

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

MARILYN OVERALL, on behalf of)
herself, individually, and on behalf) Civil No. 13-cv-11396-AC-LJM
of all others similarly situated,)
) Hon. Judge Avern Cohn
Plaintiff,) Hon. Mag. Judge Laurie J. Michelson
)
v.) **REPLY MEMORANDUM IN**
) **SUPPORT OF DEFENDANTS’**
ASCENSION HEALTH, et al.) **MOTION TO DISMISS UNDER RULE**
) **12(B)(1) AND RULE 12(B)(6)**
Defendants.)
)
)

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TABLE OF CONTENTS

I. OVERVIEW	1
II. ARGUMENT	1
A. Plaintiff Contradicts Long-Standing, Universal Construction	1
B. Ascension Is Controlled By and Associated With The Church	6
C. There Is No Violation Of The Establishment Clause.....	13

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>ACLU v. DeWeese</i> , 633 F.3d 424 (6th Cir. 2011)	14
<i>Catholic Charities of Maine v. City of Portland</i> , 304 F. Supp. 2d 77 (D. Me. 2004)	11, 12, 13
<i>Chronister v. Baptist Health</i> , 442 F.3d 648 (8th Cir. 2006)	2, 11
<i>Cohen v. City of Des Plaines</i> , 8 F.3d 484 (7th Cir. 1993)	7
<i>Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos</i> , 483 U.S. 327 (1987).....	14, 15
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005)	14
<i>Forest Hills Early Learning Ctr., Inc. v. Grace Baptist Church</i> , 846 F.2d 260 (4th Cir. 1988)	8
<i>Hall v. USAbLe Life</i> , 774 F. Supp. 2d 953 (E.D. Ark. 2011).....	3
<i>Harclerode v. Sisters of Mercy of Indep.</i> , 1981 WL 394149 (D. Kan. Nov. 3, 1981)	7
<i>Hartwig v. Albertus Magnus Coll.</i> , 93 F. Supp. 2d 200 (D. Conn. 2000).....	11
<i>Hosanna–Tabor Evangelical Lutheran Church & Sch. v. EEOC</i> , 132 S. Ct. 694 (2012).....	15
<i>John R. Sand & Gravel Co. v. United States</i> , 552 U.S. 130 (2008).....	2
<i>Kedroff v. St. Nichols Cathedral of Russ. Orthodox Church</i> , 344 U.S. 94 (1952).....	9
<i>Lown v. Cont’l Cas. Co.</i> , 238 F.3d 543 (4th Cir. 2001)	2, 11, 12

Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church,
393 U.S. 440 (1969).....12

Serb. E. Orthodox Diocese v. Milivojevich,
426 U. S. 696 (1976).....8, 12

Texas Monthly, Inc. v. Bullock,
489 U.S. 1 (1989).....14

Thorkelson v. Publ’g House of the Evangelical Lutheran Church,
764 F. Supp. 2d 1119 (D. Minn. 2011).....4

United States v. Bestfoods,
524 U.S. 51 (1998).....12

Welsh v. Ascension Health,
2009 WL 1444431 (N.D. Fla. May 21, 2009)2, 3

STATUTES

Codex Iuris Canonici, Code c.113 § 2 (1983)8
Codex Iuris Canonici, Code c.116 § 1 (1983)8
ERISA § 3(33)(C), 29 U.S.C. § 1002(33)(C)1, 3, 4, 12

OTHER AUTHORITIES

26 C.F.R. § 1.414(c)-5(b).....13
124 Cong. Rec. 12106 (1978).....5
125 Cong. Rec. 10052 (1979).....5
125 Cong. Rec. 10054 (1979).....5
I.R.S. Gen. Couns. Mem. 39007, 1983 WL 197946 (Nov. 2, 1982)4
I.R.S. P.L.R. 201319036, 2013 WL 1928485 (May 10, 2013).....3, 4
Pope John Paul II, *Health Care Ministry in Transition* (September 14, 1987), in
MEDICAL ETHICS, SOURCES OF CATHOLIC TEACHINGS (4th Ed. 2011)7
RESTATEMENT (THIRD) OF TRUSTS §§ 76-786

I. OVERVIEW

Plaintiff's Opposition Memorandum ("Opp.") confirms that her case rests on the erroneous contention that ERISA's church plan exemption applies only when a church establishes a plan. For over thirty years, *every* court, the IRS, and the DOL have rejected this argument. Plaintiff's claims should be dismissed because: (i) the church plan exemption is not limited to plans established by churches; (ii) Plaintiff's fallback claim that Ascension Health is not controlled by or associated with the Roman Catholic Church fails legally; and (iii) the church plan exemption does not violate the First Amendment.

II. ARGUMENT¹

A. Plaintiff Contradicts Long-Standing, Universal Construction

Plaintiff argues that the church plan exemption applies only to plans established by churches. *See* Pl.'s Opp. pp. 9-17. Plaintiff is wrong. The plain language of the church plan exemption, amended retroactively by Congress in 1980, covers organizations controlled by or associated with a church under the "plan committee" exemption in ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i), and the "organizational exemption" in ERISA § 3(33)(C)(ii)-(iii), 29 U.S.C. § 1002(33)(C)(ii)(II). This is not simply Defendants' argument—this is the universal, long-standing construction of the statute by the IRS, the DOL, and *every*

¹ Unless stated otherwise, all exhibits cited herein refer to the exhibits annexed to Defendants' Memorandum in Support of its Motion to Dismiss (at Dkt. Nos. 22-2 to 23-10). Defendants are filing an index listing those exhibits.

court that has applied this exemption. The two circuit cases relied on by Plaintiff make this precise point. *See Lown v. Cont'l Cas. Co.*, 238 F.3d 543, 547 (4th Cir. 2001) (concluding that “a plan established by a corporation associated with a church can still qualify as a church plan”); *see also Chronister v. Baptist Health*, 442 F.3d 648, 652 (8th Cir. 2006) (same). The only open issue is whether a plan must meet the plan committee exemption to qualify—the IRS’s view—or whether the plan can qualify under either the plan committee or organizational exemptions—the view of the courts. Ascension meets both tests.

Ascension, relying on its IRS private letter ruling and determination letters²—like thousands of other religiously-affiliated organizations—has followed this well-settled law for years. *Cf., e.g., John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 139 (2008) (courts should be loath to upset well-settled statutory construction). First, to upset this well-settled law, Plaintiff relies on Ascension Health’s arguments in *Welsh v. Ascension Health*, 2009 WL 1444431 (N.D. Fla. May 21, 2009). There Ascension Health advocated the IRS’s view—that a plan is a church plan only if it has a plan committee controlled by or associated with a church. Ascension’s Plan meets these requirements. Notably,

² *See generally* Exs. L, M. Plaintiff claims the determination letter has expired. This is incomplete. The determination letter addresses the Plan’s tax-qualified status. Ascension timely filed for its next letter, following IRS submission cycles, and the IRS’s next determination will be retroactive when issued. The IRS’s private letter ruling, stating that the Plan is a church plan, has no expiration date.

the *Welsh* district court rejected this limitation, and adopted the *broader* view of the exemption, holding that Ascension's LTD plan was a church plan. *Id.* at *4-7.³

Second, Plaintiff ignores the "plan committee" exemption. The plan committee exemption provides that "a plan established and maintained for its employees (or their beneficiaries) by a church . . . *includes* a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan" ERISA § 3(33)(C)(i) (emphasis added). This statutory provision thus deems a plan with such a committee to be established by a church, the approach taken by the IRS, *e.g.*, I.R.S. P.L.R. 201319036, 2013 WL 1928485, at 4-5 (May 10, 2013) (applying same to church plan established by religious order for two hospitals), and approved by the courts as an alternative way to satisfy the church plan exemption. *E.g.*, *Hall v. USABLE Life*, 774 F. Supp. 2d 953, 958 (E.D. Ark. 2011).

To avoid this exemption, Plaintiff argues that a plan committee that administers the plan does not "maintain" the plan. Pl.'s Opp. p. 36, n. 32. Again, Plaintiff ignores the plain language of the statute, which provides that a plan established by a church "includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan."

³ Significantly, the *Welsh* court held that Ascension's LTD plan was not covered by ERISA because, *inter alia*, Ascension was controlled by or associated with the Church. *Welsh*, 2009 WL 1444431, at *7.

ERISA § 3(33)(C)(i). The statute thus provides that the organization “maintains” the plan by “administering or funding” the plan. *See also, e.g.*, I.R.S. P.L.R. 201319036, at 4. Plaintiff also argues that a plan’s administrative committee cannot be the organization referred to in the plan committee exemption since it is not separately incorporated. Pl.’s Opp. pp. 36-37. Yet again, Plaintiff ignores the statutory text, which provides the organization can be “a civil law corporation *or otherwise.*”⁴ ERISA § 3(33)(C)(i) (emphasis added).

Third, Plaintiff asserts that the legislative history compels her “church must establish” reading, arguing that the 1980 amendment was meant simply to carry forward the intent of the earlier, repealed exemption to cover “church agency” employers that already had established church plans. However, when it passed the 1980 amendment, Congress completely rewrote the church plan exemption, deleting the provision on which Plaintiff relies. *See* Appendix A attached hereto (comparing the 1974 and 1980 church plan statutory provisions); *see also, e.g.*, *Thorkelson*, 764 F. Supp. 2d at 1129 (noting same).

The legislative history for the 1980 amendment *supports* Defendants’ position. The amendment’s co-sponsor, Senator Talmadge, explained the rationale for expanding the church plan exemption to include plans sponsored by church-

⁴ An administrative committee of a plan meets this exemption. *See, e.g.*, *Thorkelson v. Publ’g House of the Evangelical Lutheran Church*, 764 F. Supp. 2d 1119, 1127 (D. Minn. 2011); *see also* I.R.S. Gen. Couns. Mem. 39007, 1983 WL 197946, at *4 (Nov. 2, 1982) (same).

affiliated organizations like hospitals and schools:

Church agencies are essential to the churches' mission. They are for the sick and needy and disseminate religious instruction. They are, in fact, part of the churches. As a practical matter, it is doubtful that the agency plans would survive subjection to ERISA. . . . The churches fear that many of the agencies would abandon *their* plans.⁵

As Plaintiff notes correctly, this expanded church plan exemption was supported by numerous religious faiths. A letter from the Rabbinical Pension Board explained the need for statutory expansion so that the plans sponsored by its organization, whose mission included education and the promotion and enrichment of Jewish life, would be free from intrusive and uncertain inquiries by the IRS into what is or is not integral to or part of a "church." *See* 125 Cong. Rec. 10054 (May 7, 1979). Under Plaintiff's view, such plans do not qualify for the exemption as this organization did not engage in church, worshipful, activities.

Finally, Plaintiff's policy arguments that ERISA should be extended to Ascension's participants because they would be left unprotected should be directed to Congress, not the courts. With this expanded statutory language, Congress made the policy choice to exempt church-affiliated plans from ERISA, in part, because they had operated responsibly since the 1700s. *See* 124 Cong. Rec. 12106 (May 2, 1978). Despite Plaintiff's posit that purported class members are in peril, Plaintiff ignores the fact that Ascension's plans are *better* funded than the majority

⁵ 125 Cong. Rec. 10052 (May 7, 1979) (emphasis added).

of ERISA plans.⁶ She also ignores the fact that Ascension's plans are subject to IRC tax qualification requirements, as well as to fiduciary obligations under state trust law to protect the interests of church plan participants. *See, e.g.*, RESTATEMENT (THIRD) OF TRUSTS §§ 76 (duty to follow trust document and law), 77 (duty of prudence), 78 (duty of loyalty) (2007). Plaintiff acknowledges that Ascension's Plan obligates the fiduciaries to act on behalf of the participants. Pl.'s Opp. pp. 37, 44. Finally, Ascension's Plan obligates the participating institutions to contribute such amounts needed on "an actuarially sound basis" to fund the benefits. *See* Ex. K § 4.2 at ASCN-OV0000686-687.

B. Ascension Is Controlled By and Associated With The Church

Plaintiff cannot dispute that Ascension Health continues health ministries of the Roman Catholic Church that have engaged in this work for hundreds of years. Plaintiff's argument that there is no control by or association with the Church rests on two incorrect premises. First, Plaintiff contends that health ministries of the Roman Catholic Church should be deemed religiously insignificant because "healthcare and healing are the central mission of every legitimate healthcare facility, regardless of any purported affiliation with a church." Pl.'s Opp. p. 29.

However, Ascension Health is obligated to operate its health ministry not as any

⁶ Plaintiff neglects to explain that the reason for this alleged underfunding is the current historic low interest rates for corporate bonds (the rate required to be used to discount future benefit obligations to present value) caused by the Federal Reserve's monetary policy following the 2008-2009 recession. *See, e.g., Milliman 2013 Pension Funding Study* pp. 1, 5.

other non-profit, but in conformity with Roman Catholic doctrine. *E.g.*, Ex. B § 2.1 at ASCN-OV0000102-103. Moreover, the Roman Catholic Church, like many religions, considers healthcare ministries central to its religion and mission. As Pope John Paul II explained:

Your health care ministry, pioneered and developed by congregations of women religious and by congregations of brothers, is one of the most vital apostolates of the ecclesial community and one of the most significant services which the Catholic Church offers to society in the name of Jesus Christ.

...

The power that went out from Jesus and cured people of his own time (cf. Lk 6:19) has not lost its effect in the 2,000-year history of the Church. This power remains, in the life and prayer of the church, a source of healing and recognition. Ever active, this power confirms the identity of the Church today, authenticates her proclamation of the Kingdom of God, and stands as a sign of triumph over evil.⁷

Secular authorities have also recognized this principle. *E.g.*, *Harclerode v. Sisters of Mercy of Indep.*, 1981 WL 394149, at *2 (D. Kan. Nov. 3, 1981) (“The founder of the Christian faith himself also healed many as an application of his religious principles and to further those principles.”). Furthermore, Plaintiff’s contention that a church should not consider healing ministries to be part of its religious mission is precluded by the First Amendment. *E.g.*, *Cohen v. City of Des Plaines*, 8 F.3d 484, 490 (7th Cir. 1993) (“First, it is not up to legislatures (or to courts for that matter) to say what activities are sufficiently ‘religious.’ . . .

⁷ Pope John Paul II, *Health Care Ministry in Transition* (September 14, 1987), in *MEDICAL ETHICS, SOURCES OF CATHOLIC TEACHINGS* (4th Ed. 2011).

Second, it is clear that the legitimate purpose of minimizing governmental interference with the decision making processes of a religious organization can extend to seemingly secular activities of the organization.”⁸

Second, Plaintiff argues that Ascension Health’s sponsor, Ascension Health Ministries, should not be considered part of the Roman Catholic Church because it is not “the church,” i.e., a place of worship, under tax law. Pl.’s Opp. pp. 23-24. That is the wrong issue. As a Public Juridic Person of Pontifical Right, under Canon Law, Ascension Health Ministries is a distinct entity that is *part of* the Roman Catholic Church. *See Codex Iuris Canonici*, Code c.113 § 2 (“In the Church . . . there are also juridic persons”), Code c.116 § 1 (“Public juridic persons . . . fulfill in the name of the Church . . . the proper function entrusted to them in view of the public good”) (1983). Under Canon Law, Ascension Health Ministries acts in the name of the Church. Churches are entitled to structure their affairs to fulfill their religious purposes and missions. The First Amendment protects this conduct from judicial inquiry, i.e., whether the church wishes to administer a health ministry directly or through an administrative body. *See, e.g., Serb. E. Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 709-10 (1976) (First Amendment precludes inquiry into church policy and administration and allocation of power in

⁸ *See also, e.g., Forest Hills Early Learning Ctr., Inc. v. Grace Baptist Church*, 846 F.2d 260, 263 (4th Cir. 1988) (rejecting district court’s inquiry into whether activities of child care facilities established by religious organizations were sufficiently religious).

a hierarchical church); *Kedroff v. St. Nichols Cathedral of Russ. Orthodox Church*, 344 U.S. 94, 107-108 (1952) (same—government cannot regulate church administration).

Once these two corrections are made, the flaws become manifest in Plaintiff's attempts to manufacture disputes as to whether Ascension Health is controlled by or associates with the Roman Catholic Church. There are ample public documents demonstrating control or association. However, the Court need consider only one of two documents and the Court may take judicial notice of both documents: Ascension Health's publicly filed Articles of Incorporation; or the published book, the Official Catholic Directory. Ascension Health's governing document, its Articles of Incorporation, shows both control by and association with the Roman Catholic Church through its healing ministry, Ascension Health Ministries. For example:

Purposes. The purposes for which Ascension Health is organized are exclusively charitable, religious, scientific or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 . . . Further, Ascension Health is organized and at all times shall be operated exclusively for the benefit of, to perform the functions of, and to carry out the purposes of Ascension Health Ministries (referred to as the "Sponsor"), which has been conferred public juridic personality by decree of The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life of the Roman Catholic Church, and to advance the Sponsor's religious purposes. . . . In furtherance of these purposes and consistent with the official teachings of the Roman Catholic Church, Ascension Health may:

. . .
2.1.2 Serve in the health ministry of the Roman Catholic

Church, carry out its mission and ensure that the elements of Catholic identity are integrated and implemented throughout the health ministry, including the *Ethical and Religious Directives for Catholic Health Care Services*, as approved, from time to time, by the United States Conference of Catholic Bishops and as implemented by the local ordinary.

Ex. B § 2.1 at ASCN-OV0000102-103. Ascension Health's articles grant control to Ascension Health Ministries directly and through the parent entity it controls, Ascension Health Alliance, including the power to:

5.2.1 Approve, assure compliance with, change, and interpret the philosophy, mission, vision, expectations and core values of the Ascension Health.

5.2.2 Approve the Articles of Incorporation and Bylaws of Ascension Health.

5.2.3 Appoint, upon the recommendation of the Board of Ascension Health, or remove, with or without cause, the members of the Board of Trustees of Ascension Health, subject to ratification by Ascension Health Ministries.

5.2.4 Appoint, upon the recommendation of the Board, or remove, with or without cause, after consultation with the Board, the Chair of the Board of Directors of Ascension Health, subject to ratification by Ascension Health Ministries.

5.2.5 Subject to the approval of Ascension Health Ministries, approve the alienation of assets of as required by Canon law.

...

5.2.8 Approve the incurrence of debt by Ascension Health and by any of its Subsidiary Organizations.⁹

The Official Catholic Directory lists Ascension Health as associated with the Roman Catholic Church. As Plaintiff's exhibit notes, an entity is listed in the

⁹ Ex. B § 5.2 at ASCN-OV0000104-105.

directory only if a bishop of the Roman Catholic Church determines the entity is “operated, supervised, or controlled by or in connection with the *Roman Catholic Church*.” See Pl.’s Opp., Ex. 8 (U.S. Catholic Bishops’ Guidelines) p. 17 (emphasis in original). The Official Catholic Directory listing is a public statement by the Roman Catholic Church that Ascension is associated with the Church. See, e.g., *Catholic Charities of Maine v. City of Portland*, 304 F. Supp. 2d 77, 85-86 (D. Me. 2004) (referring to, *inter alia*, the Official Catholic Directory as evidence that Catholic Charities’ health benefit plans qualify for ERISA church-plan status); *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d 200, 202-203 (D. Conn. 2000) (explaining that “the Official Catholic Directory . . . is the definitive compilation of Roman Catholic institutions in the United States”).

Plaintiff’s arguments challenging control and association fail. Based on Plaintiff’s views of religious doctrine—she is a Baptist (*see* Compl. ¶ 18)—Plaintiff believes the Roman Catholic Church should not associate with Ascension Health. Plaintiff thus criticizes Ascension Health’s stewardship of its resources and its ecumenical practices in hiring employees and in caring for patients of all faiths, including tending to their pastoral needs; she relies on doctrinal tests of religious exclusion imposed on Baptist institutions as discussed in *Lown* and *Chronister*. The differences between these religious doctrines are legion. Most importantly, under the First Amendment, what is church doctrine, whether

someone is a “good Catholic,” and how a church should enforce its religious doctrine are determinations made by the Roman Catholic Church. *See, e.g., Milivojevich*, 426 U. S. at 708-10, 713-15; *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449-50 (1969). Unless the Court accepts Plaintiff’s invitation to entangle itself in ecclesiastical disputes over Roman Catholic doctrine, Plaintiff cannot plausibly claim that the Roman Catholic Church does not share “common *religious* bonds and convictions” (ERISA § 3(33)(C)(iv) (emphasis added)) with its health ministry, Ascension Health.

Plaintiff also argues that because Ascension Health is a separate corporate entity for which the Church is not liable, the Church cannot control Ascension Health. This argument does not defeat the association test, which itself establishes church plan status. Moreover, Plaintiff is wrong as to control. Limitation of liability and control are distinct legal issues; for example, the entity that controls a corporation is not liable for the acts of the corporation because the corporate form limits liability. *E.g., United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998) (noting this is a deeply ingrained American legal principle). As to corporate control, as applied to the “controlled by” test, the power to appoint the majority of trustees or directors of an institution constitutes control. *E.g., Lown*, 238 F.3d at 547 (“An organization is controlled by a church when, for example, a religious institution appoints a majority of the organization’s officers or directors.”); *Catholic Charities*

of Maine, 304 F. Supp. 2d at 85 (“Courts have interpreted the [“controlled by”] provision as referring to corporate control, such as church control over appointment of a majority of the non-church organization’s officers or Board of Directors.”); *see also* 26 C.F.R. § 1.414(c)-5(b) (“A trustee or director is controlled by another organization if the other organization has the general power to remove such trustee or director and designate a new trustee or director.”). Here, under Ascension Health’s articles, its directors are appointed and removed by Ascension Health Ministries or the entity the Ministries controls, Ascension Health Alliance. Through these same mechanisms, Ascension Health Ministries also controls Ascension Health’s articles of incorporation, bylaws, philosophy, mission, vision, expectations, core values, alienation of assets and incurrence of debt. Ex. B § 5.2 at ASCN-OV0000104-105.

C. There Is No Violation Of The Establishment Clause

Plaintiff argues that Congress violated the First Amendment by including within the church plan exemption non-profit religious-affiliated organizations that may compete with secular non-profits, e.g., hospitals, schools and the like. Plaintiff’s constitutional attack on the church plan exemption fails.¹⁰

First, Plaintiff explicitly applies the wrong legal test, cobbling together a test

¹⁰ To avoid ruling on the constitutional claim, Plaintiff argues these issues cannot be decided on a motion to dismiss, because she is making an “as applied” challenge. Pl.’s Opp. p. 39. However, the issues are legal, including the correct test to apply, and whether Congress’s statute passes that test.

biased against accommodations, relying principally on statements made in one of the plurality opinions in *Texas Monthly*.¹¹ See Pl.'s Opp. p. 38. However, in this Circuit, the *Lemon* test controls any Establishment Clause claim. E.g., *ACLU v. DeWeese*, 633 F.3d 424, 430-31 (6th Cir. 2011). Second, Plaintiff does not purport to meet the correct legal test, and as detailed in Defendants' motion at pages 32-35, Congress's church plan exemption clearly passes the *Lemon* test. Nothing Plaintiff argues upsets that analysis. Third, Plaintiff's arguments are interdicted by recent Supreme Court jurisprudence. Plaintiff's central contention is that Congress cannot favor religion over non-religion, and instead must bundle any accommodation to religious groups with accommodations to secular groups. However, ERISA's coverage also was not extended to secular groups, governmental entities, and plans for senior executives of for-profit corporations.

Equally important, Plaintiff's bundling claim is in error. In *Cutter v. Wilkinson*, the Supreme Court reversed because the Sixth Circuit had assumed, erroneously, that bundling was required. 544 U.S. 709, 724 (2005); see also *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 338 (1987) (religious accommodations need not come packaged with benefits to secular entities). Rather, the First Amendment gives

¹¹ The opinions of Justices Blackmun and O'Connor limited *Texas Monthly* to finding the tax exemption at issue violated government neutrality because it was designed to favor the dissemination of religious literature. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 28 (1989) (Blackmun, J., concurring).

enhanced protection from governmental interference for the free exercise of religion to groups *because* they are religious groups. *E.g., Hosanna–Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 706 (2012).

On Plaintiff’s related arguments comparing secular and religious non-profit hospitals, to the extent a secular non-profit elects to offer a plan, if it is not a governmental entity, the plan is subject to ERISA. A religious non-profit entity’s plan is subject to state trust and contract law, and to the organization’s religious obligations under its church doctrine and Canon Law. Such distinctions do not violate the Establishment Clause. Rather, Congress may regulate in steps, or draw the line between secular and religion in a variety of places without violating the Establishment Clause. *E.g., Amos*, 483 U.S. at 338-39.

Respectfully Submitted, August 15, 2013

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on August 15, 2013, I electronically filed the foregoing document with the Clerk of Court Using the CM/ECF system which will automatically send e-mail notification of such filing to the attorneys of record:

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APPENDIX A

PL 93-406 (HR 2) - SEPTEMBER 2, 1974 29 USC 1002(33) (2013)

(33)(A) The term “church plan” means ~~(i) 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 the internal revenue code of 1954, ~~//26 USC 501.//~~ or (ii) a plan described in subparagraph (C). Title 26.

(B) The term “church plan” ~~(notwithstanding the provisions of subparagraph (a))~~ does not include a plan ~~—, —~~

(i) ~~Which~~ which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the internal revenue code of 1954), ~~//26 use 513.//~~ Title 26), or

(ii) ~~Which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the internal revenue code of 1954.~~ if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) ~~Notwithstanding the provisions of subparagraph (B) (ii), a plan in existence of 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 and employees of one of more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies or such church (or convention or association), and if such church (or convention or association) and each such agency is exempt form tax under section 501 of the internal revenue code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence to this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.~~ For purposes of this paragraph--

(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.

(ii) The term employee of a church or a convention or association of churches includes--
(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of Title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of Title 26 and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan--

(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of Title 26) at the time of such separation from service.

(D)(i) If a plan established and maintained 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 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.

(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(iii) For purposes of this subparagraph, the term "correction period" means--

(I) the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(III) any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default, whichever has the latest ending date.

INDEX OF EXHIBITS

Please note that all of the referenced exhibits have been previously filed with this Court on 6/28/13 as attachments to Defendants' Motion to Dismiss, Dkt. #22.

EXHIBIT A	Decree of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, dated June 30, 2011 (ASCN-OV0000993-995)	Dkt. #22-2
EXHIBIT B	Ascension Health Articles of Amendment for a Nonprofit Corporation, dated December 13, 2011 (ASCN-OV0000101-107)	Dkt. #22-3
EXHIBIT C	Ascension Health Ministries, Canonical Statutes (ASCN-OV00000007-012)	Dkt. #22-4
EXHIBIT D	2011 Ascension Health Ministries Annual Report, dated July 2, 2012 (ASCN-OV0000108-171)	Dkt. #22-5
EXHIBIT E	Ascension Health Ministries Canonical Bylaws, dated January 1, 2012 (ASCN-OV0000628-635)	Dkt. #22-6
EXHIBIT F	Ascension Health Alliance Articles of Incorporation and Certificate of Incorporation, dated September 13, 2011 (ASCN-OV0000181-187)	Dkt. #22-7
EXHIBIT G	Bylaws of Ascension Health Alliance (ASCN-OV0000614-627)	Dkt. #22-8
EXHIBIT H	Official Catholic Directory, dated 2012 (ASCN-OV0000636-638)	Dkt. #22-9
EXHIBIT I	Ascension Health Alliance Consolidated Financial Statements and Supplementary Information for the years ended June 30, 2012 and 2011 (ASCN-OV0000224-291)	Dkt. #22-10
EXHIBIT J	Catholic Health Association, A Guide for Planning & Reporting Community Benefit, 2012 Edition (ASCN-OV0000297-613)	Dkt. #22-11 & #22-12
EXHIBIT K	Ascension Health Pension Plan, dated January 1, 2012 (ASCN-OV0000639-992)	Dkt. #23 & #23-1
EXHIBIT L	IRS Private Letter Ruling to the Daughters of Charity, dated July 8, 1993 (ASCN-OV0000048-057)	Dkt. #23-2

EXHIBIT M	IRS Determination Letter, dated September 25, 2009 (ASCN-OV0000996-997)	Dkt. #23-3
EXHIBIT N	Ascension Health Pension Plan, Summary Plan Description, dated January 1, 2006 (ASCN-OV0000013-047)	Dkt. #23-4
EXHIBIT O	Guiding Principles of Model Community (ASCN-OV0000172-180).	Dkt. #23-5
EXHIBIT P	Ethical and Religious Directives for Catholic Health Care Services, Fifth Edition, dated November 17, 2009 (ASCN-OV0000058-100)	Dkt. #23-6
EXHIBIT Q	Ascension Health Socially Responsible Investment Guidelines, dated June 2010 (ASCN-OV0000292-296)	Dkt. #23-7
EXHIBIT R	Ascension Health Alliance Consolidated Financial Statements and Supplementary Information for the years ended June 30, 2006 and 2005 (ASCN-OV0000188-223)	Dkt. #23-8
EXHIBIT S	Letter to DB Plan Participants, dated December 30, 2011 (ASCN-OV0000998)	Dkt. #23-9
EXHIBIT T	Executive Summary: Catholic Identity of Ascension Health Alliance as a Healing Ministry of the Church (ASCN-OV0000001-006)	Dkt. #23-10