Nos. 20-CV-714, 20-CV-715

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

HYUN JIN MOON, *et al.,*

Defendants-Appellants,

v.

FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.*,

Plaintiffs-Appellees.

Appeal from the Superior Court of the District of Columbia,
Civil Division—Civil Actions Branch
(Case No. 2011 CA 003721B)

Brief *Amicus Curiae* of The Jewish Coalition for Religious Liberty and The Becket Fund for Religious Liberty in support of Defendants-Appellants and Reversal

Eric C. Rassbach (D.C. Bar No. 493739)
William J. Haun (D.C. Bar No. 1024405)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW, Suite 400
Washington, DC 20006
Telephone: (202) 955-0095
Facsimile: (202) 955-0090
erassbach@becketlaw.org

Counsel for *Amici Curiae*

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Rule 26.1 of the District of Columbia Court of Appeals by completing item #3):

Amicus Curiae The Jewish Coalition for Religious Liberty
Amicus Curiae The Becket Fund for Religious Liberty

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

The Becket Fund for Religious Liberty.

(3) If the party or amicus is a corporation: (i) Identify all its parent corporations, if any; and (ii) List any publicly held company that owns 10% or more of the party's stock:

Amici have no parent corporations and issue no shares of stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF THE *AMICI CURIAE*[1]

The Jewish Coalition for Religious Liberty is a nondenominational organization of Jewish communal and lay leaders, seeking to protect the ability of all Americans to freely practice their faith. JCRL also aims to foster cooperation between Jewish and other faith communities in an American public square in which all supporters of freedom are free to flourish. JCRL is devoted to ensuring that First Amendment jurisprudence enables the flourishing of religious viewpoints and practices in the United States.

The Becket Fund for Religious Liberty is a non-profit law firm dedicated to protecting the free exercise of all religious traditions, including Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others. Becket regularly litigates church autonomy cases,[2] both in the Supreme Court of the United States and in federal and state courts nationwide. *See, e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).

Amici offer this brief to explain how the trial court's ruling is at odds with longstanding Supreme Court principles and threatens to upend fundamental First Amendment guarantees.

---

[1] Pursuant to Rule 29(a)(2), all parties have consented to the filing of this brief.

[2] The Supreme Court and other courts variously refer to this doctrine as "church autonomy," "religious autonomy," or "ecclesiastical abstention." We use the terms interchangeably here.

INTRODUCTION AND SUMMARY OF ARGUMENT

"[F]ull, entire, and practical freedom for all forms of religious belief and practice . . . lies at the foundation of our political principles." *Watson v. Jones*, 80 U.S. 679, 728 (1871). Ever since the first church-state case to reach the United States Supreme Court, this commitment has meant that religious polities[3] of all stripes are free to employ "corporate powers" to "better secure[]" "their own religious duties." *Terrett v. Taylor*, 13 U.S. 43, 49 (1815) (per Story, J.). By allowing religious polities to employ the corporate form consistent with their own religious tenets, our tradition is one that prohibits any government entity—civil courts included—from using the auspices of well-known corporate law principles to impose "'sundry rules and proceedings relative purely to the organization and polity of the church incorporated.'" Michael W. McConnell, *The Supreme Court's Earliest Church-State Cases: Windows on Religious-Cultural-Political Conflict in the Early Republic*, 37 Tulsa L. Rev. 7, 15 (2013) (quoting James Madison).

In practical terms, the United States Supreme Court has long understood this prohibition to mean that whenever the "subject-matter

---

[3] Polity "refers to the general governmental structure of a church, the organs of authority and the allocation and locus of its judicatory powers as defined by its own organic law." *Brady v. Reiner*, 198 S.E.2d 812, 827 (W. Va. 1973); *see also* William W. Bassett et al., 1 *Religious Organizations and the Law* § 8:5 (Westlaw 2020) ("The internal organizational framework of religious organizations, their patterns of association, cooperation, and governance—including the structures by which they implement their doctrine and live their religious commitment—are sometimes referred to as 'religious polity.'").

of [a] dispute" involves the "strictly and purely ecclesiastical," the claim is not justiciable. *Watson*, 80 U.S. at 733. Focusing on the "character" of the claim ensures that less familiar religious polities, those that might be unpopular, or those with decentralized organizational structures, enjoy the First Amendment's guarantees as much as familiar, widely understood, and centrally-organized polities. *Id.* This is crucial to vindicating the Constitution's goal of disentangling church and state.

These fundamental principles are at odds with the trial court's decision here. It is hard to conceive how a civil court is *not* entangling itself with religious governance when it holds that the directors of a religious non-profit violated a "duty of obedience"—based on how the civil court construed the religious mission articulated within the non-profit's corporate documents. And the "remedy" here is just as entangling as the claim: ordering a reorganization of the polity's board of directors, while penalizing the current non-profit's directors to the tune of over half-a-billion dollars. The decentralized nature of the Unification Church religion led the court not to accord it the same autonomy that would have easily applied to more centralized (and familiar) religious polities with organizational structures that are indisputably designed to theological norms (like the Roman Catholic Church or the Church of Jesus Christ of Latter-day Saints). Rather than punish religious entities for the unique ways in which their theological tenets inform organizational structure,

properly understanding the separation of church and state requires courts to accommodate them. The trial court here simply did not.

The trial court used secular equitable principles to adjudicate a religious schism. Left unreversed, the decision will chill how all manner of religious polities are organized. Churches, synagogues, mosques, gurdwaras, and other religious bodies will be subjected to the "significant burden" of "predict[ing]" how "secular court[s]" will evaluate their "religious" behavior. *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987). Our nation's long tradition of disentangling church and state rendered this fiduciary duty claim non-justiciable. The Court should vindicate that tradition here and reverse the trial court.

ARGUMENT

I. The First Amendment requires civil courts to respect diverse forms of church polity.

American law has long recognized that a religious polity's chosen civil legal form "is more or less intimately connected [to] religious views and ecclesiastical government." *Watson*, 80 U.S. at 726. This is because the corporate form itself often represents theological beliefs. Accordingly, civil courts are barred from conditioning religious autonomy on whether a polity's corporate form *appears* theological or not, because courts cannot properly evaluate such religious questions.

Rather than condition a polity's protection from civil litigation on how familiar its organization is to judges, the First Amendment prohibits adjudicating any claim with "criteria" that tend to entangle courts in "the

whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination." *Id.* at 733. Concluding otherwise—as the trial court here did—not only "deprive[s] these bodies of the right of construing their own church laws." *Id.* It also "open[s] the way to all the evils" that America's history of disentangling church and state has sought to avoid. *Id.*

A. American law has long prohibited civil courts from privileging, or imposing, certain forms of religious governance structures.

Because the basics of corporate law are, now, "objective, well-established concepts of . . . law familiar to lawyers and judges," it can be easy to overlook the evils they were designed to avoid. *Jones v. Wolf*, 443 U.S. 595, 603 (1979). When civil courts fail to appreciate the origins of religious organizational autonomy, they risk re-introducing two of the evils that founding-era changes to corporate law sought to dispel: religious establishments, and civil court control over church governance. The trial court's decision here wrongly revives constitutional problems that the Supreme Court resolved long ago.

"[T]he spirit of separation and pluralism that swept the country at the time of the American Revolution" led civil courts to respect the legal autonomy of diverse religious polities. Paul G. Kauper & Stephen C. Ellis, *Religious Corporations and the Law*, 71 Mich. L. Rev. 1499, 1510 (1973). From before the Revolution and into the Republic's early years, two vestiges of English law—the "special charter" condition on incorporation,

and the "departure from doctrine" interpretive principle—presented problems for the religiously diverse states.

The English-law "special charter" approach allowed governments to condition legal recognition on the state's ability to "specify[] [the polity's] form of government in minute detail." McConnell, 37 Tulsa L. Rev. at 11. In America, this approach denied legal protections, and sometimes even recognition, to the polity of any religion that did not conform to a given colony or state's established church. *See* Douglas G. Smith, *The Establishment Clause: Corollary of Eighteenth-Century Corporate Law?*, 98 Nw. U. L. Rev. 239, 266-67 (2003).

Similarly, the English-law "departure from doctrine" analysis worked to reinforce government preferences over private religious decisions. It allowed civil courts to adjudicate disputes over religious property and assets based on whether those charged with managing the *res* acted against the religious polity's theological tenets (*i.e.*, "departed from doctrine"). *See, e.g.*, *Watson*, 80 U.S. at 727-28 (describing the doctrine and its English-law roots).

In contrast to English law, American law already began dispensing with the "special charter" approach through general incorporation acts, but civil courts risked undermining that effort by importing the "departure from doctrine" analysis into an equitable doctrine of corporate and property law: the doctrine of "implied trust." *See* Bruce B. Jackson, *Secularization by Incorporation: Religious Organizations and Corporate*

Identity, 11 First Amend. L. Rev. 90, 104 (2012). General incorporation acts allowed for "trustee corporation[s]," whereby a polity's assets would be held by trustees authorized to determine their use for the polity's benefit. But if, for example, "the organization was incorporated when the membership was all Methodist, a change in a majority of the membership over time to Presbyterian" could produce a lawsuit over whether the Methodist trustees are "departing from doctrine" in how they choose to use church assets. *Id*. Implied trusts, where courts would require the use of assets in accordance with the polity's "true" theology, were the typical judicial remedy. *See id.* "Trustee[] [c]ontrovers[ies]" like these turned "[b]itter" throughout the Catholic Church in America, as new Catholic immigrants "did not wait for central church authorities to establish churches for them," but instead relied on the trustee model to build their own, and the Roman hierarchy sought to reassert control. McConnell, 37 Tulsa L. Rev. at 34-35.

In *Watson*, the Supreme Court rejected "departure from doctrine" analysis. *Watson* concerned a lawsuit where a pro-slavery minority faction of the Presbyterian Church claimed that the majority faction's anti-slavery views were a departure from doctrine, and that a civil court should thereby confirm that only the minority were the "true and lawful trustees" entitled to manage church property. *See* 80 U.S. at 690-97. The Supreme Court described this argument as at odds with the "full, entire,

and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles." *Id.* at 728.

Having surveyed the diversity of governance structures in American religious polities (*id.* at 722-25), *Watson* did not condition religious autonomy on judicial approval of (or familiarity with) a polity's form. Rather, when the "character" of a "dispute" involves the "strictly and purely ecclesiastical," civil courts have "no jurisdiction."[4] *Id.* at 733; *see also id.* at 724-25 (applying this to polities organized not only in more top-down forms, but also to "strictly congregational or independent organization[s]" and polities where "congregation officers . . . are vested [with] the powers of . . . control."). In sum, no matter the polity's form, *Watson* categorically rejected courts using equitable legal doctrines (like implied trust) "for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth." *Id* at 725.

---

[4] As *Watson* itself recognized, "the word jurisdiction" can be used in different "sense[s]." 80 U.S. at 732. Some components of the church autonomy doctrine—like the ministerial exception—are not considered issues of subject-matter jurisdiction, as the claims at issue are within a civil court's power but for the "ministerial" identity of the plaintiff. *See Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 195 n.4 (2012). But other claims that invade the ecclesiastical sphere—either by resolving a religious question or impeding church governance—are considered beyond a court's justiciable power. *See Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) ("general rule that religious controversies are not the proper subject of civil court inquiry"); *Westbrook v. Penley*, 231 S.W.3d 389, 394 n.3 (Tex. 2007) (collecting cases).

Since *Watson* was decided in 1871, the Supreme Court has extended its claim-focused approach to other legal claims involving the "strictly and purely ecclesiastical." *Id.* at 733. For example, just one year after *Watson*, the Court held it had no power to decide who are "church officers" in a case involving a congregational polity. *See Bouldin v. Alexander*, 82 U.S. (15 Wall) 131, 137 (1872). The Supreme Court similarly applied *Watson*'s rule with equal force to a *legislature*'s "transfer by statute of control over churches." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 110 (1952); *id.* at 119 (invalidating statutory power to "displace[] one church administrator with another"). And it held that *courts*, similarly, could not transfer control of churches by means of state trust law either. *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) ("the same premises" prohibit the judiciary from effectuating the same result under "common law" doctrines—even when the church polity appears controlled by "the secular authority in the U.S.S.R.").

Since *Kedroff* confirmed that *Watson*'s hands-off rule was not only a matter of federal common law but also a First Amendment guarantee (*see* 344 U.S. at 116), the Court then applied *Watson* to invalidate state common law use of "departure from doctrine" analysis. *See Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 448-49 (1969) (invalidating Georgia law).

Finally, *Watson*'s claim-focused protection of religious polity also led the Supreme Court to conclude that certain questions inherently fall outside the "sphere" of civil courts. *See, e.g.*, *Milivojevich*, 426 U.S. at 713 (holding that civil courts cannot assess whether a certain religious polity has power to decide a certain dispute within the church, or that the decisions were "arbitrary"); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) ("internal management decisions that are essential to the institution's central mission" are part of a religious polity's "sphere" of "autonomy").[5]

B. Civil courts risk entangling themselves with religious polity when adjudicating claims involving ecclesiastical issues.

Watson's claim-focused protection of religious autonomy avoids prejudicing religious polities that are unknown or unfamiliar to judges. *See* 80 U.S. at 726 (applying this rule to all polities, not just those "oftenest found in the courts"); *Our Lady*, 140 S. Ct. at 2066 ("In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role

---

[5] Some church property disputes can be determined by civil courts according to "neutral principles" that do not raise ecclesiastical issues. *See Jones v. Wolf*, 443 U.S. at 597. But in church governance cases, the Supreme Court has "narrowly drawn" this "neutral principles" doctrine, limiting it to only the church-property context. *Westbrook*, 231 S.W.3d at 398 (citing *Milivojevich*, 426 U.S. at 709). Church property cases—where there is a "conflict between two church entities over what the church's decision was in the first place"—are "fundamentally different" from using "external legal restrictions," like civil tort claims, "to thwart the church's [internal governance] decision[s]." Michael McConnell & Luke Goodrich, *On Resolving Church Property Disputes*, 58 Ariz L. Rev. 307, 336 (2016).

played by every person who performs a particular role in every religious tradition."). This not only ensures that diverse religious groups are free to "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Amos*, 483 U.S. at 341 (Brennan, J., concurring). It also avoids civil courts becoming entangled in "the free development of religious doctrine" by "implicating secular interests in matters of purely ecclesiastical concern." *Milivojevich*, 426 U.S. at 710.

By contrast, restricting religious autonomy protections solely to claims that present theological questions on their face would wrongly limit the religious freedom of many religious polities in general, and decentralized religious polities in particular. On that analysis, what goes "ignore[d]" is whether adjudicating such a claim "would unconstitutionally impede the church's authority to manage its own affairs." *Westbrook*, 231 S.W.3d at 397; *see also Kedroff*, 344 U.S. at 116 (churches are free "to decide *for themselves*, free from state interference, matters of church government *as well as* those of faith and doctrine.") (emphasis added). This blinkered approach only increases the likelihood that religious polities—confronted with the "significant burden" of having to "predict which of its activities a secular court will consider religious"—will simply shy away from activity protected by the First Amendment. *Amos*, 483 U.S. at 336.

Entanglement of church and state would immediately follow, both by directly impeding church governance and, indirectly, by chilling religious

bodies' choice of polity. The entanglement can take several forms, depending upon the type of claim and polity at issue. For example, resolving certain unlawful termination claims could influence "employment decisions of a pastoral character, in contravention of a church's own perception of its needs and purposes." *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). Adjudicating professional negligence claims that turn on whether certain secular "duties" were breached could "in effect impose a fine for [a church representative's] decision to follow the religious disciplinary procedures that [the representative's ecclesiastical] role required." *Westbrook*, 231 S.W.3d at 402 (barring professional negligence claim); *see also Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 881 (9th Cir. 1987) ("Were we to permit recovery, the pressure to forgo that practice would be unmistakable") (cleaned up). Adjudicating certain defamation claims could chill the internal governance decisions of religious leaders to speak about their co-religionists consistent with their religious teachings. *See El-Farra v. Sayyed*, 226 S.W.3d 792, 796 (Ark. 2006) ("Appellant argues that these false accusations against him . . . allege merely secular conflicts with the Executive Committee. We disagree. . . . [T]hese statements were made in the context of a dispute over appellant's suitability to remain as Imam.").

This is not to say, of course, that there are no justiciable claims between or among members of a religious polity. If a claim has nothing

to do with religious doctrine, religious questions, or the religious polity's governance structure, the claim may be justiciable. Similarly, claims involving physical harm will often be justiciable because they typically do not enmesh courts in ecclesiastical issues. *See, e.g.*, *Watchtower*, 819 F.2d at 883 ("physical assault or battery" claims arising out of a religious practice can be justiciable torts); *Rweyemamu v. Cote*, 520 F.3d 198, 208 (2d Cir. 2008) ("The minister struck on the head by a falling gargoyle as he is about to enter the church may have an actionable claim."). What makes those claims different from those not justiciable—like the fiduciary duty claim here—is that they do not put at issue a religious polity's "internal management decisions that are essential to the institution's central mission." *Our Lady*, 140 S. Ct. at 2060.

Finally, protecting diverse forms of religious polity requires resolving church autonomy's application at the case's outset. "It is not only the conclusions" a civil court may reach that may "impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979); *see also United Methodist Church v. White*, 571 A.2d 790, 792 (D.C. 1990) (Religion Clauses "grant churches an immunity from civil discovery . . . under certain circumstances").

"By resolving the question of [church autonomy] early in litigation, the courts avoid excessive entanglement in church matters." *Bryce v. Episcopal Church*, 289 F.3d 648, 654 n.1 (10th Cir. 2002) (discussing the

"ministerial exception," a component of the broader church autonomy guarantee). While this does not necessarily require considering religious autonomy an issue of subject-matter jurisdiction (*see supra* n.4), it does mean that allowing the case to proceed to intrusive discovery risks civil courts being "embroil[ed] . . . in line-drawing and second-guessing regarding [religious] matters about which it has neither competence nor legitimacy." *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1265 (10th Cir. 2008). No amount of "familiarity" with corporate law principles can force a religious organization to withstand the "sorting task" of discovery that "itself invades the religious body's integrity." *Whole Woman's Health v. Smith*, 896 F.3d 362, 368, 372 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 1170 (2019). *Cf. EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996) ("extensive pre-trial inquiries" constituted "impermissible entanglement").

The trial court's decision here sped past these guideposts. Instead, it ignored the First Amendment's protection of diverse religious polities and decided a claim that is inherently intertwined with core issues of ecclesiastical governance.

II. The trial court's decision did not respect church polity and would create substantial church-state entanglement.

The trial court ran headlong into established First Amendment principles requiring deference to religious organizations' decisions

regarding their own internal structures. This was reversible error for at least three reasons.

First, the trial court's decision required a secular court to sit in judgment of Unification Church theology, leadership, and polity—all of which is prohibited under the First Amendment. Second, if allowed to stand, the decision would excessively entangle civil courts in matters of religious governance and pressure religious organizations into abandoning their sincere religious beliefs to avoid civil liability. Third, the trial court's drastic remedies—a court-ordered reorganization of Unification Church International's ("UCI") board and an "equitable surcharge" against Defendants for charitable contributions that allegedly deviated from the mission of the Unification Church—confirm that this case cannot be adjudicated without deciding issues of religious controversy. Each reason independently requires reversal.

A. Resolving the fiduciary duty claim would force District of Columbia courts to resolve disputes over how the Unification Church understands its theology, leadership, and polity.

As discussed above, secular courts cannot adjudicate "controversies over religious doctrine," *Blue Hull*, 393 U.S. at 449, or disputes over "church polity" and "church administration," *Milivojevich*, 426 U.S. at 710. *See also Our Lady*, 140 S. Ct. at 2060.

But that is exactly what happened here. The trial court adopted Plaintiffs' disputed religious view that Family Federation is the

"authoritative religious entity at the head of the Unification Church religious denomination" such that it is entitled to "direct other entities that are members of the denomination." JA 265. The trial court then concluded that there is a "substantial" difference between "the Unification Church" and "the Unification Movement," and that "the theology and principles of the Unification Movement" exclude "the Divine Principle." JA 275-76, 341-42. In other words, the Superior Court decided as a matter of law that "doctrinal references" in UCI's original 1980 articles had a different religious meaning than the "broad goals" in its amended articles. JA 274. On that reading, the court concluded that Defendants' amendments to UCI's articles and UCI's donations to organizations allegedly "separate from the Unification Church" breached their fiduciary "duty of obedience." JA 278-79, 345, 360. Indeed, in the trial court's view, Plaintiffs—and not Defendants—represented "*the* Unification Church" which in turn required Defendants to support Plaintiffs' faction in the post-schism Unification Church. JA 263-64. The trial court could arrive at these conclusions only by ignoring the Supreme Court's repeated admonitions to avoid taking sides in religious schisms, deciding whether a church "departed from doctrine," or privileging certain forms of religious polity over others. *See supra* pp.6-9.

Indeed, the lower court's path to decision ran (and could only run) through conclusions that there is in fact a single religious body known as "the Unification Church," that Family Federation and Mrs. Moon

conclusively and exclusively speak for "the Unification Church," and that "the Unification Church" is hierarchically organized such that Plaintiffs' dictates must be obeyed. This kind of "duty of obedience" claim cannot be reconciled with our long national tradition of respecting diverse forms of religious polity, even if they do not fit a judge's preconceived notions of how religious polities are (or should be) organized. *See supra* pp.4-10; *see also Samuel v. Lakew*, 116 A.3d 1252, 1258-59 (D.C. 2015) (where "locus of control [is] ambiguous" deciding case "would entail an impermissible inquiry" into church polity).

Moreover, such a ruling will pressure UCI—and other religious polities belonging to decentralized faiths—to abandon their theologically-informed structures in favor of those "oftenest found in the courts:" hierarchical ones. *See Watson*, 80 U.S. at 726. Underlying this dispute are ambiguous religious questions: Whether UCI was a separate "providential organization" that, while carrying out Reverend Moon's mission, was separately controlled and organized by Defendants, and whether "the Unification Church" was shorthand for the religious movement founded upon the principles of Reverend Moon—not an established religious body, much less a hierarchical religious polity headed by Mrs. Moon. Concluding that civil courts may wade into and resolve such religious ambiguities, as the trial court did, will disproportionately make internal governance an "ecclesiastical" issue in hierarchical churches but not in decentralized ones. Ira Mark Ellman,

Driven from the Tribunal: Judicial Resolution of Internal Church Disputes, 69 Cal. L. Rev. 1378, 1406 (1981).

Judicially resolving issues of church polity and governance also forces religious organizations into associations and hierarchical relationships that they never agreed to. Thus UCI's 1980 Articles permitted charitable donations to entities "further[ing] the theology of the Unification Church." JA 272-73. But the Articles never defined "the Unification Church," and Family Federation—which the trial court proclaimed was the "authoritative religious entity at the head of the Unification Church" in the face of substantial dispute—did not even exist until ***decades after*** UCI created its original articles. JA 265, 321 ¶¶5-7.

Indeed, both the Second Circuit and the Southern District of New York already dismissed strikingly similar litigation for the same reasons. There, plaintiffs contended that Mrs. Moon, the managing agent of lead Plaintiff here, breached her fiduciary duty by usurping the authority of her younger son. In complete contradiction of her position here, Mrs. Moon successfully argued that civil courts could not adjudicate those claims "without deciding the religious question of who the rightful successor to the late Rev. Sun Moon is." *Moon v. Moon*, 833 Fed. App'x 876, 879 (2d Cir. 2020). Judge Buchwald held that the litigation "turn[ed] on the meaning of plainly non-secular terms and concepts," such as "an understanding of the authority" of the true leaders "within the Unification Church movement," and "the identity of the governing body

or bodies that exercise general authority[.]" *Hyung Jin Moon v. Hak Ja Han Moon*, 431 F. Supp. 3d 394, 407-08 (S.D.N.Y. 2019). Because that was "a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy." *Id.* at 407. Although civil courts may sometimes "evaluate whether church documents (*e.g.*, church charters or constitutions) contain secular language" that may "resolve the dispute on a non-theological basis," where "an issue of religious doctrine must be decided before it can be determined whether [a litigant's] acts were wrongful," courts must demur. *Id.* at 408, 412 (cleaned up). Such determinations are "judicially proscribed," as civil courts are not competent to make "determinations of religious tenets." *Id.* at 412 (cleaned up).

The same analysis applies here. At bottom, the issue for the District of Columbia courts is not which side of this religious schism should prevail. Affording Defendants' requested relief—dismissal—does not take a side in the underlying dispute. Rather, it ensures civil courts do not do what the First Amendment prohibits: "intrude[] for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom." *Kedroff*, 344 U.S. at 119.

B. Resolving the fiduciary duty claim inevitably entangles civil courts in matters of religious governance and will pressure religious organizations to alter their religious practices to avoid civil liability.

The trial court's order should also be reversed because its approach will inevitably result in excessive entanglement in religious governance, and it will pressure religious organizations to alter their religiously-motivated structures in order to reduce potential civil liability.

Excessive entanglement. "[L]itigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment." *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977). But the court's decision here authorizes the "searching case-by-case analys[es]" that produce "considerable ongoing government entanglement in religious affairs." *Amos*, 483 U.S. at 343 (Brennan, J., concurring). Such inquiries into "religious views . . . [are] not only unnecessary but also offensive," as "courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality op.).

For that reason, courts routinely hold that judicial reviews of such decisions are "*in themselves*" impermissibly "extensive inquir[ies] into religious law and practice, and hence forbidden by the First Amendment." *Young v. N. Ill. Conf.*, 21 F.3d 184, 187 (7th Cir. 1994) (cleaned up); *accord Catholic Univ.*, 83 F.3d at 466 (applying *Catholic*

Bishop to hold that EEOC investigations into church affairs violated Religion Clauses). This Court has held as much. *United Methodist Church*, 571 A.2d at 793 ("[O]nce exposed to discovery and trial, the constitutional rights of the church to operate free of judicial scrutiny would be irreparably violated."). Put differently, the church autonomy doctrine acts as a form of immunity to prevent intrusive judicial inquiries into religious belief. *See, e.g., id.* at 792 (church autonomy "grant[s] churches an immunity from civil discovery and trial"); *McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (church autonomy doctrine "closely akin" to "official immunity" and protects against "the travails of a trial and not just from an adverse judgment"). "[T]he *mere adjudication* of [religious] questions would pose grave problems for religious autonomy." *Hosanna-Tabor*, 565 U.S. at 205-06 (Alito, J., joined by Kagan, J., concurring) (emphasis added).

The trial court's decision ignored all these admonitions and would, if left uncorrected, open the floodgates to similar litigation. Citing the lower court, litigants could dredge up disputed religious materials, and courts could become enmeshed in years or decades of litigation over the interpretation of ambiguous religious terms according to supposedly "neutral principles." Civil courts would ultimately have to decide issues of church polity and governance stretching over decades of history, just as the trial court did when it concluded that the "theology and principles of the Unification Movement" had a religious meaning different from "the

Divine Principle" and "the theology of the Unification Church." JA 273-76. Such a process requires "a searching and therefore impermissible inquiry into church polity." *Jones v. Wolf*, 443 U.S. at 605.

Chilling free exercise. Allowing the trial court's decision to stand would also chill religious organizations' free exercise rights. "Fear of potential liability," or "that a judge would not understand its religious tenets," "might affect the way an organization carried out what it understood to be its religious mission." *Amos*, 483 U.S. at 336.

That is what happened here. And it portends what will happen for other unfamiliar or decentralized faiths unless this Court intervenes. Indeed, although Defendants proffered evidence indicating that their charitable donations and amendments to UCI's corporate documents were consistent with their own sincere understanding of Unification theology, the trial court held the opposite, finding that those charitable contributions and amendments violated Defendants' fiduciary duty to support the Unification Church. In other words, Defendants and UCI "regard[ed] the conduct of certain functions as integral to [their] mission," but the trial court "disagree[d]." *Id.* at 343 (Brennan, J., concurring). This will lead religious polities "to characterize as religious only those activities about which there likely would be no dispute, even if [they] genuinely believed that religious commitment was important in performing other tasks as well." *Id.* As a result, a religious organization's "process of self-definition would be shaped in part by the prospects of

litigation" instead of its sincerely held religious beliefs. *Id.* at 343-44. "[T]he danger of chilling religious activity" thus also warrants reversing the trial court. *Id.* at 344.

C. The drastic remedies imposed by the trial court demonstrate the dramatic consequences of violating church autonomy.

Finally, the drastic remedies imposed below are their own church autonomy violation. First, the trial court concluded that Defendants were "hostile to the Unification Church and its leadership," and that as a result, the court could exercise its equitable power to remove Defendants from UCI's Board of Directors. JA 362, 391.

Second, the trial court imposed an "equitable surcharge" of over $500 million on the individual directors because they made charitable contributions without Plaintiffs' approval and supposedly in contravention of Unification Church beliefs. JA 392, 409. Both remedies violated UCI's freedom to decide matters of church governance, faith, and doctrine.

Board reorganization. UCI is a religious organization. Governmental intrusion requiring the replacing ("restructuring") of its Board is thus plainly unconstitutional. If the church autonomy doctrine forbids inquiry into the theological beliefs of a religious organization, the same is *a fortiori* true for the more intrusive act of replacing the leadership of a religious organization based on a secular interpretation of those religious beliefs. The trial court was only able to order the

reorganization of UCI's Board by taking sides in a schism and determining that the Board's theological positions are "at odds with the Unification Church," "hostile" to the Unification Church, and "incapable of being obedient" to "the Church's leadership." JA 325; *id*. at 360-61.

Undeterred, the trial court ventured even further into the religious thicket by excluding certain leaders of UCI and directing the remaining board members to work "in conjunction with Plaintiffs" to replace them. JA 409. This remedy flagrantly violates the right of religious bodies to "select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Amos*, 483 U.S. at 341 (Brennan, J., concurring); *see also Our Lady*, 140 S. Ct. at 2064. Indeed, the trial court's stated reason for reorganizing UCI's Board echoes the "departure from doctrine" analysis the Supreme Court rejected long ago: The directors, concluded the trial court, were "hostile to the Unification Church and its leadership" because the directors "all belong[ed] to the same 'school of thought,' following the direction of Preston Moon" instead of Plaintiffs. JA 391; *see supra* pp.6-9. This Court should reject the lower court's revival of "departure from doctrine".

Equitable surcharge. That same conclusion also follows for the trial court's other remedy: imposing an over $500 million "equitable surcharge" on the individual directors. The court levied that massive financial penalty after it decided, despite conflicting evidence, that "the Unification Church" was a hierarchically organized religion with

Appellee Family Federation as the "authoritative religious entity at the head of the Unification Church." JA 265. The trial court then made the religious determination that the organizations receiving the donations were "completely unaffiliated with the Unification Church" or "separate from the Unification Church," as the court understood "the Unification Church." JA 278-79. The court was thus only able to impose penalties on the individual directors' religiously motivated actions by first deciding disputed issues of theological doctrine and church polity and then holding that the individual directors' actions were not religious actions based on the court's own conception of Unification Church theology.

The Supreme Court predicted these very circumstances and sought to prevent courts from ever entering this constitutional minefield. "[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious." *Amos*, 483 U.S. at 336. "[A]n organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission," leading to "liability" for "the way an organization carried out . . . its religious mission." *Id.* As a result, a church's leaders must now pay over half-a-billion dollars because a civil judge disagrees with them about their church's theological requirements. If the First Amendment means anything at all, it cannot mean that.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

/s/ Eric C. Rassbach

Eric C. Rassbach (D.C. Bar No. 493739)
William J. Haun (D.C. Bar No. 1024405)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW, Suite 400
Washington, DC 20006
Telephone: (202) 955-0095
Facsimile: (202) 955-0090
erassbach@becketlaw.org

Dated: March 29, 2021 Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing brief was filed this 29th day of March, 2021, through the Court's Electronic Filing System, and served via electronic filing upon:

James A. Bensfield
(jbensfield@milchev.com)
Alan I. Horowitz
(ahorowitz@milchev.com)
Brian A. Hill (bhill@milchev.com)
Laura G. Ferguson
(lferguson@milchev.com)
Michael J. Satin
(msatin@milchev.com)
Dawn E. Murphy-Johnson
(dmurphyjohnson@milchev.com)
MILLER & CHEVALIER CHARTERED
900 16th St., N.W.
Washington, D.C. 20006

Counsel for The Family Federation for World Peace and Unification International, The Universal Peace Federation, and The Holy Spirit Association for the Unification of World Christianity (Japan)

Derek L. Shaffer
(derekshaffer@quinnemanuel.com)
QUINN EMANUEL URQHART & SULLIVAN, LLP
1300 I St. NW, Suite 900
Washington, DC 20005

Counsel for UCI

Christopher B. Mead
(cmead@londonandmead.com)
LONDON & MEAD
1225 19th St. NW, Suite 320
Washington, DC 20036

Counsel for Michael Sommer

Henry W. Asbill
(hasbill@buckleyfirm.com)
Veena Viswanatha
(vviswanatha@buckleyfirm.com)
BUCKLEY LLP
2001 M Street NW, Suite 500
Washington, DC 20037

Counsel for Hyun Jin Moon

William G. Laxton
(wglaxton@jonesday.com)
Jacob M. Roth
(yroth@jonesday.com)
Michael A. Carvin
(macarvin@jonesday.com)
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001

Counsel for Hyun Jin Moon

Francis D. Carter
(frank@fdcarter.com)
LAW OFFICE OF FRANCIS D. CARTER
101 S. Street, NW
Washington, DC 20001

Counsel for Jinman Kwak, Youngjun Kim, and Richard Perea

Served by electronic mail upon:

Benjamin P. De Sena
(bdesena@aol.com)
LAW OFFICES OF DE SENA & PETRO
197 Lafayette Ave.
Hawthorn, NJ 07506

Of Counsel for The Family Federation for World Peace and Unification International, The Universal Peace Federation, and The Holy Spirit Association for the Unification of World Christianity (Japan)

William A. Burck
(williamburck@quinnemanuel.com)
Jan-Philip Kernisan
(jpkernisan@quinnemanuel.com)
John F. Bash
(johnbash@quinnemanuel.com)
QUINN EMANUEL URQHART & SULLIVAN, LLP
1300 I St. NW, Suite 900
Washington, DC 20005

Counsel for UCI

David T. Raimer
(dtraimer@jonesday.com)
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001

Counsel for Hyun Jin Moon

And served by mail upon:

Richard D. Carter
CARTER & LAY
803 Prince Street
Alexandria, VA 22314

Counsel for Jinman Kwak and Youngjun Kim

Dated: March 29, 2021

/s/ Eric C. Rassbach
Eric C. Rassbach