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June 29, 2023

Via Regular Mail and Email
Diane Murphy Quinlan, Esquire
Director of Charitable Trusts
Office of the Attorney General
33 Capitol Street
Concord, NH 03301
diane.m.quinlan@doj.nh.gov

RE: Trusts u/w of Mary Baker Eddy, Clause VI and VIII
Trustee Accounts for year ending March 31, 2022

Dear Ms. Quinlan:

Thank you for your letter of February 17, responding to mine of December 10, 2022 concerning the above-referenced accounts.

You are correct in your ultimate conclusion: Our client, Second Church of Christ, Scientist, Melbourne ("Second Church"), is disappointed with your response.

Second Church is most disappointed that the Office of Charitable Trusts is more inclined to listen to and accommodate the conflicted Director/Trustees, than consider the dictates of Mrs. Eddy's Will and the independent views of Second Church.[1] The Office of Charitable Trusts should be making its own informed judgments of what is in the best interests of the public with regard to the administration of these charitable trusts.

The priority of Second Church has been and remains to restore the integrity of the administration of the Clause VIII Trust – intended to "...promote and extend the religion of Christian Science as taught by me [Mary Baker G. Eddy]." While the administration of the Clause VI Trust is of secondary importance to our client, your response to our concerns about the

[1] Compare, *In re Tr. of Eddy*, 172 N.H. 266, 284, 212 A.3d 414, 428 (2019) ("We reiterate the trial court's sentiment that Second Church is encouraged to share its perspective and concerns with the DCT, and, when appropriate, seek to file as *amicus curiae* with the trial court.")

distribution to Babson College is an important example of the cause for our client's disappointment with the Office of Charitable Trusts.

The Clause VI Trust.

Your letter defends the Trustees' distribution to Babson College based on a proposal submitted by the Director/Trustees and approved by your predecessor, Mr. Donovan, in March of 2021. We were unaware of this proposal, or its approval, until we received your letter.

The timing and substance of the proposal, and its approval, leave no doubt that both were a deliberate response to the concerns Second Church raised in our letters of November 25, 2020 and February 4, 2021. Those letters expressed the concern that no distributions had been made from the Clause VI Trust since 1985 – believed to violate the Trust's mandate to,

> ...use the income and such portion of the principal, from time to time, as they deem best, for the purpose of providing free instruction for indigent, well-educated, Christian Scientists...

(Eddy Will, Clause VI). Mr. Donovan responded in his letter of February 18, 2021, that dismissed our concerns on the basis of a letter from the Director/Trustees providing various excuses for the lack of distributions.

That our concerns were so casually dismissed was disconcerting. More disconcerting, however, is what is now disclosed in your letter: That after dismissing our concerns about the lack of Clause VI distributions, the Office of Charitable Trusts entertained and "approved" a "proposal" from the Director/Trustees to begin making distributions, on modified terms, without consulting or informing Second Church or the Court.

All we know about the Director/Trustees' proposal is from the paraphrase provided as background in your letter. From that paraphrase, it appears that a Trust expressly intended "...for the purpose of providing *free instruction* for *indigent,* well-educated, worthy Christian Scientists... " is now "approved" for use to pay "... *the rental of the premises* for teaching, as well as *a portion of the room, board and tuition for pupils* who cannot afford *the full cost.*" On its face, the proposal is a material modification of the Trust conditions.[2] That it was submitted to

[2] The actual language of Clause VI identifies a specific group of *individuals* ("indigent...Christian Scientists") to benefit from distributions for two purposes: (i) their "free instruction" and (ii) "...to aid *them* [that is, the same individuals] thereafter until they can maintain themselves in some Department of Christian Science." The clear intent here is to provide a direct, complete and personal benefits to *indigent* individuals. The modified terms, as described in your letter, allow for partial, incomplete and indirect benefits – "a portion of room, board and tuition...", and the express qualification of "indigent" is missing. There is no disclosure of a certification by the Director/Trustees as to the "full costs" or the financial position of any of the individuals, so how would your office know whether the person benefitted were indigent, incapable of paying in full for the education, room and board or well to do folks.

and "approved" by the Office of Charitable Trusts, reinforces our characterization of this as a "material modification."

To allow such changes by informal arrangements, made privately between the Director of Charitable Trusts and the Director/Trustees undermines basic principles of accountability in the administration and oversight of a charitable trust; and to eschew Second Church in the resolution of issues it raises, is contrary to what we believe to be the expectation of the Courts in these matters.[3]

The extent to which the Office of Charitable Trusts or the Court can intrude upon the Director/Trustees' interpretation of the religious content of the trust conditions may be limited, but those interpretations, and their review and "approval" by the Office of Charitable Trusts, are fundamentally matters of public concern that should be fully disclosed and subject to review and comment by members of the public – including Second Church; and if (as appears on the face of your letter) they express or imply some modification of the terms of the Trust, they must be approved by the Court.

We do not doubt that some modification of the Clause VI Trust is needed. We expected a modification to be proposed when we cited the failure of the Director/Trustees to make mandatory distributions for years. We also expected to be informed and consulted by the Office of Charitable Trusts if a change in the administration of the Trust was being considered to address *our concerns*. Mr. Donovan's casual and undisclosed accommodation of the Director/Trustees in this way, after summarily dismissing Second Church's concerns about the same subject, reinforces the impression of bias in favor of the Director/Trustees and a lack of candor in communications with Second Church.

The Clause VIII Trust.

With regard to the Clause VIII Trust, your letter seeks no input, and invites no dialogue or discussion on the issues we raised concerning the enforcement and administration of Clause VIII, so debating the particulars seems pointless. But our client asked us to respond to reinforce some critical points that seem to be overlooked in your letter.

1. **The proven merits of an independent trustee.**

You refer to a concern expressed by the Supreme Court that the appointment of an independent trustee would be "intrusive" and lead to "vexatious litigation." Respectfully, a fair reading of that portion of the Supreme Court's opinion reveals it was reciting abstract legal arguments from the case law on special interest standing, and not addressing actual facts or evidence before the Court.[4]

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[3] See *id.*

[4] See, e.g., *id.*, fn.1 and 2.

The only reliable evidence of the impact of an independent trustee on the administration of the Clause VIII Trust is the record of the first 39 years of the Trust's existence, when there was an actual, independent Trustee – Josiah Fernald. He was neither a Christian Scientist nor affiliated with The Mother Church, but an independent financial advisor chosen by Mary Baker Eddy herself to serve as the Trustee of her estate during her lifetime, and later appointed by the Probate Court to serve as Trustee of the Clause VIII Trust alongside the Director/Trustees. There was no vexatious litigation during his tenure. The record indisputably shows that the Clause VIII Trust was well-administered in his time.

Indeed, it was during his 39 years that the Clause VIII Trustees established the dominant pattern of distributions to branch churches, reading rooms and societies that was partially restored by the Probate Court's Orders in 2018.

These facts completely contradict the suggestion that the appointment of an independent trustee would intrude upon anything but the fiduciary self-dealing that beset the Trust in later years, when the conflicted Director/Trustees were left alone as the only Trustees of the Clause VIII Trust.

That later history – of the administration of the Clause VIII Trust in the years without an independent trustee – contradicts your assertion of, "no reason to believe that the Trustees have failed in their fiduciary responsibilities." To the contrary, for nearly 40 years – from the early 1980s to 2019 – the Director/Trustees failed to distribute Clause VIII funds to branch churches, reading rooms and societies, as had been the established practice and interpretation of the Trust's mandate to "promote and extend the religion of Christian Science as taught by [Mary Baker G. Eddy]...," since the formation of the Trust. Instead – and the factual record (supported by decades of admissions presented in the annual accounts to your predecessors in office) is clear on this point – the Director/Trustees used the Trust for the self-serving purpose of defraying the expenses of The Mother Church.

It was *Second Church* that brought this decades-long breach of the Clause VIII Trust to light. There is not a hint of any acknowledgment of the problem by the Director/Trustees or your predecessors, until after Second Church did so.[5] Second Church thought these revelations would

[5] Indeed, your predecessors actually had a hand in approving the diversion of funds from that intended purpose to defray expenses of The Mother Church: After finding the Director/Trustees had made an improper loan of $5 million to The Mother Church, your predecessors endorsed a stipulated Order (the "1993 Order") that *allowed the improper loan to be repaid from the Trust*, instead of restoring distributions for the intended purpose of Clause VIII, to promote and extend the religion of Christian Science. That self-serving "remedy" for the breach of trust was completed in 2-3 years, but the Director/Trustees and your predecessors did nothing to restore the proper distributive priorities, and this allowed the Director/Trustees to continue their diversion of funds to The Mother Church for some 25 years longer, until Second Church brought all this to light in 2018. This is why Second Church is concerned about the as-yet undisclosed proposal for resuming distributions under Clause VI, and approval of same by Mr. Donovan. Experience shows the propensity of the Director/Trustees to manipulate such arrangements to the advantage and benefit of The Mother Church.

produce an appropriate regard for the propensity of the Director/Trustees to favor the interests of The Mother Church over the distinct interests of the Clause VIII Trust, and a corresponding appreciation for the independent voice of Second Church. The experience of Second Church has been otherwise: The Office of Charitable Trusts continues to work closely with the Director/Trustees, adopting and defending their positions, while dismissing those of Second Church without any dialogue or discussion.

Second Church did not invent this idea that conflicted fiduciaries are not to be trusted in the administration of a trust. It's black-letter law in New Hampshire, and probably every other jurisdiction in the United States. The appointment of an independent trustee is a proven solution to the problem for this Trust. The alternative, proposed (not surprisingly) by the Director/Trustees, endorsed by the Office of Charitable Trusts and approved the Probate Court (in deference, no doubt, to the latter endorsement), is deeply flawed.

2. The impropriety of the present restriction of distributions to The Mother Church and "affiliates."

The most serious implication of this deference to the Director/Trustees is in the continued accommodation of their exclusive control of the Clause VIII Trust by imposing the arbitrary and ambiguous restriction on distributions to "affiliates" of The Mother Church.[6]

Your letter refers to the "independent self-governance" standard from the Probate Court's Order of May 3, 2018. That phrase –like the term "affiliate" itself – is more appropriately applied to corporate entities than churches. The term "branch church" literally refers to these churches as "branches" of The Mother Church. They are "branch churches" only because of their affiliation with The Mother Church under the provisions of the *Church Manual* of The Mother Church. The *Church Manual* requires, on the one hand, that they be self-governed, but contains innumerable other provisions giving The Mother Church very real control over their organization and continued recognition as "branch churches." We do not see that your office has examined these provisions to understand the reality of the affiliation between The Mother Church and branch churches. Courts that have, come to conflicting conclusions about the nature and extent of the control the Directors of The Mother Church exercise over branch churches; but the Directors present themselves as the ultimate authority in a "denomination" called Christian Science, in which branch churches are subservient and dependent members.[7]

Clarifying the meaning of "affiliate," or substituting some other standard in the language of the current Orders of the Probate Court, does not address the real problem with the restrictions

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[6] Second Church is on record of its objection to the imposition by the Court of restrictions on distributions to The Mother Church and its "affiliates", believing that such distributees may be instrumental in furthering the purpose of promoting and extending the religion of Christian Science as taught by Mrs. Eddy.

[7] See, e.g., *Jandron v. Zuendel*, 139 F. Supp. 887 (N.D. Ohio 1955); *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Robinson*, 115 F. Supp. 2d 607 (W.D.N.C. 2000); and compare, *Christian Sci. Bd. of Dirs. of the First Church of Christ v. Evans*, 105 N.J. 297, 520 A.2d 1347 (1987).

on distributions. The real problem is with the imposition of *any restrictions at all* that were not intended by the grantor, Mary Baker Eddy. The true purpose and function of the "affiliate" restriction is to preserve the privilege of the Director/Trustees to continue as the sole Trustees of Clause VIII Trust[8] – to maintain their monopoly of power over the administration of the Trust. It comes at a cost. The cost is that the Trust is incapacitated from promoting and extending the religion of Christian Science through The Mother Church and its affiliates. That was clearly not Mrs. Eddie's intention.

To the contrary, it is quite obvious that Mrs. Eddie intended The Mother Church and its affiliates to be among the potential beneficiaries of the Trust's dominant purpose of promoting and extending her religion. That intention is being violated by restrictions that are necessary only to preserve the privilege of the Director/Trustees to serve alone.

Why, it must be asked, is the privilege of these Director/Trustees given priority over the intentions of the grantor of the Trust; and why does your Office continue to support the imposition of restrictions on the discretion Mrs. Eddy intended for her Trustees in order to preserve this privilege of the Director/Trustees?

3. The Massachusetts assets.

Second Church is aware of the Decree of the Supreme Judicial Court of Massachusetts providing for administration of the real property[9] located at 400 Beacon Street in Massachusetts. The same Order, however, requires that this Massachusetts property be *held in trust pursuant to Clause VIII of the Will.* The property, and the proceeds of its sale in 2004, have not been held or administered in trust under Clause VIII. That is clear from the documents Second Church produced pertaining to this matter. It is also clear, based on direct discussions with the Massachusetts Attorney General's Office, that Massachusetts is exercising no oversight. The result is that in excess of $16 million of Clause VIII Trust principal and millions more in income are unaccounted for.

Whether your office has jurisdiction over the funds or not, you have jurisdiction over the Director/Trustees who hold them, and you have the ability to support Second Church's efforts to

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[8] We refer to the service of the Director/Trustees under Clause VIII of Mrs. Eddy's Will as a *privilege* because Clause VIII does not require that the Directors, or any of them, be the appointed Trustees. Clause VI is different, expressly designating the Directors of the First Church of Christ, Scientist, as the trustees of her Clause VI Trust.

[9] It is common for real estate subject to a will in another state to be administered in an ancillary proceeding in the state in which it is located, and wonder if this – and only this – is what the Supreme Judicial Court had in mind with its Decree. The intention of the Will seems clearly to have been to sell such properties and have the proceeds held in one Trust, to produce and distribute income and principal to beneficiaries to promote and extend the religion. For some reason the Beacon Street property was not sold, but held for nearly a century. In any case, now that it is sold, the need for ancillary administration is over and there is no reason why the proceeds cannot be held in one Trust, as was obviously intended by Mrs. Eddy.

cause the Director/Trustees to account for these funds in their annual accounts, and/or dissolve the Massachusetts trust and consolidate the funds for efficiency in administration.[10]

If you believe issues of jurisdiction or comity limit your ability to undertake such efforts in New Hampshire, you could surely support efforts to persuade the Massachusetts Attorney General to take action to restore some basic accountability to the administration of these Trust assets.

Very truly yours,

Robert B. Eyre, Esquire

cc: Stuart M. Brown, Esquire (via email)
Mark D. Fernald, Esquire (via email)
Executive Board, Second Church of Christ, Scientist, Melbourne (via email)

[10] Please recall that in the early 2000's the Director/Trustees tirelessly fought to consolidate the assets of the Trust with the assets of The Mother Church for investment efficiency and so too now they should be persuaded by your office to combine the Massachusetts proceeds with the corpus of the Clause VIII Trust under administration in New Hampshire, else they be charged with waste.