No. 20-cv-0714, No. 20-cv-0715

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

HYUN JIN MOON, et al.,

Defendant-Appellants,

v.

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

Plaintiff-Appellees.

On Appeal from the Superior Court of the District of Columbia, Civil Division (Case No. 2011 CA 003721B, Hon. Laura A. Cordero & Hon. Jennifer M. Anderson)

BRIEF OF DEFENDANT-APPELLANT UCI

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DEFENDANT-APPELLANT UCI'S D.C. APP. R. 28(a)(2) STATEMENT:

The parties in this action are:

1. 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) (Plaintiff-Appellees). Counsel:

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- Alan I. Horowitz (appellate & trial counsel)
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5. JinMan Kwak and Youngjun Kim (Defendants-Appellants). Counsel:

LAW OFFICE OF FRANCIS D. CARTER

- Francis D. Carter (appellate & trial counsel)

DEFENDANT-APPELLANT UCI'S D.C. APP. R. 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Rules of the District of Columbia Court of Appeals, Defendant-Appellant UCI hereby submits its corporate disclosure statement.

UCI states that it is a nonprofit corporation. It has no parent corporation and does not issue stock.

By: */s/ Derek L. Shaffer*

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PRELIMINARY STATEMENT

For nearly a decade, this prolix litigation has been burdening D.C. courts, trampling First Amendment interests, and transgressing the outer bounds of judicial authority to police religious disputes. Immediately precipitating this appeal is a Remedies Order that has no precedent and violates constitutional and statutory commands. The court below has effectively empowered Plaintiffs—representing one side of a deep, heated religious schism—to hijack Defendant-Appellant UCI, a religious nonprofit, in service of Plaintiffs' divergent conception of UCI's true calling. By its terms, the Remedies Order would modify UCI's articles of incorporation as urged by Plaintiffs; remove UCI's chair and three directors (representing a majority of the seven-person board); and order that a new majority be appointed "in conjunction with Plaintiffs," UCI's sworn adversaries. Large chunks of the orders under appeal read as theological commentary more so than judicial reasoning. And the crushing remedies at issue follow a defective process that barred UCI even from participating.

This Court has already stayed the Remedies Order on an emergency basis while ordering expedition of this appeal. As set forth in the stay briefing and elaborated herein, the Remedies Order is legally flawed in multiple respects that call for reversal. But mere reversal of the Remedies Order is not medicine enough at this point. There is only one appellate cure for the larger ailment that plagues

the proceedings below: This entire case should be dismissed as incompatible with the First Amendment and the constitutional imperative that U.S. courts not wade into contests over religious governance or theology.

JURISDICTION

Jurisdiction rests on independent bases. First, the Remedies Order operates as an injunction, carrying "serious, perhaps irreparable, consequences" that "can be effectually challenged only by immediate appeal." *Brown v. Pearson*, 241 A.3d 265, 272 (D.C. 2020) (internal quotation marks omitted). Second, the collateral-order doctrine obtains. *See Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 425–27 (D.C. 1996); *Heard v. Johnson*, 810 A.2d 871, 876–77 (D.C. 2002).

STATEMENT OF THE ISSUES

While incorporating by reference the issues posed by the Defendant Directors, UCI specifically poses the following issues:

I. Do the Remedies Order and its claimed bases violate the First Amendment to the United States Constitution?

II. Did the process preceding the Remedies Order violate due process or evidentiary rules because UCI was precluded from presenting proof in its defense?

III. Does the Remedies Order violate D.C. law and statute by removing directors from the board of a D.C. nonprofit corporation in a non-derivative action?

STATEMENT OF THE CASE

1. In this suit, Plaintiffs Family Federation for World Peace and Unification International ("Family Federation"), Holy Spirit Association for the Unification of World Christianity—Japan ("UCJ"), and Universal Peace Federation ("UPF") seek to redirect UCI's pattern of donations, revise its articles, and reconstitute its board in Plaintiffs' desired image. At bottom, Plaintiffs challenge UCI's adherence to the leadership of Defendant Hyun Jin "Preston" Moon ("Dr. Moon"), as UCI's chair and president, and as an elder son of Reverend Dr. Sun Myung Moon ("Reverend Moon"), whom all recognize as the Unification Movement's founding messianic figure. Yet Plaintiffs have struggled to get their stories straight about *who* is meant to be leading *their* religious faction and why. When they first sued, Plaintiffs were aligned with Hyung Jin "Sean" Moon ("Sean"), then-president of Family Federation (and the younger brother of Dr. Moon); Plaintiffs trumpeted *Sean* as the ordained successor to Reverend Moon. JA.0117; JA.0130.

Although Plaintiffs initially made nary a mention of Reverend Moon's widow and Sean's biological mother, Hak Ja Han, Plaintiffs took to humming a different tune as the schism evolved. Today, Plaintiffs insist that Hak Ja Han holds all spiritual authority over the Movement, that her theological innovations reflect its true eternal values, and that Sean is heretical and excommunicated. *See*

JA.1451–55; JA.1463–66; JA.1472–78.[1] Hak Ja Han now claims to be the divine leader of the entire Movement, through what she calls her "Heavenly Parent Church." *See* JA.4137–44.

2. The trial court initially dismissed the case on First Amendment grounds, but this Court held that threshold dismissal was "premature." *Family Fed'n v. Moon*, 129 A.3d 234, 239, 249, 251–52 (D.C. 2015). While remanding for development of a "more robust record," the Court noted that, "if it becomes apparent . . . that this dispute does in fact turn on matters of doctrinal interpretation or church governance, the trial court may grant summary judgment to avoid excessive entanglement with religion." *Id*. at 251, 253 n.26.

3. Following a preliminary injunction that bars UCI from donating its assets, the case returned here on appeal in 2018. *See* JA.0235–49. While declining to reverse, the Court by "no means . . . prejudge[d]" the outcome of this case, (JA.0247), including as to any "theological questions" that might pose constitutional concerns, (JA.0243) (internal quotation marks omitted).

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[1] When Sean sued Hak Ja Han and Family Federation over his ouster, the U.S. District Court for the Southern District of New York and then the Second Circuit ruled they had no jurisdiction, agreeing with Family Federation's argument that the First Amendment prohibits "resolution of whether son Sean Moon or [Mrs.] Moon is the rightful successor to Reverend Moon as leader of the church." JA.4172; JA.4179; JA.4149; *Moon v. Moon*, 431 F. Supp. 3d 394 (S.D.N.Y. 2019), *aff'd as modified sub nom. Moon v. Moon*, 833 F. App'x 876 (2d Cir. 2020). Defendants submitted those decisions as further calling for a like dismissal here, but the trial court disagreed. *See* JA.4145; JA.0436–52.

4. In 2019, the trial court granted partial summary judgment to Plaintiffs as to breach of fiduciary duty. Rejecting Defendants' arguments for ecclesiastical abstention, (JA.0250–94, at JA.0262–64), the court sided with Plaintiffs in ruling that amendments to UCI's articles of incorporation had impermissibly "broaden[ed] UCI's purposes" by referencing the "Unification Movement" and its "theology" (rather than the "Unification Church" and the "Divine Principle"), (JA.0272–74). It further ruled for Plaintiffs that UCI's donations to outside entities not formally "[]affiliated" with the "Unification Church" had contravened "UCI's original corporate purposes." JA.0276–83.

5. In late 2019 (with a different judge presiding), the trial court held a hearing on the appropriate remedy for the violations it had found on summary judgment (the "Remedies Hearing"). When UCI there sought to introduce evidence, the trial court recognized that "of course, you have an interest." JA.2602–07, at JA.2606. But, said the trial court, "just because you have an interest doesn't mean you get to participate," so UCI could "not make objections and chime in assisting the directors" at the Remedies Hearing. JA.2606–07. When UCI renewed its attempt "to present evidence and argue concerning what is in the best interest of UCI," the court responded that such opportunity would come only in "the other proceeding that I envisioned . . . in terms of if I decided to remove the directors, how I would go about it." JA.3229. After UCI noted "there is additional

evidence that the Court can and should consider, and argument that the Court can and should consider concerning what is in UCI's best interests with respect to removal," the trial court responded, "I guess we'll address that at a later time." JA.3230–32. In fact, no such "later time" or "other opportunity" ever came. UCI was thus foreclosed from introducing its own proof, including as to how UCI became more profitable and sound during Dr. Moon's tenure,[2] how qualified UCI's directors are,[3] and how perversely Sean and Hak Ja Han would twist and betray Reverend Moon's spiritual teachings.[4]

6. Fourteen months following the Remedies Hearing, on December 4, 2020, the court issued the order precipitating this appeal (the "Remedies Order"). JA.0317–411. Adopting wholesale (and often verbatim) Plaintiffs' disputed factual account and self-serving gloss, the Remedies Order rescinded the 2010 amendments to UCI's articles; removed the Director Defendants as directors and officers of UCI, branding them "hostile to the Unification Church and its leadership" and all in the same "'school of thought,' following the direction of [Dr.] Moon"; required UCI's remaining board members to choose replacements "in

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[2] *See, e.g.*, JA.2078–104, at JA.2090–93 (UCI's brief opposing Plaintiff's motion for remedies); JA.0895–926 (Expert report of Dennis E. Crawford); JA.2315–38 (Expert Report of James J. Kern); JA.0299–302 (order limiting scope of Crawford and Kern testimony); JA.2501; JA.2507.

[3] *See* JA.2528.1–2528.2 (deeming "the business competence of the individuals who are currently on the board" to be a "totally separate issue").

[4] *E.g.*, JA.0304–11; JA.2497–99; JA.2582–83.

conjunction with Plaintiffs"; and surcharged the Director Defendants over $500 million for the GPF and KIF donations. JA.0391; JA.0409; pp. 19–20, *infra*. By the terms of the Remedies Order, all of these remedies were slated to take immediate effect, drastically transforming UCI's governance, and throwing control over it up for grabs.

7. After the trial court denied Defendants' motion for an administrative stay and for a stay pending appeal, this Court granted an administrative stay and expedited treatment over oppositions by Plaintiffs.

STATEMENT OF FACTS

UCI and this case arise from the Unification Movement, a global religion that Reverend Moon founded in Korea in 1954. JA.0116; JA.0617. Considered a messianic[5] figure and referred to as the "Third Adam," Reverend Moon exercised complete spiritual authority over the Movement. *See, e.g.*, JA.3758–63; JA.0619–20. Since its founding, the Unification Movement has devoted itself to driving global peace efforts, advancing interfaith initiatives, and promoting human rights, education, culture and the arts, media, service, and commerce, all emanating from God-centered marriage and families, which the Movement strives to foster and strengthen. *See* JA.0626; JA.1951–66; JA.2772–73.

[5] The Movement believes that the messiah is a human male, and that the messianic mission unfolds within the realm of human experience. *See* JA.0619–20; JA.0624–25; JA.2405–06; JA.2859–61.

Just as the Movement celebrates individual families as the wellspring of religion and love, Reverend Moon's own family (called the "True Family") is central, (JA.0619–22), and considered "God's true lineage" on Earth, (JA.2701–02; *see also* JA.3077). Of particular relevance in this litigation are Reverend Moon's widow and surviving sons. JA.0621–22. Under Unification theology, the Third Adam's messianic mission is to rectify the original Adam's family failure (as told in the Bible) by creating an ideal family and collaborating with one of his sons, the "Fourth Adam," to carry the ideal family forward into the next generation and propagate that ideal throughout humanity. *See* JA.2860–61; JA.3758–63.

The Movement is not a church, nor is it structured like an established religion. The term "Unification Church" encompasses the entire Movement rather than a single entity, (*see, e.g.*, JA.0626–27), and all agree that "Unification Church" and "Unification Movement" have come to be used interchangeably, JA.3787 (Hak Ja Han); JA.2787 (Dr. Moon).[6] In actuality, the Movement spans hundreds of affiliated organizations globally that maintain legal independence from one another while sharing devotion to Reverend Moon's teachings and a commitment to fulfilling the Movement's mission (however each may conceive of and practice it). *See* JA.2852–53; JA.3820–21. Among those entities is UCI, a D.C. religious nonprofit that was founded in the 1970s, and entities that have

[6] Although "Unification Church" was first coined by Movement outsiders, (JA.1270–86, at JA.1283), members then adopted it, (JA.0613–14).

aligned themselves against UCI, as reflected in respective sides of the caption in this case.

Early in the Movement's history, Reverend Moon sought a platform to attract followers and spread Unification theology. *See* JA.0617–18; JA.1282–86. To serve this purpose, certain aspects of the Movement assumed the form of national institutional "churches." Because Reverend Moon wanted these national associations to unify denominationally-divided, sectarian Christians, they were called the Holy Spirit Association for the Unification of World Christianity ("HSA-UWC"). JA.1282–83; JA.0617–18; JA.3815. The Movement encompassed these "churches," alongside the broader "constellation" of providential organizations, including UCI, all "deriv[ing] from [Reverend Moon's] messianic ministry." JA.0594; *see also* JA.1740–41. Reverend Moon was the "charismatic" leader who "held together" the Movement's disparate parts. JA.0600. Following his physical and mental decline and then his passing in 2012, a schism arose as different aspects of the Movement aligned around different members of the True Family. JA.0621.

This dispute specifically reflects theological differences between Hak Ja Han and two of Reverend Moon's sons over who is Reverend Moon's rightful successor and how the Movement's theology is to be understood and practiced in the wake of Reverend Moon's passing. *See* JA.0619–25; JA.1787–89. The upshot pits UCI, Dr. Moon, and the Defendant Directors against those, like Hak Ja Han and Sean,

who seek to aggrandize themselves and to bring to heel those who continue Reverend Moon's push for the Movement to transcend any one institutionalized, hierarchical "church" while empowering rank-and-file followers, even at the expense of institutions and clergy. *See* JA.1787–89.

A. UCI's Historic and Evolving Place in the Unification Movement

From early in its history, UCI was structured as a D.C. nonprofit corporation. In 1977, "Unification Church International" was incorporated as a non-member nonprofit in the District of Columbia. JA.0818–28. UCI instituted written articles of incorporation, which it amended in 1980, as well as written bylaws. JA.0818–26; JA.1416–20; JA.0842–65; JA.0866–79. The bylaws authorize the board, *e.g.*, to elect and remove its members and to amend the bylaws either by majority meeting vote or by unanimous written consent. JA.0855–60; JA.0869–73. The bylaws also subject UCI's president to the board's control. *Id*.

1. UCI Has Continuously Advanced Reverend Moon's Broad Vision For a Unified World of Peace

While defined by its religious beliefs and mission, UCI is not an institutional church. To the contrary, its wide-ranging purposes—as enumerated in its 1977 articles, later amended in 1980—strive to achieve Reverend Moon's vision through diverse, multi-dimensional means. JA.0818–19 at Art. III; JA.1418–20 at Art. III; JA.1944–950.

Although *spiritually* part of the Movement, UCI is *legally* independent. JA.0927–34 at ¶ 10; JA.0804–05; JA.0813. Its articles always spelled this out, stating that UCI is controlled "exclusively" by its board, (JA.0824 at Arts. V, VII; JA.1418–20; *see also* JA.0844–65; JA.0866–79), while nodding to the spiritual "inspiration" of Reverend Moon as leader of the "international Unification Church movement," (JA.0825 at Art. IX). Neither Reverend Moon nor any other Movement entity ever held any corporate power over UCI. JA.0927–34 at ¶ 10; JA.0881–82.

For decades, UCI directed its disbursements to support sundry entities, activities, and projects that furthered, each in its own way, Reverend Moon's teachings of world peace and unification. Among other things, UCI sent hundreds of millions of dollars to The Washington Times—during the 1990s, about $80 million each year. JA.3073–74; JA.1951. Similarly, UCI gave about $35 million to the nonsectarian University of Bridgeport, and more than $68 million to support a ballet company. JA.2378; JA.1952; JA.0677–78. UCI also contributed funds to anticommunist organizations; film and TV production companies; the Martial Arts Federation for World Peace; a Korean soccer team; and the Reverend Jerry Falwell's ministry.[7] *See* JA.1953–65. Likewise, a predecessor to Plaintiff UPF

[7] Many of the businesses and nonprofits to which UCI donated distanced themselves from the Movement to avoid controversy surrounding the Movement and to affirm their professional *bona fides* and credibility among a wider audience.

that Dr. Moon built up and steered, Interreligious and International Federation for World Peace ("IIFWP"), was "not evangelical, . . . non-sectarian, . . . interreligious, [did] not proselytize," and its "programs [did] not involve theological doctrine." JA.3630; JA.2389–92; JA.0713–14 at ¶¶ 35–37; JA.2890. Between 2005 and 2010, UCI provided financial support to UPF, too, and its Global Peace Festivals. JA.2007; JA.2011–12; JA.2889–96. Both sides agree that this pattern of donations was perfectly consistent with UCI's corporate documents and religious mission so long as Reverend Moon lived. *See, e.g.*, JA.0670–71 at ¶¶ 97, 99; JA.0678 at ¶ 164; JA.1966; JA.3134–35; JA.3816.

2. UCI Has Moved Towards Profitability Under Dr. Moon

UCI and its subsidiaries have long owned a number of for-profit businesses, including seafood distribution company True World Group, with the aim of generating profits to support the Movement's nonprofit endeavors. *See* JA.2373–74; JA.2379–80; JA.2928; JA.3071. Historically, these for-profit businesses lost money. JA.2379; JA.2871–72. They were kept afloat by what UCI received in donations from Plaintiff UCJ (around $100 million each year), JA.1287–91 at ¶ 12; up to 80–85% went to media businesses like The Washington Times, JA.2379–81; JA.2572–73; JA.2578; JA.2872; JA.3073–74. These organizations were secular and legally independent. JA.2377–78; JA.2595–97; JA.2772.

JA.3075–76; JA.2378; JA.3748–51. Very little of UCI's donations went to churches or overtly religious initiatives. JA.2872; JA.2379.

Even as UCI continued to support the Movement's spiritual goals, UCI's operations had become financially unsustainable by 2002. At that time, UCI was hemorrhaging more than $100 million per year under its then-president, Douglas Joo. JA.2872–77. Further, there was a "lack of depth in management, [a] lack of depth in professionalism," posing daunting operational and organizational challenges. JA.2875. In sum, UCI was a "tremendous mess." JA.2875.

Recognizing that UCI needed new leadership, Reverend Moon asked that Dr. Moon, whom he had publicly proclaimed the Fourth Adam and the Movement's spiritual successor in 1998, exercise more direct oversight. *See* JA.3758–63. In line with Reverend Moon's directive, Dr. Moon commenced quarterly meetings with leaders of UCI's for-profit subsidiaries and grant recipients to get himself up to speed. In 2006, Dr. Moon was unanimously elected by UCI's board to serve as chairman and president. JA.2873–74; JA.0971–74. Per Reverend Moon's instructions, Dr. Moon sought to modernize UCI and to improve the subsidiaries' financial performance, yielding "significant—huge improvements" by 2010. JA.2873–76.

B. A Religious Schism Has Consumed the Unification Movement

Although UCI is an important dot among the constellation of Movement entities, it is by no means the only such dot. While the Movement fractured around it, however, UCI has stayed true to its mission and Reverend Moon's teachings.

The schism dates back to the 1990s, when Reverend Moon recognized that the Movement had achieved a global footprint and announced the "end of the church era," accentuating the providential shift away from institutional churches and emphasizing the family-based aspects of the Movement. This push spawned Family Federation and various peace-based entities that followed. *See* JA.0623–25. Yet the clerics within the churches aligned with Hak Ja Han and Sean to favor an institutional structure, even after Reverend Moon had urged the opposite. The pro-institutional forces became antagonistic to Dr. Moon, who was committed then, as he remains today, to fulfilling Reverend Moon's providential directive. JA.0623–27; JA.1787–89; JA.2864–67.

It was in 1994 that Reverend Moon announced the "end of the church era." JA.0569–70. He declared that the Movement should be "centered on families," rather than on a "hierarchical, institutionalized church." JA.0996–97; *see also* JA.0596; JA.0619; JA.1283–84; JA.1292–93. Dr. Moon was tasked specifically with ushering in this new era, and focused on restructuring the Movement according to Reverend Moon's directive. *See* JA.2857–63; JA.2883–84.

As soon as Reverend Moon announced the "end of the church era," (*see* JA.1222–28 at ¶ 4), lines of division began forming, particularly as clerics resisted any move away from the institutional church structure for fear that their influence and privileges might be diminished. *See, e.g.*, JA.1787–89; JA.2865–67. By 2008,

Hak Ja Han and other members of the True Family joined the clerics' "reluctance . . . to transition from . . . a denominational church model, to this more broad pan religious movement. . . ." JA.1787–89. A schism thus took shape over the direction of the Unification Church—specifically, over whether the Unification Church would continue as a broad providential movement in accordance with Reverend Moon's beliefs and teachings, or assume a more hierarchical, institutional church structure centered around HSA-UWC. *Id.*; JA.2780–81.

Reverend Moon founded Family Federation to steer further away from any institutional church. *See* JA.0996–97; JA.2865–67. Again, Reverend Moon enlisted Dr. Moon to aid in this important push and to serve as international vice president within Family Federation. *See* JA.2865 ("[M]y father founded that organization, but I built it."); JA.3758–63. Like the HSA entities, Family Federation entities were organized in various nations. JA.0546. Also like the national HSA-UWCs, the national Family Federation organizations were legally independent and drew spiritual inspiration from Reverend Moon, "bound together" by his "moral authority," (JA.0545; JA.0548), albeit without Reverend Moon playing a formal role, (*see* JA.2865).

Although Plaintiff Family Federation now contends it is the "international headquarters" of the Movement, (JA.1735), that is antithetical to Reverend Moon's conception and not at all credible, (*see, e.g.*, JA.1335–45; JA.2897–98, JA.2960

("[W]e were a charismatic providential movement. Organizations don't matter.")).[8] True to Reverend Moon's design, Family Federation is not formally organized and has no articles of incorporation or bylaws. JA.1914. Nor is Family Federation's own leadership clear. In 2011, when this suit began, Sean Moon was Family Federation's anointed leader and president, as the Plaintiffs expressly alleged, (JA.0117–18), but Sean was then ousted. By the time Hak Ja Han was deposed in July 2018, she was testifying under oath not only that she was Family Federation's sole managing agent, but also that her authority is "higher" than Family Federation's, such that Family Federation reports to her and not vice versa. JA.3793.

When Plaintiffs first sued in 2011, they pointed to Sean "and not" Dr. Moon as the rightful successor to Reverend Moon and the ordained leader of UCI. JA.0117–18. Contrary to Reverend Moon's theology and the Movement's consensus, Sean wanted Family Federation to be the hierarchical, ecclesiastical institution atop all other Movement entities. But Plaintiffs disavowed Sean shortly after Reverend Moon's death in 2012, when Sean was cast out from Family

[8] Plaintiff "Family Federation" is an unincorporated entity that Dr. Moon built after Reverend Moon announced the "end of the church era." While it now holds itself out as the headquarters of the Unification Movement, that self-pronounced status amounts to *ipse dixit* that is unsupported by Unification theology and history, the factual record, and any legal status. *See* JA.1735; JA.1914; JA.2580–81. In nonetheless referring henceforward to "Family Federation" as a single entity, UCI does so simply for ease of reference and clarity, without dignifying the Plaintiff's claimed status.

Federation, at which point Hak Ja Han proclaimed *herself* the leader of Family Federation along with the larger Movement. JA.0624–25.

Since then, Hak Ja Han has attempted to claim Reverend Moon's legacy as the key figure in the Unification Movement. She has rejected core Unification theological tenets and now claims to have been "spiritual leader" of the Movement "from the beginning," and the "only begotten daughter of God." JA.3797–99; JA.3839. What is more, Hak Ja Han has hungrily gobbled the Movement's resources to commission lavish statues of herself that portray her as a divine figure towering over dwarf-sized statuettes of Movement members, including Reverend Moon. *Heavenly Parents' Meeting is "Ko, Re, Da,"* https://ameblo.jp/peace-tomy4509/image-12628337617-14826833765.html. Beyond that, she has also built massive, expensive palaces (which she refers to as such) to herself. *See* JA.2497–500 (proffer, excluded below, that the first such palace cost $400 million, as "raised by selling indulgences").[9]

[9] *Cf.* Jiman Yoo, *Sungmo Ahn, [Exclusive] Unification Church's "200 billion embezzlement suspicion" veiled*, Sisa Journal, (May 7, 2019) https://www.sisajournal.com/news/articleView.html?idxno=185016 (reporting in Korean that the land for Hak Ja Han's current palace cost USD 278 million, and describing Korean investigations, now closed, into embezzlement surrounding construction). In 2017, work began on a *new* palace, or "mecca," that is set be completed in 2023 and to house state-of-the-art facilities, including a seven-story museum. Seog Byung Kim, *The HJ Cheonwon Project with a Special Focus on Cheonji Sunhak Won*, (Mar. 2018) http://www.tparents.org/Library/Unification/Talks/Kim-17/Kim-180300.pdf (describing 2017 groundbreaking for an opulent 79,000-square-meter facility, per

As for Sean Moon, his path has been defined by an apocalyptic vision that urges violent self-defense and speaks to survivalist devotees. Sean's faction, called the Sanctuary Church, mandates that all members own AK-47 and AR-15 assault rifles—contrary to Reverend Moon's theology and teachings, *supra*, which promoted peace and unification. *See* T. Dunkel, *Locked and Loaded for the Lord*, Washington Post (May 21, 2018) https://www.washingtonpost.com/news/style/wp/2018/05/21/feature/two-sons-of-rev-moon-have-split-from-his-church-and-their-followers-are-armed/ ("A key pillar of Sanctuary dogma is the importance of owning a gun, particularly the lethal, lightweight AR-15. . . .").

C. The Challenged Actions UCI Took Amidst the Schism

This lawsuit reflects Plaintiffs' bid to conscript UCI into their revisionist conception of the Movement—one that is monolithic, hierarchical and institutional—by enlisting the coercive power of D.C. courts. Their remaining claims specifically challenge two sets of actions that UCI took as the Movement fragmented amidst Reverend Moon's mental and physical decline and after his death in 2012. *See* JA.0267–68. Each of these actions was part and parcel of UCI's defining purposes, however, as well as its operational and donative history.

Hak Ja Han's "guidelines"); Family Federation, *One Minute Spotlight: The Hyojeong Cheonwon Project*, (Oct. 4, 2020) http://familyfedihq.org/2020/10/one-minute-spotlight-the-hyojeong-cheonwon-project/; Family Federation, *Latin and Central America: A New Beginning*, (Nov. 6, 2020) http://familyfedihq.org/2020/11/latin-and-central-america-a-new-beginning/.

1. Donations

First, Plaintiffs (and now the trial court) fault UCI's donative decisions after Dr. Moon became chairman in 2006. According to Plaintiffs and the court, UCI should have maintained the same donations, to the same entities, as it did hitherto. In fact, the donations made by UCI have always kept the faith, according to the sincere (and understandable) beliefs of Dr. Moon and his fellow directors.

After Sean Moon took over UPF, an "NGO type of movement" that Reverend Moon had founded to promote world peace, (JA.0556), and that Dr. Moon had built, UCI ceased contributing to UPF, believing that Sean had led it astray, (JA.0567–68; JA.0992). At the same time, UCI continued its financial support of other peace-building projects, including those undertaken by the Global Peace Foundation ("GPF"), which Dr. Moon created to continue UPF's work with Reverend Moon's full endorsement. *See* JA.2006–12; JA.0517–22; JA.2403; JA.2895.

In addition, UCI has been faulted for funding the development of land located on Yeouido Island in Seoul, Korea, through donations to a Swiss foundation and Movement entity called Kingdom Investments Foundation ("KIF"), in furtherance of Reverend Moon's vision. Unification theology points to Korea as God's chosen nation, and Reverend Moon believed that its economic development was essential to creating God's kingdom on earth. In particular, Reverend Moon

believed that developing this land in Korea was essential to creating a powerful financial center for Korea, Asia, and the world. *See, e.g.*, JA.2737–39; JA.2747–49. The overall project was planned and researched for years by Reverend Moon and his advisors. *Id.* And Dr. Moon and UCI enlisted legal, financial, and business expertise in order to accomplish it.

When Dr. Moon assumed responsibility for this critical project, the development rights were temporarily held by a single individual. JA.2916–17. Concerned by the risk this posed, Dr. Moon opted to move the assets into UCI temporarily to protect them. Thus, Dr. Moon alone directed the assets *into* UCI, without anyone intending that the assets would *remain within* UCI. JA.2917–18. Ultimately, UCI's board agreed with UCI's professional advisors (who were retained for this purpose) that the assets should be transferred to KIF, an independent Swiss entity, so as to advance the project in a way that would secure requisite financing as well as tax benefits. JA.2920–21; JA.2934–37; JA.3525–30; JA.3583–84.

KIF is not *legally* affiliated with the Movement any more than UCI or The Washington Times. But KIF's articles of incorporation were "almost identical" to UCI's, and it was "run by well-known and devoted members" of the Movement. JA.2936; *see also* JA.2648; JA.2817; JA.2945–46. In fact, UCI's transfer of the

assets to KIF yielded financing as desired and enabled the development project's successful completion. *See* JA.3590–93.

2. Amendments to UCI's Articles of Incorporation

Second, Plaintiffs and the court fault revisions to UCI's articles of incorporation, on the theory that an earlier version was sacrosanct. *See* JA.0271–76. At a meeting on April 14, 2010, UCI's board voted to amend its articles by combining and streamlining the corporate purposes. JA.1994–98. The revised articles formally adopted "UCI" as the entity's name and continued to direct it toward promoting "the theology and principles of the Unification Movement." But the revised version no longer singled out "the Divine Principle" (because it had been subsumed into a larger body of Reverend Moon's works, known as the "Eight Great Texts"), or expressly referred to "Unification Churches" (because the end of the church era augured a shift away from institutions, as encouraged by Reverend Moon). *See* JA.1801–02; JA.2541; JA.2568; JA.2618–23; Defendant Directors' Opening Br. at 16–17.

SUMMARY OF THE ARGUMENT

I. The trial court's unprecedented remedies compounded the First Amendment violations the court perpetrated in granting summary judgment. Under the doctrine of ecclesiastical abstention, a civil court may not adjudicate any dispute that requires it to resolve a theological controversy or a matter of church

governance. Ecclesiastical abstention prohibits a court, *inter alia*, from construing disputed religious terminology in corporate documents; evaluating whether a religious institution has deviated too far from the tenets of the faith; or intervening in a religious institution's selection of its own leadership. All those limitations were flouted here. The court rested its ruling on its dubious construction of religious terminology in UCI's 1980 corporate articles, including "Unification Church" and "Divine Principle." The court then expressly held that UCI's directors strayed too far from the theological concepts reflected in those articles by amending the articles in 2010 and approving certain donations to GPF and KIF. Throughout its analysis, the court impermissibly credited the claim to spiritual leadership of one faction in an ongoing, multi-sided schism within the Unification Movement. Worst of all, the Remedies Order unlawfully replaced UCI's directors with those approved by a rival faction—a jarring judicial intrusion into a religious institution's leadership choices. Only by directing dismissal of the entire case can this Court properly vindicate the First Amendment rights and interests at stake.

II. The trial court's refusal to let UCI participate in the Remedies Hearing that resulted in the Remedies Order posed a stark affront to due process, as guaranteed by the U.S. Constitution. Once the trial court recognized UCI's obvious interest in opposing the remedies at issue, it was obligated to let UCI play its fair part at the evidentiary hearing. By nonetheless precluding UCI from

offering its own proof and submissions at the Remedies Hearing, the trial court denied UCI requisite opportunity to be heard in advance of these remedies. Even setting aside the constitutional defect, however, the court also abused its discretion so as to prejudice UCI when it altogether excluded any and all evidence and testimony that UCI sought to offer in its defense.

III. By replacing directors of a D.C. nonprofit in a non-derivative action, the court below contravened express terms of the governing statute, which confine the exact relief at issue—"remov[ing] a director from office"—to "a proceeding commenced *by or in the right of the corporation,*" which this is *not.* D.C. Code § 29-406.09(a) (emphasis added). That provision precludes the instant remedy, consistent with the careful design reflected in the ABA's Model Nonprofit Corporation Act (from which § 29-406.09(a) derives) and uniform adherence to the same across sister jurisdictions. Although the trial court reasoned that its Remedies Order differed from an injunction and that § 29-406.09(a) should not apply "retroactively" to this earlier-filed lawsuit, that was doubly wrong—because (i) the order removing directors plainly *is* injunctive and (ii) the Supreme Court has in any event made clear that *all* forward-looking relief is subject to the law in place at the time. *See Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). The trial court was equally wrong to invoke its inherent equitable authority as justifying its extraordinary remedy—both because (i) equity cannot supersede statutory

prescription and (ii) equity has never permitted removal of directors in a non-derivative case like this, where no fraud has been found. Last, the trust principles invoked by the trial court are misplaced given that UCI is *not* a trust and the on-point D.C. provision speaks by design to governance of *nonprofit corporations*.

STANDARD OF REVIEW

"Religious abstention has been treated as [implicating] subject matter jurisdiction. . . ." *Family Fed'n*, 129 A.3d at 248. It is subject to *de novo* review based on the full record. *Samuel v. Lakew*, 116 A.3d 1252, 1255 n.2 (D.C. 2015). Other questions of law are similarly reviewed *de novo*. *See Unum Life Ins. Co. of Am. v. D.C.*, 238 A.3d 222, 226 (D.C. 2020). Evidentiary exclusions are reviewed for abuse of discretion and may be reversed upon a showing of abuse and prejudice. *See Gordon v. United States*, 783 A.2d 575, 588 (D.C. 2001).

ARGUMENT

I. THE TRIAL COURT VIOLATED THE FIRST AMENDMENT BY DECIDING THEOLOGICAL DISPUTES UNDERLYING THIS CASE

By granting summary judgment for Plaintiffs and imposing an unprecedented remedy that dismantles UCI's leadership and rewrites its charter, the trial court has impermissibly entangled itself in a long-running religious schism.

A. The First Amendment Forbids Civil Courts from Resolving Theological Disputes

The Religion Clauses of the First Amendment "severely circumscribe the role that civil courts may play in the resolution of disputes involving religious

organizations." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005). Religious institutions have the constitutional right "'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). To preserve this autonomy, civil courts must abstain from resolving disputes over church property and other matters when doing so would entangle courts in theological controversies—a doctrine often referred to as ecclesiastical abstention. *See, e.g.*, *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 708–725 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449–452 (1969) (*Hull Church*).

That is not to say that religious institutions are always jurisdictionally immune. Courts may properly resolve disputes based on "neutral principles of law," such as ordinary rules governing contracts and trusts, where such principles are available and dispositive. *Jones v. Wolf*, 443 U.S. 595, 604 (1979).

But mere incantation of "neutral principles" does not spell the end of First Amendment analysis. Key limits forestall judicial intrusion upon religious entities. Five of those limits align against the trial court's exercise of jurisdiction here.

First, when a case "requires a civil court to examine certain religious documents," the court "must take special care to scrutinize the document[s] in purely secular terms, and not to rely on religious precepts." *Jones*, 443 U.S. at 604. Thus, for example, when a court is confronted with a "corporate charter" that "incorporates religious concepts in the provisions relating to the ownership of property," the court may not "interpret[] . . . the instruments of ownership" if doing so "would require the civil court to resolve a religious controversy." *Id.*

Second, "the civil judiciary" may not "determine whether [challenged] actions" amount to a "substantial departure from the tenets of faith and practice." *Hull Church*, 393 U.S. at 450 (internal quotation marks omitted). Such an inquiry would, as the Supreme Court has warned, "require[] the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.*

Third, although in certain circumstances a court may defer to the "supreme judicatory" of a hierarchical religious organization, *Watson v. Jones*, 80 U.S. 679, 722–723 (1871), that holds true "only if [religious supremity] can be determined without the resolution of doctrinal questions and without extensive inquiry into religious policy." *Samuel*, 116 A.3d at 1258 (quoting *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring)). Therefore, to the extent that the identity of

the highest "governing body" is the subject of theological controversy, a court violates the First Amendment by elevating one entity over another.

Fourth, a civil court may not "determine the religious leader of a religious institution." *Samuel*, 116 A.3d at 1261. Rather, "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions," as the Supreme Court has recently emphasized. *Our Lady of Guadalupe*, 140 S. Ct. at 2060, 2066–69; *see also Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Emp't Opportunity Comm'n*, 565 U.S. 171, 188–196 (2012).

Finally, "in determining whether the adjudication of an action would require a civil court to stray impermissibly into ecclesiastical matters," courts "look not at the label placed on the action but at the actual issues the court has been asked to decide." *Meshel*, 869 A.2d at 356. Substance is what matters. Courts must always determine whether the merits of the controversy require answering a theological question, regardless of whether a litigant garbs its claim in a secular cloak.

B. The Trial Court's Orders Impermissibly Rested on the Court's Resolution of Contested Theological Questions

UCI agrees with, adopts, and incorporates by reference the Defendant Directors' observations and arguments as to how and why the proceedings below violated the First Amendment. Indeed, UCI respectfully maintains that the only outcome compatible with the First Amendment is the one reached by the Second

Circuit in related, parallel litigation—namely, dismissal of Plaintiffs' entire case. Although this case is dressed up as one about corporate malfeasance and bad faith, what the trial court has been doing, in substance, is condemning and punishing what it declares to be aberrant religious beliefs and practices. By the time that the lower court took to ordering replacement of UCI's directors with new directors approved by a rival religious faction, the court had drifted too far—*way* too far—over the constitutional line that prohibits civil courts from treading upon matters of faith and religious institutions' selection of their own leaders and agendas.

1. The Summary Judgment Order Violated the First Amendment

The Defendant Directors are correct that the trial court's Summary Judgment Order violated the First Amendment by resolving a theological controversy. *See* Defendant Directors' Opening Br. at 26–42. The linchpin of the trial court's Summary Judgment ruling was that "the repeated references to the Unification Church in [UCI's] 1980 Articles carried significant independent and non-duplicative meaning," and that the 2010 amendments "unmoor[ed] UCI's purposes from these specific doctrinal ties by removing the reference to the Unification Church and replacing it with a single reference to the Unification Movement." JA.0274. That betrays an inherently theological judgment about whether the language of the 2010 amendments strayed too far from the meaning of the religious concepts set out in UCI's original articles—whether the language reflected, to

quote the Supreme Court, a "substantial departure from the tenets of faith and practice." *Hull Church*, 393 U.S. at 450. Setting aside that the court thereby erred as a matter of Unification theology, *see* pp. 13–18, *supra*, the dispositive point is that the court offended the First Amendment.

The trial court then compounded its error by ruling that UCI's donations to KIF and GPF departed from the corporate purposes reflected in UCI's 1980 articles because those entities are "unaffiliated with the Unification Church." JA.0278. Because UCI's 1980 articles do not by their terms limit donations to affiliated entities, (JA.1416–20), the trial court could not rule as it did without superimposing its own revisionist view (contrary to the undisputed facts of UCI's consistent history of donations to unaffiliated entities) as to what sort of donations properly advance the mission of the Unification Church, who leads the Church following Reverend Moon's death, and, ultimately, what the term "Unification Church" means. That is all inimical to the First Amendment.

2. The Factual Findings in the Remedies Order Confirm That the Trial Court Entangled Itself in Theological Controversies

In the Remedies Order, the trial court made a series of findings in order to justify rewriting UCI's corporate articles and ordering the replacement of a majority of UCI's board with new directors approved by a rival faction. These findings only compounded and deepened the offense to the First Amendment.

At the outset of the Remedies Order, the trial court purported to resolve the hotly contested—and inherently theological—question of what constitutes the "Unification Church," as that term was used in UCI's 1980 articles. The court concluded (whistling past strong contrary evidence) that the term "Unification Church" refers exclusively to a single, monolithic (albeit fuzzy) institution. By the court's account of the Movement's history, from 1954 to 1998, the term "Unification Church" referred to "the Holy Spirit Association for the Unification of World Christianity" (known by its acronym HSA-UWC) and thereafter to "the Family Federation for World Peace and Unification International"—the unincorporated, ill-defined entity that did *not even exist* until decades after UCI's articles were adopted. JA.0320–22.

That was wrong as a theological and historical matter. *See* pp. 13–18, *supra*; Defendant Directors' Opening Br. at 36–38. The trial court either ignored or misinterpreted Unification theology (and strong record evidence) in finding that HSA-UWC and then Family Federation *were* the Unification Church. As importantly, however, the court resorted to making its own judgment about the disputed meaning of a term fraught with religious import—something no U.S. court should ever do. Substantial evidence showed that the "Unification Church" was long understood to connote the universe of adherents (spanning numerous organizations worldwide), while centering on the messianic figure and the True

Family as the central religious institution. As conceived by Reverend Moon, this "Church" entails an inclusive, ecumenical belief system that summons people of all faiths to work together towards world peace and harmony. *See*, *e.g.*, JA.0888–90. Tellingly, the court itself so acknowledged at one point, (*see* JA.0321) ("Reverend Moon's ultimate providential goal was to create a 'supra-religious, supra-national' realm in which people of all religions and nations would be unified under his spiritual leadership")), before it construed "Unification Church" to the contrary, *see* JA.0322.

The trial court's ruling thus effectively *rejected* the meaning ascribed to "Unification Church" by Reverend Moon and countless adherents, in favor of an artificially narrow interpretation that the court fashioned from a few contested record excerpts in order to side with these Plaintiffs. JA.0339–43. While such stifling hermeneutics might be expected from clergy jealously clinging to their institutional stature and imposing their self-serving orthodoxy, it has no place whatsoever coming from any court bound by the U.S. Constitution. By interpreting a contested theological term in UCI's 1980 articles, the trial court violated bedrock First Amendment principles and defied settled precedent. *See*, *e.g.*, *Jones*, 443 U.S. at 604; *Samuel*, 116 A.3d at 1258.

From there, the trial court compounded its transgressions. Although the Unification Church had undergone a well-documented evolution in the 1990s to an

even less institutional structure (what has often been called the "end of the church era," *see* pp. 14–15, *supra*), the trial court discounted this religious watershed, which prompted the schism. Let the word now go forth from the D.C. Superior Court to all of the Movement's adherents around the world: the concept of "'the end of the church era,'" was merely "aspirational," the court has decreed. JA.0343. Misconstruing a snippet from a single witness,[10] the court rejected Defendants' view that the 2010 amendments, by substituting the "Unification Movement" for references to the "Unification Church," had simply updated UCI's charter to catch up with the evolution of Unification theology through the 1990s. JA.0342. Here, too, the court impermissibly "inject[ed] [itself] into substantive ecclesiastical matters." *Hull Church*, 393 U.S. at 451.

Trespassing even further, the court found that the 2010 amendments to UCI's charter had "substantially altered" UCI's original purpose by replacing "Unification Church" with "Unification Movement" (although the record reflects that the two terms were used interchangeably) and making certain other changes—such as replacing six references to the "Divine Principle" with one reference to the "theology and principles of the Unification Movement." JA.0337; JA.0341. By

[10] While testifying that Reverend Moon "made a very dramatic change" in announcing the end of the church era, Youngjun Kim added that, "unfortunately, in reality, . . . leaders of the Unification Movement, at that time, did not really follow Reverend Moon's direction and did not, in one sense, transform our Movement to align to Reverend Moon's new direction." JA.2618–19.

the trial court's reasoning, Defendants thereby broke from UCI's purposes. But no civil court should be undertaking any such analysis in a case like this. Per the Supreme Court, courts *cannot* determine whether a religious institution's action reflects a "substantial departure from the tenets of faith and practice." *Hull Church*, 393 U.S. at 450. Nor does it matter that the ruling was "labeled" in terms of a "breach of fiduciary duty." *Meshel*, 869 A.2d at 356. In *substance*, the court was "interpreting or weighing church doctrine," *Hull Church*, 393 U.S. at 451, en route to finding that the 2010 amendments "substantially altered" UCI's purposes by modifying certain religious terminology, JA.0337.

Underpinning all these findings was the trial court's judgment about the rightful spiritual successor to Reverend Moon. As explained above, Dr. Moon, Hak Ja Han, and Sean Moon have all vied to be the rightful spiritual leader of the Unification Movement. Throughout this raging schism, Dr. Moon has continued to maintain, with unquestioned sincerity, that he is the proper leader of the Unification Movement as the Fourth Adam chosen by God and recognized by Reverend Moon. *See* Defendant Directors' Opening Br. at. 8–11, 23. Whatever their spiritual merits, these competing claims must be resolved within the Unification Movement, not litigated and put to a judge for decision—as the Second Circuit rightly held in rejecting Sean Moon's recent attempt to obtain a judgment reinstating him as the Movement's leader. *Moon*, 833 F. App'x at 879–80. The

trial court committed an error of profound constitutional dimension when it denounced Dr. Moon as "incapable of . . . supporting the Unification Church and its activities," and took Sean's side instead—while somehow overlooking the intervening repudiation of Sean even by Plaintiffs. *See* JA.0326 ("So, [Dr. Moon] knew it was his father's decision to replace him[,]" with Sean); JA.0361–62.

It was patently unconstitutional for the trial court to wade into a dispute over religious succession and anoint one side as the victor. A civil court cannot decide which rival faction is "the appropriate church governing body" when doing so requires "extensive inquiry into religious policy." *Samuel*, 116 A.3d at 1258 (quoting *Maryland & Virginia Eldership of Churches of God*, 396 U.S. at 370 (Brennan, J., concurring)). Yet the trial court did precisely what is forbidden.

3. The Removal and Replacement of UCI's Directors Violates the First Amendment's Bar on Judicial Interference in Selecting Leaders of Religious Institutions

Above and beyond the First Amendment offenses just noted, the ultimate remedy was still worse. In addition to rescinding the 2010 amendments to UCI's charter, the Remedies Order removed four directors from UCI's board, including Dr. Moon, and ordered the appointment of new directors "in conjunction with Plaintiffs." That extraordinary remedy defied the principle that a civil court may not "determine the religious leader of a religious institution." *Samuel*, 116 A.3d at 1261. As the trial court acknowledged, UCI is a "religious nonprofit" formed to

support the activities of the Unification Church. JA.0321; JA.0329. And the directors of course lead UCI. By ousting UCI's leadership and imposing a court-designed process for selecting new leadership, the court denied this religious institution its inviolate autonomy to select its own leaders and set its own course.

The trial court emphasized that UCI is "not a church," which is true but irrelevant. As the Supreme Court has explained, the "rule[]" is that "courts are bound to stay out of employment disputes involving those holding certain important positions with churches *and other religious institutions*." *Our Lady of Guadalupe*, 140 S. Ct. at 2060 (emphasis added). Thus, for example, the First Amendment bars the application of employment-discrimination laws to teachers at Catholic schools. *Id.* at 2066–69. UCI does not materially differ. Its purpose, after all, is to inculcate the values of Unification theology worldwide through the institutions it supports.

Consider the factors that the trial court essayed in deciding to remove UCI's directors. The court found, for example, that the directors had abused their positions because they "gave away half of the value of the corporation to an entity [KIF] that, by law, could not have any religious affiliation." JA.0382. But that explanation misinterprets the *intra-Movement* transfer that represented a major step in fulfilling a lifelong dream of Reverend Moon. Indeed, it defies the court's own acknowledgement that UCI had *for decades* supported entities and causes lacking

any affiliation with the Unification Church, such as a ballet company, a publishing house, and The Washington Times. JA.0344–45.

Ultimately, the only way the court could distinguish UCI's current practice from its historical practice was to cut straight through the heart of the First Amendment: the court's key distinction is that prior recipients had been "supported by Reverend Moon," or "founded by Reverend Moon and/or [Hak Ja Han]," whereas "[n]either [] KIF nor GPF was founded, supported, or approved by Reverend Moon." JA.0344–45; JA.0381–82. In other words, the trial court's "gross abuse" finding rests on its view that Dr. Moon in fact had no legitimate claim to succeed his father as the spiritual leader of the Unification Movement. That was as clear a theological judgment as one could imagine—a judgment about whether Dr. Moon is truly the "Fourth Adam," *i.e.*, the spiritual leader of the Unification Church, and whether the Defendant Directors' and his views of UCI's purposes track theological orthodoxy. A civil court had no business rendering any such judgment, as other high courts have held. *See Wipf v. Hutterville Hutterian Brethren, Inc.*, 808 N.W.2d 678, 684–86 (S.D. 2012) (reversing ruling that a religious nonprofit "was not promoting the Hutterian religious faith and church").

The same basic problem infected the remainder of the Court's multi-factor analysis. The court found, for example, that the directors intentionally inflicted harm on UCI, because the donations served "[Dr.] Moon's personal agenda, and

not [] the best interest of UCI." JA.0385. But that likewise implicates the central theological questions dividing the parties: whether Dr. Moon is the legitimate leader of the Unification Movement and whether his vision of the Movement is true to Unification theology. The court also faulted the directors for allegedly approving Dr. Moon's preferred donations without due deliberation. JA.0385–89. But there is no question that UCI historically had made all donations that were directed by Reverend Moon, precisely because he was the spiritual leader of the Unification Movement. *See* JA.0344–45; JA.1951–66; JA.2669–71; JA.2774–75. Dr. Moon and his followers believe that Dr. Moon is now his father's rightful successor and the ordained leader of the Movement. Under that theological understanding, Dr. Moon's direction as to the charitable donations deserved great weight. The trial court's contrary view reduced to an impermissible judgment that Dr. Moon's faction within the Unification Movement is heretical.

Likewise, the court's ultimate determination that removing directors was in the "best interest" of UCI required it to pick sides in the ongoing religious schism. Dr. Moon and the other directors, said the court, "are hostile to the Unification Church and its leadership." JA.0391. That, too, requires crediting Plaintiffs' understanding of the Unification Church and their claim to leading it. By contrast, Defendants and their followers fervently believe that Family Federation and Hak Ja Han are *not* their legitimate leaders. The court likewise impugned Defendants as

"all belong[ing] to the same 'school of thought,' following the direction of [Dr.] Moon." *Id.* But that they belong to the same school of thought as Dr. Moon only confirms (yet again) the fundamentally theological nature of this case. Because the parties' dispute, "at its heart, concerns religious doctrine and practice," *Samuel*, 116 A.3d at 1257 (internal quotation marks omitted), it is outside the competence of terrestrial tribunals to decide.

II. BY PRECLUDING UCI FROM PARTICIPATING IN THE REMEDIES HEARING, THE TRIAL COURT VIOLATED DUE PROCESS AND ABUSED ITS DISCRETION

Even setting aside the First Amendment, the process by which the trial court arrived at its remedies was unsustainable. Despite recognizing that UCI had an interest in the composition of its board, the court denied UCI any opportunity to participate in the single hearing that preceded the dismantling of UCI's board. On that ground alone, the Remedies Order would need to be vacated and this case remanded for a proceeding that affords due process and entertains UCI's proof.

A. Preventing UCI from Participating in the Remedies Hearing Violated Due Process

Due process "requires . . . adequate notice and opportunity to be heard." *F.T.C. v. Compagnie De Saint-Gobain-Pont-a-Mousson*, 636 F.2d 1300, 1319 (D.C. Cir. 1980). "The essential minima for fair hearing would seem to include a reasonable opportunity to present evidence concerning disputed issues of fact and argument upon issues of law affecting the party tendering them, and to do both as a

party to the proceeding, not merely in the character of one present on sufferance or favor." *Nat'l Broad. Co. v. Fed. Commc'ns Comm'n*, 132 F.2d 545, 561 (D.C. Cir. 1942), *aff'd*, 319 U.S. 239 (1943).

Here, UCI had a cognizable interest (to say the least) in the composition of its board.[11] Indeed, the trial court so recognized, telling UCI that, "of course, you have an interest." JA.2602–07, at JA.2606. Yet the trial court then held, without further explanation, that "just because you have an interest doesn't mean you get to participate." *Id.* It went on to rule that UCI could not even "make objections and chime in assisting the directors." JA.2607. Later, the court assured UCI that its opportunity would come only in "the other proceeding that I envisioned . . . in

[11] *See, e.g.*, *Kansas East Conference of the United Methodist Church, Inc. v. Bethany Med. Ctr. Inc.*, 266 Kan. 366, 380, 383 (1998) (vacating injunction entered against a nonprofit because due process "require[d] that it be given notice and a hearing" before a ruling issued that "proceeded to control the future operation" of the nonprofit); *McDermott Inc. v. Lewis*, 531 A.2d 206, 215–17 (Del. 1987) (determining which law "governs the relationships of a corporation to its stockholders, directors and officers in matters of internal corporate governance," has "serious constitutional proportions," including under due process); *Calumet Indus., Inc. v. MacClure*, 464 F. Supp. 19, 28 (N.D. Ill. 1978) (holding that a "corporation has standing to complain of [a] violation" that could result in "a change in the board of directors"); *see also Studebaker Corp. v. Griffin*, 360 F.2d 692, 694–95 (2d Cir. 1966) (Friendly, J.) (holding that a corporation has "standing to enjoin violation" of proxy rules because "it is common knowledge that a contest for [corporate] control may be only the prelude to an arguably damaging transaction to be carried out by the winner"); *Protectoseal Co. v. Barancik*, 484 F.2d 585, 588 (7th Cir. 1973) (Stevens, J.) ("[A] corporation has standing to request a federal court to remove a director whose service on its board [is illegal] . . . [T]he corporation surely has sufficient interest in the legality of its directors' tenure to justify litigation such as this.").

terms of if I decided to remove the directors, how I would go about it," adding that "we'll address [UCI's own evidence and arguments] at a later time." JA.3228–32. But, no, it never did.

After this apparent bait-and-switch was spotlighted in post-order stay briefing, the trial court explained itself thusly: "The Court noted that it would hear from UCI at a later date but that was in a situation where Plaintiffs were requesting removal of *all* the directors, which the Court did not do." JA.0412–35, at JA.0421 n.6 (emphasis added). That purported explanation falls flat. When it removed a *majority* of UCI's board of directors, via a Remedies Order that was designed to take *immediate* effect, the trial court transformed UCI's corporate governance and identity and put everything (including continued defense in this litigation) at grave risk. No one has ever suggested that a corporation in UCI's position lacks an interest unless its *entire* board is replaced, not if a *majority* is replaced. To state the obvious, UCI has an overriding interest in control over its board—and in protecting a majority of its board against potential surrender into enemy hands.

This denial of due process would itself require vacatur so that any remedy can be reassessed on a full and fair record, inclusive of UCI's proof. *See Nat'l Broad. Co.*, 132 F.2d at 562; *see also Wilkinson v. Austin*, 545 U.S. 209, 226 (2005); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543–44 (1985).

B. Preventing UCI from Advocating on Its Own Behalf Was an Abuse of Discretion

Alternatively, to the extent this Court may wish to "avoid ruling on the constitutional question[]," recognizing that "constitutional adjudication [is] a matter of great gravity and delicacy," *Blodgett v. University Club Constitutional*, 930 A.2d 210, 217 (2007), it may vacate on the related ground that the trial court abused its discretion by categorically excluding all of the evidence UCI sought to introduce. Indeed, no colorable justification is within sight for why the trial court would sweepingly exclude evidence and testimony UCI might offer in order to defend itself and establish its best interests.[12] Because the abuse of discretion is clear, "reversal is required when the error compromised the fairness of the trial, or if the error had a possible substantial impact upon the outcome." *Gordon*, 783 A.2d at 588 (cleaned up). And prejudice is likewise clear.

UCI's evidence went directly to proving its own best interests, which were directly at issue in the Remedies Hearing. For example, UCI's brief regarding

[12] Regardless of whether the trial court precluded UCI from presenting evidence because it deemed all such evidence cumulative, or on some other ground, it abused its discretion. *See, e.g.*, *Gay v. United States*, 12 A.3d 643, 647 (D.C. 2011) (cleaned up) (admonishing against exclusion unless "probative value is substantially outweighed . . . by considerations of needless presentation of cumulative evidence"); *Recio v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 134, 143–45 (D.C. 2013) (board denied opportunity to protest license that could have "significant consequences" on petitioners) (citation omitted); *Murphy v. A.A. Beiro Const. Co.*, 679 A.2d 1039, 1043 (D.C. 1996) (movant lacked advocate in "complicated trial, involving millions of dollars").

remedies specifically noted the turnaround of a UCI subsidiary, Ginseng UP, which saw its net profits improve from $600,000 per year to $1.8 million per year under the Director Defendants' tenure. JA.2078; JA.2090–93; JA.2343–44 (3/31/11 and 3/31/10 Ginseng UP income statement); JA.2345–46 (3/31/16 Ginseng UP income statement). UCI also submitted how one of its subsidiaries had closed down a "consistently unprofitable" operation, Tiempo del Mundo. JA.2091–93; JA.2244; JA.2271–75. And UCI also warned of the economic harm and loss of key executives that UCI faced from Plaintiffs seizing board control. *See, e.g.*, JA.2093 (describing as "indispensable" a CEO at a subsidiary whom Plaintiffs would remove). Yet UCI was denied the opportunity to introduce evidence and testimony on any of these points as directly relevant to the Remedies Hearing.

In multiple respects, UCI's evidence of its best interests would have been "different from" and more "probative than" that presented by the Defendant Directors. *Gay*, 12 A.3d at 647. It defies common sense to posit that any party *other than* UCI was as well positioned to establish the best interests of *UCI*. *See United States v. Baird*, 29 F.3d 647, 655 (D.C. Cir. 1994) (testimony from one witness about his own views could not be deemed cumulative of others' testimony about theirs). Exclusion of UCI and all of its evidence simply cannot stand.

III. BY REMOVING DIRECTORS FROM UCI'S BOARD, THE TRIAL COURT VIOLATED D.C. LAW

Last, the trial court exceeded its power by ordering the removal of UCI's directors. The on-point D.C. statute strictly limits such relief to a suit that is brought by the corporation or as a derivative action, yet this case is neither.

A. A D.C. Court May Remove a Nonprofit's Directors Only in an Action Brought by the Corporation or as a Derivative Action

D.C. law speaks expressly to when a court may (and may not) remove a director of a nonprofit corporation, specifically "in a proceeding commenced by or in the right of the corporation." D.C. Code § 29-406.09(a). This case does not meet the express requirement that the proceeding be "commenced" as specified: It was brought neither by nor "in the right" of UCI, for this is not a "derivative proceeding."[13] D.C. Code § 29-411.01. Indeed, UCI is a *Defendant*. Accordingly, Section 29-406.09(a) does not authorize the removal of UCI's directors. Nor does any other D.C. statute. The trial court therefore exceeded its authorization.

The trial court nonetheless reasoned that "nothing in D.C. Code § 29-406.09 precludes the Court from exercising its equitable authority to order the removal of the directors." JA.0376. But the structure of Section 29-406.09(a) refutes that. The two subsections of Section 29-406.09(a) unambiguously limit the court's remedial power; a court may remove a director only "if" each of those subsections

[13] After their putative derivative claim was dismissed on the pleadings, Plaintiffs never appealed. *See* JA.0155–99, at JA.0176–77.

is satisfied—*i.e.*, the director engaged in specified misconduct and removal serves the corporation's best interests. Unless the phrase "in a proceeding commenced by or in the right of the corporation" is construed as a prerequisite for ordering removal, any individual plaintiff who files a *non*-derivative action, such as a single shareholder or director, could seek removal of directors *without* satisfying those limitations. In fact, the upside-down result would make it *easier* for *outsiders* to obtain judicial removal of a nonprofit's directors than it would be for the corporation itself or for its universe of stakeholders to do so.

Far from being free to blow past the statutory limitation, D.C. courts are specially directed to enforce Section 29-406.09(a) according to its terms. The statute derives from the ABA's third Model Nonprofit Corporation Act. *See* § 9:18. The Model Nonprofit Corporation Act, Third Edition, 1 Religious Organizations and the Law § 9:18. A separate provision specifies that, "[i]n applying and construing the chapters of this title based on uniform or model acts, consideration shall be given to the need to promote uniformity or consistency of the law with respect to its subject matter among states that enact it." D.C. Code § 29-107.03. In other jurisdictions that have set forth similar, enumerated instances in which courts may remove directors, courts have agreed these conditions must be strictly

observed.[14] By ignoring one of the statute's express limitations, the trial court broke from an otherwise uniform accord and thwarted the nationwide uniformity that D.C. and its sister jurisdictions set out to achieve.

B. Enforcing Section 29-406.09(a) Would Not Be Retroactive

The court's main reason for defying the plain terms of Section 29-406.09(a) was that the provision does not apply "retroactively" to this suit, which was filed just before the statute's effective date of July 2, 2011. JA.0375. But applying the statute here is not at all "retroactive."

In *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), the Supreme Court explained that, when a post-suit statute "authorizes or affects the propriety of prospective relief, application of the new provision is *not retroactive*." *Id.* at 273 (emphasis added). That principle follows from precedents holding that a statute regulating a "form of relief [that] operates only *in futuro*" applies to all "pending suits" once the statute becomes effective. *Duplex Printing Press Co. v. Deering*,

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[14] *See, e.g.*, *Doermer v. Callen*, 847 F.3d 522, 533–34 (7th Cir. 2017) (construing Indiana statute authorizing judicial removal of directors as denying such relief to a non-member); *Gilbert M. & Martha H. Hitchcock Found. v. Kountze*, 720 N.W.2d 31, 36–40 (Neb. 2006) (reversing removal of nonprofit directors for failure to comply with Nebraska's notice procedures for derivative actions); *Aarona v. Unity House Inc.*, 2007 WL 1963701, at *6 (D. Haw. July 2, 2007) (plaintiff failed to show compliance with voting shareholder numerosity requirement in action to remove directors) (citing Haw. Rev. Stat. § 414D-140(a)); *see also Heidecker Farms, Inc. v. Heidecker*, 2010 WL 3894199, at *11 & n.7 (Iowa Ct. App. Oct. 6, 2010) (noting that action to remove director had not been properly brought as a derivative action, while reversing removal on other grounds).

254 U.S. 443, 464 (1921); *see Landgraf*, 511 U.S. at 273. Accordingly, "[e]ven absent legislative authorization" for retroactive enforcement of a provision governing prospective relief, "a court should 'apply the law in effect at the time it renders its decision.'" *Landgraf*, 511 U.S. at 273 (quoting *Bradley v. School Bd. of Richmond*, 416 U.S. 696, 711 (1974)). The rule differs only for remedies that are "quintessentially backward looking," like "compensatory damages." *Id.* at 282. Here, the trial court has removed Defendant Directors *going forward*.

The trial court nevertheless distinguished *Landgraf* as "not apply[ing] in this case where the equitable remedy affected by the intervening statute is not injunctive relief." JA.0375. That distinction was wrong for two reasons. First, it misread *Landgraf*, which held that its rule of retroactivity applies to *all* "prospective relief," not just injunctions, 511 U.S. at 273, consistent with the older precedents referring to *all* relief operating "*in futuro*," *Duplex Printing Press Co.*, 254 U.S. at 464. Second, even if Supreme Court precedent could be read to cover only injunctions, the Remedies Order contains one, *i.e.*, "a command . . . that the party to whom it is directed do, or refrain from doing, some specified act." *Andrew v. Am. Imp. Ctr.*, 110 A.3d 626, 630–31 (D.C. 2015) (quoting *McQueen v. Lustine Realty Co.*, 547 A.2d 172, 176 (D.C. 1988) (en banc)). The trial court never explained how prohibiting the Defendant Directors from continuing with UCI and

commanding UCI "to identify new directors, in conjunction with Plaintiffs," (JA.0409), could be anything other than injunctive.

C. A Trial Court Has No Non-Statutory Equitable Authority to Remove Directors from a Nonprofit

Apart from mischaracterizing application of Section 29-406.09(a) as retroactive, the trial court also concluded that it enjoyed inherent "equitable authority to order the removal of [UCI's] directors" without complying with the statute. JA.0376. For support, the court cited subsection (d) of Section 29-406.09, which provides that "[n]othing in this section limits the equitable powers of the court to order other relief." JA.0376 (quoting § 29-406.09(d)). Based on that proviso, the court overcame the express limitations of subsection (a)—all of which, by the trial court's conception, stand to be swallowed by common law.

That notion errs at the threshold, however. The trial court misconstrued subsection (d)'s proviso, which merely preserves a court's authority "to order other relief"—*i.e.*, relief *other* than removing directors. The provision does not suggest that a court enjoys equitable authority to order the *enumerated* type of relief without satisfying the *enumerated* limitations. To rule otherwise would be to disregard the plain text of the statute and the proper role of the legislature.

In any event, D.C. courts have never wielded inherent equitable authority to remove the directors of nonprofit corporations. Courts lack "jurisdiction with respect to the removal of directors, except as provided in a statutory action for

removal of directors." 19 C.J.S. *Corporations* § 536. "[I]n the absence of express statutory authority, a court has no jurisdiction to remove directors or officers of a private corporation," except in a few limited cases "where fraud was alleged as the ground for removal." 124 A.L.R. 364 (originally published in 1940) (1st) 364 (1940, 2011 ed.).[15] Accordingly, even absent Section 29-406.09, the trial court *still* would not possess equitable power to remove UCI's directors in this case.

D. The Law of Trusts Does Not Allow a Court to Circumvent D.C. Law's Provisions Governing Suits Against Nonprofits

In disregarding Section 29-406.09(a), the trial court invoked trust law, opining that UCI in some respects resembles a trust in favor of the Unification Church. JA.0376–78. It did this *despite* Plaintiffs' abandonment of their trust claims in this case. *See* JA.0250–52. To the extent that the trial court thereby suggested that the nonprofit-specific provisions of Section 29-406.09 could be disregarded in favor of analogizing to the law of trusts, that is fallacious.

The D.C. Code differentiates actions seeking removal of a trustee from those seeking removal of a nonprofit director. *Compare* D.C. Code § 19-1307.06, *with* D.C. Code §§ 29-406.09(a), 29-406.09(e); D.C. Code § 29-411.03. It would undermine the legislative design of this statutory scheme to mix and match

[15] Recent decisions accord across the country. *See, e.g.*, *State ex rel. Smith v. Evans*, 547 S.E.2d 278, 282 (W. Va. 2001) ("[T]he power of removal is vested solely in the corporation . . . . [A] court lacks jurisdiction, absent statutory authority, to grant injunctions" with "the same effect as" an officer's removal.) (cleaned up); *see also, e.g.*, *Easter v. Berglund*, 367 P.3d 765 (Nev. 2010).

between a suit concerning a *nonprofit corporation* and the statutory framework concerning *trusts*, where the statute addressing the specific type of suit against the specific type of entity bars the desired relief. By limiting removal of directors to corporation-initiated actions and derivative actions, the law preserves "the integrity of corporate self-governance," as "the board of directors is given an opportunity from the start to address the issues raised by a discontented shareholder." *Gaubert v. Fed. Home Loan Bank Bd.*, 863 F.2d 59, 64–67 (D.C. Cir. 1988).

D.C.'s statutory scheme follows "the modern trend . . . to apply corporate rather than trust principles in determining the liability of the directors of charitable corporations." *Stern v. Lucy Webb Hayes Nat'l Training Sch. for Deaconesses & Missionaries*, 381 F. Supp. 1003, 1013–14 (D.D.C. 1974) (collecting authority).[16] The line of Model Nonprofit Corporation Acts from which Section 29-406.09 stems reflects the understanding that "nonprofit corporations are much more like business corporations than trusts, partnerships, or agencies." Lizabeth A. Moody, *The Who, What, and How of the Revised Model Nonprofit Corporation Act*, 16 N. Ky. L. Rev. 251, 265, 282 (1989); § 9:18. The Model Nonprofit Corporation Act, Third Edition, 1 Religious Organizations and the Law § 9:18 (similar). Whatever

[16] *See also Louisiana World Exposition v. Fed. Ins. Co.*, 864 F.2d 1147, 1151 (5th Cir. 1989); *Commonwealth ex rel. Beales v. JOCO Found.*, 558 S.E.2d 280, 284 (Va. 2002); *Oberly v. Kirby*, 592 A.2d 445, 466–67 (Del. 1991).

role trust law may play in informing other aspects of nonprofit governance,[17] it cannot dislodge an express, on-point statutory limitation.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand this case with instructions to dismiss the case for lack of subject-matter jurisdiction, or, in the alternative, vacate the grant of Summary Judgment and Remedies Order.

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Respectfully submitted,

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[17] To the extent that this Court has occasionally looked to trust law to illuminate issues relating to nonprofits, *see Owen v. Bd. of Directors of Washington City Orphan Asylum*, 888 A.2d 255, 260 (D.C. 2005); *Family Fed'n*, 129 A.3d at 244, it has never imported trust law to dislodge an on-point statutory provision or settled law governing D.C. nonprofits.

D.C. APP. R. 28(f) REPRODUCTION OF STATUTES

Pursuant to Rule 28(f), UCI reproduces certain statutory provisions below for the Court's study:

D.C. Code § 29-301.19 (2001) (Repealed). Board of directors—Number; election; classification; and removal.

(a) The number of directors of a corporation shall be not less than 3. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation

or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

D.C. Code § 29-406.09 (2011). Removal of directors by judicial proceeding.

(a) The Superior Court may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(1) The director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(2) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interests of the corporation.

(b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) of this section shall comply with all of the requirements of subchapter XI of this chapter.

(c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

(e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff shall give the Attorney General for the District of Columbia notice in record form of the commencement of the proceeding.

D.C. Code § 29-411.03 (2011). Demand.

A person shall not commence a derivative proceeding until:

(1) A demand in the form of a record has been delivered to the nonprofit corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was effective unless:

(A) The person has earlier been notified that the demand has been rejected by the corporation; or

(B) Irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

D.C. Code § 29-406.30(g) (2011)

(g) A director shall not be a trustee with respect to the nonprofit corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

D.C. Code § 19-1307.06. Removal of trustee.

(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 19-1310.01(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

CERTIFICATE OF SERVICE

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