

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STEPHEN DEL SESTO, AS RECEIVER AND
ADMINISTRATOR OF THE ST. JOSEPH
HEALTH SERVICES OF RHODE ISLAND
RETIREMENT PLAN; ET AL.,

Plaintiffs,

v.

PROSPECT CHARTERCARE, LLC; ET AL.,

Defendants.

C.A. No. 1:18-CV-00328-S-LDA

**DIOCESAN DEFENDANTS' RESPONSE TO
PROSPECT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

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Roman Catholic Bishop of Providence, a corporation sole (“RCB”), Diocesan Administration Corporation (“DAC”), and Diocesan Service Corporation (“DSC” and with RCB and DAC, collectively “the Diocesan Defendants”) submit this response in opposition to Prospect Medical Holdings, Inc., Prospect East Holdings, Inc., Prospect Chartercare LLC, Prospect Chartercare SJHSRI, LLC and Prospect Chartercare RWMC, LLC’s (collectively, “Prospect”) Cross-Motion for Summary Judgment, ECF Nos. 190 & 193 (“Cross-Motion”).

PRELIMINARY STATEMENT

The Diocesan Defendants take no position on whether St. Joseph Health Services of Rhode Island, Inc. (“SJHSRI”) satisfied the principal purpose organization requirement under ERISA for Church Plans after 2010. They also take no position on how the Court should resolve the dispute between Plaintiffs and Prospect as to whether SJHSRI failed to meet the requirements for qualification of a Church Plan on or before April 29, 2013 (Plaintiffs’ position) or on or after December 15, 2014 (Prospect’s position). The Diocesan Defendants do, however, have a position on the many inaccurate legal and factual contentions that Prospect included in its Cross-Motion. Accordingly, the Diocesan Defendants present this response to Prospect’s Cross-Motion to ensure that the Court has a complete and accurate factual foundation upon which to assess the pending motions for summary judgment.

Prospect’s papers are rife with statements flatly contradicted by the very documents it cites, statements belied by records it has, but did not cite, and factual and legal conclusions that are just plain fallacious and illogical. To wit:

First, Prospect’s assertion that “the Bishop” controlled CharterCARE Health Partners (“CCHP”) is actually contradicted and disproven by CCHP’s organizational documents and the realities of corporate governance. RCB could not appoint a majority of CCHP trustees, it

had no power to remove any of them, and its power to appoint any trustees was temporary. RCB appointees, moreover, were—as a matter of documented attendance—regularly outnumbered by the trustees appointed by Roger Williams Hospital (“RWH”) and CCHP at CCHP Board of Trustees and committee meetings.

Second, the documents in this case demonstrate that “the Bishop” also did not control SJHSRI on or after January 4, 2010, the effective date of the affiliation of SJHSRI and RWH under the CCHP umbrella. From that date forward, CCHP assumed strategic, financial, and medical authority over SJHSRI, as well as the power to fill **all but two** of the fifteen seats on the hospital’s board of trustees. RCB, by comparison, had one *ex-officio* designee to the SJHSRI Board and otherwise functioned as SJHSRI’s Class B member with limited reserved powers related solely to Catholicity.

Third, Prospect paints with too broad of a brush on matters of church association. SJHSRI was, as a factual matter, associated with the Roman Catholic Church. The same cannot be said for CCHP. CCHP was a secular entity, declared as such in its own organizational documents.

Fourth, Prospect is mistaken that RCB or the Most Reverend Bishop had the power to qualify the St. Joseph Health Services of Rhode Island Retirement Plan (the “Plan”) as a Church Plan under ERISA by listing SJHSRI in the Official Catholic Directory. Neither RCB nor the Most Reverend Bishop had the power to make the Plan a Church Plan. Further, Prospect’s suggestion that the Articles of Amendment to SJHSRI’s Articles of Incorporation (“SJHSRI Amended Articles”) indicate otherwise is belied by the Articles’ terms.

Fifth, Prospect’s chronology of the affiliation and the timing of CCHP’s assumption of operational control over RWH and SJHSRI is demonstrably incorrect. Prospect’s

understanding of the “transition period” following the execution of the Health Care System Affiliation and Development Agreement (“Affiliation Agreement”) does not comport with either the Affiliation Agreement or CCHP’s or SJHSRI’s Bylaws.

The number and scope of factual inaccuracies in Prospect’s papers are substantial. The Diocesan Defendants want to emphasize, however, that the points made in this submission do not create disputed issues of fact requiring resolution by a factfinder. Rather, the Diocesan Defendants have attempted to be assiduous in tying the statements made in this memorandum and in their previously filed Statement of Disputed Facts (ECF No. 199) to record citations. This Court should resolve the Church Plan vs. ERISA Plan status of the Plan now so that further progress might be made in resolving the myriad of other issues in this case.

I. RCB Did Not Control CCHP

At his deposition, Kenneth Belcher, President and CEO of CCHP, testified:

Q. Now, the Board of Trustees of CharterCARE Health Partners was not controlled by the Bishop of Providence, was it?

MR. WAGNER: Objection.

A. Correct.

ECF No. 196-1 (Belcher Dep.) 140:18-22. Mr. Belcher is right. RCB and the Most Reverend Bishop did not control CCHP’s board. The legal foundation of Prospect’s argument to the contrary is wholly incorrect. The power to appoint someone to an initial board of trustees does not equate to the power to control that person or, through them, the board or the entity.

As a matter of law, once an individual is appointed to an entity’s board of directors or trustees, that individual owes a fiduciary obligation to the entity. *See A. Teixeira & Co., Inc. v. Teixeira*, 699 A.2d. 1383, 1386 (R.I. 1997) (“Corporate officers and directors of any corporate enterprise, public or close, have long been recognized as corporate fiduciaries owing a duty of loyalty to the corporation”). All of the trustees appointed to the CCHP Board by either

RCB or RWH owed duties of loyalty to CCHP.¹ *See id.* These legal duties prevented board members from favoring the interests of SJHSRI, RWH, or RCB over the interests of CCHP.² *See id.*

Beyond this fundamental legal error, RCB did not and could not control CCHP for four independent factual reasons uncontradicted on this record: (A) RCB did not appoint a majority of the CCHP Board; (B) RCB could not remove any trustees from the CCHP Board; (C) CCHP's organizational documents and structure precluded RCB, RWH, and SJHSRI from controlling CCHP; and (D) CCHP trustees and committee members appointed by RWH and CCHP routinely outnumbered RCB appointees at CCHP's Board and committee meetings.

A. *RCB Did Not Appoint A Majority Of The CCHP Board*

ERISA does not define what it means to be “controlled by” a church. 29 U.S.C. § 1002(33)(c)(i). IRS rules dealing with tax consequences for Church Plans, however, provide: “an organization, a majority of whose officers or directors are appointed by a church’s governing board or by officials of a church, is controlled by a church within the meaning of this paragraph.” 26 C.F.R. § 1.414(e)-1(d)(2). Prospect rests its control argument on its contention that RCB could appoint eight of fifteen trustees to the CCHP Board, referencing the Affiliation Agreement. ECF No. 190-1 (Prospect Br.) at 15-17, 55. The Affiliation Agreement provided: “The Initial Board shall consist of eight (8) Trustees designated by the Bishop [the “RCB Appointees”] and seven (7) trustees designated by the Board of Trustees of RWH [the “RWH Appointees”].” ECF

¹ Likewise, those individuals appointed to the SJHSRI Board owed a similar duty to SJHSRI. *See A. Teixeira & Co.*, 699 A.2d. at 1386.

² Prospect intimates at various points that clergy trustees at CCHP and SJHSRI were somehow controlled by or otherwise acting at the behest of “the Bishop” when serving on those organizations’ boards. *See* ECF No. 190-1 (Prospect Br.) at 63 & n.39. Prospect cites no evidence indicating that any trustee—clergy or not—received “marching orders” from RCB or the Most Reverend Bishop before casting a vote, let alone meeting minutes where clergy trustees voted “the Bishop’s” proxy. The assumption moreover is wrong. Prospect overlooks the factual and legal reality that all trustees, clergy or layperson, had a fiduciary duty to act in the best interests of CCHP or SJHSRI, regardless of how they arrived on either board of trustees. *See A. Teixeira & Co., Inc.*, 699 A.2d. at 1386.

No. 174-14 (Aff. Agmt) § 2.1.1. The Affiliation Agreement, however, is only one piece of the puzzle.

The CCHP Bylaws, which became effective when the Affiliation closed on January 4, 2010, added two additional *ex-officio* voting members to the CCHP Board: the President and CEO of CCHP and the Executive Vice President and COO of CCHP. ECF No. 174-24 (CCHP Bylaws) § 4.2(b). These two officers had to be (and were) appointed by vote of seventy-five percent of the CCHP Board. *Id.* § 4.9(g). Their addition brought the total number of Initial Board members to seventeen. *Id.* § 4.2(b). Of that number, only eight, or forty-seven percent, were appointed by RCB. As a matter of pure arithmetic then, RCB never had the ability to appoint a majority of the CCHP Board and therefore did not control CCHP. *See* 26 C.F.R. § 1.414(e)-1(d)(2).

B. *RCB Had No Power To Remove Trustees*

Putting aside that a simple counting exercise defeats Prospect's control argument, the contention fails for an equally basic reason: RCB had no power to remove its appointees—meaning, majority or not, RCB had no ability to control those trustees. The power to remove (and therefore control) instead rested with the CCHP Board. ECF No. 174-24 (CCHP Bylaws) § 7.2; ECF No. 199 (Diocesan Defendants' Statement of Disputed Facts ("SDF")) at Resp. No. 29 at 29.1-A(3).

Although the power to appoint has often been associated with control, all powers to appoint are not created equal. The power to appoint typically goes hand-in-hand with the power to remove and replace the appointee. *See Fournier v. Fournier*, 479 A.2d 708, 711 (R.I. 1984) ("It is the prevailing view that the power to remove officers and agents of a corporation

resides in the body that appointed or elected them. The authority to remove is inherent in and incident to the authority to select. They are corollary powers.” (internal citations omitted).³

Likewise with the “controlled by” a church analysis under ERISA. The Court need only look at Prospect’s brief for confirmation. Prospect relies on 26 C.F.R. § 1.414(c)-5(b) to explain the meaning of “controlled by” under ERISA: “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.” ECF No. 190-1 (Prospect Br.) at 53 (quoting 26 C.F.R. § 1.414(c)-5(b)) (emphasis added). RCB had no such power.

The same goes for 26 C.F.R. § 1.414(e)-1(d)(2), the other IRS rule that Prospect cites in its control argument. ECF No. 190-1 (Prospect Br.) at 53 (“For example, an organization, a majority of whose officers or directors are appointed by a church’s governing board or by officials of a church, is controlled by a church, within the meaning of this paragraph.”) (quoting 26 C.F.R. § 1.414(e)-1(d)(2)). Although § 1.414(e)-1(d)(2) does not expressly refer to the power to remove, such authority is presumed incidental to the power to appoint. This is not only a matter of common sense, but apparent when courts reference § 1.414(e)-1(d)(2) to discuss church control under ERISA. “The regulations . . . seek for the entity in question to be ‘controlled by’ the church, something that would occur if other persons or entities **had to accede to and be subject to the will of the church.**” *See Hill v. Unum Provident Life & Accident Ins. Co.*, ED CV 08-01102-SGL(AGRx), 2009 WL 10672830, at *3 (C.D. Cal. Aug. 20, 2009) (construing 26 C.F.R. § 1.414(e)-1(d)(2)) (emphasis added). And, the only way to compel the appointee “to accede to and be subject to the will [of the appointer],” *id.* at *3, is

³ The same is true in the separation of powers context. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S.Ct. 2183, 2197 (2020) (“That power [to appoint], in turn, generally includes the ability to remove executive officials, for it is ‘only the authority that can remove’ such officials that they ‘must fear and, in the performance of [their] functions, obey.’” (internal citation omitted)).

through “the authority that can remove.” See *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197 (2020).

The cases bear this out.⁴ Even those Prospect cites. In *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77, 85 (D. Me. 2004), the court concluded that a charitable organization’s board was controlled by the Bishop of Portland. The court reasoned that “the Bishop has the power to appoint **and to remove** both the corporation’s members and the Chief Executive Officer” and the “corporation’s members, in turn, vote to approve members of the Board of Directors.” *Id.* (internal citation omitted) (emphasis added). “Thus, the Bishop of Portland essentially controls the Board of Directors.” *Id.* Similarly, in *Overall v. Ascension*, 23 F. Supp. 3d 816, 830-31 (E.D. Mich. 2014), a Catholic hospital and its parent corporation fell under church control because a canonical entity held several powers over both, including authority to appoint and remove their directors and officers.

26 C.F.R. § 1.414(c)-5(b) provides that whether a trustee is controlled by another organization depends on whether the organization can remove the trustee and designate a replacement and instructs that whether such authority exists depends on a review of the “facts and circumstances.” Such a review reveals that the common thread in cases like *Catholic Charities*, *Overall* and those discussed at *supra* note 4 (the removal power) is missing here.

⁴ See, e.g., *Benson v. Providence Health & Servs.-Wash.*, No. C10-941Z, 2010 WL 11688416, at *5 (W.D. Wash. Nov. 30, 2010) (“The Sisters hold complete control over the operation of these corporations by virtue of their retained rights to amend or repeal bylaws, and appoint or remove board members, among other powers.”); *Rinehart v. Life Ins. Co. of No. Am.*, No. C08-5486 RBL, 2009 WL 995715, at *4 (W.D. Wash. Apr. 14, 2009) (“This more than satisfies the ‘controlled by’ test . . . as the Sisters of Providence holds the right of *appointment and removal* as it applies to every member of the board of directors.” (internal citations omitted) (emphasis in original)); *Harclerode v. The Sisters of Mercy of Independence, Kan., Inc.*, No. 79-4022, 1981 WL 394149, at *1 (D. Kan. Nov. 3, 1981) (finding church control and noting: “The defendant has also shown that the Sisters of Mercy exercise a strong degree of control over its hospitals. The Provincial Council of the Sisters of Mercy appoints and has the absolute right to remove any member of any hospital’s board of directors.”). The IRS has taken a similar approach. See, e.g., I.R.S. P.L.R. 9627028, 1996 WL 374446, (Jul. 5, 1996) (“Thus, through the powers of appointment **and removal** of Corporation C’s Board of Directors, Congregation B controls Corporation C.”) (emphasis added).

RCB only had a temporary power to appoint a minority of trustees that was not paired with a right to remove any of CCHP's trustees. ECF No. 199 (SDF), Resp. No. 29 at 29.1-A(3) & (B). Such appointment power is not the sort of authority upon which control rests.⁵ Here, the power to remove lay with the CCHP Board, which could remove a trustee by a vote of seventy-five percent of the board. ECF No. 174-24 (CCHP Bylaws) § 7.2. The CCHP trustees then "had to accede to and be subject to the will of" each other, not SJHSRI, RWH, RCB or the Most Reverend Bishop. *See Hill*, 2009 WL 10672830, at *3. Accordingly, the CCHP Board controlled itself and, ergo, it controlled CCHP.

*C. CCHP's Organizational Documents And
Structure Precluded RCB From Controlling CCHP*

Prospect asserts that the church control analysis is "result-oriented" and urges the Court to focus on the results here. ECF No. 190-1 (Prospect Br.) at 53-54. But the results only confirm what was already obvious from the reality that RCB could not appoint a majority of CCHP's trustees or remove any of them: RCB did not control CCHP. *Supra* at Part I.A-B. Prospect's claims to the contrary are belied by (1) the very "structural barriers" that it illogically contends assured RCB's control and (2) the temporary nature of RCB's limited power to appoint.

*1. The So-Called "Structural Barriers" In The Affiliation Agreement And CCHP
Bylaws Compelled Consensus And Cooperation Between RCB Appointees
And RWH Appointees And Barred One Side From Dominating The Other*

Prospect makes much ado about provisions in the Affiliation Agreement and the CCHP Bylaws that require super-majority trustee approval for certain actions, equal representation between RWH and RCB appointees on the CCHP Nominating Committee, and unanimous nominations for new board members. ECF No. 190-1 (Prospect Br.) at 15-17, 55-56.

⁵ *See, e.g.*, 26 C.F.R. § 1.414(c)-5(b); *Seila Law LLC*, 140 S. Ct. at 2197; *Benson*, 2010 WL 11688416, at *5; *Catholic Charities*, 304 F. Supp. 2d at 85; *Fournier*, 479 A.2d at 711.

These “structural barriers,” according to Prospect, ensured that “the Bishop”⁶ controlled CCHP, since CCHP allegedly could not act unless the RCB Appointees went along. *See id.* at 17, 56, 63-64; *see also* ECF No. 190-5 (Prospect’s Statement of Facts) ¶¶ 36-39. In their Statement of Disputed Facts, the Diocesan Defendants responded to these assertions at length.⁷ Prospect’s contentions are exactly contrary to the language and intent of the Affiliation Agreement and CCHP Bylaws, as well as logic and common sense. These “structural barriers” as read and understood correctly require consensus and cooperation, not domination, among trustees. The Diocesan Defendants will not repeat these observations here, but instead incorporate their Statement of Disputed Facts by reference. *Supra* note 7.

While legal authority should not be needed to conclude that Prospect interprets these “structural barriers” backwards, this is not the first time this straw has been grasped at, without success. In *Hill*, the Association of Presbyterian Members and the secular Hoag Family Foundation each had “50% control over the selection over the corporate members” of Hoag Memorial Hospital and, “through those members’ actions, control over the [hospital’s] board of directors.” 2009 WL 10672830, at *3. The court rejected the argument that the Association controlled the hospital because it could appoint half of the corporate members. *See id.* The Association—like RCB and its appointees—“cannot make or shape the policies of the hospital, **but must partner with the Hoag Family Foundation** to accomplish any such objective.” *See id.* In so ruling, the court rejected the plaintiff’s contention—echoed by Prospect here—that the Association controlled the hospital because no other entity could control the hospital’s members

⁶ Throughout its brief, Prospect uses “the Bishop” as an undefined, generic term and fails to distinguish between the Most Reverend Bishop (as an individual and current holder of an ecclesiastical office) and the Roman Catholic Bishop of Providence, a corporation sole. In their Statement of Disputed Facts, the Diocesan Defendants explained that the Most Reverend Bishop had roles and powers with respect to the Plan and SJHSRI at various times, as did RCB. ECF No. 199 (SDF), Resp. No. 8 at 8.2. The Diocesan Defendants incorporate that discussion by reference.

⁷ ECF No. 199 (SDF), Resp. No. 29 at 29.1-A(4)-(5) & 29.1-B, Resp. No. 36, Resp. No. 38, Resp. No. 39 at 39.1, Resp. No. 49 at 49.4 & 49.5.

or its board (and therefore the hospital) “without some degree of approval by the Association.” *See id.* The court seized upon the obvious logical and practical fallacy in this argument, noting the same “is equally true of the Hoag Family Foundation.” *See id.* Here, RCB could only appoint eight of seventeen trustees (forty-seven percent) of the CCHP Board (as set out in the CCHP Bylaws), even less than the Association in *Hill*. *See id.*; ECF No. 174-24 (CCHP Bylaws) § 7.2.

Looking beyond the CCHP Bylaws and examining the CCHP Board’s composition over time, at no time did RCB Appointees make up more than fifty percent of sitting trustees, even when accounting for resignations from the CCHP Board.⁸ Thus, like the Association and the Hoag Family Foundation, neither RCB Appointees nor RWH Appointees controlled CCHP. *Hill*, 2009 WL 10672830, at *3. Control over the CCHP Board, rather, was “at most, the result of a partnership” between the RWH and RCB Appointees, “not a church run and decided venture.” *See id.*

2. RCB’s Appointing Power Expired After Three Years

Prospect argues that “the Bishop” retained a *temporary* appointment power, despite provisions in the Affiliation Agreement and the CCHP Bylaws that expressly sunset that power. ECF No. 190-1 (Prospect Br.) at 17, 55, 63; *see* ECF No. 174-14 (Aff. Agmt) § 2.1.1; ECF No. 174-24 (CCHP Bylaws) § 4.2(c)-(d). The Diocesan Defendants responded to this argument in their Statement of Disputed Facts.⁹ They explained that the appointment power had transferred to the CCHP Board, CCHP recognized it, and affirmatively chose not to exercise it to

⁸ As discussed in the Diocesan Defendants’ Statement of Disputed Facts, Hon. Joseph R. Weisberger (RCB Appointee), Marshall Raucci (RCB Appointee), and Laurie Lauzon Clabo (RWH Appointee) resigned from the CCHP Board and were not replaced. John Fogarty (CCHP’s COO and an *ex-officio* trustee) also resigned and was not replaced. ECF No. 199 (SDF), Resp. No. 29 at 29.1-C(1) & n. 5. Due to the order of departures, RCB Appointees never made up more than half of the sitting CCHP trustees. *Id.*

⁹ ECF No. 199 (SDF), Resp. No. 29 at 29.1-B & Resp. No. 38 at 38.1, 38.3.

maintain continuity due to the pending transaction with Prospect. CCHP was in control, not RCB. The Diocesan Defendants' incorporate that response by reference.¹⁰ *Supra* note 9.

D. Actual Meeting Minutes Show That RCB Appointees Were In The Minority At Most Meetings Of The CCHP Board of Trustees And CCHP Committees

While Prospect suggests that the analysis of control should be “result-oriented,” it never presents the results of the various appointment powers. Meeting minutes available to Prospect, but not cited to the Court, demonstrate that the actual membership of the CCHP Board of Trustees and its subordinate committees, as well as actual attendance at CCHP Board and committee meetings, negate Prospect's claim that RCB or RCB Appointees controlled CCHP. The Diocesan Defendants explained in their Statement of Disputed Facts that Prospect not only failed to account for the two *ex-officio* voting trustees in their mathematical arguments, but also neglected (1) the actual number of CCHP Board members in light of resignations from that board and (2) the actual attendance at CCHP Board and committee meetings, which show that RCB Appointees were regularly outnumbered by members appointed by RWH and CCHP.¹¹ The facts and documents supporting these conclusions are set forth in the Statement of Disputed Facts and are incorporated by reference. Neither RCB, through the RCB Appointees, nor the Most Reverend Bishop controlled CCHP.¹² *Supra* note 11.

II. RCB Did Not Control SJHSRI

Prospect also mistakenly contends that SJHSRI was controlled by “the Bishop.” *See, e.g.*, ECF No. 190-1 (Prospect Br.) at 56. In their Statement of Disputed Facts, the Diocesan

¹⁰ To the extent Prospect contends that “structural barriers” served to perpetuate RCB's appointment power, the Court should reject it for the reasoning set out *supra* at Part I.C.1.

¹¹ ECF No. 199 (SDF), Resp. No. 29 at 29.1-C, Resp. No. 39 at 39.1, Resp. No. 40 at 40.2.

¹² Prospect's brief contains many other inaccurate assertions relative to “the Bishop's” purported control over CCHP. ECF No. 190-1 (Prospect Br.) at 15-17, 19, 23 n.40, 24 n.41, 46-47, 55-56, 63-64. Rather than clog this brief with a refutation of each such assertion, the Diocesan Defendants note that these contentions are similarly dispensed with through the facts and documents set out on the issue of control *supra* at Part I and in the Diocesan Defendants' Statement of Disputed Facts, *supra* notes 7, 9, 11.

Defendants explained why this was not so at any time after the effective date of the Affiliation (January 4, 2010).¹³ RCB did not appoint members to the SJHSRI Board of Trustees on or after January 4, 2010, save for a single *ex-officio* designee. *See* 26 C.F.R. § 1.414(e)-1(d)(2) (noting that corporate control of an organization means the appointment of a majority of directors). The power to appoint and remove a controlling number of trustees rested with CCHP, as did power over strategic, financial, and medical matters.¹⁴ Further, RCB only served as SJHSRI's Class B member, with reserved powers limited to Catholicity.¹⁵ Control over SJHSRI as an entity, therefore, rested with CCHP. ECF No. 190-5 (Prospect's Statement of Facts) ¶ 47 ("subject to the reserved powers of the Bishop as the permanent Class B member, operational control over SJHSRI... rested exclusively with CCHP"); *see Hill*, 2009 WL 10672830, at *3 (holding that the Presbyterian Association, which appointed fifty-percent of a hospital's corporate membership, did not control the hospital).

Mr. Belcher agreed. At his deposition, he testified as follows:

Q. All right. We earlier had discussed that, once the affiliation took place and the bylaws of St. Joseph's were amended, that CharterCARE Health Partners appointed all of the members of the Board of Trustees of St. Joseph's, other than the four *ex-officio* members.¹⁶ Do you recall that?

A. I do.

Q. And once that occurred, do you agree that the St. Joseph's Health Services of Rhode Island, as an entity, was not controlled by the Bishop?

MR. WAGNER: Objection.

MR. SHEEHAN: Did I lose you?

A. I think that's accurate.

¹³ ECF No. 199 (SDF), Resp. No. 2, Resp. No. 39 at 39.1, Resp. No. 40 at 40.2 n.7, Resp. No. 44, Resp. No. 48 at 48.2, Resp. No. 50 at 50.2.

¹⁴ ECF No. 199 (SDF), Resp. No. 2, Resp. No. 47, Resp. No. 48 at 48.2.

¹⁵ ECF No. 199 (SDF), Resp. No. 2, Resp. No. 49 at 49.5.

¹⁶ The four *ex-officio* members were CCHP's CEO, CCHP's COO, the President of the SJHSRI Medical Staff, and RCB's designee. ECF No. 174-15 (SJHSRI Bylaws) § 4.2. Thus, CCHP controlled thirteen of fifteen board seats at SJHSRI, when including its CEO and COO's status as *ex-officio* trustees. *Id.*

ECF No. 196-1 (Belcher Dep.) 141:19–142:7.¹⁷

III. Prospect Paints With Too Broad A Brush On The Issue Of Church Association

A. CCHP Was A Secular Institution

As the Diocesan Defendants documented at several points in their Statement of Disputed Facts, CCHP operated as a secular organization, it was not subject to the Ethical and Religious Directives of the United States Conference of Catholic Bishops, and its board and committees were not concerned with religious matters.¹⁸ In light of all this, it was not surprising that, as Prospect acknowledges, the secular CCHP was not listed in the Official Catholic Directory. ECF No. 190-1 (Prospect Br.) at 64. CCHP was nothing more than an independent corporation that had an arms-length business relationship with a church. The Court should not grant Prospect’s Cross-Motion on the mistaken and erroneous factual record set forth in Prospect’s papers.

B. SJHSRI Was Associated With The Roman Catholic Church

Prospect contends that SJHSRI is associated with a church under ERISA. ECF No. 190-1 (Prospect Br.) at 56-58. Plaintiffs disagree. *See, e.g.*, ECF No. 60 (Am. Compl.) ¶¶ 82-93. Under ERISA, an organization “is associated with a church . . . if it shares common religious bonds and convictions with that church.” 29 U.S.C. § 1002(33)(C)(iv). Courts diverge over the proper interpretation of § 1002(33)(C)(iv). To be plain, the Diocesan Defendants agree that SJHSRI was associated with the Roman Catholic Church on account of, among other things, RCB’s status as SJHSRI’s Class B Member, the Catholicity provisions in SJHSRI’s Bylaws, and

¹⁷ Prospect’s brief also contains many other inaccurate assertions relative to “the Bishop’s” purported control over SJHSRI. ECF No. 190-1 (Prospect’s Br.) at 11-12, 15-17, 19, 23 n.39, 24 n.41, 55-56, 58. Rather than respond to them individually, the Diocesan Defendants refer to their Statement of Disputed Facts. *Supra* notes 13-15. To the extent Prospect contends that SJHSRI was church controlled because RCB or the Most Reverend Bishop controlled CCHP, the Court should reject that argument as well. *Supra* at Part I.

¹⁸ ECF No. 199 (SDF), Resp. No. 2, Resp. No. 29 at 29.1-A(1) & (6), Resp. No. 49 at 49.5.

SJHSRI's appearance in the Official Catholic Directory ("OCD"). ECF No. 190-8 (SJHSRI Amended Articles), Ex. A at Part D; ECF No. 174-15 (SJHSRI Bylaws) § 5. At this time, the Diocesan Defendants are commenting on the construction and application of § 1002(33)(C)(iv) only to the extent it may have relevance to a later dispute over the listing of SJHSRI in the OCD.

The test for church association for listing in the OCD and under ERISA are not one in the same. The latter is a matter of statutory construction, the former is a spiritual assessment of an entity's relationship with a Catholic diocese left to the sole discretion of the relevant diocese. The Diocesan Defendants addressed this distinction earlier in these proceedings as part of their motion to dismiss. ECF No. 67-1 (Dioc. Defs. Mot. to Dismiss) at 44-46. They do not believe that ERISA has anything to say about the OCD listing inquiry but, to the extent church plan association standards are relevant at all, the standard must align with the broad language of § 1002(33)(C)(iv), as interpreted in *Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1223-1224 (10th Cir. 2017), rather than the narrow test of *Lown v. Continental Casualty Co.*, 238 F.3d 543, 548 (4th Cir. 2001). ECF No. 67-1 (Dioc. Defs. Mot. to Dismiss) at 44-46.¹⁹

¹⁹ Regardless of the meaning of "associated with a church" under ERISA, the Diocesan Defendants maintain that SJHSRI shared sufficient common religious bonds and convictions with the Roman Catholic Church to warrant listing SJHSRI in the OCD before and after the 2014 sale of CCHP, RWH, and SJHSRI's assets to Prospect. SJHSRI assisted the Catholic Church's healing ministry for over a century, beginning with the chartering of St. Joseph's Hospital in 1892 and continuing through the winddown of operations associated with that mission. RCB, moreover, was SJHSRI's Class B Member with certain reserved powers with respect to Catholicity, even after the asset sale. ECF No. 190-8 (Amended Articles) at Part D; ECF No. 174-15 (SJHSRI Bylaws) §§ 4.13, 5.2-5.5. Likewise, SJHSRI remained subject to the Ethical and Religious Directives promulgated by the United States Conference of Catholic Bishops before and after the sale. ECF No. 174-15 (SJHSRI Bylaws) § 5.3. Despite all this, Plaintiffs have questioned the significance of SJHSRI's connection with the Roman Catholic Church and have essentially argued that SJHSRI was not "Catholic enough" to appear in the OCD. *See, e.g.*, ECF No. 60 (Am. Compl.) ¶¶ 69(c), 88, 129, 156-58. Given the present focus of these motions, however, this round of motion practice is not the appropriate time to resolve this dispute or whether the First Amendment even permits the Court to adjudicate it. ECF No. 67-1 (Dioc. Defs. MTD) at 46-47 (contending that the First Amendment precludes Plaintiffs' challenge to the listing of SJHSRI in the OCD).

IV. SJHSRI's Amended Articles Of Incorporation Did Not Signal That "The Bishop" Could Preserve The Plan's Status As A Church Plan By Listing SJHSRI In The OCD

Despite being completely irrelevant to the resolution of Count IV, Prospect mistakenly asserts that "the Bishop" could preserve the Plan's status as a church plan by listing SJHSRI in the OCD. ECF No. 190-1 (Prospect Br.) at 19. Prospect argues that Part E of SJHSRI's Amended Articles reflects "the Bishop's unique ability" on this score. *Id.* In their Statement of Disputed Facts, the Diocesan Defendants explained that this assertion holds no water, given that the Amended Articles contemplated that the Plan could remain a church plan, even if the OCD *ceased to exist*.²⁰ Likewise, in responding to a similar contention earlier in this case, the Diocesan Defendants noted that listing in the OCD could do nothing to salvage a purported church plan that was not maintained by a principal purpose organization. ECF No. 67-1 (Dioc. Defs. Mot. to Dismiss) at 48-49. The Diocesan Defendants incorporate those arguments by reference.

V. Prospect's Chronology Of The Affiliation Of SJHSRI And RWH Under The CCHP Banner Completely Misses The Mark

Prospect's brief is replete with references to an amorphous "transition period" that Prospect contends ran from the inception of CCHP in February 2009 to June 30, 2010, only at the end of which did CCHP and its committees assume control and oversight over SJHSRI. ECF No. 190-1 (Prospect's Br.) at 15-16, 18, 20-22, 25, 45-46, 59-64, 67. The Diocesan Defendants explained in their Statement of Disputed Facts that this chronology is not supported by the legally controlling documents: the Affiliation Agreement, the CCHP Bylaws, and the SJHSRI Bylaws.²¹ These documents establish unequivocally that CCHP assumed control over SJHSRI on January 4, 2010, the date that the affiliation between SJHSRI and RWH closed. *Supra* note

²⁰ ECF No. 199 (SDF), Resp. No. 51 at 51.3.

²¹ ECF No. 199 (SDF), Resp. No. 12 at 12.2, Resp. No. 49 at 49.2, Resp. No. 62 at 62.1.

21. The Diocesan Defendants incorporate the facts and documents supporting those conclusions by reference. To the extent Prospect depends on this erroneous chronology to carry its Cross-Motion, it is incorrect.

CONCLUSION

The Court should determine when and if the Plan qualified as a Church Plan under ERISA upon a full and accurate factual record. In many critical and important ways, Prospect fails to provide such a record. Instead it makes statements and draws conclusions that are contradicted by the documents it cites—and fails to cite—and by logic and good sense. The Court should not rely on Prospect’s inaccurate facts to grant the Cross-Motion.

Respectfully Submitted,

ROMAN CATHOLIC BISHOP OF
PROVIDENCE, A CORPORATION SOLE,
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November 2020, the foregoing document has been filed electronically through the Rhode Island ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Howard Merten

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