

**FORM 318 APPLICATION FOR PERMIT TO CONSTRUCT LPFM STATION**  
**ADDENDUM TO OWNERSHIP EXHIBITS: IMPLICATIONS OF A CORPORATE Sole**

Inasmuch as many today are much less familiar with the corporate sole than with its more common counterpart, the corporate aggregate, we herein provide a brief discussion of the features of the more ancient form. In an abundance of caution, and only to the extent necessary or appropriate, we *request waiver relief to ensure that Catholic Church institutions adhering to this traditional structure are in no way placed at a competitive disadvantage relative to other applicants.*

Chief Justice John Marshall famously described all corporations as “artificial being[s], invisible, intangible, and existing only in contemplation of law.”<sup>1</sup> Any incorporated entity can be categorized either as a “corporate aggregate” or “corporate sole”.<sup>2</sup> In both cases, the corporate form is recognized by a majority of states in the union.<sup>3</sup>

In the case of a corporate sole, the office of a pastor or bishop or monarch -- and not the individual holding the office -- is the incorporated entity.<sup>4</sup> Although admittedly

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<sup>1</sup> *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819). Marshall noted that all incorporated entities exhibit “immortality” and “individuality properties by which a perpetual succession of many persons are considered, as the same, and may act as the single individual.” *Id.*

<sup>2</sup> *Webster’s Revised Unabridged Dictionary* (1913 and 1828 editions). A corporate sole is the predecessor institution in the evolution of the more widely understood and modern legal fiction, the corporate aggregate. For an excellent general overview, consult Gerstenblith, Patty, “Associational Structures of Religious Organizations”; BRIGHAM YOUNG LAW REVIEW, Vol. 2, 439, 454-456 (1995).

<sup>3</sup> Gerstenblith, “Associational Structures of Religious Organizations”; BRIGHAM YOUNG LAW REVIEW, at 456-462. The author notes that even in states historically hostile to incorporation by religious organizations, serious Free Exercise concerns are invoked by such hostility. *Id.* at 465. Such concerns become even more significant in view of the continued applicability of the Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993, codified at 42 USC §§2000bb-2000bb4 (RFRA)).

<sup>4</sup> See Blackstone, Sir William, *Commentaries on the Laws of England*, Chapter 18 (1765-1769). “Corporations sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the king is a sole corporation: so is a bishop: . . . and so is every parson and vicar. And the necessity, or at least use, of this institution will be very apparent, if we consider the parson of a church. At the original endowment of parish churches, the freehold of the church, the churchyard, the parsonage house, the glebe, and the tithes of the parish, were vested in the then parson by the bounty of the donor, as a temporal recompense to him for his spiritual care of the inhabitants, and with intent that the same emoluments should ever afterwards continue as a recompense for the same care. But how was this to be effected? The freehold was vested in the parson; and, if we supposed it vested in his natural capacity, on his death it might descend to his heir, and would be liable to his debts and encumbrances: or, at best, the heir might be compellable, at some trouble and expense, to convey these rights to the succeeding incumbent. The law therefore has wisely ordained, that the parson *quatenus* parson, shall never die, any more than the king; by making him and his successors a corporation. By which means all the original rights of the parsonage are preserved entire to the successor: for the present incumbent, and his predecessor who lived seven centuries ago, are in law one and the same person; and what was given to the one was given to the other also.” *Id.*

less well known than the corporate aggregate, the corporate sole has clearly survived in America and is recognized, either expressly or impliedly, in statutory law or at common law, in a majority of states.<sup>5</sup>

We emphasize that in a significant number of states and across very large portions of the country, the ***Catholic Church remains organized as a traditional corporate sole.***

We respectfully submit that any suggestion that a clergy-governed institution of the Catholic Church may not be recognized as a nonprofit or educational institution, or may not be established in its community, or may be subject to ownership or control limitations based on the media activities of another clergy-governed Catholic Church institution in another diocese altogether, would be ludicrous. In many states, of course, the Church's established community presence, as well as ***the nonprofit educational nature and activities of the Church, pre-date the existence of the state itself.***

Historically, and for reasons deeply rooted in theological dispute, the Catholic Church institutions place more authority in the office of a pastor or Bishop than do their brethren protestant institutions.<sup>6</sup> Thus, the organizational form of a corporate sole is a legacy of the longstanding theological differences between faith traditions. Accordingly, compelling any applicant to change its organizational structure in order to assure -- for local church institutions of that faith tradition -- treatment before the FCC that is equal to that afforded to local church institutions of non-hierarchical faith traditions (and non-church institutions) would lead to a presumably unintended discrimination in no way necessary to achieve the agency's legitimate interests in ensuring that limited spectrum resources are apportioned with a preference for established local, nonprofit educational organizations, or with a preference for local diversity of ownership.

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<sup>5</sup> See Ohara, James, "The Modern Corporation Sole", 93 *Dickinson Law Review* (Fall 1988). As described by William W. Story, son of famed American jurist Joseph Story, in his *Treatise on the Law of Contracts* (1844): "Corporations are divided into aggregate and sole. A sole corporation is composed of one person, who is created a corporation in order to confer certain privileges, such as succession, which in his private capacity he would not possess." Story, *Law of Contracts* at §390 (1844). See also the famed New York jurist James Kent, whose *Commentaries on American Law* are now in their 14<sup>th</sup> edition and, in their 12<sup>th</sup> edition, were edited by none other than Oliver Wendell Holmes, Jr. Kent distinguished between the aggregate and sole forms of incorporation but described all incorporated entities as holding "rights and privileges [that] do not determine, or vary upon the death or change of any of the individual members. They continue as long as the corporation endures." Kent, *Commentaries*, at Lecture #33.

<sup>6</sup> Gerstenblith, "Associational Structures of Religious Organizations"; BRIGHAM YOUNG LAW REVIEW, at 455. "The corporation sole is a particularly useful organizational form for hierarchical religions because the organization's legal structure is able to mirror its internal theological structure. For example, ***in a hierarchical church, the bishop often has control over the church property according to the internal church polity and structure.*** By incorporating as a corporation sole, the bishop will also have legal authority to deal with church property." *Id.* at 455 (emphasis added), citing Paul G. Kauper & Stephen C. Ellis, "Religious Corporations and the Law", 71 MICH. L. REV. 1499, 1540 (1973).

Presumably, it was never the intention of the Commission to discriminate among faith traditions. However, any application of the agency's Rules in a way that penalizes a hierarchical clergy-governed institution seeking a LPFM authorization -- merely because that institution failed to dilute the authority of a teaching office (such as a pastor or Bishop holds) by re-organizing as a corporate aggregate as a predicate to its application -- would produce a disparate discriminatory impact on the Catholic Church, with corresponding implications pursuant to the First Amendment and RFRA, *supra* Note 6.

We know of no reason why incorporation as a corporate sole should not be recognized by the agency in the same fashion as it recognizes incorporation as a corporate aggregate. A corporate sole surely offers all of the marks material to the Commission's recognition of incorporation as a means to demonstrate either eligibility as a nonprofit educational institution, establishment in a community, or sufficiency of independence and autonomy so as to preserve diversity of ownership. Thus, each Catholic Church institution organized as a corporate sole is at least as nonprofit and educational, at least as established in its community, and at least as operationally independent from other clergy-governed Catholic Church institutions, as are the churches of other faith traditions, or organizations of no faith tradition at all, organized as aggregate corporations.

In view of the foregoing, we fully anticipate agency recognition of the corporate sole form as being equally advantageous under the Commission's Rules as is incorporation as a corporate aggregate. However, ***in an abundance of caution***, to the extent such equal recognition might not otherwise be forthcoming (and to the extent such recognition is necessary to avoid disparate discriminatory treatment of Catholic Church), ***we hereby request waiver relief such that all benefits of the corporate aggregate pursuant to the FCC Rules shall also extend to the corporate sole.***