THE STATE OF NEW HAMPSHIRE

SUPREME COURT

IN RE TRUST OF MARY BAKER EDDY

Case No. 2018-0309

BRIEF FOR THE ATTORNEY GENERAL, DIRECTOR OF CHARITABLE TRUSTS

ON APPEAL FROM DECISIONS OF THE 6th CIRCUIT COURT – PROBATE DIVISION – CONCORD (COMPLEX TRUST DOCKET)

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ISSUES PRESENTED

1. Whether the trial court properly held that Second Church of Christ, Scientist, Melbourne, Australia (Second Church) lacked special interest standing to request relief in proceedings concerning the testamentary trusts created under the Will of Mary Baker Eddy (Mrs. Eddy's Will).

2. Whether the trial court properly denied Second Church's motion for appointment of an independent trustee to the Clause 8 trust created under Mrs. Eddy's Will.

STATEMENT OF THE CASE AND FACTS

A. Mary Baker Eddy's Will

New Hampshire native Mary Baker Eddy (1821 – 1910) is best known as the founder of the religion known as Christian Science. Mrs. Eddy's Will established two separate testamentary trusts, the Clause 6 Trust and the Clause 8 Trust (collectively, the Trusts). Under Clause 6 of her Will, Mrs. Eddy gave to the Board of Directors (the Directors) of the First Church of Christ, Scientist, in Boston, Massachusetts (known as the Mother Church) the sum of $100,000 to hold, in trust,

> for the purpose of providing free instruction for indigent, well educated, worthy Christian Scientists at the Massachusetts Metaphysical College and to aid them thereafter until they can maintain themselves in some department of Christian Science.

Trustees' App. at 148-49.[1]

Similarly, Mrs. Eddy, under Clause 8, gave the residue of her estate to the Mother Church itself, in trust, under the following terms:

> I desire that such portion of my residuary estate as may be necessary shall be used for the purposes of keeping in repair the church building and my former house at #385 Commonwealth Avenue in said Boston, which has been transferred to the Mother Church, and any building or buildings which may be, by necessity or convenience, substituted therefor;…[2]and I desire that the balance of said income, and such portion of the principal as may be deemed wise, shall be devoted and used by said residuary legatee for the

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[1] Citations to the records are as follows:
"Trustees' App." refers to the appendix of the Brief of the Trustees.
"Appellant's Brief" refers to the Brief of Appellant Second Church of Christ, Scientist, Melbourne Australia.
"App." refers to the appendix of the Appellant's Brief.
"Add." refers to the Addendum to this brief.

[2] Omitted is language to benefit Mrs. Eddy's Pleasant View residence in Concord. That provision was revoked by the Second Codicil to her will. *See Glover v. Baker*, 76 N.H. 393, 400 (1912).

> purpose of more effectually promoting and extending the religion of Christian Science as taught by me.

Trustees' App. at 150.

B. Early litigation

Mrs. Eddy died on December 3, 1910, leaving behind an estate that exceeded $3 million. Gillian Gill, *Mary Baker Eddy* 553 (1999). Almost immediately, the Clause 8 Trust created two immediate challenges that led to three reported court opinions. The first challenge was statutory: both Massachusetts and New Hampshire had a type of mortmain statute, intended to discourage large bequests to churches. Mass. R.L. c. 37, Sec. 9 provided at the time that "[t]he income of the gifts, grants, bequests and devises made to or for the use of any one church shall not exceed two thousand dollars a year…"[3] New Hampshire at the time had a similar statute which provided that "[t]he income of any grant or donation made to or for the use of a church shall not exceed five thousand dollars a year."[4] The second challenge came from Mrs. Eddy's sons, George W. Glover, II, and Ebenezer J. Foster Eddy, who sought to void Clause 8 of the Will so that they might inherit instead. *See*, *generally* Peter A. Wallner, *Faith on Trial: Mary Baker Eddy, Christian Science and the First Amendment* (2014); Gill at 553-54.

In New Hampshire, the supreme court first considered these challenges in *Glover v. Baker*. While leaving it to Massachusetts to determine whether the Mother Church could hold the Clause 8 bequest as trustee, the Court held that the Clause 8 Trust remained valid even if the trustee lacked capacity:

> The gift is not to the church but in trust, and unless it is sustainable as a charitable trust it is invalid, and whether the church could act as trustee if the trust were valid is immaterial; while if the will creates a valid trust, the refusal of the trustee named in the will to act because of the incapacity

[3] This Massachusetts "church statute", later codified as M.G.L. Ch. 68, Sec. 9, was repealed in 1965. Mass. Laws 1965, Ch. 40.

[4] The similar New Hampshire law was codified at RSA 306:10 and was repealed as of August 10, 2018. 2018 N.H. Laws, Ch. 240.

> under Massachusetts law, or otherwise, will not avoid the trust, which cannot fail merely because of disability of the trustee. 'It is a rule without exception that equity never allows a legal and valid trust to fail for want of a trustee' (citation omitted).

76 N.H. at 404.

The Massachusetts Supreme Judicial Court added its insight in *Chase v. Dickey*, 99 N.E. 410 (Mass. 1912). The trustees of the Trusts and the executor of Mrs. Eddy's estate agreed, in principal, to distribute the assets to the Mother Church but refused to do so without an order of court, concerned that the Mother Church was unable to hold assets by reason of Massachusetts' church statute. *Chase* at 411. The court agreed that the Massachusetts church statute prevented the Mother Church (*i.e.*, the Directors) from holding directly the sizable Clause 8 Trust funds. *Id.* at 415. The court held, however, that the church statute did not apply to a trust and the bequest could not fail even if the named legatee is incapable of taking. *Id.* at 415-16. The court also held, based on the structure of Clause 8, that the promotion and extension of Christian Science as taught by Mrs. Eddy "manifests a purpose to make this the dominating and real residuary purpose of" Mrs. Eddy. *Id.* at 415.

Finally, back in New Hampshire, the supreme court in *Fernald v. First Church of Christ, Scientist*, 77 N.H. 108 (1913), held that the Clause 8 Trust is to be administered as a New Hampshire testamentary trust, and not be turned over to the Mother Church. The court explained, "Mrs. Eddy did not intend to give this property to the church to administer as a part of its corporate assets, but to create a public trust to be administered by the church under the direct supervision of the court." *Fernald* at 109.

On November 18, 1913, the Merrimack County Probate Court appointed six trustees: the five incumbent Directors of the Mother Church (the Trustees) and

Josiah E. Fernald[5]. App. at 433. The composition of the Trustees changed with changes in the membership of the Directors. Mr. Fernald remained a Trustee until his death in 1949. The probate court thereafter did not require the appointment of a replacement trustee for Mr. Fernald. *See*, Order of Gordon S. Lord, Judge of Probate, August 10, 1949. App. at 436.

C. Director of Charitable Trusts Oversight and More Recent Litigation

Beginning in 1914, the Merrimack County Probate Court has reviewed the annual trust accounts filed by the Trustees pursuant to RSA 564:19. In addition, since the creation of the nation's first charitable trust office in 1943, the Director of Charitable Trusts (the DCT) has exercised the Attorney General's common law and statutory oversight authority over the Trustees' administration of the Trusts. *See*, RSA 7:19, et. seq.

In 1992, the DCT inquired into a $5 million loan from the Clause 8 Trust to the Mother Church. The Mother Church had intended to use the funds to create a cable television network devoted to the religion of Christian Science. App. at 422; *see generally Weaver v. Wood*, 680 N.E.2d 918, 921 (Mass. 1997). On September 14, 1993, the probate court (*Cushing*, J.), approved a stipulation (the 1993 Order) between the former DCT and the Trustees. The 1993 Order required the Directors of the Mother Church to repay the loan amount, plus interest, to the Clause 8 Trust. App. at 352. The 1993 Order also required the use of annual income from the Clause 8 Trust first to be used for keeping in repair the Mother Church building, with any remaining income to be available for the promotion and extension of Christian Science, at the discretion of the Trustees. App. at 352. The 1993 Order also forbade the invasion of the principal of the Clause 8 Trust without a court order. App. at 353.

[5] A Concord resident, Mr. Fernald was Mrs. Eddy's banker and financial advisor.

On August 23, 2001, the probate court (*Hampe*, J.), with the consent of the former DCT, granted a petition to pool the funds of the Clause 6 and Clause 8 Trusts with other funds held by the Mother Church (the 2001 Order). App. at 359. The rationale was to increase investment diversification and to retain one set of professional managers, thereby increasing long term rates of return while decreasing costs.

Based on data provided by Second Church, it appears that until 1987, branch churches, schools and libraries were among the recipients of distributions from the Clause 8 Trust, likely in order to promote and extend the religion of Christian Science. Since that time, however, all distributions have been made to activities of the Mother Church, and since 1998, solely for the repair of the Mother Church building. App. at 417.

D. The Current Case

On November 25, 2015, Second Church filed an appearance in the trial court seeking additional time to review and to object to the Trustees' accounts for the Trusts for the fiscal year ending March 31, 2015. In a series of pleadings, Second Church raised a number of issues relating to the composition of the Trustees of the Clause 8 Trust, the Trustees' investment performance, and the Trustees' distributions from the Clause 8 Trust. March 2018 Order, Appellant's Brief at 46. A doctrinal motive underlies Second Church's challenge: Second Church believes that the Directors do not have the ecclesiastical authority they have exercised for years over the religion of Christian Science. Second Church seeks to diminish the control of the Directors and the Mother Church over branch churches. *See*, Appellant's Brief at 12-13.

In response, the DCT argued that Second Church lacked standing to raise the issues. At the same time, the DCT alerted the trial court of its planned review of the Clause 8 Trust based upon the information supplied by Second Church.

App. at 348-49. The DCT acknowledged the "embedded conflicting fiduciary obligations" of the Trustees, who also serve as Directors of the Mother Church. App. at 349.

As a result of the investigation, the DCT objected to the accounts filed by the Trustees of the Clause 6 and Clause 8 Trusts for the fiscal year ending March 31, 2016. Trustees' App. at 172. The DCT based its objection upon the Trustees' nonadherence to portions of the probate court's 2001 Order. Trustees' App. at 173. Specifically, the pending account, and earlier accounts, reported that the pooled investments were held by an entity different than that prescribed by the 2001 Order. Trustees' App. at 173. Also, the Trustees prepared internal and not audited financial statements as required by the 2001 Order. Trustees' App. at 173. Finally, the DCT raised questions about the classification of restricted funds. Trustees' App. at 173-74.

After a period of negotiations, the DCT and the Trustees reached a settlement on these points, leading to the February 7, 2017 filing of an *Assented to Motion to Approve Amended Account and to Amend the 2001 Order*. Trustees' App. at 184. The trial court held a hearing on that motion and issued an order on April 4, 2017, granting the motion in part. App. at 376. The trial court denied Second Church's Motion for Leave to File Brief *Amicus Curiae* in regards to the Trustee's motion. App. at 360 and 386.

The DCT and the Trustees then negotiated a second settlement on a number of issues arising from the DCT's review. On July 26, 2017, the Trustees, with the DCT's assent, filed an *Assented-to Motion to Amend the 1993 Order, Convert Clause 6 & 8 to Unitrusts and Adopt RSA 292-A Uniform Prudent Management of Institutional Funds Act* (the Amendment Motion). Trustees' App. at 24. The DCT filed a memorandum in support of the Amendment Motion. App. at 422. Second Church again sought leave to file an *amicus curiae* brief in opposition to the Amendment Motion. App. at 461.

On March 9, 2018, the trial court (*King*, J.) entered orders finding that Second Church lacked standing to participate in proceedings concerning the Amendment Motion, Appointment Petition, and Amicus Petition (the March 2018 Order). March 2018 Order, Appellant's Brief at 45. In the March 2018 Order, the trial court recognized the doctrine of special interest standing, and applied the five-factor "*Blasko* test," which balances whether a plaintiff's interest is distinct enough from the public at large in order to support that plaintiff's standing to enforce a charitable trust. March 2018 Order, Appellant's Brief at 62; Mary Grace Blasko, *et al.*, *Standing to Sue in the Charitable Sector*, 28 U.S.F. L. REV. 37 (1993). These factors include: (1) the extraordinary nature of the actions complained of and remedies sought; (2) the presence of bad faith; (3) the attorney general's availability and effectiveness; (4) the nature of the benefitted class and its relationship to the charity; and (5) social desirability. The trial court noted that the DCT has been actively involved in the matter and has been working directly with the Trustees to voice his concerns and negotiate their resolution. March 2018 Order, Appellant's Brief at 54. The trial court found that Second Church met none of the *Blasko* factors. March 2018 Order, Appellant's Brief at 67. The trial court left open the possibility that Second Church might gain standing if the specific facts, such as the DCT's continued involvement for example, were to change in the future. March 2018 Order, Appellant's Brief at 67, note 11.

Second Church then moved for partial reconsideration of the trial court's denial of standing to seek the appointment of an independent trustee and requested leave to supplement the record with additional facts concerning the Trustees' alleged malfeasance. App. at 591 and 605. The trial court denied both motions. Appellant's Brief at 84; Appellant's Brief and 92.

Second Church's appeal followed.

SUMMARY OF THE ARGUMENT

The trial court did not commit plain error in recognizing and applying the special interest standing doctrine to Second Church. Second Church failed to meet its evidentiary burden to provide the trial court with enough information to justify standing. The existing factual record amply supports the trial court's determination. The trial court properly adopted the *Blasko* factors to analyze whether Second Church had standing to participate in the case. It then committed no plain error in determining that Second Church failed to meet any of the *Blasko* factors: (1) the Trustee's acts were not extraordinary, (2) the Trustees did not act in bad faith, (3) the DCT has properly overseen the administration of the Trusts, (4) Second Church is not a part of a defined and limited class of entities, and (5) other case specific considerations do not weigh in favor of standing.

The trial court did not commit an unsustainable exercise of discretion in declining to appoint an independent trustee. New Hampshire statutes allow the trial court discretion to appoint an independent trustee, and the trial court properly exercised that discretion in choosing, based on the record, not to appoint an independent trustee. The trial court based its decision on the fact that the March 2018 Order created certain protections to ensure that the existing Trustees honor their obligations to treat all potential beneficiaries impartially under the DCT's diligent oversight of the Trust. Furthermore, any attempt to install an independent trustee may potentially run afoul of the First Amendment's free exercise and establishment clauses.

ARGUMENT

I. THE STANDARD OF REVIEW

The issue of whether the trial court correctly adopted the special interest standing doctrine in this case presents a question of law which is to be reviewed *de novo*. *See, King v. Onthank*, 152 N.H. 16, 17 (2005). The trial court's findings on special interest standing "are final unless they are so plainly erroneous that such findings could not be reasonably made." RSA 567-A:4; *see, e.g., Attorney Gen. v. Loreto Publications, Inc.*, 169 N.H. 68, 71 (2016) (citing *In re Estate of Couture*, 166 N.H. 101, 105 (2014)). The trial court's decision not to appoint a new trustee will not be reversed "unless it represents an unsustainable exercise of discretion that was clearly untenable or unreasonable to the prejudice of the petitioner's case." *In re Juvenile 2002-209*, 149 N.H. 559, 561 (2003) (citing *In re Brittany S.*, 147 N.H. 489, 494 (2002)).

II. THE TRIAL COURT CORRECTLY ADOPTED AND APPLIED THE *BLASKO* FACTORS.

A. This Court Should Adopt the Special Interest Standing Doctrine

The DCT agrees with Second Church that this Court should recognize the standing of certain persons or entities that have a special interest in a particular charitable trust to enforce that trust.

Generally, the attorney general protects the rights of the public in charitable trusts. *Attorney General v. Rochester Trust Co.*, 115 N.H. 74, 76 (1975). Under the New Hampshire Trust Code, however, the DCT, the Settlor *and others* may maintain a proceeding to enforce a charitable trust. RSA 564-B:4-405(c). The comments to the Uniform Trust Code, upon which the New Hampshire Trust Code is based, contemplate that certain others may have standing based on their special interest in the charity. *See*, Unif. Trust Code § 405, cmt. (2010) ("The grant of standing to the settlor does not negate the right of the state attorney general or

persons with special interest to enforce either the trust or their interests.") (emphasis added); *see, also, id.* at § 413, cmt. ("[A] petition requesting a court to enforce a charitable trust or to apply cy pres may be maintained by…the state attorney general, or by a person having a special interest in the charitable disposition.").

Special interest standing to enforce a charitable trust arises only in very specific and limited circumstances. "A suit for the enforcement of a charitable trust may be maintained only by the Attorney General….or by another person who has a special interest in the enforcement of the trust." RESTATEMENT (THIRD) OF TRUSTS, § 94(2); *see, also* George T. Bogert et al., *The Law of Trusts and Trustees* § 414 (3d ed. & Supp. June 2018) ("[I]n a fairly large group of cases the courts have permitted private individuals, whose positions with regard to the charitable trust were more or less fixed, to sue for its enforcement."); *Blasko*, *supra*. A number of states have analyzed whether a third-party has standing to bring a claim in order to enforce provisions of a charitable trust.[6] "[T]hese cases do not prove a general rule that members of the community to be affected by a charity can secure a decree for enforcement…[but] merely illustrate a tendency of the courts to relax the rule requiring the charity to be represented by the Attorney General." *Bogert*, § 414.

[6] *See Rhone v. Adams*, 986 So.2d 374 (Ala. 2007); *Robert Schlakenbach Found. v. Lincoln Found.*, Inc., 91 P.3d 1019 (Ariz. Ct. App. 2004); *Grabowski v. City of Bristol*, 780 A.2d 953 (Conn. App. Ct. 2001) (granting standing to abutters of a public park given to the City by a testamentary charitable trust); *Hooker v. Edes Home*, 579 A.2d 608 (D.C. 1990); *Warren v. Board of Regents of University of Georgia*, 544 S.E.2d 190 (Ga. 2001); *Jackson v. Callan Pub., Inc.*, 826 N.E.2d 413 (Ill. App. Ct. 2005); *In re Public Benev. Trust of Crume*, 829 N.E.2d 1039 (Ind. Ct. App. 2005); *In re Clement Trust*, 679 N.W.2d 31 (Iowa 2004); *Fitzgerald v. Baxter State Authority*, 385 A.2d 189 (Me. 1979) (granting citizens and taxpayers standing upon the Attorney General's disqualification from enforcing statute); *State ex. rel. Nixon v. Hutcherson*, 96 S.W.3d 81 (Mo.2003) (finding that "in some charitable trusts there may be beneficiaries having such special interest in the performance of the trust as to entitle them to maintain a suit to enforce it"); *Cinnaminson Twp. v. First Camden Nat. Bank & Trust Co.*, 238 A.2d 701 (N.J. Ch. 1968); *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752 (N.Y. 1985); *Kania v. Chatham*, 254 S.E.2d 528 (N.C. 1979); *In re Milton Hershey School*, 911 A.2d 1258 (Pa. 2006).

In *Blasko*, the authors reviewed the applicable decisional law, and distilled five factors that courts have used when making a determination that a potential plaintiff has a sufficient special interest in the charitable trust to support standing: (1) the extraordinary nature of the misconduct complained of and the remedy sought by the plaintiff; (2) the presence of bad faith (fraud or misconduct) on the part of the charity or its directors; (3) the state attorney general's availability or effectiveness, and actions taken by the attorney general in the specific case; (4) the nature of the benefitted class and its relationship to the charity; and, (5) case-specific factual circumstances. *Blasko*, *supra*, at 61. The authors suggest that any of these factors alone can lead a court to decide that a plaintiff has special interest in the charity such that the plaintiff has standing to enforce the underlying charitable trust. *Id.* at 59.

The Restatement sets forth a similar – though not exactly the same – set of standards for charitable organizations. *See* RESTATEMENT OF THE LAW OF CHARITABLE NONPROFIT ORGANIZATIONS, § 6.05 (Tentative Draft No. 2, May 22, 2017). Those standards provide that a private party has special interest standing if a court determines that: (1) the attorney general is not exercising its authority; (2) the charitable assets in question will not be protected without the granting of special interest standing; (3) the alleged misconduct is egregious or the circumstances are serious and exigent; (4) the relief sought is appropriate to enforce the purposes of the charity or the charitable assets; and (5) the private party bears a substantial connection to the matter at issue and the charity or the assets in question. *Id.* Unlike the *Blasko* factors, the Restatement's charitable nonprofit organization test requires the private party to meet all of the factors in order to establish special interest standing. *Id.* The trial court acknowledged that the application of the Restatement test would not have changed the outcome. March 2018 Order, Appellant's Brief at 62, note 9.

Use of a special interest standing standard would assist lower courts facing standing questions, both in the context of charitable trusts and charitable organizations. In recent years, probate courts faced with charitable organization standing questions have applied the "direct and apparent" test as defined in *Clipper Affiliates, Inc. v. Checovich*. 138 N.H. 271, 277 (1994) ("[A] person who seeks to intervene in a case must have an interest in the subject matter of the litigation" that is "'direct and apparent; such as would suffer, if not indeed be sacrificed, were the court to deny the privilege.'") (citations omitted). The "direct and apparent" language dates back to an 1852 case involving creditor rights. *See Pike v. Pike*, 24 N.H. 384 (1852).

In one probate court case, a number of parties had sought to intervene in a hospital's motion to dissolve a merger. The probate court denied standing to those who had "an interest but it [was] indirect or indeterminate in that they [had] an interest in the outcome but it [did] not relate to issues which were raised by the principal parties as to how to dissolve or disaffiliate the merger of the hospitals." *In Re: Optima Healthcare Inc., Optima Health, Inc., Catholic Medical Center, Elliot Hospital of the City of Manchester and Affiliated Entities*, Hillsborough Probate Courts. No. 99-339 Order May 27, 1999. Add. at 38. In two other cases, *In Re: Hillcrest Terrace and Women's Aid Home d/b/a Pearl Manor* (Hillsborough Probate No. 2005-647, June 16, 2005) and *In re: Nashua Center for the Arts* (9th Circuit Court, Probate Division, No. 316-2017-EQ-00191, August 30, 2017), the courts applied a semi-special interest standing analysis under the "direct and apparent" test. Add. at 45 and 47. In both cases, the courts determined that the third-parties' interests and concerns were general in nature and not different from the public at large.

The "direct and apparent" test, when applied to standing for beneficiaries of a charitable trust or organization, is too vague to be applied consistently in the probate courts. A too liberal application of the test would allow all potential

charitable beneficiaries standing to make claims against the trustees of a charitable trust or directors of a charitable organization; too conservative would limit standing only to specifically named charitable beneficiaries. The application of a special interest standing standard for beneficiaries of charitable trusts and organizations applying the *Blasko* or Restatement factors will allow better predictability and greater flexibility for courts and more guidance for litigants.

B. The Trial Court Did Not Commit Plain Error in Applying the *Blasko* Factors to Deny Standing to Second Church

The record demonstrates that the trial court made no plain error in making the determination that Second Church lacked special interest standing. The trial court's findings of fact must be reviewed for plain error, to determine whether they are supported by evidence and not erroneous as a matter of law. *In re Pack Monadnock*, 147 N.H. 419, 423-24 (2002). The trial court's findings of fact must be upheld if, on the reported evidence, any reasonable person could so find. *Id.* at 424.

As standing is "an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree or evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (discussing standing in Article III cases). "[A]t the pleading stage, the plaintiff bears the burden of establishing sufficient factual matter to plausibly demonstrate [its] standing to bring the action." *Cowels v. Fed. Bureau of Investigation*, 327 F.Supp.3d 242, 248 (D. Mass. 2018) (citing *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2011) (discussing standing in Article III cases).

1. No Plain Error in the Determination that the Acts Committed by the Trustees Were Not Extraordinary

The trial court committed no plain error in determining that the Trustees' alleged acts were not extraordinary and that Second Church sought extraordinary relief. A reasonable person could have found, based on the record, that Second Church sought extraordinary relief which included reopening 20 years of probate accountings, appointing an independent trustee and interfering with the common law and statutory authority of the DCT. That extraordinary relief was sought in response to less than extraordinary actions taken by the Trustees that failed to require such dramatic relief.

"The nature of the acts complained of or the remedy sought affects the probability that a court will allow a private plaintiff to proceed against a charity." *Blasko, supra*, at 61. "[R]equests for limited remedies and petitions alleging extraordinary violations of the express philanthropic purpose of a given charity have prompted courts to grant standing…" *Id.* at 62. Second Church alleged that the Trustees' acts "constitute flagrant self-dealing [that] pervert the purposes of the Clause 8 Trust." Appellant's Brief at 27. Specifically, Second Church argues that the Mother Church is now the sole beneficiary of the Clause 8 Trust. Appellant's Brief at 27.

Second Church fails to acknowledge, however, that under the terms of Mrs. Eddy's Will, the Clause 8 Trust serves both the maintenance and repair of the Mother Church building and the promotion and extension of Christian Science as taught by Mrs. Eddy. Trustees' App. at 150. The Mother Church is now, and has always been, a beneficiary of the Clause 8 Trust. Moreover, the 1993 Order specifically required the Trustees to expend the Clause 8 Trust income for the benefit of keeping in repair the Mother Church and the building at 385 Commonwealth Avenue. App. at 352. Only if any income remained at the end of any accounting year could the Trustees spend such funds on the promotion and

extension of the religion of Christian Science. App. at 352. Even then, the 1993 Order allows the Trustees to exercise their discretion whether to spend or not. App. at 352.

Additionally, Second Church claims that the Trustees' failure to produce annual independent audits in violation of the 2001 Order constitutes an "extraordinary act" that should allow them special interest standing. Appellant's Brief at 27. The DCT, however, pointed out to the trial court that the Trustees had "submit[ted] to the Court and the Charitable Trusts Unit annual financial reports prepared in accordance with Generally Accepted Accounting Principals…" that contain a "level of investment description [that] is no greater than what the Charitable Trusts Unit typically sees in the annual audited financial statements filed by larger charitable organizations…" App. at 345.

Second Church relies on *Stern v. Lucy Webb Hayes Nat'l Training Sch. for Deaconesses and Missionaries,* 367 F. Supp. 536 (D.D.C. 1973), and *Valley Forge His. Soc'y v. Washington Mem. Chapel*, 426 A.2d 1123 (Pa. 1981). Yet in both cases the Attorney General was not a party to the litigation, and in *Valley Forge* the Attorney General specifically declined to participate after receiving notice. *Valley Forge His. Soc'y*, 426 A.2d at 1127; *Stern*, 367 F. Supp. at 537.

Additionally, in *Stern*, the plaintiffs alleged an extraordinary act: that the directors of the nonprofit organization were using their position to enrich themselves personally. 367 F.Supp. at 538. Second Church has not accused the Trustees of any such egregious action nor could they; nothing in the record even remotely suggests personal self-dealing. In *Valley Forge*, the petitioner had standing based upon its close financial and tenancy relationship with the charitable organization. 426 A.2d at 1127. Second Church has no close relationship with the Trusts.

A reasonable person could find that Second Church's claim of extraordinary acts based on administrative deficiencies does not rise to the level of

extraordinary acts that would grant special interest standing to Second Church. Further, the requested relief, including the appointment of an independent trustee, reopening twenty years of accountings, objecting to the unitrust conversion by the Trustees, is extraordinary for the harms alleged. As Second Church bears the burden of proof in establishing the necessary facts to prove standing, a reasonable person could have found with the record presented that the actions taken by the Trustees were not extraordinary and the relief requested by Second Church was extraordinary. Second Church, therefore, can establish no plain error.

2. No Plain Error in the Determination that the Trustees Have Not Acted in Bad Faith

The trial court committed no plain error in determining that Second Church offered insufficient evidence of outright fraud or bad faith on the part of the Trustees, such that a reasonable person must conclude that the Trustees did in fact commit fraud or bad faith. "[A] demonstration by the putative plaintiff that charitable funds have been intentionally misapplied often contributes to a finding that the plaintiff is sufficiently interested to maintain a suit against a charity." *Blasko*, *supra*, at 64.

The cornerstone of Second Church's argument that the Trustees have committed fraud and acted in bad faith is the fact that the Trustees in recent years distributed Clause 8 Trust funds solely to the Mother Church. Second Church claims "it is undisputed that the express purpose of the Clause 8 Trust is to promote and *extend* Christian Science as taught by Mrs. Eddy…" Appellant's Brief at 30 (emphasis in original). Second Church overlooks plain language in Clause 8 that expressly states another purpose, namely, to use "such portion of [Mrs. Eddy's] residuary estate as may be necessary…for the purpose of keeping in repair the church building and…any building or buildings which may be, by necessity or convenience, substituted therefor…" Trustees' App at 150. Further, Second Church ignores the fact that the Trustees, under the 1993 Order, were

required to make distributions of the Clause 8 Trust's income primarily for the purpose of keeping in repair the Mother Church building and the building at 385 Commonwealth Avenue. App. at 352. The 1993 Order allowed the Trustees to apply any excess income, in their discretion, to promoting and extending the religion of Christian Science. App. at 352. The Trustees could do so, however, only if funds remain after maintenance of the Mother Church, and, then, only if they decide to do so in the exercise of their discretion. The Trustees cannot have acted in bad faith by following an earlier order of the probate court.

Second Church cites *In re Green Charitable Trust* in support of its argument for standing based on bad faith and mismanagement of trust assets. 431 N.W.2d 492 (Mich. Ct. App 1988). But, *In re Green Charitable Trust* does not make a finding that unnamed charitable beneficiaries had special interest standing based on the bad faith of the trustees. *Id.* at 494, 504. In that case, the *named* charitable beneficiaries of a charitable trust brought an action against the trustees of said trust alleging various breaches of fiduciary duties made in bad faith. *Id*. at 493-94, 504. Unlike Second Church (or any branch church) named beneficiaries always have standing. RSA 564-B:2-201(d).

The trial court found that Second Church failed to present "sufficient evidence of outright fraud or bad faith," March 2018 Order, Appellant's Brief at 64, in denying the second *Blasko* factor. As Second Church bears the burden of proof in establishing the necessary facts to prove standing, a reasonable person could have found with the record presented that no fraud or bad faith had taken place. Second Church, therefore, can establish no plain error.

3. No Plain Error in the Determination that the DCT has been Effective in Policing the Trustees' Conduct

The trial court committed no plain error in determining that the DCT has been effective in policing the Trustees' conduct. Based on the evidence in the

record, a reasonable person could have found that the DCT has been diligent in exercising its oversight authority over the Trusts.

Courts in a state with a vigilant, active, and effective division of the attorney general dedicated to enforcement of charities are likely to deny standing to private plaintiffs who lack support from the attorney general. *Blasko* at 68. Since 1943, when this state became the first in the nation to enact legislation to codify the Attorney General's common law jurisdiction over charities, New Hampshire has had an active and effective Charitable Trusts Unit. *See generally* RSA 7:19, et. seq; Marion R. Fremont-Smith, *Governing Nonprofit Organizations: Federal and State Law and Regulation* 311-14 (2004). Evidence in the record, moreover, supported the trial court's conclusion that the DCT diligently exercised its authority over the Trusts since 1943, and, in particular, during the events that gave rise to Second Church's complaint. March 2018 Order, Appellant's Brief at 53-54.

Second Church claims, as evidence of the DCT's lack of diligence, that the DCT has allowed the Trustees to take exclusive control of the Clause 8 Trust, participated in the 1993 Order and then allowed funds to be expended under the terms of that order. Appellant's Brief at 31. As discussed *supra*, the 1993 Order arose out of the DCT's discovery that the Trustees' had borrowed $5 million from the Clause 8 Trust. As a result of that alleged imprudence, the DCT and the Trustees agreed on strict distribution requirements in order to preserve and protect the corpus of the Clause 8 Trust. The DCT's involvement in the 1993 Order, in other words, occurred as part of the DCT's ongoing, diligent efforts to exercise oversight. Second Church's complaints about the 2001 Order fare no better. The DCT's involvement in the 2001 Order helped to lower the costs of management and administration of the Trusts and thus helped to preserve their value. Again, through its participation in the 2001 Order, the DCT diligently exercised oversight.

Since 2001, the probate court and the DCT have annually reviewed the accounts of the Trustees. Neither the probate court nor the DCT have caught every single issue that Second Church has now raised. Second Church, however, fails to acknowledge that after being made aware of its specific concerns, the DCT opened an investigation and took action to correct several practices of the Trustees. Trustees' App at 172. The trial court noted that during the present dispute, the DCT has been an active participant, by highlighting the dual roles of the individuals serving as Trustees and Directors of the Mother Church and by working with the parties to mitigate the effect of that conflict for the benefit of the beneficiaries of the Trusts. Appellant's Brief at 65-66. Second Church may not agree with the final result, but the DCT has worked with the Trustees to correct a number of issues raised by Second Church.

Second Church cites several cases in support of its argument that purport to show that the lack of attorney general enforcement gives rise to special interest standing for charitable beneficiaries. *See, Family Fed'n for World Peace & Unification Int'l*, 129 A.3d 234 (D.C. 2015) and *Holt v. College of Osteopathic Physicians & Surgeons*, 394 P.2d 932 (Cal. 1964). Second Church's cases, however, are inapposite. In *Holt*, the directors of a non-profit corporation, the College of Osteopathic Physician and Surgeons, attempted to alter the mission of the college to join the Association of American Medical Colleges and to drop the college's osteopathic mission. 394 P.2d at 938. The California attorney general, prior to litigation, had chosen to take no action against the proposed change in charitable purpose of the college as it "would not be detrimental to the public interest." *Id.* at 936. The college, however, had received over $1.5 million in donations for use in teaching, research, and the general promotion of osteopathy. *Id.* at 938. The court rightly held that the California attorney general's unwillingness to involve itself with the change in charitable purpose was incorrect given that the purpose restrictions placed on funds held by the college would be

violated if the charitable purpose were to change. *Id.* As to *Family Fed'n*, the Attorney General was simply not a party to the litigation. 129 A.3d at 238.

As Second Church bears the burden of proof in establishing the necessary facts to prove standing, a reasonable person could have found with the record presented that the DCT has been effective in policing the Trustees conduct. Second Church, therefore, can establish no plain error.

4. No Plain Error in the Determination that Second Church is Not a Part of a Defined and Limited Class of Entities

The trial court committed no plain error in determining that Second Church is not a part of a defined and limited class of possible beneficiaries as a reasonable person could have found that the size of the potential class of beneficiaries was too large to qualify.

"The general rule is that one who is merely a possible beneficiary of a trust, or a member of a class of possible beneficiaries, is not entitled to sue for enforcement of the trust." *Alco Gravure, Inc. v. Knapp Found.*, 479 N.E.2d 752, 755 (N.Y. 1985). However, a court may find that a plaintiff has special interest standing where the class of entities is "sharply defined and its members are limited in number." *Hooker*, 579 A.2d at 614. The policy reasons are apparent: no charitable trust should expect to defend against claims made by any disappointed applicant for the trust's beneficence.

The terms of Mrs. Eddy's Will provide that the income from the Clause 8 Trust is to be used, *inter alia*, "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by" Mrs. Eddy. Trustees' App. at 150. Second Church is not a named beneficiary. The class of potential beneficiaries far exceeds the approximate 1,400 Christian Science branch churches around the world. Appellant's Brief at 35. In fact, Second Church has pointed out that in the past the income from the Clause 8 Trust has been used for a number of different purposes, such as distributions to branch churches, payments for

Christian Science lectures, subsidies for Christian Science Reading Rooms, supplies of the Herald of Christian Science to groups in developing areas, and payments for gift subscriptions to the Christian Science Monitor for public and school libraries outside North America. App. at 25-27. The provisions of Mrs. Eddy's Will, and Second Church itself, acknowledge that any person or organization created for the purpose of, or engaged in, promoting and extending the religion of Christian Science is a possible beneficiary of the Clause 8 Trust. The fact that branch churches have been distributees of funds from the Clause 8 Trust in the past does not change the fact that the potential class of beneficiaries is neither sharply defined nor limited in number.

Second Church relies on several cases to bolster its claim that it is one of a "sharply defined and limited number" of beneficiaries. *See Y.M.C.A. of the City of Washington v. Covington*, 484 A.2d 589 (D.C. 1984); *Alco Gravure*, 479 N.E. 2d at 755; *Family Fed'n*, 129 A.3d at 240. In none of those cases, however, is the class of beneficiaries as large and nebulous as the class to which Second Church belongs in this case. For example, in *Y.M.C.A*, the plaintiffs were dues paying members of one branch of the Y.M.C.A. that enjoyed particular benefits from the facilities in question that the general public did not. *Y.M.C.A.*, 484 2.d at 591-92. Similarly, the plaintiffs in *Alco Gravure* were employees of corporations founded by Joseph Knapp contesting the dissolution of the Knapp Foundation, whose primary purpose was to assist Joseph Knapp corporation employees and their families. 479 N.E.2d at 754-56. Finally, the plaintiffs in *Family Fed'n* were two ousted directors of the charitable corporation and three long-time major recipients of funding from the charitable corporation. 129 A.3d at 240. In all three of these cases, the plaintiffs came from a significantly smaller and much more sharply defined set of potential beneficiaries that had more of an interest in the charitable trusts and corporations than the general public. Second Church fails to demonstrate that it is in such a class.

As Second Church bears the burden of proof in establishing the necessary facts to prove standing, a reasonable person could have found with the record presented that Second Church is not part of a sharply defined class of beneficiaries that is limited in number. Second Church, therefore, can establish no plain error.

5. No Plain Error in the Determination that Other Case Specific Considerations Do Not Weigh In Favor of Standing

The trial court committed no plain error in determining that Second Church's role as a branch church does not leave it well positioned to monitor and enforce the terms of the Trust such that Second Church's standing is "socially desirable." The general policy is that "charities not be harassed by suits brought by a near-infinite number of potential beneficiaries…" *Blasko*, at 74. However, "courts have used the 'special interest' doctrine to grant standing in those cases where there seemed to have been an egregious wrong which would otherwise go uncorrected…in part, by the fact that such suits are socially desirable and fulfill praiseworthy goals." *Id.*

The trial court found that the DCT's active oversight diminished the social desirability of Second Church's standing. The court observed that Second Church has actively engaged the DCT and that the DCT has continually acted on that information. Appellant's Brief at 67. Second Church stated that it "is certainly socially desirable to enforce the wishes of a testator…" App. at 482. The trial court agreed with that sentiment when it found that the DCT's involvement with the oversight of the Trusts diminished the social desirability of granting special interest standing to Second Church. Appellant's Brief at 67. As Second Church bears the burden of proof in establishing the necessary facts to prove standing, a reasonable person could have found with the record presented that there was no social desirability of granting special interest standing. Second Church, therefore, can establish no plain error.

As discussed above, the trial court properly applied the *Blasko* factors in determining that Second Church lacks standing. Because the trial court did not commit plain error, this court should affirm the trial court decision.

III. THE TRIAL COURT PROPERLY DENIED SECOND CHURCH'S REQUEST FOR APPOINTMENT OF AN INDEPENDENT TRUSTEE.

Even if Second Church had standing to seek appointment of an independent trustee, the trial court committed no unsustainable exercise of discretion in determining not to appoint an independent trustee at this time.

In 1913, Josiah E. Fernald and the then-serving Directors of the Mother Church were appointed to serve as the initial Trustees of the Trusts. App. at 434. In 1949, Judge Lord declined to fill the vacancy created by Mr. Fernald's death and held that the five surviving trustees would constitute the trustees of the Trusts. App. at 436. Since that time, the Directors of the Mother Church have served as the Trustees of the Trusts. March 2018 Order, Appellant's Brief at 79. There is no current vacancy in the ranks of the Trustees. The trial court declined to "effectively vacate Judge Lord's 1949 Order by adding a sixth member to the board of Trustees." March 2018 Order, Appellant's Brief at 79.

Under New Hampshire statutory law, "[i]f one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled." RSA 564-B:7-704(b). Additionally, "[w]hether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust." RSA 564-B:7-704(e); *see also* RSA 564:10 ("If a trustee appointed in a will, no provision being made therein for perpetuating the trust...shall die, resign or be removed, a trustee may be appointed by the judge in his stead..."). The trial court had the discretionary authority to appoint an independent trustee. The trial court held that it has "directed additional protections be put in place to ensure that the

Trustees honor their obligations to treat all potential beneficiaries impartially…" and thus, the trial court did not find that there was good cause to appoint an independent Trustee. March 2018 Order, Appellant's Brief at 79.

Moreover, the DCT raised First Amendment concerns with respect to the potential court appointment of an independent trustee who professes the belief of Christian Science, or is at least not hostile to it. The First Amendment "prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). There are a number of ways a civil court may settle such disputes, but whatever method is employed it must not involve "consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.*; *accord. Berthiaume v. McCormack*, 153 N.H. 239, 245 (2006) (Courts should not entangle themselves "in matters of doctrine, discipline, faith or internal organization..." of religious organizations).

The DCT questioned the court's ability to appoint an independent trustee who fits Mrs. Eddy's religious intention. App. at 429. In 1912, this Court held that Mrs. Eddy "intended the trust to be administered by persons professing the belief she desired to promote." *Glover*, 76 N.H. at 404. Second Church seeks to install an independent New Hampshire trustee who "either profess[es], or is not hostile to, the belief Mrs. Eddy desired to promote…" Appellant's Brief at 41. Since the current Trustees of the Clause 8 Trust are also the Directors of the Mother Church, grantmaking decisions concerning the proper way to "promote and extend" the religion of Christian Science may often involve their interpretation of a doctrinal matter.

The trial court avoided this issue entirely through the recognition that the DCT has taken affirmative steps to mitigate the "embedded conflict of interest" of the Directors serving as Trustees by directing "additional protections be put in

place to ensure that the Trustees honor their obligations to treat all potential beneficiaries impartially." March 2018 Order, Appellant's Brief at 79.

There was no unsustainable exercise of discretion in the trial court's decision that an independent trustee is unnecessary given the involvement of the DCT in overseeing the administration of the Trusts, and thus, the trial court did not engage in an unsustainable exercise of discretion.

CONCLUSION

For the foregoing reasons, the Attorney General, Director of Charitable Trusts respectfully requests that this Honorable Court affirm the judgment below.

The Director of Charitable Trusts requests a 15-minute oral argument.

Respectfully submitted,

ATTORNEY GENERAL,
DIRECTOR OF CHARITABLE TRUSTS

By his attorneys,

Gordon J. MacDonald
Attorney General

_/s/_ Thomas J. Donovan_____
Thomas J. Donovan, No. 664
Director of Charitable Trusts

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Assistant Director of Charitable Trusts

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limitation set out in Supreme Court Rule 16(11), and contains 7,883 words.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State's brief shall be served on counsel of record through the New Hampshire Supreme Court's electronic filing system.

/s/ Thomas J. Donovan
Thomas J. Donovan
NH Bar No. 664

Date: December 21, 2018

DIRECTOR OF CHARITABLE TRUSTS' ADDENDUM

Table of Contents

Relevant Statutes

RSA 7:19 [Authority; Register Authorized; Pecuniary Benefit Limited]

I. RSA 7:19 through 32-a inclusive shall apply to all trustees holding property for charitable purposes and to all persons soliciting for charitable purposes or engaging in charitable sales promotions; and the attorney general shall have and exercise, in addition to all the common law and statutory rights, duties and powers of the attorney general in connection with the supervision, administration and enforcement of charitable trusts, charitable solicitations, and charitable sales promotions, the rights, duties and powers set forth in RSA 7:19 through 32-a inclusive. The attorney general shall also have the authority to prepare and maintain a register of all charitable trusts heretofore or hereafter established or active in this state.

* * * *

RSA 564:10 [Appointing New Trustee]

If a trustee appointed in a will, no provision being made therein for perpetuating the trust, shall decline to accept it, or shall die, resign or be removed, a trustee may be appointed by the judge in his stead, after notice to the persons interested in the trust estate.

RSA 564-B:2-201 [Role of Court in Administration of Trust]

* * * *

(d) Each of the following persons may commence a judicial proceeding for the purpose of enforcing the terms of the trust: a settlor; a qualified beneficiary; a trustee; a person who, under the terms of the trust, has the power to enforce the terms of the trust; and in the case of a charitable trust, the director of charitable trusts.

RSA 564-B:4-405 [Charitable Purposes; Enforcement]

* * * *

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

RSA 564-B:7-704 [Vacancy in Trusteeship; Appointment of Successor]

* * * *

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

The State of New Hampshire

HILLSBOROUGH, S.S. PROBATE COURT

Re: OPTIMA HEALTHCARE, INC., OPTIMA HEALTH, INC., CATHOLIC MEDICAL CENTER, ELLIOT HOSPITAL OF THE CITY OF MANCHESTER, AND AFFILIATED ENTITIES - #99-339

A joint petition was filed with the Court by the State of New Hampshire, Optima Healthcare, Inc., Optima Health, Inc., Catholic Medical Center, Elliot Hospital of the City of Manchester, and Affiliated Entities requesting that the Court address issues as it relates to dissolving, disaffiliating or taking apart the merger which had been entered into by the parties for several years. The objective or their goal is to place each party in the same position as they existed prior to the merger and have each continue to operate as an on-going and viable business during and after the period of dissolution.

The parties agree that the dissolution will affect the community as a whole but particularly individuals or entities in the health field who are employed by, or physicians who work for the entities or vendors and organizations which have a direct financial interest in the outcome. However, the interest of the parties varies from the direct to indirect, and members of the community who are concerned as to the quality of healthcare that will be provided in the future.

However, from the principal parties point of view, if everyone who has a concern is allowed to participate as a party in interest, the cost and time expended will be prohibitive and the probability

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Raymond A. Cloutier
Judge of Probate

that the goals of the parties will be reached will be diminished.

The Court received several appearances, and requested that all parties who had filed an appearance state what their interest in the proceedings was and all have done so.

Attorney Walter Maroney of the Attorney General's office and the other parties who had joined in the petition, objected to the participation of the parties who filed an appearance and a hearing was held.

The Supreme Court, in the matter of Clipper Affiliates, Inc. v. Checovich, 138 NH 271 (1994), gave us some guidance as to who should be allowed to participate in the proceeding. The Court said that their interest must be "...direct and apparent; such as would suffer, if not indeed be sacrificed, were the Court to deny the privilege." In the present proceeding, the Attorney General's office on behalf of the State of New Hampshire has appeared to protect the public interest and to oversee that the charitable assets are not wasted.

At the hearing, the parties were given an opportunity to state what their direct and apparent interests were as well as their request for relief. The Court divided the parties into three (3) classes. The first class is the principal or main parties who are

the State of New Hampshire, Optima Healthcare, Inc., Optima Health, Inc., Catholic Medical Center, Elliot Hospital of the City of Manchester, and the Affiliated Entities.

The second class is collateral or peripheral parties who are individuals or entities who have a direct interest in the outcome due to contracts which are either secured or unsecured or who provided services or goods or are employed or are a part of the whole.

The third class has an interest but it is indirect or indeterminate in that they have an interest in the outcome but it does not relate to issues which were raised by the principal parties as to how to dissolve or disaffiliate the merger of the hospitals.

Thus the Court, after having reviewed the issues presented by the parties who filed an appearance, rules as follows:

1. The parties to the petition are the principal or main parties and are properly before the Court as to all issues.

2. The second class is the collateral or peripheral group which, according to the New Hampshire Supreme Court decision, the Court finds has an interest which is direct and apparent and would suffer if they would not be allowed to participate in the

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proceedings. However, their interest is limited to specific issues and they do not have the same scope of interest as the main litigants and they are as follows:

The New Hampshire Physicians Organization; The V.N.A. Foundation; Patrick J. Lawrence, M.D., J. Beatty Hunter, M.D., William A. Bradley, M.D., Robert C. Dewey, M.D., Bruce G. Hook, M.D., Connor J. Haugh, M.D., and D. Brian Shea, M.D., who operate as the New England Heart Institute; the Cardiology Associates who operate as the Heart Center; and HealthSource.

These individuals and/or legal entities are requested to file for a hearing within ninety (90) days. Their request shall contain a statement of their interest which is subject to the jurisdiction of this Court and stating the relief sought. The collateral or peripheral class may participate in the proceedings only to the extent that it is allowed by the Court and subject to such conditions and limitations as the Court may impose.

The Court shall notify the special master and all persons of the class who are affected by this order. The special master may, at her discretion, invite those individuals or legal entities to participate in any meeting, discussion, or mediation process involving an issue or transaction as to which the parties have

asserted an interest. The special master shall notify each party of the scheduling of any formal hearings as defined in the protocol to which an issue or transaction as to which the party has asserted an interest shall be acted upon. Such members of the class shall have the status of the parties in any formal hearings before the special master with respect to any issue or transaction as to which it has asserted an interest and with respect to any recommendation of the special master regarding such issue or transaction.

All members of the collateral or peripheral class shall be bound by any order of this Court regarding confidentiality or documentation or information. All will appeal from the special master's order directly to the Probate Court or to the Supreme Court.

3. The third class of appearances is those that the Court finds to be indeterminate or indirect and those individuals are:

Andre Martel, pro se, who represents the French-Franco American population, all descendants of Msgr. Hevey's family and other benefactor's who are beneficiaries and heirs to the Catholic Medical Center as a full service acute care hospital, the Beliveau Family and their heirs, and all persons who have used, are using, or will use Catholic Medical Center as a full

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service acute care hospital; and Kathleen Souza, pro se, and Barbara Hagan, pro se, who represent the Manchester Area Right to Life Committee Members.

The community action group to save Catholic Medical Center failed to appear, but Mr. Andre Martel testified that he retained the attorney to represent that group. Their interest is their concern for the welfare of the community.

The Court rules that the appearances of the members of the class whose interest are indirect or indeterminate will be dismissed or stricken from the records and they will not be allowed to participate in the proceedings.

Attorney Walter Maroney of the Attorney General's office who represents the State of New Hampshire, has informed the Court that his department was willing to accept written comments from the indirect or indeterminate members of this class as it relates to the summary of disputed issues or any periodic reports submitted by the board of director's of the Elliot Hospital or Catholic Medical Center, or interim orders, or the plan of disaffiliation which will be submitted to this Court or any recommendation of the special master and the final report of the special master which will be submitted to the Probate Court.

Raymond A. Cloutier
Judge of Probate

The State of New Hampshire

HILLSBOROUGH, S.S. PROBATE COURT

Re:

The Court has no objection to such a proposal providing that all parties understand that they have no standing in the litigation and that their comments will serve to assist the Attorney General's office in understanding the concerns of the community, and carrying out the objectives of the Charitable Trust.

Dated at Nashua this 27th day of May A.D. 1999.

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Raymond A. Cloutier
Judge of Probate

The State of New Hampshire

HILLSBOROUGH, S.S. PROBATE COURT

IN RE: HILLCREST TERRACE AND WOMEN'S AID HOME d/b/a PEARL MANOR - #2005-647

Barbara Hagan, Harriet E. Cady and Kenneth Brooks asked the Court to intervene in the matter of Hillcrest Terrace and Women's Aid Home d/b/a Pearl Manor who had filed a petition requesting cy pres relief.

Barbara Hagan and Harriet E. Cady are members of the House of Representatives but appeared in their individual capacity and not as agent or authorized representative of the House.

Kenneth Brooks formerly resided at Hillcrest Terrace and appeared as a concerned individual.

The parties were allowed to testify and tell the Court what their interests were. The Court after hearing all the parties rules that they have no interest which is direct and apparent. Their interests and concerns are general in nature and not different than the public at large and have no specific or direct identifiable interest. They have expressed their concern to the Director of Charitable Trusts and he had a meeting with the parties.

The New Hampshire Supreme Court in the matter of Clipper Affiliates v. Checovich, 138 NH 271, p. 277, stated, "We note that a person who seeks to intervene in a case must have an interest in the subject matter of the litigation, " *see Carlton v. Patterson, 29 NH 580, 587 (1854).* "Further, that interest must be 'direct and apparent;

such as would suffer, if not indeed be sacrificed, were the court to deny the privilege'," *see Pike v. Pike, 24 NH 384, 394 (1852).*

In the Petition of Burnham, 74 NH 492, p. 494, the Supreme Court said, "After that was done and it was determined that the trust was charitable, it became the duty of the [Director of Charitable Trust] to see that the rights of the public in the trust were protected and that it was properly executed. The heirs had no interest in the question apart from the general public, whose rights were represented by the [Director of Charitable Trust]," *see Haynes v. Carr, 70 NH 463, 482, 484.*

The request to intervene by Barbara Hagan, Harriet E. Cady and Kenneth Brooks is denied.

Dated at Manchester on this 16th day of June A.D. 2005.

Raymond A. Cloutier
Judge of Probate

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - Probate Division - Nashua
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NOTICE OF DECISION

THOMAS J. DONOVAN, ESQ
NH ATTORNEY GENERAL'S OFFICE - DOJ
33 CAPITOL STREET
CONCORD NH 03301-6397

Case Name: **Nashua Center for the Arts**
Case Number: **316-2017-EQ-00191**

On December 13, 2017, Judge Patricia B Quigley issued orders relative to:

Assented to Motion to Approve Proposed Order and Cancel Jan 2, 2018 Hearing - Granted
Motion is GRANTED and the hearing is cancelled

ORDER - please see attached

Any Motion for Reconsideration must be filed with this court by December 24, 2017. Any appeals to the Supreme Court must be filed by January 13, 2018.

December 14, 2017

Sherry L. Bisson
Clerk of Court

C: Nashua Center for the Arts; Joseph W. Kenny, ESQ; Paul Staller; City of Nashua; Steven A. Bolton, ESQ; J. Daniel Marr, ESQ; William Henry Barry, III, ESQ; Stephen E Carter; Attorney General's Office

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

HILLSBOROUGH COUNTY

9TH CIRCUIT – PROBATE DIVISION – NASHUA

In re: Nashua Center for the Arts

Case No. 316-2017-EQ-00191

ORDER

The Court has reviewed the Petition for a Decree of Dissolution of the Nashua Center for Arts as well as the relief sought in the Petition and acknowledges the assent thereto by the New Hampshire Attorney General, Director of Charitable Trusts. On February 27, 2017, after due consideration of the Petition, the Court Ordered Nashua Center for the Arts to publish a legal notice for two successive weeks in the Nashua Telegraph to provide notice to any unknown interested persons by publication. The Notice was duly published. As a result of the Publication, a Motion to Intervene on behalf of the City of Nashua was filed on March 27, 2017. A hearing was held on July 14, 2017 in Courtroom 6 of the 9th Circuit Court – Nashua, with regard to the said Motion to Intervene and on August 30, 2017, after further consideration by the Court, the Motion to Intervene was denied. Therefore, under the provisions of RSA 292-9, the Honorable Court hereby GRANTS the Petition approving the proposed distribution and dissolution of the Nashua Center for Arts as set forth in the Petition and as approved by unanimous vote of its Board of Directors. The Court approves the transfer of the assets of the Nashua Center for Arts to the Currier Museum Restricted Nashua Fund. The establishment of this fund for Nashua will enable the Currier Museum of Art to create arts and educational programs and to manage and deliver those programs for the benefit of residents of greater Nashua. This programming will take place both at the Currier and in Nashua and may be implemented in collaboration with other area tax-exempt organizations or solely by the Currier's staff, depending on the proposed project. The stored artwork referred to in paragraph 9 of the Petition of the Nashua Center for Arts held by the Nashua Center for

Arts is authorized to be donated to local non-profit organizations which may include the Currier Museum or the City of Nashua for display in Nashua as the Board of Directors of the Nashua Center for Arts deems appropriate. Due to the granting of the Decree of Dissolution, the Court need not address the alternative requests contained within the Petition. The Court also orders that the Currier Museum Restricted Nashua Fund will succeed to and receive any future requests, devises, gifts, grants, and other promises in a Will or other instrument made to the Nashua Center for Arts subsequent to its dissolution.

SO ORDERED.

DATED: Dec 13, 2017

Circuit Court Judge, Probate Division

Patricia B. Quigley