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<p>On Petition for Writ of Certiorari from the Colorado Court of Appeals Case No. 05CA2432</p> <p>Appeal from a Final Judgment of the District Court, Arapahoe County, Colorado Case No. 04CV1774, The Honorable Marilyn Leonard</p>	
<p>PETITIONER(S): CATHOLIC HEALTH INITIATIVES COLORADO d/b/a Villa Pueblo Towers</p> <p>RESPONDENT(S): CITY OF PUEBLO, COLORADO, DEPARTMENT OF FINANCE, and LARA BARETT AS DIRECTOR</p>	<p>Case No.: 07SC905</p>
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<p>ANSWER-REPLY BRIEF OF CATHOLIC HEALTH INITIATIVES COLORADO D/B/A VILLA PUEBLO TOWERS</p>	

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STATEMENT OF FACTS

Tax Treatment of Catholic Health And Villa Pueblo:

The City of Pueblo has granted an exempt license to Catholic Health for its operation of St. Mary Corwin Hospital in Pueblo. II:425-426. The City has never explained any basis for a distinction between the Hospital and Villa Pueblo. The State of Colorado exempts Catholic Health from sales and use tax. II:425. The Colorado Department of Revenue determined that Villa Pueblo is used solely and exclusively for religious purposes. *Id.*; II:529. A district court recently concluded that Catholic Health's operation of an identical facility in the City of Thornton is a religious activity entitled to exemption from sales and use tax under an identically worded provision. See, Exhibit A, attached. In fact, as a matter of public record, Centura Health and Catholic Health have been granted tax exemption for all of their facilities in all municipalities, except for Pueblo. The positions taken by the City of Pueblo and Colorado Department of Revenue in this case are anomalous, and are inconsistent with their prior actions.

Executive Director's Decision:

The City seems to have forgotten that this case was submitted to the District Court based on stipulated facts and that this case must be decided based on those facts. Instead, the City repeatedly refers to erroneous, inconsistent and irrelevant

findings of the Executive Director, as though they have some bearing on this case.

Answer, pp. 2, 42. They do not.

At the January 15, 2004 hearing before the Executive Director, the parties presented only oral argument. There were no witnesses and no credibility determinations. Afterwards, the Executive Director issued a decision that addressed the issue of religious exemption in a cursory and unconstitutional manner, and then focused on the issue of charitable exemption, which is not the issue before this Court. The parties had submitted briefing, but the Executive Director made findings that were unsupported by the facts asserted in the briefs. Those briefs, in any event, are not part of the record. This Court has no way to review the findings of the Executive Director to determine their accuracy.

Following the Executive Director's decision, Catholic Health appealed to the District Court pursuant to C.R.S. § 29-2-106.1(7) which required that the case be addressed in the a *de novo* proceeding. See, C.R.S. § 39-21-105. Once the decision was appealed, the Executive Director's findings of fact and conclusions became irrelevant: "A trial de novo must be conducted as though no previous action had been taken." *Spano v. Western Fruit Growers*, 83 F.2d 150 (10th Cir. 1936). The parties waived trial and submitted the case to the lower court based on stipulated facts, agreeing that this case should be decided based on those facts. It is

highly improper for the City to refer to the ruling of the Executive Director as though it establishes facts or findings upon which this Court can rely. The City should stick to the stipulated facts, as agreed.

Religious / Secular Distinction:

In its Statement of the Facts, the City attempts to differentiate between secular activities and religious activities at Villa Pueblo. Because of case law pointing out the constitutional problems that arise when government officials impose their own judgment about what is secular and what is religious, the City attempts to disguise its effort by using the terms “Spiritual Ministry” and “Physical Care Services.” There is no such distinction at Villa Pueblo. There is a spiritual aspect to the operation of Villa Pueblo as a whole and to the daily care that is provided to residents. Spirituality permeates the entire operation. The quotations in the Answer Brief at pages 5 and 6 demonstrate that physical care is combined with and cannot be separated from spiritual care. As if to underscore the constitutional concerns animating Villa Pueblo’s appeal, the City seriously misunderstands the intended meaning of those pronouncements of the Pope and the Bishops.

“Commercial” Activities:

The City attempts to characterize so-called “commercial activities” (whatever that term may mean, since the City does not define it) as somehow separable from and different in nature than the rest of the operation. Answer, pp. 8-11. The City’s description of “commercial activities,” however, includes a listing of the types of care provided to residents. *Id.* The care provided to residents is faith-based and is the key component of the religious mission of Catholic Health and the Catholic Church. Worshipping God, continuing the healing ministry of Christ and evangelization of the community by providing healing services to the elderly are the religious *raison d’eter* for Villa Pueblo.

The City asserts that the Court cannot infer from the stipulated facts “that the commercial activities of Villa Pueblo are religiously motivated, i.e. that Villa Pueblo is motivated by a sincerely held religious belief to charge residents for the Physical Care Services.” Answer, p. 22. The City also asserts that the “commercial aspect of such services . . . is a limitation voluntarily placed by Villa Pueblo upon such services, based not upon any declared religious beliefs, but upon practical economic concerns of such organization.” Answer, p. 23.

This argument is contrary to the following stipulated fact: “Villa Pueblo does not have an established endowment or grant that supports its operations, and

must therefore charge residents to continue to operate and cover a portion of its expenses, services and maintenance costs.” II:419. Charging residents is not a “limitation voluntarily placed.” It is an essential prerequisite to the activity. Without charging, the religious activity of operating Villa Pueblo could not be conducted at all. The aspect of charging is inseparable from the activity itself.

The City’s argument is also contrary to its stipulation that the operation of Villa Pueblo is motivated by sincere religious beliefs. II:409 (“To Catholic Health, providing housing and care for the elderly is a religious activity that is motivated by sincere religious belief”). The City cannot be allowed to renege on its stipulations by now asserting that one aspect of Villa Pueblo is not religiously motivated. If the need to explain had not been eliminated by stipulations, Villa Pueblo could have provided additional detail on the religious reasoning and motivation that surround the issue of charging residents. The values of “stewardship” and “compassion” are listed in Centura’s Mission and Values Statement. II:410. In the Sunny Acres case, which is a matter of public record, Sister Nancy Hoffman testified that “stewardship” and “compassion” are religious principles that apply to both the facility and to the residents. See, Transcript excerpt, attached at Exhibit B.

So stewardship has to do with being good stewards of the assets we have, being able to sustain our ministries as we go forward, and to

provide an element for our senior population to have purpose and meaning and contribute in life to the [extent] that they can.

Id. at 47:12-16. These religious principles demand that residents who are able to pay do so. *Id.* at 46:10-13. Paying what they can provides a spiritual benefit to elderly residents because “it is their last stance of independence and dignity and self-respect, that they don’t want to be a burden to society.” *Id.* at 46:19-47:1. Stewardship for the facility means that Catholic Health must be wise stewards of the Catholic Church’s assets to continue its mission and ministry, which would be impossible if residents were not charged the amount they are able to pay. *Id.* at 47:6-14. When residents cannot pay, however, they are not evicted because the principle of “compassion” comes into play. *Id.* at 46:16-18, 47:12-20.

Such testimony was not necessary in this case, however, because it was stipulated that the entire operation of Villa Pueblo was motivated by sincere religious belief. The manner in which Villa Pueblo deals with its residents from a financial perspective is surrounded by religious meaning, religious principles and religious values. The fact that Villa Pueblo must address “practical economic concerns” in fulfilling its religious ministry does not mean that the economic aspects of the operation can be somehow separated from religious principles and motivations. Most religious activities have a practical economic component, but that does not somehow transform them into a secular activity.

Stipulated Facts:

Most of the City's fact statement and much of its argument is an attempt to renege on the stipulated facts. The following are just a few of the stipulated facts that demonstrate the pervasive spiritual nature of Villa Pueblo.

Mission, Ministry and Motivation:

- As part of its religious ministry to the elderly who are in need of support services, Catholic Health operates Villa Pueblo, a continuing care retirement community. Catholic Health's mission is to share the compassion of Christ by continuing His ministry of healing and helping.
- To Catholic Health, providing housing and care for the elderly is a religious activity that is motivated by religious belief. . . . Villa Pueblo is integral to the religious mission and worship of the Catholic Church.

Worship:

- In the Catholic faith, serving those at the margins of society, including the elderly, is one of the purest forms of religious worship.

Employment:

- Catholic health care should be marked by a spirit of mutual respect among care-givers that disposes them to deal with those it serves and their families with the compassion of Christ, sensitive to their vulnerability at a time of special need.
- Catholic Health instructs new employees in orientation about the meaning of its religious mission. All employees are required to support that religious mission and follow the religious directives of the Catholic Church related to their job.

Spiritual Aspect of Daily Care:

- Catholic health care extends to the spiritual nature of the person. “Without health of the spirit, high technology focused strictly on the body offers limited hope for healing the whole person.”
- During orientation, employees were instructed regarding their role in carrying out the religious mission of Villa Pueblo. Employees were encouraged to pray with residents. A prayer service was conducted every Wednesday for employees who wish to attend. Every year all employees participated in mandatory training and inservice on the mission and values of Catholic Health, along with integrity training related to those values.

Christian Community:

- By its very nature a Catholic health care facility aims to take on the character of a Christian community. All who work there are participants in the Catholic health apostolate.

Evangelization:

- From the earliest traditions of the Church to the present day, the mission of evangelization to which Jesus sent his followers has included healing as a major part. “Into whatever city you go, after they welcome you . . . cure the sick there. Say to them, ‘the reign of God is at hand’” ([Luke] 10:8-9).

Pastoral Care:

- The chaplain interviewed and completed a spiritual assessment for all residents admitted into the assisting living and skilled nursing units. Following the spiritual assessment, the chaplain worked with the resident to create a spiritual care plan.

II:400-425. Thus, the care provided at Villa Pueblo is intended to address spiritual needs and reflect the compassion of Christ through the actions and attitudes and prayers of the caregivers who work with residents each day. Spiritual care and healing is intertwined with all of the care provided at Villa Pueblo. Villa Pueblo is charged with taking on the character of a Christian community of believers. This is especially important for the elderly who have physical limitations that preclude them from attending worship services at their normal congregation. The Villa Pueblo community becomes their church, congregation and religious community complete with chapel and ministers.

Villa Pueblo also is intended to be a healing sanctuary and to provide a daily environment that supports and encourages religious faith. It is impossible to separate physical care from spiritual care, because caregivers are charged with providing both at the same time. In many instances, it is the manner of providing physical care—the attitudes of faith and love, the feelings of compassion and respect, that are reflected by care-givers—that contribute daily to spiritual healing.

No Partial Exemption for Religious Activities:

The Court of Appeals pointed out that the City has claimed “so far as it could determine” that it had granted a partial exemption to Villa Pueblo for the facets of its operation that were religious in nature. 183 P.3d at 619. The City

made this claim in its briefing to the Court of Appeals in an apparent effort to appear sensitive to the religious aspects of Villa Pueblo and to the Code's exemption for religious activities. There is no support for this claim in the record. The stipulated facts do not support it.¹ Neither the Executive Director's Final Determination nor the District Court's ruling makes any mention of such a partial exemption. I:6; II:715-19. The City's self-serving claim that it generously granted a partial exemption for religious activities should be disregarded by this Court, particularly where the City did not include in the record any facts indicating the nature of the activities it recognized as religious and how it supposedly went about deciding which aspects of Villa Pueblo were religious and which were secular.

Villa Pueblo's consistent position has been that the operation of Villa Pueblo is a religious activity in its entirety, an activity that cannot be neatly divided into religious and secular components. That is the only conclusion that can be supported by the stipulated facts. If this Court ruled, however, that parsing the activities of Villa Pueblo were appropriate based on some standard other than Catholic Health's stipulated sincere religious motivations, the case would have to

¹ It was the City's obligation to include in the stipulated facts the factual grounds for the positions and arguments it intended to assert. By failing to provide a factual basis, the City has waived any such factual claim. The Court of Appeals recognized, however, that the City's admission in briefs that some of the activities at Villa Pueblo were religious in nature was an important concession.

be remanded for the required factual determinations (which inquiry would likely raise serious constitutional concerns).

SUMMARY OF THE ARGUMENT

- Religious faith animates all of Villa Pueblo's functions and activities.
- The City improperly ignores the stipulated facts in an attempt to characterize certain activities as purely secular.
- The social benefit test for charitable exemption does not apply in determining religious exemption.
- The Code's broad exemption for all religious activities of religious organizations would have been worded more narrowly if that had been the City Council's intent.
- The City's Answer Brief demonstrates convincingly the type of constitutional problems that are created by the Court of Appeals' opinion.
- The religion clauses require a broad and liberal construction of religious tax exemptions.

ARGUMENT

I. THE CITY'S NEW ARGUMENT—THAT CATHOLIC HEALTH IS NOT EXEMPT UNLESS IT IS CHARITABLE, IN ADDITION TO BEING NON-PROFIT AND RELIGIOUS—IS WITHOUT MERIT.

A. This Argument Was Raised For The First Time On Appeal.

Arguments cannot be raised for the first time on appeal. Am. Family Mut. Ins. Co. v. Allen, 102 P.3d 333, 340 n. 10 (Colo. 2004). The District Court never had the opportunity to consider and address the issues of whether the Code's charitable exemption requirements apply for purposes of religious exemption and, if so, whether Catholic Health is a charitable organization and whether the operation of Villa Pueblo is a charitable activity, because the City never raised these issues. Likewise, these issues were never raised in the Court of Appeals. Both the District Court and the Court of Appeals expressly stated that the only issue to be determined was whether the operation of Villa Pueblo is a religious activity. The City never contested that expressly stated scope of analysis. It cannot do so now.

Even if these arguments had been raised below, they are without merit.

B. The Code's Charitable Exemption Requirements Do Not Apply For Purposes Of Religious Exemption.

1. The social benefit test cannot be applied to a religious exemption.

For over 100 years, the courts have applied the “social benefit test” or “Gray’s Rule” to determine whether an organization or activity is charitable. In Bishop and Chapter of Cathedral of St. John the Evangelist v. Treasurer of the City and County of Denver, 37 Colo. 378, 86 P. 1021 (1906), the Court stated:

The most familiar judicial statement of the law, as recognized by the courts, is known as Gray’s rule After discussing various views of the term “charity” as applied to charitable trusts, Justice Gray said: “A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with 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.

Id. at 384-385, 86 P. at 1023. See, also, United Presbyterian Ass’n v. Board of County Comm’rs, 448 P.2d 967, 971-972 (Colo. 1968). This is the same test adopted by the City of Pueblo to define organizations that are charitable in nature. Code § 14-4-21(5) (“a charitable organization is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burdens of

government”). The City argues that the social benefit test applies for purposes of religious exemption. See, Answer, p. 17 (City asserts that Catholic Health must show that it “freely ministers” and “lessens the burdens of government,” and “should be required to qualify as a charitable activity”), p. 40-42 (religious organizations must meet the social benefit test).

Although the social benefit test is a well-established test for charitable exemption, this Court has held this test unconstitutional if applied as a test for religious exemption. In General Conference of the Church of God—7th Day v. Carper, 192 Colo. 178, 557 P.2d 832 (1976) (en banc), this Court reversed a denial of tax exemption for a religious organization. Colorado’s Tax Administrator had concluded that the organization provided insufficient proof of social benefit to justify the exemption. Explaining its decision to reverse, the Court stated:

To the extent that [prior case law] established some requirement of benefit to the people of the state of Colorado as a condition for the property tax exemption of *religious* organizations, it is hereby overruled. While such “social benefit” analysis may have continuing validity in the determination of *charitable* exemptions, it has no place in the state’s evaluation of its treatment of bona fide religious groups.

Id. at 180. The court explained that the social benefit rationale is based on the idea that tax exemptions are justified for organizations providing services that would otherwise have to be provided by the government because such organizations reduce the burdens on government and taxpayers. The court then stated:

This [social benefit] rationale requires that a distinction be made between charitable and religious exemptions; a religious group does not have as a fundamental purpose the providing of services which the state would otherwise have to provide since the state is constitutionally prohibited from such involvement.

Id. at 180-81. The Court then pointed out that the United States Supreme Court in Walz v. Tax Commission, 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed.2d 697 (1970) had “directly rejected the requirement of a ‘social benefit’” as a condition for religious tax exemption. 557 P.2d at 181. The Walz court had explained one of the constitutional problems that would arise if governmental bodies applied a social benefit test for religious tax exemptions:

We find it unnecessary to justify the tax exemption on the social welfare services or ‘good works’ that some churches perform for parishioners and others—family counseling, aid to the elderly and the infirm, and to children. . . . To give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize. Hence, the use of a social welfare yardstick as a significant element to qualify for tax exemption could conceivably give rise to confrontations that could escalate to constitutional dimensions.

397 U.S. at 674 (emphasis added). After quoting from the above paragraph in Walz, this Court concluded:

The difficulty and danger in the evaluation of the “benefit” of a religious group is clear, and we expressly reject the reliance by the Tax Administrator on such a concept in his evaluation of the availability of the property tax exemption.

192 Colo. at 181, 557 P.2d at 834. See, also, United States v. Lee, 455 U.S. 252, 263 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.”); Board of Assessment Appeals v. AM/FM International, 940 P.2d 338, 344 n. 11 (Colo. 1997) (en banc) (social benefit requirement does not apply to religious organizations).

Unsurprisingly, when it enacted an exemption from sales/use tax for charitable and religious organizations, the Pueblo City Council adopted the social benefit test for charitable organizations, but not for religious organizations, thus complying with constitutional requirements. In stark contrast, the City’s current attempt to apply the social benefit test for purposes of religious exemption flies in the face of a great deal of history, Colorado Supreme Court and United States Supreme Court precedent, and the Religion Clauses of the state and federal constitutions.

Even if there were ambiguity in the Code’s exemption, the conclusion that a religious organization need not meet the social benefit test to qualify for religious exemption would be constitutionally required. See, NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 99 S. Ct. 1313, 59 L.Ed.2d 533 (1979) (statutes must not

be construed to give rise to serious constitutional questions if any other construction is available); People v. Smith, 638 P.2d 1 (Colo. 1981) (if a challenged ordinance lends itself to alternate constructions, one of which is constitutional, the constitutional interpretation must be adopted).

2. The City misconstrues the Code when it applies the social benefit test to religious organizations.

In Code § 14-4-21(5), the term “Charitable organization” is followed by a definition that has only two requirements:

Term:

“*Charitable organization*” means

Definition:

any entity which:

--Requirement 1:

- a. Has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

--Requirement 2:

- b. Is a religious or charitable organization.

To further elaborate on the meaning of the term “charitable organization” as this term is used in Requirement 2 of the definition, the City Council inserted the longstanding social benefit test at the end of Requirement 2:

As used in this definition, a charitable organization is an organization

which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burdens of government.

Under Pueblo's code, the social benefit test does not apply to religious organizations.

The phrase "As used in this definition" is an important introductory phrase. Section 14-4-21(5) uses the term "charitable organization" both as the term to be defined and as a term within the definition, creating some potential for misunderstanding. The introductory phrase "As used in this definition," however, eliminates potential confusion by clarifying which of the two "charitable organization" terms is being explained, i.e., the one found in the definition at Part (b). This introductory phrase makes it clear that the social benefit test does not apply to religious organizations.

The social benefit test sets forth the requirements for being a "charitable organization" under Part (b). If all religious organizations were required to meet the social benefit test (i.e., required to be a "charitable organization") in order to be exempt, there would have been no reason to include "religious organizations" in Part (b). If only "charitable organizations" were intended to be covered, the City Council's inclusion of religious organizations in Part (b) would have been meaningless. Since the Court must assume that the term "religious organization"

was not meaningless, the City Council must have intended for Part (b) to be exempt from taxation organizations not already encompassed by the term “charitable organizations.”

A fundamental rule of statutory construction is that every word should be given effect; a court should avoid a construction that renders any term superfluous. Culver v. Samuels, 37 P.3d 535, 537 (Colo. App. 2001). The City’s interpretation renders the following language totally unnecessary and superfluous: “. . . a religious or charitable organization. As used in this definition, a charitable organization is. . . .” The only reasonable explanation for the inclusion of this language is that the City Council intended to differentiate between religious organizations and charitable organizations and to apply the social benefit test only to charitable organizations.

To adopt the City’s interpretation, this Court would have to believe that the City Council intended the charitable\religious exemption to incorporate the following seriously-flawed syllogism:

*Both A and B are exempt,
but B is only exempt if it is A.*

*Both charitable organizations and religious organizations are exempt,
but religious organizations are only exempt if they are charitable organizations.*

It would have been much simpler and much less confusing to say: “Only A is exempt,” or “Only charitable organizations are exempt,” if that had been the City Council’s intent. It obviously was not. Wherever the words “religious” and “charitable” appear in the Code, the disjunctive “or” is used, making it perfectly clear that organizations, functions and activities need not be both charitable and religious for the exemption to apply. Code § 14-4-77(5), § 14-4-76(8), § 14-4-21(5). See, also, Exhibit A at p. 3 (interpreting identically worded Thornton City Code).

3. Catholic Health would be entitled to charitable exemption, if that were the issue in this case.

The City cites United Presbyterian Association v. Board of County Commissioners, 167 Colo. 485, 448 P.2d 967 (1968), for the proposition that caring for physically and financially independent elderly persons does not meet the social benefit test for charitable exemption. Answer, p. 21. But the residents at Villa Pueblo are not physically and financially independent. The United case supports the proposition that Villa Pueblo would be entitled to charitable

exemption if charitable (as opposed to religious) exemption were at issue in this case.²

In contrast with the extensive religious program provided at Villa Pueblo (which includes spiritual assessments and counseling, and numerous in-house worship services, among other activities (II:422-425)), the religious program described in United was limited to providing rides to church for residents. Since many residents of Villa Pueblo, whose average age is 87 (II:416), are physically unable to attend church services elsewhere, Villa Pueblo becomes their religious congregation, religious community and religious support group. Villa Pueblo “takes on the character of a Christian community” to fulfill its mission and ministry. II:407.

The residential facility in United did not include an assisted living facility or a skilled nursing home. It only admitted those who were fully self-sustaining physically and financially, and, therefore, did not reduce the burdens of government. By contrast, Villa Pueblo has adopted a formal charitable care policy (II:420) and provides extensive charitable care to residents, as follows:

² Catholic Health waived its claim to charitable exemption for the reasons set forth in the Notice of Waiver. II:555-57. This simplification of the case was intended to avoid potential confusion between issues of religious and charitable exemption. Unfortunately, the City’s Answer and the Court of Appeals’ opinion demonstrate such confusion despite the waiver.

- Villa Pueblo has about 170 residents. II:420.
- During the audit period, 50% of the residents were on life care contracts that give the residents life-long security and stability, but that result in extensive losses (nearly \$900,000) to Villa Pueblo. II:421.
- (50% of 170 residents equals 85 residents).
- Forty-three of the residents are on Medicare or Medicaid, even though the payments often do not cover the costs of providing housing and services. II:422.
- (85 minus 43 residents equals 42).
- In accordance with its charity care policy, Villa Pueblo has never evicted a resident for inability to pay. Four residents who have outlived their financial resources are receiving charity care. In addition to those four, eight residents who could not afford to pay normal charges were admitted to Villa Pueblo's charity care apartments, for a total of 12 charity care residents.
- (42 minus 12 residents equals 30 residents who pay regular rates, and 30 residents equal only 18% of 170).
- Catholic Health's losses on its senior care facilities, including Villa Pueblo, average approximately \$5 million per year. II:422.
- Despite the fact that Villa Pueblo loses money each year, Catholic Health continues to operate Villa Pueblo as part of its religious mission. II:422.

The City's suggestion that Villa Pueblo primarily serves those who can afford to cover the full price of their care is contrary to the stipulated facts.

In addition, the residents of Villa Pueblo are not physically independent.

The stipulated facts state: "Generally, elderly individuals consider residence at

Villa Pueblo once they realize that complete independence has become too dangerous or difficult.” II:417. Villa Pueblo provides elderly support services and health care services to every resident. II:417-18. Levels of care progress from elderly support services to assisted living and then to skilled nursing care. II:416. Even at the lowest level of care, Villa Pueblo maintains a health care profile on all residents so that it can attend to their health care needs, and provides extensive health care services, including the services of seven full time Certified Nurse Assistants (“CNAs”) who monitor, assess and address the health needs of residents. II:418. Higher levels of care are provided in the assisted living and skilled nursing sections of Villa Pueblo. II:419. The stipulated facts make it clear that Villa Pueblo does not serve those who are physically and financially independent.

II. THE TERM RELIGIOUS ACTIVITIES IS BROADLY INCLUSIVE: THE CITY COUNCIL COULD HAVE EXCLUDED CERTAIN RELIGIOUS ACTIVITIES HAD THAT BEEN ITS INTENT.

The Code does not exclude any religious activities from the scope of the exemption. It does not exempt worship services, while taxing other religious activities. All religious activities are exempt.

The City asserts that the term “religious functions and activities” should be construed to mean nothing more than public worship, Sunday schools, religious

instruction and similar activities. Answer, pp. 16, 18-19, 43. In an effort to support that construction, the City asserts that the Court of Appeals found only “the operation of a chapel in the top floor of the residential facility was a religious function” and concluded that the rest of the operation was exempt only because it was “necessarily incidental to the exempted primary use.” Answer, p. 4. That is not what the Court of Appeals ruled, as demonstrated by the following quotes:

- “Contrary to the trial court’s ruling and the city’s argument, we conclude that the entire operation of Villa Pueblo is a religious activity.” *Catholic Health v. City of Pueblo*, 183 P.3d 612, 615-16 (Colo. App. 2008).
- “The parties stipulated that Catholic Health is a religious organization affiliated with the Catholic Church; . . . that its activities are religiously motivated The use to which the property is put is consistent with Catholic Health’s sincerely held religious belief. The parties stipulated that Catholic Health provides services and advocates for the elderly in accordance with its mission; that the use of the property for religious worship and reflection is integrated into Villa Pueblo’s daily activities; that its managers are trained regarding the religious mission and ministry; that its employees are instructed and required to support that mission and follow religious directives of the Catholic Church; and that Villa Pueblo holds itself out as a religious organization.” *Id.* at 619.
- “Applying these principles, we conclude that Villa Pueblo’s operation is a religious activity or function. The Pueblo code does not limit the term ‘in the conduct of their regular religious . . . functions and activities,’ by use of terms like religious ‘worship,’ ‘reflection,’ or proselytizing.” *Id.*

In light of these statements proclaiming the entire operation to be religious, the portion of the Court of Appeals decision addressing property used for purposes incidental to the exempted primary use, should be viewed as an alternative rationale—i.e., if there were any non-religious uses, they were all a part of the operation of Villa Pueblo (previously pronounced to be a religious activity) and therefore would be considered incidental to an exempt primary use. *Id.*

An exemption for religious activities of religious organizations is much broader than “the operation of a church or other place of public worship,” as the City suggests. Answer, p. 16. The City quotes the *Provena* case, an Illinois Court of Appeals case that is currently on appeal to the Illinois Supreme Court.³ Catholic Health agrees with the *Provena* case to the extent that the term “religious activity” only includes activities specifically motivated by sincere religious belief, not “whatever one [does] in the name of religion.” Catholic Health does not agree, however, with the argument in *Provena* that the term “religious purpose” is an unlimited concept that means everything, or an amorphous concept that means nothing. It does not mean all purposes or no purposes. It simply means purposes

³ A Petition for Leave to Appeal was filed in the Illinois Supreme Court on September 30, 2008 (Case # 107328).

based on sincere religious belief. Applying such a definition is not an insurmountable task, particularly in this case where the facts are stipulated.

Even if the precise parameters of the word “religious” may be difficult to define in some cases, the word “religious” was used by the City Council when it adopted the exemption, and it must be applied in this case. The City Council’s intent was to exempt a much broader scope of activity than merely “the operation of a church or other place of public worship.” Answer, p. 16. If that had been the City Council’s intent, it would have simply stated that the exemption was for “the operation of a church or other place of public worship.” It is impossible to believe that the City Council was utterly ignorant of the numerous and varied activities undertaken by churches and other religious organizations. If it had intended the exemption to apply only to places of public worship, the City Council would not have used the broader term “religious organizations” which automatically encompasses a much broader scope of religious activity than the public worship services conducted by churches. In *Young Life v. Division of Employment*, 650 P.2d 515 (Colo. 1982), this Court recognized that a tax exemption for “churches” was “narrower” than the prior exemption for “religious organizations.” *Id.* at 516. The only conclusion that can be drawn from the language of Pueblo’s religious exemption is that the City Council was exempting all religious organizations, not

just churches, and all religious activities, not just public worship services. A statute cannot be construed in a manner that would defy its obvious intent. People v. McNeese, 892 P.2d 304, 320 (Colo. 1995).. Even where tax exemptions are involved, strict construction cannot be used to defeat the plain meaning of a statute. Denver v. Lodge Ass'n, 121 Colo. 470, 473 (1950).

In contrast to the one case cited by the City—Provena, an Illinois appellate court decision that is subject to potential reversal on appeal—numerous cases have recognized that terms such as “religious organizations” and “religious purposes” have a much broader scope than worship services. In Kelly v. Methodist Hospital of Southern California, 22 Cal. 4th 1108, 997 P.2d 1169, 95 Cal.Rptr.2d 514 (2000), the California Supreme Court addressed an exemption for non-profit religious organizations. The plaintiff argued that a Methodist hospital was not eligible for the exemption because “it is a secular business involved in health care, not an organization dedicated to religious indoctrination or propagation of the Methodist faith.” Id. at 1113. The court made several insightful observations. First, the court pointed out that if the legislature had intended to exempt “only those entities traditionally understood as churches and religious orders,” an exemption for any “religious association or corporation” would have been “a remarkably inelegant way by which to designate such a limited class of

institutions.” *Id.* at 1120. Second, the court reasoned: “By specifically extending the exemption to religious ‘corporation[s] not organized for private profit,’ the Legislature appears to have anticipated that at least some of the exempted religious employers would be corporations that engage in potentially remunerative activities, albeit not for private profit.” *Id.* In other words, if no remunerative activities were intended to be covered, the restriction against for-profit organizations would have been completely unnecessary. Third, the court stated:

That the 1959 Legislature was aware of the propensity of religious groups to advance their spiritual goals through the formation of separate institutions that some might characterize as secular seems a reasonable assumption; therefore, to interpret the statutory language “religious association or corporation not organized for private profit” as having been crafted precisely in recognition of this propensity appears appropriate. Had the Legislature intended to draw a distinction between religious groups and the affiliated institutions they create in order to advance their goals, it could easily have used language that affirmatively drew such distinctions.

Id. at 1123 (citation omitted). Fourth, the court observed:

Every religiously affiliated entity generally is both secular and religious to some extent, from small entities like soup kitchens and parochial schools to large organizations like religiously affiliated universities and the Christian Science Monitor.... The Legislature gave no indication that it intended the courts to attempt to parse out various levels of religious sufficiency among the myriad types of religiously affiliated entities in order to determine when to apply the exemption, and provided us with no guidance on how to undertake such a difficult task. Absent any such indications or guidance, it is not appropriate for this court to create a religious sufficiency test out of whole cloth.

Id. at 1124. Finally, the court concluded that the Methodist hospital was entitled to exemption as a religious organization. *Id.* See, also, *McKeon v. Mercy Healthcare Sacramento*, 19 Cal.4th 321 (1998) (hospital controlled by the Catholic church was exempt as a non-profit religious organization).

Even more directly on point, in a case that involved a religiously-affiliated elderly care facility like Villa Pueblo, the Washington Supreme Court concluded that the organization was exempt from anti-discrimination statutes because it was a “religious or sectarian organization not organized for private profit.” *Farnam v. Crista Ministries*, 116 Wash.2d 659, 807 P.2d 830 (1991).

The reasoning of these cases applies here. There is a clear difference between “churches” and the much broader term “religious organizations.” In pursuit of their religious missions, religious organizations undertake a wide range of activities, including health care services such as hospitals and elderly care facilities. The United States Supreme Court recognized this fact in *Walz v. Tax Commission*, 397 U.S. 664, 90 S. Ct. 1409, 25 L.Ed.2d 697 (1970), when it stated: “We find it unnecessary to justify the tax exemption on the social welfare services or ‘good works’ that some churches perform for parishioners and others—family counseling, aid to the elderly and the infirm, and to children.” 397 U.S. at 674 (emphasis added). Catholic facilities located in Pueblo, such as St. Mary Corwin

Hospital and Villa Pueblo, were not unknown to the City. Surely these types of religiously-sponsored organizations and activities were known to the Pueblo City Council. When the City Council chose to use the broad term “religious organizations,” it indicated an intent to cover a wide range of religiously-motivated activities that are normally undertaken by such organizations in pursuit of their religious missions.

As for the term “religious activities,” numerous courts have recognized that religious activities encompass much more than worship services. E.g., Presiding Bishop v. Amos, 483 U.S. 327, 344 (1987) (Brennan concurring) (social services that serve religious purposes);⁴ Wisconsin v. Yoder, 406 U.S. 205 (1972) (refusal to comply with compulsory education laws); Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989) (faith-based outdoor recreational activities); Ballinger v. Commissioner of Internal Revenue, 728 F.2d 1287, 1291 (10th Cir. 1984) (opposition to social insurance); Espinosa v. Rusk, 634 F.2d 477, 479-81 (10th Cir. 1980), *aff'd* 456 U.S. 951 (1982) (exemption for religious, but not secular, purposes included medical, charitable and educational services provided by a church); In Matter of Community Synagogue v. Bates, 1 N.Y.2d 445, 453, 154

⁴ “Churches often regard the provision of [community] services as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster.”

N.Y.S.2d 15, 136 N.E.2d 488 (1956) ("Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer.").

In addition, there is a clear difference between (1) free services (provided at no charge whatsoever), (2) charitable services (only a portion of the services are provided free or below cost), (3) non-profit services (services are not free, but the income is dedicated to exempt purposes), and for-profit services (services are not free and there is no restriction on income use). The Pueblo City Council surely understood these differences when it adopted the exemption for non-profit religious organizations. The exemption expressly contemplates that religious organizations may charge for services, as long as they are non-profit.

III. THE CITY MISUNDERSTANDS CONSTITUTIONAL PRINCIPLES.

A. Exemptions For Non-Profit, Non-Charitable Activities Are Constitutional.

The City cites cases holding that narrow exemptions that apply only to religion-sponsored activities in a specific industry are unconstitutional. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989) (exemption only for religious publications); *Appeal of Springmoor, Inc.*, 498 S.E.2d 177 (N.C. 1998) (exemption only applied to homes for the aged, sick or infirm operated by religious organizations). By contrast, the City's exemption is not limited to one industry and

applies to a wide range of charitable and religious organizations and activities. The secular purpose behind the City Council's adoption of the exemption for religious and charitable organizations is presumably the judgment that such organizations and their religious or charitable activities should be encouraged because they tend to have a beneficial and stabilizing influence on community life. Walz v. Tax Commission, 397 U.S. 664, 673 (1970). This is an appropriate secular purpose. *Id.* Religious exemptions abound in this nation and are constitutionally permitted. *Id.* at 676-80.

The City does not assert that its own exemption is unconstitutional on its face or in its purpose or scope. Instead, the City asserts that if the exemption were applied to a non-charitable facility, it would raise first amendment concerns. Answer, pp. 19-21. Religious exemptions are generally paired with exemptions for charitable, educational, scientific or other non-profit socially beneficial activities. Under Section 501(c)(3) of the Internal Revenue Code, educational, scientific and religious activities need not be charitable to be exempt. They need only be non-profit. Income must be dedicated to the exempt purposes. Exemption for non-charitable, non-profit, socially beneficial activities does not raise any constitutional concerns. In this case, it is stipulated that Catholic Health functions as a 501(c)(3) exempt non-profit organization. In light of this fact, the City's repeated suggestion

that the court should not permit an exemption for Villa Pueblo's "religiously motivated commercial activities no matter how profitable" makes no sense. Catholic Health is non-profit. It has no profit. None. All of its income is dedicated to exempt purposes.

Exemption of non-profit religious organizations that charge for services is not unconstitutional. For example, exemptions for parochial schools and religious universities that charge tuition are not unconstitutional. University of Great Falls v. NLRB, 278 F.3d 1335 (D.C. Cir. 2002); NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979). In Presiding Bishop v. Amos, 483 U.S. 327 (1987), the United States Supreme Court addressed an exemption for religious organizations in all of their activities (whether religious or not), including "commercial" activities such as the operation of a paid-admission gymnasium. If an exemption for that activity did not violate the establishment clause, exemption for the religiously motivated operation of Villa Pueblo surely does not. Under Amos, it is constitutionally permissible to exempt all of the activities of religious organizations, even if they are non-religious and non-charitable, as long as they are non-profit. Id. at 330 ("secular nonprofit activities"), 340-44 (Brennan concurring), 349 (O'Connor concurring). The City's more limited exemption for religious activities of non-profit religious organizations is entirely constitutional.

B. This Case Does Not Involve A “Benign Form Of Entanglement.”

Catholic Health agrees that generally there is no constitutional problem with government officials determining whether a religious organization or activity qualifies for exemption. However, there are at least three constitutional restrictions that apply in religious exemption cases.

First, the exemption cannot create government endorsement of certain religions. As indicated in section I.B above, a religious exemption cannot be based on a case-by-case determination of which religious organizations or which activities of religious organizations provide a sufficient social benefit to justify exemption.

Second, as thoroughly discussed in Catholic Health’s Opening Brief, government officials cannot decide religious questions. In this case, the parties stipulated that Catholic Health is a non-profit religious organization and that the operation of Villa Pueblo is motivated by sincere religious belief. The Court of Appeals’ holding—that these stipulations were insufficient and that the government officials must consider other unspecified factors to determine whether an activity is religious—forces government officials to decide religious questions.

Third, governmentally adopted exemptions and programs are unconstitutional if they create excessive entanglement with religion. The City

asserts that *Amos* and *Catholic Bishop* have “little relevance” to the “benign form of entanglement in this case.” Answer, p. 25. In *Amos* the exemption at issue was expanded to all activities of religious organizations in order to avoid determinations of whether or not activities were religious in nature. The United State Supreme Court stated that religious activity determinations could result in “significant government interference with the ability of religious organizations to define and carry out their missions.” 483 U.S. at 339. That is precisely the issue in this case. The standards adopted by the Court of Appeals do not defer to the religious motivations of the actor and will result in exactly the type of government interference that was avoided by expanding the exemption in *Amos*.

In *Catholic Bishop*, the NLRB argued that its exercise of jurisdiction over parochial schools was proper because the schools were only “religiously associated,” not “completely religious,” as indicated by the fact that they taught secular as well as religious subjects. The Court stated: “It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.” 440 U.S. at 502. *Catholic Bishop* is relevant to this case for several reasons. It recognized that improper governmental inquiries can infringe First Amendment rights. It also acknowledged the religious nature of

parochial schools, despite the fact that they also serve a secular function. Parochial schools meet the educational needs of students in a faith-based environment that encourages and supports religious belief. Similarly, Villa Pueblo meets the health care and support needs of the elderly in a faith-based environment that encourages and supports religious belief.

C. The Constitutional Problems Created By The Court Of Appeals' Ruling Are Clearly Demonstrated By The City's Answer Brief.

The Court of Appeals' ruling permits government officials to determine whether an activity is religious with no guidelines, no deference, no parameters. The City's arguments in its Answer Brief demonstrates precisely why Catholic Health is concerned, and displays the tendencies of government officials better than any hypothetical argument ever could.

At page 22 of the Answer, the City creates an alternative wording of a specific verse of scripture from the Bible in an effort to elucidate its interpretation of that verse. The City cavalierly launches itself into the realm of religion in an effort to discount Catholic Health's view of the religious nature of its operations. The City's willingness to do so is highly offensive. It is a slap in the face of anyone with depth of feeling for the Bible or a proper sense of whom should interpret scripture. That government officials must not become involved in "scriptural interpretation" is a fundamental constitutional principle. Thomas v.

Review Bd. Ind. Empl. Sec. Div., 450 U.S. 707, 716, 101 S.Ct. 1425 (1981). The City's ignorance of this principle is extremely disturbing.

The City stipulated: "To Catholic Health, providing housing and care for the elderly is a religious activity that is motivated by sincere religious belief." II:409. The City states that it "has never attempted to dispute the religious doctrine or practice of the Catholic Church" (Answer, p. 22), but disputing religious doctrine is precisely what the City is doing.

In its Statement of Facts, the City quoted and interpreted the doctrine of the Catholic Church regarding its health care ministry, the words of Bishops and Popes, in an effort to demonstrate the entirely erroneous proposition that Catholic Health makes a clear distinction between physical care and spiritual ministry. Answer, pp. 5-6. It is not the proper role of government officials to interpret church doctrine. The City's willingness to do so says a great deal about the impact of the Court of Appeals' opinion.

Despite a stipulation that the specific activity of operating Villa Pueblo is motivated by sincere religious belief and numerous other stipulations demonstrating the mission and ministry of the Catholic Church related to care for the elderly, the City asserts that this is insufficient. The City would require more specific doctrinal pronouncements. The City asserts that Catholic Health must

demonstrate that it “is motivated by sincere religious belief to charge residents for the Physical Care Services.” Answer, p. 22. The City also indicates that any aspect of the operation based on “practical economic concerns” is not religious unless it is based on “declared religious beliefs.” *Id.* at 23. There are numerous problems with the City’s approach.

Applying the Bible’s teaching to modern times involves a great deal of scriptural interpretation. In conducting a religious activity, the specific manner of carrying out each aspect of the operation may not be dictated by the Bible or by pronouncements from church leaders. Sometimes a religious organization must use its best judgment based on religious principles as it understands and interprets them. According to the City, Catholic Health is incorrect in its interpretation of the Bible and its conclusion that Catholic Health can seek payment for services as part of its religious mission and ministry. The City interprets the Book of James in the Bible differently. Answer, p. 22. The City would require more specific pronouncements about economic issues and charging of residents before it would accept the conclusion that charging residents is motivated by religious belief. This approach involves the City in scriptural interpretation and in deciding religious questions. It is not the role of this Court to determine whether the City’s interpretation of scripture or Catholic Health’s interpretation of scripture is correct.

Thomas v. Review Bd. Ind. Empl. Sec. Div., 450 U.S. 707, 716, 101 S.Ct. 1425 (1981). Instead, both the City and the Court should simply defer to Catholic Health's pronouncements of its religious doctrine and beliefs, unless the City can demonstrate that those pronouncements are insincere. In this case, the sincerity of Catholic Health's motivations is stipulated.

The City apparently feels that practical economic concerns are not religious because they are financial. Almost all religious activities have an economic or financial component. The fact that a religious organization charges for participation in a religious activity does not change the nature of the activity. Often, charging for participation is what makes the activity possible. Numerous religious activities involve payment for services or payment for participation, including parochial schools, mission trips, religious sports camps, and seminaries for future ministers, to name a few.

If a student or her family is motivated by sincere religious belief to pay for education conducted in a religious environment that supports the development or maintenance of religious faith, the charges do not undermine the religious motivation. In fact, the willingness to pay tends to demonstrate the strength of religious motivation. The religious motivations of an organization that provides religious schooling is not undermined by the fact that tuition is charged. Likewise,

if an elderly person or her family is motivated by sincere religious belief to reside in a faith-based retirement community that encourages and supports religious faith, willingness to pay charges does not undermine but rather demonstrates the strength of religious motivation. The fact that Villa Pueblo charges residents who can pay does not contradict Villa Pueblo's religious motivation to provide a faith-based community.

There is simply no legal authority for the proposition that religious organizations are precluded from charging for religious activities on pain of losing tax exemption, as long as their operations are non-profit. If religious organizations could not charge for services, the scope of their potential impact would be severely and unconstitutionally limited.

The City's approach in the Answer makes it clear that, in an effort to collect more taxes, the City will analyze the various aspects of Villa Pueblo in an effort to characterize them as either secular or religious (Physical Care or Spiritual Ministry). The distinction itself is fallacious. Many religious activities involve economic factors and secular impacts. Religion is not only for individuals such as the reclusive guru on a mountain top who withdraws from the world in an effort to live on a purely spiritual plane. Most Christian religions try to make a difference for good in the world, just as Jesus Christ did during his healing ministry. Secular

benefits from religious activities do not make those activities less religious. Otherwise, the fact that homeless people are sheltered from winter storms and do not freeze to death while attending mass in a heated church, a secular benefit, would convert a worship service into a secular activity.

IV. THE COURT OF APPEALS' OPINION CREATES AN ONGOING ENTANGLING AND CHILLING EFFECT.

The City's Answer demonstrates quite effectively the manner in which government officials will apply the standards (or non-standards) adopted by the Court of Appeals. The Answer demonstrates that when government officials attempt to determine whether an activity is religious, without a bright-line test and without deference to the actor's beliefs and motivations, that effort will necessarily involve unconstitutional entanglement. Absent such deference, the inquiry requires government officials to decide religious questions. Government officials will fall into the trap of interpreting scripture and religious pronouncements as the City has already done here. Contrary to the City's assertion, the ongoing entangling and chilling effects outlined at pages 29 and 38-42 of Catholic Health's Opening Brief and compellingly demonstrated by the City's briefing go far beyond mere examination of whether Villa Pueblo is operating at a loss.

V. THE RELIGION CLAUSES REQUIRE A BROAD AND LIBERAL CONSTRUCTION OF RELIGIOUS TAX EXEMPTIONS.

Although tax exemptions are narrowly construed as a general rule, there is a constitutionally required exception for religious tax exemptions. In Maurer v. Young Life, 779 P.2d 1317, 1333 (Colo. 1989), this Court stated: “[T]ax exemptions for religious uses should not be narrowly construed.” The Court then elaborated in a footnote:

This policy represents an exception to the general rule that the presumption is against tax exemption and the burden is on the one claiming the exemption to establish clearly the right to such relief.

Id. at 1333, n. 20. The Court explained the constitutional underpinnings of this rule as follows:

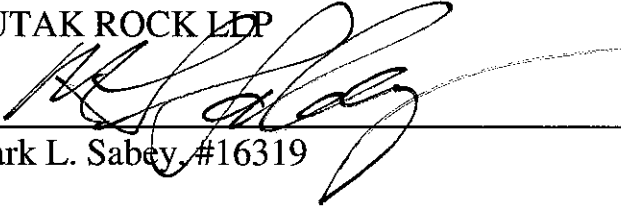
Avoiding narrow construction of property tax exemptions based upon religious use also serves the important purpose of avoiding any detailed governmental inquiry into or resultant endorsement of religion that would be prohibited by the establishment clause of the first amendment to the United States Constitution.

Id. at 1333, n. 21. These same first amendment principles were recognized by the Colorado General Assembly when it enacted C.R.S. § 39-3-106(1) and (2) and C.R.S. § 39-2-117(1)(b)(II) regarding religious property tax exemption. Applying a correct constitutional approach, the Colorado Department of Revenue concluded that “exemption is justified” because the property of Villa Pueblo was “owned and used solely and exclusively for religious purposes.” II:425, 524-545.

The reach of the Religion Clauses is not limited to property tax exemption. Concerns about improper entanglement and chilling effects apply to all forms of religious exemptions from taxation. The Court of Appeals correctly applied the rule of broad and liberal construction to the City's religious exemption from sales and use tax.

Respectfully submitted this 28th day of October, 2008.

KUTAK ROCK LLP



Mark L. Sabey, #16319

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of October, 2008, a true and correct copy of the **ANSWER-REPLY BRIEF OF CATHOLIC HEALTH INITIATIVES COLORADO D/B/A VILLA PUEBLO TOWERS** was served via U.S. Mail, first-class postage prepaid, addressed as follows:

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EXHIBIT A



GRANTED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

THOMAS R. ENSOR
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO Adams County Justice Center 1100 Judicial Center Drive Thornton, CO 80601	▲ COURT USE ONLY ▲
Plaintiff: CATHOLIC HEALTH INITIATIVES COLORADO d/b/a The Villas at Sunny Acres	
v.	Case No.: 03 CV 3817
Defendants: CITY OF THORNTON, COLORADO and DAVID BOYD, Treasurer, City of Thornton	Div.: A
FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND JUDGMENT	

This case was tried before the Court on December 8 and 9, 2005. Representing the Plaintiff were Mark Sabey and Melvin Sabey of the law firm of Kutak Rock, L.L.P. Representing the Defendant was Steven J. Dawes of the law firm of Light, Harrington & Dawes, P.C. The Court makes the following findings of fact and conclusions of law and issues the following Order and Judgment.

Plaintiff Catholic Health Initiatives d/b/a the Villas at Sunny Acres is a nonprofit corporation and has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code. The City of Thornton, Colorado is a Colorado home rule municipality. The City of Thornton adopted a Sales and Use Tax Code ("Code"). The City of Thornton performed a sales and use tax audit of the Plaintiff's operations at The Villas at Sunny Acres. The

audit period was from July 1, 1999 through June 30, 2002. As a result of that audit, Thornton issued a "Notice of Final Determination, Assessment, and Demand for Payment" dated August 19, 2003. The Assessment was for use taxes, interest, and penalty as a result of the nonpayment of use taxes on Plaintiff's acquisition of tangible personal property or taxable services for its use at The Villas at Sunny Acres.

The parties stipulated that on December 5, 2003 the City of Thornton issued a Revised Tax Assessment in the total amount of \$293,080.44, which amount included interest accrued through November 30, 2003. That amount has been deposited with the City of Thornton. The parties have agreed that the sum would be deposited into an interest-bearing account and that the deposit of the money stopped the accrual of interest on the claimed deficiency. The parties further agreed that the deposit met the statutory requirement for a cash deposit or bond and that, at the conclusion of the case, after all appellate review has been exhausted, the funds on deposit shall be retained by the City or returned to Catholic Health Initiatives Colorado at the direction of the Court, and that the prevailing party will be entitled to keep the interest earned on the money on deposit and will not be entitled to any other interest.

The Court finds that the case involves two principal issues: (1) whether the City wrongfully denied the Plaintiff's application for an exempt license for sales and use tax, and (2) if the application for exempt license was wrongfully denied, when did the wrongful denial occur. Any assessment of taxes after a wrongful denial of an application for exempt license is void, and any assessment before a wrongful denial is valid. This is not an automatic exemption; it's an exemption which requires a person to make an application and receive a license. There is no one element which is determinative. Both parties have argued that there is one factor that determines

the exemption, whether it's true belief or true faith or whether it's payment of a fee, but none of those are absolute. It's a combination of things, and a balancing of things to see what the overall purpose of the organization was, and first of all it starts with looking at the Code.

There are three categories of eligible organizations which can receive an exempt license. There are charitable organizations, quasi-governmental organizations, and religious organizations. There is a definition of charitable organization. There is no specific definition of what a quasi-governmental organization is, or what a religious organization is, except that there is a reference that a religious organization is a charitable organization.

In considering the Plaintiff and in considering section 26-388 of the Code, which is the definition section, it says a charitable organization means any entity which, (1) has been certified as a not-for-profit organization, under section 501(c) (3) of the Internal Revenue Code, and there is no question that the Plaintiff meets that criterion; and (2) is a religious or charitable organization. It is in the alternative, both are not required; it's one or the other.

There is no question in the Court's mind, nor is there a question before this Court, but that the Plaintiff is a religious organization. There is a definition, in section 26-388 which says, as used in this definition, "a charitable organization is an organization which, exclusively and in the manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons, and which thereby lessens the burdens of government." That definition is a definition of charitable organization. It is not a definition of religious organization.

The Court finds that pursuant to the plain words in municipal code section 26-388 that the Plaintiff is a "charitable organization." It has been certified as a not-for-profit organization under section 501(c) (3) of the Internal Revenue Code, and it is a religious organization.

However, simply being a charitable organization, or simply by being a religious organization does not necessarily mean that it is entitled to an exempt license. That is governed by section 26-390 (23), which states:

The price paid or charged on direct sales to and direct purchases by charitable and quasi-governmental organizations, in the conduct of their regular charitable and quasi-governmental capacities only. There is no sales tax on articles sold to charitable and quasi-governmental organizations in the conduct of their regular charitable functions and activities.

Charitable, as used in that section, is defined in subparagraph a. 2. of section 26-390 (23), and it states: "[F]or the purposes of the City's sales and use tax, the term 'religious' and 'religious purposes' and 'quasi-governmental purposes' shall be defined as being charitable or for charitable use only." Subsection a. 3. states "[t]he religious or quasi-governmental nature of all activities shall be equated, for the purposes of this code, with the term 'charitable'....."

The Court concludes that religious activities are the same acts or are equal to charitable, according to the plain words of this subsection. To the extent that those items purchased are put to such charitable use, which the Court finds by these definitions to mean to religious use, the exemption will apply.

The question is whether this is a religious activity by a religious organization. The Court finds by the totality of the testimony and the evidence that has been presented that this is a religious activity of a religious organization. It is motivated by the sincerely held religious belief for the care of the elderly. The fact that fees are paid is not determinative. The Court is not aware

of any case law which says that an activity loses its religious nature if there is a fee applied. In considering the balance sheet, the balance sheet here appears, and all the testimony is, that this is a losing proposition, and yet one that the Plaintiff is willing to pursue, despite the losing character, because of their firmly held belief to assist the elderly in their last stages of life.

The fact that not all residents are Christians were Catholics, to the Court, means little. The belief, as stated by Sister Hoffman, is that this is a responsibility that Christians and Catholics have to all people, regardless of what their religious beliefs may be. Defendant contends that this is not a religious activity just as the Plaintiff's owning a liquor store would not be a religious activity. This is not a liquor store. If this was a liquor store, that might lead to a different result. If the Plaintiff had a bowling alley they called the holy rollers, the Court would not find that to be a religious activity, regardless of how much they prayed for a strike.

The Court recently had a case recently involving a saloon called What The Hell Saloon. If the Plaintiff had a saloon called What The Heaven Saloon, that wouldn't be a religious activity, but that isn't what this is. This is the care of the elderly, which is a precept of the Catholic and Christian religion.

The Court finds that the denial of the license was not in compliance with the Thornton City Code, and, therefore, it was wrongful.

The second issue has to do with the assessment. There was an assessment made, as it related to a period of time between 1999 and 2002. The application for exempt license in this case was filed in May of 2002. There is testimony that it was sent in a year earlier, but that is not borne out by the testimony that I received, and the Court finds that it was not, in fact, submitted to the City of Thornton until May 31, 2002.

The question - going back to the 1988 application and the 1994 application - is whether or not those denials of those applications were wrongful. It is the burden of the plaintiff to show that they were wrong. There is no evidence whatsoever before this Court that those denials were wrongful. I do not have those applications. I do not have the code. I do not have the reasoning as to why those were denied, whether it was a technical reason or whether it was based on this exact same reason. I have no testimony as to how Sunny Acres was run in 1988 or 1994, and it's the duty and burden of the Plaintiff to show the Court those things.

The Court cannot say that there was a wrongful denial of this license prior to 1999. The Plaintiff does not automatically get the exemption. The exemption can only be had after the Plaintiff has received the license, or in this event, if the Plaintiff has been wrongfully denied the license, and later it is determined that the Plaintiff was entitled to a license.

The Court finds that the assessment that was issued by the City of Thornton is, in fact, a valid assessment and that the Plaintiff is not entitled to return of those monies; except following the City's receipt on May 31, 2002 of the application. It is entitled to a license for the exemption as of the date that the application was filed, which was on May 31, 2002.

This Order is made a final judgment of the Court.

NUNC PRO TUNC December 9, 2005.

BY THE COURT

Thomas R. Ensor, Judge, Adams County District Court

Court: CO Adams County District Court 17th JD

Judge: Ensor, Thomas Richard

File & Serve reviewed Transaction ID: 7725763

Current date: 2/1/2006

Case number: 2003CV3817

Case name: CATHOLIC HEALTH INITIATIVES COLO vs. CITY OF THORNTON COLO et al

/s/ Judge Thomas Richard Ensor

EXHIBIT B

District Court, Adams County, Colorado
Adams County Justice Center
1100 Judicial Center Drive
Brighton, CO 80601

Plaintiff:
CATHOLIC HEALTH INITIATIVES COLORADO,
D/B/A THE VILLAS AT SUNNY ACRES

Defendant:
CITY OF THORNTON COLORADO CITY OF
THORNTON, COLORADO AND DAVID BOYD,
TREASURER, CITY OF THORNTON

^COURT USE ONLY^

For Plaintiff:
MARK SABEY REG. NO. 16319
MEL SABEY, REG. NO. 9941

Case No: 03CV3817

Div: A
Courtroom: 504

For Defendant:
STEPHEN DAWES, REG. NO. 13193

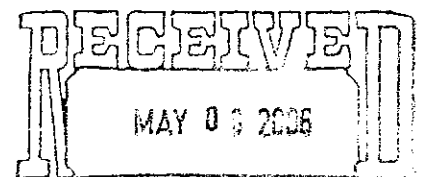
REPORTER'S TRANSCRIPT

FILED IN THE
COURT of APPEALS
STATE OF COLORADO

MAY - 9 2006

The Court Trial in this matter commenced on
December 8, 2005, before the HONORABLE THOMAS R. ENSOR,
Judge of the District Court.

Clerk, Court of Appeals



Clerk, Court of Appeals

1 everything, unless we did a report for every one of our
2 facilities, and so --

3 THE DEFENSE: Your Honor, my only objection,
4 again, is relevancy, and this time. In addition, that,
5 as best I understand, this is mostly an annual report of
6 Centura, which is not a party to this lawsuit, and so I
7 think although Centura is a management company for
8 Catholic Health Initiatives, there doesn't seem to be any
9 express reference to Sunny Acres.

10 THE COURT: Okay. Again, you know, how much
11 relevance something has, I suppose really isn't the
12 issue. I think that it is relevant, and it has a
13 tendency to prove an issue, and therefore I am going to
14 go ahead and admit it over objection.

15 (Plaintiff's Exhibits 48-50 were admitted into
16 evidence.)

17 THE PLAINTIFF: Thank you, Your Honor.

18 Q Now, in Exhibit 57, that you looked at
19 previously, the Mission of Value Statement?

20 A Yes.

21 Q It mentions the value of stewardship. Is the
22 stewardship value based on religious principles?

23 A Absolutely. I think if you look at stewardship
24 you find it as a gospel value. I think you look at
25 stewardship as the understanding of right relationship.

1 You understand that within a Catholic organization,
2 within Sisters of Charity and Catholic Health
3 initiatives, Colorado, stewardship means that we
4 understand that nothing that we have is ours.

5 Also, what we have been given over a hundred
6 years of ministry, within the State of Colorado, are
7 assets that we have an obligation to care for. And so,
8 stewardship is about the ability for us to understand
9 that.

10 So at Sunny Acres, yes, we ask people who can
11 pay, to pay, for their -- their housing, for their
12 services at Sunny Acres. It is a matter of justice, that
13 if we can pay, we pay. Stewardship is one of our values,
14 and in this day and age, our values are in conflict with
15 one another. They are in contention with one another.
16 So we try not to take a value at a time, but look at how
17 they interact with one another, in terms of stewardship,
18 integrity, compassion, and so on.

19 Q Applying the value of stewardship, do the
20 charges that Sunny Acres has residents pay, do they
21 provide any spiritual benefit to residence?

22 A Yes. Probably going to sound funny, maybe not
23 everyone would be in agreement, but if the --
24 particularly the elderly, it is their last stance of
25 independence and dignity and self-respect, that they

1 don't want to be a burden to society. They don't want to
2 be a burden to their family. They don't want to be a
3 burden, really, to Sunny Acres. And so, yes, there is a
4 religious aspect around how I spend my money. How I use
5 my money. And it is really in respect for the employees.
6 And again, it is a matter of justice that people who can
7 pay would pay, so that we have the ability to continue
8 our ministries.

9 If we were to just say, well, here we are, come
10 in, we will take care of you, we would be out of the
11 ministry function in a very short while.

12 So stewardship has to do with being good
13 stewards of the assets we have being able to sustain our
14 ministries as we go forward, and to provide an element
15 for our senior population to have purpose and meaning and
16 contribute in life to the way that they can.

17 If you don't -- if you run out of money at
18 Sunny Acres, you are not put out. If you were to go to
19 Sunny Acres, you wouldn't know who was paying who wasn't
20 paying. You wouldn't know how much anyone was paying.

21 Q Now, I want to ask you about the day to day,
22 and long-term operational and financial decisions that
23 Sunny Acres and Catholic Health's, other health care
24 facilities, have to make in order to continue to operate.

25 Is making a decision based on financial

1 considerations inconsistent with the religious mission of
2 Catholic Health?

3 A No. I think I'm probably repeating myself. I
4 think that stewardship is a value. It's a matter of
5 justice. We have to make decisions that will allow us to
6 continue our ministry, sustain our ministry. To that
7 extent, Your Honor, we have a process in which business
8 decisions, key decisions that involve stewardship,
9 financial accountability, is a process in which we use
10 what we call the values-impact analysis, which is a
11 direct intentional use of our values, related to
12 financial decisions and stewardship decisions.

13 So we have to be -- I think there is a -- a
14 quote in the Bible that says, "You should be wise as
15 serpents, and innocent as a dove." Not get to where we
16 are today without being good stewards of our assets and
17 the ministries that have been under our responsibility.

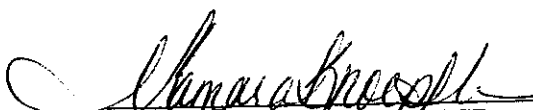
18 Q Sister Nancy, you mentioned values-impact
19 analysis. Is that a wide-spread practice within Catholic
20 Health Initiatives?

21 A Yes. It's a process that we use throughout all
22 of our Catholic facilities, especially in the State of
23 Colorado. It's -- it's practiced at Sunny Acres and all
24 of our facilities. It's been in existence for eight
25 years of our ten-year existence.

REPORTER'S CERTIFICATE

1
2 I, Tamara Knoepfle, Registered Professional
3 Reporter and Certified Realtime Reporter in and for the
4 State of Colorado, do hereby certify that I was present
5 at and recorded the above proceedings in stenotype and
6 reduced the same to typewritten form; that the foregoing
7 pages constitute a true and complete record of the
8 proceedings had and on December 8, 2005, before the
9 Honorable Thomas R. Ensor, in the Adams County District
10 Court, Division A, State of Colorado.

11 Dated this 14th day of March, 2006.

12
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14 
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