No. 20-1415

IN THE

Supreme Court of the United States

HYUNG JIN "SEAN" MOON,

Petitioner,

v.

HAK JA HAN MOON, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, consistent with the First Amendment ecclesiastical abstention doctrine, a court may exercise jurisdiction over a church leadership dispute based on allegations that the leadership was secured through fraud, collusion, or tortious conduct.

LIST OF PARTIES TO THE PROCEEDINGS

The petitioner is Hyung Jin "Sean" Moon.

The respondents are Hak Ja Han Moon, Holy Spirit Association for the Unification of World Christianity, Family Federation for World Peace and Unification International, Hyo Yul "Peter" 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.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondents Holy Spirit Association for the Unification of World Christianity (HSA-UWC (USA)) and Family Federation for World Peace and Unification International (FFWPUI), hereby state as follows:

HSA-UWC (USA) is a nonprofit corporation and no parent company or publicly held corporation owns 10% or more of its stock. FFWPUI is an unincorporated association based in Korea.

The remaining Respondents are individuals.

LIST OF PROCEEDINGS IN TRIAL AND APPELLATE COURTS

Hyung Jin "Sean" Moon v. Hak Ja Han Moon, et al., No. 19-cv-1705, U.S. District Court for the Southern District of New York. Memorandum Opinion issued December 19, 2019 and Judgment entered December 20, 2019.

Hyung Jin "Sean" Moon v. Hak Ja Han Moon, et al., No. 20-168, U.S Court of Appeals for the Second Circuit. Summary Order and Judgment entered November 5, 2020 and mandate issued December 3, 2020.

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INTRODUCTION

In this lawsuit, Petitioner Sean Moon seeks to be declared Reverend Sun Myung Moon's successor as leader of the Unification Church. Because the First Amendment ecclesiastical abstention doctrine precludes courts from exercising jurisdiction over church governance disputes, the district court properly dismissed the case, and the Second Circuit summarily affirmed. Petitioner now seeks to have the dismissal reversed by asking the Court to create a fraud, collusion or "tortious conduct" exception to the ecclesiastical abstention doctrine.

The Court has never applied a fraud or collusion exception, although it has left open the possibility of "marginal civil court review under the narrow rubrics of fraud or collusion when church tribunals act in bad faith *for secular purposes*." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) (cleaned up) (emphasis added). This is not a fraud case, and, in any event, the lawsuit alleges that the defendants engaged in misconduct to oust Mr. Moon from leadership of the church, not "for secular purposes." Although the lawsuit alleges tortious conduct, no court has ever even suggested there is a tortious conduct exception to ecclesiastical abstention. Because the Second Circuit's decision is correct and does not conflict with this Court's precedent or with decisions of other federal appellate courts, and because the absence of viable fraud claims makes the case a poor vehicle for addressing whether the Court should create a fraud or collusion exception, the Petition should be denied.

STATEMENT OF THE CASE

As the district court explained, "[t]his action arises from a succession dispute that followed the death in 2012 of Unification Church founder Rev. Moon." Pet. App. 12. In 2019, one of Rev. Moon's sons, Hyung Jin ("Sean") Moon, filed a federal lawsuit in the Southern District of New York against (1) his mother Hak Ja Han Moon, Rev. Moon's widow, (2) the international headquarters of the Unification Church, the Family Federation for World Peace and Unification International ("Family Federation" or "FFWPUI"), (3) the U.S. branch of the Unification Church, the Holy Spirit Association for the Unification of World Christianity ("HSA-UWC"), and (4) several individuals, some of whom were members of HSA-UWC's board of directors. Because Mr. Moon's claims turned on his allegation that he, not Mrs. Moon, is the rightful leader of the Unification Church, the district court dismissed the lawsuit for lack of subject matter jurisdiction under the First Amendment ecclesiastical abstention doctrine. The Second Circuit affirmed in a summary order.

The operative First Amended Complaint ("Complaint") announces in its opening "Summary" that Mr. Moon "brings this action [to] seek[] a declaration of this Court . . . to confirm his legal status as Leader of Family Federation and the Unification Church as authorized and appointed by

Rev. Moon." Pet. App. 49.[1] As previewed, Count I seeks a judgment "declaring that Sean Moon is the properly authorized and appointed successor and worldwide Leader of the Unification Church and Family Federation." *Id.* at 73-74. The Complaint also seeks "an order reinstating [Mr. Moon] to his prior positions of leadership," *id.* at 102, and "[e]njoining Defendants and other third parties from interfering with Sean Moon's exercise of authority in the Family Federation as the organization's Leader," *id.* at 104. The relief sought is squarely prohibited by *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), which held that courts may not resolve church governance disputes.

Count II's request for declaratory judgment also impermissibly seeks to have the court resolve a church governance dispute. Having alleged that "Mrs. Moon created the 'Cheon Il Guk Constitution' which established a 'Supreme Council' to lead the Unification Church and assume power after [Rev.] Moon's death, "*id.* at. 71, Count II asks the court to declare that the "Cheon Il Guk Constitution is a nullity and does not govern the activities of the Unification Church and/or Family Federation" and that the "Supreme Council is invalid and does not have authority to govern the conduct or operation of Family Federation or the Unification Church." Pet. App. 74.

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[1] The Complaint alleges that the Family Federation is the "authoritative religious entity that directs Unification Churches worldwide." Pet. App. 50.

The other counts of the Complaint also would require the court to intrude impermissibly into ecclesiastical topics because their resolution turns on the same predicate ecclesiastical claim that Sean Moon is the "rightful Leader" of the Church. *See* Pet. App. 76 (Count III, alleging breach of fiduciary duty by Mrs. Moon by, among other things, "wrongfully holding herself out to be the Leader of the Unification Church and Family Federation"); *id.* at 77-82 (Count IV, alleging breach of fiduciary duty by the directors of HSA-UWC for "refusing to honor" the supposed appointment of Sean Moon as "leader" and by "their advancement of Mrs. Moon's new theology"); *id.* at 84-85 (Count V, claiming tortious interference with "Sean Moon's rightful authority to act as Leader"); *id.* at 86 (Count VI, premising breach of agency claim on allegation that "Rev. Moon made it clear that Sean Moon . . . exercise[d] full control and authority over Family Federation"); *id.* at 88 (Count VII, setting forth Sean Moon's alleged status as "Leader" as a predicate for imposing a constructive trust); *id.* at 91 (Count VIII, alleging a February 2018 statement was defamatory because it disputed "Sean Moon's proper authority to lead the Family Federation and Unification Church as the Leader"); *id.* at 92-99 (Counts IX and X, RICO claims alleging "acts of racketeering activity" that include "falsely stating that Sean Moon was not the Leader"); *id.* at 103 (Count XII, seeking an accounting based on Sean Moon's interest in the Defendant organizations' assets "[a]s Leader of the Unification Church and Family Federation").

Those defendants who had been served with process, *see* Pet. App. 17-19, filed a motion to dismiss

seeking dismissal under Federal Rules of Civil Procedure ("Rule") 12(b)(1), (2) and (6). The district court granted the defendants' Rule 12(b)(1) motion to dismiss, properly characterizing the lawsuit as a dispute "over who should replace the late Rev. Moon as leader of the Unification Church." *Id.* at 20. In *Jones v. Wolf*, 443 U.S. 595, 604 (1979), the Court held that "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." The district court rejected Sean Moon's argument that Unification Church custom and practice could supply non-ecclesiastical, neutral legal principles to resolve the leadership dispute. "Insofar as Rev. Moon founded the Unification Church and acted as its first spiritual leader, the Unification Church has had no prior occasion to establish an 'accepted and honored custom' for selecting its successor leaders." Pet. App. 31.

Turning to the various causes of action pled in the Complaint, the district court concluded that each required a resolution of the threshold question of whether plaintiff Sean Moon or defendant Mrs. Moon is the rightful successor to Reverend Moon. *Id.* at 32-41. "And because that inquiry is barred by the First Amendment ecclesiastical abstention doctrine, those claims must be dismissed for want of subject matter jurisdiction, *even if those claims would otherwise be justiciable by reference to neutral principles*." Pet. App. 33 (emphasis by district court).

Finally, the district court rejected Mr. Moon's attempt to invoke a supposed "fraud or collusion"

exception to the ecclesiastical abstention doctrine. "Plaintiff fails to cite (and this Court has been unable to identify) a single case applying the 'fraud or collusion' exception as the basis for civil court intervention in an otherwise nonjusticiable church controversy." *Id.* at 42 n.28. And, in any event, the court held, the supposed exception would apply only "when church tribunals act in bad faith *for secular purposes*." *Id.* at 42 (quoting *Milivojevich*, 426 U.S. at 713) (emphasis by district court). "Here, any allegations of fraud pertain not to secular activities but to defendants' purported efforts to, *inter alia*, remove plaintiff from his position as 'Leader' of the Unification Church and related religious entities." *Id.*

The district court also held that the tortious interference claim and a defamation claim related to an October 2015 statement were time-barred. *Id.* at 36, 39.

On appeal, Mr. Moon's lead argument was that the case could be decided using neutral principles of law and did not, therefore, require resolution of an ecclesiastical dispute. Appellant's Br. 26-50 (2d Cir. Doc. #37). His second argument was that Family Federation was judicially estopped from invoking the ecclesiastical abstention doctrine. *Id.* at 50-59. The fraud or collusion exception was raised in a brief, third argument at the conclusion of the brief. *Id.* at 59-61.

In a Summary Order issued soon after oral argument, the Court of Appeals affirmed the dismissal, holding that all but two of the claims could not be resolved using neutral principles of law.

As to the claims for declaratory judgment, the Court of Appeals concluded that "there are no neutral principles by which we can adjudicate these claims without deciding the religious question of who the rightful successor to the late Rev. Sun Moon is." Pet. App. 5. With the exception of the time-barred defamation claim and a claim arising under New York's whistleblower protection statute, both dismissed on Rule 12(b)(6) grounds, *id.* at 7-8, the Court of Appeals held that the remaining claims also "depend[] squarely on the resolution of plaintiff's core claim that he, not defendant-appellee Hak Ja Han Moon, is the rightful leader of the Family Federation." *Id.* at 7. Accordingly, the Court of Appeals held that the district court lacked jurisdiction to adjudicate those claims on ecclesiastical abstention grounds. *Id.*

The Court of Appeals rejected the judicial estoppel argument in a footnote, rightly noting that the argument was raised for the first time on appeal. *Id.* at 6 n.2.

Turning to Mr. Moon's argument that there is a purported fraud or collusion exception to ecclesiastical abstention, the Court of Appeals noted, "if the exception exists, it would apply where the religious entity engaged in a bad faith attempt to conceal a secular act behind a religious smokescreen." Pet. App. 7. Here, however, Mr. Moon "failed to articulate a secular legal right," and, therefore, "failed to articulate how the defendants may have deprived him of that right in the guise of a religious act." *Id.*

REASONS FOR DENYING THE PETITION

The district court dismissed this action because Sean Moon's claims required resolution of a church leadership dispute and therefore could not be decided using neutral principles of law. The Second Circuit summarily affirmed on the same basis. The Petition does not seek review of that holding. Petitioner does not argue that the case can be resolved using neutral principles of law, nor does he deny that the case turns on resolution of his claim that he is Rev. Moon's successor as leader of the Unification Church. Petitioner tacitly concedes that, under the current state of the law, the ecclesiastical abstention doctrine divests the courts of jurisdiction over his claims. Instead, the Petition invites the Court to use this case as a vehicle to create a sweeping, never-before recognized exception to the well settled First Amendment principle that courts may not interfere in church governance. The Court should decline the invitation.

I. THE SECOND CIRCUIT'S DECISION IS CORRECT AND DOES NOT CREATE A CONFLICT WITH THIS COURT'S PRECEDENT OR WITH THE LAW OF OTHER CIRCUITS

The Court should deny the Petition because the Court of Appeals decision does not conflict with this Court's precedents, nor does it create a split in the circuits. The Petition concedes at the outset that the Court has never held that there is a fraud or collusion exception to the ecclesiastical abstention doctrine and that no federal appellate court has exercised jurisdiction under that exception. Pet. 1.

A. No Court Has Applied a Fraud or Collusion Exception to Resolve a Church Leadership Dispute

The "fraud or collusion" language arises from the Court's 1929 decision in *Gonzalez v. Roman Catholic Archbishop*, which suggested by negative implication that civil courts may supplant a decision of proper church tribunals "[i]n the [presence] of fraud, collusion, or arbitrariness." 280 U.S. 1, 16-17 (1929). *Gonzalez* is not a First Amendment case, and the Court's later decision in *Milivojevich* describes *Gonzalez's* "suggested 'fraud, collusion, or arbitrariness' exception" as "dictum only." 426 U.S. at 712.

When the Supreme Court revisited the *Gonzalez* dictum in *Milivojevich*, it observed that "no decision of this Court has given concrete content to or applied the 'exception.'" *Id.* There, the Court held that the First Amendment precludes courts from invoking an arbitrariness exception to decide "whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations." *Id.* at 713. Because no issue of fraud or collusion was presented in the case, *id.* at 713 n.7, the Court left open the question "whether or not there is room for 'marginal civil court review' under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith *for secular purposes*." *Id.* at 713 (emphasis added).

Thus, *Milivojevich* contemplated that any fraud or collusion exception, were it to be recognized, would be "narrow" and limited to situations where a church tribunal has acted fraudulently "for secular

purposes." In holding that no fraud or collusion exception would apply in this case because there was no allegation that the actions had a secular purpose, Pet. App. 7, the Second Circuit's decision is fully consistent with *Milivojevich*.

In the absence of a circuit split, the best Petitioner can muster is a claim that "uncertainty abounds" about whether there is a fraud or collusion exception. Pet. 15. Free-floating "uncertainty" in the absence of a circuit split – and in the absence of an issue of national importance – does not warrant granting a petition for writ of certiorari. Nonetheless, a review of the decisions cited by the Petitioner negates any claim of uncertainty. The Petition mentions a handful of court of appeals decisions, Pet. 15, 17-18, most of which do not involve claims of fraud or collusion and none of which contemplates use of the exception to resolve a church leadership dispute.

In *Hutchison v. Thomas*, 789 F.2d 392, 395 (6th Cir. 1986), the Sixth Circuit stated: "Assuming, without deciding, that review is allowed for fraud or collusion, it is still only allowed for fraud or collusion of the most serious nature undermining the very authority of the decision-making body." The court then concluded: "Certainly there is no claim or showing of such fraud or collusion here." In *Crowder v. Southern Baptist Convention*, 828 F.2d 718 (11th Cir. 1987), the Eleventh Circuit mentioned the possible existence of a fraud or collusion exception in the course of a survey of the ecclesiastical abstention jurisprudence, *id.* at 724, 725 n.18, but then stated, "appellants have made no allegation of fraud or

collusion." *Id.* at 727. *See also Askew v. Trs. of Gen. Assembly of Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 684 F.3d 413, 420 (3d Cir. 2012) (finding no basis for an inference of fraud or bad faith); *Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994) ("Whatever unlikely significance this 'open issue' [of whether there is a fraud or collusion exception] might have in some hypothetical case, it is certainly not implicated in this case because Young has alleged no fraud or collusion.").

Kaufmann v. Sheehan, notes that *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." 707 F.2d 355, 358 (8th Cir. 1983) (cleaned up). But, consistent with the Second Circuit's position here, the Eighth Circuit declined to apply the exception because the plaintiff's claims "go to the heart of internal church discipline, faith, and church organization." *Id.* "Accordingly, we do not deal here with 'secular purposes' and the 'fraud' or 'collusion' exceptions are unavailable." *Id.* at 359. Similarly, in another case cited by Petitioner (at 18), *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 331-32 (4th Cir. 1997), the court held that any fraud or collusion exception would not apply because the case presented an ecclesiastical dispute that would "interpose the judiciary into the Presbyterian Church's decisions, as well as the decisions of the other constituent churches, relating to how and by whom they spread their message and specifically their decision to select their outreach ministry through the granting or withholding of funds."

The Petition cites (at 15) a single district court decision, *Ambellu v. Re'Ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71 (D.D.C. 2019), which cited the fraud or collusion exception when evaluating the plaintiff's civil RICO claim, but then dismissed that claim for failure to adequately plead fraud and conspiracy with particularity. *Id.* at 81-85. Moreover, the court emphasized that the plaintiff in that case, unlike Petitioner here, did not "seek resolution of any questions about the control or leadership of the Church." *Id.* at 79.

B. There Is No Generic "Tortious Conduct" Exception to the Ecclesiastical Abstention Doctrine

As explained in Part II.A. below, the Complaint fails to adequately allege fraud or collusion, making Petitioner's reliance on such an exception, even if the Court were now to recognize one, untenable. For the first time in the litigation, Petitioner argues for a "tortious conduct" exception to ecclesiastical abstention. *See, e.g.,* Pet. i, Question Presented (conflating tortious conduct with fraud or collusion); Pet. 1 (defining the fraud or collusion exception as covering "fraud, torts, and conspiracies to commit those wrongful acts"); *id.* at 11 (asking the Court to resolve whether allegations of fraud "or other tortious conduct within a religious organization warrant exercising jurisdiction"); *id.* at 18 (arguing that "Mr. Moon's allegations of tortious conduct support exercising jurisdiction").

Petitioner never argued for a tortious conduct exception at the Court of Appeals. *See* Appellants' Br. 59-61. Petitioner has therefore waived this

argument. Moreover, Petitioner has made up this supposed tortious conduct exception out of whole cloth. The Petition fails to cite a single case even suggesting that allegations of non-fraud tortious conduct create an exception to the ecclesiastical abstention doctrine. Indeed, recognizing such an exception would routinely involve the courts in church governance disputes, which is foreclosed by the First Amendment.

There simply is no tortious conduct exception. And, even if the Court were to recognize the supposed fraud or collusion exception, and even if the Complaint had adequately plead fraud or collusion, any fraud or collusion exception cannot be invoked to exercise jurisdiction over a dispute over who should lead the Unification Church.

II. THIS CASE PRESENTS A POOR VEHICLE FOR DETERMINTING WHETHER THERE IS A FRAUD OR COLLUSION EXCEPTION

The single issue presented in the Petition is whether the Court should create a fraud or collusion exception to the ecclesiastical abstention doctrine. Pet. i. Petitioner does not dispute that, absent application of the supposed fraud or collusion exception, the ecclesiastical abstention doctrine would mandate dismissal of his lawsuit. Notably, he has abandoned his lead argument that his claims can be resolved using neutral principles of law.

As to the fraud or collusion exception, the Petitioner concedes that the "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.'" Pet. 1 (emphasis added). This Petition presents an exceedingly bad vehicle for this Court to address whether a fraud or collusion exception should be recognized. The Complaint does not adequately plead fraud or collusion, and there were other independent grounds for dismissal.

A. The Complaint Does Not Adequately Plead Fraud or Collusion

The Petition contends that the "case arises from fraudulent and other dishonest, tortious conduct." Pet. 4. As noted, the contention that allegations of tortious conduct are sufficient to create an exception to the ecclesiastical abstention doctrine is wholly unsupported and untenable and does not merit further discussion. With respect to fraud, the twelve-count complaint does not include any fraud claims, other than vague allegations of violations of the federal mail and wire fraud statutes as predicate acts for the civil RICO claim. Pet. App. 92-95. The Petition is notably silent on why this should be treated as a fraud case.

The Complaint's passing references to wire and mail fraud in the civil RICO claim are plainly insufficient to bring this action within any fraud or collusion exception, were the Court to create one. Where, as here, a plaintiff seeks to plead RICO's pattern element through predicate acts of mail or wire fraud, the heightened pleading requirements of Fed. R. Civ. P. 9(b) apply and require a plaintiff to state with particularity the circumstances constituting fraud. *See, e.g.*, *Menzies v. Seyfarth Shaw LLP*, 943 F.3d 328, 338 (7th Cir. 2019), *cert. denied*, 140 S. Ct. 2647 (2020); *ADA v. Cigna Corp.*,

605 F.3d 1283, 1291 (11th Cir. 2010); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-66 (9th Cir. 2004). A plaintiff must plead the "who, what, when, where, and how" of the alleged fraud. *Vanzant v. Hill's Pet Nutrition, Inc.*, 934 F.3d 730, 738 (7th Cir. 2019) (cleaned up); *see also Edwards*, 356 F.3d at 1066 (the complaint needs to "state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation") (cleaned up).

Here, the Complaint does not state the contents of the communications, who was involved, where or when they took place, or why they were fraudulent. Pet. App. 93-94. Nor does it particularize each Defendant's participation. Instead, the mail fraud allegation vaguely and conclusorily alleges that "Defendants caused documents to be sent and delivered through the United States mail, to followers of the Unification Church and Family Federation falsely stating that Sean Moon was not the Leader." *Id.* at 93. The wire fraud allegation is equally vague and conclusory, claiming that "Defendants caused numerous writings, signs, signals, pictures, or sounds to be transmitted by means of wire, radio, or television communications to followers of the Unification Church and Family Federation falsely stating that Sean Moon was not the Leader." *Id.* at 94. These allegations fail to meet even the Rule 8 pleading standard and fall well short of the Rule 9(b) particularity standard.

With respect to any claim of collusion, the civil RICO conspiracy claim fails to adequately plead a conspiracy. A RICO conspiracy requires proof "that

a defendant agreed to participate in the affairs of the enterprise through a pattern of racketeering activity." *United States v. Yannotti*, 541 F.3d 112, 121 (2d Cir. 2008). Such an agreement may be manifested "by words or actions." *Maersk, Inc. v. Neewra, Inc.*, 554 F. Supp. 2d 424, 462 (S.D.N.Y. 2008). The Complaint fails to identify the "words or actions" that reflect an agreement by each Defendant, and instead alleges that "the Defendants agreed that each conspirator would commit at least two acts of racketeering activity in furtherance of the conspiracy." Pet. App. 96. This sort of conclusory allegation would not survive a motion to dismiss. The Complaint also alleges that "the object of the conspiracy was to obtain money or property," *id.*, but does not identify what money or property was sought and from whom it was sought. Further, the Complaint alleges that all the Defendants conspired to commit "multiple acts of racketeering activity as set forth in paragraph 51," *id.*, but paragraph 51 describes Family Federation's February 2009 announcement of "Sean Moon's appointment as Leader to all Unification Church organizations," *id.* at 63, not multiple acts of alleged racketeering activity.

In sum, this case presents a poor vehicle for the Court to address whether a fraud or collusion exception should be created. In addition to the fact that the supposed exception would not apply here because the alleged fraud or collusion had an ecclesiastical purpose (exercising leadership of a church), not a secular purpose, the Complaint does not adequately plead fraud or collusion.

B. There Are Other Grounds for Dismissal

This case also presents a poor vehicle for the Court to address whether there is a fraud or collusion exception to the First Amendment ecclesiastical abstention doctrine because there are alternate grounds for dismissal. These grounds were argued in the motion to dismiss but were not considered by the district court because the case was dismissed on ecclesiastical abstention grounds.

First, the district court lacked personal jurisdiction over the principal defendants, including Hak Ja Han Moon and the Family Federation. Mrs. Moon is a Korean citizen who resides in Korea. Pet. App. 51. Family Federation is a Korean entity with its principal place of business in Korea. *Id.* at 50. Because neither Mrs. Moon nor Family Federation is "at home" in New York, or even the United States, the Southern District of New York court may not exercise general personal jurisdiction over them. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014). Moreover, the Complaint fails to allege a basis for the exercise of specific personal jurisdiction over Mrs. Moon or the Family Federation because it does not allege any conduct in New York, or even in the United States, that gives rise to the supposed fraud or collusion related claims. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017) ("For specific jurisdiction, a defendant's general connections with the forum are not enough."); *Walden v. Fiore*, 571 U.S. 277, 284-85 (2014) ("For a State to exercise jurisdiction consistent with due process, the

defendant's suit-related conduct must create a substantial connection with the forum State").

Second, there were other grounds for dismissing the civil RICO claim, in addition to the fatal defect of failing to plead wire or mail fraud with particularity, discussed above. As is apparent from the face of the Complaint, Petitioner failed to adequately plead other elements of a civil RICO claim, including the existence of an enterprise, a pattern of racketeering activity, and a cognizable domestic injury. *See* Pet. App. 92-95. Moreover, the Complaint impermissibly engages in group pleading, alleging that "Defendants" engaged in wrongdoing, rather than making specific allegations as to each Defendant. *See id.* As if that were not enough, the claim is time barred. The statute of limitations for civil RICO is four years. *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987). The four-year period starts to run when a plaintiff discovers or should have discovered his injury. *Rotella v. Wood*, 528 U.S. 549, 555 (2000). According to the Complaint, Mr. Moon discovered his injury more than four years before the initial Complaint was filed on February 22, 2019. The Complaint alleges that, nearly six years earlier, on February 23, 2013, the board of HSA-UWC voted to remove Mr. Moon as President of HSA-UWC, and on February 24, 2013, Mr. Moon wrote a letter to Unification Church members in the United States stating that Mrs. Moon had announced his removal as President of HSA-UWC. Pet. App. 67.

Even if the tortious interference or whistleblower claims could be categorized as alleging fraud or

collusion, those claims have been dismissed on non-First Amendment grounds, *id.* at 8, 36, and Mr. Moon does not appeal the dismissal of those claims. The remaining claims for breach of fiduciary duty, breach of agency relationship, and defamation would not fall within any fraud or collusion exclusion. *Id.* at 75-82, 85-92. In any event, Defendants moved to dismiss those counts for failure to state a claim, and that failure is a ground for dismissal of those claims independent of the ecclesiastical abstention doctrine.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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