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Admitted in: NH, NY

By Courier

April 12, 2019

Cheryll Andrews, Clerk
Attention: Trust Docket
7th Circuit- Probate Division- Dover
259 County Farm Road, Suite 203
Dover, NH 03820

Re: In re Trust under the Will of Mary Baker G. Eddy¹
Trust Docket Case No. 317-1910-TU-00001

Dear Ms. Andrews:

Enclosed for filing in the above matter, please find an original and two copies of an Objection to Trustees' Petition to Appoint Richard Evans as Trustee of the Clause 6 and Clause 8 Trusts Under the Will of Mary Baker G. Eddy And Incorporated Memorandum of Law.

Thank you for your attention to this matter. Please contact me if you have any questions.

Very truly yours,



Michele E. Kenney

MEK/kmd
Enclosures

cc: James F. Raymond, Esquire
Michael P. Courtney, Esquire
Thomas J. Donovan, Esquire

¹ This matter was reassigned to the Trust Docket from the docket of the 6th Circuit — Probate Division — Concord, pursuant to Administrative Order 2016-0005-TD (Kelly, J.), dated February 23, 2016.

THE STATE OF NEW HAMPSHIRE

Strafford County

7th Circuit, Probate Division, Dover
Trust Docket

In re Trust Under the Will of Mary Baker G. Eddy
Case No. 1910-001

**Objection to Trustees' Petition to Appoint Richard Evans as Trustee of the Clause 6 and
Clause 8 Trusts Under the Will of Mary Baker G. Eddy
And Incorporated Memorandum of Law**

Now Comes Second Church of Christ, Scientist, Melbourne (Australia) (hereinafter "Second Church"), by and through its undersigned attorneys, and hereby objects to the Trustees' Petitions to Appoint Richard Evans as Trustee of the Clause 6 and Clause 8 Trusts under the Will of Mary Baker G. Eddy (the "Objection"). In support of this Objection, Second Church states as follows:

Second Church's objection to the appointment of Richard Evans is grounded in the continued embedded conflict that exists with the Directors of The Mother Church (sometimes referred to herein as "Director-Trustees") serving as sole Trustees of the Clause 8 Trust (the "Clause 8 Trust" or the "Trust"). As such, the principal objection here is not to the *presence* of Mr. Evans, or any other Director of the Mother Church, *per se*, as Trustees; but to the *absence* of any non-Director (or "independent") Trustee for the Clause 8 Trust.

In other words, if there were already an independent Trustee serving Clause 8, and Mr. Evans were proposed to serve along with that independent Trustee, the Objection to the Petitions would be extremely limited, if made at all. Second Church has certain "procedural" objections to the Petitions – such as the request for "*nunc pro tunc*" appointments and the failure to address a second vacancy that currently exists. See part I, below.

But the gravamen of the objection here is to appointing another, conflicted Director as Trustee of the Clause 8 Trust, when that Trust continues to lack any independent (non-Director) Trustee to that Trust. This perpetuates a situation in which all the Trustees of that Trust – Clause 8 – serve under a conflict that disable them from fully performing the purposes of the Trust. Second Church maintains its position that the only proper cure to this embedded conflict is the appointment of an Independent Trustee. The cure advocated by the Director-Trustees – continuing to prohibit the Director-Trustees from making distributions to The Mother Church – only enshrines their disabling conflict into the Trust, and violates the intention of its grantor, Mrs. Eddy, that her Clause 8 Trustees have the discretion to distribute Clause 8 Trust funds to The Mother Church, among others, to “promote and extend the religion of Christian Science as taught by” her. One independent Trustee will give them that freedom. To restrict that freedom of the Trust in order to allow these Director-Trustees to serve alone, turns the priorities of trust law upside down. The Trustees will have become the masters to the servants; and the Trust will serve the Trustees, not the beneficiaries. See parts II - III, below.

Finally, this Court cannot allow the Director-Trustees to use the religion clauses of the First Amendment of the United States Constitution to grant them special privileges or exemptions from the application of neutral principles of law. The Clause 8 Trust is not a church or otherwise autonomous religious organization, but a Trust; and they are fiduciaries bound to its terms and to neutral principles of law the enforcement of which are not restricted by the First Amendment. See part IV, below.

I. Procedural Concerns Raised by the Trustees' Petition for Appointment of Richard Evans

Lyle Young resigned as Director of the Christian Science Board of Directors on April 30, 2017 – two years ago. *See*, Press Release of The Mother Church dated April 11, 2017, attached hereto as **Exhibit A**. Richard Evans was appointed to fill the seat vacated by Lyle Young on the Christian Science Board of Directors, effective May 1, 2017 – two years ago. *Id.* Curiously, instead of seeking the appointment of Richard Evans *nunc pro tunc* effective April 1, 2017, when he became a Director, the Trustees instead seek to appoint Richard Evans as Trustee *nunc pro tunc* effective April 1, 2018 – one year ago for which the period for filing accounts for the relevant period has closed, which raises serious questions regarding the administration of these Trusts from April 30, 2017 to the present date:

- a. Who has been serving as Trustee over the last 2 years—Lyle Young or Richard Evans – of the Clause 6 Trust and the Clause 8 Trust?
- b. Are there any minutes of Trustee meetings to confirm who has been serving as Trustee?
- c. Do the Trustees actually meet?
- d. Why did the conflicted Director- Trustees wait so long to seek the appointment of Richard Evans, especially following the Court's March, 2018 ruling prohibiting distributions to The Mother Church?
- e. How could Lyle Young have served as Trustee of the Clause 6 Trust if he is no longer a Director of The Mother Church?

The answers to these questions can only be obtained through discovery or an evidentiary hearing attended in person by the Trustees, none of whom have appeared at any court proceeding since Second Church initially began appearing in this case. Moreover, the concept of appointing

trustees *nunc pro tunc* is questionable, as is the historical pattern of routinely excusing the Trustees from the requirement of filing an inventory each time a successor trustee is appointed.

For good reason, the New Hampshire Trust Code does not address appointment of trustees on a *nunc pro tunc* basis. Allowing trustees to be appointed retroactively endorses the service of a trustee (*i.e.* Richard Evans) who has yet to be vetted and appointed the Court and who no one, other than the Directors of The Mother Church, knows is actually serving as Trustee. Instead, trustees of public charities, such as the Clause 8 Trust, should be appointed prospectively so that the public knows who is serving as Trustee at any given time.

Indeed, the Directors of The Mother Church knew as early as March of 2017 (and likely earlier) that Lyle Young was resigning his seat as a Director and that Richard Evans was filling Lyle Young's seat on the Board, effective April 1, 2017¹. The Trustees had no good reason for waiting two (2) years to seek the judicial appointment of Richard Evans as Trustee of the Trusts. This is not merely a theoretical issue. The express provisions of the Clause 6 Trust provide that the Trustees consist of the Board of Directors of The Mother Church. Accordingly, as soon as a Director resigns from the Board of The Mother Church, he or she effectively resigns as Trustee of the Clause 6 Trust.

Accordingly, either Lyle Young has impermissibly retained his seat as Trustee of the Clause 6 Trust since April 30, 2017, *or* the Trustees' acceptance of his tenure as Trustee during the period following May 1, 2017 is an admission that someone other than the Directors of The Mother Church can serve as Trustees of Clause 6 and Clause 8 Trusts.

¹ Upon information and belief, it has been the practice of the Directors to name their successor before being accepted as a Director and discovery will permit a showing of this tradition. In this context, the self-appointment of successor Directors and thereby the self-appointment of successor trustees, renders the embedded conflict even more insidious that would appear at first blush.

This same pattern of *nunc pro tunc* requests is likely to repeat itself. Allison Phinney resigned from the Board of The Mother Church on December 31, 2018; replaced by Barbara Fife, effective January 1, 2019. *See* Press Release of The Mother Church dated November 15, 2018, attached hereto as **Exhibit B**. No request for appointment of successor Trustee has been made, the Director-Trustees fail to inform this Court fully of these facts, and no one, other than The Mother Church, knows whether Barbara Fife or Allison Phinney is currently acting as Trustee and attending Trustee meetings, if any such meetings actually occur. In addition, the Trustees routinely request, and the Court has historically allowed, the Trustees to be excused from filing an inventory each time a successor trustee is appointed. Under these circumstances, such waiver should be denied in order to restore accountability to the Trusts, at least until these issues are addressed by this Court and implemented by the Trustees.

This is a troubling pattern that is especially problematic in light of the Trustees having comingled the liquid asset of the Trusts with the assets of The Mother Church and upon information and belief, have transferred other properties to The Mother Church or its affiliates. Discovery will shine a light on the assets that were and should continue to be the corpus of the Clause 8 Trust. The inventory requirement should be the rule, with exceptions permitted only under unique circumstances (i.e. when two trustees are appointed in the same year). Upon information and belief, none of the Court, the Director of Charitable Trusts, or any permissible beneficiary other than The Mother Church knows what assets the Clause 8 Trust actually owns (the gross and net values that appear on the annual accountings have not been audited annually since the Court permitted the pooling of the assets and the current reports are inheritably unreliable because they were unaudited for years in violation of the 2001 Order of Judge Richard A. Hampe).

Upon information and belief, it has been at least twenty-five (25) years since an inventory was filed revealing what the Trusts actually own and the Trustees provide no legitimate reason for being excused from filing an inventory, only suggesting that this is the way it has historically been done in the past.

II. Statutory Analysis for Appointment of Successor Trustee

The Trustees argue that RSA 564-B:7-704's order of priority for the appointment of successor trustees of charitable trust mandates that Richard Evans be appointed successor Trustee of the Clause 8 Trust. This argument is misplaced. RSA 564-B:7-704 [Vacancy in Trusteeship; Appointment of Successor] provides the following priority list for the appointment of successor trustees of charitable trusts:

1. persons designated in the terms of the trust to act as successor trustee – here there are none respecting the Clause 8 Trust;
2. persons selected by the charitable organizations expressly designated to receive distributions under the terms of the trust – here there are none; and
3. persons appointed by the Court.

See RSA 564-B:7-704(d)(1)-(3).

The first level or priority contemplates the appointment of a successor trustee explicitly named in the trust. The terms of the Clause 8 Trust do not designate Richard Evans as successor Trustee. The Trustees tenuously argue that Mary Baker Eddy intended The Mother Church to serve as Trustee of the Clause 8 Trust and that Richard Evans, as a successor Director of The Mother Church, should constitute a successor trustee “designated” in the terms of the trust. Although this may be the case for the Clause 6 Trust, which specifically provides that the Board of Directors of The Mother Church shall serve as Trustee of that trust, the Clause 8 Trust operates under a different successor trustee construct.

A technical reading of the Clause 8 Trust indicates that the congregation that is The Mother Church, as an entity, should serve as trustee. The Trustees assert that but for a certain mortmain statute in Massachusetts that prohibited The Mother Church from holding estate assets when Mary Baker Eddy died, The Mother Church would have been appointed. The Trustees fail to recognize that subject enabling legislation in Massachusetts allowed The Mother Church to accept such property before the initial Trustees of the Clause 8 Trust were appointed. Accordingly, the New Hampshire Probate Court could have appointed The Mother Church as initial trustee, but chose not to. *See* Trustees' Petition, at page 9.

The Trustees misleadingly suggest that when the Probate Court considered the appointment of the initial trustees, Josiah Fernald, as Administrator under the Will of Mary Baker Eddy, petitioned the Court, on October 16, 1913, for the appointment of the five (5) members of the Board of Directors and himself as the initial trustees of the Trusts. This is yet another inaccurate representation. The petition filed by Josiah Fernald on October 16, 1913 requested the appointment of "suitable trustee or trustees" without mentioning the Directors or himself. *See Exhibit C* attached hereto. This is an important distinction because it shows that the Probate Court did not consider the Directors of The Mother Church, serving alone, as "suitable trustees."

Indeed, the Probate Court, in appointing Josiah Fernald as an Independent Trustee, could only have appreciated the perils of leaving the assets of a charitable trust in the hands of conflicted fiduciaries and considered New Hampshire Attorney General James P. Tuttle, who, at the time, presaged the need for one or more independent Trustees in his brief filed in the *Fernald* case:

It is possible that the Probate Court of Merrimack County may deem this Church, as represented by these five directors, suitable to execute the trust, but...it might become the duty of the court to appoint persons not in hostility to the belief she desired to promote other than these five directors. It may be premature to discuss this feature until the question is presented directly to the Probate Court, but the magnitude of the trust is such and the interest of the Christian Scientists in New Hampshire is such that it seems to be our plain duty to urge that the interests of all who may expect to reap the benefit of this charity may be as well protected and the interests of those of New Hampshire may be better protected by the appointment of one or more New Hampshire trustees who either profess, or are not hostile to, the belief she desired to promote, to act in conjunction with these five directors and their successors under such bonds to the Probate Court as may be determined to be reasonable.

Brief of New Hampshire Attorney General James P. Tuttle, *Fernald v. First Church of Christ Scientist*, 77 N.H. 108 (1913), at Appendix to Second Church's Brief *Amicus Curiae* dated February 15, 2017, at page 40.

The similarity in language between Tuttle's brief and those expressed by the New Hampshire Supreme Court in the *Glover* case is notable: "the testatrix intended the trust to be administered by persons professing the belief she desired to promote. Such persons it would be the duty of the court to appoint should occasion, arise, or at least none in hostility thereto should be permitted to undertake the execution of the trust." *Glover*, 76 N.H. at 404. When Mr. Fernald died in 1949, in the context of some undisclosed and likely *ex parte* exchange with the Directors, the Probate Court decided not to replace Mr. Fernald's sixth (6th) seat as Trustee of the Trusts. That said, as this Court aptly noted in its March 2018 Order, the 1949 letter of Judge Lord "did not affirmatively require that the trustees be board members of the Mother Church, and as such, the Court will take into consideration the lack of an independent trustee when reviewing candidates the next time there is a trustee vacancy." The Trustees did not appeal this March 2018 Order, rendering it law of the case.

Accordingly, it is well settled that the Directors of The Mother Church are not “designated” as successor trustees of the Trusts, there is no statutory obligation to appoint Richard Evans as such, and there is no restriction on this Courts authority to appoint an Independent Trustee.

The second level of priority is not applicable because there are no charitable organizations expressly designated to receive distributions under the terms of the Clause 8 Trust; rather, the Trust has general primary purpose clause to promote and extend Christian Science as taught by Mary Baker Eddy.

For the reasons that follow, the Court, having the final level of priority in the appointment of a successor trustee of a charitable trust, should appoint an Independent Trustee to serve along with the current Directors of The Mother Church from the date of appointment only.

III. Necessity of an Independent Trustee

The necessity of appointing an Independent Trustee is rooted in New Hampshire’s pecuniary interest statute as well as the self-interested history of administration of Trusts by the Directors of The Mother Church since Josiah Fernald’s death.

A. New Hampshire Pecuniary Interest Statute

RSA 7:19-a (referred to as the “pecuniary interest statute”) and RSA 564-B:8-803 (the New Hampshire Trust Code provision concerning impartiality of trustees) do not prohibit the conflicted trustees from “serving” as Trustees *per se*, but they do prohibit them from acting in any transaction in which they have direct or indirect conflicting interests. Likewise, while distributions to The Mother Church for the purposes set forth in Mrs. Eddy’s Will are not “pecuniary benefit transactions” *per se*, they are when the decision to and to what extent to make them is authorized by these conflicted Trustees.

A “pecuniary benefit transaction” is defined as a transaction “between a charitable trust in which a trustee of the charitable trust has a financial interest, *direct* or *indirect*.” RSA 7:19-a, I(c) (emphasis added). The Trustees, collectively, constitute the entire Board of The Mother Church, which has a direct financial interest in the Clause 8 Trust. *See* RSA 7:19-a, I(b). An indirect financial interest is one in which the transaction involves “a person or entity of which the trustee is a proprietor, partner, employee, or officer.” *Id.* Individually, the Trustees have an *indirect* financial interest in the Clause 8 Trust, as Directors of The Mother Church. The Director of Charitable Trusts coined the phrase “embedded conflict” as it pertains to these Director-Trustees.

A pecuniary interest transaction is prohibited unless it is “in the best interests of the trust” and, all of the conditions under RSA 7:19-a, II, are met, including that “the transaction receives affirmative votes from at least 2/3 majority of all the *disinterested members* of the governing board of the charitable trust...” RSA 7:19-a, II (emphasis added). In the absence of an independent trustee, the Clause 8 has been (and is) prohibited from making transfers to The Mother Church – yet has done so for years including in 1992 when the Directors of Charitable Trusts caught The Mother Church and compelled it to repay an unauthorized loan that is the subject of the 1993 Order.

With respect to the duty of impartiality under RSA 564-B:8-803 (requiring impartiality in distributions to beneficiaries as an extension of a trustee’s duty of loyalty under RSA 564-B:8-802), a failure to so act can be grounds for removal. *See Shelton v. Tamposi*, 164 N.H. 490, 505 (2013). Given the embedded conflict, the Trustees, acting alone, are unfit to decide whether and when to distribute funds to The Mother Church, and such unfitness is also grounds for their removal absent the appoint of at least one Independent Trustee. *See* RSA 564-B:7-706(b)(3).

Second Church does not seek to remove any Trustees, but it seeks to restore accountability to and respect for the intentions of Mary Baker Eddy by requesting the appointment of an Independent Trustee. Without such independence in the fiduciary administration of the Trust, the Trust is disabled – unable appropriately to make distributions to or for the benefit of The Mother Church – because the Trustees, by themselves, are incapable of fully performing that fiduciary function.

This disability arises not only because of the pecuniary interest statute, but also because of an enduring principle of common law that for hundreds of years has held such transactions by trustees and other fiduciaries with interests in the beneficiary presumptively invalid, unless ratified by independent trustees after full disclosure, and otherwise being fair and equitable to the trust. *See, e.g., Sparhawk v. Allen*, 21 N.H. 9 (1850); *Hollis v. Tilton*, 90 N.H. 119, 122 (1939); *Pearson v. Concord R. Corp.*, 62 N.H. 537, 550-51 (1883).

The established dominant purpose of the Clause 8 Trust, to “promote and extend the religion of Christian Science as taught by [Mary Baker Eddy]” can only be fully and properly effectuated if the Trustees are able to exercise discretion to make distributions to all appropriate beneficiaries, including The Mother Church, as well as others globally. The solution imposed by this Court and advocated by the Trustees and the Director of Charitable Trusts is to restrict the discretion of the Trustees by presumptively prohibiting distributions to The Mother Church. This prohibition was already in place by virtue of the pecuniary interest statute, even if not respected by the Director-Trustees for decades. Accordingly, the “solution” directed by this Court prohibiting distributions to The Mother Church and its affiliates is intolerable, even to Second Church, because it serves no legal benefit that is not already in place by virtue of the pecuniary interest statute and materially compromises the intended purposes of the Clause 8

Trust in order to accommodate the desire of these conflicted Director-Trustees to serve, alone, without the independent fiduciary oversight.

Restricting the ability of the Trustees to perform the dominant purpose of the Clause 8 Trust to “promote and extend the religion of Christian Science as taught by [Mary Baker Eddy]” merely to accommodate the five Director- Trustees is a perversion of trust law. This Trust does not exist for the convenience of the Trustees. It exists to benefit those Mrs. Eddy intended to benefit, fully and without unnecessary compromise, globally to promote and extend the religion of Christian Science as taught by Mrs. Eddy. Yet since March, 2018 this purpose is being compromised to accommodate these Trustees.

B. History of Administration of Trusts

The history of the administration, as known to Second Church without the benefit of discovery or evidentiary hearings, was presented to this Court in Second Church’s August 4, 2017 *Amicus Curiae* brief. Second Church incorporates that brief herein, specifically pages 9 thru 14 and Exhibits 2 and 3 thereof, to avoid excessive duplication of facts herein. What is clear is that when the Directors of The Mother Church serve alone as Trustees of the Clause 8 Trust, there is a dramatic shift in the distributions of the Clause 8 Trust exclusively to The Mother Church and away from branch churches, reading rooms and other beneficiaries that historically had received distributions in furtherance of the dominant purpose to promote and extend the religion of Christina Science as taught by Mary Baker Eddy.

Indeed, since 1988, every distribution from the Clause 8 Trust has been to The Mother Church. See Exhibit 2 to Second Church’s August 4, 2017 *Amicus Brief*. Without an independent trustee, all of these self-interested distributions violate the pecuniary interest statute and should, technically, be returned, unless an Independent Trustee is appointed who can review

these distributions to determine whether they were fair and equitable and ratify them or they are presented to this Court on motion and following discovery for a determination that each was entirely fair.

Such monopolization of the administration of the Clause 8 Trust has effectively resulted in the Clause 8 Trust being gifted to The Mother Church to be used and distributed as the Directors of The Mother Church deem fit for the promotion and extension of Christian Science as taught by Mary Baker Eddy. In other words, the Trustees have treated the assets of the Clause 8 Trust as having already been distributed to The Mother Church and The Mother Church, through its Board of Directors, as having authority to make distributions for the promotion and extension of Christian Science, all contrary to and in contempt of and for this Court and the New Hampshire Supreme Court's rulings. This erodes the concept of a trust and results in what former New Hampshire Attorney General Tuttle feared would happen; namely, that if the Trust was left solely in the hands of the Directors of The Mother Church, "all others who may reap the benefit of the charity" would not be protected.

In addition, the concept of The Mother Church having exclusive authority over the Trusts runs afoul of the consistent theme from the holdings in the historical cases related to these Trusts that the Clause 8 Trust was not a gift to The Mother Church. *See Glover*, 76 N.H. at 402 ("The residuary clause in its principal feature is not a gift to a church or for the use of a church."); *Fernald*, 77 N.H. at 109 ("The question of [Ms. Eddy's] intention was considered at length in *Glover v. Baker*, 76 N.H. 393, and it was held that she did not intend to give this property to the church, but to create a public trust for promoting and extending Christian Science as taught by her to all parts of the world."); and *Dickey*, 212 Mass. 555, at 562, ("[t]he residuary clause of this will makes a gift to the First Church of Christ Scientist 'in trust' to be devoted to the repair of

church buildings and ‘the purpose of more effectually promoting and extending the religion of Christian Science as taught by’ the testatrix. This latter purpose in substance is not a gift to the particular ecclesiastical organization for its special needs. It manifests a broader design, and authorizes the use of the gift for spreading the tenets of faith taught by the testatrix over an area more extensive than could possibly be gathered in one congregation.”).

In light of the opaque and self-interested manner in which the Trustees administered the Trust over the last few decades, great uncertainty remains concerning what transactions the Trustees may have been able to slip by the Director of Charitable Trusts and this Court.

One of the ways in which this Court could restore the independence and integrity of the Clause 8 Trust is to appoint an Independent Trustee and charge that Independent Trustee with reviewing material assets that once were owned by the Clause 8 Trust but may no longer be included in the corpus of the Clause 8 Trust, due to transactions that occurred after the death of the Independent Trustee, Josiah Fernald, as well as any distributions made to The Mother Church in violation of the pecuniary interest statute to determine whether any such distributions were actually in the best interests of the Trusts and in respect of the primary purpose of the Clause 8 Trust. For example, the independent trustee could look into the:

- a. Copyrights, including the obligation to restore in-house printing to publish Mrs. Eddy’s teachings and writings;
- b. Lands owned by Mrs. Eddy that were not permanently conveyed *inter vivos* or under her Will, including rights respecting the Christian Science Publishing Society realty interests;
- c. Funds transferred to The Mother Church other than in accord with Clause 8 proper purposes; and

- d. The adequacy of the bonds and any claims under any bond benefitting the Clause 8 Trust protecting it from acts or omissions of the Trustees and protecting the corpus of the Clause 8 Trust².

IV. The Appointment of an Independent Trustee to Serve in Conjunction with Director-Trustees Does not Infringe on any Interest of The Mother Church

Second Church has previously briefed this Court concerning the application of the religion clauses of the First Amendment to the Clause 8 Trust, in its November 17, 2017 Memorandum of Second Church of Christ, Scientist Concerning Application of the First Amendment... (“First Amendment Memorandum”), and hereby incorporates the factual material and legal arguments set forth there in partial response to the Director-Trustees arguments in part V of the Memorandum in Support of the instant Petitions (herein, “D-T Memorandum”) concerning the same subject.

The factual background set forth in Second Church’s First Amendment Memorandum (at pp. 2-5), differs materially from that set forth in the Trustees’s Memorandum (at pp. 1-8) and accompanying Preller Affidavit. Most of the differences relate to the structure and governance of The Mother Church and the distinction between the *religion of Christian Science* founded by Mary Baker Eddy, and the *institution of The Mother Church* that the Directors manage pursuant to various Deeds of Trust and the Bylaws and Tenets of The Mother Church set forth in the Church Manual. The important point here is that the religion of Christian Science is not the same as or confined to The Mother Church. The founding of the religion by Mary Baker Eddy predates the founding of The Mother Church and is practiced by and through organizations and

² The existing bonds are grossly insufficient to secure the Trusts’ assets, generally, and from conflicted trustees, specifically. As Second Church argued in its September 11, 2018 Motion to Increase Bonds, incorporated herein by reference, as of the date of the last accounting filed in this Court, the Clause 6 Trust comprised assets totaling \$629,567.07, yet the Clause 6 Trust Bond (Liberty Mutual Bond # 94A 014 339) stands in the amount of merely \$25,000. That is, the value of the Clause 6 Trust is more than 25 times the amount of the Trust Bond that secures it. Further, as of the date of the last accounting filed in this Court, the Clause 8 Trust comprised assets totaling \$25,387,054.60. Upon information and belief, the Clause 8 Trust Bond (Liberty Mutual Bond # 94A 014 338) stands in the amount of merely \$500,000. That is, the value of the Clause 8 Trust is more than 50 times the amount of the Trust Bond that secures it.

individuals throughout the world, not just within the congregation of The Mother Church. The Mother Church and the Directors are important parts of that religion, but do not encompass or contain all of it.

If this Court were being asked to address some aspect of the administration of The Mother Church by the Directors, then the details concerning the structure and governance of The Mother Church would be more relevant, but the salient point here is that the Clause 8 Trust is not part of The Mother Church and the Directors were not made its Trustees under Mary Baker Eddy's Will; and the Clause 8 Trust is not a church or part of a church. It is a public charitable Trust formed under Mrs. Eddy's Will and declared legally enforceable as such.

As discussed at length in Second Church's prior First Amendment Memorandum (at pp. 6-14), the First Amendment principles relied upon by the Directors were established and are applied to protect the religious freedom exercised by individuals and autonomous organizations – like and self-governed denominations – not to free fiduciaries of testamentary trusts from the obligations imposed on them by the terms of a valid trust of and neutral principles of law. Indeed, the seminal case that the Director-Trustees themselves cite, as the foundation for the church autonomy doctrine, *Watson v. Jones* made this very point – in a part of the Supreme Court's opinion left out of the Director-Trustees' Memorandum on these Petitions:

The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.

Watson v. Jones, 80 U.S. 679, 727 (1872). The second and third categories of religious organizations referenced in this passage were and are the benefactors of the church autonomy doctrine—the second being what is now referred to as a “congregational church” and the third being known as the “hierarchical church”. *See, id.* at 726-27 and compare *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368-70 (1970) (Brennan, J. concurring); *Callahan v. First Congregational Church*, 441 Mass. 699, at 704-09 (2004). The church before the *Watson* court was in the third category—a hierarchical (Presbyterian) church to which the Supreme Court applied the rule often cited as the foundation of the church autonomy doctrine:

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

The hierarchical and the congregational are *autonomous* in a way that allows them to develop their own organic doctrine and rules for self-governance. They differ from each other in the locus of that autonomy: the congregational organization is distinguished as an “independent organization, governed solely within itself, either by a majority of its members or by such other

local organism as it may have instituted for the purpose of ecclesiastical government...;” *Watson*, 80 U.S. at 724. While in the hierarchical organization, the “local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.” *Id.* at 726-27.

Both of these *autonomous* forms of religious association are distinct from *Watson’s* “first” category of religious organization where a donor, “by deed or will...or other instrument...,” has conditioned a gift on the organization’s compliance with lawful terms or conditions. *Id.* at 722. In such a case, said the *Watson* Court,

...it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require. ***And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use.***

Id. at 721-23 (Emphasis added).

The Clause 8 Trust is squarely in *Watson’s* category 1 and the Director-Trustees, as its fiduciaries, can claim no First Amendment autonomy for themselves. They are not autonomous, but bound to the terms declared by Mary Baker Eddy under her Will.

The Director-Trustees refer to the First Amendment rights of Mrs. Eddy “to worship, practice, and spread the Christian Science religion, a right that did not end with her passing, but continued under the Clause 8 Trust...” See Trustees’ Memorandum at p.12, citing *Glover*, 76 N.H. at 420-21). But what they fail to acknowledge is that she chose to exercise those rights, not by making a gift of the residue of her estate to The Mother Church, but by forming a testamentary trust that would provide benefits to a larger class of Christian Science organizations for the purpose of “more effectually promoting and extending the religion of Christian Science as

taught by me.” This is how she exercised her First Amendment rights and it is her rights, not those of The Mother Church or the Directors, that are to be protected and enforced.

And even more to the point, she did not name the Directors of The Mother Church as Trustees of the Clause 8 Trust. She did name them as Trustees of the Clause 6 Trust, but she did not name them under Clause 8 of the same document. It cannot be assumed that this difference was an oversight. To the contrary, such distinctions are ordinarily assumed to reflect an intention of the grantor or testator. Compare *Glover*, 76 N.H. at 404.

Thus, absent some evidence to the contrary, it must be assumed that Mrs. Eddy trusted this Court to appoint suitable trustees and to have the discretion to appoint others besides the directors of The Mother Church – perhaps because she or her counsel understood, as did Attorney General Tuttle, that the protection and efficacy of the Trust depended on it.

Accordingly, neither The Mother Church nor the Directors can claim any First Amendment interest in being free of this Court’s authority to appoint an independent Trustee. Alternatively, to the extent they can claim any First Amendment interest in the Trust, this Court is nonetheless able to apply neutral principles of law to its administration. E.g., *Jones v. Wolf*, 443 U.S. 595 (1979); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969). The principles embodied in the pecuniary interest and common law requiring fiduciaries be free of conflicts of interest in making trust distributions are quintessentially neutral – applying to all charitable trusts without regard to their religious or non-religious purposes.

The Director-Trustees arguments that the appointment of an independent Trustee will entangle the Court in religious affairs or interfere with anyone’s religious freedom exaggerates the scope and effect of the action contemplated. One independent Trustee to serve alongside of

the Director-Trustees does not limit or disqualify the Directors from serving as Trustees. It merely adds to their number an independent fiduciary. The predictions of entanglement of this Court in disputes over the meaning of “promoting and extending the religion of Christian Science” as taught by Mary Baker Eddy are a red herring. If and when such a dispute were to arise, the Court can navigate the proper scope, if any, of its intervention.

WHEREFORE, Second Church of Christ, Scientist, Melbourne, respectfully requests that this Honorable Court enter an Order:

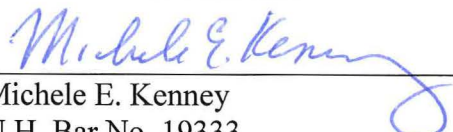
- A. Allowing the appointment of Richard Evans as Trustee of the Clause 6 and Clause 8 Trusts under the Will of Mary Baker G. Eddy *only to the extent that* the Court also appoints an Independent Trustee;
- B. Require Richard Evans and the Independent Trustee to file an inventory within 30 days of their appointment;
- C. Increasing the bonds to provide sufficient security for the assets of the Clause 6 and Clause 8 Trusts; and
- D. Granting such other and further relief as justice may require.

Respectfully submitted,

SECOND CHURCH OF CHRIST,
SCIENTIST, MELBOURNE,

By its attorneys,

PIERCE ATWOOD LLP

By: 
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Dated: April 12, 2019

Dated: April 12, 2019

By:

DLA PIPER LLP (US)

Stuart Brown / mek

Stuart Brown

Admitted *Pro Hac Vice*

1201 North Market Street, Suite 2100

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Dated: April 12, 2019

By:

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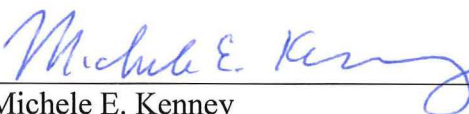
CERTIFICATE OF SERVICE

I hereby certify that I have on this 12th day of April, 2019, forwarded a copy of the foregoing Objection to Petition for Appointment of Richard Evans as Trustee of the Clause 6 and Clause 8 Trust and Incorporated Memorandum of Law to the following by electronic mail and first class mail:

James F. Raymond, Esquire
Upton & Hatfield LLP
10 Centre Street
PO Box 1090
Concord, NH 03302-1090

Michael P. Courtney, Esquire
Upton & Hatfield LLP
10 Centre Street
PO Box 1090
Concord, NH 03302-1090

Thomas J. Donovan, Esquire
Director of Charitable Trusts
Office of the Attorney General
33 Capitol Street
Concord, NH 03301-6397



Michele E. Kenney
NH Bar #19333



Rotation on the Christian Science Board of Directors

By The Christian Science Board of Directors

April 11, 2017 - [Church News](#)

Dear Church Family,

We'd like to share with you the following message.

Suzanne Riedel

Clerk of The Mother Church

Dear Fellow Members and Friends,

With great gratitude for the continuity of good, the Christian Science Board of Directors extends heartfelt thanks to Lyle Young, C.S.B., who will be stepping off the Board at the end of April to return to his loved home base in Ottawa, Ontario, Canada. On May 1, we will welcome Richard Evans, C.S.B., to serve on the Board.

Lyle's contribution to the Board and our Church over the past six years as Director, and his service as Clerk from 2013 to 2015, have had a worldwide impact. His pure and buoyant spirit, his care for the global family, and in particular his knowledge of the Christian Science fields in Latin America, Africa, and parts of Europe, have greatly benefited The Mother Church. We look forward to the ways he will continue to serve the Movement through his metaphysical clarity, genuine love, and multilingual facility.

After joining The Mother Church in 1984, Lyle entered the public practice of Christian Science in 1987, and became a Christian Science teacher in 1991. He has served as Committee on Publication for Ontario and Canada, First Reader of The Mother Church, and Christian Science lecturer, in addition to writing extensively for Church periodicals. We are also very grateful to his wife Elisabeth, who is deeply devoted to Church and has selflessly and cheerfully supported Lyle's work.

Lyle reflects that, "After nine years of constant travel as Committee on Publication, four years of worldwide travel as a lecturer, and nine years serving as an Officer of The Mother Church, returning to my first calling of the public practice and to teaching will be a most welcome opportunity for renewal and rededication."

We are also delighted that Rich Evans has agreed to step on to the Board on May 1. Rich came to The Mother Church in 2015 to assume the responsibilities of the Manager of Committees on Publication. He has brought great grace and metaphysical strength to this work. Prior to his full-time commitment to practicing and teaching Christian Science, Rich

practiced law and was an executive officer in several global corporations. Throughout his life, his interest in diverse cultures has been evident in his early Peace Corps service in the Philippines and in many of his business career assignments. He and his wife, Blythe, who is also a *Journal*-listed practitioner, have actively engaged in the Boston community since moving here from Arizona, where Rich served as the state's Committee on Publication.

Rich comments, "I'm grateful to serve the Church in this new way, and I leave the Committee on Publication with unbounded appreciation for the individuals with whom I was so fortunate to work and for the opportunity to learn more about the Committee's true purpose, forged wisely in our *Church Manual*. What wonderful preparation it has been for joining the Board of Directors, whose example of modesty and real affection in serving the Cause of Christian Science, I have grown to know. It is with much joy, expectation of God's loving guidance, and desire to help fulfill His plan, that I step into this next opportunity in unity with my fellow Directors."

An announcement about the new Manager of Committees on Publication will follow in coming weeks. We join all of you in thanking God for guiding every progressive step of the Cause of Christian Science.

With love,

THE CHRISTIAN SCIENCE BOARD OF DIRECTORS

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Rotation in Office

By The Christian Science Board of Directors

November 15, 2018 - [Church News](#)

Dear Members and Friends,

When Skip Phinney told us of his desire to step down from serving on the Christian Science Board of Directors at the end of December, we were tempted to try to talk him out of it. But when he reminded us that he first came to serve the Church in 1960, we realized our only legitimate response was to express profound gratitude for the many ways his service has strengthened The Mother Church and the Cause of Christian Science. And while it almost seems easier to list the few offices he has not held than to come up with all those he has, we know you will want to join us in specifically thanking Skip for his selfless service as Manager of Committees on Publication, Clerk of The Mother Church, Special Lecturer, Editor of *The Christian Science Journal*, *Sentinel*, and *Herald*, President of the Board of Education, President of The Mother Church, Teacher of the 2015 Normal Class, and member of the Board of Directors.

Skip and his wife, Pam, will be moving to Kennebunkport, Maine, to resume the full-time practice of Christian Science healing and to continue Skip's teaching. Of great encouragement to all of us is the fact that, with considerable perspective to draw upon, Skip says there is a newness and vitality to what's going on in our Church today, like he's never seen before. As he put it, "It's clear that Christian Science is what's coming, not what's going!"

Although Barbara Fife only began serving as Clerk of The Mother Church in October of this year, we felt right away that she had the qualities and background needed for the Board of Directors. We're happy to announce that she will step into that position in January, while also continuing as Clerk. Barbara has a breadth of experience and knowledge of the field gathered during 13 years of lecturing, as well as teaching and public practice. Grace, calm, and spiritual strength are evident in all she does, as well as the vital sense of joy and humor. We are so grateful for Barbara's willingness to serve on the Board and as Clerk, as several others have done both in the early and recent history of our Church. Thank you, Vancouver, Canada, for loaning her to Boston!

With love and gratitude,

The Christian Science Board of Directors

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EXHIBIT 1

(Form 473)

STATE OF NEW HAMPSHIRE

TO THE HONORABLE JUDGE OF PROBATE FOR THE COUNTY OF MERRIMACK:

Your petitioner, Josiah E. Fernald, of Concord, in said County,
Administrator d.b.n., c.t.a. of the estate of Mary Baker G. Eddy
~~nk~~ ~~in said County of Merrimack~~
 respectfully represents that Mary Baker G. Eddy late of Concord
 in said County, deceased, testate, in and by her last will and testament, which has been duly proved and
 allowed, gave, bequeathed and devised certain estate therein named to The First Church of
Christ, Scientist, in Boston, Massachusetts,
 in trust for the ~~testamentary~~ purpose of more effectually promoting and extend-
ing the religion of Christian Science as taught by her (me)"
and other incidental purposes, as set forth in said will duly
~~proven and allowed and subject to certain conditions imposed in said will~~ probated and
now on file in this Court.

~~and that the said will was duly proved and allowed in said Court~~

Wherefore, your petitioner prays that a suitable trustee or trustees of
said trust estate
 may be appointed ~~trustee or trustees~~ agreeably to the laws of said State.

Dated this sixteenth day of October A.D. 1913.

Josiah E. Fernald, Administrator de
benis non, with will annexed of the
estate of Mary Baker G. Eddy.