

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



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DISTRICT OF COLUMBIA COURT OF APPEALS

HYUN JIN MOON, *et al.*,

Defendants-Appellants,

v.

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

Plaintiffs-Appellees.

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

**BRIEF OF DEFENDANTS-APPELLANTS HYUN JIN MOON, JINMAN
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INTRODUCTION

It is hard to conceive of more glaring violations of the First Amendment than the orders below. The Superior Court removed from office the directors of a religious non-profit, and imposed over \$500 million in personal liability, for supposedly violating a fiduciary “duty of obedience” by straying (in the court’s view) from the non-profit’s explicitly religious mission. The court drew that mistaken conclusion at *summary judgment* despite conflicting evidence about the meaning of religious terms in the non-profit’s ambiguous corporate articles. More fundamentally, the court had no business making the *theological* determinations those articles implicated. The court acknowledged that the directors sincerely believe they are loyal to their religion’s true spiritual leader and theology following the death of its charismatic founder. In rejecting their views, the court picked sides in a religious schism—exactly what this Court and the U.S. Supreme Court prohibit. Courts cannot distinguish the faithful from the apostates.

The parties have spent *literally a decade* litigating over the theological and leadership controversies that have splintered their religious movement, including for five years after this Court ruled that ecclesiastical abstention was “premature” at the pleading stage. Discovery, summary judgment briefing, and a month-long remedies hearing have since left no doubt that the underlying disputes are ecclesiastical and cannot be resolved by courts. This Court should reverse and dismiss this litigation, just like the federal courts recently did in a mirror-image suit arising out of the same schism. And if these claims are justiciable at all, the Court must at minimum remand them for a jury trial.

STATEMENT OF JURISDICTION

On December 4, 2020, the Superior Court issued an order (JA.317) that granted injunctive relief in accordance with liability findings contained in a summary judgment order from March 28, 2019 (JA.250). The remedies order is appealable under D.C. Code § 11-721(a)(2)(A). Because the injunction was predicated on the summary judgment order, the latter is also now reviewable. *See Barry v. Little*, 669 A.2d 115, 117 n.5 (D.C. 1995); *D.C. v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 8 (D.C. 2000).

STATEMENT OF THE ISSUES

I. Did the Superior Court resolve disputed questions of theology and church polity in violation of the First Amendment?

II. Did the court err, at minimum, by granting summary judgment to the plaintiffs, despite genuine factual disputes material to every aspect of their claims?

III. Did the court further violate the Constitution and D.C. law by removing the directors from the non-profit's board based on their supposed spiritual disloyalty?

STATEMENT OF THE CASE

Defendants are a D.C. religious non-profit, “Unification Church International” or “UCI,” along with five of its current and past directors (“the Directors”). The Directors include Dr. Hyun Jin (Preston) Moon (“Dr. Moon”), the eldest living son of the late Rev. Sun Myung Moon (“Rev. Moon”). Rev. Moon founded the global providential movement known colloquially as “the Unification Church,” and designated Dr. Moon as “the Fourth Adam” to succeed to his messianic mission. *Infra* at 8-9.

Five plaintiffs filed this action in 2011, but only three remain: (i) an unincorporated association in Korea calling itself “Family Federation for World Peace and Unification International” (FFWPUI); (ii) a church in Japan named “the Holy Spirit Association for the Unification of World Christianity—Japan” (UCJ); and (iii) a non-profit in the U.S. called “Universal Peace Federation” (UPF). Claiming special-interest standing, they sued shortly before Rev. Moon’s death, as part of an effort by his wife (Hak Ja Han) and self-interested clerics to usurp Dr. Moon’s spiritual role and install a younger brother, Hyung Jin (Sean) Moon, as her pawn. *Infra* at 9-11.

In their complaint, Plaintiffs alleged that Sean was Rev. Moon’s successor and that FFWPUI, which Sean then led, was the institutional head of the religion. JA.119-20, 130. They asserted that UCI and the Directors breached trust, fiduciary, agency, and contractual duties by following Dr. Moon rather than Sean. In particular, they claimed that the Directors had abandoned the undefined “Unification Church” in UCI’s articles of incorporation, and violated the articles by funding entities supposedly at odds with the religion. Shortly after Rev. Moon’s death in 2012, Hak Ja Han ousted Sean, and Plaintiffs recast their narrative to identify *her* as their spiritual leader. *Infra* at 11.

Now-Chief Judge Anita Josey-Herring dismissed the suit on the pleadings because it appeared bound to turn on religious issues, but this Court found dismissal then to be “premature.” *Family Fed’n for World Peace & Unification Int’l v. Moon*, 129 A.3d 234, 249 (D.C. 2015); *see also id.* at 239, 251, 252 (repeating word “premature” or “prematurely”). The Court instructed that “a fuller exposition of the facts” was necessary to determine

if adjudication was indeed “precluded” by the Constitution. *Id.* at 249-50. But the Court took care to provide a judicial off-ramp: “going forward, if it becomes apparent to the trial court that this dispute does in fact turn on matters of doctrinal interpretation or church governance, the trial court may grant summary judgment to avoid excessive entanglement with religion.” *Id.* at 253 n.26.

On remand but before discovery, the new presiding judge (Judge John Mott) issued a preliminary injunction to preserve the status quo by restricting UCI’s donations. JA.233. This Court affirmed, finding “only” that, based on “only the materials in the record at the time,” which did not flesh out the religious disputes, that court did not “abuse[] its discretion.” JA.239, 247. This Court emphasized it had not “prejudge[d]” any issue and that, injunction in place, the litigation “will vigorously continue.” JA.236, 247-48. As before, the Court again instructed the trial court to abstain if it became apparent that “excessive entanglement with religion” would ensue. JA.243 n.10.

After discovery, Defendants moved for summary judgment on all claims, explaining why the full record now confirmed that Plaintiffs’ claims hinged on disputed religious premises and therefore compelled abstention. In response, Plaintiffs abandoned the trust, agency, and implied-by-law claims they had touted to this Court (JA.250-52), implicitly conceding they were meritless, but cross-moved on their fiduciary-duty claim (Count II). Defendants’ factual statements at summary judgment exceeded 100 pages and were supported by over 220 exhibits, including 25 depositions, reports by religious experts on both sides, and scores of documents spanning decades. *See* JA.1905, 1540.

Judge Laura A. Cordero, new to this complex case, denied Defendants’ motion and granted Plaintiffs’ cross-motion, without even holding oral argument. She held that the Directors had breached fiduciary duties by modifying religious references in UCI’s articles and donating assets to charities that were supposedly not affiliated with the true “Unification Church.” JA.282. Largely ignoring the robust record, the court ruled that the articles’ *plain text*—riddled with ambiguous religious terms—was dispositive. *See* JA.276. (Certain other claims were deferred for trial. JA.286, 290-91.)

Proceedings moved to remedies. Taking the reins, Judge Jennifer M. Anderson reluctantly held a four-week bench trial at which the Directors testified that they were loyal to the Unification Church, believed Dr. Moon was its spiritual leader, and viewed FFWPUI and Hak Ja Han as heretical to Rev. Moon’s teachings. Not one fact witness testified live for Plaintiffs, and the court excluded important defense witnesses. Over a year later, the court issued an order that, to ensure consistency with her predecessor’s summary judgment order, largely copied Plaintiffs’ proposed findings and conclusions. The court removed the four Directors still on the Board (all but Perea); ordered their vacancies to be filled “in conjunction with Plaintiffs”; and imposed a “surcharge” on them personally of over \$500 million. JA.409. Mentioning the First Amendment only once, in passing, the remedial order makes dozens of findings about Unification Church “leadership” and which acts were “at odds with” its theology. JA.317, 320-25, 329, 332, 334, 341-46, 360-62. Over Plaintiffs’ objections, this Court granted an administrative stay of that order and expedited the appeals.

STATEMENT OF FACTS¹

A. Rev. Moon Found the Unification Church Movement.

The “Unification Church” is a colloquial name for the global religious movement Rev. Moon founded in 1954. JA.1907-08. It is a charismatically led, messianic, providential movement, centered around Rev. Moon and his family. Known as the “Third Adam,” Rev. Moon’s mission was to pick up where the first two Adams (the biblical one and Jesus Christ) left off—to restore a fallen world by creating an ideal family and establishing peace across religious, national, racial, and ethnic divides. *See* JA.2858, 2860, 594-95, 2820, 1282-83, 1298. Importantly, Rev. Moon did not want to create a new denomination. JA.1297. Rather, he sought to *unify* “global Christianity and [all other] religions” (JA.3765), and “create a ‘supra-religious, supra-national’ realm in which people of all religions and nations would” overcome divisions (JA.321).

Rev. Moon inspired a worldwide movement that encompassed not only traditional churches (called “Holy Spirit Associations for the Unification of World Christianity”) but also educational, cultural, political, media, and business organizations. *See* JA.493-94, 1981-83, 2018-21, 2593-2603, 2765-77. Each entity was legally independent, but all recognized Rev. Moon as their messianic leader and supported his vision of creating a unified, peaceful world. JA.3902 (“[A]ll the organizations ... were held together because all their ... work was for the support of ... my father as the Messiah.”); JA.594, 1977-92.

¹ Because the Superior Court granted summary judgment against the Directors, the facts are recited most favorably to them. *Blair v. D.C.*, 190 A.3d 212, 220 (D.C. 2018).

Rev. Moon never held formal positions in any of these organizations, and no entity had legal authority over any other. JA.548 (“[T]here is not ... an international sort of centralized body that ... owns all the other churches around the world. These are separate legal entities.”), 1973-76. Instead, the movement was bound together by Rev. Moon and his immediate family (“True Family”), which represents the ideal family and path to salvation for humanity. JA.2702; *see also* JA.3077-78, 1740-42, 1747-48.

B. In the 1990s, Rev. Moon Announces the “End of the Church Era.”

Although the Unification Movement included traditional churches, Rev. Moon had always said that anyone who “hangs a sign that says ‘church’” is “making a distinction” and “dividing” people: “This was not my dream.” JA.1518. Rather, Rev. Moon’s mission was to *eliminate* denominational lines. JA.1297. This was a critical theological difference between the Unification Church and mainline Christian denominations.

In the mid-1990s, Rev. Moon took an important step toward this providential goal by announcing the “end of the church era.” JA.569-70. To avoid the divisions caused by a “hierarchical, institutionalized church,” he declared that the Unification religion would be a broad ecumenical peace movement “centered on families” as the unit of salvation. JA.996-97. As the leader of a U.S.-based church wrote to members at the time: “Father has recently stated that the Unification Church ... has fulfilled its providential role.” JA.1292; *see also* JA.3769 (announcing transition from “religious sphere” to “establish[ing] true families”), 1619, 596, 1299, 1330, 2589-90, 2362-63 (explaining theological significance of this shift).

Rev. Moon called this decentralized, family-focused construct “Family Federation for World Peace and Unification” (“Family Federation”), and national entities with that name sprung up around the world. JA.3757, 546. These associations of families were meant to “go beyond” institutional churches, transcend religious boundaries and reach members of other faiths. JA.940-42; *see also* JA.1299, 1240-41. The Family Federations were (like other movement organizations) legally independent, but unified in drawing inspiration from Rev. Moon and his “moral authority.” JA.548; *see also* JA.1729. One of the Plaintiffs here, FFWPUI, is an unincorporated association that purports to lead this movement but has no legal authority over any other entity. *See* JA.1914, 1733-35.

C. Rev. Moon Publicly Proclaims Dr. Moon the “Fourth Adam.”

In 1998, at the age of 78, Rev. Moon passed the mantle to his son, Dr. Hyun Jin (Preston) Moon, to serve as the fourth Adamic figure to lead the movement and carry on his messianic mission. *See* JA.380, 2608, 603, 502. During a public ceremony that Rev. Moon described as the most “precious” of his life, he recognized Dr. Moon as “Fourth Adam” and announced that the “era of the Fourth Adam has begun”:

We must understand how miraculous it is that the era of the Fourth Adam has begun. ... [F]inally from God’s point of view three generations have been restored and now the era of the fourth Adam can begin. That is the significance of this inauguration [of Hyun Jin] today.

JA.3763. This was a profound theological moment, marking a generational transition that would culminate in the realization of Rev. Moon’s providential mission. JA.1524. As even the Superior Court acknowledged, the Directors genuinely believe “Reverend Moon selected [Dr. Moon] to be his spiritual heir and the fourth Adam.” JA.323-24.

In recognition of Dr. Moon's spiritual authority, Rev. Moon asked him to help bring about the "end of the church era," and granted him authority over all movement members and leaders. *See* JA.3752, 2779. For many years, Dr. Moon led the activity of movement organizations and traveled the world to carry out this mission. *See, e.g.,* JA.1993, 603, 326 ("Preston Moon was the anointed heir of his father's vast empire for many years"). In particular, he built the (now-Plaintiff) entities FFWPUI and UPF. JA.2865-69. Dr. Moon regularly presented Rev. Moon with reports of his activities, detailing how he was implementing the movement's focus on uniting all religions under the vision of One Family under God. JA.3773, 1335. Far from rejecting those efforts, Rev. Moon praised Dr. Moon for shepherding the movement into "a new stage where huge leaps and bounds can be accomplished." JA.3778.

D. Hak Ja Han, Sean, and Corrupt Clerics Scheme To Usurp Succession.

Rev. Moon's declaration of the "end of the church era" and elevation of Dr. Moon as his successor were the origins of the schism. JA.1237-38. Fearing a loss of power and perks due to the transition away from institutional churches, clerics endeavored to frustrate the move while Dr. Moon championed it. JA.1339, 1341-42, 1345, 1348. Rev. Moon's wife (Hak Ja Han), meanwhile, wanted the successor role for herself. JA.1410-11. But all understood that, theologically, one of Rev. Moon's sons had to succeed him (JA.322 n.5, 1410-11, 538-39), and those teachings could not be disregarded while he was alive. So they devised a scheme to usurp Dr. Moon's role and resist the end-of-church shift by using his younger brother, Hyung Jin (Sean) Moon, as a pawn.

In 2009, when Rev. Moon was close to 90 years old, Hak Ja Han began to claim that he actually intended to pass the mantle not to Dr. Moon, but to Sean. She used staged events to make her case—events that merely confirmed that Rev. Moon was no longer in control of his faculties and was being manipulated by others.

In March 2009, Hak Ja Han revealed a “spirit message” supposedly sent by Hyo Jin Moon, Rev. Moon’s oldest son who had recently passed away. The message, a four-page memorandum, purported to dictate an organizational chart showing Sean at the top. JA.1488-90, 3741. The Directors knew the message was fabricated; Rev. Moon’s grief over his son’s death was being used to exploit him. JA.1488-90, 2813-15, 2641-42. A cleric affiliated with Hak Ja Han later confirmed the fraud. *See* JA.2412-13.

Next, in June 2010, FFWPUI published a video capturing an early-morning scene in Rev. Moon’s bedroom. JA.3887-88, 1505-06. In the video, Hak Ja Han and Sean cajoled a semi-conscious Rev. Moon to sign a document naming Sean as “representative and heir” of the “command center of cosmic peace and unity.” JA.1508, 3585. There has never been any movement organization with that name. JA.2645-46. From the video, it is obvious that Rev. Moon did not understand the document. JA.1377. It took a dozen prompts for him to even recognize and write the date. JA.1508, 1502-04, 3904. Hak Ja Han also pressed Rev. Moon to add language directing adherents not to “listen to Hyun Jin” (Dr. Moon). He refused: “I am not writing Hyun Jin’s name here.” JA.1508. After seven minutes of pressure, Rev. Moon added some meaningless calligraphy to the document but still refused to write Dr. Moon’s name. *Id.*

These Sean succession claims had no credibility. Rev. Moon never identified him as an Adamic figure or gave him authority over the movement. Even Hak Ja Han later conceded that Sean did not understand Unification theology, calling him “immature” and at “the level of middle school ... in terms of [] understanding the providence.” JA.1761-63. His actions—like changing Family Federation’s name to “the Unification Church”—assuaged the clerics but contradicted Rev. Moon’s teachings and flouted the shift away from institutional churches toward decentralized federations. JA.1759-61, 1236 (calling Sean’s memo “inaccurate, misleading, incorrect”), 1282-83.²

It thus came as no surprise when Hak Ja Han stripped Sean of all leadership roles shortly after Rev. Moon’s passing, leaving him to create his own faction. JA.3884, 1749, 531. Sean had simply served as a prop, a temporary straw man to allow Hak Ja Han to feign adherence to the patriarchy mandated in Unification theology while Rev. Moon was alive. JA.2405-06, 2496. Sean’s actions, including changing Family Federation’s name to “the Unification Church,” were quickly undone. *See* JA.1463-65. And Hak Ja Han now told the movement that neither the fabricated spirit message nor the bedroom proclamation actually identified Sean as the successor, even though she (and Plaintiffs here) had previously said the exact opposite. JA.3807, 3907; *see infra* at 22-23.

² Plaintiffs and the Superior Court misinterpreted Sean’s April 2008 appointment to serve as President of FFWPUI as evidence of a theological “rejection” of Dr. Moon by Rev. Moon. JA.325. Of course, if that were true, Hak Ja Han would not have needed a fabricated spirit message or coerced video proclamation. In the Unification faith, *spiritual authority* is distinct from *institutional roles*, which is why Rev. Moon never held the latter despite leading the movement for over a half-century.

E. The Directors Run UCI To Support Rev. Moon's Mission.

Rev. Moon's followers founded UCI in the 1970s to advance his movement. UCI is a non-member, non-profit corporation, and like many movement organizations, all power is vested in a self-perpetuating Board of Directors. JA.818, 1416. UCI's purposes, as recited in its 1980 articles of incorporation, included "guiding the activities of Unification Churches," "promot[ing] the worship of God," advancing "the theology of the Unification Church," and sponsoring programs to further "the Divine Principle[,] the unification of world Christianity and other religions, world peace, harmony of all mankind, [and] interfaith understanding between all races, colors and creeds." JA.1418-19. The Divine Principle is one of Rev. Moon's early theological texts. JA.1909-10.

Consistent with these purposes, UCI for decades donated hundreds of millions of dollars to a host of cultural, educational, spiritual, and political entities—from schools to anti-communist advocacy groups, ballet troupes to soccer teams, martial arts leagues to film production companies. (UCI Br. at 11-12.) It also owned for-profit businesses (*e.g.*, seafood distribution, and the Washington Times newspaper), to generate funds to support the movement's non-profit work—although in practice these businesses *lost* vast sums of money. (*Id.*) To reach a wider audience, many of UCI's subsidiaries and beneficiaries disavowed any connection to the Unification faith, while others had no religious affiliation at all. JA.1950-65, 883, 890-91, 893-94. Nevertheless, all agree that UCI's support of those organizations was consistent with its purposes, because their work advanced Rev. Moon's providential mission and theology. JA.1966.

In 2006, the UCI Board unanimously elected Dr. Moon as Chairman and President. JA.971, 975. The other Directors were elected in 2009, after decades of experience in the movement. JA.1180-83. JinMan Kwak and Youngjun Kim were born into families of Rev. Moon's earliest disciples, served as missionaries, and led movement nonprofits. JA.2762-64, 2589. Both were related to Dr. Moon by marriage because, per Unification tradition, Rev. Moon chose their spouses. JA.2650-51, 2852, 2972-73. Michael Sommer and Richard Perea had followed Rev. Moon since their youth and successfully run movement businesses. JA.3065, 3070-72, 2588-89, 2611-13, 2350-59, 2369-74.

1. The Directors continue to support peace-building efforts.

The Unification Church movement seeks to build peace between different religions and cultures. JA.1282-83, 2707-08, 594-95. UCI supported such peace-building efforts for decades, long before any of the Directors joined the Board. It did so by, among other things, funding UPF, an organization built by Dr. Moon that worked on peace education and service projects, and coordinated an "interreligious council" of world leaders to address problems through universal, faith-based values. JA.1092-94, 3635-36, 556. In 2007, UPF also began organizing "global peace festivals" (known as GPFs) to generate broad support for Rev. Moon's goal of uniting the world "as one family under God" (a phrase Dr. Moon coined and his father adopted). JA.2007, 3659, 3650, 554, 784. The festivals showcased regional artists and community service projects, and appealed to many non-movement members, including political and NGO leaders who were called Ambassadors for Peace. JA.3651, 2711; *see also* JA.568, 597.

Rev. Moon embraced these festivals and Dr. Moon's role in leading peace-building efforts. JA.2007-12. In 2007, to express his enthusiastic support, Rev. Moon publicly signed a commemorative GPF poster, addressing it to "King Hyun Jin." JA.3657, 2806-08. In 2008, he told his followers that the "scope [and] scale" of the festivals would expand following the tremendous success of a GPF in Paraguay. JA.3701, 524. In 2009, Rev. Moon reaffirmed that Dr. Moon was to be a "central figure[] for UPF." JA.1393; *see also* JA.1395-96 (stating that Dr. Moon "has to be in charge of the Abel UN!!," Rev. Moon's theological moniker for the UPF interreligious peace-building council).

Starting in late 2009, after the schism erupted, these peace festivals were continued with UCI's support under the auspices of a different entity, Global Peace Foundation (GPF). Sean Moon had at that time proclaimed he was in charge of UPF and took steps to turn it into a sectarian organization to convert people to "Unificationism" rather than welcome all religions. JA.568, 1220-21, 3694 (Sean instructing to carry out UPF activities "under the name Unificationism"). Sean's sectarian approach was contrary to Rev. Moon's theological teachings, and shocked the Directors and UPF's Ambassadors for Peace, who came from many different faith backgrounds. JA.568, 992, 3848. As directed by Rev. Moon and implemented by Dr. Moon, UPF was *ecumenical*, and had repeatedly told members, partners, and even governments that it would not proselytize. *See, e.g.*, JA.3630 ("[W]e are not evangelical, we are non-sectarian, we are interreligious, we do not proselytize, [our] programs do not involve theological doctrine"), 515-16. To please the clerics, however, Sean was undoing all of that.

Rather than engage in a public fight within the True Family over the leadership of UPF, Dr. Moon and the Directors opted to continue to further UPF's "original vision" and "the roadmap to peace articulated by" Rev. Moon using GPF. JA.593, 1439, 1444, 1447, 2008-10, 2053-54, 1220-21. GPF's programs were identical to, and a continuation of, UPF's earlier programs. *Compare* JA.3635-36 (UPF educational and service projects) *with* JA.3613-14, 1018-85 (GPF educational and service projects); *see also* JA.2721-24, 2006-10. Likewise, GPF's and UPF's purposes were the same: to promote world peace beyond any one religion. JA.1865 (UPF: "one global family under God," "all religions are welcome"), 1010 (GPF: "peace by focusing on the family, interfaith and service" and "vision that all are one family under God").³

Neither UPF's nor GPF's corporate documents refer to the Unification Church. JA.1863-86, 1854-61, 1009-11. Yet GPF promotes Unification theology, just like UPF historically had. GPF has facilitated resolution of Christian-Muslim conflicts in Nigeria; brought solar lighting to villages in the Philippines; mobilized resources to help

³ In his November 4, 2009 letter to the UPF community announcing this decision, Dr. Moon said the GPF peace festivals would have "no formal or legal association with FFWPU," to show that there would be no change from UPF's prior ecumenical work. JA.1220-21. The trial court misinterpreted Dr. Moon's letter as repudiating the Unification religion because, at one point, he referred to "FFWPU, the Unification Church." JA.279. That infers exactly the *opposite* of Dr. Moon's intent. At that time, Sean had changed Family Federation's name to "the Unification Church," a change Hak Ja Han later reversed because it was inconsistent with Unification theology. JA.1463-66. That is why Dr. Moon used that phrasing. As he made clear in his letter, he built GPF to follow in Rev. Moon's footsteps, advancing the true, supra-religious purposes of the original "Unification Church" referenced in UCI's 1980 articles. JA.1220-21.

earthquake victims in Nepal; led national restoration efforts in Asia, Latin America, and Africa; and organized the largest civic movement in history to advance Korean reunification. JA.3705-40, 2705-06, 2710, 1006, 1018-85. Each of these activities is consistent with UCI's purposes. JA.1006-07, 593, 1439, 1444, 1447, 2053-54, 3819.

2. The Directors modernize and professionalize UCI.

In late 2009, UCI began working with attorney Deborah Ashford, a non-profit law expert at Hogan & Hartson, to update its corporate documents. JA.3235-36, 1841, 1428, 1892. This was part of Dr. Moon's effort to professionalize the corporation and turn around its money-losing operations. (*See* UCI Br. at 12-13.)⁴

In March 2010, Ashford proposed streamlining UCI's articles of incorporation. JA.4016, 1428. Her proposal condensed UCI's purposes while highlighting its original goals: promoting "unification of world Christianity and all other religions," advancing the "theology and principles of the Unification Church," and furthering "interfaith understanding among all races, colors and creeds throughout the world." JA.4016. She also asked whether the organization's name "should be changed formally to UCI," as the corporation was commonly known, as part of the amendments. *Id.* Ashford copied UCI's General Counsel Dan Gray and litigation counsel at Zuckerman Spaeder on her email to the Board. *Id.* None of these attorneys ever advised against the amendments.

⁴ Ashford had been recommended by UCI's litigation counsel, Zuckerman Spaeder, who were retained following threats from Plaintiffs. The litigation work was supervised by UCI's CFO, Jinhyo Kwak, not Dr. Moon or the Directors. JA.2920-21.

Three weeks later, in April 2010, the Board convened to consider the final draft amendments. The only new change was that one reference to “the Unification Church” became “the Unification Movement.” *Compare* JA.4018 *with* JA.983. The Directors approved the amendments, which they understood to be insubstantial stylistic edits that accurately reflected the corporation’s historical purposes and practices as well as the evolution of the Unification religion over the thirty years since the last set of amendments in 1980. JA.985, 2541-42, 2624-25, 2788, 2791-92.

For instance, while the 1980 articles directed UCI to further the Divine Principle (JA.1419), the 2010 articles committed UCI to the “theology and principles of the Unification Movement,” which included the Divine Principle *and* other texts Rev. Moon had published after that (JA.595, 983, 676, 703-04, 730). Nor was changing the corporation’s name significant, because the non-profit was never a church and “had always been called ... UCI.” JA.4083, 1830, 573-74, 1814, 1890, 998, 1899, 1000.

The Directors also believed “Unification Church” and “Unification Movement” were interchangeable terms. Plaintiffs agreed. JA.1755 (Hak Ja Han), 3889 (Sean), 514 (UPF), 495-96 (Plaintiffs’ expert). “Movement” simply more accurately described the breadth and supra-denominational nature of the religion, especially after the “end of the church era.” Tellingly, *both versions* of the articles “recognize[d] and acknowledge[d] that the Reverend Sun Myung Moon has provided the inspiration and spiritual leadership for the founding of the Corporation and is the spiritual leader of the international Unification Church movement.” JA.825, 4020.

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

The last UCI Board decision at issue concerns the development of land located on Yeouido Island in Seoul, Korea. The Unification Movement acquired the land in the 1970s. For 30 years, movement leaders tried to develop it, but failed to obtain building permits or financing because of prejudice from the local community.⁵ JA.2070, 1840, 2727-30, 1831-33, 1823, 1134. By the late 1990s, the land—in the middle of a busy financial district—still lay empty. JA.3266. It was almost seized by creditors after distressed movement businesses used it as collateral. JA.2070-71, 2456, 2731, 1537.

In 2005, Paul Rogers, a movement member and former head of Lehman Brothers Asia, began working with Rev. Moon and his closest lieutenant, Rev. Chung Hwan Kwak, in a renewed attempt to develop the land into a world-class, multi-billion dollar office and retail complex. JA.2070-71, 2732-37, 2740-41. In 2006, Rev. Moon asked Dr. Moon to work with Rogers and oversee the project, after receiving reports that Dr. Moon's younger brother Kook Jin (Justin) Moon was trying to seize control of it. JA.2067, 2744-45. Dr. Moon agreed to do so. JA.2067, 3754, 2911-14. At that time, the development rights were temporarily held in trust by a single individual. JA.2074, 2916. At Dr. Moon's request, the individual donated the property interest to UCI to safeguard it until a permanent holding structure was determined. JA.2068, 2914-19.

⁵ The Directors all experienced prejudice as members of the Unification Movement, a minority religion. JA.2460-61, 2799-800, 2630; *see also* JA.3862.

Starting in 2006, UCI executives tasked by Dr. Moon worked with lawyers, accountants, and asset managers to understand and maximize the assets. JA.1838-39, 1844, 1134, 3425-32. First, the Yeouido property interest was consolidated with other Korean assets, including the Central City real estate project in Seoul. JA.1894, 2074-75. That provided sufficient collateral for Rogers to secure short-term financing to begin construction in 2007. JA.3113-15, 3483. In 2008, Rev. Moon visited the site with Dr. Moon, JinMan Kwak, Youngjun Kim, and others; he was “extremely happy and proud” of the initial progress. JA.2795-95.01, 2796-97; *see also* JA.2629, 2069.

Meanwhile, the team considered options for a long-term ownership structure. By 2008, the experts had determined that a Swiss foundation would likely be best, primarily due to favorable tax laws. JA.1893, 1895, 1852-53. But they continued to study the various alternatives. JA.1849.

In May and June 2010, the advisors unanimously recommended that the UCI Board use a Swiss foundation. JA.1134, 3585. Mark Weinstein, an international tax expert from Hogan & Hartson, said doing so would yield tax savings of over \$200 million. JA.3527-28, 3422-24. Rogers, Perea, and a Korean law firm all advised that use of a Swiss foundation would be critical to obtain project financing, by serving as a neutral intermediary to circumvent anti-Unification prejudice from lenders. JA.1134-35, 2070. Rogers also said permanent financing was “urgently needed” because the interim loan was soon repayable in full, and unless repaid, the collateral (the Yeouido rights and Central City assets) would be seized. *See* JA.1135, 3111-15, 2454-55, 2502-03.

None of the advisors ever provided the Board with any reason not to approve the transaction. After analyzing nearly 300 pages of briefing material, and convening two board meetings over six weeks to ask questions and discuss the risks and benefits, the Directors agreed with the professional advisors and approved the donation of the assets to a Swiss foundation named Kingdom Investments Foundation (KIF), which was newly formed for this purpose. *See* JA.3278, 3523, 1135, 3531, 3571, 3583.

The Directors were confident that the transaction would further UCI's purpose of supporting "the theology and principles of the Unification Movement" because the donation agreement contractually obligated KIF to do just that with the proceeds of the project. JA.1099. KIF's Deed also established the foundation's primary purpose to promote "harmony of all humankind" and "interfaith understanding among all races, colors and creeds." JA.3551. As even Hak Ja Han admits, that is the purpose of the Unification Church. JA.1497-98 ("Q. What does it mean to you for an organization to support the Unification Church? [A]. It is the work in the process to realize a unified world and one unified family of humanity."). The Directors were also reassured that KIF would be run by two long-time movement members, including Perea, who (after resigning from UCI's Board) advised that KIF would support the same types of non-profit activities as UCI. JA.3581-82; *see also* JA.3529-30.

The Directors were motivated to achieve Rev. Moon's "life long dream" to develop the land. JA.3526, 3529. They believed this intra-movement transfer of assets was the best way to do so, and would maximize benefits for the movement as a whole. JA.2631-

33, 2455-56, 2481. Such intra-movement transfers—such as from UCJ to UCI—were standard practice between Unification organizations. *E.g.*, JA.1209, 1211, 1214, 1216.

The Directors were *right*. The KIF transaction has been a tremendous success for the Unification Movement. Permanent financing was secured for the Yeouido project, and construction of the towers is now complete. JA.3782 (2019 picture), 1845-46. In the years following the donation, KIF funded Unification projects, including social service, education, and health programs in an impoverished region of Paraguay. JA.3592-93, 3130-33. In recent years, KIF has resisted identifying its beneficiaries to avoid disclosure to Plaintiffs here, whom the KIF directors view as heretics. JA.1534. Nevertheless, KIF has been led by movement members and there is no indication that its funds have been used to support anything other than movement organizations and the advancement of Rev. Moon’s vision. *See* JA.3125-29, 366.

F. The Schism Deepens After Rev. Moon’s Passing in 2012.

As explained, the theological roots of the schism within the Unification Movement date back decades, to Rev. Moon’s “end of the church era” announcement, Dr. Moon’s commitment to following that path by creating a “true inter-faith movement” (JA.1336), and the resistance toward that shift by self-interested clerics, aided and abetted by Sean and Hak Ja Han. JA.1230, 1238, 1243. The skirmishing over UPF—whether it should be a sectarian organization (per Sean) or a pan-religious vehicle for peace-building (per Dr. Moon)—exemplified the larger theological debate within True Family over the Movement’s future, and foreshadowed the divisions that followed.

When Rev. Moon passed away in September 2012, the rupture became complete. As mentioned above, Hak Ja Han anointed herself as spiritual leader and stripped Sean of all leadership roles. JA.2416. To be clear, Hak Ja Han does not hold any formal position with FFWPUI or any other organization; she claims her spiritual authority entitles her to “ownership” of all movement entities. JA.1454-55, 1494. Exercising that supposed spiritual authority, Hak Ja Han has changed core Unification tenets to create a new religion altogether. JA.1798, 1244-45. Rev. Moon was no longer the messiah and True Family no longer the center of the faith; instead she is a “deity,” the “only begotten daughter of God,” with more spiritual authority than even Rev. Moon, who *never* claimed to be divine. JA.3046-49, 536-37, 3798, 3806, 3906. Yielding to the corrupt clerical class and their vision of a hierarchical church, she created a “supreme council” of clerics—unheard of in Rev. Moon’s lifetime—to select a successor after her own passing. JA.1493. Hak Ja Han even changed the name of the religion. She and her followers, including Plaintiffs, are no longer the Unification Church or even Family Federation. They are instead the “Heavenly Parent Church.” JA.4137.

For his part, Sean Moon still claims to be Rev. Moon’s successor, and has created what he calls “Sanctuary Church” to carry out that role. JA.531, 533, 544, 550. Sean sued Hak Ja Han, FFWPUI, and others in federal court, alleging that they had breached fiduciary duties by deposing him, but the courts promptly dismissed those claims on First Amendment grounds because they implicated religious succession. *Moon v. Moon*, 431 F. Supp. 3d 394 (S.D.N.Y. 2019), *aff’d*, 833 F. App’x 876 (2d Cir. 2020).

Meanwhile, Dr. Moon remains the “Fourth Adam” designated by his father to fulfill the providential mission of the Unification Church. He and the Directors rejected first Sean and then Hak Ja Han’s heresies, and to this day are fervently committed to the Unification religion and its theology. Indeed, they are the only representatives of “the Unification Church” identified in UCI’s 1980 articles, while Plaintiffs have created a new, different, and heretical religion that Rev. Moon would not recognize and that Dr. Moon and the Directors reject as illegitimate. *See* JA.1798, 1786, 993-94, 561-63, 2059-62. This case is about whether the courts can second-guess that religious judgment.

SUMMARY OF ARGUMENT

The claims at issue in this appeal ask whether the Directors’ actions fell within the scope of the purposes set forth in UCI’s 1980 charter. But those sweeping purposes are ambiguous, because they are laced with theological terms (like “Divine Principle”) and religious constructs (like “the Unification Church,” which is a *religion*, not a legally cognizable entity). Understanding those terms requires extrinsic evidence, and that evidence—from discovery and the remedies hearing—exposed that the parties do not agree on what those terms mean, particularly after Rev. Moon’s decline and death. The Unification Church, its polity, and its theology were not controverted in 1980, but now—with Rev. Moon’s widow, elder son, and younger son all claiming to inherit his spiritual authority—construing and applying the articles presents an ecclesiastical mess. By forging ahead even after these theological and governance debates were laid bare as the heart of Plaintiffs’ claims, the Superior Court doubly erred.

I. Most fundamentally, the court violated the First Amendment. Courts cannot identify adherence to, or departure from, tenets of faith. Nor can they resolve religious succession debates. Recognizing as much, the federal courts swiftly dismissed Sean’s parallel fiduciary suit seeking imprimatur for *his* succession claims. Plaintiffs here—defendants there—successfully invoked the First Amendment to extricate themselves from that suit. Yet in this case, Plaintiffs disingenuously convinced the Superior Court to adopt their narrative that *they* are the true, modern embodiment of “the Unification Church” of 1980 while *the directors* are the apostates—rather than vice versa.

In an effort to circumvent the constitutional obstacles, the Superior Court equated Plaintiff FFWPUI with “the Unification Church” referenced in UCI’s articles, such that it could simply defer to Plaintiffs’ theological positions. But FFWPUI did not even *exist* when those articles were drafted, and no neutral principle confers spiritual authority over this religion on that unincorporated association or its current spiritual leader, Hak Ja Han. The Directors maintain that Dr. Moon, as the “Fourth Adam,” is the successor to his father, and that adherence to “the Unification Church” identified in UCI’s articles therefore requires following *him*. This is not a debate that any court can adjudicate. UCI’s articles could have vested power in a legal entity, as the Supreme Court advised religious organizations to do, but instead bound the corporation to a *religion*. And it is well-established that where, as here, the locus of spiritual authority within a religion is ambiguous, courts are barred from attempting to identify it. So the court’s “solution” merely substituted one non-justiciable religious issue with another.

How did the court below veer so badly off-track? It appears to have misunderstood this Court’s decisions in the two earlier appeals. In reversing dismissal on the pleadings, this Court called ecclesiastical abstention “premature” before discovery; the court also sustained a preliminary injunction to preserve the status quo while the litigation played out. But in both cases, this Court reiterated that the lower court could not adjudicate any disputes over church theology or governance, and instructed it to revisit the First Amendment issues on a full record. In time, all discovery showed was that Plaintiffs have nothing beyond the articles’ ambiguous text, and that religious disagreements over the meaning of that text are profound. By nonetheless plunging ahead to adjudicate those disputes as if the corporate documents neutrally answered them, the lower court did exactly the *opposite* of what this Court instructed.

II. Even beyond its flagrant constitutional error, the Superior Court plainly erred by resolving these claims *at summary judgment*. When a written instrument is ambiguous on its face, summary judgment is rarely appropriate. This case is no exception, as the Directors provided hundreds of exhibits to support their view of what UCI’s articles mean and how their actions complied with them. Yet the lower court ignored those disputed facts, instead adopting Plaintiffs’ narrative on everything from the identity of “the Unification Church” to the Directors’ motives—in some cases citing nothing but threshold judicial rulings that had *assumed* certain allegations to be true. If this case is justiciable at all, the decision below must therefore still be reversed and the case remanded for a jury trial.

ARGUMENT

I. IN GRANTING SUMMARY JUDGMENT TO PLAINTIFFS, THE SUPERIOR COURT IMPERMISSIBLY RESOLVED RELIGIOUS DISPUTES.

Just last year, the Supreme Court warned that “[j]udicial review of the way in which religious [entities] discharge [their] responsibilities ... undermine[s their] independence ... in a way that the First Amendment does not tolerate.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). Yet that is exactly what the lower court did here—review how the Directors discharged their responsibilities to advance UCI’s *religious* mission. And, in holding that the Directors failed to satisfy those responsibilities, the court plunged into the very disputes of theology and polity that have splintered Rev. Moon’s Unification Movement, with no neutral principle to guide the way. That plainly violated the First Amendment. Reviewing *de novo*, *Bible Way Church v. Beards*, 680 A.2d 419, 427 (D.C. 1996), this Court must reverse. (The Directors adopt UCI’s arguments too, and in particular how the remedial order compounded the constitutional error.)

A. The First Amendment Forbids Courts from Adjudicating Disputes Over Church Doctrine or Leadership.

The First Amendment “severely circumscribe[s] the role that civil courts may play in the resolution of disputes involving religious organizations.” *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. 2005). Involving courts in these disputes “can advance religion or otherwise impermissibly entangle the civil courts in ecclesiastical matters,” *id.*, “plainly jeopardiz[ing]” constitutional “values,” *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969).

In practical terms, this means some cases cannot be adjudicated on the merits. For one, courts cannot resolve claims that turn on disputes over “religious doctrine.” *Mesbel*, 869 A.2d at 353. In *Hull Memorial*, for example, state law provided that, in the event of a schism between a local church and a parent church, the local church could keep its property if the parent church had “substantial[ly] depart[ed] from the tenets of faith and practice existing at the time of the local churches’ affiliation.” 393 U.S. at 450. The Supreme Court rejected that test, because courts cannot interpret “church doctrines,” much less “assess[] the relative significance to the religion of the tenets from which the departure was found,” without straying into constitutionally forbidden territory. *Id.*

Beyond theological debates, “the First Amendment does not permit a civil court to determine [a] religious leader,” *Samuel v. Laken*, 116 A.3d 1252, 1261 (D.C. 2015), or to settle disputes over “church polity” or “administration,” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976). “[Q]uestions of ... church hierarchy are at the core of ecclesiastical concern,” *id.* at 717, and religious entities must have “autonomy with respect to internal management decisions” bearing on their “mission,” *Our Lady*, 140 S. Ct. at 2060; *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012) (courts cannot “interfere[] with the internal governance of the church”). So, if “the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry.” *Samuel*, 116 A.3d at 1258; *Jones v. Wolf*, 443 U.S. 595, 605 (1979) (if “locus of control” is “ambiguous,” locating it would involve “impermissible inquiry into church polity”).

In *Samuel*, for example, a congregation’s archbishop and its administrators disagreed about certain property. 116 A.3d 1252. The archbishop relied on a favorable decision of a religious governing body, the Holy Synod. *Id.* at 1255-56. While the congregation’s governing documents “acknowledge[d] the Holy Synod’s responsibility for ‘spiritual and religious affairs,’” the parties “disagree[d]” over what that authority entailed. *Id.* at 1258. “Answering that question,” this Court reasoned, would “require a *searching and therefore impermissible* inquiry into church polity.” *Id.* at 1258-59 (emphasis added). So the court affirmed summary judgment for defendants, because “the First Amendment does not permit a civil court to determine the religious leader of a religious institution.” *Id.* at 1261; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 119 (1952) (courts cannot “displace[] one church administrator with another”).

None of this means courts may *never* resolve disputes involving religious entities. Rather, the corollary principle is that courts can entertain suits that can be resolved by applying “neutral principles of law.” *Jones*, 443 U.S. at 604. To identify those suits, a court “look[s] not at the label placed on the action but at the actual issues the court has been asked to decide.” *Mesbel*, 869 A.2d at 356; *see also Samuel*, 116 A.3d at 1259. If the case “does not involve any inquiry into the internal affairs, hierarchy, or autonomy of a religious organization,” *Steiner v. Am. Friends of Lubavitch (Chabad)*, 177 A.3d 1246, 1253 (D.C. 2018), a court may adjudicate it. But if a claim ultimately “turn[s] on matters of doctrinal interpretation or church governance,” the court cannot hear it. *Second Episcopal Dist. African Methodist Episcopal Church v. Priolean*, 49 A.3d 812, 818 (D.C. 2012).

If religious bodies want to facilitate civil adjudication of disputes, they thus need only adopt neutral principles courts can apply without entanglement in church doctrine or governance. For example, the synagogue in *Mesbel*, “[t]hrough its corporate bylaws, ... adopted [an] alternative dispute resolution mechanism” that could be applied “without ecclesiastical judgment.” 869 A.2d at 356. In *Steiner*, the parties drafted a non-compete clause using “terms that [did not] require religious interpretation.” 177 A.3d at 1254. Other churches have followed the Supreme Court’s advice to use “reversionary clauses and trust provisions” to “specify ... what religious body will determine the ownership in the event of a schism.” *Jones*, 443 U.S. at 603-04. It is only when the entity’s charter “incorporates religious concepts” that “religious controversy” arises. *Id.* at 604.

The U.S. Court of Appeals for the Second Circuit recently applied these rules to the same schism at issue here. Dr. Moon’s younger brother Sean sued Hak Ja Han, FFWPUI, and others, alleging that they breached fiduciary duties by usurping the power Rev. Moon allegedly conferred on him as successor spiritual leader of the Unification Church. Ironically, FFWPUI (which originally pledged fealty to Sean in its complaint in this case) invoked the First Amendment; the court agreed and dismissed the action. *Moon*, 431 F. Supp. 3d at 394. Resolving Sean’s claims “would require a ruling in favor of the views of one faction of a religious organization,” the court noted, but “the First Amendment serves to prevent exactly this sort of picking of winners in ecclesiastical matters.” *Id.* at 414. The Second Circuit summarily affirmed the dismissal just two weeks after oral argument. *Moon*, 833 F. App’x at 878.

B. Plaintiffs' Claims Ultimately Turn on Disputes About the Theology and Leadership of "the Unification Church" Religion.

Here, the lower court held that the Directors breached their duties by (i) amending UCI's articles to "fundamentally alter" its mission to support the Unification Church; and (ii) making donations that did not advance that mission. But to determine whether the Directors indeed deviated from the Church—or whether it is instead *Plaintiffs* who departed—a court would have to identify either the "true" theology or "true" spiritual leader of "the Unification Church" named in UCI's 1980 articles. Both questions are constitutionally foreclosed. The articles offer no answers; they were written pre-schism using ambiguous theological terms that bound the corporation to a *religion*. Far from exposing any neutral principle, discovery (and the remedies trial) confirmed that these disputes are at the heart of the schism that ruptured the Church into factions, each claiming to be the faithful modern incarnation of the "international Unification Church movement" (JA.825) that UCI's articles committed to support 40 years ago.

In short, Plaintiffs assert that the Directors abandoned the Unification Church religion; the Directors maintain the opposite. This is a classic "religious controversy." *Jones*, 443 U.S. at 604. A court cannot decide which faction "depart[ed] from the tenets of the faith." *Hull Memorial*, 393 U.S. at 450. Nor can it "determine the religious leader of a religious institution." *Samuel*, 116 A.3d at 1261. The Directors' legal duty under UCI's articles is to operate the corporation to serve its spiritual goals, and courts cannot second-guess their religious judgments about how best to do so.

1. Amendments. Plaintiffs argued, and the court below agreed, that the Directors “fundamentally alter[ed]” UCI’s purposes by revising its articles of incorporation to “eliminate all references to the Unification Church and the Divine Principle.” JA.271, 273, 276. The revised articles replaced that language with, *inter alia*, a promise to support the “theology and principles of the Unification Movement.” JA.1418-20, 982-83.

The problem with this claim should be obvious: To compare one set of undefined religious terms to another and to measure the degree of difference between them are *theological* inquiries. First, a court would have to *construe* these terms, which requires “interpretation” of “religious concepts.” *Jones*, 443 U.S. at 604. Is there a difference between “the Unification Church” and “the Unification Movement”? What comprises the “theology and principles” of the latter? Do they include the Divine Principle? Only the Divine Principle? Those are questions of religious doctrine. Second, the court would have to *assess the magnitude* of any changes: are they minor or “substantial”? That requires an analysis remarkably akin to the one forbidden by *Hull Memorial*: whether an institution has “*substantial[ly]* depart[ed]” from its “tenets of faith and practice.” 393 U.S. at 450 (emphasis added). No secular court can undertake that assessment.

As discovery showed, these are not *theoretical* controversies. The Directors testified that the “Unification Church” and “Unification Movement” are interchangeable labels, both referring to the same charismatic providential movement, with the latter simply more faithful to Rev. Moon’s “end of the church era” pronouncement. JA.1811, 1817, 991, 578-80. Accordingly, “the theology and principles of the Unification Movement”

are “equivalent” to “the theology of the Unification Church”; they embrace the Divine Principle along with other texts Rev. Moon added to the Unification canon after 1980. JA.1818-19, 1999-2004, 2049-52. In short, the amended articles “incorporated all the purposes” in the prior version, but also reflected “change[s] in [the] movement” since 1980. JA.1812-13, 1815-17.⁶ If the Directors are correct on those theological points, there was no “fundamental change” to UCI’s original mission.

In rejecting those positions, the court thus took sides on issues of religious doctrine. It held that the amended articles “do not reference the Divine Principle, the Eight Great Textbooks [sic], or any other spiritual text.” JA.275. But that implicitly—and impermissibly—construed the “theology ... of the Unification Movement” to exclude those works. Likewise, in reasoning that “the Unification Church” is “denominational” but “Unification Movement” is not, the court defined admittedly “doctrinal” references and reached disputed characterizations of the nature of the Unification faith. JA.274. In effect, the court purported to resolve the longstanding *theological* debate over what Rev. Moon intended by “the end of the church era,” favoring the institutional-church faction over the decentralized-movement faction. *See* JA.1226-27; *see also* JA.231.

⁶ The Directors elaborated at the remedies trial. Far from seeking to abandon Rev. Moon’s religion, they viewed the amendments as “chang[ing] the words” but not UCI’s “purpose.” JA.2540, 2888, 2624-25, 2788, 2791-92. They used the phrase “Unification Movement” (JA.2385-86, 2541, 2786-87, 2881-82, 2620-22) to reflect Rev. Moon’s ending of the church era. JA.2621, 2673-75, 2882-84, 2780-81, 2786-87, 3066-67, 3088-90, 2362-63. And they believed that the “theology and principles of the Unification Movement” captured all of Rev. Moon’s teachings, *including* the Divine Principle. JA.2881-82, 2884-86, 3009-09.1, 2784, 3086-88, 2616-17.

Simply put, a court cannot resolve disputes over whether revisions to the “religious concepts” in UCI’s charter changed its purposes, *Jones*, 443 U.S. at 604, much less whether the revisions changed them “substantially,” *Hull Memorial*. 393 U.S. at 450, when both inquiries turn on disputed theological claims.

2. Donations. Plaintiffs further argued, and the court agreed, that the Directors’ donations to GPF and KIF “fell outside the purview” of the 1980 articles. JA.271, 276.

Again, the constitutional obstacle is obvious. UCI’s original articles authorized it to, *inter alia*, undertake a “practical application of the Divine Principle” and “further the theology of the Unification Church.” JA.1418. It is difficult to imagine any dispute more directly over “religious doctrine,” *Mesbel*, 869 A.2d at 353, than whether a certain project advances those theological ends. These claims necessarily hinge on whether the challenged donations are consistent with Unification Church “tenets of faith” or instead “depart[]” from them. *Hull Memorial*, 393 U.S. at 450.

And, again, the dispute is real. At summary judgment, the Directors explained that GPF supported the Divine Principle and theology of the Unification Church because its peace-building work fulfilled Rev. Moon’s providential vision, as UPF had previously done. JA.2053-54, 1573-76, 1090 (“GPF faithfully carries out the vision and teachings of Reverend Moon.”). GPF is not sectarian, but neither was UPF before Sean perverted it; these organizations furthered Unification Church theology by seeking reconciliation across religious lines. *Supra* at 6-8, 11. The Directors also explained how UCI fulfilled its religious mission through the intra-movement donation of assets to KIF to facilitate

a project of spiritual significance to Rev. Moon, with the proceeds restricted for use to promote Unification Church goals, *e.g.*, the “interdenominational, interreligious, and international unification of world Christianity.” JA.2014-15, 1779, 2055-56, 1603-04.⁷

Neutral principles offer no way to decide whether GPF and KIF advance “practical application of the Divine Principle,” particularly when even Plaintiffs agree there are “millions” of ways to do so. JA.885-86. And courts cannot reject the Directors’ beliefs on that theological question without wading into “religious doctrine.” *Mesheh*, 869 A.2d at 353; *cf. Our Lady*, 140 S. Ct. at 2069 (rejecting standard that would “require courts to delve into the sensitive question of what it means to be a ‘practicing’ member of a faith”); *Hines v. Turley*, 615 N.E.2d 1251, 1260 (Ill. Ct. App. 1993) (First Amendment barred inquiry into whether religious non-profit could “carry out its purposes”).

3. Polity & Leadership. Plaintiffs argued that the court could bypass these glaring constitutional problems by declaring that FFWPUI is “the authoritative religious entity” in the Unification Church, whose “edicts ... must be followed.” JA.119. If FFWPUI leads the Unification Church and the Directors refuse to follow FFWPUI, it follows that they abandoned the Church. *See* JA.1422-23, 796-97. Instead of impermissibly resolving theological disputes, the court could simply defer to Plaintiffs on the answers.

⁷ At the remedies trial, the Directors expanded on those beliefs, describing GPF projects that furthered the Divine Principle (JA.2429-31, 2893-94), and how the KIF donation satisfied a longtime objective of Rev. Moon (JA.2904-05, 2793-94, 2846-47, 2455). Each Director believed that GPF and KIF are part of the Unification Church movement, and that the donations were consistent with UCI’s articles and Rev. Moon’s theology. JA.2903-04, 2939, 2945, 2455-56, 2576-79, 3134-35, 2637-39, 2803-04.

The Superior Court apparently agreed. Quoting the preliminary injunction orders (which had in turn quoted Plaintiffs' complaint), the court ruled that FFWPUI is the "authoritative religious entity at the head of the Unification Church" and just "another name for the Unification Church." JA.265; *see also* JA.242. That became the lynchpin of its analysis. In finding no First Amendment barrier to adjudication of Plaintiffs' claims, the court emphasized it need only find that the Directors were disloyal to "*the* Unification Church" (meaning FFWPUI)—no independent determinations of whether the Directors' actions were "spiritually unsound" would be required. JA.263.

The court pursued that approach in adjudicating Plaintiffs' claims. Instead of inquiring whether GPF and KIF advance the theology of the Unification Church, the court deemed the donations unauthorized because GPF and KIF were "separate from" and "unaffiliated with" the Unification Church (*i.e.*, FFWPUI). JA.278-79. In finding a "substantial change" to UCI's purposes, the court again thought it need not review the Directors' "commitment to Unification Church theology" because they severed ties to "the Unification Church" (*i.e.*, FFWPUI). JA.275-76. And the court piled weight on Dr. Moon's statements distancing himself from FFWPUI. JA.257-58, 275-76.

This theory trades non-justiciable *theological* questions for equally non-justiciable *polity* questions: Who leads the "Unification Church" in the wake of the schism? Did Rev. Moon create a hierarchical denomination, as some clerics insist, or a decentralized movement, as his Adamic successor preaches? The Superior Court violated the First Amendment by answering those questions.

Taking one step back, the ultimate question is what UCI's articles meant when they referred in 1980 to "the Unification Church." The phrase is ambiguous; it cannot be interpreted without evidence beyond the four corners of the document. That evidence showed that the articles referred to a *religion*. Plaintiffs admitted "the Unification Church" was not "the official name of any entity," but rather "the religious movement" Rev. Moon founded, the "faith community" following him, and the "constellation" of entities inspired by his "messianic ministry." JA.1730, 1746, 514, 594, 1765. Indeed, Plaintiffs' complaint defined "the Unification Church" as "a *religion* founded by [Rev. Moon]." JA.116 (emphasis added), 551 ("[T]he Unification Church" is a religion "in the same way that Buddhism, Confucianism and Islam are religions."). Of note, Sean's post-schism (and later-reversed) name change of FFWPUI to "the Unification Church" creates semantic confusion in the record but does not clarify UCI's 1980 articles.

The critical question is therefore who (or what) leads the religion today. That is a quintessential matter of "church polity." *Milivojevich*, 426 U.S. at 710. And it is *disputed*. When UCI's articles were adopted, everyone accepted Rev. Moon as spiritual leader of "the Unification Church," even though he held no formal institutional role. FFWPUI did not even *exist* yet. JA.4093. But his decline and death led to division and schism. Now each faction believes itself to be the true Church. Courts cannot say who is right. *Metro. Philip v. Steiger*, 98 Cal. Rptr. 2d 605, 609-10 (Cal. Ct. App. 2000) (abstaining from deciding "which faction represents the 'true' church"); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 368 (Haw. 1994) ("secular law cannot determine ... schism").

Specifically, Plaintiffs depict the Church as a hierarchical denomination, directed by FFWPUI (now “Heavenly Parent Church”) and answering to Hak Ja Han, who calls herself the “only begotten daughter” and “mother of the universe,” above Rev. Moon. JA.1452-55, 1458, 1494, 1507, 2063. The Directors reject all that. They view FFWPUI as having “left [the] Unification movement” (JA.990) and Hak Ja Han as aligned with “corrupt clerics” in perverting Rev. Moon’s teachings (JA.1798, 1781, 1786, 1790). They instead understand “the Unification Church” to be the “pan religious movement” (JA.1787) Rev. Moon founded; that embraces all “individuals and organizations that follow[] his teachings” (JA.582); that eschews the trappings and structure of hierarchical churches (JA.2057-60); and that Dr. Moon leads by virtue of having “ownership over God’s providence” (JA.1781, 1786, 1784, 1787, 1790, 1798, 2057-58, 4094). Notably, not even the trial court doubted the Directors’ *sincerity* on those points. JA.323-24.

This religious leadership dispute is obviously not justiciable. A court cannot rule that FFWPUI directs “the Unification Church” identified in UCI’s articles, because that is itself a religious question. The locus of spiritual power in “the Unification Church” is “a matter of substantial controversy”—at the heart of the schism, tracing back to a decades-long theological debate—so “courts are not to make” the “searching and therefore *impermissible inquiry* into church polity” to resolve that controversy. *Samuel*, 116 A.3d at 1258. As the federal courts agreed (at FFWPUI’s own urging), Plaintiffs’ theory “presupposes that the identity of the church’s authoritative decision-making body is undisputed,” but it is not. *Moon*, 431 F. Supp. 3d at 407. It violates the First

Amendment for a court to declare that FFWPUI and Hak Ja Han, rather than UCI and Dr. Moon, embody “the Unification Church” today. *Id.* at 406 (“intrachurch succession disputes” are “nonjusticiable”); *Cong. Beth Yitzhok v. Briskeman*, 566 F. Supp. 555, 558 (E.D.N.Y. 1983) (abstaining where claims implicated “proper succession” to deceased rabbi); *Puri v. Khalsa*, 321 F. Supp. 3d 1233, 1250-51 (D. Or. 2018) (similar).

Put another way, the Superior Court concluded that, at some point after 1980, the unincorporated association calling itself FFWPUI or Heavenly Parent Church assumed the role of “*the* Unification Church” referenced in UCI’s articles (a religious issue), and that Hak Ja Han’s spiritual authority exceeds Dr. Moon’s (another religious issue). No neutral principles say so. The articles are ambiguous; succession is disputed; and there is no legally cognizable organizational hierarchy that can be consulted. This is a religious quagmire that courts cannot enter, thus leaving for UCI’s Board the religious questions inevitably implicated by applying UCI’s articles to a post-schism world.

To close this discussion with a hypothetical, consider an 11th century corporation devoted to supporting “the Christian church” that, after the Great Schism, amends its articles to embrace “the Roman Catholic Church” and then supports Catholic institutions rather than Eastern Orthodox ones. *Milivojevich*, 426 U.S. at 699 (describing the Great Schism). A court applying the First Amendment would never countenance a fiduciary-duty suit by the Patriarch of Constantinople based on the premise that Eastern Orthodoxy (not Roman Catholicism) represents the true “Christian church.” Yet that is, *mutatis mutandis*, exactly the reasoning that the Superior Court adopted here.

C. The Superior Court Misunderstood This Court’s Earlier Decisions.

Because Plaintiffs have never been able to identify any neutral principle that could allow adjudication of their claims, they have instead argued that this Court already *rejected* the First Amendment defense in its two earlier decisions (one reversing judgment on the pleadings, and the other affirming a preliminary injunction). The Superior Court seems to have bought into that. In refusing to abstain, that court reasoned that because the “same language” of UCI’s articles remained at issue, this Court’s determination that the Constitution did not “bar the case from proceeding” implied that the articles could be construed without “resorting to religious interpretation.” JA.263. Likewise, the court repeatedly relied on statements made in the affirmed preliminary injunction order. *See* JA.265 (quoting that order for “determin[ation]” that FFWPUI is “at the head of the Unification Church”), 274 (stating that “[p]revious rulings” held that the article amendments wrought a substantial change to UCI’s mission).

Not only was that wrong, but it turned this Court’s decisions *upside-down*. This Court held at the pleading stage that Plaintiffs were entitled to try to develop a neutral principle to *avoid* the intractably religious language in UCI’s articles—yet that somehow became support for the conclusion that the articles’ “plain text” compelled judgment for Plaintiffs as a matter of law. And this Court upheld a preliminary injunction only because the sliver of a factual record that was then before the Superior Court had not established the genuine existence of a religious dispute—yet that somehow became the source for controlling “determinations” on critical, disputed religious questions.

Starting with the pleadings, the Superior Court got the point completely backwards. It thought that because this Court refused to abstain despite the language of the articles, that meant the articles presented no religious issues. JA.263. Actually, this Court *agreed* with Judge Josey-Herring that the language in UCI's articles was "unmistakably religious in nature." JA.218, 226, 228. *See Moon*, 129 A.3d at 250-52. This Court reversed only because it could not foreclose the possibility that "discovery and further evidentiary presentation," *beyond* "documentary evidence," might reveal a neutral principle. *Id.* Dismissal on First Amendment grounds was thus "premature." *Id.* at 249-50, 239, 251-52. But the Court was clear: If discovery showed the "dispute does in fact turn on matters of doctrinal interpretation or church governance," the court must abstain. *Id.* at 253 n.26. Yet after discovery ended, far from looking *beyond* "documentary evidence," the Superior Court concluded that the same "plain text[]" of the articles that previously compelled it to *dismiss* now "unambiguously" warranted *judgment for Plaintiffs*. JA.276.

The Superior Court also misapprehended this Court's affirmance of its preliminary injunction. It thought those proceedings *already determined* that FFWPUI was a modern alter ego of the Unification Church (JA.265); that the Directors owed a duty to a specific entity (JA.263); and that the amendments had fundamentally altered UCI's purposes (JA.274-75). Yet findings made at the preliminary injunction stage are *never* binding in later stages of litigation. *Johnson v. Capital City Mortgage Corp.*, 723 A.2d 852, 856-57 (D.C. 1999). That is particularly true here, as this Court affirmed the injunction only because it declined to look beyond the limited "materials in the record at the time." JA.239.

The paucity of that record allowed certain key religious allegations to be treated as “(then) undisputed,” such that “there were no theological questions for the court to resolve.” JA.242-43. But this Court underscored that it had not “prejudge[d]” the issues, litigation would “vigorously continue,” and abstention would be “revisit[ed]” on a full record. JA.236, 243 & n.10, 247-48. Instead of revisiting the issue, the trial court acted as if nothing had changed, ignoring the mountains of evidence exposing religious debates over Plaintiffs’ foundational premises that had earlier been *assumed* true.

Properly construed, both of this Court’s prior decisions compelled dismissal of this case at summary judgment, once it became clear that Plaintiffs had nothing beyond the religion-laced articles and that construing them implicated disputed issues of theology and polity. By proceeding, the Superior Court entangled itself in religion, contrary to the First Amendment, Supreme Court authority, and this Court’s guidance.

* * *

With the benefit of a complete record, the Constitution compels dismissal. UCI adopted articles infused with “religious concepts,” *Jones*, 443 U.S. at 604, that vested all power “exclusively in the Board,” JA.1932-33. No neutral principle can determine that Board’s duties or identify breaches, particularly in the context of a schism that has torn “the Unification Church” of 1980 into factions, each with its own name, spiritual leader, and theology. *Accord Wipf v. Hutterville Hutterian Brethren, Inc.*, 808 N.W.2d 678, 686 (S.D. 2012) (by “weav[ing] religious doctrine throughout its corporate documents,” religious non-profit “limited a secular court’s ability to adjudicate any corporate disputes”).

The consequences of the Superior Court’s error at summary judgment are on vivid display in its remedial order. (*See* UCI Br. Part I.B.) After a four-week trial focused on the Directors’ religious beliefs, the court issued “findings of fact” about matters such as who was “eligible” to “lead the movement”; whether positions were “at odds with” Church theology, and the hierarchy of religious institutions. JA.321, 322, 325. This culminated with the stunning order removing the Directors as supposedly “hostile to the Unification Church.” JA.362. Meanwhile, the U.S. Supreme Court was reiterating that the Constitution requires courts “to stay out of ... disputes involving those holding certain important positions with ... religious institutions.” *Our Lady*, 140 S. Ct. at 2060. Plainly something has gone very wrong. It is time for this Court to fix it.

II. EVEN IF PLAINTIFFS’ CLAIMS WERE JUSTICIABLE, THE SUPERIOR COURT ERRED BY GRANTING SUMMARY JUDGMENT ON THIS RECORD.

Assuming the First Amendment did not preclude adjudication, reversal would still be inevitable because the lower court badly erred by ruling for Plaintiffs *at summary judgment*. A court may bypass a trial only if the undisputed material facts, viewed most favorably to the non-moving party, would compel any reasonable factfinder to return a certain verdict. And that burden is heightened when a *plaintiff* seeks summary judgment. Yet the court here rested summary judgment on a long list of propositions that were manifestly disputed and—if justiciable at all—could hardly be resolved without a trial. Reviewing *de novo*, *Liu v. U.S. Bank Nat’l Ass’n*, 179 A.3d 871, 876 (D.C. 2018), this Court must reverse on this basis at minimum.

A. A Plaintiff Is Entitled to Summary Judgment Only If No Reasonable Jury Could Reject Its Claim.

“Summary judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Liu*, 179 A.3d at 876. This Court “view[s] the evidence in the light most favorable to the non-prevailing party” and “draw[s] all reasonable inferences in that party’s favor.” *Id.* And it routinely reverses when trial courts grant summary judgment in the face of disputed facts. *E.g.*, *Tillery v. D.C.*, 227 A.3d 147 (D.C. 2020); *Gan v. Van Buren St. Methodist Church*, 224 A.3d 1205 (D.C. 2020); *Abdul-Aziz v. Howard Univ. Hosp.*, 213 A.3d 99 (D.C. 2019).

Here, both sides sought summary judgment on Plaintiffs’ fiduciary-duty claim, but that does not alter the standard. *See Beckman v. Farmer*, 579 A.2d 618, 629 (D.C. 1990). Rather, the court must view the record through two opposite lenses: in the light most favorable to *Plaintiffs* in considering *Defendants’* motion, but in the light most favorable to *Defendants* in considering *Plaintiffs’* motion. *Reich v. John Alden Life Ins. Co.*, 126 F.3d 1, 6 (1st Cir. 1997) (on “cross-motions for summary judgment, the court must consider each motion separately, drawing inferences against each movant in turn”).

Moreover, the standard for granting summary judgment to a *plaintiff* is heightened because a plaintiff bears the burden of proof. *See* W. Schwarzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465, 487-88 (1984). For summary judgment, Plaintiffs must therefore “establish beyond peradventure *all* of the essential elements of the[ir] claim.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir.

1986). In essence, they must show it would be impossible for any reasonable factfinder to reject their proof on any element of their claims, or to accept any proffered defenses. *Torres Vargas v. Santiago Cummings*, 149 F.3d 29, 35 (1st Cir. 1998) (to prevail at summary judgment, evidence supporting party with “burden of proof” must be “conclusive”).

Accordingly, this Court can affirm the grant of summary judgment to Plaintiffs here only if, after viewing all facts and drawing all inferences most favorably to the Directors, the record is “conclusive,” *id.*, that Plaintiffs are entitled to judgment as a matter of law. That is a very demanding standard—and rightly so, as summary judgment deprives the Directors of their day in court before a jury. Plaintiffs come nowhere close.

B. The Superior Court Improperly Resolved Material Factual Disputes.

Plaintiffs’ fiduciary claims turn on whether the Directors’ actions were consistent with UCI’s articles. Corporate articles are interpreted like other written instruments. *Bd. of Directors, Wash. City Orphan Asylum v. Bd. of Trs., Wash. City Orphan Asylum*, 798 A.2d 1068, 1079 n.12 (D.C. 2002). If language is “clear and unambiguous,” the court must apply its “plain and ordinary meaning.” *Id.* at 1079. But if articles are ambiguous, ascertaining their meaning requires considering parol evidence—including the “manner in which the interested parties construed and applied [them] in the months and years immediately following enactment.” *Id.* at 1082. In that scenario, “summary judgment will not generally be appropriate,” as a factfinder must decide how to weigh the extrinsic evidence and what reasonable inferences to draw from it. *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983); *see also Beckman*, 579 A.2d at 630.

UCI's articles cannot seriously be characterized as "clear and unambiguous" on the central issues here. They embrace five sweeping purposes rife with undefined religious terms like "the Divine Principle," and refer to "the Unification Church" even though no institution formally bore that name and it was used in different contexts to mean different things even *before* the succession schism. In nonetheless concluding that the articles "unambiguously" foreclosed the Directors' actions as a matter of law (JA.276), the Superior Court plainly erred. If these claims are justiciable, the disputes of material fact at minimum require reversal and remand for resolution by a factfinder.

1. Amendments. The court first held that the Directors breached their fiduciary duties by amending UCI's articles in a way that "fundamentally alter[ed]" its purposes. JA.281. The court found that the revised articles "do not reference the Divine Principle," and that referring to the "Unification Movement" in lieu of the "Unification Church" was a "substantial change." JA.273-76. Even if those claims could be adjudicated by a civil court without infringing the Constitution, both propositions were genuinely disputed in the record and therefore cannot support summary judgment.⁸

⁸ This claim also rests on a novel legal theory. Most states allow non-profit directors to amend corporate purposes as they see fit. JA.2171-81 (citing cases, articles, and treatises). Indeed, updating corporate purposes is generally considered to be a best practice for non-profit entities. JA.2177-79. Only in three jurisdictions have courts held that a "duty of obedience" restricts that power. JA.2181-83. Although this Court speculated in the previous appeal that a fundamental change in purposes "might well be barred," *Moon*, 129 A.3d at 252, it should refrain from actually adopting that minority view. Of course, reversal is required here even under that stricter legal standard.

First, the Directors adduced evidence that the 2010 articles *do* “reference the Divine Principle.” Those articles call on UCI to advance “the theology and principles of the Unification Movement” (JA.983); the Directors explained that this theology includes the Divine Principle plus Rev. Moon’s other teachings. *Supra* at 17.⁹ There is just no way to conclude that the articles *unambiguously* say otherwise as a matter of law.

Second, the Directors submitted overwhelming evidence, including admissions by Plaintiffs, that the “Unification Movement” is just another name for “the Unification Church” religion identified in UCI’s original articles. *Supra* at 17; JA.1907-08, 818.¹⁰ The court responded by observing that the Directors viewed the term “Unification Church” as “antiquated.” JA.275. But that does not negate the point. A term can be antiquated while still equivalent in substantive meaning to a modern synonym (*e.g.*, “administrative assistant” as a substitute for “secretary”).

⁹ For example, (i) Plaintiffs admitted “the theology of the Unification Church” extends beyond the Divine Principle, JA.676, 703-04, 730; (ii) Plaintiffs also admitted “the Unification Church” and “the Unification Movement” are interchangeable (*see infra* n.10); and (iii) each Director specifically testified that the theology of the Unification movement includes the Divine Principle. JA.593, 1438, 1441, 1813.

¹⁰ For example, (i) Plaintiffs’ expert testified that there is no difference between “the Unification Church” and “the Unification movement,” JA.495-96; (ii) FFWPUI and UPF representatives testified that “the Unification Church” is a “religious movement,” not a single “entity,” JA.1730, 1746, 514; (iii) Hak Ja Han testified that the “Unification Church” is used “interchangeably” with “Unification movement,” JA.1755, 1758, 1764-65; (iv) in 1980, an institutional Unification Church told the IRS that “[t]he Unification Church is a world-wide religious movement,” JA.2066; (v) UCI’s 1980 articles themselves referred to “the international Unification Church movement,” JA.825; and (vi) each Director testified that he understands “Unification Church” and “Unification movement” to be synonyms, JA.593, 1438, 1440, 1443, 1446.

Third, even if these changes were substantive rather than stylistic, their *magnitude*—whether the changes rose to the “substantial” or “fundamental” level—is still a question for trial. Questions “of degree” are for the factfinder. *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525, 532 (1958). Here, there was evidence from which a factfinder could have concluded that deemphasizing formal church institutions was consistent with Rev. Moon’s teachings and UCI’s history—not a “substantial” change.¹¹

2. Donations. The court also concluded that the donations to GPF and KIF were “contrary to” UCI’s articles, because those organizations are “completely unaffiliated with” and “totally separate from” the Unification Church. JA.278-79, 282. Again, those findings are subject to genuine dispute and cannot support summary judgment.

First, the court’s premise—that UCI can only fund entities with an “express affiliation to the Unification Church,” JA.278—defies the record and certainly is not *compelled* by the articles. UCI’s purposes are sweeping, authorizing it to “promote the worship of God,” “achieve the interdenominational, interreligious, and international unification of world Christianity,” and fund programs for “world peace, harmony of all mankind, [and] interfaith understanding,” among other things. JA.1418-20. Nothing in the articles restricts UCI to bankrolling Church affiliates. And the extrinsic evidence

¹¹ For example, Rev. Moon had always opposed creation of a new “denomination,” JA.1282, and UCI had historically directed less than 5% of its disbursements to traditional “church” entities, JA.1967. While the corporate name originally included “Unification Church,” it had been known as “UCI” for decades, including by Plaintiffs. *E.g.*, JA.930-33, 1000-03, 1184-1218, 1527, 1882, 1898-99, 1428-29. And Plaintiffs have changed the name of their own organizations, including FFWPUI. *Supra* at 11, 22.

about UCI's practices "following enactment," *Orphan Asylum*, 798 A.2d at 1082, refutes any "affiliation" prerequisite. For example, the Universal Ballet—to which UCI gave tens of millions of dollars before the Directors here joined the Board—told the IRS it "has no affiliation with ... the Unification Church." JA.1979-80; *see also, e.g.*, JA.277-78, 1955-58, 1961-65 (other beneficiaries without Church "affiliation"). Indeed, Plaintiffs *conceded* that UCI always "had the power to support organizations unaffiliated with the Unification Church." JA.672, 698, 726, 1949-50. If even *Plaintiffs* admitted as much, how could the court grant them summary judgment on the opposite premise?

Second, even if UCI's articles allowed donations only to entities "affiliated" with "the Unification Church," that only begs the question of what "the Unification Church" is. The plain text of the articles does not define the phrase. *Orphan Asylum*, 798 A.2d at 1082. And the Directors submitted extensive parol evidence showing that the articles referenced a decentralized providential movement defined by Rev. Moon's vision, *not* any institutional entity or hierarchical denomination. *See supra* at 6-7.¹² In concluding

¹² For example, (i) a 1997 memo from an institutional Unification Church in the U.S. explained that it "did not become the [Family Federation] in any legal or corporate sense" and that "[Family Federation] is a separate organization," JA.1293; (ii) Plaintiffs alleged that "the Unification Church" is a "religion," not any institution, JA.116; (iii) an expert report rebutted the notion that FFWPUI is the parent body of the Unification Church, JA.1227; (iv) Rev. Moon's autobiography disclaimed the creation of a new hierarchical denomination, JA.1282; (v) Hak Ja Han testified that Sean Moon did not understand Unification theology when he (in 2009) changed FFWPUI's name to "the Unification Church," JA.1759-63, 1768-69; and (vi) each Director rejected the claim that FFWPUI controls the Unification religion, JA.1791-92, 1794, 1797-98, 989, 990, 1809-10, 1827-28, 1834, 593, 1439, 1441, 1444, 1447; *see also* JA.1542-43, 1544-46.

that FFWPUI—which did not even exist in 1980 (JA.4093)—is “the Unification Church” named in UCI’s 1980 articles, the court ignored that evidence, wrongly relying instead on a preliminary injunction issued *before discovery*. JA.263.

Third, if the Directors are correct that “the Unification Church” means Rev. Moon’s religious movement, there is more than ample evidence for a factfinder to conclude that GPF and KIF are affiliated with it. Indeed, the court said only that evidence “suggests” GPF is “separate” from the Church and “there is evidence” that KIF is “unaffiliated” with it—implicitly acknowledging the record is not *conclusive*. JA.278-79. And the Directors offered extensive proof that GPF and KIF *are* indeed “affiliated” with the Unification Church religion, in the sense of promoting Rev. Moon’s theology. *Supra* at 13-16, 18-21.¹³ The lower court did not even try to address those materials.

¹³ For example, as to GPF, (i) Plaintiffs admitted it hosted “Global Peace Festivals” that promoted “world peace and unity,” and that such events were “consistent with” Rev. Moon’s teachings,” JA.783-84; (ii) Plaintiff UPF testified that GPF’s core values are “values of the Unification movement” that “advanced the teachings of Reverend Moon,” JA.521-22, 525-27; (iii) longtime Unification leader Rev. Kwak agreed that “GPF faithfully carries out the vision and teachings of [Rev.] Moon,” JA.1090; and (iv) each Director testified to similar effect, JA.593, 1439, 1441, 1444, 1448. As for Rev. Moon’s supposed instruction to Dr. Moon to “cease GPF operations,” JA.279, that too is disputed: Plaintiffs offered no non-hearsay basis for that assertion, which there are good reasons to doubt. JA.1570-71.

As to KIF, (i) Rev. Kwak’s testified the donation was “in line with ... [Rev.] Moon’s ideals and providential purposes,” JA.954; (ii) Director Sommer testified that KIF is “affiliated with the unification movement,” JA.577; (iii) Director Kwak testified that KIF’s purposes were “the same” as UCI’s, JA.1821-26; (iv) UCI’s corporate designee testified that KIF is “part of the unification movement” because its charter “require[s] it to fulfill ... the philosophy and the teachings of the unification movement,” JA.1842-43; and (v) each Director attested to the same, JA.593, 1439, 1443, 1445, 1446, 1448.

* * *

Insofar as any court is constitutionally authorized to review whether the Directors' actions were spiritually aligned, post-schism, with "the Unification Church" referenced in UCI's 1980 articles, that fraught question certainly cannot be answered from the plain text of the articles, as a matter of law, without even a jury trial. By holding otherwise, the Superior Court erred. At minimum, this Court must reverse the grant of summary judgment (and the derivative remedial order), and remand for further proceedings.

III. THE SUPERIOR COURT ALSO VIOLATED THE FIRST AMENDMENT AND D.C. LAW BY REMOVING THE DIRECTORS FROM UCI'S BOARD.

Per DCCA Rule 28(j), the Directors adopt Appellant UCI's arguments on this issue. As UCI's brief explains, the Superior Court compounded its constitutional violation by interfering with the governing board of a religious non-profit, and exceeded its power under D.C. law by doing so outside the narrow context of a derivative suit.

CONCLUSION

For these reasons, this Court should reverse the decision below and order this case dismissed so that adherents of the Unification religion can decide this schismatic debate. At minimum, the case should be remanded for trial on Plaintiffs' fiduciary claims before an unbiased jury of peers in accordance with the Seventh Amendment.

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Respectfully submitted,

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