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**SUPREME COURT, STATE OF COLORADO**

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On Writ of Certiorari to 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

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Case No: 07SC905

**BRIEF OF AMICI CURIAE ASSOCIATION OF CHRISTIAN SCHOOLS  
INTERNATIONAL, AZUSA PACIFIC UNIVERSITY, BETHESDA MINISTRIES,  
CHRISTIAN CAMP AND CONFERENCE ASSOCIATION, COLORADO CHRISTIAN  
UNIVERSITY, COMPASSION INTERNATIONAL, COOK COMMUNICATIONS  
MINISTRIES, DENVER RESCUE MISSION, FOCUS ON THE FAMILY, HCJB  
GLOBAL, INTERNATIONAL STUDENTS, INC., THE CATHOLIC FOUNDATION  
FOR THE ROMAN CATHOLIC CHURCH IN NORTHERN COLORADO, THE  
CHRISTIAN AND MISSIONARY ALLIANCE, THE NAVIGATORS, WORLD VISION,  
YOUTH FOR CHRIST AND YMCA OF THE ROCKIES IN SUPPORT OF  
PETITIONER**

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## SUMMARY OF ARGUMENT

*Amici* constitute a diverse group of religious organizations and collectively they conduct activities ranging from humanitarian relief to care for seniors to education at all levels to Bible instruction, religious training and evangelism. *Amici* conduct these activities out of a religious motivation and in furtherance of their respective religious missions. But many of these activities do not include distinctly or identifiably religious content and may appear to some to be secular and/or commercial in nature. Examples of such activities include camps, retirement centers, accredited liberal arts educational programs and a variety of “outreach” activities designed to establish relationships with nonbelievers (such as a coffee house or the distribution of children’s literature that teaches certain religious values but does not include any expressly religious content).

This case asks two related questions: (1) do these types of activities constitute exempt religious activities, and (2) how can government officials make such a determination. As discussed below, the answer to the first question is “yes,” and the answer to the second question is determined by applying the following three principles.

1. ***The question of whether an activity is a religious activity must turn not on any measure of distinctly religious content in the activity but on whether the activity furthers the religious purposes of the organization.***

Not only do governmental officials lack any institutional competence to sort out activities based on some measure of the distinctly religious content they perceive in the activities, but they are also prohibited from doing so under the First Amendment. To attempt to do so not only requires government officials to interpret religious doctrine, but it also inevitably results in preferable treatment for familiar religious activities over less familiar ones. Further, the distinctly religious content of an activity is not a reliable indicator of the religious character of any activity. An “essentially” religious activity such as Bible study is not religious when undertaken purely as part of a comparative literature course; and an “essentially” secular activity such as horseback riding becomes religious when conducted as part of a religious camp. For these reasons, when asked to determine whether certain activities constitute “religious worship,” this Court has consistently looked solely to the purposes furthered by the activities.

2. ***Government officials must accept the bona fide representations of religious organizations regarding the religious character of their purposes and the means by which their activities further such purposes.***

Both federal and state law limit the scope of governmental inquiry into religious matters. Government officials can, of course, analyze an organization's activities to confirm that its representations are *bona fide* and that the organization has not made false statements. But where the organization has represented that its activities further its religious purposes, government officials must accept such activities as religious activities unless there is evidence to establish that the organization's representations do not reflect sincerely held beliefs or otherwise are not *bona fide*.

3. ***Religious purposes are no less religious merely because they are similar to secular purposes.***

The same or similar purposes can be embraced by different persons for different reasons. For instance, the Bible teaches that true religion consists of taking care of widows and orphans. Whereas a religious organization might choose to pursue this mission out of obedience to this Biblical command, a secular organization might embrace a similar mission for nonreligious reasons. But the fact that the secular organization pursues a similar purpose for nonreligious reasons



does not diminish the religious character of the purpose for the religious organization.

### *Application*

Although the decision of the Court of Appeals in this case alludes to these three critical principles, the court's description of the law does not articulate them clearly. Indeed, the court explained that government officials may analyze characteristics of an activity to determine whether it is sufficiently religious, but it failed to provide any guidance as to the focus or scope of such an analysis.

*Amici* are filing this brief to express their concern that government officials following the limited guidance provided by the Court of Appeals could conduct an open-ended and unbounded inquiry into the religious character of any activity. At a minimum, such an inquiry risks imposing at least implicitly a state orthodoxy regarding what constitutes religious activity. It would also likely result in similar activities receiving different tax status based upon the extent to which such activities include distinctly religious “trappings” as perceived by different government officials (*e.g.*, a church soccer camp with prayer and a Bible lesson integrated into it might be exempt whereas a camp which focuses on building relationships and offers a Bible study as an optional extra activity might not be). To avoid these arbitrary and discriminatory results, *amici* respectfully request this

Court to constrain the analysis of the Court of Appeals by imposing the three principles described above.

## ARGUMENT

### **I. The test for a religious activity must turn not on religious content but on religious purposes.**

Religious organizations such as *amici* conduct a wide range of activities that further their religious purposes. Most if not all religious organizations engage in distinctly religious activities such as the study of sacred texts, prayer, meditation and sacramental services (*e.g.*, communion, baptisms, weddings and funerals). In addition, because religion relates to virtually all aspects of life, religious organizations also conduct educational activities, provide a wide range of social service programs, and engage in activities designed to build relationships with people who may be interested in their religion. Many of these activities may not contain any distinctly religious content.

As discussed below, this Court has recognized that for exemption purposes the religious character of any such activity derives not from any distinctly religious content but rather from the religious purposes the activity is intended to further. Longstanding constitutional principles prohibit government officials from measuring the religious character of an activity based on some litmus test of perceived religious content. Government officials have no competence or

authority to weigh the religious significance of various activities, and doing so inevitably entangles government officials in religious doctrine and results in favoritism. Applying such an approach, a government official might determine that a soup kitchen run by a Baptist church that includes a required specific denominational prayer and an evangelistic message is exempt whereas a soup kitchen run by a Methodist church that requires no prayers but offers an optional Bible study is not exempt.

***A. Government officials have no competence or authority to distinguish among activities based on their perceived religious content, and doing so results in favoritism.***

In a long and unbroken line of cases, beginning with *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), courts have consistently held that government officials have no authority to interpret or apply religious doctrine. In announcing a rule of judicial deference regarding church property disputes, the *Watson* court explained that:

The law knows no heresy and is committed to the support of no dogma, the establishment of no sect. . . . It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to the one which is less so.

*Id.* at 728-29.

The Court has subsequently held that not only do government officials lack competence to make distinctions based on religious content, they also lack the authority to do so. In *New York v. Cathedral Academy*, 434 U.S. 125 (1977), the Court struck down a statute allowing religious schools to obtain reimbursements for costs incurred with respect to certain examinations, provided the examinations were not too religious. The statute 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 this audit 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. 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.

A few years after *Cathedral Academy*, the court rejected a proposed distinction between “religious worship” and other forms of religious expression, observing that “the distinction [lacked] intelligible content,” that it was “highly

doubtful that [the distinction] would lie within the judicial competence to administer.” *Widmar v. Vincent*, 454 U.S. 263, 269 n.6 (1981). The Court noted that “[m]erely to draw the distinction would require the [State] - and ultimately the courts - to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases.” *Id.*; *see also id.* at 271 n.9 (explaining that the distinction between religious and nonreligious speech is based on the purpose of such speech), *id.* at 272 n.11 (noting the difficulty of determining which words and activities constitute religious worship due to the many and various beliefs that constitute religion).

One critical reason why the constitution prohibits governmental officials from making distinctions based on religious content is because doing so inevitably favors expressly religious or conventional methods of accomplishing a religious mission over other more ecumenical or unorthodox methods. In *Fowler v. Rhode Island*, 345 U.S. 67 (1953), the Court struck down a city ordinance that permitted churches and similar religious bodies to conduct worship services in its parks, but prohibited religious meetings. The ordinance resulted in the arrest of a Jehovah’s Witness as he addressed a peaceful religious meeting. The Court held that the

distinction required by the ordinance between “worship” and an “address” on religion was inherently a religious question and invited discrimination:

Appellant’s sect has conventions that are different from the practices of other religious groups. Its religious service is less ritualistic, more unorthodox, less formal than some. . . . Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings. . . . To call the words which one minister speaks to his congregation a sermon, immune from regulation, and the words of another minister an address, subject to regulation, is merely an indirect way of preferring one religion over another.

*Id.* at 69-70.

In *University of Great Falls v. NLRB*, 278 F.3d 1335 (D.C. Cir. 2002), the court struck down a “substantial religious character test” used by the NLRB to determine whether it could exercise jurisdiction over a religious organization. Although the university at issue in the case was affiliated with the Catholic Church, it maintained a campus open to people of all faiths or no faith. Further, the university did not emphasize the Catholic faith in its curriculum, neither the president nor any of the faculty were 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 as a religious organization. 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.

The foregoing cases emphasize that government officials simply cannot categorize activities based on their distinctly religious content. In doing so, state officials may, on the one hand, attempt to discern the religious content of an activity by interpreting the organization’s religious doctrine, a task which is clearly outside of their competence. Local officials are no more competent to identify and interpret particular content as “religious” than were the officials in *Fowler* competent to discern between whether a particular event constituted “worship” or a “religious address.” Further, such discernment requires precisely the inquiry into the religious significance of words and practices rejected in *Cathedral Academy* and *Widmar*.

Alternatively, local officials may compare the content with content they implicitly consider to be “religious.” However, this approach not only fails for the

reasons described above, but it also creates an implicit state defined orthodoxy regarding religious content and interferes with the right of religious institutions to determine and apply their own doctrine.

In short, as with the rejected tests in *Fowler*, *Cathedral Academy*, *Widmar* and *Great Falls*, a “religious content” test entangles the government in theological classification, and invites covert religious favoritism. For instance, suppose a religious institution expresses its religious value of caring for the needy solely by providing meals and shelter, and that the theological tradition of this institution emphasizes “teaching by example” over preaching. In this case, the religious institution has two purposes related to its religious values for its activities: to serve and to teach. However, because local officials are not competent to interpret the institution’s doctrine, they cannot conclude based on this doctrine that the activities reflect religious values. So instead, they may conclude based on their own conceptions of orthodoxy that the activities are not religious. But this conclusion favors one religious tradition regarding how to serve and teach over another.<sup>1</sup>

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<sup>1</sup> In contemporary culture, theologically “liberal” activities will often appear to local officials as “secular” whereas theologically “conservative” or orthodox activities will more likely be regarded as “religious.” With respect to religion and public life, the significant distinction among believers is often not the traditional denominational lines separating Protestants, Catholics, Jews and Muslims, but rather the line between “orthodox” (whether Protestant, Catholic, Jewish, or Muslim) and theologically liberal or “progressive” (whether



Indeed, a more discriminatory rule than one that privileges some theological traditions over others could hardly be devised.

The rule also creates incentives for organizations to include more distinctly religious content in their activities. Suppose a religious organization creates a children's story promoting the values of honesty and respect for parents (which are two of the Ten Commandments found in the Bible). To reach a broader audience, the organization might decide that it would be more effective not to reference the Bible in the story. However, under the religious content rule, there would be an incentive for the organization to include such a reference to preserve the activity as a religious activity. Put differently, this rule requires religious organizations to take into account the absurd result that a story presented by a religious organization with the message of "be honest and respect your parents" would have a different

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Protestant, Catholic, Jewish, or Muslim). See James Davison Hunter, *Culture Wars: The Struggle to Define America* 42-46 (1991). Professor Hunter explains that orthodox believers are devoted "to an essential, definable, and transcendent authority," whereas progressives "resymbolize historic faiths according to the prevailing assumptions of contemporary life." Activities of the latter type of religious organizations, those most likely to align with contemporary culture, will, unsurprisingly, appear less "religious" or sectarian to government officials, while many activities conducted by orthodox groups who ignore cultural assumptions will appear more sectarian. Of course, even orthodox groups may choose to align some of their activities with contemporary culture for greater outreach or impact. The important point is that all such activities are equally religious.

tax status than one with the message that “the Bible says to be honest and respect your parents.” *See Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 336 (Noting that requiring a religious organization “to predict which of its activities a secular court will consider religious” imposes a significant burden and that “[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission.”)

Finally, this approach fails to recognize that the same activity can be religious or not depending upon the reason it is conducted. Bible reading is a religious activity if performed out of a desire to know and obey God, but it is not if performed merely as a study of literature. Eating bread and drinking wine is a religious activity if performed as part of a communion service, but it is not if performed merely to satisfy physical needs or desires. Smoking peyote and killing chickens are generally not religious activities, but they become so when conducted as a sacrament in certain religions. *Employment Division v. Smith*, 494 U.S. 872 (1990); *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520 (1993).

***B. Colorado law has applied this principle by defining the term “religious worship” to include all activities in furtherance of religious purposes.***

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 (emphasis added). Read literally, the exemption applies to activities characterized as religious worship. However, this Court has long recognized that the religious property tax exemption should be broadly construed to apply to all uses in furtherance of *religious purposes*. In *McGlone v. First Baptist Church of Denver*, 97 Colo. 427 (1935), this 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. *McGlone* involved a church building the construction of which had been suspended due to a lack of funds during the Depression. This Court held that “[t]he church organization, having no objectives other than religious, charitable and educational, under the rule we have applied, is entitled to the benefit of the presumption that when the building is completed it will be used exclusively *for religious purposes*.” *Id.* at 433 (emphasis added); *see also, Pilgrim Rest Baptist Church v. Huddleston*, 971 P.2d 270 (Colo. 1998).

Since *McGlone*, this Court has consistently applied the rule of liberal construction when considering religious use exemptions. In *General Conference of the Church of God – 7th Day v. Carper*, 192 Colo. 178 (1976), this Court again noted that it “has always been receptive to the exemptions implementing the constitutional policy of support for charitable and religious endeavors.” *Id.* at 182.

This Court noted that exemptions had been extended “to property that was incidental to the *furtherance of the objectives of the exempt group.*” *Id.* (emphasis added)(citing *Colorado Tax Council v. Denver Bible Institute*, 94 Colo. 402 (1934); *Kemp v. Pillar of Fire*, 94 Colo. 41 (1933)). Accordingly, this Court held that religious publishing activities constitute a form of religious worship. *Id.*

Most recently, this Court applied a liberal rule of construction again in *Maurer v. Young Life*, 774 P.2d 1317 (Colo. 1989). In *Maurer*, this Court upheld a determination by the Board of Assessment Appeals that camp property owned and operated by Young Life qualified for a religious worship exemption. *Id.* at 1319. Both the facilities and the activities conducted at Young Life’s camp are typical of mountain camp properties. Such activities include hiking, horseback riding, swimming and basketball. *Id.* at 1328. In determining whether the properties were used for religious worship, this Court noted that “the character of the owner may often illuminate *the purposes for which the property is used.*” *Id.* at 1331 (emphasis added)(quotation omitted).

The general assembly in 1989 amended the statutory religious use exemption to codify this line of cases (and the underlying constitutional principles). Specifically, the Colorado statutes now 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.

39-3-103(1) (emphasis added). In addition, the general assembly made the following finding:

The general assembly hereby finds and declares religious worship has different meanings to different religious organizations; . . . and that ***activities of religious organizations which are in furtherance of their religious purposes constitute religious worship*** for purposes of . . . the Colorado constitution. C.R.S. 31-3-106(2) (emphasis added).

The same principles that led this Court and the general assembly to define the term *religious worship* as activities that further a religious purpose apply equally to the term *religious activity*. Accordingly, any activity that furthers the religious purposes of a religious organization must be treated as a *religious activity*.<sup>2</sup>

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<sup>2</sup> In *Samaritan Institute v. Prince-Walker*, 883 P.2d 3 (Colo. 1994), this Court held that a religious organization which provided administrative services for affiliated pastoral counseling centers was not “operated primarily for religious purposes.” *Id.* at 7-8. Based on its reading of a U.S. Supreme Court case interpreting this statutory phrase, this Court determined that the construction of the phrase required “a more circumscribed view” than the broad construction of the property tax exemption language in *Mauer*. *Id.* at 8. Indeed, this Court appears to have interpreted the phrase to apply only to activities operated for primarily or exclusively religious purposes, such as preparing students for vocational ministry. *Id.* at 7. Although *amici* have some concern that the analysis of the activities in *Samaritan Institute* does not appear to conform to the constitutional principles set forth in this brief, the outcome in that case may be justified by the narrow construction of the applicable statutory phrase. In any event, as the Court of Appeals noted, there is no indication that the city

**II. In determining whether activities further an organization's religious purposes, government officials may only inquire into whether the organization's representations regarding religious matters are bona fide.**

Both federal constitutional principles and Colorado state law limit the scope of inquiry government officials may conduct into the religious character and mission of an organization. Specifically, officials must accept an organization's bona fide representations regarding the religious basis for its motivations and objectives.

***A. Federal constitutional principles limit the scope of governmental inquiry regarding the religious character of an organization and its activities.***

The principles of religious liberty embedded in the First Amendment require government officials to defer to a religious organization's own interpretation of its religious character and mission unless there is evidence of dishonesty, fraud, or inconsistencies that demonstrate that the organization's representations are not bona fide. Cases following *Watson* have held that the rule of deference applies not just to courts and property disputes, but to all government officials and to all matters that turn upon religious doctrine. For instance, the rule prohibits

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sales/use tax exemption in this case applies only to activities that further exclusively religious purposes. *Catholic Health Initiatives Colorado v. City of Pueblo*, 183 P.2d 612, 618 (Colo. Ct. of Appeals, Sept. 6, 2007). Therefore, this case is governed by *Mauer* and not by *Samaritan Institute*.

government officials from inquiring into or interpreting the procedural or substantive requirements of religious doctrine. *See Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

In *Serbian Eastern Orthodox Diocese v. Milijevich*, 426 U.S. 696 (1976), the Court held that courts cannot review actions of religious organizations “involving matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law” even if such actions allegedly do not comply with church laws and regulations. *Id.* at 713. The Court observed that “to analyze whether the ecclesiastical actions of a church judicatory are in that sense ‘arbitrary’ must inherently entail inquiry into the *procedures* that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else into the *substantive criteria* by which they are supposedly to decide the ecclesiastical question.” *Id.* (emphasis added). The Court concluded that “[t]his is exactly the inquiry that the First Amendment prohibits. . . .” *Id.*

Similarly, government officials may not inquire into the religious character of the operations of a religious institution. As discussed above, the court in *University of Great Falls*, held that the NLRB’s “substantial religious character” test violated the First Amendment. The court noted that the 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.” 278 F.3d 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 court concluded that the “substantial religious character” test was flawed because in evaluating an institution the test “boils down to ‘is it sufficiently religious?’” *Id.* at 1343. The court observed 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.”). Instead, the court held that the religious character of an organization should be determined by confirming that the organization’s religious representations are bona fide (*e.g.*, that it holds itself out to the public as a religious organization). *Id.* at 1344.



Courts have consistently applied this rule in other contexts. In *Unification Church v. Immigration and Naturalization Service*, 547 F.Supp. 623 (D.D.C. 1982), the court remarked that while the Immigration and Naturalization Service (“INS”) exercises “delegated power” from Congress with respect to admission of aliens, it is unlikely that Congress granted the INS “authority . . . to establish ‘criteria’ by which religions may be qualitatively appraised, particularly in light of the deference the Establishment and Free Exercise Clauses must be accorded when no issue of alienage is involved.” *Id.* at 628 (citing *Larson v. Valente*, 456 U.S. 228 (1982)).<sup>3</sup> As a result, the court concluded “that when Congress permitted an alien’s status to turn upon religious considerations[,] it intended that the INS do no more than to determine if the religion in question is *bona fide*. A more invidious use of the government’s power over aliens should require more explicit legislative direction.” *Id.*<sup>4</sup>

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<sup>3</sup> The court observed that “INS officials, no more than judges, are equipped to be oracles of theological verity, and it is unlikely that either Congress or the Founders ever intended for them to be declarants of religious orthodoxy even for aliens.” *Id.* at 628 (internal quotations and citations omitted).

<sup>4</sup> See also *Jin Soo Lee v. Immigration and Naturalization Service*, 541 F.2d 1383 (9<sup>th</sup> Cir. 1976) (holding that the particular religious order, rather than Attorney General or INS, may define what “special skills” qualify an alien for the religious worker provision).

Finally, in *Mauer*, this 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.” 774 P.2d at 1333 n.21.<sup>5</sup> To avoid such an inquiry, this Court limited itself to confirming that there was a *bona fide* connection between Young Life's seemingly secular camp activities and its religious purposes. In this regard, this Court cited the testimony of Young Life's president that:

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<sup>5</sup> This Court supported its analysis with the following citations: *Hernandez v. Commissioner*, 490 U.S. 680, 109 S. Ct. 2136, 2146, 104 L. Ed. 2d 766 (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); *Holy Spirit Ass’n v. Tax Comm’n*, 55 N.Y.2d 512, 435 N.E.2d 662, 665, 668, 450 N.Y.S.2d 292 (1982) (in determining eligibility for property tax exemption, first amendment prohibits courts from inquiring into validity of religious beliefs); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989) (plurality opinion) (“The prospect of inconsistent treatment and government embroilment in controversies over religious doctrine seems especially baleful where . . . a statute requires that public official determine whether some message or activity is consistent with ‘the teaching of the faith.’”); *United States v. Lee*, 455 U.S. 252, 263, 71 L. Ed. 2d 127, 102 S. Ct. 1051 n.2 (1982) (Stevens, J., concurring) (“The risk that governmental approval of some [claims for religious tax exemptions] and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude.”). *Id.*

To us, skiing, horseback riding, swimming, opportunities to be with young people in a setting and in an activity that is wholesome is all a part of the expression of God in worship. There is no [“] we are now doing something secular, we are now doing something spiritual.[”]

*Id.* at 1328. Based on bona fide evidence of a connection between Young Life's activities and Young Life's religious purposes and mission, this Court concluded 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 (emphasis added).<sup>6</sup>

To summarize, in assessing the religious character of an organization's activities (*i.e.*, the extent to which they further the organization's religious

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<sup>6</sup> Ten years after *Maurer*, the Colorado Court of Appeals applied *Maurer* to a Young Life camp property in Grand County. *Bd. of County Comm'rs v. Prop. Tax Adm'r*, No. 98CA0082, Colo. Ct. App. (June 17, 1999). The court noted that “The proposed activities at Crooked Creek Ranch are virtually identical to those relied upon by the Supreme Court in *Maurer*.” *Id.* at 5. In upholding the exemption determination, the court cited the Board of Assessment Appeals' finding that, “[Young Life's] witnesses established an unrebutted relationship between [Young Life's camp] activities and the furtherance of Young Life's mission. . . .” *Id.*

mission), constitutional principles limit the scope of governmental inquires to confirming that the representations of the organization regarding its religious character and mission are bona fide.

***B. Colorado statutory law does not permit government officials to inquire beyond whether a religious organization's representations regarding the religious character of its activities are bona fide.***

The Colorado general assembly codified this rule of deference when, in the 1989 amendments to the religious exemption, it made 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) (emphasis added).

In addition, the general assembly set forth procedural limits and presumptions regarding a religious organization's mission and activities. To apply

for a religious exemption, a property owner must submit a declaration of religious mission and purpose pursuant to C.R.S. 39-2-117(1)(b)(II). Consistent with the legislative finding discussed above, the general assembly provided 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) (emphasis added).

In short, both this Court and the general assembly have established a rule of deference that defines *religious worship* based on the bona fide representations of religious organizations regarding their religious character and mission. Because this rule of deference is based not on any specific aspects of property tax exemptions but rather on federal constitutional principles, it applies equally to the definition of *religious activity* for sales tax exemption purposes.

The foregoing deference standard does not, of course, require government officials to accept every statement of an organization claiming exemption. As an initial matter, government officials reserve the authority to determine whether an organization is making false statements regarding its religious beliefs.

In this regard, government officials may confirm that the asserted religious beliefs and mission are not merely a sham and that there is at least a plausible connection between the organization's activities and its stated purposes. Indeed, this Court in *Mauer* cited several examples of such corroborating evidence, noting that "wrangler breakfasts include a worship service, counselors are available to discuss spiritual issues with campers at any time, mountain hikes may include religious discussions, and at the nightly roundup meetings the group explores the meaning of each day's experiences in relation to living a Christian life." 774 P.2d at 1327. Of course, as discussed above, government officials cannot require that such corroborating evidence include distinctly religious content.

Further, the property tax section regarding the declarations of a religious organization provides that government officials can inquire into whether an organization's religious beliefs are sincerely held and whether the property is actually being used for the stated purposes. For example, government officials could inquire into whether an organization has consistently asserted a religious basis for its purposes or whether it is opportunistically asserting such a basis merely to claim an exemption. Similarly, they could challenge the declaration of an organization which claims to be engaged in providing food and shelter for the poor but is actually running a software business.

As these examples indicate, governmental officials can examine an organization's activities, but only for the limited purpose of verifying that its representations are bona fide and sincerely held.

**III. An organization's purposes and activities are no less religious merely because they are similar to secular purposes and activities**

Many of *amici's* activities further purposes that are both religious and secular. *Amici* embrace these purposes for religious reasons even as others may embrace them for nonreligious reasons (*e.g.*, serving the needy or elderly (or widows and orphans); promoting healthy spirit, mind and body). The purposes and activities of a religious organization are no less religious merely because others may embrace similar purposes or conduct similar activities for nonreligious reasons. Put differently, *religious purposes* are not limited to *exclusively religious purposes* (*i.e.*, only those purposes that could not be embraced for nonreligious reasons).

For example, the property tax exemption discussed in section I.B above prohibits any use where there is no religious purpose, but it does not preclude uses that serve both non-religious purposes and religious purposes. Accordingly, it does not matter that certain activities may further a purpose, such as serving the needy, which is embraced by some for nonreligious reasons, provided that the purpose is embraced by the organization for religious reasons.

In this regard, it is helpful to consider the response by the court in *University of Great Falls* to an argument that the University was not sufficiently religious because it promoted 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.

278 F.3d at 1346 (emphasis added).<sup>7</sup> The *University of Great Falls* court 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 activities without expressly religious content). The court explained that the *Amos* rule was based on "the difficulty of judicially deciding

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<sup>7</sup> Regarding the religious foundation for the University's values, the court noted that: "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." *Id.*



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.

The position that religious purposes are not religious if they are embraced for nonreligious reasons would essentially mean that six of the Ten Commandments (honor your parents and do not murder, steal, lie, covet or commit adultery – Exodus 20: 2-17) are no longer religious because they have been widely embraced by society. Religious organizations formed to fulfill these particular Commandments would not be religious. This rationale could apply to religious humanitarian organizations, to church soup kitchens, to church hospitals, and to religious educational institutions. Indeed, applying this position, Mother Theresa’s activities to serve the poor out of obedience to God would not qualify as serving a religious purpose.

**IV. The open ended inquiry permitted by the Court of Appeals exceeds the constitutional limits.**

*Amici* obviously agree with the Court of Appeals in this case that Petitioner’s activities are religious activities. However, the description of the

applicable law provided by the court in its decision fails to articulate clearly the three limiting principles set forth in this brief.

First, although the court did not purport to define conclusively the term “religious activity,” it did hold that a religious motivation underlying an activity was not sufficient. *Catholic Health Initiatives*, 183 P.2d at 618. Instead, the court held that “a certain amount of inquiry into a religious organization’s activities is appropriate.” *Id.* at 617. But the court provides no guidance as to the scope or focus of such inquiry. Therefore, government officials applying the court’s ruling could engage in a potentially open-ended analysis of an activity’s religious content to determine whether an activity is religious.

As discussed above, government officials simply cannot measure the religious content of an activity. To avoid unconstitutional and arbitrary inquiries into religious content, and the favoritism that inevitably results, this Court should clarify that the religious character of an activity is based on the purposes it is intended to further and not on its distinctly religious content.

Second, in reviewing the activities in question, the court properly concluded that “[t]he use to which the property is put is consistent with Catholic Health’s sincerely held religious belief.” *Id.* at 618. The court did not, however, expressly state that its analysis must be limited to confirming that Catholic Health’s

representations were bona fide. *Amici* agree that government officials can determine whether religious representations are bona fide or sincerely held. Indeed, this is a regular task for government officials. But this Court should expressly state that the rule of deference to the bona fide representations of religious organizations applies to the determination of religious activities, and that the analysis of an organization's activities should be limited to verifying that the organization's representations are bona fide. In addition, it should be stressed that although objective factors may support or undermine the sincerity of such a representation, the lack of distinctly religious content cannot be the determining factor in a bona fide analysis.<sup>8</sup>

Finally, the court correctly notes in passing that the religious character of an activity is not diminished by the existence of similar secular activities. *Id.* This Court should expand upon this discussion to confirm that it applies to religious purposes in the definition of a religious activity.

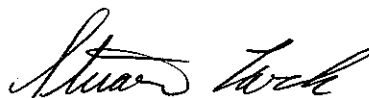
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<sup>8</sup> In this regard, the court appears to leave open the question of whether generating positive net revenue from an activity undermines its religious character. *Id.* However, when an organization is otherwise subject to the rules governing Code § 501(c)(3) organizations, there is no requirement that its activities must operate at a loss in order to further bona fide religious purposes.

To summarize, *amici* respectfully request this Court to affirm that government officials must follow the three principles set forth above when determining whether an activity is a religious activity.

Respectfully submitted this 20th day of August, 2008.

HOLME ROBERTS & OWEN LLP



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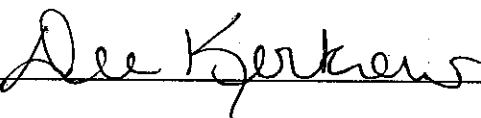
Stuart J. Lark, #27369

## CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of August, 2008, a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, AZUSA PACIFIC UNIVERSITY, BETHESDA MINISTRIES, CHRISTIAN CAMP AND CONFERENCE ASSOCIATION, COLORADO CHRISTIAN UNIVERSITY, COMPASSION INTERNATIONAL, COOK COMMUNICATIONS MINISTRIES, DENVER RESCUE MISSION, FOCUS ON THE FAMILY, HCJB GLOBAL, INTERNATIONAL STUDENTS, INC., THE CATHOLIC FOUNDATION FOR THE ROMAN CATHOLIC CHURCH IN NORTHERN COLORADO, THE CHRISTIAN AND MISSIONARY ALLIANCE, THE NAVIGATORS, WORLD VISION, YOUTH FOR CHRIST AND YMCA OF THE ROCKIES IN SUPPORT OF PETITIONER** was served via U.S. mail as follows:

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## EXHIBIT A

### Statement of Interest of Amici Curiae

**Association of Christian Schools International** is the largest association of Protestant schools in the world, having more than 5,000 member Christian schools in more than 100 nations. ACSI is based in Colorado Springs. Its mission is to enable Christian educators and schools worldwide to effectively prepare students for life.

**Azusa Pacific University** is an evangelical Christian university located near Los Angeles with approximately 8,000 students and 850 faculty members. As provided in its mission statement, the university seeks to advance the work of God in the world through academic excellence in liberal arts and professional programs of higher education that encourage students to develop a Christian perspective of truth and life.

**Bethesda Ministries** is a nonprofit Christian ministry organization headquartered in Colorado Springs whose mission is to provide child care, education and health care to over 30,000 impoverished children in 21 countries through *Mission of Mercy*. Bethesda Ministries also has a nonprofit subsidiary, whose mission is to care for seniors with dignity, including those whose financial status qualifies them for Medicaid. The subsidiary operates 15 residential senior

living communities in 6 states with over 600 employees and an annual budget of approximately \$36,000,000.

**Christian Camp and Conference Association** is an association of over 900 member camps and conference centers. CCCA is based in Colorado Springs and its mission is to proclaim the power and benefits of the Christian camp and conference experience, and to provide leaders at member organizations with ongoing encouragement, professional training and timely resources.

**Colorado Christian University** is an evangelical Christian university with a main campus located near Denver and several satellite campuses throughout Colorado. CCU has over 2,000 students in more than 35 undergraduate and graduate programs. CCU cultivates knowledge and love of God in a Christ-centered community of learners and scholars, with an enduring commitment to the integration of exemplary academics, spiritual formation and engagement with the world.

**Compassion International** is a Christian child advocacy ministry that releases children from their spiritual, economic, social and physical poverty and enable them to become responsible and fulfilled Christian adults. Based in Colorado Springs, Compassion helps more than one million children in 24 countries.

**Cook Communications Ministries** is one of the leading publishers of Sunday school and Christian materials. Its materials have been translated into over 120 different languages and are currently being used around the world. The organization's headquarters are in Colorado Springs.

**Denver Rescue Mission** is a Christian organization in Denver that provides shelter, food, clothing, education, Christian teaching and work discipline to meet individuals at their physical and spiritual points of need. Founded in 1892, the organization serves thousands of needy individuals through a range of programs.

**Focus on the Family** is a Christian ministry which seeks to cooperate with the Holy Spirit in sharing the Gospel of Jesus Christ with as many people as possible by nurturing and defending the God-ordained institution of the family and promoting biblical truths worldwide. The organization is based in Colorado Springs and employs over 1, 200 individuals in the United States. The organization's radio programs have a combined 220 million listeners in 155 countries.

**HCJB Global** is an international Christian ministry organization based in Colorado Springs that seeks to empower dynamic media and healthcare ministries that declare and demonstrate Jesus Christ. HCJB Global currently has ministries in over 100 countries.



**International Students, Inc.** is a Christian ministry organization based in Colorado Springs which seeks to share Christ's love with international students and to equip them for effective service in cooperation with the local church and others. The organization provides resources to help international students thrive culturally, academically and spiritually.

**The Catholic Foundation for the Roman Catholic Church in Northern Colorado** seeks to provide optimal donor services to foster philanthropy, manage funds and make grants to advance the priorities of the Roman Catholic Church in northern Colorado. The foundation provides financial support to Catholic educational, service and religious organizations in order to ensure a promising future for the Catholic community in northern Colorado and those whom that community reach.

**The Christian and Missionary Alliance** is a church denomination and missionary organization with about 429,000 members in over 2,000 churches in all 50 states. In addition, there are over 800 missionaries in 58 nations supported by the organization. Based in Colorado Springs, the organization also sponsors a number of educational institutions and retirement centers around the country.

**The Navigators** is an international Christian ministry organization based in Colorado Springs that conducts a wide range of activities all designed to introduce

people to the Christian faith and help them grow spiritually. Internationally, there are more than 4,000 Navigators staff serving in more than 100 countries.

**World Vision** is an international Christian humanitarian organization based in the Seattle area that serves over 100 million people in nearly 100 countries. The organization is dedicated to working with children, families and their communities world wide to reach their full potential by tackling the causes of poverty and injustice.

**Youth for Christ** is a Christian ministry organization based in the Denver area that seeks to reach young people everywhere with the gospel of Jesus Christ. The organization conducts a wide range of activities appropriate to the different environments in which it operates, including urban neighborhoods.

**YMCA of the Rockies** operates two conference and family vacation centers, one near Estes Park and the other near Winter Park. Through these centers, 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.