

## The “Principal Purpose” Driven Life: How Hospitals Should Apply ERISA’s Church Plan Exemption After *Advocate v. Stapleton*

Virginia L. Brown

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/jhclp>

---

### Recommended Citation

Virginia L. Brown, *The “Principal Purpose” Driven Life: How Hospitals Should Apply ERISA’s Church Plan Exemption After Advocate v. Stapleton*, 22 J. Health Care L. & Pol’y 223 (2020).  
Available at: <https://digitalcommons.law.umaryland.edu/jhclp/vol22/iss2/16>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Journal of Health Care Law and Policy by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

---

---

# THE “PRINCIPAL PURPOSE” DRIVEN LIFE: HOW HOSPITALS SHOULD APPLY ERISA’S CHURCH PLAN EXEMPTION AFTER *ADVOCATE V.* *STAPLETON*

VIRGINIA L. BROWN, B.B.A., J.D.\*

“KNOWING YOUR PURPOSE GIVES MEANING TO YOUR LIFE.”<sup>1</sup>

## INTRODUCTION

The United States’ health care industry is filled with numerous protections for individuals and entities who have objections based on religious beliefs and moral convictions.<sup>2</sup> For example, there is a long history of conscience protections for individuals that object to performing or assisting in the performance of abortion or sterilization procedures<sup>3</sup> or assisted suicide (including euthanasia or mercy killing).<sup>4</sup> Over time, as more medical entities declare affiliation with religious entities, Congress has expanded conscience protections to cover more than just the daily activities of medical professionals. Generally, churches have to comply with the Employee Retirement Income Security Act (ERISA or the Act) just like any other employer. Yet, Congress provided an exception from ERISA for the administration of “church plans.”<sup>5</sup> This exemption has existed for many years without issue until recently, when this exemption became the subject of increased litigation. ERISA defines

---

© 2019 Virginia L. Brown, B.B.A., J.D.

\* B.B.A., Baylor University; J.D., Paul M. Hebert Law Center, Louisiana State University. The author is a contract attorney at a healthcare software company in Franklin, TN. She would like to thank Professors John M. Church and Skip Philips for cultivating her interest in healthcare law and Professor Philip Hackney for his helpful guidance throughout the writing process.

1. Rick Warren, *THE PURPOSE DRIVEN LIFE: WHAT ON EARTH AM I HERE FOR?* (2002).
2. Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,792, 47,792 (Oct. 13, 2017).
3. 42 U.S.C. § 300a-7 et seq. (collectively known as the “Church Amendments”); 42 U.S.C. § 238n; Weldon Amendment, Consolidated Appropriations Act, 2009, Pub. L. No. 11-117, 123 Stat 3034.
4. 42 U.S.C. § 18113.
5. 26 U.S.C. § 414(e)(1) (2018).

“church plan”<sup>6</sup> to apply more broadly than merely to plans covering people who work in houses of worship; schools, nursing homes, and hospitals may also comply if they are controlled or owned by religious entities.<sup>7</sup> Most recently, questions have risen regarding whether the employee pension plans used by religiously-affiliated hospitals have been correctly classified as “church plans” exempt from ERISA.<sup>8</sup> The answers to these questions carry with it large consequences because qualified church plans are excused from certain coverage, vesting, benefit accrual, and funding requirements of ERISA and the Internal Revenue Code (IRC) that otherwise apply to tax-qualified plans.<sup>9</sup>

In the 2017 landmark case *Advocate Health Care Network v. Stapleton*, one question that had long been debated between circuit courts regarding the extent of this exemption was resolved; the Court determined that a plan established and maintained by a church includes a plan maintained by a principal purpose organization.<sup>10</sup> This ruling means that any religiously-controlled entity that manages an employee benefit plan no longer must be *created* by a religious entity in order to qualify for this exemption. Regardless of how (and by whom) the entity was first established, an organization may still take advantage of this exemption from ERISA as long as the entity is *maintained* by a principal purpose organization.

This Supreme Court ruling is far from a full resolution of the issue. *Advocate* left a few issues unresolved, such as the definition of “principle purpose organization.” This leaves religiously-affiliated hospitals in a sticky place: unsure if they qualify for—and therefore can rely on—the ERISA church exemption. Since there are many potentially devastating effects on non-qualifying hospitals that mistakenly relied on this exemption, it is important for the qualifying factors to be clear. No longer should religiously-affiliated hospitals seek and rely on non-binding (and sometimes inaccurate) private letter rulings (PLRs) issued by the IRS in order to determine their exemption status.

In Part I, this Comment will discuss ERISA’s church plan exemption pre- and post-*Advocate*. Additionally, it will cover a brief overview of the history of employee benefit plans in the healthcare system and describe the roles of different governmental entities. In Part II, this Comment will discuss the landmark case *Advocate v. Stapleton* and its impact on the employee benefit industry, and the current status of ERISA’s principal purpose requirement. Last,

---

6. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 3(33)(A), 88 Stat. 829, 838 (codified as amended at 26 U.S.C. § 501 (2018)). This definition of church plan is a mirror image of the definition of church plan set out in § 414(e) as amended by ERISA. 26 U.S.C. § 414(e)(2).

7. 26 U.S.C. § 414(e)(2); Emily Morrison, *Revisiting ERISA’s Church Plan Exemption After Advocate Health Care Network v. Stapleton*, 111 NW. U. L. REV. 1281, 1281–82 (2017).

8. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

9. 26 U.S.C. § 414(e)(2); *See also* Morrison, *supra* note 7, at 1281–82 (examining the legislative history of the church plan exemption and case law development that impacts the exemption).

10. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

Part III will suggest a new set of factors that each religiously-controlled hospital and its employee benefit subcommittees can rely on in determining if it meets the “principal purpose” requirement.

#### PART I: ERISA’S CHURCH PLAN EXEMPTION

##### *A. Timeline of Significant Healthcare and ERISA Events*

Congress has consistently expanded healthcare law over time—especially as it relates to employee benefits—to protect the average American.<sup>11</sup> Courts have been more willing to protect against various forms of discrimination when it relates to the blanket application of healthcare, as seen in the Tax Reform Act of 1986 and the Mental Health Parity Act of 1996.<sup>12</sup> There have also been many significant milestones throughout the history of ERISA in the healthcare industry. Congress enacted ERISA in 1974 for the purpose of setting minimum standards for most voluntarily-established private retirement plans and health plans.<sup>13</sup> Shortly after the adoption of this Act, the IRS held that the church plan exemption did not extend to hospitals established by an order of Catholic nuns because the hospitals did not include “religious functions.”<sup>14</sup> Congress responded with an amendment in 1980 to broaden the exemption to its present state.

The Omnibus Budget Reconciliation Act of 1986 permitted limitations on the amount of benefits provided and prohibited employers from excluding employees from retirement plans when they are hired within five years of normal retirement age. In 1986, the Tax Reform Act further tightened the nondiscrimination requirements for retirement plans. The Family Medical Leave Act (FMLA) of 1993 brought more big changes to the field of employment regulations; it generally provided covered employees the right to take an unpaid leave of absence from work for medical or family obligations without jeopardizing their employment. While an employee is on FMLA leave, the employer must maintain the employee’s group health plan coverage. Another big change to the field of medicine came in 1996 when Congress enacted the Health Insurance Portability and Accountability Act (HIPAA).<sup>15</sup> This act amended

---

11. PRACTICAL LAW EMP. BENEFITS & EXEC. COMP., SIGNIFICANT EMPLOYEE BENEFITS DEVELOPMENTS SINCE THE ENACTMENT OF ERISA TIMELINE, PRACTICAL LAW CHECKLIST 1-577-3228, Westlaw.

12. Tax Reform Act of 1986, Pub. L. No. 99-514, § 1151 100 Stat. 2085, 2494–09; Mental Health Parity Act of 1996, Pub. L. No. 104-204, §§ 701–703, 110 Stat. 2874, 2944–50.

13. *History of EBSA and ERISA*, U.S. DEP’T OF LAB., available at <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/history-of-ebsa-and-erisa> (last visited July 12, 2019).

14. I.R.S. Gen. Couns. Mem. 37,266, 1977 WL 46200, \*5-6 (Sept. 22, 1977).

15. Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (“[T]o improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the

ERISA to provide increased health plan portability of coverage by limiting preexisting condition exclusions and to prohibit discrimination against participants and beneficiaries based on their health status. Also, this act required any entities covered by HIPAA to implement safeguards to protect the security of health insurance information in electronic form.

More significant changes came in 2010 with the enactment of the Patient Protection and Affordable Care Act (PPACA).<sup>16</sup> This act added the employer mandate, which penalizes employers for failing to offer its employees health coverage (or to offer inadequate coverage). In 2012, the Supreme Court held that the PPACA's individual mandate was a constitutional exercise of Congress' power to tax.<sup>17</sup> Yet, Congress effectively eliminated this individual mandate as part of sweeping tax reform legislation by reducing the penalty to \$0, effective in 2019.<sup>18</sup> In *Burwell v. Hobby Lobby Stores*, the Court found that the PPACA's contraception coverage mandate—part of the law's preventative services rules—violated the Religious Freedom Restoration Act (RFRA) as applied to for-profit closely-held corporations with religious objective to the contraceptives mandate.<sup>19</sup>

### *B. Purpose and Enactment of ERISA*

ERISA was enacted, in part, to provide stronger protection and security for the pensions of American workers should their current or former employers unexpectedly go out of business and drain any funds previously promised for pensions.<sup>20</sup> ERISA imposes extensive requirements on private retirement and welfare plans, such as reporting, disclosure, vesting, benefit accrual, and funding requirements.<sup>21</sup>

Congress provided some exceptions within ERISA—the most relevant here is the church plan exception<sup>22</sup>—which exempts churches from many of ERISA's standards. In providing this exemption, Congress intended to avoid government entanglement with church business.<sup>23</sup> Some experts have speculated that this

---

use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.”)

16. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified at 42 U.S.C. § 18001 *et seq.* (2018)).

17. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 588 (2012).

18. *See generally* Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2054-2238 (2017).

19. *Burwell v. Hobby Lobby Stores*, 134 S. Ct. 2751, 2785 (2014).

20. *History of EBSA and ERISA*, U.S. DEP'T. OF LAB., <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/history-of-ebsa-and-erisa> (last visited July 12, 2019).

21. Morrison, *supra* note 7, at 1284 (citing Colleen E. Medill, INTRODUCTION TO EMPLOYEE BENEFITS LAW: POLICY AND PRACTICE 31–32 (4th ed. 2015)).

22. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 4(b)(2), 88 Stat. 829, 839–40 (codified at 29 U.S.C. § 1003(b)(2) (2018)).

23. Morrison, *supra* note 7, at 1287

exemption was provided based on Congress’s “belief that churches have a particularly strong moral commitment to their employees and are likely to keep the pension promises they make to their employees.”<sup>24</sup> By providing this exemption, Congress allowed churches to create and manage their own plans for their employees’ retirement. In the long run, this exemption may save churches lots of money and allow them to better allocate their tithed income to their charitable purpose. Congress has also extended this exemption to other religiously-affiliated organizations, such as hospitals and schools, under the belief that they shared a similar moral commitment to their employees.

On one hand, exempting plans from ERISA are risky because it puts employees in a potentially catastrophic position if their career-long contributions to a pension becomes insolvent by their retirement date.<sup>25</sup> On the other hand, exemption is beneficial because compliance with ERISA is expensive, which adds yet another cost to the already increasing price of healthcare.<sup>26</sup>

Issues arise when an organization is not sure whether it qualifies for the church exemption. If church leaders assume they are exempt and operate their retirement plans outside the umbrella of ERISA, there is a risk that they later discover they are not exempt and are immediately responsible for back payment of taxes and penalties. Because there is no clear standard, each entity must seek individual guidance from the IRS or Department of Labor (DOL) regarding whether they are exempt.

Yet, even if church-affiliated organizations obtain qualification confirmation for the church plan exemption, the fight over pension plan administration will simply shift to the state courts.<sup>27</sup> This is not ideal because many states do not have specific statutes analogous to ERISA; rather, the governing law will be based on the states’ common law of trusts, fiduciary duties, and contracts.<sup>28</sup> Church-affiliated organizations that operate across state borders will potentially have to determine and comply with multiple sets of legal obligations that vary by state.<sup>29</sup> Therefore, an exemption from ERISA does not

---

24. Norman Stein, *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, A.B.A. EMP. BENEFITS COMM. NEWSL. (Summer 2014), [http://web.archive.org/web/20180109033327/http://www.americanbar.org/content/newsletter/groups/lab\\_or\\_law/ebc\\_newsletter/14\\_sum\\_ebc\\_news\\_faith.html](http://web.archive.org/web/20180109033327/http://www.americanbar.org/content/newsletter/groups/lab_or_law/ebc_newsletter/14_sum_ebc_news_faith.html).

25. Ronald Mann, *Opinion analysis: Justices unanimously uphold ERISA exemption for church-affiliated pension plans*, SCOTUS BLOG (June 5, 2017, 3:47 PM), <http://www.scotusblog.com/2017/06/opinion-analysis-justices-unanimously-uphold-erisa-exemption-church-affiliated-pension-plans/>.

26. *Id.*

27. Joanne C. Youn & Robert G. Cluett, *Church-Affiliated Organizations Face New Challenges After Advocate*, 29 TAX’N EXEMPTS 26, 28 (2017) (discussing church-affiliated organizations’ best options for determining their exemption status under ERISA).

28. *Id.* at 29.

29. *Id.*

guarantee that pension plans will impose fewer obligations on their participants.<sup>30</sup>

### *C. The Role of the IRS*

The IRS bears much of the responsibility for overseeing church pension plans and its interpretation and application of the church plan definition has remained relatively consistent over time.<sup>31</sup> The IRS disseminates its interpretation of this statute primarily through the issuance of private letter rulings (PLRs), which are determinations issued to specific taxpayers upon request.<sup>32</sup> Every organization can request a PLR that will indicate whether it is eligible for the exemption, however, these PLRs only bind the requesting party. Over the years, religiously-affiliated entities have relied on obtaining these individual PLRs in order to operate their plans as ERISA-exempt church plans.<sup>33</sup> This is not ideal, though, because it takes lots of money and time to acquire these rulings, which may only be a realistic option for larger and more powerful entities.<sup>34</sup> While a church may take advantage of the ERISA exemption without a PLR from the IRS, most hospitals and other religiously-affiliated entities still regularly request PLRs to offer confirmation of their plans' status for tax purposes.<sup>35</sup> A PLR is basically useless to other non-requesting organizations because it is applicable only to the specific taxpayer to whom it is issued and may not be used or cited as precedent.<sup>36</sup> Additionally, a PLR has no binding effect on any court that may later consider the exempt status of an organization.<sup>37</sup> Therefore, reliance on PLRs is far from an ideal situation.

### *D. The Role of the Department of Labor*

The Department of Labor (DOL) is another federal agency that administers and enforces ERISA. DOL has not issued either a regulation or interpretation concerning what constitutes a church plan. To date, the DOL has only issued an information release that indicates they are awaiting further development of the

---

30. *Id.*

31. Jeffrey A. Herman, *Resolving ERISA's "Church Plan" Problem*, 31 ABA J. LAB. & EMP. L. 231, 251 (2016).

32. Morrison, *supra* note 7, at 1284.

33. *Id.*

34. User fees for PLRs range from \$250 to \$50,000. Rev. Proc. 2018-1, Section 15. When only one branch of the IRS is involved, a ruling can take two to three months. When the issue is more complex and more branches are involved, a ruling can take over three months.

35. Morrison, *supra* note 7, at 1284.

36. *Id.* at 1291.

37. *Understanding IRS Guidance – A Brief Primer*, INTERNAL REVENUE SERV. (July 6, 2016) <https://www.irs.gov/newsroom/understanding-irs-guidance-a-brief-primer>.

IRS regulations prior to issuing any of their own regulations.<sup>38</sup> They have, however, issued some Advisory Opinions under ERISA Procedure 76-1 that provide interpretative guidance for § 3(33) of ERISA as it relates to certain employee benefit arrangements.<sup>39</sup>

#### *E. Defining “Church Plan”*

To be exempt from taxation under I.R.C. § 501, an employer need not be a church to sponsor a church plan as long as the plan of the employer is established and maintained by an organization that is controlled by or associated with a church or convention or association of churches.<sup>40</sup> Typically, a religious hospital will establish a subcommittee whose sole duty is to manage the benefit plans. An organization is “controlled” by a church if the majority of its officers or directors are appointed by the church’s governing board or by officials of the church.<sup>41</sup> An organization is “associated with” a church or by a convention or association of churches if it shares common religious bonds and convictions with the church.<sup>42</sup>

In 1974, Congress originally defined a church plan as one “established and maintained for its employees by a church or by a convention or association of churches.”<sup>43</sup> After the 1980 ERISA amendment, Subsection A of the statute now reads:

The term ‘church plan’ means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.<sup>44</sup>

The current Subsection C (an expansion of the church plan definition under Subsection A) has remained the same since 1980; it reads:

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

---

38. Gail Jones, *Government and Single-Employer Collectively Bargained Plans*, INTERNAL REVENUE SERV. TAX EXEMPT & GOV’T ENTITIES 4-10, <https://www.irs.gov/pub/irs-tege/epchd403.pdf> (last visited July, 31, 2019).

39. U.S. Dep’t of Lab., Advisory Opinion 2004-11A (Dec. 30, 2004).

40. Daniel J. Schwartz, *Employee Benefits for Tax-Exempt Organizations (Portfolio 487)*, BLOOMBERG TAX, <https://www.bna.com/employee-benefits-taxexempt-p73014475830/> (last visited Apr. 7, 2019).

41. 26 U.S.C. § 414(e)(3)(A) (2018).

42. *Id.* § 414(e)(3)(D).

43. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, § 3(33)(A), 88 Stat. 829, 838 (codified as amended at 26 U.S.C. § 501 (2018)).

44. 29 U.S.C. § 1002(33)(A) (2018); 26 U.S.C. § 414 (e)(1) (2018) (providing a parallel citation in the Tax Code).

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.<sup>45</sup>

In summary, a “church plan” established and maintained by a church includes a plan maintained by a principal purpose organization.<sup>46</sup> Some big issues that remain are the meaning of the terms “established and maintained” and “includes,” and the interaction of Subsection C and Subsection A of the statute. Yet, this Comment will not address those issues. It is unclear when an organization is considered to be a principal purpose organization, such as under what circumstances the administration of an employee benefit plan is the organization’s principal purpose.<sup>47</sup>

If an organization qualifies for an ERISA exemption, it still has the option to use or ignore that exemption; when deciding what direction to go, entities must weigh the benefits and burdens of aligning their retirement plan to ERISA’s standards. There are two types of church plans: non-electing church plans and electing church plans.<sup>48</sup> If a church qualifies for the ERISA exemption and chooses to take advantage of it, the default rule applies and it is designated a non-electing church plan. In such a case, non-electing church plans do not have to meet the funding, vesting, reporting, and disclosure requirements under ERISA. However, these plans will remain subject to the Tax Code’s qualified plan provisions that preexisted ERISA.<sup>49</sup> Sometimes, though, a church may qualify for the ERISA exemption but choose not to use it. These so-called electing church plans qualify for church plan status, but nonetheless opt into ERISA under Section 410(d) of the Tax Code.<sup>50</sup> Once made, an election is irrevocable.

#### *F. Circuit Splits Leading Up to the Supreme Court’s 2017 Decision*

Today, it is still unclear how the two subsections of ERISA § 33 relate to one another because federal courts across the United States have failed to apply Subsections C and A in a uniform manner.<sup>51</sup> The Third, Seventh, and Ninth Circuits have affirmed rulings that interpreted the exemptions narrowly, finding that the two subsections dictate that the religiously-affiliated hospital systems’ pension plans do not qualify as church plans because they were not established

---

45. 29 U.S.C. § 1002(33)(C)(i) (emphasis added).

46. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1663 (2017).

47. *See id.* at 1657 n.2 (noting that the court’s opinion is not addressing the issue of whether the hospital’s internal benefits committees are principal purpose organizations under ERISA).

48. Morrison, *supra* note 7, at 1288.

49. *Id.*

50. *Id.*

51. *See id.* at 1297 (citing Jeffrey A. Herman, *Resolving ERISA’s “Church Plans” Problem*, 31 A.B.A. J. LAB. & EMP. L. 231, 232 (2016)).

by a church.<sup>52</sup> In contrast, other district courts have embraced a broader interpretation, finding that “church plans do not have to be established by churches as long as the plans are properly maintained by a church-affiliated organization.”<sup>53</sup>

The leading case in the Third Circuit is *Kaplan v. Saint Peter’s Healthcare System*.<sup>54</sup> This case involved a suit filed by current and former employees of St. Peter’s Healthcare System, which operated St. Peter’s University Hospital and other companies (St. Peter’s).<sup>55</sup> St. Peter’s established its defined benefit pension plan in 1974 and operated it as an ERISA plan for more than thirty years before reconsidering its plan’s status and seeking a church plan PLR in 2006.<sup>56</sup> The district court held that St. Peter’s pension plan was not a church plan because the plain language of the statute requires that a “church plan must, from the outset, be *established* by a church and can be *maintained* by an organization controlled by or associated with a church.”<sup>57</sup> The district court declined to give deference to the PLR that St. Peter’s had received from the IRS and the Third Circuit affirmed.<sup>58</sup>

The Seventh Circuit’s leading case on the issue is *Stapleton v. Advocate Health Care Network*.<sup>59</sup> In this case, former and current employees filed a claim against the Advocate hospital system, which operates twelve hospitals across Illinois and employs more than 33,000 employees.<sup>60</sup> Advocate was formed in 1995 through the merger of two hospital systems, the Lutheran General Health System and the Evangelical Health Systems.<sup>61</sup> The district court held that the

---

52. See *Stapleton v. Advocate Health Care Network*, 817 F.3d 517, 523 (7th Cir. 2016) (holding that because the plan “was both established and maintained by a church-affiliated organization, it is not a church plan”), *rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017); *Rollins v. Dignity Health*, 830 F.3d 900, 905 (9th Cir. 2016) (“In order to qualify for the church-plan exemption under subparagraph (C)(i), a plan must have been established by a church and maintained either by a church or by a principal-purpose organization”), *rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017); *Kaplan v. St. Peter’s Healthcare System*, 810 F.3d 175, 181 (3rd Cir. 2015) (“Here, Congress carefully limited the church plan exemption to only those plans established by a church”), *rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

53. See *Medina v. Catholic Health Initiatives*, 147 F. Supp. 3d 1191 (D. Colo. 2015) (finding the church plan was maintained and administered by a church subcommittee); *Overall v. Ascension*, 23 F. Supp. 3d 816 (E.D. Mich. 2014) (reading the statutory church plan exemption as not requiring establishment by a church to maintain church plan designation).

54. 810 F.3d 175 (2015), *rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

55. *Id.* at 178.

56. *Id.* at 177–78.

57. *Kaplan v. Saint Peter’s Healthcare Sys.*, No. 13–2941 (MAS)(TJB), 2014 WL 1284854, at \*6 (D.N.J. Mar. 31, 2014) (emphasis added), *aff’d*, *Kaplan v. Saint Peter’s Healthcare Sys.*, 810 F.3d 175 (3rd Cir. 2015), *and rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

58. *Kaplan*, 810 F.3d at 178.

59. *Stapleton v. Advocate Health Care Network*, 817 F.3d 517 (7th Cir. 2016), *rev’d*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

60. *Id.* at 520.

61. *Id.* at 520–21.

pension plan failed to meet the criteria for a church plan exemption solely because it was maintained by a non-church entity.<sup>62</sup> The Seventh Circuit affirmed, echoing the Third Circuit's logic. Notably, when the Supreme Court reversed, it expressly stated that "nothing we say in this opinion expresses a view of . . . [whether] the hospitals' pension plans are not 'church plans' because the hospitals do not have the needed association with a church."<sup>63</sup>

Lastly, the most influential case on this instant issue is *Rollins v. Dignity Health* in which the Ninth Circuit examined Dignity Health, a medical facility formed through a merger of two religiously-affiliated health systems.<sup>64</sup> The district court found that the plan was not subject to church plan exemption because it was not "established" by a church.<sup>65</sup> The Ninth Circuit affirmed.<sup>66</sup>

These varying results on similar issues provided a rocky foundation leading up to the Supreme Court's review of *Advocate* in 2017. The Supreme Court's decision in *Advocate* rejected all three unanimous views of the circuit courts, which paints a cautionary tale for circuit courts that may try to predict how other courts might act.

## PART II: THE SUPREME COURT RESOLVES THE CIRCUIT SPLIT WITH *ADVOCATE*

### *A. Advocate Health Care v. Stapleton*

On June 5, 2017, the Supreme Court unanimously sided with the religiously-affiliated hospital, reversing the judgments of the Third, Seventh, and Ninth Circuits.<sup>67</sup> Justice Kagan explained that the use of the word "includes" in the exemption definition is not literal but rather signals to readers of the statute that a "different type of plan should receive the same treatments (i.e. an exemption) as the type described in the old definition."<sup>68</sup> This interpretation of the statute effectively opened up the church plan exemption to more organizations than previously thought. Justice Sotomayor concurred to express why this outcome still troubled her: the silence of the legislative history on the question before the Court in 2017 and the difference between the church plans of 1980 when the statute was enacted and those before the Court in 2017.<sup>69</sup>

The main takeaway from this case is clear: ERISA provides an exemption for an employee benefit plan *maintained* by a church affiliated organization

---

62. *Id.* at 521–23.

63. *Cardoza-Estremera v. Berrios*, No. CV 16-2318 (ADC), 2017 WL 3098089, at \*3 (D.P.R. July 20, 2017) (quoting *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1664 n.2 (2017)).

64. *Rollins v. Dignity Health*, 830 F.3d 900, 903–04 (9th Cir. 2016).

65. *Id.* at 903.

66. *Id.*

67. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

68. *Id.* at 1658.

69. *Id.* at 1663.

regardless of whether a church affiliated organization also *established* the plan. The type of entity—either a church or its affiliate—that established the plan is irrelevant.<sup>70</sup> Yet, there are two questions that *Advocate* leaves unaddressed. First, how do church-affiliated organizations that satisfy the “maintained” criterion for the church plan exemption determine whether they also satisfy the other statutory requirements for exemption, and is the exemption itself even permissible under the Establishment Clause of the First Amendment? Second, if the church plan exemption does apply, what legal obligations does a non-ERISA plan face in lieu of the standards applicable to an ERISA plan?<sup>71</sup>

The Court noted in the ruling that it did not address the second requirement of the law: that an exempt church plan be maintained by an “organization” that has administration of the plan as its principal purpose. Justice Sotomayor summarized these concerns in her concurrence:

Other provisions also impact the scope of the ‘church plan’ exemption. Those provisions—including the provisions governing which organizations qualify as principal purpose organizations permitted to establish and maintain ‘church plans,’ need also be construed in line with their text and with a view toward effecting ERISA’s broad remedial purposes.<sup>72</sup>

Additionally, the Court made it clear that it was not giving deference to government analyses of decisions, such as PLRs.<sup>73</sup>

### *B. Principal Purpose Requirements*

A religiously-controlled medical facility cannot itself administer an exempt benefit plan for its employees because ERISA requires such a plan to be administered by an organization whose principal purpose is to administer that retirement plan. A hospital with a charitable purpose must instead operate exclusively to further a proper exempt purpose, as defined in I.R.C. § 501, in order to maintain its tax-exempt status as a charitable organization. Generally, the promotion of health is considered to be a charitable purpose.<sup>74</sup> Both Congress and the IRS treat § 501(c)(3) tax-exempt organizations as co-partners with the federal government because such organizations receive tax-deductible charitable contributions and perform their activities with contributed funds.<sup>75</sup> Because all tax exemptions are a matter of legislative grace, Congress imposes strict

---

70. *Id.*

71. Joanne C. Youn & Ronald G. Cluett, *Church-Affiliated Organizations Face New Challenges After Advocate*, 29 TAX’N EXEMPTS 26, 26 (2017).

72. *Advocate*, 137 S. Ct. at 1663–64 (Sotomayor, J., concurring).

73. *Id.* at 1657, 1663 (majority opinion).

74. ERIKA LUNDER & EDWARD C. LIU, CONG. RESEARCH SERV., TAX EXEMPT SECTION 501(C)(3) HOSPITALS: COMMUNITY BENEFIT STANDARD AND SCHEDULE H 2–3 (2008).

75. Internal Revenue Serv., *Tax Information for Charitable Organizations*, IRS.GOV, <https://www.irs.gov/charities-non-profits/charitable-organizations> (last updated Jan. 17, 2019).

operating requirements upon qualified organizations.<sup>76</sup> The Affordable Care Act modified these requirements for tax-exempt hospitals; as of 2010, a § 501(c)(3) hospital must satisfy: community health needs assessment rules, financial assistance policy rules, charge limitations, and billing and collection rules.<sup>77</sup>

Two types of organizations qualify for the church-plan exemption: churches and so-called principal purpose organizations.<sup>78</sup> After the enactment of ERISA, plans maintained by a church-affiliated organization must satisfy specific statutory requirements in order to claim the church plan exemption.<sup>79</sup> The IRS requires that church-related employers provide health plans to their employees that satisfy the committee requirement under § 414(e)(3)(a); that is, it must be maintained by an organization whose principal purpose or function is the administration or funding of the plan and which is controlled by, or associated with, a church or convention or association of churches.<sup>80</sup> Generally, the IRS has required plan sponsors—i.e. religiously-controlled hospitals—to satisfy this requirement by appointing a committee whose principal function is the administration of the plan.<sup>81</sup> Yet, the Court in *Advocate* did not actually determine whether the hospitals' internal benefits committees qualified as a "church-associated organization whose chief purpose or function is to fund or administer a benefits plan for the employee of either a church or a church-affiliated nonprofit."<sup>82</sup> Therefore, it is still unclear whether any and all similar committees and organizations would satisfy the principal purpose requirement.

Because the existing legal authority does not fully address or define these requirements, further litigation addressing the scope of the ERISA exemption for plans maintained by church-affiliated organizations is likely, including arguments concerning its constitutionality, as well as those specific to the statutory text.<sup>83</sup> The Court in *Advocate* did not address the existence of the letter rulings, so those rulings addressing the principal purpose requirements do not

---

76. *Reagan v. Taxation with Representation of Wash.*, 461 U.S. 540, 549 (1983).

77. 26 C.F.R. § 1.501(r)-3 (2018); 26 U.S.C. § 501(r)(4); 26 C.F.R. § 1.501(r)-4; 26 U.S.C. § 501(r)(5); 26 C.F.R. § 1.501(r)-5; 26 U.S.C. § 501(r)(6); 26 C.F.R. § 1.501(r)-6.

78. *Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1221 (10th Cir. 2017).

79. 29 U.S.C. § 1002(33)(C)(i) (2018) (emphasis added) ("A plan established and maintained . . . by a church . . . 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 . . . for the employees of a church . . . if such organization is controlled by or associated with a church.*").

80. DANIEL J. SCHWARTZ, 487 T.M., EMPLOYEE BENEFITS FOR TAX-EXEMPT ORGANIZATIONS, PORTFOLIO 487-1<sup>ST</sup>, EMPLOYEE BENEFITS FOR TAX-EXEMPT ORGANIZATIONS, DETAILED ANALYSIS, A NON-ELECTING CHURCH PLANS, BNA.

81. *See, e.g.*, I.R.S. Priv. Ltr. Rul. 201739010 (Sept. 29, 2017); I.R.S. Priv. Ltr. Rul. 201247023 (Aug. 31, 2012), I.R.S. Priv. Ltr. Rul. 201233027 (May 25, 2012), I.R.S. Priv. Ltr. Rul. 200813044 (Jan. 2, 2008), I.R.S. Priv. Ltr. Rul. 200708090 (Nov. 28, 2006), I.R.S. Priv. Ltr. Rul. 200610023 (Dec. 12, 2005)

82. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1658 n.3 (2017).

83. Joanne C. Youn & Ronald G. Cluett, *Church-Affiliated Organizations Face New Challenges After Advocate*, TAX'N EXEMPTS 26, 26 (2017).

offer authoritative reliance to church-affiliated organization seeking clarity regarding the status of their organizational structure.<sup>84</sup>

The “principal purpose” standard is vague and difficult to apply, yet carries huge implications. Religiously-affiliated hospitals and their affiliated entities that maintain their retirement plans under the notion that they are included in ERISA’s church plan exemption may face a rude awakening should the Court one day interpret this phrase narrowly. These organizations should have some test that they can rely upon to determine whether the “principal purpose” standard applies to their activities. One main reason why the Court in *Advocate* found the provision at issue to be interpreted widely was to allow organizations to better understand their own individual status under the law. Previously, the process of obtaining a PLR for each individual organization was arduous, so this ruling by the Court was supposed to alleviate that struggle. Yet, that struggle remains. Religiously-affiliated health organizations often rely heavily on the ERISA church plan exemption in their everyday administration and therefore should feel confident that it does indeed qualify for the exemption. The best way this uncertainty can be solved is through the creation—or recognition—of a universal definition of “principal purpose” as used in ERISA § 33(C)(i).

### PART III: DEVELOPMENTS SINCE *ADVOCATE V. STAPLETON* AND DEFINING “PRINCIPAL PURPOSE”

#### *A. Introduction*

Since the Supreme Court handed down the opinion in *Advocate* in the summer of 2017, district courts have struggled to apply the new guidelines. The limited and vague guidance from the IRS and the Department of Labor only make the problem worse. A religiously-affiliated entity will have to take a more creative approach in its attempt to clarify the statutory standards.

#### *B. Defining “Principal Purpose” Through Case Law Guidance*

##### *i. Lown v. Continental Casualty*

The *Lown* test is a fact-sensitive inquiry that may provide a little more guidance for some church-affiliated organizations than the statutory language of ERISA, even assuming the other requirements for the church plan exemption can be satisfied.<sup>85</sup> In *Lown v. Continental Casualty Company*, an employee of Baptist Health System of South Carolina (the System) asserted that litigation of her claims under the System’s long-term disability plan was not subject to federal

---

84. *Id.* at 27.

85. *Id.* at 28; *Lown v. Cont’l Cas. Co.*, 238 F.3d 543, 548 (4th Cir. 2001).

question jurisdiction because the System's ties to the South Carolina Baptist Convention exempted the plan from ERISA.<sup>86</sup> The Fourth Circuit held that the exemption did not apply to the System's plan because the Baptist Convention did not appoint or approve any System board members and did not provide any monetary support to the System.<sup>87</sup> The court stated that:

[i]n deciding whether an organization shares common bonds and convictions with a church, three factors bear primary consideration: (1) whether the religious institution plays any official role in the governance of the organization; (2) whether the organization receives assistance from the religious institution; and (3) whether a denominational requirement exists for any employee or patient/customer of the organization.<sup>88</sup>

Applying these factors, the court found the healthcare organization at issue did not qualify as a "church plan," since it had formally disaffiliated from the Baptist Convention several years before the litigation, and no denomination requirement remained.<sup>89</sup>

Applied to the issue at hand, the *Lown* factors could be helpful in deciding whether a religiously-affiliated hospital and its designated subcommittee are "principle purpose" organizations. Yet, as Tenth Circuit argued in *Medina v. Catholic Health Initiatives*, these factors are not determinative because they are more narrow than the statutory definition found in 29 U.S.C. § 1002(33)(c)(iv).<sup>90</sup> "[T]o be 'associated with a church,' a corporation need only share 'common religious bonds and convictions with that church or convention or association of churches.'"<sup>91</sup> Moreover, the statute imposes no denominational requirements, corporate governance requirements, or funding requirements.<sup>92</sup> In contrast, an organization could meet the statutory definition but satisfy none of the *Lown* factors.<sup>93</sup> "Satisfying the *Lown* factors may suffice to establish that an organization is associated with a church," but an organization need not satisfy the *Lown* factors in order to be associated with a church.<sup>94</sup> Therefore, further analysis is needed.

---

86. *Lown*, 238 F.3d 543.

87. *Id.* at 548.

88. *Id.*

89. *Id.*

90. *Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1224 (10th Cir. 2017).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

*ii. Cardoza-Estremera v. Berrios*

*Cardoza-Estremera v. Berrios* was one of the first district court opinions handed down after *Advocate* that addressed the new Supreme Court guidance.<sup>95</sup> In this case, plaintiffs were parochial-school teachers who participated in the employee pension plan of the Catholic Schools of the Roman Catholic Archdiocese.<sup>96</sup> The complaint alleged that defendant mismanaged plaintiff’s pension plan. Defendant moved the court to dismiss, arguing that plaintiff’s pension plan is exempt from ERISA because it is a “church plan” within the meaning of 29 U.S.C. §1002(33).<sup>97</sup> The defendants seemed to think that this exemption-based argument contests plaintiff’s standing to sue.<sup>98</sup> The District Court of Puerto Rico denied defendant’s motion to dismiss, finding that the exemption status of the plan doesn’t affect the plaintiff’s standing or the Court’s subject matter jurisdiction.<sup>99</sup> The court stated that the complaint did state a facially plausible claim that ERISA covers the plan.<sup>100</sup>

*iii. Medina v. Catholic Health Initiatives*

In this case, a retirement plan participant brought putative class action against her employer, a nonprofit organization created to carry out the Roman Catholic Church’s healing ministry, alleging the plan was not an exempt church plan under ERISA. The Tenth Circuit simply applied the Supreme Court’s holding in *Advocate*, stating that ERISA extends the church plan exemption to so-called principal purpose organizations. The court explicitly defined a principal purpose organization as a “church-affiliated organization whose principal purpose is administering or funding a benefit plan for the employees of a church or a church-affiliated nonprofit organization.”<sup>101</sup>

The court went further to find that ERISA § 33(C) imposes a three-step inquiry for entities seeking to use the church plan exemption for plans maintained by principal purpose organizations.<sup>102</sup> These entities can determine if they are liable for the church plan exemption by asking the following questions. First, is

---

95. *Cardoza-Estremera v. Berrios*, No. 16-2318 (ADC), 2017 WL 3098098, at \*1 (D.P.R. July 20, 2017).

96. *Id.*

97. *Id.* Defendants urged that the plan is a church plan because it “was established by the church to cover only [parochial-school] employees,” those parochial schools “are an integral part of the Catholic Church,” and the plan is maintained by the schools’ Superintendent “to the extent [she] does not delegate totally or partially such control to a Retirement Committee,” and the Superintendent “is an office of the Archdiocese,” which is exempt from federal taxes. The court found that these assertions, alone, were not enough to prove the pension plan was an exempt church plan. *Id.* at \*7.

98. *Id.* at \*3..

99. *Id.* at \*2.

100. *Id.* at \*5.

101. *Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1219 (10th Cir. 2017).

102. *Id.* at 1222.

the entity a tax-exempt non-profit organization associated with a church? If so, second, is the entity's retirement plan maintained by a principal purpose organization? That is, is the plan maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees? Then, if so, is that principal purpose organization itself associated with a church?<sup>103</sup>

In *Medina*, the Court ultimately found in favor of the nonprofit organization. Roman Catholic canon law provides that, "public juridic persons need civil-law counterparts—normally nonprofit corporations—in order to transact civil-law business, such as holding title to property."<sup>104</sup> As a public juridic person organized under canon law, the Catholic Church regards Catholic Healthcare Foundation as an official part of the Catholic Church, so the court agrees that the Catholic Health Initiatives, its civil law counterpart, is "associated with" a church.<sup>105</sup>

*iv. A Combination Approach of Medina plus Lown*

While the *Medina* test only has binding force over the Tenth Circuit, the thoroughness of the analysis will likely have persuasive force in other courts in the future; it could be combined with the *Lown* factors and then applied nationwide as a standard test in determining if an organization is principally purposed. Here, each step of the test will be deconstructed further to demonstrate how district and circuit courts could apply this inquiry.

Step one asks if the entity is a tax-exempt non-profit organization associated with a church.<sup>106</sup> It's not enough for an entity to be established by a religious entity; it must currently maintain an association.<sup>107</sup> It should be clear according to an entity's charter whether it is a non-profit organization; the only issue that could arise is regarding the definition of "association."<sup>108</sup> In analyzing this first prong, courts should turn to the *Lown* factors, where an institution is "associated with" a church when: (1) the church plays an official role in the governance of the organization, (2) the organization received assistance from the religious institution, or (3) a denominational requirement exists for any employee, patient, or customer of the organization.<sup>109</sup> This inquiry is fact-based and any entity should be able to determine for itself whether these terms are met. Should the entity meet at least one element of step one, the inquiry moves forward to the *Medina* step two.

---

103. *Id.*

104. *Id.* at 1222–23.

105. *Id.* at 1223.

106. *Id.* at 1222.

107. *Id.* at 1223–24.

108. *Id.*

109. *Lown v. Cont'l Cas. Co.*, 238 F.3d 543, 548 (4th Cir. 2001).

The second step considers whether the entity’s retirement plan is maintained by an organization whose principal purpose is administering or funding a retirement plan for entity employees.<sup>110</sup> The Tenth Circuit in *Medina* reasoned that the term “maintain,” as used in this context, must mean “to keep in a state of validity.”<sup>111</sup> In some cases, the umbrella religiously-affiliated entity maintains retirement plans for its own employees, but in most cases this responsibility is outsourced to another organization. This separation allows medical facilities to focus on their medical duties, while allowing another organization to focus principally on employee benefits. In this case, this other organization must care for the plan for purposes of “operational productivity.”<sup>112</sup> In *Medina*, for example, the plan was maintained by an internal plan subcommittee, which was considered to be an alter ego; because it provided benefits to employees of a religious nonprofit organization, the Tenth Circuit found it was associated with a church.<sup>113</sup>

The third part of the test asks whether the principal purpose organization maintaining the plan is itself associated with a church.<sup>114</sup> This is the main issue presented. At first glance, this prong seems to be repetitive of part two of the test, defining a “principal purpose” organization as one that has a “principal purpose,” but this part looks further than the status of the entity seeking the exemption. Not only does the entity itself have to be associated with a church, but its retirement plan must also be “maintained” by a principle purpose organization.<sup>115</sup> For example, in *Advocate*, the religiously-affiliated hospital was clearly a principal purpose organization, but the Court did not decide whether the hospital’s subcommittee that managed the retirement plans was also a principal purpose organization.<sup>116</sup> In *Medina*, this question was easily solved in the affirmative because the subcommittee that managed the plan was completely controlled by the larger entity.<sup>117</sup> “As a matter of logic,” the court stated, “a subdivision wholly encompassed by a larger entity shares that entity’s affiliations.”<sup>118</sup> This court expressly declined to address the same issue that *Advocate* left unanswered: whether the medical facility’s internal benefit committee qualified as a “principal purpose organization.”<sup>119</sup> Besides this limited guidance, the scope of a “principal

---

110. *Id.* at 1222.

111. *Id.* at 1225 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1362 (2002)).

112. *Id.* at 1226 (quoting BLACK’S LAW DICTIONARY 1039 (9th ed. 2009)).

113. *Id.* at 1219.

114. *Id.* at 1222.

115. *Id.*

116. *Id.* at 1221 (citing *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017)).

117. *Id.* at 1226–27.

118. *Id.* at 1227.

119. *Id.* at 1221.

purpose organization” remains undefined.<sup>120</sup> Therefore, entities should look beyond the case law to try to define “principal purpose.”

*D. Administrative Guidance on Defining “Principal Purpose” in ERISA Cases*

Relying on the language in ERISA’s church plan exemption, the Department of Labor and IRS have repeatedly recognized exemptions for church-affiliated schools and hospitals plans when the benefits committee administering the plans were themselves controlled by a church. However, this analysis seems circular in nature by defining church plans as those already established as eligible for church plans. If the only function of a hospital’s internal benefits committee is to maintain the employee benefit plan, then clearly that organization is principally purposed. Yet, if the same committee took on additional roles, such as ones typically performed by an in-house human resources department, it is unclear whether it would maintain that status.

A plan will qualify as a church plan only if it is first maintained by an organization and controlled by or associated with a church whose principal purpose or function is to administer the plan.<sup>121</sup> The IRS’s general position, reflected in several PLRs, is a principally purposed organization’s retirement sub-committee that administers the plan as its sole purpose is also considered a principal purpose organization.<sup>122</sup> However, when such a committee has other purposes, the standard becomes muddled.

Most of the administrative guidance addressing ERISA § 3(33) gives little insight into the reasoning behind the IRS and the Department of Labor’s decisions on whether or not an organization is principally purposed. In countless PLRs, the IRS seems to simply accept the requesting party’s assertion that its organization is principally purposed.<sup>123</sup> Many of these reports include a statement similar to this: because the organization’s principal purpose is to administer the employee retirement plan, it is a “principal purpose” organization.<sup>124</sup> This circular reasoning provided by the IRS is far from

---

120. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, n.3 (2017); *Medina v. Catholic Health Initiatives*, 877 F. 3d 1213, 1228 (10th Cir. 2017).

121. I.R.S. Gen. Couns. Mem. 39,007 (July 1, 1983).

122. *See, e.g.*, I.R.S. Priv. Ltr. Rul. 8936052 (June 13, 1989); I.R.S. Priv. Ltr. Rul. 9029039 (Apr. 23, 1990); I.R.S. Priv. Ltr. Rul. 9322032 (Mar. 9, 1993); I.R.S. Priv. Ltr. Rul. 9617047 (Jan. 31, 1996); I.R.S. Priv. Ltr. Rul. 9619073 (Feb. 13, 1996); I.R.S. Priv. Ltr. Rul. 200307096 (Nov. 22, 2002).

123. *See, e.g.*, I.R.S. Priv. Ltr. Rul. 89-36-052 (June 13, 1989); I.R.S. Priv. Ltr. Rul. 91-38-071 (June 28, 1991); I.R.S. Priv. Ltr. Rul. 96-17-047 (Jan. 31, 1996); I.R.S. Priv. Ltr. Rul. 96-19-073 (Feb. 13, 1996); I.R.S. Priv. Ltr. Rul. 2014-15-015 (Jan. 13, 2014); I.R.S. Priv. Ltr. Rul. 2015-05-051 (Nov. 3, 2014).

124. *See, e.g.* I.R.S. Priv. Ltr. Rul. 9041004 (June 25, 1990); I.R.S. Priv. Ltr. Rul. 9138071 (June 28, 1991); I.R.S. Priv. Ltr. Rul. 9537034 (June 23, 1995); I.R.S. Priv. Ltr. Rul. 9702035 (Oct. 16, 1996); I.R.S. Priv. Ltr. Rul. 9705021 (Nov. 4, 1996); I.R.S. Priv. Ltr. Rul. 200148055 (July 16, 2001); I.R.S. Priv. Ltr. Rul. 200207027 (Nov. 19, 2001); I.R.S. Priv. Ltr. Rul. 200331010 (May 9, 2003); I.R.S. Priv. Ltr. Rul. 200418050 (Feb. 06, 2004); I.R.S. Priv. Ltr. Rul. 201222052 (Mar. 7, 2012); I.R.S. Priv. Ltr. Rul.

enlightening.<sup>125</sup> Religiously-affiliated hospitals could read a hundred PLRs based on this statutory provision<sup>126</sup> and still fail to understand whether its own employee benefit committees comply.

The only rare guidance that religiously-affiliated hospital and their employee benefit committees have to rely on are a few administrative guidance documents issued prior to *Advocate*. When at least 80% of the employee benefit committee meetings include discussion of administration or funding of the Plan, the Department of Labor found that it met the principal purpose test.<sup>127</sup> When the benefits committee’s principal overall function is to shape the policy and direct the operations of the plan and other retirement and welfare benefit plans maintained by the organization, the IRS found that it met the principal purpose test.<sup>128</sup> Yet, it is not necessary for the individuals who are officers of a principal purpose organization, such a religiously-controlled hospital, to do so on a full-time basis or to have their role with the organization as their principal activity or responsibility.<sup>129</sup> When a benefits plan committee’s sole responsibility was expanded to include provision of the other benefits for lay employees of the hospital, it still qualified as a “church plan.”<sup>130</sup> Lastly, a committee still retained its principal purpose status despite having expanded duties that included the power: “to adopt bylaws and to make and enforce rules and regulations for administration of Plan X, to determine all questions of eligibility for benefits, duration of employment, computation of benefits and value of benefits, to employ necessary advisors, to maintain adequate records and file appropriate government filings . . .”<sup>131</sup> Despite the magnitude of private letter rulings issued directly addressing this ERISA provision, a religiously-affiliated medical facility and its subcommittees still have little guidance on which to proceed. Therefore, it may look elsewhere to try to define clear guidelines around the term “principal purpose.”

---

201233027 (May 25, 2012); I.R.S. Priv. Ltr. Rul. 201415015 (Jan. 13, 2014); I.R.S. Priv. Ltr. Rul. 201505051 (Nov. 3, 2014).

125. Due to the confidential nature of private letter rulings, there is only so many background facts that the IRS is willing to include in a PLR. Therefore, it’s unclear to the general public whether the conclusions are based on solid circumstantial facts or if the IRS is simply trusting a hospital’s assertion that its committee is principal purpose. One would hope that the IRS is confident that a particular organization is principle purpose before it issues a PLR on that exact matter, but the average person doesn’t have any way to double check the IRS’s conclusions.

126. This is an avenue that the author does not recommend, coming from her personal experience.

127. U.S. Dep’t of Lab., Advisory Opinion Letter 93-01A (Jan. 6, 1993).

128. I.R.S. Priv. Ltr. Rul. 9742038 (July 25, 1997).

129. I.R.S. Gen. Couns. Mem. 39,007 (July 1, 1983).

130. U.S. Dep’t of Lab., Advisory Opinion No. 86-19A (Aug. 22, 1986) (explaining that the responsibility was expanded namely to hospitalization benefits, life insurance and accidental death and dismemberment benefits, long term disability, dental benefits, vision benefits, and opportunities for HMO membership).

131. I.R.S. Priv. Ltr. Rul. 9444036 (Aug. 8, 1994).

*E. Administrative Guidance on Defining “Principal Purpose” as Used in Non-ERISA Cases*

As almost a last resort, an entity seeking to determine if it meets the requirements of ERISA § 3(33) may look to other administrative guidelines issued in contexts outside the realm of ERISA that define the terms “principal purpose.” For example, a hospital is considered to be “charitable”<sup>132</sup> when its “principal purpose and function” is the provision of medical and hospital care.<sup>133</sup> An educational organization’s “principal purpose and function” is the presentation of formal education in the instructive sense when it regularly maintains a faculty and a curriculum and regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.<sup>134</sup> A rehabilitation institution or an out-patient clinic may qualify as a hospital if its “principal purpose or functions” is the provision of hospital or medical care.<sup>135</sup> Where the principal purpose and functions of an organization are the maintenance of a museum and library and other facilities for research, with secondary activities in furtherance of the organization’s graduate and post-graduate educational aims, the organization does not constitute an educational organization.<sup>136</sup> An organization whose activities have the aspects of a church or association of churches, an educational organization, and a hospital, but whose principal purposes or functions are not those of a church or association of churches, or an educational organization, or a hospital, does not qualify under any of the classes of “charitable” organizations set forth in IRC § 170(b)(1)(A).<sup>137</sup>

*F. An Amalgam of Approaches*

Since not one proposed approach is fool proof, religiously-affiliated hospital are likely to apply some or all of these approaches in their attempt to define their own employee benefits committee as principal purpose. At the end of the day, though, the *Advocate* ruling provides little guidance for the typical religiously-affiliated hospital. It’s time for Congress to take action and clearly define the requirements for ERISA’s church plan exemption. The stakes are too high for the standard to be this muddy.

---

132. Internal Revenue Serv., *Charitable Hospitals-General Requirements for Tax Exemption Under Section 501(c)(3)*, IRS.GOV, (<https://www.irs.gov/charities-non-profits/charitable-hospitals-general-requirements-for-tax-exemption-under-section-501c3>) (last updated Nov. 7, 2018).

133. I.R.S. Priv. Ltr. Rul. 9215047 (Jan. 14, 1992).

134. I.R.S. Priv. Ltr. Rul. 5702044380A (Feb. 4, 1957).

135. 26 C.F.R. § 1.170-2(a)(4) (2018).

136. I.R.S. Rev. Rul. 58-433, 1958-2 C.B. 102.

137. I.R.S. Priv. Ltr. Rul. 5507064520A (July 6, 1955).

## CONCLUSION

After *Advocate v. Stapleton*, the Supreme Court seemed to leave as many questions unanswered as answered. Religiously-affiliated hospitals and their employee benefit committees remain in a tough spot where they must make a best guess as to whether to blindly rely on the church plan exemption or go through the arduous private letter rulings process to know for sure. Because so much is on the line—especially all their employees’ long term retirement accounts—hospitals are more likely to take the latter approach. While large hospitals may be able to afford this extra cost, smaller religiously-controlled entities like private schools and nursing homes will likely face more challenges. So in the long run, *Advocate* doesn’t actually save these church-affiliated entities any time or money. Without a clear answer, the men and women who choose to work at a non-profit medical facility have to take the risk that their pension plans could disappear should the entity ever cease to exist. It’s imperative that the Court address this issue and clearly decide it once and for all.