No. 20-1415

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

REPLY BRIEF

AARON M. HERZIG
Counsel of Record
JONATHAN G. POLAK
LYNN ROWE LARSEN
SPENCER S. COWAN
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202
Phone: (513) 357-8768
Fax: (513) 381-0205
aherzig@taftlaw.com

May 18, 2021

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

REPLY BRIEF

Respondents agree that Mr. Moon's petition presents a narrow, unanswered question: whether a federal court has jurisdiction to conduct even a minimal review of allegations of fraud, collusion, or other tortious conduct within a religious organization. Br. in Opp. at 9. Respondents quibble with whether this is the right case in which to answer that question. But if Respondents are correct, no case presenting this question will ever reach this Court. The question presented is about when a case should survive a motion to dismiss for lack of jurisdiction under the ecclesiastical abstention doctrine. Only cases that are dismissed for lack of jurisdiction will raise this question, and every case that is dismissed will have the vehicle problems that Respondents perceive—standard challenges to all complaints, such as the specificity of pleading. The trial court did not even reach those issues precisely because it decided that it did not have jurisdiction under the ecclesiastical abstention doctrine. If this Court established a fraud or collusion exception, the trial court would have kept jurisdiction and reached the substance of the case.

Respondents claim that even if a fraud or collusion exception existed, it would not apply to this case. Perhaps they are correct—various Justices' references to potential fraud exceptions are as narrow as Respondents say. The problem is that no litigant or court knows the answer to that question. This Court needs to resolve it. Respondents' suggestion about what they think the fraud or collusion exception might mean only underscores the point that we are all guessing

until this Court announces whether an exception exists and describes its contours.

Answering this question is important because abstention deprives Mr. Moon of the only possible forum to resolve this dispute. There are no other governing or quasi-judicial bodies to resolve this dispute, which explains why different groups within the Unification Church—including Respondents—have turned to the courts for guidance. But the consequences of abstention extend beyond Mr. Moon. At bottom, this Court's ecclesiastical abstention doctrine fails to recognize the threats faced by modern religious organizations. And, simultaneously, the doctrine overstates the potential harm from narrow judicial intervention to resolve fundamentally secular disputes involving fraud and related torts. This imbalance is a disservice to religious organizations and their members. But there is daylight between categorical abstention and unconstitutional interference with the free exercise of religion. Mr. Moon's petition presents an ideal opportunity for this Court to refine that doctrine and articulate a formal exception in cases of fraud, collusion, and bad-faith tortious conduct.

Granting certiorari would end the uncertainty around this important jurisdictional question. Declining review allows this uncertainty to continue with the effect of immunizing rogue actors determined to pillage religious organizations with impunity.

I. Mr. Moon's petition presents a narrow question, focused exclusively on the ecclesiastical abstention doctrine's fraud or collusion exception.

The parties agree that this Court has not defined the scope of the ecclesiastical abstention doctrine, nearly 150 years after it first recognized the doctrine in *Watson v. Jones*, 80 U.S. 679 (1872). To be sure, there is clarity at one end of the spectrum. Courts should abstain from disputes that are "strictly and purely ecclesiastical in [their] character." *Id.* at 733. Likewise, courts should avoid resolving "doctrinal questions" or from making an "extensive inquiry into religious policy." *See, e.g.*, *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 (1970). But that is not this case here. Mr. Moon has never asked a court to interpret religious texts, decipher church doctrine, or scrutinize a religious decision against the backdrop of church policy.

Mr. Moon presents an altogether different question: whether courts may exercise jurisdiction when a party alleges a dishonest, fraudulent scheme to take control of a religious organization. Respondents concede that this Court has not applied a fraud or collusion exception to the First Amendment's ecclesiastical abstention doctrine—but that it has left open the possibility of "civil court review under the narrow rubrics of fraud or collusion." *Serbian E. Orthodox Diocese of U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976) (internal quotation marks omitted). This Court should not leave that question unanswered any longer.

Respondents inaccurately frame this case as a pure leadership dispute within the Family Federation and the Unification Church—and discourage judicial review over these kinds of disputes, no matter the misdeeds of the defendants. But there are two key reasons to reject Respondents' claim that no court may exercise jurisdiction to resolve a leadership dispute within a religious organization. First, when tortfeasors take control of an entire religious organization through fraud, collusion, or other bad-faith conduct, the need for judicial intervention is arguably greater than in any other circumstance. That conduct poses an existential threat to the religious organization—particularly if the tortfeasors (like Respondents) misappropriate assets and retaliate against members who expose their wrongdoing. Categorical abstention only encourages such conduct. This Court should grant Mr. Moon's petition to refine its ecclesiastical abstention doctrine and account for the harm that fraudulent or bad-faith tortious conduct poses to the free exercise of religion.

Second, this is not a leadership dispute within a purely religious organization, driven by a theological disagreement. Mr. Moon's complaint describes a fraudulent scheme motivated by power and money, not church doctrine or spirituality. Mr. Moon alleges fraud and related tortious conduct within the Family Federation, a massive organization with secular functions and assets.[1] In particular, Respondents:

---

[1] No one disputes that many business interests are at stake in the numerous lawsuits among the Moons, including The New Yorker Hotel, a 43-story Manhattan hotel. Pet. App. 50–51; *see also Family Federation for World Peace and Unification International*

- Pressured Mr. Moon into resigning from leadership positions within the Unification Church under false pretenses;
- Coerced Mr. Moon to move to the United States to resolve a leadership dispute, only to later remove him from that role;
- Retaliated against Mr. Moon by suspending him from additional Unification Church leadership positions after Mr. Moon exposed corruption and self-dealing within that organization; and
- Committed wire and mail fraud by sending documents to Family Federation members containing false statements about Mr. Moon.

Pet. App. 66–69; 92-97.

It is no surprise that Respondents want to shroud these misdeeds under the ecclesiastical abstention doctrine.[2] Outside of the courts, Mr. Moon has no remedy; Family Federation has no internal procedures or governing body to rectify this misconduct. So, Respondents mischaracterize this dispute as doctrinally driven to escape all judicial scrutiny and permanently deny Mr. Moon judicial relief. The

---

v. Hyun Jin Moon, 2011-CA 003721-B (D.C. Super. Ct. Dec. 03, 2020).

[2] Conveniently, Respondents have argued against applying the ecclesiastical abstention doctrine in other contexts, largely because there are no forums within the Family Federation or the Unification Church to resolve these disputes.

question, however, is whether Respondents should be *able* to do so.

Abstention deprives Mr. Moon of a neutral forum to resolve allegations of fraud and related tortious conduct that threaten the Family Federation's existence. And beyond Mr. Moon, abstention shields those determined to pillage a religious organization. This Court should avoid both outcomes by granting Mr. Moon's petition and formally recognizing a fraud or collusion exception to the ecclesiastical abstention doctrine.

II. Respondents cannot narrow the scope of the fraud or collusion exception before this Court has fully defined that exception.

Although Respondents concede that the existence of a fraud or collusion exception remains unanswered, they nonetheless try to narrow the scope of that exception before this Court has even defined it.

First, Respondents oppose Mr. Moon's petition because Mr. Moon has not alleged a stand-alone fraud claim. That argument, however, is unfounded: this Court has never suggested that the fraud or collusion exception applies only when a party pleads a stand-alone fraud claim. In *Milivojevich*, for example, this Court noted that "[n]o *issue* of 'fraud' or 'collusion' is involved in this case" and so declined to address whether the fraud or collusion exception applied. *Milivojevich*, 426 U.S. 696, 713 n.7 (1976) (emphasis added). But there is no requirement that the party seeking jurisdiction under the fraud or collusion exception may plead only a fraud claim. Requiring a

party to plead a stand-alone claim for collusion makes even less sense, given that many states do not recognize "collusion" as an independent cause of action. *See, e.g.*, *Hill v. Hawks*, No. 2:12-cv-364, 2012 WL 12906185, at *2 (E.D. Va. Nov. 13, 2012) ("[T]here is no cause of action for 'collusion.'"); *Lewis v. Wells Fargo Bank, N.A.*, No. LA CV12-04540, 2012 WL 12897041, at *2 (C.D. Cal. Sept. 12, 2012) (collusion is a legal doctrine, not a cause of action); *Ricks v. Murphy*, No. A-10-CA-185-LY, 2010 WL 2246287, at *4 (W.D. Tex. June 3, 2010) ("[T]here is no cause of action for collusion or for misappropriation of funds.").

This Court's language in *Milivojevich* confirms that the exception is nowhere near as narrow as Respondents suggest. Lower courts should exercise jurisdiction when bad-faith tortious conduct—be that fraud, collusion, breach of fiduciary duty, or other intentional torts—comprises a stand-alone claim *or* embeds a separate claim. If bad-faith tortious conduct is an *issue* in the case, ecclesiastical abstention may not be proper, regardless of the particular claims the parties have alleged. And here, Mr. Moon has alleged specific claims premised on Respondents' fraudulent conduct. Through his breach of fiduciary duty claim, Mr. Moon alleges that Respondents orchestrated the fraudulent scheme to misappropriate assets and to remove him from the organization. In other words, allegations of fraud undergird that tort claim. And if that were not enough, Mr. Moon alleges multiple RICO violations, including specific counts alleging mail *fraud*, wire *fraud*, and money laundering.

Second, Respondents try to discourage judicial review by claiming that the fraud or collusion exception applies only if the fraud or collusion serves some secular purpose. But even if that is true, that proposition does Respondents no favors. Respondents cannot dispute that Family Federation officials executed their scheme for a secular purpose: power and money. Mr. Moon's complaint describes how Family Federation leaders drew excessive salaries and misappropriated assets that belonged to him and to the organization. When Mr. Moon exposed that wrongdoing, Family Federation officials demanded his silence and then retaliated, removing him from his leadership positions within the organization. That scheme served no purpose, other than to empower and enrich Respondents. There is no reason to treat Respondents differently from any other wrongdoer, simply because they have cloaked their misdeeds under the guise of religion.

III. Categorical abstention exposes religious organizations to fraud and other bad-faith torts.

Respondents oppose the creation of any exceptions to the ecclesiastical abstention doctrine. They would leave religious organizations defenseless to fraud and other bad-faith tortious conduct. Denying victims—like Mr. Moon—a neutral judicial forum sends a clear message to would-be tortfeasors: there are no consequences for fraud, collusion, or bad-faith tortious conduct, so long as they conceal their conduct under the guise of religion. The effects of categorical abstention are not hard to envision. What stops a church treasurer

from transferring the title of church assets to his name; if he declares himself the new leader of the church, he would receive civil immunity, absent *some* exception to the ecclesiastical abstention doctrine. Categorical abstention, which Respondents advocate, would prevent religious organizations and their members from remedying this kind of conduct.

Justice Rehnquist recognized the dangers of categorical abstention and warned that civil courts "can easily be converted into handmaidens of arbitrary lawlessness." *Milivojevich*, 426 U.S. at 727 (Rehnquist, J., dissenting). That warning came true when the lower courts dismissed Mr. Moon's claims under the ecclesiastical abstention doctrine, notwithstanding his allegations of fraud and other bad-faith tortious conduct. This Court should correct that injustice by granting Mr. Moon's petition and providing Mr. Moon a forum to litigate his case. And it should formally recognize an exception to the ecclesiastical abstention doctrine in cases alleging fraud, collusion, or other bad-faith tortious conduct.

IV. There is no obstacle to reaching the merits here.

Respondents try to discourage further judicial scrutiny by overstating the threat of potential vehicle problems. Respondents' perception of Mr. Moon's complaint is no reason to deny his petition—and Respondents' argument, taken to its logical conclusion, would bar review of any petition that asks this Court to reconsider its ecclesiastical abstention doctrine. Whenever a court dismisses a case under the ecclesiastical abstention doctrine (or any other

jurisdictional doctrine), it chooses to *not* decide a claim on its merits and to leave questions about the strength of the claim unanswered. But those unanswered questions should not bar this Court from granting Mr. Moon's petition. If they did, no jurisdictional dismissal would ever warrant certiorari.

In effect, Respondents seek to permanently foreclose judicial review before the lower courts have addressed the merits of Mr. Moon's surviving claims and before the parties have conducted any discovery on those claims. But if the pleading or jurisdictional defects were as profound as Respondents claim, the lower courts would have decided each claim on the merits. Instead, the lower courts chose to wade into the constitutional thicket of ecclesiastical abstention and dismissed nearly all of Mr. Moon's claims under that doctrine.[3]

Mr. Moon's complaint details how Respondents conspired—and executed—a fraudulent scheme to discredit Mr. Moon and to remove him as leader. Mr. Moon's RICO claims alleging mail and wire fraud schemes, for example, describe a pattern of racketeering activity that satisfies RICO's predicate elements. To that end, Mr. Moon attached documents to his complaint that Respondents sent to other Family Federation members; those documents contain false statements about Mr. Moon and help explain how Respondents cemented control over the Family

[3] For that matter, Respondents did not even raise the purported pleading and jurisdictional defects in their appellate brief with the Second Circuit.

Federation through mail and wire fraud. Pet. App. 92–97.

Respondents' brief in opposition also fails to explain why Mr. Moon's breach of fiduciary duty and breach of agency relationship claims are deficient, beyond a conclusory assertion that they fail to state a claim. But both claims are well pleaded. Both claims describe with particularity how Respondents conspired to remove Mr. Moon from his leadership positions and misappropriate assets belonging to Mr. Moon and the Family Federation. *Id.* at 85–90. In doing so, Respondents breached their fiduciary duties to—and agency agreements with—Mr. Moon and the Family Federation.[4]

This Court should not decline the opportunity to resolve a longstanding, unanswered question about its ecclesiastical abstention doctrine, based on arguments that the lower courts did not address and that Respondents did not raise with the Second Circuit.

---

[4] Respondents' personal jurisdiction defenses are unavailing. Respondents have never offered evidence to rebut Mr. Moon's factual allegations supporting personal jurisdiction in New York. Hak Ja Han, for example, received service of Mr. Moon's complaint in New York but claims she is immune from personal jurisdiction because she was attending a deposition in a related case. But because Hak Ja Han did not prove that she was in New York *solely* to attend that deposition (and evidence confirms she was in the United States for an extended visit), she failed to meet her burden to receive immunity from service of process. *See, e.g.*, *Continental Indus. Grp., Inc. v. Altunkilic*, 633 F. App'x 61, 63 (2d Cir. 2016) ("The burden on these issues rests with the party claiming immunity.").

CONCLUSION

This Court should grant Mr. Moon's petition.

Respectfully submitted,

AARON M. HERZIG
Counsel of Record
JONATHAN G. POLAK
LYNN ROWE LARSEN
SPENCER S. COWAN
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202
Phone: (513) 357-8768
Fax: (513) 381-0205
aherzig@taftlaw.com

Counsel for Petitioner Hyung Jin "Sean" Moon