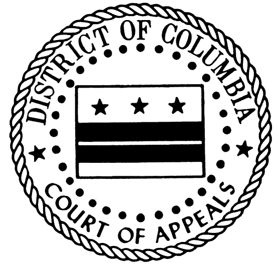

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DISTRICT OF COLUMBIA COURT OF APPEALS

HYUN JIN MOON, *et al.*,

Defendants-Appellants,

v.

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

Plaintiffs-Appellees.

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

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INTRODUCTION

Plaintiffs' theory is that the Directors strayed from UCI's "mission of supporting the Unification Church and promoting the Unification Church religion." Opp. 50. As a matter of grade-school logic, one cannot evaluate that charge without identifying what "the Unification Church religion" is, who leads it, and what it believes. The Unification Church is a charismatic, messianic, providential movement; as Fourth Adam, Dr. Moon leads it; and its mission is building world peace and unity across denominational and religious lines. The Directors have *always* been faithful to that religion.

Plaintiffs decline to dispute the Directors' statements about the identity, leadership, and theology of the Unification Church, since they know those are *ecclesiastical* debates. So now they pretend the ecclesiastical disputes *do not matter*: Notwithstanding their own allegations and the court's reasoning below, they now say that whether FFWPUI is head of the Church is not "material"; whether Dr. Moon is its spiritual leader is "not at issue"; and whether GPF and KIF promote Church theology is "irrelevant." Opp. 1, 45, 57. Studiously avoiding these questions, however, does not solve the First Amendment problem. It just makes Plaintiffs' claims *incoherent* as well as *unconstitutional*. They are left to insist the Directors abandoned a Church that Plaintiffs mention 167 times in their brief but whose structure they refuse to define, whose leader they refuse to name, and whose theology they refuse to describe. And they (like the court below) implausibly divine that conclusion from a bare, undefined reference to "the Unification Church" in UCI's 1980 articles, even though no legal entity with that name existed then or now.

Plaintiffs obfuscate, contradict themselves, and play shell games. The best response is clarity: Dr. Moon is the spiritual leader of the Unification Church—the religious movement his father founded and UCI is bound to support. It is thus an oxymoron to assert that the Directors violated their duties by furthering Dr. Moon's "agenda" *instead of* "the work of the Unification Church." Opp. 59. By definition, Dr. Moon's agenda *is* the "work of the Unification Church," just like Rev. Moon once defined the Church's mission and priorities. To hold otherwise is to reject the Directors' sincere beliefs about their own faith. And that is something Plaintiffs *admit* courts cannot do, much less do at summary judgment. The orders below must be reversed and the case dismissed.

BACKGROUND

Before rebutting Plaintiffs' arguments, a few words are due about their treatment of the facts. Because this is an appeal from a summary judgment order, the evidence must be viewed "most favorabl[y] to the non-prevailing party," *i.e.*, the Directors, with "all reasonable inferences" drawn in their favor. *Liu v. U.S. Bank Nat'l Ass'n*, 179 A.3d 871, 876 (D.C. 2018). Yet Plaintiffs reverse that standard; they tell a story based not on undisputed facts, but on inferential leaps that ignore everything refuting their narrative. Moreover, the "source" they cite most—over 60 times—is the trial court's *remedies order*. But it is the summary judgment "record" and "evidence" that matter. *Folks v. District of Columbia*, 93 A.3d 681, 683 (D.C. 2014). The remedies order, which began from the premise that summary judgment was "law of the case" (JA.314 n.2), cannot retroactively cure the manifest errors in the very order that spawned it two years earlier.

When Plaintiffs do cite the record, they mischaracterize it. One important example is that Rev. Moon never said FFWPU was "the formal name of the Church." Opp. 10 (citing JA.3768). *See infra* at 9 & n.3. To the contrary, Rev. Moon repeats in the cited sermon that he "did not create another denomination or sect" and that the "Unification Movement" must "transcen[d] the mission of any one church or denomination." JA.3765-68. That utterly refutes Plaintiffs' claim that "non-sectarian" activities (Opp. 21) are verboten for UCI, and vindicates the Directors' interfaith approach. Plaintiffs also advance bald assertions with *no citation whatsoever*, like that "FFWPU was widely understood to be the embodiment of the Unification Church." Opp. 60.

In the end, Plaintiffs' claims fail as a matter of *law*; but their inability after a decade of litigation to point to real record evidence in support of their false narrative is telling.

ARGUMENT

I. PLAINTIFFS ADMIT THAT COURTS CANNOT RESOLVE EITHER RELIGIOUS CONTROVERSIES OR FACTUAL DISPUTES AT SUMMARY JUDGMENT.

The Directors' opening brief showed that the summary judgment order was doubly flawed: It impermissibly resolved religious disputes over the structure, leadership, and doctrine of the Unification Church religion, and it also prematurely resolved genuine, material factual disputes that are properly left for a factfinder. DD Br. 30-38, 44-50.

Plaintiffs concede the legal premises. They admit that the Constitution "prohibits courts from deciding church leadership disputes or matters of church doctrine." Opp. 33. And they do not challenge their heightened burden, at summary judgment, to prove that the *undisputed facts* compel judgment in their favor. DD Br. 42-44.

Instead, Plaintiffs half-heartedly suggest that the First Amendment somehow does not apply here because "this is not a lawsuit against a church," but rather against UCI's "individual directors" who exercise only a "secular role." Opp. 2, 30, 36-37. Even the Superior Court rejected this argument. JA.261 n.5. And for good reason: From its inception, ecclesiastical abstention has turned on the "*subject-matter of [the] dispute*," *Watson v. Jones*, 80 U.S. 679, 733 (1871) (emphasis added), not the *identity of the parties*. After all, "[i]n a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020). The Religion Clauses do not limit their protection to churches or, as Plaintiffs imply, schools (Opp. 36). Rather, as this Court and Plaintiffs agree, "[t]he touchstone" is whether resolving the dispute would require "consideration of doctrinal matters." *Fam. Fed'n v. Moon*, 129 A.3d 234, 249 (D.C. 2015); Opp. 34. That is why individuals and non-church entities, including Hak Ja Han in the suit filed by Sean, routinely prevail on abstention grounds.[1]

[1] *E.g.*, *Moon v. Moon*, 833 F. App'x 876, 878 (2d Cir. 2020) (invoked by, *inter alia*, Hak Ja Han); *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Fla.*, 824 F. App'x 680, 683 (11th Cir. 2020) (wife of former pastor); *United Fed'n of Churches, LLC v. Johnson*, No. 20-cv-00509, 2021 WL 764670, at *10 (W.D. Wash. Feb. 26, 2021) (former members); *Puri v. Khalsa*, 321 F. Supp. 3d 1233, 1249 (D. Or. 2018) (directors of Sikh nonprofit); *Wallace v. ConAgra Foods, Inc.*, 920 F. Supp. 2d 995, 990 (D. Minn. 2013) (food processor), *vacated on other grounds*, 747 F.3d 1025 (8th Cir. 2014); *Klouda v. Sw. Baptist Theological Seminary*, 543 F. Supp. 2d 594, 611 (N.D. Tex. 2008) (seminary president); *Samuel v. Lakew*, 116 A.3d 1252, 1254 (D.C. 2015) (head of church board).

In any event, Plaintiffs' efforts to depict UCI as something other than "a religious organization" or the Directors' role as "secular" beggar belief. Opp. 1-2, 29-30. Recall that Plaintiffs fault the Directors not for a lack of business acumen, but because they are purportedly "hostile to the Unification Church." Opp. 75. Indeed, their entire case is premised on the notion that the Directors failed to advance what Plaintiffs themselves describe as UCI's "primary mission" of "promoting the Unification Church religion." Opp. 50. That is hardly a "secular" role. To the contrary, all parties agree UCI "has a religious purpose" (Opp. 36), which its Directors must effectuate. Thus, even assuming the Directors' "role" was relevant to the abstention analysis, that role is materially indistinguishable from that of, for example, a seminary president, a parish administrator, or the head of a Sikh nonprofit, where courts refused on First Amendments grounds to evaluate the exercise of their duties. *Supra* at 4 n.1.

Plaintiffs are equally wrong to imply that the First Amendment is categorically irrelevant to questions of "contract interpretation." Opp. 38-39. As Plaintiffs admit, courts "look not at the *label* placed on the action but at the *actual issues* the court has been asked to decide." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 356 (D.C. 2005) (emphases added); Opp. 34-35. Thus, whether a dispute over a contract or corporate document is justiciable depends on whether it includes "religious concepts" that present "religious controversy." *Jones v. Wolf*, 443 U.S. 595, 604 (1979). A court could not, for example, apply bylaws requiring a party to live "consistent with church doctrine," *Askew v. Trs. of Gen. Assembly of Church of the Lord Jesus Christ of the Apostolic*

Faith Inc., 684 F.3d 413, 419 (3d Cir. 2012), or determine whether a pastor breached a contract duty to "provide adequate spiritual leadership," *Lee v. Sixth Mount Zion Baptist Church of Pitt.*, 903 F.3d 113, 121 (3d Cir. 2018).[2] To be sure, if there is "no material dispute between the parties over the meaning" of religious terms in a document, *Meshel*, 869 A.2d at 354, or if those terms need not be interpreted at all to resolve the claims at issue, *Steiner v. Am. Friends of Lubavitch (Chabad)*, 177 A.3d 1246, 1254-56 (D.C. 2018), a court can resolve the litigation using neutral principles. But as the Directors explained and elaborate below—and as a well-respected array of *amici* agree—that is decidedly not the case here. *See* DD Br. 30-38; Becket Br. 14-25; Profs' Br. 22-25; *infra* Part II.

This is not a case with an ecclesiastical "feel" or a mere "connection to" religious disputes. Opp. 34-35. Rather, abstention is required because the nature of Plaintiffs' "duty of obedience" claims, on this factual record, necessarily ask the court to "pick[] … winners" in a schism over which faction is faithful to the true Unification Church. *Moon v. Moon*, 431 F. Supp. 3d 394, 414 (S.D.N.Y. 2019); *see also Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 122 (1952) (Frankfurter, J., concurring) (courts cannot "settle conflicts of authority" or "define religious obedience"); *infra* Part II.

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[2] *See also Samuel*, 116 A.3d at 1258-59 (scope of bylaw authority over "spiritual and religious matters"); *Myhre v. Seventh-Day Adventist Church Reform Movement Am. Union Int'l Missionary Soc'y*, 719 F. App'x 926, 927 (11th Cir. 2018) (whether plaintiff was a "member in good standing"); *Garrick v. Moody Bible Inst.*, 412 F. Supp. 3d 859, 873 (N.D. Ill. 2019) (whether conduct amounted to a "serious violation[] of Institute policy"); *Exec. Bd. of Mo. Baptist Convention v. Mo. Baptist Univ.*, 569 S.W.3d 1, 13 (Mo. Ct. App. 2019) (whether teaching seven-day creation comported with the "transmission of truth").

II. THE SUMMARY JUDGMENT ORDER IMPERMISSIBLY RESOLVED RELIGIOUS CONTROVERSIES AND MATERIAL FACTUAL DISPUTES.

Plaintiffs insist that the trial court resolved no religious or factual disputes. That is demonstrably wrong. There was nothing "neutral" about the principles applied below, and UCI's articles cannot remotely be described as "unambiguous" on these issues.

A. The Donations Cannot Be Condemned Without Identifying the Leadership or Theology of "the Unification Church."

Plaintiffs argue that the donations to GPF and KIF violated UCI's original purpose of "supporting the Unification Church and its activities" because those two entities "were not affiliated with the Unification Church." Opp. 44. But that logic hinges on accepting Plaintiffs' interpretation of the ambiguous term "Unification Church" and taking their side in the schism over the leadership of that religion. It is also based on an "affiliation" requirement that Plaintiffs elsewhere *admit* UCI's articles do not impose.

1. Evaluating "Affiliation" Requires Defining the Church, Its Structure, and Its Leadership. Most obviously, even if being "affiliated with the Unification Church" were the relevant question, there is no way to evaluate that affiliation without identifying "the Unification Church" in the 1980 articles, and who represents the real "Unification Church" today—since no legal entity bears that name. That dispute is the crux of this case. As the Directors explained, "the Unification Church" is a messianic, providential movement Rev. Moon founded. Dr. Moon is its spiritual leader, and GPF and KIF are absolutely part of it—whereas Plaintiffs have created a new religion. DD Br. 22. Of course, Plaintiffs see it differently. But that core disagreement is a religious one.

Plaintiffs' claims about lack of "affiliation" or "association" with the Church rest on the premise that they—and specifically, FFWPUI—are the true embodiment of the Unification Church today. That premise requires three steps: *First*, they interpret "the Unification Church" in UCI's articles to mean the Holy Spirit Association for the Unification of World Christianity (HSA-UWC). Opp. 9. *Second*, they suggest that when Rev. Moon created Family Federation in the 1990s, it replaced HSA-UWC and became "the formal name of the Church." Opp. 10. *Finally*, they depict FFWPUI, a loose, unincorporated association, as "International Headquarters" of the Unification Church (Opp. 11) or, as they put it in their Complaint, the "authoritative religious entity" that sits at the "head[] of" the Unification Church (JA.119-20).

Every step in that chain implicates a religious dispute, factual dispute, or both. To start, while "the Unification Church" was sometimes used to mean HSA-UWC, it more often bears a broader meaning—interchangeable with "Unification Movement"—that embraces the "constellation" of entities committed to Rev. Moon's ministry. DD Br. 6, 36. Plaintiffs have admitted (and themselves used) that broader definition. *See* JA.116 (complaint defining "the Unification Church" as "a religion"), 1755; DD Br. 46 n.10. Their expert defined the Unification Church as "a global movement encompassing religious, cultural, educational, media, commercial[,] and industrial enterprises." JA.494. Plaintiffs do not dispute that GPF and KIF are part of the Unification Church, so defined, because both are dedicated to advancing Rev. Moon's providential mission of world peace and interfaith harmony. Opp. 57. That alone requires reversal.

Moreover, the notions that Family Federation embodies "the Unification Church" *today*, and that FFWPUI is its "Headquarters," are disputed matters of religious polity. DD Br. 36-38, 46-48 & nn.10, 12.[3] As a messianic, providential movement, the Church followed Rev. Moon, not any *institution*. *Cf.* JA.1455 (Hak Ja Han testifying that her authority does not derive from any institutional role). Rev. Moon passed that mantle to Dr. Moon by designating him the Fourth Adam. DD Br. 8-10. Plaintiffs deny none of those propositions. But even if they did, such a polity dispute is not justiciable.

Recognizing that FFWPUI's role in the Church is a non-justiciable issue of religious hierarchy, Plaintiffs now abandon their own allegation—which the court assumed true at the preliminary injunction stage (JA.242) and then recycled at summary judgment (JA.265)—about its "authoritative" status as "head of the Unification Church." Opp. 45. Plaintiffs disclaim this "fact" as not "material" (*id.*), yet *it is the foundation of their case*. If FFWPUI is the "head" of the Church, Plaintiffs can fairly say that GPF and KIF are not "associated" with the Church. Indeed, that was the trial court's reasoning. JA.279 (concluding that GPF was "totally separate from the Unification Church" because Dr. Moon said it would not be associated "with FFWPUI"), JA.265 (equating FFWPUI

[3] As noted above (*supra* at 3), the sermon that Plaintiffs cite says nothing of the sort. Another of their exhibits *distinguishes* "the Unification Church" from FFWPU, noting how the two maintain different "flags." Pls. SJ Ex. 3. They also cite a defense expert report, but ignore his opinion that HSA-UWC was just "an initial launching pad for the larger movement" that Dr. Moon's GPF best represents today. JA.626-27. Plaintiffs also ignore that their own managing agent, Hak Ja Han, testified that Sean's attempt to change FFWPU's name to "the Unification Church" was theologically misguided and contrary to Rev. Moon's will. JA.1463-66.

with Church). And that is why Plaintiffs call themselves "the plaintiff Church." Opp. 2. But if FFWPUI does not have final say on who is "in" or "out," GPF and KIF are very much affiliated with the Church, just as the Directors attested. DD Br. 33-34.

Plaintiffs' other tactic is reliance on "admissions." Opp. 42-43, 55. These are word games. Plaintiffs mostly harp on a 2009 letter equating FFWPU with "the Unification Church" (JA.1220), but ignore that Sean had unilaterally changed FFWPU's name to "Unification Church"—a change Hak Ja Han later reversed as contrary with Unification theology (JA.1463-66). In charting a "separate" path (Opp. 31), Dr. Moon was properly distancing himself from Sean's *new* "Unification Church" to pursue the "original" path marked by Rev. Moon—the *original* Unification Church. JA.1221, 1604.[4]

And Plaintiffs are in no position to point fingers about abandoning the Unification Church *name*. Their managing agent, Hak Ja Han, has declared that "we are no longer the Unification Church or Family Federation," instead creating a new "Heavenly Parent Church." JA.4142. To be clear, the Directors do not wish to play "gotcha" over name changes. Rather, the point is this: Each faction has its vision of what "the Unification Church" of 1980 means today, complete with a name, spiritual leader, and religious focus. To decide that Plaintiffs' faction is "right" requires resolving theological and factual disputes—and without that determination, Plaintiffs' claims collapse.

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[4] As to KIF, Dr. Moon testified that it was legally independent (Opp. 55)—like all Unification organizations (*infra* at 12)—but he and the other Directors were clear it was always part of the Movement. DD Br. 49 n.13. The "concession" by UCI counsel at a 2016 hearing ignores the full context of the exchange. *See* Defs. SJ Ex. 200 at 19-22.

2. UCI Can Support Any Project That Advances Rev. Moon's Providential Mission. The second, independent defect in Plaintiffs' claim is that "affiliation" with the Unification Church is *not* required by the 1980 articles. Plaintiffs admitted as much below (DD Br. 48) and do so again on appeal, contradicting themselves in the process. They first deny that any theological inquiries were needed because "[t]he point is that KIF and GPF were not affiliated with the Unification Church." Opp. 44. Just pages later, they admit no "express, formal affiliation with the Unification Church" is needed, and insist that lack of affiliation "was not the dispositive fact." Opp. 56.

Plaintiffs are right that affiliation is not, and never was, required. What *does* matter under the original articles is whether the donation does any of the following: "promote the worship of God," "teach the Divine Principle," "achieve the interdenominational, interreligious, and international unification of world Christianity and all other religions," "further the theology of the Unification Church," or advance "world peace, harmony of all mankind, [or] interfaith understanding." JA.1418-20.[5] And whether GPF and KIF further those religious purposes are *theological* questions. DD Br. 33-34 & n.7. Their peace-building and interfaith work, the Directors testified, are what it means to practically apply the Divine Principle—and the best way to further the Church's theology. *Id.* Courts cannot second-guess their religious judgment.

[5] With no plausible response, Plaintiffs use this Court's affirmance of a preliminary injunction as a crutch. Opp. 44, 57. As the Directors explained, that ruling was made before discovery, deferred to the trial court's discretion, and made abundantly clear that it was not prejudging the merits. DD Br. 40-41. It is irrelevant here.

Plaintiff *admit* that GPF "supports peace-building activities" and KIF "has as one of its purposes supporting interfaith harmony," consistent with Unification theology. Opp. 57. They say that is "irrelevant," since UCI cannot support "peace-building and interfaith harmony divorced from the context of the Unification Church." *Id.* GPF and KIF, they say, are not "sectarian religious organization[s]." Opp. 13, 27. Yet the idea that UCI is limited to supporting sectarian projects within "the context of the Unification Church" is disputed—and plainly wrong. The articles' text imposes no such limit. And the extrinsic, historical evidence shows the opposite. *Bd. of Directors, Wash. City Orphan Asylum v. Bd. of Trs., Wash. City Orphan Asylum*, 798 A.2d 1068, 1082 (D.C. 2002). UCI supported countless beneficiaries, *including Plaintiff UPF*, who disclaimed affiliation with "the Unification Church" and presented themselves as non-sectarian:

- **<u>UPF</u>:** Without reference to the Unification Church, UPF's charter describes it as "a global alliance" working "to promote peace, that is, a unified world in which all people live together in harmony, cooperation and co-prosperity." JA.1864.

- **<u>Universal Ballet</u>**: The Universal Ballet publicly stated that it "has no affiliation with ... the Unification Church," is "non-sectarian," and "does not espouse or advance any religion, religious belief or ideology." JA.3748-49.

- **<u>The Washington Times</u>**: Bo Hi Pak, who was UCI's President from 1977-1991, attested that the Washington Times does "not [have] a religious purpose. I was a president of that organization. I know it very well." JA.806.

- **<u>University of Bridgeport</u>**: The University reported that it was "an independent and nonsectarian international academic institution." JA.892-93.

Yet Plaintiffs admit that UCI legitimately gave *hundreds of millions of dollars* to these groups. JA.1951-65. Their theory is not only wrong and unconstitutional, but also disingenuous.

3. Plaintiffs' New "Undisputed Dispositive Facts" Rest on More Religious and Fact Disputes. Caught in their web of contradictions, Plaintiffs offer three new, supposedly "undisputed dispositive facts" to ground their donation claims. Opp. 56.

First, having conceded that "affiliation" does not matter, they propose that the truly "dispositive" facts are that GPF was "separate from the Unification Church" and KIF had "no association with the Unification Church." Opp. 56-57. If there is a difference between "affiliation," "separation," and "association," Plaintiffs do not explain it. This theory therefore fails for all the same reasons set forth above: It is enmeshed in religious and factual disputes over the definition of the Unification Church. Ironically, Plaintiffs add that GPF received funds "that previously went to a Unification Church-affiliated organization (UPF)." Opp. 57. Yet UPF was itself "non-sectarian" and "interreligious" (JA.3630); its corporate charter did not refer to the Unification Church (JA.1863-86); and (until Sean's tenure) it expressly disclaimed any such association (JA.515-16). On Plaintiffs' theory, *even UPF* was not "affiliated" with the Unification Church.

Second, Plaintiffs argue that the "dispositive" fact about KIF was the donation's *size*. Opp. 56. This is truly flailing. Whether a donation falls within the scope of corporate purposes cannot depend on its size, particularly because UCI is a *non-profit*; its mission is religious, not profit-seeking. There is absolutely zero legal support for Plaintiffs' new theory, and they cite nothing. They also conceded it was proper for UCI to subsidize the Washington Times to the tune of nearly $1 billion, which is inconsistent with their arbitrary "too big" theory of the duty of obedience. *See* JA.920, 1951, 1966.

Finally, Plaintiffs say what really matters is Rev. Moon did not support KIF. Opp. 57. Factually, that is wrong—the Y22 project was Rev. Moon's life-long dream, and he tasked Dr. Moon to get it done. DD Br. 18-20. As Plaintiffs cannot deny, Dr. Moon *did* get it done—through an intra-Movement transfer guided by highly regarded experts and resulting in completion of towers that are generating revenue to sustain Movement activities. Rev. Moon also enthusiastically backed GPF peace festivals (DD Br. 13-14), as Plaintiffs do not dispute. More generally, Plaintiffs try to insinuate that Rev. Moon was on their side of this dispute, but the truth is Rev. Moon *never* disowned Dr. Moon despite immense pressure (DD Br. 10). By contrast, he disowned Hak Ja Han and Sean, publicly accusing them of "betray[al]" and a "total take over," while calling one Plaintiff "a cheater" and another a "scoundrel." JA.1395-96. In 2012, Rev. Moon excoriated Hak Ja Han at a major public speech, declaring the "position of his wife" to be "open." JA.3813. If this case comes down to which side Rev. Moon favored, Plaintiffs lose.

More importantly, this argument about Rev. Moon's "support" is telling about the religious questions lurking *everywhere*. Nowhere do UCI's articles require Rev. Moon's support for donations; his support matters only insofar as he was the Church's *spiritual leader*. But that is precisely why the succession issue cannot be avoided: As the Fourth Adam, Dr. Moon is the spiritual leader of the Church; *his* support imbues GPF and KIF with the same legitimacy that Rev. Moon once bestowed on the Washington Times, Universal Ballet, etc., and that Plaintiffs presumably believe Hak Ja Han has conferred on *her* novel creations. To reject that parallel logic is constitutionally untenable.

B. The Amendments Cannot Be Condemned Without Construing and Contrasting Disputed Theological Concepts.

On the amendments, Plaintiffs say it is "self-evident" from "unambiguous" text that the Directors "fundamentally altered UCI's purpose." Opp. 41, 47, 50. The notion that a "plain[-]text comparison" (Opp. 41) of the articles could prove Plaintiffs' claims, however, turns this Court's prior decisions upside-down: The point of discovery was to give Plaintiffs an opportunity to find a way *around* the religion-infused "documentary evidence." DD Br. 39-40. Regardless, the only "self-evident" fact is that comparing two religious mission statements is a theological, not a legal, exercise.

1. Plaintiffs Abandon the Trial Court's Rationale. The trial court reasoned that the amendments wrought fundamental change by replacing "denominational references to the Unification Church" with a reference to the "Unification Movement," and by deleting the Divine Principle "entirely." JA.274-75. There is no difference, however, between "the Unification Church" and "the Unification Movement"—both refer to the messianic, providential movement that Rev. Moon created. DD Br. 6-7. And the Divine Principle is *part of* the "theology and principles of the Unification Movement." DD Br. 17. In treating these as fundamental changes, the court resolved both religious disputes and factual disputes about how to construe facially ambiguous terms.

In response, Plaintiffs abandon the Superior Court's reasoning. They *do not dispute* that "Unification Church" and "Unification Movement" are functional equivalents; *nor do they dispute* that the revised articles include the Divine Principle. Instead, they claim

the real problem was the reduction of "*repeated* references" to the Church and Divine Principle to "a *single* reference" to the Movement and its theology. Opp. 39-40; *see also* Opp. 53. Respectfully, that is silly. Professing adherence to a faith *twice* is not different from doing so *once*. If a Christian nonprofit's mission is "to evangelize, tell people about God, and spread the teachings of Christ," replacing that with "preach the gospel" is not a fundamental change. So long as UCI's articles continued to bind it to the *same* religion and *same* theology—as Plaintiffs now admit—then their claim fails on the merits.

2. Purpose-by-Purpose Comparison Only Highlights the Theological Issues. Plaintiffs try to show substantial change just by cataloguing the revisions (Opp. 49-55), but it is impossible to characterize the amendments without *interpreting* the old and new words. This only further exposes unavoidable theological disputes. Plaintiffs' notion that their conclusions can be derived from "unambiguous" language, making extrinsic evidence unnecessary (Opp. 47-49), is nothing short of ludicrous.

First, Plaintiffs say the amendments "deleted" the first purpose in the 1980 articles (assisting "activities of Unification Churches"), which they arbitrarily elevate above the other four purposes. Opp. 51. Not so. The revised articles charge UCI with goals (*e.g.*, to promote Unification theology) that *subsume* assisting brick-and-mortar churches. The Directors testified that those purposes continue to allow UCI to support "Unification Churches" (which have always gone by various names)—and UCI has indeed done so. JA.1583-84, 1608-09, 1999-2001, 2440-41, 2625, 2881, 2888. Any disagreement over their interpretation of these religious directives is necessarily theological.

Moreover, even if the articles *had* omitted this purpose, there is both a religious and factual dispute over whether such a change counts as "fundamental." It is undisputed that UCI had *never* devoted substantial resources to brick-and-mortar churches, and they were further deprioritized when Rev. Moon ended the "church era." DD Br. 47 n.11. On the latter issue, Plaintiffs attack a straw man. Opp. 41 n.7, 55. The Directors' point is not that Rev. Moon was *announcing the end* of the Unification Church (and by extension UCI). Rather, he was *defining the Church's future*. *See* JA.569-70, 578-80; DD Br. 7-9. As Rev. Moon articulated in a 2004 address, the "first stage of the Unification Movement" dealt "mainly in the religious sphere." JA.1330. The "next stage"—triggered by the end of the church era—was "to find and establish true families." *Id.* And the "third stage," under Dr. Moon's leadership, is "to build the ideal world of peace." *Id.*[6]

Second, Plaintiffs claim that the amendments "stripped out" the "Unification Church religion" from UCI's second purpose. Opp. 52. Wrong again. The revised second purpose directs UCI to promote "interdenominational, interreligious, and international unification of world Christianity and all other religions." *Id.* That phrase appeared verbatim in the 1980 articles and is *the precise mission* of the Unification Church. JA. 594-95, 1282-83, 1239-41. Again, insofar as Plaintiffs disagree, the dispute is theological.

[6] This is the vision Dr. Moon promoted in his 2008 report, which pushed the Church to focus on being "a true inter-faith movement" consistent with Rev. Moon's clear directions. JA.3675. It is categorically false that Rev. Moon "rejected" this report. Opp. 14. To the contrary, Rev. Moon praised and made it required reading for the Unification faithful (10/21/19 Rem. Tr. 36:10-38:7), to the chagrin of the institution-oriented clerics who sought to preserve their own perks and power (JA.1787-88).

Third, Plaintiffs depict the revised third purpose (to promote "understanding and teaching of the theology and principles of the Unification Movement") as "a far cry" from the original (which spoke of "teaching" the Divine Principle and "the theology of the Unification Church"). Opp. 52. They never say what the difference is, however, and the Directors testified that these are theologically identical. DD Br. 17, 46.

Fourth, Plaintiffs object that the changes "deleted the underlying religious purpose" from the fourth purpose, which calls for publication of books, newspapers, and tracts. Opp. 53. No. The revisions *shortened* the publications' "purpose" to "further[ing] the purposes of the Corporation." *Id.* Since UCI's purposes *remained the same*—promotion of the Unification Church religion and theology—this was no substantive change at all.

Finally, Plaintiffs complain that UCI's original fifth purpose also lost its "religious purpose." Opp. 51. This too reduces to a theological fight, as the Directors maintain that "world peace, harmony of all humankind, [and] interfaith understanding among all races, colors and creeds" *is* the ultimate purpose of the Unification Church. JA.3085-86. If Plaintiffs want to disagree, they can do so in a seminary, not a courtroom.

In the end, despite Plaintiffs' dramatic assertions of "fundamental" change, they fail to identify anything that UCI *could not do* under the original articles but *can do* under the revised version, or anything that UCI *could do* under the 1980 articles but *cannot* do now. Certainly not *unambiguously*. The broad aspirational language of the 1980 articles conferred vast discretion on UCI's Board—to the point that one Plaintiff said there were "millions" of authorized actions (JA.885-86)—and that remains true today.

Plaintiffs are therefore left to criticize the supposed "reason" for the amendments, insisting they were "intended" to facilitate the KIF donation. Opp. 20, 53, 57-58. The trial court adopted that same "intent" theory. *See* JA.281 (objecting to "purpose" of amendments). That is both legally irrelevant and factually baseless, as the KIF donation was perfectly legitimate even under the 1980 articles. *Supra* Part II.A. And it certainly cannot support summary judgment, as the Directors denied that charge (JA.1587, 1584-85; *see also* JA. 2939, 4105), and "[i]ntent generally is an issue ill-suited for determination as a matter of law." *In re Estate of Corriea*, 719 A.2d 1234, 1243 (D.C. 1998).

* * *

The Directors have methodically deconstructed the trial court's analysis, exposing a cavalcade of errors. (The Directors also adopt UCI's reply brief, which does the same.) Notwithstanding Plaintiffs' non-sequiturs and contradictions, it is undeniable that their complaints about the Directors' exercise of duties are rooted in a theological schism within the Unification Church religion. The Directors do not seek a right to "disagree with the Unification Church," as Plaintiffs would have it. Opp. 31. They want to *adhere to* the Unification Church religion, as they understand it and as Rev. Moon intended it. Again, the fight is over what the Unification Church stands for and who speaks for it, nearly 70 years after its creation by a charismatic leader. Plaintiffs' efforts to tear this dispute from its context are unavailing. This is the culmination of a decades-long religious battle for the soul of the Unification Movement. Accepting Plaintiffs' complaints means taking their side in that schism.

UCI's ambiguous articles, drafted long before the schism emerged or FFWPUI was even created, offer no neutral ways out. They certainly *could have*. The Supreme Court explained, the year before UCI adopted its 1980 articles, that religious entities can create enforceable property rights by vesting control in "some legally cognizable form." *Jones*, 443 U.S. at 606. Other churches followed that roadmap and adopted charters that impose express trusts for the benefit of specific legal entities; courts can apply those trusts using neutral principles. *E.g.*, *Falls Church v. Protestant Episcopal Church in the U.S.*, 740 S.E.2d 530, 540-41 (Va. 2013); *Hope Presbyterian Church of Rogue River v. Presbyterian Church (U.S.A.)*, 291 P.3d 711, 714 (Or. 2012). But Unification leaders never created a legal entity that had rights over property of the constellation of entities Rev. Moon founded or inspired, like UCI. They instead trusted the governing boards of the entities to remain *morally and spiritually bound* to the Movement's mission and spiritual leader, as Hak Ja Han and Sean Moon admitted. *See* JA.548, 1474-75.

But the Movement has since splintered into factions over spiritual succession and direction. Entities like UCI must therefore do their best to advance what they believe to be the Church's true mission. Plaintiffs want the judiciary to swoop in and bless *their* vision, deciding the Movement's future by fiat. But there is no role for courts in this process; a decade of litigation has only caused tremendous confusion and expense for the Movement. The Unification faithful must be left to sort this out themselves.

CONCLUSION

The Court should reverse the decision below and order this case dismissed.

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Respectfully submitted,

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