

Case No. 15-1172

**IN THE UNITED STATES COURTS OF APPEALS
FOR THE THIRD CIRCUIT**

LAURENCE KAPLAN, on behalf of himself,
individually, and on behalf of all others similarly situated,
Appellees,

v.

SAINT PETER'S HEALTHCARE SYSTEM; RONALD C. RAK;
SUSAN BALLESTERO, an individual; GARRICK STOLDT, an individual;
JOHN and JANE DOES 1-20

Saint Peter's Healthcare System, Ronald C. Rak,
Susan Ballestero, Garrick Stoldt,
Appellants.

On Appeal from the United States District Court
for the District of New Jersey
C.A. No. 13-2941 (MAS)(TJB)

**BRIEF AMICI CURIAE OF AARP AND
THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
IN SUPPORT OF APPELLEES URGING AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT OF AARP

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4)(1993) of the Internal Revenue Code and is exempt from income tax. AARP is also organized and operated as a non-profit corporation pursuant to Title 29 of Chapter 6 of the District of Columbia Code 1951.

Other legal entities related to AARP include AARP Foundation, AARP Services, Inc., Legal Counsel for the Elderly, and AARP Insurance Plan, also known as the AARP Health Trust.

AARP has no parent corporation, nor has it issued shares or securities.

Dated: May 11, 2015

/s/ Mary Ellen Signorille
Mary Ellen Signorille

CORPORATE DISCLOSURE STATEMENT OF NELA

The Internal Revenue Service has determined that the National Employment Lawyers Association (NELA) is organized and operated exclusively for advancing employee rights and serving lawyers who advocate for equality and justice in the American workplace pursuant to Section 501(c)(6) of the Internal Revenue Code and is exempt from income tax. NELA is also organized and operated as a not for profit corporation under the state laws of Ohio. The Employee Rights Advocacy Institute For Law & Policy is NELA's related charitable and educational organization under Section 501(c)(3) of the Internal Revenue Code.

NELA has no parent corporation, nor has it issued shares or securities.

Dated: May 11, 2015

/s/ Roberta L. Steele
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INTEREST OF AMICI CURIAE¹

AARP is a nonprofit, nonpartisan organization, with a membership that helps people turn their goals and dreams into real possibilities, seeks to strengthen communities, and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities, and protection from financial abuse. In its efforts to foster the economic security of individuals as they age, AARP seeks to increase the availability, security, equity, and adequacy of public and private pension, health, disability and other employee benefits which countless members and older individuals receive or may be eligible to receive.

The National Employment Lawyers Association (NELA) is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; with the exception of the fact that the parties' counsel may be members of AARP and/or the National Employment Lawyers Association, and, as such, pay general membership dues. No person other than amici, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.²

The core issue in this case is retirement security, an interest of direct and immediate concern to AARP members and the clients of NELA members. Congress enacted the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461 (2012), after assembling a record that showed a history and pattern of employers failing to provide promised employee benefits, a lack of disclosure and transparency, and varied and numerous financial abuses. As Congress declared, ERISA is intended to ensure that "the interests of participants in employee benefit plans and their beneficiaries" are protected. 29 U.S.C. § 1001(b); *see also, e.g., Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S.

² AARP and NELA have, jointly and singly, participated as amicus curiae in numerous cases to protect the rights of workers and their beneficiaries under ERISA. *See, e.g., Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 134 S. Ct. 604 (2013); *CIGNA Corp. v. Amara*, 131 S. Ct. 1866 (2011); *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739 (2004); *Cottillion v. United Ref. Co.*, 781 F.3d 47 (3d Cir. 2015); *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585 (3d Cir. 2009).

359, 361-62 (1980). Although Congress did not require that every pension plan be covered by ERISA, Congress did limit the exemptions to ERISA's coverage due to the abuses it uncovered and the remedial nature of the legislation.³

Participants and beneficiaries in private employer-sponsored employee benefit plans should be able to rely on promised pension benefits because the quality of their lives in retirement depends heavily on their eligibility for and the amount of their benefits. Mid-career and older participants have the most to lose in the recent trend of ERISA-covered pension plans "converting" to exempt church plans because these individuals have little time to make up any potential benefit shortfall. Resolution of the issues in this case will have a significant impact on the funding and integrity of employee benefit plans, individual participants' abilities to obtain accurate information to make informed decisions concerning their benefits, and their ability to obtain all promised retirement benefits. Because exemptions to ERISA's coverage and protections have a direct bearing on the economic security

³ See generally Br. of Pension Rights Ctr. as Amicus Curiae Supporting Appellees (discussing the legislative history of the church plan exception to ERISA coverage); Norman Stein, *An Article of Faith: The Gratuity Theory of Pensions and Faux Church Plans*, ABA Section of Labor and Employment Law Employee Benefits Committee Newsletter (Summer 2014), www.americanbar.org/content/newsletter/groups/labor_law/ebc_newsletter/14_sum_ebc_news/faith.html (noting that under ERISA's predecessor, the Welfare and Pension Plan Disclosure Act had exempted all tax-exempt organizations from its coverage; ERISA extended coverage to all plans except church and governmental plans).

of millions of Americans, including AARP members and NELA's members' clients, AARP and NELA respectfully submit this brief amici curiae.

ARGUMENT

I. ERISA-PROTECTED RETIREMENT BENEFITS ARE A CRITICAL ELEMENT OF AN EMPLOYEE'S COMPENSATION PACKAGE.

When provided, ERISA-protected pension benefits have significant value to the employees who receive them. Congress recognized that forfeited pensions were unfair, because pension promises may have been made in lieu of additional compensation or some other benefit that the employees would have received. S. Rep. No. 93-383, at 17, 25 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4890, 4930. When employers promise employees, at the time of hiring, a pension plan protected by ERISA, employees may accept a lower salary or hourly rate from that employer. Teresa Ghilarducci, *Pensions & the Uses of Ignorance by Unions and Firms*, 11(2) J. of Labor Res. 203, 203-04, 206 (1990). These employees perceive that their retirement benefits are worth more than their immediate compensation because those benefits are protected by ERISA. *See id.*

As longevity and, as a result, the amount of assets needed to live comfortably in retirement increases, retirement plans become more crucial to

individuals' retirement security. Indeed, for many people, outside of Social Security, employee benefit plans are their main source of retirement income.⁴

Not surprisingly, older workers are particularly vulnerable to the effects of benefit elimination and reductions from their retirement plans. When an employer reneges on its pension promises, it wreaks financial havoc upon older employees and their families by destroying a lifetime of working and planning for their retirement years.⁵ Retirement typically occurs at an age where employees no longer have the option or the time to start all over again in hopes of obtaining a new pension.⁶ For those already retired, it is just too late.

Enacted over 40 years ago, ERISA was created to protect retirement benefits and plan assets through a “comprehensive and reticulated” system designed to

⁴ See Sudipto Banerjee, *Income Composition, Income Trends, and Income Shortfalls of Older Households*, EBRI Issue Brief No. 383, Feb. 2013, at 5, http://www.ebri.org/pdf/briefspdf/ebri_ib_02-13.no383.incmeld.pdf (pensions and annuities are the second-most important source of income for most older households).

⁵ 120 Cong. Rec. 29928 (1974) (statement of Senator Williams) (“[T]oo many workers, rather than being able to retire in dignity and security after a lifetime of labor rendered on the promise of a future pension, find that their earned expectations are not to be realized.”); see S. Rep. No. 93-127, at 1-9 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4838-4844.

⁶ See Treasury Inspector General for Tax Administration, No. 2010-10-097, *Statistical Trends in Retirement Plans*, at 14 (Aug. 9, 2010), <http://www.treas.gov/tigta/auditreports/2010reports/201010097fr.pdf>.

assure that pension plans actually pay the benefits they promise. *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361, 374-75 (1980) (purpose of ERISA was to prevent the “great personal tragedy” suffered by employees whose retirement benefits were not paid). Ensuring ERISA’s protections remain in place throughout an employee’s work life and retirement is crucial to an individual’s retirement security. Thus, in constructing this remedial statute, Congress permitted only the most limited exemptions to ERISA’s protections.⁷ See ERISA § 4(b), 29 U.S.C. § 1003(b). A plan must meet all of ERISA’s requirements if it does not meet the precise conditions of an exemption. *Cf. John Hancock v. Harris Trust*, 510 U.S. 86, 105-06 (1993) (exemption limited to the precise words of the statute).

II. MANY ORGANIZATIONS THAT TAKE ADVANTAGE OF THE THE CHURCH PLAN EXEMPTION ARE BIG BUSINESSES, NOT CHURCHES.

As the Pension Rights Center discusses in its proposed brief amicus curiae, Congress designed ERISA’s church plan exemption to apply narrowly. As its label implies, it was intended only to apply to actual churches. However, like the defendant health system in this case, many of the organizations taking advantage of the church plan exemption are big businesses. They are organized to make healthcare services, to compete with similar institutions which do not claim the

⁷ See *supra* note 3.

church plan exemption for their pension plans, and to operate with primarily laypersons—including the CEO—to achieve their goals. Indeed, they are not organized to deliver religion and are not churches at all.⁸

Saint Peter’s Healthcare System, Inc. (“SPHS”) illustrates an all too common perversion of the church plan exemption. SPHS is a New Jersey not-for-profit hospital conglomerate that employs more than 2,800 individuals.⁹ In addition to an acute care teaching hospital affiliated with Drexel University’s College of Medicine, SPHS owns and operates numerous subsidiary corporations.¹⁰ These subsidiaries include a captive insurance company incorporated in the Cayman Islands, for-profit physician service organizations, a property management corporation, and a sports physical therapy institute, among others.¹¹ SPHS is also a participant in several for-profit joint ventures, including outpatient surgery centers, a clinical laboratory service, and a cardiac catheterization lab.¹² SPHS competes

⁸ We note that St. Peter’s Retirement Plan was operated as an ERISA plan from January 1974 to 2006. *See* App. on Behalf of Appellants 61 [*hereinafter* App.].

⁹ App. 843, 869.

¹⁰ App. 844 (organization chart).

¹¹ App. 845-47.

¹² App. 847.

with six other major medical centers in Central New Jersey, and maintains a market share of over 18%.¹³ Its revenues are over \$36 million, according to its latest tax filing,¹⁴ and it receives significant financing from tax-exempt debt issued by public agencies in New Jersey.¹⁵ Like other chief executive officers of for-profit systems and large non-profit health care systems, the CEO of SPHS is well-compensated. In 2013, he received compensation of approximately \$758,000.¹⁶ SPHS is not a church.¹⁷

Many of the largest health care conglomerates in the country claim that their pension plans are exempt church plans. For example, among the nation's ten

¹³ App. 871.

¹⁴ Saint Peter's Healthcare System, Inc., Return of Organization Exempt From Income Tax (Form 990) (2013 calendar year), *available at* http://990s.foundationcenter.org/990_pdf_archive/262/262019056/262019056_201312_990.pdf?_ga=1.132390474.557788912.1429197057.

¹⁵ *See* App. 781-86 (explaining 2011 debt issued on behalf of the System by the New Jersey Health Care Facilities Financial Authority).

¹⁶ Beth Fitzgerald, *New Jersey's Top Hospital CEO Compensation* (ranked by 2012 compensation), NJBiz (last visited May 6, 2015) http://www.njbiz.com/section/lists?djoPage=view_html&djoPid=31878.

¹⁷ Usually, CEO compensation is established "to approximate the prevailing market conditions for companies of similar size and revenues." Rachel Landen, *Another Year of Pay Hikes for Non-profit Hospital CEOs*, Modern Healthcare, Aug. 9, 2014, <http://www.modernhealthcare.com/article/20140809/MAGAZINE/308099987>.

largest healthcare systems ranked by 2013 patient revenues are five multi-million dollar corporations that fail to operate their pension plans in compliance with ERISA.¹⁸ These include Ascension Health, with 102 hospitals in 23 states; CHE Trinity Health, with 135 hospitals in 20 states; Dignity Health, with 39 hospitals in 20 states; Catholic Health Initiatives, with 87 hospitals in 18 states, and Providence Health & Services, with 32 hospitals in five states.¹⁹ Collectively, these systems had 2013 revenues of over 46.3 billion dollars.²⁰ Their competitors are likewise well-known and powerful businesses, including HCA, Community Health Systems, Tenet Healthcare Corp., and the Mayo Clinic. These for-profit systems and large not-for-profits do not claim that their pension plans are exempt from ERISA.

¹⁸ Modern Healthcare, *Healthcare Systems Ranked by 2013 Net Patient Revenue* (2014); *see also* Compl. at 47-67, *Griffith v. Providence Health & Servs.*, No. 2:14-cv-01720 (W.D. Wash. Nov. 7, 2014), ECF No.1; Compl. at 32-48, *Medina v. Catholic Health Initiatives*, No. 1:13-cv-01249-REB-KLM (D. Colo. May 10, 2013), ECF No. 1; Compl. at 36-48, *Rollins v. Dignity Health*, No. 3:13-cv-01450-TEH (N.D. Cal. Apr. 1, 2013), ECF No. 1; *Chavies v. Catholic Health E.*, No. 2:13-cv-01645-CDJ (E.D. Pa. Mar. 28, 2013), ECF No. 1; Compl. at 49-66, *Overall v. Ascension Health*, No. 2:13-cv-11396-AC-LJM (E.D. Mich. Mar. 28, 2013), ECF No. 1.

¹⁹ *See id.*

²⁰ Modern Healthcare, *Healthcare Systems Ranked by 2013 Net Patient Revenue* (2014).

All these large health systems are big businesses, not churches. It is not surprising, therefore, that plan participants around the country have filed lawsuits seeking declaratory and injunctive relief that their pension plans are governed by the protections of ERISA, and are not exempt church plans. *See, e.g., Griffith v. Providence Health & Servs.*, No. 2:14-cv-01720 (W.D. Wash. filed Nov. 7, 2014); *Stapleton v. Advocate Health Care Network & Subsidiaries*, No. 1:14-cv-01873 (N.D. Ill. filed Mar. 17, 2014); *Medina v. Catholic Health Initiatives*, No. 1:13-cv-01249-REB-KLM (D. Colo. filed May 10, 2013); *Rollins v. Dignity Health*, No. 3:13-cv-01450-TEH (N.D. Cal. filed Apr. 1, 2013); *Chavies v. Catholic Health E.*, No. 2:13-cv-01645-CDJ (E.D. Pa. filed Mar. 28, 2013); *Overall v. Ascension Health*, No. 2:13-cv-11396-AC-LJM (E.D. Mich. filed Mar. 28, 2013).

III. CONGRESS ENACTED ERISA TO ENSURE THAT EMPLOYERS WOULD KEEP THEIR PENSION PROMISES, SO EMPLOYEES WOULD GET THE BENEFIT OF THEIR BARGAINS.

Like the other business entities discussed above, SPHS has undermined participants' retirement security by treating its pension plan as an exempt church plan. Thwarting Congress's deliberate, protective design, it has stripped away each carefully-crafted ERISA requirement. As discussed below, participants in church plans lose multiple ERISA protections, including the law's minimum funding protections and insurance guarantees, the limitations on reducing or eliminating

pension benefits, the fiduciary responsibilities, and the comprehensive disclosure scheme.

A. Converting an ERISA Plan to an Exempt Church Plan Leaves Participants Without ERISA’s Minimum Plan Funding Protections and Insurance Guarantees, Both of Which Ensure Participants Will Receive Their Benefits.

ERISA arose in the wake of the failure of Studebaker Motor Company and its pension, a watershed moment in pension history. Studebaker had agreed in collective bargaining to pension increases, but was not required to fund these pension promises for thirty years. When the company failed, the pension was underfunded by over \$15 million. Thousands of employees, including some who had worked their whole life for the company, lost all or most of their pensions. *See* James A. Wooten, *ERISA: A Political History* 51 (2004).

In response to these losses and the hardships it caused workers, Congress established minimum funding requirements for pension plans to ensure that they “will accumulate sufficient assets within a reasonable period of time to pay benefits to covered employees when they retire.” H.R. Conf. Rep. No. 93-1280, at 283 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5038. Plan sponsors must make periodic contributions as participants accrue benefits and must certify that these contributions comply with ERISA’s established standards. ERISA §§ 302, 303, 29 U.S.C. §§ 1082, 1083.

As a safeguard, Congress established a system of plan termination insurance under ERISA to protect individuals against the loss of pension benefits in the event that a defined benefit pension plan terminates with insufficient assets or the employer becomes insolvent. This program guarantees the payment of pension benefits for individuals in these plans up to certain statutory limits. The Pension Benefit Guaranty Corporation (“PBGC”) administers the program, which is financed exclusively through employer premiums, investment income, the assets of terminated plans, and recoveries on claims for termination liability. ERISA §§ 4002, 4005-4007, 29 U.S.C. §§ 1302, 1305-1307.

As SPHS accountants recognize, these minimum funding requirements do not apply to church plans. Consequently, there is no guarantee that the employer will appropriately fund the plan. Indeed, SPHS accountants stated, “plan funding will be determined by the plan administrators.” App. 1256. In addition, as recognized by SPHS accountants, these plans have no obligation to pay PBGC premiums and “the Plan will discontinue PBGC insurance.” *Id.* Thus, SPHS retirement plan participants are not eligible for PBGC protection if the plan

terminates with insufficient assets.²¹ This would leave the participants of SPHS in the same dire predicament as Studebaker employees over forty-five years ago.

B. Converting an ERISA Plan to an Exempt Church Plan Leaves Participants Without Protection From Reductions to, or Elimination of, Their Pension Benefits.

Congress became extremely cognizant of the widespread damage that the loss of promised and earned pension benefits caused to workers' lives and their retirement security.²² Congress believed that unless employees' rights to their accrued pension benefits are non-forfeitable, they have no assurances that they will ultimately receive a pension. *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004) (recognizing the "centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them..."). Congress sought to prevent employers from pulling the rug out from

²¹ The current SPHS Plan contains a "fund specific promise." See Section 12.01 of the SPHS Plan at App. 464. Under such a "fund specific promise," only money in a fund designated by the employer is available to pay plan benefits. ERISA bans these fund-specific promises because they limit the money available for pensions to whatever the employer chooses to provide—which could be nothing. See John H. Langbein, Susan J. Stabile, & Bruce A. Wolk, *Pension and Employee Benefit Law* 230-31 (4th ed. 2006). Indeed, without ERISA protections, SPHS could just as easily write that promise out of the plan.

²² See *Private Pension Plans, 1966: Hearings Before the Subcomm. on Fiscal Policy of the Joint Economic Comm.*, 89th Cong., 2d Sess. 104-28 (1966) (statement of Clifford M. MacMillan, Vice-President, Studebaker Corp.) (describing the closing of the Studebaker automobile plant where approximately 7,000 employees lost some or all of their promised pension benefits).

under employees participating in a pension plan after they met the plan's eligibility requirements. *See Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 375 (1980).

In constructing ERISA, the main protections for employees' benefits reside in the statute's participation, vesting, accrual, and benefit payment provisions. The participation standards impose a minimum age and service requirement on all covered plans. The minimum vesting standards establish the time at which a participant's accrued benefits must become non-forfeitable and non-revocable after satisfying specific age and/or service requirements under the plan terms. ERISA § 203(a)(1), 29 U.S.C. § 1053(a)(1). ERISA also imposes minimum standards regarding the manner in which participants accrue benefits. Benefits must accrue relatively consistently on an annual basis and cannot accrue disproportionately at the end of a participant's career. ERISA §§ 204(a), (b)(1), 29 U.S.C. §§ 1054(a), (b)(1). Importantly, a plan cannot stop a participant's accrual of benefits, or lower the rate at which those benefits accrue, based on the participant's age. ERISA § 204(b)(1)(H), 29 U.S.C. § 1054(b)(1)(H). Finally, ERISA requires that benefits, once earned, cannot be reduced or taken away by a plan amendment. ERISA § 204(g), 29 U.S.C. § 1054(g); *see Heinz*, 541 U.S. at 743; *Bellas v. CBS, Inc.*, 221 F.3d 517, 522, 525 (3d Cir. 2000).

To ensure that retirement benefits are available at retirement, ERISA § 2(a), 29 U.S.C. § 1001(a), Congress established rules regulating the form and payment of benefits. For example, to protect the spouses of plan participants, certain plans are required to provide benefit payments in the form of qualified joint and survivor annuities, ERISA § 205(a), 29 U.S.C. § 1055(a); *see also Boggs v. Boggs*, 520 US 833, 842-44 (1997), unless the spouse consents to an alternative form of payment. ERISA § 205(c)(2), 29 U.S.C. § 1055(c)(2). ERISA also prohibits the assignment or alienation of benefits, except in the case of a qualified domestic relations order. ERISA § 206(d), 29 U.S.C. § 1056(d).

None of these fundamental standards applies to church plans. Thus, the SPHS Retirement Plan has the unfettered ability to design its pension plan in any way it desires including, among other possibilities, having the ability to eliminate or reduce benefits, require thirty years of service to achieve a non-forfeitable benefit (rather than ERISA's five years of vesting), stop accruing a participant's benefits at the age of sixty-five, or not provide for a joint and survivor annuity. The participants of SPHS would certainly lose significant protections and suffer great injury if SPHS's asserted eligibility as a church plan is upheld.

C. Converting an ERISA Plan to an Exempt Church Plan Leaves Participants Without ERISA’s Fiduciary Protections Against Mismanagement and Abuses.

“[I]n the wake of more than a decade of Congressional investigation into looting and other abuses of plans by some union leaders,”²³ Congress concluded that it would safeguard employee benefits “by establishing standards of conduct, responsibility, and obligation of fiduciaries of employee benefit plans.” ERISA § 2(b), 29 U.S.C. § 1001(b). Thus, Congress imposed a federal fiduciary regime in order to eliminate abuses.

ERISA requires fiduciaries to manage and administer the plan and its assets. That means that these fiduciaries must act solely in the best interests of the participants. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1). Likewise, they must act for the exclusive purpose of providing benefits and defraying reasonable expense incurred in the administration of the plans. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A). In addition, fiduciaries must discharge their duties with the highest level of loyalty and care known under the law and manage plan assets prudently. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B). Plan assets must be held in trust, ERISA § 403, 29 U.S.C. § 1103, and investments must be diversified

²³ See John H. Langbein, *The Supreme Court Flunks Trusts*, 1990 Sup. Ct. Rev. 207, 210 (1991); James A. Wooten, *ERISA: A Political History* 118 (2004) (among other examples, a union officer and “trustee for life” diverted several million dollars to Liberia and Puerto Rico).

to avoid large losses to the plan. ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). Finally, fiduciaries must act in accordance with the provisions of the plan document and other instruments governing the plan to the extent they are consistent with Titles I and IV of ERISA. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

In its review of pension plan abuses, Congress determined that certain types of transactions frequently gave rise to misconduct. Supplementing the general fiduciary duty requirements, Congress categorically prohibited plan fiduciaries from engaging in specific transactions that were “likely to injure the pension plan.” *Comm’r of Internal Revenue v. Keystone Consol. Indus., Inc.*, 508 U.S. 152, 160 (1993). Therefore, Congress barred fiduciary self-dealing in plan assets and other conflict of interest transactions involving plan assets, and limited the types of assets a plan may hold. ERISA § 406, 29 U.S.C. § 1106.

Church plans are not subject to ERISA’s fiduciary requirements. The managers of the SPHS Retirement Plan do not have to live up to the highest standards of conduct. Instead, they can act merely as any other entity in the marketplace, leaving participants unprotected from abuses and mismanagement.

D. Converting an ERISA Plan to an Exempt Church Plan Leaves Participants Without the Assurance of ERISA's Disclosure Scheme.

Congress also sought to safeguard employee pensions by mandating “disclosure and reporting to participants and beneficiaries of financial and other information” and by requiring that “disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans.” ERISA § 2, 29 U.S.C. § 1001; *see also* Legislative History of the Employee Retirement Income Security Act of 1974, Vol. III 4668 (1974) (stating that the “availability of this information will enable both participants and the Federal Government to monitor the plans’ operations...”). In enacting ERISA, Congress sought to hold employers accountable for the benefits they promised employees by requiring accurate, understandable, and timely disclosures. *See Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 374-75 (1980); ERISA § 2, 29 U.S.C. § 1001.

ERISA requires that pension plans make certain disclosures to their participants, including providing them access to the terms of the plan; financial, actuarial and investment information; and other information relating to the management and operation of the plan. *See, e.g.*, ERISA §§ 101, 102, 104, 204(h), 29 U.S.C. §§ 1021, 1022, 1024, 1054(h). Plan administrators must furnish certain periodic reports to participants. *See, e.g.*, ERISA § 102(b), 29 U.S.C. § 1022(b). In

addition, a participant may request certain documents from the plan administrator in writing at any time. ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4). No such requirements apply to church plans.

Similarly, ERISA requires that pension plans make certain disclosures concerning the financial condition and operation of the plan to the Internal Revenue Service, the Department of Labor, and the PBGC. These disclosures are designed to provide government agencies sufficient information to meet their enforcement and oversight obligations under ERISA. *See, e.g.*, ERISA §§ 101(f), 103, 104, 204(h), 29 U.S.C. §§ 1021(f), 1023, 1024, 1054(h). No such oversight occurs for church plans.

If its plan is a church plan, then SPHS has no obligation to inform participants of the plan's funding status as required under ERISA. Thus, without disclosures that are accurate and understandable in accord with ERISA's statutory requirements, participants are not equipped with the information they need to make informed decisions concerning their benefits and employment, including looking for new employment, saving more, or working longer. Significantly, participants do not receive the advantages of government oversight and protection that required disclosures to the government provide.

CONCLUSION

Blessing SPHS Retirement Plan’s exemption as a church plan, even though SPHS is not a church, may leave its employees “emptyhanded” after years of employment and deferred compensation—notwithstanding that SPHS guaranteed its employees certain retirement benefits. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996); *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 510 (1981); *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 375 (1980). This result would clearly repudiate Congress’ intent in enacting ERISA.

For the foregoing reasons, the ruling in favor of the appellees below should be affirmed.

Dated: May 11, 2015

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

I, Mary Ellen Signorille, hereby certify that I am admitted to practice before the United States Court of Appeals for the Third Circuit and I am currently a member in good standing.

Dated: May 11, 2015

/s/ Mary Ellen Signorille
Mary Ellen Signorille

CERTIFICATE OF COMPLIANCE WITH RULE 32(a) AND L.A.R. 31.1(c)

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,278 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point font in Times New Roman.

CERTIFICATE OF IDENTICAL COMPLIANCE AND VIRUS CHECK

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Symantec Anti-Virus Endpoint Protection, ed. 2011 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: May 11, 2015

/s/ Mary Ellen Signorille
Mary Ellen Signorille

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May, 2015, I served using the appellate CM/ECF system of the Third Circuit which will send notice of such filing to the parties registered through the ECF system a copy of the Brief Amici Curiae of AARP and NELA In Support of Appellees. Seven identical hard copies of this amicus brief will be delivered to the Court's office within five days of electronically filing.

/s/ Mary Ellen Signorille
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