

APPENDIX

Appendix A

VIRGINIA:
IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG

No. CASE 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiff,

v.

CITY OF FREDERICKSBURG,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

CAME THIS DAY THE Parties, by their respective counsel, on the City's Motion for Summary Judgment, the briefs both in support and in opposition, and presented their argument before this Court which having been duly considered, this Court hereby **SUSTAINS** the City's Motion for Summary Judgment based upon facts presented through pleading and discovery indicating that the residents of the real

estate known as 1708 Franklin Street, Fredericksburg, are not "the minister" as required under Virginia Code §58.1-3606(A)(2).*

This matter is therefore **DISMISSED** with prejudice.

DATE: Feb 18, 2020 JUDGE: Patricia Kelly

SEEN AND OBJECTED TO: for the reasons stated on brief and at oral argument

By: T. Wayne Biggs
T. Wayne Biggs, Esq. (VSB No. 41281)
10533 Main Street
Fairfax, VA 22030
T: (703) 383-0100
F: (703) 383-0101
twbiggs@dyciaolaw.com
Counsel for Plaintiffs

SEEN AND AGREED:

John A. Rife
John A. Rife, Esq. (VSB No. 86372)
Taxing Authority Consulting Services, PC
PO Box 31800
Henrico, Virginia 23294-1800
T: (804) 545-2379
F: (804) 545-2378
john@taxva.com
andy@taxva.com

And

* The court notes it has read briefs of both parties and the cases cited therein.

3a

Kathleen Dooley VSB #25725
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Virginia 22401
kdooley@fredericksburgva.gov
Counsel for Defendant

Appendix B

VIRGINIA:

*In the Supreme Court of Virginia held at the
Supreme Court Building in the City of Rich-
mond on Wednesday the 3rd day of March, 2021.*

No. CASE 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiff,

v.

CITY OF FREDERICKSBURG,

Defendant.

**FROM THE CIRCUIT COURT OF THE
CITY OF FREDERICKSBURG**

Upon review of the record in this case and consid-
eration of the argument submitted in support of and
in opposition to the granting of an appeal, the Court
is of the opinion there is no reversible error in the
judgment complained of. Accordingly, the Court re-
fuses the petition for appeal.

Justice McCullough took no part in the resolution
of the petition.

A Copy,

Teste:

Douglas B. Robelen,
Clerk

5a

By:

Deputy Clerk

Appendix C

VIRGINIA:
IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG

No. CASE 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiff,

v.

CITY OF FREDERICKSBURG,

Defendant.

AMENDED COMPLAINT

COME NOW the Trustees of the New Life in Christ Church, by Counsel and for their Amended Complaint states as follows:

1. This is an application for relief brought pursuant to § 58.1-3984 Va. Code.

2. New Life in Christ Church (hereinafter "Church") is an unincorporated congregation located in Spotsylvania County Virginia.

3. The Plaintiffs Robert Williams Jr., Thomas J. Worman, Jeff McConnell and Peter O'Hara (hereinafter "Trustees") are the trustees of the Church and have been properly selected under the provisions of the Church's constitution and bylaws.

4. On or about June 30, 2017 the Church by and through its trustees purchased property in the City of Fredericksburg located at 1708 Franklin Street Fredericksburg, Virginia 22407 ("Property"). A copy of the Deed of Conveyance of the Property to the Church along with a copy of the Order entered by the Fredericksburg Circuit Court allowing the Trustees to encumber the Property, is attached to this action as "Exhibit A".

5. The Property was purchased by the Church to be used as the residence of the Minister of the Church and has in fact been used as residence of the church Minister since its purchase.

6. Upon the purchase of the Property the Trustees have on numerous occasions attempted to file for tax exempt status of the property pursuant to Article X Section 6 (a) (2) of the Virginia Constitution, but the City of Fredericksburg has refused to take or accept the application and/or grant tax exempt status to the Property.

7. The Property purchased by the Church is entitled to tax exempt status pursuant Article X Section 6 (a) (2) of the Virginia Constitution in that the property is used as the residence of the Church Minister. The Property purchased by the Church further qualifies for tax pursuant to § 58.1-3606(A)(2)(ii) as the property is "for the residence of the minister" of the Church.

8. The City of Fredericksburg's refusal take or accept the application and grant the Church's Property tax exempt status is in violation of the Church's right under Article X Section 6 (a) (2) of the Virginia Constitution and in violation of § 58.1-3606(A)(2)(ii).

9. The Church has been erroneously assessed and has paid property taxes on said Property from the date of its purchased to the present, paying the City of Fredericksburg property taxes in the amount of Five Thousand Seven Hundred Eighteen Dollars (\$5,718.00).

10. The Church is entitled to a refund of all property tax payments paid to the City of Fredericksburg with interest on said payment at the legal rate until said tax payments are refunded to the Church.

11. The Church has been erroneously assessed property taxes on the Property. The Property qualifies as tax exempt pursuant to Article X, Section 6(a)(2) of the Virginia Constitution and pursuant to § 58.1-3606(A)(2)(ii).

12. Section 58.1-3984 provides that a person "aggrieved by any [local tax] assessment, may, apply for relief to the circuit court of the county or city where such assessment was made." The Church hereby applies for such relief.

WHEREFORE, the Church prays for the following relief:

A. That pursuant to § 58.1-3984 Va. Code, the Court find that the assessment of the Property was erroneous as the Property is exempt from taxation pursuant to Article X, Section 6(a)(2) of the Virginia Constitution and pursuant to § 58.1-3606(A)(2)(ii) Va. Code.

B. That the court determine that such Property is exempt from taxation pursuant to Article X, Section 6(a)(2) of the Virginia Constitution and pursuant to § 58.1-3606(A)(2)(ii) Va. Code.

C. That the Court order the City of Fredericksburg to refund to the Church any taxes erroneously paid including interest as may be allowed by law.

D. For such other and further relief which the Court may be authorized to award.

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH

By Counsel

T. Wayne Biggs
DYCIO & BIGGS
T. Wayne Biggs, Esq. VSB#41281
10533 Main Street
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703-383-0100
703-383-0100
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Robert M. Byrne
10619 Jones Street
Third Floor
Fairfax, Virginia 22030
703-352-7877
VSB. 23732
robertmbyrne@rmbyrnelaw.com
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 23, day of August, 2019, I caused a true and accurate copy of the foregoing to be mailed by U.S. mail, postage pre-paid, first class and via facsimile (where indicated) as follows:

John A. Rife, Esq. VSB #45805
Taxing Authority Consulting Services, PC

10a

PO Box 31800
Henrico, Virginia 23294-1800
(804) 545-2500
Facsimile (804) 545 2378

And

Kathleen Dooley (VSB# 25725
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Va 22401

T. Wayne Biggs
T. Wayne Biggs, Esq.

EXHIBIT A

*TITLE INSURANCE UNDERWRITER: FIRST
AMERICAN TITLE INSURANCE COMPANY*

Prepared by M. J. Barrett, Esq.

(Virginia State Bar #20674)

816 William St.

Fredericksburg, Virginia 22401

Return to Grantee

Grantee's Address

11925 Burgess Lane

\$476,500.00

Fredericksburg, VA 22407 Parcel ID #7779-67-7036

Consideration: \$470,000.00

Assessed

Value:

THIS DEED, made and entered into this 30th day of June, 2017, by and between FALKERMAN, LLC, a Virginia limited liability company, GRANTOR; and THOMAS J. WOMAN, TRUSTEE, JEFF MCCONNELL, TRUSTEE, ROBERT WILLIAMS, JR, TRUSTEE, and PETER O'HARA, JR, TRUSTEE, collectively, the TRUSTEES OF NEW LIFE IN CHRIST CHURCH, GRANTEES.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby bargain, sell, grant and convey unto the Grantees, with General Warranty and English covenants of Title, in fee simple, the following described real estate, to-wit

All that certain lot or parcel of land with all buildings and improvements thereon, and all rights and privileges appurtenant thereto, situate, lying and being in the City of Fredericksburg, Virginia,

and being known and described as LOT ELEVEN (11), in BLOCK "C" of KENMORE SUBDIVISION, lying on the western side of Franklin Street at its intersection with Fitzhugh Street, the metes and bounds of which are shown on a plat made by J. C. Russell, C.S., dated May 25, 1960, and attached to and recorded with deed of record in Deed Book 114, at Page 126 of the land records in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia, and designated thereon as the Original Lot 11:

LESS AND EXCEPT, HOWEVER, a strip of land ten (10) feet wide, fronting on Franklin Street and running to the original south boundary, as shown on said plat, the frontage on said Lot 11 hereby conveyed being 88.4 feet on Franklin Street and 75 feet at the rear lot line, and being a portion of the original lot shown on plat recorded in the Clerk's Office of the Circuit Court of the City of Fredericksburg, Virginia, in Deed Book 76, at Page 433.

Being the same property which was conveyed to Falkerman, LLC by deed from John F. Hyland and Karen-Marie Hyland, dated December 15, 2015, filed for record on December 16, 2015, as Instrument #150003007, in the aforesaid Clerk's Office.

This conveyance is made subject to all easements, restrictions and reservations of record validly affecting the property conveyed herein.

WITNESS the following signature(s) and seal(s):

FALKERMAN, LLC

By: Heather Hagerman (SEAL)
HEATHER HAGERMAN, Manager

STATE OF VIRGINIA

CITY OF FREDERICKSBURG, to-wit:

The foregoing Deed was acknowledged before me this 30th day of June, 2017, by HEATHER HAGERMAN, who a Manager of FALKERMAN, LLC, a Virginia limited liability company.

My commission expires: 8/31/2020

Aimee Lynette Meade
Notary Public
Registration No. 7166343

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
FREDERICKSBURG

)	
Re: NEW LIFE IN CHRIST)	CL17-397
CHURCH,)	
)	
A Virginia Religious Con-)	
gregation)	

ORDER

This day came petitioners, Thomas J. Worman, Trustee of New Life in Christ Church, Jeff McConnell, Trustee of New Life in Christ Church, Robert Williams, Jr., Trustee of New Life in Christ Church and Peter O'Hara, Jr., Trustee of New Life in Christ Church (hereinafter, collectively, the "Trustees"), requesting this Court, pursuant to Sections 57-15 and 57-15.1 of the Code of Virginia, grant leave for the New Life in Christ Church (the "Church") to encumber certain real property which it intends to acquire at 1708 Franklin Street in the City of Fredericksburg, Virginia (the "Property") with a deed of trust to secure the borrowing necessary to acquire the Property, and to execute such documents on behalf of the Church as may be required to effect same.

Upon consideration thereof it appearing from the Petition that the Petition has been authorized by the congregation of the Church and that the prayer should be granted, it is hereby:

ORDERED that the Church be, and it hereby is, granted leave to encumber the Property with a deed

15a

of trust to secure the borrowing necessary to acquire the Property, and the Trustees are hereby authorized to execute such documents on behalf of the Church as may be required to effect same without personal liability, as more specifically provided in Section 57-15.1 of the Code of Virginia.

ENTER: 06/09/2017

Sarah L. Deneke

Judge

Heather Aubain

Jun 19 2017 1:28 PM

I ask for this:

Paul A. Simpson

Paul A Simpson (VSB #27460)

PARRISH SNEAD FRANKLIN SIMPSON, PLC

910 Princess Anne Street

P.O. Box 7166

Fredericksburg, Virginia 22404-7166

(540) 373-3500

Fax: (540) 899-6394

E-mail: simpson@parrishsnead.com

Counsel for Petitioners

Appendix D

VIRGINIA:

**IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG**

Case No. CL19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

**CITY OF FREDERICKSBURG'S ANSWERS
AND RESPONSES TO TRUSTEES OF THE
NEW LIFE IN CHRIST CHURCH'S FIRST SET
OF WRITTEN INTERROGATORIES**

COMES NOW, the City of Fredericksburg (the "City"), by counsel, and for its Answers and Responses to the Trustees of the New Life in Christ Church's First Set of Written Interrogatories states as follows:

INTERROGATORIES

1. Please identify the individual answering these Interrogatories on behalf of the City and identify the individual's authority to answer these Interrogatories on behalf of the City.

ANSWER:

Various Attorneys of Taxing Authority Consulting Services, PC, including John Rife, Andrew Neville, and Ray Warren, and the City of Fredericksburg City Attorney, Kathleen Dooley. Taxing Authority Consulting Services, PC was retained by the City Attorney to aid in the above-styled litigation. The City Attorney's authority to answer in this matter is self-evident.

2. Please identify the factual basis for the City's denial in its Answer of the allegations in paragraph 5 of the Amended Complaint.

ANSWER:

The City denied the allegations in Paragraph 5 of the Amended Complaint because the residence is not occupied by "the minister" of the congregation as defined by Virginia law, but is instead occupied by two individuals who are not ordained as teaching elders, are not ordained pastors, do not exercise sacramental or administrative authority over the congregation, and are not "set apart as the leader" by the local congregation or the denomination to which the local congregation belongs. See Answer 7, below.

3. Please identify the factual basis for the City's denial in its Answer of the allegations in paragraph 6 of the Amended Complaint.

ANSWER:

The denial of Paragraph 6 of the Amended Complaint relates to the statement that the

City “refused to take or accept the application and/or grant tax exempt status to the Property.” The allegation suggests that the City failed to even consider the application of the Church, which is simply false. Through the detailed letter provided by the City Attorney, Kathleen Dooley, the City not only considered the application, but explained in great detail why such application was to be denied.

4. Please identify the factual basis for the City’s denial in its Answer of the allegations in paragraph 7 of the Amended Complaint.

ANSWER:

The City’s denial of Paragraph 7 of the Amended Complaint rests on the same reasoning as is listed in Answer 2, above.

5. If it is your contention that the New Life in Christ Church cannot designate Josh Storms as a minister, please identify the basis for your contention.

ANSWER:

The congregation can grant any title it desires to one of its members, but the City contends that in order to be considered a minister of the Church for the purposes of seeking tax exempt status pursuant to the Constitution of Virginia and Virginia Code § 58.1-3606 that strict adherence to the Church’s governing requirements must be followed and simply designating an individual as a “college minister” does not overcome the strict construction required to allow for such exemption under Virginia

law. As more fully set out in Answer 7, below, the organizational documents governing the congregation that owns the property specifically utilize the term “minister” in ways that exclude Mr. Storms. Furthermore, the congregation’s own public pronouncements state that one or more persons other than Mr. Storms exercise(s) the role of “the minister” as defined in the statute and the Virginia Constitution.

6. If it is your contention that the New Life in Christ Church cannot designate Anacari Storms as a minister, please identify the basis for your contention.

ANSWER:

In addition to the reasons stated in Answer 5, above, the organizational documents of the Church disallow a female from holding the position of the minister of the Church.

7. If it is your contention that in order for the Property to be tax exempt, the person residing there must be an “ordained” minister under the provision of the Book of Church Order, please identify the basis for any such contention.

ANSWER:

Virginia courts have ruled that the term “minister” refers to “the head of a religious congregation, society or order. He is set apart as the leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order.”

The organizational documents of the Plaintiffs' congregation utilize the term "minister" in contexts that make it clear that the term refers to a duly ordained person with specific leadership duties. (See Chapter 21 of the Book of Church Order entitled "The Ordination and Installation of Ministers" and Chapter 34 of the Book of Church Order entitled "Special Rules Pertaining to Process Against a Minister". Also see Chapter 58 of said Book regarding "the administration of the Lord's Supper" and Chapter 56 of said Book regarding "the administration of baptism").

The church website states that "The Senior Pastor together with the Associate Pastor and Ruling Elders form the Session (or governing body) of the church who are responsible for caring for the spiritual needs of the congregation." Neither of the residents of the property are a senior pastor or associate pastor.

Whether a non-ordained person can be "the minister" for legal purposes in the context of different religious denominations or traditions depends on the organizational policies of the organization. But in the context of a congregation affiliated with the Presbyterian Church in America, and specifically of the local congregation to which the plaintiffs belong, the organizational documents of the church and the local congregation define "the minister" as an ordained person. Even if ordination is not required for a person to be the person "set apart as the leader" of a local PCA

congregation, the statements, pronouncements and documents of the Plaintiffs' congregation clearly identify a person or persons other than the occupants of the property as fulfilling that role.

8. If it is your contention that in order for any property to qualify as the "residence of the minister" within the meaning of § 58.1-3606(A)(2)(ii) the person residing at such property must be "ordained," please identify the basis of your contention.

ANSWER:

See Answer 7, above.

9. If it is your contention that in order for any property to qualify as the "residence of the minister" within the meaning of § 58.1-3606(A)(2)(ii) the person residing at such property must be the person who delivers regular sermons during regular worship hours, please identify the basis for your contention.

ANSWER:

The person who resides in the property must be "set apart as the leader" of the congregation and "the person elected or selected in accordance with the ritual, bylaws or discipline of the order." Whether regularly delivering sermons is a responsibility of such a person depends on the polity and organizational structure of the particular religious organization. In the context of the Presbyterian Church in America, the Plaintiffs' congregation, delivery

of the sermon is normally the duty of the person set apart as “the minister”. Thus, whether the residents deliver regular sermons is probative and relevant to whether he or she is the person set apart as the leader in accordance with the Church’s organizational structure.

10. Please identify all instances within the past 5 years in which the City has denied a filing for tax exempt status for real property owned by a church where the factual basis for the exemption claimed was that the real property was the residence of the minister.

ANSWER:

Other than the Property subject to this suit, there have been no other denials of tax exempt status by the City within the past five years.

11. Please identify all instances within the past 5 years in which the City has approved a filing for tax exempt status for real property owned by a church where the basis for the exemption claimed was that the real property was the residence of the minister.

ANSWER:

There has been one application for tax exemption granted in the last five years related to the application of a religious organization for the residence of its minister. The property involved is located at 1104 Anderson Street, which is owned by the Trustees of the Way Evangelical Ministries and was confirmed to be the full-time residence of its minister, Pastor Matt Rothe.

12. Please identify any expert witness you intend to call to testify at any hearing on this matter and please provide all information discoverable as to expert testimony under Rule 4:1 of the Rules of Supreme Court.

ANSWER:

The City has not yet identified any expert that might be called to testify in this matter at this point, but will supplement this Answer should any determination be made to designate any individual as such expert to testify.

I hereby swear and affirm under penalty of perjury that the foregoing is true and accurate to the best of my information, knowledge, and belief. The actual wording of answers may be that of Plaintiff's attorney.

Date: January 9, 2020 Signed: _____

Name: _____

Title: _____

Respectfully submitted,
City of Fredericksburg
By Counsel

John A. Rife
John A. Rife (VSB No. 45805)
Taxing Authority Consulting Services, P.C.
P.O. Box 31800
Henrico, Virginia 23294-1800

24a

Phone: (804) 545-2500

Fax: (804) 525-2378

and

Kathleen Dooley (VSB No. 25725)

Fredericksburg City Attorney

600 Caroline Street

Fredericksburg, Virginia 22401

Counsel for the City of Fredericksburg

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2020, I caused a true and accurate copy of the foregoing to be forwarded via fax and regular US mail, postage prepaid, first class, as follows:

T. Wayne Biggs, Esq.
Dycio & Biggs
10533 Main Street
Fairfax, Virginia 22032
*Counsel for the Trustees of the
New Life in Christ Church*

Robert M. Byrne, Esq.
10619 Jones Street, 3rd Floor
Fairfax, Virginia 22030
*Counsel for the Trustees of the
New Life in Christ Church*

John A. Rife
John A. Rife, Esq

John A. Rife

From: Johnathan D. Middleton <jdmiddleton@fredericksburgva.gov>
Sent: Monday, August 21, 2017 4:35 PM
To: jwhitman11@aol.com'
Subject: Note from Fburg Real Estate Dept re: Franklin St. Property

Jimmy —

I apologize for the delay in getting an answer regarding tax exempt status for your church's new acquisition on Franklin St. Wanted to let you know I'm still on the case and should have this wrapped up soon.

I just did a little research and have found that In the event we obtain approval for the home's tax exempt status, exemption begins from the date of purchase rather than date of approval.

Let me know if you have any questions and thanks so much for your patience!

Johnathan D. Middleton
Real Estate Department
City of Fredericksburg
(540)372-1207

From: Johnathan D. Middleton
Sent: Thursday, August 10, 2017 10:06 AM
To: 'jwhitman11@aol.com'
Subject: Note from Fburg Real Estate Dept re: Franklin St. Property

27a

Jimmy—

Just a quick note to let you know I haven't forgotten about your query regarding taxes and the new Franklin St. home. We have inquired with the city attorney's team to ensure we pass on the correct answer—I will let you know what I find out as soon as the information is available, thanks!

Johnathan D. Middleton
Real Estate Department
Office of the Commissioner of the Revenue
City of Fredericksburg
(540)372-1207

28a

KATHLEEN DOOLEY
CITY ATTORNEY

ROB ECKSTROM
ASSISTANT CITY ATTORNEY



601 CAROLINE STREET,
SUITE 200B
P.O. BOX 7447
FREDERICKSBURG, VA 22401
540-372-1020

December 7, 2018

Robert M. Byrne
10619 Jones Street
Third Floor
Fairfax, Virginia 22030

Re: New Life in Christ Church
1708 Franklin Street, Fredericksburg Virginia
22401

Dear Mr. Byrne:

By letter dated November 19, 2018 you requested that the City designate the residential property located at 1708 Franklin Street as tax exempt, retroactive to the date the church purchased the property. You requested that the City refund \$5,718 in taxes paid, plus interest, and that the matter be handled in an expedited manner. New Life in Christ Church has complained that it has spent 18 months trying to get an explanation of the City's position. Finally, you advised that you would have to file a declaratory judgment action against the City if we failed to respond in writing.

So first, let me acknowledge that this written response is coming three weeks later, and I appreciate your forbearance. Your letter landed at a particularly busy time, and I appreciate the extra week to respond.

I did feel that it was important for you to receive our written response before proceeding to court.

Facts:

The following summary of the situation is based on conversations between New Life in Christ Church and the Commissioner of Revenue and the members of her real estate department. They met several times in August and September of 2017. In addition, this summary is based on both official records and publicly available information.

The facts are important to the application of Virginia Constitution Article X § 6 and Code of Virginia § 58.1-3606, which implements the Constitutional tax exemption classification. I believe that upon further examination of both the Constitutional provision and the statute, you will at least understand why the City believes that the facts are important to the application of the tax exemption law. If you believe there is a material error in the following summary, then we would appreciate receiving better information in writing.

- **The property.**

The property located at 1708 Franklin Street was acquired by the Trustees of New Life in Christ Church by deed dated June 30, 2017, recorded as Instrument #170001590 in the land records of the Fredericksburg Circuit Court Clerk. The Trustees granted a Deed of Trust to Union Service Corporation of even date, recorded as Instrument #170001591; and an Assignment of Rents to Union Bank & Trust, also dated June 30, 2017, recorded as Instrument #170001592.

The City's Geographic Information System (GIS) reports the property as a 10,621 square foot lot with a

1.7 story, 2,942 square foot dwelling. The house is listed as having 4 bedrooms and 3 bathrooms. The Commissioner's real estate assessment data lists the house as having two units.

In response to notice of the Assignment of Rents, the Commissioner of Revenue mailed the Trustees a letter dated August 1, 2017 enclosing the City's landlord license and asked the Church to send the completed application and payment of the landlord license fee. The Commissioner's file copy of the letter includes a handwritten note of the response by Jimmy Whitman on behalf of the Church, "Location to be used as free lodging for missionaries and other church personnel." Thus, he contended that the house is not a rental and that no landlord license fee was owed. The Church has never registered as a landlord with the Commissioner. The claim that the house is not rented is at odds with the Assignment of Rents to Union Bank, but the Commissioner did not pursue the matter further, and there may be some simple explanation.

Mr. Tom Worman met with the Real Estate staff and Commissioner in August and September of 2017 to discuss the claim of tax exemption. He informed them that the house was the residence of a married couple who are active in New Life in Christ's college ministry program. According to Mr. Worman, the husband worked full-time outside of the church and had begun seminary courses to become an ordained minister. The remainder of his time was dedicated to ministering to the students of University of Mary Washington. The wife at that time worked full-time for the church, but is not eligible for seminary or ordination. The Commissioner asked for a statement of the use of the residence in writing, but did not receive one.

Your letter relates that the property is owned by New Life in Christ Church “and is occupied by a paid minister of the church.”

- **New Life in Christ Church; college ministers.**

New Life in Christ Church is located at 11925 Burgess Lane, in Spotsylvania County. The Church’s website includes a list of church “leaders,” which includes Senior Pastor Douglas Kittredge, Associate Pastor Sean Whitenack, and Assistant Pastor Sam Capitano.

In addition, the website lists over 30 church ministries, including the College Ministry led by Josh & Anacari Storms, the residents of 1708 Franklin Street. The purpose of this ministry is outreach to students from University of Mary Washington, Germanna Community College, and “a few other schools.” Other listed ministries include the Christian Service Brigade, Baseball, Care Groups, Director of Child Protection, Vacation Bible School, Nursery, Sunday School, Thanksgiving Day Ministry, and more.

The biographical information provided for the Storms on the Church’s website relates that Josh works as a Design Specialist for a local Christian-owned engineering company, and also free-lances for local ministries and businesses. Anacari is a case manager for Micah Ecumenical ministries and is responsible for assisting recently housed homeless people in the city of Fredericksburg.

Josh’s website, joshuastorms.com, says “I am a graphic designer and business development team member working full time for a DoD contracting company, as well as freelancing on the side. I have an extensive client base in the state of Virginia, 5+ years

experience working with DoD and military contractors, and have worked with several overseas clients as well. In my free time I enjoy supporting local and international ministries with my design talents, and sharpening my skills in other areas like sketching, physical design projects, and hand lettering. I also teach classes in both traditional art and Adobe Software . . .” He also speaks of his joy of traveling — “I enjoy travel most when it’s with a purpose — specifically, missions work.”

Commissioner of the Revenue’s decision.

In 2017, the City Commissioner of the Revenue declined to classify 1708 Franklin Street as tax exempt, on the grounds that it is not exclusively occupied for the residence of the minister of New Life in Christ Church.

Issue:

Is 1708 Franklin Street eligible for classification as exempt from real estate taxes as the residence of the minister of New Life in Christ Church?

Your letter stated that the City is relying upon two Attorney General Opinions in support of its position—opinions 73-74 Va. AG 358 and 67-68 Va. AG 266. This is not correct, although I did mention these opinions on the phone with you, when I pulled up the digital file. I did not mean to imply that the City relied on either opinion, and I apologize for the misunderstanding. Rather, the City is relying on Article X §§1 and 6 of the Constitution of Virginia and Code of Virginia § 58.1-3606, discussed below.

Law:

The Commissioner's decision was based on the Constitution of Virginia and the Virginia Code.

- **1971 Constitution of Virginia.**

The 1971 Constitution of Virginia, Article X § 1 requires that all property shall be taxed except as expressly exempted by later provisions. It also authorizes the General Assembly to define and classify taxable subjects.

Article X, § 6(a)(2) exempts from state and local taxation: "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."

The language in this section does use the plural form, as pointed out in your letter. However, it uses the plural form for both "churches" and "residences" of their "ministers." The Constitutional provision applies to churches throughout the Commonwealth, so the use of the plural for both churches and their ministers makes sense in this context. Thus, I disagree with your primary contention that it is not possible to read the Constitutional language in any other way but to require the classification of the residences of all ministers of a church as tax exempt.

Article X § 6 also contains two other relevant subsections. Subsection 6(c) provides that "[e]xcept as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any of all of the above exemptions." And subsection 6(f) provides that "[e]xemptions of property from taxation as established

or authorized hereby shall be strictly construed; provided, however, that all property exempt from taxation on the effective date of this section shall continue to be exempt until otherwise provided by the General Assembly as herein set forth.”

The requirement that tax exemptions be strictly construed is in contrast to the previous rule of statutory construction, which required that tax exemptions under the 1902 Constitution be liberally construed. Post-1971, constitutional and statutory exemptions are to be strictly construed against a taxpayer claiming an exemption.

- **Code of Virginia.**

Code of Virginia § 58.1-3606(A)(2) implements Article X, § 6(a)(2) of the 1971 Constitution, as authorized in Article X, § 6(c). It exempts from taxation “[r]eal and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in section 57-16.1, and exclusively used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property.”

In short, in codifying the Constitutional tax exemption, the legislature used the singular form of “residence,” “minister,” and “church.” Presumably, the legislature’s choice to refer to the minister of a church instead of ministers of a church, was intentional. The statute simply takes the general, statewide rule stated in the Constitution and restates it for application in individual cases. Article X § 6(c) permitted the

General Assembly to restrict or condition any of the Constitutional exemptions.

- **Strict construction.**

As mentioned above, the 1971 Constitution included for the first time a rule of strict construction with respect to tax exemptions. Prior to the adoption of the 1971 Constitution, § 168 of the 1902 Constitution, providing for exemptions from taxation, had been liberally construed. Article X § 6(f) of the 1971 Constitution, however, reversed the former rule and requires a general rule of strict construction of exemptions from taxation. *City of Portsmouth v. Portsmouth Catholic Elementary School PTA*, 217 Va. 199 (1976).

The general rule is that an exemption from taxation is the exception and provisions exempting property from taxation must be strictly construed. The strict construction [of §58.1-3650] means that entitlement to exemptions must appear clearly from the statutory provisions relied upon. If there is any doubt concerning the exemption, the doubt must be resolved against the party claiming the exemption. *Virginia Baptist Homes, Inc. v. Botetourt County*, 276 Va. 656, 668 (2008).

- **“The residence of the minister of any church.”**

I have not found any post-1971 authoritative construction of this phrase. But the first thing that is clear to me is that it does not, on its face, exempt all residences of all ministers of a church. Under the former rule of liberal construction, construing this exemption under the 1902 Constitution, the Virginia Supreme Court held that the exemption was not limited to a single residence per church or religious body. “It

is by no means clear that it was the intent of the constitutional revisors of 1902 and of the General Assembly to restrict the tax exemption to the residence of only one minister for each church or religious body.” *Cudlipp v. City of Richmond*, 211 Va. 712 (1971). However, the extension of the exemption extended only slightly in this case.

In *Cudlipp*, the Virginia Supreme Court held that property held by the Trustees of the Protestant Episcopal Diocese of Virginia, provided as a residence for the Bishop Coadjutor of the Diocese, was entitled to tax exemption. In so doing, it overruled the trial court’s ruling that the Bishop, but not the Bishop Coadjutor, was “the minister” whose residence was tax exempt. In so ruling, the Court found that the Bishop Coadjutor “is subordinate to the Bishop who is the ecclesiastical head of the Diocese.” However, the Bishop Coadjutor “has full authority over all missionary and aided churches in the Diocese so that technically the Coadjutor is the Bishop over any church that is an aided church . . . In his area of responsibility he is ‘the final authority.’”

The Episcopal Church’s website describes the post of Bishop Coadjutor today as “Assistant bishop with the right of succession upon the resignation of the diocesan bishop. Before a bishop coadjutor is elected, the diocesan bishop must consent to such an election and state the duties which will be assigned to the bishop coadjutor when duly ordained and consecrated.”¹ The Episcopal Diocese of Texas describes the Bishop Coadjutor as “A bishop elected to succeed the Diocesan

¹ [An Episcopal Dictionary of the Church](#), accessed December 7, 2018.

Bishop [the primary bishop of a diocese.] An ordained person consecrated to become the next bishop of a diocese when the diocesan bishop retires; when the bishop retires or resigns, the Co-adjutor becomes the Diocesan and the term Co-adjutor is dropped.”²

Conclusion.

I hope you will agree that the question of classification requires more than a bare assertion that “a paid minister” of a church resides in property owned by the church. The Commissioner and her staff attempted to explain this to Mr. Worman and to seek out any additional information that might have changed her decision. Based on the information available to me, and upon a thorough review of the law, I still believe the Commissioner made the right decision with respect to the classification of this property as taxable, and not tax exempt.

It may continue to be the intention of the Constitution and the statute to reach more than a single residence for any church, as per the example of the Bishop and the Bishop Coadjutor. A court may so rule. But I do not believe that the statute can fairly be construed to reach the residences of the many people, ordained or non-ordained, who, on a paid or volunteer basis, devote a portion of their time to the good work of the church.

It is truly admirable that so many people participate in New Life in Christ Church and its ministries and activities. We mean no disrespect to any person who serves a church in this way. But the general rule is that all property is taxable, and 1708 Franklin Street

² [The Episcopal Diocese of Texas](#), accessed December 7, 2018.

does not fit within the exemption provided in Article X § 6(a)(2) or § 58.1-3606(A)(2).

Given the Constitutional and statutory provisions discussed above, I must decline to advise the Commissioner of Revenue to classify the house at 1708 Franklin as tax exempt as the residence of the minister of New Life in Christ Church. I hope that New Life in Christ will reconsider its interest in a declaratory judgment action. If you have any questions or additional information, I encourage you to call or write.

Sincerely,

Kathleen Dooley

Kathleen Dooley
City Attorney

cc: Lois Jacob, Commissioner of Revenue

Appendix E

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF
FREDERICKSBURG**

Case No. CL 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

**DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, the City of Fredericksburg (the “City”), by counsel, and files its Motion for Summary Judgment to the Plaintiffs’ application for real estate tax exemption filed herein with this Honorable Court and in so moving states as follows:

1. The Trustees of the New Life in Christ Church (the “Church”) filed their Amended Complaint in this matter alleging, *inter alia*, that the real estate known as 1708 Franklin Street, Fredericksburg, Virginia 22407 (the “Property”), is occupied by “the Minister” of the Church. See Amended Complaint ¶5.
2. That upon information and belief, the City denied this allegation in its timely filed An-

swer and, having conducted discovery, discerned that the true residents of the Property are Josh Storms and Anacari Storms. See Plaintiffs' Answers and Responses to the City of Fredericksburg's First Set of Written Interrogatories, Interrogatory #1, a copy of which is attached in its entirety as Exhibit "A".

3. That the Church is organized under the rules and regulations of the Presbyterian Church in America and is governed by the Book of Church Order. *Id.* #5.
4. Further, that the residents of the Property, while listed as "Adjunct Staff Members...Youth Ministers...and Directors of College Outreach", do not lead any sermons of the Church and are not ordained as a Pastor, Associate Pastor, Assistant Pastor or Teaching Elder. *Id.* #10, 11, and 12.
5. That while the residents of the Property proselytize to members of the college community and they are considered Directors of the College Ministry of the Church, such designation does not grant the residents minister status for the purposes of tax exemption recognition under the Virginia Constitution and relevant statutes.
6. Article X of the Constitution of Virginia exempts from taxation "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.” *See* Constitution of Virginia, Article X, Section 6(a)(2).

7. Article X, Section 6(c) further provides that “except as to property of the Commonwealth, the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions.” In response to the power contained in Article X, Section 6(c), the General Assembly has enacted Code of Virginia § 58.1-3606(A)(2) which provides, in relevant part, for property exempt from taxation by classification by stating the following to be exempt:

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 or for **the residence of the minister of any church or religious body**, and such additional adjacent land reasonably necessary for the convenient use of any such property.
Emphasis Added.

8. The public policy in Virginia requires all property to be taxed and exemptions are the exception to the rule and must be strictly construed.
9. The burden of proof to show entitlement to any such exemption rests upon the applicant.
10. That the General Assembly has specifically limited application of tax exemptions to “the minister” of the church and that Virginia

Courts and the Attorney General have consistently opined that the minister of the church implies one with authority or “the head” of the church. *See Memorandum in Support.*

11. That through pleadings and discovery, the facts lay bare that the residents of the Property, while they may be diligent members of the Church engaged in good works, do not meet the residency requirement for the Property to qualify for the requested tax exemption.

THEREFORE, the City prays this Court grant the City’s Motion for Summary Judgment and dismiss this Complaint with prejudice, and for such other relief as this Court may allow.

Respectfully submitted,

CITY OF FREDERICKS-
BURG, VIRGINIA,

By Counsel

John A. Rife
John A. Rife, Esq. (VSB No. 45805)
Taxing Authority Consulting Services, PC
P.O. Box 31800
Henrico, Virginia 23294-1800
Phone: (804) 545-2500
Facsimile: (804) 545-2378

43a

And

Kathleen Dooley (VSB No. 25725)
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Virginia 22401
Counsel for the City of Fredericksburg

CERTIFICATE OF MAILING

I, the undersigned attorney, hereby certify that on this the 9th day of January, 2020, a true copy of the foregoing Motion for Summary Judgment was mailed, postage prepaid, to the following persons:

T. Wayne Biggs, Esq.
Dycio & Biggs
10533 Main Street
Fairfax, Virginia 22032
*Counsel for the Trustees of the
New Life in Christ Church*

Robert M. Byrne, Esq.
10619 Jones Street, 3rd Floor
Fairfax, Virginia 22030
*Counsel for the Trustees of the
New Life in Christ Church*

John A. Rife
Counsel for the City of
Fredericksburg

Exhibit "A"
City's Motion for Summary Judgment

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF
FREDERICKSBURG**

Case No, CL 19-395

TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

**TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH ANSWERS AND RESPONSES TO
THE CITY OF FREDERICKSBURG'S FIRST
SET OF WRITTEN INTERROGATORIES**

COMES NOW, the Trustees of the New Life in Christ Church ("NLICC"), by counsel, and for its Answers and Responses in the City of Fredericksburg's First Set of Written Interrogatories states as follows:

INTERROGATORIES

INTERROGATORY 1

Fully identify the name, occupation, and contact information, including telephone and email addresses, of the resident(s) occupying the Property (hereinafter "Residents").

ANSWER: Josh Storms—jstorms743@gmail.com
540-287-6570

Anacari Storms—anacariglobal@gmail.com-- 540-273-4198. Both are Directors of College Outreach and Youth Ministers for the New Life Church. Upon information and belief, Josh is also employed as a graphics specialist.

INTERROGATORY 2

Identify any affiliation and official title each of the Residents may have with the NLICC.

ANSWER: Both are Adjunct Staff Members, both are members of the New Life Church, both are Youth Ministers, and both are Directors of College Outreach.

INTERROGATORY 3

Is one or more of the Residents a full-time employee of the NLICC? If so, please identify each full-time employee by name and provide a description of the employee's regular duties with the NLICC.

ANSWER: No.

INTERROGATORY 4

How many sermons have the Residents preached during the regular Sunday morning services at the NLICC?

ANSWER: None.

INTERROGATORY 5

If the NLICC is governed by any established national denomination, please name that affiliation and the describe the documents applicable to governance of NLICC as a member of that denomination. For ex-

ample, if the congregation is a member of the Presbyterian Church in America, it would appear that the “Book of Church Order” would govern the congregation’s doctrines and practices. Please identify the denomination (if any) to which the NLICC is affiliated and the governing document(s) that define the doctrines and practices of member congregations in that denomination.

ANSWER: The NLICC is a member of the Presbyterian Church in America (“PCA”) and, regionally, is a member of the James River Presbytery. The Book of Church Order describes governance of members of the PCA. The Westminster Confessions of Faith and Longer and Shorter Catechisms describe our doctrinal position.

INTERROGATORY 6

Do the Residents have other full-time occupations outside of the NLICC? If so, please list the occupations, titles, employers, and business contact information for the employers.

ANSWER: As stated, it is believed that Josh Storms is employed as a graphics specialist.

INTERROGATORY 7

List all employees of the NLICC that provide regular sermons to the NLICC congregation during regular worship hours. Include name, title, contact information and dates of hire for each.

ANSWER: Douglas Kittredge is the Founding Pastor—540-786-4848—7/12/75-Present and Sean White-nack is the Lead Pastor—540-786-4848—2/15/05—Present.

INTERROGATORY 8

What is the relationship between NLICC and the James River Presbytery of the Presbyterian Church in America?

ANSWER: NLICC is a member of the James River Presbytery.

INTERROGATORY 9

Are any of the persons named in the webpage or its attachments found at <https://www.nlicc.org/pastor-transition-plan/> residents of the Property? If so, describe the beginning date of their residency and the terms under which they reside at the Property.

ANSWER: No.

INTERROGATORY 10

Do any of the persons who reside at the Property serve as Pastor, Associate Pastor or Assistant Pastor of the congregation? If so, describe the date of their residency, the terms under which they reside at the Property, and the date(s) when the person or persons were designated as a Pastor, Associate Pastor or Assistant Pastor.

ANSWER: No.

INTERROGATORY 11

Does the doctrine and/or polity of the NLICC and the denomination in which it is affiliated allow women to be ordained as Pastor and to lead congregations?

ANSWER: No.

INTERROGATORY 12

Are any of the Residents of the Property ordained as teaching elders? If so, please name the Residents who are teaching elders.

ANSWER: The Residents are not teaching elders.

I hereby swear and affirm under penalty of perjury that the foregoing is true and accurate to the best of my information, knowledge and belief. The actual wording of answers may be that of Plaintiff's attorney.

Date: _____ Signed: _____
Name: _____
Title: _____

Respectfully submitted,
Trustees of the New Life
In Christ Church
By Counsel

T. Wayne Biggs
T. Wayne Biggs, Esq.
Dycio & Biggs
10533 Main Street
Fairfax, Virginia 22032
*Counsel for the Trustees of the
New Life in Christ Church*

Robert M. Byrne, Esq.
10619 Jones Street, 3rd Floor
Fairfax, Virginia 22030
*Counsel for the Trustees of the
New Life in Christ Church*

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of October 2019, I caused a true and accurate copy of the foregoing to be forwarded via facsimile and regular US mail, postage prepaid, first class, as follows:

John A. Rife, Esq. (VSB No. 45805)
Taxing Authority Consulting Services, PC
P.O. Box 31800
Henrico, Virginia 23294-1800
Phone: (804) 545-2500
Facsimile: (804) 545-2378

and

Kathleen Dooley (VSB No. 25725)
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Virginia 22401
Counsel for the City of Fredericksburg

T. Wayne Biggs
T. Wayne Biggs, Esq.

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF
FREDERICKSBURG

Case No. CL 19-395

TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH RESPONSES TO THE CITY OF
FREDERICKSBURG'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

COMES NOW, the Trustees of the New Life in Christ Church, by counsel, and files its Responses to the First Request for Production of Documents of the City of Fredericksburg and states as follows:

DOCUMENTS REQUESTED

1. Provide a copy of any lease agreement involving 1708 Franklin Street, Fredericksburg, Virginia 22401 (the "Property") with New Life in Christ Church, ("NLICC") and any other party allowing use of the property.

RESPONSE: None.

2. Provide a full copy of any minutes of any committee meeting wherein the lease or occupation of the Property was discussed or authorized.

RESPONSE: None insofar as there is no lease. Plaintiff has located no minutes at this time, but will supplement if responsive documents are located.

3. Provide copies of all communications, electronic or otherwise, between the Trustees, Pastor, Associate Pastor, Josh Storms or Anacari Storms discussing the lease or occupation of the Property.

RESPONSE: None insofar as there is no lease. Plaintiff objects to the request as to “all communications” as being overly broad and unduly burdensome. Without waiving the objection, responsive documents are produced herewith.

4. Provide a copy of any official documentation indicating that the NLICC is affiliated with the Presbyterian Church in American and the James River Presbytery of said denomination.

RESPONSE: See letter dated November 13, 2014, produced herewith.

5. Provide a copy of any ordination credentials for Josh Storms or Anacari Storms or any other person deemed “a minister” who primarily resides at 1708 Franklin Street.

RESPONSE: There are no ordination credentials.

Respectfully submitted,
Trustees of the New Life
In Christ Church
By Counsel

T. Wayne Biggs
T. Wayne Biggs, Esq.
Dycio & Biggs
10533 Main Street
Fairfax, Virginia 22032
*Counsel for the Trustees of the
New Life in Christ Church*

Robert M. Byrne, Esq.
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and

Kathleen Dooley (VSB No. 25725)
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Virginia 22401
Counsel for the City of Fredericksburg

T. Wayne Biggs, Esq.

55a

Presbyterian Church in America

Office of the Stated Clerk—
Administrative Committee
1700 North Brown Road, Suite 105
Lawrenceville, CA 50043.5143
Phone: 678-825-1000
Fax: 678-825-1001

Stated Clerk of the General Assembly
Dr. L. Roy Taylor
Business Administrator
The Reverend John W. Robertson

Please Note: Use EIN # 54-1205241 in all communications with the IRS.

November 13, 2014

To Whom It May Concern:

This is to confirm the status of New Life in Christ Church, Fredricksburg, VA, as a church in good standing in the Presbyterian Church in America.

The Presbyterian Church in America is a denomination composed of more than 1700 churches and missions. New Life in Christ Church is a recognized church of the denomination.

The denomination has received recognition from the Internal Revenue Service as a tax-exempt organization. An application for group recognition by the IRS of the presbyteries, churches, missions, committees and agencies of the Presbyterian Church in America (according to Revenue Procedure 80-27, 1980-1 CB 677) has been approved. A copy of the March 20, 2013, IRS Letter is attached. New Life in Christ Church is included in the group and is identified by the Employer Identification Number 54-1205241. The federal Group Exemption Number for the Presbyterian Church in America is 8534.

56a

Respectfully,

John W. Robertson

John W. Robertson
Business Administrator

ajh

EXHIBIT A

New Life in Christ Church

Douglas Kittredge: Senior Pastor

540-786-4848

NLICC@NLICC.org

JOB TITLE

Director of College Outreach

POSITION DESCRIPTION

The College Outreach Director builds a sustainable college ministry that incorporates students from the University of Mary Washington and Germanna Community College; connects students with the New Life in Christ Church (NLICC) community, mission and vision; and maintains a home in which students meet to study God's word and enjoy Christian fellowship. The College Outreach Director will provide leadership over the ministry to New Life in Christ College Students through godly example, prayer, leadership development, collegiate community engagement, program management and administrative oversight. The focus is to make disciples through an evangelistic and discipleship ministry, personal discipleship, as well as large and small group meetings.

This is a Missionary position as an Adjunct Staff Member of NLICC.

SUMMARY OF RESPONSIBILITIES

- Reports to the Session, NLICC, via the Associate Pastor;
- Coordinate with the Associate Pastor of NLICC to establish ministry goals and track progress annually;

58a

- Execute ministry vision and goals through Associate Director, supervising, as required, those activities to achieve ministry goals;
- Provide mentoring, coaching, discipleship to Associate Director and each member of the college ministry, as required;
- Provide Bible Study, Discipleship, and Fellowship at least through 1 regularly scheduled weekly group setting in the home provided by NLICC;
- Oversee coordination with UMW Sponsor to plan for and provide activities via the UMW campus club;
- Develop and submit an annual budget for consideration to assist building the Church's fiscal year budget; submission is due March 31, or as coordinated via the Associate Pastor of NLICC;
- Manage approved budget within set limits to include any funds raised in support of Ministry activities;
- Solicit donations in support of the College Ministry activities to cover any expense that exceeds the Church's college ministry annual budget limit;
- Meet with the Associate Pastor of NLICC monthly, or as scheduled, to review ministry status and for spiritual refreshment/guidance, coaching, and supervision;
- Provide a monthly College Ministry monthly report to the Session via the Associate Pastor, or as directed;

- Annual continuing education at New Geneva Theological Seminary of 4 credit hours per year.

SALARY, BENEFITS & ALLOWANCES

- Salary basis is \$18,000/year
 - Cash salary is \$6,000/year.
 - Housing provided is \$12,000/year taxable fringe benefit,
- Vacation benefit: 2 weeks per year.
- Medical/Dental/Life insurance benefit: None.
- Retirement benefit: None.
- Allowances: None.
- Source of Funds:
 - Total salary is contingent upon College Outreach Director's raised support and those funds availability at time of payroll processing.
 - Total salary is \$18,000 per year in 26 bi-weekly payments (\$12,000 being taxed as a fringe benefit not realized in actual funds received but rather as a housing benefit).
 - If adequate funds are not available for a full paycheck during payroll processing, the paycheck will be reduced in a way consistent with the available support funds raised. During the next pay period, if sufficient funds are available, NLICC will include the shortfall in that paycheck to not exceed \$18,000/annum.
 - Due to the \$12,000 taxable fringe benefit for housing, a balance consistent to the

required taxes will be maintained in order to process payroll. Should sufficient funds be raised in the amount of the annual taxable fringe benefit, that balance will be earmarked for taxes to process payroll.

- In the case there are insufficient funds to process pay, the pay stub will reflect the housing benefit and taxes required for such benefit received.

Example Bi-Weekly Pay with anticipated Tax Requirement										
Description	Amount	Employee Taxes*				Employer Taxes				Total Taxes
		Federal	SocSec	Medicare	VA	Federal Unemployment	SocSec	Medicare	VA Unemployment	
Salary	\$230.77	\$0.00	\$14.31	\$3.35	\$2.00	\$0.00	\$14.31	\$3.35	\$0.00	\$37.32
Taxable Fringe Benefit (Housing)	\$461.54	\$13.00	\$28.62	\$6.69	\$12.00	\$0.00	\$28.62	\$6.69	\$0.00	\$595.62

* Estimated Employee Tax based on 2 exemptions with annual salary of \$6,000 and \$12,000 taxable fringe benefit
 As indicated in this color shade above, the anticipated additional bi-weekly support needed for a \$6,000 annual salary and \$12,000 housing benefit: \$113.28.
 ANTICIPATED TOTAL ANNUAL FUND RAISING REQUIREMENT: \$8945.28 (covers all taxes for a \$18,000 annual salary & benefit package)

61a

ACCEPTED AND AGREED

If you accept this offer, your start date is July 1, 2017.

Clerk of Session

Candidate

Signature: Sam Capitano

Signature: Josh Storms

Print Name : Sam Capitano

Print Name : Josh Storms

Date: 07/18/17

Date: 7-14-17

Enclosure: (1) Memorandum on the Distribution of Financial Support

Copy to:

1. New Hire
2. HR records
3. Treasurer/Book Keeper (Payroll)

Memorandum on the Distribution of Financial Support

The College Ministry at New Life in Christ Church is entirely funded through the financial support raised by its leaders for the ministry. All support will be pooled into a single college ministry account that will fund salaries and taxes associated with the positions. As such, a prioritized order for fund disbursement will be implemented to support these salaries.

During each payroll period, funds will be drawn from a college ministry account in the following order:

- 1) Funds to pay for the taxable fringe benefit of the housing; then
- 2) Funds to pay for the Associate Director of College Outreach's salary to include the requisite employer-side federal taxes; then
- 3) Funds to pay for the Director of College Outreach's salary to include the requisite employer-side federal taxes.

In order listed above, each will be paid only upon the full funding of the previous item.

Funds raised over and above the amount required to provide for salary and benefits will accumulate in this college ministry account. All funds present within the account at the point of employment termination (either by direction or by mutual agreement) will remain within the college ministry account at New Life in Christ Church unless either of you are transferring directly to another missionary position associated with a mission agency to which funds may be transferred. This transaction will be reviewed and recommended

63a

by NLICC Missions' Committee, subject to the approval of NLICC's Session.

Date received: 7-14-17

Signature:

Josh Storms: Josh Storms

22222 Void <input type="checkbox"/>		number OMB No. 1545-0008	
b Employer identification number (EIN) 54-1205241		1 Wages, tips, other compensation 14384.59	2 Federal income tax withheld 770.00
c Employer's name, address, and ZIP code NEW LIFE IN CHRIST CHURCH 11925 BURGESS LN FREDERICKSBURG VA 22407-6927		3 Social security wages 14384.59	4 Social security tax withheld 891.64
		5 Medicare wages and tips 14384.59	6 Medicare tax withheld 208.58
		7 Social security tips	8 Allocated tips
d Control number	9 Verification code	10 Dependent care benefits	
e Employee's name, address, and ZIP code ANACAKI STORMS 1708 FRANKLIN ST FREDERICKSBURG VA 22401		11 Nonqualified plans	
		12a See instructions for box 12	
		13 Health plan <input type="checkbox"/> 13b <input type="checkbox"/>	13c <input type="checkbox"/> 13d <input type="checkbox"/>
14 Other		15a <input type="checkbox"/>	15b <input type="checkbox"/>
16 State wages, tips, etc. VA 14384.59		17 State income tax 627.00	18 Local wages, tips, etc.
19 State income tax		20 Local income tax	21 Locality name

Form **W-2 Wage and Tax Statement** 2018 Department of the Treasury—Internal Revenue Service
 Copy 1—For State, City, or Local Tax Department For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
 Copy D—For Employer.

22222 Void <input type="checkbox"/>		number OMB No. 1545-0008	
b Employer identification number (EIN) 54-1205241		1 Wages, tips, other compensation 18000.02	2 Federal income tax withheld 245.00
c Employer's name, address, and ZIP code NEW LIFE IN CHRIST CHURCH 11925 BURGESS LN FREDERICKSBURG VA 22407-6927		3 Social security wages 18000.02	4 Social security tax withheld 1116.00
		5 Medicare wages and tips 18000.02	6 Medicare tax withheld 261.00
		7 Social security tips	8 Allocated tips
d Control number	9 Verification code	10 Dependent care benefits	
e Employee's name, address, and ZIP code JOSHUA S STORMS 1708 FRANKLIN ST FREDERICKSBURG VA 22401		11 Nonqualified plans	
		12a See instructions for box 12	
		13 Health plan <input type="checkbox"/> 13b <input type="checkbox"/>	13c <input type="checkbox"/> 13d <input type="checkbox"/>
14 Other Fringe B 12000.00		15a <input type="checkbox"/>	15b <input type="checkbox"/>
16 State wages, tips, etc. VA 18000.02		17 State income tax 572.00	18 Local wages, tips, etc.
19 State income tax		20 Local income tax	21 Locality name

Form **W-2 Wage and Tax Statement** 2018 Department of the Treasury—Internal Revenue Service
 Copy 1—For State, City, or Local Tax Department For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.
 Copy D—For Employer.

**VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF
FREDERICKSBURG**

Case No. CL 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

**DEFENDANT’S MEMORANDUM OF LAW IN
SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the City of Fredericksburg (the “City”), by counsel, and submits this Memorandum of Law in support of its Motion for Summary Judgment to this Honorable Court.

I. INTRODUCTION

Plaintiffs in this action challenge the assessment of real estate taxes against the residential property located at 1708 Franklin Street, Fredericksburg, Virginia, 22407 (the “Property”), claiming entitlement to an exemption of taxes pursuant to the Virginia Constitution and claiming the residents of the Property to be “the Minister” of the New Life in Christ Church (the “Church”). *See* Plaintiffs’ Amended Complaint ¶5. The Plaintiffs fail to specifically name the residents of the Property in their Complaint or Amended Complaint, however, in responding to discovery the

Plaintiffs state that Josh Storms and Anacari Storms reside in the home and are part-time employees of the Church and head the Church's endeavors in college ministry.

According to the Plaintiffs' answers to the City's interrogatories, the Church is organized as a member of the Presbyterian Church in America and specifically the James River Presbytery of said organization and is governed by the Book of Church Order. It is undisputed that neither Josh Storms nor Anacari Storms have obtained the formal status of minister or teaching elder as recognized by the Church's governing documents.

For the reasons stated below, the residency requirement for tax exemption under the laws of the Commonwealth of Virginia is not met to qualify the Property for a tax exemption.

II. APPLICATION OF LAW

Exemption from taxation requires ownership, use and residency tests be met.

The Virginia Constitution provides for the relevant tax exemption sought in this suit. It allows an exemption for the "[r]eal 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." Virginia Constitution, Article X, Section 6(a)(2). Section 6(c) of the same Article provides that "...the General Assembly by general law may restrict or condition, in whole or in part, but not extend, any or all of the above exemptions." The applicable limitations to such exemption were enacted in Virginia Code § 58.1-3606(A)(2) as follows:

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 or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property. Real property exclusively used for religious worship shall also include the following: (a) property used for outdoor worship activities; (b) property used for ancillary and accessory purposes as allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the principal religious worship use; and (c) property used as required by federal, state, or local law.

Pursuant to the authority of Section 6(c) in Article X of the Virginia Constitution, the General Assembly has established the real estate and personal property tax exemption tests requiring an ownership, use and, in this particular case, a residency test. The City concedes the Church's *ownership* of the residence and its *use* as a residence, satisfying those portions of the test. However, the facts presented in this case fail to satisfy the residency component of the test.

In Virginia, the general policy is to tax all property. *DKM Richmond Associates, LP v. City of Richmond*, 249 VA 401, 407, 457 SE2d 76, 80 (1995). "Exemptions of property from taxation...shall be strictly construed' against the taxpayer." *Id.* (quoting VA

Const. art. X, § 6(f)). The *DKM* Court states that “[u]nder this rule, exemption from taxation is the exception, and any doubt is resolved against the one claiming the exemption.” *Id.* (citing *Westminster Canterbury of Hampton Roads, Inc. v. City of Virginia Beach*, 238 VA 493, 501, 385 S.E.2d 561, 565 (1989)). “And, the taxpayer has the burden to establish that it comes within the terms of the exemption.” *Id.* (citing *Commonwealth v. Manzer*, 207 VA 996, 1000, 154 S.E.2d 185, 189 (1967)).

The Property is not occupied by “the minister” and therefore fails to meet the residency test required to qualify for the tax exemption.

While the test for residency is fact-specific, through discovery, the City has established the residents of the Property. Contrary to the allegation in Plaintiffs’ Amended Complaint Paragraph 5, the Property is not occupied by “the Minister” of the Church, but rather is occupied by Josh Storms and Anacari Storms. Josh Storms and Anacari Storms are employed part-time by the Church to spearhead the College Ministry for the Church. As a part of the compensation, the Property is made available as a residence to the Storms and is reported on their W-2 as a valued benefit for their compensation. (See Motion for Summary Judgment Exhibit “A”). According to the Plaintiffs, neither Josh Storms nor Anacari Storms are ordained ministers or teaching elders of the Church. While they may be established by the local church with responsibility for a portion of the Church’s outreach, this responsibility does not fall within the parameters outlined by the Virginia Constitution and its governing statutes.

The Church states on its website that, “The Senior Pastor together with the Associate Pastor and Ruling Elders form the Session (or governing body) of the church who are responsible for caring for the spiritual needs of the congregation.” New Life in Christ Church. (2019). Officers. Retrieved December 29, 2019, from [“https://www.nlicc.org/about/officers/”](https://www.nlicc.org/about/officers/). Neither of the residents of the property are a senior or associate pastor of the Church. Rather, they are employed part-time as a part of the Church’s college outreach ministry. While the Church may have informally designated the Storms as “ministers”, this does not make them “the minister” for the Church in terms of seeking the exemption from real estate taxes.

While the Constitutional exemption and its statutory limitations differ in the plural versus the singular use of the term “minister”, this Court need not delve into such distinction. Rather, it need merely to look to the import of the term “the minister.” That usage signifies more than a simple congregational designation. Virginia Courts have opined that “the minister” refers to “the head of a religious congregation, society or order. He is set apart as the leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order.” *Cramer v. Commonwealth*, 214 VA 561, 567, 202 S.E.2d 911, 915 (1974).

The *Cramer* Court contended with the rights of “ministers” of a congregation to conduct marital ceremonies for members of the Universal Life Church, Inc., under Virginia Code § 20-23. The Court noted that one of the central tenets of the church encouraged all members to become ministers and every member

was eligible for immediate ordination into the ministry. *See id* at 567, 915. The *Cramer* Court was required therefore to devise the General Assembly's intent in determining what the qualification of a minister would be in allowing the privilege to conduct marital rites. The Court states that, "[a] church which consists of all ministers, and in which all new converts can become instant ministers, in fact has no 'minister' within the contemplation of Code §20-23." *Id* at 566-67, 915.

The *Cramer* Court's reading of the General Assembly's intent was made during a period where the tax exemptions required a liberal construction. After the amended Constitution came into effect, in 1971, however, the exemptions from taxation are required to be strictly construed by the terms of the Virginia Constitution. *See* VA Const. art. X, § 6(f). Additionally, the *Cramer* Court contended with church governing documents that presumably gave broad ministerial grants to its members. The New Life in Christ Church, in contrast, is affiliated with, and is a member of, the Presbyterian Church in America and the James River Presbytery of said organization. As such, its own definition of its ministers is rooted in the governing document of the Presbyterian Church in America, "the Book of Church Order". Section 22:1 in Chapter 22 of the Book of Church Order states that "the various pastoral relations are pastor, associate pastor, and assistant pastor." *See* Table of References to Memorandum of Law.

The Plaintiffs affirmed in their discovery responses that the Church is governed by the Book of Church Order of the Presbyterian Church in America. The Book of Church Order utilizes the term "minister"

in contexts that make it clear that the term refers to a duly ordained person with specific leadership duties. For example, Chapter 21 of the Book of Church Order is entitled “The Ordination and Installation of Ministers” and Chapter 34 of the Book of Church Order is entitled “Special Rules Pertaining to Process Against a Minister”. Both of these chapters speak only of ordained ministers of the denomination. Chapter 58 of said book regarding “the administration of the Lord’s Supper” and Chapter 56 of said book regarding “the administration of baptism” also use the term “minister” in contexts that make it clear that the word refers to properly ordained individuals.

Clearly, by its own definitions the Church has limited its pastoral leadership to specific individuals, none of which occupy the Property which the Church seeks to have exempted from taxation.

The Church lists two individuals living at the Property it seeks to exempt from taxation as being involved in “college ministries.” But in many religious traditions it is possible to “minister” without being “the minister”; and certainly without being “members of a narrow class . . . intended for the leaders of the various religious faiths and not for the members generally”. *Cramer* at 569, 917.

Indeed, Anacari Storms, the female “college minister” is not permitted in accordance with the polity and policy of the Presbyterian Church in America to be an ordained minister or to serve on the administrative board of the local congregation (the “Session”) as a “ruling elder”. By the denomination’s own doctrines and discipline, she can “minister” only as an un-ordained lay person. Josh Storms, the other resident of

the Property, is not prohibited by reason of his gender from becoming a minister in Presbyterian Church in America, but, by admission through discovery, the Plaintiffs concede he has not been ordained as a minister. He certainly is not the “Lead Pastor”, “Associate Pastor” or “Assistant Pastor” listed as the leaders of the Church on the Church website. Indeed, Josh’s personal website and LinkedIn (LinkedIn.com) profile list him as being employed full time by a private employer not related to the Church.

The courts and administrative rulings in Virginia have outlined what is needed to be considered “the minister” for the purposes of local tax exemptions and in all cases have pointed to one who represents a leadership and central role to the church and its congregation. In *Cudlipp v. City of Richmond*, 211 VA 712, 180 SE2d 525 (1971) the Supreme Court of Appeals of Virginia allowed the Episcopal Diocese of Virginia to claim a tax exemption for the residence of its bishop coadjutor. In so doing, the Court recognized that while the Coadjutor was subordinate to the Bishop, he had “full authority” over all missionary and aided churches within the Diocese. His level of responsibility as the head or “full authority” allowed for the qualification of the tax exemption.¹ While *Cudlipp* was decided at a time that exemptions were afforded a liberal interpretation, the Court’s analysis is useful in ferretting out the statutory parameters for ministers.

¹ Also at issue in *Cudlipp* is the application’s allowance when one residence was already tax exempt for the church, which is not relevant to the particular set of facts in the matter at bar.

Additionally, in a 1976 opinion addressed to The Honorable Sam T. Barfield, Commissioner of the Revenue for the City of Norfolk, the Virginia Attorney General opined that a full time minister of music who often lead services and who filled in and “gave the message” for eight months while the church was without a minister could qualify as a “minister” for the purposes of the exemption contained in the constitution. 1976-77 Va. Op. Atty. Gen. 276 (1976).

But, again, the Attorney General used the “liberal interpretation” standard which is not applicable in the matter of the New Life in Christ Church.

It is clear that whenever the Virginia Supreme Court has previously had occasion to interpret the word “minister” it has defined the term in a legal sense as describing “members of a narrow class . . . intended for the leaders of the various religious faiths and not for the members generally.” *Cramer* at 569, 917. A person engaged in “college ministry” but lacking credentials to serve as a pastor or leader within a congregation may indeed be engaged in ministry and good works, but he is still a layperson.

Josh Storms is not a minister in accordance with the rules and regulations of his chosen denomination, much less “the minister” leading the congregation, thus, the necessary prerequisite for declaring the Property as tax exempt does not exist. Because Anacari Storms is not allowed by the rules of her denomination to become a minister, she also cannot be “the minister” for the Church.

The Church does not classify Josh or Anacari Storms as “ministers” for the purpose of federal taxation.

Through discovery, the Plaintiffs provided their employment confirmation letter to Josh Storms, as well as the Storms' W-2, which delineates the Property as a value-added benefit of employment. The United States tax code permits residency allowances for ministers to be exempt from Federal income taxation. The Storms' W-2 indicates that the Church withholds taxes on the housing allowance as a part of its compensation. 26 USC § 107 specifically excludes housing of ministers from income taxation and withholding requirements. Therefore, for Federal tax purposes, the Church does not consider the residence to be occupied by a minister of the Church.

III. CONCLUSION

The Virginia Constitution and statutes that define those exemption allowances govern the Court's determination whether one qualifies for an exemption. The particular set of facts presented this Court through pleadings and discovery necessitate this Court to find that the Property in which exemption is claimed fails the residency test of the religious residence exemption qualification. The Property is not, in the words of the statute, utilized "for the residence of the minister" of the congregation that owns the Property and, therefore, is not exempt from the City's real estate taxation.

Respectfully Submitted,

CITY OF
FREDERICKSBURG,

By Counsel

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CERTIFICATE OF MAILING

I, the undersigned attorney, hereby certify that on this the 9th day of January, 2020, a true copy of the foregoing Memorandum of Law in Support of Motion for Summary Judgment was mailed, postage prepaid, to the following persons:

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TABLE OF REFERENCES

1. Virginia Constitution, Article X, Section 6.
2. Virginia Code § 58.1-3606.
3. *DKM Richmond Associates, LP v. City of Richmond*, 249 VA 401, 457 SE2d 76 (1995).
4. *Westminster-Canterbury of Hampton Roads, Inc., v. City of Virginia Beach*, 238 VA 493, 385 SE2d 561 (1989).
5. *Commonwealth v. Manzer*, 207 VA 996, 154 SE2d 185 (1967).
6. New Life in Christ Church. (2019). Officers. Retrieved December 29, 2019, from “<https://www.nlicc.org/about/officers/>”.
7. *Cramer v. Commonwealth*, 214 VA 561, 202 SE2d 911 (1974).
8. The Book of Church Order of the Presbyterian Church in America, Chapter 22.
9. *Cudlipp v. City of Richmond*, 211 VA 712, 180 SE2d 525 (1971).
10. 1976-77 Va. Op. Atty. Gen. 276 (1976).
11. 26 USC § 107.

Appendix F

VIRGINIA:

**IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG**

Case No. CL 19-395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

**TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH'S OPPOSITION TO THE
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, the Trustees of the New Life in Christ Church ("New Life" or "New Life Church"), by counsel, and files its Opposition to the Defendant's Motion for Summary Judgment filed by the City of Fredericksburg ("City") and states as follows:

I. INTRODUCTION

New Life Church has filed this action pursuant to § 58.1-3984 Va. Code seeking review of the City's determination that certain property located at 1708 Franklin Street in the City of Fredericksburg ("Property") is not entitled to the tax exemption provided by Article X, Section 6(a)(2) of the Virginia Constitution and § 58.1-3606(A)(2)(ii) ("Tax Exemption Provi-

sions”). The property is currently occupied by individuals employed by the Church as Youth Ministers. The City’s position seems to be that unless property is occupied by a “minister” meeting certain criteria that the City has deemed important, then a church cannot assert that such an individual is a minister for purposes of the Tax Exemption Provisions of the Virginia Constitution and attendant statutes. Because the government may not, as a matter of federal constitutional law and Virginia law, dictate to a church who may be a “minister,” the City’s motion must fail. Additionally, insofar as the assertion of the New Life Church is that New Life Church’s sincere belief that the Youth Ministers are “legitimate” ministers, such belief is a question of intent and credibility which are questions of fact for the fact finder and not properly resolved on summary judgment.

II. SUMMARY JUDGMENT STANDARD

Under Virginia law, summary judgment is a “drastic remedy” which is available only where there are no “material facts genuinely in dispute.” Slone v. General Motors Corp., 249 Va. 520, 522 (1995) (internal citations omitted). Ordinarily, facts developed through discovery should not supplant the taking of evidence at a trial. Carson v. LeBalanc, 245 Va. 135, 137 (1993). The court is obliged to view the facts in the light most favorable to the non-moving party and to grant all reasonable inferences in favor of such non-moving party. Bloodworth v. Ellis, 221 Va. 18, 23, (1980). Further, while a moving party, absent agreement and certain circumstances not applicable here, is prohibited from using affidavits and discovery depositions in support of its motion, the opposition party is not similarly restricted in supporting its opposition.

Lloyd v. Kime, 275 Va. 98, 107 (1988); see also, Rule 3:20 Rules of Supreme Court.

III. MATERIAL FACTS IN DISPUTE

The City moving papers do not contain a specific section listing the material facts purportedly not in dispute though it attaches interrogatory answers from New Life Church. The City concedes any issues as to the ownership and use of the Property but asserts that a “minister” does not “reside” at the Property. The Church asserts the following facts in support of its Opposition as set forth in the Affidavit of Thomas J. Worman attached hereto as “**Exhibit A.**”

1. The Trustees of the New Life in Christ Church are the record owners of real property located at 1708 Franklin Street in the City of Fredericksburg (“Property”) which is the subject of this litigation.

2. Two individuals known as Josh Storms and Ancari Storms (husband and wife) currently reside at the Property.

3. The Storms are employed by the New Life in Christ Church as Youth Ministers and have been since 2017.

4. Prior to beginning their work as Youth Ministers, the Storms received training relating to the Church’s expectations, goals and standards for youth ministry and had existing experience. Such training and experience includes the fact that Josh Storms grew up in the church as a teenager and was on the youth group and was the president of the Youth Group and then went off to college. He was part of a college ministry for the 4 years he was at Virginia Tech. Since graduation he has taken part time classes at

New Geneva Seminary and he is under the direction of the NLIC session and has been mentored by the assistant pastor. Anacari Storm grew up in the church and did missionary work in Jordan for a year. She is being trained by mentoring and on the job training, and has a degree in theology. They are doing ministry and are supervised by the session of NLIC. Now they continue training in seminary classes and 2 CCEF training conferences annually.

5. The Storms' activities and responsibilities as Youth Ministers is summarized in the attached "Exhibit A" under "Summary of Responsibilities." In addition to those specific responsibilities, the Youth Ministers are expected to establish and maintain a ministry catering to college-aged men and women which spreads the message of the New Life in Christ Church to such young men and women.

6. The New Life in Christ Church views these functions as essential, religious functions in that the Church's primary function is to spread its message of salvation and redemption through the Christian faith. The Youth Ministers function is also considered essential insofar as it is important to attract young members who will hopefully be active members of the Church for years to come.

7. The City's arguments that a "minister" of a church must be ordained or must be the person in some leadership capacity does not comport with the actual structure of the New Life in Christ Church and misconstrues the Church hierarchy.

8. The ruling body of a church in the Presbyterian faith is called the Session. The Session of a particular church, such as New Life in Christ Church, is

elected by the Church's congregation. The Session is the governing body of such church.

9. A church's pastor (i.e. an ordained minister authorized to deliver sermons) is a member of the Session. However, the pastor is but one member of the Session and has but one vote.

10. The decision-making authority for a Presbyterian church (and, accordingly, for New Life in Christ Church) rests with the Session. The pastoral minister does not have autonomous authority over the New Life in Christ Church.

11. While it is true that in order to deliver sermons to the congregation a person doing so must be an "ordained" minister, there is nothing in the Book of Church Order that prohibits a particular church from hiring ministers to serve as messengers and teachers of the faith.

12. In this respect, Section 12 of the Book of Church Order provides each church rather broad authority to govern its own affairs which would include the ability to hire ministers to cater to specialized groups, such as youth.

IV. ARGUMENT

The First Amendment provides, in relevant part, that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." U.S. Const. Amend. The First Amendment is applicable to the several States by virtue of the 14th Amendment. See generally, Lee v. Weisman, 505 U.S. 577 (1992). "The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been

more scrupulously observed.” Reid v. Gholson, 229 Va. 179, 187 (1985) (internal citations omitted). The City’s interpretation of the “requirements” to be a minister of New Life Church and argument as to who New Life may determine to be a “minister” would be a violation of the First Amendment rights of New Life and would unnecessarily require this court to delve into questions of faith and doctrine.

In Hosanna-Tabor Evangelical Lutheran Church Sch. V. EEOC, 565 US 171 (2011), the United States Supreme Court held that the First Amendment and the “ministerial exception” barred a discrimination claim under the Americans With Disabilities Act filed by a minister the church that fired her. Id. at 196. In arriving at this decision, the Supreme Court noted that “the freedom to select the clergy, where no improper methods of are proven is . . . part of the free exercise of religion protected by the First Amendment against government interference.” Id. at 186 (internal citations omitted). Simply put, civil laws, in that case, did not override a religious organization’s right to determine who its ministers are notwithstanding that the organization’s actions may have otherwise violated employment laws.

Significantly, three separate Justices in the Hosanna-Tabor case filed or joined concurring opinions to specifically warn against adopting any specific “test” to determine who qualifies as a “minister.” Justice Thomas wrote that, in his view, a “religious organization’s right to choose its ministers would be hollow if secular courts could second-guess the organization’s sincere determination that a given employee is a ‘minister’ under the organization’s religious tenets.” Id. at 197 (Thomas, concurring). Justice Alito, joined

by Justice Kagan, expressed similar views and argued that the concept of “formal ordination” or the use of the term “minister” should not be dispositive of when the ministerial exception applies and that “minister” should apply to “any ‘employee’ who leads a religious organization, conducts worship services or important religious ceremonies or rituals or *serves as a messenger or teacher of its faith*.” *Id.* at 199 (Alito, concurring). Indeed, the Supreme Court has long recognized that it would be a “significant burden on a religious organization to require it, upon pain of substantial liability, to predict which of its activities a secular court will consider religious.” Corporation of Presiding Bishop v. Amos, 483 U.S. 327, 336 (1987).

Virginia law is in conformance with the views and rulings of the Supreme Court. As the Virginia Supreme Court has acknowledged, it is well established that a civil court may neither “interfere in matters of church government nor in matters of faith and doctrine.” Jae-Woo Cha v. Korean Presbyterian Church, 262 Va. 604, 611 (2001) (internal citations omitted). Agreeing with the Fourth Circuit, the Supreme Court of Virginia has specifically stated that the “right to choose ministers without government restriction underlies the well-being of religious community.” *Id.* (citing and quoting Rayburn v. General Conference of 7th Day Adventists, 772 F.2d 1164, 1167-68 (4th Cir. 1985) (internal quotations omitted)). “Any attempt by government to restrict a church’s free choice of leaders thus constitutes a burden on the church’s free exercise rights.” *Id.* The Jae-Woo court further observed with approval that “many courts have concluded that any attempt by civil courts to limit a church’s choice of its religious representatives.

That Hosanna-Tabor and Jae-Woo involved employment disputes does not distinguish those cases from the principle at issue in this case. The government need not provide an tax exemption for the residence of a minister of a church. But, having done so, it is not in the government's purview to judge whether an individual, hired as a minister by a church, is "qualified" to be a minister. A church, acting in good faith, has a constitutional right to employ ministers of its choosing to do the work of the Church.

The City's essential argument is that the Storms cannot be ministers of the Church for purposes of the Tax Exemption Provisions of the Virginia Constitution or Virginia statute at issue. Specifically, the City argues that regardless of whether one is considering the use of the plural "ministers" as stated in the Virginia Constitution or the singular "minister" as stated in the statute, the word is limited to someone who is the "head of a religious congregation" who is "set apart as the leader." Memo in Support Page 4 (citing Cramer v. Commonwealth, 214 Va. 561, 567 (1974)). The City's position is flatly at odds with the federal and Virginia case-law cited above which prohibit government from imposing its own determinations into what constitutes a "minister." Additionally, the City's reliance on Cramer is misplaced.

In Cramer, this issues did not involve the tax exempt status of any property owned by a church. Rather, the issue was a circuit courts revocation of certain ministers' authority to act as marriage celebrants pursuant to § 20-23 Va. Code. Id. at 563. The ministers at issue were ministers of the Universal Life Church, Inc. which lacked any "traditional doctrine"

or structure. *Id.* at 562. Basically, anyone who expressed a desire to be ordained could be and was ordained by Universal Life and the Court noted that one could, apparently, become ordained without one's knowledge. *Id.* at 562-63. The "congregations" were minimal and the so-called ministers interaction with a congregation was "informal, incidental, and infrequent." *Id.* at 563. After a local news reporter appeared at the clerk's office with an ordination card and requested authority to perform marriages, the clerk questioned the eligibility and a show cause order was entered. *Id.* The authority of the ministers was revoked and the appeal followed.

On appeal, the Commonwealth argued that the marriage statute should be limited to ministers for whom ministry was "full-time vocation." *Cramer*, 214 Va. 563-64. The Court rejected that argument asserting that it was a matter of common knowledge that many ministers "serve their congregations with complete fidelity and efficiency while holding outside employment." *Id.* at 564. The Court further rejected the application of any "religious test." *Id.* In upholding the revocation, the Court determined that the Universal Life Church was an "organization of ministers" and determined that "[a] church which consists of all ministers, and in which all new converts can become instance ministers, in fact has no 'minister'" *Id.* at 565. Thus, it was in the context of the marriage statute and in the context of a church where anyone who wished to become a minister could become a minister simply by asking, that the court stated that a "minister" is the "leader." That is not the situation that is faced by this court and it is not the case that a

person can become a “minister” of the New Life Church by simple request.

The City’s apparent contention is that unless an individual is ordained as a minister pursuant to the Book of Church Order, the individual cannot be a “minister.” The City ignores that each individual church has the autonomy to engage an individual as a “minister.” The City’s argument that a “minister” must be the “leader” of a church does not comport with how Presbyterian churches are organized.

The ruling body of a church in the Presbyterian faith is called the Session. Judicial Comm. of PCA v. Kim, 56 Va. Cir. 46, 46-47 (Fairfax Cir. 2001); see also, Affidavit of Thomas Worman, ¶ 13-14, attached as **Exhibit 1**. The Session of a particular church (and, indeed, the Session of the New Life in Christ Church) are elected by the church’s congregation. Affidavit at ¶ 12. The Session is the governing body of that particular church. Affidavit at ¶ 14. Although a church’s pastor (i.e. the minister authorized to deliver sermons) is a member of the Session, the pastor is but one member of the Session with one vote. Affidavit at ¶ 13. Put another way, the Session is the decision-making authority for the New Life in Christ Church and its pastoral minister does not have autonomous authority. Affidavit at ¶ 14. The relative autonomy of a particular church is “codified” in the Book of Church Order in Section 12.5. Affidavit at ¶ 16. A copy of the relevant section of the Book of Church Order is attached hereto as **Exhibit 2**. Nothing in the Book of Church Order prohibits a particular church from hiring ministers to serve to carry its message of faith.

In its Motion, the City cites to Cudlipp v. City of Richmond, 211 Va. 712 (1971) apparently to support of its position that in order to be a “minister,” a person must possess some measure of “authority” over the congregation or church. Memo Pg. 7. In that case, the circuit court had denied the church’s application to challenge the City of Richmond’s denial of the property tax exemption for the residence of a “Bishop Coadjutor” (i.e. a person subordinate to a Bishop) and determined that the Constitution and applicable Code provisions limited exemptions to one minister per church. Cudlipp, 211 Va. at 713. The Supreme Court reversed because it was “by no means clear” that it was the intent of the legislature or constitutional revisors to limit exemptions to the “residence of only one minister for each church or religious body.” Id. The Court also found it significant that the City of Richmond had a history of extending the exemption to assistant ministers of local churches. Id. Thus, even though the relative authority of the Bishop Coadjutor was referenced by the Court, it was not the main focus of the analysis. There is no issue in this case that New Life is seeking exemptions for more than one residence.

The City’s reference to the 1976 Attorney General opinion actually tends to support this view of Cudlipp insofar as the Attorney General noted that the Supreme Court ruled that a church may have more than one minister. The Attorney General then proceeded to opine that a “minister of music and education of the church” would qualify as a “minister” for purposes of the tax exemption. Significantly, the Attorney General reach his opinion irrespective of the fact that the

minister was not “an ordained minister” but nevertheless was someone who “assists the pastor in answering to the needs of church members.” Most significant was that the minister was a person “whose duties relate to the religious work of the church, as opposed to duties which merely facilitate the operation of the church.”

The City notes that Cudlipp was decided and the 1976 Attorney General opinions were issued using a liberal construction of the constitutional provisions and statutes at issue. It is true that under Article 10, Section 6(f) of the Virginia Constitution, the tax exemption provisions of the Constitution and attendant statutes are to be strictly construed. DKM Richmond Assocs. v. City of Richmond, 249 Va. 401, 407 (1995). However, the City cites to no case, and New Life has found none, where strict construction has been interpreted to mean that the government may decide for a religious organization who does or who does not qualify as a minister. The DKM case concerned whether the City of Richmond had properly disallowed an exemption pursuant to its local ordinances regarding rehabilitated property. Id. at 402. In Westminster-Canterbury of Hampton Rds., Inc. v. Virginia Beach, 238 Va. 493 (1989), cited by the City, the issue was whether a retirement community had met its burden of demonstrating that its purpose was exclusively charitable. Id. at 501. There is no statutory definition of “minister” that is applicable to this case.

In determining this issue, New Life would submit that the “strict construction” of Section 6(f) must yield to the Establishment Clause rights of New Life. New Life Church has hired the Ancaris as Youth Ministers. Their function is to spread the message of New Life’s

beliefs to young men and women of “college age.” New Life views this function as essential religious work that is vital to New Life sustaining its growth as a church and maintaining its existence as a church. The sincerity of New Life’s view in this matter is not something that can be determined on Summary Judgment as credibility and intent are questions for the fact finder. See generally, Ciejek v. Laird, 238 Va. 109, 113-14 (1989) (intent is a fact question); Wetlands Am. Trust v. White Cloud, 291 Va. 153, 173-74 (2016) (credibility is for the trier of fact).

V. CONCLUSION

For the foregoing reasons, the Motion for Summary Judgment of the City of Fredericksburg should be overruled and denied.

Respectfully submitted,
Trustees of the New Life
In Christ Church
By Counsel
T. Wayne Biggs
T. Wayne Biggs, Esq.
Dycio & Biggs
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Fairfax, Virginia 22032
*Counsel for the Trustees of the
New Life in Christ Church*

Robert M. Byrne, Esq.
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*Counsel for the Trustees of the
New Life in Christ Church*

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of February, 2020, I caused a true and accurate copy of the foregoing to be forwarded via facsimile and regular US mail, postage prepaid, first class, as follows:

John A. Rife, Esq. (VSB No. 45805)
Taxing Authority Consulting Services, PC
P.O. Box 31800
Henrico, Virginia 23294-1800
Phone: (804) 545-2500
Facsimile: (804) 545-2378

and

Kathleen Dooley (VSB No. 25725)
Fredericksburg City Attorney
600 Caroline Street
Fredericksburg, Virginia 22401
Counsel for the City of Fredricksburg

T. Wayne Biggs
T. Wayne Biggs, Esq.

**VIRGINIA: IN THE CIRCUIT COURT OF THE
CITY OF FREDERICKSBURG**

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiffs,

v.

CITY OF FREDERICKSBURG,

Defendant.

AFFIDAVIT OF THOMAS J. WORMAN

COMES NOW YOUR AFFIANT, Thomas J. Worman who deposes and states as follows:

1. My name is Thomas (“Tom”) J. Worman. I am over the age of 18 and competent to testify in this matter.

2. I am a member of the New Life in Christ Church. Additionally, I am currently a Deacon at New Life in Christ Church, and I am currently one of the Trustees of the New Life in Christ Church.

3. I am the Tom Worman identified in the website printout attached to the City of Fredericksburg’s Memorandum of Law In Support of Its Motion for Summary Judgment.

4. I have otherwise been a practicing member of the Presbyterian faith for most of my life and my entire adult life. I have been a Deacon of New Life since 1989.

5. The Trustees of the New Life in Christ Church are the record owners of real property located at 1708

Franklin Street in the City of Fredericksburg (“Property”) which is the subject of this litigation.

6. Two individuals known as Josh Storms and Ancari Storms (husband and wife) currently reside at the Property.

7. The Storms are employed by the New Life in Christ Church as Youth Ministers and have been since 2017.

8. Prior to beginning their work as Youth Ministers, the Storms received training relating to the Church’s expectations, goals and standards for youth ministry and had prior experience. Specifically, Josh Storms grew up in the church as a teenager and was on the youth group and was the president of the Youth Group and then went off to college. He was part of a college ministry for the 4 years he was at Virginia Tech. Since graduation he has taken part time classes at New Geneva Seminary and he is under the direction of the NLIC session and has been mentored by the assistant pastor. Anacari Storm grew up in the church and did missionary work in Jordan for a year. She is being trained by mentoring and on the job training, and has a degree in theology. They are doing ministry and are supervised by the session of NLIC. Now they continue training in seminary classes and 2 CCEF training conferences annually.

9. The Storms’ activities and responsibilities as Youth Ministers is summarized in the attached “Exhibit A” under “Summary of Responsibilities.” In addition to those specific responsibilities, the Youth Ministers are expected to establish and maintain a ministry catering to college-aged men and women

which spreads the message of the New Life in Christ Church to such young men and women.

10. The New Life in Christ Church views these functions as essential, religious functions in that the Church's primary function is to spread its message of salvation and redemption through the Christian faith. The Youth Ministers function is also considered essential insofar as it is important to attract young members who will hopefully be active members of the Church for years to come.

11. The City's arguments that a "minister" of a church must be ordained or must be the person in some leadership capacity does not comport with the actual structure of the New Life in Christ Church and misconstrues the Church hierarchy.

12. The ruling body of a church in the Presbyterian faith is called the Session. The Session of a particular church, such as New Life in Christ Church, is elected by the Church's congregation. The Session is the governing body of such church.

13. A church's pastor (i.e. an ordained minister authorized to deliver sermons) is a member of the Session. However, the pastor is but one member of the Session and has but one vote.

14. The decision-making authority for a Presbyterian church (and, accordingly, for New Life in Christ Church) rests with the Session. The pastoral minister does not have autonomous authority over the New Life in Christ Church.

15. While it is true that in order to deliver sermons to the congregation a person doing so must be an "ordained" minister, there is nothing in the Book of

Church Order that prohibits a particular church from hiring ministers to serve as messengers and teachers of the faith.

16. In this respect, Section 12 of the Book of Church Order provides each church rather broad authority to govern its own affairs which would include the ability to hire ministers to cater to specialized groups, such as youth.

17. With regard to the W-2 and tax withholding issue raised in the brief, the New Life Church notes that the federal tax exemption refers to a “minister of the gospel” whereas the Virginia statute refers to a “minister.” New Life has followed its CPA’s advice as to how to issue its W-2s for employees.

AND FURTHER YOUR AFFIANT SAYETH NAUGHT.

I hereby affirm that the foregoing is true and accurate to the best of information, knowledge and belief under penalty of perjury.

Date: 2-10-20 SIGNED: Thomas J. Worman

Thomas J. Worman

CHAPTER 12

The Church Session

12-1. The church Session consists of the pastor, associate pastor(s), if there be any, and the ruling elders of a church. If there are four or more ruling elders, the pastor and two ruling elders shall constitute a quorum. If there are fewer than four ruling elders, the pastor and one ruling elder shall constitute a quorum. Assistant pastors, although not members of the Session, may be invited to attend and participate in discussion without vote.

When a church has no pastor and there are five or more ruling elders, three shall constitute a quorum; if there are less than five ruling elders, two shall constitute a quorum; if there is only one ruling elder, he does not constitute a Session, but he should take spiritual oversight of the church, should represent it at Presbytery, should grant letters of dismissal, and should report to the Presbytery any matter needing the action of a Church court.

Any Session, by a majority vote of its members, may fix its own quorum, provided that it is not smaller than the quorum stated in these paragraphs.

12-2. The pastor is, by virtue of his office, the moderator of the Session. In the pastor's absence, if any emergency should arise requiring immediate action, the Session may elect one of its members to preside, the quorum for such emergency meeting being as in the case of a church with no pastor in 12-1. Should prudential reasons at any time make it advisable for a minister other than the pastor to preside, the pastor

may, with the concurrence of the Session, invite a minister of the same Presbytery to perform this service.

12-3. When a church is without a pastor, the moderator of the Session may be either a minister appointed for that purpose by the Presbytery, with consent of the Session, or one invited by the Session to preside on a particular occasion, or one of its own members elected to preside. In judicial cases, the moderator shall be a minister of the Presbytery to which the church belongs.

12-4. Associate or assistant pastors may substitute for the pastor as moderator of the Session at the discretion of the pastor and Session.

12-5. The church Session is charged with maintaining the spiritual government of the church, for which purpose it has power:

a. To inquire into the knowledge, principles and Christian conduct of the church members under its care; to censure those found delinquent; to see that parents do not neglect to present their children for Baptism; to receive members into the communion of the Church; to remove them for just cause; to grant letters of dismissal to other churches, which when given to parents, shall always include the names of their non-communicating, baptized children;

b. To examine, ordain, and install ruling elders and deacons on their election by the church, and to require these officers to devote themselves to their work; to examine the records of the proceedings of the deacons; to approve and adopt the budget;

c. To approve actions of special importance affecting church property;

d. To call congregational meetings when necessary; to establish and control Sunday schools and Bible classes with special reference to the children of the church; to establish and control all special groups in the church such as Men in the Church, Women in the Church and special Bible study groups; to promote world missions; to promote obedience to the Great Commission in its totality at home and abroad; to order collections for pious uses;

e. To exercise, in accordance with the Directory for Worship, authority over the time and place of the preaching of the Word and the administration of the Sacraments, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put; to take the oversight of the singing in the public worship of God; to ensure that the Word of God is preached only by such men as are sufficiently qualified (*BCO* 4-4, 53-2, 1 Timothy 2:11-12); to assemble the people for worship when there is no minister; to determine the best measures for promoting the spiritual interests of the church and congregation;

f. To observe and carry out the lawful injunctions of the higher courts; and to appoint representatives to the higher courts, who shall, on their return, make report of their diligence.

12-6. The Session shall hold stated meetings at least quarterly. Moreover, the pastor has power to convene the Session when he may judge it requisite; and he shall always convene it when requested to do so by any two of the ruling elders. When there is no

pastor, it may be convened by two ruling elders. The Session shall also convene when directed so to do by the Presbytery.

12-7. Every Session shall keep an accurate record of its proceedings, which record shall be submitted at least once in every year to the inspection of the Presbytery.

12-8. Every Session shall keep an accurate record of baptisms, of communing members, of non-communing members, and of the deaths and dismissions of church members.

12-9. Meetings of the Sessions shall be opened and closed with prayer.

100a

Appendix G

VIRGINIA:
IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG

CASE No. CL 19395

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Plaintiff,

v.

CITY OF FREDERICKSBURG,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE PATRICIA
KELLY, JUDGE

Tuesday, February 18, 2020

9:05 a.m.

Fredericksburg, Virginia

Halasz Reporting & Videoconference
1011 E. Main Street, Richmond, VA 23219

(804) 708-0025

Reported by: Mark E. Brown, RPR

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

DYCIO & BIGGS

By: T. WAYNE BIGGS, ESQUIRE

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ON BEHALF OF THE DEFENDANT:

**TAXING AUTHORITY
CONSULTING SERVICES, P.C.**

By: JOHN A. RIFE, ESQUIRE

8919 Three Chopt Road

Henrico, VA 23229

(804) 545-2379

john@taxva.com

PROCEEDINGS

THE COURT: Good morning. Let's see. We are on the record of the Trustees of the New Life in Christ Church versus the City of Fredericksburg, case number CL-19395. And we have?

MR. RIFE: Good morning, Your Honor. John Rife and Gregory Haynes for the City of Fredericksburg.

THE COURT: Good morning.

MR. BIGGS: Good morning. Wayne Biggs on behalf of the Trustees, and with me is one of the trustees, Mr. Thomas Worman.

THE COURT: Good morning. So we are here on the City's motion for summary judgment?

MR. RIFE: Yes, Your Honor.

THE COURT: All right.

MR. RIFE: If it please the Court, Your Honor, we're here on the City's motion for summary judgment because there is no material fact that's in dispute.

When the amended complaint was filed, paragraph five indicated that the property that we're discussing here known as 1708 Franklin Street was occupied by the church minister.

Through basic discovery, we learned that it was not, in fact, Sean Whitenack, who is the lead pastor, Doug Kittredge, the founding pastor, or Sam Capitano, who is the [assistant] pastor, but rather, the house is occupied by Josh and Anacari Storms, who the church considers their directors of college outreach, according to their jobs titles, with the church and their work with the church is part-time.

But before we get into it, Judge, I want to be on record to indicate that the City's position in this matter is in no way intended to lessen the good work and important work that the Storms are doing for the church, but the work that they are doing simply doesn't qualify them as the minister as required by the statutes.

So the best place to start for us to reconnoiter where we are with the lay of the legal land is to look at the statute.

First of all, the constitution in article 10, section 6, goes into the exemption itself for tax exemptions for churches and states that real and personal property owned and exclusively occupied or used by churches or religious bodies for religious worship or the residences of their ministers would be tax exempt.

And the constitution goes on to provide the General Assembly may limit but not expand these exemptions.

Now, the General Assembly took its legislative privilege to provide that limitation in 58.1-3606(a)(2), where they go in and say -- talking about residences for their ministers -- in section 2 it indicates that property that is exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body.

Now, there are two important differences to point out between the constitution and the statute, and the constitution says the residences of their ministers. And in the limitation under 3606(a)(2), it's the residence of the minister.

Now, Your Honor, we're here today on an application for a tax exemption for the property, that's 1708 Franklin Street, and we would concede that in the three tests that are required this Court to look at under the statute, you have to determine the ownership. It is owned by the church or the trustees of the church. You have to determine the use and you have to determine who the occupant of the residence is.

Now, the City concedes that you have the ownership and the use taken care of. It's owned by the trustees of the church. And its use, it's being used as a residence. But it's the occupancy that is at issue.

And the fact is not at issue that it's occupied by Josh and Anacari Storms, but the issue is whether they fall into the term of the ministry. And we believe, Judge, that the documentation that we have provided to the Court and the statutes clearly indicate that that's not the case.

So the -- Josh and Anacari Storms have been designated as directors of college outreach in a part-time capacity with the church, and we understand that the church has carved out this role for them and that the church is calling them ministers but minister is a term of art, Judge, and it can be used in a number of different connotations, but the way the statute indicates that it must be read is with a specific -- in a specific way, and it has a specific meaning and it points to a specific person within the church.

In this term of art, we are required to review not only who the minister is for qualification but I do need to deal with the inference that was provided in the Plaintiff's motion in opposition where they indicated

the Court can't determine who a minister is, and specifically they reference a court case, the Hosanna case, as they point to Hosanna versus EEOC, they indicate this Court cannot make a determination as to who a church minister is, and we're not asking the Court to determine who is and who is not a minister of a church, but the Hosanna case dealt with an ADA complaint, and the ADA complaint, the layperson who was called as a minister developed narcolepsy, ultimately they were determined -- the church determined to go a different direction and hired someone else and terminated her, so she filed an ADA complaint.

Now, the Supreme Court said we can't review that because the courts can't tell a church who its minister is going to be, because by doing so, we're going to fundamentally interfere with the organization and the operation of the church.

That's not what we are doing here today. So we're here today on an application for a tax exemption.

The Court's determination one way or the other whether the Storms are the minister of the church will not affect the church's operation in the least, so this is outside of that ministerial exception from the establishment clause.

So there is no prohibition on the Court determining who the minister is for qualifying under the statute.

But back to that term of art. So the statute requires that the residence of the home be the minister of the church. Clearly, the statute envisions that it's

going to have someone in that that house that has some authority over the church, and to this the courts have opined in the past who is the minister or who is a minister for the purposes of celebrating marital rights.

There is one case in particular that is on point with the discussion that we're having here, which is the City of Richmond -- or Cudlipp versus the City of Richmond. It's the most on-point case, and you would think after a few centuries of history we would have some more case law that deals with specific on-point matters, but this is as close as we can get, Judge.

The Cudlipp matter dealt with a bishop coadjutor and he was over several of the churches but he was not the -- he was not the bishop, he was the bishop coadjutor, and they filed for a tax exemption for his residence and initially it was denied and the Supreme Court indicated and they looked at what the bishop coadjutor's duties were and the bishop coadjutor provided the services for the churches and he was considered the final authority for those churches and was able in making its ruling that the residence that he occupied was entitled to the tax relief or the tax exemption. The Court indicated that, you know, as far as the churches go, yes, there is someone that is over him, but for these churches that he administers, he is the final authority.

So the courts have looked to the term, the minister, and put a specific definition of someone who is set apart from the general congregation to someone who is -- who personifies the leader of the church, if you will.

And, Your Honor, in the -- in the Plaintiff's brief in opposition, they indicate that the City's position is that we're indicating that you have to be ordained to be considered the minister and that's simply not the case, Your Honor.

This church is organized under the Presbyterian Churches of America. They have a book of order. In that book of order, they establish who their pastor is going to be and the assistant pastor and they have a hierarchy that has been established.

The City's contention is not that you have to be an ordained minister in order to qualify for this. There are a plethora of churches that do not have an ordained minister as their head. In those cases, the pastor of those churches, even if they have not been fully ordained by, you know, a higher authority, if you will, a governing authority, they may still qualify for the tax exemption, but in this case, we have a book of church order that establishes how the New Life in Christ Church is to be organized and it indicates who their pastors are going to be, and the City's position is when you have a rule -- a rule book, you have to follow it.

And in this case, Josh and Anacari Storms are not pastors, they are not ordained, and by admissions through interrogatories that we filed, they have never preached a sermon in front of the congregation but they are directors of college outreach.

They are ancillary to the overall purpose of the church, performing good work for the church, no doubt, no question, but they are ancillary part-time members of the church.

The use of the term the minister in the code, Judge, is indeed a term of art, and it's intended to connotate one who is the leader of the congregation. One that's personified as the spiritual leader of the church. And the requirement of the code just can't square with the contention that an adjunct part-time staff member of the church would be the religious leader of the church in order to survive strict scrutiny, which by the constitution, Judge, this Court has to review these exemptions with strict scrutiny and it's the burden of the individual that's claiming the tax exemption to overcome the burden of proof and to show that they qualify. And in this case, it simply does not qualify.

The exemption requirement is codified and it's a matter of legislative grace and the Plaintiffs have not shown that a clergy or a member of the church who is the minister resides in that house. It simply does not qualify, Your Honor, and the City asks the Court to grant its motion for summary judgment and dismiss the matter.

THE COURT: Thank you.

Mr. Biggs, sir.

MR. BIGGS: Yes, ma'am.

Judge, in this case, I think the primary consideration for today is the procedural posture of where we are today. We are here on a motion for summary judgment, and under a motion for summary judgment, the facts are viewed in the light most favorable to the non-moving party which is the trustees. Inferences, if any are to be drawn, are to be drawn in favor of the trustees.

And I think that basically on the case as is presented to you, I don't think it's appropriate to make this decision on summary judgment.

The Storms are youth ministers and the City, although it claims to not be trying to dictate to this church who its ministers can or can't be, I think that's exactly what they're doing.

And we both seem to agree that there is no definition of minister that is provided by the code, at least in the context of -- in the context of tax exemption.

Judge, one of the cases that the City cited I think is instructive of how I view this and how the church views this and that's the Kramer case.

In Kramer, a charter was revoked and upheld on appeal against a religious organization that basically the facts of the case were that in that religious organization, everyone could become a minister. All you had to do was ask to be a minister.

As a matter of fact, one of the more salient points that I noted was apparently you could be a minister even without realizing you had become a minister.

And I say that to say this. I think what Kramer instructs is that if the Court were presented with a situation in which it were -- in which the allegations were that this was a sham or that an organization is perpetrating a fraud in that the minister was not bona fide in any way, that I think the Court could rightly hear evidence on that to make that determination, whereas here, the ministers at issue are legitimately engaged in religious work.

I think the government is not permitted to dictate who, quote/unquote, qualifies as a minister or not and I think that that is true regardless of strict scrutiny in this case because I think the import of the Hosanna case that they cite to and that I've cited to in my brief, yes, it's an employment case, but what the Supreme Court says is that the ADA has to yield to the establishment clause, and the ADA cannot dictate to a church who its ministers can be.

Now, in this particular case, the facts that we asserted in our brief that we would submit are in dispute or would be facts that the Court should give full consideration to at a hearing instead of summary judgment is that there are actually two pastors who regularly provide sermons, and that's in interrogatory number seven, and I point that out to say this, that in this particular case, one would wonder under the City's position if it were a case of whether or not one of these pastors was entitled to the exemption, would be City be permitted at that point to judge whether or not the lead pastor versus the senior pastor was the, quote/unquote, leader in the City's view. And I would submit to you that as long as the Court is satisfied that both of them are doing religious work, then it's not to the City to decide who the, quote/unquote, leader is of the church.

I think it's important also to bear in mind in this case we are not presented with a case in which there are three or four different properties and this church is trying to claim an exemption for each one of them. There is only one property at issue.

Continuing, even as to the two pastors that apparently they're pointing to as people who would be the minister, under the churches hierarchy, its actual hierarchy, neither one of them are actually the unquestioned or the autonomous leader with full authority over the church.

Under the affidavit provided by Mr. Worman attached to my brief, pastors are simply members of the session which is the governing body of the church. Pastors just have one vote just like any other member.

The decision-making authority of any church rests with the session. And under section 12.5 of the Book of Church Order which is attached to my moving papers, the session is in charge of the, quote, spiritual government of the church.

And under 12.5(e), one of the powers granted to a church is to determine the best measures for promoting the spiritual interest of the church and congregation, such as creating a youth ministry and hiring youth ministers.

Further through the affidavit it asserts the Storms received training and had youth ministry experience to begin with before starting this ministry. Mr. Storms is taking seminary classes and Mrs. Storms has a theology degree and did missionary work in Jordan to begin with.

The affidavit also sets forth the extensive responsibilities that they both have. And crucially under the affidavit, the church views these as religious functions.

And that is, I think, another key distinction. It's not simply a matter of the operation of the church. The church does not have somebody who is, say, a maintenance man or janitor in the residence and trying to claim that as an exemption.

These are people who do religious work and religious functions, and they are certainly leaders in the context of youth ministry.

I've already discussed the Hosanna case, and I would note again, as I set forth in my brief, there were several concurring opinions that cautioned against any test by Judge Thomas, that the government shouldn't be allowed to second-guess a religious organization in determining who its minister should be. And Judge Alito determined that formal ordination should not be dispositive, but the term "minister" should apply to anyone who has a message of faith.

The Jawoo (phonetic) case from the Virginia Supreme Court admonishes that the government shouldn't interfere with matters of faith and doctrine and the right to choose ministers without government restriction underlines the wellbeing of a religious community.

And it says that any attempt to restrict a church's free choice of its leader is a burden on free exercise.

As far as Cudlipp is concerned, I think the interesting point about Cudlipp is exactly what we have here. We have somebody who is essentially an assistant pastor or is not the head of the church, but in that case, Cudlipp allowed for the exemption, and I understand that's under the prior liberal interpretation, but

I would submit that the strict construction of the constitution at this point doesn't make a difference in this case because the determination of whether or not someone is doing religious work to be a minister or the minister of the church should rest with the church.

And the City also cites to an Attorney General opinion which affirmed that ordination didn't matter but that what one should look at is whether the people who are at issue as ministers are doing religious work.

So from the Church's perspective, Judge, the people who are asserted as ministers were hired as ministers, they have a specific ministry within the church and they are doing religious work.

The City's assertion that the minister can only be the head is problematic on a number of levels; namely, as I set forth in this particular case, though we have two different pastors who deliver sermons every Sunday, the, quote/unquote, decision-making body of the church is the session.

So in that sense, I think that I would come back around to the fact that we're here on summary judgment, and with all facts inferred in the Church's favor, I don't think it's appropriate to make this decision on summary judgment. Thank you.

THE COURT: Mr. Biggs, when you're saying there are material facts in dispute, I understand that there may be more than one pastor who preaches on a particular day, but that's really not an issue in this particular case.

The issue in this case, I think we all agree factually where we are, the first two prongs are met, the

third prong is what's at issue and the issue is whether the two individuals living in this property -- I don't remember the exact address -- but living at this particular property are ministers for purposes of the tax exemption.

I don't think anyone is trying to tell this church who their ministers are. I don't think we can, I don't think we should be able to or that we should, but the issue is whether they qualify for purposes of the tax exemption as ministers and that's really the focus of this Court, and it's similar to Cudlipp.

I was amazed at how few reported cases there were on this issue, but nonetheless, here we are.

So what are you alleging are the material facts in dispute that it's not appropriate for a summary judgment motion at this point?

MR. BIGGS: Well, I would submit to the -- well, the fact that they're doing religious work that the church considers to be religious work. Maybe that's not in dispute. Maybe the real argument that I'm making is that under the establishment clause, regardless of the fact that we're talking about the tax statute, I don't see a distinction between telling them who their ministers are saying this person can't be a minister for purposes of the tax exemption. What is the difference?

THE COURT: Well, they're not telling the church you can't use these people as ministers. They're not saying that. They're not trying to dictate. The church can call anybody a minister.

I mean, I'm not saying that the church does that, but basically your position is if the church says they're a minister then you can't look beyond that. That's essentially your position.

MR. BIGGS: Having given an exemption, the General Assembly I think is bound by the first amendment in the establishment clause, and that is essentially my position except I would say this, that the facts that we have presented in opposition to this brief demonstrate the kind of work that they are doing and the level of work that they're doing, and I think as long as there is a bona fide sincere belief by the church that they have asserted these people as ministers, then that is a fact for resolution at trial and not appropriate for summary judgment.

THE COURT: Are you disputing that they are doing religious work?

MR. RIFE: Your Honor, we're not disputing they're doing religious work. We're disputing the fact that they aren't in that narrow class of individuals that would be that -- would be established in order to qualify for the tax exemption.

I think they are reaching out to college students but it's an ancillary function of the church and they don't minister to the church as a whole. They provide an adjunct function for the church.

MR. BIGGS: We don't agree that it's ancillary or adjunct. Part of my brief is actually how important the church considers that to be in maintaining the spiritual growth of the church. The youth ministry is

very important to the church. To call it ancillary or adjunct is not something that we would agree with.

THE COURT: Well -- okay. I'm looking for the -- and I know I saw it when I was reviewing this file. I'm looking for the job listing. Where is that?

MR. BIGGS: If you go to my brief in opposition, the quickest place is attached to the Worman affidavit or behind the Worman affidavit.

THE COURT: Got it. Thank you. I knew I had seen it. And the job title is Director of College Outreach.

MR. BIGGS: Correct.

THE COURT: And it lists the description. Describes it as a missionary position, an adjunct staff member of NLICC, which I guess is the New Life In Christ Church?

MR. BIGGS: Correct. And then you have the summary of responsibilities.

THE COURT: All right. Thank you, Mr. Biggs.

I'm sorry, I'm back with you, Mr. Rife. Do you want to respond to Mr. Biggs?

MR. RIFE: Your Honor, just briefly. There was some discussion about the Attorney General's opinion which we included as a copy to our brief that we referenced, and even in the AG's opinion it goes to look to see what -- in that case -- in that matter, it was a director of the music. And in that particular case, the director of music stepped in and oversaw the sermons of the church while the pastor was not there at the

church and ultimately it was determined that his duties rose to the level of providing the minister functions to the church. And in the Attorney General's opinion, it was deemed that he -- that his residence would qualify; however, that was determined under the liberal interpretation of the statute and that's where this really turns.

So if the property was owned prior to the change in the constitution, it was given a liberal interpretation.

Now we're dealing with a strict interpretation by [its] very terms in the constitution and I don't think any way that we slice this, if you read this statute and the constitution with the strict interpretation that's required, they simply don't qualify.

They're doing good work for the church and we laud their efforts but they don't fall under this tax exemption and we'd ask the Court to grant our summary judgment.

THE COURT: Mr. Biggs, I'm coming back to you because I'm trying to focus on the issue.

I mean, even in Cudlipp, we agree that they looked at the duties of what this person was doing to determine if they qualified for the exemption, and so -- but your theory, and I've read the cases from the Supreme Court that you cited, your theory is that we can't even, we being the courts, can't look at what a minister does in order to determine if they are a minister, that if the church says they're a minister, they are a minister.

MR. BIGGS: Not exactly.

THE COURT: I want to make sure I understand your point because obviously I know we're on summary judgment as well, but I want to make sure I understand what your position is on that issue.

MR. BIGGS: Because if we were simply saying this person is a minister and offering nothing else, or if we were saying this person is a minister and the facts bore out that they -- as the example I already gave, that they were a maintenance man or janitor or some other kind of administrative function within the church that doesn't have any religious function, then I think the Court is absolutely right to look at that because the Court can always determine whether or not an assertion is bona fide or sincere in the assertion of a minister.

But what I am saying is that once it has been established that the person being asserted as a minister is, in fact, doing religious work that the church deems important, then I do, with all due respect, submit that this question of whether it rises to the level of some sort of threshold that's not within the statute and that's not truly defined in the case law is problematic and at odds with the first amendment establishment clause.

Once you have determined that someone is doing religious work and they are -- and under these facts, again, we only have the one residence that the church owns, it's not a case where there are three or four different churches and you have to determine whether or not you get one minister per church --

THE COURT: I don't think that's an issue in this case.

MR. BIGGS: I'm just pointing out that this is solely focused on the Court's ability to judge whether or not someone's religious work is sufficient to meet the term "minister" under the statute, and I think that what the U.S. Supreme Court case as well as the Virginia Supreme Court cases I have submitted suggest is that the Court can't do that or should not do that. Certainly at least on summary judgment, the Court should not do that.

THE COURT: And I'm coming back to the summary judgment as well. You do not think that I have all of the information that I need in front of me to make this decision.

What piece of information or what fact do I need or is in dispute that it's not a solely legal determination at this point? Which is what summary judgment really is.

MR. BIGGS: Well, I think there would always be -- there would be testimony from the Storms, there would be further testimony from Mr. Worman, but as far as the affidavit that we have provided, I think that what you have in front of you is a general idea or a general listing of the work that they do that could be expanded -- or expounded at trial that would give the Court a better idea of whether or not the work that they're doing is, as the City puts it, sufficient to rise to the level of minister.

Again, and I say that maintaining my position that I don't think it is the government's purview or province to determine what is sufficient once we have determined that religious work is being done.

THE COURT: Okay. Thank you, Mr. Biggs.

MR. BIGGS: Yes, ma'am.

MR. RIFE: Your Honor, if I may.

THE COURT: I mean, it's an interesting issue for me. Obviously I've read it and I'm interested but I'm coming back to you and I'm happy to hear anything. It's your motion so your final word.

MR. RIFE: Just briefly, Your Honor. The establishment clause is not an issue here.

First of all, to say that no court in Virginia could ever look to see whether the statute complies or that the minister is required to be the resident, it would take the entire fact-finding out of that. It would take the rule and only require the church to own it and it be used as a residence, and it didn't matter who lived there because the Court could never look behind the veil of who is there and what their functions are, so I find that absurd.

We have a statute that says that a church is granted a tax exemption so long as they meet those three tests and that is that it's owned by the church or the trustees, that it's used as a residence, and it's occupied by the minister. And that's a specific term of art that is -- and I agree with the Court, we're looking at it from the perspective of a legal perspective of the minister and how that fits into the current facts that the Court has before us.

I don't think there's anything else to be gleaned through a trial. I think we've conceded that the

Storms are part-time and in the church's terms in the responsibilities an adjunct member of the church.

Now, they have been bestowed by the church as, you know, a minister, but under the book of order, that's not -- the pastors are laid out in the book of order, so from the perspective of how the church operates internally, this adjunct part of the church does good work for the church, no question, but from a day-to-day -- at the time when the church members gather and someone stands at the pulpit and they are ministering to the congregation, that is the pastor and the assistant pastor, that's not the Storms.

And if you were to ask any member of the congregation who the minister was, I don't think anyone is going to say the Storms, but we don't have to get to that point because we know what their duties are and the Court can determine that the Storms, who are the residents of that property, are not the ministers, and Your Honor, we think that the summary judgment is proper.

THE COURT: Thank you, sir.

I have read everything that you have put forward and I find it to be an interesting case. It is very well done briefs on both sides, but based on what's in front of me today, it is a motion for summary judgment, I am mindful of the legal standard, I do not find that there is any material fact in dispute at this point that a trial would gain further information, and based on the rulings in Cudlipp and Kramer, I am granting the motion for summary judgment and the matter is dismissed.

Mr. Rife, are you going to get me an order?

MR. RIFE: Your Honor, I have one sketched out that is very brief but it says --

THE COURT: Mr. Biggs, I will note your exception for the record.

MR. BIGGS: Yes, ma'am.

THE COURT: I don't know what's in the order but I would like it to be clear that I have read the job responsibilities and I've read the briefs and just want to make sure that we're being clear for the record, in case this has to go further, which it could.

MR. RIFE: See if this suits the Court.

THE COURT: And I guess it covers everything that was included in all of the briefs. I basically went from the amended complaint forward.

Well, I started at the initial complaint and then I went from the amended complaint and I went forward and I reviewed the response to interrogatories, the request for production of documents, the job title, the briefs, all of that has been reviewed and I don't find there is any material fact in dispute and it's appropriate for summary judgment, so I will enter this order and we will be clear for that for the record and that's the best I can do at this point. Anything else for today?

MR. RIFE: No, Your Honor.

MR. BIGGS: No, ma'am.

THE COURT: Nice to meet both of you gentlemen. I enjoyed reading your briefs.

123a

(The proceedings concluded at 9:41 a.m.)

CERTIFICATE OF COURT REPORTER

I, Mark E. Brown, RPR, do hereby certify that I recorded verbatim the proceedings in the Circuit Court of the City of Fredericksburg in the captioned cause, heard by The Honorable Patricia Kelly, Judge of said court, on February 18, 2020.

I further certify that the foregoing pages numbering 1 through 31 inclusive, constitute a true, accurate, and complete transcript of said proceedings.

Given under my hand this 26th day of March, 2020.

Mark E. Brown

Mark E. Brown, RPR, Notary Public
Commonwealth of Virginia
Registration No. 7564442

125a

Appendix H

IN THE SUPREME COURT OF VIRGINIA

Record No. _____

TRUSTEES OF THE NEW LIFE IN CHRIST
CHURCH,

Plaintiff-Appellant,

v.

CITY OF FREDERICKSBURG,

Defendant-Appellee

PETITION FOR APPEAL

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TABLE OF CONTENTS

Table of Authorities.....iv

Glossary 1

Introduction.....2

Assignments of Error5

Nature of the Case and Proceedings Below6

Statement of Facts8

Argument.....9

Standard of Review9

 I. Review is needed to clarify that Virginia courts may not overrule a church’s sincerely held religious beliefs as to who is a minister under principles of church doctrine and governance. (Assignment #1)..... 10

 A. Civil courts may not decide questions of faith, doctrine, or church governance. (Assignment #1)..... 11

 B. The question of who is a minister pursuant to church doctrine is unquestionably religious. (Assignment #1) 14

 II. Under the religious function test required by neutral principles of law, New Life in Christ Church’s Directors of College Outreach are ministers. (Assignment #2)..... 17

- A. Virginia and Federal law require that courts use a religious function test to determine who qualifies as a minister. (Assignment #2)..... 18
- B. Because it is undisputed that the Directors of College Outreach do religious work, the Court should hold they are ministers. (Assignment #2) 20
 - 1. Under the religious function test, employees who do important religious work qualify as ministers. 20
 - 2. A narrow construction of “minister” would be constitutionally suspect and is unsupported by the text or precedent. 26
 - a. A narrow construction of “minister” under § 58-3606(A)(2) would be constitutionally suspect..... 26
 - b. The City’s narrow construction is not supported by the exemption’s text or by precedent..... 28
- III. In the alternative, there are material questions of fact that preclude summary judgment. (Assignment #3)..... 31
- Conclusion 32
- Certificate 33

TABLE OF AUTHORITIES

CASES

<i>Alicea-Hernandez v. Catholic Bishop of Chicago</i> , 320 F.3d 698 (7th Cir. 2003)	23, 24
<i>Bloodworth v. Ellis</i> , 221 Va. 18 (1980)	10
<i>Bowie v. Murphy</i> , 271 Va. 127 (2006)	10, 11
<i>Carson v. LeBalanc</i> , 245 Va. 135 (1993)	31
<i>Cha v. Korean Presbyterian Church</i> , 55 Va. Cir. 480 (2000)	2
<i>Cha v. Korean Presbyterian Church of Washington</i> , 262 Va. 604 (2001)	2, 8, 11, 12, 13
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993)	28
<i>Clover Hill Reformed Church v. Twnshp. of Hills- borough</i> 2018 WL 1478024 (N.J. Tax. Mar. 23, 2018)	24, 25
<i>Cramer v. Commonwealth</i> , 214 Va. 561 (1974)	23, 29, 30
<i>Cudlipp v. City of Richmond</i> , 211 Va. 712 (1971)	29, 30
<i>Denny v. Prince</i> , 68 Va. Cir. 339 (2005)	15
<i>EEOC v. Roman Catholic Diocese of Raleigh, N.C.</i> , 213 F.3d 795 (4th Cir. 2000)	23
<i>Employment Division, Department of Human Re- sources of Oregon v. Smith</i> , 494 U.S. 872 (1990)	28
<i>Gray v. Binder</i> , 294 Va. 268 (2017)	9-10

<i>Hernandez v. Commissioner of Internal Revenue</i> , 490 U.S. 680 (1989).....	16
<i>Hosanna-Tabor Evangelical Church & Sch. v. EEOC</i> , 565 U.S. 171 (2012).....	8, 12, 13, 15, 19
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979).....	13
<i>Kedroff v. Saint Nicholas Cathedral of Russian Or- thodox Church in N. America</i> , 344 U.S. 94 (1952)	12, 15
<i>Larson v. Valente</i> , 456 U.S. 228 (1982).....	4, 5, 26, 28
<i>Md. & Va. Churches v. Sharpsburg Church</i> , 396 U.S. 367 (1970).....	14
<i>Mount Aldie, LLC v. Land Trust of Virginia, Inc.</i> , 293 Va. 190 (2017)	10
<i>Neal v. Fairfax Cnty. Police Department</i> , 295 Va. 334 (2018)	10
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 140 S. Ct. 2049 (2020).....	<i>passim</i>
<i>Rayburn v. General Conference of Seventh-Day Ad- ventists</i> , 772 F.2d 1164 (1985).....	<i>passim</i>
<i>Reid v. Gholson</i> 229 Va. 179 (1985).....	3, 11, 17
<i>Serbian E. Orthodox Diocese for U.S. of Am. & Can- ada v. Milivojevich</i> , 426 U.S. 696 (1976)	13, 14
<i>Slone v. General Motors Corp.</i> , 249 Va. 520 (1995)	31
<i>Thomas v. Review Board of Indiana Employment Sec. Division</i> , 450 U.S. 707 (1981).....	11
<i>Watson v. Jones</i> , 13 Wall. 678 (U.S. 1871).....	12

CONSTITUTIONS AND STATUTES

Va. Const., Art. X, § 6.....	3, 26, 32
Va. Const., Art. X, § 6(a)(2).....	5, 6, 11
Va. Code § 1-227.....	29
Va. Code § 58.1-3606.....	26
Va. Code § 58.1-3606(A)(2).....	<i>passim</i>
Va. Code § 58.1-3984.....	6

OPINIONS OF THE ATTORNEY GENERAL

1976 Va. Op. Atty. Gen. 276 (Va. A.G. 1976).....	24
--------------------------------------------------	----

TREATISES AND OTHER AUTHORITIES

Bruce N. Bagni, <i>Discrimination in the Name of the Lord: A Critical Evaluation of Discrimination by Religious Organizations</i> , 79 Columbia L. Rev. 1514 (1979).....	20-21
James Madison, <i>Memorial and Remonstrance Against Religious Assessments</i> , in Selected Writings of James Madison 21 (R. Ketcham ed. 2006).....	13

GLOSSARY

BCO	Presbyterian Book of Church Order
City	The City of Fredericksburg
MSJ	Defendant's Motion for Summary Judgment (filed 1/10/20)
MSJ Memo	Defendant's Memorandum of Law in Support of its Motion for Summary Judgment (filed 1/10/20)
NLICC	New Life in Christ Church
Opp.	Plaintiff's Opposition to the Defendant's Motion for Summary Judgment (filed 2/11/20)
Order	Order Granting Summary Judgment (filed 2/18/20)
Tr.	Transcript of February 18, 2020 Hearing on Defendant's Motion for Summary Judgment
Worman Aff.	Affidavit of Tom Worman (attached to Plaintiff's Opposition to the Defendant's Motion for Summary Judgment)

INTRODUCTION

The Court should grant review to correct the circuit court's departure from clear precedent prohibiting courts from interpreting religious doctrine and to promote uniform application of Virginia's tax exemption for the residence of ministers.

This Court unanimously affirmed a circuit court's holding that it was "constitutionally prohibited from reviewing ... the [Presbyterian Book of Church Order ("BCO")], a religious document. Such a review would require this Court to both interpret the BCO and make faith-based determinations concerning the roles and scope of authority of Church leaders." *Cha v. Korean Presbyterian Church*, 55 Va. Cir. 480 at *4 (2000), *aff'd sub nom. Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604 (2001). Noting a string of United States Supreme Court precedent holding that "civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes," *Cha*, 262 Va. at 610, this Court agreed that civil courts lack subject matter jurisdiction to "adjudicate issues regarding the church's governance, internal organization, and doctrine." *Id.* at 612.

Despite this clear and binding authority, the circuit court relied on the City of Fredericksburg's interpretation of the BCO to hold that the Directors of College Outreach for New Life In Christ Christian Church ("NLICC") are not ministers of the church despite the City's concession that they do important religious work for NLICC. The court therefore held their church-owned residence does not qualify for Virginia's property tax exemption for the residence of

ministers. VA. CONST. Art. X, § 6, Va. Code § 58.1-3606(A)(2). Tr. 27-28; Order.

On matters touching religion, courts must apply “neutral principles of law.” *Reid v. Gholson*, 229 Va. 179, 188 (1985). Under neutral principles of law, courts must look primarily to an employee’s religious functions to determine whether the employee is a “minister.” *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2064 (2020) (“What matters, at bottom, is what an employee does.”); *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (1985) (“[Ministerial status] does not depend upon ordination but upon function of the position.”).

Here, the City of Fredericksburg (the “City”) admits that NLICC’s Directors of College Outreach are “doing religious work” that is “important ... for the church.” Tr. 4, 20. This concession alone should be sufficient to conclude they are ministers. *See Rayburn*, 772 F.2d at 1169 (“[I]f the employee’s primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered ‘clergy.’”). Instead, the City determines who qualifies as a minister through a vague and inconsistent individualized assessment that sometimes requires ordination and other times does not. Tr. 10. Such differential treatment is constitutionally prohibited. *See Larson v. Valente*, 456 U.S. 228, 244 (1982) (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”); *see also Our Lady*, 140 S.Ct. at 2066 (“In a country with the religious diversity of the United States, judges

cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition.”).

The City’s reliance on narrow construction of tax exemptions cannot save its position. The United States Supreme Court has warned that narrow construction of religious exemptions is constitutionally suspect. *Larson*, 456 U.S. at 243. As this case illustrates, the City’s narrow construction of “minister” invites the type of entanglement with religion that this Court has held is impermissible. For these reasons, the Court should grant review and reverse the circuit court’s judgment for the City.

ASSIGNMENTS OF ERROR

1. The trial court committed constitutional error and exceeded its jurisdiction when it accepted the City’s interpretation of the Presbyterian Book of Church Order to grant Defendant’s motion of summary judgment and hold that a church’s Directors of College Outreach do not qualify as ministers for Virginia’s property tax exemption for ministers’ church-owned residences. Order, Opp. 1-11; Tr. 11-21, 24-26, 29.

2. The trial court erred when it granted Defendant’s motion for summary judgment because, under neutral principles of law, undisputed facts demonstrate that New Life In Christ Church’s Directors of College Outreach are ministers under a correct interpretation of Virginia’s property tax exemption for ministers’ church-owned residences. Order, Opp. 1-11; Tr. 11-21, 24-26, 29.

3. In the alternative, the trial court erred when it granted Defendant's motion for summary judgment because disputed material fact issues exist as to whether New Life In Christ Church's Directors of College Outreach are ministers under Va. Const. Art. X, § 6(a)(2) and Va. Code § 58.1-3606(A)(2). Order, Opp. 2-4, 10-11; Tr. 11-16, 25-26, 29.

NATURE OF THE CASE AND PROCEEDINGS BELOW

This case arises from NLICC's request for a property tax exemption for church-owned residences of ministers pursuant to the Virginia Constitution and Virginia law. VA. CONST. Art. X, § 6(a)(2); Va. Code § 58.1-3606(A)(2); Amended Complaint ¶¶ 4-8 (Case No. 19-395). This action was filed pursuant to Virginia Code § 58.1-3984. Amended Complaint ¶ 1. On April 24, 2019, the Trustees of the New Life in Christ Church filed suit against the City of Fredericksburg (the "City") in the Circuit Court for the City of Fredericksburg to contest the City's denial of its request for a property tax exemption at 1708 Franklin Street, Fredericksburg, Virginia 22407 (the "Property"). Amended Complaint ¶¶ 4-6. The Trustees filed an Amended Complaint on August 26, 2019.

Shortly after discovery began in this suit, the City filed a Motion for Summary Judgment (the "Motion"). In the Motion, the City noted that Josh and Anacari Storms, who serve as NLICC's Directors of College Outreach, reside at the Property. MSJ 1-2; MSJ Memo 2-3. The City argued that, despite the NLICC's representations that the residents of the property at issue are ministers, they should not be considered "ministers" pursuant to the Presbyterian Book of

Church Order (“BCO”), which sets NLICC’s church governance. *See* MSJ 2; MSJ Memo 5-9; *see also, e.g.*, MSJ Memo 8 (“[The resident] is not a minister in accordance with the rules and regulations of his chosen denomination.”).

The Trustees responded in opposition, noting that “the government may not, as a matter of federal constitutional law and Virginia law, dictate to a church who may be a ‘minister.’” Opp. 2. The Trustees argue that the City’s interpretation of the BCO “does not comport with the actual structure of the New Life in Christ Church and misconstrues the Church hierarchy,” and “unnecessarily require[s] this court to delve into questions of faith and doctrine.” *Id.* at 4-7. Instead, the Trustees argued that the court must look to the residents’ responsibilities, and that NLICC views the residents’ role in college outreach “as essential religious work that is vital to New Life sustaining its growth as a church.” *Id.* at 11; *see also id.* at 4-7. The Trustees provided evidence that the Storms perform essential religious functions at NLICC. *Id.* at 3-4 & Exhibit A; *see also* Worman Aff. ¶¶ 6-10 & Exhibit A.

During hearing on the motion, the City continued to argue its interpretation of the BCO. Tr. 9-11, 27-28. The Trustees contended such argument was improper and contrary to *Hosanna-Tabor* and *Cha.* Tr. 11-18, 19-21. Instead, courts should focus on whether “the ministers at issue are legitimately engaged in religious work.” Tr. 13; *see also* Tr. 25-26 (“I don’t think it is the government’s purview or province to determine what is sufficient once we have determined that religious work is being done.”).

The City ultimately conceded that the ministers at issue are “doing religious work.” Tr. 20. Despite this concession, the circuit court granted the City’s Motion for Summary Judgment and entered an order to that effect on February 18, 2020. Tr. 28-29; Order. The court specifically noted that it considered and relied on all of the materials provided by the parties and noted the Trustees’ exception to its ruling. Tr. 28-29; Order. The Trustees timely filed their notice of appeal on March 11, 2020.

STATEMENT OF FACTS

The material facts are largely undisputed. The City concedes that NLICC is a Presbyterian church that is governed by the Presbyterian Book of Church Order. MSJ 1-2, Tr. 9. NLICC owns the Property at 1708 Franklin Street in Fredericksburg, Virginia and that the Property is used as a residence. MSJ Memo 1, 3; Tr. 5-6, 18. The Property is occupied by Josh Storms and Anacari Storms, who both serve as NLICC’s Directors of College Outreach. MSJ 1-2; Opp. 3 & Ex. A; Tr. 4, 6. NLICC applied for a property tax exemption for the Property pursuant to Virginia’s tax exemption for the residence of ministers, which the City rejected. MSJ, Tr. 5-6. The Property is the only residence for which NLICC seeks an exemption. Tr. 14, 24-25.

The Storms’ religious duties with NLICC include evangelism, leading bible study, discipleship, and program management. Opp. 2-4; Worman Aff. ¶¶ 6-11 & Exh. A. These responsibilities were introduced as disputed facts, but it is undisputed that the Storms “proselytize to members of the college community,” (MSJ 2), do “important work ... for the church,” (Tr. 4), and

are “doing religious work.” (Tr. 20). The City also concedes that NLICC considers the Storms to be ministers. Tr. 6.

ARGUMENT

Standard of Review. Each assigned error is reviewed de novo. Issues of subject matter jurisdiction are reviewed de novo. *Gray v. Binder*, 294 Va. 268, 275 (2017). The construction and interpretation of statutes are reviewed de novo. *Neal v. Fairfax Cnty. Police Dept.*, 295 Va. 334, 343 (2018). On appeal of summary judgment, the trial court’s determination that no genuinely disputed material facts exist and its application of law to the facts are reviewed de novo. *Mount Aldie, LLC v. Land Trust of Virginia, Inc.*, 293 Va. 190, 196-97 (2017). At summary judgment, courts must view the facts in the light most favorable to the non-moving party and to grant all reasonable inferences in favor of the non-moving party. *Bloodworth v. Ellis*, 221 Va. 18, 23 (1980).

I. Review is needed to clarify that Virginia courts may not overrule a church’s sincerely held religious beliefs as to who is a minister under principles of church doctrine and governance. (Assignment #1)

The Religion Clauses of the Constitution of the United States and the Constitution of Virginia prohibit courts from “resolv[ing] issues of church governance and disputes over religious doctrine.” *Bowie v. Murphy*, 271 Va. 127, 133 (2006). The circuit court committed constitutional error and exceeded its jurisdiction when it relied on argument that New Life in Christ Church misinterpreted the Presbyterian Book

of Church Order to hold that NLICC’s Directors of College Outreach are not ministers and deny NLICC a property tax exemption for their church-owned residence. MSJ Memo 5-8; Tr. 9-11, 27-28. *See also* Va. Const. Art. X, § 6(a)(2); Va. Code § 58.1-3606(A)(2).

A. Civil courts may not decide questions of faith, doctrine, or church governance. (Assignment #1)

A long line of precedent from the United States Supreme Court and this Court holds that “generally civil courts are not a constitutionally permissible forum for a review of ecclesiastical disputes.” *Cha*, 262 Va. at 610 (citing cases); *see also Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 716 (1981) (“Courts are not arbiters of scriptural interpretation.”). Although “what is or is not an ‘ecclesiastical dispute’ is often debatable, issues of church governance and matters of faith and doctrine are *unquestionably* outside the jurisdiction of the civil courts.” *Bowie*, 271 Va. at 133 (emphasis added); *see also Reid*, 229 Va. at 187 (“The threshold inquiry for a court asked to resolve such a dispute must be whether ... [it] can be decided without reference to questions of faith and doctrine.”).

When a civil court interprets religious doctrine, it violates both the First Amendment’s Establishment Clause and Free Exercise Clause. It violates the Establishment Clause by “entangl[ing]” the court “in issues regarding the church’s governance as well as matters of faith and doctrine.” *Cha*, 262 Va. at 613; *see also Our Lady*, 140 S. Ct. at 2060 (“[A]ny attempt by government to dictate or even to influence such matters [of faith and doctrine] would constitute one of

the central attributes of an establishment of religion.”). It violates the Free Exercise Clause by putting the weight of the civil law behind its interpretation of religious doctrine and interfering with a church’s ability to choose its own doctrine. Churches have constitutional guarantees of “independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Hosanna-Tabor Evangelical Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

Similarly, civil courts are not competent to interpret religious doctrine. See *Watson v. Jones*, 13 Wall. 678, 729 (U.S. 1871) (“It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.”). Indeed, James Madison, “the leading architect of the religion clauses in the First Amendment,” *Hosanna-Tabor*, 565 U.S. at 184, noted, “the idea that a ‘Civil Magistrate is a competent Judge of Religious truth’ is ‘an arrogant pretension’ that has been ‘falsified.’” *Our Lady*, 140 S. Ct. at 2070 (Thomas, J., concurring (quoting *Memorial and Remonstrance Against Religious Assessments*, in *Selected Writings of James Madison* 21, 24 (R. Ketcham ed. 2006))).

This Court has followed the United States Supreme Court in observing that “ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria.” *Cha*, 262 Va. at 612 (quoting *Serbian E.*

Orthodox Diocese for U.S. of Am. & Canada v. Milivojevic, 426 U.S. 696, 713 (1976)). Civil courts lack jurisdiction to second guess a church's interpretation of its own doctrine. *Id.*

Similarly, a court's consideration of and reliance on a government official's interpretation of religious doctrine in any way is a constitutional violation. See *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (“[A] State may adopt ... various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters*, whether the ritual and liturgy of worship or the tenets of the faith.” (quoting *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring) (emphasis added))); *Serbian E. Orthodox*, 426 U.S. at 709 (“To permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide ... religious law (governing church polity) ... would violate the First Amendment in much the same manner as civil determination of religious doctrine.” (citing *Md. & Va. Churches*, 396 U.S. at 369) (Brennan, J., concurring)). Indeed, the United States Supreme Court has warned:

if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court.

Id. at 714.

B. The question of who is a minister pursuant to church doctrine is unquestionably religious. (Assignment #1)

Under these well-defined principles, the circuit court erred when it relied on the City's arguments that NLICC's Directors of College Outreach are not ministers pursuant to the BCO to hold as a matter of law that their residence does not qualify for a property tax exemption.

Questions of who is a minister pursuant to church doctrine are unquestionably beyond the purview of civil government and jurisdiction of the court. As the United States Supreme Court unanimously reaffirmed, the question of who is a "minister" is inherently doctrinal. *See Hosanna-Tabor*, 565 U.S. at 195 (holding that the determination of who is a minister is "a matter 'strictly ecclesiastical'" (quoting *Kedroff*, 344 U.S. at 119)); *cf. Denny v. Prince*, 68 Va. Cir. 339 (Portsmouth 2005) (declining to decide who is an "active member" of a church).

The United States Supreme Court recently reaffirmed that "[t]he First Amendment protects the right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Our Lady*, 140 S. Ct. at 2055 (quoting *Kedroff*, 344 U.S. at 116). For that reason, the Court's "decisions ... confirm that it is impermissible for the government to contradict a church's determination of who can act as its ministers." *Hosanna-Tabor*, 565 U.S. at 185. The Fourth Circuit has also noted that "[b]ureaucratic suggestion in employment decisions of a pastoral

character, in contravention of a church's own perception of its needs and purposes, would constitute unprecedented entanglement with religious authority." *Rayburn*, 772 F.2d at 1171. "In these sensitive areas, the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content." *Id.* at 1169.

The United States Supreme Court has confirmed that church interpretations of ministerial status are entitled to deference because civil judges are not well-suited to decide who qualifies as a minister under church doctrine. See *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question ... the validity of particular litigants' interpretations of those creeds."); see also *Our Lady*, 140 S. Ct. at 2066 ("A religious institution's explanation of the role of [its] employees in the life of the religion in question is important.").

Despite these clear prohibitions against overruling a church's interpretation of its own doctrine and who serves as its ministers, the circuit court heard and relied on argument from the City of Fredericksburg that although the college ministers at issue "have been bestowed by the church as ... a minister" they are not ministers "under the book of order." Tr. 27; see also MSJ Memo 5-9; Tr. 10 ("[The BCO] establishes how the New Life in Christ Church is to be organized ... the City's position is when you have a rule — a rule book, you have to follow it."). The Trustees disputed the City's interpretation of the BCO and pointed to the Storm's religious functions. Opp. 4-6; Tr. 13, 17-21. Nonetheless, the circuit court relied on the City's argument to grant summary judgment. Tr. 28-29; Order. Neither the City nor the civil courts can

tell a church that it has misinterpreted its own ecclesiastical documents, and this Court should grant review to correct this error.

II. Under the religious function test required by neutral principles of law, New Life in Christ Church’s Directors of College Outreach are ministers. (Assignment #2)

Although civil courts have no jurisdiction to interpret questions of religious doctrine, they may decide issues involving religious organizations that can be decided by “neutral principles of law” rather than inquiry into matters of religious doctrine or governance. *See Reid*, 229 Va. at 188 (“The question is simply whether the court can decide the case by reference to neutral principles of law, without reference to issues of faith and doctrine.”). The United States Supreme Court and numerous federal courts have held, in the context of determining whether a church employee is a minister, that neutral principles of law require examining a church employee’s religious functions.

In this case, it is undisputed that the Storms, who serve as NLICC’s Directors of College Outreach, perform important religious functions. Tr. 4, 20 (conceding the Storms do “important” and “religious” work). This concession is fatal to the City’s position. As numerous courts have held, employees who perform important religious functions should be treated as ministers under the law. Any narrower interpretation of “minister” invites disparate treatment of faith traditions and judicial entanglement in religious doctrine, both of which are clearly prohibited under the constitutions of the United States and of Virginia. The trial

court therefore erred when it held that the Storms are not ministers for purposes of the tax exemption.

A. Virginia and Federal law require that courts use a religious function test to determine who qualifies as a minister. (Assignment #2)

The United States Supreme Court, deciding whether a Lutheran “called teacher” is a minister, identified four considerations for the purpose of determining whether a person is a “minister” under neutral principles of law: religious duties, education, title, and whether the employee held himself out as a minister. *Hosanna-Tabor*, 565 U.S. at 192. However, the Supreme Court has since clarified that the primary consideration is the employee’s religious duties. See *Our Lady*, 140 S. Ct. at 2063 (“[O]ur recognition of the significance of those factors in [*Hosanna-Tabor*] did not mean that they must be met—or even that they are necessarily important—in all other cases. ... What matters, at bottom, is what an employee does.”).

The Fourth Circuit has also recognized that ministerial status “does not depend upon ordination but upon function of the position.” *Rayburn*, 772 F.2d at 1168. Moreover, it expressly warned against courts looking to religious doctrine for the purposes of determining whether somebody qualifies as a minister. See *Rayburn*, 772 F.2d at 1169 (“In these sensitive areas, the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content.”). Therefore, civil courts facing the question of whether a church employee is a minister must focus on the employee’s duties.

B. Because it is undisputed that the Directors of College Outreach do religious work, the Court should hold they are ministers. (Assignment #2)

When applying the religious function test, the primary question is “whether a position is important to the spiritual and pastoral mission of the church.” *Rayburn*, 772 F.2d at 1169. Here, the City concedes that the church’s Directors of College Outreach are “doing religious work,” [Tr. 20], that is “important work ... for the church.” Tr. 4. This includes proselytizing to college students. MSJ ¶ 5. Because the undisputed facts support holding that the Storms qualify as ministers under the religious function test, the Court should grant review to correct the circuit court’s error in holding the Storms are not ministers.

1. Under the religious function test, employees who do important religious work qualify as ministers.

Where an employee’s responsibilities contribute to the religious character of the church, he or she is a minister. “As a general rule, if the employee’s primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, he or she should be considered clergy.” *Rayburn*, 772 F.2d at 1169 (quoting Bruce N. Bagni, *Discrimination in the Name of the Lord: A Critical Evaluation of Discrimination by Religious Organizations*, 79 COLUMBIA L. REV. 1514, 1545 (1979)). The United States Supreme Court has likewise held that employees who “play[] a vital part in carrying out the mission of the

church” should be considered ministers. *Our Lady*, 140 S. Ct. at 2066.

The Storms’ important religious functions are set forth in their job description. The Director of College Outreach is a “missionary position” whose responsibilities include “execut[ing] ministry vision and goals ... , supervising as required, those activities to achieve ministry goals”; “provid[ing] mentoring, coaching, and discipleship to ... each member of the college ministry as required”; and “provid[ing] Bible Study, Discipleship, and Fellowship at least through 1 regularly scheduled weekly group setting.” Opp., Worman Aff., ¶ 9 & Ex. A. The Trustees also submitted an affidavit indicating that the responsibilities also include “establish[ing] and maintain[ing] a ministry catering to college-aged men and women which spreads the message of the New Life in Christ Church to such young men and women.” Opp., Worman Aff. ¶ 9. The Church “views these functions as essential, religious functions.” *Id.* at ¶ 10. These responsibilities, wherein the Storms are NLICC’s representatives to college students, fall well in line with cases where courts have held that church employees should be treated as ministers.

Rayburn is particularly illustrative. 772 F.2d 1164. In holding that a church’s “associate of pastoral care” qualifies as a minister under neutral principles of law, the Fourth Circuit noted that her responsibilities included “introducing children to the life of the church,” “lead[ing] small congregational groups in Bible study,” and serving as “counselor and as pastor to the singles group.” *Id.* at 1168. Similar to the Storms, she was a “liaison between the church as an institution and those whom it would touch with its message.”

Id. In holding that the employee was a minister, the court considered the “fact that an associate in pastoral care can never be an ordained minister in her church” to be “immaterial,” noting that the analysis “does not depend upon ordination but upon the function of the position.” *Id.* Similarly, the court refused to consider argument that she was not a minister because “the Seventh-day Adventist Church does not ordain women,” noting that “the state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content.” *Id.* at 1169.

The Fourth Circuit similarly applied a “fact-specific examination of the functions of the position” to hold that a “Director of Music ministry and [] part-time music teacher” qualified as a minister, noting that the “functions of the positions are bound up in the selection, presentation, and teaching of music, which is an integral part of Catholic worship and belief.” *EEOC v. Roman Catholic Diocese of Raleigh, N.C.*, 213 F.3d 795, 802 (4th Cir. 2000). This Court has also rejected argument that only full-time employees can be ministers. *Cramer v. Commonwealth*, 214 Va. 561, 564 (1974) (“It is a matter of common knowledge that there are many ministers in Virginia who serve their congregations with complete fidelity and efficiency while holding outside employment and deriving the major portion of their income from such employment.”).

In a similar matter, the Seventh Circuit held that the “Hispanic Communications Manager” of a Catholic church was a minister under neutral principles of law. *See Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003). As in *Rayburn*, the Court noted that the communications manager “was

‘a liaison between the church as an institution and those whom it would touch with its message.’” *Id.* (quoting *Rayburn*, 772 F.2d at 1168). The communications manager qualified as a minister under the law because she “was integral in shaping the message that the Church presented to the Hispanic community” and “was responsible for both crafting the message and determining how best to reach the Hispanic community.” *Id.* at 704 & n.4. Much like the Hispanic Communications Manager before the Seventh Circuit, the Storms are responsible for determining how to best reach the college-aged community for NLICC.

Although these cases arise in the employment discrimination context, the religious function test is not limited to that context. The Virginia Attorney General applied a religious function test to affirm that a church’s “Minister of Music & Education” would qualify for the parsonage tax exemption, noting that his “duties relate to the religious work of the church, as opposed to duties which merely facilitate the operation of the church.” 1976 Va. Op. Atty. Gen. 276 (Va. A.G. 1976).

Similarly, the Tax Court of New Jersey used the religious function test to determine whether a minister of music’s residence qualified for that state’s exemption for “a parsonage occupied by an officiating clergyman.” *Clover Hill Reformed Church v. Twnshp. of Hillsborough*, 2018 WL 1478024 (N.J. Tax. Mar. 23, 2018). Like Virginia, New Jersey construes tax exemptions narrowly. *Id.* at *4. Moreover, the court noted that there is “no officially recognized position in the Reformed Church of Minister of Music.” *Id.* at *3.

Nonetheless, the court held that, based on his religious responsibilities, the minister of music was an “officiating clergyman,” noting:

Where adherents to a faith have a sincerely held belief that a person is a leader in providing worship services to a congregation, and that belief is corroborated by objective evidence of that person’s training, experience, and responsibilities, the courts should hesitate to discount those beliefs because of the absence of an act, such as ordination, the court believes is necessary to impart the status of clergyman. It is not for the judiciary to impose on a religious congregation its view of who is or is not a clergyman in that congregation.

Id. at *7.

The Storms undisputedly do work that contributes to the religious mission of NLICC, and the Court should grant review to correct the circuit court’s holding that they are not ministers as contemplated in Virginia’s tax exemption for the residences of ministers.

2. A narrow construction of “minister” would be constitutionally suspect and is unsupported by the text or precedent.

The City argues that the definition of “minister” in Article X, § 6 and § 58.1-3606 is too narrow to reach all church employees that do important religious work. However, a narrower definition would be constitutionally suspect under Supreme Court precedent and is not supported either by the text of the exemption or precedent.

a. A narrow construction of “minister” under § 58-3606(A)(2) would be constitutionally suspect.

The City claims that, because tax exemptions are to be narrowly construed, the Court must hold that a “minister” means only one “leading the congregation.” MSJ Memo 8. However, narrow construction of religious exemptions are constitutionally suspect. *See Larson*, 456 U.S. at 243 (“Strict or narrow construction of a statutory exemption for religious organizations is not favored.”). Particularly, a narrow construction should be avoided where (1) it invites the type of religious “entanglement” this Court has repeatedly cautioned against, and (2) the City applies its construction on an individualized basis.

As the United States Supreme Court observed in *Our Lady*, “[i]n a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition. A religious institution’s explanation of the role of such employees in the life of the religion in question is important.” 140 S. Ct. at 2066. Different religions have different leadership structures that courts are ill-equipped to evaluate and reconcile:

A brief submitted by Jewish organizations makes the point that “Judaism has many ‘ministers,’” that is, “the term ‘minister’ encompasses an extensive breadth of religious functionaries in Judaism.” For Muslims, “an inquiry into whether imams or other leaders

bear a title equivalent to ‘minister’ can present a troubling choice between denying a central pillar of Islam—i.e., the equality of all believers—and risking loss of ministerial exception protections.”

Id. at 2064. Accordingly, such judicial line drawing as to who has “authority” in a church is certain to result in arbitrary distinctions and government entanglement with religion.

Furthermore, the City conceded that its definition of minister is based on individualized assessments of who is a minister. Tr. 10. Although the City contends the Storms do not qualify as ministers because they are not ordained, there are a “plethora of churches” whose unordained ministers would qualify for the exemption. *Id.* Individualized governmental assessments involving religion, as here, must survive strict scrutiny. See *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993) (“[I]n circumstances in which individualized exemptions from a general requirement are available, the government ‘may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason.” (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 884 (1990))).

By requiring some churches, like NLICC, to prove ordination for tax-exempt status, but allowing other churches to claim tax exempt status without proving ordination, the City also expresses preference for certain denominations over others in violation of the Establishment Clause. See *Larson*, 456 U.S. at 246 (“[W]hen we are presented with a state law granting a denominational preference, our precedents demand

that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality.”).

b. The City’s narrow construction is not supported by the exemption’s text or by precedent.

Not only are narrow interpretations of religious exemptions constitutionally suspect, a narrow interpretation of “minister” is neither supported by the text or judicial precedent. The City views as significant that the tax exemption statute refers to “the minister of a church” rather than the “ministers of a church.” Va. Code. § 58.1-3606(A)(2). However, under Virginia’s rules of statutory construction, the singular includes the plural and the plural includes the singular. Va. Code § 1-227. Indeed, this Court has held that it “is by no means clear that it was the intent of the constitutional revisors of 1902 and of the General Assembly to restrict the tax exemption to the residence of only one minister for each church or religious body.” *Cudlipp v. City of Richmond*, 211 Va. 712, 713 (1971).

The City’s narrow construction is also unsupported by precedent. Although this Court has stated in dicta that a minister (as used in a marriage licensing statute) is “the head of a religious congregation, society, or order,” that is only in the context of distinguishing between “members” and “ministers.” *Cramer*, 214 Va. at 566. The Court makes this clear just one sentence earlier – “A church which consists of all ministers, and in which all new converts can become instant ministers, in fact has no minister.” *Id.* The Court did not indicate that a group of selected individuals from one church could not all qualify as ministers. Notably, the individuals at issue in *Cramer*

would fail the religious functions test. “[N]o ceremony, oath or form” was required to become a minister. *Id.* at 562-63. “In fact, one could become an ordained Universal minister without his knowledge.” *Id.* at 563. Moreover, the Court expressly rejected the Commonwealth’s argument that “minister” only included those for whom ministry is a full-time vocation. *Id.* at 563-64.

Similarly, when determining that a Bishop Coordinator was a minister for purposes of tax exemption, the Court observed that he was the “final authority” in his area of responsibility. *Cudlipp*, 211 Va. at 713. But there is no question that a church employee with some form of “final authority” in religious matters is a minister under neutral principles of law. Nothing in *Cudlipp* can be read to say that *only* persons with final authority are ministers. Indeed, the Court noted that the City of Richmond had “extended the exemption to church-owned residences of *assistant* ministers of local churches,” without any suggestion of impropriety. *Id.* (emphasis added). The court’s error in holding the Storms are not ministers despite the City’s concession that they do important religious work calls for review.

III. In the alternative, there are material questions of fact that preclude summary judgment. (Assignment #3)

The City’s admission that NLICC’s Directors of College Outreach do important religious work means that this Court should hold that they are ministers as a matter of law. *See* Part II, *supra*. In the alternative, the Court should hold that for the reasons stated above, the facts presented as to the Storms’ religious

functions demonstrate that disputed issues of material fact remain and that the circuit court's grant of summary judgment was improper. Summary judgment is a "drastic remedy" which is available only where there are no "material facts genuinely in dispute." *Slone v. General Motors Corp.*, 249 Va. 520, 522 (1995) (internal citations omitted). Ordinarily, facts developed through discovery should not supplant the taking of evidence at trial. *Carson v. LeBalanc*, 245 Va. 135, 137 (1993). There are sufficient facts in the record to demonstrate that the Storms had some level of religious authority at NLICC. Opp. 2-4; Worman Aff. & Ex. A. The Trustees should be given an opportunity to develop a record as to the Storms' role at NLICC. Tr. 24-25. The trial court therefore erred when it granted summary judgment on this record and this Court should grant review.

CONCLUSION

For the foregoing reasons, the Court should grant this Petition, and upon hearing this case, reverse the circuit court's grant of summary judgment, hold that the Storms are ministers under Va. Const. Art. X, § 6 and Va. Code. § 58.1-3606(A)(2), hold that NLICC is entitled to a property tax exemption for the Storms' residence, and grant Appellant all relief to which it is entitled. In the alternative, the Court should hold that summary judgment was granted in error and remand to the trial court for further proceedings.

Respectfully submitted,

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LIFE IN CHRIST CHURCH

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156a

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CERTIFICATE

Pursuant to Rule 5:17(i), I hereby certify that:

The Appellant is the Trustees of the New Life In Christ Church. The name, address, telephone number, facsimile number, email address, and Virginia State Bar Number of its counsel are:

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I HEREBY certify that on this 21st day of September, 2020, a copy of the foregoing Petition for Appeal was sent by electronic mail and first-class mail to all counsel named below. Counsel for appellant desire to state orally and in person to a panel of this Court why this petition should be granted.

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Appendix I

**IN THE
SUPREME COURT OF VIRGINIA**

RECORD NO. 201156

TRUSTEES OF THE NEW LIFE
IN CHRIST CHURCH,

Petitioner,

v.

CITY OF FREDERICKSBURG,

Respondent.

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

INTRODUCTION..... 1

STATEMENT OF FACTS AND THE CASE..... 2

SUMMARY OF ARGUMENT..... 3

STANDARDS OF REVIEW 4

ARGUMENT 5

 I. The circuit court did not err in determining that “the minister” of NLICC did not reside at the Property. 5

 II. The circuit court did not interpret the Church’s Book of Order or question the Church’s religious doctrine or the sincerity of its beliefs..... 9

 III. The Trustees’ arguments invite either excessive governmental entanglement with religion, or abuse, distorting the statute.... 11

 IV. The circuit court did not err in granting summary judgment as no material facts were in dispute. 12

CONCLUSION 12

REQUEST FOR NOTICE OF ORAL ARGUMENT 13

CERTIFICATE OF SERVICE 15

TABLE OF AUTHORITIES**CASES**

<i>Cha v. Korean Presbyterian Church of Washington</i> , 262 Va. 604, 553 S.E.2d 511 (2001).....	10
<i>Cramer v. Commonwealth</i> , 214 Va. 561, 202 S.E.2d 911 (1974)	7, 11, 13
<i>Cudlipp v. City of Richmond</i> , 211 Va. 712, 180 S.E.2d 525 (1971)	6
<i>DKM Richmond Associates, L.P. v. City of Richmond</i> , 249 Va. 401, 457 S.E.2d 76 (1995)	4
<i>Klaiber v. Freemason Assocs., Inc.</i> , 266 Va. 478, 587 S.E.2d 555 (2003)	5
<i>LZM, Inc. v. Virginia Dept. of Taxation</i> , 269 Va. 105, 606 S.E.2d 797 (2005)	5
<i>Pure Presbyterian Church of Washington v. Grace of God Presbyterian Church</i> , 296 Va. 42, 817 S.E.2d 547 (2018)	9, 10
<i>Reid v. Gholson</i> , 229 Va. 179, 327 S.E.2d 107 (1985).....	9
<i>Virginia Baptist Homes, Inc. v. Botetourt County</i> , 276 Va. 656, S.E.2d 119 (2008).....	5

CONSTITUTION AND STATUTES

Va. Const. art. X, § 1	4
Va. Const. art. X, § 6	<i>passim</i>
Va. Code § 58.1-3606(A)(2)	<i>passim</i>

INTRODUCTION

This case is not about who may be a minister of the Appellants' church, or of any church. Rather, this case involves the neutral application of a tax statute to facts established by the church's actions and admissions.

Those actions and admissions show that neither of the residents of the property in question are "the minister" of Appellants' church, as required under Virginia Code § 58.1-3606(A)(2) for the property to be exempt from ordinarily-required real estate taxes.

The circuit court did not dictate to Appellants who could or could not be involved in the ministries of their church. Instead, the issue in this case is whether either of the residents of the real estate were "the minister" of that church, as that phrase is used in the statute.

The statute provides an exemption for "the residence of the minister" of any church. If the exemption applied to "every" residence of "any" minister of a church, this would be a very different case – the case that the Appellants seek to portray in their Petition for Appeal. But it is not, and accordingly, the City requests that this Court decline to grant the Petition for Appeal.

STATEMENT OF FACTS AND THE CASE

New Life in Christ Church ("NLICC" or "the Church") owns real property at 1708 Franklin Street in Fredericksburg, Virginia ("the Property"). (Am. Compl. ¶ 4; Ans. ¶ 4). The Property is occupied as a residence by Josh Storms and Anacari Storms (collec-

tively “the Storms”), both of whom are part-time employees of the Church. (Church’s Resp. to Interrog. Nos. 1 and 3). There is no dispute that the Storms do religious work for the Church. (Tr. at 20, lines 18-21).

NLICC is a Presbyterian Church governed by the Presbyterian Church Book of Church Order (“BCO”). (Church’s Resp. to Interrog. No. 5). Under the BCO, the pastoral relations of the Church are pastor, associate pastor, and assistant pastor. (BCO, Ch. 22).

Neither of the Storms serve as pastor, associate pastor or assistant pastor of NLICC, nor are they the Church’s Founding Pastor or Lead Pastor. (Church’s Resp. to Interrog. Nos. 7 and 10). Nor are either of them named on the Church’s website which describes its pastor transition plan. (Church’s Resp. to Interrog. No. 9).

Neither of the Storms have preached any sermons during the Church’s regular Sunday morning services, and neither of them are teaching elders. (Church’s Resp. to Interrog. Nos. 4 and 12; Church’s Resp. to Request for Documents No. 5). Finally, Mrs. Storms is not eligible to serve as pastor of NLICC. (Church’s Resp. to Interrog. No. 11).

The Church’s Trustees filed a Complaint for Declaratory Relief in the circuit court. After the City filed a Demurer to the Complaint, the Trustees filed an Amended Complaint, asking the circuit court to declare that the Property was exempt from real estate taxation by the City under Virginia Code § 58.1-3606(A)(2) and Va. Const. art. X, § 6(a)(2). Following written discovery, the City moved for summary judgment, which the circuit court granted. This appeal followed.

SUMMARY OF ARGUMENT

The circuit court properly held that there was no dispute of material fact, and that the facts established by the pleadings and NLICC's written discovery responses established that neither of the Storms was "the minister" of the Church, as that term is used in Virginia Code § 58.1-3606(A)(2). Thus, the circuit court concluded that the Property was not eligible for exemption from City real estate taxes.

In rendering its decision, the circuit court did not interpret or question the Church's doctrine or beliefs, but simply applied the undisputed facts to the neutral statute enacted by the General Assembly.

The approach advocated by the Church, on the other hand, either would invite the government to make detailed examination of religious workings, possibly in violation of the First Amendment, or would invite abuse of the legislative grace provided by the General Assembly. Neither approach would be consistent with the relevant statute and state constitution.

STANDARDS OF REVIEW

Review of any claim of exemption from taxes must start with acknowledgement of the relevant constitutional provisions.

"Exemptions of property from taxation . . . shall be strictly construed" against the taxpayer. Va. Const. art. X, § 6(f). "All property [in Virginia], except as . . . provided [otherwise], shall be taxed." Va. Const. art. X, § 1. *See also DKM Richmond Associates, L.P. v. City of Richmond*, 249 Va. 401, 407, 457 S.E.2d 76, 80

(1995) (“In Virginia, the general policy is to tax all property.”).

“Under this rule, exemption from taxation is the exception, and any doubt is resolved against the one claiming the exemption.” *DKM Richmond Associates, L.P.*, 249 Va. at 407, 457 S.E.2d at 80. “[T]he taxpayer has the burden to establish that it comes within the terms of the exemption.” *Id.* “When a tax statute is susceptible to two constructions, one granting an exemption and the other denying it, the latter construction is adopted.” *LZM, Inc. v. Virginia Dept. of Taxation*, 269 Va. 105, 110, 606 S.E.2d 797, 799 (2005).

“[T]he issue of property tax exemption is a mixed question of fact and law.” *Virginia Baptist Homes, Inc. v. Botetourt County*, 276 Va. 656, 663, S.E.2d 119, 122 (2008). The questions of statutory interpretation are reviewed on a de novo basis. *Id.* Where, as here, the matter below was decided on summary judgment following written discovery, the required deference to the circuit court’s factual findings must be tempered by reviewing the facts in the light most favorable to the Church. *See id., Klaiber v. Freemason Assocs., Inc.*, 266 Va. 478, 481-82, 587 S.E.2d 555, 556 (2003).

ARGUMENT

I. The circuit court did not err in determining that “the minister” of NLICC did not reside at the Property.

Virginia provides an exemption from real estate taxes for church-owned property used for specified purposes. Va. Const. art. X, § 6(a)(2). This exemption is strictly construed, *id.* art. X, § 6(f), unlike the liberal rule of construction followed under the pre-1971 constitution in an earlier case involving a predecessor

statute and a prior constitutional provision. *Cudlipp v. City of Richmond*, 211 Va. 712, 713, 180 S.E.2d 525, 526 (1971).

“[T]he General Assembly by general law may restrict or condition, in whole or in part, but not extend,” this exemption. Va. Const. art. X, § 6(c). Consistent therewith, the General Assembly limited the real property exempt from taxation to that which is

owned by churches or religious bodies, . . .
and exclusively occupied or used for religious worship or **for the residence of the minister** of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property.

Virginia Code § 58.1-3606(A)(2) (emphases added).

These statutory provisions require a landowner claiming the exemption to show three facts: 1) that the property is owned by a church or religious body; 2) that the property is used a residence; and 3) that the occupant of the residence is “the minister” of the church or religious body. These tests all must be met in order for the property to qualify for the exemption. In this case, only the first two conditions are met, rendering the exemption inapplicable to the Property.

NLICC owns the Property, and the Storms reside there. But, neither of the Storms are “the minister” of the Church. The Storms are not pastors or teaching elders of the Church, do not exercise sacramental or administrative authority over the Church, and have not been “set apart as the leader” of the Church. *See Cramer v. Commonwealth*, 214 Va. 561, 567, 202 S.E.2d 911, 915 (1974),

In *Cramer*, this Court interpreted the term “minister” in the context of a statute governing who may officiate marriage ceremonies. There, the Court stated, “[t]he minister referred to there is the head of a religious congregation, society or order. He is set apart as the leader. He is the person elected or selected in accordance with the ritual, bylaws or discipline of the order.” *Id.*

The guidance provided thereby and the Trustees’ responses to discovery lay bare that neither of the residents of the Property are “the minister” of the Church. Not all persons who do good, meaningful, and religious works for a church are “set apart as the leader” of the church, being neither “elected or selected in accordance with the ritual, bylaws or discipline of the order.” *Id.* at 561, 567, 202 S.E.2d at 915.

In many religious traditions, persons may “minister” to others without being “the minister” of any church. This fact does not lessen the value of their contributions, nor does it question the sincerity of their faith and beliefs. It merely means that, in the context of real estate taxation, as here, taxes are due on the property in which they reside.

Put another way, a church may have many persons performing important religious work, but it may benefit from a real estate tax exemption for only the residence of the one it sets apart as its leader.¹ As the

¹ The employment law cases relied on by the Church have no relevance to the determination of who is “the minister” of the Church under Code section 58.1-3606(A)(2). The relevant statute simply applies the facts established by the church’s own actions to provide a limited exemption from generally applicable real estate taxation.

statute clearly says, it is for “the residence of the minister,” not “every” residence of “any” minister, no matter the good works performed by such resident.

Effectively the statute providing a limited exemption from taxation of real estate says to churches or religious bodies “you tell us who your leader is, and if they reside in church-owned property, we will exempt that specific property from taxation.” NLICC cannot in good faith say that either of the Storms are its leader.

Instead, the undisputed facts show that NLICC owns the Property and the residence is occupied, but it is not occupied by “the minister” of NLICC as is required for qualification under Virginia Code §58.1-3606(A)(2). These exemptions are narrowly construed and, as such, neither of the Church’s part-time employees, the Storms, are “the minister” of NLICC, for real estate tax exemption purposes.

II. The circuit court did not interpret the Church’s Book of Order or question the Church’s religious doctrine or the sincerity of its beliefs.

While courts are disinclined to meddle in the business of religious bodies, that principle does not prohibit a court from observing and giving recognition to the organizational structures of a church, as established by the church itself, to determine the qualifications for a statutory tax exemption. The Trustees make bare allegations without any factual support that the circuit court interfered with NLICC’s organizational structure. Nothing could be further from the truth.

It is well-established that courts may, and should, apply “neutral principles of law” to disputes involving church property. *Reid v. Gholson*, 229 Va. 179, 188–9, 327 S.E.2d 107, 112 (1985).

Whether taxes are assessed on a piece of real estate is not an inherently ecclesiastical decision. *See Pure Presbyterian Church of Washington v. Grace of God Presbyterian Church*, 296 Va. 42, 53, 817 S.E.2d 547, 553 (2018). Eligibility of a piece of real estate for tax exemption might have some small effect on church governance, but that is no bar to a civil court’s application of “neutral principles of law.” *Id.* at 54, 817 S.E.2d at 554.

The circuit court did not question, and certainly did not overrule, the Church’s sincerely-held religious beliefs. The court simply applied the facts the Church helped establish to the neutral statute.

The circuit court did not interpret the BCO. Instead, NLICC identified the BCO as its governing document, and the parties provided the circuit court with excerpts from the BCO, none of which expressly were relied on by the circuit court.

Even if the circuit court relied on the plain language of what the Church said was its governing documents, there would be no error in violation of this Court’s holding in *Cha v. Korean Presbyterian Church of Washington*, 262 Va. 604, 553 S.E.2d 511 (2001), because the circuit court would not be imposing its secular judgment to second guess a decision about retention of a pastor.

The Church cannot set its rules in the BCO and expect for a court to ignore their plain language when

the Church tells the court, in an action that its Trustees filed, that the Church is governed by the rules therein. To be clear, no interpretation of the BCO, or any of NLICC's religious doctrine was required, or undertaken, for the circuit court to observe that the Church had established its order of pastoral relations, and that neither of the Storms had been "elected or selected," *see Cramer*, 214 Va. at 567, 202 S.E.2d at 915, to fill any of those roles.

III. The Trustees' arguments invite either excessive governmental entanglement with religion, or abuse, distorting the statute.

The Appellants' arguments would result either in excessive entanglement of church and state, as local governments attempt to measure and gauge the importance and scope of work done by those offered as "the minister," or would invite abuse of the exemption from taxation of church-owned property. Neither result is consistent with the plain language of the statute, which itself is thoroughly consistent with Article X of the state constitution.

To avoid excessive entanglement, the Trustees would have the courts take the claimant of the exemption at their word that the occupant is "the minister" of the religious body. The history of this case shows why that is not proper.

The Amended Complaint in the proceeding alleged that the Property was the residence of "the Church Minister." (Am. Compl. ¶ 7). Only after the City engaged in discovery did the Trustees admit that the occupants of the Property were in fact two of the

Church's part-time employees. (Church's Resp. to Interrogs. Nos. 1 and 3). The adoption of a "just trust us" approach would lead to abuse of the exemption.

IV. The circuit court did not err in granting summary judgment as no material facts were in dispute.

The Trustees alternatively contend they should have been able to present additional facts about the Storms' role at NLICC.

However, at oral argument before the circuit court, NLICC was unable to identify any material facts in dispute. (Tr. at 19, lines 11-17). At most, the Church said only that it could present additional evidence of the religious work done by the Storms. (Tr. at 25, lines 18-25, and at 26, lines 1-12). However, the City did not dispute that fact, (Tr. at 20, lines 18-21), such that further evidence of the Storms' good works would not have revealed any dispute of material fact.

CONCLUSION

As in *Cramer*, "[t]his case is not one concerning the guarantee of religious freedom as provided in the Constitution, but one of a proper construction of" a neutral statute lawfully enacted "as an exercise by the General Assembly of its legislative power" under Article X, § 6(c) of the state constitution. *Cramer*, 214 Va. at 564, 202 S.E.2d at 914.

For the reasons stated above, the circuit court's determination was well founded based upon law and the undisputed facts presented. The Property does not qualify for the real estate tax exemption afforded under Virginia Code § 58.1-3606(A)(2) and therefore, the Petition should be denied.

173a

**REQUEST FOR NOTICE OF ORAL
ARGUMENT**

Respondent requests notice of oral argument on
the Petition for Appeal.

RESPECTFULLY SUBMITTED,

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174a

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CERTIFICATE OF SERVICE

On this 13th day of October, 2020, pursuant to the Rules of the Supreme Court of Virginia, the required number of true copies of this Brief in Opposition were filed in the Office of the Clerk of the Supreme Court of Virginia, and on the same day, one true copy was mailed by first- class mail

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