



Legal Update

Conference Forum 2016



General Board

Pension and Health Benefits

Caring For Those Who Serve

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Agenda

- About the Church Alliance
- Church Alliance Legislation
- Washington Outlook
- Church Plan Litigation

Church Alliance

Founded 1975: Church Alliance for Clarification of ERISA

Coalition of CEOs: 37 denominational benefit boards

- Mainline Protestants (including UMC)
- Two Jewish movements
- Catholic schools
- Evangelical Protestants

**Policy work and advocacy on behalf of over
1 million clergy and lay church workers and their families**

State of Play

- President Obama—final 11 months in office
 - Washington in “campaign mode”
 - Accelerated by death of Justice Scalia
- House controlled by GOP
 - GOP Fracture: “Establishment” vs. “Freedom Caucus”
 - New Speaker: Rep. Paul Ryan, R-WI
- Senate controlled by GOP (54 seats)
 - 2016 Election: Dems defending 10 seats vs. GOP 24

State of Play

- Presidential campaigns in full gear
- **Macro level issues**
 - Syrian refugees
 - Immigration
 - Planned Parenthood funding
 - ACA* repeal
 - Tax Reform

Bottom Line (most likely):

Not much will get done this year other than a few “must dos” —
e.g., FAA reauthorization during the lame duck session

* ACA: Affordable Care Act

Church Plan Clarification Act

Clarifies	Controlled group rules
Preserves	Grandfathered defined benefit 403(b) plans
Allows	Automatic enrollment
Permits	Transfers between 403(b) and 401(a) plans
Expands	81 – 100 trusts

Church Plan Clarification Act Saga

111th Congress	112th Congress	113th Congress
Discussed, but not introduced	Introduced as S. 143 , and again as S. 3532	Introduced as S. 952 <ul style="list-style-type: none">• Not enacted due to skewed revenue score

Church Plan Clarification Act

Church Alliance policy trip to Capitol Hill October 21–22, 2015

- 4 CEOs and Secretary/Treasurer
- Policy Counsel coordinated more than 25 meetings over two days with House members and senior staff to push the Church Plan Clarification Act
- **Day 1:** Happened to be the day Rep. Paul Ryan announced he would seek the Speakership
- **Day 2:** Happened to be Hillary Clinton's 11-hour marathon Benghazi hearing appearance



To Andrew Hendren
With Best Wishes,

Congressman Pete Sessions (R-TX)



To Dennis Potter
With Best Wishes,

Congressman Pete Sessions (R-TX)

Church Plan Clarification Act

November 19, 2015: Reintroduced in 114th Congress

- **S. 2308**
 - Senators Rob Portman (R-OH) and Ben Cardin (D-MD)
- **H.R. 4085**
 - Congressmen Tiberi (R-OH) and Neal (D-MA)

Enacted on **December 18, 2015** as part of
Protecting Americans from Tax Hikes (PATH) Act of 2015

Church Health Plan Act

Would amend Affordable Care Act (ACA)

- Permit certain church health plan participants to qualify for ACA's premium tax credits
- Extend availability of ACA small business tax credit to small employers in church health plans beyond 2014

Church Health Plan Act

- Introduced in 113th Congress (**S. 1164**) by Senator Pryor (D-AR)
 - Pryor lost re-election
- Working through House Ways and Means and new “task forces” established by Speaker Ryan
- Challenges, considering ACA approach by GOP
 - House and Senate passed a Reconciliation Bill to repeal most of ACA
 - **Vetoed by President Obama and override vote failed**

Regulatory Efforts

Regulatory Comment Letters

- **Affordable Care Act** Regulatory Guidance
 - Employer Payment Plans
 - Preventive Services coverage (contraceptives)
 - Small Business Health Care Tax Credit
 - W-2 Reporting—cost of health coverage
 - Cadillac Plan Tax implementation
- **Dodd-Frank** Regulatory Guidance
 - Commodity Futures Trading Commission

Litigation Monitoring

- Housing allowance
 - *Freedom From Religion Foundation (FRFF) v. Lew*—
7th Circuit Court of Appeals, 2014
 - **Amicus curiae brief**
- Church plan definition litigation
 - 12 cases in various federal courts
- Other litigation
 - E.g., challenges to *Form 990* exemptions for churches by FRFF and others

Church Plan Litigation

Plaintiffs (usually employees of church-affiliated hospitals) claim employers' defined benefit plans cannot be church plans exempt from ERISA*

Plaintiffs' Argument

Only a “church or convention or association of churches” can establish a church plan

*** In some cases plaintiffs also claim that “church plan” exemption from ERISA is unconstitutional**

Church Alliance Amicus

Rollins v. Dignity Health

- 9th Circuit Court of Appeals
 - History of narrow reading of religious liberty
- *Amicus curiae* brief by Church Alliance
 - Joined existing *amicus* brief by GuideStone of the Southern Baptist Convention and Pension Board of United Church of Christ
- July 13, 2015
- Argument in support of **constitutionality** of church plan exemption from ERISA

Court of Appeals Decision

Kaplan v. St. Peters Healthcare System— **Third Circuit 2015**

- “Church plan” must be established by a church (or convention or association of churches)
- Plans established by other organizations (e.g., hospitals, even if “church controlled”) are subject to ERISA
- Other Court of Appeals decisions expected soon
 - 7th Circuit (*Stapleton v. Advocate Health*)

Fee Litigation

Bacon v. Portico Benefit Services of the ELCA— **Minnesota Court of Appeals**

- Class action suit against ELCA pension board (Portico) for unreasonable fees charged to defined contribution retirement plans
- Portico motion to dismiss based on First Amendment
 - Trial Court granted motion
 - Plaintiffs appealed
- Church Alliance filed an amicus curiae brief
 - Argues that secular courts would get too entangled in church doctrine if they try to assess reasonableness of church plan budget line items

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