No. _____

In the Supreme Court of the United States

HYUNG JIN "SEAN" MOON,
Petitioner,

v.

HAK JA HAN MOON, HOLY SPIRIT ASSOCIATION FOR THE UNIFICATION OF WORLD CHRISTIANITY, FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, HYO YUL KIM, "PETER", DOUGLAS D.M. JOO, CHANG SHIK YANG, KI HOON KIM, MICHAEL W. JENKINS, MICHAEL BALCOMB, FARLEY JONES, ALEXA WARD, JOHN DOES 1-6,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether there is an exception to this Court's ecclesiastical abstention doctrine that allows courts to resolve disputes over whether control of a religious organization was improperly taken through tortious conduct (a "fraud or collusion exception")?

PARTIES TO THE PROCEEDING

Petitioner (appellant below) is Hyung Jin "Sean" Moon, an individual.

Respondents (appellees below) are Hak Ja Han Moon, Holy Spirit Association for the Unification of World Christianity, Family Federation for World Peace and Unification International, Hyo Yul Kim, Douglas D.M. Joo, Chang Shik Yang, Ki Hoon Kim, Michael W. Jenkins, Michael Balcomb, Farley Jones, Alexa Ward, and John Does 1–6.

STATEMENT OF RELATED PROCEEDINGS

Moon v. Moon, No. 20–168 (2d Cir.) (opinion issued and judgment entered Nov. 5, 2020).

Hyung Jin Moon v. Hak Ja Han Moon, No. 19-cv-1705-NRB (S.D.N.Y.) (order granting motion to dismiss issued Dec. 19, 2019).

Holy Spirit Ass'n for the Unification of World Christianity v. World Peace & Unification Sanctuary, Inc., No. 3:18-cv-01508-JPW (M.D. Pa.) (pending).

Family Fed'n for World Peace v. Hyun Jin Moon, 2011-CA-003721 (D.C. Super. Ct.) (pending).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

CONSTITUTION AND STATUTES

PETITION FOR A WRIT OF CERTIORARI

Hyung Jin "Sean" Moon respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit and resolve a vital question about the scope of this Court's ecclesiastical abstention doctrine.

This case involves a dishonest scheme to plunder an organization's resources, improperly remove Mr. Moon as the organization's leader, and retaliate against Mr. Moon for daring to expose this wrongdoing. In any other context, courts would exercise jurisdiction to resolve claims arising from that misconduct. But because one of the organizations at issue—the Unification Church—is religious, the trial court found that it lacked jurisdiction under the ecclesiastical abstention doctrine, without even allowing minimal discovery, and the Second Circuit affirmed on similar grounds.

This Court created the ecclesiastical abstention doctrine to protect the First Amendment right to free exercise of religion from improper interference by the judicial branches of federal and state governments. This Court has suggested—but never held—that an exception to the ecclesiastical abstention doctrine may exist for claims involving what it has labeled "fraud or collusion"—*i.e.*, fraud, torts, and conspiracies to commit those wrongful acts. And almost every federal appellate court has acknowledged this Court's reference to a possible fraud exception. But none have exercised jurisdiction under that exception, out of uncertainty whether it exists.

Because this Court has not explicitly created an exception for fraud or collusion, the ecclesiastical abstention doctrine had the opposite of its intended effect here—and in many other scenarios involving grievous fraudulent and tortious conduct within a religious organization. Without a formal exception, the doctrine disadvantages religious organizations, depriving them of a neutral forum to resolve allegations of fraud or other tortious conduct that threaten their existence. Rather than protect the free exercise of religion, the doctrine—as applied here—protects those who seek to destroy how others practice their religion.

To be sure, this Court has recognized that leadership disputes within long-established religious organizations—which have developed bureaucracies, bodies of law, and methods of adjudicating conflicts—are best resolved outside of court. But the facts that commonly warrant ecclesiastical abstention are not present here. *First*, no party has asked a court to interpret or apply religious doctrine to resolve a claim or defense. There is no doctrine that would resolve this fundamentally secular dispute. *Second*, parties on all sides here have repeatedly asked federal courts to resolve disputes arising from the death of the Unification Church's founder and only leader, Rev. Sun Myung Moon ("Rev. Moon"). Put simply, the parties have nowhere else to resolve these disputes—other than court.

A formal exception to the ecclesiastical abstention doctrine—permitting jurisdiction in cases of fraud or dishonest, tortious conduct—would have allowed the

courts to consider the merits of Mr. Moon's claims, as any court would in any other circumstance. Instead, the trial court reflexively dismissed Mr. Moon's complaint, and the Second Circuit affirmed that decision, simply because the subject matter of the dispute is religious. In doing so, the lower courts permanently deprived Mr. Moon of a judicial forum to resolve the misconduct within the Unification Church—and permanently immunized the wrongdoers from civil liability.

Ecclesiastical abstention is a Court-made doctrine, so only this Court can define its nature and scope; only this Court can create exceptions; only this Court can give religious actors the judicial tools they need to protect their religious organizations from fraud or other tortious conduct. This Court should revisit and refine its ecclesiastical abstention doctrine by formally recognizing an exception for cases like this one involving fraud or other tortious conduct within a religious organization.

OPINIONS BELOW

The Second Circuit's opinion, *Moon v. Moon*, 833 F. App'x 876 (2d Cir. 2020), appears in the Appendix ("Pet. App.") at Pet. App. 1. The opinion of the United States District Court for the Southern District of New York, *Hyung Jin Moon v. Hak Ja Han Moon*, is reported at 431 F. Supp. 3d 394 (S.D.N.Y. 2019), and appears at Pet. App. 10.

JURISDICTION

The Second Circuit entered judgment on November 5, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

U.S. Const. amend. I.

STATEMENT OF THE CASE

A. Factual Background

This case arises from fraudulent and other dishonest, tortious conduct within the Unification Church (also called the Family Federation for World Peace and Unification International ("Family Federation")), a global religious organization that Rev. Moon founded in 1954.[1] Pet. App. 11. From its founding until 2012, the Family Federation had one leader: Rev. Moon. *Id.* at 62. Rev. Moon held complete control of the Family Federation—so much so that the Family Federation never developed corporate documents stating a formal leadership structure or a

[1] The Unification Church is registered in South Korea under the name Family Federation for World Peace and Unification International ("Family Federation"). Family Federation is the parent organization of all Unification Church affiliates worldwide. The Unification Church's United States affiliate, a California nonprofit, is registered as Holy Spirit Association for the Unification of World Christianity ("HSA-UWC (USA)").

written succession plan. *Id.* at 69–70. Rev. Moon exercised his power to appoint executives and board members for all Family Federation-affiliated organizations, including HSA-UWC (USA), Family Federation's United States affiliate. *Id.* at 62. And Rev. Moon possessed the unilateral authority to appoint and remove officials within the Family Federation and its affiliates. *Id.* His practice of hand-selecting executives and board members was longstanding and unchallenged. In effect, that practice became official policy.

1. Rev. Moon appoints Sean Moon as the future leader of the Unification Church.

Rev. Moon knew his time on Earth was finite, so to prepare the Family Federation for a new leader, he appointed his son, Sean, to two key roles within the Family Federation. First, in April 2008, Rev. Moon named Mr. Moon the International President of the Family Federation. *Id.* at 12. In that role, Mr. Moon managed all Family Federation organizations while continuing to serve under Rev. Moon's direction. *Id.* at 61. Second and more importantly, Rev. Moon announced in January 2009 that Mr. Moon would succeed him as leader of the Family Federation. *Id.* at 13. This irrevocable appointment was especially significant because Rev. Moon had not identified his successor. *Id.* at 62.

Rev. Moon and the Family Federation made Mr. Moon's appointment widely known. *Id.* at 13. In January 2009, Rev. Moon confirmed Mr. Moon's appointment in three public ceremonies—one in the United States and two in South Korea. *Id.* at 13,

62–64. Defendant Hak Ja Han Moon ("Hak Ja Han"), Rev. Moon's wife and Mr. Moon's mother, attended all three events and publicly supported Mr. Moon as Rev. Moon's successor to lead the Family Federation. *Id.* at 63. And in June 2010, Rev. Moon prepared and signed a written proclamation, formally appointing Mr. Moon as the successor and future leader of the Family Federation. *Id.* at 63–64.

Mr. Moon's appointment carried symbolic and substantive legal meaning. The symbolic effect was clear: Rev. Moon's irrevocable appointment meant that when he died, Mr. Moon would become the permanent leader of the Family Federation. Mr. Moon also received several ceremonial robes and crowns, and he retains a vested right in that property. *Id.* at 65. But the appointment also substantively changed Mr. Moon's role within the organization. Rev. Moon made Mr. Moon an agent to the Family Federation—an appointment Mr. Moon accepted. *Id.* at 64–65. Thus, Mr. Moon had authority to act as the Family Federation's agent and to perform certain duties for the Family Federation.

2. After Rev. Moon dies in 2012, Family Federation officials begin their scheme to remove Mr. Moon from all leadership positions.

Soon after Rev. Moon's death in 2012, his irrevocable appointment of Mr. Moon came under attack. *Id.* at 12. Hak Ja Han began a fraudulent, dishonest scheme to accomplish three improper goals: (1) remove Mr. Moon as the permanent leader of the Family Federation; (2) install herself in Mr. Moon's

place; and (3) misappropriate assets belonging to Mr. Moon and the Family Federation. *Id.* at 66–68.

This scheme comprised several critical steps. Hak Ja Han began by conspiring with Family Federation senior officials to expel Mr. Moon as President of HSA-UWC (Korea). *Id.* at 66. A Family Federation administrator presented Mr. Moon with documents to sign, deceiving Mr. Moon into believing that those documents would not alter his role as permanent successor to Rev. Moon. *Id.* Hak Ja Han then orchestrated a vote by the HSA-UWC (USA) board to remove Mr. Moon as president of HSA-UWC (USA). *Id.* at 14.

3. Mr. Moon exposes corruption at the Family Federation and faces further retaliation.

Mr. Moon retained his role as International President of the Family Federation—but not for long. In January 2015, Mr. Moon exposed corruption within the top ranks of the Family Federation, including that certain officials were drawing excessive salaries and benefits at the expense of the organizations they purported to serve. *Id.* at 68. Family Federation officials confronted Mr. Moon, telling him to acquiesce to Hak Ja Han's exercise of authority—even though she lacked the authority to remove Mr. Moon or to install herself in his place. *Id.* They also demanded that Mr. Moon cease speaking publicly about the self-dealing and corruption he exposed—at least until after Hak Ja Han's death—and promised that after Hak Ja Han died, Mr. Moon could correct some of her misdeeds. *Id.*

Mr. Moon rejected this demand, continuing to expose the officials' improper conduct. He paid a price. One month after Mr. Moon began to expose this corruption, Family Federation officials retaliated by suspending him as International President of the Family Federation (even though they lacked authority to do so). *Id.* at 69.

4. With no authority to do so, Hak Ja Han installs herself as leader of the Family Federation.

Although Rev. Moon's appointment of Mr. Moon was irrevocable—and went unchallenged while Rev. Moon was alive—Hak Ja Han now claims to lead the Family Federation. *Id.* at 71. Hak Ja Han and her co-conspirators have manipulated the organization to solidify her control. *Id.* And they have enriched themselves with assets belonging to the Family Federation and confiscated property belonging to Mr. Moon, including ceremonial crowns and Rev. Moon's writings. *Id.* at 69. Hak Ja Han even contrived to create what she claimed was a new "governing" document for the Family Federation, the "Cheon Il Guk Constitution"—a post-hoc attempt to legitimize her effort to usurp Mr. Moon's authority and defy Rev. Moon's irrevocable appointment. *Id.* at 16.

B. Proceedings Below

1. The District Court's Decision

Mr. Moon sued Hak Ja Han, HSA-UWC (USA), the Family Federation, eight individuals affiliated with the Family Federation or HSA-UWC (USA), and six unnamed defendants, in the Southern District of New

York, filing an amended complaint in June 2019. *Id.* at 47. Mr. Moon sued for: (1) a declaration that he is Rev. Moon's appointed successor and leader of the Family Federation; (2) a declaration that Hak Ja Han's Cheon Il Guk constitution is a legal nullity; (3) breach of fiduciary duty against Hak Ja Han; (4) breach of fiduciary duty against seven individual defendants who were directors of HSA-UWC (USA); (5) tortious interference with a business relationship against all defendants; (6) breach of agency agreement against Hak Ja Han and the Family Federation; (7) breach of fiduciary duties, unjust enrichment, and constructive trust against all defendants; (8) defamation against Hak Ja Han and the Family Federation; (9) violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(b), against all defendants; and (10) violations of New York's whistleblower protection law against all defendants. *Id.* at 73–102. Mr. Moon also sought a constructive trust on all assets belonging to the Family Federation and the Unification Church, as well as an accounting of the assets that he once controlled as leader of the Family Federation. *Id.* at 102.

The district court granted Defendants' motion to dismiss with prejudice, applying the ecclesiastical abstention doctrine and holding that it could not decide any of Mr. Moon's claims without resolving an underlying religious controversy. *Id.* at 45–46. Mr. Moon appealed that decision to the Second Circuit, which affirmed on modified grounds.

2. The Second Circuit's Decision

The Second Circuit affirmed the trial court's dismissal of Mr. Moon's defamation and tortious interference claims on statute of limitations grounds. *Id.* at 7. And it affirmed the trial court's dismissal of Mr. Moon's claim under New York's whistleblower protection statute for failure to state a claim. *Id.* at 8. As to the remaining claims, the Second Circuit affirmed the trial court's dismissal for lack of subject matter jurisdiction under the ecclesiastical abstention doctrine. *Id.* at 7. It refused to apply an exception for fraud, collusion, or other tortious conduct.

REASONS FOR GRANTING THE PETITION

This case presents an unresolved question about the scope of this Court's ecclesiastical abstention doctrine—specifically, whether courts may resolve allegations of "fraud and collusion" within a religious organization. The ecclesiastical abstention doctrine generally instructs courts to avoid scrutinizing matters of church government and religious doctrine. But a blunt, undiscerning application of ecclesiastical abstention does no favors for the free exercise of religion. Indeed, it can cause substantial injustice, even inflicting the First Amendment harms that the doctrine is intended to avoid, especially in cases like this one involving fraud, collusion, and other tortious conduct. Abstention immunizes individuals like Hak Ja Han, who cloak their misdeeds under the guise of religion. And it deprives plaintiffs like Mr. Moon of a neutral, orderly forum to resolve a predominately secular dispute. This Court should grant certiorari to resolve whether courts must unhesitatingly abstain

from cases touching on religion, even when the plaintiff alleges fraud or other tortious conduct.

I. This Court should grant the petition to resolve whether allegations of fraud or other tortious conduct within a religious organization warrant exercising jurisdiction.

The First Amendment circumscribes the role that civil courts can play in resolving religious disputes. Because the Constitution precludes the government from favoring one religious sect over another—or endorsing a specific religious belief—courts generally cannot pick winners and losers in a religious controversy. The ecclesiastical abstention doctrine created by this Court arises from that principle, precluding judicial review of claims that turn on "strictly and purely ecclesiastical" questions. *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976) (citation omitted). And that doctrine is jurisdictional: "civil courts exercise no jurisdiction" over purely ecclesiastical matters. *Watson v. Jones*, 80 U.S. 679, 733 (1871).

This doctrine exists for several important reasons. First, the practical: "[c]ivil judges obviously do not have the competence of ecclesiastical tribunals in applying the 'law' that governs ecclesiastical disputes." *Milivojevich*, 426 U.S. at 714, n.8. Second, the doctrine, emanating from the First Amendment's Free Exercise Clause, recognizes that questions of "discipline, or of faith, or ecclesiastical rule, custom, or law" are best left to the church. *Id.* at 710 (citation omitted). Religious institutions must "decide for themselves, free from state interference, matters of

church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

A. The ecclesiastical abstention doctrine is not absolute, and a blunt application of that rule would often result in injustice and lawlessness.

While the First Amendment does not impose an absolute barrier to jurisdiction in all disputes that touch on religion, this Court has created only one express exception—for property disputes. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 449 (1969) ("not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment"); *Jones v. Wolf*, 443 U.S. 595, 597 (1979) ("[C]ivil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve [church property] dispute[s] on the basis of 'neutral principles of law.'").[2]

The lack of other formal exceptions to the ecclesiastical abstention doctrine means that tortious conduct—not based on religious doctrine or observance—goes unchecked. Indeed, this immunizes religious leaders and organizations from all other kinds

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[2] State courts have also recognized that neutral principles of law can resolve trust and property disputes—involving church property, between separate religious groups—without flouting the ecclesiastical abstention doctrine. *See Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417, 420 (Tex. 2020).

of suits and deprives their victims of a neutral judicial forum. Far from impeding the free exercise of religion, narrow judicial review is necessary in limited circumstances to protect a religious organization and its members from rogue actors bent on undermining the organization. The current, nearly categorical rule—one requiring abstention from all suits that touch on religious leadership—leads to injustice or even lawlessness. Writing in dissent, Justice Rehnquist, joined by Justice Stevens, warned that complete, unyielding deference to any church decision "bearing the ecclesiastical seal" would convert the civil courts "into handmaidens of arbitrary lawlessness." *Milivojevich*, 426 U.S. at 727 (Rehnquist, J., dissenting). And just last year, the Fifth Circuit cautioned that a broad application of the ecclesiastical abstention doctrine could be put to misuse, explaining that "religious entities could effectively immunize themselves from judicial review of claims brought against them," all before either party took discovery. *McRaney v. N. Am. Mission Bd. of the Southern Baptist Convention, Inc.*, 966 F.3d 346, 351 (5th Cir. 2020), *petition for cert. filed*, (U.S. Feb. 23, 2021) (No. 20-1158) (reversing district court's dismissal under ecclesiastical abstention doctrine).

B. Resolving allegations of fraud or other tortious conduct outweighs competing First Amendment interests and supports the exercise of jurisdiction.

The Court's ecclesiastical abstention decisions have repeatedly suggested that allegations of "fraud" or "collusion"—*i.e.*, tortious conduct (here, breach of

fiduciary duty, RICO, and misappropriation of assets)—might warrant a judicial forum, overriding competing interests that the ecclesiastical abstention doctrine otherwise protects. This Court first suggested the possibility of such an exception in *Gonzales v. Roman Catholic Archbishop of Manila*, noting that the ecclesiastical abstention doctrine bars judicial review of religious decisions "[i]n the absence of fraud, collusion, or arbitrariness." 280 U.S. 1, 16 (1929). This Court later refined that statement and dispensed with judicial review of church decisions for arbitrariness. *Milivojevich*, 426 U.S. at 713. But that makes sense: reviewing a religious decision for arbitrariness compels the court to inquire "into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow." *Id.*

Reviewing a decision for tortious conduct, however, is a different matter. In doing so, the court does not scrutinize the challenged conduct against the backdrop of church doctrine or religious texts. It simply examines whether fraud or another tort taints the challenged conduct. Since *Milivojevich*, this Court has continued to acknowledge the possibility of a fraud-or-collusion exception. *See Jones*, 443 U.S. at 609 n.8 ("There is no suggestion in this case that the decision of the commission was the product of 'fraud' or 'collusion.'").

C. Uncertainty abounds among the lower courts because this Court has never held whether the fraud-or-collusion exception exists.

Although this Court has hinted at an exception for fraud or other tortious conduct, it has never held that this exception exists or applied it. It is still true that "[n]o decision of this Court has given concrete content to or applied the 'exception.'" *Milivojevich*, 426 U.S. at 712. So uncertainty abounds about the doctrine's jurisdictional barriers. The Sixth Circuit, for example, has speculated that judicial review may be allowed "for fraud or collusion of the most serious nature undermining the very authority of the decision-making body." *Hutchinson v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986). And the Eleventh Circuit acknowledged that this Court "left open the possibility that civil courts might engage in marginal civil court review under the narrow rubrics of fraud or collusion when church tribunals act in bad faith for secular purposes." *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 725 n.18 (11th Cir. 1987) (internal quotation marks and citation omitted).

Few courts have applied the fraud or collusion exception, although *Ambellu v. Re'ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 81 (D.D.C. 2019), is one such case. In *Ambellu*, the district court found that some of the plaintiffs' claims fell under the fraud exception to the ecclesiastical abstention doctrine and therefore did not justify abstention. *Id.* at 81. In that case, a group of parishioners alleged that some of their co-congregants formed a secret committee to "take

over control of the Church." *Id.* (citation omitted). One Sunday, one of the leaders of the secret committee announced the dismissal of all church board members and then appointed an interim board that assumed control of the church and its money and property. As Judge McFadden explained, the parishioners' civil RICO claims "do not 'turn on the resolution by civil courts of controversies over religious doctrine and practice." *Id.* at 79 (quoting *Presbyterian Church*, 393 U.S. at 449). Instead, those claims "involve the 'narrow rubrics of 'fraud' or 'collusion' that may permit 'marginal civil court review' when 'church tribunals act in bad faith for secular purposes.'" *Id.* (quoting *Milivojevich*, 426 U.S. at 713). So the court chose to exercise jurisdiction and decide those claims on the merits, rather than dismiss them under the ecclesiastical abstention doctrine.

Yet *Ambellu* is an aberration. Although nearly every federal circuit has acknowledged this Court's reference to a fraud or collusion exception to the ecclesiastical abstention doctrine, no federal appellate court has ever applied that exception. *Puri v. Khalsa*, a Ninth Circuit decision that bears many similarities to this case, highlights the lower courts' uncertainty about the scope of the ecclesiastical abstention doctrine. 844 F.3d 1152, 1168 (9th Cir. 2017). Like this case, *Puri* also involves a dispute arising from the death of a spiritual leader, Yogi Bhajan. *Id.* at 1155. Yogi Bhajan created and controlled many business and nonprofit entities through a nonprofit corporation. Before he died, Yogi Bhajan established a separate nonprofit *religious* corporation, which would act as the successor legal organization to—and control the assets of—the

nonprofit corporation. The religious corporation included a board of directors, and membership in that board was conditional on the prospective member's "living, and participating in the affairs of the Sikh community, in a manner consistent with the teachings and values of [Yogi Bhajan]." *Id.* at 1155. After Yogi Bhajan died, his wife and three children were excluded from the nonprofit religious corporation's board meetings, so they sued several of Yogi Bhajan's business associates. *Id.* at 1156. The plaintiffs accused Yogi Bhajan's business associates of improperly excluding them from the board meetings—in violation of state corporate law—and sought a judgment that all four plaintiffs be appointed to the board. Although the plaintiffs asked the Ninth Circuit to reach the merits of their claims under the fraud or collusion exception, the Ninth Circuit concluded it could resolve the dispute under neutral principles of law and thus declined to address whether the fraud or collusion exception exists. *Id.* at 1168.

Still more federal appellate courts have expressed uncertainty whether they can exercise jurisdiction under a fraud or collusion exception to the ecclesiastical abstention doctrine. The Second Circuit was likewise uncertain in this case. Pet. App. 7 ("In *Milivojevich*, the U.S. Supreme Court noted the possibility of an exception for fraud or collusion when church tribunals act in bad faith for secular purposes."). *See also Askew v. Trs. of Gen. Assembly of Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 684 F.3d 413, 418 (3d Cir. 2012) ("[C]ivil courts accept decisions of the highest religious decision-maker as binding fact, so long as those decisions are not

tainted by fraud or collusion."); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 331 (4th Cir. 1997) (noting possibility of "marginal civil court review" for fraud or collusion); *Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184, 187 n.3 (7th Cir. 1994) ("*Milivojevich* merely leaves open, but does not endorse, the possibility that limited review would be available in cases of fraud or collusion."); *Kaufmann v. Sheehan*, 707 F.2d 355, 359 (8th Cir. 1983) ("*Milivojevich* did not foreclose marginal civil court review under the narrow rubrics of fraud or collusion when church tribunals act in bad faith for secular purposes.") (internal quotation marks and citation omitted). This Court should resolve that uncertainty by formally recognizing—and applying here—an exception to the ecclesiastical abstention doctrine for allegations of fraud or other tortious conduct.

D. Mr. Moon's allegations of tortious conduct support exercising jurisdiction, and the Second Circuit erred by treating the fraud-and-collusion exception as an afterthought.

This Court can eliminate that uncertainty here by holding that the ecclesiastical abstention doctrine does not bar judicial review when the complaint plausibly alleges fraud or other torts within a religious organization. This petition allows this Court to resolve that an exception for fraud, collusion, or related tortious conduct exists, heeding Justice Rehnquist's warning that unconditional abstention would ignore obvious injustice and permit lawlessness.

Ecclesiastical abstention is a Court-created doctrine. It only follows that this Court should clarify

the scope of that doctrine and formally recognize an exception to which it has repeatedly referred in prior decisions. This Court should hold that the First Amendment permits judicial review when a plaintiff alleges fraud or other tortious conduct within a religious organization.

The Second Circuit erred when it brushed aside Mr. Moon's allegations of tortious conduct, dishonesty, and collusion, noting that the exception might only apply when a "religious entity engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen." Pet. App. 7. But Mr. Moon has alleged exactly that. Indeed, Hak Ja Han's scheme to wrest control of the Family Federation and retaliate against Mr. Moon for exposing her misdeeds is exactly the type of conduct that supports exercising jurisdiction. Mr. Moon alleges specific facts about that scheme, including that Hak Ja Han and her co-conspirators:

- Pressured Mr. Moon into resigning as President of HSA-UWC (Korea) under the false promise that he would remain Rev. Moon's permanent successor;
- Coerced Mr. Moon to move to the United States to resolve a leadership dispute at HSA-UWC (USA) and later removed him from that role; and
- Retaliated against Mr. Moon by suspending him as International President of the Family Federation after Mr. Moon exposed corruption and self-dealing by Family Federation leaders.

By declining to exercise jurisdiction, the trial court and the Second Circuit not only deprived Mr. Moon of a forum to correct Hak Ja Han's misdeeds. They also signaled that would-be perpetrators of tortious conduct will avoid judicial scrutiny by cloaking their decisions under the guise of religion. *See Milivojevich*, 426 U.S. at 726 (Rehnquist, J., dissenting) ("If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of arbitrary lawlessness."). This Court should grant the petition to correct—and eliminate—that perception.

E. This fundamentally secular dispute presents none of the doctrinal questions that commonly warrant ecclesiastical abstention.

Unlike this Court's other ecclesiastical abstention decisions, this case does not turn on questions of church doctrine, which is even more reason to recognize an exception for fraud or other tortious conduct. In *Milivojevich*, for example, this Court described at length the Serbian Orthodox Church's governing structure, which includes "legislative, judicial, ecclesiastical, and administrative" bodies. *Milivojevich*, 426 U.S. at 699. And this Court reversed the Illinois Supreme Court's decision to second-guess the "decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitute[ ] its own inquiry into church polity and resolutions based thereon of those disputes." *Id.* at 708. Similarly, in *Jones*, this Court explained

that abstention is proper in matters concerning "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Jones*, 80 U.S. at 733.

But those concerns have no resonance here because the Family Federation lacks governing documents and judicial bodies that might otherwise resolve this dispute. Neither Mr. Moon nor any Defendant has asked a court to interpret Unification Church or Family Federation doctrine or to scrutinize Hak Ja Han's misconduct against the backdrop of a religious text. To the contrary, Mr. Moon has consistently argued that the *lack* of church documents warrants judicial review and that the court need only evaluate Hak Ja Han's misdeeds against secular principles of law.

Precisely because there is no forum within the Unification Church to resolve disputes arising from Rev. Moon's death, the parties have repeatedly turned to the courts for assistance. This time, the Family Federation finds itself as a defendant and so, unsurprisingly, argues for ecclesiastical abstention to make the dispute go away. But the Family Federation and its affiliates have also invoked jurisdiction as plaintiffs in related lawsuits. *See, e.g.*, *Holy Spirit Ass'n for the Unification of World Christianity v. World Peace & Unification Sanctuary, Inc.*, No. 3:18-cv-01508-JPW (M.D. Pa.) (pending); *Family Fed'n for World Peace v. Hyun Jin Moon*, 2011-CA-003721 (D.C. Super. Ct.) (pending). And in those lawsuits, they have either: (1) argued vigorously against ecclesiastical abstention (and prevailed); or (2) taken the implied position that

ecclesiastical abstention does not apply.[3] The Family Federation's litigiousness underscores that there is no other forum to resolve these disputes—and that judicial intervention here would not impair the free exercise of religion.

Left unreviewed, the Second Circuit's decision leaves the Family Federation and the Unification Church under the leadership of people who usurped the authority of Rev. Moon and installed themselves as leaders based on nothing more than their personal desires to control the organizations and assets of the Family Federation. The fact that the defendants took over a religious organization should not immunize their wrongful conduct from the scrutiny of our judicial system.

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[3] As Hyun Jin (Preston) Moon and UCI noted in their amicus brief to the Second Circuit, "Family Federation is being incredibly duplicitous by telling this Court that it cannot adjudicate Sean's claims that he is the spiritual leader of the Unification Church." Brief for Hyun Jin (Preston) Moon and UCI as Amici Curiae Supporting Appellees, *Moon v. Moon*, 833 F. App'x 876 (2d Cir. 2020) (No. 20-168).

CONCLUSION

For these reasons, this Court should grant the petition.

Respectfully submitted,

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