

Record No. 120919

**IN THE
SUPREME COURT OF VIRGINIA**

THE FALLS CHURCH, DEFENDANT-APPELLANT

v.

THE EPISCOPAL CHURCH AND THE PROTESTANT EPISCOPAL CHURCH
IN THE DIOCESE OF VIRGINIA, PLAINTIFFS-APPELLEES

On Appeal from the Circuit Court for Fairfax County

**THE ATTORNEY GENERAL'S AMICUS BRIEF
IN SUPPORT OF
APPELLANT THE FALLS CHURCH
ON THE ISSUE OF DONOR INTENT**

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I. INTRODUCTION

The Falls Church ("TFC" or "the Church") appeals from a trial court's decision in a church property dispute between itself and The Episcopal Church ("TEC") and The Protestant Episcopal Church in the Diocese of Virginia ("the Diocese"), the hierarchical entities to which TFC had previously belonged (collectively, "the plaintiffs"), assigning six separate errors. A continuation of a long-standing dispute between the Church and the plaintiffs that was previously addressed in *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 694 S.E.2d 555 (2010), this appeal challenges, inter alia, the trial court's award to the plaintiffs of several million dollars worth of charitable donations originally made to the Church on the express condition that they not be shared with the plaintiffs. To protect the public interest in honoring the wishes of donors to charitable institutions, pursuant to the authority granted by Va. Code Ann. § 2.2-507.1(A), the Attorney General of Virginia presents this Amicus Brief in support of that aspect of the Church's Appeal and urges the Court to reverse the trial court's transfer of TFC charitable donations to the plaintiffs against the wishes of TFC donors.¹

¹ The Attorney General takes no position on the merits of TFC's other assignments of error.

II. NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

The Attorney General hereby adopts the Church's Statement of the Case and Proceedings Below appearing in its opening brief (TFC Opening Br. at 5-6), but expresses no opinion regarding matters relevant to the other alleged errors therein discussed. The trial court's allocation to TEC and the Diocese of charitable donations given by donors to TFC on the condition that they *not* be provided to plaintiffs raises a foundational question of fundamental principles: whether an express condition placed on a charitable donation by a donor to a religious congregation may be contravened and a court of the Commonwealth order the donation forwarded to another religious body, when the donor has expressed an unequivocal unwillingness to support that body. The nature and seriousness of this issue compels the Attorney General's participation.

The Attorney General of Virginia has the authority, and duty, "to act on behalf of the public with respect to" assets held by "charitable entities" that are "incorporated in or doing any business in Virginia," such as those at issue here, and "to seek such judicial relief as may be necessary to protect the public interest in such assets." Va. Code Ann. § 2.2-507.1(A); see *Dodge v. Trs. of Randolph-Macon Woman's Coll.*, 276 Va. 10, 16, 661 S.E.2d 805, 808-09 (2008) ("This statute further gives the Attorney General

the authority to act on behalf of the public when a charitable corporation incorporated in or doing business in Virginia uses charitable property in a manner inconsistent with the corporation's governing documents *or applicable law.*" (emphasis added)); *see also* Va. Code Ann. § 55-532 (requiring non-profit entities to notify the Attorney General before disposing of assets so that the Attorney General "may exercise his common law and statutory authority over the activities of these organizations"); *accord Tauber v. Commonwealth*, 255 Va. 445, 451, 499 S.E.2d 839, 842 (1998) (The Supreme Court of Virginia "long ago recognized the common law authority of the Attorney General to act on behalf of the public in matters involving charitable assets." (citing *Clark v. Oliver*, 91 Va. 421, 427-28, 22 S.E. 175, 177 (1895))).

The Attorney General here asserts the public interest in the wishes of donors being honored -- that the charitable gifts of donors be used "for such purposes as are established by . . . the gift or bequest made to" the religious body in question. Va. Code Ann. § 2.2-507.1. This venerable principle of charitable trusts has been vindicated time and again by this Court, *see, e.g., Gallego's Ex'rs v. Att'y Gen.*, 30 Va. (3 Leigh) 450, 461 (1832) (reciting that "[t]he attorney general [of Virginia] filed an information and bill, to have [the charitable gifts] applied to the objects for which they

were bequeathed, and to enforce the execution of the trusts in respect to them"), and pervades Virginia law governing charitable assets donated to religious institutions. See, e.g., Va. Code Ann. § 57-4 (directing that assets donated "for a charitable purpose" to a "vestry" no longer in existence be managed by the governing body of the locality in which the vestry lay and that the governing body "shall apply such money or other thing in such manner as may have been directed by the donor." (emphasis added)).

Because the Church presents a prima facie case that the clearly expressed wishes of donors to a charitable institution are being contravened; and in a manner raising grave constitutional concerns, the Attorney General, pursuant to his common law and statutory authority and in pursuit of the public interest, urges this Court to reverse the trial court's decision insofar as it awarded to plaintiffs charitable donations that were made to TFC on the condition that they not be shared with plaintiffs.

III. ASSIGNMENT OF ERROR SUPPORTED

The trial court erred in awarding TFC's personal property to plaintiffs—even though plaintiffs never had any control over TFC's funds or their use, and TFC's donors, for religious reasons, gave on the express condition that their gifts *not* be forwarded to plaintiffs — in violation of Va. Code § 57-1 and the Religion Clauses of the U.S. and Virginia

Constitutions.²

IV. STATEMENT OF FACTS

The Attorney General hereby incorporates the Statement of the Facts provided by TFC in its opening brief, with special reference to Subsection B thereof (TFC Opening Br. at 10-11), but expresses no opinion regarding any recitation relevant to the other errors assigned.

V. AUTHORITIES AND ARGUMENT

A. Donor Intent Governs the Disposition of Charitable Donations in the Event of Conflicting Claims by Religious Entities. (Assignment of Error 5)

Whether constitutional and statutory law require that the intent of TFC donors be honored by not allocating their charitable donations to plaintiffs, whose activities they refuse to support for reasons of religious conviction, are questions of law subject to de novo review by this Court. See *Protestant Episcopal Church*, 280 Va. at 20-21, 694 S.E.2d at 562.

Church property disputes must be resolved with reference to the general laws of property and contract. See *id.* at 29, 694 S.E.2d at 567-68 (citing Va. Code Ann. § 57-7.1; *Trs. of Asbury United Methodist Church v. Taylor & Parrish, Inc.*, 249 Va. 144, 452 S.E.2d 847 (1995); *Green v. Lewis*,

² The assignment of error supported corresponds with Assignment of Error 5 in Brief for Appellant The Falls Church. (TFC Opening Br. at 4-5.) Citations to the record showing where the issue was preserved also appear in that brief in that Assignment of Error. (TFC Opening Br. at 5.)

221 Va. 547, 272 S.E.2d 181 (1980); and *Norfolk Presbytery v. Bollinger*, 214 Va. 500, 201 S.E.2d 752 (1974)). The paramount principle that donor intent governs the disposition of property, both real and personal, by one entrusted with its management cannot be disputed, and serves as the foundation for the law governing charitable trusts. See Va. Code Ann. § 57-7.1 ("Any such conveyance or transfer that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, church diocese, religious congregation or religious society as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof."); Va. Code Ann. § 22.1-112 ("Any donations made to the Board of Education or to any member thereof for the benefit of any public school or schools in the Commonwealth . . . shall be expended by the Board in accordance with the wishes of the donor."); Va. Code Ann. § 23-9.2 (declaring "the public policy of the Commonwealth" with regard to financing higher education to be that private donations "be used in accordance with the wishes of the donors thereof"). The Court should conclude that this principle controls this case, and the disposition of TFC charitable donations, as well.

In ruling for the plaintiffs, the trial court relied upon Va. Code Ann. § 57-10, which provides that:

When personal property shall be given or acquired for the benefit of an unincorporated church or religious body, to be used for its religious purposes, the same shall stand vested in the trustees having the legal title to the land, to be held by them as the land is held, and upon the same trusts or, if the church has created a corporation pursuant to § 57-16.1, to be held by it as its land is held, and for the same purposes.

Having concluded that the real property belonged to plaintiffs, the trial court relied upon this section to conclude that all of TFC's personal property as of a certain date was also plaintiffs'. See (TFC Opening Br. at 45-46.) Assuming for purposes of argument that Va. Code Ann. § 57-10 is relevant to the disposition of the charitable donations, a point TFC contested below and contests now on appeal, see (TFC Opening Br. at 46 n.21), this default rule -- that personal property "is held" in the same manner and for the same purposes as a religious body's real property -- does not evince an intent to amend the bedrock principle that assets donated to a charitable organization *be reserved to the organization and use that the donor intended*. Instead, it presupposes an unrestricted gift for general religious purposes. Nor does this section speak at all to this case: a dispute over ownership of personal property between a congregation and a hierarchical church body with which the congregation had previously associated. Yet the court below stretched this statute to cover situations it was not intended

to control, dislodging general principles of trust law. See *Protestant Episcopal Church*, 280 Va. at 29, 694 S.E.2d at 567-68.

Other statutes, such as Va. Code Ann. §§ 57-1 and 57-7.1, caution against this overbroad reading of Section 57-10. Va. Code Ann. § 57-1, passed by the General Assembly within ten years of the Commonwealth's independence, declares "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical, and even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern." To prevent this violation "of the natural rights of mankind," *id*; Va. Code Ann. § 57-2, the General Assembly enacted the principle "[t]hat no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever." Va. Code Ann. § 57-1. The principles of reading statutes "in pari materia" and not presuming a repeal by implication, see *Eastlack v. Commonwealth*, 282 Va. 120, 125, 710 S.E.2d 723, 725-26 (2011) (citing *Hughes v. Cole*, 251 Va. 3, 14, 465 S.E.2d 820, 828 (1996), for the proposition that "repeal of a statute by implication is not favored, and there is a presumption against a legislative intent to repeal where express terms indicating such intent are lacking"),

require reading Va. Code Ann. § 57-10 so as not to partially repeal Va. Code Ann. § 57-1 by involuntarily transferring donations from one religious congregation to another, over the religious objections, and in violation of the clearly expressed intent of the donors.

And Va. Code Ann. § 57-7.1 lends further support to the conclusion that Code § 57-10 should not be read as an (implicit) command to ignore donor intent when resolving disputes between religious organizations over personal property. That section, entitled "What transfers for religious purposes valid," provides in pertinent part: "[a]ny such conveyance or transfer *that fails to state a specific purpose* shall be used for the religious and benevolent purposes of the [recipient religious entity] as determined appropriate by the authorities" designated by the recipient entity. Va. Code Ann. § 57-7.1 (emphasis added). The emphasized language implies that "any such conveyance or transfer" that does "state a specific purpose" is not subject to the rule that the religious authorities may decide upon an appropriate use. If the Court concludes from the record that the donors' "conveyance or transfer" of charitable contributions to The Falls Church were conveyed with the specific purpose that they *not* be used to benefit the plaintiffs, see (TFC Opening Br. at 10-11, 47-49), this Court should

conclude that the circuit court misapplied Virginia law in vesting in the plaintiffs legal right to those charitable contributions.

B. Virginia Statutes Should Be Construed to Avoid Conflicting with the Constitutions of the United States and of Virginia. (Assignment of Error 5)

In addition to the reasons advanced for adopting the natural interpretation of Va. Code Ann. § 57-10 urged above, another rule of construction weighs heavily against the Court allowing the trial court's disposition of the charitable donations to stand. Courts "have a duty to construe statutes subject to a constitutional challenge in a manner that 'avoid[s] any conflict with the Constitution.'" *Copeland v. Todd*, 282 Va. 183, 193, 715 S.E.2d 11, 16 (2011) (quoting *Commonwealth v. Doe*, 278 Va. 223, 229, 682 S.E.2d 906, 908 (2009)). "In this context," this Court, like others, has reiterated that it "will narrowly construe a statute where such a construction is reasonable and avoids a constitutional infirmity." *Va. Soc'y for Human Life v. Caldwell*, 256 Va. 151, 157, 500 S.E.2d 814, 816-17 (1998); see also *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 397 (1988) (holding, in the First Amendment context, that no overbreadth exists if curative construction is one to which the statute is "readily susceptible"); *Hooper v. California*, 155 U.S. 648, 657 (1895) ("[E]very reasonable

construction must be resorted to, in order to save a statute from unconstitutionality.”).

The religious freedoms protected by the First Amendment of the United States Constitution, as applied to the Commonwealth through the 14th Amendment, as well as Article I, § 16 of the Virginia Constitution,³ prohibit forced donations to a religious organization. See *Lee v. Weisman*, 505 U.S. 577, 587 (1992) (“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise”); see also Va. Const. art. I, § 16 (“No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.”).

Since December of 1785, upon the adoption of Thomas Jefferson's Bill of Religious Liberty as Chapter 34 of the Acts of Assembly, see 12 William Waller Hening, *Statutes at Large* 84-86 (Richmond, J. & G. Cochran 1823), Virginia law has prohibited the compelled support of religious bodies: “No man shall be compelled to frequent or support any

³ “[T]he protections under the Virginia Constitution are 'parallel' to those of the U.S. Constitution.” *Glassman v. Arlington Cnty.*, 628 F.3d 140, 149 (4th Cir. 2010) (citing *Coll. Bldg. Auth. v. Lynn*, 260 Va. 608, 626, 538 S.E.2d 682, 691 (2000)).

religious worship, place, or ministry whatsoever." This sharp break from the system of levies for the established church, see, e.g., 9 William Waller Hening, Statutes at Large 514 (Richmond, J. & G. Cochran 1821) (Chapter 10 of the Assembly's Acts of 1778), sprang from a deep and, at that time, revolutionary, commitment to the freedom of conscience. See 1 A.E. Dick Howard, Commentaries on the Constitution of Virginia 291 (1974) (relating the comments of a prominent Virginia historian "that it was 'the high honor of Virginia that she was thus the first state in the history of the world . . . to lay as the chief cornerstone of her fabric of government this precious stone of religious liberty'" (citation omitted)).

As Jefferson explained in the preamble to that bill, which comes down to us as Virginia Code Ann. § 57-1,

to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical" and "that even the forcing him to support this or that teacher *of his own religious persuasion*, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern.

Everson v. Bd. of Educ. of Ewing, 330 U.S. 1, 13 (1947) (emphasis added).

The operative language of Jefferson's bill was elevated into the fundamental law in the Virginia Constitution in 1830, see Va. Const. of 1830, art. III, § 11, where it remained until united with the remainder of the

constitutional protections for religious conviction in the Virginia Constitution of 1971. Va. Const., art. I, § 16; see generally, *Reid v. Gholson*, 229 Va. 179, 187 n.11, 327 S.E.2d 107, 111 n.11 (1985); *Pirkey Bros. v. Commonwealth*, 134 Va. 713, 717, 114 S.E. 764, 765 (1922); 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 292 (1974).

As a matter of history, it would be incongruous in the extreme for this first principle of religious freedom, declared and dearly maintained by Virginia's founding generation, to be neglected by the courts of the Commonwealth. See *Reid*, 229 Va. at 187, 327 S.E.2d at 111-12 ("The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed."); *Jones v. Commonwealth*, 185 Va. 335, 343, 38 S.E.2d 444, 448 (1946) (citing the Commonwealth's history of protecting the freedoms of religious conscience and concluding that "[n]o State has more jealously guarded and preserved the questions of religious belief and religious worship as questions between each individual man and his Maker than Virginia."). "Because of this strong tradition," Virginia courts have refused to adopt doctrines that encroach upon the power of religious persons to control their civil affairs and the beneficiaries of their donations, see *Reid*, 229 Va. at 187 n.12, 327 S.E.2d at 112 n.12, a tradition that led a

judge of this Court to inquire, in one celebrated case: "Does it not strike the most common understanding as an invasion of right, to give an estate which is devised to a roman catholic charity, to a charity of the church of England, on the principle, that the first was void at law, and the next is cy pres the testator's intention, when nothing in the world could have been farther from his intention?" *Gallego's Ex'rs*, 30 Va. (3 Leigh) at 473 (Tucker, J., concurring).

Although courts must resolve disputes over property rights affecting religious bodies, and thus necessarily will on occasion recognize property interests in one religious claimant or body and not another, see *Reid*, 229 Va. at 188, 327 S.E.2d at 112 ("Neither the State Constitution nor the First Amendment deprives church members of their right to resort to the courts for the protection of their property rights."), they must do so, as this Court instructed, in reliance upon neutral principles of private law. See *Protestant Episcopal Church*, 280 Va. at 29, 694 S.E.2d at 567-68. Those principles require that donor intent be honored here. Accordingly, in obedience to this Court's mandate and the Constitution, the trial court was obliged to reject an interpretation of Va. Code Ann. § 57-10 that ignores donor intent for purposes of church property disputes, especially where donors have expressed in no uncertain terms that they object on grounds of conscience

to their donations supporting a particular religious body. See (TFC Opening Br. at 45-49.) This Court should not permit that error to stand.

VI. CONCLUSION

For the reasons previously stated, the Attorney General of Virginia requests that the Court reverse the circuit court's award to plaintiffs of any donations made to TFC on the condition that they not be shared with TEC or the Diocese.

Respectfully submitted,

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CERTIFICATE

Pursuant to Va. Sup. Ct. Rule 5:26(h), I hereby certify that THE ATTORNEY GENERAL'S AMICUS BRIEF IN SUPPORT OF THE BRIEF FOR APPELLANT THE FALLS CHURCH ON THE ISSUE OF DONOR INTENT complies with the requirements of Rule 5:26.


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I hereby certify that on this 12th day of December, 2012, fifteen (15) copies of this brief have been filed in the Office of the Clerk of the Supreme Court of Virginia; an electronic copy of the Brief has been filed with the Clerk of the Supreme Court of Virginia by e-mail at scvbrieffs@courts.state.va.us; an Adobe Acrobat PDF copy of the foregoing Brief has been sent by electronic mail, and three (3) copies have been posted first class, to all Counsel listed below.

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