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2 East 14th Ave.
Denver, CO 80203

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.</td><td>▲ COURT USE ONLY ▲</td></tr>
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<tr><td colspan="2">AMENDED REPLY BRIEF</td></tr>
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CERTIFICATE OF COMPLIANCE

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

I certify that this Reply 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 no more than 5,700 words.

- The brief complies with C.A.R. 28(k) because it contains, under one or more separate headings, a concise statement of whether such party agrees with the opponents' statements concerning the standard of review and preservation for appeal, and if not, why not. This certification pertains to the Reply Brief of Plaintiffs-Appellants' Ananda Marga, Inc., et al.

/s/ Charles T. Mitchell

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INTRODUCTION

Defendants' Answer attempts to sidestep the central point of Plaintiffs' appeal. The issue is not whether the trial court's determination in favor of the Ranchi faction and its General Secretary was manifestly erroneous in light of the facts presented. The issue is much more fundamental -- whether the trial court can even make such a determination in the first place without violating the First Amendment. The controlling case law and undisputed portions of the record confirm that it cannot. The moment the trial court resolved disputed issues of religious doctrine and practice by selecting one competing faction's authority over another's for control over AMPS-Central and Ananda Marga Inc. ("AMI"), it violated the First Amendment of the United States Constitution and committed reversible error. *See Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85, 102 (Colo. 1986) ("Mote").

The controlling state and federal case law is uniform and clear: in actions involving religious groups over control of the local church and its property, a court is prohibited from resolving such church disputes by inquiring into and resolving controversies over religious doctrine and policy. *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich,* 426 U.S. 696, 710-11 (1976) ("*Serbian Eastern Orthodox*") (the First Amendment

commands civil courts to decide disputes within religious organizations over property, polity, and administration "without resolving underlying controversies over religious doctrine"); *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.,* 396 U.S. 367, 368-69 (1970) (per curiam) ("*Sharpsburg*") ("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"); *Mote*, 716 P.2d at 102 (the "inquiry can be as broad as is necessary to encompass all relevant considerations, as long as the inquiry does not require resolution of disputed issues of religious doctrine"). Whether a civil court is being asked to resolve a religious dispute over ownership of property or church governance, the First Amendment prohibits that civil court from inquiring into and resolving disputed issues of religious doctrine and practice in the process of making its determination. *Id.*

It is also clear from the record, and undisputed by Defendants, that Ananda Marga's global religious organization is, and has been since at least 2003, in the midst of precisely the sort of fundamental battle over church governance and religious doctrine and practice that *Serbian Eastern Orthodox*, *Sharpsburg*, and *Mote* all cautioned against judicial interference. Defendants admit in their Answer

Brief that in 2003, tensions within Ananda Marga over the proper administration of the organization led to a physical split of AMPS-Central into two separate factions: AMPS-Ranchi and AMPS-Kolkata. (Def. Br. 12-14). Defendants also acknowledge that separate elections were held creating two distinct governing bodies with two separate General Secretaries for the factions. (*Id*.) The conflicting provisions in Caryácarya and the AMPS Constitution create a *bona fide* dispute over which election process was legitimate. Consequently, each faction claims to be the legitimate Governing Body of AMPS-Central, and each one claims to have its own duly appointed (or elected) General Secretary with the power to appoint and transfer the officers and employees of AMPS-Central and its affiliated worldwide sectors. (*Id.*) Moreover, the parties agree the Kolkata faction has filed still-pending lawsuits in India to determine the duly elected and legitimate Governing Body of AMPS-Central, including its President and General Secretary. (*See* Def. Br. 13; CD1, 5-9-11, 111:6-13; CD2, Pl. Ex. 106, 107, 108, 111, and 112; CD3, Def. Ex. 347, pp.20-22).[1]

In deciding this case, the trial court improperly undertook and attempted to resolve for itself these conflicting issues of religious doctrine and policy in

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[1] The format for citation to the record in this Reply Brief is set forth in Plaintiffs-Appellants' Amended Opening Brief ("Pl. Br."), and adopted herein.

violation of the First Amendment. *See Serbian Eastern Orthodox*, 426 U.S. 710-11; *Sharpsburg*, 396 U.S. at 368-69; *Mote*, 716 P.2d at 102. In finding for Defendants, which includes the Ranchi faction, the trial court expressly ruled on the disputed and unresolved status and authority of Ranchi's General Secretary (Dhruvananda) as the stand-alone General Secretary of AMPS-Central in 2005, which required the court to resolve an active 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.

Defendants only rebuttal to the trial court's blatant trespass into constitutionally protected areas of religious doctrine and policy is that Plaintiffs are not officially part of the Kolkata faction anyway, so the trial court's judicial endorsement of Dhruvananda and the Ranchi faction over the Kolkata faction should not be a problem for Plaintiffs or the court. However, the fact that this case is not a direct civil litigation between card-carrying members of the two competing factions does not make the trial court's determination in favor of the Ranchi faction any less of a Constitutional problem. The court still inserted itself into an ongoing religious dispute and impermissibly "resolv[ed] underlying controversies over religious doctrine." *Serbian Eastern Orthodox*, 426 U.S. at 710. If allowed to

stand, the precedent represents a factual finding by a U.S. court in direct violation of the First Amendment.

This ongoing governance dispute is directly interconnected with Plaintiffs' own AMI claims. (Pl. Br. 27-30) Plaintiffs attempted to remain neutral after the 2003 split, choosing not to affiliate exclusively with either side, and focusing instead on their continuing board responsibilities and the governance of AMI. (CD 1, 5-13-11, 123:8-125:6) It was not until the period leading up to Dhruvananda's attempts to transfer Tiirthananda in 2005 that they openly questioned Dhruvananda's authority. (*Id.*) Plaintiffs initiated this litigation as AMI board members, not as Kolkata adversaries of Ranchi, but the underlying issue of Dhruvananda's authority is nonetheless central to the case. The purpose of the suit was simply to determine the validity of the amended bylaws through a neutral examination of corporate documents, and consequently resolve the transfer dispute without encroaching upon underlying controversies over religious doctrine or policy. However, the moment it became clear that: (1) the trial court could not resolve the declaratory action through a neutral examination of AMI's governing documents, including its articles, by-laws, and board resolutions; and (2) there was no clear "definitive resolution" from the church's highest decision-making body upon which the court could defer in resolving the governance dispute, the trial

court was prohibited by the First Amendment from becoming further entangled in the religious controversy or intervening on behalf of any particular group to resolve "underlying controversies over religious doctrine." *Serbian Eastern Orthodox*, 426 U.S. at 710.

ARGUMENT

I. PLAINTIFFS' OPENING BRIEF CORRECTLY STATES THE ISSUES ON APPEAL AND THE STANDARD OF REVIEW.

As an initial matter, Defendants-Appellees and Intervenor-Appellee (collectively, "Defendants") are simply incorrect in their assertion that the issues presented by the Plaintiffs-Appellants ("Plaintiffs") were not raised below. (Def. Br. 1). Moreover, their efforts to re-characterize the issues and the *de novo* the standard of review should be disregarded.

A. The Issues On Appeal Are Properly Preserved and Presented.

As stated in the Amended Opening Brief, Plaintiffs' First Amendment argument and the disputed authority of the Ranchi faction's General Secretary was presented first in their summary judgment briefing and raised again at trial in connection with Defendants' Rule 41(b) Motion. (Pl. Br. 21). Before trial, Plaintiffs raised the same arguments in summary judgment briefing to the court, citing the ongoing and unresolved dispute taking place in the Indian courts concerning the legitimate leadership of the Ananda Marga organizations, including

the unresolved dispute as to who is the "General Secretary" referenced in the AMI bylaws. (*See* #37005139, Plaintiffs' Reply Brief In Support Of Summary Judgment, at pp. 15-18). Citing *Sharpsburg* and *Serbian Eastern Orthodox*, Plaintiffs also argued that the trial court was prohibited from inquiring into issues of religious law and usage that would be essential to the resolution of such controversies. (*Id.*) Finally, Plaintiffs argued the court was prohibited from *deciding or presuming* that the Ranchi faction and its General Secretary had sole, legitimate authority to make AMI secretarial appointments and consequently, Defendants' claims were non-justiciable for lack of a legal cognizable interest. (*Id.* at 16) ("Defendants' counterclaims and defenses depend entirely upon their non-justiciable allegation that they hold that authority").

Again at trial, in connection with Defendants' oral Rule 41(b) motion, Plaintiffs argued the trial court was without jurisdiction to *assume or decide* the issues of religious doctrine that were in dispute here, and the record did not contain any clearly recognizable, definitive resolution by church authority to which the court could defer. (CD 1, 5-13-11, 149:4-150:15). Thus, Plaintiffs' appeal issues are properly before this Court and Defendants' assertion that they were not raised below is untrue.

Defendants' argument concerning Plaintiffs' "new" challenge to the court's improper use of the India court's provisional order is also a red herring. (Def. Br. 23-24). Defendants suggest that Plaintiffs waived any objection to the trial court's taking judicial notice of the India court's provisional order because they did not object to its admission and, in fact, requested that the court take judicial notice of it. *Id*. Again, Defendants ignore the actual point of Plaintiffs' argument. The India orders were offered at trial simply to establish the undisputed fact of pending litigation in India on the same issues, including the *bona fide* dispute over the status of the General Secretary. (Pl. Br. 31-32). Plaintiffs' are not challenging the admission of the evidence for notice of the pending litigation, only to the improper, post-trial use of the *provisional* order for a permanent factual finding that the India court did not make. *Id.*

B. *De Novo* Review Is Proper And Necessary Under The Constitution.

Defendants' effort to recast the standard of review into one of manifest error is equally without merit. First, it is well settled that this Court reviews *de novo* the trial court's grant of summary judgment on Defendants' counterclaims. *Western Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008). It was the trial court's grant of summary judgment that actually displaced the Plaintiff board and put the Defendant board in control of AMI, not the dismissal of

Plaintiffs' declaratory action under Colo. R. Civ. P. Rule 41. Moreover, the First Amendment's limitation on the trial court's ability to enter a judgment that necessarily determines whether Dhruvananda was the stand-alone General Secretary of AMPS Central is a question of law. Therefore, *de novo* review is proper.

Secondly, the ultimate constitutional issue requires a *de novo* review consistent with applicable law - not an evaluation of the weight or sufficiency of the trial evidence under a manifest error standard - because the First Amendment expressly prohibits trial courts from interpreting or weighing evidence in resolving underlying disputes over religious doctrine, policy and administration. *Serbian Eastern Orthodox*, 426 U.S. at 710. In this case, the disputed authority of the Ranchi faction's General Secretary is fundamentally intertwined with the AMI issues being litigated and appealed. When 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 (emphasis added). In such cases, the trial court must defer to the authoritative resolution of that issue arrived at by the highest court, tribunal, or controlling body of the hierarchical church organization, to the extent one exists.

Mote, 716 P.2d at 102. More importantly, the trial court can only defer to the church's resolution "if that resolution is brought to the courts' attention in a manner clearly recognizable as a definitive resolution." *Id* at 102. Put simply, it is not about the weight or credibility of the evidence presented. It is, and only can be about the existence of a definitive resolution worthy of deference as a matter of law. Therefore, this Court should review the record *de novo* to determine whether it contains such a "clearly recognizable" and "definitive resolution" from the highest church tribunal that is final and conclusive enough to merit court deference as a matter of Colorado Supreme Court law.[2]

Defendants cite *In re Marriage of Hoyt*, 742 P.2d 963 (Colo. App. 1987) in support of the manifest error standard, but *Hoyt* is completely unrelated to disputes involving governance of religious organizations. *Hoyt* involves an appeal from a contempt order requiring the defendant to pay back child support. On appeal, the defendant claimed the trial court abused its discretion in finding him in contempt since his inability to secure employment and earn child support payments resulted

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[2] Defendants suggest that Ex. D-323, an email narrative summary of Ananda Marga's doctrinal conflict and organizational split prepared by a group of margiis and other circumstantial evidence represents a "clearly recognizable . . . definitive resolution" from the highest church tribunal regarding Dhruvananda's stand alone authority as General Secretary and the validity of Tiirthananda's transfer. (Def. Br. 16-17). For the reasons set forth more fully below, this email summary falls far short of a definitive resolution required under the *Mote* standard.

from his sincerely held religious beliefs. *Id.* at 964. Hoyt claimed his religious beliefs prohibited him from disclosing his social security number to potential employers. The court found Hoyt's refusal to disclose his social security number was based on secular beliefs stemming from his political principles and membership in a bartering association. The trial court determined the defendant's motives were not a "sincerely held belief" by evaluating the credibility of the witnesses and the sufficiency, probative effect, and weight of the evidence. *Id.* Such determinations are subject to review for manifest error.

In contrast, this case involves a dispute over the governance of a religious organization and a decade-old split between two factions over religious doctrine and policy. This trial court is expressly prohibited from resolving that doctrinal dispute by evaluating the sufficiency, probative effect, and weight of the evidence presented. Indeed, it can only defer to a "clearly recognizable" and "definitive resolution" from the highest church tribunal if one exists, or abstain from judicial intervention as required by the First Amendment. *Mote,* 716 P.2d at 102. A *de novo* review of the record is required to show that the trial court did not defer to a clearly recognizable, definitive resolution from the highest AMPS tribunal resolving Dhruvananda's status as the stand alone General Secretary of Ananda Marga, because there is none. Instead, the trial court resolved the issue by

impermissibly evaluating the sufficiency, probative effect, and weight of the circumstantial evidence presented. *Id.*

II. THE TRIAL COURT VIOLATED THE FIRST AMENDMENT BY SELECTING ONE COMPETING FACTION OVER ANOTHER FOR THE RIGHT TO CONTROL AMPS AND AMI.

The question presented in this case is whether a religious faction of AMPS-Central known as AMPS-Ranchi is entitled to a transfer of ownership and control over AMI and its property. Despite the clear constitutional limitations on resolving such religious doctrinal issues, the trial court nonetheless resolved this church's governance dispute by evaluating the credibility and weight of the evidence presented, and by taking judicial notice of a provisional ruling from the India courts, to rule that the General Secretary of the Ranchi faction was the stand-alone General Secretary of AMPS-Central, with full authority to replace AMI's Sectorial Secretary and reconstitute its Board of Directors. (CD4, 5-16-11, 30:7-17 and 35:6-11). The record does not contain any clearly recognizable, definitive resolution of the Ranchi faction's disputed authority over AMI, and the trial court is prohibited from resolving such governance dispute without one.

A. The Organizational Split At The Highest Levels Of Ananda Marga Is Central To This Case.

Defendants claim that the well-documented and undisputed split between Ananda Marga's factions is irrelevant to this dispute, that the two parallel

governing bodies, two general secretaries, and multiple pending India litigations on precisely the same governance issue are all extraneous to the Plaintiffs' challenge of Dhruvananda's authority, simply because Plaintiffs did not join Kolkata at the time of the split. (Def. Br. 26). Defendants' overly simplistic argument ignores the fact that Plaintiffs made every effort to remain neutral until the events leading to this litigation forced them to challenge Dhruvananda's authority. (CD1, 5-13-11, 123:8-125:6). The split within the organization is inexorably intertwined with the governance issues in this case, and the trial court's resolution of this doctrinal issue in favor of the Ranchi faction is an overreach of judicial authority in violation of the First Amendment of the United States Constitution.

B. *Serbian Eastern Orthodox* Is Distinguishable And Must Be Read In Conjunction With *Mote* And Other Cases Dealing With Church Governance And Property Ownership.

Defendants argue that *Serbian Eastern Orthodox* alone is controlling in his case, but they ignore one key difference between it and the present case. In *Serbian Eastern Orthodox*, there was no dispute over who had the authority to transfer its bishops, who the highest tribunal of the hierarchical church was, or what final decision the tribunal had made regarding the removal of its bishop. *Serbian Eastern Orthodox*, 426 U.S. at 703, 715-17. Consequently the Court was

able to defer to those decisions without weighing evidence or resolving doctrinal controversies in violation of the Constitution.

In stark contrast, the organizational split within Ananda Marga reaches to the highest levels of the church and each faction now has its own Central Purodha Board and Purodha Pramukha. (CD1, 5-11-11, 6:10-21). Moreover, since August 2003, there have been at least two, and sometimes up to three Ananda Marga adherents purporting to be the General Secretary of AMPS-Central, with each one claiming to have exclusive transfer authority. (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). Finally, this record does not contain any "clearly recognizable" and "definitive resolution" from the highest tribunal concerning the 2005 stay of transfer decision or Dhruvananda's exclusive authority, and thus no clear tribunal decision entitled to deference by the trial court.

Instead of heeding the limitations of *Mote*, the trial court relied on conflicting testimony from certain witnesses, an unconfirmed email narrative that mentions an alleged Purodha Board decision but is silent on the specific issue of the previous stay order and Dhruvananda's status as sole General Secretary, and a provisional, temporary order from an India court with no binding effect in this jurisdiction. (Pl. Br. 26-28; Def. Ex. D323, p.10). Here, the trial court did not

defer to a clearly defined and undisputed resolution from the highest court tribunal, as was the case in *Serbian Eastern Orthodox*, because there was none. Instead, the trial court considered the weight and sufficiency of the conflicting evidence and either concluded or presumed that the Ranchi faction and its General Secretary had exclusive authority to transfer Tiirthananda and reconstitute the AMI Board. *Serbian Eastern Orthodox*, *Sharpsburg* and *Mote* set forth the legal framework for this appeal, but *Serbian Eastern Orthodox* is not exclusively controlling because its critical facts are distinguishable from those in the present case.

Defendants are also incorrect in their assertion that Plaintiffs are attempting to re-characterize the case as a pure church property action to avoid *Serbian Eastern Orthodox*. Plaintiffs have repeatedly acknowledged that the dispute is over the ownership and control of AMI *and* its property. (Pl. Br. 15, 21, 22; #305142327, First Amended Complaint For Declaratory Judgment And Injunctive Relief ("Complaint"), pp. 12-14). *Serbian Eastern Orthodox* is certainly relevant to the Court's analysis of actions involving religious groups over property, polity and administration, and the Court's limitations under the First Amendment. Plaintiffs are not avoiding the case at all, but the "deference" holding of *Serbian Eastern Orthodox* is still limited to those disputes in which the authority of highest decision making body in the church is not in dispute, and the unchallenged body

has issued a clear and definitive resolution upon which the court can defer. *See Serbian Eastern Orthodox*, 426 U.S. at 717-18 (the record contains no dispute over the identity of the highest decision-making church authority or its definitive resolution). This case does not satisfy either one of those requirements.

Defendants are correct in stating that the Supreme Court has left it to the states to decide how it will resolve such church disputes, and the Colorado Supreme Court has adopted the neutral principles approach. *Mote,* 716 P.2d at 96. But despite Defendants' assertion, the Colorado Supreme Court's use of the neutral principles doctrine is not strictly limited to church property disputes. *See Moses v. Diocese of Colorado,* 863 P.2d 310, 320 (Colo. 1993). The Court has determined 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 found:

> 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).

When read together, these cases set forth a process for resolving church disputes over property *and* governance that starts with a neutral principles analysis of the organization's governing documents, just as any court would do when analyzing issues that "arose out of any other corporation or voluntary organization." *Id.* at 320. This is precisely what Plaintiffs were asking of the trial court when they sought declaratory relief. From the outset, Plaintiffs simply sought a neutral legal assessment of the bylaws of the corporation and a declaration affirming the rights and status of the Plaintiff Directors. (*See* Complaint, pp.13-14). Plaintiffs have not, as Defendants contend, changed their position or strayed from seeking relief using a constitutionally consistent, neutral review of AMI's local governing documents and amended bylaws. *Id.* The impasse of non-justiciability only came about later, after Defendants filed counterclaims seeking judicial recognition of the Ranchi faction's General Secretary as the sole general secretary of the worldwide religious organization, and a final court determination of Ranchi as the prevailing faction in the global dispute for control of AMPS-Central. (#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). The constitutional obstacles arose after evidence was

produced through discovery concerning the intertwined and unresolved controversies over religious doctrine and practice at the highest levels of the religious organization. *Mote,* 716 P.2d at 101-02 ("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*, 426 U.S. at 710; *Sharpsburg,* 396 U.S. at 368.

The trial court improperly resolved for itself the issue of Dhruvananda's authority 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 numerous 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)). Consequently, the trial court's determination of this issue was an error in violation of the Constitution. *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). Moreover, without a definitive resolution of the dispute entitled to judicial deference, a summary judgment ruling on Defendants' counterclaims is equally improper given the genuine dispute over material facts. *See Cotter Corp. v. American Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004).

C. The Trial Court Improperly Weighed Conflicting Evidence And Resolved Underlying Controversies Over Religious Doctrine.

Defendants argue that the trial court was entitled to weigh conflicting evidence and resolve the religious governance controversy at the center of this dispute because the court simply made "neutral factual findings" regarding matters that were not in dispute. (Def. Br. 34). They also claim that the alleged governance "disputes" within Ananda Marga were self-serving fabrications that the trial court was free to discount and ignore. (Def. Br. 35-36). These arguments are flatly contradicted by the overwhelming evidence in the record documenting the undisputed conflict within Ananda Marga for governance and control of the organization, and its direct impact on AMI's board decisions.

Plaintiffs did not "fabricate" the protracted and unresolved litigation between the Kolkata and Ranchi factions in the India Court system. (Pl. Br. 9-12). Even Defendants acknowledge the ongoing litigation in their own briefing. (Def. Br. 13). The record is clear that the Ranchi and Kolkata factions have been in

continuing and multiple litigations since 2003 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). These lawsuits call into question the election process used to elect members and officers of the Governing Body of AMPS, including its General Secretary. (*See* CD3, Def. Ex. 347, pp.20-22). While no final decision on the merits has ever been reached, (Pl. Br. 10), 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). This continuing legal controversy cuts to the heart of Ananda Marga's governance policies and doctrine. All of this undisputed evidence was presented to the trial judge to demonstrate that Dhruvananda's status as sole General Secretary was the subject of legitimate dispute.

Nor did Plaintiffs "fabricate" the undisputed fact that since August 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). The crisis over governance, the multiple people claiming to be the General Secretary, and the questionable authority of Dhruvananda to effect the transfer were all central factors in the Plaintiffs' actions to amend the bylaws. (*Id.*; *see also* CD1, 5-12-11, 133:15-25).

Defendants also claim that the trial court merely used the provisional orders from the India courts to show "that its own ruling was not in conflict with rulings of courts in India," not to make a factual finding that Dhruvananda was at all relevant times the undisputed General Secretary of AMPS. (Def. Br. 39). Defendants' presumptions about how the trial court used the foreign orders in its ruling are rather audacious given the fact that the court did not elaborate on its usage of the India pleadings. Nonetheless, the trial court recognized the pleadings as factual corroboration that Dhruvananda was the General Secretary of AMPS and should function as such until the resolution of the litigation in India. (CD4, 5-16-11, 35:6-11). Defendants' hypothesis as to how the trial court used the India pleading in its findings does not excuse the fact that the orders are temporary rulings for purposes of maintaining business functions, not a factual finding of Dhruvananda's undisputed secretarial authority. (Pl. Br. 31-32). Nor does it address the fact that none of those rulings –temporary or otherwise – have ever found that Dhruvananda was the General Secretary at the time of Tiirthananda's

attempted transfer in 2005. The earliest provisional ruling was issued *six months after the challenged transfer*. (Pl. Br. 33). The trial court's improper use of the India rulings is part of the record, not a fabrication by Plaintiffs.

Finally, there is a genuine dispute over whether the Central Purodha Board's stay of Tiirthananda's transfer had ever been lifted before the AMI board amended its bylaws. (Pl. Br. 13, 27-28). The only evidence offered by Defendants of the alleged action by the Central Purodha Board lifting its prior stay is a narrative email prepared by a group of Margiis that attempts to summarizes their understanding of the history of the conflict. (*See* CD3, Def. Ex. 323; *see also* Def. Br. 16).[3] The summary includes a hearsay account of how two members of the Purodha Board, without a meeting required under established board policy, were pressured to withdraw certain Purodha Board decisions, which presumably included the stay order. (CD3, Def. Ex. 323, p. 10). The uncorroborated email account falls far short of a "clearly recognizable" and "definitive resolution" that must be brought to the trial court's attention before it can defer to the church tribunal's definitive resolution of the issue. *Mote*, 716. P.2d at 102. This second-

[3] The email summary does not purport to be a definitive resolution or first-hand account of the events described therein. In fact, it even contains a disclaimer regarding the accuracy of its contents. The last sentence of the summary states quite plainly: "We humbly apologize for any inaccuracies and welcome input to improve future versions of this document." (CD3, Def. Ex. 323, p. 11).

hand account is particularly deficient when compared to an actual definitive resolution from the Central Purodha Board, such as its November 27, 2007 Resolution, a three-page, single-spaced, handwritten resolution documenting, among other orders of business, the indefinite stay of Tiirthananda's transfer from the NY Sector. (*See* #36768703, Ex. 22 of Plaintiffs' Motion for Summary Judgment, p. 3 at Item 3). Certainly, if Defendants had a similarly detailed, official resolution from the Central Purodha Board lifting the stay, they would have provided it to the trial court.

Defendants attempt to discount all of this conflicting evidence by labeling it "self-serving" and "fabricated." Yet the evidence was sufficient to establish genuine triable issues of material fact and preclude entry of summary judgment before trial. The trial court is prohibited by the Constitution from "resolving underlying controversies over religious doctrine" while it considers disputes within a religious organization over property polity, and administration. *Serbian Eastern Orthodox*, 426 U.S. at 710-11. Without a definitive resolution from the Purodha Board resolving the controversy over its General Secretary and Tiirthananda's authority to ratify the bylaws, the court is barred from stepping in and resolving it. *Id.; see also Congregation Beth Yitzhok v. Briskman*, 566 F.Supp. 555 (E.D.N.Y.

1983); *Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 879 N.E.2d 1282 (N.Y. 2007).

III. THE PARTIES HAVE RESOLVED THE ISSUE OF ATTORNEYS FEES.

Defendants have included in their Answer Brief a request for an award of attorneys' fees. (See Def. Br. 45). Following the submission of that brief, the parties participated in a two-day settlement conference in a good faith effort to resolve all disputes and dismiss the appeal. While the parties were unable at that time to resolve the entire appeal, they were able to resolve all issues and claims concerning attorneys' fees, with each side to pay their own attorneys' fees in connection with the appeal.

CONCLUSION

In finding for the Defendants, the trial court necessarily decided contested issues of church governance and administration. Under *Serbian Eastern Orthodox*, *Sharpsburg*, and *Mote*, the trial court is only able to make such a determination by deferring to a definitive resolution from the highest authority within the religious organization, and then only "if that resolution is brought to the court's attention in a manner *clearly recognizable as a definitive resolution.*" *Mote*, 716 P.2d at 102-103 (emphasis added). There is no such definitive decision in the trial court record. Therefore, Plaintiffs respectfully request that this Court vacate the trial

court's rulings, dismiss the action with prejudice for want of justiciability, reinstate Plaintiffs to the positions each of them held before the commencement of litigation, and return Plaintiffs and their organization to the status quo state that existed at the time of the trial court issued its unconstitutional ruling.

Dated: November 4, 2013.

Respectfully submitted,

Original signature on file

s/ Charles T. Mitchell
Charles T. Mitchell, # 27850

JIN, SCHAUER & SAAD LLC

ATTORNEYS FOR
PLAINTIFFS-APPELLANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2013, a true and correct copy of the above and foregoing **AMENDED REPLY BRIEF** was served via Integrated Colorado Courts E-Filing System and email service, addressed to the following:

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