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<p>Court below: Colorado Court of Appeals Case No. 05 CA 2432 Opinion by Judge Marquez Trial Court: District Court, Arapahoe County Case No. 04 CV 1774 Division 402, Judge Leonard</p>	
<p>PETITIONER: CATHOLIC HEALTH INITIATIVES COLORADO d/b/a Villa Pueblo Towers</p> <p>RESPONDENTS: CITY OF PUEBLO, COLORADO DEPARTMENT OF FINANCE, and LARA BARRETT AS DIRECTOR</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>OPENING-ANSWER BRIEF OF RESPONDENT/CROSS PETITIONERS CITY OF PUEBLO, COLORADO, ET. AL.</p>	

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ISSUES FOR REVIEW

1. Whether the Court of Appeals applied the proper test for religious activity.
2. Whether the test for religious activity applied by the Court of Appeals, with which Catholic Health must comply continually to retain its tax exemption, and which the City of Pueblo must apply in subsequent audits, is unconstitutional and creates an ongoing chilling and entangling effect.
3. Whether the Court of Appeals erred in its interpretation and application of the City's sales and use tax exemption for religious organizations by applying a rule of broad and liberal construction which has heretofore been limited to property tax exemptions under Colorado Constitution, art. X, section 5.

STATEMENT OF THE CASE

Pursuant to the March 12, 2004 final determination of the Executive Director, Department of Revenue, State of Colorado, the Executive Director found that the City correctly denied Catholic Health's¹ application for Sales Tax Exemption for the audit period June 1, 1997 through May 31, 2000 with respect to

¹ As used herein, Petitioner shall be referred to as "Catholic Health" while the specific facility operated within the City of Pueblo which is the subject of the claimed exemption shall be separately referred to as "Villa Pueblo."

the Villa Pueblo facility. Rec. Vol. 1, p. 6 to p. 14.² With respect to Catholic Health's claimed charitable function, the Executive Director found that, "[A] quid pro quo permeates the entire operation of Villa Pueblo. New residents are targeted based on financial resources; fees are based on amenities and services provided; fees are subject to change; accommodations are touted; and, the obligation for financial assistance is highly accentuated." Rec. Vol. 1, p. 5.

The Executive Director also denied Catholic Health's claimed religious function and refused to apply the broad and liberal construction afforded property tax exemption under Colorado Constitution, Art. X, §5. The Executive Director found as follows:

Regarding the religious organization argument, Catholic Health cites the Colorado Supreme Court decision in Maurer v. Young Life, 779 P.2d 1317 (1989), as relevant authority. However, Maurer is a property tax decision and the issue in this case is sales and use tax. These taxes are based on completely different ideologies.

Rec. Vol. 1, p. 4.

On appeal to the District Court of Arapahoe County, the Petitioner requested only the following relief, "to reverse the final determination of the Executive

² The record consists of three volumes. Citation to the record will refer to the volume followed by the page and line number. Other than volume three, there is no separate identification by line number in the record and as such none will be given.

Director and order that Catholic Health is exempt from sales and use tax in its operations of Villa Pueblo.” Rec. Vol. 1., p. 3. This matter was submitted to the District Court for determination as a matter of law based upon the April 21, 2005 Joint Waiver of Trial and Submission of Case Based on Stipulated Facts (the “Stipulated Facts”). Rec. Vol. 2, pp. 398-427.

Pursuant to the April 25, 2005 Notice of Waiver, Catholic Health waived its claim that Villa Pueblo was exempt from taxation as a charitable activity and elected to base its claim for exemption exclusively on its claim that the operation of Villa Pueblo is a religious activity of a religious organization that is exempt from sales and use tax under the City of Pueblo’s code. Rec. Vol. 2, p. 555.

Based upon the Stipulated Facts, District Court Judge Marilyn Leonard found as follows:

I also appreciate that it is expensive to operate a facility such as Villa Pueblo and that the family members of the folks who live there are very appreciative of the obviously superior care they get at that facility, but my question is, is this a religious activity that would trigger constitutional safeguards? Instead I find that it is a community of like-minded citizens who have chosen to conclude their lives in a community of similarly situated souls. The activity of moving into Villa Pueblo, whether the assisted living portion, the independent living portion, the condominiums, the apartments, is not a religious activity. It is a charitable deed on the part of the Catholic church as all religions are admonished to do by statements in the new testament. Rec. Vol. 3, p. 15, l. 25 to p. 16, l. 10.

On appeal, the Court of Appeals exercised plenary review with respect to the interpretation and application of the City sales and use tax exemption for religious organization. The Court of Appeals applied a broad and liberal policy of construction applicable to property tax exemption utilized in Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989) to the interpretation and application of the City's sales and use tax exemption for religious organizations. Catholic Health Initiatives Colorado v. City of Pueblo, 183 P.3d 612, 619 (Colo.App. 2007)

The decision of the Court of Appeals focused on the City's acknowledgment that the operation of a chapel on the top floor of the residential facility was a religious function and entitled to a use tax exemption with respect to the use of tangible personal property in such operation. Id. In applying a rule of broad and liberal construction, the Court of Appeals determined that the nonexempted items were used for purposes necessarily incidental to the exempted primary use. Id.

STATEMENT OF THE FACTS

Spiritual Ministry of Catholic Health.

A substantial portion of the Stipulated Facts consists of mission statements of the Catholic Church and Catholic Health. Throughout such mission statements, the distinction between spiritual ministry, whether denominated as religious,

pastoral or otherwise (“Spiritual Ministry”), and physical care, whether denominated as body, physical, psychological, health, mind or otherwise (“Physical Care Services”) is repeatedly recognized and drawn.

Catholic Health is committed to and does in fact follow the *Ethical and Religious Directives for Catholic Health Care Services* approved by the Committee on Doctrine of the National Conference of Catholic Bishops (the “Directive”). Rec. Vol. 2, p. 402. These Directives specifically provide that:

Since a Catholic health care institution is a community of healing and compassion, the care offered is not limited to the treatment of a disease or bodily ailment but embraces the physical, psychological, social, and spiritual dimensions of the human person. The medical expertise offered through Catholic health care is combined with other forms of care to promote health and relieve human suffering. For this reason, 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.” Directed to spiritual needs that are often appreciated more deeply during times of illness, pastoral care is an integral part of Catholic health care.

10. A Catholic health care organization should provide pastoral care to minister to the religious and spiritual needs of all those it serves. . . Rec. Vol. 2, p. 404 (emphasis in original).

The Directives rely heavily on *A Pastoral Letter of the U.S. Catholic Bishops*, adopted November of 1981, entitled *Health and Health Care*. Rec. Vol. 2, p. 406. The relevant provisions of the Pastoral Letter emphasized by Catholic

health include the following quotation:

The advance of medical science and technology has made healing a complex task. Catholic facilities have a special witness in this regard . . . [W]e recall the words of Pope John Pual II in his recent address to health professionals. He said, "Care . . . must address all the elements of human being." . . . [O]ur health care facilities should make every effort to personalize the patient care they offer. They should strive to treat the whole person in a way the fully respects human dignity and that recognizes the multi-faceted causes of illness, not limited to the physical and medical causes . . . We urge increased collaboration between medical staff and the pastoral care staff. These pastoral care departments and programs, appropriately ecumenical in operation and staffed by trained men and women, give needed emphasis to the spiritual dimensions of health. Without health of the spirit, high technology focused strictly on the body offers limited hop for healing the whole person.

Rec. Vol. 2, p. 407.

In implementing the mission statement, Catholic Health acknowledges the distinction between Spiritual Ministry and Physical Care Services. "Catholic Health combines medical skills, compassionate touch, and spiritual treatment to care for the whole person - body, mind and spirit." Rec. Vol. 2, p. 411.

Spiritual Ministry Provided at Villa Pueblo

In implementing its Spiritual Ministry, Villa Pueblo has a Pastoral and Spiritual Care office (Rec. Vol. 2, p. 412) and provides the following types of Spiritual Ministry:

- (a) A Chaplain who provides Christian counseling for residents and

staff members. The Chaplain completes a spiritual assessment with respect to residents admitted into the Assisted Living and Skilled Nursing Units and works with such residents to create a spiritual care plan;

- (b) A chapel is located at Villa Pueblo. Sunday mass is conducted for those of the Catholic faith. A Sunday evening service is conducted for residents and staff. A midweek Episcopal service is held by Episcopal clergy;
- (c) Other services such as a Blessing of the Hands service and National Day of Prayer are conducted;
- (d) Employees are encouraged to pray with residents;
- (e) The Chaplain will perform, upon request, the sacrament of Anointing of the Sick; and
- (f) For Catholic residents who are in danger of death, Villa Pueblo arranged for an ordained Catholic priest to perform Viaticum (last rights).

Rec. Vol. 2, pp. 422 to 425.

There is nothing in the Stipulated Facts establishing that a sales or use tax

was imposed or collected with respect to any tangible personal property stored, used or consumed in providing the Spiritual Ministry at Villa Pueblo.

Commercial activities conducted at Villa Pueblo.

Residents of Villa Pueblo are obligated to pay for the Physical Care Service rendered for such Residents. If available, Villa Pueblo will offer a charitable care unit where the normal and customary fee is reduced based upon the resident's ability to pay. Rec. Vol. 2, p. 23. The number of charitable care residents is eight which is less than five percent (5%) of the total number of residents. Rec. Vol. 2, p. 23. In addition, Villa Pueblo has on occasion reduced its normal and customary charge for a resident who had an ability to pay but has outlived their financial resources. Rec. Vol. 2, p. 23. Four residents receive this reduction which is less than three percent (3%) of the total number of residents. Rec. Vol. 2, p. 23. The average reduction in rate is \$700. Rec. Vol. 2, pp. 23 to 24.

Villa Pueblo provides three different categories of Physical Care Services: Elderly Support Apartments, Assisted Living and Skilled Nursing.

The Elderly Support Apartments are advertised as "Independent Apartment Living." Rec. Vol. 2, p. 417. These units range in size from 476 to 1,092 square feet. Rec. Vol. 2, p. 419. They are described as studio, one and two bedroom

apartments, some with complete kitchens and private balconies. Rec. Vol. 2, p. 419. Monthly fees for the Elderly Support Apartments range from \$1,130 to \$2,347. Rec. Vol. 2, p. 419.

The Physical Care Services provided residents of Elderly Support Apartments include: inside and outside maintenance, 24-hour security, bi-weekly housekeeping, weekly flat laundry service, dining room, meal delivery, transportation, an activities director who plans social/recreational programs (sing-alongs, crafts, concerts, shopping trips, speakers, and outings). Rec. Vol. 2, p. 417.

In addition, Villa Pueblo provides “catered living” services to those Elderly Support Apartment residents who need additional assistance but do not require 24-hour monitoring. Rec. Vol. 2, p. 417. Such services include assistance with bathing, dressing, shopping, daily domestic services, and monitoring medications. Rec. Vol. 2, pp. 417 to 418. In providing the “catered living” services and other services to the Elderly Support Apartment residents, Villa Pueblo employs 7 Certified Nurse Assistants who work under the supervision of a Licensed Practical Nurse. Rec. Vol. 2, p. 418.

The second category of Physical Care Services is Assisted Living. Rec. Vol.

2, p. 419. A physician's order is required for admission into the Assisted Living Units. Rec. Vol. 2, p. 419. These residents do not require care by a registered nurse, but do require limited health care services and 24-hour monitoring and supervision by a responsible adult. Rec. Vol. 2, p. 419. Villa Pueblo also assists these residents with activities of daily living such as bathing, dressing, grooming, medication and the elderly support services above outlined. Rec. Vol. 2, p. 419. These residents have on-site access to the additional services of a rehabilitation therapist, social worker and activity coordinator. Rec. Vol. 2, p. 419.

The third category of Physical Care Services provided by Villa Pueblo is the Skilled Nursing Care for residents who need ongoing registered nursing services in addition to the elderly support services provided to other residents. Rec. Vol. 2, p. 419. A potential resident of the Skilled Nursing Unit must have a physician's prescription, order, or letter indicating that the services of a registered nurse are required. Rec. Vol. 2, p. 419.

The normal and customary fees for the Assisted Living Units and Skilled Nursing Care are not stipulated other than acknowledging that the fees are higher than that charged for Elderly Support Apartments. Rec. Vol. 2, p. 420.

The Stipulated Facts do not establish what type of loss, if any, is occasioned

by Villa Pueblo. The Stipulated Facts do quantify the loss associated with one aspect of Villa Pueblo's services (the life care contracts) and losses with respect to all of Catholic Health's facilities. Rec. Vol. 2, p. 422. Noticeably absent is any statement of revenue and expenses, or similar record, with respect to Petitioner's activity within the City, i.e. Villa Pueblo.

SUMMARY OF THE ARGUMENT

This case is less about defining or restricting religious practice and more properly about determining the scope of a sales and use tax exemption in a manner consistent with the language of the Ordinance and its underlying legislative purpose. If full effect is given to the language of the Ordinance and its underlying legislative purpose, the scope of the exemption is properly construed as applying to those activities in which a religious organization exclusively, freely and voluntarily ministers to the spiritual needs of persons.

The Court of Appeals, however, ruled that the commercial activities of Villa Pueblo also qualified for the exemption as being necessarily incidental to the exempted primary use. The Court of Appeals focused on the City's acknowledgment that the Spiritual Ministry and particularly the chapel on the top floor of the residential facility, qualified under the exemption. Catholic Health Initiatives Colorado v. City of Pueblo, 183 P.3d 612, 619 (Colo.App. 2007). The Court of Appeals, however, construed the City's exemption as not being limited to the Spiritual Ministry and, subject to the following restrictions, could include the commercial activities of operating a retirement, assisted living or nursing home facility: (a) is the activity an integral part of the organization's ministry; (b) do the

amounts received exceed the expense; (c) is the activity for gain or profit; and (d) are the sums paid devoted to the organization's purpose. Catholic Health, 183 P.3d 612.

In reaching this result, the Court of Appeals applied a rule of broad and liberal construction to the interpretation and application of the City's exemption which has heretofore been limited to property tax exemptions under Colorado Constitution, Art. X, §5. Such construction departs from the generally accepted rule of construction for sales and use tax exemptions and conflicts with the strict construction applied with respect to sales and use tax exemptions for religious organizations by another division of the Court of Appeals. First Lutheran Mission of the Knolls v. Department of Revenue, 613 P.2d 351, 353 (Colo.App. 1980).

If the Court of Appeals had applied the proper rule of construction, it would have denied the relief requested by Catholic Health. Villa Pueblo's commercial activities do not clearly qualify as activities whereby a religious organization exclusively, freely and voluntarily ministers to the spiritual needs of persons.

In contrast, Catholic Health has argued that the exemption should extend to any activity specifically motivated by a sincerely held religious belief. Such interpretation is not consistent with the language of the Ordinance, its underlying

legislative purpose and would render the exemption meaningless.

To the extent the exemption is broadly construed in the manner requested by Catholic Health, such construction would not resolve whether the commercial component of Villa Pueblo's activities qualified for exemption, nor would the qualifying requirement imposed by the Court of Appeals violate the Establishment Clause and particularly the entanglement test.

ARGUMENT

I. WHETHER THE COURT OF APPEALS APPLIED THE PROPER TEST FOR RELIGIOUS ACTIVITY.

The City views Catholic Health's argument to consist of two parts: (a) the City's exemption extends to all activities of a religious organization which are motivated by a sincerely held religious belief; and (b) the Court of Appeals erred in applying additional requirements with respect to commercial activities of a religious organization. With respect to the first part, the City argues in subsection A that Catholic Health's interpretation of the exemption is contrary to the language of the Ordinance and the underlying legislative purpose, and if adopted, such construction would have its own constitutional infirmities under the Establishment Clause. With respect to the second part, City argues in subsection

B that, even if the exemption was broadly construed, it does not resolve how the commercial activities are to be treated and that the requirements imposed by the Court of Appeals do not violate the Establishment Clause.

A. The City's tax exemption should not be construed to include religiously motivated commercial activity no matter how profitably conducted.

Catholic Health ultimately requests this Court to expand the City's sales and use tax exemption for regular religious function and activity to include religiously motivated commercial activity no matter how profitably it is conducted within the City. Opening Brief at p. 42.

The City does not make this statement to minimize Catholic Health's constitutional concerns but to emphasize that, if the exemption is ambiguous, the Court may consider the consequences of the construction urged. Huff v. Tipton, 810 P.2d 236, 237 (Colo.App. 1991). As argued in the following Section III, the City does not believe that the exemption is ambiguous if full effect is given to the Ordinance as written. The City's religious exemption only applies to those activities in which a religious organization exclusively, freely and voluntarily ministers to the spiritual needs of persons. §14-4-21(5), P.M.C. Rec. Vol. 2, p. 591. To the extent such interpretation is rejected by this Court, the City provides

the following argument.

1. Catholic Health’s definition of regular religious function is inconsistent with the purpose of the exemption.

The City’s exemption applies to religious organizations in the “conduct of their regular religious . . . functions and activities.” §14-4-76(8) and 14-4-77(5), P.M.C. Rec. Vol. 2, pp. 587-589. Such phrase could be construed to mean nothing more than the operation of a church or other place of public worship. *See People ex rel. McCullough v. Deutsche Gemeinde*, 94 N.E. 162, 164 (Ill. 1911) (Under a strict rule of construction, religious purpose when applied to the use of property means “a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools, and religious instruction.”). *Cf. Provena Covenant Medical Center v. Department of Revenue of State of Illinois*, ___ N.E.2d ___, 2008 3989685 at *24 (Ill.App. Aug. 26,2008) (although the uses identified in *Deutsche Gemeinde* were illustrative, court ruled that “[It] must follow that ‘religious use’ has a determinable nature and that to be a religious use, the activity must somehow resemble the activities listed in *Deutsche Gemeinde*.”).

The City believes, however, that the phrase is best understood in light of the Ordinance’s legislative purpose and effect. *See Colorado Dept. of Revenue v.*

Woodmen of the World, 919 P.2d 806, 810 (Colo. 1996) (in determining meaning of a statute, court must adopt construction that will serve legislative purposes underlying enactment).

The City's tax exemption is provided to those organizations 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 burden of government." §14-4-21(5), P.M.C. Rec. Vol. 2, p. 591. The obvious legislative purpose supporting the exemption is based upon the benefit these organizations confer on society, i.e. freely ministering to the physical, mental and spiritual needs of persons thereby lessening the burden of government.

A specific exemption is provided for religious organizations based upon the services which are unique to religious organizations but also within the class of services exempt for charitable, non religious, activities, i.e. freely ministering to the spiritual needs of persons. To the extent the activities of the organization go beyond the specific scope of the exemption, such activities do not qualify as regular religious functions and activities, and should be required to qualify as a charitable activity.

To hold otherwise would expand the religious exemption to an extent that it would have no conceivable relevance to the legislative purpose supporting the exemption and would be providing an exemption to any activity of a religious organization merely because it was motivated by religious belief. Such construction would provide an exemption to religious organizations which is outside the class and type of services which qualify for exemption, i.e. exclusively, freely and voluntarily ministering to the physical, mental and spiritual needs of persons.

Such an interpretation would also render the scope of the exemption meaningless. A very similar argument was made by a religious organization in Provena Covenant Medical Center v. Dept. of Revenue of State of Illinois, _____ N.E.2d _____, 2008 W.L. 3989685 (Ill.App. Aug. 28, 2008). In Provena, the religious organization operated a hospital as an “apostolic mission and health care ministry of the Catholic Church.” Provena, 2008 W.L. at 3989685 at *24. It was stipulated that, “[Provena’s] stated and ongoing mission is to serve as the Catholic health[-]care ministry and charitable hospital in the Champaign/Urbana area and to build communities of healing and hope by compassionately responding to human need in the spirit of Jesus Christ.” Id. Provena argued that these stipulations

compelled a determination that its operation was a religious purpose. In rejecting such interpretation, the Court held:

If “religious purpose” meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation the exception. “In a sense, everything a deeply devout person does has a religious purpose.” *Faith Builders*, 378 Ill.App.3d at 1046, 318 Ill.Dec. 133, 883 N.E.2d at 1264. In *Fairview Haven v. Department of Revenue*, 153 Ill.App.3d 763, 106 Ill. Dec. 634, 768-769, 506 N.E.2d 341, 345 (1987), we were unpersuaded by the reasoning that a nursing home had a religious purpose because taking care of the elderly was a way of “tying preaching to action.” “Religious purpose” within the meaning of section 15-40(a)(1) (35 ILCS 200/15-40(a)(1) (West 2002) has to be narrower than “Christian service,” or else “religious purpose” would mean everything (and, therefore, nothing).

Provena, 2008 W.L. at 3989685 at *24.

2. First Amendment Concerns Relating to Catholic Health’s Requested Relief.

The following constitutional concerns are raised by the City not as Catholic Health characterizes them, i.e. “An effort to raise questions about the propriety of its own exemption” (Reply in Support of Petition for Writ of Certiorari), but to illustrate constitutional concerns about the propriety of Catholic Health’s proposed construction. See People v. Washburn, 593 P.2d 962, 964 (Colo. 1979) (a statute should be construed as to reduce constitutional infirmities not to impose them).

Catholic Health is requesting this Court to expand the City’s sales and use

tax exemption to include religiously motivated commercial activity no matter how profitable such activity is conducted within the City. In such context, any secular for profit business operating a retirement housing facility within the City and in direct competition with Villa Pueblo may wonder why it has to pay sales and use tax when Villa Pueblo does not. Such concern should be justified under, or at least have support by, the principles which the Establishment Clause was meant to further. As stated by the United States Supreme Court in Texas Monthly Inc. v. Bullock, 489 U.S. 1, 14-15 (1989):

Every tax exemption constitutes a subsidy that affects nonqualifying taxpayers, forcing them to become “indirect and vicarious ‘donors’.” Insofar as that subsidy is conferred upon a wide array of nonsectarian groups as well as religious organizations in pursuit of some legitimate secular end, the fact that religious groups benefit incidentally does not deprive the subsidy of the secular purpose and primary effect mandated by the Establishment Clause. However, when government directs a subsidy exclusively to religious organizations that is not required by the Free Exercise Clause and that either burdens nonbeneficiaries markedly or cannot reasonably be seen as removing a significant state-imposed deterrent to the free exercise of religion, as Texas has done, see *infra*, at 901-902, it “provide[s] unjustifiable awards of assistance to religious organizations” and cannot but “conve[y] a message of endorsement” to slighted members of the community.

Id. at 14-15 (citations omitted).

Based on such precedent, the Supreme Court of the State of North Carolina was compelled to strike down as violating the Establishment Clause a state statute

which granted property tax exemptions to homes for the aged, sick or infirm but only if the home was owned, operated and managed by a religious or masonic organization. Appeal of Springmoor, Inc., 498 S.E. 2d 177 (N.C. 1998).

This decision has particular relevance to the facts of this case. This Court has previously determined that senior citizen's homes do not qualify as a charitable use because such activity does not lessen the burden of government, i.e. the care of physically and financially independent elderly persons is not a government obligation. United Presbyterian Ass'n. v. Board of County Com'rs of Jefferson County, 448 P.2d 967, 975 (Colo. 1968). The Elderly Support Apartments provided at Villa Pueblo are in fact this type of activity. Statement of Facts at pp. 8-9. Under Catholic Health's interpretation and similar to the case in Springmoor, the only facilities which could qualify for a tax exemption with respect to senior citizen's homes would be those operated by a religious organization.

B. The Test Applied by the Court of Appeals is Not Unconstitutional

Even if the court were to construe the exemption as extending to all religiously motivated activity, such construction would not resolve how the commercial activities of Villa Pueblo are to be treated.

The essential point of Catholic Health's argument is that Villa Pueblo's activities are motivated by sincerely held religious beliefs and thus qualify for exemption. The City has never attempted to dispute the religious doctrine or practice of the Catholic Church. Rec. Vol.2, p. 619. This does not mean nor in the City's opinion can this Court infer based upon 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.

For example, the Stipulated Facts set forth the following quote from the New American Bible, James, 27, as its religious belief which motivates its operation of Villa Pueblo, "Religion that is pure and undefiled before God and the Father is this: to care for orphans and widows in their affliction" Rec. Vol. 2, p. 401. The quotation from the Bible does not read - Religion that is pure and undefiled before God and the Father is this: to care for orphans and widows in their affliction subject to payment of normal and customary charges and/or reduction thereof subject to availability and qualification.

This point is not made to mock or in any way disparage Catholic Health but is intended to limit the inferences that can or should be made based upon the

Stipulated Facts. To Catholic Health, the providing of housing and care for the elderly is motivated by religious belief. Rec. Vol. 2, p. 409. The commercial aspect of such services, however, 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.

This in fact is what appears to be the issue the Court of Appeals attempted to resolve when it applied a broad and liberal rule of construction to find that such commercial activities were necessarily incidental to the exempted use. Although the City has argued against applying such a broad and liberal construction, it is such an application that requires an examination of the primary and incidental uses which, in the City's opinion, is what Catholic Health and the amici parties find problematic.

1. Determining qualification for exemption does not violate the Establishment Clause.

In determining whether the commercial activities are necessarily incidental, the Court of Appeals focused on the following factors: (a) is it an integral part of the organization's ministry; (b) do the amount received exceed the expenses; (c) is the activity for gain or profit; and (d) are the sums paid devoted to the organization's purpose. Catholic Health, 183 P.3d at 612.

These types of qualifying requirements, and examinations necessary to establish them, are not prohibited by the Establishment Clause. The Establishment Clause and particularly the entanglement test are usually invoked by a party seeking to invalidate a government program which provides benefits to religion. Mueller v. Allen, 463 U.S.388, 103 S.Ct. 3062 (1983), New York v. Cathedral Academy, 434 U.S. 125 (1977); and Roemer v. Bd. of Public Works of Maryland, 426 U.S. 736 (1976).

In appropriate circumstances, the entanglement test will be relied upon to protect religious organizations from comprehensive government regulation, the application of which will have an obvious and direct effect upon such organization's free exercise rights. For example, the broad exemption for religious organizations from application of Title VII's prohibition of religious discrimination in employment serves the legitimate government purpose of "alleviating significant government interference with the ability of religious organizations to define and carry out their mission." Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 339 (1987). For similar reasons the application of the National Labor Relations Act, which could potentially subject issues such as method and manner of

catechesis of parochial school children to the jurisdiction of the NLRB, was interpreted not to extend to parochial schools. NLRB v. Catholic Bishop of Chicago, 440 U.S. 490 (1979).

Although Catholic Health relies heavily upon Amos and Catholic Bishop of Chicago and decisions similar in nature, such cases have little relevance to the type of benign form of entanglement in this case, i.e. determining the nature and scope of Villa Pueblo's commercial activities. This is especially true in light of the fact that neither the Establishment Clause nor the Free Exercise Clause require a religious exemption from the payment of sales and use taxes. Jimmy Swaggart Ministries v. Board of Equalization, 493 U.S. 378 (1990). Unlike Amos, Catholic Bishop of Chicago and related decisions, sales and use tax exemptions for religious organizations are not necessary to remove any significant state imposed deterrent to the free exercise of religion.

The decision of this Court in Young Life v. Division of Employment and Training, 650 P.2d 515 (Colo. 1982) is particularly instructive. In Young Life, a religious organization ("Young Life"), appealed a determination that it did not qualify for a religious exemption from the Colorado Unemployment Tax since it was not a church. Young Life asserted that the determination of whether it

qualified as a church violated the Establishment Clause. With respect to the entanglement test, this Court noted Young Life's concession that the religious exemption in Colorado Unemployment Tax statute was, similar to sales and use taxes, not constitutionally mandated. Id. at 522. In this context, the Court framed the issue as follows:

Young life's excessive entanglement claim therefore is limited to the contention that the *determination* of whether Young Life is a church for purposes of the exemption constitutes impermissible involvement of the state in religious activities.

Id. at 522-523.

In supporting its claim of excessive entanglement, Young Life asserted that, “[the] determination has necessitated several proceedings during the past five years in which evidence was adduced concerning Young Life’s doctrinal creeds, religious beliefs and practices, time, place and manner of worship services, sacraments administered, religious organizational affiliations, terminology and sources of financial support.” Id. at 523.

This Court found that such facts did not constitute excessive government entanglement in violation of the Establishment Clause. Id. at 524. In reaching its conclusion, this Court made the following relevant observation, “Any tax exemption for religious organizations entails an examination of whether a

particular group or organization meets the statutory requirements for exemption. Thus, the entanglement problem claimed by Young Life occurs with respect to every religious tax exemption.” Id. at 523. This Court then concluded “Simply determining the applicability of a statutory exemption to a particular group does not constitute ‘a union of government and religion [which] tends to destroy government and degrade religion’.” Id. at 523 - 524 (citation omitted).

In the present action, Catholic Health fails to identify in any material or compelling manner how the principles underlying the Establishment Clause and in particular the excessive government entanglement test are violated by the qualifying requirements set forth by the Court of Appeals. At least in Young Life, the organization was able to point to a list of specific activities conducted by the government which were perceived as problematic. The only concrete concern identified by Catholic Health is that the Court of Appeals’ opinion would permit the City to examine whether the commercial activity of Villa Pueblo is operated at a loss. Opening Brief at p. 41.

This sort of religiously neutral examination, i.e. profit or loss, is far less problematic under the entanglement test than the determination of “church” permitted in Young Life. Moreover, religiously neutral examinations by taxing

authorities are well recognized as being permissible under the entanglement test. Hernandez v. C.I.R., 490 U.S. 680, 696-698 (1989) (determination by the IRS as to whether payment to a religious organization is part of a quid pro quo transaction is not prohibited as excessive government entanglement even though the determination, “may require the IRS to ascertain from the institution the prices of its services and commodities, the regularity with which payments for such services and commodities are waived, and other pertinent information about the transaction”); Jimmy Swaggart Ministries, 493 U.S. at 395-396 (“[t]he sorts of government entanglement that we have found to violate the Establishment Clause have been for more invasive than the level of contact created by administration of neutral tax laws.”); *See generally* Texas Monthly Inc., 489 U.S. at 21 (1989) (citations omitted) (“While Texas is correct in pointing out that compliance with government regulations by religious organizations and the monitoring of their compliance by government agencies would itself enmesh the operations of church and state to some degree, we have found that such compliance would generally not impede the evangelical activities of religious groups and that the routine and factual inquiries commonly associated with the enforcement of tax laws bear no resemblance to the kind of government surveillance the Court has previously held

to pose an intolerable risk of government entanglement with religion.”)

II. CATHOLIC HEALTH IS NOT SUBJECT TO AN ONGOING ENTANGLING AND CHILLING EFFECT

This issue relates to the requirements imposed by the Court of Appeals with respect to the commercial activities conducted by Villa Pueblo and has been previously addressed within the foregoing argument. The City would note that the specifically identified concern which Catholic Health has with respect to any future potential revocation is that the City can examine whether its operation of Villa Pueblo is conducted at a loss. Opening Brief at pp. 41-42.

III. THE COURT OF APPEALS ERRED IN ITS INTERPRETATION AND APPLICATION OF THE CITY’S SALES AND USE TAX EXEMPTION FOR RELIGIOUS ORGANIZATIONS BY APPLYING A RULE OF BROAD AND LIBERAL CONSTRUCTION WHICH HAS HERETOFORE BEEN LIMITED TO PROPERTY TAX EXEMPTIONS UNDER COLORADO CONSTITUTION ART. X, §5

The decision of the Court of Appeals focused on the City’s acknowledgment that the operation of a chapel, which is part of the physical facility at Villa Pueblo, was granted a use tax exemption with respect to purchases of tangible personal property related to such operation. Catholic Health, 183 P.3d at 619. In applying a rule of broad and liberal construction, the Court of Appeals determined that the nonexempted items were used for purposes necessarily incidental to such

exempted primary use. Id.

- A. Sales and use tax revenues are essential to the provision of local government services, and the collection of such revenues by a home rule municipality like the City cannot generally be circumscribed or limited by the State of Colorado.**

It is important to the City to briefly emphasize the essential nature of sales and use tax in the provision of local government services. Local government services are the foundation upon which any civilized community is built and maintained. Local government provides a broad array of public services including: (1) protection of the rights of persons and property from crime including preservation of public peace, prevention of crime and apprehension of criminals; (2) protection of life and property from fire and other emergency including emergency response with respect to calls relating to fire, hazardous materials, rescue and medical; (3) building and maintaining streets and providing for the safe and efficient movement of vehicular and pedestrian traffic; (4) prevention and abatement of nuisances and threats to public health; (5) sewage and drainage including wastewater collection and treatment; and (6) improvement of infrastructure and public amenities including places of public recreation such as parks, zoos and golf courses.

For a home rule municipality like the City, the primary and principal source

for financing such services is the sales and use tax. The power to levy and collect sales and use taxes is essential to the existence of the City and to the performance of these services. This Court has recognized the essential nature of sales and use tax to the full exercise of the right of self government and limited the General Assembly of the State of Colorado in its attempts to prohibit or preempt a home rule municipality's collection of sales and use tax. Winslow Const. Co. v. City and County of Denver, 960 P.2d 685, 693-695 (Colo. 1998);and Security Life & Accident Co. v. Temple, 492 P.2d 63, 64-65 (Colo. 1972).

B. The Court of Appeals' decision departs from the generally accepted rule of construction for sales and use tax exemptions.

Under established precedent in the State of Colorado, there is a strong presumption against sales and use tax exemptions; the burden is on the one claiming an exemption to clearly establish the right to such exemption; and the exemption will be strictly construed in favor of the taxing authority. General Motors Corp. v. City and County of Denver, 990 P.2d 59, 74 (Colo. 1999); and Security Life & Accident Co. v. Heckers, 495 P.2d 225, 226 (Colo. 1972). This rule of strict construction is generally premised upon a recognition that tax exemptions are a matter of legislative grace. Cray Computer Corp. v. Colorado Dept. of Revenue, 988 P.2d 652, 654 (Colo.App. 1999), *rev'd on other grounds*,,

Colorado Dept. of Revenue, 18 P.3d 1277 (Colo. 2001). Tax exemptions by necessity increase the tax burden of all other taxpayers who do not otherwise qualify for the exemption. See Bob Jones University v. U.S., 461 U.S. 574, 592 (1983). (When the government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and “vicarious” donors). Courts have been circumspect in applying the exemption beyond that which was specifically provided for by the legislature or, as the case may be, the electorate.

Based upon a prior decision of another division of the Court of Appeals, review of sales and use tax exemptions for religious organizations has been subject to the foregoing rule of strict construction. First Lutheran Mission of the Knolls, 613 P.2d at 353.

C. The decisions in Mauer and other property tax caselaw are not appropriately applied to the City’s sales and use tax exemption for religious organizations.

In interpreting the City’s sales and use tax exemption for religious organizations, the Court of Appeals relied upon case law interpreting property tax exemptions for religious worship under Colorado Constitution, Art. X, Section 5 and not upon caselaw interpreting sales and use tax exemptions. Catholic Health,

183 P.3d at 616 to 619.

Religious exemption for property taxes, unlike sales and use taxes, is specifically provided for by the Colorado Constitution. Colo. Const. Art. X, §5. This constitutional provision and the exemptions provided therein have historically been liberally construed. El Jebel Shrine Ass'n v. McGlone, 26 P.2d 108, 109 (Colo. 1933). The decision in Maurer v. Young Life, 779 P.2d 1317 (Colo. 1989) appears to be the broadest reading of such policy of liberal construction of the property tax exemption wherein the Court noted, "This policy represents an exception to the general rule that the presumption is against tax exemption and the burden is on the one claiming exemption to establish clearly the right to such relief." Maurer, 779 P.2d at 1333, n. 20 (citation omitted).

It is instructive to review the legislative background in which Maurer was decided. The Maurer decision was announced on September 18, 1989. Senate Bill 237 was approved June 7, 1989 and became applicable to property tax years commencing on and after January 1, 1990. Appendix 8 to City's Cross-Petition for Writ of Certiorari at pp. 8-9. Senate Bill 237 replaced the religious purpose exemption for property tax exemption with a more expansive religious purpose exemption. Pursuant to this enactment, the General Assembly of the State of

Colorado made a number of legislative declarations applicable to property tax exemptions for religious organizations including a declaration 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.” §39-3-106(2), C.R.S. (emphasis added)

In enacting Senate Bill 237, the Colorado General Assembly did not apply such legislative finding and declaration beyond property tax exemption under Colorado Constitution, Art. X, §5. Specifically, no similar concurrent legislation was enacted and made applicable to sales and use taxation. Although the General Assembly has subsequently amended the State's sales and use tax act, including enactment of a safe harbor provision for occasional sales by religious organizations, (H.B. 95-1145 now codified at §39-26-718(1)(b), C.R.S.), the General Assembly has never adopted the more expansive religious purpose property tax exemption with respect to sales and use tax.

It is further important to note that such an exception to the general rule of strict construction has never been adopted by this Court outside the context of property taxation. In the one instance of a published decision where a lower court

attempted to apply Maurer outside the context of property taxation, this Court rejected such approach. Samaritan Institute v. Prince-Walker, 883 P.2d 3, 8 (Colo. 1994). (While *Maurer v. Young Life*, 779 P.2d 1317 (Colo. 1989), provides that exemptions for religious organizations should be construed more broadly than other statutes, section 8-70-140(1)(a) requires a more circumscribed view. An organization that provides essentially secular services falls outside the scope of section 8-70-140(1)(a).)

D. The First Amendment does not require that the City's sales and use tax exemption for religious organizations be broadly construed.

As a basis for broadly construing the City's sales and use tax exemption for religious organizations, the Court of Appeals relies upon potential First Amendment concerns. Catholic Health, 183 P.3d at 616. The Court of Appeals, however, does not identify in any concrete manner how a strict construction of the exemption would result in excessive government entanglement, or more specifically, how a review of the nature and scope of Villa Pueblo's commercial activities would implicate the Establishment Clause of the First Amendment. The Court of Appeals does cite the following holding in its prior decision in Prince Walker v. Industrial Claim Appeals Office of State of Colo., 870 P.2d 588, 591

(Colo. App. 1993), “[U]nlike most tax exemptions, tax exemptions for religious organizations are construed more broadly so as to accommodate First Amendment concerns.” (Appendix 1 at p. 10.) The Court of Appeals reliance on such holding, however, is misplaced. As above noted, the Colorado Supreme Court refused to apply such a broad rule of construction utilized by the Court of Appeals.

Samaritan Institute, 883 P.2d at 8.

The Court of Appeals also cites Gen. Conference of Church of God-7th Day v. Carper, 557 P.2d 832, 834 (Colo. 1976) and Kemp v. Pillar of Fire, 27 P.2d 1036, 1037 (Colo. 1933) in support of its holding that potential First Amendment concerns require a board interpretation of the exemption. Neither of these cases support such holding. In Carper, the Court rejected the application of a government benefit test to property tax exemption for religious organization. The Court was quick to note that such ruling should not be construed to “[relieve] a religious organization from the obligation to otherwise satisfy the criteria for a valid religious exemption.” Carper, 557 P.2d at 834.

In Kemp, the Court based its decision upon the liberal construction afforded property tax exemption under Colorado Constitution, Art. X, §5. No mention is ever made in Kemp to the First Amendment.

To the extent the Court of Appeals's decision could be interpreted as relying on Maurer for the position that religious tax exemptions must be broadly construed to accommodate First Amendment concerns, such an interpretation would be inaccurate. The broad and liberal policy of construction relied upon in Maurer was in furtherance of the constitutional policy of receptiveness which had historically been applied in interpreting Colorado Constitution Art. X, §5, religious property tax exemption. Maurer, 779 P.2d at 1332. Although the Court in Maurer noted in a footnote that a broad rule of construction also furthered the purpose of avoiding any potential excessive government entanglement, the Court never ruled that such construction was constitutionally mandated under the Establishment Clause. Maurer, 779 P.2d at 1133, N.21.

Such a ruling, if made, would have been odd in light of the Supreme Court's decision in Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970). In Walz, the Supreme Court did not find it significant or problematic under the Establishment Clause that the New York City Tax Commissioner would have to, on an annual and continuing basis, determine qualifications for "houses of religious worship." In response to any such concern, the Court ruled, "The exemption creates only a minimal and remote involvement between church and

state and far less than taxation of churches.” Walz, 397 U.S. at 676.

E. If the strict rule of construction were applied to the interpretation and application of the City’s sales and use tax exemption for religious organizations, the Court of Appeals would have denied and this Court should deny the relief requested by Villa Pueblo.

This case was submitted to the District Court upon the Stipulated Facts. This Court may exercise plenary review with respect to whether Catholic Health has clearly established its right to an exemption. Hicks v. Loudre, 125 P.3d 452, 455 (Colo. 2005); *and see* §39-21-105(7), C.R.S. (The decision of the District Court shall be reviewable by the supreme court or court of appeals as is otherwise provided by law.)

1. The City’s exemption is limited to spiritual ministry.

Interpretation of a municipal ordinance is subject to the Supreme Court’s de novo review. Town of Erie v. Eason, 18 P.3d 1271, 1274 (Colo. 2001). Any ambiguity in the language of a sales and use tax exemption shall be construed against the taxpayer. Broadmoor Hotel Inc. v. Department of Revenue, 773 P.2d 627, 629 (Colo.App. 1989).

With respect to sales of tangible personal property to religious organizations, Section 14-4-76, P.M.C., provides an exemption as follows:

Sales to charitable organizations as defined in Section 14-4-21

above, in the conduct of their regular religious or charitable functions and activities, which organizations, at the time of sale or purchase, present satisfactory evidence of being issued a current tax exempt license for the City to the vendor or retailer, and he or she shall record such license number in documents relating to the transaction in support of the exemption claimed.

§14-4-76(8), P.M.C. (emphasis added). Rec. Vol. 2, pp. 587 to 588.

With respect to the storage, consumption or use of tangible personal property by a religious organization, Section 14-4-77, P.M.C., provides an exemption as follows:

To the storage, use or consumption of tangible personal property of the United States government, or of the State or its institutions or political subdivisions in their governmental capacities only; or **by charitable organizations as defined in Section 14-4-2** above in the conduct of their regular religious or charitable functions.

§14-4-77(5), P.M.C. (emphasis added). Rec. Vol. 2, p. 589.

The Ordinances specifically provide that regular religious functions and activities do not qualify for an exemption unless the organizations come within the definition of charitable organizations in Section 14-4-21, P.M.C.

A charitable organization is defined in Section 14-4-21, P.M.C., as follows:

Charitable organization means any entity which:

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

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 burden of government.

§14-4-21(5), P.M.C. Rec. Vol. 2, p. 591.

As such, a *charitable organization* may be either a religious organization or a charitable organization. In either event, their activities must come within the definition of *charitable organization* i.e. exclusively, freely and voluntarily ministers to the physical, mental or spiritual needs of persons which lessens the burden of government.

Catholic Health has argued that the government benefit requirement in the definition of *charitable organization*, i.e. lessens the burdens of government, cannot be constitutionally applied to religious organizations and cite General Conference of Church of God - 7th Day v. Carper, 557 P.2d 832 (Colo. 1976), in support of its position. Rec. Vol. 2, p. 563. While the City's exemption is very different from that considered in Carper, the City has not required compliance with this requirement with respect to Villa Pueblo's Spiritual Ministry. This, however,

does not mean that Villa Pueblo is not otherwise required to come within the definition of *charitable organization* in the performance of its regular religious functions and activities. Such a position would be contrary to the specific requirements of §§14-4-76(8) and 14-4-77(5), P.M.C., and not supported by Carper in which the court emphasized that its ruling should not be construed to “[relieve] a religious organization from the obligation to otherwise satisfy the criteria for a valid religious exemption.” Carper, 557 P.2d at 834.

In this context, the phrase “in the conduct of their regular religious . . . functions and activities” is limited under the Ordinance to that conduct in which the organization exclusively, freely and voluntarily ministers to the spiritual needs of persons. “Spiritual” being the only category of service having any religious reference which would warrant exclusion from the government benefit test, i.e. lessens the burden of government. Webster’s defines “spiritual” as “of or relating to religious or sacred matters” *Webster’s Third New International Dictionary* 2198 (2002)

Nor is freely and voluntarily ministering to the spiritual needs of persons a vague concept which is not easily identifiable or commonly understood. When we go to church or other religious services, we do so to receive and/or partake in

such spiritual ministry. The concept of charging admission to enter church or otherwise receive spiritual ministry would be odd to any attendee or recipient if not abhorrent to the religious organization. This is in part what makes such activity unique and appropriate for inclusion within the exemption.

It is further important to emphasize that Catholic Health recognizes and separately identifies its activities which are part of its Spiritual Ministry. Statement of Facts at pp. 6-8. This is not to say that a religious organization may not also qualify for an exemption with respect to its charitable activities and the Ordinance specifically provides for such an exemption. In fact, Catholic Health did apply for an exemption upon its claimed charitable activities which was denied by the Executive Director of the Department of Revenue, State of Colorado, who found that “[A] quid pro quo permeates the entire operation of Villa Pueblo. New residents are targeted based on financial resources; fees are based on amenities and services provided; fees are subject to change; accommodations are touted; and, the obligation for financial assistance is highly accentuated.” Rec. Vol. 1, p. 5.

2. Applying a strict rule of construction, Villa Pueblo has failed to clearly establish its right to an exemption.

Under a rule of strict construction, Catholic Health has the burden of clearly

establishing the right to the exemption and the exemption will be strictly construed in favor of the taxing entity. General Motors Corp., 990 P.2d at 74 (Colo. 1999); and Security Life and Accident Co., 495 P.2d at 226. The only activities of Villa Pueblo which qualify for an exemption as regular religious activity and function is its Spiritual Ministry. Catholic Health itself distinguishes and identifies those activities constituting its Spiritual Ministry as: (a) a chaplain who performs spiritual assessment of a resident upon entry and is available for Christian counseling needs; (b) a chapel wherein catholic and episcopal services are provided; and (c) the performance of the sacraments of Anointing of the Sick and last rights. Statement of Facts at pp. 6-7. There is no evidence in the record upon which to find that Catholic Health was assessed sales and use tax with respect to any tangible personal property stored, used or consumed with respect to its Spiritual Ministry.

With respect to the commercial activities, Villa Pueblo charges its residents for Physical Care Services including Elderly Support Apartments, Assisted Living and Skilled Nursing. The Physical Care Services include: inside and outside maintenance, 24-hour security, bi-weekly housekeeping, weekly flat laundry service, dining room, meal delivery, transportation, an activities director who

plans social/recreational programs (sing-alongs, crafts, concerts, shopping trips, speakers, and outings), bathing, dressing, shopping, domestic services and medication monitoring. Statement of Facts at pp. 9-10.

In applying a rule of strict construction, the Physical Care Services do not qualify for an exemption as regular religious activities and functions because they do not clearly come within the exemption, i.e. they are not services ministering to the spiritual needs of persons nor are they free.

CONCLUSION

If the strict rule of construction were applied to the interpretation and application of the City's sales and use tax exemption for religious organizations, the Court of Appeals would have denied and this Court should deny the relief originally requested, i.e. to reverse the final determination of the Executive Director and order that Catholic Health is exempt from sales and use tax in its operations of Villa Pueblo.

Signed this 17th day of September, 2008.



Robert P. Jagger Atty. Reg. No. 24612
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CERTIFICATE OF COMPLIANCE

Pursuant to C.A.R. 32(a), I certify that this Opening-Answer Brief Of Respondents/Cross Petitioners City of Pueblo, Colorado, et. al., contains 9,416 words.

I relied upon the word count of the word-processing system (Word Perfect 10) used to prepare this cross-petition.

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after reasonable inquiry.


Robert P. Jagger

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opening-Answer Brief Of Respondents/Cross Petitioners City of Pueblo, Colorado, et. al., was served upon counsel for the Petitioner and Amici Parties, by mailing same, United States mail, postage prepaid this 29th day of September, 2008, addressed to:

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