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Nos. 23-cv-836, 23-cv-837, 23-cv-838

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**IN THE DISTRICT OF COLUMBIA  
COURT OF APPEALS**

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

*Plaintiffs-Appellants,*

v.

HYUN JIN MOON, *et al.*,

*Defendants-Appellees.*

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

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**BRIEF OF DEFENDANT-APPELLEE UCI**

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## **RULE 28(a)(2) STATEMENT:**

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## **RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Rules of the District of Columbia Court of Appeals, Defendant-Appellee 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

This appeal presents nothing more than a wasteful attempt by these Plaintiffs-Appellants to relitigate the same issues that this Court unanimously resolved against them in *Moon v. Family Federation for World Peace & Unification International*, 281 A.3d 46 (D.C. 2022) (“*Moon III*”), and then in denying their rehearing request. As *Moon III* recognized, this entire controversy has been and remains fundamentally a religious dispute over the Unification Church, its teachings, and its spiritual leader. *Id.* at 49–50, 61 n.16. The question now for *Moon IV*, if any, is whether Plaintiffs can circumvent First Amendment commands by dressing their religious grievances up in ill-fitting secular garb. And the answer to that should be an obvious, emphatic “no.”

This Court has already chronicled the history and contours of the dispute. The Reverend Sun Myung Moon founded “the Unification Church in 1954” and was its “spiritual leader for nearly sixty years.” *Id.* at 49. Adherents revere him as a “non-divine ‘messianic’ figure” and the “third Adam.” *Id.* at 51. In his final years, however, a schism fractured the movement. One faction is led by Dr. Hyun Jin Moon (“Dr. Moon”), whom Rev. Moon had declared his spiritual successor and the “fourth Adam.” *Id.* at 50. Another group is led by Rev. Moon’s widow, Hak Ja Han Moon, while a third faction follows Rev. Moon’s younger son, Hyung Jin (or Sean) Moon. Each claims to be Rev. Moon’s successor and has, at different times,

led Appellant Family Federation for World Peace and Unification International (“Family Federation”). While Family Federation has betrayed the Movement’s theology and pursues centralized, institutional control of Rev. Moon’s movement, Dr. Moon remains devoted to realizing his father’s dream for an “interfaith,” “non-denominational,” and “decentralized religion.” *Id.*

Dr. Moon serves as Chairman of the board of directors of Appellee UCI, a non-profit that holds assets “earmarked for advancing the Unification Church and its principles.” *Id.* When UCI used these assets to support Dr. Moon’s vision, Family Federation and the other Plaintiffs-Appellants sued UCI and its board. *Id.* The only remaining claims against UCI boil down to allegations that UCI allegedly misdirected its assets by following Dr. Moon’s vision, as derived from his father’s, contrary to the desires of the competing religious faction. Specifically, Appellant Holy Spirit Association for the Unification of World Christianity—Japan (“UCJ”) is here challenging the Superior Court’s rejection of its claims for breach of contract, promissory estoppel, and unjust enrichment, on the theory that UCI under Dr. Moon strayed from Reverend Moon’s teachings by donating assets as UCI did. This contention is as absurd as it is legally deficient. In actuality, Dr. Moon is the only one who has remained faithful to Rev. Moon’s teachings and the Movement’s core principles.

In any event, this Court has already covered this ground in explaining why substantively indistinguishable claims failed. At issue in *Moon III* were Plaintiffs' claims that UCI's directors breached their fiduciary duty of loyalty in two ways. First, the directors amended UCI's articles of incorporation to reflect Dr. Moon's non-denominational vision, "replacing two references to the 'Unification Church' with a single reference to the 'Unification Movement.'" *Id.* at 63. Second, the directors caused UCI to donate to Global Peace Foundation ("GPF") and Kingdom Investments Foundation ("KIF")—entities unaffiliated with Family Federation, which claims to be the "authoritative religious entity that directs Unification Churches worldwide." *Id.* at 60. According to Plaintiffs, these donations violated UCI's corporate purposes because KIF and GPF "were not affiliated with the Unification Church." *Id.* at 67.

After the Superior Court erroneously endorsed Plaintiffs' theories by granting them summary judgment, *Moon III* unanimously reversed. This Court explained that the "First Amendment generally precludes civil courts from resolving religious conflicts" unless they "can be resolved through the application of neutral principles of law without wading into religious questions." *Id.* at 50. Under the religious abstention doctrine, it is "not for the courts to pronounce" that "Family Federation is the 'authoritative religious entity' that ordains what does and does not benefit the Unification Church." *Id.* at 51.

The Superior Court had no less “erred in finding that UCI’s donations to KIF and GPF ran afoul of UCI’s corporate purposes.” *Id.* at 70. As this Court observed, UCI had historically donated “tens if not hundreds-of-millions of dollars to a number of unaffiliated, nonsectarian entities” with Rev. Moon’s blessing. *Id.* at 68. “If Rev. Moon’s approval was enough to insulate a given donation from further scrutiny for compliance with the articles,” then there was “no reason why the approval of his rightful successor would not do likewise.” *Id.* at 69 n.28. “That brings the succession fight to the forefront of this dispute,” and leaves “no neutral principle to resolve a dispute as to which party had ‘spiritual and charismatic authority’ over the Church and its affiliates at the time the relevant transfers were approved.” *Id.* at 69 & n.28.

Nor could this Court determine “that UCI’s directors fundamentally altered its articles of incorporation without first addressing religious questions that [this Court] cannot entertain.” *Id.* at 51. “To determine which party was correct about the meaning of the [prior] articles—which are steeped in overtly religious language—the court would have needed to adjudicate longstanding debates over the direction of the Church, including whether it is best understood as a denominational institution or an interfaith movement.” *Id.* at 69–70. As *Moon III* concluded, “it is not for us to pass judgment on whose vision of the Unification

Church, or Unification Movement, is more faithful to the purposes UCI was established to advance.” *Id.* at 51.

Although the claims in *Moon III* differ technically from those raised against UCI here (because the instant claims fall outside the summary judgment order previously appealed), the underlying issues are no different. In the proceedings below, the Superior Court dismissed UCJ’s claims for breach of contract, promissory estoppel, and unjust enrichment because they all run afoul of this Court’s express, on-point holding in *Moon III*. Each claim’s premise is that UCJ donated to UCI on the condition that the funds be used to support the “mission and purpose” of UCI as “reflected in [its prior] Articles of Incorporation.” JA.216–17. In UCJ’s view, the transfers to GPF and KIF violated its alleged restrictions on its donations, simply because UCJ intended its donations to be used in furtherance of UCI’s religious purposes, from which UCJ alleges Dr. Moon’s vision deviated.

In other words, UCJ’s claims rehash the parties’ fundamental dispute over how UCI should be pursuing its religious purposes and which party has the correct understanding of Rev. Moon’s religious teachings and desires. But any such theory has been foreclosed by *Moon III* in pellucid terms. This Court explained that the First Amendment forbids deciding which party is “more faithful to the purposes UCI was established to advance.” *Moon III*, 281 A.3d at 51. The First

Amendment likewise bars any “finding that UCI’s donations to KIF and GPF ran afoul of UCI’s corporate purposes.” *Id.* at 70.

UCJ here insists that its restrictions “may” have gone beyond those in UCI’s articles of incorporation. Br. 63 (quotation omitted). But Plaintiffs do not cite a scintilla of record evidence to support any such imagined restrictions, much less identify any neutral principle for enforcing them. If anything, UCJ is alluding to documents and testimony that regurgitate religious purposes of the sort expressed in UCI’s articles—religious purposes which no U.S. court can referee consistent with the First Amendment and *Moon III*.

UCJ also objects that UCI donated to KIF without sufficient oversight of how it used the assets, thereby resurrecting precisely the same argument UCJ raised and lost before this Court in *Moon III*. As the Superior Court observed, “UCJ’s challenge goes to whether UCI’s directors breached their fiduciary duty through donating UCI’s assets to KIF, which *Moon III* plainly forecloses.” JA.3135.

UCJ next invokes a supposed “fraud or collusion” exception to the religious abstention doctrine in an effort to resuscitate its theories. Yet UCJ fails to explain how a *fraud* exception (that no court has ever applied) could possibly salvage its *contractual* claims against UCI. Regardless, the exception urged is one that would swallow the rule. At bottom, UCJ is contending that, because UCI allegedly



strayed from the Unification Church, its use of funds amounts to fraud. Of course, *any* religious dispute could be characterized this way. Indeed, someone could just as easily complain that Martin Luther’s publication of the Ninety-five Theses “fraudulently” siphoned assets away from the Catholic Church. This is precisely the “the type of religious intrusion” this Court rebuffed in *Moon III*. 281 A.3d at 65.

Nor did the Superior Court come anywhere close to abusing its discretion in refusing to reopen discovery or hold an evidentiary hearing on the purported fraud exception after more than a decade of litigation that saw sprawling discovery and unending submissions. Although Plaintiffs point to Dr. Moon’s recent statements reflecting his emotional and spiritual attachment to what KIF accomplished, that does not contradict his prior testimony that he did not personally supervise KIF. Moreover, the facts underlying UCJ’s claims against UCI have been known for years. The proposed discovery would accomplish nothing beyond elongating this litigation saga by years and compounding its staggering costs for all concerned—at the expense of judicial and party resources. It is the Plaintiffs who have been engaging in bad-faith litigation for over a decade, wasting resources, and inflicting grave damage upon UCI and the Unification Movement. After running amuck in D.C. courts for over a decade, they have no colorable justification for starting all over anew.

Finally, Plaintiffs spuriously claim that applying religious abstention will somehow violate their First Amendment rights. But by no means have they suffered “discrimination against [their] religious exercise” resulting in a “refusal” of “access to the civil courts.” Br. 28. Religious abstention applies because Plaintiffs’ claims raise “religious questions,” *Moon III*, 281 A.3d at 62, not because Plaintiffs are “religious claimants,” Br. 29. Nor does enforcing jurisdictional limits—as grounded in the First Amendment—discriminate against anyone. Longstanding, governing precedent prohibits U.S. courts from deciding “contested matters of church doctrine, polity, or practice” lest they “‘impermissibly entangle’ the judiciary in ‘ecclesiastical matters,’” and that precedent is not open to challenge here. *Moon III*, 281 A.3d at 61 (quoting *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005)).

If any substantial question might now be posed for this Court, it would be whether the Superior Court unduly spared Plaintiffs and their new counsel from sanctions after they (following the withdrawal of prior counsel) continued to pursue against UCI claims that were so manifestly foreclosed by *Moon III*. Despite deeming “well taken” UCI’s suggestion that “the Court consider sanctioning UCJ” for its “bad faith in continuing to pursue doomed claims against UCI,” the court below stopped short of sanctions on the view that UCJ’s “futile” arguments were not “*definitively* foreclose[d].” JA.3141 n.9 (emphasis added). To

spare judicial resources and conclude this litigation at long last, UCI has not cross-appealed here in search of sanctions—but not because Plaintiffs’ continuing campaign is anything other than frivolous. This Court should affirm and thus end Plaintiffs’ costly, vexatious affront to the First Amendment once and for all.

### **STATEMENT OF JURISDICTION**

Pursuant to D.C. Code § 11-721(a)(1), this Court has jurisdiction over the appeal of the D.C. Superior Court’s June 15, 2023 Order granting UCI’s Motion for Summary Judgment on Counts IV, V, and VI; and over the Superior Court’s August 11, 2023 Order denying Plaintiffs’ Motion to Reopen Discovery, to Designate Fraud or Collusion Expert Out of Time, and for Evidentiary Hearing.

### **STATEMENT OF THE CASE**

Thirteen years ago, on May 11, 2011, Plaintiffs filed this lawsuit against Dr. Moon, UCI, and its board of directors. *See* JA.184–85. Among other things, Plaintiffs alleged that UCI’s directors donated its assets to unaffiliated entities against the wishes of Family Federation. *Moon III*, 281 A.3d at 50. They also alleged that the directors improperly amended UCI’s articles of incorporation, removing mention of the “Unification Church” and replacing it with the “Unification Movement.” *Id.*

UCJ also brought three separate claims against UCI for breach of contract, promissory estoppel, and unjust enrichment, alleging UCI’s use of donated funds

went beyond its corporate purposes. *See* JA.216–19. According to the complaint, UCJ “condition[ed]” its donations to UCI on its understanding that UCI would use the donated funds only to support “the mission and purpose of UCI as expressed in the Corporation’s original Articles of Incorporation.” JA.197; JA.216–19.

At first, Plaintiffs were aligned with Sean Moon, then-president of Family Federation. JA.186; JA.199. Plaintiffs changed their tune as the schism evolved, however. Today, they insist that Hak Ja Han holds all spiritual authority, that her theological innovations reflect its true eternal values, and that Sean is heretical and excommunicated. *See* JA.1758–68. Hak Ja Han claims to be the divine leader of the entire Movement, through what she calls her “Heavenly Parent Church.” JA.2351.

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 the Second Circuit dismissed the suit based on the religious abstention doctrine. Both courts agreed 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.” *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).

Here, too, the Superior Court initially dismissed the case on First Amendment grounds, but this Court held that threshold dismissal was “premature.”

*Fam. Fed’n for World Peace v. Moon*, 129 A.3d 234, 239, 249, 251–52 (D.C. 2015) (“*Moon I*”). The Court remanded for development of a “more robust record” and 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.

Following a preliminary injunction that barred UCI from donating its assets, the case returned here on appeal in 2018. *See* JA.0561–75. While affirming, this Court emphasized its ruling was based on a limited factual record. JA.565. It accordingly observed that religious abstention should be revisited “if it becomes apparent to the trial court that this dispute does in fact turn on matters of doctrinal interpretation or church governance.” JA.569 n.10.

In 2019, the Superior Court granted partial summary judgment to Plaintiffs on their claim for breach of fiduciary duty. JA.1154–98. Rejecting Defendants’ arguments for ecclesiastical abstention, JA.1166–68, the court ruled 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.1176–78. It further ruled that the donations to GPF and KIF had contravened “UCI’s original corporate purposes” because they were outside entities not formally “[a]ffiliated” with the “Unification Church.” JA.1180–87.

On December 4, 2020, the court issued a remedies order rescinding the 2010 amendments to UCI’s articles; removing 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”; requiring UCI’s remaining board members to choose replacements “in conjunction with Plaintiffs”; and surcharging the Director Defendants over \$500 million for the challenged donations. JA.2428; JA.2446.

After granting an emergency stay and then a longer-term stay pending appeal, this Court on August 25, 2022 reversed, vacating the Superior Court’s grant of summary judgment and remedies order. *Moon III*, 281 A.3d at 51. First, this Court held it was impossible to determine whether amending UCI’s articles wrought a “fundamental” change without impermissibly inquiring into religious doctrine. *Id.* at 65–67. Second, the Court held that determining whether donating to particular beneficiaries—such as GPF or KIF—fell outside of UCI’s purposes would inherently implicate religious theory and polity. *See id.* at 68–70. Although these holdings implicated UCJ’s counts against UCI, they were “not the subject of [the] appeal” and therefore “remain[ed] live.” *Id.* at 60 n.15.

In their subsequent petition for rehearing en banc, Plaintiffs acknowledged *Moon III*’s prospective implications. The petition noted *Moon III*’s ruling that “UCI’s stated purposes are plainly broader than merely supporting institutions that

are formally affiliated with the Church.” Pls.’ Pet. for Reh’g En Banc at 12. It also acknowledged that *Moon III* foreclosed deciding “disputes about the Articles’ meaning” because they cannot “be interpreted using the neutral principles of the objective law of contracts.” *Id.* at 7. Finally, the petition stressed *Moon III*’s wide-ranging significance, denouncing it as “a roadmap for defendants to defeat lawsuits by churches seeking to enforce their property rights.” *Id.* at 15.

Despite denial of the petition, UCJ “refused to withdraw [its] case against UCI” on remand. UCI Mot. for Summ. J. at 2. “[A]fter being afforded multiple, fulsome warnings” about its sanctionable conduct, *id.*, Plaintiffs’ longtime counsel withdrew from the case and were replaced, JA.2537–40. Judge Irving then invited the filing of “dispositive motions” to “swift[ly]” resolve “on the papers” the “‘slivers of the case’ that remain[ed].” JA.2552.

UCI then sought summary judgment on Counts IV, V, and VI. Because *Moon III* barred any “finding that UCI’s donations to KIF and GPF ran afoul of UCI’s corporate purposes,” UCI explained that UCJ’s remaining claims are equally foreclosed. UCI’s Mot. for Summ. J. at 8 (quoting *Moon III*, 281 A.3d at 70). In response, UCJ argued its claims could be relitigated under a “fraud or collusion exception” to abstention once relabeled as “self-dealing.” Plaintiffs also sought to reopen discovery and designate a new “fraud or collusion expert.”

The Superior Court granted summary judgment for UCI, agreeing that *Moon III*'s reasoning foreclosed UCJ's claims. As the court explained, those claims would "necessarily require[] an inquiry into contested matters of Unification Church doctrine, polity, and practice forbidden by the First Amendment" per *Moon III*. JA.3136. Determining whether UCI's donations to GPF and KIF accorded with its corporate purposes would raise religious questions, including "the nature of 'Rev. Moon's providential vision' and 'lifelong dream' for the Unification Church, the identity of Rev. Moon's successor and the meaning and effect of their interpretations of Rev. Moon's teachings, and the organization of the Unification Church's polity." JA.3134.

Likewise, the Superior Court rejected UCJ's invocation of what would be a sweeping exception to religious abstention. As the court noted, UCJ was wrong to "suggest[] that many trial courts have applied" the so-called "fraud or collusion exception." JA.3137. In fact, such an exception has never been applied by the Supreme Court, this Court, or in any of the cases UCJ cited. JA.3137–38. Moreover, UCJ's invocation of the exception "conflate[d] the contractual nature" of its claims against UCI with "the *Complaint*'s other counts" related to self-dealing, which were "immaterial" as to UCI. JA.3140 (emphasis in original).

In any event, UCJ's claims were "expressly premised on a determination of whether UCI's acts were in accord with a religious mission or purpose," and



therefore require “a constitutionally impermissible extensive inquiry into ‘matters of ecclesiastical cognizance.’” JA.3140. (quoting *Moon III*, 281 A.3d at 61). As the court explained, “UCJ’s focus on the presence or absence of self-dealing among UCI’s directors misses the decisive basis precluding its claims: the Court cannot ascertain if UCI’s donations are within the scope” of UCI’s religious mission. JA.3140.

Additionally, the court declined to sanction UCJ for opposing summary judgment after *Moon III*. Because the existence of the fraud exception remained open (“at best”), UCJ’s “futile” arguments were not “*definitively* foreclose[d].” JA.3141 n.9 (emphasis added). At the same time, UCI’s suggestion that “the Court consider sanctioning UCJ” for its “bad faith in continuing to pursue doomed claims against UCI” was “well taken” by the court. JA.3141 n.9.

Finally, the court rejected Plaintiffs’ discovery-related requests, ruling Plaintiffs failed to show “excusable neglect” or “good cause.” JA.3198–3213. It noted that one of Plaintiffs’ purported grounds to reopen even raised “concerns about counsel’s professionalism” and “‘candor’” to the court. JA.3212 n.10.

UCJ has timely appealed.

### **STATEMENT OF FACTS**

This case arises from a theological dispute within the Unification Movement, a global religion that Rev. Moon founded in Korea in 1954. JA.185;

*See Moon III*, 281 A.3d at 49–51. Considered a messianic figure and referred to as the “Third Adam,” Rev. Moon exercised spiritual authority over the Movement. *See, e.g.*, JA.1744–49; JA.1838; *Moon III*, 281 A.3d at 51–52. In his lifetime Rev. Moon only recognized four Adamic figures, of whom he is the third and his son, Dr. Moon, is the fourth. In this way, Dr. Moon carries the same spiritual authority as his father. Despite recognizing Rev. Moon’s spiritual identity and authority, Plaintiffs refuse to recognize Dr. Moon’s own.

The Movement spans hundreds of affiliated organizations globally. Early in its history, certain aspects of the Movement assumed the form of national institutional “churches” called the Holy Spirit Association for the Unification of World Christianity. *See Moon III*, 281 A.3d at 51. The Movement encompassed these “churches,” alongside the broader constellation of providential organizations, all deriving from Rev. Moon’s messianic ministry. *Id.* at 51–52. Rev. Moon was the “charismatic” leader who held together the Movement’s disparate parts. *Id.* at 52.

In 1994, Reverend Moon formally announced the end of the church era. *See Moon III*, 281 A.3d at 53. He declared that the Movement should be “centered on families” rather than on a “hierarchical, institutionalized church.” JA.2742; *see Moon III*, 281 A.3d at 53. Dr. Moon was tasked specifically with ushering in this

new era, and focused on restructuring the Movement according to Rev. Moon's directive. *See Moon III*, 281 A.3d at 53.

Following Rev. Moon's physical and mental decline and then passing in 2012, a schism arose as different parts of the Movement aligned around different members of the True Family. *Id.* at 49–50, 53–54, 59. This dispute reflects theological differences over Rev. Moon's teachings and the identity of his rightful successor. *See id.* at 49–50. The schism pits UCI, Dr. Moon, and the Defendant Directors against those, like Hak Ja Han and Sean, who seek to aggrandize themselves at the expense of those who continue Reverend Moon's push for the Movement to transcend any one institutionalized, hierarchical "church." *See id.* at 50; JA.1787–89.

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

In 1977, "Unification Church International" (UCI) was incorporated as a non-member nonprofit in the District of Columbia governed by an independent, self-perpetuating Board of Directors. JA.577–86. While defined by its religious beliefs and mission, UCI is not an institutional church. *See Moon III*, 281 A.3d at 52. To the contrary, its wide-ranging purposes—as enumerated in its 1977 articles, as amended in 1980—strive to achieve Rev. Moon's vision through diverse means. JA.577–78; JA.891–93; JA.1010–16.

Although spiritually part of the Movement, UCI is legally independent. *Moon III*, 281 A.3d at 52–53, 65. Its articles make clear that UCI is controlled “exclusively” by its board, JA.583; JA.891–93, while referencing the spiritual “inspiration” of Reverend Moon as leader of the “international Unification Church movement,” JA.584; *Moon III*, 281 A.3d at 52.

For decades, UCI supported sundry entities and projects that furthered, each in its own way, Rev. Moon’s teachings of world peace and unification. Among other things, UCI sent hundreds of millions of dollars to The Washington Times. JA.1017; *Moon III*, 281 A.3d at 68. Similarly, UCI gave about \$35 million to the nonsectarian University of Bridgeport, and more than \$68 million to support a ballet company. JA.1018; *see Moon III*, 281 A.3d at 68. 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. *See* JA.1019–31; *see Moon III*, 281 A.3d at 68.

UCI and its subsidiaries also have 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. JA.1944; *see Moon III*, 281 A.3d at 52, 68. Historically, these for-profit businesses lost money. JA.1862–63. They were kept afloat by what UCI received in donations from Plaintiff UCJ. JA.838; *Moon III*, 281 A.3d at 52–53. For example, up to 80–85%

of the money UCI donated went to media businesses like The Washington Times. *See Moon III*, 281 A.3d at 52. Both sides agree that this pattern of donations was consistent with UCI's corporate documents and religious mission. *See, e.g., Moon III*, 281 A.3d at 68.

As UCI supported the Movement's spiritual goals, UCI's operations had become financially unsustainable by the early 2000s. JA.1989; 2036. At that time, UCI was hemorrhaging more than \$100 million per year under its then-president, Douglas Joo. JA.1863–68; JA.837. Further, UCI suffered a “lack of depth in management” and a “lack of depth in professionalism,” which posed operational and organizational challenges. JA.1866. In sum, UCI was a “tremendous mess.” JA.1866.

Recognizing that UCI needed new leadership, Rev. Moon asked that Dr. Moon exercise more direct oversight. *See* JA.1861. 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. JA.1860–61. In 2006, Dr. Moon was unanimously elected by UCI's board to serve as chairman and president. JA.1864–65. Per Rev. Moon's instructions, Dr. Moon sought to modernize UCI and to improve the subsidiaries' financial performance, yielding “significant—huge improvements” by 2010. JA.1864–67.

## **B. UCJ's Donations to UCI**

For decades, UCI received donations from UCJ. JA.838; *Moon III*, 281 A.3d at 53. Record “[e]vidence . . . suggests that UC[J]’s regular donation of funds to UCI was not contingent upon a written promise or repeated assurances about the use of funds.” JA.1192. Starting around the 1970’s, UCI sent letters to UCJ soliciting donations. JA.1190–93. Those letters included annual meeting minutes discussing UCI’s budget, which included broad catch-all line items for “Related Business Projects.” JA.1193. In 1997, UCJ requested UCI make a change to the letters to respond to changes in Japanese law requiring “more specific categorization of UCI’s use of funds.” *Id.* In response, UCI slightly changed the form solicitation letter, but still included a broad category for “[b]usiness and other projects, which, economically or otherwise, help advance the mission of UCI and the worldwide Unification Church.” *Id.*

Historically, UCJ contributed approximately \$100 million per year. JA.1989; JA.2036. When Sean took control of Family Federation, however, his faction scorned UCI so it would fail under Dr. Moon’s leadership. UCJ cut donations by \$24 million in 2008, and ceased contributing to UCI altogether the following year. *See* Dir. Defs.’ Proposed Findings of Fact 33 (Nov. 25, 2019). Despite this nine-figure loss in yearly funding, UCI weathered the storm thanks to Dr. Moon’s reforms and leadership. *See* JA.1864–67.

### **C. UCI Stays True To Reverend Moon's Vision**

The remaining claims against UCI relate to two sets of actions that it took as the Movement fragmented amidst Rev. Moon's mental and physical decline and after his death in 2012. *See Moon III*, 281 A.3d at 55–59. Each action followed naturally from UCI's defining purposes, however, as well as its operational and donative history.

First, UCJ faults UCI's donations after Dr. Moon became chairman in 2006. For a time, UCI donated to UPF, a nonprofit that Rev. Moon had founded and Dr. Moon had built to promote world peace. *Id.* at 55. After Sean Moon took over, however, UCI ceased contributing to UPF, believing that Sean had led it astray. *Id.* At the same time, UCI continued its financial support of other peace-building projects, including those undertaken by GPF, which Dr. Moon created to continue UPF's rightful work. *See* JA.1072–78; *Moon III*, 281 A.3d at 55–56.

UCI also funded a development on Yeouido Island in Seoul, Korea through donations to a Swiss foundation and Movement entity called KIF. 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, Rev. Moon believed that developing this land in Korea was essential to creating a powerful financial center for Korea, Asia, and the world, so it was his "lifelong dream to develop that property." *See, e.g.*, JA.1916–18. The overall

project was planned and researched for years by Rev. Moon and his advisors. JA.1359–64; JA.895–96; JA.1558–65. And Dr. Moon and UCI enlisted legal, financial, and business expertise in order to accomplish it. *Id.*

When Dr. Moon assumed responsibility for this critical project, the development rights were temporarily held by a single individual. JA.1928–29. 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.1929–30. Ultimately, UCI’s board agreed with UCI’s professional advisors (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 secured requisite financing as well as tax benefits. JA.1932–33; JA.1954–57; JA.758–60; *Moon III*, 281 A.3d at 58–59. KIF is not legally affiliated with the Movement any more than UCI. 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.1956. UCI’s transfer to KIF yielded the desired financing and enabled the project’s successful completion. *See* JA.1723–26.

#### **D. Plaintiffs’ Post-Suit Conduct**

Plaintiffs’ conduct after filing this suit has all but confirmed UCI’s and Dr. Moon’s decision to honor Rev. Moon’s wishes and move away from an



institutional church model. Family Federation’s self-proclaimed leader, Hak Ja Han, has squandered donations from the faithful to fund construction of extravagant palaces that triggered government investigations into embezzlement.<sup>1</sup> She and her acolytes have also gambled away fortunes at casinos.<sup>2</sup>

Most concerning, UCJ has been widely pilloried for its abhorrent fundraising practices off the backs of its members, as now notoriously linked to the murder of Japan’s Former Prime Minister.<sup>3</sup> This episode has triggered an investigation by the Japanese government, which has formally requested that UCJ

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<sup>1</sup> See 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); 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 Hak Ja Han’s “guidelines”).

<sup>2</sup> See Weekly Bunshun, (Nov. 10, 2022), [https://bunshun.jp/articles/-/58504?utm\\_source=twitter.com&utm\\_medium=social&utm\\_campaign=onlinePublished](https://bunshun.jp/articles/-/58504?utm_source=twitter.com&utm_medium=social&utm_campaign=onlinePublished) (reporting in Korean that Hak Ja Han and other Unification Church executives gambled approximately 6.4 billion yen at Las Vegas Casinos and lost around 900 million yen).

<sup>3</sup> See, e.g., Mari Yamaguchi, *Unification Church pledges reforms after Abe’s assassination*, ASSOCIATED PRESS (Sept. 22, 2022), <https://apnews.com/article/shinzo-abe-religion-japan-philanthropy-assassinations-4f18b1c688ed8f25fbc43a6fb2dcd782>; see also Guy Taylor, *Conference promotes religious freedom as a human right*, WASHINGTON TIMES (Nov. 12, 2022), <https://www.washingtontimes.com/news/2022/nov/12/conference-promotes-religious-freedom-as-human-rig/>.

be dissolved as a religious corporation in Japan.<sup>4</sup> According to Japan’s Education Minister Mashito Moriyama, UCJ has “tried to steer its followers’ decision-making in ways that were not always in their best interest, using manipulative tactics, making them buy expensive goods and donate beyond their financial ability, also affecting the lives of their families.”<sup>5</sup>

### **SUMMARY OF ARGUMENT**

*Moon III* forecloses UCJ’s remaining claims against UCI, which all turn on whether UCI’s donations to GPF and KIF ran afoul of its original religious purposes. This Court held unequivocally that the First Amendment forbids deciding “whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance.” 281 A.3d at 51. The First Amendment equally bars any “finding that UCI’s donations to KIF and GPF ran afoul of UCI’s corporate purposes.” *Id.* at 70.

Although UCJ here adverts to other restrictions that “may” differ from those in UCI’s articles of incorporation, it does not identify anything substantive in this respect, nor does it cite any supporting record evidence. Br. 63 (quotation omitted). In actuality, any documents and testimony UCJ might cite in this regard

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<sup>4</sup> <https://www.cnn.com/2023/10/14/asia/japan-unification-church-dissolution-explainer-hnk-dst-intl/index.html>

<sup>5</sup> <https://apnews.com/article/japan-unification-church-religion-cult-revokation-32cce4e1b584e24fc41a9df57ec9207>

would be indistinguishable from the religious doctrines and aspirations that are set forth in UCI's articles and are nonjusticiable under any reading of *Moon III*.

As for UCJ's persisting objection to the KIF donation, UCJ literally repeats what this Court has already rejected. Just as the court below noted, UCJ raised and lost this same argument in *Moon III*. JA.3135 ("UCJ's challenge goes to whether UCI's directors breached their fiduciary duty through donating UCI's assets to KIF, which *Moon III* plainly forecloses." (citing *Moon III*, 281 A.3d at 69–70)).

There is no valid "fraud or collusion" exception to religious abstention, and certainly not an exception as broad as UCJ would need it to be in order to obtain reversal. Nor could any exception sounding in *fraud* bear on UCJ's *contractual* claims. UCJ's theory is simply that UCI strayed from its ordained mission of supporting the Unification Church—which requires that secular courts choose between competing sides of a religious schism and thus threatens "the type of religious intrusion" this Court ruled out in *Moon III*. 281 A.3d at 65.

The Superior Court properly refused to reopen discovery or hold an evidentiary hearing on the fraud exception. There is no inconsistency between Dr. Moon's recent statements reflecting approval over what KIF accomplished and his prior testimony disclaiming supervision over KIF. Regardless, discovery into a potential "fraud" exception would have no bearing on UCJ's contractual claims against UCI, which turn on the same facts the parties have known for years.

Finally, applying religious abstention does not impinge in the slightest on Plaintiffs’ First Amendment rights. Religious abstention applies because Plaintiffs’ claims raise “religious questions,” *Moon III*, 281 A.3d at 62, not because the Plaintiffs are “religious claimants,” Br. 29. By no colorable reading of precedent have Plaintiffs suffered any “discrimination against [their] religious exercise” resulting in a “refusal” of “access to the civil courts.” Br. 28. To the contrary, Plaintiffs are perfectly free to worship as they please and to litigate according to the same neutral principles that everyone else does. What they cannot do, per the clear holdings of this Court and the U.S. Supreme Court, is offensively enlist secular courts to bless their side of a religious schism and impose judicial coercion against those whose religious views diverge.

## **ARGUMENT**

### **I. THE REASONING OF *MOON III* FORECLOSES UCJ’S REMAINING CLAIMS**

UCJ’s remaining claims against UCI for breach of contract, promissory estoppel, and unjust enrichment are all rooted in the parties’ fundamental differences about whether UCI’s donations fall within its corporate mission. *Moon III* makes clear why such claims are foreclosed. *Moon III*, 281 A.3d at 69–70.

#### **A. The Religious Abstention Doctrine Forbids The Inquiries On Which UCJ’s Claims Rely**

To prevail on any of its claims, UCJ would need to show, in essence, that UCI’s use of UCJ’s donations was “wrongful or unjust.” JA.3128. For breach of

contract, UCJ must (among other things) establish that UCI “breach[ed]” a contractual duty. *Tsintolas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009) (emphasis added). For promissory estoppel, UCJ must show it relied on UCI’s promise, resulting in an “injustice.” *N. Litterio & Co. v. Glassman Constr. Co.*, 319 F.2d 736, 739 (D.C. Cir. 1963). And for unjust enrichment, UCJ must show that “(1) [UCJ] conferred a benefit on [UCI]; (2) [UCI] retains the benefit; and (3) under the circumstances, [UCI’s] retention of the benefit is *unjust*.” *Pearline Peart v. D.C. Hous. Auth.*, 972 A.2d 810, 813 (D.C. 2009) (emphasis added).

UCJ asserts that UCI breached the parties’ alleged contract “when it used [UCJ’s] contributions for purposes for which they were not intended.” JA.3129 (citing Compl. ¶¶ 133, 134). Notably, record “[e]vidence . . . suggests that UC[J]’s regular donation of funds to UCI was not contingent upon a written promise or repeated assurances about the use of funds.” JA.1192.

Regardless, UCJ’s alleged restrictions raise questions foreclosed by the religious abstention doctrine. UCJ’s purported “‘purposes’ [were] allegedly understood by both Parties to be the ‘mission and purpose . . . reflected in [UCI’s] Articles of Incorporation’ prior to 2010. JA.3129 (citing Compl. ¶¶ 133, 134). Likewise for its quasi-contractual claims, “UCJ pleads that UCI promised to use UCJ’s funds in accordance with the same ‘mission and purpose’ quoted above.” JA.3129 (citing Compl. ¶¶ 140–146). In particular, UCJ challenges “UCI’s

donations to GPF and KIF” as breaches of donative intent. *See* JA.3130. At bottom, therefore, UCJ’s claims call for a determination whether “UCI’s donations to GPF and KIF [fell] outside of UCI’s ‘mission and purpose.’” JA.3130. That makes UCJ’s theory part and parcel of what *Moon III* expressly rejected.

Under the religious abstention doctrine, “[c]ivil courts are barred from deciding disputes that turn on ‘the interpretation of particular church doctrines.’” *Moon III*, 281 A.3d at 60 (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 450 (1969)). “[A] civil court may not ordain matters of ‘church polity or administration,’” *id.* at 61 (quoting *Meshel*, 869 A.2d at 353), “by, for instance, ‘determin[ing] the religious leader of a religious institution.’” *Id.* (quoting *Samuel v. Lakew*, 116 A.2d 1252, 1261 (D.C. 2015)). “Court involvement in such disputes would ‘impermissibly entangle the judiciary in ecclesiastical matters,’” *id.* (quoting *Meshel*, 869 A.2d at 353), thereby “jeopardizing the values underlying the Religion Clauses and ‘inhibiting the free development of religious doctrine.’” *Id.* (quoting *Presbyterian Church*, 393 U.S. at 449). A civil court cannot “resolve a property dispute between factions of a church” unless “it can do so through ‘neutral principles of law’ without deciding contested matters of church doctrine, polity, or practice.” *Id.*

Applying this framework, *Moon III* rejected the notion that a “neutral principle[]” forbade UCI’s donations to KIF and GPF. *Id.* As this Court

recognized, UCJ “struggle[d] in vain to differentiate the transfers to KIF and GPF from UCI’s historical donations to other unaffiliated organizations.” *Moon III*, 281 A.3d at 68. Those donations undisputedly included a host of nonsectarian organizations, including the Washington Times. Given UCJ’s admission that those donations “were consistent with UCI’s corporate purposes,” *id.* at 68, this Court noted that “UCI’s history appears to refute the notion that the articles ever prohibited donations to entities unaffiliated with the Unification Church,” *Moon III*, 281 A.3d at 68.

Plaintiffs replied “that ‘[a]lmost all of the organizations that UCI historically supported were founded by Rev. Moon and/or Mrs. Moon,’ whereas the transfers to KIF and GPF were made in defiance of Rev. Moon’s wishes.” *Id.* As this Court noted, however, “[i]f Rev. Moon’s approval was enough to insulate a given donation from further scrutiny for compliance with the articles,” then “the approval of his rightful successor” should, too. *Id.* at 69 n.28. “That brings the succession fight to the forefront,” and leaves “no neutral principle to resolve a dispute as to which party had ‘spiritual and charismatic authority’ over the Church and its affiliates at the time the relevant transfers were approved.” *Id.* at 69 & n.28.

Nor can a court decide whether the challenged donations violated UCI’s articles without interpreting the articles’ meaning. “To determine which party was correct about the meaning of the [prior] articles—which are steeped in overtly

religious language—the court would have needed to adjudicate longstanding debates over the direction of the Church, including whether it is best understood as a denominational institution or an interfaith movement.” *Id.* at 69–70.

In sum, this Court has already well explained why this case fundamentally differs from those on which UCJ now relies. In *Steiner v. Am. Friends of Lubavitch (Chabad)*, the parties “well understood the meaning of” the religious terms in a rabbi’s contract. 177 A.3d 1246, 1254–55 (D.C. 2018). In *Carrier v. Ravi Zacharias Int’l Ministries, Inc.*, where funds earmarked for “Christian ministries” had been used “to support and hide [the minister’s] sexual abuse,” the denial of a motion to dismiss did not address any factual record, let alone as rich and clear-cut as the one present here. 2022 WL 1540206, at \*6 (N.D. Ga. May 13, 2022). Nor does the gulf between “Christian ministry” and “sexual abuse” (*id.*) remotely approximate the parties’ disagreement over UCI’s articles, which are “steeped in overtly religious language” and raise “longstanding debates over the direction of the Church” in a context where the sides come down to competing views of nomenclature, succession, and theology. *Moon III*, 281 A.3d at 69–70.

As *Moon III* concluded, “it is not for us to pass judgment on whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance.” *Id.* at 51. That is why “the trial court exceeded



its authority under the First Amendment when it found that [UCI's] 1980 articles barred the transfers to GPF and KIF.” *Id.* at 68.

Although UCJ's claims were not technically before this Court in *Moon III* (because they were not the subject of the summary judgment order then under appeal), their substance is indistinguishable: They contend that donations approved by Dr. Moon (including donations to GPF and KIF) impermissibly diverged from “the mission and purpose of UCI as expressed in the Corporation's original Articles of Incorporation.” JA.197; JA.216.

As of their unsuccessful petition for rehearing en banc, Plaintiffs plainly grasped that *Moon III* doomed any remaining claims by UCJ. As Plaintiffs there acknowledged, “UCI's stated purposes are plainly broader than merely supporting institutions that are formally affiliated with the Church.” Pls.' Pet. for Reh'g En Banc at 12. The petition likewise noted that *Moon III* foreclosed deciding “disputes about the Articles' meaning” because they cannot “be interpreted using the neutral principles of the objective law of contracts.” *Id.* at 7. In fact, the petition emphasized *Moon III*'s far-reaching implications for future cases as well, decrying that it provided “a roadmap for defendants to defeat lawsuits by churches seeking to enforce their property rights.” *Id.* at 15.

UCJ now asserts that “it is for a jury to decide . . . whether using donated funds in ways not approved by Rev. Moon would violate UCJ's donative

restrictions.” Br. 66–67. But that simply restates the argument that *Moon III* expressly rejected: that “donations approved by Rev. Moon comport with UCI’s mission, whereas those approved by [Dr. Moon] (and his co-directors) do not.” *Moon III*, 281 A.3d at 68–69. No jury or judge can decide any such dispute over religious doctrine or succession. It is flatly disingenuous for UCJ to be recognizing Rev. Moon’s spiritual authority while failing to do so for Dr. Moon, after he was acknowledged as the Fourth Adam, and urging a U.S. court to renounce the latter under the auspices of deciding UCJ’s contract claims.

**B. UCJ Cites No Evidence Providing Any Basis To Reverse The Superior Court’s Ruling**

On appeal, UCJ all but admits that its contract claims are “bar[red]” by *Moon III* “to the extent they are based on interpretation of UCI’s mission and purpose under its articles.” Br. 62. To salvage its case post-*Moon III*, UCJ contends that its claims “were not premised solely on UCI’s donations violating its original articles,” and that there may have been donative restrictions apart from those expressed in the articles. Br. 63.

But this attempted reinvention of UCJ’s case is doomed at the start. UCJ failed to plead any such theory in its Complaint. Nothing in the complaint even hints that any contractual or quasi-contractual restrictions on UCJ’s donations went beyond the articles’ articulation of UCI’s mission and purposes. Nor did UCJ ever specify these separate restrictions throughout 13 years of litigation predating the

instant appeal. JA.1094–1114. It is far too late for UCJ to gin up a new theory upon remand from *Moon III*. Indeed, “[r]emand is not an opportunity for parties to assert new arguments or legal theories that were raised neither in the district court originally nor on appeal. Were the rule otherwise, there would be no end to any case.” *Volvo Trademark Holding Aktiebolaget v. AIS Constr. Equip. Corp.*, 416 F. Supp. 2d 404, 409 (W.D.N.C. 2006); *see also Boracchia v. Biomet, Inc.*, 2010 WL 1904488, at \*1 (N.D. Cal. May 11, 2020). Considering UCJ’s underlying contract theories have remained unchanged for more than a decade, UCJ should not be permitted to conjure up a new theory now.

Regardless, the record is utterly inhospitable to UCJ’s theory. Indeed, it speaks volumes that Appellants fail to cite *any* evidence that UCJ even purportedly perceived any restrictions substantively different from how the articles of incorporation formulated UCI’s founding mission and purpose. To stave off summary judgment, UCJ would need to point to “specific evidence” in the record. *Spellman v. Am. Sec. Bank, N.A.*, 504 A.2d 1119, 1122 (D.C. 1986) (“If a movant has made a prima facie showing that there is no genuine issue of fact in dispute and it is clearly entitled to judgment as a matter of law, the opposing party may prevail only if he rebuts the showing with specific evidence.”) (quoting *Wyman v. Roesner*, 439 A.2d 516, 519 (D.C. 1981)); *Teru Chang v. Inst. for Public-Private P’ships, Inc.*, 846 A.2d 318, 323 (D.C. 2004) (“In order to survive a motion for summary

judgment, the non-moving party must present more than mere conclusory allegations.”). Even now, UCJ is bereft of requisite evidence.

First, Appellants point to a footnote in *Moon I*, which states that “it *may* be that the contract terms limited the permissible use of corporate funds more sharply than the articles themselves.” Br. 63 (emphasis added) (quoting *Moon I*, 129 A.3d at 253 n.25). But this statement in *Moon I* obviously does not supply “specific evidence” of any kind. *Spellman*, 504 A.2d at 1122. Nor does this statement have any bearing on what the Superior Court was deciding. *Moon I* was decided at the pleading stage and could not pre-judge what the record would indicate at summary judgment. *See, e.g., Acosta v. Nelson*, 561 F. App’x 4, 6 (D.C. Cir. 2014) (“The ruling on a motion to dismiss for failure to state a claim for relief is addressed solely to the sufficiency of the complaint and does not prevent summary judgment from subsequently being granted based on material outside the complaint.”) (quoting 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2713 (3d ed. 1998)).

Lest there be any doubt, *Moon I* expressly anticipated that the result might well differ at summary judgment: “if it becomes apparent to the trial court 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.” *Moon I*, 129 A.3d at 253 n.26. *Moon III* emphasized

this same caveat when reviewing the case, now with the benefit of a fulsome record. 281 A.3d at 59 (quoting *Moon I*, 129 A.3d at 253). “Based on the record before [the Superior Court], which [wa]s far more developed” than it was “in either *Moon I* or *Moon II*,” the Superior Court was well within its right to rule for UCI. *Moon III*, 281 A.3d at 62.

UCJ alludes vaguely to “an array of evidence supporting contractual obligations owed by UCI to UCJ, including oral communications, actions, and decades of written materials, namely solicitation letters and budgets, i.e., materials that existed independent and apart from the articles.” Br. 63. But not a single record citation (never mind a string cite to “an array” of supporting evidence) accompanies that bare assertion.<sup>6</sup> UCJ thus repeats its failure below to cite any such record evidence, as it was obligated to do in order to avoid summary judgment. *See* UCJ Opp. 5–6. Affirmance should follow for this reason alone.

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<sup>6</sup> In lieu of evidence, UCJ cites portions of the Superior Court’s 2019 Omnibus Order denying summary judgment on relevant counts. *See* Br. 63–64; *see also id.* at 21–23. But such statements are not themselves “specific evidence” that establish a “genuine issue of fact,” *Spellman*, 504 A.2d at 1122, and UCJ does not argue otherwise. Nor is the 2019 Order “law of the case.” Br. 63–64. To the contrary, “a legal decision made at one stage of litigation” so qualifies *only* if the decision is “unchallenged in a subsequent appeal *when the opportunity to do so existed*,” which it did not here. *Williamsburg Wax Museum, Inc. v. Historic Figures, Inc.*, 810 F.2d 243, 250 (D.C. Cir. 1987) (emphasis added); *see Kritsidimas v. Sheskin*, 411 A.2d 370, 372 (D.C. 1980). It would be upside-down to elevate the interlocutory, unappealable decision from 2019 over this Court’s subsequent holding in *Moon III*. *See Kritsidimas*, 411 A.2d at 372; *see also Kurth v. Dobricky*, 487 A.2d 220, 224–25 (D.C. 1985) (citing and quoting *Tompkins v. Washington Hospital Center*, 433 A.2d 1093, 1098 (D.C. 1981)).

Even setting aside UCJ’s procedural default, surveying the record *sua sponte* would not yield a scintilla of evidence supporting UCJ’s legal argument. All of the “materials that existed independent and apart from the articles” and factored in the 2019 Summary Judgment Order turn up the very same issues foreclosed by *Moon III*. See Br. 63 (citing JA.1191–95). Put differently, even if the “materials” are separate from UCI’s articles of incorporation, they substantively echo the articles and raise precisely the same religious questions.

As the Superior Court noted, these materials indicate (at most<sup>7</sup>) that “UCI was to use donated funds to further UCI’s *charitable corporate purposes*.” JA.1192 (emphasis added); *see also* JA.1191 (noting the “Complaint alleges that UCI breached a contract with UC Japan when UCI used funds donated by UC Japan beyond the scope of UCI’s *original corporate purposes*”) (emphasis added); JA.1191–92 (noting UCJ’s argument that “funds would be used for UCI’s *charitable corporate purposes*, as evidenced by decades of letters from UCI soliciting funding from UC Japan”) (emphasis added); JA.1194 (“Evidence indicates that despite its lack of knowledge as to UCI’s business activities, UC Japan expected UCI to use funds in furtherance of its ‘*original purposes*.’”) (emphasis added).

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<sup>7</sup> In its summary judgment briefing below, UCI explained it was not “disputing for present purposes the [Superior] Court’s prior determination that a factfinder could find the existence of a contract.” UCI’s Reply Mot. for Sum. J. at 3–4. UCI reserves the right to challenge the existence of such a contract should the case proceed to trial.

(emphasis added). In particular, the 2019 Order points to letters from UCI to UCJ soliciting funding and attaching yearly budgets. JA.1193. Starting in 1988, these contained broad “catchall[s]” referring to UCI’s “purposes,” “objectives,” “activities,” and “mission.” *Id.* “These purposes were intentionally written with broad scope,” which “suggest[ed] a measure of discretion on UCI’s behalf, albeit consistent with the Unification Church.” JA.1193–94; *see also* JA.1094–1114.

Of course, UCI’s “original corporate purposes” (JA.1191) are spelled out in UCI’s articles of incorporation. *See Moon III*, 281 A.2d at 52 (noting UCI’s 1980 articles “set forth its core purposes as supporting the Unification Church and its principles”). And UCJ all but concedes that *Moon III* bars its claims “to the extent they are based on interpretation of UCI’s mission and purpose under its articles.” Br. 62. Of course, it is impossible to determine whether UCI failed to use the donations “in furtherance of its ‘original purposes’” (JA.1194) without determining what those purposes are. *Moon III* made clear that “it is not for [this Court] to pass judgment on whose vision of the Unification Church, or Unification Movement, is more faithful to the purposes UCI was established to advance.” 281 A.3d at 51. “That religious question is outside of this [C]ourt’s purview.” *Id.*

The other materials cited in the 2019 Order lead to the same forbidden ground. The Order cites evidence that the presidents of UCI and UCJ had a conversation “confirming that the purpose of the donated funds was ‘to support

activities under the guidance of the True Parents and international headquarters.” JA.1192. UCI’s former president “promised that ‘everything is for—for missionary activities, missionary purposes.” JA.1192; *see also id.* (citing testimony of UCI’s former chair that he “shared this understanding”).

Again, the “guidance of the True Parents” returns to the same religious questions that *Moon III* placed off limits. There, Plaintiffs similarly argued that “[a]lmost all of the organizations that UCI historically supported were founded by Rev. Moon and/or Mrs. Moon,’ whereas the transfers to KIF and GPF were made in defiance of Rev. Moon’s wishes.” *Moon III*, 281 A.3d at 68. In other words, the Plaintiffs refuse to recognize Dr. Moon’s spiritual authority, which was acknowledged by his father when Dr. Moon was designated Fourth Adam.

This Court eschewed going down that path, noting that, “even if we assume that the Unification Church is a charismatic religious movement that places a single individual atop its hierarchy, the First Amendment bars us from resolving a dispute as to the identity of that leader.” *Id.* at 69. This Court noted “testimony that Rev. Moon’s health was fading and that—at the time of the key events in this case—he was being manipulated by others, contrary to his vision for the religion’s future,” whereas Dr. Moon “had been dubbed the ‘fourth Adam’ by his father.” *Id.* As this Court explained, “If Rev. Moon’s approval was enough to insulate a given donation from further scrutiny for compliance with the articles,” then the same



should hold for “his rightful successor,” bringing “the succession fight to the forefront of this dispute.” 281 A.3d at 69 n.28. Such “intrachurch succession disputes . . . fall squarely within the nonjusticiable category,” *id.* at 69.

Nor can this Court determine which entity (if any) is the Unification Movement’s “international headquarters” or what qualifies as a “missionary activit[y],” JA.1192, a term that UCI used interchangeably with UCI’s corporate purposes, JA.1094–1114.<sup>8</sup> *Moon III* made clear that “[t] it is not for the courts to pronounce” that “the Family Federation is the ‘authoritative religious entity’ that ordains what does and does not benefit the Unification Church,” 281 A.3d at 51, just as it made clear that the GPF and KIF donations cannot be neutrally distinguished from transactions that *all* parties concede were rightful, *id.* at 67–70. Therefore, all of the materials cited in the 2019 Order raise religious questions that *Moon III* forecloses. UCJ refrains from citing these telltale particulars only because UCJ knows they further confirm the warrant for affirmance.

### **C. The KIF Transfer Is No Different**

This Court should likewise reject UCJ’s alternative argument that the claims based on the KIF transfer should be allowed to proceed. UCJ wrongly suggests that, because these claims turn on UCI’s lack of knowledge as to how KIF would

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<sup>8</sup> See also *Ds’* SJ Ex. 52 at 208 (“missionary activities” included “The Washington Times”), 213 (the nonsectarian “Universal Ballet”), 218 (for-profit “business projects,” if consistent with UCI’s “original purpose”).

use the funds, they do not implicate religious doctrine. Br. 68–69. In fact, *Moon III* considered and rejected this precise argument. *Moon III*, 281 A.3d at 69–70.

Simply comparing UCJ’s latest appellate brief with its prior one reveals that it is recycling the very same arguments that UCJ advanced and lost in *Moon III*: Compare Br. at 70 (“It is undisputed that UCI’s directors did not monitor or assure that the assets UCI transferred to KIF were used consistent with UCI’s purposes, no matter how defined.”), with *Moon III* Br. at 23 (“The Director Defendants have taken no steps to confirm whether KIF has complied with the Donation Agreement.”). After considering these precise arguments in *Moon III*, this Court rejected them. It held that the First Amendment prevents any finding that the act of transferring money to KIF ran afoul of UCI’s corporate purposes. See *Moon III*, 281 A.3d at 59 n.13 (“The Family Federation further suggests that KIF’s prompt sale of the Central City asset for ‘close to \$1 billion,’ and the fact that the directors have never accounted for how the proceeds of that sale were used, are further indications that they did not act with any intention to advance the religion or its principles . . . .”). *Moon III* therefore disposes of this issue as a matter of law. *Williamsburg Wax Museum*, 810 F.2d at 250. Even setting aside the law of the case, however, UCJ does not even attempt to argue why *Moon III* erred on this point or why the result should be any different this time around.

UCJ also fails to offer any argument, or point to any evidence, explaining why UCI had a contractual duty to restrict the KIF transfer. Put simply, UCJ repackages a vague duty-of-care objection as a contractual obligation without even trying to show that obligation existed. Even if UCI had such an obligation, UCJ fails to explain why it was not sufficient that KIF was “run by well-known and devoted members” of the Movement whom Dr. Moon trusted. JA.1956; *see also* JA.1989–90. These failures further doom UCJ’s argument.

## **II. THE SUPERIOR COURT PROPERLY DECLINED TO APPLY A FRAUD EXCEPTION TO THE RELIGIOUS ABSTENTION DOCTRINE**

UCJ also invokes a supposed “fraud or collusion” exception to the First Amendment to resuscitate theories that *Moon III* held nonjusticiable. Br. 71–73. Yet UCJ fails to explain how a *fraud* exception could possibly salvage its *contract* claims against UCI. Nor is any such argument legally available, for “District of Columbia law requires that the factual basis for a fraud claim be *separate* from any breach of contract claim that may be asserted.” *Plesha v. Ferguson*, 725 F. Supp. 2d 106, 113 (D.D.C. 2010) (emphasis added). The Superior Court recognized as much below, reasoning that UCJ’s arguments require “conflat[ing] the contractual nature of [UCJ’s] three counts [against UCI] with the *Complaint*’s other counts, alleging breaches of fiduciary duty and self-dealing, that are immaterial to deciding” the contract claims. JA.3140 (emphasis in original).

UCJ argues that the lower court failed to conduct the “two-step inquiry on remand” that *Moon III* “tasked”: “(1) deciding ‘whether there is a fraud or corruption exception,’ and (2) if so, applying the [e]xception” to the facts. Br. 71 (quoting *Moon III*, 281 A.3d at 70–71). But *Moon III*’s passing reference to a potential fraud exception in discussing Plaintiffs’ “self-dealing” theory of fiduciary breach does not override the rest of the opinion. UCJ cannot maintain contract claims that depend on the same determinations this Court held “are non-justiciable.” *Moon III*, 281 A.3d at 70.

Nor is there any force to UCJ’s objection that the Superior Court “skirt[ed] step one” and “proceeded to opine on the second issue.” Br. 72. Courts frequently conduct multi-step inquiries by assuming one requirement is met and holding that another is independently fatal. This approach allows courts to avoid wasting judicial resources on meritless claims. For example, in the context of the Fourth Amendment, courts regularly assume that challenged conduct qualifies as a search or seizure and proceed directly to the reasonableness analysis. *See, e.g., Brown v. United States*, 97 A.3d 92, 96 (D.C. 2014) (“[W]e assume that appellant was seized when Officer Allen grabbed his jacket, but we need not decide the issue because by that time the officers had acquired reasonable articulable suspicion.”). So too for qualified immunity: courts frequently assume a constitutional violation before concluding that any violation was not clearly established. *See, e.g., Pearson v.*

*Callahan*, 555 U.S. 223, 243–44 (2009). Appellants miss the mark, therefore, by faulting the Superior Court for “taking the analytical steps out of order.” Br. 72.

At the end of the day, this Court can alternatively affirm the Superior Court, if it so wishes, on the ground that the “fraud or collusion” exception does not exist and/or that no such exception could properly apply here. *See Franco v. District of Columbia*, 3 A.3d 300, 307 (D.C. 2010).

First, no such “fraud or collusion” exception exists. The Supreme Court has “never definitely endorsed” a “fraud or collusion” exception to the First Amendment. *Moon III*, 281 A.3d at 70 n.29. As the Superior Court noted, the Supreme Court and other courts have referenced a possible “fraud or collusion” exception to the ecclesiastical abstention doctrine with “circumspection and caution” and have ***never applied*** any such exception. JA.3137–38; *see, e.g., Moon III*, 281 A.3d at 70 n.29 (emphasis added) (citing cases).<sup>9</sup> As Appellant Family

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<sup>9</sup> *See also Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986) (discussing suggestion of fraud or collusion exception in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712–13 (1976), before declining to intervene in the religious dispute and emphasizing that “we do not hold that such great fraud would be a basis for court interference”), *cert. denied*, 479 U.S. 885 (1986); *Moon v. Moon*, 833 F. App’x 876, 880 (2d Cir. 2020) (observing “purported exception to the ecclesiastical abstention doctrine” and declining to apply the fraud and collusion exception, “if the exception exists”), *cert. denied*, 141 S. Ct. 2757 (2021); and *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (noting the Supreme Court “later characterized the entire phrase” “fraud, collusion, or arbitrariness” as “dictum only” and declining to apply any purported exception)); *see also, e.g., Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994) (noting *Milivojevich* “‘left open the issue’ of whether

Federation rightly and successfully argued in a parallel Second Circuit action arising from the same schism, “there is no fraud or collusion exception” to the ecclesiastical abstention doctrine. Appellee Br., No. 20-168 (2d Cir. Apr. 15, 2020), ECF 48 at 17, 33–34. Neither Family Federation nor the other Plaintiffs should be permitted to argue from the other side of their mouths simply to serve their present agenda. *See Porter Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003) (applying judicial estoppel).

Notably, UCJ’s theory of “fraud” paints Dr. Moon/UCI’s beliefs as being improper. *Cf. Moon III*, 281 A.3d at 68–69 (rejecting as nonjusticiable the position that “donations approved by Rev. Moon comport with UCI’s mission, whereas those approved by Preston (and his co-directors) do not”); *id.* at 51 (similarly rejecting proposition that “Family Federation is the ‘authoritative religious entity’ that ordains what does and does not benefit the Unification Church”). U.S. courts cannot adjudicate such claims any more than they can adjudicate whether it was

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a church decision may be reviewed in the case of ‘fraud or collusion’” but noting the “unlikely significance” of the “‘open issue’ . . . in some hypothetical case”); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 726–27 (11th Cir. 1987) (affirming dismissal of complaint “one step removed from a major doctrinal conflict between two factions” in church after considering balance of interests, including a grievant’s “strong interest in obtaining a civil forum where the religious tribunal’s decision is tainted by fraud or collusion”); *Hutchison*, 789 F.2d at 395 (“We merely state that possibility has been left open by the Supreme Court . . . .”); *Kaufmann v. Sheehan*, 707 F.2d 355, 358–59 (8th Cir. 1983) (noting *Milivojevich* did not “foreclose” fraud or collusion exception but declining to apply exception).

“fraud” for Martin Luther to split from the Roman Catholic Church—which could, by Appellants’ telling, be recast as a fraud surpassing Bernie Madoff’s considering the value of the assets that were “siphoned off” from one religious faction to another. Br. 65. As the Superior Court recognized below, the First Amendment “precludes adjudication of UCJ’s three counts [against UCI] because they are expressly premised on a determination of whether UCI’s acts were in accord with a religious mission or purpose—a determination requiring a constitutionally impermissible extensive inquiry into ‘matters of ecclesiastical cognizance.’” JA.3140 (quoting *Moon III*, 281 A.3d at 61).

Second, even if this Court were open to being the first ever affirmatively to recognize a fraud exception, that exception could not apply here. UCJ’s remaining claims go to the core of UCI’s religious mission. UCI’s previous donations to GPF or KIF were not “fraudulent” in any cognizable sense. As Plaintiffs noted below, (Pls.’ Opp’n to UCI’s Mot. to Vacate (Feb. 3, 2023) at 3–4, 6), those donations have been well known for years and prominently featured in this litigation—including before this Court in *Moon III*. Plaintiffs’ gripe is not that they relied on any misrepresentations that have only now been discovered, as would be necessary to plead fraud. Rather, Plaintiffs complain that the donations (as long known to them) inherently betrayed UCI’s corporate and religious mission. This is precisely

the sort of complaint that requires a forbidden ecclesiastical determination, as this Court made clear in *Moon III*.

UCJ's invocation of any "fraud or collusion" exception is all the more misplaced given this case's procedural history. UCJ did not allege fraud in its complaint. To the extent UCJ is attempting to re-label its self-dealing theory of fiduciary breach as fraud, UCJ pleaded the fiduciary breach claims against the Individual Defendants entirely separately from the contract claims against UCI.

Third, the argument is waived. UCJ had a full decade to argue that its contract claims were somehow justiciable under the so-called fraud exception. Its failure to do so constitutes waiver. *See Parker v. United States*, 254 A.3d 1138, 1142 & n.9 (D.C. 2021). Now on appeal, UCJ *still* does not address any of the glaring problems noted above. And to the extent Plaintiffs respond for the first time in reply, such arguments have been waived. *See Stockard v. Moss*, 706 A.2d 561, 566 (D.C. 1997) ("It is the longstanding policy of this court not to consider arguments raised for the first time in a reply brief.").

### **III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION TO REOPEN**

Nor did the Superior Court come anywhere close to abusing its discretion by refusing to reopen discovery or hold an "evidentiary hearing" on the purported fraud exception. The sole basis for UCJ's request is the alleged disconnect between Dr. Moon's prior testimony that he did not superintend KIF, and recent



public statements reflecting his emotional and spiritual attachment to what KIF accomplished. Br. 72, 73–75. But Dr. Moon’s latest account is of a piece with his prior, and by no means ground-shifting. Indeed, Rev. Moon no less than Dr. Moon took pride in accomplishments by the Unification Movement—in furtherance of his overarching vision—that Rev. Moon himself did not personally superintend.

UCJ does not even attempt to explain how the cited statements by Dr. Moon could salvage its contract claims against UCI. These claims revolve around the same facts—particularly UCI’s corporate purposes and its donations to KIF and GPF—that have long been known to Plaintiffs. UCJ’s complaint is not that it relied on any misrepresentations or omissions by UCI that have only now been discovered. Rather, UCJ is continuing to claim that donations it knew of for years inherently betrayed UCI’s religious mission—which is precisely the complaint *Moon III* foreclosed. UCJ has no basis for suddenly injecting “fraud” into its contractual claims. Because any “fraud” exception that may exist would be inapplicable to the claims against UCI, no additional discovery could possibly be warranted, especially at this late stage of the litigation.

Nor could UCJ and the Plaintiffs be entitled to *one-sided* discovery. If this Court reopens discovery (and it should not), then UCI and the other Defendants should be permitted discovery into reports of Plaintiffs’ misuse of donations and

other misconduct that further illuminates why Dr. Moon, UCI, and countless others have all renounced Plaintiffs. *See supra* nn.1–5.

#### **IV. RELIGIOUS ABSTENTION DOES NOT VIOLATE PLAINTIFFS’ FIRST AMENDMENT RIGHTS**

Finally, it is meritless for Plaintiffs to equate religious abstention with violation of their First Amendment rights. Br. 25–29. To begin, they never raised this (absurd) argument in opposing UCI’s motion for summary judgment, nor was it addressed by the Superior Court. The argument is thus waived. *See Akassy v. William Penn Apartments Ltd. P’ship*, 891 A.2d 291, 302 (D.C. 2006) (“Generally, issues not raised in the trial court will be not be considered on appeal.”).

In no event does the ruling below “conflict[] with Supreme Court precedent upholding rights of religious organizations under the Free Exercise Clause to access public benefits.” Br. 26. Plaintiffs have not been “refus[ed] a public benefit” in the form of “access to the civil courts.” Br. 28. There is no more “right” to have a secular court decide a religious dispute than there is to have a court decide any other dispute over which it lacks jurisdiction. Indeed, permitting courts to decide “contested matters of church doctrine” would “jeopardiz[e] the values underlying the Religion Clauses” and flout longstanding, unbroken precedent. *Moon III*, 281 A.3d at 61. To argue otherwise, Plaintiffs posit self-serving answers to the questions *Moon III* held nonjusticiable. *Compare* Br. 28 (claiming it is “immaterial” to Plaintiffs’ claims “whether Preston Moon is or

claims to be the ‘charismatic’ or ‘messianic’ leader of an *entirely different movement*”) (emphasis added), *with Moon III*, 281 A.3d at 64.

Nor do Plaintiffs suffer “discrimination against [their] religious exercise.” Br. 27. Religious abstention applies because Plaintiffs’ claims raise “religious questions,” *Moon III*, 281 A.3d at 62, not because they are “religious claimants,” Br. 29. The First Amendment bars deciding religious questions raised by “every nonprofit, religious or not.” *Id.* at 28. As *Moon III* explained, “the religious abstention doctrine concerns the ‘subject-matter of [the] dispute,’ not the identity of the parties.” 281 A.3d at 61 n.16 (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). Far from threatening any “discriminatory result,” Br. 29, fidelity to this doctrine ensures that the same *issues* will be off limits for *all* potential claimants.

At the same time, the doctrine designedly enables religious organizations to memorialize, in their governing documents, express constraints that can be enforced in court according to neutral principles, to whatever extent those organizations so desire. *See Jones v. Wolf*, 443 U.S. 595, 603 (1979) (“[R]eligious societies can specify . . . what religious body will determine the ownership in the event of a schism or doctrinal controversy.”) As *Moon III* recognized, “UCI’s articles could have vested final decision-making authority in a particular institutional actor like the Family Federation, but they have never done that.” 281 A.3d at 51. To the extent religious entities and actors elect not to memorialize

constraints that U.S. courts can enforce pursuant to neutral principles, that is their prerogative—it is not the fault of the courts or the product of discrimination.

Finally, there is deep irony in Plaintiffs’ allegations about the “theft of church assets,” Br. 25, which were “derived from faithful Church members who made personal and financial sacrifices” on the “belief their contributions would benefit the purposes to which they dedicated their lives,” Br. 7. In fact, it is Family Federation’s self-proclaimed leader who has squandered donations from the faithful to fund extravagant palaces while losing millions at casinos. *See supra* nn. 1 & 2. Meanwhile, the Japanese government has investigated UCJ’s abusive fundraising practices that involve “manipulative tactics” and encourage followers to “donate beyond their financial ability” while “affecting the lives of their families.” *Supra* n.5. Now that these practices have been linked to the murder of Japan’s Former Prime Minister, *supra* n.4, the Japanese government has formally requested that UCJ be dissolved as a religious corporation in Japan. *See supra* n.5.

For the reasons explained above, the last thing this Court should want to do now is lay down a charter for competing religious factions to have their religious differences adjudicated. Beyond that, these Plaintiffs are the last ones who might claim to be specially deserving of any such precedent-violating charter.

## **CONCLUSION**

For the foregoing reasons, this Court should affirm.

Dated: June 24, 2024

Respectfully submitted,

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