

**VIRGINIA:
IN THE CIRCUIT COURT FOR THE COUNTY OF MONTGOMERY**

**CHRISTIAN SCHOLARS NETWORK, INC.,)
d/b/a BRADLEY STUDY CENTER,)
Petitioner)
v.) Case No. CL20001179-00
MONTGOMERY COUNTY, VIRGINIA, *et al.*,)
Respondents.)**

POST-TRIAL BRIEF OF PETITIONER CHRISTIAN SCHOLAR’S NETWORK, INC.

Petitioner Christian Scholar’s Network, by counsel, hereby submits its Post-Trial Brief in support of its Amended Complaint seeking relief from the payment of real property taxes.

Introduction

Christian Scholars Network, Inc. (“CSN”) seeks exemption from the payment of real property taxes imposed by Montgomery County and the Town of Blacksburg (collectively, “Government” or “Respondents”) on its real property located at 104 Faculty Street, Blacksburg, Virginia 24060, parcel ID 150276, Tax Map 256-12104 (“Property” or “Bradley Study Center”).

During trial, this Court mentioned that “scripture...says, Render unto Caesar what is Caesar's,”¹ and “perhaps, if [CSN] followed that scripture, we wouldn't be here.” (Day 2 Tr. at 108.) Upon first glance, perhaps this case could appear as about merely a ministry organization refusing to pay taxes; and the Court’s comment is not taken as any indication that the Court would not uphold CSN’s lawful right to do so. But CSN has in fact followed that scripture by

¹ Jesus said this in response to the question “Is it lawful to pay taxes to Caesar, or not?”, which was asked out of “malice” in an attempt “to entangle [Jesus] in his words.” MATTHEW 22:15-21 (English Standard Version (“ESV”)). Thus, Jesus was not *sua sponte* commanding people to voluntarily give all their money and support to civilian government officials, but was explaining that it is not a sin to give what is lawfully required through taxes, even though the governmental authorities might use that money for sinful acts which go against God’s law and the moral conscience of the taxpayer.

paying the taxes demanded of it while this litigation has been pending (CSN is not being prosecuted for failing to pay its taxes), and thankfully we do not have a Caesar—rather, it is the people themselves who ultimately govern the Commonwealth and this Country. The preamble to the U.S. Constitution states, “We the People of the United States...do ordain and establish this Constitution for the United States of America.” And the Virginia Constitution similarly begins by expressing in Article I that it is “made by the good people of Virginia in the exercise of their sovereign powers.” Section 2 of Article I then goes on to state, “That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.”

The good people of Virginia, who have all power vested in them, thus exercised their sovereign powers in determining and setting forth in Article X, Section 6 of the Virginia Constitution and in Title 58.1, Chapter 36 of the Code of Virginia that certain religious and charitable organizations would be exempt from property taxes. While the government uses tax revenue to provide items and services for the common good—such as roads, infrastructure, public safety, etc. (which the Government Respondents have repeatedly pointed out (see, e.g., Day 1 Tr. at 39, 73-74, 236-38; Day 2 Tr. at 27, 63))—the people have determined that certain religious and charitable organizations likewise provide services which are of value and importance to the community. Therefore, the people have established that such organizations should not be taxed so that those organizations can then use their money (often received solely from donations of the people, who have paid taxes) to remain in operation and to continue benefiting the common good—as taxes are intended to do, but usually in a way that the government cannot.

CSN has shown that it provides many unique and significantly needed benefits to the community.² Most notably, this was explained on an individual level by Kase Poling’s emotional testimony in response to the Court asking “why did you do [CSN’s Fellows Program]? What’s in it for you?” to which Poling tearfully answered that the Bible says to,

always be ready to give a defense of your faith” but “I didn’t have a good defense of that faith, and so I sought out my pastor at home to answer some very hard questions that I had, doubts that I had. And...I was very blessed to find the study center to help me answer some of those questions.”

(Day 2 Tr. at 69-70.) When asked by the Court, “Did Virginia Tech offer what the Bradley Study Center offered in any class that you knew of?” Poling answered, “certainly the Bradley Center offers something that the university does not, and I would say probably cannot offer.” (Day 2 Tr. at 71-72.) Poling testified that CSN’s ministries at its Property “served as like my...campus ministry church while I was [at Virginia Tech],” and so Poling did not attend worship anywhere else in Blacksburg because he stated that “I essentially...did do the same thing at the Bradley Center that I do like in my Wednesday night church service” at his home church in West Virginia. (Day 2 Tr. at 34, 52, 59, 61.)

On a broader level, Pastor Eugene “EJ” Smith of Calvary Chapel Blacksburg testified that his church freely used CSN’s Property for years and “the study center was our sanctuary. It was our church. ...Sunday morning we’d gather for our service. We would pray. We’d worship. We’d praise. We’d go through a sermon. We’d close with worship and fellowship. We saw people get saved there. We saw people be set free there. ... When we needed something or a place to

² Petitioner has not included in this Brief a recitation of the facts, but instead relies on the transcripts of the trial (which Petitioner is filing with the Court) and the exhibits introduced during trial.

meet, that's where we met.” (Day 2 Tr. at 14-15, 20.) Pastor Smith’s church also used CSN’s Property for prayer meetings, children’s ministry, and for things like marriage counseling. (Day 2 Tr. at 18.) The church made some small donations to CSN because it “felt the work that the Bradley Study Center was doing was valuable, and we wanted to be a part of the work that they were doing for our community.” (Day 2 Tr. at 21.) Similar benefits and appreciation of CSN and the free use of its Property were testified to by Daniel Patino, who is an employee of Dwelling Place Christian Fellowship church as a campus minister to Virginia Tech students and part of the collective of campus ministries called “VT1” (Day 1 Tr. at 286, 293-97), and by James Montgomery, who is a staff missionary with Campus Crusade for Christ International’s Valor ministry (Day 1 Tr. at 303, 305-08).

By providing these benefits and services to the community, CSN and its Property qualify under several of the property tax exemptions which the people set forth in the Virginia Constitution and statutes, but the Government Respondents have wrongfully taxed CSN nevertheless for years. Thus, CSN has been compelled to render to Ceasar’s servants money which is not Ceasar’s; and, in this respect, the Government Defendants have failed to follow the laws established by the people and have failed in their role as the people’s “trustees and servants, and at all times amenable to them.” See Va. Const. art. I, § 2. CSN thus pursued the lawful avenues established by the people in filing this lawsuit asking this Court to provide correction.

Procedural Posture

At the conclusion of evidence, this Court stated,

The evidence I've heard is that a lot more than what was put into the application. And I would like you all to address how that may affect the decision in the case. And I -- what I'm saying to you -- and I'm going to be upfront about this -- I think the evidence that I've heard makes the issue much more complicated than what was perhaps put before the county and the town initially before we got here.

(Day 2 Tr. at 137.)

First, the Government, especially the Commissioner of the Revenue, had more than sufficient evidence and information to know that CSN qualified for property tax exemption at the time of CSN's application. (See Petitioner's Trial Exhibits (*hereinafter*, "Pet'r Exh.") 18 and 24.) Because this lawsuit has extended over four years though, CSN has naturally engaged in more activities during that time—but the Government had full knowledge of all that during this lawsuit through the Complaint and its exhibits (See gen'ly Amended Compl. and Exhibits thereto), an extensive deposition of Mike Weaver in January 2021 (Day 1 Tr. at 19, 85, 88, 103), as well as other ongoing discovery, and the Government could have determined and agreed that CSN became qualified for property tax exemption at any time.

Regardless, all evidence presented at trial must be considered by the Court without any limitation or consideration as to what was previously presented to the Government. Before the start of trial, all parties agreed that this is a trial *de novo*, which means that CSN is not limited solely to the evidence presented to the Government in CSN's initial requests for its property tax exemption (Day 1 Tr. at 49-51)—and properly so, according to the statutes. Pursuant to Code § 58.1-3980(A), on November 19, 2019 CSN applied by letter for a correction to the Montgomery County Commissioner of the Revenue due to CSN's Property erroneously not receiving tax exemption. (Pet'r Exh. 24.) But, in a letter dated January 30, 2020, the Commissioner refused to correct the error by granting a tax exemption as allowed by Code § 58.1-3981(A). (Pet'r Exh. 25.) In accordance with Code § 58.1-3984, CSN then filed this lawsuit on June 10, 2020 to "apply for relief to the circuit court."

But this lawsuit is an independent action and is not an appeal simply reviewing the Commissioner's decision. As Code § 58.1-3984 states, this proceeding is to be "conducted as an

action at law before the court” (i.e., not as an appeal or a judicial review of a prior decision), and Code § 58.1-3983 explains that seeking a correction from the commissioner “shall be *in addition to* the right of any taxpayer to apply within the time prescribed by law to the proper court” (emphasis added) and therefore, “[a]pplication may be made to the proper court *whether or not such applicant has theretofore made application to the commissioner of the revenue* for the correction of any such assessment” (emphasis added).

Thus, CSN never had to make application to the Board of Supervisors or to the Commissioner before bringing this lawsuit, which is not dependent on first exhausting other potential remedies; and the fact that CSN did make application to the Board and Commissioner has no bearing on the substance of this lawsuit because the application to this Court is a separate and independent right and means by which CSN can seek a correction. Therefore, this lawsuit is wholly independent and separate from the Board’s and Commissioner’s reviews and analyses, and as such it is not limited to the information and evidence which was previously considered by them.

The fact that this is a separate *de novo* hearing is further confirmed by contrast to other legal proceedings where a circuit court sits in a reviewing or appellate capacity and is expressly limited by statute to evidence previously presented to a prior decision-maker. For example, under the Administrative Process Act, Code § 2.2-4025(B) explicitly states that for certain case decisions made by administrative agencies and on “appeal” to a circuit court,³ “the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the

³ Rules of the Supreme Court of Virginia 2A:2(b) (“notice of appeal...must specify the circuit court to which the appeal is taken”) and 2A:4(a) (“appellant must file a petition for appeal with the clerk of the circuit court”).

trier of fact.” Likewise in another context for unemployment compensation, Code § 60.2-625(A) states that after a decision of the Virginia Employment Commission, “any party aggrieved who seeks judicial review shall commence an action in the circuit court,” and “[i]n any judicial proceedings under this chapter, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner....” Similarly, Code § 65.2-706(A) states that a decision of the Virginia Workers' Compensation Commission “shall be conclusive and binding as to all questions of fact.” The case here before the Court is also in contrast to parties applying to a circuit court for “judicial review of the determination” made by the Tax Commissioner of the Virginia Department of Taxation as to a mobile property, business, or license tax under Code §§ 58.1-3703.1(A)(7)(a) and 58.1-3983.1(G).

As the Virginia Supreme Court has ruled,

when the General Assembly has used specific language in one instance but omits that language or uses different language when addressing a similar subject elsewhere in the Code, the Court must presume that the difference in the choice of language was intentional. Courts must rely on this presumption because under these circumstances, it is evident that the General Assembly knows how to include such language in a statute to achieve an intended objective, and therefore, omission of such language in another statute represents an unambiguous manifestation of a contrary intention.

Morgan v. Commonwealth, 301 Va. 476, 482 (2022) (cleaned up with internal quotation marks, alternation marks, and citations omitted).

Therefore, because the General Assembly has enacted statutes which expressly limit a circuit court’s review to the facts presented to or found by a prior executive-branch or other type of decision-maker in certain cases, the omission of such a provision in the statutes governing this proceeding here, especially in light of clear language to the contrary in Code § 58.1-3983, must

be deemed intentional and given meaningful effect because the General Assembly knows how to include such limiting language in a statute when it desires to, and yet choose not to include such limiting language for the type of proceeding here. Therefore, CSN and this Court are in no way limited to the facts previously considered by the Board and the Commissioner.

Nor is any deference to be given to the Board's or Commissioner's determinations based on the same principles of statutory interpretation. Under the Administrative Process Act, Code § 2.2-4027 states that "the court shall take due account of...the experience and specialized competence of the agency." Yet there is no similar statutory provision directing a court to take due account of the decisions or competence of a board or commissioner in this type of proceeding, and the omission of such a provision must be deemed intentional and given effect.

The absence of such statutory provisions prevents boards and commissioners from prejudicing a taxpayer by willfully ignoring or not fully examining the basis for an exemption, even if that means they should take initiative to ask the taxpayer for more information to make a determination, since there is no requirement for an evidentiary proceeding before the board or commissioner. Indeed, willfully ignoring and not fully examining the basis for an exemption appears to be what the County Board of Supervisors did here to the surprise of CSN's Executive Director Michael Weaver who testified, "I have to say I was expecting -- because the County website implied that there would be an opportunity for a hearing in front of the Board of Supervisors, I sort of expected that and was rather surprised when that didn't happen" on CSN's application; nor did Weaver receive any notice that the Board of Supervisors would be meeting to consider CSN's application. (Day 1 Tr. at 269-70.)

Lastly, if this proceeding is not *de novo*, as was agreed to by the parties (Day 1 Tr. at 49-51), then CSN could be unfairly prejudiced because CSN would have presented additional

evidence at trial, including the testimony of Commissioner Helen Royal regarding what she knew and had reviewed about CSN in the process of making her determination to deny CSN's property tax exemption. CSN did not present certain evidence based upon the agreement and understanding at the beginning of trial that it would be *de novo*, and so that agreement should not be changed now after the close of evidence.

Argument

I. CSN qualifies for exemption under Code §§ 58.1-3609 and 58.1-3617 because CSN is a religious association which exclusively operates and uses its Property for religious, charitable, and educational purposes.

Of all the property tax exemptions under which CSN qualifies, Code §§ 58.1-3609 and 58.1-3617 are the clearest.

Code § 58.1-3609(A) provides,

The real and personal property of an organization classified in §§ 58.1-3610 through 58.1-3621 and used by such organization for a religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purpose as set forth in Article X, § 6 (a) (6) of the Constitution of Virginia⁴, the particular purpose for which such organization is classified being specifically set forth within each section, shall be exempt from taxation, so long as such organization is operated not for profit and the property so exempt is used in accordance with the purpose for which the organization is classified.

Connected with that property tax exemption, Code § 58.1-3617 (being one of the sections "in §§ 58.1-3610 through 58.1-3621" referenced in the statute above) states,

⁴ Article X, § 6(a)(6) of the Constitution of Virginia provides:

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

[...]

(6) Property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes, as may be provided by classification or designation by an ordinance adopted by the local governing body and subject to such restrictions and conditions as provided by general law.

Any church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious and charitable organization. Notwithstanding §58.1-3609, only property of such association or denomination used exclusively for charitable, religious or educational purposes shall be so exempt from taxation.

A. CSN is a religious association.

The Virginia Code does not explicitly define the term “religious association,” and no Virginia case law exists wherein the term “religious association” has been defined, particularly in the context of tax exemption. Thus, the court must adopt the term’s ordinary meaning. *See Horton v. Commonwealth*, 255 Va. 606, 612 (1998). There is nothing complicated, formal, or cryptic about what the term “religious association” might mean. Webster’s Dictionary defines “association” simply as “3: an organization of persons having a common interest.” “Association,” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED, 2020. The term “association” is also used twice in Code § 58.1-3606(A)(4), listing a tax exemption for certain property held by “local bar associations” and “local medical associations”—this use of the same term further confirms that “association” simply means “an organization of persons having a common interest.” Thus, the ordinary meaning of the term “religious association” is an organization of persons having a common interest in exemplifying the influence of religion. This is the definition the Court must adopt when interpreting Code § 58.1-3617.

The Rockbridge County Circuit Court embraced this ordinary meaning for the definition of “religious association” in *Young Life, Inc. v. Rockbridge County*. In that case, the court held that Young Life, a nonprofit and non-denominational⁵ organization that ran a youth summer camp in which its campers participated in typical camp activities while learning about and

⁵ <https://younglife.org/about/young-life-and-schools/> (“Young Life is non-denominational. Our staff and volunteers are both Protestant and Catholic; all subscribe to Young Life’s Statement of Faith.”)

growing their Christian faith, qualified as a “religious association” under § 58.1-3617. *Young Life, Inc. v. Rockbridge County*, Rockbridge County Circuit Court, Case No. CH3000048-00 (April 5, 2006), attached hereto as Exhibit 1. An opinion by the Virginia Attorney General had likewise determined that “Young Life is a ‘religious association,’ as that term is used in §§ 58.1-3617 and 58.1-3606(A)(5), and that, therefore, its property may be exempt from local real and personal property taxation.” 2002 Op. Va. Att’y Gen. No. 02-126, at 1, attached hereto as Exhibit 2. The AG Opinion also noted the absence of a definition of “religious association” in the Virginia Code and provided the following guidance:

The Supreme Court has observed that an organization with religious emphasis that provides housing for the elderly could be a “religious association” entitled to tax-exempt classification. A prior opinion of this Office concludes that the Northern Virginia Jewish Community Center is a “religious association” similar to the Young Men’s Christian Association. Young Life, like the Northern Virginia Jewish Community Center, operates on a nondiscriminatory basis. In addition, Young Life’s goal is similar to that of the Young Men’s Christian Association.

Id. at 3.

CSN is a “religious association” similar to Young Life, the Northern Virginia Jewish Community Center, and the YMCA because CSN is operated exclusively on a nonprofit basis for charitable, religious or educational purposes. (Day 1 Tr. at 215, 273; Pet’r Exh. 19.) CSN’s employees must ascribe to certain beliefs and conduct, including by annually signing “a statement of agreement to the Apostles’ Creed, the Nicene Creed and the Lausanne Covenant.” (Day 1 Tr. at 195-96; Pet’r Exh. 17.) CSN Director Weaver holds a master’s degrees from Wesley Theological Seminary and Duke Divinity School, obtained a Doctor of Theology from the University of Winchester in 2023, and is ordained as a deacon and licensed as a minister. (Day 1 Tr. at 81, 92-94.)

CSN hosts events and programs for both Christians and non-Christians with a goal of forming Christians as disciples of Jesus and building connections with the larger Virginia Tech community by showing that Christians are a positive presence on campus. (Day 1 Tr. at 101-02.) CSN charges no fees to students, faculty, or community members who attend their events and programs or to Christian ministries which use its Property. (Day 1 Tr. at 90, 143, 165, 226, 261, 297.) CSN hosts discussion groups and provides educational programming aimed to help students learn about the Bible and writings by other religious scholars to teach students how to integrate their Christian faith into their academic studies. (Day 1 Tr. at 102-07, 112-13, 143, 154; Pet'r Exh. 18.) CSN also hosts formal worship services, which include prayer, singing, and instruction, among other things. (Day 1 Tr. at 97-99, 110-13, 156; Pet'r Exh. 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 27, 28.) Thus, CSN is a "religious association."

Further, CSN is in association with other Christian study centers through its membership in the Consortium of Christian Study Centers, which is itself a 501(c)(3) nonprofit organization. (Day 1 Tr. at 57, 60, 199.) Members are "engaged in a common mission," sign a statement of faith which includes the Apostles' Creed, pay annual dues, and gather for annual meetings. (Day 1 Tr. at 58, 60-61 199-202.) CSN Director Weaver explained that the "Consortium is very important in helping to foster the religious activities that all of our Study Centers are engaged in" (Day 1 Tr. at 200), and Consortium Director Karl Johnson stated the Consortium "exist[s] to empower existing centers and to catalyze new centers with respect to what we call thoughtful Christian presence and practice at colleges and universities" (Day 1 Tr. at 55).

The Government's pretrial memorandum claims on pages 13 and 17-18 that a "religious association" is basically synonymous with "church" or refers to a diocese, presbytery, or a voluntary association of churches of the same denomination, each of which would constitute a

“religious denomination.” But the Government cites no authority that the term “religious association” does not and cannot have a broader meaning. The Government puts forth a logical fallacy to imply that because a church, diocese, or presbytery might be a type of “religious association,” then nothing else may constitute a religious association.

Contrary to the Government’s interpretation that the term “religious association” means absolutely nothing other than the two types of groups listed alongside of it in Code § 58.1-3617 (“church, religious association or religious denomination”), the disjunctive (“or”) suggests that each term in that phrase actually means something different. Further, the Virginia Supreme Court has held that “surplusage” is ““contrary to the settled rule in this Commonwealth that every provision in or part of a statute shall be given effect if possible””. Further, “[w]ords in a statute should be interpreted, if possible, to avoid rendering words superfluous””. [...] This is so because, as we have long recognized, we must assume that in enacting legislation, ““the [General Assembly] did not intend to do a vain and useless thing.”” *Va. Elec. & Power Co. v. State Corp. Comm’n*, 300 Va. 153, 163-64, 861 S.E. 2d 47, 52-53, 2021 Va. LEXIS 85, *11, 2021 WL 2964026 (2021).

The term “religious association” is also used in Code § 58.1-3606(A)(5): “Property belonging to and actually and exclusively occupied and used by the Young Men's Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries [...]” The Virginia Supreme Court has set forth a “rule that courts interpret a statute as a consistent and harmonious whole,” and so “when a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning.” *Eberhardt v. Fairfax Cnty. Employees' Ret. Sys. Bd. of Trs.*, 283 Va. 190, 195,

721 S.E. 2d 524, 526, 2012 Va. LEXIS 8, *7, 2012 WL 112505 (2012) (interpreting the meaning of a word in one statute by reference to a different but related statute—not just a different section of the same statute). Both Code §§ 58.1-3617 and 58.1-3606(A)(5) fall under Chapter 36 of Title 58.1 for tax exempt property. The use of the same term should therefore carry the same meaning in each statute. By the use of “religious associations” in § 58.1-3606(A)(5) to be similar to the YMCA and include religious mission associations and other groups which are clearly not churches or religious denominations, the same term used in § 58.1-3617 must then be much broader than what the Government argues and must have a different meaning than simply a church or religious denomination, which would also include a diocese, presbytery, and voluntary association of churches of the same denomination.

The Government then cites to a Lynchburg Circuit Court case from 1983 on page 19 of its pretrial memorandum in an effort to support its argument that CSN is not a religious association. The Government claims that “[t]he court held that Old Time [Gospel Hour] did not qualify for tax exemptions under the same statutes CSN relies on.”. Contrary to the Government’s claim, the Lynchburg Circuit Court found that the two “parcels actually used by Old [T]ime in whole or in part in its ministry” were exempt from property taxes. *Old Time Gospel Hour, Inv. v. Lynchburg*, 8 Va. Cir. 73, 90 (Lynch. Cir. Ct. 1983). As to twenty-one other parcels of land which Old Time did not use, the court ruled that Old Time did not qualify for property tax exemption on those parcels. *Id.* While the court held that Old Time (a very different type of organization than CSN) was not “a church or similar organization, a college or institution of learning, or an exclusively charitable association similar to a Y.M.C.A.,” the court did not find that Old Time was not a “religious association” under former Code §§ 58.1-3617 or 58.1-3606(A)(5)—as to the latter, the court held that Old Time did not qualify under former

§ 58.1-3606(A)(5) because it was not “exclusively charitable.” *Id.* at 89. Rather, the court stated, “[c]ertainly Old Time could be classified as a religious body or organization,” even though Old Time is not a church. *Id.* at 87.

In *Old Time Gospel Hour*, the chief financial officer and treasurer of Thomas Road Baptist Church testified that “the basic purpose of the Old-Time Gospel Hour is to televise the Sunday services at Thomas Road Baptist Church” along with “the direct mail in fund-raising operations and in so doing they fund functions of the church [...]” *Id.* at 81. The court thus found that Old Time was “formed primarily to promote the spread of Christian beliefs and ideas through its television, broadcast and print facilities and to generate funds to support itself, Thomas Road Baptist Church, and ministries of the Church.” *Id.* Therefore, if Old Time qualifies for property tax exemption as a religious body and association, then CSN certainly qualifies even more so.

B. CSN is operated exclusively on a nonprofit basis for charitable, religious or educational purposes, and CSN’s Property is used exclusively for charitable, religious or educational purposes.

CSN is a 501(c)(3) nonprofit organization. (Day 1 Tr. at 215, 273; Pet’r Exh. 19.) As CSN Director Weaver explained, “the purpose [of CSN and its Property, the Bradley Study Center], if I put it down in a sentence, is to help students, faculty and community members, but particularly students and faculty to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind.” (Day 1 Tr. at 101.) CSN seeks “to develop spiritual and intellectual formation in students, particularly, but also faculty, at a deeper level and help them to integrate their faith into everything they do as students, as faculty members and what they’re going to do[...].” (Day 1 Tr. at 101-02.) Thus, everything CSN does as an organization and with its Property serves a religious purpose (which also includes charitable and educational

purposes—but the disjunctive “or” indicates that only one of those three purposes is needed and that any combination of the three will also qualify).

In understanding the meaning of “exclusively,” the Virginia Supreme Court has held that “the word ‘exclusively,’ as used in such exemption provisions, ‘has never been considered an absolute term.’” *City of Richmond v. United Givers Fund of Richmond, Henrico and Chesterfield, Inc.*, 205 Va. 432, 438, 137 S.E. 2d, 876, 880, 1964 Va. LEXIS 199, *13 (1964) (citation omitted). For example, “[t]o come within a provision for the exemption of property used exclusively for charitable purposes, an organization must have charity as its primary, if not sole, object.” *Id.* Therefore, “the controlling factor is the dominant purpose in the use of the property,” whereby “if the use of the property ‘has direct reference to the purposes for which the institution was created, and tends immediately and directly to promote those purposes, it is then within the exemption provision of the Constitution [...].” *Id.* Applying this principle in *United Givers Fund*, the Virginia Supreme Court held that “the devotion of a portion of the building for office space and clerical help does not destroy its tax exemption” because the office space and clerical help “contribute directly to the purposes for which [United Givers Fund] was organized and is carrying out.” *Id.*

Because everything CSN does and uses its Property for promotes the dominate purpose of religion, charity, and education, CSN satisfies the “exclusively” standard. This includes CSN activities and events which take place off-site from its Property. CSN Director Weaver explained that CSN’s Property has office space for CSN staff and is where staff meetings occur to plan and arrange for off-site events. (Day 1 Tr. at 226-27.) Thus, just like the office space and clerical activity at the property in *United Givers Fund* contributed directly to the dominant charitable purposes for which that organization was formed and was carrying out, *United Givers Fund*, 205

Va. at 438, the use of CSN’s Property for its staff to plan and arrange off-site events contributes directly to CSN’s dominant religious, charitable, and educational purposes. As such, even CSN’s off-site events—such as its Fellows Program retreat (Day 1 Tr. at 97-99; Pet’r Ex. 3), yearly Veritas Forums (Day 1 Tr. at 105-06, 134, 155), Christian theatrical performance based on C.S. Lewis’s writings (including a discussion with the performer afterwards at CSN’s Property) (Day 1 Tr. at 77-78), public lectures and dialogues on Christian topics (Day 1 Tr. at 102, 134-35) — must still be considered part of the use of CSN’s Property to bring about and accomplish those events.

The Government argues in its pretrial memorandum on page 14 that *United Givers Fund* was decided under a liberal construction before the 1971 changes to the Virginia Constitution. But that does not mean the ruling and reasoning of *United Givers Fund* does not still apply under a strict construction of the statute. Indeed, Article X, Section 6(f) of the Virginia Constitution now states that “[e]xemptions of property from taxation as established or authorized hereby shall be strictly construed,” and Code § 58.1-3609(B) similarly provides that “[e]xemptions of property from taxation under this article shall be strictly construed in accordance with Article X, §6 (f) of the Constitution of Virginia.” But decades after this strict construction requirement was added, the Virginia Supreme Court still applied the “dominant purpose” test in the same way as it did previously in *United Givers Fund*.

After the strict construction requirement was added, the Virginia Supreme Court held in *Smyth Community Hospital v. Town of Marion* that courts are to

apply the “dominant purpose test” in cases involving issues of property taxation exemption. That test, generally speaking, is whether the property in question promotes the purpose of the institution seeking the tax exemption. The test is applied in two different contexts; one in which the qualifying status of the *property owner* is challenged; the other in which the qualifying status of the *property* is challenged.

259 Va. 328, 334, 527 S.E.2d 401, 404 (2000) (emphasis in original). The Court went on to explain that

[i]n applying the dominant purpose test in this case we are mindful that it was originally developed and applied under the provisions of the prior constitution and implementing statutes to which a liberal interpretation was applied. However, the statutory provisions at issue in this case, as we have said, must be strictly construed and the dominant purpose test must be applied in the context of this rule of statutory construction.

Id. at 335 (internal citation omitted).

Even in the context of strict construction, the dominant purpose test still had the same application and full effect. In *Smyth Community Hospital*, the Virginia Supreme Court reversed a ruling by the trial court and found that the Hospital was “entitled to a tax exemption” for its intermediate care nursing facility (“the Manor”), which the government claimed was a separate entity operated for the purpose of producing revenue for the Hospital. *Id.* at 331-32. Even though the Court found that “some activity is occurring which is revenue producing, thereby making the use of the property not exclusively charitable,” under the dominant purpose analysis “the test is whether the Manor, even if it produces revenue, immediately and directly promotes the charitable purposes of the Hospital.” *Id.* at 336. Because the “Hospital produced evidence that it was conducted exclusively as a charity [...] and [...] the use of the property furthered the charitable purposes of the Hospital,” the Court found that even a strict construction of the term “exclusively” did not disqualify the Hospital from a property tax exemption, and remanded the case for determination of the taxed amounts to be refunded. *Id.* at 336-37.

The Virginia Supreme Court also explained that, simply, “strict construction of this statute means that entitlement to the exemption must appear clearly from the statutory provisions relied upon.” *Smyth* at 333 (internal quotation marks omitted) (citation omitted). As the Virginia Supreme Court found that entitlement to the property tax exemption for the Hospital’s Manor

appeared clearly from the statutory provisions, even more so does CSN's entitlement appear clearly from the statute because CSN is a religious association which is operated and uses its property exclusively for religious, charitable, or educational purposes.

Further, strict construction cannot result in absurdity as the Government's narrow interpretations of "exclusively" and other statutory terms would lead. The Virginia Supreme Court has held that when "interpreting a statute, courts ascertain and give effect to the intention of the legislature" and "apply the plain language of a statute unless [...] applying the plain language would lead to an absurd result." *Barnes v. Berry*, 300 Va. 188, 189 (2021) (internal quotation marks omitted) (citations omitted). It would be an absurd result and frustrate the intent of the legislature to say that a church, religious association, or charitable organization does not qualify for exemption from property taxes under the statutes due to its property not being "exclusively" used for religious, charitable, or educational purposes because the property has office space used for clerical or administrative work or bathrooms, especially when those spaces and uses aid and contribute to the dominant purpose of the organization.

Therefore, this Court should find that CSN is a religious association and that its Property is exempt from taxation under Code §§ 58.1-3609 and 58.1-3617.

II. CSN also qualifies for exemption under Code § 58.1-3606(A)(2) and Article X, § 6(a)(2) of the Constitution of Virginia because CSN is a religious body and its Property is exclusively used for religious worship.

Code § 58.1-3606(A)(2) provides in relevant part:

- A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation:
[...]
2. Real property and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively occupied or used for religious worship [...].

Similarly, Article X, § 6(a)(2) of the Constitution of Virginia provides:

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

[...]

(2) Real estate and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or for the residences of their ministers.

CSN is a religious body. As with the term “religious association” discussed above, the Virginia Code does not explicitly define the term “religious body,” and no known Virginia case law exists wherein the term “religious body” has been defined, particularly in the context of tax exemption. The court must therefore adopt the term’s ordinary meaning. *See Horton*, 255 Va. at 612. Merriam-Webster defines this type of “body” simply as “5: a group of persons or things: such as [...] b: a group of individuals organized for some purpose[, for example,] a legislative *body*[,] the university's student *body*.” “Body,” Merriam-Webster.com Dictionary, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/body> (accessed July 30, 2024 at 8:40 a.m.). Thus, the ordinary meaning of the term “religious body” is a group of persons organized for a religious purpose.

As discussed further in Section V below, under the First Amendment, CSN must be given significant deference and autonomy on what constitutes “religious worship” without the Government requiring certain formalities. *See Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049, 2060-61, 2064 (2020); *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707, 714 (1981). Everything CSN does and uses its Property for serves the dominant purpose of religious worship. *See United Givers Fund*, 205 Va. at 438; *Smyth Community Hospital*, 259 Va. at 336. CSN Director Weaver explained that the purpose of CSN and its Property is to help students, faculty, and community members “love God with all

their heart, soul, mind and strength, but, in particular, to love God with all their mind” (Day 1 Tr. at 101-03), and “loving God is worship” (Day 1 Tr. at 267). Thus, all of CSN’s activities and uses of its Property are designed to lead to the love and worship of God.

CSN Director Weaver stated that “worship is embedded in a lot of what we do” (Day 1 Tr. at 211) and that they “can do worship in any of those spaces” in CSN’s Property (Day 1 Tr. at 235) but especially the “second floor is where we do worship” on Monday nights as part of the Fellows Program (Day 1 Tr. at 247-48). Indeed, there are many examples of events where CSN and its Property were specifically engaged in worship:

- the weekly Monday evening Fellows Program worship gathering with singing, liturgy, prayer, fellowship, and study or discussion of scripture and theology (Day 1 Tr. at 110-13, 156, 247-48; Pet’r Exh. 4, 8);
- the retreat for CSN’s Fellows Program with worship music, teaching, and communion (Day 1 Tr. at 97-99; Pet’r Exh. 3);
- the 24-hour prayer vigils CSN has hosted at its Property as part of VT1 (Day 1 Tr. at 163, 294-95);
- the Sunday church worship services by Calvary Chapel (Day 1 Tr. at 127; Day 2 Tr. at 14-15 (Pastor Smith noting that “the study center was our sanctuary. It was our church. [...] Sunday morning we'd gather for our service. We would pray. We'd worship.”)); and
- worship by campus ministry groups, like Valor, and by Living Water Fellowship house-church services (Day 1 Tr. at 151-53, 187, 314-15).

Both off-site events planned by CSN (as explained above with “religious purposes” under Code § 58.1-3617) and use of CSN’s Property by other Christian ministries and churches (as discussed in Section VI below), still make CSN’s Property “exclusively [...] used for religious worship”

and qualify for property tax exemption under Code § 58.1-3606(A)(2). *See United Givers Fund*, 205 Va. at 434, 438.

While other types of activities also occur at CSN’s Property—just like they do at most churches (e.g., potlucks, meals, youth activities and games, etc.)—all of those activities foster community and knowledge leading to the dominant purpose of loving and worshiping God. As explained above, “the word ‘exclusively,’ as used in such exemption provisions, has never been considered an absolute term.” *United Givers Fund*, 205 Va. at 438 (other internal quotation marks omitted). Additionally, strict construction cannot result in absurdity. *Barnes*, 300 Va. at 189. But it would be an absurd result and frustrate the intent of the legislature to disqualify a church or religious body from its property tax exemption because the property also hosts potlucks or other similar fellowship activities, has office space used for clerical or administrative work, and has bathrooms, especially when those spaces and uses still aid and contribute to the dominant purpose of religious worship. Thus, other types of activities do not disqualify CSN’s Property from the tax exemption it qualifies for under Code § 58.1-3606(A)(2) and Article X, § 6(a)(2) of the Constitution of Virginia as a religious body whose Property is exclusively used for religious worship.

And even if the Court does not find that CSN is a “religious body” or uses its Property exclusively for “religious worship,” CSN and the use of its Property are still clearly within the far broader scope of the terms “religious association” and “religious purposes” (which would include worship as well as other activities) under Code § 58.1-3617, as explained above.

III. CSN also qualifies for exemption under Code § 58.1-3606(A)(5) because CSN is a religious association conducted not for profit but exclusively as a charity.

Code § 58.1-3606(A)(5) provides:

A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation: [...]

5. Property belonging to and actually and exclusively occupied and used by the Young Men's Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

CSN is a religious association as explained above in the discussion for its exemption under Code § 58.1-3617 which uses the very same term. That term must be given the same meaning here. *Eberhardt*, 721 S.E.2d at 526 (“when a term is used in different sections of a statute, we give it the same meaning in each instance”). CSN is similar to Young Men’s Christian Associations because CSN is a nonprofit religious organization which offers educational programming to the local community. While CSN is similar to the YMCA, an exact similarity is clearly not required to qualify for an exemption because the statute states that “similar religious associations” include “religious mission boards and associations” which would be very different from the YMCA in many respects as most of those organizations do not offer gym memberships to the public. Thus, strict similarity with the YMCA is clearly not a requirement for a tax exemption under Code § 58.1-3606(A)(5).

The common qualifying standard for exempt organizations under the statute is that they must be “conducted not for profit but exclusively as charities.” Such is how CSN is conducted as it charges no fees and is designated as a “public charity” by the IRS. (Day 1 Tr. at 215, 273; Pet’r Exh. 18.) CSN provides its events and space free of charge and without expectation of any remuneration. (Day 1 Tr. at 128-29, 226, 261-62, 298-99, 318-19; Day 2 Tr. at 20-21.) Even the Fellows Program and weekly meals are provided to participants free of charge (Day 1 Tr. at 191-

92), as is the food at events like “Pizza with the Profs,” which involves Christian prayer, testimony, and discussion (Day 1 Tr. at 143-44). And CSN provides other resources, such as hundreds of books from its library, free of charge to the community. (Day 1 Tr. at 86-87.)

Additionally, Code § 58.1-3617 provides that “[a]ny church, religious association or religious denomination operated exclusively on a nonprofit basis for charitable, religious or educational purposes is hereby classified as a religious *and charitable organization*” (emphasis added). Because CSN is a religious association under Code § 58.1-3617, it is therefore classified as a charitable organization because of the conjunctive “and” in that statute. This makes sense, because the advancement of religion is understood to be charitable. In describing the exempt purposes set forth in Internal Revenue Code Section 501(c)(3), the IRS explains:

The term **charitable** is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; *advancement of religion*; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

“Exempt Purposes - Internal Revenue Code Section 501(c)(3),” IRS,

<https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3> (accessed July 30, 2024 at 8:52 a.m.) (bold emphasis in original)

(italicized emphasis added).

Further, CSN meets the standard for operating “exclusively as a charity” under the dominant purpose test as applied by the Supreme Court of Virginia to this code section in *Smyth Community Hospital*. In that case, the Court used the “dominant purpose test” to determine “whether the property in question promotes the purpose of the institution seeking the tax exemption.” 259 Va. at 334. Under the test, “[i]f the dominant purpose of the [...] property is not

to obtain revenue or profit, but to promote the purposes for which the charity was established and is incidental thereto, the [owning organization] retains its charitable status and thus its property tax exemption.” *Id.* (cleaned up). Therefore, Smyth Community Hospital was granted tax exemption under Code § 58.1-3606(A)(5) for its property used as an intermediate care nursing facility (“the Manor”) even though some activity at the Manor “was revenue producing, thereby making the use of the property not exclusively charitable.” *Id.* at 336. CSN is conducted even more exclusively as a charity than Smyth Community Hospital was, because unlike the Hospital, CSN has no revenue producing property or activity.

And unlike the previous two statutory property tax exemptions under Code §§ 58.1-3617 and 58.1-3606(A)(2) discussed above, there is no requirement under Code § 58.1-3606(A)(5) that the property be used for any specific purpose—just that the property is “belonging to and actually and exclusively occupied and used by” the religious association. As the Virginia Supreme Court has explained, the “requirement that an operation be conducted ‘not for profit but exclusively’ as a charity applies to the institution seeking the exemption [...]. The statute [Code § 58.1-3606(A)(5)] does not impose that requirement upon the property for which exemption is sought. Compare § 58.1-3617 (requiring that property be used for charitable, religious, or educational purposes).” *Smyth Community Hospital*, 259 Va. at 336.

The Property belongs to CSN and is actually and exclusively occupied and used by CSN. While one of CSN’s many uses of its Property is to freely provide space to other Christian ministries to further CSN’s religious, charitable, and educational purposes leading to the love and worship of God, that is still CSN’s own use of its Property as explained further in Section VI below. There is no lease or rental to these other organizations, and CSN remains in full control of its Property. CSN has “a staff person who has to coordinate the scheduling of the building for the

use of those campus ministries.” (Day 1 Tr. at 262.) And when other ministries want to use or reserve the Property, CSN’s own events take priority and CSN retains the authority to use its Property to the exclusion of others and cancel others’ weekly reservations if there is a conflict in scheduling; as Director Weaver explained, “[t]here is a stipulation in [the third party’s reservation] that, if we have a need to use a program of the Bradley Study Center, we ask them to not use it that week so that we can do a program.” (Day 1 Tr. at 129-30.) Therefore, as discussed further in Section VI below with *United Givers Fund*, whose building’s use by third parties did not negate “the dominant and primary use by UGF for its benevolent and charitable purposes,” *United Givers Fund*, 205 Va. at 438-39, neither should CSN freely allowing other Christian ministries and churches to use its Property to further CSN’s mission disqualify CSN’s Property from any tax exemption.

Because CSN is a “religious association [...] operated exclusively on a nonprofit basis for charitable, religious or educational purposes” and thus “classified as a religious and charitable organization” under Code § 58.1-3617, and everything CSN does is for the “advancement of religion,” which is considered charitable, CSN is thus conducted not for profit and exclusively as a charity. Therefore, CSN’s Property, which is actually and exclusively occupied and used by CSN, is exempt from taxes under Code § 58.1-3606(A)(5).

And even if the Court does not find that CSN’s Property “is actually and exclusively[...] used by” CSN, there is no such exclusive use requirement under Code §§ 58.1-3617 or 58.1-3606(A)(2)—instead, those sections provide that the property must be “used exclusively *for* charitable, religious or educational purposes” or “exclusively [...] used *for* religious worship,” not that the property has to be “exclusively [...] used *by*” the owning organization as under Code § 58.1-3606(A)(5). *See Smyth Community Hospital*, 259 Va. at 336. And while Code

§ 58.1-3609(A) states that the exempt property is to be “used by such organization for a religious, [or] charitable...purpose” and “used in accordance with the purpose for which the organization is classified,” the word “exclusively” is not included. The omission of the term “exclusively used by” in Code §§ 58.1-3609, 58.1-3617, and 58.1-3606(A)(2), must be deemed an intentional difference from Code § 58.1-3606(A)(5) and given meaningful effect. *Morgan*, 301 Va. at 482. Thus, property used by third parties for charitable, religious, or educational purposes or for religious worship is clearly permitted and is not disqualifying for a tax exemption under Code §§ 58.1-3617 and 58.1-3606(A)(2).

Likewise, if the Court does not find that CSN is conducted exclusively as a charity, there is no such requirement under Code §§ 58.1-3617 or 58.1-3606(A)(2).

IV. CSN also qualifies for exemption under Code § 58.1-3606(A)(4) and Article X, § 6(a)(4) of the Constitution of Virginia because CSN is an institution of learning conducted not for profit and CSN’s Property is primarily used for educational purposes or purposes incidental thereto.

Code § 58.1-3606(A)(4) provides in relevant part:

A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation:

[...]

4. Property owned by [...] incorporated colleges or other institutions of learning not conducted for profit. This paragraph shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto and shall not apply to industrial schools which sell their products to other than their own employees or students.

Similarly, Article X, § 6(a)(4) of the Constitution of Virginia provides:

(a) Except as otherwise provided in this Constitution, the following property and no other shall be exempt from taxation, State and local, including inheritance taxes:

[...]

(4) Property owned by public libraries or by institutions of learning not conducted for profit, so long as such property is primarily used for literary,

scientific, or educational purposes or purposes incidental thereto. This provision may also apply to leasehold interests in such property as may be provided by general law.

CSN could also be classified as an institution of learning (a religious one) with its Property being primarily used for educational purposes to further knowledge and understanding about Christianity. While the term “institution of learning” is not defined in the statute or Constitution, the Arlington County Circuit Court has held that to qualify as an institution of learning, an organization must “have a faculty, a student body of an age that is accepted as the first level in the public school system, and prescribed courses of study.” *Close Up Foundation v. Arlington County Bd. of Sup’rs*, 39 Va. Cir. 490, 498, 1996 Va. Cir. LEXIS 202, at *18 (July 29, 1996).

CSN satisfies the requirements of an “institution of learning” under this definition, even though the Arlington County Circuit Court’s definition is not binding on this Court. CSN Director Weaver explained that the purpose of CSN and its Property is to help students, faculty, and community members to

love God with all their heart, soul, mind and strength, *but, in particular, to love God with all their mind*. And we believe that there is a need [...] for us to articulate and to develop spiritual and intellectual formation in students, particularly, but also faculty, at a deeper level and help them to integrate their faith into everything they do [...]. We also believe that there is a perception in the world and in the university that Christianity is anti-intellectual, and we want to rebut that by offering on campus public lectures that have Christians and non-Christians involved in some points, sometimes dialogue events in order to show that Christian faith is intellectually plausible and even respectable.

(Day 1 Tr. at 101-02 (emphasis added)). CSN’s employee handbook states that “The Bradley Study Center exists to engage Virginia Tech students, scholars, and community members in the rich intellectual traditions of the Christian faith and explore its implications for every aspect of life.” (Day 1 Tr. at 194; Pet’r Exh. 17.)

CSN has a faculty that consists of permanent CSN staff members—including CSN Director Weaver, who holds master’s degrees from Wesley Theological Seminary and Duke Divinity School, obtained a Doctor of Theology from the University of Winchester in 2023, and is ordained as a deacon and licensed as a minister (Day 1 Tr. at 81, 92-94)—as well as Virginia Tech faculty who volunteer to lead discussion groups and give lectures, among other things, as part of CSN’s educational programming. (Day 1 Tr. at 110, 116, 142-43, 145, 147, 156, 158, 161, 192-93; Pet’r Exh. 7.) CSN leads reading groups where “the science of faith is a very common theme.” (Day 1 Tr. at 102-03, 142-43.) CSN has hundreds of books available in its library. (Day 1 Tr. at 86-87.) CSN also has a student body consisting of undergraduate and graduate students who attend discussion groups and lectures hosted by CSN, and a consistent set of students who applied and committed to attend weekly course meetings as part of CSN’s two-year Fellows Program, which has a prescribed course of study or curriculum with four core seminars for four semesters. (Day 1 Tr. at 109-11, 114-16, 156-59, 189-90; Pet’r Exh. 4, 8.) CSN aspires for the Fellows Program to have 40 to 50 students. (Day 1 Tr. at 116.). At the end of the two-year Fellows Program, students who have completed the program receive a certificate in Christian studies from CSN. (Day 1 Tr. at 115.)

Because CSN is a non-profit organization recognized as such by the IRS and CSN’s Property is primarily used for the educational purposes listed above, CSN qualifies for a tax exemption under Code § 58.1-3606(A)(4) and Article X § 6(a)(4) of the Virginia Constitution. These provisions only require a property to be “primarily” used for educational purposes, rather than “exclusively” for certain purposes, as Code §§ 58.1-3617 and 58.1-3606(A)(2) do; and these provisions do not require a property to be “exclusively used by” the owning organization as Code § 58.1-3606(A)(5) does. *See Smyth Community Hospital*, 259 Va. at 336. This difference in

language between the statutes must be deemed intentional and given meaningful effect. *Morgan*, 301 Va. at 482. And, as explained above, religious, charitable, and educational purposes can significantly or entirely overlap and include each other, as shown by CSN’s mission and activities in this case. So, neither the use of CSN’s Property for other religious purposes, which the Court might not deem to be educational, nor the use of CSN’s Property by third parties would disqualify CSN’s Property from a tax exemption under Code § 58.1-3606(A)(4) and Article X § 6(a)(4) of the Virginia Constitution if the Property is still “primarily used for [...] educational purposes,” which can include education about Christianity with a religious purpose.

V. Under the First Amendment, CSN must be given significant deference on what constitutes “religious purposes” and “religious worship.”

As the U.S. Supreme Court has held, the First Amendment to the U.S. Constitution provides a “general principle of church autonomy” whereby

the Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion. State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion.

Our Lady of Guadalupe School, 140 S.Ct. at 2060 (internal quotation marks and citations omitted). Accordingly, the Court had also earlier explained that the “determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task,” and therefore “the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas* at 714.

Because of this, “it is not within the judicial function and judicial competence to inquire whether

[one person] or [another] more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.” *Id.* at 716.

In *Our Lady of Guadalupe School*, the Court rejected the lower court’s reliance on religious formalities, 140 S.Ct. at 2058, 2067, and explained that “attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.” *Id.* at 2064. But privileging religious denominations which have more formal organizational structures and rituals of worship is exactly what the Government has argued for here with its proposed strict construction on statutory terms, including “religious association,” “religious body,” “religious purpose,” and “worship.” Such an overly strict construction and formalistic requirements as the Government proposes would disadvantage many nondenominational churches, like Dwelling Place Christian Fellowship church and Calvary Church Blacksburg (see Day 1 Tr. at 291-92; Day 2 Tr. at 12-13, 15-16), from qualifying for property tax exempt status and would thereby favor and support the establishment of religions with more formalistic and hierarchical churches in direct violation of the First Amendment’s Establishment Clause. This Court must therefore reject the Government’s unconstitutional proposal of statutory interpretation.

VI. By allowing other Christian organizations to use CSN’s Property, CSN is itself making use of its Property for CSN’s own religious, charitable, and educational purposes, which further solidifies CSN’s qualification for property tax exemption.

Providing free space where ministry, worship, and discipleship can occur is one of CSN’s many uses of its Property which advances CSN’s religious purposes and mission. Allowing other Christian ministries to freely use CSN’s Property was an intended purpose of the Property from the start (Day 1 Tr. at 225-26), and still today, CSN freely “offering the space to these campus ministry groups is part of the purpose of [CSN’s] Bradley Study Center” Property and part of

CSN's own "hospitality and ministry" (Day 1 Tr. at 261-62). CSN is further involved with the use of its Property by other ministries because CSN has "a staff person who has to coordinate the scheduling of the building for the use of those campus ministries." (Day 1 Tr. at 262.) As CSN Director Weaver explained, CSN "want[ed] this [Property] to be a connecting point to campus for students on campus, and that part of the way that that is facilitated is through allowing campus ministries and students to use the facility free of charge." (Day 1 Tr. at 226.)

In response to the Government's argument that CSN cannot "bootstrap...[other groups'] use to qualify to establish an entitlement to our tax exemption" (Day 2 Tr. at 86), the Court noted "in this case what we have is at least a -- the Bradley Learning Center or the CSN perhaps not leasing it to a church but permitting that third party to use it as a church," and so "what if you lease it for a permitted use? A tax exempt use. [...] Because that's what we have here, without a lease, but [...] the use of it." (Day 2 Tr. at 89-90).⁶

⁶ The Court and the Government discussed a hypothetical and a statute involving leased property (Day 2 Tr. at 86-90), apparently referring to Code § 58.1-3203, which provides in part that

A. [...] If the remaining term of the lease is 50 years or more, or the lease permits the lessee to acquire the real property for a nominal sum at the completion of the term, such leasehold interest shall be assessed as if the lessee were the owner. [...]

B. When any real property is exempt from taxation under Section 6 (a)(1) or (2) or by designation under Section 6(a)(6) of Article X of the Constitution of Virginia, the leasehold interest in such property may also be exempt from taxation, provided that the property is leased to a lessee that is exempt from taxation pursuant to § 501(c) of the Internal Revenue Code [...] and is used exclusively by such lessee primarily for charitable, literary, scientific, cultural, or educational purposes.

Thus, a property tax exemption can be maintained even for leased property. And separate from and in addition to the provisions of this statute, the Virginia Supreme Court has held that "the mere existence of a lease will not work a forfeiture of the exempt status that the leased property may otherwise enjoy. Rather, the lease must generate a 'substantial' net revenue or profit before the exemption is forfeited." *Mariner's Museum v. City of Newport News*, 255 Va. 40, 45 (1998)

First, CSN clearly qualifies for property tax exemption based solely on its own activities and use of its Property, without needing to “bootstrap” any third party’s use, because all of CSN’s activities and use of the Property are exclusively for religious, charitable, or educational purposes, which is all that matters. The question is not about whether a certain quantity or amount of activities which take place at a tax exempt property is sufficient to meet some unknown and unspoken threshold, but is rather about the exclusiveness of a tax exempt property’s use supporting the dominant purpose of religion, charity, or education. The fact that a greater amount of religious, charitable, and educational activities occur at CSN’s Property because CSN allows other Christian churches, ministries, and counselors to freely use its Property does not alter the exclusiveness of CSN’s use of its Property for religious, charitable, or educational purposes.

Second, CSN is not claiming tax exemption based on what other groups do, but is claiming tax exemption solely based on what CSN itself does, which includes using its Property to freely provide space for other Christian groups and ministries which further CSN’s own religious, charitable, and educational purposes. (Day 1 Tr. at 225-26.) Thus, the Government mischaracterizes the third-party use of CSN’s Property as something completely separate and independent from CSN’s own use that CSN is trying to “bootstrap,” and the Virginia Supreme Court has clearly recognized that an organization supporting the work of other groups and providing space at its property for other groups to use (even for a small fee) can be a basis for the organization’s property tax exemption.

(internal citation omitted). Therefore, merely “incidental” revenue received from rent does not cause exempt property to become taxable. *Id.* at 47.

In *United Givers Fund*, the Virginia Supreme Court held that United Givers Fund's ("UGF") property was exempt from taxes. 205 Va. at 440. UGF raised and distributed funds to forty-two other welfare agencies, like American Red Cross, Salvation Army, YMCA, etc., which would then further distribute or use those funds for charitable purposes. *Id.* at 433-34, 436, 438. Find that "[n]o reason has been advanced why these charitable services or gifts may not be made *indirectly through agencies*," the Court held, "[c]learly, we think that in the administration of its benevolences *through these agencies*, UGF is a charitable association within the meaning of that term as used in the constitutional and statutory provisions." *Id.* at 436 (emphasis added). Thus, the Court found UGF to be a charitable association because of the charitable work done by third parties which UGF supported to advance UGF's mission. Similarly, the religious, charitable, and educational purposes which CSN, a religious association, furthers and achieves by allowing Christian churches, ministries, and counselors to freely use CSN's Property should also support the basis for CSN's qualification for tax exemption of its Property.

Describing the property which UGF sought exemption for, the Court noted that

[i]n addition to such use by the UGF, its members, agencies and employees, any "nonprofit" or "nonpolitical" organization is permitted to use the meeting rooms. During the year 1961, twenty-two such organizations were permitted to hold meetings in the building or make use of portions thereof. Among such permitted users were a summer theater, the Richmond Dental Society, United States Coast Guard, and Virginia Motor Sports Club. For such use these outside agencies paid no rent but only a janitor's fee for cleaning the rooms.

Id. at 434. Similarly, CSN allows other Christian churches, ministry organizations, and a Christian counselor to use its Property without having to pay rent; and the janitor's fee which the organizations paid to UGF without disqualifying UGF from its property tax exemption is just like the small \$50 quarterly fee which Abundant Life Counseling paid in the past to CSN to

cover internet, consumable materials like tissues and toilet paper, utilities, etc. (Day 1 Tr. at 205-06, 277-78).

The Court explained that “the controlling factor is the dominant purpose in the use of the property,” and thus “if the use of the property has direct reference to the purposes for which the institution was created, and tends immediately and directly to promote those purposes, it is then within the exemption provision of the Constitution.” *United Givers Fund*, 205 Va. at 438 (internal quotation marks omitted, and citations omitted). As the Court more recently explained in *Smyth Community Hospital*, the dominant purpose “test, generally speaking, is whether the property in question promotes the purpose of the institution seeking the tax exemption.” 259 Va. at 334. For UGF, the Court found that “the dominant purpose in the use and occupancy of the Branch Memorial House is to promote the charitable work of UGF and its agencies.” *United Givers Fund*, 205 Va. at 438.

Far more so than UGF, whose building’s use by third parties was “merely incidental to[] the dominant and primary use by UGF for its benevolent and charitable purposes,” *id.* at 438-39, CSN and its Property are within the exemption provision of Code §§ 58.1-3609 and 58.1-3617 because the third-party use of CSN’s Property is not merely incidental to CSN’s use, but rather has direct reference to the religious, charitable, and educational purposes for which CSN was created, and tends immediately and directly to promote those purposes. Thus, allowing other Christian ministries to use CSN’s property is not something separate and disconnected from CSN’s own use of its Property and mission, but is rather part of the religious, charitable, and educational purposes of CSN. Everything CSN does with its Property promotes the dominant purpose of worship and religion (which includes charitable and educational purposes). And while third party groups must share in CSN’s mission and values to hold church services and other

religious events at CSN's Property (Day 1 Tr. at 129-31, 204-05, 207-09, 265-66, 268, 277; Pet'r Exh. 5), the events and programs at the Property and the Property itself are still open to those who do not share in CSN's mission, values, or beliefs (Day 1 Tr. at 128)—even CSN's Fellows Program is open to non-Christians as part of CSN's mission and religious purposes are to reach, engage, and help nonbelievers (Day 1 Tr. at 102, 189).

Conclusion

While CSN qualifies under multiple classifications due to the broad range of activities which CSN does and uses its Property for, only one classification is needed and the clearest for CSN's Property is provided by Code § 58.1-3617, which does not require exclusive use of the Property by CSN and requires that the Property be used exclusively for religious, charitable, or educational purposes. But if the Court does not find that CSN qualifies under that statute, then CSN would still qualify under other statutory provisions in Code §§ 58.1-3606(A)(2), (A)(4), and (A)(5).

Respectfully submitted,
Christian Scholars Network, Inc.,
d/b/a Bradley Study Center

Of Counsel

Melvin E. Williams

Meghan A. Strickler

WILLIAMS & STRICKLER, PLC
1320 Third Street, SW
Roanoke, Virginia 24016
(540) 266-7800

Counsel for Petitioner and Participating Attorney for The Rutherford Institute

