylton & Esquier, *supra* note 140, § 1.06(2)(a)–(b) (describing potential state-law claims for church plan litigants). *But see* Decision/Order, *supra* note 10, at 19 (allowing the plaintiffs in St. Clare's to continue with their state-law claims after a motion to dismiss, suggesting that there may be some willingness to consider state-law claims when the reliance on employer promises was egregious).

[268] *See* 28 R.I. GEN. LAWS § 28-7.1-4 (requiring only that plan sponsors submit nothing more than annual summaries to participants).

[269] *See* 29 U.S.C. §§ 1051–1061, 1081–1085, 1301–1461 (containing ERISA's vesting, funding, and insurance requirements); H.R. REP. NO. 93-533, at 214–15 (1973) (listing vesting and funding as two of the major issues Congress designed ERISA to protect).

[270] *See, e.g.*, Arnold, *supra* note 1 (detailing how shocked St. Clare's retirees were to learn about the financial status of the plan). Some employees of St. Clare's had been counting on their pension to be their entire source of income in retirement. *Id.* Therefore, when they found out about the status of the pension plan after they already retired and could not seek another source of income, the effects were particularly devastating. *See id.*

[271] *See id.* (illustrating that retirees who worked at St. Clare's for so long stayed in part because of the belief that they would have secure pensions).

[272] *See* 29 U.S.C. § 1144(b)(2)(B) (containing the ERISA preemption provision); O'Brien Hylton & Esquier, *supra* note 140, § 1.02(3)(a) (highlighting that states can avoid federal law preemption of any state laws they make regarding church plans).

litigants now have a slim chance of succeeding in federal court, and must rely on state-law claims and settlement agreements to hold their employers accountable to their pension obligations. To protect vulnerable retirees, Congress could act to amend the church plan exemption, or states can and should act on their own to regulate church plans. Absent such protective measures, countless current and future retirees are left exposed to financial instability.

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