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, through 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 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 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 taking advantage of their exemption from state law preemption to seek 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. It concludes with 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 that she had been relying on for retirement was gone.[1] Bradley had been a nurse for twenty-four years at St. Clare's Hospital of Schenectady, NY (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 she would have this source of income.[3] 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 based on the promise of receiving pension funds.[5] She then discovered that she had lost thirty percent of her anticipated pension, and was forced to sell her home because she was unable to keep up with mortgage payments.[6] In the end, over 600 participants in the St. Clare's pension plan lost their entire pensions, and a smaller group of workers over the age of sixty-two lost some of their pensions, after St. Clare's revealed that it would no longer be

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[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. Bradley learned that St. Clare's Hospital of Schenectady, New York (St. Clare's) would no longer be able to provide her with a pension in a letter. *Id.*

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

[3] *Id.* (emphasizing that Bradley chose to work for such a long time at this hospital, at least in part, because of the promise of the pension upon retirement). The St. Clare's pension plan was a defined benefit plan. *See* Complaint at 21, Hartshorne v. Roman Catholic Diocese of Albany, New York, No. 2019–1989 (N.Y. Sup. Ct. filed Sept. 10, 2019) (recounting St. Clare's promise to pay defined pension benefits to the plan beneficiaries). Employers generally determine defined benefit private pension plan distributions based off the number of years that employees work for them, thus giving employees incentive to stay longer. *See Types of Retirement Plans*, U.S. DEPT. LABOR, https://www.dol.gov/general/topic/retirement/typesofplans (clarifying the function of a defined benefit plan, in which beneficiaries receive a set amount per month in retirement, as opposed to a defined contribution plan, in which an employee receives a lump sum upon retirement).

[4] *See* Arnold, *supra* note 1 (profiling additional plan beneficiaries).

[5] *Id.*

[6] *Id.* 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 speaking about losing the home that she had planned to retire in, admitting that the loss took its toll on her. *Id.*

able to meet its pension obligations due to underfunding of the plan.[7] Soon thereafter, the AARP Foundation filed suit against the Roman Catholic Diocese of Albany on behalf of the former employees of St. Clare's in the New York Supreme Court, Schenectady County, alleging breach of contract, promissory estoppel, and breach of fiduciary duty.[8]

In many ways, the St. Clare's plan was similar to other defined benefit pension plans.[9] In a typical defined benefit pension plan, an employer invests money on behalf of participating employees over the course of their employment, and then distributes regular monthly payments to the participating employees following their retirements.[10] 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.[11] If a defined benefit plan terminates, a federal agency called the Pension Benefit Guaranty Corporation (PBGC) may continue to pay beneficiaries their monthly retirement benefits.[12]

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[7] Complaint, *supra* note 3, at 19–21. The Roman Catholic Diocese of Albany, NY was the original sponsor of St. Clare's, a not-for-profit corporation operated out of the 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 State's Not-For-Profit Corporation Laws. *Id.* at 9, 18; *see* N.Y. NOT-FOR-PROFIT CORP. LAW §§ 1101–15 (McKinney 2019) (outlining the procedures for a judicial dissolution of a non-profit corporation in New York State). It stated on its petition for dissolution that its only creditor was the St. Clare's Hospital Retirement Income 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 consistence with the Catholic value of workers' rights as an element of their fiduciary duty of obedience. *Id.* at 9–10.

[8] *Id.* at 4, 28; *see Docket: Employee Pensions and Benefits*, AARP FOUND., https://www.aarp.org/aarp-foundation/our-work/legal-advocacy/afl-docket-employee-benefits1.html?cq_ck=1450612867152 (providing information about the AARP Foundation's work on this case). The plaintiffs in the suit were all former employees of St. Clare's. Complaint, *supra* note 3, at 4.

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

[10] 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 1980's. *Id.* These plans work differently than defined benefit pension plans. *Id.* at 21–22. A defined contribution plan is more like a savings account, in which 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.

[11] *Id.* at 11. Sections 202 and 203 of the Employee Retirement Income Security Act of 1974 (ERISA) regulate the area of pension vesting, establishing 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. 29 U.S.C. §§ 1052–53 (2018).

[12] *See id.* § 1302 (establishing the Pension Benefit Guaranty Corporation (PBGC) within the Department of Labor).

"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.[13] Generally, employers that are churches or church-affiliated organizations do not need to comply with ERISA.[14] Because of its oversight by a Catholic Diocese, St. Clare's Hospital Retirement Income Plan (Plan) was just such a church plan.[15] As a result, many of its employees lost their entire pension plans and were left with no recourse in federal court, and no pension insurance protecting them when St. Clare's dissolved.[16] 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.[17]

Part I of this Note discusses the political and social history of ERISA.[18] Part I further examines the protections of ERISA as they apply to covered retirement plans and the church plan exemption.[19] It then explores the Supreme Court's 2017 decision in *Advocate Health Care*

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[13] *Id.* §§ 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).

[14] *Id.* § 1003(b)(2).

[15] Complaint, *supra* note 3, at 15. Around 1992, the 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 the Pension Benefit Guaranty Corporation (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 Diocese received $88,000 from the PBGC for past insurance premiums that they paid before the PLR. *Id.* at 15–16.

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

[17] 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. 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.* (quoting Dara Smith, a senior attorney with the AARP Foundation, who limited her estimate to Catholic-affiliated organizations).

[18] *See infra* notes 33–55 and accompanying text.

[19] *See infra* notes 56–111 and accompanying text.

Network v. Stapleton, in which the Court adopted a broad reading of the church plan exemption.[20] Part II outlines litigation post-*Stapleton*, narrowing in on several representative case studies.[21] These case studies demonstrate the possible recourses available to litigants, from attempting to dispute church plan status in federal court, to filing in state court, or settling outside of court altogether.[22] Finally, Part III argues that the options left for litigants post-*Stapleton* offer little to no protections against misuse of their relied-upon pensions.[23] Part III proposes to resolve this problem through Congressional legislative reform and state law legislation.[24]

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.[25] When enacting ERISA, however, Congress chose to exempt several different types of employee benefit plans from coverage, including church plans.[26] Debate about the definition of a church plan led to extensive litigation

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[20] *See infra* notes 112–136 and accompanying text.

[21] *See infra* notes 161–214 and accompanying text.

[22] *See infra* notes 161–214 and accompanying text.

[23] *See infra* notes 215–260 and accompanying text.

[24] *See infra* notes 215–260 and accompanying text.

[25] 29 U.S.C. §§ 1001 et. seq. (setting forth ERISA's statutory scheme). 22% 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 Table 2 (2018), https://www.bls.gov/ncs/ebs/benefits/2018/employee-benefits-in-the-united-states-march-2018.pdf. 55% of workers participate in a general workplace retirement plan, suggesting that many workers may not participate in a private pension plan, but may 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*, 2012 MONTHLY LAB. REV., 1, 3 (Dec. 2012) (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/ (describing the declining popularity of pension plans in the private sector).

[26] 29 U.S.C. §1003(b) (describing the different exemptions to ERISA).

and many administrative rulings, culminating in the Supreme Court's decision in *Stapleton.*[27] Because it is integral to this Note's discussion of the church plan exemption to explore the enactment of ERISA generally, and its intended role in the United States retirement system, 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.[28] Section B focuses on the church plan exemption, why is was enacted, how it functions, and how it has changed over time.[29] This section also discusses the role of Private Letter Rulings (PLRs) in the evolution of church plans.[30] Section C examines *Stapleton*, in which the Supreme Court adopted a broad interpretation of the definition of a church plan, and provides an overview of state law claims remaining for church plan litigants post-*Stapleton*.[31] Section C focuses on legislation in Rhode Island from 2019 that brings church plans under the annual reporting requirement of ERISA.[32]

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 scope.[33] The IRS initially indirectly

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[27] *See* 137 S. Ct. 1652, 1654 (2017) (resolving differences of interpretation at the district and circuit court level as to the definition of a church plan).

[28] *See infra* notes 33–74 and accompanying text.

[29] *See infra* notes 75–111 and accompanying text.

[30] *See infra* notes 75–111 and accompanying text.

[31] *See infra* notes 112–136 and accompanying text.

[32] *See infra* notes 137–160 and accompanying text.

[33] *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 (noting that the Internal Revenue Service (IRS) and Department of Labor (DOL) regulated pension plans under prior statutory frameworks).

regulated private pension plans through the Revenue Acts of 1921 and 1926, which offered tax incentives to plan sponsors.[34] 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.[35] For a plan to receive this special tax treatment, it had to meet tax qualification status by adhering to certain coverage and contribution requirements.[36] Under the Revenue Act of 1942, the IRS imposed stricter requirements for plan sponsors to receive tax qualification, including a disclosure requirement.[37] 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.[38]

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[34] Revenue Act of 1926, Pub. L. No. 69-20, 44 Stat. 9 (1926); Revenue Act of 1921, Pub. L. No. 67-98, 42 Stat. 227 (1921); *History of EBSA and ERISA*, *supra* note 33.

[35] § 219(f), 44 Stat. at 33–34; § 219(f), 42 Stat. at 247; *History of EBSA and ERISA*, *supra* note 34. 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. I.R.C. § 410(a). 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.

[36] *See History of EBSA and ERISA*, *supra* note 33 (describing how plans qualified for preferential tax treatment under the Revenue Acts of 1921 and 1926).

[37] Revenue Act of 1942, Pub. L. No. 753, 56 Stat. 798 (1942); *History of EBSA and ERISA*, *supra* note 33 (describing the Revenue Act of 1942).

[38] Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, § 5, 72 Stat. 997, 999 (1958). The Welfare and Pension Plans Disclosure Act (WPPDA) exempted churches from coverage because 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.* § 4(b)(3), 72 Stat. at 998–99; *see* I.R.C. § 501(c)(3) (allowing a federal tax exemption for certain nonprofit organizations). This is the only exemption that differs materially from the exemptions eventually included in ERISA. *Compare* Welfare and Pension Plans Disclosure Act § 4(b)(1)–(4), 72 Stat. at 998–99 (listing exemptions from coverage from the WPPDA) *with* 29 U.S.C. § 1003(b) (listing the comparable exemptions from ERISA 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 (1962); G.R. Blakey, *Welfare and Pension Plans Disclosure Act Amendments of 1962*, 38 NOTRE DAME L. REV. 263, 264, 269–85 (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. CORP. PENSION FUNDS & OTHER PRIVATE RET. & WELFARE PROGRAMS, PUBLIC POLICY AND PRIVATE PENSION PROGRAMS: A REPORT TO THE PRESIDENT ON PRIVATE EMPLOYEE RETIREMENT PLANS, APPENDIX C (1965) (containing President John F. Kennedy's memorandum requesting the creation of a committee). In 1962, President Kennedy organized the President's Committee on Corporate Pension Funds. *Id.* He noted that the amendments to the WPPDA had already created an enforcement mechanism and penalties for embezzlements of funds, so the report focused on how appropriate funding and vesting requirements could assist pensioners. *Id.*

Although Congress had several motivations for enacting ERISA, one was the infamous story of the Studebaker-Packard plant closing.[39] In 1963, the Studebaker-Packard Corporation (Studebaker-Packard) closed an automotive assembly plant in South Bend, Indiana.[40] At the time of the plant closing, the liabilities of the company's pension plan exceeded its assets by fifteen million dollars.[41] When United Auto Workers (UAW), a powerful labor union representing auto workers, had 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 became eligible to retire.[42] These limited vesting rights allowed the corporation to pay higher pensions to eligible employees because fewer employees would qualify.[43] The contract did not obligate Studebaker-Packard, however, to actually pay out these retirement benefits, just to make regular

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[39] *See* Michael Allen, *The Studebaker Incident and Its Influence on the Private Pension Plan Reform Movement*, *in* JOHN H. LANGBEIN ET AL., PENSION & EMP. BENEFIT L. 1, 78 (5th ed. 2010) (characterizing the Studebaker closing as the catalyzing event for federal regulation of employee benefits). Another event which spurred public interest in pension reform was the 1972 National Broadcasting Company (NBC) documentary "Pensions: The Broken Promise." *Id.* at 81; *Pensions: The Broken Promise* (NBC television broadcast, Sept. 12, 1972). 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.

[40] JAMES A. WOOTEN, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974: A POLITICAL HISTORY 51 (2004) (outlining in detail the political history of ERISA). 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, a recession and reduction in defense spending led to decreasing car sales. *Id.* at 53–54. Ford Motors responded by keeping production steady and lowering prices, and smaller companies could not compete. *Id.* at 54. Studebaker and Packard merged in 1954, forming the Studebaker-Packard Corporation (Studebaker-Packard), because of these outside pressures. *Id.* At the time of merger, however, both companies had already begun struggling financially. *Id.* at 56.

[41] 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) (discussing the role of the Studebaker-Packard plant closing in the eventual enactment of ERISA).

[42] WOOTEN, *supra* note 40, 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 terminate employment before then, the employee has no interest in the fund, and does not get 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 10, 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 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, *supra* note 40, at 54 (describing the vesting requirements negotiated by the UAW and Studebaker).

[43] WOOTEN, *supra* note 40, at 54–55.

contributions to the pension trust.[44] As 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.[45] In total, Studebaker-Packard laid off 2,900 employees with no vested rights to the pension plan, and an additional 4,000 employees with vested rights received only a portion of their accrued benefits.[46]

An oft-discussed aspect of the Studebaker incident was that employees had no recourse under existing federal and state law.[47] Studebaker-Packard had lawfully contracted away any obligation on their part to pay out retirement benefits, so they could not be liable for a state law claim of breach of contract.[48] The company also did not engage in blatantly fraudulent or criminal behavior.[49] Some scholars have concluded that the underfunding of the Studebaker-Packard plan was a predictable consequence of what were common pension management practices at the time.[50]

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[44] *Id.* at 53.

[45] *Id*. at 51. Notably, Studebaker-Packard had already terminated their 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.*

[46] Allen, *supra* note 39, 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 age of retirement. *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 about 15% of the value of their lifetime annuities in a lump sum payment. *Id.* The third group, about 2,900 employees, had no vested rights, and received nothing. *Id.*

[47] *See* JOHN H. LANGBEIN ET AL., PENSION & EMP. BENEFIT L. 83 (5th ed. 2010) (noting that even though the overall company was not insolvent, participants in the plan did not have any recourse); *see also* WOOTEN, *supra* note 40, 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 39, at 79 (noting further that the only lawsuit resulting from the closure was based on a company health program).

[48] *See* LANGBEIN, *supra* note 47, at 83 (noting that companies at the time of Studebaker often formulated the plan contract to place the risk of plan funding onto the participants, rather on the company, and that Studebaker-Packard had complied with the requirement of making contributions to the plan); WOOTEN, *supra* note 40, at 53 (describing the Studebaker plan contract).

[49] *See* WOOTEN, *supra* note 40, at 51 (noting specifically that Studebaker had not misused plan funds).

[50] *E.g.*, *id.*

The Studebaker-Packard incident became a catalyst for pension reform, particularly encouraging lawmakers to seriously consider termination insurance.[51] Although the UAW had previously been 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.[52] Union officials worked alongside Senator Vance Hartke of Indiana to introduce the Federal Reinsurance of Private Pensions Act in 1964.[53] 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.[54] 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; in 1974, the New York Times called these reform measures a "minor miracle."[55]

ERISA, in its broadest sense, creates uniform national rules governing employer-provided retirement and health plans, preempts state law, provides consistent remedies, and gives litigants access to the federal court system.[56] The statute begins with a statement of Congressional

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[51] Wooten, *supra* note 41, at 733. Termination insurance works by requiring employers with defined benefit pension plans to pay premiums into an insurance fund. *General FAQs About PBGC*, PENSION BENEFIT GUARANTY CORP., https://www.pbgc.gov/about/faq/pg/general-faqs-about-pbgc. 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, in which 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*, PENSION BENEFIT GUARANTEE CORP., https://www.pbgc.gov/about/pg/other/how-pension-plans-end (Apr. 27, 2017) (describing methods by which pension plans covered by ERISA may end).

[52] *See* Wooten, *supra* note 41, at 733 (quoting UAW leaders calling Studebaker a "focusing event" for pension reform). Union leaders had previously been 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 at all. *See* AM ENTERPRISE INST., THE DEBATE ON PRIVATE PENSIONS 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 would hurt an employer's competitiveness in the marketplace).

[53] Wooten, *supra* note 41, at 734–35; S. 3071, 88th Cong. (1964).

[54] *See id.* at 739 (emphasizing the role that the Studebaker closing had on Congressional and Executive considerations about employee pension protection).

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

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

findings and policy that emphasizes that employee benefit plans can affect the well-being and economic security of millions of Americans.[57] According to Congress, these plans do not just affect their beneficiaries; they also affect labor relations and the national public interest.[58] Therefore, Congress believed that it had a legitimate interest in imposing reporting requirements, setting standards of conduct, and ensuring remedies.[59]

ERISA contains four separate titles.[60] 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.[61] Specifically, ERISA requires plan sponsors to furnish plan participants with a summary plan description, to file annual reports with the Secretary of Labor, and to provide notice of modifications or changes to the plan.[62] 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 their accrued benefits.[63] It requires sponsors of employee benefit plans to have a written document naming at least one officer that is to be bound by fiduciary obligations under ERISA.[64] For single-employer defined benefit plans, ERISA imposes

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[57] *See* 29 U.S.C. § 1001(a) (asserting that the Commerce Clause of the United States Constitution empowers Congress to enact ERISA).

[58] *See id.* (noting further that pension plans affect the very revenue of the United States because of their preferential tax treatment, yet another strong Congressional interest in their regulation).

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

[60] MEDILL, *supra* note 10, at 29; *see also* CONG. RES. 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.

[61] 29 U.S.C. §§ 1021–1191c; MEDILL, *supra* note 10, at 29. In general, ERISA preempts any state law that deals with 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)).

[62] 29 U.S.C. §§ 1021–31.

[63] *Id.* at §§ 1051–61.

[64] *Id.* at §§ 1101–14.

minimum funding levels as calculated by the employer's minimum contribution amounts.[65] 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.[66] Finally, Title I stipulates that ERISA supersedes all state laws relating to employee benefit plans, except laws regulating insurance.[67]

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.[68] Title III establishes a dual authority to enforce Titles I and II between the Department of Labor (DOL) and the Internal Revenue Service (IRS), a bureau of the Department of Treasury.[69] Finally, Title IV addresses termination insurance, creating the Pension Benefit Guaranty Corporation (PBGC) to operate a new federal pension insurance program.[70]

Just a few years after ERISA's enactment, President Jimmy Carter submitted to Congress and the Senate the Reorganization Plan No. 4 of 1978, which was intended to make division of labor between the IRS and Department of Labor (DOL) more streamlined, and to avoid

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[65] *Id.* at § 1083.

[66] *Id.* at §§ 1131–51.

[67] *Id.* at §§ 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.* at § 1144(a). Then, the so-called "savings clause" allows state laws to regulate insurance, banking, and securities. *Id.* at § 1144(b)(2)(A); MEDILL, supra note 10, 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). *Id.* at § 1144(b)(2)(B); MEDILL, supra note 10, at 727. The preemption provision is notoriously complicated; Justice Blackmun once referred to it as "perhaps … not a model of legislative drafting." Metropolitan Life Ins. Co. v. Mass., 471 U.S. 724, 739 (1985) (determining whether a Massachusetts statute regulated insurance within the meaning of the ERISA preemption exception).

[68] 29 U.S.C. §§ 1011–2008; MEDILL, *supra* note 10, at 29.

[69] 29 U.S.C. §§ 3001–43; MEDILL, *supra* note 10, at 29.

[70] 29 U.S.C. §§ 1301–1461; MEDILL, *supra* note 10, at 29–30. Note that the Pension Benefit Guaranty Corporation (PBGC) does not insure defined contribution plans, profit-sharing plans, 401(k), 403(b), thrift/savings plans, and stock bonus plans. CONG. RES. SERV., *supra* note 60, at 56.

bureaucratic confusion.[71] Specifically, this Order gave the Department of the Treasury authority over regulating minimum standards of vesting of benefit rights, participation, and funding, with the DOL maintaining veto power.[72] The Department of Labor gained authority over fiduciary standards, such as enforcing a prohibition on certain transactions which would be a conflict of interest for the employer.[73] Both Departments now share enforcement power over ERISA's provisions.[74]

B. The Church Plan Exemption

The provisions of ERISA apply to the vast majority of pension plans, save a few exemptions, including church plans.[75] Several factors may have motivated Congress to include a church plan exemption in ERISA.[76] First, a 1973 Senate report suggested that government control or examination of church finances could constitute a violation of the Establishment Clause of the Constitution.[77] The Establishment Clause enshrines the principle of separation of church and state and forbids Congress from making laws with respect to establishment of

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[71] Reorg. Plan No. 4 of 1978, 43 Fed. Reg. 47,713, 47,713 (Aug. 10, 1978) (dividing authority for authority of ERISA); Statement on Congressional Action on Reorganization Plan No. 4 of 1978, 14 Weekly Comp. Pres. Doc. 1782 (Oct. 14, 1978) (containing a statement by President Jimmy Carter on the Reorganization Plan No. 4 of 1978).

[72] Reorg. Plan No. 4, 43 Fed. Reg. at 47,713.

[73] *Id.* at 47,713–14.

[74] *See* 29 U.S.C. §§ 3001–43 (delegating dual authority over ERISA); MEDILL, *supra* note 10, at 29 (delineating the roles of the DOL and IRS in ERISA enforcement).

[75] *See* 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); *id.* § 1002(33)(A) (defining a church plan).

[76] *See* Norman Stein, *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, EMP. BENEFITS COMMITTEE NEWSL. (A.B.A., Chicago, IL), Summer 2014 (offering several possible Congressional motivations behind the church plan exemption).

[77] *See* S. REP. NO. 93-383, at 81 (1973) (expressing concerns that looking into the records of a religious organization could compromise their privacy in pursuing their religious activities). The report also notes that if the church organization decides to elect to fall under ERISA coverage, they 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).

religion.[78] The report concluded that there could be an Establishment Clause issue the federal government had the right to review records regarding a church organization's pension fund.[79] At least one commentator has also posited that legislators may have thought churches had a moral incentive to keep their promises to employees, and were therefore more likely manage their pension plans responsibly.[80] Another potential factor contributing to Congress's decision to include a church exemption in ERISA would be the unlikelihood that a church in the 1970's would run into such serious financial trouble that it would fail to adequately fund its employee pensions.[81]

In its original form, the exemption for church plans only applied to plans "established and maintained by a church."[82] It also stipulated, as it still does today, that churches could choose to accept ERISA coverage and forego the exemption when electing a church plan.[83] Once a church makes this irrevocable decision, its plan is subject to some Internal Revenue Code and ERISA

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[78] U.S. CONST. amend. I; S. REP. NO. 93-383, at 81.

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

[80] Stein, *supra* note 76; *see also* 125 CONG. REC. 10,051, at 10,055 (May 7, 1979) (statement of Sen. Herman Talmadge) (entering into the record a letter from the Pension Fund of the Christian Church that emphasized their desire to follow Christian teachings in their economic practices).

[81] 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, from sexual abuse settlements to a reduction in religious participation). For example, even Catholic dioceses as large and well-established as the Archdiocese of Boston are filing for bankruptcy in the aftermath of making large damage payments to victims of sexual abuse by priests. *See id.* (commenting on bankruptcy filings by dioceses in the United States).

[82] 29 U.S.C. § 1002(33)(A) (1976); Kaplan v. St. Peter's Healthcare Sys., 810 F.3d 175, 179 (2015). In the original 1974 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.

[83] 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 80 (noting that churches could elect ERISA coverage under the original formulation of the statute as well).

provisions.[84] In a non-electing church plan, the church is exempt from Title I provisions, such as minimum vesting and disclosure requirements.[85] Further, PBGC termination insurance under Title IV does not cover church plans, unless they have elected coverage.[86] 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.[87] Additionally, a grandfather provision permitted plans covering employees of church agencies to be exempt until 1982.[88] Churches, worried by the sunset provision for employees of church-affiliated agencies, began to lobby Congress for an extension of this provision.[89] Twenty-five churches formed a coalition called the Church Alliance for Clarification of ERISA.[90] 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 different employees.[91] Further, in 1977, the IRS and Department

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[84] *See* I.R.C. § 410(d) (noting that once a church plan makes the election, the provisions in Title I or ERISA apply). The church plans 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. LABOR & EMP. L. 231, 250 (2016) (citing this fact as support for the broad interpretation of the definition of a church plan, as the narrow interpretation would force many church plans into ERISA coverage without the ability to exercise the choice to elect such coverage); *see* 29 U.S.C. § 1003(b) (containing the various exemptions from ERISA coverage).

[85] 29 U.S.C. § 1003(b)(2).

[86] *Id.* § 1321(b)(3).

[87] Stein, *supra* note 80.

[88] *Id.* Therefore, after 1982, church plans could not include non-church employees, and plans maintained but not church-affiliated agencies but not created by a church would not be eligible for the exemption. *Id.*

[89] 125 CONG. REC. 10,051, at 10,054–58 (statement of Sen. Herman 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 while businesses receive funds from other sources, churches rely upon tithes for their income, distinguishing church plans from other pension plans. *Id.*

[90] Stein, *supra* note 76; *see also History*, CHURCH ALLIANCE, https://church-alliance.org/history (discussing the organization's origins as the Church Alliance for Clarification of ERISA in 1975). This organization still exists today, and lists on their website several more recent pieces of legislation they have championed, such as the Church Plan Parity and Entanglement Prevention Act of 1999, which then-Senator for Alabama Jeffrey Sessions sponsored. Pub. L. No. 106-244, 114 Stat. 499 (1999) (codified at 29 U.S.C. 1144(a)); *History*, CHURCH ALLIANCE https://church-alliance.org/history.

[91] Stein, *supra* note 76.

of Treasury proposed regulations to the Internal Revenue Code that would make religious organizations "churches" only if they were an integral part of a church and carried out the functions of a church.[92]

In response to such lobbying, Congress amended ERISA's definition of a church plan in 1980 as part of the Multiemployer Pension Plan Amendments Act (MPPAA).[93] This Act amended the definition of a church plan to address whether these plans include church-affiliated agencies.[94] Following the enactment of the MPPAA, subsection (A) of the church plan definition states that church plans includes those plans that are both established and maintained by a tax-exempt church.[95] 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.[96]

The interplay between these two subsections spurred debate in the courts as to whether a plan maintained by a church-affiliated organization can be a church plan even if a church did not

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[92] Prop. Treas. Reg. § 1.414(e)-1, 42 Fed. Reg. 18,621, 18,621 (Apr. 8, 1977).

[93] *See* Multiemployer Pension Plan Amendments Act, Pub. L. No. 96-364 § 407(a), 96-364 Stat. 1303-04 (codified as amended at 29 U.S.C. § 1002(33)).

[94] *Id.* 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. §§ 1002(33)(A), (C)(i).

[95] *Id.* at § 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.*

[96] *Id.* at § 1002(33)(C). In her majority opinion in *Stapleton*, 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.

establish the plan.[97] 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.[98] On the other hand, circuit courts that adopted a narrow interpretation held that subsection (A) read alone suggests that a church must have established a plan maintained by a church-affiliated organization to qualify as a church plan.[99]

Historically, the IRS interpreted this provision in its Private Letter Ruling (PLR) process, by which the IRS consistently adopted the broad interpretation of the church plan definition.[100] PLRs are statements that the IRS issues to taxpayers upon request that applies tax law to the taxpayer's purported situation.[101] 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.[102] Furthermore, the DOL has also consistently adopted a broad interpretation of the definition of a church plan through its process of issuing

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[97] Herman, *supra* note 84, at 232 (detailing the disagreements about the proper interpretation of a church plan in the district and circuit courts); *see* 29 U.S.C. § 1002(33)(A), (C)(i).

[98] *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, 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).

[99] *See, e.g.*, Kaplan, 810 F.3d at 177 (adopting the narrow interpretation of the church plan definition); Herman, *supra* note 84, at 232, 235 (explaining circuit court interpretations of subsection (A)).

[100] *See* Stein, *supra* note 76 (describing the IRS's broad interpretation adopted in its PLR's); Emily Morrison, Note, *Revisiting ERISA's Church Plan Exemption After Advocate Health Care Network v. Stapleton*, 111 N.W. 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).

[101] *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, IRS, (Oct. 24, 2019), https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts. Although PLRs are personalized for the requesting taxpayer, they are generally available for public viewing. 26 U.S.C. § 6110(a) (2018). Courts do not consider a PLR to be binding precedent on any party other than the taxpayer to which it was issued. Herman, *supra* note 84, at 251–52.

[102] I.R.S. Priv. Ltr. Rul. 08-16-031, 6 (Jan. 25, 2008). The IRS in this PLR offered little insight into their reasoning for adopting the broad interpretation. *See id.* (lacking explanation of the reasoning behind its interpretation). It simply wrote that either a church must have established and maintained a church plan, or a church affiliated organization must administer it. *Id.* The IRS defines church-affiliated organizations as organizations described in I.R.C. § 414(e)(3)(A)). *Id.*

advisory opinions.[103] For example, in a 2004 advisory opinion, it stated that a plan established and also maintained by a church affiliated non-profit corporation fell within the statutory definition of a church plan.[104] DOL administrative rulings often additionally turned on whether the IRS had chosen to issue a PLR.[105]

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.[106] These employers could seek a refund of the premiums they had paid to the PBGC through a written request.[107] The IRS purportedly refunded nearly $18 million in premiums between 1999 and 2007 to eighty-six employers seeking exemption.[108] Under the era of PLR interpretation of church plans, employers could receive an exemption determination letter, and not notify participants, even if they had originally been told that the plan was subject to ERISA and insured by the PBGC.[109]

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[103] Herman, *supra* note 84, at 251. The DOL issues individualized advisory letters to individuals or organizations about their status under ERISA, or to counsel them as to what the effects of a course of action may be. *Filing Requests for ERISA Advisory Opinions: ERISA Procedure 76-1*, U.S. DEPT. LABOR, https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/filing-requests-for-erisa-aos. These notices only apply to the individual or organization who requested them. *Id.*

[104] 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. This advisory letter responded 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 found the plan to be a church plan. *Id.*

[105] *See, e.g.*, Advisory Opinion, *supra* note 104 (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. PENSION BENEFIT GUAR. CORP., QUESTIONS TO THE PBGC AND SUMMARY OF THEIR RESPONSES 25 (2011).

[106] *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 then explaining how they could go about requesting a refund of their premiums).

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

[108] Ellen Schultz, *IRS Nears Action on Church Pensions*, WALL ST. J. (June 5, 2010), https://www.wsj.com/articles/SB10001424052748704080104575286960632243300.

[109] *See* Stein, *supra* note 83 (noting that IRS 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 the determination).

In 2009, the IRS announced a moratorium on new church plan PLRs.[110] Prior to such moratorium, the IRS consistently determined that a church plan did not need to be established by a church, and could be maintained by an administrative committee rather than the employer.[111]

C. Advocate Healthcare Network v. Stapleton

Following the IRS's mortarium on church plan PLRs, there was a rise in church plan litigation, ultimately culminating in the 2017 Supreme Court case *Stapleton*.[112] Before the Supreme Court's decision, federal district courts alternated between the narrow and the broad interpretation of church plan in over 30 lawsuits brought between 2013 and 2016.[113]

The Third, Seventh, and Ninth Circuits all addressed the church plan definition issue, and all chose to adopt the narrow interpretation of the definition of a church plan: 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.[114] In 2015, in *Kaplan v. St. Peter's Healthcare System*, the Third Circuit affirmed a district court's denial of a motion to dismiss for

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[110] *Id.* (attributing this moratorium on new PLRs to the IRS having 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.

[111] *See supra* notes 102, 104 and accompanying text (describing a representative IRS PLR and DOL advisory opinion).

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

[113] Petition for Writ of Certiorari at 13–14, 14 n.8, Advocate Health Care Network v. Stapleton, 137 S. Ct. 546, 546 (2016) (No. 16–74).

[114] *See* 29 U.S.C. §§ 1003(b)(2), 1002(33)(A), (C)(i) (establishing the definition of a church plan and the exemption of such plans from ERISA); Rollins v. Dignity Health, 830 F.3d 900, 903 (9th Cir. 2016) (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) (same); Kaplan, 810 F.3d at 177 (same).

the defendants.[115] The court held that the plain language of § 1002(33)(A) and (C) mandates a narrow interpretation, in which (A) is a threshold, or a gatekeeper, for (C).[116] The Seventh Circuit came to the same conclusion in *Stapleton v. Advocate Health Care Network*, again looking to the plain meaning of the statute, emphasizing that the word "includes" in subsection (C) only modifies who may maintain a church plan, and has no effect on the requirement in (A) that a church itself must establish a church plan.[117] Finally, the Ninth Circuit came to the same conclusion in *Rollins v. Dignity Health*, beginning with an analysis of the plain language of the statute, but also considering the legislative history of this provision.[118] 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.[119]

After years of debate among circuit and district courts, in 2017, the Supreme Court weighed in on the definition of church plan in *Stapleton*.[120] In this case, the employers from the three circuit court decisions appealed from the adverse circuit decisions that denied them inclusion in

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[115] 810 F.3d at 187. St. Peter's 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 had failed to provide necessary plan information as required by ERISA, and that the plan had been underfunded 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.*

[116] *Id.* at 181 (citing Kaplan v. St. Peter's Healthcare Sys., 2014 WL 1284854, at *5 (D. N.J. Mar. 31, 2014).

[117] 817 F.3d at 524–25. A merger between Lutheran General HealthSystem 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 (2018) (describing the phenomenon of the contractual creation of religious affiliations in the healthcare industry).

[118] 830 F.3d at 905–08. The Ninth Circuit affirmed a grant of summary judgment for the petitioners. *Id.* at 903.

[119] *Id.* at 907–08.

[120] 137 S. Ct. at 1656–57.

the church plan exemption.[121] Justice Kagan authored the unanimous opinion of the Court, while Justice Sotomayor filed a concurrence.[122]

In the majority opinion, the Supreme Court departed from the lower circuit courts and embraced the broad interpretation of a church plan; the Court held that a church plan need not have been established by a church to qualify for the ERISA exemption.[123] The Court began by emphasizing that the amended version of § 1002(33)(C)(i) *expanded* which plans could qualify for the church plan exemption.[124] 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."[125] As Justice Kagan put it succinctly, "[j]ust so."[126] The Court pointed out that, had Congress intended to merely qualify the requirement of subsection (A) that a church organization maintain the plan, it could have easily made that clear.[127]

The petitioners had offered a hypothetical scenario in their brief that the court thought to be persuasive; theoretically, the government could offer a free insurance program to those who are disabled and a veteran, with an amendment that a person who is disabled and a veteran comprises of someone in the National Guard.[128] Then, a non-disabled member of the National

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[121] Reply Brief for Petitioners at 1–2, Advocate Health Care Network v. Stapleton, 137 S. Ct. 546 (Nos. 16-74, 16-86, 16-258).

[122] *Stapleton*, 137 S. Ct. at 1655. Justice Gorsuch did not take part in the decision. *Id.*

[123] *Id.* at 1663.

[124] *Id.* at 1656.

[125] *Id.* at 1659 (citing Overall v. Ascension, 23 F. Supp. 3d 816, 828 (E.D. Mich. 2014)).

[126] *Id.*

[127] *Id.* at 1659. The majority opinion cites *Lozano v. Montoya Alvarez*, in which the Court held that if a legislature does not use language which would be a clear substitute, then courts can infer that they did not intend the substitute meaning. *Id.* (citing 572 U.S. 1, 16 (2014) (resolving a dispute regarding the statute of limitations to petition for the return of an abducted child under the Hague Convention).

[128] *Stapleton*, 137 S. Ct. at 1660 (citing Brief for Respondents at 22, Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (Nos. 16-74, 16-86, 16-258)). This hypothetical scenario first appeared during oral argument before the Third Circuit in *Kaplan*, and the circuit court cited the hypothetical scenario as persuasive in their decision. 810 F.3d at 181.

Guard would likely not be eligible.[129] 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.[130] The majority distinguishes this hypothetical from the amendments to the church plan definition, as in the hypothetical scenario, the two categories of "disabled" and "a veteran" are highly dissimilar, whereas plans "established" and "maintained" by a church are not.[131] Further, the Court believed that the background knowledge in the hypothetical situation suggests 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.[132]

Justice Sotomayor filed a concurrence because she agreed with the statutory interpretation of the majority, but felt the outcome may have broad unfortunate implications.[133] She emphasized that the current size and scope of large religiously-affiliated hospital organizations is different than the landscape at the time of the enactment of ERISA.[134] Further, the scant legislative history of the exemption and its amendment worried Justice Sotomayor, who emphasized the impact of a church plan exemption that includes plans neither established nor maintained by an actual church.[135] She ended her concurrence by noting, although the plain language of the statute requires the broad interpretation of the definition of a church plan, the

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[129] *Stapleton*, 137 S. Ct. at 1660–61.

[130] Brief for Respondents, *supra* note 128, at 41.

[131] *Stapleton*, 137 S. Ct. at 1660–61.

[132] *Id.* The Court also proposes 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 still have enlisted to get the insurance, not just served in the Armed Forces or National Guard. *Id.* This hypothetical scenario, the Court concludes, is more akin to the language of the church plan exemption definition. *Id.*

[133] *Id.* at 1663.

[134] *Id.*

[135] *Id.*

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.[136]

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*, participants and beneficiaries of these plans have faced a higher bar to challenging the status of church plans in federal court.[137] 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.[138] 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).[139] Subsection 1 briefly examines the elements of each of these claims and their viability for church plan litigants.[140] 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.[141]

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[136] *Id.* at 1663–64.

[137] *See* Stapleton, 137 S. Ct. 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 it).

[138] *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* N.Y.U. REV. EMP. BENEFITS & EXECUTIVE COMPENSATION §§ 1.01, 1.06(2)(a) (2018) (advocating for state law claims such as these for church plan litigants).

[139] *Id.* at § 1.06(2)(a).

[140] *See infra* notes 142–154 and accompanying text.

[141] *See infra* notes 155–160 and accompanying text.

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.[142] Although it varies by jurisdiction, the traditional elements of a claim of breach of contract are the formation of a valid contract, a breach of the promise, and an injury as a result.[143] In the case of pension plans, typically the employer promises the employee in an employment contract that it will maintain the employee pension fund in exchange for the employee's service, and pay out those funds to the employee upon their retirement.[144]

Breach of contract can rise to the level of tortious breach if it involves bad faith.[145] About half of all states recognize this cause of action.[146] 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.[147] Because this cause of action is a tort, more expansive types of damages—including punitive damages—are available.[148]

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[142] *See* Hylton, *supra* note 138, at §1.06(2)(a) (focusing on the fact that church plan employers likely would not have plausible defenses against a breach of contract claim).

[143] *See, e.g.*, U.S. Nonwovens Corp. v. Pack Line Corp., 48 Misc. 3d 211, 215 (N.Y. Sup. Ct. 2015) (outlining the requirements for a cause of action of breach of contract under New York State law).

[144] *See* Hylton, *supra* note 138, at §1.06(2)(a) (describing how employers routinely promise that they will pay a fixed sum to an employee after they retire, and then break that promise).

[145] *Id.* at § 1.06(2)(b)(i); *see* 34 AM. JUR. TRIALS *Bad Faith Tort Remedy for Breach of Contract* § 1 (2020) (noting that because there is a bad faith requirement for tortious breach, there is often an implied covenant of good faith involved in the contract).

[146] Hylton, *supra* note 138, at § 1.06(2)(b)(i).

[147] *See* RESTATEMENT (SECOND) OF TORTS § 1, 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. §§ 1101–14. Church plans are, however, exempt from these provisions of ERISA, meaning that they are subject to traditional common law fiduciary laws. *See* 29 U.S.C. § 1003(b)(2) (containing the church plan exemption); *id.* § 1144(a) (preempting state law except in the case of plans exempt under § 1003(b)).

[148] Hylton, *supra* note 138, at § 1.06(2)(b)(i).

Another potential cause of action for church plan litigants is fraud, the elements of which are misrepresentation, scienter, intent, reliance, and resulting injury.[149] 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.[150] A wide range of damages are available in the context of fraud, including punitive damages.[151]

Finally, for a claim of IIED, litigants generally need to demonstrate extreme and outrageous conduct, a level of intent, and injury as a result.[152] Scholars have regarded this cause of action is the most far-fetched for church plan litigants because litigants must show serious lack of regard for the interests of plan participants.[153] It may nevertheless be viable for those who can demonstrate that the sponsor of their plan had the requisite intent and that their conduct was extreme.[154]

2. Emerging State Law Legislation

Aside from these state common law remedies, states can also create statutes that directly speak to church plans.[155] ERISA exempts church plans not only from the provisions in Title I, but

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[149] RESTATEMENT (SECOND) OF TORTS § 525 (1977); Hylton, *supra* note 138, at § 1.06(2)(b)(ii); *see, e.g.*, Foundation Capital Resources, Inc. v. Prayer Tabernacle Church of Love, Inc., 2018 WL 4697281, at *7 (D. Conn. 2018) (outlining the elements of a claim of fraud).

[150] Hylton, *supra* note 138, at § 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, with the promise of a full pension).

[151] *Id*.

[152] RESTATEMENT (SECOND) OF TORTS § 46 (AM. LAW INST. 1977).

[153] Hylton, *supra* note 138, at § 1.06(2)(b)(iii).

[154] *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).

[155] *See* 29 U.S.C. § 1144(a) (containing the ERISA provision that permit states to legislate regarding exempted plans).

from state law preemption, so states have an open door to create legislation that places affirmative duties on church plans sponsors.[156] At least one state has already tried.[157] In July 2019, Rhode Island enacted a law mandating that all defined benefit plans exempt from ERISA (except governmental plans) must follow a specific disclosure requirement of ERISA, requiring employers to give employees an annual report about the plan fund.[158] 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.[159] 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.[160]

II. POST-*STAPLETON* LITIGATION

In the years since the Supreme Court's decision in *Advocate Health Care Network v. Stapleton* in 2017, church plan pensioners have continued to face underfunding of their pension

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[156] *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. § 1023(a)(1)(A). Church plan sponsors, however, are exempt from these requirements. *Id.* § 1003(b)(2).

[157] *See* 28 R.I. GEN. LAWS § 7.1-4 (2019) (codifying legislation encompassing ERISA exempt church plans). This recent act in Rhode Island was the result of a church plan sponsored by a hospital in Providence, St. Joseph Health Services of Rhode Island, collapsing. *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 (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. GRP. (July 8, 2019) (announcing the new Rhode Island law, and attributing it to a hospital pension plan collapse in Providence), https://www.groom.com/resources/rhode-island-enacts-law-to-require-church-defined-benefit-plans-with-at-least-200-members-to-provide-financial-information/.

[158] An Act Relating to Labor and Labor Relations--Non-ERISA Covered Pension Plans, 2019 R.I. Pub. Laws, ch. 52, § 1 (codified at 28 R.I. GEN. LAWS § 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. § 1024(b)(3) (relating to annual plan reporting). This provision of ERISA mandates that administrators of plans must give a copy of statements and schedules to summarize their annual report to each participant in the plans each year. 29 U.S.C. § 1024(b)(3).

[159] *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 (framing this legislation as an example of a state court tactic for church plans).

[160] Press Release, Office of General Treasurer Seth Magaziner, 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. The Rhode Island House Majority Leader also characterized this law as a common-sense piece of legislation protecting workers in the state. *Id.*

plans, and a lack of disclosure about the financial health of the plan fund from their employers, all while facing additional difficulty maintaining standing in federal court.[161] Part II of this Note examines just a few examples of litigation post-*Stapleton*, with an emphasis on litigation strategies, new and unresolved issues, and success rates.[162] 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.[163]

A. 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.[164] The Franciscan Sisters of the Poor established St. Elizabeth in 1861.[165] In 2016, several former nurses who had 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).[166] Unlike other church plan cases, the employer did not actually deny any employees of their pension benefits.[167] Rather, the

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[161] *See* 137 S. Ct. 1652, 1656 (2017) (adopting the broad interpretation of the definition of a church plan).

[162] *See infra* notes 164–214 and accompanying text.

[163] *See infra* notes 164–214 and accompanying text.

[164] Amended Complaint at 5, Boden v. St. Elizabeth Med. Ctr., Inc., 404 F. Supp. 3d 1076 (2019) (No. 2:16-cv-00049).

[165] Boden v. St. Elizabeth Med. Ctr., Inc., 404 F. Supp. 3d 1076, 1083 (E.D. Ky. 2019).

[166] Amended Complaint, *supra* note 164, 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 based off their length of service and income while working. *See id.* at 2 (describing the terms of the St. Elizabeth plan).

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

participants sued because St. Elizabeth had underfunded the plan by more than $166 million.[168] Prior to *Stapleton*, the plaintiffs filed suit in the United States District Court of the Eastern District of Kentucky in 2016, claiming federal jurisdiction under the basis that St. Elizabeth did not have an ERISA-exempt church plan.[169] In their original complaint, the plaintiffs argued that the plan was neither established nor maintained by a church, but rather by St. Elizabeth's, a church-affiliated health care organization.[170] The district court granted a stay until the Supreme Court decided *Stapleton*, after which the plaintiffs filed an amended complaint.[171] They argued that the plan, even under *Stapleton*'s broad definition, was not a church plan, because it was maintained by an organization whose principal purpose was the delivery of health care, not the administration of pension funds.[172]

This argument did not persuade the district court.[173] The Supreme Court in *Stapleton* had 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

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[168] *Id.* (detailing the plaintiffs' claims, which seek to compel St. Elizabeth to comply with ERISA's funding, fiduciary and notice requirement and pay damages, or, if the plan is found to not be subject to ERISA, breach of contract and breach of duty under state law). The Supreme Court in the 2019-2020 session will hear the case of *United States Bank, National Association v. Thole*. 873 F.3d 617 (8th Cir. 2017), *cert. granted*, (U.S. June 28, 2019) (No. 17-1712). In that case, the question is whether plaintiffs have standing to sue in ERISA cases if they have not actually lost their retirement income, although in that case, the plan was adequately funded, and the issue was breach of fiduciary duty. *Id.* at 621–22.

[169] Complaint at 1–2, Boden v. St. Elizabeth Med. Ctr., 404 F. Supp. 3d 1076 (2019) (No. 2:16-cv-00049-DLB-CJS).

[170] *Id.* at 2.

[171] *Boden*, 404 F. Supp. 3d at 1080. In fact, the defendants in *Boden v. St. Elizabeth Medical Center* filed an amicus brief to the Supreme Court in *Stapleton* in support of the petitioners. Brief of Amicus Curae Saint Elizabeth Medical Center, Inc. in Support of Petitioners at 7, Advocate Health Care Network v. Stapleton, 137 S. Ct. 1654 (2017) (Nos. 16-74, 16-86, 16-268), 2017 U.S. S. Ct. Briefs LEXIS 260, at *9–10. They 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 who had relied upon IRS analyses of ERISA. *Id.* at 7–9.

[172] Amended Complaint, *supra* note 164, at 2.

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

purpose organization.[174] The district court in Boden adopted a three-part test, to determine whether a plan maintained by a principal purpose organization met the *Stapleton* church plan requirements: First, is the entity in question tax-exempt under I.R.C. § 501(c)(3) and affiliated with a church?[175] If so, does an organization—with the principal purpose of administering the plan—maintain the entity's plan?[176] Finally, is the principal purpose organization affiliated with a church?[177]

As a threshold matter, the district court found that St. Elizabeth's satisfied the first prong of the test, as a tax-exempt non-profit with sufficient ties to the Catholic Church.[178] Next, the court addressed the second prong.[179] The court decided that the Committee counted as an "organization," although it is comprised of internal committees.[180] It found that the Committee indeed "maintained" the plan within the meaning of ERISA's church plan definition.[181] 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.[182] Instead, the court concluded that

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[174] Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1002(33)(C)(i) (setting forth the requirement of a principal purpose organization); *Stapleton*, 137 S. Ct. at 1656 (interpreting this provision of ERISA).

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

[176] *Id.*

[177] *Id.*

[178] *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.

[179] *See id.* at 1084–93 (determining that the Committee was a principal purpose organization).

[180] *Id.* at 1084–86. Because ERISA does not define the term "organization," the court looked to the ordinary meaning, in the form of 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 separated from other entities. *Id.* Finally, 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.

[181] *Id.* at 1086–92.

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

"maintenance" included all the actions necessary to continue the plan.[183] The court found that the resolution creating the Committee tasked it with doing more than administration, which is simply the steps taken to run the plan.[184] Finally, the court determined that the Committee was associated with a church.[185] Accordingly, the court held that the Committee was a principal purpose organization within the meaning of the church plan exemption.[186]

In the end, the court re-affirmed that St. Elizabeth's pension plan was an ERISA-exempt church plan.[187] This conclusion was largely based on the broad interpretation of a church plan adopted in *Stapleton*.[188] The court dismissed the plaintiff's claims, and as a result, waived jurisdiction over any additional claims, noting that the plaintiffs could re-file in state court if they chose.[189]

B. Owens v. St. Anthony Medical Center, Inc.

In 2012, St. Anthony Medical Center (Center) notified employees that it was terminating its employee pension plan, and although the trust funding the plan would continue to pay

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

[184] *Id.* at 1090.

[185] *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.* Because St. Elizabeth's is associated with a church, and the Committee is a subset of St. Elizabeth's, the Committee is associated with a church as well. *Id.*

[186] *Id.*

[187] *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 (reporting on St. Elizabeth's successful motion for partial summary judgment).

[188] *See Boden*, 404 F. Supp. 3d at 1081–82 (establishing Stapleton's interpretation as the framework by which it analyzed St. Elizabeth's plan).

[189] *Id.* at 1095.

distributions, it would reduce benefits by up to forty percent for certain participants.[190] The Center is affiliated with the Franciscan Sisters of Chicago Service Corporation, a nonprofit corporation that runs assisted living and hospice facilities through a network of affiliates.[191] In or around 1989, the IRS had sent the Center a PLR verifying their church plan status, a determination which authorized the Center to stop complying with ERISA's disclosure, insurance, and funding requirements.[192] In response to the plan termination, a group of former employees filed suit in 2014 against the Center in the United States District Court for the Northern District of Illinois.[193] The plaintiffs alleged that not only was the plan not a church plan under ERISA, but also other violations under ERISA, including breach of fiduciary duty.[194] The defendant employer filed a motion to dismiss, which the court suspended pending resolution of *Stapleton*.[195]

In 2018, the court reconsidered a new motion to dismiss by the defendants, with additional state law claims.[196] This case was short-lived, however; in 2019, the parties reportedly settled for

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

[191] *Id.* at *1.

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

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

[194] *See id.* at *2 (outlining the plaintiffs' various claims). The court denied the plaintiff's first application from class certification in 2014, as the Supreme Court announced it would rule on the *Stapleton* case. Danielle Nichole Smith, *Indiana Hospital Plan Participants Seek Cert. in Benefits Suit*, LAW360 (Nov. 1, 2018), https://www.law360.com/articles/1098213.

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

[196] *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 (summarizing the decision to grant in part and dismiss in part the defendant's motion to dismiss in *Owens II*). The court dismissed the claim for unjust enrichment because the plaintiffs argued alternatively for breach of contract, and 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 properly do. *Id.*

four million dollars.[197] According to the plaintiffs, one million dollars of the settlement went to attorney's fees and incentive awards for the named pensioners, and the other three million dollars went to the 1,900-member class of plan participants.[198]

C. St. Clare's Hospital

Although the case of St. Clare's in Schenectady, NY has not yet gone to trial, the plaintiff's complaint is one of the newest and most notable examples of church plan litigation post-*Stapleton*.[199] The complaint in this case raises three state law claims under New York State law: breach of contract, promissory estoppel, and breach of fiduciary duty.[200] The plaintiffs do not dispute that the plan at issue is a church plan, nor that the Diocese of Albany manages St. Clare's.[201] In fact, the plaintiffs emphasize the involvement of the Diocese in the management of St. Clare's, as it helps establish that the Diocese is the party responsible for the mismanagement of funds.[202]

The plaintiffs begin their complaint by noting that New York law considers retirement plans to be wage supplements, and therefore, if an employer does not make payment under a

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[197] 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.

[198] *Id.*

[199] See Complaint, *supra* note 3, at 4 (commencing the lawsuit by participants in the St. Clare's church plan against the Diocese); *see* Arnold, *supra* note 1 (reporting on the St. Clare's lawsuit for NPR).

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

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

[202] *See id.* at 6–8 (listing the defendants in the case, emphasizing the involvement of the Diocese of Albany in the management of St. Clare's). 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 Roman Catholic Diocese of Albany as a liaison to local Catholic hospitals. *Id.* at 8.

retirement plan, a court can find it guilty of a misdemeanor.[203] Therefore, the employees could sue for these benefits in state court.[204]

The plaintiffs first raised a claim of breach of contract.[205] To establish a breach of contract under the common law of New York State, a plaintiff must demonstrate that it formed a contract with the defendant, it performed its duties under the contract but the defendant failed to perform, and an injury resulted from such failure to perform.[206] According to the plaintiffs, the defendants breached their contracts with the plaintiffs because they had represented in the plan documents and the Summary Plan Description that they would fund the plan, not change the plan in a way that would negatively affect benefits, and continue to abide by ERISA even as the plan was exempt from coverage.[207]

The plaintiffs then asserted a related claim for promissory estoppel.[208] To establish a promissory estoppel claim under New York State common law, a plaintiff must show that it did not have a contract with the defendant, but nevertheless, the plaintiff reasonably relied to its detriment on a clear promise that the defendant made to them.[209] The plaintiffs emphasized that they had made decisions about their employment with the expectation that after five years of

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[203] Complaint, *supra* note 3, at 11; *see* N.Y. LAB. LAW § 198-c (McKinney 2019).

[204] *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 them to be "wage supplements").

[205] *Id.*

[206] *Id.* (citing Clearmont Prop., LLC v. Eisner, 872 N.Y.S.2d 725, 728 (N.Y. App. Div. 2009)).

[207] *Id.* at 21–22.

[208] *Id.* at 22.

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

service, their right to pension benefits would vest, a fact that St. Clare's should have reasonably anticipated.[210]

Finally, the plaintiffs put forth a claim for breach of fiduciary duty.[211] 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 special relationships.[212] To establish a breach of fiduciary duty, one must show that this special relationship of trust existed for the benefit of the plaintiff, that a duty as part of that trust was breached, and that the plaintiff suffered injury as a result.[213] The plaintiffs allege that St. Clare's breached their fiduciary duties, specifically their duty of prudence in their management of the plan, and their duty of disclosure.[214]

III. Church Plan Reform: A Call and A Response

Church plan litigation in the wake *of Advocate Health Care Network v. Stapleton* demonstrates that the exemption exposes participants and beneficiaries of church plans to tremendous risk, with little recourse in federal or state courts.[215] This Part focuses on a path forward.[216] Section A is a call for reform.[217] It argues that the church plan exemption currently undermines the statutory intent of ERISA, the justification for the exemption has become

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[210] *Id.* at 22–23.

[211] *Id.* at 24.

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

[213] *Id.* (citing Northeast Gen. Corp. v. Wellington Adv., 624 N.E.2d 129, 129–31 (N.Y. 1993)).

[214] *Id.* at 24–26.

[215] *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 lacked standing in federal court).

[216] *See infra* notes 220–260 and accompanying text.

[217] *See infra* notes 220–240 and accompanying text.

irrelevant, and competing incentives justify change.[218] Section B focuses on potential solutions and reforms, emphasizing the efficacy of state statutory law protections for church plan participants.[219]

A. The Call

The church plan exemption undermines the purpose behind ERISA and Congressional intent.[220] In the declaration of policy at the start of ERISA, Congress justified its action by citing its powers under the Commerce Clause.[221] And, indeed, the welfare of the United States pension system is a matter of national concern, affecting the security that Americans feel they may retire with dignity.[222] Indeed, the church plan exemption itself has an impact on the national retirement system, as retirement plans are used by companies to compete for workers as part of a comprehensive benefit package.[223] Therefore, if one organization complies with ERISA, and must pay PBGC premiums, hire additional plan administrators to fulfill ERISA's reporting requirements, and meet ERISA's vesting and funding obligations, they are at a disadvantage as

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[218] *See infra* notes 220–240 and accompanying text.

[219] *See infra* notes 241–260 and accompanying text.

[220] *See* 29 U.S.C. § 1003(b)(2) (containing the church plan exemption); Stein, *supra* note 76 (describing the legislative intent behind the church plan exemption).

[221] 29 U.S.C. § 1001(a); *see* U.S. CONST. art. I, § 8, cl. 3 (setting forth Congress's right to 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 regulation of retirement benefits in the United States falls under its taxing authority, because benefit plans receive preferential tax treatment, and therefore regulation of these plans is important to protecting federal revenue streams. 29 U.S.C. § 1001(a).

[222] *See Survey Reveals Why Seniors Are Putting Off Retirement*, PROVISION LIVING, https://www.provisionliving.com/news/survey-reveals-why-seniors-are-putting-retirement (summarizing the findings of a 2019 study concerning attitudes toward retirement among seniors) [hereinafter *Survey*]. 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, while 70% listed social security. *Id.*

[223] *See* Amended Complaint, *supra* note 164, at 3 (arguing that St. Elizabeth's received an advantage over its competition by not complying with ERISA, particularly by not paying PBGC premiums).

compared to organizations that do not.[224] This creates a disincentive for church plans to opt in to coverage, and gives religious plan sponsors an advantage in the marketplace, undermining the Congressional intent of regulating interstate commerce.[225]

Further, the lack of availability of ERISA's protections places current pensioners in a similar position as Studebaker employees prior to the enactment of ERISA.[226] First, by allowing the church plan exemption to continue, Congress is placing countless workers in a position where they must seek common law state claims against employers that fail to fulfill pension obligations.[227] Before the enactment of ERISA, pensioners, such as former Studebaker employees, had to rely on the meager protection afforded by state law claims.[228] 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.[229] ERISA was also a direct Congressional response to the real human effects of the Studebaker plant closing.[230] In that case, employees faced the same issues church plan pensioners do now: lack of accountability from their employer, and lack of recourse if something goes awry.[231] The real human effects are not only retirees left without income that they had counted on having, but

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[224] *See id.* (arguing that St. Elizabeth's had a competitive advantage).

[225] *See id.*

[226] *See* WOOTEN, *supra* note 40, at 51 (describing the Studebaker plant closing).

[227] *See* Hylton, supra note 138, at § 1.06(2)(a) (noting that church plan plaintiffs seeking relief may need to turn to state law claims).

[228] *See* WOOTEN, *supra* note 40, at 51 (describing the Studebaker case, wherein workers lost their pensions with no recourse in federal law, and unprotected by pension insurance).

[229] *See* Complaint, *supra* note 7, at 20–21 (recounting the St. Clare's case, in which 600 workers lost some or all of their pension, with no recourse in federal court because of the church plan exemption).

[230] *See* Wooten, *supra* note 55, at 684 (demonstrating the effect the Studebaker plant closing, and the impact on the pension plans of retirees, had on catalyzing lawmakers into enacting ERISA).

[231] *See* Wooten, *supra* note 55, at 684 (recounting Studebaker's role in ERISA's legislative and political history).

also retirees who stayed at a job with a defined benefit plan specifically because of that reassurance.[232]

Recent church plan litigation demonstrates that the reality of modern church organizations undermines the intent behind the church plan exemption itself.[233] Most of modern church plan litigation centers around Catholic-affiliated hospital networks.[234] The Catholic Church is currently the subject of worldwide financial difficulties because of priest sexual abuse allegations.[235] With church organizations in a precarious financial state, protecting retirees relying on pension plans managed by these organizations becomes more important.[236]

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.[237] Not only is confidence in the ethical behavior of churches eroding, but church organizations have

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[232] *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 R., (Dec. 14, 2010), 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 say that they stay at their current job at least in part because of the promise of their pension plan).

[233] *See* 29 U.S.C. §§ 1001(a), 1003(b)(2) (describing the intent behind ERISA, and containing the church plans exemption); *see e.g.* Morrison, *supra* note 100, at 1292–93, 1315–22 (advocating for closer IRS fact-finding into the plan sponsor's degree of religious connection in the PLR process).

[234] *See, e.g.*, *Boden*, 404 F. Supp. 3d at 1076 (describing St. Elizabeth's connection with the Catholic church). Further, 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 (noting that in 2016, the Catholic church owned or operated 14.5% of the acute care hospitals in the United States).

[235] *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 (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).

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

[237] *See* Stein, *supra* note 80 (recounting a letter in the Congressional Record from the Pension Fund of the Catholic Church emphasizing their intention to manage their funds with Christian values).

demonstrated through their (mis)management of employee pension funds and failure to opt in to ERISA compliance that they can fail to adequately fund and insure pension plans.[238]

Finally, the reality is that many modern church organizations are healthcare organizations, that are only loosely connect to a religious mission.[239] Therefore, the establishment clause concern of maintaining separation of church and state becomes less important for these organizations.[240]

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 who are carrying out essential religious work.[241] Such a response, however, may be far off and not politically feasible.[242] Therefore, in the meantime, there is another approach: for states to step in and create legislation around church plans.[243]

Of course, church plan litigants can sue under traditional state laws, but causes of action like breach of contract and breach of fiduciary duty only provide recourse *after* an employer has, for example, failed to fund a plan, created a prohibitively high vesting requirement, or failed to

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[238] *See* 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 (reporting that only half of all Americans belong to a church, a number that was 70% in 1999).

[239] *See e.g.* Owens v. St. Anthony Medical Center, *supra* notes 161–67 and accompanying text.

[240] *See* SENATE REP., *supra* note 78, at 81 (commenting on the establishment clause motivations behind the church plan exemption).

[241] *See* Hylton, *supra* note 138, at § 1.06(1) (advocating for Congress to abolish the church plan exemption except in cases where regulation would result in substantial entanglement in religious affairs).

[242] *Id*.

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

report and disclose the financial status of the plan.[244] In contrast, ERISA places affirmative duties upon the sponsors of traditional defined benefit pension plans, to protect pensioners before anything goes awry, and if the employer has not broken any other laws.[245] Pensioners under such plans can work and retire with more confidence in their plan funds, the belief that 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.[246] This is a 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.[247]

A promising and innovative option to protect church plan litigants, and place such affirmative duties on church plan sponsors, is narrowly tailored state law legislation.[248] As Part I, Section D describes, Rhode Island is the trailblazer on this type of legislation, passing a law in 2019 that brings church plans under ERISA's annual reporting requirement.[249] As Rhode Island officials noted when passing this law, the benefits of such legislation are numerous.[250] First, state laws can be narrowly tailored to address the specific needs of church plan beneficiaries in their region.[251] For example, legislation could bring plans under the funding or vesting requirements

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[244] *See supra* notes 142–154 and accompanying text (outlining various traditional state law remedies for church plan litigants).

[245] 29 U.S.C. §§ 1021–1191c (containing the requirements imposed by Title I of ERISA).

[246] *See id.* (placing a myriad of affirmative duties on traditional employee benefit plans).

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

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

[249] *See id.*; *supra* notes 155–160 and accompanying text (describing the recent Rhode Island legislation).

[250] *See* Press Release, *supra* note 160 (quoting several Rhode Island officials commenting on this law).

[251] *See, e.g.*, 28 R.I. GEN. LAWS § 7.1-4 (narrowly imposing an annual reporting requirement on church plans).

of ERISA instead of annual reporting, if that better fit the needs of a given jurisdiction.[252] Second, state law legislation such as Rhode Island's avoids Congress's Establishment Clause concerns with looking into church finances.[253] If plan sponsors only give annual reports to plan participants, and not to the government, then participants are equipped with the knowledge they need, without mingling of church and state.[254] Finally, statutes such as these give a clear cause of action to church plan litigants, who do not need to try to fit their claims into existing state law causes of action such as breach of contract.[255]

One could argue that this legislation does not go far enough.[256] How useful is a reporting and disclosure requirement if church plans are still not subject to vesting and funding standards, and are not covered by PBGC insurance?[257] If plan participants can catch problems with funding early on, however, this could protect workers, and could put pressure on employers.[258] Workers could make different employment choices earlier if they knew that the employer was underfunding the pension plan.[259] 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.[260]

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[252] *See id.* (bringing church plans only under an annual reporting requirement, not any of ERISA's other provisions).

[253] *See* SENATE REP., *supra* note 78, at 81 (commenting on the establishment clause motivations behind the church plan exemption).

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

[255] *See* Hylton, *supra* note 138, at § 1.06(2)(a)–(b) (describing potential state law claims for church plan litigants).

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

[257] *See* 29 U.S.C. §§ 1051–61, 1081–85b, 1301–1461 (containing ERISA's vesting, funding, and insurance requirements); *see* 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).

[258] *See, e.g.*, Arnold, *supra* note 1 (detailing how unexpected the financial status of the St. Clare's plan was to retirees).

[259] *See id.* (reporting on the St. Clare's pension failure for NPR, and interviewing retirees who worked so long at St. Clare's at least in part because of the belief that they would have a secure pension).

[260] *See* 29 U.S.C. § 1144(b)(2)(B) (containing the ERISA preemption provision); Hylton, *supra* note 138, at § 1.02(3)(a).

CONCLUSION

When Congress enacted ERISA in 1974, they 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 litigants now have a slim chance of succeeding in federal court, and must rely on state law claims and settlement agreements to hold their employer accountable if they fail to properly fund a pension plan. To protect vulnerable retirees, Congress could act to amend the church plan exemption, or states could act on their own to regulate church plans. Absent such protective measures, countless current and future retirees are left exposed to financial instability.