

**COURT OF APPEALS, STATE OF COLORADO**

Court Address: Colorado State Judicial Building  
101 West Colfax, Suite 800  
Denver, CO 80203

**Colorado Board of Assessment Appeals**  
**Docket Nos.: 53058, 53173, 53475, 53476, 44667,**  
**44670, 44672, 44674, 44677, 44681, 44682, and 44683**

**Petitioners-Appellees:**  
Grand County Board of Commissioners, Larimer County  
Board of Commissioners, Scott G. Cast, David  
Habecker, Barbara M. Hoffman, Wesley E. Hoffman,  
and Lucille M. Younglund,

and

**Appellee:**  
Board of Assessment Appeals

v.

**Respondent:**  
Colorado Property Tax Administrator,  
and

**Intervenor-Appellant:**  
YMCA of the Rockies.

▲ COURT USE ONLY ▲

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Case Number: 2007-CA-422  
2011-CA-725

**OPENING BRIEF OF APPELLANT YMCA OF THE ROCKIES**

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This Brief complies with C.A.R. 28(g) because it contains 13,769 words (see Appellant YMCA of the Rockies' Motion to Confirm Leave to File Brief in Excess of 9500 Words).

This Brief complies with C.A.R. 28(k) because it contains under a separate heading a concise statement of the applicable standard of appellate review with citation to authority.



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Stuart J. Lark

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## **I. STATEMENT OF ISSUES PRESENTED FOR REVIEW**

A. Whether the Board of Assessment Appeals (“Board”) acted contrary to law when it applied an erroneous legal presumption to reverse the Property Tax Administrator’s (“PTA”) granting of religious and charitable exemptions to YMCA of the Rockies’ (“YMCA”) operation of Estes Park Center (“EPC”) and Snow Mountain Ranch (“SMR”).

B. Whether the Board acted contrary to law in reversing the PTA’s granting of a religious exemption to YMCA where the Board’s legal analysis and framework (i) disregard the broad and deferential exemption for the activities of religious organizations mandated by the Colorado General Assembly and the Colorado Supreme Court; (ii) require government officials to engage in a searching and unconstitutional inquiry as to whether a religious organization’s activities are “sufficiently religious”; (iii) improperly distinguish YMCA’s activities from those of other religious organizations (e.g., Young Life) based on the level of religious content in the activities, thereby unconstitutionally favoring one method of accomplishing religious purposes over another; and (iv) incorrectly interpret the legal significance of public school activities and tax-exempt financing.

C. Whether the Board acted contrary to law in reversing the PTA’s granting of a charitable exemption to YMCA where the Board’s legal analysis and

framework (i) contradict the PTA's regulations and the uniform application of charitable exemption statutes; (ii) would require an applicant to meet the impossible burden of providing specific evidence on the use of the property by each individual guest rather than maintaining the proper focus on how the applicant uses the property; (iii) fail to recognize the PTA's regulations regarding partial use exemptions; and (iv) result in treating YMCA differently from all other properties in Colorado operated by community-based YMCA associations offering similar activities.

## **II. STATEMENT OF THE CASE**

### **A. Nature of the Case.**

This case asks whether YMCA qualifies for exemption from property tax with respect to its operation of EPC in Larimer County and SMR in Grand County. As a nonprofit religious and charitable organization, YMCA operates EPC and SMR as camp and conference centers in furtherance of its Christian mission.

### **B. Course of Proceedings and Disposition Below.**

In December 2003, YMCA filed 18 applications with the PTA requesting a determination that EPC and SMR (collectively, the "Properties") are exempt from property tax. YMCA excluded from the applications limited portions of the Properties. In May 2005, the PTA determined that the Properties, with the

exception of the portions excluded by YMCA, were used solely and exclusively for religious purposes pursuant to COLO. REV. STAT. (“C.R.S.”) § 39-3-106 and that the Properties were exempt from taxation as requested effective January 1, 2002. Record on Appeal (“ROA”) Vol. III, pp. 1390-1405, 1431-76.

In June 2005, Petitioner-Appellees appealed the PTA’s determinations to the Board, and the Board held a hearing in August 2006. On February 2, 2007, the Board issued its decision (the “Religious Order”), reversing the determinations of the PTA with respect to the religious purpose exemption except as it applied to three buildings. ROA Vol. I, pp. 0466-72. YMCA appealed the Religious Order to this Court (Case Number 2007-CA-422), and this Court issued a stay of the appeal pending the PTA’s charitable purpose determination under C.R.S. § 39-3-108.

In November 2009, the PTA determined that SMR and EPC were entitled to a 96% and 97% exemption, respectively. Filing ID 39594605 pp. 0036, 0088, 0251, 0273. Larimer County and Grand County (and YMCA) each appealed to the Board, and the Board held a hearing in June 2010. In an Order dated February 25, 2011 (the “Charitable Order”), the Board reversed the PTA’s determinations and held that the Properties did not qualify for the charitable purpose exemption. Filing ID 39565072. YMCA appealed the Charitable Order to this Court (Case

Number 2011-CA-725), which granted YMCA's motion to consolidate the appeals of the Religious Order and the Charitable Order.

**C. Statement of Facts.<sup>1</sup>**

**1. YMCA is a Religious and Charitable Organization.**

**a. YMCA's Christian Character, Purpose and Mission.**

YMCA was formed in 1907 for the primary purpose of training leaders of the growing national Young Men's Christian Association movement.<sup>2</sup> The original

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<sup>1</sup> The record from the 2006 religious proceedings includes eleven (11) hard copy volumes transmitted from the Board's Administrator. The record from the 2010 charitable proceedings is accessible on LexisNexis, Colorado State BAA, case no. 53058. In those instances where the religious exhibits were re-submitted at the later charitable hearing, citation is to LexisNexis.

<sup>2</sup> Since its inception in the 1850's, the Young Men's Christian Association has been identified as a distinctly Christian organization. Initially, YMCAs provided a refuge for young men flocking to urban centers in search of employment. YMCAs offered a place to find prayer meetings, Bible classes, evangelistic meetings, lectures, help in finding jobs, decent boarding facilities, books and hometown newspapers. By the late 1850s, exercise and gymnastics began to appear for young businessmen and in 1885 swimming pools were added. Filing IDs 39648282 p. 8, 39648288 p. 8.

Presently, there are over 2,280 separate YMCAs that serve annually over 17 million people – half children and half adults. All YMCA associations are required to conduct their activities in furtherance of the purposes of the national YMCA ("To put Christian principles into practice through programs that build healthy spirit, mind and body for all"). Filing ID 39568682, 48:10-12. All separate YMCA associations must maintain their status under Section 501(c)(3) of the Internal Revenue Code and to employ as their Chief Executive Officer only those individuals who are certified by the national YMCA. *Id.* at 54:25-55:3; Filing ID 39681291 p. 4.

purpose of the organization stated in its initial Articles of Incorporation was “to provide facilities and cooperate in the conduct of conferences, institutes, and other assemblies of Young Men’s Christian Association workers.” The current Articles of Incorporation identify the following *primary purpose*:

*to provide a Christian environment and the necessary facilities and equipment to hold religious and educational conferences in the interests of youth; to foster in every way possible the interests and program of the Young Men’s Christian Associations; and, to provide a program for family groups under Christian leadership.*<sup>3</sup>

This primary purpose fits within the common purpose statement adopted by the YMCA of the USA (referred to herein as the “National Y”), the umbrella organization for YMCA and community-based YMCA associations (referred to herein as “Community Ys”). Indeed, YMCA is required to certify each year that it conforms in spirit and practice to the following common *purpose statement* set forth in the national constitution:

*The Young Men’s Christian Association we regard as being, in its essential genius, a world wide fellowship united by a common loyalty to Jesus Christ for the purpose of building Christian personality and a Christian society.*

YMCA pursues this vision and its Christian purposes with the following *mission statement*:

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<sup>3</sup> YMCA’s Articles of Incorporation and Bylaws are included in Filing ID 39648290.

*The YMCA of the Rockies puts Christian principles into practice through programs, staff and facilities in an environment that builds healthy spirit, mind and body for all. We will accomplish this by serving conferences of a religious, educational or recreational nature, providing unifying experiences for families, offering traditional summer camping experiences for boys and girls, and serving our staff with leadership opportunities and productive work experiences.*

Filing IDs 39648282 p. 9, 39648288 pp. 8-9, 39681291 p. 3.

YMCA seeks to accomplish its mission by providing Christian environments at EPC and SMR that demonstrate and promote Christian principles. The specific Christian principles in the mission statement include: application of Scriptural values to character development; meaningful relationships within families; growth opportunities for youth; responsible stewardship and cultivation of God's gifts; an appreciation of God's creative beauty; and service to the community and the needy. Filing ID 39672295. In addition, the Y promotes five core values: caring, honesty, respect, responsibility and faith. Filing ID 39681087 p. 2. Although other persons may embrace some or all of these principles for non-religious reasons, YMCA's commitment to and understanding of these principles flows from its Christian convictions. Filing IDs 39682819 p. 24, 39672174, 39672295.

**b. Communications with Donors and other Constituents.**

Each year, YMCA prepares an Annual Report describing YMCA's activities and Christian values, identifying projects that may be supported with donations,

and identifying the extensive number of donors. YMCA offers a wide range of giving opportunities to support its mission, including program facilities (e.g., a religious activities center, a craft center, and museum/library), cabins, camp scholarships and various levels of giving to the general fund which supports other fee discounts. Filing IDs 39648314, 39680970, 39681087, 39711430, 39711512, 39711628, 39711745.

YMCA incorporates into these annual reports comments and stories provided by guests that express YMCA's mission. Filing IDs 39680970, 39681087, 39682819 p. 32-34. For example, at the end of the 2005 Annual Report, YMCA presented the following guest comment:

This retreat center provides a place . . . for Christians to deepen their relationship and knowledge of Jesus . . . and for non-Christians to experience moments of silence and awe, to put them in touch with their creator.

Filing ID 39681087, p. 32.

**c. YMCA's Tax Status.**

The Internal Revenue Service has recognized YMCA as an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Filing ID 39648292. YMCA also qualifies for an exemption from state sales tax based on the religious and charitable character of its activities. *See* Filing ID 39711963. This exemption applies to purchases YMCA makes for its facilities

and operations, as well as for new construction of lodges, cabins and program facilities. Filing ID 39568682 pp. 100-102.<sup>4</sup>

The PTA has determined that the facilities of Community Ys in Colorado, including both their recreational facilities and camp properties, qualify for charitable exemptions. Filing ID 39711272. A 2008 PTA report granting a charitable exemption for a new Community Y facility owned by YMCA of the Pikes Peak Region noted that “[t]he applicant is currently exempt for approximately 10 other properties consisting of recreational centers and camps in El Paso and Douglas counties.” *Id.* p. 1. The 2008 PTA report noted that the new facility would include a “gym, pool, locker rooms, weight rooms, aerobics room and offices as well as outdoor sports complex for use by YMCA members and program participants. Programs include health/fitness classes, aquatics classes, sports leagues, childcare, and family programs.” Filing ID 39711272 p. 2.<sup>5</sup>

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<sup>4</sup> In addition, YMCA has qualified for tax-exempt financing based on the educational and cultural character of its activities and facilities. Most recently, YMCA financed the construction of new lodges and meeting rooms through bonds issued by the Colorado Cultural and Educational Facilities Authority. *See* Filing IDs 39710426, 39568682 pp. 103-106. Although a governmental entity issues the bonds in a tax-exempt financing deal, the entity has no obligation for repayment of the bonds. *See* Filing IDs 39710426, 39711079, 39568682 pp. 105, 106.

<sup>5</sup> Filing ID 39711272 includes additional PTA reports granting or continuing the charitable property tax exemptions of Community Y facilities (Pueblo, Denver, Longmont). For instance, a report dated February 6, 2001, continues a charitable

## **2. YMCA's Operation of the Properties as Christian Environments Furtheres YMCA's Religious and Charitable Purposes.**

YMCA has intentionally designed EPC and SMR to foster among staff and guests a cultivation of YMCA's core values, strong families and children, individuals and groups exercising healthy stewardship and appreciation of God's beauty, and service to the community and the needy.<sup>6</sup> The environments at EPC and SMR express YMCA's Christian principles directly and indirectly through facilities, activities and operational policies. Filing IDs 39648282 pp. 14-31, 39648288 pp. 14-34.

Both EPC and SMR feature large chapels as central buildings of the campus; they both also have outdoor chapels for religious activities. Large crosses (up to 16 feet tall) are visible at both centers, including lighted crosses on the chapels near the central administration buildings. Signage displaying the YMCA's core values is prominently displayed throughout public areas. Filing IDs 39745373, 39745518. Further, YMCA's mission statement with its emphasis on Christian principles is prominently displayed on its promotional and marketing materials,

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exemption for a Community Y camp property in Douglas County. That property included "a health center, lodge, playing field, dining hall, staff housing, crafts center," cabins and open space for hiking. Filing ID 39711272 p. 6.

<sup>6</sup> Detailed statistics regarding annual guest visits to EPC and SMR are provided in Filing ID 39712431.

and on the program materials provided to guests upon arrival. Filing IDs 39648318, 39648319, p. 13, 39680179. And table flyers with expressly Christian messages are located on all tables in the cafeteria and in all rooms (over 1,500 color copies of these flyers were printed). Filing IDs 39672174, 39672295, 39647697 Vol. IV, 13:8-20.

To carry out its Christian principles, YMCA seeks to provide an environment without pretense or clutter in order to help guests focus on spiritual matters. Facilities are designed to blend into the surroundings and to emphasize the natural beauty of the environment. Most of the rooms do not have televisions, and where televisions are available, there is no access to adult programming. Similarly, the gift shop sells a wide variety of religious literature but does not sell any adult materials. Neither EPC nor SMR sells alcoholic beverages or tobacco products, there is no “lounge” or night club at either location, and public consumption of alcohol is not permitted. Filing IDs 39648282 p. 15, 39468288 p. 15.

**a. Activities.**

YMCA provides activities for all types of groups, individuals and families. The program bulletins describe the activities offered throughout the week. Filing IDs 39648318, 39648319, 39680179, 39680286. General religious and family

programming activities can be divided into two categories based on the “department” that plans and conducts the activities. The chaplain’s office provides a wide range of programs that tend to be more expressly religious in nature. To complement these activities, the program department designs and offers activities that promote YMCA’s core values.

### *Chaplain Activities*

The Chaplain’s office promotes and cultivates the Christian environment of the Properties through services, studies and programs. An extensive list of programs offered by the Chaplain’s office is provided in Filing IDs 39648321, 39648322, 39672440, 39672672. Activities include Bible studies, guided prayer walks, discussion groups and regular worship services.

A variety of services are offered for all guests on Sundays, including a general worship service, Holy Communion services, and a “praise and worship” Sunday evening vespers service. There is also a “Sunday School” program for children. A wide variety of additional services are offered throughout the week and on special Christian holidays throughout the year (e.g., Christmas, Easter, Thanksgiving, Advent, Lent). Filing IDs 39648282 pp. 21-22, 39468288 pp. 21-22.

The Chaplain's office also participates in staff orientation and training; offers counseling and guidance to those in need (staff and guests and community residents); provides daily devotions led by the chaplain or a volunteer; works with Christian groups at the Properties to enhance their programming; and performs weddings, funerals and sacramental services. Filing IDs 39648282 p. 22-23, 39468288 p. 22.

Through the Chaplain's office, YMCA also provides its facilities to churches and other religious groups in the communities. For instance, all ministerial pastoral associations in Grand County meet at SMR each month, and YMCA provided the Whispering Pines Chapel to the Presbyterian Church of Grand County during the lengthy construction phase of their church. Filing IDs 39648282 P. 23, 39648288 pp. 22-23.

### *Family Programming*

YMCA uses the term "family programming" to encompass recreational and educational activities. Filing IDs 39648326 and 39648329 describe the wide range of program activities. They include crafts, guided nature hikes, visiting the museum and library, family recreational activities such as rollerskating and mini-golf, bird banding (for kids and adults together), archery lessons, evening concerts and lectures (on cultural, religious or educational topics), devotional services, and

challenge courses (climbing walls, ropes courses). During the winter months, SMR guests have access to SMR's Nordic ski trails.

Other activities are similar to those provided at Community Y centers throughout the state (and country), swimming, weight-lifting, and aerobics. Residents of the surrounding communities use the Properties as their local "Y" (which is a unique opportunity since these communities would not otherwise be large enough to support a Community Y). Filing ID 39648282 p. 24.

#### *Youth Camping Programs*

An important component of YMCA's family programming during the summer months consists of day camp programs for children. *Id.* Camp Chief Ouray (CCO) is a traditional summer residential camp for youth that is held in a dedicated portion of SMR. Filing ID 39648347. On the opening night of each session, the CCO staff use Vespers as the introduction to YMCA's core values. Each counselor is required to have devotions every night. CCO's goal is to ensure that each child will have ample opportunities to witness people treating each other in a Christ-like manner, incorporating Christian values into their everyday lives, and being involved in spiritual-based discussions. Filing ID 39468288 p. 26-27.

### *Outdoor Education Programming*

Many schools throughout Colorado participate in YMCA's year-round Outdoor Education Program which combines academic and character education in YMCA's unique environment. Approximately 6,000 students are served annually. Filing IDs 39648340, 39648343.

### *Group Program Activities*

YMCA serves religious groups, charitable groups and commercial groups. With their intentionally Christian environment, the Properties naturally serve as a major Christian conference center for church groups and other Christian groups in Colorado and throughout the country. Filing IDs 39648346, 39648350.

In addition to religious groups, SMR provides conference programming support for many charitable, educational and governmental groups. Such groups include the Boy Scouts and Girl Scouts, the United States Army, which has used the YMCA as a winter and summer training site, and the Division of Wildlife, which has used the YMCA for aquatics training. Many public schools bring their co-curricular and extra-curricular programs for sports training and leadership training. Filing ID 39648288 p. 29.

Multi-cultural and special-needs populations have also taken advantage of this customized YMCA programming process. For example, the Heritage Camps

program brings together families that have adopted multinational children. Filing ID 39647697, Vol. III, 197:10-198:14. YMCA also provides activities for the Colorado Neurological Institute, which serves families that have a child with a Cochlear Implant hearing device; and Adam's Camp, which serves families with various needs ranging from Downs Syndrome to Autism. Other groups include the Brachial Plexus Family Camps, Children's Hospital Burn Survivors Family Camp, and the National Kidney Foundations Kidney Camp (which takes advantage of SMR's unique kidney treatment facility). Filing ID 39648288 p. 25.

#### *Community-Based Activities*

YMCA also makes the facilities available at reduced rates (or without charge) to various community groups, including local park and recreation districts. Filing IDs 39648309, 39648312, 39678161, 39678247.

#### **b. Financial Policies.**

YMCA's fees are set not to maximize profits, but rather to serve as many guests as possible while covering its operational costs and providing for facility replacement. Accordingly, pricing is based solely on costs and without regard to market rates. As a matter of policy, YMCA sets its fees in order to obtain an aggregate annual net revenue figure that is sufficient to enable YMCA to replace its facilities every 50 years. Because facilities must be replaced every 25 years,

YMCA intentionally relies on donor contributions and volunteer support to maintain its facilities and programs and remain solvent. Filing IDs 39648282 p. 19, 39468288 p. 18, 39647697 Vol. IV, p. 87:23-88:6.

Between 2002 and 2007, YMCA's losses from fee revenue averaged \$1.46 million per year. Filing ID 39722534 p. 4. During that same period, YMCA received an average of \$2.05 million per year in charitable contributions. *Id.* at 4, 10-11. In 2007, YMCA provided over \$500,000 in discounted or free use of its facilities and services (much of it to those with financial needs or to charitable or government groups), and YMCA received over 28,000 hours of volunteer services. Filing ID 39722307 p. 5-6.

YMCA strives to keep its programming fees low to encourage participation. Indeed, most chaplain and family programs are offered at no cost (or with a minimal charge for supplies). YMCA also provides discounts for family guests with unique financial needs (such as a job loss) and families in special circumstances, such as military personnel, foster families and pastors. For these targeted family discounts, there are no blackout periods. Filing ID 39569909 p. 13. In addition, YMCA provides free use of its facilities for many local community groups. Filing IDs 39569909, 122:13-131:8, 39678161, 39678247. YMCA also provides scholarships for campers based on financial need. Filing IDs 39569909

pp. 132:2-133:24, 39680751. In 2005, the total scholarships for day camp, preschool and Camp Chief Ouray were approximately \$69,000. Filing ID 39680751. YMCA has never turned away anyone from Camp Chief Ouray who could not afford to pay, Filing ID 39568682 p. 202, and offers membership without charge to any person who feels he or she is unable to pay the membership fee. Filing IDs 39648282 p. 18, 39468288 p. 18.

**c. Personnel Policies.**

YMCA board members are required to “believe in and subscribe to the Christian purpose of the Association.” The CEO is required to have “a good foundation in the Christian religion and an understanding of how Christian ethics are applied in everyday living and in the solution of YMCA problems.” The job description states that this requirement is necessary because the CEO is “the chief employed officer of an organization with a Christian name, purpose and tradition.” In this regard, the CEO (like all YMCA employees) is required to “uphold the YMCA of the Rockies Mission Statement.” The interview questions established by YMCA for prospective Center Directors at EPC and SMR require applicants to discuss how they will “promote the Christian atmosphere of YMCA of the Rockies.” Filing IDs 39648282 p. 16, 39468288 p. 16.

YMCA employs over 120 full-time and 500 seasonal employees at EPC, and over 56 full-time and 450 seasonal employees at SMR, including full-time chaplains at each Property. Filing IDs 39648282 p. 18, 39468288 p. 16. In the summer months, there are approximately 150 staff members at each Property providing activities, plus an additional 50 volunteers at EPC and 35 volunteers at SMR. Filing ID 39569909 pp. 16-17. All staff must certify that they are “aware that YMCA of the Rockies is a Christian oriented association” and that they will “uphold its ideals and policies,” and are provided extensive training related to the distinctly Christian values of YMCA. Filing IDs 39648282 p. 16, 39468288 p. 16.

YMCA also partners with Great Commission Ministries (“GCM”), an evangelical Christian organization that works primarily with college students. Each summer, GCM brings approximately 100-150 students to EPC for leadership training. EPC employs the students as summer staff and provides housing and meeting facilities for leadership training activities. GCM staff leaders incorporate the work experience with EPC guests into the leadership training and GCM offers Christian worship and outreach activities for EPC guests. A similar partnership is operated at SMR with The Navigators, an evangelical Christian group based in Colorado Springs and with Calvin College, a Christian college in Michigan. In 2003, the partnership with The Navigators involved 81 students and 8 staff leaders;

Calvin College recruits 30 students for their program with the YMCA. Filing IDs 39648282 p. 17, 39468288 p. 17. Materials describing these staff training partnerships and their impact on student participants are provided in Filing ID 39648303.

YMCA receives volunteer project labor from churches and church programs across America. For instance, the initial framing of the Adam's Camp Summit building (used for a pediatric therapeutic program) was done by two church youth groups, and retired couples from the United Methodist Church Nomad Program constructed three outdoor chapels at SMR. Filing ID 39648288 pp. 31-32. YMCA also receives invaluable service each season from many retired individuals who provide their expertise and servant hearts. Filing IDs 39648282 p. 17, 39468288 p. 17. Volunteers provided over 28,000 hours of service in 2007. Filing ID 39722534.

### **3. The Facilities at the Properties are Used Solely for YMCA's Operations.**

EPC consists of 17 separate parcels comprising approximately 860 acres. SMR consists of 1 parcel comprising of approximately 2,187 acres. The property maps in Filing IDs 39744988 and 39744694 show all the facilities at the Properties in 2003. For ease of reference, these facilities are color-coded on the map according to the types of facilities described below.

**a. Activity Facilities.**

*Program Facilities*

A number of facilities are used primarily for family and group programming activities provided by the family programming department. These facilities are identified in Filing IDs 39669164 and 39670442 and are color-coded aqua on the property map in Exhibits ROAs Vol. V, 2081 and 2085. One unique facility is the kidney treatment center at SMR, which provided over 300 treatments in 2002.

Filing ID 39648288 p. 15.

Camp Chief Ouray has a number of dedicated facilities and associated land used exclusively for the camping program during the summer season. During the off-season, the cabins are not used since they are not winterized. However, the main building is used for the Nordic Cross Country Ski center. Filing ID 39648288 p. 34.

Another group of facilities are used primarily for the programs provided by the chaplain's office. These facilities, which are identified in Filing IDs 39669164 and 39670442, include both the indoor and outdoor chapels as well as religious activities centers. These facilities are color-coded green on the property map in Exhibits ROAs Vol. V, 2081 and 2085.

### *Open Land*

The entire area of the Properties is used as a programming area. Much of the property is used as a setting for the Outdoor Education program for school groups and by youth groups for overnight camp out trips as a part of their YMCA outing. Families take hikes, horseback rides, and bike rides on the trail system. Various locations are used as points of reflection and education. Filing IDs 39648282 p. 31, 39648288 p. 34.

### *Auditorium and Meeting Rooms*

For group meetings, YMCA provides a number of facilities. Filing IDs 39670354 and 39670644. These group programming activities include community events, conferences, and staff meetings. The dining hall is also used for participants in all program activities. These facilities are color-coded blue on the property map in ROAs Vol. V, 2081 and 2085.

#### **b. Accommodations.**

YMCA provides two primary types of accommodation options for guests. The cabins are used for family reunions, private families, and individuals participating in family and religious programming and group programming. The lodges are also used for private families and individuals as well as groups participating in group programming activities and/or conferences (members of

these groups often also participate in various religious and family programming activities). SMR has several outdoor campground facilities used by volunteers as well as by private families and individuals participating in SMR family and religious programming. Filing IDs 39648282 pp. 30-31, 39648288 p. 33.

These accommodation facilities are identified in Filing IDs 39670549 and 39670841 and are color-coded yellow (cabins), brown (lodges) and grey (campgrounds) on the property map in ROAs Vol. V, 2081 and 2085.

**c. Administration, Maintenance and Support.**

A number of facilities are used for administration, maintenance and support functions related to all programming activities. These facilities, identified in Filing IDs 39670714 and 39671011 and color-coded orange on the property map in ROAs Vol. V, 2081 and 2085, include the seasonal staff housing for staff whose jobs require them to live on the premises. Filing IDs 39648282 p. 31. Filing ID 39648288 p. 33. In this regard, YMCA provides safe, wholesome, drug- and alcohol-free living space for its seasonal staff in its dormitories. *Id.* at 15.

### **III. SUMMARY OF ARGUMENT**

#### **A. The Property Tax Administrator Correctly Determined that YMCA Qualifies for the Religious and Charitable Exemptions.**

##### **1. Colorado Law Exempts Property Used By Religious and Charitable Organizations in Furtherance of Their Purposes.**

Based on its purposes and activities, YMCA applied for exemption under both the religious and charitable exemptions provided under Colorado law. The religious exemption law consists of a statutory exemption for property used for religious purposes. C.R.S. §39-3-106(1). This statutory exemption manifests a considered decision of the Colorado General Assembly to provide a broad and deferential exemption for the activities of religious organizations. Indeed, the General Assembly could hardly have been more clear that (i) the exemption applies to all activities that further an organization's religious purposes, and (ii) the governmental inquiry in this regard should be limited to whether the organization's religious beliefs are bona fide/sincerely held. C.R.S. §§39-3-106(2), 39-2-117(1)(b)(II).

This statutory deference aligns with Colorado case law regarding religious property tax exemptions, including most specifically the Colorado Supreme Court's decision in *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989). In *Maurer*, the Court held that camp properties owned and operated by Young Life in

furtherance of its religious mission qualified for a religious exemption, even though many of the activities at the camps were not distinctly religious.

The charitable exemption consists of a separate statutory section and a separate body of case law which together exempt property used for certain common law charitable purposes. C.R.S. §39-3-108(1). Under this common law analysis, fee-based activities which otherwise satisfy charitable criteria qualify for exemption if the revenue derived from such activities is used for charitable purposes. *Board of Assessment Appeals v. AM/FM International*, 940 P.2d 338, 347 (Colo. 1997). On this basis, Community Y's in Colorado (and other charities such as museums and zoos) qualify for the charitable exemption even though they charge fees for their activities. Filing ID 39711272.

## **2. YMCA Qualifies for Both the Religious and Charitable Exemptions.**

Based on the applicable law and the PTA's corresponding regulations, the PTA determined that YMCA qualifies under both the religious and charitable exemptions. With respect to the religious exemptions, the facts establish that YMCA's religious mission is sincerely held and that YMCA uses EPC and SMR solely to further this mission. In these critical respects, YMCA's purposes and operations do not differ from those of Young Life in a manner that is material to the religious exemption analysis.

With respect to the charitable exemption, the program facilities are exempt because YMCA's activities further charitable purposes (in a manner similar to the activities of other Community Y's). In addition, the accommodations are generally exempt because they are an integral part of the camp experience offered by YMCA and they are necessary to YMCA's use of the program facilities. YMCA's overall financial model also supports its charitable use of the properties.<sup>7</sup>

**B. The Board's Orders Contradict, and Have No Reasonable Basis in, the Applicable Exemption Laws.**

The Board held separate hearings on the appeals of the PTA's religious and charitable exemption determinations. In each case, the Board did not make any material factual findings inconsistent with the facts upon which the PTA relied. But in each case the Board reversed the determinations of the PTA by applying to YMCA legal standards for the religious and charitable exemptions that directly contradict the applicable standards applied by the PTA to YMCA and to all other property tax exemption applicants.

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<sup>7</sup> The PTA applied a separate "combined use" section of the exemption law to analyze the use of accommodations (and meeting space) for group guests (a term used by YMCA to describe parties of 15 or more). C.R.S. §39-3-116. The PTA applied this section to a small percentage of family guests (which includes small parties of friends) who reported that they did not participate in any YMCA activity. As a result, the PTA granted partial exemptions for 96% and 97% of the properties. PTA Determination Memos Filing ID 39594605 pp. 36-41, 251-256.

### **1. Legal Errors in the Board's Religious Exemption Analysis.**

The Board held that YMCA's use of the Properties does not satisfy the religious exemption because the Properties are open to the public without regard to religion, the marketing materials for the properties do not contain sufficient distinctly religious content, and many of the guests do not have any religious purpose for their visit and do not participate in distinctly religious activities. ROA Vol. I, pp. 0470-71. The Board distinguished the *Maurer* court's conclusion regarding Young Life case by claiming that a much higher percentage of the guests at Young Life participate in distinctly religious activities, and that Young Life exercises greater control over the content of activities. *Id.* at 0471.

Although the Board did not articulate the legal standards it was applying, these standards are evident in the Board's explanations of its decision. Specifically, the Board's conclusion is not that YMCA's activities fail to further its sincerely held religious mission, but rather that they fail to do so in a manner that the Board considers to be "sufficiently religious." ROA Vol. I, pp. 0470-71. This sufficiently religious analysis immerses governmental officials in measuring the religious significance of various activities. And it invariably leads to religious favoritism, improperly discriminating among religious organizations based not on whether they use their property to accomplish their respective religious missions, but rather

based on how they do so. Indeed, the Board expressly favors Young Life's approach over that of YMCA's solely because Young Life appears to accomplish its mission in a more distinctly religious and controlled manner. *Id.* at 0471. In short, because the legal standards upon which the Board relies violate the very principles of deference and neutrality dictated by the General Assembly and Colorado Supreme Court, the Board's ruling should be reversed.

## **2. Legal Errors in the Board's Charitable Exemption Analysis.**

With respect to the charitable exemption, the Board concluded that no exemption could apply for use of any of the facilities for family guests because the Board felt that family guests do not have charitable purposes for visiting the Properties and there was insufficient evidence of the activities in which they participated. Filing ID 39565072 p. 11. The Board supported this conclusion by noting that guests are not required to participate in any particular activities and the facilities are similar (in some respects) to commercial resorts. *Id.* The Board also concluded that there was insufficient evidence that the activities of groups furthered charitable purposes. *Id.* Finally, the Board held that the PTA had incorrectly applied the evidence regarding discounts provided by YMCA. *Id.* at 10.

The Board's analysis rests on the false premise that there is a statutory presumption against charitable exemptions. Filing ID 39565072 p. 10. Applying this false premise, the Board first incorrectly focuses on the purposes of family guests rather than the purposes of YMCA. *Id.* at 10-11. Accordingly, the Board cites evidence regarding why such guests choose to visit SMR and EPC rather than the evidence of the activities and facilities YMCA offers and why. *Id.* at 11. The Board also incorrectly focuses on the voluntary nature of YMCA's activities and on superficial similarities to commercial operations. *Id.* And the Board appears to hold that certain discounts are required for a charitable exemption, even if the organization operates at a loss. *Id.* at 10. This is not the charitable exemption law.

The Board also imposes draconian evidentiary standards regarding the activities of guests, rejecting the standards the PTA applies to other properties. Filing ID 39565072 p. 11. The Board does not, however, set forth a clear alternative standard, noting only that the evidence of guest activities presented by YMCA was not enough. *Id.* Further, the Board's interpretation is not workable. The law cannot require YMCA to present evidence of the activities and purposes for every Boy Scout and church group that visited the Properties, or for the PTA and the Board to review all such evidence.

Finally, the Board fails to apply properly the combined and partial use analysis in Colorado statutes and the PTA regulations. C.R.S. § 39-3-106.5. With respect to the combined use analysis and partial exemptions, the Board must apply the regulations as adopted and interpreted by the PTA (including evidentiary standards), both as a matter of administrative law and to ensure equal treatment of taxpayers.

In short, the Board's conclusions have no reasonable basis in the applicable law as correctly interpreted. The uncontroverted evidence establishes that the Properties are used to further qualifying religious and charitable purposes. The Board did not apply the correct legal standards, and its ruling should be reversed.

#### **IV. ARGUMENT**

##### **A. Standard of Review and Preservation.**

The standard of review is the same for each issue below. “In cases involving judicial review of agency actions, the court must determine all questions of law and interpret the statutory provisions involved and must apply such interpretations to the facts established; and if the court finds that the agency action is in excess of statutory authority or is otherwise contrary to law, then the court must set aside the agency action . . . and remand the case for further proceedings.” *Kennedy v. Public Employees’ Retirement Ass’n*, 768 P.2d 1264, 1266 (Colo. Ct. App. 1988). The

court “reviews *de novo* an agency’s statutory and regulatory interpretations.” *Koehler v. Colorado Dep’t of Healthcare Policy and Financing*, 252 P.3d 1174, 1178 (Colo. Ct. App. 2010), *cert. denied*, 2011 Colo. LEXIS 388 (Colo. May 9, 2011). The court also “review[s] an administrative agency’s conclusions of law *de novo*.” *Specialty Rests. Corp. v. Nelson*, 231 P.3d 393, 397 (Colo. 2010). The court must “reverse an administrative agency’s determination if the agency erroneously interpreted the law,” *Stell v. Boulder Cnty. Dep’t of Social Services*, 92 P.3d 910, 916 (Colo. 2004), or the agency’s determination has no “reasonable basis in law.” *Board of Assessment Appeals v. Huddleston*, 940 P.2d 338, 343 (Colo. Ct. App. 1997).

Pursuant to C.A.R. 28(k), YMCA preserved its arguments concerning its entitlement to the religious and charitable exemptions in its written closing arguments before the Board. ROA Vol. I, p. 392; Filing IDs 39563199, 39564237.

## **B. YMCA’s Operations Qualify for a Religious Exemption.**

### **1. Colorado Law Exempts Property Used by a Religious Organization Solely in Furtherance of its Religious Purposes.**

Colorado law has long recognized that the religious property tax exemption should be broadly construed in deference to the bona fide representations of religious organizations. The state constitutional basis for exemption from property tax for religious uses is as follows: “Property, real and personal, that is used solely

and exclusively for religious worship . . . shall be exempt from taxation. . . .”

Colo. Const. Art. X, Sect. 5. In *McGlone v. First Baptist Church of Denver*, 97 Colo. 427 (1935), the Colorado Supreme Court reaffirmed several prior decisions of the court that property tax exemptions for religious purposes are subject to a “liberal rule of construction.” *Id.* at 430-31.

The *McGlone* court noted that the Colorado state constitution gives the legislature the authority to reject the rule of liberal construction by limiting or abolishing the exemptions provided in the constitution. *Id.* at 431. Far from rejecting this rule, the General Assembly expressly endorsed it. In 1989 the General Assembly amended the religious use exemption to codify the rule of liberal construction and deference and to provide guidance for its implementation. Specifically, the statute was amended to provide that “[p]roperty, real and personal, which is owned and used solely and exclusively for religious purposes and not for private gain or corporate profit shall be exempt. . . .” C.R.S. 39-3-106(1).

The General Assembly supported this new standard with the following legislative finding:

In order to guide members of the public and public officials alike, in the making of their day-to-day decisions, to provide for a consistent application of the laws, and to assist in the avoidance of litigation, the general assembly hereby finds and declares that religious worship has

different meanings to different religious organizations; that the constitutional guarantees regarding establishment of religion and the free exercise of religion *prevent public officials from inquiring as to whether particular activities of religious organizations constitute religious worship; that many activities of religious organizations are in furtherance of the religious purposes of such organizations; and that activities of religious organizations which are in furtherance of their religious purposes constitute religious worship for purposes of section 5 of article X of the Colorado constitution. This legislative finding and declaration shall be entitled to great weight in any and every court.*

C.R.S. 39-3-106(2).

To implement this finding, the General Assembly provided that a religious applicant must submit a declaration of religious mission and purpose and that:

*Such declaration shall be presumptive as to the religious purposes for which such property is used. . . . The administrator may challenge any declaration included in the application only upon the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property, that the property being claimed as exempt is not actually used for the purposes set forth in such application, or that the property being claimed as exempt is used for private gain or corporate profit.*

C.R.S. 39-2-117(1)(b)(II).

These limitations on inquiry by their terms apply only to the PTA.

However, the legislative and constitutional concerns underlying the PTA limits, and the presumption based on the declaration, apply to all government officials.

Further, courts are required to give “great weight” to the applicable legislative findings. C.R.S. 39-3-106(2).

The Colorado Supreme Court affirmed the liberal rule of construction again in *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989). Applying the pre-1989 statute, the *Maurer* court noted that “[a]voiding a narrow construction of property tax exemptions based upon religious use also serves the important purpose of avoiding any detailed governmental inquiry into or resultant endorsement of religion that would be prohibited by the establishment clause of the first amendment of the United States Constitution.” *Id.* at 1333 n.21; *see also Catholic Health Initiatives Colorado v. City of Pueblo*, 207 P.3d 812, 818 (Colo. 2009) (noting precedents designed to avoid this type of governmental entanglement).

Accordingly, the Court articulated “a policy of receptiveness towards exemptions implementing the constitutional policy of support for charitable and religious endeavors.” *Id.* at 1332. The Court observed that: “[t]his policy represents an exception to the general rule that the presumption is against tax exemption and the burden is on the one claiming exemption to establish clearly the right to such relief.” *Id.*

In *Maurer*, the Court upheld a religious exemption for camp property owned and operated by Young Life. *Id.* at 1319. The Young Life properties included “a Christian family lodge” with a “warm Christian atmosphere.” *Id.* at 1329. Activities at the camps included horseback riding, archery, billiards, swimming,

and jeep rides, and they were promoted, as in one instance, as “Sun and Fun” family vacations. *Id.* at 1341 (Mullarkey, J., dissenting). The Court noted, “the Board [in its findings] specifically acknowledged that ‘not all of the activities that take place at Young Life camps . . . are inherently religious, [however] they are used by Young Life as effective vehicles for presenting the gospel during the day and for building relationships so that campers will be more receptive to the gospel as it is presented during the course of Young Life’s program.’” *Id.* at 1331.

Put differently, the *Maurer* court relied on bona fide evidence of a connection between Young Life’s activities and Young Life’s religious purposes and mission to confirm its conclusion regarding the religious purposes of Young Life’s activities. The Court stated that:

Although not all the activities conducted on the Young Life properties are inherently religious in nature, by considering the character of the owner and the competent evidence in the record that the uses of the properties were to advance in an informal and often indirect manner Young Life’s purposes, the Board could and did conclude that any nonreligious aspects of these activities were necessarily incidental to the religious worship and reflection purposes for which Young Life claimed the properties were used.

*Id.* at 1327.

**2. YMCA is a Religious Organization and YMCA Uses the Properties Solely in Furtherance of its Religious Mission.**

The undisputed facts clearly establish that YMCA is a bona fide Christian organization and that it uses EPC and SMR solely as Christian environments to further its Christian mission.

**a. It is undisputed that YMCA is a Christian organization.**

YMCA has a long and public history as a Christian organization. YMCA's articles of incorporation state that YMCA's primary purpose is "to provide a Christian environment." Filing ID 39648290 p. 23. Further, YMCA is required each year to subscribe to a national purpose statement affirming "a common loyalty to Jesus Christ for the purpose of building Christian personality and a Christian society." Filing ID 39681291 p. 3. Building on this purpose, YMCA's mission statement provides:

The YMCA of the Rockies puts Christian principles into practice through programs, staff and facilities in an environment that builds healthy spirit, mind and body for all.

*See, e.g.*, Filing ID 39672174. The Board recognized YMCA's status as a Christian organization by upholding religious exemptions for the chapels on the Properties.

**b. YMCA uses the Properties solely as Christian environments to demonstrate and promote Christian principles, which is precisely YMCA's religious purpose.**

EPC and SMR are similar to the camp properties of churches and community Y's, with many distinct features related to YMCA's particular Christian mission. Put differently, YMCA's implementation of Christian principles through facilities, staff, policies and activities creates a Christian environment at the Properties.<sup>8</sup> Among other things, YMCA's Christian environment "prepares the soil" for spiritual growth in the lives of many guests by promoting Christian principles shared by all. Filing ID 39648282 p.10.

As an initial matter, the "for all" in YMCA's mission statement is based on YMCA's Christian belief that God cares for all people. For this reason, YMCA furthers its mission by serving guests who have no particular faith or who are Jewish or Buddhist (see Filing ID 39679251), or practitioners of Yoga. YMCA explained in its application, "[s]uch guests often choose to visit EPC or SMR because they appreciate the values reflected in the facilities and programming, the safe and wholesome atmosphere that YMCA provides by incorporating its

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<sup>8</sup> Grand County witness, Ms. Ross, testified that she sent church groups to SMR, and that if somebody were to ask for a place with a Christian atmosphere, she would direct them to SMR or the Young Life camp. Filing ID 39647697 Vol. II, 76:14-19.

Christian principles into its daily operations. These guests are particularly important to YMCA's religious mission because they are the ones that YMCA has a unique ability to influence." Filing ID 39648282 p. 20.<sup>9</sup>

To encourage guests to focus on each other and on God, the facilities at the Properties are intentionally designed to be simple and unassuming. Additional policies such as no TVs in lodge rooms and in many cabins, quiet hours and no alcohol sales or service and no sale of adult materials (Filing ID 39648282 p. 15) also support these objectives. Further, expressly Christian symbols and materials are displayed all over the Properties. Filing IDs 39745373, 39745518, 39647697 Vol. III, 203:25-208:24, Vol. IV, 132:9-134:11. These symbols include both indoor and outdoor chapels and crosses in prominent locations.

YMCA's Christian environment is further enhanced by YMCA's intentional efforts to have church and other Christian groups as guests. The record shows there are more church/religious groups than any other type of group. Filing ID 39712431. YMCA furthers its mission both by helping these groups with spiritual

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<sup>9</sup> Although the actual impact on guests is not the determinative criteria regarding YMCA's use of the Properties, such impact does reflect YMCA's mission. In this regard, the exhibits include comments from guests expressing the spiritual growth and healing they experienced at the Properties. Filing IDs 39672870, 39672927, 39678340, 39679513.

growth and by having a substantial presence of intentionally Christian guests on the Properties to interact with other guests. Filing ID 39648282 p. 19.

In addition, YMCA's staffing partnerships with Christian campus ministries including Great Commission Ministries (GCM), The Navigators, Calvin College and College of the Ozarks enhance the Christian environment. These partnerships provide approximately one-third of the total staff at the Properties during the summer months. These staff members, like the full-time chaplains at EPC and SMR, are Christians committed to growing in their faith and developing leadership skills. As a result, they influence the other staff with whom they work as well as guests.

Finally, YMCA's activities, many of which are typical for a church camp and similar to the activities at Young Life camps, are also designed to further YMCA's Christian principles. This includes not only the "chaplain" programs, but also the family activities.<sup>10</sup> Filing ID 39647697 Vol. IV pp. 163-64, 39648282 pp. 14-34.

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<sup>10</sup> As an organization described in Internal Revenue Code §501(c)(3), there is no dispute that YMCA satisfies the requirement that there be no corporate profit or private gain. *See* C.R.S. 39-1-102(8.5).

**3. Given the Uncontradicted Facts, the Board’s Decision Does Not Have a Reasonable Basis in Law Because It Violates Core Statutory and Constitutional Rules for the Religious Exemption.**

Applying the religious exemption law to the undisputed facts regarding YMCA and its use of EPC and SMR as Christian environments, the PTA determined that YMCA qualifies for the religious exemption. The Board’s Order reversing the PTA does not turn on any materially different findings of fact than those relied upon by the PTA. Instead, the Board applies a different legal test, looking not to whether YMCA uses the Properties to further its sincerely held religious beliefs, but rather whether it does so in a sufficiently religious and direct manner. This test leads to the excessive inquiry and religious favoritism prohibited by the applicable statutory language, the *Maurer* decision and a long line of religious liberty cases.

**a. The Board’s test requires an unconstitutional inquiry into the religious character of YMCA’s operations.**

Courts have consistently held that government officials must avoid inquiries to measure the religious character of an organization or activity. In *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002), the court found a First Amendment violation in the NLRB’s “substantial religious character” test, which it used to determine whether it could exercise jurisdiction over religious employers. The court noted that the “substantial religious character” test evaluates “the

purpose of the employer’s operations, the role of unit employees in effectuating that purpose and the potential effects if the Board exercised jurisdiction.” *Id.* at 1339 (quotation omitted). In evaluating a religious school, for instance, the test requires the NLRB to consider “all aspects of a religious school’s organization and function,” including “such factors as the involvement of the religious institution in the daily operation of the school, the degree to which the school has a religious mission and curriculum, and whether religious criteria are used for the appointment and evaluation of faculty.” *Id.* (quotation omitted).

The *Great Falls* court concluded that “the nature of the Board’s inquiry boils down to ‘is it sufficiently religious?’” *Id.* at 1343. The court held that the “very process of inquiry” into the “‘religious mission’ of the University,” as well as “the Board’s conclusions have implicated [] First Amendment concerns . . . .” *Id.* at 1341 (citing *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979)); *see also Mitchell v. Helms*, 530 U.S. 793 (2000)(plurality) (“It is well established, in numerous other contexts, that courts should refrain from trolling through a person’s or institution’s religious beliefs.”).

The excessive inquiry prohibition applies also to the religious character of activities. *Great Falls* relied in part on *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), in which the Supreme Court upheld an exemption in

Title VII of the Civil Rights Act that applied to all employment positions of a religious employer (even those positions performing secular activities). The court explained that the *Amos* rule was based on “the difficulty of judicially deciding which activities of a religious organization [are] religious and which [are] secular.” *Great Falls*, 278 F.3d at 1342. The Court in *Amos* observed that “[t]he line [between religious and secular activities] is hardly a bright one and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission.” *Amos*, 483 U.S. at 336.

Similarly, in *New York v. Cathedral Academy*, 434 U.S. 125 (1977), the Court struck down a statute which required government officials to “review in detail all expenditures for which reimbursement is claimed, including all teacher-prepared tests, in order to assure that state funds are not given for sectarian activities.” *Id.* at 132. The Court noted that the requirement would place religious schools “in the position of trying to disprove any religious content in various classroom materials” while at the same time requiring the state “to undertake a *search for religious meaning* in every classroom examination offered in support of a claim.” *Id.* at 132-33 (emphasis added). The Court concluded that “[t]he prospect of church and state litigating in Court about what does or does not have

religious meaning touches the very core of the constitutional guarantee against religious establishment.” *Id.* at 133.<sup>11</sup>

These cases make clear that, in assessing the religious character of YMCA’s activities (*i.e.*, the extent to which they further YMCA’s mission), public officials must avoid second guessing the bona fide representations of YMCA regarding how such activities further YMCA’s religious purposes.

Further, although the statutory exemption precludes any use where there is no religious purpose, it does not preclude uses that serve both non-religious purposes and religious purposes. Accordingly, it does not matter that certain YMCA activities may further purposes other than strictly Christian purposes (e.g., demonstrating and promoting Christian principles embraced by others for non-Christian reasons), provided that these activities also further YMCA’s Christian mission.

In this regard, it is helpful to consider the court’s response in *Great Falls* to an argument that a university was not sufficiently religious because it promoted

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<sup>11</sup> See also *Hernandez v. Commissioner*, 490 U.S. 680, 694 (1989) (in income tax exemption context, pervasive governmental inquiry into “the subtle or overt presence of religious matter” is proscribed by the First Amendment Establishment Clause).

values similar to those taught at secular institutions (*e.g.*, character, competence and community). The court observed that this fact:

. . . says nothing about the religious nature of the University. Neither does the University’s employment of non-Catholic faculty and admission of non-Catholic students disqualify it from its claimed religious character. *Religion may have as much to do with why one takes an action as it does with what action one takes.* That a secular university might share some goals and practices with a Catholic or other religious institution cannot render the actions of the latter any less religious. The University of Great Falls in its mission statement defines its mission “as an expression of the teaching mission of Jesus Christ.” In its expression of its philosophy and purpose, it calls upon its faculty and staff to join with the students in developing “character . . . competence . . . [and] commitment.” But it goes further than that. It defines character in terms of recognition and acceptance of personal accountability by the students “to themselves, to society, and to God.”

*Great Falls*, 278 F.3d at 1346 (D.C. Cir. 2002) (emphasis added). *See also Leboon v. Lancaster Jewish Community Center Ass’n*, 503 F.3d 217 (3<sup>rd</sup> Cir. 2007); *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, \_\_ U.S. \_\_, 2012 WL 75047 (Jan. 11, 2012) (holding that a minister may engage in a substantial amount of secular activities).

Accordingly, the Board’s position that YMCA’s religious use of the Properties is undermined because the marketing materials do not contain expressly Christian content relies on the false premise that Christian objectives can be accomplished only through expressly Christian content. YMCA’s marketing materials are intentionally designed to be attractive “for all,” which is an important

component of YMCA's mission statement. Moreover, YMCA cannot influence people who do not come to the Properties. Filing ID 39647697 Vol. IV 10:7-19.

In any event, the Board's conclusions regarding religious content in marketing materials and YMCA's control over activities are not supported by the record. The record contains plenty of objective indicia of YMCA's Christian character and mission in marketing materials and in facilities.

The Board's analysis requires the same type of subjective weighing of factors as the various "religious character" tests rejected in the case law. The weight given by the Board to the fact that the Properties are open to the general public and that certain guests may not perceive EPC and SMR as Christian environments or share YMCA's beliefs was directly rejected by *Great Falls* and *Leboon*. Similarly, the Board's search for religious content in YMCA's marketing materials and activities violates *New York Cathedral* and *Amos*.

More generally, the Board's test necessarily requires government officials to impose their own measures of religiosity. Such an inquiry raises questions which public officials have no competence or authority to answer. For instance, does a religious belief in serving "all" undermine religious use? Is it less religious to seek to influence the general public? Also, what percentage of guests must share the purposes of YMCA or perceive a Christian environment (and how would such

individual subjective perceptions be determined)? And what constitutes expressly religious content and how much of it must be in marketing materials? Similarly, what level of participation in expressly religious activities is sufficient, and how much control must there be over such activities? The Board's inquiry casts public officials into a sea of subjective religious determinations which they have no authority or competence to make. This directly contradicts both the statutory provisions and the constitutional considerations set forth in *Maurer*.

The relevant inquiry for property tax purposes is not whether the activities are sufficiently religious or whether guests have (or hope to have) a religious experience, but whether the property owner seeks to accomplish a religious purpose through the use of the property. Because YMCA accomplishes its Christian mission when guests experience YMCA's Christian environment, the PTA properly granted a religious exemption. The Board's conclusion to the contrary rests on an analysis mired in religious determinations prohibited under both statutory and constitutional law.

**b. The Board's test unconstitutionally favors Young Life's religious methods over YMCA's religious methods.**

The Board distinguished YMCA from Young Life by noting that a substantial percentage of the Young Life guests participated in "religious programming." ROA Vol. I, p. 471; citing *Maurer*, 779 P.2d 1328, 1329. The

Board also noted that many Young Life campers attend Young Life sponsored events, that YMCA does not control a majority of activities at the Properties and that Young Life mentions religion in its marketing materials. *Id.* These distinctions represent the different means by which YMCA and Young Life accomplish their respective missions.

The distinction between different methods of accomplishing religious purposes is precisely the distinction rejected by the *Great Falls* court. *Great Falls* involved a challenge to NLRB jurisdiction by a University which, although affiliated with the Catholic Church, maintains a campus open to people of all faiths or no faith. The University does not emphasize the Catholic faith in its curriculum, neither the president nor any of the faculty are required to be of the Catholic faith, and the one required religion course need not be one involving Catholicism. *Great Falls*, 278 F.3d at 1340. Nevertheless, the court held that these factors did not disqualify the University from exemption from NLRB jurisdiction. The court explained that:

If the University is ecumenical and open-minded, that does not make it any less religious, nor NLRB interference any less a potential infringement of religious liberty. To limit the ... exemption to religious institutions with hard-nosed proselytizing, that limit their enrollment to members of their religion, and have no academic freedom, as essentially proposed by the Board in its brief, is an unnecessarily stunted view of the law, and perhaps even itself a violation of the most basic command of the Establishment Clause --

not to prefer some religions (and thereby some approaches to indoctrinating religion) to others.

*Id.* at 1346.

Similarly, in *Colorado Christian University v. Weaver*, 534 F.3d 1245, 1258-9 (10<sup>th</sup> Cir. 2008), the court held that a “pervasively sectarian” test violated the First Amendment because it “necessarily and explicitly discriminated[d] among religious institutions . . .,” and “the discrimination is expressly based on the degree of religiosity of the institution and the extent to which that religiosity affects its operations, as defined by such things as the content of its curriculum and the religious composition of its governing board.” *See also Larson v. Valente*, 456 U.S. 228, 231-32 (1982).

The distinctions the Board drew between Young Life and YMCA essentially prefers Young Life’s approach to indoctrinating religion (*i.e.*, its religiosity) over YMCA’s, which is precisely the analysis rejected in the preceding cases. As such, the Board’s analysis violates both the statutory religious exemptions provisions and established constitutional principles.

**c. The Board applied incorrect legal standards to YMCA’s public school programs and tax-exempt financing.**

The Board supported its conclusion by arguing that YMCA cannot qualify for a religious exemption because YMCA provides outdoor education activities for

public schools and has received tax-exempt financing through government agencies. ROA Vol. I, p. 0471. However, neither of these factors are inconsistent with YMCA's use of the Properties to further its Christian mission.

Although the outdoor education program for public schools clearly does not include any distinctly religious content, the program nevertheless furthers YMCA's religious mission by promoting character building and environmental education and stewardship. The cases discussed above clearly hold that Christian principles are no less Christian merely because they may be shared by others for non-Christian reasons, and that a religious organization may advance its religious mission through activities that are not inherently religious.

In connection with tax-exempt financing provided through Grand County, YMCA agreed not to use the financed facilities "primarily for pervasively sectarian purposes." But the Board incorrectly equated "pervasively sectarian" purposes with "religious" purposes. The Colorado Supreme Court has specifically held that these terms are not identical: the term "sectarian" refers to religious sects or denominations and is more narrow than the term "religious." *People ex rel. Vollmar v. Stanley*, 255 P. 610 (1927). Moreover, the prohibited use applies not to "sectarian" purposes, but to "pervasively sectarian" purposes (presumably meaning purposes lacking any nonsectarian component).

Although YMCA is a Christian organization, it is not associated with or a part of any denomination or sect. And YMCA primarily uses the facilities to demonstrate and promote Christian principles that are not “sectarian,” let alone “pervasively sectarian.” Therefore, YMCA satisfied the narrow bond restriction on “pervasively sectarian purposes” while continuing to use the facilities for more general religious purposes.

**C. YMCA’s Operations Qualify for a Charitable Exemption.**

**1. Colorado Law Exempts Property That is Used for Common Law Charitable Purposes and That Provides a Public Benefit.**

Colorado law exempts from tax nonresidential property “which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit. . . .” C.R.S. § 39-3-108(1). In determining whether an activity furthers charitable purposes, the Colorado Supreme Court has adopted “Gray’s rule,” which provides that:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

8 CCR 1304-2 (“PTA Reg.”) IV.A.1; *United Presbyterian Association v. Board of County Commissioners*, 448 P.2d 967, 971-72 (Colo. 1968). The Colorado

Supreme Court has stated that charitable exemption determinations must be based on “the overall conduct of the corporation.” *Board of Assessment Appeals v. AM/FM International*, 940 P.2d 338, 348 (Colo. 1997).

The Court has stated that the activity must provide a “public benefit,” and that the analysis “must not be mired in precise dollar calculations, but rather must focus on the service being performed and the determination of whether that service is indeed, one that confers a real benefit on the public.” *Id.* at 346 (emphasis added). In applying this standard, the Court has held that while charitable purposes are to be construed strictly, the means by which these purposes are accomplished are to be construed liberally. *United Presbyterian*, 448 P.2d at 973 (emphasis added).

**2. YMCA’s Operations Further Charitable Purposes and Provide a Public Benefit.**

YMCA qualifies for a charitable exemption because: (i) the activities and facilities at the Properties further purposes that fit within the Gray’s rule and *public benefit* standards set forth under Colorado law (as do the similar activities and facilities of Community Ys and other charitable camps); and (ii) YMCA’s “financial model,” under which YMCA seeks to serve as many people as possible while remaining solvent, and relies upon charitable contributions and volunteer services to do so, furthers charitable purposes and provides a “gift.”

**a. YMCA's operations further charitable objectives by providing a public benefit.**

YMCA's purposes and activities satisfy Gray's rule in the same manner as the similar purposes and activities of other Community Ys in Colorado.<sup>12</sup> Indeed, in his opening statement, counsel for Larimer County acknowledged that YMCA's activities provide a "social benefit." Filing ID 39568682, 34:9-13. The counties have also conceded that YMCA intends to satisfy the Gray's rule objectives. Filing ID 39564833 p. 2.

YMCA provides an extensive range of activities at EPC and SMR which promote healthy spirits, minds, and bodies, family unity, character development, leadership, and social responsibility. Filing IDs 39568682 p. 214-225, Filing ID 39569909 p. 8, 39648319, 39648318, 39648329, 39648326, 39680179, 39680286; *see also*, Filing IDs 39648288 pp. 20-32, 39648282 pp. 20-31. YMCA's purposes are the same as those embraced nationwide by all Community Ys. Filing ID 39568682 pp. 51-59. In pursuit of these common charitable purposes, the activities at EPC and SMR are no different than similar activities at Community Ys (including their camp properties). Swimming at EPC or SMR is no less charitable than swimming at a Community Y or another charitable camp. The same goes for

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<sup>12</sup> The fact that YMCA is eligible for *income* and *sales* tax exemptions supports this conclusion.

other recreational activities, educational seminars, cultural events and community group meetings.

Because YMCA's purposes and activities are materially similar to those of Community Ys, the PTA correctly determined that the charitable status of other Community Ys in Colorado is strongly informative as to the charitable character of YMCA's activities. *See* Filing ID 39569909 pp. 247-48. In this regard, the PTA has consistently held that the activities at Community Ys (including their camp properties) further charitable purposes. Filing ID 39711272.

Moreover, the Court has held that the provision of such activities supports a charitable exemption. In *West Brandt Foundation, Inc. v. Carper*, 652 P.2d 564 (Colo. 1982), the Court denied a charitable exemption for a camp property because the property did not provide any programs or activities for guests. In analyzing the fact that "the Ranch is open to any group willing to pay the fees charged," the Court stressed that "it is relevant to this issue that *the Ranch provides no programs of its own*, but merely provides lodgings for any group that wishes to make use of its facilities," *Id.* at 570 (emphasis added). The Court reiterated this point in its summary by noting that the owner "hoped to utilize the Ranch as a base for more extensive charitable and religiously oriented activities, but *there was no evidence*

*that these plans had been implemented at the time this litigation began.” Id. at 570 (emphasis added).*

The Court expressly limited its ruling, stating that “by our decision here we do not mean categorically to exclude from exemption camping and retreat facilities of this kind.” *Id* at 570 (citations omitted). In stark contrast to the facts in *West Brandt*, YMCA provides abundant activities of precisely the kind which were lacking in that case (and which further charitable purposes when conducted at Community Ys and other charitable camps). Filing IDs 39563199 pp. 7-8, 39711272.

**b. YMCA’s financial model satisfies the “gift” criteria.**

YMCA’s “financial model” provides a gift by seeking to serve as many people as possible while remaining solvent. Filing ID 39568682, 86:1.

Accordingly, YMCA sets its fees not to maximize profit but rather to keep projected revenue below operational and replacement costs; YMCA makes up the shortfall through volunteer services to reduce its costs and through charitable contributions . *Id.* pp. 84-85, Filing ID 39569909 p. 49. YMCA also provides fee discounts in needy circumstances and to the extent it can. Filing ID 39568682 p. 84. In addition, YMCA is open to all people and does not operate for any corporate profit or private gain. YMCA guests strongly affirm that the value they

receive exceeds the price they pay. Filing ID 39569909 pp. 188-89. For all these reasons, YMCA's financial model provides a clear public benefit.

The case law clearly states, and the counties do not dispute, that charitable organizations may charge fees for their facilities and services. The Court has repeatedly held that “[p]ayment of fees ‘does not foreclose charitable exemption, even if the facility involved does not operate at a loss, as long as any surplus is devoted to charitable purposes.’” *AM/FM*, 940 P.2d at 347 (quoting *West Brandt*, 652 P.2d at 568); *see also*, *United Presbyterian*, 448 P.2d at 975; *West Brandt*, 652 P.2d at 568 (citing *Bishop and Chapter v. Treasurer*, 86 P.1021, 1025 (Colo. 1906)).

The Court's decisions recognize that a charitable organization cannot sustain its mission if it does not remain financially solvent, and that contributions from donors are often not sufficient. In *Bishop and Chapter*, the Court granted a charitable exemption for a home for consumptives even though it charged fees to all residents. The Court noted that the home limited the discounts it provided so that it could remain solvent. *Id.* at 1022-23. Similarly, in *American Water Works Association v. Board of Assessment Appeals*, 563 P.2d 359 (Colo. App. 1976), the court granted a charitable exemption even though the property owner had accumulated a financial surplus solely through fees. The court noted that

“[f]inancial insolvency is not a condition precedent to tax exempt status.” *Id.* at 361-63 (distinguished on other grounds in *AM/FM*). Accordingly, many exempt charitable organizations which charge fees, including museums, zoos and Community Ys, have charitable exemptions. *See, e.g.*, Filing ID 39711272 (charitable exemption determinations for Community Ys and museums that charge fees).

The Colorado Supreme Court has also held, though, that the overall financial model cannot be one which results in “material reciprocity” or a “*quid pro quo*,” at least in a situation where the organization’s activities do not inherently further charitable purposes. *United Presbyterian*, 448 P.2d at 974, 976 (noting that such a model lacks “warmth and spontaneity”); *AM/FM*, 940 P.2d at 347; *West Brandt*, 652 P.2d at 568. The facts in *United Presbyterian* are revealing. A residential facility offered incidental social activities for its residents, seniors who were both physically and financially independent. *United Presbyterian*, 448 P.2d at 973-74. Residents were charged fees sufficient to cover all operational and maintenance costs, and the fees were at market rates. *Id.* In addition, the facility had given only \$96 of discounts, compared with over \$124,000 in annual revenue and over \$1.5 million in construction costs for the facility. *Id.* at 974. The facility also received

only minimal donations of \$3,000 in cash and furnishings. *Id.* at 970-71. There was no evidence of any volunteer services at the facility.

The Colorado Supreme Court has identified several factors that distinguish a *quid pro quo*/material reciprocity fee structure such as that in *United Presbyterian* from a charitable fee structure (which may even result in a surplus). As applied to YMCA's overall financial model, these factors demonstrate that YMCA provides a "gift."

As an initial matter, the Court has relied upon the fact that fee revenues exceeded costs to conclude that the arrangements constituted a *quid pro quo*. *United Presbyterian*, 448 P.2d at 973-74; *West Brandt*, 652 P.2d at 569-70; *see also, id.* at 566-67 (the Court noted discrepancies in the accounting evidence submitted by the owner regarding allocations of fees and costs); *AM/FM*, 940 P.2d at 347 (noting that the organization had generated a surplus from fee revenue). By way of contrast, YMCA's financial model does not create a *quid pro quo* because YMCA's overall rates are *intentionally set to lose money* from fee revenue. And in fact YMCA actually did lose an average of \$1.46 million per year between 2002 and 2007 from fees. Filing ID 39720844 p. 4.

The Court has also recognized that charitable contributions may be evidence of a lack of *quid pro quo*, particularly when combined with operating losses. *See*

*Stanbro v. Baptist Home Association*, 475 P.2d 23, 25 (Colo. 1970) (granting a charitable exemption to a nursing home supported in part by grants or donations); *see also West Brandt*, 652 P.2d at 566, 570. In this regard, YMCA received an average of \$2.05 million annually in donations between 2002 and 2007, and it relied on these funds to refurbish its facilities and remain solvent. Both the undisputed \$1.46 million annual average operating deficit and the undisputed \$2.05 million annual average donations constitute tangible evidence of a gift (in addition to data regarding scholarships and discounts, complimentary use of facilities and volunteer services). Filing ID 39720844 p. 4.

The Court has held that discounts and scholarships for those with financial needs or for charitable or government groups are an indication of a lack of *quid pro quo*. *Stanbro*, 475 P.2d at 25; *United Presbyterian*, 448 P.2d at 974 (only \$96 of discounts was not material relative to \$1.5 million construction costs and \$124,000 annual revenue); *West Brandt*, 652 P.2d at 569 (no evidence of discounts); *AM/FM*, 940 P.2d at 347-48 (discounts only for students and not based on need). Discounts obviously take many forms and are offered by many organizations, commercial and charitable, for a variety of reasons. Accordingly, Mr. Gueldenzopf testified that discounts are just one indicator of charitable purposes, and that they must be analyzed in the context of the overall operations of an

organization. Filing ID 39570527 pp. 144-147. In this context, the discounts provided by YMCA contribute to the overall public benefit of YMCA's operations.

YMCA provided evidence of need-based discounts for its camp programs, Filing ID 39563199 pp. 11, 12, for family guests who lost their jobs, *id.* p. 12, Filing ID 39568682 p. 207 (page 721), for students in its outdoor education program, Filing ID 39563199 p. 11, for returning military, foster care and pastor families, *id.* p. 12, and for charitable and government groups, *id.* pp. 11-12. In 2007, YMCA provided discounts and scholarships related to accommodations and food services in excess of \$500,000. In addition, the "warmth and spontaneity" of many of these discounts is reflected in the decentralized authority to waive fees. *Id.* p. 12.

Finally, YMCA passes along to guests in the "gift" of donated services from volunteers, resulting in lower fees. This gift includes both a quantitative component, over 28,000 hours, and a qualitative component in terms of mentoring and program support. Neither of the organizations in *United Presbyterian* and *West Brandt* had volunteer support (and the volunteers in *AM/FM* appeared to be members who had a business interest in the organization's activities).

**c. The PTA determined that use for group meetings and non-participating family guests results in a partial exemption under the PTA's regulations.**

Both Colorado statutes and PTA regulations include provisions to determine the impact of separate uses on the overall exemption of a property. The PTA determined that the activities of outside groups in meeting rooms (and the corresponding use of accommodations and dining room space) are separate uses by such groups for charitable exemption purposes.<sup>13</sup> Filing ID 39594605 pp. 103, 289. For these uses, the PTA looks not at YMCA's purposes, but at the group's purposes. Pursuant to C.R.S. §39-3-116, separate uses by religious and governmental groups are exempt, separate uses by commercial groups are not exempt, and separate uses by charitable groups are not exempt unless the group is charged less than reasonable costs for the facilities used.<sup>14</sup>

The constitutional and statutory exemption for property used "solely and exclusively" for charitable purposes applies to any portion of the property so used.

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<sup>13</sup> The PTA also considered as separate uses the accommodations used for family guests who do not participate in any activity. Accordingly, the PTA treats 6% of the family guests as separate uses, based on the results of the survey conducted by Mr. Ciruli. *See* Filing ID 39722534 Attachment I.

<sup>14</sup> For charitable groups, an additional calculation is made to compare the fees charged for the area used to the reasonable expenses related to such area. *See* PTA Reg. V.B.2.

Any portion not so used is carved out. To determine the amount of nonexempt use, the PTA regulations require a calculation of “adjusted hours” for each separate nonexempt use of an otherwise exempt property. The “adjusted hours” is the number of hours of each such use multiplied by the area actually used and divided by the total area of the property. This calculation converts the time a portion of the property is used into the effective equivalent time that the entire property is used. The total adjusted hours of all nonexempt uses effectively represents the total number of hours in a year in which the entire property is used for nonexempt purposes. *See* PTA Reg. I.B.27.<sup>15</sup> If the total adjusted hours of nonexempt use is less than 208, then the property may be eligible for a full exemption. C.R.S. § 39-3-106.5. If the nonexempt use exceeds 208 adjusted hours, then the property is given a partial exemption for the portion of time used for exempt purposes.

As applied to EPC and SMR, the PTA determined that the total nonexempt use for groups is the total adjusted hours for commercial groups plus the total adjusted hours for charitable groups in those areas where the allocated fees charged exceeded the allocated costs. This total is expressed as a percentage of the total

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<sup>15</sup> The PTA is required to apply these regulations for the separate uses disclosed in each new exemption application and in annual reports filed for every property in the state. Filing ID 39570527 pp. 130-31; 174-75.

number of hours in a year (8760), and then deducted from a full (100%) exemption.

To complete these calculations for the *meeting rooms*, the PTA obtained from YMCA data regarding the use of meeting rooms for commercial, charitable and religious groups. For the accommodations (and dining), the PTA used the 2002 guest night data for groups and families as previously provided by YMCA. Finally, the PTA used square footage data for the meeting rooms, accommodations and total properties as provided by YMCA. As it does with all exempt properties (both in the initial exemption applications and in the annual use reports), the PTA reviewed and adjusted as appropriate the separate use information submitted to it by YMCA. The PTA then applied the standard formula in its regulations to determine the amount of nonexempt use associated with the separate uses. Filing ID 39594605 pp. 0036-38, 0109-11, 0295-298, 0251-253.

Applying the PTA's regulatory formula to the separate uses for groups and for non-participating families yielded the following total adjusted hours of nonexempt use (in rounded numbers): 284 hours at EPC and 336 hours at SMR. As a percentage of the total number of hours in a year, this is 3.24% for EPC and 3.83% for SMR, resulting in a 97% exemption for EPC and a 96% exemption for SMR. See Filing ID 39594605 pp. 0036-41, 0251-56.

**3. The Board Improperly Applied Legal Standards that Conflict with the PTA’s Interpretation of the Charitable Exemption Statutes and Regulations and that have No Reasonable Basis in Law.**

The Board’s analysis rests on incorrect legal standards. As an initial matter, the Board asserts that there is a “statutory” presumption against charitable exemptions. But the statute provides the exact opposite, setting forth a statutory presumption in favor of charitable exemptions. C.R.S. § 39-3-101. In addition, the Court in *Maurer* held that there is a “policy of receptiveness” toward charitable exemptions and that this policy is an exception from the presumption against exemptions. *Maurer*, 779 P.2d at 1332.

Based on this contrived and false statutory presumption against exemption, the Board applies the wrong legal standard, focusing on guest participation rather than YMCA’s use of the Properties. Under the proper legal standard, the issue is how YMCA uses the Properties to further charitable purposes, not what particular guests may do. In this regard, the Board’s fixation on “voluntary participation” is not relevant, as many charitable organizations do not *require* participation by their guests (as they may properly assume that guests will participate). The decision of whether to require participation in some activities simply reflects an organization’s strategic decision on how best to accomplish its charitable mission.

Similarly, the Board's comparison to commercial operations is irrelevant. Nothing in the law requires charitable organizations to maintain a monopoly on wholesome, family activities. Many charitable exempt organizations, including camps, Community Ys, hospitals and educational institutions, conduct activities that are broadly similar to those conducted by commercial organizations. The issue is not the broad similarity of activities, but the different purposes the activities further.

Relying upon its incorrect understanding of the presumption, the Board required evidence of each guest's participation in the activities offered at the Properties. The Board gives no indication, though, as to what amount of evidence would be sufficient to satisfy its evidentiary standards. This standard defies the common sense expressed by Larimer County's counsel: "Is it not true that people who attend the Y or, or stay at the Y intend to use the facilities anyway? That is why they are there." Filing ID 39570527, 46:25-47:2.

This common sense, along with the impracticality of gathering evidence on each guest's activities and purposes, guides the PTA's practice with YMCA and all other exempt properties. In contrast, the Board's erroneous legal standard would require evidence regarding each of the thousands of guests who visit YMCA (and by extension, the many more thousands of guests who visit Community Y's,

museums, zoos and other charitable properties). The Board acted contrary to law by imposing new standards based on a contrived “statutory” presumption against charitable exemptions.

Finally, the Board completely ignores the PTA regulations providing for partial use exemptions if the nonexempt use exceeds 208 adjusted hours. Instead, the Board incorrectly concludes that if nonexempt use exceeds 208 adjusted hours, the *entire exemption* is denied. By doing so, the Board effectively changes the law and revokes all partial exemptions in Colorado. Such authority does not reside with the Board.

#### V. CONCLUSION

For the foregoing reasons, the Board’s orders denying religious and charitable exemptions should be reversed, and the Property Tax Administrator’s determinations upheld.

Respectfully submitted this 27<sup>th</sup> day of January, 2012.



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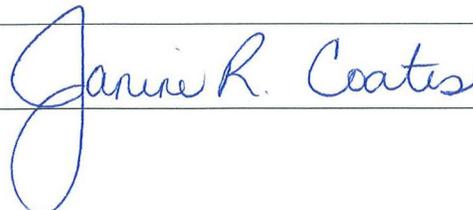
*BRYAN CAVE HRO*

***ATTORNEYS FOR APPELLANT YMCA  
OF THE ROCKIES***

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27<sup>th</sup> day of January, 2012, a true and correct copy of the foregoing **OPENING BRIEF OF APPELLANT YMCA OF THE ROCKIES** was served by U.S. mail, postage prepaid, as follows:

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