Record No. _____

In the Supreme Court of Virginia

Trustees of the New Life In Christ Church,

Plaintiff-Appellant,

v.

City of Fredericksburg,

Defendant-Appellee

PETITION FOR APPEAL

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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. Milivojevich*, 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,

TRUSTEES OF THE NEW LIFE IN CHRIST CHURCH

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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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