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.	)	

PETITIONER CHRISTIAN SCHOLARS NETWORK, INC.'S REPLY TO COUNTY AND TOWN RESPONSE TO PETITIONER'S POST-TRIAL MEMORANDUM

Petitioner Christian Scholars Network, Inc. ("CSN"), by counsel, hereby submits its Reply to County and Town Response to Petitioner's Post-Trial Memorandum (*see* Day 2 Tr. at 136) in support of its Amended Complaint seeking exemption from the payment of real property taxes and refund of the taxes collected by Respondents ("Government") from CSN for its real property located at 104 Faculty Street, Blacksburg, Virginia 24060, parcel ID 150276, Tax Map 256-12104 ("Property" or "Bradley Study Center").

Arguments in Response

I. CSN's Property is not disqualified from tax exemption due to its use by third parties.

The Government claims that CSN's Property is not exempt because CSN partly uses its Property to host and provide space to other Christian ministries, churches, and counselors, which use the Property to further CSN's own religious purposes. (Gov. Resp. Br. at 3, 6-7, 8-9, 12, 16.) But, as set forth in CSN's opening post-trial brief, only two of CSN's secondary claims—for exemption under Code § 58.1-3606(A)(5) and Va. Const. Art. X, § 6(a)(2)—would require CSN to "exclusively" use the Property, and not even those provisions under a strict construction

preclude exemption from property taxes due to an owner freely allowing similar organizations to make use of its property at times in furtherance of the owner's religious or charitable purposes.

A. Statutory provisions and distinctions of exclusivity requirements

All of the statutory provisions at issue here are grounded in Article X, § 6(a)(6) of the Virginia Constitution which exempts "[p]roperty used by its owner" for certain purposes, but which does not include the word "exclusively" with that phrase, and there is no dispute that CSN itself uses its own Property. Accordingly, and pertaining to CSN's primary claim to exemption, Code § 58.1-3609(A) exempts property "as set forth in Article X, § 6 (a) (6) of the Constitution of Virginia," and simply requires an exempt property to be "used by such organization," but does not include the word "exclusively" with that phrase either. Likewise, Code § 58.1-3617 (being connected with Code § 58.1-3609(A)) states that the property of any nonprofit church, religious association, or religious denomination must be "used exclusively for charitable, religious or educational purposes," but does not require that use to be "exclusively" by the owner. And it is these two statutes upon which CSN primarily relies and argues for property tax exemption.

Likewise, all subsections of Code § 58.1-3606(A) are also grounded in Article X, § 6(a)(6) of the Virginia Constitution. Thus, Code § 58.1-3606(A) 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[.]

Accordingly, Code § 58.1-3606(A)(2) exempts property owned by churches or religious bodies which is "exclusively occupied *or used for* religious worship *or* for the residence of the minister" (emphasis added).[1] While this provision is similar to Article X, § 6(a)(2) of the Virginia

[1] The disjunctive "or" used twice indicates that the property has to be either exclusively occupied for the residence of the minister (such as a parsonage) or exclusively used for religious worship.

Constitution, these are two separate and distinct exemption provisions and the Government's claim is incorrect that Code § 58.1-3606(A)(2) "must be read with Va. Const. Art. X, § 6(a)(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'" to "require[] that the 'religious body' both own and exclusively use the property." (Gov. Resp. Br. at 6-7.)[2] As noted above, Code § 58.1-3606(A) explicitly states that its provisions are made "[p]ursuant to the authority granted in Article X, Section 6 (a)(6)"—not in Section 6(a)(2) as the Government implies. Additionally, Code § 58.1-3606(A)(2) provides more grounds for exemption than Article X, § 6(a)(2), and more broadly provides tax exemption if a property is "exclusively…used *for* religious worship" (emphasis added) instead of "exclusively…used *by* churches or religious bodies for religious worship" (emphasis added) as stated in Article X, § 6(a)(2). By providing a separate and more extensive tax exemption from Article X, § 6(a)(2), the omission of the phrase "by churches or religious bodies" from Code § 58.1-3606(A)(2) must be deemed an intentional difference and given meaningful effect. *See Morgan v. Commonwealth*, 301 Va. 476, 482 (2022).

The Virginia Court of Appeals recently recognized this difference in contrasting Article X, § 6(a)(2) with § 6(a)(6) and Code § 58.1-3606(A)(2), explaining that "Article X, Section 6(a)(2) of the Constitution created a baseline exemption by classification for religious-use properties," but "Section 6(a)(6), however, empowered the General Assembly to create an exemption for 'religious' and other nonprofit uses *broader than that baseline* [...]." *Emmanuel Worship Center v. Petersburg*, 80 Va. App. 100, 110 (2024) (emphasis added). Thus, "[t]he power conferred on the General Assembly in Section 6(a)(6) is exceedingly broad," and "[u]nlike

[2] While CSN raised the same grounds for tax exemption under both Code § 58.1-3606(A)(2) and Va. Const. Art. X, § 6(a)(2), these are two separate and independent claims, which are both additional to CSN's primary claim for exemption under Code §§ 58.1-3609 and 58.1-3617.

Section 6(a)(2),…there is no such exclusive-use requirement in Section 6(a)(6)." *Id.* (internal quotation marks omitted).

Similarly, neither Code § 58.1-3606(A)(4) or Article X, § 6(a)(4) of the Virginia Constitution contain any requirement for who uses the property of an institution of learning, and only requires that the property must be "primarily used for literary, scientific or educational purposes or purposes incidental thereto [...]."

This is all in contrast to Code § 58.1-3606(A)(5), which is the only provision at issue in this case that requires the property of the owner (a YMCA or similar religious association) to be "actually and exclusively occupied and used by the [owner]."[3] As explained in CSN's opening post-trial brief, the omission of the term "exclusively" modifying "used by" (as opposed to "used for") in Code §§ 58.1-3609, 58.1-3617, 58.1-3606(A)(2), and 58.1-3606(A)(4), as well as in Article X, §§ 6(a)(4) and (6) of the Virginia Constitution, must be deemed an intentional difference from Code § 58.1-3606(A)(5) and Article X, § 6(a)(2) and given meaningful effect. *Morgan*, 301 Va. at 482; *see also Smyth Community Hospital v. Town of Marion*, 259 Va. 328, 336 (2000) (contrasting differences in terms and requirements between Code §§ 58.1-3606(A)(5) and 58.1-3617, for example).

Thus, the effect or purposes of Code §§ 58.1-3609, 58.1-3617, 58.1-3606(A)(2), and 58.1-3606(A)(4), as well as Article X, §§ 6(a)(4) and (6) of the Virginia Constitution is to provide a property tax exemption based on what the property is used *for*—not based on whom the property is used *by* (though the property must still be owned and used to some extent by a qualifying organization). As the Virginia Supreme Court has stated, "[i]t is the use to which

[3] While exemption under Va. Const. Art. X, § 6(a)(2) is also claimed, CSN also argues for exemption based on the same grounds under Code § 58.1-3606(A)(2) which does not require exempt property to be "exclusively" used by the owner.

property is put […] that determines whether the property shall be exempt." *Mariner's Museum v. Newport News*, 255 Va. 40, 47 (1998). This is because the type of use of the property is what provides the benefit to the community and thus deserves a tax exemption regardless of what organization is sometimes using the property to provide that benefit. However, Code § 58.1-3606(A)(5) more broadly exempts all property occupied and used by certain organizations which are conducted exclusively as charities regardless of any specific type of use of such property other than that generally required by Article X, § 6(a)(6). *Smyth Community Hospital*, 259 Va. at 336 (holding that 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).").

B. Caselaw interpretation and application of exclusivity requirements

The Virginia Supreme Court has made clear that a property's use by unrelated third parties does not disqualify the property from tax exemption. *City of Richmond v. United Givers Fund of Richmond, Henrico and Chesterfield, Inc.*, 205 Va. 432, 434, 439-40 (1964); *accord* Gov. Resp. Br. at 9 n.18 (stating that "the [Virginia Supreme] court rejected the city's argument that the building was not 'exclusively used' by United Givers ('UGF'), because it allowed third parties to hold meetings there"). And even apart from statutory provisions for leased property, such as Code § 58.1-3203, the 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." *Mariner's Museum*, 255 Va. at 45 (citing *Board of Supervisors of Wythe County v. Medical Group Found., Inc.*, 204 Va. 807, 812, 134 S.E.2d 258, 261 (1964)).

The Government disregards *United Givers Fund* by claiming that "the Supreme Court did not hold that use of property by third parties supports a claim for tax exemption." (Gov. Resp. Br. at 9.) The Government fails to acknowledge the separate and distinct issues which the Court addressed and ruled on in *United Givers Fund* which CSN cites for support. Among other things, the Court held that (1) use of UGF's property by unrelated third parties did not preclude tax exemption as the city had argued, *United Givers Fund*, 205 Va. at 434, 439-40, and (2) UGF could indeed "bootstrap" (as the Government calls it) the work of third parties which UGF supported to qualify UGF and its work as charitable for a property tax exemption, *id.* at 435-36.

As to the first holding mentioned, the Government notes that "[t]he 42 welfare agencies (American Red Cross, Salvation Army, etc.) were not unrelated third parties - they were 'institutional members' of the United Givers Fund." (Gov. Resp. Br. at 9.) The Court explained this title:

> The forty-two welfare agencies which receive funds from UGF and distribute them are known as "institutional members." Persons who contribute funds to UGF are known as "contributing members" who elect a board of governors. This board determines the eligibility of the institutional members or agencies to receive money from UGF. The funds received by these welfare agencies are distributed by them for charitable purposes throughout the year.

United Givers Fund, 205 Va. at 434. But "institutional members" were not part of UGF, nor did they control UGF—they were simply approved and selected to receive funds from UGF, just like other Christian ministries, churches, and counselors are approved and allowed to use CSN's Property for religious worship and ministry purposes. And aside from these "institutional members," other "unrelated third parties" (as the Government would call them) were allowed to use UGF's property. As the Court explained:

> *In 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.

United Givers Fund, 205 Va. at 434 (emphasis added). Based on that, similar to the Government's arguments here, "the city argue[d] that many of the meetings held in this building are by organizations 'totally unconnected with UGF,'" *id.* at 437, and therefore "that the building is not 'exclusively used' by UGF because it permits organizations not connected therewith to hold meetings there," *id.* at 438. The Court responded by stating, "This is but another way of saying that such *permitted use* by outside civic organizations destroys the tax exemption status of the property. *We do not agree*." *Id.* (emphasis added). Likewise, the permitted use of CSN's Property by outside organizations does not destroy the tax exemption status of CSN's property.

For this same argument, the Government further cites *Old Time Gospel Hour, Inv. v. Lynchburg*, 8 Va. Cir. 73 (Lynch. Cir. Ct. 1983), and again misinterprets the holdings, claiming that "Old Time could not qualify for tax exemption under former §§ 58. l-3606(A)(2) or former -3606(A)(5) on properties used by third parties." (Gov. Resp. Br. at 9 n.18.) However, the Government fails to explain the case. Old Time claimed exemption for twenty-three parcels of land, *Old Time Gospel Hour* 8 Va. Cir. at 85-86, of which it appears only two parcels were wholly used by Old Time (its headquarters and parking lot), *id.* at 86 and n.6, and one parcel was partially used by both Old Time and Thomas Road Baptist Church (for storage), *id.* at 86 and n.9. Contrary to what the Government implies, the court held, "I therefore rule that none of the twenty-three parcels are tax exempt *except* those parcels actually used by Old time in whole *or in part* in its ministry (see footnotes 3 through 9)." *Id.* at 90 (emphasis added). Thus, the court found that even property used only "in part" by Old Time and partly by another organization was

still exempt from taxation and that Old Time was not disqualified from tax exemption by third party use of its property.

Old Time did not qualify for tax exemption on the other parcels because it apparently did not use them in its own operations, and the parcels were instead wholly used by other organizations. While many parcels did not qualify for tax exemption, the court still reaffirmed that even under a strict construction "[t]he word 'exclusively' is not an absolute term." *Id.* at 88 (citing *United Givers Fund*, 205 Va. at 438). The court distinguished these parcels of Old Time from UGF's property, and noted that "[u]nlike Old Time, United Givers both owned and occupied its property." *Id.* at 88. For the same reasons, CSN's Property is different from the parcels not used by Old Time and is similar to UGF's property because CSN both owns and occupies its property while allowing other organizations to use it.

Even under the provisions of Code § 58.1-3606(A)(5) and Va. Const. Art. X, § 6(a)(2), which each require an exempt property to be "exclusively used…by" the owning organization, when strictly construed, an owner could allow other similar groups to temporarily use its property to further the owner's goals and purpose(s) without losing its tax exemption. For example, a church with a gym, field, or basketball court can allow a Christian youth sports league to temporarily use the church's property for practices or games, or allow a Christian homeschool group to use the church's rooms for classes or meetings, or allow an outside Christian ministry or missions organization to use its building or sanctuary for an event or meeting. Similarly, a YMCA or a religious mission board can allow an outside organization to temporarily use its property for an event that furthers the interest and purpose of the owner. To say that the term "exclusively" is so restrictive that an owner allowing such temporary use of its property even once (because what reasonable number of permissible uses could be set using what

standard?) would cause the owner to lose its property tax exemption would be to interpret "exclusively" to the point of absurdity. That is not a permissible interpretation, because 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).

Therefore, CSN allowing other Christian ministries, churches, and counselors to freely use its Property does not disqualify CSN's Property from a tax exemption, especially under Code §§ 58.1-3609 and 58.1-3617, 58.1-3606(A)(2), and 58.1-3606(A)(4), as well as Article X, §§ 6(a)(4) and (6)—none of which require the Property to be exclusively used by CSN—but not even under Code § 58.1-3606(A)(5) or Va. Const. Art. X, § 6(a)(2) which have such provisions requiring exclusive use by the owner.

C. Abundant Life Christian Counseling's use of CSN's Property does not disqualify it from a tax exemption, and even if it does, then CSN's Property should be treated as divisible and only taxed for the portion used by Abundant Life

The Government separately mentions that CSN allows Avrial Mendoza, a Christian Licensed Professional Counselor, of Abundant Life Christian Counseling to freely use its Property, but the Government fails to argue or cite any authority for Abundant Life's use having any different impact on CSN's tax exemption than any other third party. (Gov. Resp. Br. at 8, 12.) That is because it does not have any different impact.

Abundant Life uses CSN's Property minimally for about five hours one day per week, as Avrial Mendoza does the majority of her counseling practice from home or elsewhere. (Day 1 Tr. at 207-08.) Abundant Life's website states, "'For Christians Jesus talks about the Abundant Life he offers even in the midst of and through suffering. Sometimes life feels like a far cry from that.

God can feel far away, and hearing his voice can be difficult.'" (Day 1 Tr. at 265.) As with other third party organizations, CSN only allowed Abundant Life to use its Property because Mendoza's counseling is from a Christian perspective, which is essential for CSN, and CSN would not allow a secular counselor to use its Property. (Day 1 Tr. at 208, 266.)

CSN felt that "offering these spaces for campus ministries and even the counselor is, in a sense, of public benefit. It's a benefit to the community, and it's a -- it's a part that's contributing to the common good." (Day 1 Tr. at 206.) This is because, as CSN Director Weaver explained, "mental health is a huge -- is a huge challenge for a lot of young people. […] [W]e have college kids coming in and out of the building all the time, and many of them need help." (Day 1 Tr. at 205.) This is additionally important because Director Weaver noted that Virginia Tech's counseling center is "overwhelmed. And a student right now who needs to see a counselor may wait three to four weeks to see a counselor." (Day 1 Tr. at 207.) So, providing students easier and greater access to mental health counseling from a Christian perspective through Abundant Life furthers CSN's religious and charitable purposes, which CSN hopes will lead to worship.

For the use of its Property, CSN entered into a separate type of "agreement with [Abundant Life] to make sure that the Bradley Study Center was an additional named insured in order to protect [CSN] legally." (Day 1 Tr. at 209.) This agreement is not a lease, and no rent is paid. (Day 1 Tr. at 205, 207; Resp't Exh. 14.) Despite what the Government implies, Abundant Life simply being a business does not somehow thereby make it a "lessee" of CSN's Property. (Gov. Resp. Br. at 9 n.17.) And while Abundant Life charges for its professional services, CSN does not receive any share of that payment. (Day 1 Tr. at 205, 207, 263, 277-78.)

As with UGF, where "outside agencies paid no rent but only a janitor's fee for cleaning the rooms," *United Givers Fund*, 205 Va. at 434, CSN allows Abundant Life 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 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). Also, "those portions of the building which were used by the outside agencies were not leased to them by, nor were they a source of profit or revenue" and "there was no separation or division of space in the building for the use of [the owner] and its agencies, on the one hand, and the use of the outside agencies on the other hand […] . Both used the same space or rooms, from time to time, as the occasions required." *United Givers Fund*, 205 Va. at 439-40.

CSN's arrangement and Property use by Abundant Life is completely different from that in *Emmanuel Worship Center* where a church's second property, which sat next to its main worship center, was denied tax exemption under Code § 58.1-3606(A)(2) because it was not used exclusively for religious worship since the church "*rented* a portion of the property to a commercial tenant" which was "in the business of tinting automobile and residential windows for profit." 80 Va. App. at 105-06, 119 (emphasis added). This was the company's principal place of business, and it was "leased *to the exclusion of the church*". *Id.* at 107-08 (emphasis added). In holding that the property was not used exclusively for worship, the Court of Appeals noted "that the Church has *leased* much if not most of the property to [the company], that [the company] operates its commercial business there, and that [the company's] *business is unrelated to the Church's religious mission*." *Id.* at 112 (emphasis added).

Unlike the property in *Emmanuel Worship Center*, CSN's Property is not leased to Abundant Life or to any other party to the exclusion of CSN, and all third-party use of CSN's Property, including by Abundant Life, is related to CSN's religious mission and purposes. If

third-party use by a business alone were automatically disqualifying as the Government suggests, then the Court of Appeals would not have had to go through any of that analysis in its decision and would have found the church was disqualified from tax exemption simply because its property was not exclusively used by the church, rather than determining whether the property was exclusively used for religious worship.

Further, as mentioned before, even when property is leased, that "will not work a forfeiture of the exempt status that the leased property may otherwise enjoy." *Mariner's Museum*, 255 Va. at 45 (citing *Medical Group*, 204 Va. at 812); *see also Commonwealth v. Lynchburg Y.M.C.A.,* 115 Va. 745 (1914) (holding that receiving monthly payments for bedrooms did not disqualify a YMCA from its tax exemption when the money provided only a third of its maintenance costs; cited as a basis for the dominant purpose test in *Smyth Community Hospital v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401, 404 (2000)).

Even if Abundant Life's or any other third party's use of CSN's Property somehow disqualifies CSN from tax exemption, Code § 58.1-3603 provides that only the space used for such amount of time should be taxed:

> A. […] *When a part but not all* of any such building or land [which is exempt from taxation pursuant to this chapter], however, is a source of revenue or profit, and the remainder of such building or land is used by any organization exempted from taxation pursuant to this chapter for its purposes, only such portion as is a source of profit or revenue shall be liable for taxation.
>
> B. In assessing any building and the land it occupies pursuant to subsection A, the assessing officer shall only assess for taxation that portion of the property as is a source of profit or revenue and the tax shall be computed on the basis of the ratio of the space as is a source of profit or revenue to the entire property. When any such property is leased for portions of a year the tax shall be computed on the basis of the average use of such property for the preceding year.

(emphasis added); *see also Emmanuel Worship Center*, 80 Va. App. at 114 n.9 (noting this as a possible consideration for the church's leased property, but that the issue was not raised on

appeal). However, as with United Givers Fund, since CSN's Property is not a source of revenue or profit, CSN should qualify for a full tax exemption. *See United Givers Fund*, 205 Va. at 439-40.

D. Incidental Use and the Dominant Purpose Test for Exclusivity

The Government states that the "Court held that incidental use by third parties did not preclude a tax exemption, because under the (pre-1971) liberal construction of the term 'exclusively'[] this 'incidental' use did not interfere with UGF's dominant and primary use for benevolent and charitable purposes." (Gov. Resp. Br. at 10.) The Government's statement and interpretation here is accurate—but it has no bearing on CSN's primary claim for exemption under Code §§ 58.1-3609 and 58.1-3617, and little if any bearing on CSN's secondary claims (nor does it affect the other holdings in *United Givers Fund* or necessarily mean that this holding or the outcome would have been different were UGF's case decided after 1971). UGF claimed an exemption requiring its property to be "used exclusively for lodge purposes or meeting rooms *by* [a benevolent or charitable] association." 205 Va. at 435 (emphasis added). The Court was satisfied that the property was sufficiently "'exclusively used' by UGF," explaining that the "outside organizations[']…use of the property in no way interferes with, but is merely incidental to, the dominant and primary use by UGF for its benevolent and charitable purposes." *Id.* at 438-39. The *Emmanuel Worship Center* opinion by the Virginia Court of Appeals recently rejected what it called the "permissive definition" of "exclusively" which used the dominant purpose test as set forth in *United Givers Fund*, reasoning that "the Supreme Court rejected the liberal interpretation of *exclusively* in *Westminster-Canterbury of Hampton Roads, Inc. v. City of Virginia Beach*, 238 Va. 493, 385 S.E.2d 561, 6 Va. Law Rep. 711 (1989)." 80 Va. App. at 112-13. The Court of Appeals further stated that "the Court later confirmed in *Children, Inc.*[*v. City*

of Richmond], *Westminster-Canterbury* applied a 'strict construction of "exclusively"' compared to the liberal construction in *United Givers*." 80 Va. App. at 113 (citing *Children, Inc*., 251 Va. 62, 66-67 (1996)). The Government makes the same argument in footnote 20 on page 10 of its Post-Trial Response Brief.

However, there are multiple flaws with this reasoning by the Court of Appeals and the Government. First, the Court of Appeals completely overlooked or ignored the fact that decades after the strict construction requirement was added, as well as many years after the decisions in *Westminster-Canterbury* (1989) and *Children, Inc*. (1996), the Virginia Supreme Court still held in *Smyth Community Hospital* (2000) and reaffirmed in *Virginia Baptist Homes v. Botetourt County* (2008) 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.

Smyth Community Hospital, 259 Va. 328, 334 (2000) (first emphasis added); *accord Virginia Baptist Homes v. Botetourt County*, 276 Va. 656, 668 S.E.2d 119, 124 (2008) ("In this appeal, as we have done in the past, 'we apply the "dominant purpose test" in cases involving issues of property taxation exemption.'"). That directly contradicts the Court of Appeals holding in *Emmanuel Worship Center* that the dominant purpose test no longer applies to the interpretation of "exclusively." It also directly contradicts the Government's unsupported assertion that "[t]he 'dominant purpose' test is not applicable here because CSN's property is not revenue-producing" (Gov. Resp. Br. at 14), because the Supreme Court stated that the test broadly applies to "cases involving issues of property taxation exemption" without providing any qualification or limitation to only those cases involving revenue-producing property, *see Smyth Community*

Hospital, 259 Va. at 334, and the dominant purpose test was applied in *United Givers Fund*, which did not involve any revenue-producing property, 205 Va. at 438.

The Supreme Court acknowledged 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). Thus, although the Supreme Court found in *Smyth Community Hospital* that "some activity is occurring which is revenue producing, thereby making the use of the property *not exclusively charitable*," nevertheless, 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 (emphasis added). 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 therefore remanded the case for determination of the taxed amounts to be refunded. *Id.* at 336-37.

Second, despite what the Court of Appeals and the Government indicate from *Children, Inc.*, the Virginia Supreme Court did not say that a strict construction *would* lead to a different result in *United Givers Fund*, but just mentioned that case "[f]or example" in dicta, and stated that a "strict construction of these terms *could* result in a different conclusion. *See*, *e.g.*, *Westminster-Canterbury*, 238 Va. at 501, 385 S.E.2d at 565 (applying strict construction of 'exclusively' as used in Code § 58.1-3606(A)(5))." *Children, Inc.*, 251 Va. at 66-67 (emphasis added).That statement was clearly dicta because it was expressly stated as an "example"

comparing *United Givers Fund* as a pre strict construction case with *Westminster-Canterbury* as a post strict construction case, and the interpretation of "exclusively" was not at issue before the Court (which was interpreting the application of the "grandfather clause") because the parties had stipulated that the Children, Inc. and all uses of its personal property were charitable; and so, with barely any discussion, the Court found that the property was indeed "entitled to a tax exemption" because it was "used exclusively for its charitable purposes." *Children, Inc.*, 251 Va. at 68.

Third, Westminster-Canterbury is incredibly different from UGF, and the Supreme Court did not discuss what "exclusively" meant under a strict construction in its *Westminster-Canterbury* decision. Rather, the Court explained that for Westminster-Canterbury,

> [a] resident of the facility pays an initial founder's fee and monthly charges. Founder's fees run from $54,900 for a studio apartment to as much as $146,500 for a two-bedroom unit. Monthly charges range from $668.88 to $1,247.32 for single-person occupancy and from $1,058.27 to $1,565.32 for double occupancy.

Westminster-Canterbury, 238 Va. at 496. Therefore, with hardly any analysis or discussion on the meaning of "exclusively" in the statutes, the Court quickly, easily, and obviously held that "[w]e do not think it appears clearly that Westminster is an organization conducted exclusively as a charity or that its property is used exclusively for charitable purposes," apparently because a majority of their residents paid a significant amount for the room and services they received. *Id.* at 501. Westminster-Canterbury is thus not comparable to UGF, nor to CSN.

Regardless, this does not affect CSN's claims even if the application of "exclusively" from *United Givers Fund* does not apply, because unlike UGF, CSN's use of the Property to provide space and hospitality for other Christian ministries, churches, and counselors is not merely "incidental"—it is part of CSN's own use to further its religious, charitable, and educational purposes as well as religious worship, as described more in the following section.

II. The Government is incorrect in claiming that CSN cannot "bootstrap" the related work of third parties which further CSN's religious, charitable, and educational purposes.

As to the second holding in *United Givers Fund*, previously mentioned above, that UGF could "bootstrap" (using the Government's term) the work of third parties which UGF supported to qualify UGF and its work as charitable for a property tax exemption, 205 Va. at 435-36, CSN's opening post-trial brief discussed this thoroughly in Argument section V on pages 27-32 in support of its claims, which is contrary to the Government's assertions that "CSN cites no law to support this argument" and that "[n]o Virginia law allows CSN to 'bootstrap' the religious worship of unrelated third parties to support a tax exemption for its property" (Gov. Resp. Br. at 9). But it is actually the Government which fails to cite any Virginia law or authority for its claims that an organization's work and use of its property to support third parties cannot provide even at least partial grounds for a qualifying purpose for tax exemption when such support of third parties furthers the organization's own purposes.

In *United Givers Fund*, the city pointed out that UGF's brochure "stated that the organization performed 'not "charities," but services'" and argued "that because UGF administers its benevolences indirectly through its agencies and makes no direct gifts or money to, and provides no direct services for, individuals, it is not a charitable organization." *United Givers Fund*, 205 Va. at 435-36. In response, the Virginia Supreme Court stated, "We do not agree with this contention." *Id.* at 436. Finding 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). Again, these welfare "agencies," also known

as "institutional members," were completely independent organizations, including the American Red Cross, Salvation Army, and the YMCA, which were simply selected to receive money from UGF, but were not under any authority or control by UGF. *Id*. at 434, 436. Likewise, in *Board of Supervisors of Wythe County v. Medical Group Foundation, Inc.*, the Virginia Supreme Court held that Medical Group Foundation qualified for tax exemption even though, and even because, it leased its property to a Hospital, finding that "[t]he lease discloses *a joint effort* between two charitable corporations to accomplish the purposes for which they were chartered, and it does not affect the tax exempt status of the hospital property." 204 Va. 807, 813 (1964. Similarly, the religious, charitable, and educational purposes which CSN furthers and achieves by allowing Christian churches, ministries, and counselors to freely use CSN's Property should also further support the basis for CSN's qualification for tax exemption in addition to CSN's direct activity, events, and programs.

The Government states that "CSN's Exhibit 16 is an 88 page list of groups CSN has allowed to use the Study Center. The use of the building to this extent is not 'incidental.'" (Gov. Resp. Br. at 10.) CSN agrees with this statement—this is one reason why CSN's Property qualifies for tax exemption much more so than UGF did, even when strictly construed. Whereas the use of UGF's building by "outside" third parties, like the U.S. Coast Guard, a summer theater, and a Dental Society, who work and use of the property did not further UGF's charitable purposes was "merely incidental to[] the dominant and primary use by UGF for its benevolent and charitable purposes," *United Givers Fund*, 205 Va. at 438-39, CSN and its Property qualify for tax exemption are because the third-party use of CSN's Property directly relates to and furthers the religious, charitable, and educational purposes of CSN. Third parties must share in CSN's mission and values to hold church services and other religious events or provide

counseling and other services at CSN's Property. (Day 1 Tr. at 129-31, 204-05, 207-09, 265-66, 268, 277; Pet'r Exh. 5.) Thus, allowing other Christian ministries, churches, and counselors 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 itself. Everything CSN does with its Property and everything CSN's Property is used for furthers a religious purpose (which includes charitable and educational purposes) and worship. Therefore, as in *United Givers Fund* and *Medical Group Foundation*, CSN can indeed "bootstrap" the use of its Property by third parties as grounds for a tax exemption of that Property for the benefit which the Property's use provides to the community. But CSN's Property also qualifies for exemption solely based on CSN's own direct use of the Property regardless of any additional use by third parties, which does not disqualify CSN's Property from tax exemption.

III. The Government's definitions of "religious associations" and "religious bodies" are incorrect, overly restrictive, and contradicted by its own arguments

Notably, in its response, the Government does not (and cannot legitimately) dispute that everything CSN does as an organization and uses its Property for has and furthers a religious purpose (which also includes charitable and educational purposes). In *Children, Inc.* the Virginia Supreme Court noted that "[t]here is no evidence that the personal property was used for any purpose other than Children's charitable purposes. Therefore, we conclude […] that it was entitled to a tax exemption for personal property […] which it used exclusively for its charitable purposes." *Children, Inc.* at 68. And in *Virginia Baptist Homes*, the Court similarly noted that "[t]here is no evidence in this record that The Glebe provides any service other than operating a retirement community for the elderly. There is no evidence of The Glebe performing any other function on the premises of The Glebe such as the operation of some unrelated commercial

venture" and therefore "h[e]ld that The Glebe is used exclusively for a religious purpose." *Va. Baptist Homes, Inc.* at 669. Likewise, there is no evidence here that CSN's Property is used for some unrelated commercial venture or for any purpose other than exclusively for CSN's religious purposes.

While the Government states that "CSN's Articles of Incorporation do not state that the corporate purpose of CSN is religious" (Gov. Resp. Br. at 4), that should be clearly understood as the very first word of the organization is "Christian." And for however the Government factors this into its arguments, it should be rejected just like the city's argument that UGF was not charitable based on wording in UGF's brochure was rejected. *United Givers Fund*, 205 Va. 435-36.

The Government thus argues that CSN is neither a "religious association" or a "religious body" to qualify for tax exemption. (Gov. Resp. Br. at 7, 11-12, 15-16.) In claiming that CSN is not a "religious association" the Government notes that "[c]ourt decisions have used the term 'religious association' as a synonym or near-synonym for 'church.'" (Gov. Resp. Br. at 11 & n.24.) While that may be true, the Government presents no authority stating that a "religious association" can be nothing other than a church. The YMCA is not a church, and yet it is considered by statute to be a type of "religious association." Va. Code § 58.1-3606(A)(5) (exempting property belonging to "the Young Men's Christian Associations *and similar religious associations*" (emphasis added)). And the Government itself indicates that a religious association would include "the Southern Baptist Foreign Mission Board, offices of the Catholic Diocese of Richmond and Bureau of Catholic Charities, and offices of the Protestant Episcopal Church" (Gov. Resp. Br. at 15 n.36)—but those are not churches either.

Similarly, the Government claims that "religious bodies" is a term that "applies to houses of worship not described as 'churches,' such as synagogues, mosques, meeting houses, temples or similar terms." (Gov. Resp. Br. at 7.) But then the Government's footnote cites cases indicating that a "religious body" includes hierarchical and congregational churches, the Protestant Episcopal Diocese of Virginia, and a "religious body which by the laws of the church or denomination to which the congregation belongs" (Gov. Resp. Br. at 7 n.10)—but none of those are "synagogues, mosques, meeting houses, temples or similar terms."

Thus, the meaning of "religious association" and "religious body" must necessarily be much broader than what the Government claims. The Government's argument is very similar to the one made by the city and rejected by the Virginia Supreme Court in *United Givers Fund*: "the city contends that the exemption of the property of benevolent or charitable associations referred to […] applies only to properties of 'fraternal orders' and that UGF is not that kind of association." *Richmond* at 436. The city pointed out that legislative "debates show an intended purpose to exempt the property of fraternal orders" and "further relies upon a dictum" in a case identifying "in general language" that the section at issue "[a]pplie[d] to property of fraternal orders." *Id.* at 436-37. But the Supreme Court rejected the city's argument and explained that "[w]hile paragraph (f) does apply to the property of fraternal orders, as that opinion states, *we did not say that its application is limited to such associations*. We now hold that it is not so limited." *Id.* at 437 (emphasis added). Similarly, the authority which the Government cites to support its arguments is not so limited to such associations and bodies.

Even with *Westminster-Canterbury*, the dissent pointed out, and the majority did not hold otherwise, "[t]hat it is a 'religious association' is not seriously contested," *Westminster-Canterbury*, 238 Va. at 504 (Russell, J., dissenting), but that does not fit with the Government's

definitions. Also, in *Old Time Gospel Hour*, the Lynchburg Circuit Court stated, "[c]ertainly Old Time could be classified as a religious body or organization," 8 Va. Cir. at 87, even though Old Time is not a church and does not fit within the Government's definition either.

The Government claims that "CSN is also not similar to the YMCA" (Gov. Resp. Br. at 12) but the Government does not identify what the YMCA did to make its property tax exempt nor distinguish CSN from that. For an understanding of what the YMCA did to justify its tax exemption, the Virginia Supreme Court gave a good description in *Commonwealth v. Lynchburg Y.M.C.A.,* 115 Va. 745, 80 S.E. 589 (1914). The Court detailed the YMCA's property, noting that its

> billiard room, tenpin alley, swimming pool, and baths are used only by members of the association, and their out of town guests […] . The office is occupied by the secretary and his assistants in and about the work of the association. The lobby is open to the public, and no fee of any sort is charged for its use. The gymnasium is used for the various classes in physical culture, taught by a director employed by the association. None but members are allowed these privileges, and no extra charge is made therefor. The auditorium is used for all public meetings, the object and purpose of which is approved by the directors; no rental is charged for its use. None but members of the association are allowed to use the boys' department, and no charge is made or money ever received for the use of this department or any of its privileges. The educational class-rooms are used for the conduct of the night school. No fees are charged for instruction in this school. Some of the pupils do pay very small sums, because they prefer to do so; but these fees do not pay over one-half the cost of conducting the school, and are not compulsory. The dormitories or bedrooms are used by members of the association only. They pay for these rooms from $8 to $15 per month, according to size and location.

Id. at 749. So, there are places for fellowship, offices for work, space freely open to the public, an auditorium freely open to events approved by the director, and rooms for free classes—all things which CSN's Property similarly has and is used for.

The Court went on to explain the YMCA's membership and leadership structure:

> Any man or boy over twelve years of age, of good moral character, is eligible to membership. No religious test of any sort is applied. The membership includes Catholics, Jews and all the various Protestant denominations, as well as many

> persons who are not members of any church. One-third of the directors are elected at the annual meeting each year, at which meeting all the members who are members of evangelical churches are entitled to vote, the only qualification for a director being that he must be a member of an evangelical church.

Id. at 749-50. Similarly, the events and programs at CSN's Property and the Property itself are open to those who do not share in CSN's mission, values, or beliefs (Day 1 Tr. at 128), and 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). However, CSN's employees must ascribe to certain religious 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.) And as part of CSN's membership in the Consortium of Christian Study Centers, CSN must 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.)

In describing the YMCA's activities, the Court stated that

> [t]he secretary and his assistants seek out young men and boys and endeavor to bring them under moral and religious influences, to secure their attendance at some place of worship, to introduce them to the members and privileges of the association, to aid them in selecting suitable boarding houses and employment, and by every possible means surround them with Christian influences. The association maintains a library and reading room, where good books, the daily papers, and a large number of magazines are at the disposal of the members. ... During the week Bible classes are taught in this building; large numbers of young men being gathered in these classes, who engage in the regular and systematic study of the Bible. ... The association maintains a regular night school, where certain nights in each week reading, writing, arithmetic, penmanship, bookkeeping and other common school branches are taught to such young men and boys as are employed during the day.

Id. at 754-55. Similar to the YMCA, CSN seeks "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 "to develop spiritual and intellectual formation in students, particularly, but also faculty." (Day 1 Tr. at 101-02.) One example of this is how CSN helped

Kase Poling. (*See, e.g.*, Day 2 Tr. at 69-70.) To do this, CSN hosts events and programs for both Christians and non-Christians with a goal of forming Christians as disciples of Jesus. (Day 1 Tr. at 101-02.) CSN charges no fees to those who attend its events and programs, who partake of its meals, or to Christian ministries and counselors 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 has a two-year Fellows Program, and aspires to have 40 to 50 students in that program. (Day 1 Tr. at 109-11, 114-16, 156-59, 189-90; Pet'r Exh. 4, 8.) CSN provides other resources, such as hundreds of books from its library, free of charge to the community. (Day 1 Tr. at 86-87.) 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.)

Therefore, CSN is a religious association similar to the YMCA for property tax exemption under Code § 58.1-3606(A)(5) (exempting property belonging to "the Young Men's Christian Associations and similar religious associations"). But even if the Court does not find CSN to be similar to the YMCA, CSN is even more clearly a "religious association" for property tax exemption under Code §§ 58.1-3609 and 58.1-3617, and is also a "religious body" for tax exemption under Code § 58.1-3606(A)(2) and Va. Const. Art. X, § 6(a)(2), in addition to being an institution of learning for tax exemption under Article X, § 6(a)(4) and Code § 58.1-3606(A)(4). Clearly, based on all that CSN does and how it exclusively uses its Property, in addition to being a 501(c)(3) nonprofit organization (Day 1 Tr. at 215, 273; Pet'r Exh. 19), the

Government's argument that if CSN's Property is given tax exemption then "[a]ny property owner" could claim property tax exemption (Gov. Resp. Br. at 13 & n.32) is clearly catastrophizing and incorrect.

Conclusion

WHEREFORE, for the reasons articulated herein, as well as the reasons articulated in the Post-Trial Brief of Petitioner Christian Scholars Network, Inc., Christian Scholars Network, Inc., *d/b/a* Bradley Study Center respectfully prays that this Court finds its Property tax exempt, provides permanent relief from payment of real property taxes as exempt pursuant to the Constitution and Code of Virginia, enters an order requiring Respondents to refund the taxes collected by each of them from CSN (including, but not limited to taxes that CSN paid during the pendency of this action), and award such further relief as this Court deems just and necessary.

Respectfully submitted,
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