

COLORADO COURT OF APPEALS
101 West Colfax Ave., Suite 800
Denver, CO 80202

Appeal from Denver County District Court
The Honorable Michael A. Martinez
Case No. 2010CV1867

Plaintiffs-Appellants: Ananda Marga, Inc., a
Colorado Nonprofit Corporation, *et al.*

v.

Defendants-Appellees: Acharya Vimalananda
Avadhuta, *et al.*

and

Intervenor-Appellee: Ananda Marga Pracaraka
Samgha-Ranchi.

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AMENDED OPENING BRIEF

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with C.A.R. 32(f)

I certify that this opening brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. With respect to C.A.R. 28, I further certify that:

- The brief complies with C.A.R. 28(g) because it contains less than 9501 words.
- The brief complies with C.A.R. 28(k) because it contains, under one or more separate headings, a concise statement of the applicable standard of appellate review with citation to authority; and (where the issue is raised as a matter of preserved error rather than plain error) one or more citations to the precise locations in the record (by volume and page number) where the issue was raised by a party and addressed by the trial court.

/s/ Charles T. Mitchell

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REFERENCES TO THE RECORD IN THIS BRIEF

As set forth in the order of this Court dated January 20, 2012, and the Notice of Filing Of Record On Appeal And Briefing Schedule dated January 20, 2012, formatting problems prevented the Clerk of the Court's office from generating an indexed CD-Rom version of the electronic record. The Record on Appeal includes the Lexis/Nexis record of trial pleadings, two CDs containing the complete transcript of the trial proceedings, and two CDs containing trial exhibits.

Citations to pleadings, motions, and documents in support of motions will include the Lexis/Nexis transaction number, pleading, and page number.

The Trial Transcript is contained on two CDs. In the CD containing the transcripts of the first five days of trial ("CD1"), there are five PDF documents, each named for the date of the trial day and containing the transcription of that day's proceedings. Citations to the Trial Transcripts of the first five days of trial are to CD1, the PDF trial date, and the transcript page and line numbers (*e.g.* CD1, 5-9-11, 38:1-12). The second Trial Transcript CD ("CD4") contains the transcript of the last day of trial, May 16, 2011, which consists of the trial court's findings of facts, conclusions of law, and ruling from the bench. That transcript will be cited as CD4, the PDF trial date, and the transcript page and line numbers. (*e.g.* CD4, 5-16-11, 30:7-17).

Trial exhibits are contained on two CDs: Plaintiffs' exhibits are on CD2, and Defendants' exhibits are on CD3. Citations to trial exhibits are to CD2 or CD3, exhibit number and PDF page number (*e.g.* CD2, Pl. Ex. 3, p.3). Pursuant to C.A.R. 28(e), the following table identifies each exhibit referenced in the Opening Brief, with corresponding citations to the place in the record where the exhibit was referenced and admitted into evidence.

TABLE OF EXHIBITS PURSUANT TO C.A.R.28(e)

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STATEMENT OF ISSUES PRESENTED

1. Did the trial court err in its determination of the parties' claims by impermissibly intruding into matters of religious doctrine and practice in violation of the First Amendment to the United States Constitution?

2. Can the parties' dispute be resolved without judicial intrusion into matters of religious doctrine and practice, or are the claims nonjusticiable?

STATEMENT OF THE CASE

A. Nature Of The Case And Course Of Proceedings.

The Plaintiffs in this action are Ananda Marga, Inc. ("AMI"), a Colorado nonprofit corporation and religious organization, AMI's board of directors, and fourteen nonprofit corporations that are subordinate affiliate religious organizations of AMI (collectively referred to herein as "Plaintiffs" or "AMI"). Defendants are a group of individuals who are affiliated with one of several factions of AMI's global parent organization in India, Ananda Marga Pracaraka Samgha ("AMPS-Central"), and the Intervenor, Ananda Marga Pracaraka Samgha-Ranchi ("AMPS-Ranchi"), is the faction with which the individual defendants are aligned (collectively referred to herein as "Defendants" or "AMPS-Ranchi"). This declaratory action was filed to determine the legally serving members of the board

of directors of AMI and the ownership rights to property held by AMI and its subordinate affiliates.

The General Secretary of AMPS-Central has the power to appoint the highest executive officer of AMI – its Sectorial Secretary. (CD2, Pl. Ex. 3, p.3). The Sectorial Secretary of AMI, in turn, is responsible for appointing AMI’s board of directors. (*Id.* at p.7). Approximately two years before the events that gave rise to the current dispute over the composition of AMI’s board of directors, AMI’s global parent in India split into two separate factions: “AMPS-Ranchi” and “AMPS-Kolkata.” (CD1, 5-12-11, 112:10-114:22). The split began after the death of Ananda Marga’s Founder and Guru, and culminated with an ongoing bitter dispute at the highest levels of AMPS-Central over the election of the legitimate governing body of AMPS-Central. (*Id.*). Beginning in 2003, multiple lawsuits were filed in India by the two factions to determine the legitimate General Secretary and the overall governing body of AMPS-Central. (*Id.*). Most of these lawsuits are still working their way through India’s legal system with no final resolution regarding the legitimate General Secretary and governing body of AMPS-Central.

This Colorado action arose from Defendants’ efforts in 2010 to terminate the services of AMI’s board of directors and reconstitute the board with appointments

from within the AMPS-Ranchi faction. Because the legitimacy of AMPS-Ranchi's General Secretary (and his AMI appointments) was in dispute, the individual Plaintiffs and individual Defendants both claimed to be the duly-appointed officers and directors of AMI. Each sought a declaratory judgment from the trial court to resolve the ongoing conflict. The claims were tried to the Court, and at the close of Plaintiffs' case, Defendants moved for involuntary dismissal of Plaintiffs' claims pursuant to C.R.C.P. Rule 41(b) and for reconsideration of their motion for summary judgment on Defendants' counterclaims. On May 16, 2011, the trial court granted Defendants' motions and ordered that AMI and its board were to be controlled by Defendants and the Intervenor faction, AMPS-Ranchi.

In its findings and conclusions, the Court acknowledged its limited jurisdiction under the First Amendment of the United States Constitution to resolve disputes regarding ecclesiastical governance (CD 4, 5-16-11, 6:21-7:7), and further acknowledged the pending litigation in India regarding the governance of global parent AMPS-Central and the contested status of its General Secretary – an issue that the Court recognized as beyond the scope of the Court's authority to review and “beyond the scope, obviously, of [its] authority to intervene.” (CD4, 5-16-11, 30:7-17). Nonetheless, the court reviewed the evidence, took judicial notice of a provisional ruling from the Indian courts allowing AMPS-Ranchi's general

secretary to act as the temporary, interim General Secretary until a final resolution on the merits was reached in India, and ruled in favor of Defendants and their faction's general secretary as the "stand alone" general secretary with "unquestioned authority" over AMI. (CD4, 5-16-11, 35:6-11 and 31:3-6).

B. Disposition In The Court Below.

Plaintiffs sought declaratory and injunctive relief, declaring the individual Plaintiffs to be the duly constituted Board of Directors over AMI and its related assets, and enjoining Defendants from exercising authority over the Board of Directors or representing themselves as the AMI Board. Specifically, Plaintiffs requested that the trial court resolve the declaratory claim using a "neutral principles of law" analysis of the corporate documents, including the articles and bylaws of AMI. (#305142327, First Amended Complaint For Declaratory Judgment And Injunctive Relief, pp. 12-14). Defendants and Intervenor asserted counterclaims for declaratory and injunctive relief, seeking judicial recognition of the Intervenor faction's General Secretary as the sole general secretary of the religious organization, recognition of Intervenor as the prevailing faction and governing body of AMPS-Central, and an order affirming Defendants' status as the directors of AMI with their right to control the assets of AMI and its subordinate affiliates. (#31119868, Defendants' First Amended Joint Answer To First

Amended Complaint, Affirmative Defenses And Counterclaims, pp. 29-30; (#33874823, Answer To First Amended Complaint, Affirmative Defenses, And Counterclaims Of Intervenor, pp. 34-35). Resolution of Defendants' and Intervenor's counterclaims required the trial court to review and resolve disputed issues of religious doctrine and practice regarding the governance of AMPS-Central (*Id* at p. 34, ¶¶1 (b) and (c)).

The parties filed cross motions for summary judgment, both of which were denied. A bench trial was commenced on May 9, 2011. At the close of Plaintiffs' case, Defendants moved for involuntary dismissal of Plaintiffs' claims pursuant to C.R.C.P. Rule 41(b). Defendants also moved for reconsideration of its motion for summary judgment on Defendants' counterclaims. The Court granted both motions, enjoining Plaintiffs from exercising authority and control over AMI, its assets and property, and the assets and property of its affiliate entities. On May 27, 2011, the trial court's rulings were reduced to a written Order of Judgment and entered into the register of actions pursuant to C.R.C.P. 58.

C. Statement Of The Facts.

1. AMPS-Central.

AMPS-Central is a worldwide spiritual organization headquartered in India. (CD1, 5-9-11, 149:18-23). Ananda Marga's spiritual movement was

founded in 1955 by Shrii Shrii Anandamurti, also known as Reverend Baba or Guru, to promote Reverend Baba's teachings of "Ananda Marga," or "the Path of Bliss." (CD1, 5-10-11, 112:4-7). Followers of the teaching of Ananda Marga are referred to as "adherents." (CD1, 5-9-11, 98:21-99:1). Until his death in 1990, the Reverend Baba governed and controlled AMPS-Central. (CD1, 5-9-11, 79:6-15).

Since the Guru's death in 1990, AMPS-Central has been governed pursuant to the Ananda Marga Caryácarya literature and the AMPS Constitution. (CD2, Pl. Ex. 8, 15). The Guru wrote Caryácarya in 1956 after founding the spiritual movement. (CD2, Pl. Ex. 15, p.6). While there have been multiple editions of Caryácarya throughout the 1960s, 1970s, and 1980s, the governing body of AMPS-Central authorized a unified edition of Caryácarya in 1995. (*Id.* at p.7).

Caryácarya covers an array of topics and establishes a governing structure for the Ananda Marga organization. Caryácarya establishes both an executive committee and an adjudicative committee. The "Central Committee" is the primary policy-making committee. (*Id.* at p.47). Under Caryácarya, Ananda Marga's Central Committee is comprised of between 15 and 60 members who are elected by Ananda Marga's senior spiritual leaders, or "purodhas," from among their own ranks, with the Purodha Pramukha acting as the ex-officio President unless he or she decides to delegate this role to another person. (*Id.* at pp.47-49).

The Purodha Pramukha is elected by the votes of the purodhas, and the position is held for life. (*Id.* at pp.50-51). As ex-officio President, his or her responsibilities include appointing chairpersons for all subordinate committees and constituting the Central Executive Committee, a smaller administrative subcommittee of the Central Committee. (*Id.* at pp.47-49).

Caryácarya also establishes an adjudicative body for AMPS-Central known as the “Central Purodha Board.” (*Id.* at pp.50-51). The chairperson of the Central Purodha Board is the Purodha Pramukha. The remaining three members of the Board are elected by the purodhas. The four-member Board reviews complicated problems and serious controversies that arise within Ananda Marga, and their decision is considered final. Decisions are made by majority rule. In the event of an evenly split vote of the four members, the single vote of the Purodha Pramukha will be considered the vote of the Board. (*Id.*).

AMPS-Central is also registered as a legal entity and recorded under the Societies Act of West Bengal, India. (CD 4, 5-16-11, 10:18-11:2). The legal entity is controlled by its own separate AMPS Constitution. (CD2, Pl. Ex. 9). Under the AMPS Constitution, the “Governing Body” (also identified as the “Central Committee”) is the organizational body that carries on the administration and business affairs of AMPS-Central. (*Id.* at pp.9-11). The AMPS-Central

Governing Body is comprised of between 10 and 15 members elected from the general membership. (*Id.* at p.8). The 10 to 15 elected officers, or “office bearers,” of the Governing Body then hold an additional election at which the various executive officers, including the General Secretary, are elected from amongst themselves. (*Id.*). The General Secretary of the Governing Body has the power to appoint “different level Secretaries/Branch Secretaries/Assistant Secretaries/members, or agents and employees, and to transfer any of them according to law and these regulations...”. (*Id.* at p.13).

The AMPS Constitution and Ananda Marga Caryácarya are inconsistent in their treatment of the “Central Committees” and create irreconcilable differences between the number of Central Committee members and the process by which the Central Committee members are elected or appointed. (*See supra.*). These inconsistencies have led to fundamental, ongoing disputes within the religious organization over religious doctrine and governance that have yet to be resolved. (*See Section C.2, infra.*).

2. Continuing Litigation Over Governance Of AMPS-Central.

Beginning with the Guru’s passing and continuing to the present day, there has been an ongoing dispute within AMPS-Central as to which individuals are the genuine members and duly-elected (or duly-appointed) officers of the Central

Committee and Governing Body. (CD1, 5-12-11, 112:10-114:22 and 121:3-123:12; CD1, 5-9-11, 112:15-113:10; CD1, 5-10-11, 234:25-236:6). Following the Guru's passing, election procedures were largely ignored and conflicts arose over whether the central office should be holding new Governing Body elections in compliance with the AMPS Constitution. (*Id.*; *see also* CD3, Def. Ex. 347, pp.20-22). By 2003, these tensions led to a physical split of AMPS-Central into two separate factions: AMPS-Ranchi and AMPS-Kolkata. (*Id.*). Separate elections were held, which created two distinct Governing Bodies with two separate General Secretaries for the factions. (*Id.*). Each faction claimed to be the legitimate Governing Body of AMPS-Central, and each claimed to have its own duly appointed General Secretary with the power to appoint and transfer the officers and employees of AMPS-Central and its affiliated worldwide sectors. (*Id.*).

In 2003, AMPS-Kolkata adherents filed suit in India to determine the duly elected and legitimate Governing Body of AMPS-Central, including its President and General Secretary. (CD1, 5-9-11, 111:6-13; CD2, Pl. Ex. 106, 107, 108, 111, and 112; CD3, Def. Ex. 347, pp.20-22). In the still-pending lawsuits, AMPS-Kolkata claims that the previous General Secretary failed to convene annual meetings to hold legitimate elections for the members and officers of the Governing Body in violation of the AMPS Constitution. (*See* CD3, Def. Ex. 347,

pp.20-22). AMPS-Kolkata also claims to have exercised its right to convene a special meeting for the purpose of electing members of the Governing Body – importantly, this included the election of a new General Secretary as of August 24, 2003 – and seeks recognition of its Governing Body and General Secretary as the legitimate, duly elected officers of AMPS-Central. (*Id.*). Although there have been some provisional rulings by the Indian courts that impose temporary arrangements for the smooth functioning of AMPS-Central, (CD2, Pl. Ex. 106-108, 111 and 112; CD3, Def. Ex. 347, pp.4-68 (pages 1-3 of Def. Ex. 347 were redacted and are not part of the trial record)), no final decision on the merits has been reached and the cases are still pending in India. (*Id.*). Importantly, the India Court has recognized that the conflicting provisions in Caryácarya and the Constitution for the election of the Central Committee and the Governing Body’s “Central Committee” are incompatible with the Ranchi faction’s practice of selecting its Governing Body. (CD2, Pl. Ex. 112, pp.40-48). Thus, the Indian litigation involves disputes over the interpretation of fundamental rules governing the election procedure for AMPS-Central, including how executive officers are selected, how many officers may serve, and whether the highest executive officer is elected or appointed. (CD2, Pl. Ex. 112, pp. 44-48; *see also* CD2, Pl. Ex. 9, p.8, ¶9; CD2, Pl. Ex. 15, p.106).

The AMPS-Ranchi faction also filed its own lawsuit in India, seeking an injunction against the AMPS-Kolkata faction and a declaration from the Indian courts that the President, General Secretary, and Treasurer of AMPS-Kolkata's Governing Body were "illegal, void and without jurisdiction . . . to make any disturbance or interference in administration and management" of AMPS-Central. (CD2, Pl. Ex. 109, p.40). While the lawsuits seeking to determine the legitimate and rightful status of AMPS-Kolkata's General Secretary and Governing Body are still being litigated in India, the mirror claims filed by the AMPS-Ranchi faction were dismissed. (*Id.* at 68-69; *see also* CD1, 5-12-11, 1:21-5:18 and 13:12-16).

Acarya ("Ac.") Dhruvananda Avadhuta ("Avt.") ("Dhruvananda") is a member of the AMPS-Ranchi faction and represents himself as the General Secretary of AMPS-Central. Dhruvananda's purported status as General Secretary of AMPS-Central has been in dispute since August 2003, when the two factions within AMPS-Central split and held elections that led to the India litigations. (CD1, 5-9-11, 112:15-113:10). Specifically, since August 24, 2003, there have been at least two, and sometimes up to three Ananda Marga adherents purporting to be the General Secretary of AMPS-Central. (CD1, 5-9-11, 110:1-6, 143:1-6; CD1, 5-10-11, 16:23-17:8; CD1, 5-12-11, 121:3-123:12; CD3, Def. Ex. 347, pp.20-22; CD4, 5-16-11, 30:7-17). No court in India has reached a final decision

on this key issue in the legal disputes between the AMPS-Ranchi and AMPS-Kolkata factions. Nor has any resolution been issued by the Central Purodha Board that determines the duly elected General Secretary of AMPS-Central. The schism between the two factions presently extends to the Central Purodha Board, with a different person from each faction conveying himself as the Purodha Pramukha. (CD1, 5-11-11, 6:10-21).

3. AMI And The Colorado Dispute.

AMI is a Colorado nonprofit corporation and religious organization, the management and control of which is governed by its Articles and Bylaws (as amended) and its duly appointed Board of Directors. (CD2, Pl. Ex. 1-5). AMI is affiliated with AMPS-Central, the international parent organization, and is the corporate entity associated with the “New York Sector,” the sector of AMPS-Central that covers North and Central America. (CD2, Pl. Ex. 3, p.1). The original Bylaws of AMI provide that the highest executive officer of AMI – its Sectorial Secretary – is to be appointed by the General Secretary of AMPS-Central. (*Id.* at p.3). The Sectorial Secretary of AMI, in turn, is responsible for appointing AMI’s board of directors (*Id.* at p.7).

Plaintiff Ac. Tiirthananda Avt. (“Tiirthananda”) was posted as the Sectorial Secretary of AMI in January 2003, before the split between the Ranchi and

Kolkata factions and before the factions commenced the India litigation matters. (CD1, 5-12-11, 102:8-103:19; CD2, Pl. Ex. 84, p.2). Tiirthananda and the Plaintiff Board of Directors of AMI successfully managed the operations of AMI without disruption from 2003 until late 2005.

On October 30, 2005, more than two years after the split in the factions and the commencement of litigation over Dhruvananda's status as General Secretary, Dhruvananda purported to transfer Tiirthananda to the Suva Sector in Australia and appoint a new Sectorial Secretary of AMI. (CD2, Pl. Ex. 98). In response, a core group of adherents in the New York Sector wrote to the Central Purodha Board in India requesting a review and rejection of the transfer. (CD3, Def. Ex. 362, ¶ 9). On November 27, 2005, the Central Purodha Board met in India and after reviewing the core group's request, issued an indefinite stay of Tiirthananda's transfer. (#36768703, Ex. 22 of Plaintiffs' Motion for Summary Judgment, p.3 at Item 3). On December 24, 2005, the Central Purodha Board prepared comprehensive Board Minutes and Resolutions confirming the November 27, 2005 actions of the Central Purodha Board, including the indefinite stay of Tiirthananda's transfer. (*Id* at p.4). Under Caryácarya, the decision of the Central Purodha Board is final with regard to serious controversies arising within Ananda Marga. (CD2, Pl. Ex. 15, pp. 50-51).

On January 28, 2006, the Board of Directors of AMI voted unanimously to amend its Bylaws to require that the appointment of a new Sectorial Secretary must be ratified by two-thirds vote of the AMI Board, not including the incumbent Sectorial Secretary. (CD2, Pl. Ex. 38, p.6). The Amendment was certified and executed by AMI's Corporate Secretary on February 10, 2006. (CD2, Pl. Ex. 5, p.6). The AMI Board amended the Bylaws to preserve the status quo of AMI during the ongoing dispute in India between the two factions over the duly elected Governing Body of AMPS-Central, including its General Secretary, and to protect against unauthorized appointments by Dhruvananda as the purported General Secretary of the Ranchi faction. (CD1, 5-12-11, 133:8-25).

On February 28, 2006, Dhruvananda purported to transfer Tiirthananda again, this time to the Qahira Sector in the Middle East. (CD2, Pl. Ex. 99). The AMI Board declined to ratify the appointment as required under the Amended Bylaws because Dhruvananda's status as the legitimate General Secretary of AMPS-Central was, and continues to be, under dispute and the subject of AMPS-Central litigation in India, and because the Central Purodha Board had stayed Tiirthananda's transfer. (CD1, 5-9-11, 142:14-143:6). Without any resolution from either the Central Purodha Board or the Indian courts on these issues, Tiirthananda and the AMI Board of Directors continued to manage AMI in accordance with the

governing documents of AMI. (CD1, 5-9-11, 144:12-145:12). Four years later, in February 2010, Defendants' counsel sent Plaintiffs a letter informing them that Ac. Vimalananda Avt., Dhruvananda's purported Sectorial Secretary appointment from February 28, 2006, had unilaterally reconstituted the Board of Directors of AMI, and demanding a handover of the corporation and its assets to the Defendants. (*Id.*). The Defendants' demand led to the present declaratory action.

SUMMARY OF THE ARGUMENT

The question presented in this case, as in *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85, 90-91 (Colo. 1986) and *Jones v. Wolf*, 443 U.S. 595, 602 (1979), is whether one of two competing factions within a religious organization – in this case, AMPS-Ranchi – is entitled to ownership and control over AMI and its property.

The civil courts have the general authority to resolve this question. *Jones*, 443 U.S. at 602. The state has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum in which the ownership and control of church property can be determined conclusively. *Id.*; *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445 (1969) (*Blue Hull*).

Colorado courts have adopted a “neutral principles of law” approach to resolving disputes over ownership and control of church property. *Mote*, 716 P.2d 99. Under this approach, the “court should analyze legal issues that arise out of church organizations in the same manner as we would analyze those issues if they arose out of any other corporation or voluntary association.” *Id.* The court need not, however, rely solely on concepts of property and corporate law in determining the parties’ intent as to who controls church property and may review local and general church documents as part of this analysis. *Id.* at 101.

There is, however, an important limitation imposed on a neutral principles analysis by the First Amendment to the United States Constitution: a court is prohibited from resolving the church dispute by inquiring into and resolving disputed issues of religious doctrine and practice. *Id.* (“This inquiry can be as broad as is necessary to encompass all relevant considerations, as long as the inquiry does not require resolutions of disputed issues of religious doctrine.”); *see also Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 710 (1976) (*Serbian Orthodox Diocese*); *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (per curiam) (*Sharpsburg*). When an issue of religious doctrine or practice is necessarily involved in the issue being

litigated, a civil court must defer to the authoritative resolution of that issue arrived at by the highest court, tribunal, or controlling body of a hierarchical church organization. *Mote*, 716 P.2d 85 at 102. Notwithstanding, “where 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 into religious law and usage that would be essential to the resolution of the controversy.” *Sharpsburg*, 396 U.S. at 369-70 (*per curiam*, Douglas, J. and Marshall, J., concurring).

Under this framework, it remains a real and distinct possibility that a civil court simply may not be able to resolve a church dispute without violating the First Amendment. More specifically, when a neutral principles analysis requires the court to resolve a disputed issue of religious doctrine or practice *and* there is no resolution of the issue from the highest decision-making authority within the religious organization to which the court can defer, the court cannot impose its resolution of the issue without violating the First Amendment. *Mote*, 716 P.2d 85 at 101-102.

Defendants’ and Intervenor’s counterclaims present just such a nonjusticiable case because they are asking the trial court to resolve the ongoing, unresolved dispute between the Ranchi and Kolkata factions. The trial court erred

in recognizing Dhruvananda as the General Secretary of AMPS-Central, and in giving over control of AMI to the Sectorial Secretary appointed by Dhruvananda. In so doing, the trial court impermissibly decided disputed issues of religious doctrine and practice and selected one faction over another for the right to control AMPS-Central and direct the governance of the religious organization. The dispute between AMPS-Ranchi and AMPS-Kolkata involves disagreements over the fundamental procedures governing AMPS-Central, including how executive officers are elected, how many officers may serve, and whether the highest executive officer is elected or appointed. These are questions of religious doctrine and practice that cannot be resolved by the trial court without violating the First Amendment of the United States Constitution, unless the court can defer to a definitive resolution by the highest authority within AMPS Central — the Central Purodha Board — on this issue. The trial court did not do this, and could not possibly have done so, because the issue was never resolved by the Central Purodha Board.

Instead of deferring to the highest authority's resolution, as required, the trial court weighed conflicting evidence and took judicial notice of the fact that a court in India entered an interim order authorizing Dhruvananda to act as the temporary General Secretary for AMPS-Central beginning in July 2006, six months after the

disputed appointment of AMI's Sectorial Secretary. This was also a legal error because the India decision did not resolve the question of who the duly-elected General Secretary of AMPS-Central was in January 2006. Instead, the India Order only authorized Dhruvananda to act as the General Secretary under a limited and "temporary arrangement" for the purpose of preserving the status quo until a final resolution on the merits is reached. The provisional ruling only authorized Dhruvananda to act as the General Secretary (in shared cooperation with the Kolkata faction) beginning on July 19, 2006, and does not address or resolve the issue of AMPS-Central governance during the relevant timeframe, October 2005 to February 2006.

The trial court's decision was also erroneous because it went beyond the bounds of proper judicial notice. Although the trial court could have taken notice (and actually did take notice) of the fact that litigation was ongoing in India involving claims of competing factions for control over AMPS-Central, including the identity of the duly-elected or appointed General Secretary, the trial court clearly went beyond this limited use of judicial notice. If a court in the United States is prohibited by the United States Constitution from resolving disputed issues of religious doctrine and practice, then surely it is also prohibited from taking judicial notice of provisional orders from a foreign tribunal making a

temporary ruling on these very issues. Any other result would simply encourage foreign litigation as a way to circumnavigate religious freedoms secured by the First Amendment of the United States Constitution.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO AND THE ISSUES PRESENTED WERE PRESERVED FOR APPEAL.

A. Standard Of Review Is De Novo.

This Court reviews *de novo* a trial court's grant of a motion for summary judgment. *Western Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo.App. 2008). Appellate review of summary judgment motions is *de novo* because it is ultimately a question of law. *Martini*, 42 P.3d at 632; *Feiger, Collison & Killmer v. Jones*, 926 P.2d 1244, 1250 (Colo.1996) ("All summary judgments are rulings of law in the sense that they may not rest on the resolution of disputed facts. We recognize this by our *de novo* standard of reviewing summary judgments."). Summary judgment is appropriate when the pleadings and supporting documentation demonstrate that no genuine issue of material fact exists and that the moving party is entitled to summary judgment as a matter of law. *Martini v. Smith*, 42 P.3d 629, 632 (Colo.2002). The nonmoving party is entitled to the benefit of all favorable inferences from the undisputed facts, and all doubts

as to the existence of a triable issue of fact must be resolved against the moving party. *Martini*, 42 P.3d at 632.

B. The Issues Presented Were Preserved For Appeal.

The issues raised in this appeal were presented to the trial court. Specifically, AMI presented argument to the trial court in its briefing on summary judgment and in the trial proceedings that Defendants' request for declaratory relief could not be granted because, *inter alia*, it required the trial court to resolve disputed religious issues, including the question of who controls AMPS-Central and who is authorized to act as its General Secretary. (*See* #37005139, Plaintiffs' Reply Brief In Support Of Summary Judgment, at pp. 15-18; CD1, 5-13-11, 149:4-150:15).

II. THE TRIAL COURT VIOLATED THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN IT RESOLVED DISPUTED ISSUES OF RELIGIOUS DOCTRINE AND PRACTICE BY SELECTING ONE COMPETING FACTION OVER ANOTHER FOR THE RIGHT TO CONTROL AMPS-CENTRAL AND AMI.

The question presented in this case is whether a religious faction of AMPS-Central known as AMPS-Ranchi is entitled to ownership and control over AMI and its property. The trial court resolved this issue by taking judicial notice of a provisional ruling from the India courts to determine that the General Secretary of the Ranchi faction was the undisputed, stand alone General Secretary of AMPS-

Central, with authority to replace AMI's Sectorial Secretary and reconstitute its Board of Directors, and granting summary judgment in favor of Defendants' and Intervenor on their counterclaims. (CD4, 5-16-11, 30:7-17 and 35:6-11). The trial court's selection of one faction's General Secretary over another's was an overreach of judicial authority and a violation of the First Amendment of the United States Constitution.

A. Under Colorado Law, The Trial Court Must Apply Neutral Principles Of Law In Resolving Disputes Over Ownership And Control Of Church Property Without Inquiring Into And Resolving Disputed Issues Of Religious Doctrine And Practice.

The civil courts have the general authority to resolve disputes between two contending religious groups over ownership and control of church assets. *Jones*, 443 U.S. at 602. Colorado courts follow the widely-recognized "neutral principles of law" approach in resolving such disputes. *Mote*, 716 P.2d at 96. The neutral principles doctrine was first defined in *Blue Hull*, 393 U.S. at 449, and allows a court "to apply the neutral laws of the state to religious organizations but forbids a court from resolving disputed issues of religious doctrine and practice." *Moses v. Diocese of Colorado*, 863 P.2d 310, 320 (Colo. 1993).

The Colorado Supreme Court's use of the neutral principles doctrine is not strictly limited to church property disputes. *Id.* The Court recognized that it should "analyze legal issues that arise out of church organizations in the same manner as

[it] would analyze those issues if they arose out of any other corporation or voluntary organization.” *Id.* (quoting *Mote*, 716 P.2d at 99). The Court acknowledged:

Even though *Mote* involved a church property dispute, we noted that during the turn of the century this court had held that religious corporations “are subject to the principles of the common law and the practice and procedure applicable to corporations under general incorporation laws, so far as the same are pertinent.”

Id. (quoting *Mote*, 716 P.2d at 98 and *Horst v. Traudt*, 96, P. 259 (Colo. 1908)).

The issues presented in the present case are similar to those in *Mote* and *Jones* in that they all involve a schism within the local religious organization and a resulting dispute over control and ownership of church property. *Mote*, 716 P.2 at 97. Colorado law is clear that the starting place for resolving such disputes is an analysis under the neutral principles of law doctrine, (*id.* at 96), which includes an examination of the governing documents of the religious organization. *Id.* at 101-102.

Of course, the First Amendment of the United States Constitution imposes an absolute limitation on the court’s authority to resolve religious disputes under any analysis. Courts are prohibited from resolving disputes between religious groups by inquiring into and resolving disputed issues of religious doctrine and practice. *Id.* (“This inquiry can be as broad as is necessary to encompass all

relevant considerations, as long as the inquiry does not require resolutions of disputed issues of religious doctrine.”); *see also Serbian Orthodox Diocese*, 426 U.S. at 710; *Sharpsburg*, 396 U.S. at 368. When an issue of religious doctrine or practice is necessarily involved in the issue being litigated, the trial court must defer to the authoritative resolution of that issue arrived at by the highest court, tribunal, or controlling body of a hierarchical church organization. *Mote*, 716 P.2d 85 at 102. However, “where 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 into religious law and usage that would be essential to the resolution of the controversy.” *Sharpsburg*, 396 U.S. at 369-70 (*per curiam*, Douglas, J. and Marshall, J., concurring).

B. The Trial Court Violated The First Amendment By Choosing One Faction’s General Secretary Over The Other, Impermissibly Resolving A Disputed Issue Of Religious Doctrine And Practice.

At the center of the trial court’s grant of summary judgment in favor of Defendants on their counterclaims is the court’s finding that Dhruvananda, the purported General Secretary of the Ranchi faction, was, at the time of the October 30, 2005 posting order, “the stand alone general secretary with the unquestioned authority pursuant to Ananda Marga structure and authority and code and doctrine to do what he did, which is to transfer Tiirthananda, unquestionably.” (CD4, 5-16-

11, 31:1-6). The trial court made this finding despite repeated testimony concerning the dispute within the religious organization over Dhruvananda's status as General Secretary of AMPS-Central, (*see* CD1, 5-9-11, 110:1-6, 143:1-6; CD1, 5-10-11, 16:23-17:8; CD1, 5-12-11, 121:3-123:12; CD4, 5-16-11, 30:7-17), and multiple exhibits documenting the unresolved legal disputes in India between the factions over this precise issue (*see* CD2, Pl. Ex. 106-108, 111 and 112; CD3, Def. Ex. 347, pp.4-68 (pages 1-3 of Def. Ex. 347 were redacted and are not part of the trial record)). A summary judgment ruling on this record is plain error. More importantly, a challenge involving the fundamental procedures for AMPS-Central's election practice, the proper procedure for selecting candidates, and the identity of the Governing Body of Ananda Marga's worldwide spiritual organization, including its President and General Secretary, is certainly an issue of religious doctrine and practice of the highest order. *Sharpsburg*, 396 U.S. at 369 ("where 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 an inquiry into religious law and usage that would be essential to the resolution of the controversy") (Douglas, J., and Marshall, J., concurring). Under *Mote* and the First Amendment, the trial court is prohibited from making such a determination (under Rule 41 or Rule 56) without deferring to a "definitive resolution" from the

highest court, tribunal, or controlling body of the hierarchical religious organization. *Mote*, 716 P.2d at 102.

The record in this case has no such “definitive resolution” from the Central Purodha Board, and the trial court did not defer to such a decision. Instead, the trial court weighed the disputed evidence concerning Dhruvananda’s purported status as General Secretary in October 2005, took judicial notice of a provisional, interim order from a foreign court allowing Dhruvananda to act as General Secretary on a temporary basis until the cases could be decided on the merits (CD4, 5-16-11, 35:6-11), and impermissibly made its own judgment call that Dhruvananda was the “stand alone general secretary with the unquestioned authority” to transfer AMI’s Sectorial Secretary and direct the reconstitution of its Board of Directors. (CD4, 5-16-11, 31:1-6).

A neutral principles analysis of the documents and evidence can only take the trial court so far in this dispute. The objective record supports the following findings of fact: The Bylaws of AMI provide that the highest executive officer of AMI – its Sectorial Secretary – is to be appointed by the General Secretary of AMPS-Central. (CD2, Pl. Ex. 3, p.3; Pl. Ex. 4, p.2; Pl. Ex. 5, p.2). The Sectorial Secretary of AMI, in turn, is responsible for appointing AMI’s board of directors. (CD2, Pl. Ex. 3, p.7; Pl. Ex. 4, p.3; Pl. Ex. 5, p.4). Tiirthananda was posted as the

Sectorial Secretary of AMI in January 2003, before the split between the Ranchi and Kolkata factions and before the factions commenced litigation in India. (CD1, 5-12-11, 102:8-103:19; CD2, Pl. Ex. 84, p.2). Tiirthananda and the Plaintiff Board of Directors of AMI successfully managed the operations of AMI without disruption from 2003 until late 2005.

On October 30, 2005, Dhruvananda purported to transfer Tiirthananda to Australia within the Suva Sector, and appoint a new Sectorial Secretary of AMI. (CD2, Pl. Ex. 98). By this time, a two-year dispute between the Ranchi and Kolkata factions had ripened into a global dispute over the governance and control of AMPS-Central. (CD1, 5-9-11, 111:6-13; CD2, Pl. Ex. 107, 108, 109, 111, and 112; CD3, Def. Ex. 347, pp.20-22). Among other issues, the status of Dhruvananda as General Secretary of AMPS-Central was being disputed in India and in the New York Sector. *Id.* In response to Dhruvananda's October 2005 transfer order, a core group of adherents wrote to the Central Purodha Board in India, the highest decision-making body within the religious organization, requesting a review and rejection of the transfer. (CD3, Def. Ex. 362, ¶ 9). Until this time, the Central Purodha Board had not taken an active role in the dispute. (CD1, 5-9-11, 134:21-135:13).

On November 27, 2005, the Central Purodha Board issued a formal resolution imposing an indefinite stay of Tiirthananda's transfer. (#36768703, Ex. 22 of Plaintiffs' Motion for Summary Judgment, p.3 at Item 3). The Central Purodha Board's resolution to stay Tiirthananda's transfer was adopted and confirmed in the Purodha Board's formal Minutes and Resolutions, dated December 24, 2005. (*Id.* at p.4). On January 28, 2006, the Board of Directors of AMI voted unanimously to amend its Bylaws to require that the appointment of a new Sectorial Secretary must be ratified by two-thirds vote of the AMI Board, not including the incumbent Sectorial Secretary. (CD2, Pl. Ex. 38, p.6). The Amendment was certified and executed by AMI's Corporate Secretary on February 10, 2006. (CD2, Pl. Ex. 5, p.6). Afterwards, on February 28, 2006, Dhruvananda attempted to transfer Tiirthananda again, this time to the Qahira Sector in the Middle East. (CD2, Pl. Ex. 99). The AMI Board declined to ratify the appointment as set forth under the Amended Bylaws because Dhruvananda's status as the legitimate General Secretary of AMPS-Central was in dispute and the subject of AMPS-Central litigation in India, and because the Central Purodha Board had stayed Tiirthananda's transfer. (CD1, 5-9-11, 142:14-143:6). All of these events are clearly established in the record. However, bridging the gap between these facts and a determination that Dhruvananda is the undisputed General Secretary of

AMPS-Central, requires the court to inquire into and resolve disputed issues of religious doctrine and practice.

The trial court correctly recognized there was a dispute over who was the General Secretary of AMPS-Central at the time Dhruvananda sought to appoint a new Sectorial Secretary of AMI. (CD4, 5-9-11, 30:7-17). There is ample evidence in the record confirming the ongoing dispute between the factions dating back to 2003, including a dispute over the valid recognition of the duly-elected General Secretary of AMPS-Central. For example, multiple witnesses provided testimony concerning the 2003 split between factions and the ongoing internal and legal dispute over Dhruvananda's status as General Secretary. (*See* CD1, 5-9-11, 110:1-6, 143:1-6; CD1, 5-10-11, 16:23-17:8; CD1, 5-12-11, 121:3-123:12). In addition, the trial court admitted into evidence and took judicial notice of multiple exhibits containing pleadings and orders from the various legal proceedings in India challenging the validity of the governing bodies and general secretaries of the two competing factions. (*See* CD2, Pl. Ex. 106-109, 111 and 112; CD3, Def. Ex. 347, pp.4-68).

The trial court also correctly recognized that this was beyond its power to resolve:

Clearly, I am aware from the evidence and the testimony that the circumstances, present status of Ananda Marga, is in some degree of

disarray in India, there is litigation pending between the various factions – [Kolkata] and Ranchi, and depending on what testimony I have heard, there are one, two, or even three people holding themselves out as general secretaries, but that is not a debate that I need to get into, that is not a resolution that I can offer, that is beyond the scope of my authority to review [in] the case and it is beyond the scope, obviously, of my authority to intervene.

(CD4, 5-16-11, 30:7-17).

Mote specifically instructs that a disputed issue of doctrine or practice like this must be resolved, if at all, by deferring to a definitive resolution from the highest authority within the religious organization. When faced with disputes over religious doctrine and practice, the trial court must “defer to the church’s authoritative resolution of any doctrinal issue necessarily involved in interpreting or applying the provisions of such instruments, if that resolution is brought to the court’s attention in a manner *clearly recognizable as a definitive resolution.*”

Mote, 716 P.2d at 101-102 (emphasis added). There is no evidence in the record of a definitive resolution by the Central Purodha Board endorsing the Ranchi faction’s Governing Body, or recognizing Dhruvananda as the “unquestioned . . . stand alone” General Secretary of AMPS-Central, as the trial court impermissibly determined.

Instead of following *Mote*, the trial court resolved this dispute by weighing evidence and taking “judicial notice” of the fact that a court in India allegedly declared Dhruvananda the General Secretary of AMPS-Central:

The Court will take judicial notice of the ruling from the India courts which corroborate that at least until resolution of those cases pending, those courts have determined that Dhruvananda is the general secretary of AMPS and should function as the Purodha Pramukha until resolution of those cases.

(CD4, 5-16-11, 35:6-11).

In doing so, the trial court erred for two principal reasons. First, the trial court simply cannot take judicial notice of a provisional ruling in a foreign court to resolve a disputed issue of religious policy. Trial courts may take judicial notice of facts “not subject to reasonable dispute” that are “either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Colo. R. Evid. 201(b). This rule “has traditionally been used cautiously in keeping with its purpose to bypass the usual fact finding process only when the facts are of such common knowledge that they cannot reasonably be disputed.” *Prestige Homes, Inc. v. Legouffe*, 658 P.2d 850, 853 (Colo.1983). Here, even the provisional order relied upon by the trial court recognizes that there is a *bona fide*, reasonable dispute between the parties as to who is the valid General

Secretary of AMPS-Central. (See CD3, Def. Ex. 347, p.32 (“In the present circumstances, I am inclined to hold that, it cannot be stated that the plaintiffs/appellants failed to make out any prima facie case. I am satisfied that there is a bona fide dispute raised by the plaintiffs/appellants on the facts and circumstances of the present case...”))).

The trial court, however, went beyond taking notice of the fact that litigation was pending in India over governing control of AMPS-Central and specifically, who is the duly-authorized General Secretary. While the court can take judicial notice that a certain document exists and contains certain statements, it cannot take judicial notice of the truth of the statements contained in the documents. *See One Hour Cleaners v. Indus. Claim Appeals Office of State of Colo.*, 914 P.2d 501, 505 (Colo. App. 1995). Here, the trial court took judicial notice of a provisional order of the courts in India authorizing Dhruvananda to act as the temporary General Secretary pending a final resolution on the merits, and used it to make a *factual finding*. None of the orders submitted for judicial notice contain such a finding. Even if the order contained such a finding, which it does not, the trial court cannot take notice of the truth of that statement – only that the document contains such a statement. *Id.*

Second, none of the provisional rulings found that Dhruvananda was the General Secretary of AMPS-Central at the time he attempted to transfer Tiirthananda in October 2005. On the contrary, the provisional order simply recognized an ongoing *bona fide* dispute between competing factions over control of AMPS-Central, including claims against the President and General Secretary of each faction, and authorized Dhruvananda to act as interim General Secretary pending a final resolution on the merits. (CD3, Def. Ex. 347, pp. 4-10). The order is a prospective, “temporary arrangement” to maintain the status quo and smooth operation of the organization going forward. The earliest of these provisional, *status quo* rulings is dated July 19, 2006, nearly 6 months after the disputed appointment. (*Id.*).

In sum, under the First Amendment and the directives set forth by the Supreme Courts of the United States and Colorado in *Jones*, *Mote*, and *Moses*, the trial court must “apply the neutral laws of the state to religious organizations” but is forbidden from “resolving disputed issues of religious doctrine and practice.” *Moses*, 863 P.2d at 320. In this case, “the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy,” and the trial court is prohibited from making determinations of “religious law and usage that would be essential to the resolution of the

controversy.” *Sharpsburg*, 396 U.S. at 369-70 (*per curiam*, Douglas, J. and Marshall, J., concurring). The trial court impermissibly inquired into, and ruled on a substantial controversy over the authority of Ananda Marga’s governing body. Therefore, the trial court’s order granting summary judgment must be vacated.

III. DEFENDANTS’ AND INTERVENOR’S COUNTERCLAIMS CANNOT BE RESOLVED WITHOUT VIOLATING THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

Under the framework set forth above, a civil court may not be able to resolve a particular church dispute without violating the First Amendment. When a neutral principles analysis requires the court to address a disputed issue of religious policy *and* there is no definitive resolution on the issue from the highest decision-making authority in the church to which the court can defer without evaluation, the court cannot resolve the dispute without violating the First Amendment. *See Mote*, 716 P.2d at 102. Defendants’ and Intervenor’s counterclaims present just such an impasse.

A. The Counterclaims Are Nonjusticiable Because The Court Cannot Insert Itself into This Dispute over Religious Doctrine and Practice.

While no Colorado Court has taken any published case to a nonjusticiable conclusion, state and federal courts in other jurisdictions have done so. The most instructive cases are out of New York, where a diverse collection of religious organizations thrive under the protections of the First Amendment.

In *Congregation Beth Yitzhok v. Briskman*, 556 F.Supp. 555 (E.D.N.Y. 1983), two Chassidic groups brought action in federal district court seeking declaratory and injunctive relief to determine ownership of property and church assets. *Id.* at 555. The litigation arose following the death of their religious leader, or “Skolyer Rebbe”. *Id.* at 556. In addition to the core claims over property rights, the court correctly viewed the case as “an internecine dispute between rival religious factions.” *Id.* at 557. “In cases involving a dispute between two or more religious factions, the Court must look beyond the allegations of the complaint to ascertain what lies at ‘the heart of [the] controversy.’” *Id.* at 558 (quoting *Kendroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952)).

As in this case, the district court’s analysis must begin with neutral principals of law. *Id.* at 557. The court quickly found that resolution of the issue required the court to resolve issues of religious doctrine, namely the recognition and scope of authority of the new Skolyer Rebbe under the applicable religious law. *Id.* at 558. Also as in this case, there was no definitive resolution on the governance issue from the highest religious tribunal that the district court could defer to in resolving the lawsuit. *Id.* Therefore, the court dismissed the action for want of justiciability. *Id.* In dismissing the action, the court found:

Such an examination in this case leads ineluctably to the conclusion that resolution of the allegations in the complaint first demands that I

determine the proper succession of the post of Skolyer Rebbe. As tempting as that invitation may be, it does not appear to be the proper role of a federal court. *Id.*

A similar justiciability impasse was affirmed in *Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 879 N.E.2d 1282 (N.Y. 2007). In that case, the central issue on appeal was whether resolution of an election controversy between two rival factions of a religious congregation could be achieved through the application of neutral principles of law without judicial intrusion into matter of religious doctrine. *Id.* at 1283. The case involved a split between two rival factions of an Orthodox Jewish Congregation following the death of its Grand Rabbi. *Id.* Just as in the present case, each faction conducted their own separate election of board members and officers of the Congregation in accordance with their understanding of the Congregation's prior practice and bylaws. *Id.* at 1284. The trial court declined to make a determination as to the validity of the election process, holding that it could not decide the election dispute through application of neutral principles of law "because it would require it to apply ecclesiastical doctrine in violation of the First Amendment." *Id.* The highest appellate court in New York upheld the decisions of the trial court and the Appellate Division, finding the core dispute over the election process "must be resolved by the members of the congregation, and cannot be determined by this Court." *Id.* at 1286.

The similarity in issues between *Briskman*, *Kahana* and the present case are striking, and the justiciability decisions are highly instructive. Each case involves a dispute between rival factions within a religious organization after the passing of the founder or religious leader of the church. Consistent with *Mote* and Supreme Court precedent, the courts in *Briskman* and *Kahana* began their analysis through application of neutral principles of law. Both courts determined that a resolution of the parties' disputes would necessarily involve impermissible inquiries into religious doctrine and policy. In *Briskman*, the court was faced with resolving disputes over the selection of a successor leader and the scope of his authority under religious law. In *Kahana*, the court was faced with resolving disputes over the election process between two rival factions that resulted in two sets of board directors and officers. Neither court could defer to a definitive resolution by the highest tribunal in the religious organization because there was none. Thus, the courts had no option but to dismiss for want of justiciability.

To resolve this case, the court must resolve issues of religious doctrine and policy. To find for Defendants, the court must resolve the disputed status and authority of Dhruvananda as the General Secretary of AMPS-Central, which would require this court to resolve the dispute between the Ranchi and Kolkata factions

over the election process in India under Caryácarya and the AMPS Constitution, and the duly elected Governing Body of AMPS-Central.

This is not a simple matter of following a neutral path. The Constitution and Caryácarya are at odds with one another over the constitution and composition of the Central Committee and Governing Body. There is no clear interpretive principle to resolve which document is controlling, or how, or even if they can work in harmony. Choosing sides in this dispute would mean deciding which election process the religion is required to follow – the democratic process set forth in the Constitution, under which the Committee is chosen from the entire society at an annual meeting, or the more oligarchic process set forth in Caryácarya, under which the Committee is elected by the purodhas from within their own group. Choosing sides would change the composition of the Committee, which could have as many as 60 or as few as 10 members. A court ordered resolution of which faction controls AMPS-Central would also determine how the General Secretary is chosen – either appointed by the Purodha Pramukha consistent with Caryácarya, or elected from among the executive officers consistent with the Constitution. For the reasons set forth above, these issues must be resolved by the Central Purodha Board and the adherents of AMPS-Central, “and cannot be determined by this Court.” *Kahana*, 879 N.E.2d at 1286.

B. Unless Plaintiff's Declaratory Claims Can Be Resolved Using A Neutral Principles Analysis Of AMI's Governing Documents, Remand is Futile Because Threshold Issues of Religious Doctrine and Practice Cannot Be Determined By The Trial Court.

The Trial court granted Defendants' Rule 41(b) motion to dismiss the Plaintiffs' claims based in the same impermissible review and determination of disputed issues of religious doctrine and practice described above. (CD4, 5-16-11, 40:19-41:8). Therefore, at a minimum, the involuntary dismissal of Plaintiffs' Amended Complaint should be vacated and the case should be remanded with instructions to determine whether a neutral principles analysis of AMI's Articles and Bylaws, as amended, can provide a resolution to the Plaintiffs' claims without resolving disputed issues religious doctrine and policies.

On remand, the trial court's review of the Amended Bylaws must follow *Mote* and be limited to a review of the governing documents and the process under which AMI's Bylaws were amended. If during that process, however, the trial court is required to resolve disputed issues of religious doctrine or practice, such as the validity and authority of Dhruvananda (or others in the AMPS-Ranchi faction) under the AMPS Constitution and Caryácarya to control the management of AMI, the trial court must then, if possible, defer to the church's authoritative resolution of the doctrinal issue. *Mote*, 716 P.2d at 101-102. Notwithstanding, the Colorado Supreme Court is very clear that the trial court can only defer "*if that resolution is*

brought to the court's attention in a manner clearly recognizable as a definitive resolution." *Id.* at 102 (emphasis added). Therefore, without an existing resolution from the Central Purodha Board concerning the duly elected General Secretary of AMPS-Central, remand may futile.

The trial court has already recognized the fact that there are at least two individuals presently holding themselves out as the General Secretary of AMPS-Central. (CD4, 5-16-11, 30:7-17). This has been the case since the August 24, 2003 elections, and was certainly the subject of dispute in October 2005 when Dhruvananda attempted to transfer Tiirthananda. (CD1, 5-9-11, 110:1-6, 143:1-6; CD1, 5-10-11, 16:23-17:8; CD1, 5-12-11, 121:3-123:12; CD3, Def. Ex. 347, pp.20-22; CD4, 5-16-11, 30:7-17). (CD1, 5-11-11, 6:10-21). The present record contains no "definitive resolution" of this issue by the Central Purodha Board. Moreover, there are now two individuals presently holding themselves out as the Purodha Pramukha. (CD1, 5-11-11, 6:10-21). Consequently, the trial court cannot resolve the governance dispute by reopening the case and hearing additional evidence because no "definitive resolution" exists and none is forthcoming from a divided Central Purodha Board. *See Mote*, 716 P.2d at 101-102. Thus, no instruction from this Court or further proceeding in the district court can resolve the core governance dispute without violating the First Amendment.

Unless Plaintiff's claims can be resolved through a neutral analysis of AMI's Articles and Bylaws, the trial court's orders under Rule 41(b) and Rule 56 should be vacated and the case dismissed for want of justiciability. In that event, the organization of AMI should be returned to the *status quo* in the form it held before the trial court enjoined the individual Plaintiffs from exercising authority and control over AMI, its assets, its properties, its adherents and its subordinate affiliates. (CD4, 5-16-11, 41:9-42:18). The individual Plaintiff officers and Board members should be reinstated, and all actions taken by the Defendants in their capacity as officers and directors of AMI since entry of the trial court's order dated May 16, 2011 be rendered nullified and without effect. The parties should be returned to the positions held before the commencement of litigation until such time as the adherents of AMPS-Central and AMI, with direction from a unified Central Purodha Board, can resolve their differences.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court vacate the trial court's rulings and remand with instructions consistent with *Mote* and the cases cited herein, or alternatively, dismiss the action with prejudice for want of justiciability, and reinstate Plaintiffs to the positions each of them held before the commencement of litigation

Dated: May 17, 2012.

Respectfully submitted,

Original signature on file

s/ Charles T. Mitchell
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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2012, a true and correct copy of the above and foregoing **AMENDED OPENING BRIEF** was served via LexisNexis File and Serve and email service, addressed to the following:

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