ADDENDUM

STATUTES AND CONSTITUTIONAL PROVISIONS AT ISSUE IN THIS APPEAL

United States Constitution, Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Virginia Constitution, Art. I §§ 11, 16.

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be

taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Section 16. Free exercise of religion; no establishment of religion.

That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but 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.

Va. Code § 1-219.1 (Limitations on eminent domain), subsection A.

The right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is

hereby defined as to embrace only the acquisition of property where: (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation; (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public; (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad; (iv) the property is taken for the provision of any authorized utility service by a government utility corporation; (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition is by agreement of all the owners.

Va. Code § 57-7. What transfers for religious purposes valid. (Repl. Vol. 1969). (Repealed, 1993 Va. Acts, ch. 370)

Every conveyance, devise, or dedication shall be valid which, since the first day of January, seventeen hundred and seventy-seven, has been made, and every conveyance shall be valid which hereafter shall be made of land for the use or benefit of any religious congregation as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church diocese, church, or religious society, as a residence for a bishop or other minister or clergyman who, though not in special charge of a congregation, is yet an officer of such church diocese, church or religious society, and employed under its authority and about its business; and every conveyance shall be valid which may hereafter be made, or has heretofore been made, of land as a location for a parish house or house for the meeting of societies or committees of the church or others for the transaction of business connected with the church or of land as a place of residence for the sexton of a church, provided such land lies adjacent to or near by the lot or land on which is situated the church to which it is designed to be appurtenant; or for use in furtherance of the affairs of any church diocese, and the land shall be held for such uses or benefit and for such purposes, and not otherwise. And no gift, grant, or bequest hereafter made to such church diocese, church or religious congregation, or the trustees thereof, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, or bequest in any case where lawful trustees of

such church diocese, church or congregation are in existence, or the church diocese, or the congregation is capable of securing the appointment of such trustees upon application as prescribed in the following section (§ 57-8); but such gift, grant, or bequest shall be valid, subject to the limitation of § 57-12; provided, that whenever the objects of any such trust shall be undefined or so uncertain as not to admit of specific enforcement by the chancery courts of the Commonwealth, then such gift, grant, or bequest shall inure and pass to the trustees of the beneficiary church diocese or congregation, to be by them held, managed, and the principal or income appropriated for the religious and benevolent uses of the church diocese or congregation, as such trustees may determine, by and with the approval of the vestry, board of deacons, board of stewards, or other authorities which, under the rules or usages of such church diocese, church or congregation, have charge of the administration of the temporalities thereof.

Provided that any devise of property after January one, nineteen hundred fifty-three, for the use or benefit of any religious congregation, wherein no specific use or purpose is specified shall be valid. (Code 1919, § 38; 1954, c. 268; 1956, c. 611; 1962, c. 516.)

Va. Code § 57-7.1. What transfers for religious purposes valid.

Every conveyance or transfer of real or personal property, whether inter vivos or by will, which is made to or for the benefit of any church, church diocese, religious congregation or religious society, whether by purchase or gift, shall be valid.

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.

No such conveyance or transfer shall fail or be declared void for insufficient designation of the beneficiaries in any case where the church, church diocese, religious congregation or religious society has lawful trustees in existence, is capable of securing the appointment of lawful trustees upon application as prescribed in § 57-8, is incorporated, has created a corporation pursuant to § 57-16.1, or has ecclesiastical officers pursuant to the provisions of § 57-16.

(1993, c. 370; 2005, c. 772.)

Va. Code § 57-9. How property rights determined on division of church or society.

A. If a division has heretofore occurred or shall hereafter occur in a church or religious society, to which any such congregation whose property is held by trustees is attached, the members of such congregation over 18 years of age may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county or city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in the court's civil order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of the Commonwealth.

B. If a division has heretofore occurred or shall hereafter occur in a congregation whose property is held by trustees which, in its organization and government, is a church or society entirely independent of any other church or general society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice or custom, may decide the right, title, and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

(Code 1919, § 40; 1972, c. 825; 2005, cc. 681, 772.)

Va. Code § 57-12. Quantity of real and personal estate trustees may hold (as amended by 1973 Va. Acts, ch. 515). (Repealed, 2003 Va. Acts, ch. 813)

Such trustees shall not take or hold at any one time more than four acres of land in a city or town, nor more than two hundred fifty acres outside of a city or town and within the same county; provided that the city or town council of any city or town may by ordinance authorize such trustees to take and hold in such city or town not exceeding fifty acres of land at any one time if such acreage is to be devoted exclusively, and is subsequently

so devoted, to a church building, chapel, cemetery, offices exclusively used for administrative purposes of the church, a Sunday-school building and playgrounds therefor, and parking lots for the convenience of those attending any of the foregoing, and a church manse, parsonage or rectory; and provided further, that the trustees of a church diocese may take or hold not more than two hundred fifty acres in any one county at any one time; and they shall not take nor hold money, securities or other personal estate to the extent that such taking or holding causes the money, securities or other personal estate held at the time of taking by such trustees to exceed in the aggregate, exclusive of the books and furniture aforesaid, the sum of five million dollars; provided, that where two or more religious congregations, churches or religious societies shall merge or consolidate, such religious congregation, church or religious society so merged or consolidated, shall have three years' time within which to dispose of its land in excess of that which it is permitted to hold under this section.

Land taken or held outside of a city or town shall always be considered as such for the purposes of this article although such land later becomes part of a city or town through annexation or otherwise.

Nothing herein contained shall affect the validity of any land within a city or town legally acquired by a church to be exclusively used for a church manse, parsonage or rectory between June thirtieth, nineteen hundred fifty-four and June twenty-seventh, nineteen hundred sixty-four, provided the total amount of land owned by a church within a city or town does not exceed twenty acres. (Code 1919, § 43; 1926, p. 867; 1930, p. 687; 1952, c. 433; 1954, c. 309; 1958, c. 423; 1962, cc. 41, 516; 1964, c. 493; 1966, c. 308; 1973, c. 515.)

Va. Code § 57-15. Proceedings by trustees or members for similar purposes, exception for certain transfers.

A. The trustees of such a church diocese, congregation, or church or religious denomination, or society or branch or division thereof, in whom is vested the legal title to such land held for any of the purposes mentioned in § 57-7.1, may file their petition in the circuit court of the county or the city wherein the land, or the greater part thereof held by them as trustees, lies, or before the judge of such court in vacation, asking leave to sell, encumber, extend encumbrances, improve, make a gift of, or exchange the land, or a part thereof, or to settle boundaries between adjoining property by agreement. Upon evidence being produced before the court that it is

the wish of the congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof having jurisdiction in the premises, or of the governing body of any church diocese, to sell, exchange, encumber, extend encumbrances, make a gift of, or improve the property or settle boundaries by agreement, the court shall make such order as may be proper, providing for the sale of such land, or a part thereof, or that the same may be exchanged, encumbered, improved, or given as a gift, or that encumbrances thereon be extended, and in case of sale for the proper investment of the proceeds or for the settlement of such boundaries by agreement.

When any such religious congregation has become extinct or has ceased to occupy such property as a place of worship, so that it may be regarded as abandoned property, the petition may be filed either by the surviving trustee or trustees, should there be any, or by any one or more members of such congregation, should there be any, or by the religious body which by the laws of the church or denomination to which the congregation belongs has the charge or custody of the property, or in which it may be vested by the laws of such church or denomination. The court shall either (i) make a decree for the sale of the property or the settlement of boundaries between adjoining properties by agreement, and the disposition of the proceeds in accordance with the laws of the denomination and the printed acts of the church or denomination issued by its authority, embodied in book or pamphlet form, shall be taken and regarded as the law and acts of such denomination or religious body or (ii) at the request of the surviving trustees and after notice in accordance with law to all necessary parties, make such order as may be proper providing for the gift of such property to any willing local, state or federal entity or to a willing private, nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided the court finds that (a) the property includes a historic building or landmark so designated by the Commonwealth and (b) the purpose of such gift is historical preservation of the property.

The court may make such order as to the costs in all these proceedings as may seem proper.

B. As an alternative to proceeding under subsection A, (i) the trustees of a church or religious body that incorporate may transfer the title to the real and personal property of the church or religious body held by them to the incorporated church or religious body; and (ii) the trustees of a church or religious body that do not incorporate under subdivision (i) hereof may

transfer title to the real and personal property of the church or religious body held by them to a corporation created pursuant to § 57-16.1 without, in either instance, obtaining court permission if the transfer is authorized in accordance with the church's or religious body's polity. If no petition seeking to set such a transfer aside is filed within one year of the recordation of the trustees' deed transferring title to the real estate, or the date of the transfer of any personal property, it shall be conclusively presumed that the transfer was made in accordance with the church's or religious body's polity insofar as a good faith purchaser or lender is concerned.

C. No transfer made pursuant to subsection A or B shall operate as a transfer for purposes of a provision contained in any note or deed of trust that purports to accelerate an indebtedness upon a transfer of title. Any such transfers of real estate shall be entitled to the exemptions set forth in § 58.1-811.

D. Any transfer of real or personal property made pursuant to subsection B, and any similar transfer made pursuant to subsection A after April 23, 2002, shall be deemed to assign to the incorporated church or religious body, or the corporation created pursuant to § 57-16.1, as the case may be, the beneficial interest in every policy of insurance of every kind, type, and description, relating to the property transferred, contemporaneously with the transfer, and the transferee shall have all of the rights and obligations of the transferor relating thereto.

(Code 1919, § 46; 1924, p. 535; 1938, p. 179; 1962, c. 516; 1974, c. 138; 1983, c. 542; 1993, c. 370; 1998, c. 258; 2005, c. 772.)

Va. Code § 57-16. Property held, etc., by ecclesiastical officers.

A. How property acquired, held, transferred, etc. - Whenever the laws, rules or ecclesiastic polity of any church or religious sect, society or denomination commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by deed, devise, gift, purchase or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules or ecclesiastic polity, and not prohibited by the laws of Virginia, and the power to hold, improve, mortgage, sell and convey the same in

accordance with such laws, rules and ecclesiastic polity, and in accordance with the laws of Virginia.

B. Transfer, removal, resignation or death of ecclesiastical officer. - In the event of the transfer, removal, resignation or death of any such bishop, minister, or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon election or appointment, and pending election or appointment of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules, or ecclesiastical polity of such church or religious sect, society or denomination.

C. Validation of deeds, etc. - All deeds, deeds of trust, mortgages, wills or other instruments made prior to March 18, 1942, to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who at the time of the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church or religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church or religious sect, society or denomination, are hereby ratified and declared valid. All transfers of title and rights with respect to property, prior to such date from a predecessor bishop, minister or other ecclesiastical officer who has resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

D. Insufficient designation of beneficiaries or objects of trust. - No gift, grant, bequest or devise made on or after March 18, 1942, to any such church or religious sect, society or denomination or the duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid; provided, that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the courts of the Commonwealth, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious sect, society or

denomination by its duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs.

E. Rights and remedies cumulative. - The rights created and the remedies provided in this section shall be construed as cumulative and not exclusive.

F. No implied repeal of other provisions. - This section shall not be so construed as to effect an implied repeal of any other provisions of this chapter.

(1942, p. 382; Michie Code 1942, § 38a; 1962, c. 306; 1966, c. 308; 2005, cc. 681, 772.)

Va. Code § 57-16.1. Property of unincorporated church held by corporation.

Whenever the laws, rules, or ecclesiastic polity of an unincorporated church or religious body provide for it to create a corporation to hold, administer, and manage its real and personal property, such corporation shall have the power to (i) acquire by deed, devise, gift, purchase, or otherwise, any real or personal property for any purpose authorized and permitted by the laws, rules, or ecclesiastic polity of the church or body, and not prohibited by the law of the Commonwealth and (ii) hold, improve, mortgage, sell, and convey the same in accordance with such law, rules, and ecclesiastic polity, and in accordance with the law of the Commonwealth.

(2005, cc. 772, 928.)