Word Count: 4,790

SUPREME COURT, STATE OF COLORADO
Court Address: 2 E. 14th Avenue
Denver, Colorado 80203

On Petition for Writ of Certiorari from the Colorado Court of Appeals Case No. 05CA2432

Appeal from a Final Judgment of the District Court, Arapahoe County, Colorado Case No. 04CV1774, The Honorable Marilyn Leonard

PETITIONER(S): CATHOLIC HEALTH INITIATIVES COLORADO d/b/a Villa Pueblo Towers

RESPONDENT(S): CITY OF PUEBLO, COLORADO, DEPARTMENT OF FINANCE, and LARA BARETT AS DIRECTOR

Case No.: 07SC905

Attorney for Amicus Curiae
The Catholic Health Association
of the United States:
Peter J. Krumholz, No. 27741
Richard A. Westfall, No. 15295
Hale Friesen LLP
1430 Wynkoop St., Suite 300
Denver, Colorado 80202
Telephone: (720) 904-6000
Facsimile: (720) 904-6006

BRIEF OF AMICUS CURIAE THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases — Page

Colorado Revised Statutes

Miscellaneous

STATEMENT OF THE ISSUES

Amicus Curiae The Catholic Health Association of the United States will address the following issues:

1. Whether the test applied by the Court of Appeals to determine whether an applicant's activities are religious and therefore entitled to a tax exemption, results in excessive entanglement with religion.

2. Whether Colorado precedent in this area should be clarified to adequately account for the values of non-establishment and non-preference of religion embodied in the First Amendment and Colorado Constitution.

3. Whether this Court should adopt a more objective test which is firmly grounded in both Colorado case law and statute, and which examines the sincerity of the applicant's declared religious beliefs rather than the content of those beliefs.

THE MISSION AND INTEREST OF AMICUS CURIAE

The Catholic Health Association of the United States (CHA) is the national leadership organization representing the Catholic health care ministry of this country. Founded in 1915, the CHA now has more than 1,950 members from all 50 states, forming the nation's largest group of nonprofit health care systems, hospitals, long term care facilities and related health care organizations.

For many years, CHA has served as a representative and advocate for its members, addressing the social, economic, political and legal factors affecting the delivery of high quality health care throughout the nation as well as in Colorado. As the representative of every Catholic hospital in Colorado as well as numerous Catholic nursing homes, assisted living facilities and other health care providers in the State, CHA has a profound interest in this case.

STATEMENT OF THE CASE

CHA adopts and incorporates the Statement of the Case set forth in Petitioner's Opening Brief. For purposes of this brief, the key fact in the case, which was established by stipulation of the parties, is that to Petitioner Catholic Health Initiatives Colorado, providing housing and care for the elderly (such as that provided at Villa Pueblo) is an activity motivated by religious belief. The City of Pueblo does not challenge the sincerity of this religious belief.

SUMMARY OF CHA'S POSITION

The test for religious activity applied by the Court of Appeals will result in excessive entanglement of religion. This violates the First Amendment and the Colorado Constitution, which protect individuals and organizations from searching government inquiries regarding the merits of their religious beliefs. The Court of Appeals' analysis effectively amounts to an "I know it when I see it" approach,

which will lead courts and government officials to make determinations of whether an activity is religious based on their own subjective views and experiences.

The precedent which guided the Court of Appeals in its analysis is questionable under First Amendment jurisprudence and the Colorado Constitution, and allows for too much subjectivity. The Colorado Supreme Court's decision in *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989) permits courts to make subjective judgments about the religious nature of an applicant's character and activities, just as Justice (now Chief Justice) Mullarkey predicted in her dissent in *Maurer*. This Court's decision in *Samaritan Institute v. Prince-Walker*, 883 P.2d 3 (Colo. 1994), on which the Court of Appeals also relied, should also be re-examined. The *Samaritan* court evaluated whether an organization is religious by asking in part whether it "proselytizes or evangelizes," and the Tenth Circuit recently deemed a very similar analysis unconstitutional.

The test which this Court should adopt for these purposes is set forth in C.R.S. § 39-2-117(1)(b)(II), which provides that in connection with religious property tax exemptions, the administrator can only challenge an applicant's declaration of religious belief on the grounds that the declaration is not sincerely held, that the application is fraudulent, or that the property is actually used for private gain. These are neutral, non-entangling criteria that have ample support in

existing law. The sincerity test, in particular, has been applied in similar contexts by both Colorado and federal courts. Under such a test and based upon the record in this case, the trial court's inquiry would not have gone beyond the stipulated facts, which included that Petitioner's provision of care for the elderly at Villa Pueblo was motivated by a sincere religious belief.

ARGUMENT

I. THE TEST ADOPTED BY THE COURT OF APPEALS WILL RESULT IN EXCESSIVE ENTANGLEMENT WITH RELIGION

A. The Court of Appeals' Decision Is Contrary to Federal Constitutional Principles

The First Amendment to the United States Constitution states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Collectively, the Establishment and Free Exercise clauses protect individuals and religious organizations from searching government inquiries regarding the merits of their beliefs. *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) ("It is well established . . . that courts should refrain from trolling through a person's or institution's religious beliefs."); *United States v. Lee*, 455 U.S. 252, 263 n.2 (1982) (Stevens, J., concurring) ("It is the overriding interest in keeping the government—whether it be the legislature or the courts—out of the business of evaluating the relative merits of differing religious claims."). As the

United States Supreme Court admonished: "Repeatedly and in many different contexts, we have warned that courts must not presume to determine . . . the plausibility of a religious claim." *Employment Div., Dep't of Human Resources of Ore. v. Smith*, 494 U.S. 872, 887 (1990).

This prohibition on governmental intrusion into religious questions serves important purposes, including protecting religions and religious beliefs whose creeds or traditions are novel or unfamiliar. In *Stevens v. Berger*, 428 F. Supp. 896 (E.D.N.Y. 1977), Judge Weinstein explained that "[j]udges recognize intellectually the existence of new religious harmonies, but they respond more readily and feelingly to the tones the founding fathers recognized as spiritual." *Id.* at 900. Thus, protecting religious belief and activities from searching judicial inquiries is necessary to prevent "established creeds and dogmas" from receiving "an advantage over new and changing modes of religion." *Id.*

The Court of Appeals' analysis below, if affirmed by this Court, will lead to judicial inquiries that violate these principles. In holding that "a certain amount of inquiry" into a religious organization's activities is appropriate, the Court of Appeals effectively would permit lower courts and other government officials to inquire into whether particular activities do or do not have religious meaning. Such an inquiry would be a textbook violation of the Establishment Clause. "The

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." *New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977).

In addition, the court's analysis would allow the courts and government officials to engage in this subjective and improper inquiry with no limiting standards whatsoever. Indeed, the imprecise nature of the contemplated inquiry is built into the Court of Appeals' analysis; it held only that "a certain amount" of inquiry into a religious organization's activities is appropriate, without any further explanation. 183 P.3d at 617; *see also id.* (motivation should be considered "along with ***some*** analysis of the organization's activities") (emphasis added).[1]

Finally, the Court of Appeals compounded its error by stating that "[w]e do not purport to define conclusively the term 'religious activity.'" *Id.* at 619. This "I know it when I see it" approach will almost certainly lead courts and government

[1] To the extent the Court of Appeals did provide any guidance in evaluating an organization's activities, it was ill-considered. The court implied that Villa Pueblo qualified for an exemption in part because it operates at a loss. 183 P.3d at 619. That criterion finds no support in the law. Indeed, Colorado precedent confirms that to qualify for a charitable tax exemption, an institution need not operate at a loss. *West Brandt Found'n v. Carper*, 652 P.2d 564, 568 (Colo. 1982). Moreover, such a requirement would make little sense as a matter of public policy. Requiring religious activities to operate at a loss in order to qualify for tax exemptions could severely curtail the services provided by religious organizations, to the detriment of communities across Colorado.

officials to make determinations of whether an activity is religious based on their own subjective views and experiences. This wholly subjective test is precisely what the Establishment and Free Exercise clauses are designed to prevent. *See Cathedral Academy*, 434 U.S. at 133; *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 844-45 (1995); *Colorado Christian Univ. v. Weaver*, -- F.3d --, 2008 WL 2815017, at *8 (10th Cir. July 23, 2008) (explaining the interconnected purposes of the Establishment and Free Exercise clauses).

B. The Court of Appeals' Analysis Also Violates State Constitutional Principles

The laws of this State are consistent with federal constitutional principles regarding the non-establishment of religion and protection of the right to free exercise. Article II, Section 4 of the Colorado Constitution states:

> The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion . . . . No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

As this Court observed in *Americans United for Separation of Church & State v. State*, 648 P.2d 1072 (Colo. 1982), "[a]lthough the provisions of Article II, Section 4 are considerably more specific than the Establishment Clause of the First

Amendment, we read them to embody the same values of free exercise and governmental noninvolvement secured by the religious clauses of the First Amendment." *Id.* at 1081-82.

Colorado law is suffused with these constitutional values. The Preference Clause of the Colorado Constitution prohibits public officials from determining whether an activity does or does not have religious meaning. Thus, a state statute on religious property tax exemptions observes that "religious worship has different meanings to different religious organizations . . . and 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." C.R.S. § 39-3-106(2). As is true under the federal Constitution, Colorado's prohibition against intrusive judicial inquiries regarding religious matters is designed in large part to protect religious minorities. *Conrad v. City & County of Denver*, 656 P.2d 662, 668 n.5 (Colo. 1982) ("One of the main evils that the federal and state constitutional religion clauses seek to prevent is the oppression that a sectarian majority may visit upon citizens with unpopular beliefs."); *compare Stevens*, 428 F. Supp. at 900.

As discussed above, the Court of Appeals' analysis is inconsistent with these constitutional values and, as discussed in the next section, this Court's precedent

concerning religious tax exemptions—stemming from charitable contexts—is also inconsistent.

II. COLORADO PRECEDENT SHOULD BE CLARIFIED TO ADEQUATELY ACCOUNT FOR THE VALUES EMBODIED IN THE FIRST AMENDMENT AND COLORADO CONSTITUTION

The precedent which guided the Court of Appeals in its analysis is questionable under current First Amendment jurisprudence and allows for too much subjectivity. The court reached the following contradictory conclusion:

> Thus, while excessive government entanglement must be avoided in determining whether a religious organization is entitled to a tax exemption, ***the government may consider motivation but must examine other factors.***

183 P.3d at 618 (emphasis added). The Court of Appeals recognized the important non-establishment and non-preference principles at stake, but essentially determined that existing precedent requires courts to determine for themselves which activities do or do not have religious meaning. This conclusion, stemming in large part from the Court of Appeals' reliance upon *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989), is problematic under current First Amendment jurisprudence discussed elsewhere in this brief.[2] A review of *Maurer* and *Samaritan Institute v. Prince-Walker*, 883 P.2d 3 (Colo. 1994), also relied upon by

[2] The Court of Appeals noted the Petitioner's argument that a bright-line test should be followed, but rejected it, launching into a discussion of why *Maurer* called for a different analysis. 183 P.3d at 617.

the Court of Appeals, reveals why this Court should use this case to establish a definitive standard that comports with the First Amendment and Article II, Section 4 of the Colorado Constitution.

A. The *Maurer* Decision

The Court of Appeals relied heavily upon this Court's decision in *Maurer*. In that case, this Court examined whether an owner of land used for summer church camps was entitled to a religious property tax exemption. The Court concluded that it "must examine the use to which the property is put, not the character of the owner." *Id.* at 1331 (citing *West Brandt Found'n v. Carper*, 652 P.2d 564, 567 (Colo. 1982) and *United Presbyterian Ass'n v. Board of County Comm'rs*, 448 P.2d 967, 971 (Colo. 1968)). However, the Court in almost the next breath contradicted itself by holding that "'the character of the owner may often illuminate the purposes for which the property is used and need not be excluded from consideration.'" *Id.* (quoting *West Brandt*, 652 P.2d at 567-68). In fact, it was *West Brandt's* "character" analysis that really drove the *Maurer* court's conclusion that the activity was suitably "religious" to justify an exemption. *See* 779 P.2d at 1331 ("by considering the character of the owner and the competent evidence in the record . . ."); *id.* at 1332 ("[c]ompetent evidence in the record supports the Board's conclusion that the character of the owner indicates that any

nonreligious aspect of the outdoor activities sponsored by Young Life are necessarily incidental to Young Life's use of its properties for religious worship and reflection"); *id.* ("[t]his and other similar evidence in the record, when considered in light of Young Life's character, as stated in its articles of incorporation, as an organization dedicated to promoting an evangelistic Christian testimony and to encouraging the development of a Christian spiritual life among young people, is sufficient to support the Board's conclusion that Young Life's properties were primarily used for religious worship and reflection").

The standard set forth in *Maurer* permits the courts to engage in a subjective and unconstitutional inquiry. Under the *Maurer* standard, a court may inquire into the religious character of the applicant for a tax exemption, as well as the religious nature of the applicant's activities. Thus, the court is permitted to make subjective judgments about whether the applicant's character and activities are sufficiently religious to qualify for an exemption. Justice (now-Chief Justice) Mullarkey, writing for the dissent, observed the problems with the majority's approach: "I suggest that the majority's unwillingness to define the religious worship exemption is more likely to cause first amendment problems than it is to avoid them because there are no standards for administrative enforcement. . . . The potential for arbitrary enforcement of the religious worship exemption will go unchecked

without guidance from this Court." *Id.* at 1340-41. Justice Mullarkey's prediction proved well-founded and led to the subjective approach utilized by the Court of Appeals in this case.

Besides the fact that the analysis in *Maurer* is simply too subjective, it is important to note that it is primarily based upon earlier cases that addressed eligibility for ***charitable*** tax exemptions, not religious exemptions, particularly *West Brandt*. While purporting to recognize that *West Brandt* was distinguishable because it was based upon the charitable use exemption, not the religious exemption, *id.* at 1334, the *Maurer* court nevertheless relied upon *West Brandt's* subjective "character" test. *See id.* at 1331. The majority in *Maurer* did not analyze how its approach implicated impermissible entanglement, nor did it consider non-establishment, non-preference, or free exercise principles.[3]

Finally, *Maurer* involved the question of whether Young Life was entitled to a tax exemption for the 1984 property tax year. *Id.* at 1327. Thus, to the extent the Court relied on Colorado statutory law, it relied on then-existing statutory law. *See id.* (citing 1982 statutory law). *Maurer* therefore necessarily did not account for

---

[3] Similarly, the other decision on which the *Maurer* court relied involved a charitable tax exemption. *See United Presbyterian Ass'n v. Board of County Comm'rs*, 448 P.2d 967 (Colo. 1968). Again, in *United Presbyterian*, the Court made no mention of the principles embodied in the First Amendment and Colorado Constitution.

the General Assembly's 1989 revisions to C.R.S. 39-2-117(1)(b)(II). *See* 1989 Colo. Legis. Serv. S.B. 237 (West). As further discussed in Section III below, the revised statute adopted a content-neutral sincerity test for evaluating applications for religious property tax exemptions. Had the *Maurer* court had the benefit of the revised statute, its analysis may have looked quite different.

Thus, the principal precedent from this Court on how to determine eligibility for religious tax exemptions is both unduly subjective and is based on a body of law that ultimately has nothing to do with the religious principles embodied in the First Amendment, the Colorado Constitution, and Colorado statutes. *Maurer* should be re-examined given its limitations and its pedigree.[4]

B. The *Samaritan Institute* Decision

The decision in *Samaritan*, although less heavily relied upon by the Court of Appeals, should also be re-examined. In that case, this Court rejected the Samaritan Institute's claim to a religious exemption under a state workers compensation statute because, among other things, "the Institute does not evangelize or proselytize." *Id.* at 8.

---

[4] Amicus, nevertheless, supports the Court's opinion in *Maurer* that recognizes "a policy of receptiveness towards 'exemptions implementing the constitutional policy of support for charitable and religious endeavors.'" 779 P.2d at 1332 (citations omitted).

The Court's conclusion in *Samaritan*, however, is precisely of the genre that was recently deemed "fraught with entanglement problems" by the Tenth Circuit. *Colorado Christian Univ. v. Weaver*, -- F.3d --, 2008 WL 2815017, at *8 (10th Cir. July 23, 2008). In *Weaver*, the Tenth Circuit struck down Colorado's scholarship program on the ground that it violated the Establishment Clause. Among other things, the court held that the program impermissibly required state officials to make "intrusive judgments regarding contested questions of religious belief or practice" to determine whether a university is "pervasively sectarian" and therefore ineligible for the receipt of scholarship funds. *Id.* at *11. In particular, the Tenth Circuit was troubled by the "most potentially intrusive element" of the state scholarship statute, which required state officials to determine whether any theology courses required by the university "tend to indoctrinate or proselytize." *Id.* The court found that requiring state officials to make this determination required them to "decide how religious beliefs are derived and to discern the boundary between religious faith and academic theological beliefs." *Id.*

The analysis in *Samaritan Institute* did precisely what the Tenth Circuit found unconstitutional about the scholarship program: it determined whether an organization was religious based on whether it "evangelizes or proselytizes." 883 P.2d at 8. To make this determination not only required the Court to "decide how

religious beliefs are derived," *Weaver* at *11, but it also assumed that a necessary characteristic of all religions is that they proselytize. This was nothing more than a substantive value judgment about what religion should be, and it conflicts with the First Amendment and Colorado Constitution. In short, the *Samaritan Institute* decision engaged in precisely the kind of "line drawing and second-guessing regarding matters about which [the government] has neither competence nor legitimacy." *Weaver*, 2008 WL 2815017 at *15; *see also Wolf v. Rose Hill Cemetery Ass'n*, 832 P.2d 1007, 1009 (Colo. App. 1991) (recognizing that the Establishment Clause prohibits civil courts from resolving disputed issues of religious doctrine and practice).

III. THE PROPER TEST SHOULD BE WHETHER THE ACTIVITY IS MOTIVATED BY SINCERE RELIGIOUS BELIEF

The State is entitled, and indeed obligated, to make certain that organizations applying for a religious sales tax exemption are actually entitled to such an exemption. *See Frazee v. Illinois Dep't of Empl. Security*, 489 U.S. 829, 833 (1989) (noting in the free exercise context that "States are clearly entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause"). As discussed below, there is ample statutory and precedential support in Colorado for a test which focuses on the sincerity of the applicant's declaration of

religious belief. Such a test gives public officials and courts an effective yet content-neutral method of policing this area.

A. Sincerity, Not Verity

The proper test focuses on the sincerity of the applicant's declaration of religious belief, not on the verity of that belief. *See Jolly v. Coughlin*, 76 F.3d 468, 476 (2d Cir. 1996); *Stevens*, 429 F. Supp. at 899 ("Popularity, as well as verity, are inappropriate criteria" for evaluating religious claims). As the United States Supreme Court held, "while the 'truth' of a belief [*i.e.*, its verity] is not open to question, there remains the significant question whether it is 'truly held' [*i.e.*, its sincerity]. ***This is the threshold question of sincerity which must be resolved in every case***." *United States v. Seeger*, 380 U.S. 163, 184 (1965) (emphasis added). Similarly, Colorado courts have recognized that "[a]lthough a court may not determine whether a given belief is or is not a religion, the trier of fact may determine whether the belief is sincerely held as a religious belief without violating the First Amendment." *In re the Marriage of Hoyt*, 742 P.2d 963, 964 (Colo. App. 1987).

The Colorado General Assembly has implemented the sincerity test with respect to religious property tax exemptions. Section 39-2-117 provides that applicants for a property tax exemption need only declare that the property is used

in furtherance of a religious mission and purpose. "The administrator may challenge [such a] declaration . . . only on the grounds that the religious mission and purposes are not religious beliefs sincerely held by the owner of such property . . . ." C.R.S. § 39-2-117(1)(b)(II). In addition to the sincerity test, the statute sets forth two additional criteria for evaluating applications for tax exemptions that do not implicate entanglement concerns: that the property is actually used for the purpose stated in the application, and that the property is not used for private gain or corporate profit. *Id.*

This Court should take the opportunity presented by this case to establish a test for religious activity, like the one set forth in Section 39-2-117, that gives public officials and courts an effective and content-neutral way to evaluate claims to an exemption based upon religious activity.

B. A Sincerity Test Is Well Within the Courts' Expertise

Unlike substantive determinations of religious or doctrinal questions, an evaluation of sincerity is well within the judiciary's expertise. As one scholar has noted, "a sincerity inquiry is not inherently different from familiar inquiries into a defendant's mental state or credibility." David E. Steinberg, *Rejecting the Case Against the Free Exercise Exemption: A Critical Assessment*, 75 B.U. L. REV. 241, 278-83 (1995); *see also Employment Div.*, 494 U.S. at 907 (O'Connor, J.,

concurring) (noting that the sincerity test is an established part of free exercise doctrine); *Hoyt*, 742 P.2d at 964 (same). In numerous contexts, factfinders are required, in evaluating a claim or defense, to conduct an inquiry into a party's mental state. Steinberg, 75 B.U. L. REV. at 279. For example, in Colorado a landowner is liable to a trespasser only if the landowner caused damages to the trespasser "willfully and deliberately." C.R.S. § 13-21-115(3)(a). Similarly, a plaintiff is entitled to exemplary damages only if the factfinder determines that the defendant acted fraudulently, maliciously, or willfully and wantonly. C.R.S. § 13-21-102(1)(a). Such concepts are routinely explored by courts, and an evaluation of a party's sincerity—measured by such traditional concepts as credibility of witness testimony—is no different.

A Ninth Circuit decision illustrates how the test is applied and how an evaluation of the sincerity of a religious belief is distinguishable from an evaluation of the verity of that belief. In *United States v. Rasheed*, 663 F.2d 843 (9th Cir. 1981), two criminal defendants argued that their conviction on mail fraud charges was barred by the First Amendment. They contended that the pyramid scheme (which the defendants called their "Dare to be Rich" program) underlying their conviction was a tenet of their religion, and that the government's case

therefore necessarily required inquiry into the truth or falsity of that alleged religious tenet. *Id.* at 847. The Ninth Circuit rejected the argument:

> The nature of the [defendants' religion,] the Church of Hakeem, and its teachings as a whole, are not issues in this case. ***The government has conceded that the Church is a bona fide religious organization.*** Rather, the government contends that [defendants] engaged in conduct based on knowingly false representations to induce others to donate money to the Church through the "Dare to be Rich" program. ***So analyzed, the issue in this case becomes whether Rasheed and Phillips held sincere religious beliefs in the allegedly fraudulent aspects of the "Dare to be Rich" program.***

Id. (emphases added).

The court therefore held that "[b]ecause the jury necessarily found that [defendants] lacked a sincere religious belief in certain aspects of the 'Dare to be Rich' program, the only analysis left in the First Amendment claim is whether there was sufficient evidence to support this conclusion." *Id.* at 848. The court then proceeded to an evaluation of the evidence in the record, and concluded that there was sufficient evidence for the jury to have concluded that the defendants lacked sincere religious belief in the fraudulent aspects of the program. *Id.* Among the evidence supporting the jury's conclusion was the fact that even though the defendants told church members their "Dare to be Rich" program made money from "increases of God" derived from foreign investments, no such foreign investments ever existed. *Id.* Indeed, the evidence showed that the defendants

knew that the money used for "increases of God" came not from foreign investments but solely from money paid by other church members. *Id.*

Similarly, in *In re the Marriage of Hoyt*, 742 P.2d 963 (Colo. App. 1987), the defendant appealed a trial court's order finding him in contempt for violating its order to pay child support. The defendant contended that the trial court's order violated his Free Exercise rights because his inability to pay child support resulted from his sincerely held religious belief that social security numbers are the biblical "mark of the beast." *Id.* at 964. Because the defendant refused to give his social security number to potential employers, it severely curtailed his ability to obtain employment, and he argued that the Free Exercise Clause therefore protected him from any punishment for his inability to pay child support.

The trial court rejected the defendant's claim, and the Court of Appeals affirmed. The court acknowledged that it could not determine whether defendant's belief was or was not a religion, but that a trier of fact may determine whether that belief is sincerely held. *Id.* With respect to the sincerity question, the court observed:

> Here, the only evidence that [the defendant's] belief was sincere was his testimony. Also in evidence was his membership in the secular, tax protest organization, the National Commodity Barter Association. One purpose of that organization is to fight social security taxes. On this record, the trial court determined Hoyt's testimony was not credible and ruled he acted on his secular beliefs.

Id. The Court of Appeals upheld the trial court's evaluation of the defendant's credibility, finding that it was well within the trial court's discretion. *Id.*

The *Rasheed* and *Hoyt* decisions demonstrate that courts and juries are well-suited to evaluating sincerity, and that such evaluations are an effective and practical way to distinguish fraudulent religious claims from genuine ones. Accordingly, CHA urges this Court to adopt a test that examines whether the activity is motivated by a sincere religious belief.

C. Under a Sincerity Test and Based Upon this Record, the Trial Court's Inquiry Would Not Have Gone Beyond the Stipulated Facts

The parties in this case stipulated that Catholic Health's provision of housing and care for the elderly at Villa Pueblo is motivated by religious belief, and the City of Pueblo did not challenge the sincerity of that belief. Under the test urged by CHA, no further inquiry into the religious nature of Catholic Health's activities would have been required.

CONCLUSION

For the reasons set forth herein, CHA respectfully submits that the test applied by the Court of Appeals is unconstitutional and would result in excessive entanglement with religion. Moreover, Colorado precedent in this area, on which the Court of Appeals relied, should be re-examined because it does not adequately

account for the values expressed in the First Amendment and Colorado Constitution. Finally, CHA respectfully urges this Court to adopt the sincerity test, which is already used by Colorado and federal courts, and which the Colorado General Assembly adopted in C.R.S. § 39-2-117.

Dated this 21st day of August, 2008.

Peter J. Krumholz, No. 27441
Richard A. Westfall, No. 15295
HALE FRIESEN, LLP
1430 Wynkoop St., Suite 300
Denver, CO 80202
Phone: (720) 904-6007

Attorneys for Amicus Curiae
The Catholic Health Association
of the United States

OF COUNSEL:

Lisa J. Gilden
VP, General Counsel
Catholic Health Association
of the United States
1875 Eye St. N.W., Suite 1000
Washington, DC 20006
Phone: (202) 296-3993

CERTIFICATE OF SERVICE

The undersigned certifies that on the 21st day of August, 2008, a true and correct copy of the foregoing Brief of Amicus Curiae The Catholic Health Association of the United States was served via first-class mail, postage prepaid, on the following:

Mark L. Sabey
Kutak Rock LLP
1801 California St., Suite 3100
Denver, CO 80202

Robert P. Jagger
503 North Main Street, Suite 127
Pueblo, CO 81003

Stuart J. Lark
Holme Roberts & Owen LLP
90 South Cascade Ave. Suite 1300
Colorado Springs, CO 80903

Britt Burgess