ORIGINAL

NO. 26-625

FILED
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SUPREME COURT, U.S.

IN THE SUPREME COURT
OF THE UNITED STATES

PETER JUDSON,

Petitioner,

v.

ROBERT I. FRIEDMAN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court of Pennsylvania

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PETITION FOR A WRIT OF CERTIORARI

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October 6, 2026

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QUESTION PRESENTED

At the center of this case is whether a Settlor of an irrevocable trust has a 14th Amendment right to set the terms for their own estate without fear of a fiduciary or State Court using future laws to usurp those very terms. The law at issue, the UNIFORM PRINCIPAL AND INCOME ACT (UPIA), has been adopted in thirty-six states plus the District of Columbia and modified versions have been adopted in the remaining fourteen states. As such, this is a national issue for State Courts to wrestle with and uniformity has not been the standard to date. The disputes at hand are:

1. Whether the probate exception to federal diversity jurisdiction applies to the instant case.

2. Whether the UPIA is, in its nationwide application, a Federal statute masquerading as State law, with the same universal effect and obligations as laws contained in the United States Constitution and in laws passed by the Congress of the United States.

3. Whether the Governing Instrument itself, for all practical purposes, is a Federal statute written by the individual, carrying a weight and authority upon the Trusts it governs, and "if it is not unlawful, must [it] prevail"[1] over conflicting Federal and State statutes, in spite of where the Trusts happen to be sitused.

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[1] *In re Est. of Cassidy*, 2023 Pa. Super 101, 296 A.3d 1219, 1223 (2023) (citing *In re Wilton*, 921 A.2d 509, 513 (Pa. Super. 2007))

4. Whether the State Courts in Pennsylvania and Massachusetts erred in their conflicting application of the UPIA to three 1992 irrevocable Trusts in clear violation of the terms of the Governing Instruments.

5. Whether the State Courts in Pennsylvania and Massachusetts deprived the Petitioner and the Settlors of their due process of law resulting in an unjustified taking of the Petitioner's property, a usurping of the Settlors' rights to set the terms of their own legacy, and as such, a violation for all of the 14th Amendment.

PARTIES TO THE PROCEEDINGS

The Petitioner is Peter Judson who is one of the Remainder Beneficiaries of the subject Trusts of this action.

The Respondent is Robert I. Friedman who is the Co-Trustee and sole Fiduciary of the subject Trusts of this action.

Denise Jo Levy is a Co-Trustee and the Income Beneficiary of the subject Trusts. She was never a Respondent in any of the proceedings and the Massachusetts Courts erred in listing her as such.

STATEMENT OF RELATED PROCEEDINGS

In Re: Hess Kline, Deceased
No. 64 MAL 2026
Supreme Court of Pennsylvania
Petition Denied on July 15, 2026

In Re: Hess Kline, Deceased
No. 637 EDA 2024
Superior Court of Pennsylvania
Judgment entered December 31, 2025

In Re: Estate Of Hess Kline, Deceased
No. 1988-X3737
Court Of Common Pleas Of Montgomery County, Pennsylvania Orphans' Court Division
Judgment entered December 6, 2023

Peter Judson, Petitioner v. Robert I. Friedman
No. 24-1258
Supreme Court of the United States
Petition Denied on October 6, 2025

In The Matter Of The Trusts Under The Will Of Helyn W. Kline
No. SJC-13579
Massachusetts Supreme Judicial Court
Judgment entered November 5, 2024

In Re: Trusts U/W Of Helyn Kline
No. BA22P1993P0
Commonwealth Of Massachusetts The Trial Court Probate And Family Court Department, Barnstable Division
Judgment entered August 3, 2023

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OPINIONS BELOW

The opinion of the Superior Court of Pennsylvania (PA Superior Court), No. 637 EDA 2024, is reported at 2025 PA Super 295 and reproduced at App., infra, 1a. The PA.R.A.P. 1925(a) opinion of the Court Of Common Pleas Of Montgomery County, Pennsylvania Orphans' Court (PA Lower Court), No. 1988-X3737, is unreported and reproduced at App., infra, 21a. The opinion of the Massachusetts Supreme Judicial Court (MA SJC), No. SJC-13579, is reported at 244 N.E.3d 1011 and 495 Mass. 1 and reproduced at App., infra, 44a. The opinion of the Commonwealth Of Massachusetts The Trial Court Probate And Family Court Department, Barnstable Division (MA Lower Court), No. BA22P1993P0, is unreported and reproduced at App., infra, 61a.

JURISDICTION

The PA Superior Court issued its opinion on December 31, 2025. That judgment became final on July 15, 2026 when the Supreme Court of Pennsylvania denied the Petitioner's Petition for Allowance of Appeal. The December 31, 2025 PA Superior Court ruling conflicts with the November 5, 2024 MA SJC ruling for the very same issues, with both Courts deciding an important question of constitutional law that has not been, but should be, settled by this Court. This Court has jurisdiction under 28 U.S. Code § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 14th Amendment, Section 1 is reproduced at App., infra, 73a. United States Constitution, Article IV, Section 1 is reproduced at App., infra, 74a. Pennsylvania's 20 Pa.C.S.A. §§ 8103-8104 is reproduced at App., infra, 75a. Pennsylvania's 1 Pa.C.S.A. § 1927 is reproduced at App., infra, 82a. Massachusetts' G. L. c. 203D, §§ 3-5 is reproduced at App., infra, 83a.

STATEMENT

Facts/Procedural History:

Hess Kline died testate, a resident of Montgomery County, Pennsylvania on August 7, 1985. In the decedent's Governing Instrument, dated August 1, 1977, with a codicil dated April 28, 1982, two Trusts were established for the benefit of the decedent's wife, Helyn W. Kline, a marital Trust and a non-marital Trust. Helyn died a resident of Barnstable County, Massachusetts on May 19, 1988, and upon her death executor David J. Kaufman (Kaufman) on January 3, 1989 filed a first and final accounting and petition for adjudication of the estate. In early 1992 six Trusts were formed under Hess' August 1, 1977 Governing Instrument and Helyn's August 3, 1977 Governing Instrument[2] for the benefit of their daughters, Denise

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[2] These two Governing Instruments are virtually identical in their entirety and identical with reference to the issues in the instant case. References herein are to the Hess Kline Governing Instrument.

Jo Levy (Income Beneficiary) and Barbara Ann Eldridge (Sister).[3] Under these separate Trusts, each daughter would be entitled to the entirety of the Trust's net income for the duration of their lives and upon their deaths, the principal would be granted to their children and the Trusts would be dissolved. The Income Beneficiary has two living adult sons, Stephen H. Judson (Other Remainder Beneficiary) and Peter Judson (Petitioner), each of whom is an equal remainder beneficiary of the subject Trusts.[4]

The original trustees named in the Governing Instrument were Hess Kline, Nathan Silverstein, and Kaufman. All but Kaufman predeceased the Settlor. On August 17, 1988, Kaufman designated the Income Beneficiary as successor co-trustee to serve with him, in accordance with the terms of the Governing Instrument.

Governing Instrument's Article Sixth D (1):

> My trustees shall distribute to each daughter all of the Net Income of her trust in convenient periodic installments.

Governing Instrument's Article Sixth D (2):

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[3] One Trust for each under the Governing Instrument of Hess Kline in Montgomery County, Pennsylvania and two Trusts for each under the Governing Instrument of Helyn W. Kline in Barnstable County, Massachusetts.

[4] The Income Beneficiary's third son, William H. Judson, died on January 2, 2025.

> My Trustees may also distribute to a daughter, or apply for her benefit, from time to time, **such portion or portions of the principal of her trust as my Trustees, in their absolute discretion, may deem necessary for any emergency affecting such daughter**, taking into account her income and assets from all other sources. It is my intention that principal distributions be made to a daughter **only under the most extraordinary circumstances and I do not anticipate the probability that any principal distributions will be required.** (emphasis added)

From Governing Instrument's Article Twelfth:

> [A]ny fiduciary who is also a beneficiary shall not participate in any decision relating to any discretionary distributions of income or principal . . . .

Governing Instrument's Article Thirteenth (1):

> The term "fiduciaries" shall be deemed, where appropriate, to mean executors, trustees or guardians.

In 2001, serving as counsel to the Income Beneficiary, Robert I. Friedman (Respondent)

organized dissolutions of two other Hess Kline Trusts, one for each of the daughters, sitused in Philadelphia County, Pennsylvania. The Income Beneficiary had advised the Petitioner that these dissolutions were for investment purposes and that the generation skipping clauses would still be in full force and effect.[5]

On March 31, 2009 the Respondent was appointed successor co-trustee by Kaufman who then resigned, leaving the Respondent and the Income Beneficiary as co-trustees.

In 2016 the Respondent drafted agreements to dissolve two of the Helyn Kline Trusts in Massachusetts for tax saving purposes, deeming the change in tax law "an 'extraordinary' circumstance in keeping with the provisions of the Trust" [6] as justification for the dissolutions. The dissolution was successful for the Sister's Trust, but because the Petitioner requested three changes, that would not have affected either the tax savings or the income distributed to the Income Beneficiary, [7] the dissolution of the Income Beneficiary's Trust never came to fruition.

In January of 2022, absent an emergency and in violation of the Governing Instruments, the Respondent began to invade the principal of the three

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[5] All of the proceeds from this dissolution went to the Income Beneficiary and her Sister.

[6] From the 2016 Dissolution Agreement.

[7] Those three changes were rejected by the Income Beneficiary and the Other Remainder Beneficiary.

remaining Kline Trusts for the Income Beneficiary, distributing to her in excess of net income. The Respondent claimed it was at the request of the Income Beneficiary [8] and that he had reviewed carefully the Income Beneficiary's "cost of living and her other resources" and taken "into account all of the other relevant factors required by the law" in making these excess distributions, but in spite of multiple requests, [9] had failed to document this claim. As mentioned, the Income Beneficiary herself had not claimed or demonstrated that there was an emergency warranting the distribution of any principal funds.[10]

In April of 2022 the Petitioner contacted the Respondent about these excess distributions but was informed by the Respondent that this was based on the UPIA's Power to Adjust contained in Pennsylvania's 20 Pa.C.S.A. §§ 8103 & 8104, and in the Massachusetts Principal and Income Act [11] (MPIA). After the Respondent refused multiple requests to relent in his invasion of the principal of the Trusts, the Petitioner filed Petitions in

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[8] Violating the Governing Instrument's Article Twelfth: "[A]ny fiduciary who is also a beneficiary shall not participate in any decision relating to any discretionary distributions of income or principal" . . . .

[9] The Petitioner's requests for the Respondent's purported audit began in 2022 and continue to this day.

[10] These monthly distributions of principal are ongoing with no claim of an emergency.

[11] Specifically, Massachusetts' G. L. c. 203D, §§ 3-5.

Montgomery County, Pennsylvania and in Barnstable County, Massachusetts.

On December 6, 2023, the PA Lower Court issued an Order denying the Petitioner's General Trust Petition. (App., infra, 42a) On January 5, 2024, the Petitioner filed a Notice of Appeal with the PA Superior Court. On August 22, 2024 the PA Lower Court issued a PA.R.A.P. 1925(a) Opinion. (App., infra, 21a) On December 31, 2025 the PA Superior Court affirmed the PA Lower Court's Order. (App., infra, 1a) On January 30, 2026, the Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania which was denied on July 15, 2026. (App., infra, 43a)

On August 3, 2023, the MA Lower Court issued a Judgment of Dismissal for the Petitioner's Motion for Summary Judgment. (App., infra, 61a) On August 18, 2023, the Petitioner filed a Notice of Appeal. During the appellate process the case was transferred to the MA SJC sua sponte on March 15, 2024. In spite of the MA Lower Court and the Respondent falsifying the facts of the case, the MA SJC affirmed the MA Lower Court's decision on November 5, 2024. (App., infra, 44a) The Petitioner filed a Motion for Reconsideration on November 19, 2024 which was denied on December 18, 2024. The Petitioner filed a Petition for a writ of certiorari with the Supreme Court of the United States which was denied on October 6, 2025.

Probate Exception:

In *Marshall v. Marshall* the Supreme Court of the United States wrote:

> In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned: "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction, if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." 6 Wheat. 264, 404 (1821). **Among longstanding limitations on federal jurisdiction otherwise properly exercised are the so-called "domestic relations" and "probate" exceptions.** ***Neither is compelled by the text of the Constitution or federal statute*** . . . . In the years following Marshall's 1821 pronouncement, courts have sometimes lost sight of his admonition and have rendered decisions expansively interpreting the two exceptions. In *Ankenbrandt v. Richards*, 504 U. S. 689 (1992), this Court reined in the "domestic relations exception." Earlier, in *Markham v. Allen*, 326 U. S. 490 (1946), the Court endeavored

similarly to curtail the "probate exception."

Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." 392 F. 3d 1118, 1133 (2004) . . . . **We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception** . . . .

[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from disposing of property that is in the custody of a state probate court. ***But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.*** (emphasis added) *Marshall v. Marshall*, 547 U.S. 293 (2006).

The instant case is not an adjudication on the probate or annulment of the Governing Instruments, the administration of the estate, or the disposing of property in the custody of the probate courts, therefore it does not fall under the probate exception to federal diversity jurisdiction. *Marshall v. Marshall*, 547 U.S. 293 (2006).

In a currently active proceeding, *Moss v. Taub,* the trustee in that matter filed a Rule 12(b)(1) motion arguing that the Federal Court lacked jurisdiction to hear the case. He claimed the lawsuit fell under the "probate exception," stripping Federal Courts of diversity jurisdiction over cases handling the administration of a decedent's estate or probate matters, leaving them strictly to State Probate Courts. But the Court rejected the trustee's argument, determining that the probate exception did not apply to the dispute. As with *Moss v. Taub*, the parties involved in the instant case all reside in different states with damages far exceeding the $75,000 minimum. [12] Most importantly, like the instant case, *Moss v. Taub* centers on a fiduciary giving financial partiality to one particular beneficiary over the others, in violation of the Governing Instruments. *Moss v. Taub*, No. 1:25-cv-03592, ECF No. 83 (S.D.N.Y. Aug. 25, 2026).

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[12] The Petitioner is a citizen of California, Respondent a citizen of Pennsylvania, Income Beneficiary and Other Remainder Beneficiary citizens of New York, with Hess Kline's Trust situsued in Pennsylvania, and Helyn Kline's Trusts situsued in Massachusetts. At the end of 2025, the amount of damages in the form of excess distributions to the Income Beneficiary was $551,472.

The Governing Instrument Governs:

Hess and Helyn Kline were residents of Montgomery County, Pennsylvania from the 1930s to the mid-1980s. They would spend their summers at their ninety-acre property in Barnstable County, Massachusetts. While summering in Massachusetts in the early 1980s, Hess suffered a stroke and was bedridden until his death on August 7, 1985. As he intended, Hess' non-marital Trust was sitused in Montgomery County, Pennsylvania. Soon thereafter, Helyn died on May 19, 1988 and as a result of her time spent in Massachusetts, Helyn's marital Trust was not sitused in Pennsylvania but in her place of death, Barnstable County, Massachusetts. So by pure happenstance, two identical Governing Instruments, with Trusts that were all intended to be sitused in Pennsylvania, ended up under the jurisdiction of two different states, both adopting the very same law, the UPIA, years later.

The comment sections of the UPIA state: 1962 "[T]he Settlor's intent is the guiding principle which should control the disposition of all receipts..."; 1995 & 1996 "[P]rovisions in the Governing Instrument are paramount..."; 1997, 2000 & 2008 "[P]rovisions in the terms of the trust are paramount." The Courts have weighed in as well: "The testator's intent is the polestar in the construction of every will and that intent, if it is not unlawful, must prevail." *In re Est. of Cassidy, 2023 Pa. Super 101*, 296 A.3d 1219, 1223 (2023) (citing *In re Wilton*, 921 A.2d 509, 513 (Pa. Super. 2007)). (App., infra, 37a-38a)

The UPIA is a default act but cannot be applied by default if the Governing Instrument has "a different provision". Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1):[13]

> A fiduciary shall administer a trust or estate in accordance with the governing instrument, even if there is a different provision in this chapter. (App., infra, 75a)

The Settlor sets the rules for their estate and those rules cannot be usurped or overruled by legislative statutes. The UPIA's commentaries say as much. This is the very reason that the Trusts in question are called TRUST UNDER THE WILL OF HESS or HELYN KLINE not TRUST UNDER THE RESPONDENT. The UPIA clearly mandates to tread lightly, to remember that the polestar is the Governing Instrument, that the Governing Instrument is paramount, and nothing usurps its authority over the Trusts it creates. For all practical purposes, the Governing Instrument itself is a Federal statute written by the individual, and "if it is not unlawful, must prevail" *Id.* over conflicting Federal and State statutes, in spite of where the Trusts happen to be sitused. The PA Superior Court writes:

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[13] Massachusetts' G. L. c. 203D, § 3 (a) (1): "[A] fiduciary: (1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;" (App., infra, 83a)

> The interpretation of a trust document **is a question of law**; our standard of review is de novo and our scope of review is plenary. [*In re Peterson Family Irrevocable Trust*, 333 A.3d 453, 457 (Pa. Super. 2025).] (emphasis added) (App., infra, 4a)

The interpretation of a Governing Instrument "***is a question of law***" ergo that interpretation *must be consistent and uniform* in whatever State the Settlor happens to pass away. Unfortunately that *consistent and uniform interpretation* has been absent in the instant case. Article IV, Section 1 of the United States Constitution reinforces this notion of uniform consistency:

> Full Faith and Credit shall be given in each State to the public Acts, Records, *and judicial Proceedings* of every other State. (emphasis added) (App., infra, 74a)

Conflicting Opinions:

The UPIA has been adopted in thirty-six states plus the District of Columbia and modified versions have been adopted in the remaining fourteen states. As such, its application is nationwide, as if it were a Federal statute masquerading as State law, with the same universal effect and obligations as laws contained in the United States Constitution and in laws passed by the Congress of the United States, an argument the PA Superior Court echoes in its opinion:

> [B]ecause the UPIA is a uniform act adopted by many states, we must adhere to § 1927, which provides: "Statutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." 1 Pa.C.S.A. § 1927. (App., infra, 14a)

There can be no doubt that uniformity has not been the standard to date with the PA Superior Court and the MA SJC having weighed in with conflicting opinions. The PA Superior Court points out that the results are the same, neglecting to mention the significant differences in their arguments:

> We observe, also, that [Petitioner] filed a nearly identical action against the Trustee in Massachusetts . . . . The Supreme Judicial Court of Massachusetts rejected [Petitioner]'s arguments and upheld the Trustee's exercise of discretion under the Massachusetts UPIA . . . . The decision of a sister state interpreting the same provisions of a uniform act is entitled to great deference from the Courts of Pennsylvania. *Koken v. Reliance Ins. Co.*, 893 A.2d 70, 83 (Pa. 2006). ***Our analysis in the main text is in accord with that of the Supreme Judicial Court of Massachusetts***, and we reach the

> same result. (emphasis added) (App., infra, 14a)

Unfortunately the PA Superior Court's analysis of provisions in the main text of the Governing Instrument, which UPIA commentaries clearly state "are paramount" and "should control the disposition of all receipts",[14] are ***not*** in accord with the analysis rendered by the MA SJC for those very same provisions. As discussed supra, if the Governing Instrument "is not unlawful, [it] must prevail." *In re Est. of Cassidy,* 2023 Pa. Super 101, 296 A.3d 1219, 1223 (2023) (citing *In re Wilton*, 921 A.2d 509, 513 (Pa. Super. 2007)). (App., infra, 37a-38a) Furthermore, the MA SJC, unlike the PA Superior Court, agreed with the Petitioner's interpretation of the Governing Instrument's Article Ninth,[15] that the adjustment language in the Article is "**for tax purposes**", expressly for items of deduction in either income tax returns or estate tax return, ***it does not allow for the wholesale Power to Adjust between principal and income.*** From the MA SJC's opinion:

> Compare Article Fourth [16] [Sixth] (setting forth limitations on "principal distributions" to [Income

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[14] From the 1962, 1995, and 1996 comment sections of the UPIA.

[15] The Hess Kline Governing Instrument contains two sequential articles titled "Ninth". The references herein are to the first appearing Article Ninth.

[16] Massachusetts' Article Fourth is Pennsylvania's Article Sixth. References herein are to Pennsylvania's Article Sixth.

> Beneficiary]) with Article Seventh[17] [Ninth] (discussing power of trustee to make ***"adjustments" between principal and income for tax purposes***). (emphasis added) (App., infra, 58a)

The PA Superior Court quotes the Governing Instrument's Article Ninth, Paragraph 2 as such:

> My fiduciaries, in their absolute discretion, shall have the authority to claim items of deduction in either the income tax returns or estate tax return, as they may decide, without the consent of the beneficiaries, without liability on their part for so doing, **and, in their discretion, to make or not to make adjustments or apportionments among the beneficiaries or as between principal and income.** [18] (App., infra, 6a)

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[17] Massachusetts' Article Seventh is Pennsylvania's Article Ninth. References herein are to Pennsylvania's Article Ninth.

[18] Article Ninth in full:

"I direct that all inheritance, estate, transfer and succession taxes, federal, state and foreign, of any kind whatsoever, which may be due and payable as a result of my death, together with all interest and penalties thereon, with respect to all property includible for such tax purposes, shall be paid out of the principal of the Nonmarital Portion of my residuary estate. I authorize my

The PA Superior Court writes:

> [Petitioner] argues that Article Ninth, in its reference to adjustment of principal and income, "must be read in context of the second paragraph's intended purposes—governing items of deduction in income tax and/or estate tax returns" . . . . Article Ninth clothes the trustee with discretion to determine when a tax deduction ***and/or*** an adjustment between principal and income is appropriate. The operative language, for purposes of the present dispute, appears in an independent clause that ***expressly clothes the Trustee with unqualified discretion to make, or not make, adjustments.*** (bold italic emphasis added) (App., infra, 6a-7a)

Article Ninth, Paragraph 2 is a one sentence paragraph and in Estate Law, the entire sentence is treated as a single, unified mechanism called an

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fiduciaries to pay such taxes at such time or times as they, in their absolute discretion, may deem advisable.

My fiduciaries, in their absolute discretion, shall have the authority to claim items of deduction in either the income tax returns or estate tax return, as they may decide, without the consent of the beneficiaries, without liability on their part for so doing, and, in their discretion, to make or not to make adjustments or apportionments among the beneficiaries or as between principal and income."

Equitable Adjustment Clause (often called a Warms adjustment clause). According to *In re Warms' Estate,* 140 N.Y.S.2d 169 (Sur. Ct. 1955),[19] the two halves cannot be read as separate concepts because the second power only exists to manage the mathematical consequences of the first power. As a result, adjustments between principal and income are solely allowed to address the financial effects of the Trustee claiming "items of deduction in either the income tax returns or estate tax return". (App., infra, 6a, 24a, 35a-36a)

Furthermore, to use the PA Superior Court's own argument, the Court "requires us to read into the instrument language that is not there . . . ." (App., infra, 7a) From the PA Superior Court's opinion:

> Article Ninth clothes the trustee with discretion to determine when a tax deduction ***and/or*** an adjustment between principal and income is appropriate. (emphasis added) (App., infra, 7a)

The PA Superior Court has injected into its description "**or**" where no "**or**" exists, only "**and**". The Court's assertion that the "operative language, for purposes of the present dispute, appears in an independent clause" is an incorrect assumption which breaks the most basic rules of English grammar. The Court would be correct if "**and/or**" was actually used

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[19] Certainly the Settlors' counsel would have been aware of *In re Warms' Estate* as it was decided in 1955, twenty-two years before the Governing Instruments were drafted and executed.

in the Article, *but it was not.* From the Governing Instrument's Article Ninth, Paragraph 2:

> My fiduciaries, in their absolute discretion, shall have the authority to claim items of deduction in either the income tax returns or estate tax return, as they may decide, without the consent of the beneficiaries, without liability on their part for so doing, ***and,*** in their discretion, to make or not to make adjustments or apportionments among the beneficiaries or as between principal and income. (App., infra, 6a)

As one can see this is not an independent, but clearly dependent clause, and as per *In re Warms' Estate*, 140 N.Y.S.2d 169 (Sur. Ct. 1955) the entire sentence must be treated as a single, unified mechanism.

Ever Evolving Argument:

The Respondent's arguments evolved with time so it is understandable that all of the State Courts responded in kind. In fact the Governing Instrument's Article Ninth, Paragraph 2 was never mentioned by the Respondent as a justification for the invasion of the principal until his second brief and affidavit to the MA Lower Court and the first ANSWER TO PETITION FOR CITATION to the PA Lower Court, nearly a year after the invasion of the Trusts' principal was first questioned by the

Petitioner. For that first year, the Respondent was asserting that the law alone, not the Governing Instrument, allowed for the invasion of principal under the UPIA's Power to Adjust. One has to wonder why the Respondent felt he needed the law in the first place if he eventually would claim the Governing Instrument allowed it as well? The calendar went as follows:

April 7, 2022: In a pre-lawsuit email the Respondent writes to the Petitioner: "You are right of course that *the Trusts provide only quite limited provisions for the distribution of principal* to [the Income Beneficiary]. The trust law applicable to the Trusts . . . however, authorizes trustees to exercise a 'power to adjust' between income and principal" . . . .[20] (emphasis added)

January 31, 2023: In the first Massachusetts Affidavit from the Respondent there is no mention of the Governing Instrument's Article Ninth, Paragraph 2 or the different provision clause from Massachusetts' G. L. c. 203D, § 3 (a) (1)[21] cited below:

> [A] fiduciary: (1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if

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[20] In this pre-lawsuit email the Respondent also wrote that his exercise of the "power to adjust" was at the request of the Income Beneficiary, violating the Governing Instrument's Article Twelfth: "[A]ny fiduciary who is also a beneficiary shall not participate in any decision relating to any discretionary distributions of income or principal" . . . .

[21] Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1). (App., infra, 75a)

> there is a different provision in this chapter; (App., infra, 83a)

February 16, 2023: In the first Massachusetts Brief from the Respondent there is no mention of the Governing Instrument's Article Ninth, Paragraph 2 or the different provision clause from Massachusetts' G. L. c. 203D, § 3 (a) (1).[22] (App., infra, 83a)

March 21, 2023: In the second Massachusetts Affidavit and Brief from the Respondent he finally references the Governing Instrument's Article Ninth, Paragraph 2 but his references are severely mis-paraphrased and he never mentions the different provision clause from Massachusetts' G. L. c. 203D, § 3 (a) (1).[23] (App., infra, 83a)

March 23, 2023: In the Pennsylvania ANSWER TO PETITION FOR CITATION from the Respondent he references the Governing Instrument's Article Ninth, Paragraph 2 but his references are severely mis-paraphrased and he never mentions the different provision clause from Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1)[24] cited below:

> A fiduciary shall administer a trust or estate in accordance with the governing instrument, even if there is a different provision in this chapter. (App., infra, 75a)

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[22] *Id.*

[23] *Id.*

[24] Massachusetts' G. L. c. 203D, § 3 (a) (1). (App., infra, 83a)

August 3, 2023: In its opinion the MA Lower Court references the Governing Instrument's Article Ninth, Paragraph 2 but its references are severely mis-paraphrased and in concluding its opinion the MA Lower Court inexplicably repeats the Respondent's mis-quote of the Instrument from his final lower Court brief as justification for its own opinion.[25] Most importantly, the MA Lower Court selectively quotes *but does not discuss* the different provision clause from Massachusetts' G. L. c. 203D, § 3 (a) (1).[26] (App., infra, 83a)

August 22, 2024: In its opinion the PA Lower Court references the entire sentence from the Governing Instrument's Article Ninth, Paragraph 2, emphasizing selective portions as if it makes the other portions disappear. Most importantly, the PA Lower

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[25] The Respondent and MA Lower Court both quoted a falsified rewritten version of Article Ninth, Paragraph 2 as such:

"The Will expressly provides for fiduciaries '**in their absolute discretion, to make or not make adjustments or apportionments among the beneficiaries or as between principal and income.**'" (emphasis added to their quoted section) (App., infra, 71a)

Article Ninth, Paragraph 2 in full:

"***My fiduciaries,*** in their absolute discretion, ***shall have the authority to claim items of deduction in either the income tax returns or estate tax return, as they may decide, without the consent of the beneficiaries, without liability on their part for so doing, and, in their discretion,*** to make or not ***to*** make adjustments or apportionments among the beneficiaries or as between principal and income." (emphasis added to the Respondent and the MA Lower Court's omissions)

[26] Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1). (App., infra, 75a)

Court *does not quote or discuss* the different provision clause from Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1).[27] (App., infra, 75a)

November 5, 2024: In a Novel Opinion that departs from all the other Courts, the MA SJC argues that the Governing Instrument's Article Ninth, Paragraph 2 adjustment language is "for tax purposes", expressly for items of deduction in either income tax returns or estate tax return, it does not allow for the wholesale Power to Adjust between principal and income.[28] Unlike the Respondent and the MA Lower Court, the MA SJC ***does discuss*** the different provision clause[29] from Massachusetts' G. L. c. 203D, § 3 (a) (1).[30] (App., infra, 83a)

December 31, 2025: In its opinion the PA Superior Court references the entire sentence from the Governing Instrument's Article Ninth, Paragraph 2, emphasizing selective portions that it claims were independent and that allowed for the Power to Adjust. Unlike the Respondent and the PA Lower Court, the

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[27] Massachusetts' G. L. c. 203D, § 3 (a) (1). (App., infra, 83a)

[28] The MA SJC ignored the MA Lower Court and the Respondent falsifying the facts of the case in their intentional mis-quote of Article Ninth, Paragraph 2.

[29] The MA SJC novelly and incorrectly wrote: "The parties' dispute centers on . . . whether the trustee's power to adjust is barred by a 'different provision' of the will." (App., infra, 57a) It was only the Petitioner that ever discussed any portion of Massachusetts' G. L. c. 203D, § 3 (a), the Respondent completely ignored it, silent to its existence, and the MA Lower Court selectively quoted *but did not discuss* it.

[30] Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1). (App., infra, 75a)

PA Superior Court ***does discuss*** the different provision clause from Pennsylvania's 20 Pa.C.S.A. § 8103 (a) (1)[31] (App., infra, 75a) but it claims the Governing Instrument's Article Ninth, Paragraph 2 negates its relevance, conflicting with the MA SJC.

Novel Conflict / Balls & Strikes:

> [I]t's my job to call balls and strikes, and not to pitch or bat.
>
> Chief Justice John G. Roberts, Jr.

The PA Superior Court (App., infra, 1a), the PA Lower Court (App., infra, 21a), and the MA Lower Court (App., infra, 61a) were all in accord in interpreting the same provisions of the UPIA[32] and the Governing Instruments. All three Courts ruled that the Governing Instrument and the UPIA permitted the Power to Adjust. The MA SJC however changed course and did not rule that the Governing Instrument ***permitted*** the Power to Adjust, it specifically ruled that it ***did not prohibit*** the Power to Adjust. The Court wrote of the Governing Instrument that it "does not discuss, much less clearly preclude, the power to adjust" required by the UPIA. (App., infra, 58a)

The MA SJC's Novel Argument was never presented by the Respondent or the Petitioner.

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[31] Massachusetts' G. L. c. 203D, § 3 (a) (1). (App., infra, 83a)

[32] Though the PA Lower Court did not mention or quote the UPIA's different provision clause.

Creating a fortune-telling standard, the Court's opinion required the Settlor to use specific language prohibiting the Power to Adjust from a future 2005 law in the 1977 Governing Instrument. From the MA SJC's opinion:

> [B]ecause the trust instrument, a will, *does not clearly evince the testator's intent* to deny the trustee the power to adjust, the MPIA [33] permitted the trustee to adjust between principal and income . . . . (emphasis added) (App., infra, 45a)

Unfortunately the UPIA was adopted in Pennsylvania in 2002 and in Massachusetts in 2005, twenty-five and twenty-eight years after the Governing Instruments were executed, [34] so absent the ability to see into the future, the Settlor could not possibly have been able to satisfy this most unconstitutional trampling of property rights enumerated in the 14th Amendment of the United States Constitution, and as per Article IV, Section 1, the MA SJC effectively set this fortune-telling standard for State Courts across the nation.

To make matters worse, while the Court's job is "to call balls and strikes" the MA SJC decided to step up to the plate and take a turn at bat, supporting its decision by referencing a commentary that seemed to support its argument. Unfortunately the MA SJC

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[33] Massachusetts' version of the UPIA adopted in 2005.

[34] The Settlors died in 1985 and 1988.

used deception riddled with bias, omitting the very last line of this commentary. From the MA SJC's opinion:

> Since the power [to adjust] is intended to enable trustees to employ the prudent investor rule without being constrained by traditional principal and income rules, an instrument executed before the adoption of this Act whose terms describe the amount that may or must be distributed to a beneficiary by referring to the trust's income or that prohibit the invasion of principal or that prohibit equitable adjustments in general should not be construed as forbidding the use of the power to adjust under [§ 4 (a)] if the need for adjustment arises because the trustee is operating under the prudent investor rule. ***Instruments containing such provisions that are executed after the adoption of this Act should specifically refer to the power to adjust if the settlor intends to forbid its use.*** Uniform Principal and Income Act § 104(f) comment, 7A U.L.A. (Part IV) 302-303. [35] (emphasis added to the

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[35] The MA SJC validated the importance of commentary when they wrote: "Although secondary sources are not binding in our construction of a statute, they can be informative. The drafters'

MA SJC's omission)[36] (App., infra, 54a-55a)

For the MA SJC to be so brazen as to omit the very sentence that negated its very demand of the 1977 Governing Instrument to specifically refer to the Power to Adjust from the 2005 law clearly shows a bias from the Court to purposely mislead. The MA SJC used its edited comment to justify its requirement for the Governing Instrument to *not be* "silent as to whether the trustee may adjust between principal and income" *but the opposite is true.* (App., infra, 58a) The Court's deleted line plainly states that Governing Instruments "executed *after the adoption of this Act* should specifically refer to the power to adjust if the settlor intends to forbid its use", it does

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comments to the MPIA -- and so far as the MPIA substantially mirrors its language, ***comments to the uniform act – are particularly useful in understanding the objectives the Legislature sought to achieve in adopting the act.*** *See Klingel v. Reill*, 446 Mass. 80, 84 (2006) ("***When the Legislature adopted the language of [a uniform act], it intended an interpretation of that term consistent with the rationale explained in the comment accompanying that language***")." (emphasis added) (App., infra, 51a)

The PA Superior Court also validates the importance of commentary when they write: "And because the UPIA is a uniform act adopted by many states, we must adhere to § 1927, which provides: 'Statutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.' 1 Pa.C.S.A. § 1927. ***The Uniform Law Comments we consult throughout this opinion serve precisely that purpose.***" (emphasis added) (App., infra, 14a)

[36] The Respondent in his Massachusetts Appellate brief also quoted this UPIA comment with the very same omission.

not apply this rule to Governing Instruments executed *before this Act.* (emphasis added)

Throwing off its Umpire's uniform, the Court had stepped up to the mound, advocating with its curve ball of bias for a pre-determined result rather than an adjudication based on the true and complete facts of the case. The UPIA drafters expressly shielded pre-act instruments from retroactive "explicit referencing" standards. A Testator drafting a Governing Instrument prior to the adoption of the UPIA could not have specifically referred to, or intentionally forbid, a statutory Power to Adjust that did not yet exist. The comment addresses this exact reality by splitting instruments into two distinct, chronological categories, before and after the enactment of the act. The MA SJC had demanded a chronological impossibility and by omitting the language regarding post-adoption Trusts, the Court completely misrepresented this chronological distinction, fabricating and retroactively applying a stricter unconstitutional post-adoption standard to a grandfathered pre-adoption trust.

While the MA SJC had based its whole decision on the 2005 UPIA's intent to retroactively require prohibition language to pre 2005 Governing Instruments, the Court's own referenced UPIA comment, when read in full, actually invalidates that very notion. More importantly, the Court cannot negate a Governing Instrument *and its intent* with language from a law that did not exist at the time of its enactment. Ultimately the omitted language neutralizes the Court's Novel Legal Theory, and once

revealed, the legal foundation of its argument collapses.

Different Provision Conflicts:

The PA Superior Court acknowledges that the UPIA defers to the Governing Instrument if the Instrument has "a different provision":

> We now turn to the statutory language, beginning with § 8103(a), which mandates that a fiduciary, when "allocating receipts and disbursements to or between principal and income [...] shall administer a trust or estate in accordance with the governing instrument, even if there is a different provision in this chapter." 20 Pa.C.S.A. § 8103(a)(1). (App., infra, 10a)

The PA Superior Court continues as it disputes the existence of "a different provision":

> Where the governing instrument does not contain a provision that differs from what the UPIA requires, the fiduciary must follow the UPIA. 20 Pa.C.S.A. § [8103(a)(3)]. [37] In examining [Petitioner]'s first

[37] The Petitioner corrected the Court's typographical error as there is no section 8013 in the statute.

> argument, **we explained that the Trust instrument does not have express language cabining the Trustee's discretion to adjust.** (emphasis added) (App., infra, 10a, 12a)

But the PA Superior Court's position conflicts with the MA SJC's interpretation. The MA SJC wrote that the Governing Instrument's Article Ninth, Paragraph 2 ***was cabining*** "'adjustments' between principal and income ***for tax purposes***":

> Compare Article Fourth [38] [Sixth] (setting forth limitations on "principal distributions" to [Income Beneficiary]) with Article Seventh[39] [Ninth] (discussing power of trustee to make ***"adjustments" between principal and income for tax purposes***). (emphasis added) (App., infra, 58a)

In re Warms' Estate, 140 N.Y.S.2d 169 (Sur. Ct. 1955) bolsters the MA SJC's argument that in the Governing Instrument's Article Ninth, Paragraph 2 the Trustee's discretion to adjust *was cabined* by the one sentence paragraph's first half. As discussed supra, in Estate Law, the entire sentence is treated

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[38] Massachusetts' Article Fourth is Pennsylvania's Article Sixth. References herein are to Pennsylvania's Article Sixth.

[39] Massachusetts' Article Seventh is Pennsylvania's Article Ninth. References herein are to Pennsylvania's Article Ninth.

as a single, unified mechanism called an Equitable Adjustment Clause (often called a Warms adjustment clause). The two halves cannot be read as separate concepts because the second power only exists to manage the mathematical consequences of the first power. As a result, adjustments between principal and income are solely allowed to address the financial effects of the Trustee claiming "items of deduction in either the income tax returns or estate tax return". (App., infra, 6a, 24a, 35a-36a)

The Juliet Rule: A rose by any other name would still be an invasion of principal... the Power to Adjust *is* an Invasion of Principal:

The PA Superior Court writes:

> Section 8104, in turn, governs the specifics of a trustee's management of principal and income adjustments. (App., infra, 12a)

The Court goes on to discuss § 8104 (a) at length but fails to *quote or mention* the more relevant § 8104 (b). Turning to the MA SJC, it stated that the "distributions of principal" are somehow different than the adjustments "between principal and income":

> The provision of the will on which [Petitioner] relies does not discuss, much less clearly preclude, the power to adjust. **Instead, the provision addresses only distributions of**

> **principal; it is silent as to whether the trustee may adjust between principal and income.** (emphasis added) (App., infra, 58a)

As noted, the PA Superior Court overlooked § 8104 (b), specifically paragraph (9), while the MA SJC referenced Massachusetts' version in a footnote (App., infra, 55a-56a), but as it negated its argument, it clearly did not consider it in its opinion. Massachusetts' G. L. c. 203D, § 4 (b) (7):[40]

> (b) In deciding whether to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant . . . . (7) **whether the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income** . . . . (emphasis added) (App., infra, 84a-85a)

Here the law in both States clearly mandates that the fiduciary consider whether the Governing Instruments permit any invasion of principal for the Power to Adjust to be permissible and as the

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[40] Pennsylvania's 20 Pa.C.S.A. § 8104 (b) (9) (App., infra, 77a-78a)

Respondent's Attorney Christopher Lindstrom stated in the September 9, 2024 MA SJC hearing, distributions are an invasion of principal.[41] Whether it be a distribution of principal or the Power to Adjust *both of these acts require an invasion of principal*, that is the very act that connects them, the very act that must be executed before they themselves are enacted, an act which according to the Governing Instruments can only happen in an emergency, and as such, according to Pennsylvania's 20 Pa.C.S.A. § 8104 (b) (9) and Massachusetts' G. L. c. 203D, § 4 (b) (7), the laws do not apply as "provisions in the Governing Instrument are paramount"[42] and "must prevail". *In re Est. of Cassidy*, 2023 Pa. Super 101, 296 A.3d 1219, 1223 (2023) (citing *In re Wilton,* 921 A.2d 509, 513 (Pa. Super. 2007)). (App., infra, 37a-38a)

No Limit to Power to Adjust:

The MA SJC made a claim regarding the UPIA's Power to Adjust limits clause:

> Importantly, the MPIA identifies the type of "different provision" required to preclude a trustee from exercising the power to adjust under the act.[43] It provides that the

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[41] September 9, 2024 MA SJC-13579 Hearing Transcript, 782-811, 00:35:51.030 --> 00:37:04.863.

[42] From the 1995 & 1996 comment sections of the UPIA.

[43] Specifically Massachusetts' G. L. c. 203D § 4 (f) (App., infra, 87a) and Pennsylvania's 20 Pa.C.S.A. § 8104 (f). (App., infra, 81a)

> "[t]erms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of [§ 4] unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by [§ 4 (a)]" (emphasis added). (App., infra, 54a)

As one can see, nowhere in Massachusetts' G. L. c. 203D § 4 (f) and Pennsylvania's 20 Pa.C.S.A. § 8104 (f)[44] do the words "a different provision" appear and the MA SJC's attempt to insert them into the statute was one more error on its part.[45] The plain language of the law shows us that this provision is not about identifying "a different provision" but about identifying words in the Governing Instrument that limit the Power to Adjust, but such limiting words are never used which would be necessary for the triggering of this clause, again how would that have been possible for a Governing Instrument written twenty-eight years earlier? While the Governing Instrument's Article Ninth allows for the fiduciary "to claim items of deduction in either the income tax returns or estate tax return . . . and, in their discretion, to make or not to make adjustments or

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[44] The PA Superior Court and PA Lower Court never mention Pennsylvania's 20 Pa.C.S.A. § 8104 (f) in their opinions.

[45] The PA Superior Court agrees with this notion that one cannot require us to read into a document "*language that is not there.*" (App., infra, 7a)

apportionments among the beneficiaries or as between principal and income", this allowance is a granting *not a limiting* of that power, therefore it would not trigger Massachusetts' G. L. c. 203D § 4 (f) and Pennsylvania's 20 Pa.C.S.A. § 8104 (f). Furthermore, the MA SJC was not consistent with its own logic when it wrote:

> [B]ecause the trust instrument, a will, *does not clearly evince the testator's intent* to deny the trustee the power to adjust, the MPIA permitted the trustee to adjust between principal and income . . . . (emphasis added) (App., infra, 45a)

The MA SJC had to use this same logic to show where the Governing Instrument clearly evinces the testator's intent *to limit* the trustee's Power to Adjust, but it could not because nowhere does the Governing Instrument evince such limitation.[46] And one needs to remember that according to the MA SJC's own referenced UPIA commentary (App., infra, 54a-55a), the line the Court purposely omitted[47] negates the very notion that Massachusetts' G. L. c. 203D § 4 (f)

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[46] Article Sixth D (2), the emergency clause, puts a triggering event of an emergency to invade the principal, *it does not discuss, much less limit, the Power to Adjust,* a power that did not exist when the instruments were executed.

[47] The MA SJC's omitted line: "Instruments containing such provisions [limiting the Power to Adjust] that are executed after the adoption of this Act should specifically refer to the power to adjust if the settlor intends to forbid its use." UPIA § 104(f) comment, 7A U.L.A. (Part IV) 302-303.

and Pennsylvania's 20 Pa.C.S.A. § 8104 (f) could even be applied to the Trusts since the 1977 Governing Instruments and the 1992 Trusts pre-date the enactment of the 2005 and 2002 laws by several years. Again, nowhere in the Governing Instruments is the Power to Adjust mentioned. According to this UPIA comment, the requirement for the Power to Adjust to be explicitly referred to is reserved for instruments "executed *after the adoption*" of the act *not before,* reinforcing the notion that Courts cannot negate a Governing Instrument and its intent with language from a law that did not exist at the time of its enactment. (emphasis added) The MA SJC very well knew this which is why it hid the line from plain sight.

Most importantly, *the Respondent himself did not agree with the MA SJC's Novel Position on the limit issue.* From the Respondent's January 17, 2024 brief to the MA SJC, page 20:

> There are no provisions in the Will that limit the Trustee's statutory authority to adjust between principal and income.

In their overzealous pursuit of a pre-determined result and in opposition to the actual arguments presented by either party, the MA SJC had chosen to advocate rather than adjudicate, violating the most basic rules of due process.

Actions Speak Louder than Words:

The PA Superior Court writes:

> We determine the settlor's intent by examining "all the language within the four corners of the trust instrument, the scheme of distribution[,] and **the circumstances surrounding the execution of the instrument.**" *In re Peterson Family Irrevocable Trust*, 333 A.3d 453, 458 (Pa. Super. 2025). (emphasis added) (App., infra, 4a)

The Settlors' intent and the "circumstances surrounding the execution" of their Governing Instruments is crystal clear as can be seen by the facts surrounding the Trust the Respondent and the Income Beneficiary dissolved in 2001. Hess Kline originally executed this Trust as a Philadelphia County Deed of Trust dated June 8, 1939 for the benefit of the Income Beneficiary and named himself as the original Trustee thereof. The Deed of Trust provided that upon the Income Beneficiary attaining the age of forty years the Trust would terminate and the balance of principal then remaining would be distributed outright to her. At the urging of Hess Kline, and prior to attaining the age of forty years, the Income Beneficiary executed an agreement dated March 6, 1972 providing for the continuation of the Trust as a Generation Skipping Trust for her lifetime. Five years later, in 1977, Hess and Helyn Kline executed their Governing Instruments with the very same Generation Skipping terms, including a clear prohibition on the distribution of principal outside of an emergency affecting the Income Beneficiary.

No Court can deny that the circumstances surrounding Hess and Helyn Kline's actions in 1972 and 1977 is clear evidence that the Settlors did not want the Income Beneficiary to have free access to the principal of the 1939 Trust or the 1992 Trusts and the Respondent's violation of their clear intent drafted into their Governing Instruments is an abuse of his fiduciary discretion.[48]

REASONS FOR GRANTING THE PETITION

This Court has jurisdiction, noting that probate exceptions are not "compelled by the text of the Constitution or federal statute" *Marshall v. Marshall*, 547 U.S. 293 (2006) and the Court has "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given" *Cohens v. Virginia*, 19 U.S. 264 (1821), going on to rule that a lower Court "had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception." *Marshall v. Marshall*, 547 U.S. 293 (2006).

In the instant case, the PA Superior Court decided that the law and the Governing Instrument permitted the Power to Adjust. However, that decision conflicts with the MA SJC's opinion which did not rule that the 1977 Governing Instrument ***permitted*** the Power to Adjust, it specifically ruled that it ***did not prohibit***

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[48] As discussed supra, all of the Courts have ignored the intent of the Respondent and the Income Beneficiary to dismantle the Settlors' legacy, succeeding in dissolving three out of the eight Kline Trusts in 2001 and 2016, with the proceeds going to the Income Beneficiary and her Sister.

the Power to Adjust, therefore the Power to Adjust was allowed under the 2005 law, creating an unconstitutional fortune-telling standard for Courts across the nation.

Even though their opinions conflict, as per Article IV, Section 1 of the United States Constitution, the PA Superior Court leaned on the MA SJC's decision to support its own, not realizing that the MA SJC had broken the "balls and strikes" rule, creating a Novel Argument which rejected the approach taken by the PA Superior Court,[49] an approach that disregarded the most basic rules of English grammar, interpreting a one sentence paragraph as two independent clauses when they were clearly dependent. As discussed supra, according to *In re Warms' Estate,* 140 N.Y.S.2d 169 (Sur. Ct. 1955) the two halves of that one sentence paragraph cannot be read as separate concepts as the second power only exists to manage the mathematical consequences of the first power.

As such, we turn to the MA SJC's opinion requiring the Settlor to incorporate language from a future law into a Governing Instrument written many years before the statute is actually enacted and many years after the Settlor's death. The Court's biased reference to the law's commentary purposely misled in its omission, creating a Novel Framework, imposing a chronological impossibility contrary to the express text of the statutory commentary, representing a clear misapprehension of both the

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[49] Both the PA Lower Court and the MA Lower Court were in accord with the PA Superior Court's opinion.

factual record and the controlling statutory framework. Rather than supporting, the unredacted comment actually negated the Court's core argument requiring the Governing Instrument *to not be* "silent as to whether the trustee may adjust between principal and income".[50] (App., infra, 58a) The Court had based its entire opinion on the retroactivity of the law regarding how it interacts with the Governing Instrument yet its own referenced commentary invalidated that very notion. More importantly, the Court cannot negate a Governing Instrument and its intent with language from a law that did not exist at the time of its enactment as the Settlor would not have been able to consider this law without the ability to see into the future and without violating rights given to every citizen under the 14th Amendment.

Every Court is entitled to render its own opinion, but not its own facts[51] and breaking this rule creates a breakdown of due process. Because of its Novel Argument, due process would mandate that the MA SJC had an obligation to restore the Petitioner's case to its calendar for additional oral arguments or new briefs. The Court granted neither option.

As it stands, under the PA Superior Court and the MA SJC's conflicting opinions, we are not a nation of laws protecting the individual from judicial

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[50] The MA SJC's omitted line: "Instruments containing such provisions [limiting the Power to Adjust] that are executed after the adoption of this Act should specifically refer to the power to adjust if the settlor intends to forbid its use." UPIA § 104(f) comment, 7A U.L.A. (Part IV) 302-303.

[51] Adapted from the words of the late Senator Moynihan.

overreach, but a nation of Courts whose own agendas take precedence over plain facts, take precedence over the rule of law, even take precedence over the basic rights of decedents who believed their words left behind would be understood and prevail, not tread asunder. In spite of the facts presented, the State Courts have failed in their oversight duties, convinced instead their role is to advocate for an industry, protect the status quo, rather than to protect the rights of the individual. Without due process of law, all rights are at risk, and only the Supreme Court of the United States can restore what has been deprived in the instant case.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

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