**MEMORANDUM**

TO: Tom Allen

FROM: Tim Duffy

DATE: September 10, 2023

RE: Revisions to the Governing Documents of the Urantia Book Fellowship

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**EXECUTIVE SUMMARY**

Separate and apart from the issue of whether and how to revise the governing documents so as to provide some check on the power currently vested in the Executive Committee, there are some more fundamental issues that should be addressed regarding the basic structure of the organization.

The core problem is that the current documents appear to pertain to two distinct entities: The Urantia Book Fellowship and The Fifth Epochal Corporation. Having two separate legal entities is problematic for a number of reasons and does not truly reflect the way the organization operates.

I am therefore recommending that the documents be amended so as to clarify the organization is a single entity that is both true to the democratic traditions of the Fellowship and is able to benefit from the protections of the Illinois not-for-profit law and maintain favorable tax treatment for the organization and its supporters as envisioned via the establishment of the Fifth Epochal Corporation.

As for the governance issues, the specific proposed amendments are also problematic. A tripartite separation-of-powers model is hard to reconcile with the corporate law. In contrast of the diffusion of power and accountability that may exist in a civil government structure, corporate law requires the directors of the entity possess a certain amount of ultimate authority and responsibility for the entity that is not subject to the dictates of another committee or council. There are, however, provisions that can serve as a more effective check on the executive committee. I have therefore suggested some new provisions designed to address this issue.

Finally, I have suggested some additional changes to consider where the current text is problematic from a legal perspective or cumulative, repetitive, or unduly complex.

**I. Clarifying the Legal Structure of The Urantia Book Fellowship.**

When The Urantia Brotherhood, now known as The Urantia Book Fellowship (hereinafter “The Fellowship”), was established in 1955, both the laws governing non-profit organizations and the U.S. Internal Revenue Code, were quite different than they are today. This has resulted in governing documents that are in some respects outdated and in other respects a confusing patchwork put in place over the years in an attempt to comply with changes in the law and its implantation in terms of both corporate governance and financial operations.

A full history of these documents is beyond the scope of this memo. Suffice it to say that the Constitution, both in its original form and today, is written for what would be considered a “voluntary association” under Illinois law. Nothing wrong with this. The association is a structure that works perfectly well for some social organizations. It is not, however, a desirable structure for the Fellowship for two reasons. First, an association has no legal standing apart from that of its individual members. It cannot, legally, own property or engage in transactions; rather any such holdings or activity is considered to be held or undertaken by the individual members of the association. This creates many potential problems, including that income to the association may be deemed income to each member, and any legal liability is not borne by the entity, but by its members. Second, an association cannot qualify for tax-exempt status with the IRS, so not only are donations to it not tax-deductible, but the association’s members are potentially liable for income tax on the association’s income.

No doubt, it was these concerns that led to the addition of what is now (on page 28) [Sections 14.4 and 14.5](https://assetrepository.urantiabook.org/AssetRepository/Documents/UBF_Constitution.pdf?_ga=2.209546770.1064791752.1694986960-2111186638.1590363479) of the Constitution, providing that the General Council could authorize the organization of what was originally known as The Urantia Brotherhood Corporation, and is now known as The Fifth Epochal Fellowship Corporation (hereinafter, “The Corporation”) as a Not-for Profit Corporation under Illinois law. The Corporation is the proper structure for an entity that has legal standing to own property, engage in transactions, obtain tax-exempt status, without subjecting its members to potential legal or tax liabilities – solving all the potential problems posed by the structure of The Fellowship.

The problem is that the Constitution and By-Laws of The Fellowship, and the By-Laws of the Corporation are written as if The Fellowship and The Corporation are two separate entities, and that the Fellowship controls The Corporation. It is also apparent that many members think of these organizations as somehow separate. From a legal perspective, however, they should not be considered separate, and to the extent they are, that should be changed as soon as possible.

If The Fellowship and The Corporation are separate entities, The Fellowship has no ability to own property, enter into agreements, or accept tax-deductible donations. It may be tempting to say, “The Fellowship doesn’t do those things – that is all done by The Corporation.” While theoretically legitimate, such a distinction is inconsistent with the actual operation of the organization. Notwithstanding what name is used on legal documents, it is as “The Fellowship” that the organization has members, engages in activities, and solicits donations. No one can argue that The Corporation (whose members are limited to the Executive Committee of the Fellowship) is actually the group of persons who does all these things and that the Members, the Delegates, the General Council, and all the Committees of The Fellowship are merely coincidentally engaged in activity supportive of The Corporation. Moreover, the legal structure one has to envision if the organizations are separate leaves no room whatsoever for any oversight of The Corporation by The Fellowship. The historical and current truth is that The Fellowship engages in its activity and, desiring to avail itself of the protections and advantages of the law, has attempted to organize itself in accordance therewith, but the execution of that strategy needs to be revisited.

Two practical examples might help see the problem here. Imagine a conference attendee trips and falls over an extension cord and is seriously injured. This person’s family decides to sue. A suit against The Corporation (which we would consider the appropriate defendant) would be unfortunate, but not especially problematic. The Corporation has insurance (right?), assets, and is no doubt prepared to manage this risk as any other responsible corporate entity would be. But what if there is a separate entity, The Fellowship, and it is also sued. The Fellowship has no insurance, and worse, its Members would be liable to pay any judgment obtained by the plaintiff. There would not be any basis to say the society member who failed to tape down the extension cord was there for “The Corporation” and not as a Member of “The Fellowship.” Not good. And I am sure the Members would be surprised to learn that they all, in theory, could be held responsible for this claim.

In a second hypothetical, assume there is a challenge either to the deductibility of a contribution to The Corporation or a challenge to its 501(c)(3) status or simply an audit that challenges compliance with the applicable regulations. To the extent any such inquiry concludes that The Fellowship and not The Corporation solicited or received the benefit of contributed funds, this could lead to a substantial liability of The Corporation and, worse, the imposition of liability for income taxes on the members of The Fellowship.

These scenarios are highly unlikely, but not inconceivable. And we cannot discount the possibility that they might arise deliberately should someone make it their goal to injure the organization. In both cases, we would absolutely want to be in a position to demonstrate that The Fellowship and The Corporation are a single organization, and it therefore would be wise to revise the government documents accordingly.

**II. Adjustments to the Governance Structure.**

If The Fellowship (using that now as the term for the single unified entity) is to be a viable non-profit under current state and federal law, it must have a board of directors who are responsible for the operation of the entity. It would be inconsistent with those laws to nominate another group of persons who are not directors to have veto or override power over the board of directors, so the idea of the Judicial Committee serving as a check on the Executive Committee really must be abandoned.

There are other ways, however, to balance the power of the board. A non-profit entity is governed either by its Members or by its Directors. A non-profit is not required to have Members or to give those Members votes – all power may reside in the Directors. It is also possible, however, to have the power originate in the Members, notwithstanding there are still Directors responsible for the entity, but in this scenario, the Directors are beholden to the Members. This is how it works (in theory) in a for-profit corporation. The Board of Directors is in charge, but actually it is the shareholders from whom that power arises and the shareholders (the equivalent of our Members) have the ultimate power, expressly via their ability to elect and remove the Board of Directors. It may not be immediate, but they can change the direction of the organization.

The Fellowship has a modified “Member” control model that can be improved upon if the goal is more control over the Executive Committee. In order for this to pass muster under the law, and have some practical effect, it needs to be clear that (a) the Members have voting rights; (b) that in our organization, given its size and geographic diversity, their chief exercise of this right is to elect the delegates – think of them like the electors we have in a U.S. Presidential election; it’s their job to go to the assembly and express the will of the Members; (c) the delegates elect the “permanent” representatives of the Members in selecting the General Council, which acts as the voice of the Members on a continuing basis; (d) the General Council actually has the most power because it can (because it can trace its legitimacy to the Members) elect the Officers and the Executive Committee, which are the Directors of our entity; (d) operational oversight and control, the management of the entity, is handed over to the Officers and the Executive Committee, the Directors, but the General Council not only periodically determines who these individuals are, but also – and this is new – possesses the power to remove and replace the Officers and members of the Executive Committee. This is the only viable form of an increased check on the power of the Executive Committee, again because of the link to the Members (which the Judicial Committee lacks). In the suggested edits, I have proposed a 3/4 majority requirement for these removals, which is the same as the vote required to remove a General Councilor, but this number could be anything from a majority to unanimity. I have also added language that emphasizes the supremacy of the General Council in terms of the authority. In this way, one might think of the structure as more of a parliamentary model – in such systems parliament is the seat of authority, the ministers, including the prime minister, always subject to the democratically elected body’s control. We can’t translate this directly to the corporate setting, but it is a more workable conception than a tripartite government (notwithstanding the Book’s endorsement thereof!).

**III. Other Changes**.

There is no reason to have both a “Constitution” and “By-Laws” and there is every reason not have separate By-Laws for The Corporation since it is not a separate entity. Usually, a non-profit would only have By-Laws, and in fact it must have By-Laws, but we can call these a “Constitution” if we like (and we should, given the history). We just have to note that these are also, in fact, the By-Laws for legal purposes.

The By-Laws themselves are a bit crazy. While in some respects they deal with a few topics in more detail, it is evident that they have been used as a “quick and dirty” way to amend the Constitution, and standing beside the Constitution give rise to a number of confusing provisions that cover the same ground as the provisions in the Constitution. I have therefore integrated these into the Constitution, or tried to.

There were also some other things that just did not make much sense I suggest deleting, and a few other things that needed to be added – most importantly provisions regarding conflicts of interest on the Executive Committee level and indemnification which is in the miscellaneous section. All the other “additions” you see are things moved over from the By-Laws.

Finally, I could not stomach repeatedly hearing THE URANTIA BOOK FELLOWSHIP in my mind in all caps, and have suggested we use a normal tone of voice for the name of the organization. I also did some work on the consistency of capitalization of “Members” and “Officers. Most of the changes you see are actually these.