

**IN THE
COURT OF APPEALS
OF VIRGINIA**

**CHRISTIAN SCHOLARS NETWORK, INC.
d/b/a BRADLEY STUDY CENTER,**

Appellant

v.

MONTGOMERY COUNTY, VIRGINIA,

and

TOWN OF BLACKSBURG, VIRGINIA,

Appellees.

OPENING BRIEF OF APPELLANT

**Record No. 0058-25-3
Circuit Court Case No. CL20001179-00**

Melvin E. Williams (VSB No. [REDACTED])

**[REDACTED]
Meghan A. Strickler (VSB No. [REDACTED])**

**[REDACTED]
WILLIAMS & STRICKLER, PLC
1320 Third Street, SW
Roanoke, Virginia 24016
540-266-7800**

[REDACTED] *facsimile*

***Counsel for Christian Scholars Network, Inc., d/b/a Bradley Study Center, and
participating attorney for The Rutherford Institute***

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I. Statement of the Nature of the Case and Material Proceedings.

Christian Scholars Network, Inc., *d/b/a* Bradley Study Center (*hereinafter*, “CSN”) is a Christian ministry endeavoring to “help students, faculty and community members [at Virginia Tech] to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind.” *Trial testimony of CSN Executive Director Michael Weaver (hereinafter, “Weaver testimony”)*, Record at 790. In 2019, CSN purchased a building at 104 Faculty Street, in Blacksburg, near the Virginia Tech campus, to use for its ministry. *Virginia Land Record Cover Sheet and Deed of Bargain and Sale*, Exhibit 1, Record at 1853-55. The building became and is the locus of CSN’s ministry and is known as the Bradley Study Center (“BSC” or the “Center”).

After purchasing the property, on June 5, 2019, CSN applied to Montgomery County and the Town of Blacksburg (*hereinafter*, the “Government”) to exempt the building from property taxes. *Letter from Michael Weaver to Craig Meadows, County Administrator of Montgomery County*, Exhibit 24, Record at 2126, *et seq.* The application for exemption was denied. Record at 2141, *et seq.* Thereafter, on June 10, 2020, CSN appealed the denial by commencing this action, seeking

- exempt[ion] from payment of real estate taxes because its real estate is
- a. “owned by a church or religious body,”
 - b. “belonging to and actually exclusively occupied and used by” a “religious association[.]” similar to the Young Men’s Christian Associations,

- c. “belonging to any benevolent or charitable organization and used by it exclusively for lodge purposes or meeting rooms ...,” and/or
 - d. “used by such organization for a religious ... purpose”
- Virginia Code §§ 58.1-3606(A)(2), (5), and (7); and 58.1-3609(A), *respectively*; also see Constitution of Virginia at Article X, §§ 6(a)(2) and (6); and Code of Virginia §§ 58.1-3609 and 3617.

Complaint for Review of Tax Assessment, Montgomery County Circuit Court, case no. CL20001179-00, Record at 6.

During the course of discovery, CSN identified “ordained Anglican Priest and theologian”¹ Dr. Gerald McDermott as an expert witness to testify about what is “religious worship.” *Petitioner’s Response to Respondents’ Objection to and Motion in Limine to Exclude the Testimony of Gerald R. McDermott, Ph.D.*, Record at 363, *et seq.* The Government moved to exclude the testimony of Dr. McDermott. *Respondents’ Objection to and Motion in Limine to Exclude Testimony of Gerald R. McDermott, PH.D.*, Record at 214, *et seq.* The trial court granted the motion and excluded the testimony of Dr. McDermott. *Order Ruling on Respondents’ Motion in Limine*, Record at 404, 968-72.

The case proceeded to trial on April 29 and 30, 2024, the Honorable Michael S. Irvine sitting by designation. Record at 329. After trial, the parties submitted post-trial briefs and offered *ore tenus* argument. The trial court denied CSN’s

¹ *Discovery deposition of Gerald R. McDermott*, Record Addendum at 53.

Petition for exemption *in toto*. *Final Order*, Record at 667-68, and *Letter Opinion* dated September 27, 2024, Record at 659-66.

CSN appealed. *Notice of Appeal*, Record at 679-81.

II. Statement of the Assignments of Error.

- A. The trial court erred by concluding that Appellant is not exempt from real property taxes pursuant to Virginia Code §§ 58.1-3609 and 58.1-3617, and Article X, § 6(a)(6) of the Constitution of Virginia, to include (without limitation)
1. Holding that Appellant is not a “church” or “religious association,” and
 2. By failing to rule that Appellant meets all other requirements for a tax exemption.
- Record at 554-564, 575-81, 626-50, 667-78, 1183-1210.
- B. The trial court erred by concluding that Appellant is not exempt from real property taxes pursuant to Virginia Code § 58.1-3606(A)(2), to include (without limitation)
1. Holding that Appellant is not a “church[] or religious bod[y]” and
 2. That Appellant’s use of the property is not exclusively for religious worship.
- Record at 564-67, 575-76, 581, 626-47, 667-78, 1183-1210.
- C. The trial court erred by concluding that Appellant is not exempt from real property taxes pursuant to Virginia Code § 58.1-3606(A)(5), to include (without limitation)
1. Holding that Appellant is not a “religious association[]” similar to the YMCA or failing to rule that Appellant is a “similar religious association[],”
 2. Holding that Appellant did not “actually and exclusively occup[y] and use[]” the property,
 3. Holding that Appellant is not “conducted not for profit but exclusively as [a] charit[y],” and
 4. Holding that “[Appellant’s] use of the property is not exclusively conducted as a ‘charity.’”
- Record at 555-64, 567-72, 581, 583-92, 625-50, 667-78, 1183-1210.
- D. The trial court erred by failing to exempt from real property taxes all of Appellant’s property except that portion used for profit by a third party, as provided by Virginia Code § 58.1-3603. Record at 634-38 and 667-78.

E. The trial court erred by excluding the testimony of expert witness Gerald R. McDermott. Record at 363-390, 404-06, 667-78, 946, and 968-72.

III. Statement of the Facts.

The purpose of Christian Scholar's Network and the Bradley Study Center "is to help students, faculty and community members [of Virginia Tech], but particularly students and faculty to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind." *Weaver testimony*, Record at 790.

The Bradley Study Center exists to cultivate a thoughtful exploration of the Christian faith at Virginia Tech. Focusing on students, faculty, staff and alumni, the Center seeks to explore how faith, learning, and calling relate to one another in advancing the common good for all. Believing that the Christian intellectual tradition can contribute a vibrant voice to the academic life of a public university, the Bradley Study Center offers opportunities to:

- engage students and faculty in the rich intellectual traditions of the Christian faith - connecting it meaningfully to their studies, work and lives;
- encourage and support Christian faculty and students in their academic pursuits and their current and future vocations; and
- promote the pursuit of knowledge and truth on the important questions of life in an environment of open and civil academic dialogue.

BSC website page WHO WE ARE, Record at 2072, Exhibit 19 (bold in original);

also see BSC Employee Handbook, Purpose of the BSC, Exhibit 17, Record at

2049. "The Bradley Study Center exists to engage Virginia Tech students,

scholars, and community members in the rich intellectual traditions of the

Christian faith and explore its implications for every aspect of life." *Id.*, BSC

Mission, Record at 2048. “[E]very staff member and board member has to sign annually a statement of agreement to the Apostles' Creed, the Nicene Creed and the Lausanne Covenant.” *Weaver testimony*, Record at 884.

“[CSN has] three programmatic emphases.... One is holistic formation, Christian formation. The second one is hospitality and outreach. And the third is engaging the university as the university.” *Weaver testimony*, Record at 790.

The “signature program” of BSC is its Fellows Program. *Weaver testimony*, Record at 796.

The Bradley Fellows Program offer[s] Virginia Tech undergraduates and graduate students a formative program of faith-and-life integration – an opportunity unique for students attending a public university. They combine rich community and conversation, Christian theological formation, and the historic resources of the Christian tradition, helping students to see their studies and callings in the light of the gospel.

The BSC Fellows description, Exhibit 4, Record at 1861. The Fellows Program is “a program of faith and life integration.” *Weaver testimony*, Record at 797.

Meetings of the Fellows Program are held at BSC on Monday nights. *Weaver testimony*, Record at 779. The Fellows Program would meet throughout the academic year when students were on campus. *Trial testimony of Kase Poling* (“Poling testimony”), Record at 1141-42. The meetings begin with worship including liturgy and singing. *Weaver testimony*, Record at 800-01, and 845. Liturgy consisted of a responsive reading from the Psalms and prayer. *Id.*, Record at 801, and *Poling testimony*, Record at 1138, 1139, 1140-41, and 1148. Worship

was followed by a communal meal preceded by a prayer for the meal, and then a time of study that involved lecture and discussion. *Weaver testimony*, Record at 800-01.

Kase Poling, who attended BSC as a graduate student at Virginia Tech beginning in the fall of 2021,² described the Fellows Program this way:

We would typically pray, walk through like a, you know, liturgy, read a psalm or something to that effect. We would share a meal, you know, have discussion, typical things that you'd share a meal -- you know what's going well with your week, you know, whatnot. And then, you know, really get into kind of the latter half of the discussion of the study.

Poling testimony, Record at 1138. Poling described “the meeting and the study and the discussions that we had were another form of worship,” *Id.*, Record at 1141. Poling testified on cross-examination that, “I essentially [] do the same thing or did do the same thing at the Bradley Center that I do like in my Wednesday night [Baptist³] church service.” *Id.*, Record at 1149. Notably, when pressed on cross-examination about aspects of worship of some Christian churches or denominations, this exchange occurred:

Q ... But on Sunday church service, with the candles and the rituals and the doctrines, that didn't take place at Bradley -- CSN?
A Well, that doesn't take place at my home church now anyway.

Id., Record at 1149. And this exchange:

² *Poling testimony*, Record at 1124-25.

³ *Poling testimony*, Record at 1149.

- Q ... And the meetings of the Fellows Group was not a traditional worship service like you would do on Sunday at your church?
- A I would say it would be more of a, like, Wednesday night service at my church. I mean, at my home church in Beckley, we typically have, like, singing, and then the pastor gets up and talks, and then we meet in what we call care groups or more traditionally like Sunday school that might happen before church we do after. And so we'll get into groups and have small group discussions similar to what we do at the Bradley Center.

Id., Record at 1151; *also see Id.*, Record at 1155-57.

The Fellows Program follows a curriculum. *Weaver testimony*, Record at 846. The teaching outline for the Fellows Program sets forth this curriculum. Teaching Outlines, Exhibit 8, Record at 1899-1925. The weekly topics for the Fellows Program are “CREATION,” “CS Lewis play,” “ABRAHAM, EXODUS,” “DAVID,” “PROPHETS, GOSPEL,” “WISDOM, FULFILLMENT,” “KINGDOM,” “CROSS,” “GRACE,” “COVENANT, SPIRIT,” “COMPLETION,” “Athanasius, On the Incarnation,” “Augustine, Confession,” “Aquinas, Summa,” “Phoebe Palmer, The Way of Holiness,” “Lewis: Abolition of Man,” “Lewis: That Hideous Strength,” “T.S. Elliot,” “Flannery O’Connor,” and “[Pope] John Paul II, Theology of the Body.” *Id.*, Record at 1924-25.

CSN also sponsors reading groups. Reading groups, or short courses, meet everywhere in the building (*Weaver testimony*, Record at 779), and “are typically six-to-eight-week weekly meetings of a faculty member or a staff member of the

BSC leading a discussion related to the integration of faith and knowledge.” *Id.*,

Record at 831; *also see* Record at 790-91:

[R]eading groups include a time of prayer, and often are focusing on studying the Bible or studying a book about the Bible[,] or they're studying the Bible in relationship to genetics and population genetics, and the relationship between reading the book of Genesis and looking at how do we understand how the world came into existence, and kind of trying to figure out how do we -- how do these two sources of knowledge relate to one another. We don't want to reject one or the other. We want to bring them together. So the science of faith is a very common theme.

Reading group topics have included:

- “Narnia: A Gospel Themed World” (Record at 1892);
- “The Liturgy of Politics: Spiritual Formation for the Sake of Our Neighbor” (Record at 1893);
- “Exploring the Intersection of Leadership, Faith, and Society” (Record at 1894);
- “The Lost World of Adam and Eve” (Record at 2066);
- “Genesis and Human Origins” (Record at 2067);
- “How Do We Read Complicated Bible Passages” (“Record at 2069);
- “What does it mean to be part of the Multiethnic Kingdom of God?” (Record at 2070); and
- “The Drama of Scripture: Finding Your Part in God's Plan” (Record at 2070).

CSN also hosts at the Center “Bradley Conversations,” which are “small lecture events,” held once per semester. *Weaver testimony*, Record at 834 and 849, *respectively*. “[T]he Bradley conversations is really about [] bringing in two people, in this case an atheist and a Christian, both of whom are scientists, but they can air their differences and have a robust conversation and go have a beer afterwards.” *Id.*, Record at 850.

Morning prayer is also held at the Center weekly. Record at 2063, 2064, and 2056.

On the first floor of the BSC is a coffee bar, classroom or meeting room with a long table and chairs that holds about 12 people, “two small [meeting] rooms” (Record at 777), and a library with 200 to 300 books and two armchairs. *Weaver testimony*, Record at 775. The library contains

almost entirely Christian books. There are some maybe books on leadership that might not be from an explicitly Christian perspective, if they're consistent with our Christian beliefs. But we have Bibles. We have Bible commentaries. We have theology textbooks. We have a variety of books on a number of topics, evangelism, apologetics, pastoral care, theology, social issues, science and faith, science and religion, you know, the so-called conflict between science and religion, cultural analysis. 99 percent of the books are from a Christian perspective.

Id., Record at 776.

The second floor is a large open space, with chairs, tables, and armchairs. *Weaver testimony*, Record at 778. “In fact, every night of the week this space upstairs is being used by either the Bradley Study Center or by another campus

ministry at Tech.” *Id.*, Record at 779. The second floor is where the Fellows Program worships, and other organizations use the second-floor space for worship services. *Id.*, Record at 779, and *e.g.*, Record at 845 (Fellows Program), 816 (Calvary Chapel), 840 (Campus Crusade for Christ), 841 (Living Water Fellowship), and 841 (Valor). CSN limits use of the BSC by third parties to those of a “Chrisian nature.” *Id.*, Record at 957.

VT1, a “collective of campus ministries,”⁴ has sponsored a 24-hour prayer vigil twice at BSC, and as part of the prayer vigil the upstairs served as a place where “people could worship prayerfully.” *Trial testimony of Daniel Patino* (“Patino testimony”), Record at 983-84. Patino characterized the use of the BSC in various ways, to include weekly dinners (Record at 982), pancake suppers (Record at 986), and the prayer vigils (Record at 983-84), as “worship.” *Id.*, Record at 988. Patino is an ordained minister. *Id.*, Record at 976-77.

Valor, a ministry of CRU to Virginia Tech students enrolled in the ROTC, uses the BSC regularly, *i.e.*, weekly or bi-weekly, to meet with discipleship groups that include opening with prayer, and to meet for a video series called Better Man with discussion of manhood from a Christian perspective that also includes prayer. *Trial testimony of James Michael Montgomery* (“Montgomery testimony”), Record at 994 and 995-97. Montgomery referred to the events held on the second floor of

⁴ Record at 985 and 986.

the BSC by Valor as “worship,” and identified photographs of Valor participants singing and “giving a devotion.” *Id.*, Record at 998-99, *also see* photographs of Valor worship, Exhibit 27 , Record at 2160-64 (notably, the photograph at Record 2164 includes a slide being displayed to the Valor participants with verses from the Old Testament portion of the Christian Bible or the Jewish Torah, book of Exodus, chapter 17, verses 11-13). Valor held Thursday night events at BSC consisting of

start[ing] with opening prayer, bless the food -- and, you know, if you feed them, they will come. And so we give them time to eat, to fellowship together. And then there's some kind of a program, a devotional. Sometimes we end up with a[n] outside speaker from Navigators or, actually, there's a couple of the 06's, colonels, and a Navy captain that will come and give a presentation as well about life, religious life in the context of their -- of their future career in the military. And we have singing and we close, send them on their way. About an hour and a half.

Montgomery testimony, Record at 314-15. Montgomery characterized what Valor does at the BSC as “worship.” *Id.*, Record at 315. Montgomery was commissioned through Campus Crusade in 2004 and has the right to function “the same as a pastor” “in terms of teaching, preaching.” *Id.*, Record at 993.

Kase Poling referred to BSC as his “campus ministry church.” *Poling testimony*, Record at 1124-25 and 1142-43 (“[T]hat was, you know, kind of, again, quote/unquote, my church campus ministry while I was there in addition to, you know, when I would go home on the weekends, I would attend my regular church,”). Poling participated in reading groups, lunch and learn events, pizza with the professors, and the Fellows Program. *Id.*, Record at 1128 and 1131.

He recalled reading groups on books by C.S. Lewis and John Lennox, “one of the, if not the best well-known, Christian apologists of our time.” *Poling testimony*, Record at 1127-28 and 1129. “[A]ll of the books were Christian books, and that was the intent was to, you know, learn about who God is, what -- you know, who we are as humans, what does it mean to be human, and how that impacts our lives.” *Id.*, Record at 1132-33. Poling testified that the lunch and learn events always had a “Christian question,” for example, “how to be a Christian on a public university campus.” *Id.*, Record at 1133-34. He also donated (or tithed) money to BSC and volunteered (or tithed of) his time to BSC while a student. *Id.*, Record at 1125-27.

CSN is a dues paying member of an association of Christian study centers, known as the Consortium of Christian Study Centers. *Trial testimony of Karl Johnson*, Executive Director of the Consortium of Christian Study Centers (“Johnson testimony”), Record at 746. The Consortium “exist[s] to empower existing centers and to catalyze new centers with respect to what we call thoughtful Christian presence and practice at colleges and universities around the world, although right now they’re only in North America.” *Johnson testimony*, Record at 744.

To be a member of the Consortium, members

have to affirm a number of things. We have a document entitled The Core Commitments of a Christian Study Center, which includes things like an

affirmation of the Apostles' Creed, a historic creed of the confessional Christian Church, as well as an affirmation of the Consortium's mission. There are a few other affirmations in there such as a commitment to the life of the mind being part of one's responsible discipleship of a life in Christ, as well as an affirmation to be a servant of the host university that they are attached to.

Johnson testimony, Record at 747. The Consortium has an annual meeting or conference of its members that includes times of worship (“singing and prayer,” Record at 752), preaching, teaching, morning devotions, and keynote addresses.

Johnson testimony, Record at 749-50, 752, and 757-58. As Executive Director of the Consortium, Johnson is required to be a licensed minister, which under his licensing gives him all rights to practice ministry as an ordained minister, *e.g.*, weddings, administer sacraments, officiate funerals. *Id.*, Record at 754 and 757.

CSN has permitted a for-profit, Christian counselor, Avril Mendoza, doing business as Abundant Life Counseling, to use a room at BSC to see clients once per week. *Weaver testimony*, Record at 954-55 and 896-97. To CSN “it would be essential that [the counseling] come from a Christian perspective. [CSN] wouldn't entertain it otherwise.” *Id.*, Record at 955 and 897. At first, Mendoza paid a small quarterly fee for consumables, but as of the trial she paid nothing for her use of space at the BSC. *Weaver testimony*, Record at 966-67.

CSN identified the Reverend Doctor Gerald McDermott as an expert witness to testify to what is “religious worship.” *Expert Report of Dr. McDermott* (“McDermott Report”), Record Addendum at 13. McDermott opined that “the

study of sacred texts and related commentaries—accompanied by prayer or meditation—is integral to what the West has called ‘religious worship.’” *Id.*, Record Addendum at 18. By way of example, McDermott pointed out that

- (1) “[T]he study of Torah is a religious act of worship” for Jews (*Id.*, Record Addendum at 16);
- (2) “Christians also regard biblical study as an act of worship” and “[Roman] Catholics since Vatican II (1962-65) have also been told to study the Bible as a means of hearing God's Word.” (*Id.*, Record Addendum at 16 and 17);
- (3) In Hinduism the “‘way of knowledge’ by studying, *i.e.*, meditating upon, the Upanishads (*Id.*, Record Addendum at 17);
- (4) In original Buddhism “one achieves the final goal of nirvana by studying the Buddha's teachings (the Four Noble Truths and the Three Characteristics of Existence) and living by his Noble Eightfold Path” (*Id.*); and
- (5) Daoism teaches that through “study[] of its two principal religious texts” one “seeks oneness with the Dao (Chinese for ‘way’) which is impersonal -- not a god but the ultimate process of change” (*Id.*, Record Addendum at 17-8).

Next, McDermott demonstrated that “[s]ome religions worship without groups or liturgies or ordained leaders.” *McDermott Report*, Record Addendum at 18. That an individual may worship alone is acknowledged by, *inter alia*, Catholics, other Christian groups, and Buddhists. *Id.* Nor are ordained clergy required for worship: worship services for Mormons, Jehovah’s Witnesses, and Plymouth Brethren are led by laymen. *Id.* Muslim imams are not ordained, but lead Friday Muslim prayer services.

McDermott observes that,

Virginians have come to see other world religions represented among their neighbors in the state, and buildings owned by religious groups such as Buddhists and Hindus. They have also seen the multiplication of evangelical Christian groups, many using studies of religious texts and prayer but without liturgy or ordained clergy.

Id., Record Addendum at 20. And then he concludes that,

Since the Bradley Center's studies and lectures and discussions all cite the Bible as their final authority, and since many of their studies are of the Bible and religious books that comment on the Bible, and since many of their studies open and close with prayer, the consensus of scholarship in religious studies would characterize the activities of the Bradley Center as various forms of “religious worship.”

McDermott Report, Record Addendum at 21; *also see Deposition of Gerald R.*

McDermott, Record Addendum at 57 (“my argument is that religious worship does take place there. ... Not only that it takes place, that -- that its fundamental character is religious worship.”).

In his deposition, McDermott further opined that CSN allowing other groups, including Abundant Life Counseling, to use its property is an act of worship “because [CSN] believe[s] that she is offering a Christian service and she - - and this is part of Christian ministry.” *Id.* at 112-13. McDermott explained that he would “define worship as practices that express reverence for ultimate reality. And so serving people by bringing the application of the biblical vision to their personal lives and counseling is a practice of expressing reverence for ultimate reality,” which is “descriptive of everything that goes on at the CSN.” *Id.* at 113-14. As for the counselor herself, McDermott also explained that “[i]t is my testimony that a Christian counselor who does her counseling []as a form of service to God or fellow man would see that as religious worship and it could be construed as religious worship.” *Id.* at 116.

IV. The Standard of Review and Argument.

A. Standard of Review

This Court reviews questions of statutory interpretation utilizing a de novo standard of review. *Virginia Polytechnic Inst. & State Univ. v. Interactive Return Serv.*, 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006). Furthermore, [the Virginia Supreme Court has] held that the issue of property tax exemption is a mixed question of fact and law and thereby must be reviewed de novo, giving deference to the trial court's factual findings. *Smyth County Community Hosp. v. Town of Marion*, 259 Va. 328, 336, 527 S.E.2d 401, 405 (2000); *The Daily Press, Inc. v. City of Newport News*, 265 Va. 304, 309, 576 S.E.2d 430, 432-33 (2003).

Va. Baptist Homes, Inc. v. Botetourt Cty., 276 Va. 656, 663, 668 S.E.2d 119, 122 (2008); also see *Emmanuel Worship Ctr. v. City of Petersburg*, 80 Va. App. 100, 108, 897 S.E.2d 265, 269 (2024), citing *Gloss v. Wheeler*, 302 Va. 258, 278, 887 S.E.2d 11, 19 (2023).

In this case, the trial court’s factual recitation, as set forth in its letter opinion, is scant, reducing 1,481 pages of trial testimony (1,165 pages) and exhibits (316 pages) to 4 paragraphs totaling 421 words. *Opinion Letter*, Record at 660-61. Moreover, the Government presented no case at trial. Trial transcript, Record at 1744, and 1800-01.

As to the trial court’s exclusion of the testimony of expert witness McDermott: “[t]he admission of expert testimony is a matter within the sound discretion of the trial court, and [] the trial court’s judgment [will be reversed] when the court has abused this discretion.” *Keese v. Donigan*, 259 Va. 157, 161 (2000) (citing *Tarmac Mid-Atlantic, Inc. v. Smiley Block Co.*, 250 Va. 161, 166, 458 S.E.2d 462, 465 (1995); *Brown v. Corbin*, 244 Va. 528, 531, 423 S.E.2d 176, 178 (1992)).

B. Argument

In this appeal, CSN seeks exemption from payment of real estate taxes on the following grounds:

- Pursuant to Virginia Code §§ 58.1-3609 and 58.1-3617 and Article X, § 6(a)(6) of the Constitution of Virginia, CSN is a “church” or “religious association” which operates exclusively on a nonprofit basis for charitable, religious, or educational purposes and its property is used exclusively for charitable, religious, or educational purposes.
- Pursuant to Virginia Code § 58.1-3606(A)(2) and Article X, § 6(a)(2) of the Constitution of Virginia, CSN is a “church[] or religious bod[y]” whose property is “exclusively occupied or used for religious worship.”
- Pursuant to Virginia Code § 58.1-3606(A)(5), it is a “religious association” similar to “the Young Men’s Christian Associations” that “actually and exclusively occup[ies] and use[s]” the property, is not “conducted not for profit but exclusively as [a] charit[y],” and whose use of the property is exclusively conducted as a ‘charity.’”

In the alternative, should the *de minimis* use of the CSN property by a for-profit, Christian counselor interfere with the tax-exempt condition of the property then, pursuant to Virginia Code § 58.1-3603, the property should be exempt except for that portion used by the counselor.

Lastly, to the extent that exemption relies on whether the activities of CSN constitute “religious worship,” the expert opinions of the Rev. Dr. Gerald

McDermott should have been admitted to assist and educate the trier of fact upon the meaning of religious worship.

CSN will address each argument in turn.

1. General Principles

Settled principles applicable here should be reviewed. The general policy in the Commonwealth is to tax all property. *See* Va. Const. Art. X, § 1. But the Constitution creates certain exemptions, *see id.* § 6(a), and authorizes the General Assembly to establish others. *See id.* § 6(b). And, the legislature is permitted to restrict or condition, in whole or in part, but not extend, any or all of the exemptions created in the Constitution. *Id.* § 6(c).

Furthermore, the Constitution provides that all exemptions shall be strictly construed against the taxpayer. *Id.* § 6(f). "Under this rule, exemption from taxation is the exception, and any doubt is resolved against the one claiming the exemption." *DKM Richmond Assocs. v. City of Richmond*, 249 Va. 401, 407, 457 S.E.2d 76, 80 (1995). The burden is upon the taxpayer to establish that it comes within the terms of the exemption. *Id.*

The Constitution authorizes the General Assembly to exempt from taxation property used by its owner for charitable, historical, benevolent, or cultural purposes "subject to such restrictions and conditions as may be prescribed." Art. X, § 6(a)(6).

The General Assembly implemented the foregoing constitutional provisions in Title 58.1, Chapter 36, of the Code.

Mariner's Museum v. City of Newport News, 255 Va. 40, 44, 495 S.E.2d 251, 252-53 (1998).

2. CSN is a “church” or “religious association” and otherwise qualifies for exemption pursuant to Virginia Code §§ 58.1-3609 and 58.1-3617 and Article X, § 6(a)(6) of the Constitution of Virginia (first assignment of error).

Virginia Code § 58.1-3609 states in relevant part,

A. The real and personal property of an organization classified in §§ 58.1-3610 through 58.1-3621 and used by such organization for a religious,

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

B. Exemptions of property from taxation under this article shall be strictly construed in accordance with Article X, § 6 (f) of the Constitution of Virginia.

Virginia Code § 58.1-3617 states in relevant part,

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

First, to be exempt pursuant to 58.1-3609 Christian Scholars Network, Inc. must be “an organization classified in [§ 58.1-3617].” *See* Va. Code § 58.1-3609.

Under § 58.1-3617 an organization must be a “church, religious association or religious denomination.” CSN meets the definition of a “religious association,” if not that of a “church;” CSN does not aver that it is a religious denomination.

Church is not defined in Title 58.1 of the Code of Virginia. Where a word is not defined “[then it is] to be given its plain and ordinary meaning” *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 21, 694 S.E.2d 555, 562-63 (2010).

Merriam-Webster defines “church” as:

- 1 : a building for public and especially Christian worship
- 2 : the clergy or officialdom of a religious body

the word *church* ... is put for the persons that are ordained for the ministry of the Gospel, that is to say, the clergy—J. Ayliffe

3 often capitalized : a body or organization of religious believers: such as

a : the whole body of Christians

the one *church* is the whole body gathered together from all ages—J. H.

Newman

b : denomination

the Presbyterian *church*

c : congregation

they had appointed elders for them in every *church*—Acts 14:23 (Revised Standard Version)

4 : a public divine worship

goes to *church* every Sunday

5 : the clerical profession

considered the *church* as a possible career

<https://www.merriam-webster.com/dictionary/church>, last visited May 27, 2025, at

11:53 hours. Dictionary.com defines “church,” as:

1. a building for public Christian worship.
2. public Christian worship of God; a Christian religious service:
They attend church regularly.
What time does your church start?
3. none the church or the Church, the whole body of Christian believers.
4. Sometimes Church. any organized group of Christian believers professing the same creed and acknowledging the same ecclesiastical authority; a Christian denomination:
the Methodist Church.
5. that part of the whole Christian body, or of a particular denomination, belonging to the same city, country, nation, etc.:
The African church was well represented at the international ecumenical conference.
6. a body of Christians worshipping in a particular building or constituting one congregation:
She is a member of this church.
7. ecclesiastical organization, power, and affairs, as distinguished from the state:
The separation of church and state is entrenched in the U.S. Constitution.
8. the clergy and religious officials of a Christian denomination:

- The missionary went wherever the church sent him.*
9. the Christian faith:
The early 20th century saw the return of many intellectuals to the church.
10. none the church or the Church, the organized body of professing Christians before the Reformation:
In a.d. 325, Constantine summoned the leaders of the Church to a conference at Nicaea.
11. the Church, the Roman Catholic Church.

<https://www.dictionary.com/browse/church>, last visited May 27, 2025, at 23:50 hours.

CSN meets several of the above definitions of a “church” as (1) “a body or organization of religious believers,” (2) a “congregation,” (3) “a Christian religious service,” (4) “any organized group of Christian believers professing the same creed and acknowledging the same ecclesiastical authority,” and (5) “a body of Christians worshipping in a particular building or constituting one congregation.”

CSN, through its various events, but especially through its Fellows Program, is a “body ... of religious believers.” It is a “congregation” in the most basic sense: a group of persons with religious, *i.e.*, Christian, beliefs/faith that comes together to pray, sing, celebrate liturgy, share meals, and study how to live as Christians. The weekly Fellows meetings in which these practices of their faith occur constitute a “Christian religious service.” It is organized and credal, *i.e.*, professes the Apostle’s Creed, Nicene Creed, and the Lausanne Covenant. CSN worships at its building, the Bradley Study Center. It has a stated mission, purpose, programmatic emphases, and curriculum. While CSN may lack some of the indicia

of a “church” in the traditional or historical sense, it is as much a church as any non-denominational, independent, and/or congregational/self-governing church that meets to worship God and Jesus Christ in the present day.

Dictionary.com defines “association” as “an organization of people with a common purpose and having a formal structure.” <https://www.dictionary.com/browse/association>, last visited May 28, 2025, at 00:52 hours. Even if CSN is not formally a church, it is a “religious association,” that is an association of persons that gather for a religious purpose: CSN has a board. *Weaver testimony*, Record at 770. Virginia Tech students, faculty, and other community members that avail themselves of its programming come together for a common purpose. CSN is explicitly a Christian or a religious organization. Its purpose “is to help students, faculty and community members [of Virginia Tech], but particularly students and faculty to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind.” *Id.*, Record at 790.

Next, CSN must “operate[] exclusively on a nonprofit basis for charitable, religious or educational purposes.” *See* Va. Code § 58.1-3617. Section 58.1-3609 also requires the organization to be “operated not for profit.” CSN is a 501(c)(3) not for profit corporation: the Government has not alleged that CSN is not nonprofit.

Moreover, CSN exists for the purpose of furthering the Christian religion by enabling its participants to engage their religion (*i.e.*, faith and beliefs) on an intellectual or apologetic plane, to consider the intersection of their religion and the higher education and understanding of the world and universe they pursue in the university environment. This pursuit could just as easily be considered educational as religious, although CSN does not possess the formalities of a university or other formal institution of learning.

Sections 58.1-3609 and 58.1-3617 both have use requirements. When read together, a church or religious organization must use the property for a religious purpose, although not exclusively, in order to comply with § 58.1-3609, but the use of a property owned by a religious association must be “used exclusively for ... religious purposes” in order for the religious association to comply with § 58.1-3617. However, the exclusive use of the property under 58.1-3617 need not be exercised by the religious association property owner: the property could be used by another organization exclusively for religious purposes, or used by multiple organizations, including the owner, exclusively for religious purposes.

“Exclusively” has been interpreted elsewhere in Title 58.1, *i.e.*, at § 58.1-3606(A)(2), to mean “‘primarily’ or ‘substantially,’ depending on the nature and function of the organization proposed to be exempted.” *Emmanuel Worship Ctr.*, 80 Va. App. at 110, 897 S.E.2d at 270-71. Therefore, “exclusively” as used in §

58.1-3617 also should be construed *in pari materia* to mean primarily or substantially. *Linton v. Linton*, 63 Va. App. 495, 499, 759 S.E.2d 14, 16 (2014), quoting *Thomas v. Commonwealth*, 59 Va. App. 496, 500, 720 S.E.2d 157, 159-60 (2012) (quoting *Lucy v. Cnty. of Albemarle*, 258 Va. 118, 129-30, 516 S.E.2d 480, 485 (1999)).

Regardless, the property is used exclusively for religious purposes. “Religious purpose” is not defined in Title 58.1, but certainly would include worship and other activities of the nature conducted at BSC by CSN and the other campus and community ministries that it permits to use the property. All events held at the Center are of a religious nature. Accordingly, CSN qualifies for exemption from property taxes pursuant to Virginia Code §§ 58.1-3609 and 58.1-3617.

3. CSN is a “church[] or “religious bod[y]” exempt from real property taxes pursuant to Virginia Code § 58.1-3606(A)(2) (second assignment of error).

Virginia Code § 58.1-3606(A)(2) states,

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

...

2. Real property and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively occupied or used for religious worship 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.

As with § 58.1-3617, CSN may claim exemption by proving that it is a church.

As set forth in the discussion of § 58.1-3617, *supra*, CSN is a church.

CSN is even more appropriately viewed as a “religious bod[y].” In relevant part, Merriam-Webster defines “body” as “a group of persons or things: such as [] a fighting unit [or] a group of individuals organized for some purpose.” <https://www.merriam-webster.com/dictionary/body>, last visited May 28, 2025, at 02:53 hours. CSN is “a group of persons[, *i.e.*,] a group of individuals organized for [the] purpose” (*Id.*) of “to help[ing] students, faculty and community members [of Virginia Tech], but particularly students and faculty to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind.” *Weaver testimony*, Record at 790.

The exemption under § 58.1-3606(A)(2) also requires that CSN’s property be “exclusively occupied or used for religious worship.” Like § 58.1-3617, however, the exclusive occupation and/or use of the property need not be exercised by the religious association property owner. As the evidence adduced at trial showed, BSC is used by many groups for worship, especially given the “expansive definition of

religious worship” contained in § 58.1-3606. *See Emmanuel Worship Ctr. v. City of Petersburg*, 300 Va. 393, 403, 867 S.E.2d 291, 295 (2022).

The template followed by BSC for its events, the Fellows Program in particular, *i.e.*, liturgy and prayer, sharing a meal, and teaching, follows the practice of the earliest Christians, following the Day of Pentecost, as set forth in the Acts of the Apostles, the fifth book of the New Testament in the Christian Bible immediately following the Gospels, at chapter 2, verse 42, “And they devoted themselves to the apostles’ teaching and the fellowship, to the breaking of bread and the prayers.” Acts 2:42 (English Standard Version). For the earliest Christians this was worship: congregational prayer, meals, and teaching. It is also the template followed by many, if not all, of the various groups (local churches and campus ministries) that use BSC. Even the Government acknowledged at trial “that it is worship in a sense....” Record at 979.

Incidental uses of the property otherwise do not disqualify the Center from exemption, any more than the Boys Scouts, Alcoholics Anonymous, or other civic groups using a church property disqualify it from exemption. *Emmanuel Worship Ctr.*, 80 Va. App. at 110, 897 S.E.2d at 270-71 (“‘exclusively’ may better be replaced by ‘primarily’ or ‘substantially,’””). As a particular church permitting another church or religious body to use its building for religious worship, CSN permitting other Christian groups to use BSC for worship services does not

disqualify it from exemption. *Id.* Also see *Richmond Mem'l Hosp. v. City of Richmond*, 55 Va. Cir. 308, 312 (Cir. Ct. 2001).

4. CSN is a religious association similar to the YMCA and that otherwise qualifies for exemption from property taxes pursuant to § 58.1-3606(A)(5) (third assignment of error).

Virginia Code § 58.1-3606(A)(5) states,

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

...

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

To claim this exemption, CSN must demonstrate that it is a religious association similar to “the Young Men's Christian Associations.” See Virginia Code § 58.1-3606(A)(5). In ruling on a special plea of charitable immunity, the Virginia Supreme Court quoted from the Articles of Incorporation of the Hampton Roads YMCA: the YMCA

- “unequivocally reflect its nonprofit, charitable status as a nonstock corporation.”
- “the YMCA ‘shall be operated exclusively for one or more charitable, religious, educational and scientific purposes.’”
- “The Young Men's Christian Association ... in its essential genius [is] a worldwide fellowship united by common loyalty to Jesus Christ for the

purpose of developing Christian personality and building a Christian society.”

- “The mission statement for the corporation is to put Judeo-Christian principles into practice through programs that build healthy body, mind, and spirit for all.”

Ola v. YMCA of S. Hampton Rds., Inc., 270 Va. 550, 559-60, 621 S.E.2d 70, 74-75

(2005). The Supreme Court also set forth the purpose of the Lynchburg YMCA in

1914, when evaluating its tax exemption, as, “the improvement of the spiritual,

mental, social and physical condition of young men and boys.” *Commonwealth v.*

Lynchburg Y. M. C. A., 115 Va. 745, 746, 80 S.E. 589, 589 (1914) (*internal*

quotations omitted).

In *Lynchburg Y.M.C.A.*, the Supreme Court also described the YMCA property and use thereof in great detail:

The real estate of the association consisted of a lot on Church street, in the city of Lynchburg, eighty feet by 132 feet, upon which was erected a five-story building, including the basement, and the whole was valued at \$48,000. The use made of the building by the association, as stated by the court in its finding of the facts (the correctness of which is not controverted), are as follows:

"Fourth. That in the basement of this building is a billiard room, tenpin alley, swimming pool and numerous shower and other baths. On the first floor is an office and lobby, a library and reading room and a gymnasium. On the second floor is an auditorium, a boys' department, consisting of a library, reading room and game room, a parlor and several educational class rooms. The third and fourth floors contain dormitories or bedrooms, of which there are forty-five in number.

"Fifth. That the billiard room, tenpin alley, swimming pool and baths are used only by members of the association and their out-of-town guests; for the use of the billiard tables they pay five cents per one-half hour; for the tenpin alley, five cents per game; and for the baths and swimming pool no charge is made. The office is occupied by the secretary and his assistants in

and about the work of the association. The lobby is open to the public, and no fee of any sort is charged for its use. The gymnasium is used for the various classes in physical culture, taught by a director employed by the association. None but members are allowed these privileges, and no extra charge is made therefor. The auditorium is used for all public meetings, the object and purpose of which is approved by the directors; no rental is charged for its use. None but members of the association are allowed to use the boys' department, and no charge is made or money ever received for the use of this department or any of its privileges. The educational class-rooms are used for the conduct of the night school. No fees are charged for instruction in this school. Some of the pupils do pay very small sums, because they prefer to do so, but these fees do not pay over one-half the cost of conducting the school, and are not compulsory. The dormitories or bedrooms are used by members of the association only. They pay for these rooms from \$8.00 to \$15.00 per month, according to size and location. These rooms are furnished, and the price paid includes light, heat and janitor services. No one except members who pay fee for full membership can occupy these rooms. The actual amount received from these dormitories is about \$5,000 *per annum*. No itemized account of the cost of maintaining them has been kept, and no accurate estimate of the cost of heating, lighting, cleaning or superintending them can be made; it does, however, amount to a considerable sum *per annum*.

"Sixth. Any man or boy over twelve years of age, of good moral character, is eligible to membership. No religious test of any sort is applied. The membership includes Catholics, Jews and all the various Protestant denominations, as well as many persons who are not members of any church. One-third of the directors are elected at the annual meeting each year, at which meeting all the members who are members of evangelical churches are entitled to vote, the only qualification for a director being that he must be a member of an evangelical church.

"Seventh. The cost of maintaining the work of this association in its building aforesaid is about \$15,000 *per annum*; \$ 5,000 of this sum is collected from persons occupying the rooms or dormitories hereinbefore referred to; the remaining \$10,000 is raised from the membership fees and such contributions as may be made by the friends of the association. An annual fee of \$10.00 is charged to men who are to be entitled to all the privileges of the association, and for like privileges boys are charged \$ 5.00 or \$ 6.00 *per annum*. Some deduction is made from these sums for persons whose salaries or wages are below a given sum. The association has no capital stock and no

provision for making profits or declaring dividends. As a matter of fact, the work of the association is always done at a loss. . . ."

It is not claimed that the association is not occupying and using the basement and the first and second stories of the property in a way which directly promotes the purposes for which the association was incorporated. The question, therefore, to be determined here is whether or not the use made of the third and fourth stories is such as to exclude the property from the exemption provided by the Constitution. If the letting of the rooms in those stories by the association to its members for sleeping or lodging purposes is a renting or leasing of them, the property was not occupied and used exclusively by the association for its purposes within the meaning of the Constitution.

Commonwealth v. Lynchburg Y. M. C. A., 115 Va. 745, 748-50, 80 S.E. 589, 590-91 (1914).

As can be gleaned from these statements by the Virginia Supreme Court, CSN is a similar religious association to the YMCA. CSN exists "to help students, faculty and community members [of Virginia Tech], but particularly students and faculty to love God with all their heart, soul, mind and strength, but, in particular, to love God with all their mind." *Weaver testimony*, Record at 790. This purpose is similar to that of the Hampton Roads YMCA, *i.e.*, "developing Christian personality and building a Christian society," and "to put Judeo-Christian principles into practice through programs that build healthy body, mind, and spirit for all." *Ola*, 270 Va. at 560, 621 S.E.2d at 74. And it is similar to the Lynchburg YMCA' stated purpose, *i.e.*, "the improvement of the spiritual, mental, social and physical condition of young men and boys." *Lynchburg Y. M. C. A.*, 115 Va. at 746, 80 S.E. at 589.

Again, similar to the Lynchburg YMCA, the Center is used by CSN's participants, and CSN also offers its property for use by third parties. The YMCA offered classes and various forms of entertainment (billiards, tenpin alley, and a swimming pool), a library, and a reading room: again similar to the use made of BSC, although admittedly the YMCA's entertainment offerings exceed those of BSC. For the Lynchburg YMCA, "No religious test of any sort [was] applied. The membership include[d] Catholics, Jews and all the various Protestant denominations, as well as many persons who are not members of any church." *Id.* at 749. For CSN's Fellows Program,

Students have to apply. The main requirement there's two main requirements, be a Christian student, or be interested in Christianity. In other words, you're a seeker, so to speak. And we would allow people who are not Christians, maybe 10 percent of the fellows to be that. We don't want it to be too many people. We want some folks that have particular grounding in the Christian faith. The second thing is that they would commit to the program, that they would consistently participate and attend every week and do the reading.

Weaver testimony, Record at 878-88.

CSN is similar to the YMCA, but for the exemption to apply there is more. CSN must be "conducted not for profit but exclusively as [a] charit[y]." *See* Va. Code § 58.1-3606(A)(5). CSN is not for profit, and the Government has not alleged otherwise.

"The requirement that an operation be conducted 'not for profit but exclusively' as a charity applies to the institution seeking the exemption." *Smyth*

Cty. Cmty. Hosp., 259 Va. at 336, 527 S.E.2d at 405. “We have said that the word ‘charitable,’ as used in tax exemption provisions, “should be given a fair and reasonable interpretation, and means intended for charity.” An organization is charitable if it is ““organized and conducted to perform some service of public good or welfare.”” *Manassas Lodge No. 1380, Loyal Order of Moose, Inc. v. Cty. of Prince William*, 218 Va. 220, 224, 237 S.E.2d 102, 105 (1977), quoting *City of Richmond v. United Givers Fund*, 205 Va. 432, 436, 137 S.E.2d 876, 879 (1964).⁵ Again, “exclusively” here should be read as “primarily” or “substantially,” depending on the nature and function of the organization proposed to be exempted. *Emmanuel Worship Ctr.*, 80 Va. App. at 110, 897 S.E.2d at 270-71.

CSN does not charge third parties for the use of its property, nor does it charge students to participate in its events. *Weaver testimony*, Record at 915 and 880-81, *respectively*. CSN provides free meals to its participants and provides free space for campus and community Christian ministries to meet for worship and other purposes. CSN sponsors, *i.e.*, spends money on, events for students to be able to attend the events free of charge. CSN is as charitable, if not more, as the Lynchburg YMCA, which charged for many of its offerings to its members.

⁵ While these cases applied a pre-1971 liberal construction of the statutes, the definition given for “charitable” is not affected by the liberal construction.

Lastly, CSN must prove that the BSC “belong[s]” to it, and that it “actually and exclusively occupie[s] and use[s]” the property. *See* Va. Code § 58.1-3606(A)(5). Again, “exclusively” here should be read as “primarily” or “substantially,” depending on the nature and function of the organization proposed to be exempted. *Emmanuel Worship Ctr.*, 80 Va. App. at 110, 897 S.E.2d at 270-71. CSN exclusively occupies the property – it resides nowhere else and has administrative offices on the property (*Weaver testimony*, Record at 915) and conducts the vast majority of its programming at the property: CSN uses other spaces only when BSC is inadequate for the size of the group anticipated to attend a particular event. That other campus and community Christian ministries use the property does not render CSN’s use of the property non-exclusive, because CSN conditions third party use on the property not first being needed for a CSN event.

5. Use of the property by Christian Counselor Avril Mendoza does not destroy the property’s tax-exempt status; if it affects the exemption at all, then Virginia Code § 58.1-3603 requires that it be pro-rated to the area used by Mendoza (fourth assignment of error).

Virginia Code § 58.1-3603 provides that,

A. Whenever any building or land, or part thereof, exempt from taxation pursuant to this chapter and not belonging to the Commonwealth is a source of revenue or profit, whether by lease or otherwise, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city or town. When a part but not all of any such building or land, however, is a source of revenue or profit, and the remainder of such building or land is used by any organization exempted from taxation pursuant to this chapter for its purposes, only such portion as is a source of profit or revenue shall be liable for taxation.

CSN garners no revenue or profit from Mendoza's use of the property and therefore, Mendoza's use does not disqualify CSN's property from tax exemption. *Weaver testimony*, Record at 966-67.

Nonetheless, should use of the property by a for-profit third party be of concern, then for the use to be consequential, "the lease must generate a 'substantial' net revenue or profit before the exemption is forfeited." *Mariner's Museum*, 255 Va. at 45, 495 S.E.2d at 253, *citing City of Newport News v. Warwick County*, 159 Va. 571, 593-94, 166 S.E. 570, 578 (1932). "[T]he mere existence of a lease will not work a forfeiture of the exempt status that the leased property may otherwise enjoy." *Mariner's Museum, supra, citing Board of Supervisors of Wythe County v. Medical Group Found., Inc.*, 204 Va. 807, 812, 134 S.E.2d 258, 262 (1964).

Accordingly, use of the BSC by Counselor Mendoza is of no consequence to the tax-exempt status of the property, but even if it were, Mendoza's use of the space is minor – 1 room used once per week. Instead of Mendoza's use destroying the entire exemption for the property, Code § 58.1-3603 dictates that "only such portion as is a source of profit or revenue shall be liable for taxation." Therefore, if the Court were to determine that Mendoza's use of the property affects its tax-exempt status, then the Court should remand this action for the trial court to

determine the portion of the property used by Mendoza, but otherwise exempt the remainder of the property.

6. The trial court abused its discretion by excluding the testimony of expert witness Gerald R. McDermott (fifth assignment of error).

The trial court abused its discretion in excluding the expert testimony of Dr. McDermott defining “religious worship.” The Government objected to Christian Scholars Network’s designation of Gerald R. McDermott, Ph.D. as an expert witness to testify at trial of this matter for the following reasons:

- Dr. McDermott’s proffered opinion as to the definition of “religious worship” as used by religious scholars is “interpreted in the abstract without connection to legislative intent,” and is therefore irrelevant and inadmissible;
- Dr. McDermott’s proffered opinion is a legal conclusion barred by Virginia Code § 8.01-401.3;
- Dr. McDermott’s proffered opinion violates Virginia law on the interpretation of tax exemption because his opinion has “no limiting principle”; and
- Dr. McDermott’s proffered opinion lacks an adequate foundation and is therefore inadmissible because he “conducted no meaningful investigation” of CSN’s property and its activities.

The trial court stated that “an expert does not need to tell me what worship is,” and “I don't need an expert to come in and tell me that people saying prayers is worship, that people singing hymns and reciting Psalms and studying the Bible. . . . I really don't think it's in dispute in this case.” Record at 969, 972. However, the trial court later found that “Abundant Life is a professional counseling business which charges clients by the hour, an activity which cannot reasonably (let alone strictly) be characterized as religious worship,” and therefore held that CSN’s property did not qualify for tax exemption under Virginia Code § 58.1-3606(A)(2). *Letter Opinion*, Record at 664. Thus, Dr. McDermott’s proffered expert opinion was relevant to this case, and the trial court “abused its discretion by holding that the excluded testimony was not relevant to [a] material issue.” *See Commonwealth v. Proffitt*, 292 Va. 626, 636, 792 S.E.2d 3, 8 (2016). Pursuant to Virginia Code § 58.1-3606(A)(2), CSN was required to prove that its real property was “exclusively occupied or used for religious worship.” McDermott’s expert testimony concerned what constitutes “religious worship.”

The trial court avoided the question of whether the property was “exclusively used for religious worship” because it held that use of the property by Counselor Mendoza entirely destroyed the exclusive use of the property for religious worship. *Letter Opinion*, Record at 664. In this the trial court erred, for the immediately preceding reasons set forth herein.

Instead, the trial court was required to determine whether the property was “exclusively occupied or used for religious worship.” *See* Va. Code § 58.1-3606(A)(2). Notably, the statute does not require the exclusive occupancy or use for religious worship be exercised by the property owner, nor by its plain language does it exclude religious worship by multiple parties from constituting “exclusive use for religious worship.”

In this case, the evidence at trial demonstrated that the property was used nearly every day for what the participants called worship: prayer, singing, preaching, book studies and discussion, teaching, and liturgy. Accordingly, McDermott’s opinions on what constitutes “religious worship” should have been admitted.

The Government agreed that the activities of CSN at the property were “worship in a sense, but it is an informal sense....” Record at 979-80. The Government was disputing what constituted worship.

As “religious worship” used in the statute must be subject to application to religions other than Christianity and/or traditional western religions, a definition of religious worship must consider what is considered “worship” by other religions. Knowledge of what religions around the world would consider worship is beyond the general knowledge of the common person. Therefore, McDermott’s expert

testimony would assist the trier of fact in understanding what is “religious worship.”

McDermott’s testimony is from a scholarly perspective, but it is unlikely that anyone other than a religious scholar would be qualified to offer expert testimony on world religions. “[T]o qualify as an expert[,] the witness needs only to have a degree of knowledge of a subject matter beyond that of persons of common intelligence and ordinary experience so that the witness’ opinion will have value in assisting the trier of fact in understanding the evidence or determining a fact in issue.” *Conley v. Commonwealth*, 273 Va. 554, 560, 643 S.E.2d 131, 134 (2007).

McDermott’s expert report, curriculum vitae, and deposition reveal the foundation that he had in formulating his opinion. He reviewed pleadings and exhibits in the case. McDermott has authored or co-authored over 24 books, seven (7) of which concerned world religions. *McDermott Report*, Record Addendum at 11. He has taught and lectured on world religions and related topics, and reviewed scholarly books on world religions. *Id.*

The Government may not agree with Dr. McDermott’s definition of worship, but its disagreement alone is insufficient for it to be excluded. Dr. McDermott drew from his extensive knowledge of world religions to opine on what is worship from a religious standpoint.

The Virginia Rules of Evidence permit an expert to offer opinion or conclusion on the ultimate issue, but not legal conclusions. Rule 2:704 of the Virginia Rules of Evidence. McDermott's opinion, therefore, may be that the events held at the BSC constitute worship from a world religions standpoint. This is not a legal conclusion, but interpretation of facts.

The trial court abused its discretion in excluding the expert witness testimony of Dr. McDermott. "In a civil case, the erroneous exclusion of evidence is reversible error when the record fails to show plainly that the excluded evidence could not have affected the verdict." *Proffitt*, 292 Va. at 642, 792 S.E.2d at 11. Excluding McDermott's expert opinions was not harmless error and clearly could have affected the trial court's decision, because the trial court based its decision on denying CSN property tax exemption under Virginia Code § 58.1-3606(A)(2) on the specific grounds that

Abundant Life is a professional counseling business which charges clients by the hour, an activity which cannot reasonably (let alone strictly) be characterized as religious worship. While Abundant Life may provide its services from a Christian point of view, its activities are not a form of religious worship under the meaning of this statute.

. . . . Because the property is not exclusively used as a worship space and because it is not ancillary or accessory to a worship space, it must fail this exemption.

Letter Opinion, Record at 664. Dr. McDermott's expert opinion would have directly contradicted this finding by the trial court, because Dr. McDermott would

have opined that “a Christian counselor who does her counseling []as a form of service to God or fellow man would see that as religious worship and it could be construed as religious worship.” *McDermott deposition*, Record Addendum at 116. Dr. McDermott also opined that CSN allowing Abundant Life Counseling to use its property is an act of worship and that “everything that goes on at the CSN” constitutes worship. *Id.*, Record Addendum at 112-14. The trial court abused its discretion in excluding the expert witness testimony of Dr. McDermott.

V. Conclusion.

Petitioner Christian Scholars Network, Inc., *d/b/a* Bradley Study Center, prays this Court would:

- a. Reverse the decision of the Montgomery County Circuit Court and hold that, as of June 5, 2019:
 - i. CSN is exempt from the payment of real estate taxes pursuant to Virginia Code §§ 58.1-3609 and 58.1-3617 and Article X, § 6(a)(6),
 - ii. CSN is exempt from the payment of real estate taxes pursuant to Virginia Code § 58.1-3606(A)(2) and Article X, § 6(a)(2) of the Constitution of Virginia, and/or
 - iii. CSN is exempt from the payment of real estate taxes pursuant to Virginia Code § 58.1-3606(A)(5).

- b. In the alternative, reverse the decision of the trial court, and hold that as of June 5, 2019, CSN is exempt from the payment of real estate taxes under a. i., ii., and iii. (above) except for that portion used by the counselor, and remand the action to the trial court for a determination of what portion is not exempt; and/or
- c. In the alternative, hold that exclusion of the expert opinion of Dr. Gerald McDermott was in error and either, upon consideration of his opinions reverse the trial court and hold that CSN is exempt as of June 5, 2019, from payment of real estate taxes pursuant to Virginia Code § 58.1-3606(A)(2) and Article X, § 6(a)(2) of the Constitution of Virginia, or vacate the trial court's decision and remand to the trial court with instruction to admit and consider the opinions of Dr. McDermott and reconsider its decisions in this action as they may be affected by Dr. McDermott's opinions.

RESPECTFULLY SUBMITTED,
CHRISTIAN SCHOLARS NETWORK,
INC., *d/b/a* BRADLEY STUDY CENTER

/s/ Melvin E. Williams
Of Counsel