Nos. 23-CV-0836, 23-CV-0837, 23-CV-0838

DISTRICT OF COLUMBIA COURT OF APPEALS

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

Plaintiffs-Appellants,

v.

HYUN JIN MOON, *et al.*,

Defendants-Appellees.

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

BRIEF OF DEFENDANTS-APPELLEES HYUN JIN MOON, MICHAEL SOMMER, RICHARD PEREA, JINMAN KWAK, AND YOUNGJUN KIM

Michael Weitzner (D.C. No. 472505)
MICHAEL WEITZNER ATTORNEY AT LAW
4916 Brandywine Street, NW
Washington, D.C. 20016
Telephone: (202) 905-1172

Counsel for Defendants-Appellees Richard Perea, JinMan Kwak, and Youngjun Kim

Christopher B. Mead (D.C. No. 411598)
LONDON & MEAD
1225 19th Street, NW, Suite 320
Washington, D.C. 20036
Telephone: (202) 331-3334

Counsel for Defendant-Appellee Michael Sommer

Jacob M. Roth (D.C. No. 995090)*
William G. Laxton, Jr. (D.C. No. 982688)
David T. Raimer (D.C. No. 994558)
JONES DAY
51 Louisiana Avenue, NW
Washington, D.C. 20001
Telephone: (202) 879-3939

Henry W. Asbill (D.C. No. 938811)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, D.C. 20037
Telephone: (202) 349-8007

Counsel for Defendant-Appellee Hyun Jin Moon

DEFENDANTS-APPELLEES' D.C. APP. R. 28(a)(2) STATEMENT:

The parties and *amici curiae* in this action are:

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

  Cathy A. Hinger (appellate & trial counsel)
  Victoria A. Bruno (appellate & trial counsel)
  Lela M. Ames (appellate & trial counsel)
  Jasmine A. Chalashtori (appellate & trial counsel)
  WOMBLE BOND DICKINSON (US) LLP

  James A. Bensfield (trial counsel)
  Alan I. Horowitz (trial counsel)
  Brian A. Hill (trial counsel)
  Laura G. Ferguson (trial counsel)
  Michael J. Satin (trial counsel)
  Dawn E. Murphy-Johnson (trial counsel)
  MILLER & CHEVALIER CHARTERED

  Benjamin P. De Sena (trial counsel)
  LAW OFFICES OF DE SENA & PETRO

- Hyun Jin Moon (Defendant-Appellee). Counsel:

  Jacob M. Roth (appellate & trial counsel)
  William G. Laxton (appellate & trial counsel)
  David T. Raimer (appellate counsel)
  JONES DAY

  Henry W. Asbill (appellate & trial counsel)
  ORRICK, HERRINGTON & SUTCLIFFE LLP (formerly of BUCKLEY LLP)

- Michael Sommer (Defendant-Appellee). Counsel:

  Christopher B. Mead (appellate & trial counsel)
  LONDON & MEAD

- Richard Perea, JinMan Kwak, and Youngjun Kim (Defendants-Appellees).

  Counsel:

  Michael Weitzner (appellate counsel)
  COOPER & KIRK PLLC

  Francis D. Carter (trial counsel)
  LAW OFFICE OF FRANCIS D. CARTER

- UCI (Defendant-Appellee). Counsel:

  Derek L. Shaffer (appellate & trial counsel)
  William A. Burck (appellate & trial counsel)
  John F. Bash (trial counsel)
  Jan-Philip Kernisan (appellate & trial counsel)
  QUINN EMANUEL URQUHART & SULLIVAN, LLP

- Child USA, Survivors Network of Those Abused by Priests, Zero Abuse Project, and Professor Leslie C. Griffin (*Amici Curiae*). Counsel:

  Jodie E. Buchman (appellate counsel)
  SILVERMAN THOMPSON SLUTKIN & WHITE LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Seventy years ago, the late Rev. Sun Myung Moon founded a charismatic, messianic religious movement that became colloquially known as the "Unification Church." Rev. Moon publicly acknowledged his son, Dr. Hyun Jin (Preston) Moon, as the "Fourth Adam"—a non-divine messianic figure in the line of the Biblical Adam, Jesus Christ, and Rev. Moon himself—to carry on the Movement's mission of uniting all peoples and faiths. But a cabal of self-interested clerics—whom Rev. Moon branded "worse than Lucifer" weeks before his passing—schemed to sideline Dr. Moon, usurp authority, and twist an ecumenical peace movement into a hierarchical, sectarian institution. They first propped up Dr. Moon's brother as their stooge, then purged *him* in favor of Rev. Moon's widow—the self-styled "only begotten daughter of God."

Unable to win over the hearts and minds of the faithful, this corrupt faction turned to weaponized litigation, asking courts (in D.C. and abroad) to ratify its bid for religious supremacy. In 2011, Plaintiffs sued Dr. Moon and four other Defendants for allegedly breaching fiduciary duties as directors of UCI, an independent D.C. nonprofit created to advance the Unification Church movement and its religious mission. Plaintiffs' basic theory was that *they* represent the true "Unification Church," and that Defendants had betrayed the religion (and thus UCI's corporate purposes) by disobeying their faction. The truth was exactly the opposite—Plaintiffs had betrayed Rev. Moon, perverted his teachings, and abandoned his mission, while Dr. Moon and Defendants acted faithfully to preserve his legacy. This case was thus a sham and a fraud from the very start.

As important, this religious schism was never one that civil courts could adjudicate. After more than a decade of intense litigation, this Court so held: Plaintiffs' claims were replete with disputed questions of theology and church polity that no "neutral principles of law" could resolve. *Moon v. Family Fed'n for World Peace & Unification Int'l*, 281 A.3d 46 (D.C. 2022) (*Moon III*). Their claims hinged unavoidably on "longstanding debate[s]" about the "future of the religion" and who holds Adamic, "spiritual authority" within the Movement—forays the First Amendment plainly precludes. *Id.* at 65 & n.23.

While *Moon III* disposed of Plaintiffs' core claims, it did not *formally* end this case, because a few slivers were not part of the interlocutory appeal; at least technically, the propriety of two minor corporate transactions alleged to involve "self-dealing" by Dr. Moon remained live, as did contract claims against UCI. On remand, Plaintiffs first suggested they would dismiss those loose ends and seek Supreme Court review. Instead, they replaced their longtime counsel and fought tooth and nail to relitigate *Moon III*—directly, by launching belated, frivolous attacks on this Court's rulings, and indirectly, by trying to smuggle the same rejected claims back into the case in various guises.

Judge Irving was not fooled. In a series of careful orders, he rejected Plaintiffs' revisionist theory of the case, stopping just short of sanctioning them for "'frivolous'" arguments advanced in "futile" pursuit of "'doomed claims.'" JA3141, 3205, 3212 & n.10, 3257. Their arguments on appeal are equally frivolous, equally futile, and equally doomed. This Court should affirm, and put a final end to this profoundly misguided and abusive litigation, now entering its fourteenth wasteful year.

STATEMENT OF JURISDICTION

On August 28, 2023, the lower court granted the last-pending dispositive motion and closed the case. JA.3259. That order is appealable per D.C. Code § 11-721(a)(1).

STATEMENT OF THE CASE

A. The Parties, Claims, and Nature of the Case.

Defendants are UCI and five of its current and past Directors, including Dr. Moon, who is Rev. Moon's eldest living son and has been UCI's President and Chairman since 2006. The other Directors (Sommer, Perea, Kwak, and Kim) are longtime members of the Unification Church movement who joined the Board in 2009.

Plaintiffs are (i) an unincorporated association in Korea, the Family Federation for World Peace and Unification International (FFWPUI); (ii) a Japanese church, the Holy Spirit Association for the Unification of World Christianity–Japan (UCJ), which is now under threat of dissolution following the assassination of former Prime Minister Shinzo Abe; and (iii) a U.S. nonprofit, the Universal Peace Federation (UPF).

As this Court has noted, this case is downstream of a "religious schism" within Rev. Moon's movement. *Moon III*, 281 A.3d at 50. Dr. Moon and the Directors understand the Unification Church to be "a non-denominational and decentralized" "interfaith movement." *Id.* Plaintiffs instead want to transform FFWPUI into the "institutional embodiment" of the Church—under their hierarchical control. *Id.* As part of that campaign, Plaintiffs sued in 2011 (shortly before Rev. Moon's death), alleging that Dr. Moon's younger brother, Hyung Jin (Sean) Moon, was Rev. Moon's successor (JA.186

(¶ 4), 199 (¶¶ 54-55)); that FFWPUI (which Sean then led) was the religion's command center; and that the Directors had breached legal duties by not obeying Sean's orders. After Rev. Moon passed in 2012, his widow Hak Ja Han ousted Sean from FFWPUI, and Plaintiffs recast their narrative to identify *her* as their spiritual leader.

The Complaint pled three counts against the Directors.[1] Count I claimed they had breached an oral trust to support "the Unification Church." Count II alleged that the Directors had breached their fiduciary duties to UCI, acted *ultra vires*, and abetted each other's torts. Count III alleged violation of an "agency" relationship with FFWPUI. All three counts challenged essentially the same acts: (i) the replacement of directors obedient to FFWPUI; (ii) a 2010 amendment to UCI's corporate articles; (iii) donations by UCI to recipients, primarily the Global Peace Foundation (GPF), that were allegedly not aligned with the "true" Church; and (iv) three alleged "self-dealing" or "related party transactions" in which Dr. Moon was purportedly interested. *See generally Family Fed'n for World Peace & Unification Int'l v. Moon*, 129 A.3d 234, 240-42 (D.C. 2015) (*Moon I*).

In early discovery, Plaintiffs learned that a Swiss entity, the Kingdom Investments Foundation (KIF), had sold a Seoul real-estate interest it received from UCI in 2010. The court later construed Count II, which had challenged UCI's donations to GPF as beyond the corporate purposes, to "arguably … encompass" a similar "duty of obedience" claim challenging the propriety of the 2010 KIF donation. JA.503-04 n.3.

[1] In addition, UCJ sued UCI in contract (Count IV), promissory estoppel (Count V), and unjust enrichment (Count VI). UCI's brief addresses those counts.

B. The Course of Litigation Up To *Moon III*.

Appreciating that this case hinged on religious issues, Judge Josey-Herring granted Defendants judgment on the pleadings based on religious abstention. But this Court found that such an early dismissal "prematurely resolved the constitutional issue"; only "a fuller exposition of the facts" could show whether "neutral principles of law" might be capable of resolving the claims. *Moon I*, 129 A.3d at 239, 249. Still, the Court warned that abstention would be warranted if it "bec[a]me[] apparent … that this dispute … turn[s] on matters of doctrinal interpretation or church governance." *Id.* at 253 n.26.[2]

After "extensive" discovery, Defendants sought summary judgment on all claims. *Moon III*, 281 A.3d at 50. In response, Plaintiffs abandoned (i) Count I's trust claims, (ii) Count III's agency claims, and (iii) Count II's Board-composition and aiding-and-abetting theories. JA.984-1009, 1034-57. Plaintiffs sought summary judgment on the Count II claims that the Directors had violated their fiduciary duty of obedience in two respects: by amending UCI's articles and by donating to GPF and KIF.

Judge Cordero dismissed the claims Plaintiffs abandoned, then addressed in turn each of the remaining claims in Count II. She granted summary judgment to Plaintiffs on the articles amendment claim, holding that the amendment had improperly changed UCI's purposes. JA.1175-80. Next, she ruled that GPF and KIF were "unaffiliated

[2] The Court repeated that warning in an unpublished memorandum that affirmed—after an "exhaustive caveat" about the limited facts and issues on appeal, *Moon III*, 281 A.3d at 60—a preliminary injunction tying up UCI's assets during litigation. JA.561.

with the Unification Church" and thus impermissible donation recipients. JA.1180-87. Finally, as to the "three transactions" that "Plaintiffs challenge[d] … as self-dealing" by Dr. Moon, the court found that two (a real-estate deal and a consulting contract with entities in which Dr. Moon held a personal financial interest) raised triable issues, but granted summary judgment to Dr. Moon on the third (involving a loan). JA.1187-90. Since all three transactions occurred before the *other* Directors joined the Board, the court also dismissed the self-dealing claims against them. JA.1195, 1197.

Judge Anderson next held a four-week bench trial to address remedies on the claims Plaintiffs had won. The Directors testified that they are loyal to the Unification Church movement; that they believe Dr. Moon is its spiritual leader; and that FFWPUI and Hak Ja Han are heretical. Plaintiffs argued that those convictions were precisely why they had to be removed from the Board. JA.2277 (¶¶ 9-10), 2280 (¶ 21), 2307-10 (¶¶ 115-20), 2329. Bound by the summary judgment order, the court agreed and issued an order that removed the Directors and held them liable for a "surcharge" of over $500 million. This Court stayed those extraordinary remedies pending appeal.

C. The *Moon III* Appeal.

Moon III reversed and vacated the summary-judgment and remedies orders. With the full record in place, this Court concluded that the articles and donations claims were inextricably "entangled with religious questions." 281 A.3d at 61 n.16. "[W]hat the [Unification] Church is[;] what its core principles are;" "who might rightly be called its spiritual (or institutional) leader"; whether "there is [any] hierarchical authority in the

Unification polity at all"; "whether the Unification Movement is just another term for Unification Church"; whether Plaintiffs "depart[ed] from the religion's core tenets"; "whether GPF and KIF furthered the goals of the religion"—all these "material factual disputes," and more, this Court recognized, made it impossible "to resolve this case on neutral principles of law." *Id.* at 61 n.16, 62 n.17, 64, 65 n.23.

The only "wrinkle" that precluded dismissing Count II in full was its "self-dealing" strand, which was not on appeal in *Moon III* (because Plaintiffs had not prevailed on it) and which none of the briefs had discussed. *Id.* at 70. Noting that a "fraud or collusion exception" to abstention had been hypothesized (though never "endorsed"), the Court queried if the self-dealing claims might be "justiciable" without "delving into religious questions." *Id.* at 70-71 & n.29. But it was unsure whether any self-dealing claims "even … remain[ed] live," let alone "what evidence" those claims involved. *Id.* at 70. So it left those claims to be considered on remand "if appropriate." *Id.* at 70-71.

Plaintiffs sought rehearing en banc. Clearly believing *Moon III* effectively ended the litigation, they decried that opinion as "a roadmap for defendants to defeat lawsuits by churches seeking to enforce their property rights." Ps' Pet. for Rehr'g En Banc at 15. Unmoved, this Court denied rehearing without a poll on October 26, 2022.

D. The Remand Proceedings.

On remand, Defendants filed a status report explaining why *Moon III* foreclosed further litigation. Specifically, as relevant here, Plaintiffs could no longer claim special-interest standing for the two stray self-dealing claims left for trial. *See* JA.2491-2500.

Plaintiffs' counsel did not respond and, at a status hearing, initially ventured that "it may make sense just to convert the status reports into summary judgment motions," enabling the court to enter a final judgment for Defendants so that Plaintiffs could seek U.S. Supreme Court review of the otherwise-interlocutory *Moon III* decision. JA.2522. After much stalling, however, Plaintiffs replaced their longtime counsel. JA.2537-40. Judge Irving then invited the filing of "dispositive motions" to "swift[ly]" resolve "on the papers" the "'two slivers of the case' that remain[ed]." JA.2552.

In response, Plaintiffs finally unveiled their position: *Moon III* resolved nothing, since all of their claims could be relitigated under (i) a "fraud or collusion exception" to abstention, and (ii) a label of "self-dealing." They then sought to reopen discovery (which closed years earlier) and designate a new "fraud or collusion expert."

Fed up with Plaintiffs' delays (and borderline sanctionable conduct, JA.3141 n.9, 3205, 3212 & n.10, 3257), Judge Irving issued a series of orders granting Defendants' motions, rejecting Plaintiffs' do-over pleas, and dismissing the case.

First, the court granted summary judgment on religious abstention grounds to UCI on UCJ's contract claims, which (like the self-dealing claims against Dr. Moon) had not directly been part of *Moon III* because Judge Cordero had concluded that they presented triable issues of fact. In this order, Judge Irving tackled the so-called "fraud or collusion exception" head on, debunking Plaintiffs' boasts of "'robust recognition'" in caselaw and holding that, even if the "exception" exists, it could not "'be applied here'" to claims turning on "'religious doctrine and practice.'" JA.3137-40.

Second, the court granted judgment to Sommer, Perea, Kwak, and Kim, because there were no live claims against them after *Moon III*. Of note, Judge Irving rejected Plaintiffs' revisionist account that the GPF and KIF donations were part of Count II's still-pending "self-dealing" theory, adding that an amendment so reframing them "would be untimely" at this late stage of the proceedings. JA.3151-58 & n.3.

Third, the court rejected Plaintiffs' new-discovery requests, given their abject failure (among others) to show either "excusable neglect" or "good cause." JA.3198-3213. Indeed, one of Plaintiffs' grounds to reopen (based on an irrelevant, corrupt criminal investigation in Paraguay) was so facially baseless as to provoke serious "concerns about counsel's professionalism" and "'candor to [the] tribunal.'" JA.3212 n.10.

Finally, Judge Irving dismissed the leftover claims against Dr. Moon for lack of special-interest standing. With KIF no longer part of the case, Plaintiffs challenged no "extraordinary measure" (JA.3141-48), and Plaintiffs' suggestion that they could replead was dilatory and prejudicial (JA.3255-58). This appeal then followed.

STATEMENT OF FACTS

The through-line of Plaintiffs' narrative is unabashed refusal to admit what has happened in this case. Their favorite "factual" source, with more than 100 citations, is *the trial court's remedies order*—a legal nullity that *Moon III* "reverse[d] and vacate[d]," along with its predicate summary-judgment order, for "repeatedly resolv[ing] ecclesiastical disputes" in Plaintiffs' favor. 281 A.3d at 51, 69. For Plaintiffs, this Court may as well have never decided *Moon III*, as shown by their repeated assertions of "facts" it *specifically*

held nonjusticiable.[3] They also accuse Dr. Moon of vague "fraud[]" in the turnover in UCI's Board (Br. 13)—despite expressly abandoning, years ago, all claims challenging "'designation and removal of directors.'" JA.988-1009, 1034-57. And they repeatedly cite the "expert report" they proffered post-remand (JA.2605-39), ignoring that Judge Irving *excluded it* as "belated," "unhelpful," and "prejudic[ial]" (JA.3200-13 & n.9).

In sum, after persisting in this litigation for 13 years, Plaintiffs shamelessly presume nothing they ever lost or conceded counts, leaving them entitled to as many bites at as many apples as they wish to take. This Court should not countenance such tactics.

A. Rev. Moon Founds the Unification Church Movement.

In 1954, Rev. Moon founded a movement "known colloquially as the 'Unification Church.'" *Moon III*, 281 A.3d at 51. Followers regard him as a "non-divine 'messianic' figure"—"the 'third Adam.'" *Id.* Crucially, Rev. Moon did not seek to "create another denomination" (JA.1751), but to unite "people of all religions and nations" (JA.2275 (¶ 2)). He inspired "a global movement encompassing religious, cultural, educational, media, and commercial enterprises," over which he exercised "moral authority" based on his "spiritual" role, but not "*legal* authority." *Moon III*, 281 A.3d at 51-52.

[3] *Compare, e.g.*, Br. 5 (equating FFWPUI with "the Unification Church"), *with Moon III*, 281 A.3d at 65 n.23 (courts cannot determine that "the 'Unification Church' simply refers to [FFWPUI]"); Br. 17 (asserting that "[t]he 2010 amendments substantially changed the purposes of UCI"), *with Moon III*, 281 A.3d at 62-67 (deeming that claim nonjusticiable); Br. 21 (asserting that KIF donation "was substantively unfair to UCI and was not in its best interest"), *with Moon III*, 281 A.3d at 62 n.17, 67-68 n.26 (Court could not decide "whether GPF and KIF furthered the goals of the religion").

One of those entities was UCI. Established in the 1970s, UCI is a nonmember, nonprofit D.C. corporation governed by an independent, self-perpetuating Board of Directors. *Id.* at 52–53, 65. Its 1980 articles "set forth its core purposes as supporting the Unification Church and its principles." *Id.* at 52. For decades, "UCI donated funds to a sweeping array of recipients." *Id.* Those donations included "hundreds-of-millions of dollars to … unaffiliated, nonsectarian entities," including "the Universal Ballet, the University of Bridgeport, and *The Washington Times*." *Id.* at 68. UCI also donated to "a martial arts organization," "anti-communist organizations," "a firearms manufacturer," and "Rev. Jerry Falwell's ministry." *Id.* It is undisputed that all those historic donations (and more) were consistent with UCI's sweeping purposes. *Id.*; JA.1032.

B. Rev. Moon Proclaims the "End of the Church Era" and Identifies Dr. Moon as the "Fourth Adam" To Lead the Movement.

In the 1990s, in a significant turning point known as the "'end of the church era,'" Rev. Moon "sought to commence 'the providential age in which families may receive salvation [beyond] the boundaries of religion, nationality and race.'" *Moon III*, 281 A.3d at 53. Going further to eliminate denominational lines and hierarchies, he declared that "[t]he time is coming that we will not need a church" and called for "all these old church or church-related signs to come down." *Id.* To inaugurate this family-focused era, Rev. Moon established FFWPUI. *Id.* While that entity now purports to be the "'head of the Unification Church,'" "[t]here is nothing in the record to suggest that [it] ever exercised legal authority over … other organs of the religion." *Id.* at 65 n.23.

To lead the Movement into its next providential phase, Rev. Moon acknowledged Dr. Moon as "the Fourth Adam" at a public ceremony he called "miraculous" and the most "precious" of his life. JA.1746, 1749. Directly comparing the event to the start of Jesus's public ministry at age 30, Rev. Moon explained that, with this "inauguration" "the era of the fourth Adam can begin." JA.1746, 1749. Dr. Moon "understood" this announcement "to mean that Rev. Moon had recognized him as a 'messianic figure' and … spiritual heir." *Moon III*, 281 A.3d at 53. Indeed, apart from Rev. Moon, Dr. Moon is the *only* figure within the Movement ever recognized as possessing this Adamic authority. While this litigation has been incredibly contentious, Plaintiffs have *never* disputed (and no judge has ever doubted) that Dr. Moon and the Directors sincerely believe he is the Fourth Adam and, "as of 1998," "was leading the Unification Church movement" with his father. JA.2277 (¶¶ 9-10); *see also* JA.533 (¶ 6), 3031, 3039-40.

Pursuant to this mandate, Dr. Moon led the activity of Movement organizations for the next decade, building Plaintiff entities FFWPUI and UPF (among many others) from the ground up, while championing Rev. Moon's vision of uniting all peoples and faiths as "One Family Under God." *Moon III*, 281 A.3d at 53 & n.7. In fact, as part of this generational transition to the Fourth Adam era, Rev. Moon directed that all Unification leaders under age 48 would henceforth fall under Dr. Moon's authority—no small remit, as Rev. Moon simultaneously retired senior Movement leaders above that age. JA.2008-09; Ds' Remedies Ex. 727.

C. A Corrupt Clerical Cabal Schemes To Seize Power.

By March 2008, Rev. Moon was nearly 90, and Dr. Moon sensed a coming "division in the Church." *Moon III*, 281 A.3d at 54. In a 25-page "Report to Parents," he stressed that the faith should "com[e] out of [its] 'church' skin" to build a true "inter-faith movement" capable of "realiz[ing] the dream of [One Family Under God]." JA.852. Yet as Dr. Moon knew "all too well," this vision faced resistance from a Korea-based clerical faction, aligned with Rev. Moon's wife (Hak Ja Han) and certain then-directors of UCI (former Plaintiffs Douglass Joo and Peter Kim), who "cl[u]ng" to the Church as an "institution" that supplied them with status, power, and perks. JA.852, 855.

The clerical faction viewed Dr. Moon's younger brother, Sean, as a useful stooge. The next month, Sean was announced as FFWPUI's president. *Moon III*, 281 A.3d at 54. Like the clerics, he "supported a 'denominational' rather than an 'interfaith' vision." *Id.* He denied that "Rev. Moon did not come to create a religion," and even changed the name "Family Federation" to "Unification Church." JA.1735, 679; *Moon III*, 281 A.3d at 56 n.10, 64-65 n.21. In early 2009, Sean issued a memo on FFWPUI letterhead purporting to assert unprecedented authority over all Movement organizations. JA.880.

With this fraudulent takeover underway, Dr. Moon was called to Sokcho, Korea, to listen to a "spirit message" supposedly sent by Rev. Moon's recently deceased eldest son. JA.1970-78. The "message" spelled out an organizational chart with Sean on top and decreed that all Moon children were only to approach Rev. Moon through Hak Ja Han. JA.1739-42. Contrary to Plaintiffs' claim that Dr. Moon never worried about his

father's mental state before this lawsuit (Br. 39), Dr. Moon contemporaneously recognized the "spirit message" as an appalling fraud by Hak Ja Han and the clerics to manipulate the grieving, elderly Rev. Moon. JA.2829-30, 1978-79, 2075-76.

In June 2010, FFWPUI *itself* broadcast further evidence of this manipulation to the world, releasing a video of Hak Ja Han and Sean cajoling a semi-conscious Rev. Moon into signing a document naming Sean "representative and heir" of the "command center of cosmic peace and unity." Ds' SJ Ex. 158. It took a dozen prompts for Rev. Moon to recognize and write *the date*; yet despite Hak Ja Han's extensive coaching, he refused to add language disavowing "Hyun Jin." Ds' SJ Ex. 178; *see also* Ds' SJ Ex. 160.

A more recently revealed video, taken just weeks before Rev. Moon passed away, shows that he came to recognize his betrayal. Seated beside Hak Ja Han before the clerical cabal's leaders, Rev. Moon accused her of "le[aving him] and [their] children under the feet of the satanic world." JA.3114; https://vimeo.com/799579520. He condemned the clerics as "worse than Lucifer" and (reminiscent of Dr. Moon's Report to Parents) "politicians who brought ruin" by "say[ing] that the church is not to be lost." JA.3115-16. In another speech around this time, Rev. Moon lamented that Hak Ja Han had gone rogue and proclaimed the "position of his wife" to be vacant. JA.1783-84; *see also* JA.882-83, 886-87 (similar comments in private, which Hak Ja Han censored).

After Rev. Moon passed away in September 2012, Hak Ja Han "wrested control" of FFWPUI and "stripped Sean of his leadership roles," claiming spiritual headship for herself. *Moon III*, 281 A.3d at 56 n.10, 59. In a complete about-face, she averred that

Sean was never meant to succeed Rev. Moon, had issued fraudulent decrees in Rev. Moon's name, and had displayed at best only a "middle school" understanding of the providence. JA.1003, 1760-61, 1796, 1800-01, 1817. Plaintiffs have followed her lead, shifting their allegiance from Sean to Hak Ja Han. JA.1778-79, 1817. Despite originally alleging that Rev. Moon appointed Sean as his successor (JA.199 (¶¶ 54-55)), their brief contains not one reference to the man to whom they once swore spiritual fealty.

Since arrogating spiritual control, Hak Ja Han has pushed doctrinal innovations that have perverted Rev. Moon's teachings beyond recognition. In her revisionist dogma, she is "a deity," the "only begotten daughter of God" with "more authority" than Rev. Moon himself (who *never* claimed divinity, only Adamic authority as a human messiah). JA.1777, 1758-59, 1816. She has also abandoned the core principle of lineal succession within the True Family, declaring "[t]here's no next generation" and instead leaving the choice of her successor to an unheard-of clerical "supreme council" (a regression to institutional frameworks Rev. Moon sought to transcend). JA.1778-79. She even rechristened the religion: "no longer the Unification Church or Family Federation," her followers are now the "Heavenly Parent Church." JA.2351-53.

As for Sean—who still claims to be Rev. Moon's heir—he now leads a sect called "Sanctuary Church" or "Rod of Iron Ministries."[4] Several years ago, Sean sued Hak Ja

[4] "Rod of Iron" refers to the AR-15 semi-automatic rifle, which plays a major role in Sean's religion. *See* Tim Dickinson, *Inside the Bizarre and Dangerous 'Rod of Iron' Ministry*, Rolling Stone (Aug. 18, 2022), *available at* https://perma.cc/H2M6-6RFA. Sean's militant movement has drawn significant media attention. *E.g.*, *id.*

Han and FFWPUI, claiming they had breached fiduciary duties by deposing him, but they secured dismissal on First Amendment abstention grounds. *Moon v. Moon*, 431 F. Supp. 3d 394 (S.D.N.Y. 2019), *aff'd*, 833 F. App'x 876 (2d Cir. 2020).

D. The Directors Operate UCI To Support the Unification Movement.

In 2006, Dr. Moon was unanimously elected as UCI's President and Chair, and used his business acumen and Harvard MBA to launch a successful financial turnaround of UCI's money-losing operations. JA.1861-67. The other Directors were elected in 2009, after decades in the Movement. *Moon III*, 281 A.3d at 54. They "shar[ed] [Dr. Moon's] view of the Unification Church as a decentralized and interfaith movement." *Id.* Together, they steered UCI to advance Rev. Moon's true religious mission.

1. The Directors cease funding Sean's sectarian UPF and continue supporting ecumenical peace-building efforts through GPF.

UCI began donating to UPF in 2005, consistent with its purpose of supporting peace-building efforts. *See id.* at 52; JA.1077. Then under Dr. Moon's leadership (and with Rev. Moon's support), UPF organized "global peace festivals," "multi-day events designed to promote world peace." *Moon III*, 281 A.3d at 53. UPF was ecumenical, promising members, partners, and even governments it would not proselytize. JA.1729.

In November 2009, however, Sean declared himself to be UPF's chairman and placed allies in other key roles. JA.593. Rev. Moon condemned the takeover days later, reaffirming that Dr. Moon, not Sean, should be "central" in UPF. JA.882-83; *see also* JA.3114 (Rev. Moon accusing clerics of "trampl[ing]" his "son who stood for creating

a world centered on the Abel UN," his term for UPF). Flouting Rev. Moon's "end of the church era" mandate, Sean turned UPF into a sectarian organization, to convert people to "Unificationism" rather than to transcend all religions. JA.1731-35.

To avoid a public fight over UPF, Dr. Moon and the Directors chose to further Rev. Moon's original vision by creating and supporting a new entity, GPF. *Moon III*, 281 A.3d at 55; JA.1074-76, 596-97. As Plaintiffs have never disputed (and indeed emphasize), GPF's peace festivals and other programs were virtually identical to UPF's earlier activities, before Sean's sectarian takeover. JA.1072-76; *see* Br. 15-16.

2. The Directors update UCI's articles of incorporation.

In April 2010, the Directors approved amendments to UCI's 1980 articles. The amended articles reaffirmed UCI's core purposes of promoting (*inter alia*) "unification of world Christianity and all other religions," "the theology and principles of the Unification Movement," "world peace," and "interfaith understanding." *Moon III*, 281 A.3d at 57. At the same time, they streamlined the articles by dropping one enumerated purpose to which UCI had "never devoted substantial resources," *id.* at 67, and by generally trimming dated or overly specific religious references (which were already subsumed in the "broader" theology-and-principles purpose, *see id.* at 66). The formal name of the corporation was also changed to UCI, as it had been commonly known "for decades." *Id.* at 65 n.22; *see* JA.1071. The Directors believed the amended articles better captured UCI's historical purposes and practices, as well as the evolution of the religion since the end-of-church-era shift. *Moon III*, 281 A.3d at 64.

3. The Directors accomplish Rev. Moon's life-long dream of executing the Yeouido development project.

In the 1970s, the Unification Movement acquired a piece of land on Yeouido Island in Seoul. For decades, Church leaders tried in vain to develop the land, which at one point was almost lost to creditors. JA.1359-60. In 2006, Rev. Moon asked Dr. Moon to oversee a renewed effort to develop the land into a world-class office and retail complex ("Parc1"), aided by Paul Rogers (a former head of Lehman Brothers Asia) and Rev. Chung Hwan Kwak (Rev. Moon's closest lieutenant). JA.1352-54, 1922-25.

At the time, the development rights were held by an individual Movement member; Dr. Moon asked him to donate the interest to UCI for temporary safekeeping. JA.1353, 1928-30. UCI then worked with expert advisors to understand long-term structuring options. JA.1359-64, 895-96, 1558-65. By 2008, after extensive diligence, they had determined that a Swiss foundation would likely be best, due to favorable tax treatment. JA.895-96.

In 2010, the Board approved donating the assets to KIF. A tax expert explained this would save hundreds of millions of dollars for the Movement. JA.1659-62, 1555-57, 1711-12. The Board was also advised that an owner not overtly associated with the Unification Church would reduce lending risk with Korean banks. JA.1647, 1659, 1710-11. The Directors believed the donation would advance Rev. Moon's "life long dream" of developing the Yeouido land and maximize value for the Movement. JA.1659, 1662. KIF would be run by trusted Movement members (including one former UCI Director,

Perea, who resigned from UCI's Board), and the donation agreement required KIF to use the donated assets to advance UCI's purposes. *Moon III*, 281 A.3d at 58.

In the end, KIF secured financing, and Parc1 became a tremendous success. At its opening, Dr. Moon was proud to say that he had kept his 2006 promise to Rev. Moon. JA.2642. KIF has used the proceeds to fund Unification goals, including projects in an impoverished part of Paraguay. JA.1309-10, 1316. KIF has been led by Movement members, and there is no evidence its assets have been misspent.

* * *

To be sure, the clerical cabal that now controls Plaintiffs purports to disapprove of how the Directors have run UCI—that is the ostensible basis for this lawsuit. Plaintiffs claim that FFWPUI "ordains what does and does not benefit the Unification Church," so the Directors are bound to obey. *Moon III*, 281 A.3d at 51. Of course, the Directors utterly reject that premise. They maintain that Dr. Moon is the Fourth Adam and the true inheritor of Rev. Moon's providential vision, while Plaintiffs follow a new, heretical religion that Rev. Moon would not recognize. The heart of this case has always been whether courts can take sides in those disputes. This Court said no in *Moon III*, and the trial court's orders on remand flowed ineluctably therefrom.

SUMMARY OF ARGUMENT

I. Plaintiffs lost in *Moon III*, and their real goal in this appeal is to relitigate that loss. *Moon III* sought to extract the D.C. courts from this theological thicket; Plaintiffs now try one ruse after another to toss them back in. Their first and most fundamental ploy

is to pretend this Court's abstention holdings simply do not count. Indeed, Plaintiffs turn *Moon III* inside out; they ignore (and flout) its exhaustively-reasoned holdings about the claims actually involved in that interlocutory appeal, but trumpet (and inflate beyond recognition) its terse and tentative statements about narrow "self-dealing" claims that were not before the Court. Along the way, Plaintiffs launch belated broadsides against the Supreme Court's religious-abstention doctrine, which are not only plainly foreclosed but also patently frivolous. *Moon III* is the beginning and end of this appeal.

II. Plaintiffs' next ploy is to revive their rejected claims through an eleventh-hour retreat to a supposed "fraud exception" to the First Amendment. But the claims *Moon III* specifically rejected cannot be retroactively resurrected. Plus, Plaintiffs long waived any fraud exception. In all events, the exception envisioned by Plaintiffs—a murky hypothesis born of dicta preceding modern abstention doctrine—does not exist, as they themselves have successfully persuaded other courts. And if all of that were not enough, the exception could not salvage Plaintiffs' claims even if it did exist. Plaintiffs have repeatedly (and affirmatively) conceded the sincerity of the Directors' religious convictions; it is far too late for a U-turn now.

III. Plaintiffs fare no better in trying to squeeze the core donation challenges *Moon III* shut down into the self-dealing strand of Count II that *Moon III* did not touch. The self-dealing theory was always a sidecar to the core claims. Its only remaining contents after summary judgment were allegations that Dr. Moon's personal financial interests put him on both sides of two minor corporate transactions. While Plaintiffs had alleged

that the other Directors aided and abetted that purported self-dealing, they abandoned that theory at summary judgment, leaving no live claims against those Directors after *Moon III*. Since Plaintiffs' charade requires rewriting (or just ignoring) the voluminous history of this case, that is what Plaintiffs do—and, even so, end up nowhere. Their new trick of retroactively calling donations "self-dealing" does not change that they legally are *not*; nor does it remove the fundamental abstention roadblock that whether those donations "ran afoul of UCI's corporate purposes" cannot be "evaluate[d] … consistent[ly] with the First Amendment." *Moon III*, 281 A.3d at 67-70 & n.26.

IV. As for the *actual* self-dealing claims against Dr. Moon, Plaintiffs—who have no legally cognizable interest in UCI's management—lack special-interest standing to press them. For one thing, the remaining self-dealing claims (absent Plaintiffs' disingenuous reimagining of the KIF donation as "self-dealing") do not challenge an existential threat to UCI or its mission. For another, *Moon III* exploded the idea that Plaintiffs are part of an "identifiable," "sharply defined" class with "a distinct justiciable interest" in UCI's donations. *Hooker v. Edes Home*, 579 A.2d 608, 612-14 (D.C. 1990). UCI's purpose is to support *a religion*, *not* any well-defined beneficiary class; Plaintiffs thus have no footing to bring quasi-derivative suits against its Directors for alleged fiduciary breaches.

V. All that remains is Plaintiffs' last, desperate attempt to keep this case alive by reopening discovery or amending a Complaint now in its teenage years. Judge Irving denied both bids, and Plaintiffs make no serious argument that he abused his discretion in doing so. As to discovery, Plaintiffs already had many years of it, with a full

understanding of the First Amendment hurdles before them. As to repleading, such efforts would have been wildly untimely, clearly prejudicial, and manifestly futile. It is understandable that Plaintiffs, with new counsel, wish they had different legal claims or a different factual record, given that the current set leaves them emptyhanded. But "litigation must end somewhere." *Polcover v. Sec'y of Treasury*, 477 F.2d 1223, 1237 (D.C. Cir. 1973). In this case—after over 13 costly years—that "somewhere" is finally here.

ARGUMENT

In *Moon III*, this Court squarely held that Plaintiffs' challenges to UCI's donations were non-justiciable. No neutral principle of law could answer whether donations to GPF or KIF advanced—or instead undermined—the corporation's religious purposes. But Plaintiffs are unwilling to take the loss and move their battle from the courtroom to the chapel. They start with a frontal attack on *Moon III*, which is both procedurally and substantively frivolous. Next they try to escape this Court's rulings, by invoking a so-called "fraud exception" and recharacterizing their core claims as part of a minor "self-dealing" theory that was not before the Court last time. None of this works—not as a matter of procedural history, a matter of law, or a matter of fact. Failing all else, Plaintiffs suggest the trial court abused its discretion in declining to indulge them with a complete do-over after more than a decade of litigation. Hardly. This baseless appeal should mark the final culmination of this sham-from-the-start litigation.

I. PLAINTIFFS CANNOT RELITIGATE *MOON III*.

Under the First Amendment, "civil courts" may not "decid[e] disputes that turn on the interpretation of particular church doctrines," "the importance of those doctrines to the religion," or "matters of church polity or administration" such as "succession dispute[s]." *Moon III*, 281 A.3d at 61 & n.16 (cleaned up). As this Court held in *Moon III*, all those forbidden issues are front and center here. Simply put, courts cannot take up Plaintiffs' invitation to "pass judgment on whose vision of the Unification Church … is more faithful to the purposes UCI was established to advance." *Id.* at 51.

Those holdings are binding precedent and the law of the case. True, *Moon III* "did not end this case." Br. 1. As an interlocutory appeal, *Moon III* could not (and did not) sew up claims not before this Court. But it could (and did) resolve the issues on appeal, including Plaintiffs' core challenges to the GPF and KIF donations. Plaintiffs blink the reality of those adverse rulings in a futile attempt to relitigate them.

A. Plaintiffs Ignore, and Defy, What *Moon III* Decided.

Plaintiffs repeatedly cite the trial-court orders *Moon III reversed*, the pleading-stage rulings it *superseded*, and a three-paragraph coda about a minor "wrinkle"—yet all but ignore this Court's opinion. That opinion, however, dooms this appeal from the start.

Moon III began with an introduction that summarized the "religious schism" in the Movement; the articles and donation claims on appeal; and why those claims "cannot be resolved" in civil court. 281 A.3d at 50-51. Part I then set out the key facts, most of which were "not disputed." *Id.* at 51. Part II explained why those facts "raised a

host of material factual disputes" that neutral principles could not resolve, grappling "in turn" with "the two theories of fiduciary breach" on appeal. *Id.* at 62 & n.17.

Part II.A addressed the articles amendment claim. This Court held it nonjusticiable, because finding that the amendments changed UCI's core character required forbidden theological inquiries. *Id.* at 62-67. The Court specifically held that no neutral principles could refute the Directors' beliefs that the 2010 articles are "more faithful to Rev. Moon's" legacy; that "fidelity to the religion required breaking from" FFWPUI; and "that there is no hierarchical authority in the Unification polity." *Id.* at 64, 65 n.23.

Part II.B next addressed the donation claims. These claims too were nonjusticiable: It "exceeded [the trial court's] authority" to find that "the transfers to GPF and KIF" "breached [the Directors'] fiduciary duties." *See id.* at 67-70. Plaintiffs "struggle[d] in vain to differentiate" those entities from UCI's large and diverse array of concededly licit past beneficiaries, and their futile line-drawing attempts only "expose[d] the true nature" of their claims: namely, that "donations approved by Rev. Moon comport with UCI's mission, whereas those approved by Preston (and his co-directors) do not." *Id.* This Court then explained that it "cannot adopt that reasoning" because doing so would require it to make religious determinations about the structure and leadership of the Unification Church religion. *Id.* at 69. A court cannot "decree that that the Unification Church is a hierarchical organization"; even if it could, it cannot identify who "had 'spiritual and charismatic authority' over the Church and its affiliates at the time the relevant transfers were approved." *Id.* at 69 & n.28. Ultimately, given the unavoidably

religious nature of UCI's corporate purposes, "finding that UCI's donations to KIF and GPF ran afoul of [those] purposes" would require "adjudicat[ing] longstanding debates over the direction of the Church," contrary to the First Amendment. *Id.* at 69-70.

Plaintiffs brazenly reject all of this. They still demand judicial imprimatur for their contested ecclesiology, in which the Unification Church is "hierarchical" (Br. 38-40), FFWPUI *is* the Church (Br. 13), and the Fourth Adam had no spiritual authority in the religion (Br. 28). *Moon III* squarely holds that courts cannot make those determinations. *See* 281 A.3d at 64-65 & n.23, 68-69 & n.28. Period.

Indeed, while *Moon III* held that the claims then on appeal could not be resolved "in a manner consistent with the First Amendment," *id.* at 68 n.28, Plaintiffs' lead argument here is that *not* resolving their claims somehow violates the First Amendment, Br. 25-29. That novel argument comes too late; if Plaintiffs thought abstention itself violated the Free Exercise Clause, they could and should have argued that in *Moon III*. They cannot do so now to launch a collateral attack on their prior loss.

In all events, their contention is frivolous. As the Supreme Court has squarely held, "[n]othing could be further from the truth" than the notion that refusing to venture beyond neutral principles "somehow frustrate[s] … free-exercise rights." *Jones v. Wolf*, 443 U.S. 595, 606 (1979). The Court's longstanding position simply recognizes that civil courts cannot decide matters of "'theological controversy, church discipline, [or] ecclesiastical government.'" *Moon III*, 281 A.3d at 61 n.16 (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). Religious bodies can always avoid "judicial impasse" by adopting

neutral principles to govern "in the event of a schism or doctrinal controversy." *Id.* at 65. But here, UCI's articles charged its Board with executing theological purposes that courts cannot second-guess. That left no legal means of deciding this religion-drenched dispute—again, as this Court has already squarely recognized. *Id.* at 51, 65.[5]

B. Plaintiffs Misrepresent What *Moon III* Did Not Decide.

To be sure, *Moon III* did not wholly resolve Count II. That is why there were more proceedings on remand. But Plaintiffs' arguments—both on remand and here—are all based on a fundamental misrepresentation of the issues *Moon III* did not reach.

As noted above, Parts II.A and II.B of this Court's opinion deemed the articles and donation claims, respectively, to be "non-justiciable." Part III then observed that the Complaint had alleged a third, distinct, "self-dealing" theory of fiduciary breach. *Id.* at 70. True: Beyond the amendments and donations, Plaintiffs had also always challenged a handful of commercial transactions, which they described as involving "self-dealing" because Dr. Moon held a personal financial interest in the counterparties. *See infra*, Part III.A; *Moon I*, 129 A.3d at 241-42. That self-dealing theory was not part of Plaintiffs' summary-judgment win—Judge Cordero had set two self-dealing claims for trial while rejecting the third—so it was not on appeal in *Moon III*. 281 A.3d at 70.

[5] In another belated, frivolous argument, Plaintiffs suggest abstention does not apply unless there is an "alternative forum" for the claims—citing two cases that are not about the religious-abstention doctrine at all, and an article lamenting that binding Supreme Court precedent *precludes* the very exception Plaintiffs seek. Br. 36; *see* Michael A. Helfand, *Litigating Religion*, 93 B.U. L. Rev. 493, 499 (2013).

That "wrinkle," the Court observed, precluded dismissing Count II "altogether." *Id.* After flagging the open issue of the hypothetical fraud-or-collusion exception, the Court then speculated that unlike the claims it had just found "non-justiciable," the self-dealing theory may "not require delving into religious questions." *Id.* at 70-71. But the Court stressed it did not know "what evidence (or lack thereof) underl[ay] the self-dealing claim," or "even … whether that claim remain[ed] live." *Id.* at 70. It thus left "all matters" relating to the self-dealing theory for "the trial court to address in the first instance," "if appropriate." *Id.* at 70-71.

While ignoring *Moon III*'s holdings, Plaintiffs eagerly seize on this brief coda of non-holdings, taking it as permission to relitigate the same foreclosed claims under the new labels of "fraud" and "self-dealing." The Directors explain more fully below why those gambits fail, but first, a simpler point—Plaintiffs' reading of Part III is nonsensical. This Court merely flagged an unbriefed, unappealed self-dealing theory while remaining agnostic on what the claims were, if they remained live, and whether an open doctrinal issue might be relevant. 281 A.3d at 70. It is absurd to read any of that as an invitation to start over on the very claims just declared "non-justiciable." *Id.*

As a consequence, Plaintiffs miss the mark with their repeated accusations that Judge Irving "frustrated" the mandate by not "decid[ing] whether the [fraud exception] exists." Br. 2, 12. *Moon III* simply directed the trial court to address any remaining claims as "appropriate" and "consistent with" the Court's ruling. 281 A.3d at 71. Judge Irving had no occasion to decide whether a "fraud exception" might exist, because he

found (correctly, *see infra*, Parts III-V) that Plaintiffs had: (i) no live claims against Sommer, Perea, Kwak, or Kim; (ii) no standing for their remaining claims against Dr. Moon; and (iii) no justification for adding new claims at this late date. Nevertheless, he also added that: (i) Plaintiffs were dilatory in pursuing any fraud exception (JA.3203-04, 3207-08, 3210); (ii) the never-recognized "exception" likely does not exist (JA.3137-40, 3151 n.9, 3208, 3227 n.2); and (iii) even if it does, it does not let Plaintiffs "fashion a new theory to relitigate [the *Moon III*] claims" (JA.3207; *see* JA.3140). All of that was perfectly "appropriate" and "consistent with" this Court's directions in *Moon III*.

II. PLAINTIFFS' BELATED INVOCATION OF A SUPPOSED "FRAUD EXCEPTION" TO THE FIRST AMENDMENT CANNOT SAVE THEIR CLAIMS.

Plaintiffs insist that *Moon III* was not a limited remand to address the remaining self-dealing sliver of Count II, but rather an open invitation to redo *the whole case* under a "fraud or collusion" exception to abstention. For the reasons detailed above, that is an utterly disingenuous interpretation of this Court's mandate, and fails for that reason alone. *Supra*, Part I.B. But in any event, the purported "exception" Plaintiffs now trumpet is long waived, does not exist, and would not aid them even if it did.

A. Plaintiffs Waived Any "Exception" to Religious Abstention.

Even if any "exception" somehow empowers courts to decide theological disputes, Plaintiffs long ago waived it. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 120 (D.C. Cir. 2008) ("[A]rguments in favor of subject matter jurisdiction can be waived by inattention[.]"). For years, Plaintiffs maintained the (obviously false) position that this

case raised no religious disputes at all and therefore did not trigger abstention; only after *Moon III* sank that idea did they pivot to an "exception." But parties cannot "change theories in mid-stream." *Donald v. Wilson*, 847 F.2d 1191, 1198 (6th Cir. 1998).

Plaintiffs had "ample notice" of the high First Amendment hurdles awaiting them. JA.3203. A decade ago, the trial court embraced abstention, citing the need to interpret UCI's "unmistakably religious" purposes. JA.479-82. This Court concluded that the trial court's "understandable concern" was premature, yet reminded Plaintiffs of their "ultimate burden to establish jurisdiction." *Moon I*, 129 A.3d at 249, 252.

At summary judgment, Defendants renewed the issue and argued—correctly, as *Moon III* later found—that the full record confirmed that neutral principles could not resolve this dispute. If Plaintiffs had an alternative theory to press (such as a fraud exception to abstention), that was the time. *Boyle v. Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017) ("a properly supported motion for summary judgment" causes "the burden [to] shift[]"). Instead, they doubled down on the absurd idea that no religious disputes were implicated; they did not once mention "fraud," "collusion," or any "exception" in resisting summary judgment or defending the judgment on appeal. These years of neglect mean waiver many times over. *See, e.g.*, *Parker v. United States*, 254 A.3d 1138, 1142 (D.C. 2021) ("Failure to make the argument in the initial appeal amounts to a waiver."); *Volvo Trademark Holding Aktiebolaget v. Clark Mach. Co.*, 510 F.3d 474, 481 (4th Cir. 2007) ("[A] remand proceeding is not the occasion for raising new arguments.").

Plaintiffs' sole answer to this waiver problem—so flimsy they nestle it in an unelaborated dependent clause in *the very last sentence* of their argument—is that "the Exception only became ripe after *Moon III*." Br. 75. Hogwash. Pleading and proving jurisdiction was always Plaintiffs' "burden," as *Moon I* reminded them. 129 A.3d at 249. "If [Plaintiffs] had viable, alternative theories" of how to carry it, they were "obligated to present" them years ago. *Goldfish Shipping, S.A. v. HSH Nordbank AG*, 623 F. Supp. 2d 635, 641 (E.D. Pa. 2009). They did not, and now is too late.

B. Plaintiffs' "Fraud Exception" Does Not Exist.

Plaintiffs' new mantra is also legally baseless. There is no need to take Defendants' word for it. FFWPUI and Hak Ja Han *themselves* argued four years ago, in successfully fending off litigation by Sean Moon: "There Is No Fraud or Collusion Exception." Br. of Appellees 34 (Apr. 15, 2020), *Moon v. Moon*, No. 20-168 (2d Cir.). Even if this Court were to allow them to "chang[e their] position according to the vicissitudes of self interest"—which, as a matter of estoppel, it should not—Plaintiffs' First Amendment flip-flop gets them nowhere. *Porter Novelli, Inc. v. Bender*, 817 A.2d 185, 188 (D.C. 2003).

The so-called "fraud" exception traces back to eight words of century-old, now-obsolete dicta in *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). That case reaffirmed the rule of deference to church authorities in "purely ecclesiastical" matters, adding: "[i]n the absence of fraud, collusion, or arbitrariness." *Id.* at 16. That offhand proviso was "dictum only," issued before the Court grounded abstention in the First Amendment. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712 (1976).

Going forward, the Court continued to *mention* the *Gonzalez* dictum, but never *applied* it, fleshing out its meaning only by subtraction. First, it held the dictum does not support "inject[ing] the civil courts into substantive ecclesiastical matters." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969). Then, in *Milivojevich*, the Court rejected "arbitrariness" review because it would "inherently entail" "exactly the inquiry that the First Amendment prohibits." 426 U.S. at 713.

To this day, "no decision of [the Supreme] Court," or any other court, "has given concrete content to or applied" the dictum's other prongs. *Id.* at 712-13. Despite a scolding from the trial court for overstating their holdings (JA.3137-38), Plaintiffs again cite five cases that supposedly "recognize[d]" or "applied" a fraud exception (Br. 30-31). Not one did so.[6] Courts are understandably wary "to rush in where the Supreme Court has refused to tread"; as this Court has noted, "[e]ven if the 'fraud or collusion'

[6] *See Askew v. Trs. of the Gen. Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 684 F.3d 413, 420 (3d Cir. 2012) (stating exception "may" exist while finding it inapplicable); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 724-27 & nn. 15, 18 (11th Cir. 1987) (acknowledging exception remains hypothetical); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983) (finding abstention necessary even though plaintiff "arguably state[d] a claim for fraud," because claim raised "inherently religious issues"); *Jeong v. Calif. Pac. Ann. Conf.*, 1992 WL 332160, at *2-3 (9th Cir. Nov. 12, 1992) (assuming exception would require pleading with particularity and dismissing for failure to do so).

What Plaintiffs seem to regard as their best case actually *applied* abstention to dismiss claims indistinguishable from Plaintiffs' theory of this case. *Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 80 (D.D.C. 2019). The court did state that some civil RICO counts, "[a]s pleaded," seemed fit for "'marginal' civil court review," but it equated the "exception" with "secular legal principles"—and then dismissed those claims because they did not actually plead fraud. *See id.* at 78-79, 81-85.

portion of the *Gonzalez* exception has 'concrete content,' it is likely to be as impossible to apply as the 'arbitrariness' portion." *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002).

Indeed, more recent precedent confirms that no "fraud" exception can exist, at least not as Plaintiffs envision it. In the related context of the "ministerial exception," the Supreme Court has foreclosed challenges to an "asserted religious reason" for a minister's firing as "pretextual," as that would still entangle courts in "ecclesiastical" matters. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194 (2012). Plaintiffs' conception of the "fraud exception"—allowing the Court to look behind a "religious smokescreen" that purportedly "conceal[s] secular wrongdoing"—is no different from the pretext inquiry rejected in *Hosanna-Tabor*. Br. 3.

Finally, it is settled that the "exception" does not cover "substantive ecclesiastical matters," *Presbyterian Church*, 393 U.S. at 451; "essentially religious question[s]," *Moon*, 833 F. App'x at 880; or "inherently religious issues," *Kaufmann*, 707 F.2d at 359. But those are the only issues that trigger abstention in the first place. An "exception" that operates only when the general rule is not in play is no exception at all.

C. In Any Event, No "Fraud Exception" Could Apply Here.

Even if the fraud exception envisioned by Plaintiffs did exist, it could not help them here, for a host of reasons. *First*, following Plaintiffs' own cited cases, invoking a fraud exception would have required Plaintiffs to allege *fraud*, with special "particularity." Super. Ct. R. Civ. P. 9(b); *see Jeong*, 1992 WL 332160, at *2-3; *Ambellu*, 387 F. Supp. 3d at 81-85. They never alleged fraud at all.

Second, as noted, the "exception" does not allow resolution of "inherently religious issues." *Kaufmann*, 707 F.2d at 359. That includes "the identity of [the] leader" of the Unification Church and whether the Directors followed the right "providential vision." *Moon III*, 281 A.3d at 64, 69. Plaintiffs' claims depend on those determinations, as this Court already held, so they "fall squarely within the nonjusticiable category." *Id.* at 69.

Third, Plaintiffs' fraud theory is chiefly based on the idea that Dr. Moon "tactical[ly] invent[ed]" religious disputes as a "smokescreen" for his bad-faith, secular pursuits. Br. 13-16, 20, 28, 33, 39. But *Moon III* never doubted the Directors' sincere religious convictions. *See* 281 A.3d at 54-55, 62 n.17, 64, 65 & n.23, 69. And for good reason: Plaintiffs always litigated this case as one of "competing visions about Rev. Moon's legacy" and "profound" theological disagreements. 9/12/2019 Ps' Remedies Reply 2. They agreed that "as of 1998, Preston Moon believed he was leading the Unification Church," as did "[t]he other Directors." JA.2277 (¶¶ 9-10); JA.3031 (Dr. Moon "believe[s] that he is actually, in fact, the leader of the church"), 533 (¶ 6), 535 (¶ 12), 541 (¶ 38). Their religious expert, too, conceded that Dr. Moon is "wholly committed to … his father's legacy" and "utterly convinced that his way forward is the path that the tradition should follow." JA.3039-40. In short, *Moon III* treated the Directors' sincerity as undisputed *because it was*; Plaintiffs "cannot seek to deny those concessions at this late hour." *Packer v. SN Serv. Corp.*, 250 F.R.D. 108, 115 (D. Conn. 2008).[7]

[7] Plaintiffs nonetheless try, badly warping the record in the process. Asserting that Dr. Moon "recognized Rev. Moon had sole authority" to guide the Church (Br. 14),

Finally, Plaintiffs separately attempt to invoke a fraud exception by ginning up a "contradict[ion]" between Dr. Moon's statements at Parc1's opening and his testimony at the remedies hearing. Br. 21, 31. It is not clear what this has to do with any fraud exception to the First Amendment; regardless, as Judge Irving found on closer review, there was no contradiction. JA.3211. This is simply more contrived nonsense.

Dr. Moon testified that he had no legal control over KIF. (Judge Mott had earlier reached the same conclusion, finding "no evidence" that UCI controlled KIF. JA.530.) But Dr. Moon also testified that he was confident that "members of our Movement" who *did* control KIF would keep it "aligned to the larger Movement." JA.2250-51. That was why he was comfortable that the donation was in the Unification Movement's best interests. And, indeed, he viewed KIF's success in advancing "[his] father's dream" as a "vindication" of the donation. JA.2251. After Parc1 opened, Dr. Moon spoke publicly about how he "undertook responsibility" for the project because Rev. Moon "entrusted [him] with [it] in 2006" (JA.2590, 2650)—just as he had said under oath in 2012 and again in the remedies hearing (JA.1352-54, 1919, 2257-58). *See supra* at 18-19.

---

they cite two documents that actually confirm Dr. Moon's belief in his own Adamic leadership. JA.847 ("I have been leading the Unification Movement"), 1334-37 ("I understood [the 1998 ceremony] as a transfer of" "the mantle of owning God's providence"). They then gloss a page from the vacated remedies order as showing that Dr. Moon "acknowledg[ed] Rev. Moon as the hierarchical leader of the Church." Br. 14. But while Dr. Moon did describe Rev. Moon as "the third Adam" and "a messianic figure" (JA.2381), Plaintiffs ignore key theological context—Rev. Moon's proclamation of Dr. Moon as the *Fourth* Adam to lead the Movement in the next generation (JA.1749). And while they harp (Br. 14, 33) on Dr. Moon's justified anger after the Sokcho disgrace, contemporaneous notes powerfully *refute* any suggestion of insincerity. JA.2827-32.

He also expressed "tremendous[] pr[ide]" that "we built this facility"—referring to the Movement that Dr. Moon leads as the Fourth Adam and of which KIF's leaders are part. JA.2590. Far from "show[ing]" Dr. Moon lied about his authority over KIF (Br. 21), these statements show nothing more than well-deserved satisfaction in his role in realizing Rev. Moon's life-long dream. None of this remotely evinces any "fraud," or otherwise helps Plaintiffs' groundless case one iota.

III. THE SUPERIOR COURT RIGHTLY DISMISSED SOMMER, PEREA, KWAK, AND KIM, AGAINST WHOM NO CLAIMS REMAINED AFTER *MOON III*.

As explained, *Moon III* foreclosed Plaintiffs' articles and donations claims, leaving for remand whatever stray "self-dealing" claims remained. As against Sommer, Perea, Kwak, and Kim, there were none. Plaintiffs' self-dealing theory alleged that *Dr. Moon* breached his duty of loyalty via three related-party commercial transactions involving UCI. At summary judgment, Plaintiffs abandoned aiding-abetting as a liability theory, so the court dismissed the self-dealing claims as against the other Directors (who were not even on the Board at the times of the challenged transactions). JA.1189-90. After *Moon III* then extinguished the *non*-self-dealing claims in Count II, those Directors were out of the case. *Moon III* had rejected the only live claims against them.

Plaintiffs now say the self-dealing theory *also* included the GPF and KIF donations, leaving these Directors subject to claims that they committed self-dealing by approving them. That new argument defies the record and fails on its own terms to boot.

A. The Donations Were Never Part of Plaintiffs' "Self-Dealing" Theory.

To fold UCI's donations into the "self-dealing" claim that was not before the Court in *Moon III*, Plaintiffs need to rewrite the entire history of this case, starting with their Complaint. There, in a discrete section, they claimed that "*Preston Moon* Engage[d] in Self-Dealing and Other Improper Transactions," pointing "[s]pecifically" to three UCI transactions and alleging that Dr. Moon's "participation in *these related party transactions*" breached "his duty of loyalty." JA.198 (¶¶ 49-51; emphases added). Beyond ¶¶ 49-51, Plaintiffs never alleged that any Director was "on both sides of" or derived a "personal financial benefit" from any UCI transaction. *Willens v. 2720 Wis. Ave. Co-op Ass'n*, 844 A.2d 1126, 1136-37 (D.C. 2004). Indeed, the other Directors were "self-dealing" defendants only because Count II's shotgun-style allegations claimed that all Directors had "aided and abetted" one another's breaches. JA.213 (¶ 117); *see* JA.1132. (To deny this and belatedly reinvent their pleading, Plaintiffs resort to scissors and glue—splicing the self-dealing theory (JA.213 (¶ 117)) with the words "personal gain" from a separate, generic description of fiduciary duties (JA.213 (¶ 115)). Br. 57.) The Complaint also attacked UCI's donations, *but not as "self-dealing"*; instead, it objected that the donations were unlawful because the donees were "separate from the Church." JA.205 (¶ 82).

At the pleadings stage, Plaintiffs and two trial judges treated the self-dealing claims as tracking the Complaint's "Self-Dealing" section—and completely distinct from the donation claims. *See* JA.272, 293, 357-58, 416 & n.6, 466. Echoing the consensus, *Moon I* described one set of claims alleging deviations from UCI's "purposes" (*i.e.*, the

donations and amendments), and a separate set attacking "Preston Moon['s]" alleged "self-dealing" (*i.e.*, the ¶¶ 49-51 transactions). 129 A.3d at 241-242.[8] No one noticed any other "self-dealing" claims, as there were none. JA.3154-58 & nn.3-4, 3161-63.

Nothing changed at summary judgment, where the trial court (and Plaintiffs) again treated the donations and "three self-dealing transactions" as distinct. JA.1162, 1158, 1187, 931. After resolving the KIF and GPF claims in Plaintiffs' favor, Judge Cordero entered judgment for Dr. Moon on one alleged self-dealing transaction (based on its fairness) and for the other Directors on all three (because they occurred before those Directors joined the Board, and aiding-abetting was abandoned). JA.1190, 1156, 1196-97. The court declared that Count II "remain[ed] pending" only as to claims against Dr. Moon based on the two remaining "alleged self-dealing transactions." JA.1197.

Plaintiffs' efforts to evade this record are futile. *First*, their claim that they "clearly identified" KIF and GPF as self-dealing "in discovery" is belied by the cited materials. Br. 49. In describing their damages, Plaintiffs *distinguished* "the self-dealing and other improper transactions referenced in paragraphs 49-52" from the "donations or other transfers made to" KIF and GPF. JA.2836; JA.2836-37 (listing "donat[ions]" separately from "transactions between UCI and related parties"). Their expert similarly treated

[8] *Moon I* said the Complaint stated "self-dealing" claims against the four Directors (Br. 54), but that is because *Moon I* came before Plaintiffs ditched the aiding-abetting theory. The only "self-dealing" claims *Moon I* recognized involved Dr. Moon as the conflicted party. *See* 129 A.3d at 241-242; *id.* at 253 (citing "allegation that corporate funds were used here to benefit *one of the directors* personally" (emphasis added)).

donations as distinct from "Transactions with Entities Owned or Controlled by Preston Moon." JA.1218-20; JA.1224, 1228 (same). Plus, *after* these exchanges, Plaintiffs' own filings acknowledged that only "three self-dealing transaction[]" claims had ever existed, JA.1144-45, and that the "comparatively minor" "self-dealing" claims that "remain[ed] in the case" after summary judgment were "against Preston Moon" alone, JA.1326 n.2. Those two "minor" self-dealing claims against Dr. Moon that "remained pending" after summary judgment were thus the only claims left alive after *Moon III*. JA.1197.

Second, Plaintiffs argue that Judge Mott treated their challenge to the KIF donation as embraced by Count II. Br. 49. True, but Judge Mott slotted the KIF claim into the strand of Count II challenging donations as beyond UCI's "'purposes,'" not its distinct self-dealing-by-Dr.-Moon strand. JA.503-04 n.3. Plaintiffs suggest KIF became part of "all of Count II's … theories" or even "'self-dealing'" specifically. Br. 49. But this, too, is more revisionism. As Judge Irving correctly concluded, that is not what Judge Mott said or how KIF was ever litigated thereafter. JA.3154-55 n.3.

Third, Plaintiffs attempt to divine that *Moon III* "expressly recogniz[ed]" GPF and KIF self-dealing claims against all Directors, because it referred to alleged self-dealing by "the directors," plural, and the other Directors had already prevailed at summary judgment on the claims based on the corporate transactions. Br. 54-55 & n.9. That is absurd given that *Moon III* expressly admitted uncertainty over whether *any* self-dealing claims remained live. 281 A.3d at 70. In fact, the aiding-abetting claims against the other Directors had already been dismissed.

Finally, Plaintiffs cannot get around all this by invoking a made-up rule that the pleadings automatically "conform to the evidence." Br. 24, 49-50. Of course, pleadings may be amended (where appropriate) to add new allegations based on newly discovered facts, but that requires an amendment under Civil Rule 15; it does not just happen by itself. *See Dartmouth Review v. Dartmouth Coll.*, 889 F.2d 13, 16 (1st Cir. 1989) ("[N]otice pleading … is not entirely a toothless tiger."). For over a decade, Plaintiffs neglected to amend their Complaint to target the GPF or KIF donations as "self-dealing," and Judge Irving acted well within his discretion in denying their belated efforts to reshape the litigation after an appellate loss and change of counsel. *See infra*, Part V.

B. The Donations Could Not Be Recharacterized as "Self-Dealing."

There is a good reason why Plaintiffs never challenged the donations as "self-dealing"—they weren't. Self-dealing, as "a subset of breach of loyalty," *Solomon v. Armstrong*, 747 A.2d 1098, 1113 n.36 (Del. Ch. 1999), occurs when a fiduciary "appear[s] on both sides of" or "derive[s a] personal financial benefit from" a transaction that "is not substantively fair to the corporation." *Willens*, 844 A.2d at 1137 & n.13 (cleaned up). Despite four pages of trying painfully to shoehorn the donation claims into rough "self-dealing" shape (Br. 57-60), Plaintiffs get nowhere close to a viable claim.

As to KIF, Plaintiffs do not even *try* to argue that any Director was on both sides of, or otherwise derived personal financial benefits from, that donation. That is because no evidence would support such an assertion, despite years of KIF-obsessed discovery. (As explained above, and as Judge Irving appreciated, Dr. Moon's remarks lauding the

Parc1 opening in no way suggest that he held any legal control over KIF. *Supra* at 34–35.) Instead, Plaintiffs invoke the discredited finding from the reversed remedies order that KIF advanced Dr. Moon's "'personal agenda,'" as supposedly distinct from UCI's "best interest." Br. 60. But that is the precise claim *Moon III* foreclosed. *See* 281 A.3d at 67-70. Plaintiffs seem to think deriding KIF as a "personal pursuit" or "project" suffices to transform it into "self-dealing," but those are nothing more than their stale epithets for the Directors' side of the schism. *E.g.*, JA.186 (¶ 4). A charitable donation is obviously not "self-dealing" just because those approving it believe in the cause, and *Moon III* precludes any argument that the KIF "cause" itself was illegitimate.

As to GPF, Plaintiffs note that Dr. Moon, Sommer, Kwak, and Kim held fiduciary positions in GPF (Br. 58), but that does not make out a viable self-dealing claim either. If two entities' interests are "aligned," a transaction between them poses "no conflict" for a dual fiduciary. *In re Trados Inc. Shareholder Litig.*, 73 A.3d 17, 46–47 (Del. Ch. 2013). Indeed, Dr. Moon's predecessor as President of UCI, former Plaintiff Douglas Joo, also held fiduciary roles in *The Washington Times* and the University of Bridgeport while UCI supported those entities. *See* Ds.' SJ Ex. 45 at 105-06, 133, 135. Yet it is undisputed that those donations were lawful because they furthered UCI's corporate mission. *See Moon III*, 281 A.3d at 53, 68; JA.1032. After *Moon III*, Plaintiffs can no longer argue that GPF's activities were differently situated, or deny that UCI's interests "aligned" with GPF's. Their *ipse dixit* assertions that the GPF donations "had no benefit to UCI" (Br. 59) or were "substantively unfair to UCI" (Br. 57) ultimately rest on the premise

that GPF did not advance UCI's purposes—the very premise that, per *Moon III*, the First Amendment does not allow courts to accept. 281 A.3d at 62-70. Unable to establish those propositions, Plaintiffs cannot make out a viable self-dealing claim. *See Willens*, 844 A.2d at 1136 n.13; D.C. Code § 29-406.70(a)(3).

At bottom, the fundamental problem with Plaintiffs' revisionism (beyond just being revisionism) is that relabeling the donations as "self-dealing" does not circumvent the constitutional obstacles identified by *Moon III*. A charity's fiduciaries owe loyalty to the "charity's purposes." Restatement of the Law, Charitable Nonprofit Organizations § 2.02(a) & cmt. a; *see also Macrophage Therapeutics, Inc. v. Goldberg*, 2021 WL 2582967, at *13 (Del. Ch. June 23, 2021) (requiring fidelity to "corporate purposes"). Thus, at least absent any personal financial benefit to the Directors, any "self-dealing" challenge to the KIF or GPF donations would still require this Court to review UCI's articles to determine their propriety. But if *Moon III* foreclosed anything, it was that. 281 A.3d at 62-70. "Such determinations are not permissible under the First Amendment," and that remains true no matter how Plaintiffs try to repackage the claims. *Id.* at 70.[9]

[9] Contrary to what Plaintiffs try to imply, the Directors never "conced[ed]" that recharacterizing GPF and KIF as "self-dealing" would get around the First Amendment. Br. 55. Counsel's statement at oral argument that self-dealing was "an entirely different category" responded to a hypothetical about Dr. Moon using UCI's assets for naked self-enrichment, akin to the Complaint's presentation of the ¶¶ 49-51 transactions. As shown, those allegedly self-dealing transactions *were* an "entirely different category" and were not dismissed on abstention grounds. But Plaintiffs now are trying to retroactively blur the lines between "self-dealing" and their original "duty of obedience" claims, as a way to circumvent *Moon III*. That semantic maneuver does not work.

IV. AFTER *MOON III*, PLAINTIFFS LACK SPECIAL-INTEREST STANDING.

As to the *actual* self-dealing claims pending against Dr. Moon, Judge Irving correctly dismissed them for lack of standing. As a "general rule," members of the public have no "justiciable interest" in challenging fiduciary breaches by a charity's directors; only a public officer, as representative of the public, may do so. *Moon I*, 129 A.3d at 244. That rule "stems from the inherent impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class," while protecting charities from "vexatious litigation." *Hooker*, 579 A.2d at 612.

A narrow "exception" allows private suit when a charity exists to benefit "a small class of persons" with "a distinct justiciable interest" in its mission. *Id.* at 612-13. Under *Hooker*, this "special-interest" standing requires two elements: (i) a "class of potential beneficiaries" that "is sharply defined and limited in number"; and (ii) a challenge to "an extraordinary measure threatening the existence of the trust." *Id.* at 613-15.

Under that test, *Moon III* fatally undercut Plaintiffs' ability to maintain what is left of Count II. With the KIF claim gone, the leftover "self-dealing" claims plainly do not involve any "extraordinary measure" threatening UCI's existence—as Judge Irving correctly held. Independently, *Moon III* made clear that UCI's beneficiaries are *not* "sharply defined" or "limited"—which defeats Plaintiffs' standing to press *any* fiduciary claims against *any* Directors (and is therefore yet another reason why neither a "fraud" exception nor a reimagining of their "self-dealing" claims can revive Plaintiffs' case).

A. Plaintiffs No Longer Challenge Any Extraordinary Measure.

At the pleadings stage, Plaintiffs were taken to be "challenging [the] extraordinary measure" of "fundamentally changing [UCI's] purpose" and "divest[ing] it[] from the Unification Church." *Moon I*, 129 A.3d at 245 n.18. With that theory no longer tenable, Plaintiffs now characterize the KIF donation, by itself, as the "extraordinary measure" they target. Br. 46. As explained, however, Plaintiffs no longer have any live challenge to the KIF donation: *Moon III* held that courts cannot neutrally adjudicate whether that donation "ran afoul of UCI's corporate purposes," 281 A.3d at 70; Plaintiffs never asserted a separate "self-dealing" KIF claim (*supra*, Part III.A); nor could any such claim have been (or be) brought consistent with the First Amendment (*supra*, Part III.B).

As such, Plaintiffs no longer challenge any arguably extraordinary measure. That means they lack special-interest standing under the second prong of *Hooker*'s test. *See* 579 A.2d at 614-15. Put simply, Plaintiffs cannot come to court and attack Dr. Moon's participation in the challenged transactions. Only the Attorney General could do that.

Plaintiffs cannot sidestep this standing defect by claiming that FFWPUI and UPF's standing are "law of the case" under the summary-judgment and remedies orders. Br. 45.[10] At those earlier points, Plaintiffs *were* challenging arguably extraordinary measures;

[10] Although "only one plaintiff needs standing" for any given claim (Br. 45 n.7), Plaintiffs do not contend that UCJ has standing to press Count II under any prior orders, as those orders only spoke to UCJ's standing "to enforce [alleged] restriction[s]" on its donations. *Moon I*, 129 A.3d at 247 n.20; JA.1174, 2410. Those are the contract claims against UCI, which are addressed by UCI's brief. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("plaintiffs must demonstrate standing for each claim").

now they are not. *Moon III* dramatically changed the scope of this litigation. Because the standing question after *Moon III* is therefore "not identical to the [standing] question previously decided," the law-of-the-case doctrine "has no application," and the matter had to be considered afresh. *Sowell v. Walker*, 755 A.2d 438, 444 (D.C. 2000). It does not matter that standing itself was "not appealed" in *Moon III*, or that *Moon III* did not "question Plaintiffs' ongoing standing." Br. 45. Plaintiffs' standing to pursue their self-dealing claims was not at issue in *Moon III* for the simple reason that *the self-dealing claims were not on appeal*. 281 A.3d at 70. It is hardly notable that this Court did not *sua sponte* inspect Plaintiffs' standing as to claims not before it. Nonetheless, the consequence of *Moon III*'s holdings is that Plaintiffs had no further right to press Count II.

B. *Moon III* Forecloses Plaintiffs' "Special Interest" in UCI's Purposes.

Plaintiffs' lack of a live KIF claim is enough to affirm the dismissal of the remaining self-dealing claims, but they are wrong to call this "[t]he only real issue." Br. 46. After *Moon III*, Plaintiffs cannot even satisfy *Hooker*'s first prong—and that is an independent basis to affirm the dismissal of Count II, whatever its remaining scope.

Under *Hooker*, special-interest standing to sue charitable directors requires "definite criteria narrowing the … class" of potential plaintiffs and identifying its members with "particularity." 579 A.2d at 614-15. Yet, as *Moon III* acknowledged, UCI's "overtly religious" articles give no such guidance, and its history shows a "sweeping array" of widely diverse (yet all valid) donees. 281 A.3d at 52, 68-70. Thus, the idea that UCI's purposes delimit a "sharply defined," "limited" class of donees entitled to sue is no

longer tenable. *Hooker*, 579 A.2d at 614; *cf. In re Trust of Mary Baker Eddy*, 212 A.3d 414, 427 (N.H. 2019) (finding trust's "broad language" about "promoting and extending the religion of Christian Science" to be incompatible with "a small, identifiable class").

Judge Irving thought Plaintiffs could potentially define themselves into a class of "entities (1) established by Rev. Moon; (2) previously headed or directed by Dr. Moon …; (3) that have received significant contributions from UCI over an extended period of time." JA.3239-40 & n.9. That may well describe Plaintiffs. But it overlooks that the relevant class must be clearly defined *by the charity's purposes*. *See Hooker*, 579 A.2d at 612-13. Hence why special-interest standing cases, as a rule, "look[] to the trust's *chartering documents* to discern the purpose of the trust." *Sagtikos Manor Hist. Soc'y, Inc. v. Robert David Lion Gardiner Found., Inc.*, 9 N.Y.S.3d 80, 82 (N.Y. App. Div. 2015) (emphasis added); *Hooker*, 579 A.2d at 615 (looking to "standards established in the [grantor's] will, the charter, and the by-laws"); Restatement (Second) of Trusts § 391 cmt. c (1959). *Hooker*'s first element is not so trivial that would-be plaintiffs can satisfy it by gerrymandering the relevant class around their own hand-picked criteria.

Here, Plaintiffs' bespoke class has no basis in UCI's documents and, if anything, rehashes impermissible religious premises. *First*, UCI's support was not limited to entities "established by Rev. Moon." *See Moon III*, 281 A.3d at 68. *Second*, it is entirely unclear how *Dr. Moon's* former positions could define the class "for whose benefit [UCI] was created." *Hooker*, 579 A.2d at 612. *Last*, as a matter of law, UCI's prior support of FFWPUI and UPF does not confer any cognizable interest in its support in the future.

Hadassah Acad. Coll. v. Hadassah Women's Zionist Org. of Am., 2018 WL 8139301, at *3 (S.D.N.Y. Nov. 1, 2018) (being "past beneficiary," even to tune of "millions of dollars," is "insufficient … to confer standing"); *Robert Schalkenbach Found. v. Lincoln Found.*, 91 P.3d 1019, 1024 (Ariz. Ct. App. 2004) ("merely being a … prior beneficiary" not enough). The only way to bridge that legal gap is to assume that FFWPUI and its appendages constitute "the Church" that UCI is bound to support—thus repeating the core constitutional error of the orders *Moon III* reversed. *See* 281 A.3d at 50-51, 62-70.

Indeed, to put the last nail in the "law-of-the-case" deflection, nothing is more risible than the idea that FFWPUI and UPF received past-beneficiary standing "based on neutral principles" that survive *Moon III*. Br. 45. The reversed orders found that FFWPUI had a special interest in UCI's "original purposes" because "'[FFWPUI] is the Unification Church'" (JA.1171) and "the main body of [Rev.] Moon's movement" (JA.2409)—both premises that *Moon III* unambiguously foreclosed as contested matters of religious polity. For its part, UPF was granted standing only "to challenge UCI's alleged diversion of funding from UPF to GPF" (JA.1174), given that GPF was "created … as an alternative to UPF" that was "not affiliated with the Unification Church" (JA.2410). That donation claim is gone after *Moon III*, as is the underlying assumption that GPF was "not affiliated" with the true Church. 281 A.3d at 67-70.

In the end, this issue is very simple under the only law of the case that matters now: UCI has no sharply defined and numerically limited beneficiary class, and that means Plaintiffs have no standing to pursue *any* fiduciary claims against *any* Directors.

V. JUDGE IRVING DID NOT ABUSE HIS DISCRETION BY REFUSING TO ALLOW PLAINTIFFS TO START OVER AFTER 13 YEARS OF LITIGATION.

Plaintiffs' last gasp is to complain that Judge Irving abused his discretion by refusing to indulge their requests to either reopen discovery or let them amend their Complaint. Plaintiffs were entitled to neither. Indeed, *granting* such relief would have been an abuse of discretion, guaranteeing only further waste of time, money, and judicial resources.

As to reopening fact and expert discovery, Plaintiffs say it was necessary to explore the potential applicability of the supposed "fraud exception." Br. 75. But as explained above, Judge Irving had no occasion to reach any such exception, because he properly concluded that Plaintiffs lacked standing to pursue the only claims that survived *Moon III*. In all events, no "fraud exception" could help Plaintiffs here. *Supra*, Part II. Even putting all that aside, Plaintiffs do not meaningfully engage with Judge Irving's thorough findings negating "excusable neglect" or "good cause" to modify the scheduling order. *See* JA.3199-3212; *Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 908 (D.C. 1998). Plaintiffs ignore his rulings that: (i) their requests violated Civil Rule 16(b)(7)(A) (JA.3208-10), which was "fatal[]" (JA.3258); (ii) their proposed expert's opinion would be "unhelpful to the trier of fact" (JA.3208 n.9); and (iii) the consistency of Dr. Moon's testimony with his subsequent public statements "decidedly weigh[ed] against" new discovery (JA.3211). By failing to "clearly raise any challenge" to these "independent grounds," Plaintiffs "have abandoned any challenge" to the discovery order. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680-81 (11th Cir. 2014).

As for leave to amend, that "is entrusted to the sound discretion of the trial court." *Gordon v. Raven Sys. & Research, Inc.*, 462 A.2d 10, 13 (D.C. 1983). Plaintiffs argue that Judge Irving should have granted them leave to replead, ostensibly in order to explicitly frame the GPF and KIF donations as "self-dealing." Br. 50-54, 61-62. But there was clearly no abuse of discretion here, for multiple independent reasons.

To start, in opposing the four Directors' motion, Plaintiffs did not even *mention* repleading, and Judge Irving certainly had "no obligation" to "invite" amendment himself. *Freyberg v. DCO 2400 14th Street, Inc.*, 304 A.3d 971, 981 (D.C. 2023). Nor did Plaintiffs ever submit a motion for leave to amend or a proposed amended complaint for the court to consider. JA.3255 n.12. That too was "justifiable grounds" to "deny" leave. *Klein v. Forster & Garbus, LLP*, 2021 WL 2646334, at *5 (E.D.N.Y. June 28, 2021); *see also Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 161 & n.18 (D.C. 2000).

Beyond that, Judge Irving's judgment that "amendment would be untimely" and prejudicial was obviously correct. JA.3155, 3255-58 & n.13. While "delay by itself" might not support denial, delay without "any satisfactory reason" absolutely does. *Eagle Wine & Liquor Co. v. Silverberg Elec. Co.*, 402 A.2d 31, 35 (D.C. 1979). Plaintiffs offer no legitimate reason for waiting till now to retcon GPF and KIF as "self-dealing." *E.g.*, *Edwards v. Safeway, Inc.*, 216 A.3d 17, 19 (D.C. 2019) (repleading denied where plaintiff had no "explanation … other than 'the interests of justice,'" after case had been pending "eighteen months"); *Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996)

(noting disfavor of late amendments "to alter the shape of the case"). Rebuffing this belated search for a way around *Moon III* was *well* within Judge Irving's discretion.

As to KIF in particular, it bears emphasizing that the parties conducted extensive KIF-focused discovery, followed by a year and a half of merits discovery, followed by a four-week remedies hearing, and—at the end of all of this—Plaintiffs have *nothing* to suggest that Dr. Moon had a personal financial interest in KIF or owed it any fiduciary duty, apart from their own tendentious construction of his public comments. *Supra* at 34–35. Their KIF-repleading ask is thus simply a "request to conduct what is essentially a 'fishing expedition'" in a well-fished pond, "masquerading as a [hypothetical] motion to amend." *Tafari v. Baker*, 2017 WL 2334893, at *2 (W.D.N.Y. May 30, 2017).

At bottom, Judge Irving's denial of a pleading do-over was just common-sense: "If [Plaintiffs] had viable, alternative theories," they "should not have withheld them while [the parties] invested considerable time and judicial resources evaluating what [they] now say[] was an incomplete set of theories, which emphasized the wrong facts, set forth the wrong sources of legal duties and, overall, charted the wrong course to the requested relief." *Goldfish*, 623 F. Supp. 2d at 641. After 13 years, enough is enough.[11]

[11] Plaintiffs say their self-dealing switcheroo would be "similar" to the repleading allowed in *Miller-McGee v. Washington Hospital Center*, 920 A.2d 430 (D.C. 2007). Br. 51. But in that "exceptional" case: (i) the complaint arguably already encompassed the new theory; (ii) that theory "rest[ed] on the same," cabined factual nucleus; (iii) the relevant facts had been fully explored in discovery; *and* (iv) the trial court had *already stated* in an order, pre-dismissal, that the new theory could "go forward." 920 A.2d at 432-39. That is worlds apart from reconfiguring this decade-old sprawling case to squeeze the now-rejected donation claims into the always-separate "self-dealing" bucket.

Even putting all that aside, the hypothesized amendment would plainly be futile—another independent basis to deny leave. *See, e.g.*, *Mwani v. Al Qaeda*, 600 F. Supp. 3d 36, 49-50 (D.D.C. 2022). As explained, the fundamental problem with calling the donations "self-dealing" is that they were *not*; plus, that labeling *still* runs into the same nonjusticiable religious issues recognized in *Moon III*. *Supra*, Part III.B. Finally, the confused suggestion that a court cannot dismiss a case on standing grounds and then deny repleading as futile (Br. 52) has no basis in law or logic.

Last is Plaintiffs' lengthy submission that Judge Irving should have dismissed the self-dealing claims under Rule 12(b)(1), which they think would have permitted them to amend. Br. 41-45. Plaintiffs are mistaken about the proper vehicle for the dismissal but, more importantly, misapprehend the consequence of a Rule 12(b)(1) loss. Such a jurisdictional dismissal, even if "without prejudice" in the sense that the merits are not deemed adjudicated, does *not* necessarily entail leave to replead. *See UMC Dev., LLC v. D.C.*, 120 A.3d 37, 49-50 (D.C. 2015) (doubting whether "opportunity … to file a new complaint" "still exist[ed]" after Rule 12(b)(1) standing dismissal). Rather, in weighing leave to amend after a jurisdictional dismissal, courts apply the same Rule 15 standard that governs after a Rule 12(b)(6) dismissal. *E.g., Knife Rights, Inc. v. Vance*, 802 F.3d 377, 389-90 (2d Cir. 2015); *Castro v. Oliver*, 2024 WL 150104, at *5 (D.N.M. Jan. 12, 2024). All the import Plaintiffs attach to this dichotomy is a mirage.

CONCLUSION

This Court should affirm the judgment below.

Dated: June 24, 2024

Respectfully submitted,

/s/ Michael Weitzner
Michael Weitzner (D.C. No. 472505)
MICHAEL WEITZNER ATTORNEY AT LAW
4916 Brandywine Street, NW
Washington, D.C. 20016
Telephone: (202) 905-1172

Counsel for Defendants-Appellants Richard Perea, JinMan Kwak, and Youngjun Kim

/s/ Christopher B. Mead
Christopher B. Mead (D.C. No. 411598)
LONDON & MEAD
1225 19th Street, N.W., Suite 320
Washington, D.C. 20036
Telephone: (202) 331-3334

Counsel for Defendant-Appellant Michael Sommer

/s/ Jacob M. Roth
Jacob M. Roth (D.C. No. 995090)
William G. Laxton, Jr. (D.C. No. 982688)
David T. Raimer (D.C. No. 994558)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939

/s/ Henry W. Asbill
Henry W. Asbill (D.C. No. 938811)
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, D.C. 20037
Telephone: (202) 349-8007

Counsel for Defendant-Appellant Hyun Jin Moon

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2024, I caused the foregoing brief to be served via electronic filing upon:

Cathy A. Hinger (cathy.hinger@wbd-us.com)
Victoria A. Bruno (victoria.bruno@wbd-us.com)
Lela M. Ames (lela.ames@wbd-us.com)
Jasmine A. Chalashtori (jasmine.chalashtori@wbd-us.com)
WOMBLE BOND DICKINSON (US) LLP
2001 K Street, NW, Suite 400 South
Washington, DC 20006

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

Derek L. Shaffer (derekshaffer@quinnemanuel.com)
William A. Burck (williamburck@quinnemanuel.com)
Jan-Philip Kernisan (jpkernisan@quinnemanuel.com)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I St. NW, Suite 900
Washington, DC 20005

Counsel for Defendant-Appellee UCI

Jodie E. Buchman (jbuchman@silvermanthompson.com)
SILVERMAN THOMPSON SLUTKIN & WHITE LLC
400 E. Pratt St., Suite 900
Baltimore, MD 21202

Counsel for Amici Curiae *Child USA, Survivors Network of Those Abused by Priests, Zero Abuse Project, and Professor Leslie C. Griffin*

/s/ *Jacob M. Roth*
Jacob M. Roth