

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>101 West Colfax Ave., Suite 800 Denver, Colorado 80202</p>	
<p>Appeal from Denver County District Court The Honorable Michael A. Martinez Case No. 2010CV1867</p>	
<p><b>Plaintiffs-Appellants:</b> Ananda Marga, Inc., et al.,</p> <p>v.</p> <p><b>Defendants-Appellees:</b> Acharya Vimalananda Avadhuta, et al.,</p> <p>and</p> <p><b>Intevenor-Appellee:</b> Ananda Marga Pracaraka Samgha.</p>	<p>▲ COURT USE ONLY ▲</p>
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<p><b>ANSWER BRIEF</b></p>	

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

- The brief complies with C.A.R. 28(g).
- It contains 9,447 words.
- The brief complies with C.A.R. 28(k) in that, for the party responding to the issue, it contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

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## **REFERENCES TO THE RECORD IN THIS BRIEF**

Defendants-Appellees adopt the Plaintiffs-Appellants' format for citations to the record with the following exceptions. Where references are to initial pleadings with the trial court, the citations may include the Lexis/Nexis transaction number, pleading, and paragraph number. Where references are to Plaintiffs-Appellants' Amended Opening Brief, citations will contain "Am. Op. Br." and the relevant page numbers.

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

<b>Exhibit Identification</b>	<b>Admitted (Date, Page:line)</b>
Pl. Ex. 3	By stipulation (05-09-2011, 41:13-42:16)
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Pl. Ex. 83	Judge Martinez's ruling (05-16-2011, 8:25-9:6)
Pl. Ex. 121	By stipulation (05-13-2011, 92:15-19)
Def. Ex. D72	By stipulation (05-09-2011, 203:4-13)
Def. Ex. D120	By stipulation (05-09-2011, 229:19-230:11)
Def. Ex. D148	By stipulation (05-09-2011, 229:19-230:11)
Def. Ex. D181	By stipulation (04-17-2011, Ex. 4 to Trial Management Order ("TMO") p.11)
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## **ISSUES PRESENTED**

Defendants-Appellees and Intervenor-Appellee (collectively, “Defendants”) dispute the issues presented statement of Plaintiffs-Appellants (“Plaintiffs”). Plaintiffs now raise an issue that was not raised below, and Plaintiffs have constructed certain issues for the purpose of diverting the Court from the true issue presented for review. Defendants submit that the issue properly subject to review on this appeal is:

Whether it was manifestly erroneous for the trial court to find, based upon the testimony and evidence presented by Plaintiffs’ witnesses, that Acarya Dhruvananda Avadhuta was the AMPS General Secretary with the unquestioned authority to transfer Plaintiff Fernando Kumar on October 30, 2005.

Although this is the correct issue for review, Defendants will address Plaintiffs’ stated issues in the Argument below.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case and Course of Proceedings**

As the overwhelming evidence in support of summary judgment and at trial established, putative plaintiff Ananda Marga, Inc. (“AMI”) is the U.S. branch of Ananda Marga Pracaraka Samgha (“AMPS”), a hierarchical religious denomination founded and headquartered in India. Plaintiffs filed an action with the trial court in the name of AMI, multiple corporate plaintiffs, and multiple

individual plaintiffs (the “Individual Plaintiffs”), asking that the Individual Plaintiffs be declared the rightful AMI Board of Directors. Plaintiffs also asked the court to enjoin the individual Defendants named in Plaintiffs’ Complaint (the “Individual Defendants”) – who had been appointed by the AMPS governing authorities to replace the Individual Plaintiffs as the AMI Board of Directors – from holding themselves out as such. Defendants filed answers and counterclaims mirroring the claims of Plaintiffs – that is, Defendants asked for a declaration that the Individual Defendants are the rightful Board of Directors of AMI and for an injunction enjoining the Individual Plaintiffs from holding themselves out as the same. This is, therefore, a dispute regarding the ecclesiastical control of the local unit of a religious denomination, not a dispute regarding ownership of church property.

At trial, the crux of Plaintiffs’ argument was that AMPS was not a hierarchical religious denomination with a distinct ecclesiastical structure. It was on this basis – that there was no hierarchy and therefore no reason to defer to a hierarchy – that Plaintiffs sought the trial court’s resolution of the issue under a neutral principles analysis. (Plaintiffs’ Response In Opposition to Defendants’ and Intervenor’s Motion for Attorneys’ Fees (“Plaintiffs’ Fees Opposition”), pp. 5-6.) Plaintiffs’ position rejected the entire history of AMPS and its relationship with

AMI and instead asserted AMI's total independence from any AMPS ecclesiastical hierarchy. Plaintiffs' position was resoundingly contradicted by AMI's own monthly publications, Board minutes, communications with adherents, almost every one of its almost sixty filings with government agencies, and by the trial testimony of Plaintiffs' own witnesses.

Rather, the evidence and testimony strongly supported Defendants' positions that: (1) AMPS is a hierarchical religious denomination with a defined ecclesiastical structure; (2) AMI is part of and subject to the AMPS hierarchy; (3) AMPS-Central, the AMPS headquarters that encompasses AMPS's highest ecclesiastical authorities, is and always has been AMI's parent organization; (4) the General Secretary of AMPS, the person charged with the administration of AMPS, has always had the unilateral authority to transfer the Sectorial Secretary, AMI's highest executive officer; and (5) the General Secretary of AMPS did so on October 30, 2005 when he transferred Plaintiff Fernando Kumar ("Tirthananda"). Accordingly, the trial court granted Defendants' motion for involuntary dismissal under C.R.C.P. 41(b) and reconsidered and granted Defendants' motion for summary judgment.

In their Amended Opening Brief in this appeal, Plaintiffs now instead argue that they disregarded the October 2005 transfer order because of a dispute in India

between Intervenor and Kolkata, a self-proclaimed rival faction. In so doing, Plaintiffs attempt to advance yet another position that can only be arrived at by disregarding (1) Plaintiffs' then-contemporaneous actions and written statements, (2) Plaintiffs' own testimony on cross-examination, and (3) the trial court's factual findings based upon weighing the credible testimony and evidence.

Plaintiffs attack as reversible error the trial court's factual finding that AMPS General Secretary Acarya Dhruvananda Avadhuta ("Dhruvananda") had "the unquestioned authority pursuant to Ananda Marga structure and authority and code and doctrine to do what he did, which is to transfer Tirthananda, unquestionably" (CD4, 05-16-11, 31:6-8), a finding that the trial court made entirely on the basis of the testimony of Plaintiffs' own witnesses and Plaintiffs' documents. Plaintiffs now contend that the trial court had no jurisdiction to decide the issues that Plaintiffs themselves presented to it, as well as Defendants' corresponding counterclaims. Plaintiffs ask for the extraordinary measure of vacating not only the trial court's grant of summary judgment but also its involuntary dismissal of Plaintiffs' claims under C.R.C.P. 41(b).

**B. Disposition in the Court Below.**

Plaintiffs sought a declaration that the Individual Plaintiffs were the rightful Board of Directors of AMI and an order enjoining the Individual Defendants from

acting or representing themselves as the same. Plaintiffs' claims were premised upon their representations that AMI was autonomous of and independent from any AMPS religious hierarchy. (First Amended Complaint for Declaratory Judgment and Injunctive Relief ("First Amended Complaint"), pp. 6-7, 12-14.) Plaintiffs further represented in their First Amended Complaint that "[a]n actual, justiciable controversy exists between the parties concerning their rights, status and legal relations that can be resolved by a declaratory judgment of the Court." (*Id.*, p. 12.) Defendants filed a mirror counterclaim, seeking a declaration that the Individual Defendants are the rightfully appointed AMI Board of Directors pursuant to the AMPS ecclesiastical, hierarchical structure and enjoining the Individual Plaintiffs from holding themselves out as the same.

Before trial, both parties submitted summary judgment motions, which the court denied. The trial court held a six-day evidentiary trial in which all testimonial evidence was presented by Plaintiffs' witnesses, and all documentary evidence was either admitted by stipulation or authenticated by Plaintiffs' own witnesses. Many of the witnesses whose affidavits had been included in Plaintiffs' motion for summary judgment testified at trial, and the vast majority of the documents admitted into evidence had been produced by Plaintiffs in discovery (as

noted by a Bates number beginning with “P”) and/or contain Plaintiffs’ own sworn or certified statements.

At the close of Plaintiffs’ evidence, the trial court granted Defendants’ motion for involuntary dismissal of Plaintiffs claims under C.R.C.P. 41(b). While delivering its ruling on Defendants’ Rule 41(b) motion, the trial court made numerous factual findings based upon the documentary and credible witness testimony presented. (CD4, 05-16-11, 7:24-35:11.) The Court then made legal findings based upon those factual findings. (*Id.*, 36:19-44:8.) Then, on Defendants’ motion, the Court also reconsidered and granted Defendants’ Motion for Summary Judgment. (*Id.*, 44:8-14.)

Following entry of judgment, Defendants moved the court to grant reasonable attorneys’ fees incurred in defending a substantially frivolous, groundless or vexatious lawsuit under § 13-17-102, C.R.S. The trial court granted Defendants’ motion for fees, making specific findings of fact upon which it based its ruling. (#43896711, Order, pp. 2-18).

### **C. Statement of the Facts.**

Plaintiffs’ recitation of the relevant facts is highly selective and ignores important testimony and evidence at trial as well as the trial court’s actual factual findings based upon such testimony and evidence. Rather than refute each of

Plaintiffs' inaccurate or incomplete factual statements, Defendants herein highlight the relevant facts – as determined by the trial court and as amply supported by the evidence – that are important for this Court's consideration of Plaintiffs' appeal.

1. AMPS Has A Well-Defined Hierarchy And Ecclesiastical Structure That Includes The General Secretary's Unilateral Authority To Appoint And Remove The Sectorial Secretary And Strict Oaths Of Obedience By Its Religious Ministers To Obey Transfer/Posting Orders.

AMPS, the religious denomination begun in India by Rev. P.R. Sarkar (known by his followers as “Baba” or “Reverend Baba”), is a hierarchical denomination, with well-defined levels of authority and structure for the functioning of the organization. Reverend Baba taught that “without structure you will have chaos.” (CD1, 5-12-11, 28:10-12.) He therefore created for AMPS detailed hierarchical structures to allow his followers (“adherents”) to follow ananda margha, the “path of bliss.” (CD4, 5-16-11, 11:21-12:2; CD1, 5-12-11, 147:23-148:9.)

AMPS has a distinct hierarchy of ordained religious ministers, with the highest level minister being *purodha*, followed, in descending order, by *acarya* (abbreviated “Ac.” when used as a title), and *tattvika*. (CD3, Def. Ex. D72, p.8-9.) Where possible, AMPS places *purodhas* in positions of ecclesiastical and organizational authority. (CD2, Pl. Ex. 15, p.14.) However, those who are ordained as *acaryas* are empowered to initiate others into Ananda Margha and to

minister to the adherents. (CD3, Def. Ex. D72, p. 9.) Some acaryas have elected to become monks (*avadhutas*, abbreviated “Avt.” when used as a title) or nuns (*avadhutikas*), referred to as “Wholetimers” because they dedicate their whole lives to the Ananda Marga mission. (*Id.*) Wholetimer acaryas are assigned or posted throughout the global organization to serve the mission. (*Id.*)

Reverend Baba articulated several codes of discipline and conduct for Ananda Marga. Many of these are contained within *CaryaCarya*, Reverend Baba’s social code, the portion of the AMPS foundational documents that prescribes the structure of the organization. (*Id.*, p. 7.) All adherents take oaths to abide by AMPS’s codes of doctrine and discipline. (*Id.*; CD1, 05-09-11, 170:16-171:16.) As ordained ministers, acaryas are subject to stricter codes than general adherents, and Wholetimers are subject to still stricter codes of conduct. (CD3, Def. Ex. D72, p. 7; CD4, 5-16-11, 17:19-18:9.) Among the acarya and Wholetimer codes of discipline is the duty to obey one’s posting orders. (*Id.*; CD1, 5-12-11, 39:16-25.) An acarya who fails to follow codes of conduct can be disciplined (CD1, 5-12-11, 30:1-24). Reverend Baba also provided methods to resolve disputes in *CaryaCarya* and through a tribunal system. (CD3, Def. Ex. D294.)

Reverend Baba instituted a pyramidal hierarchy for the AMPS organization, with AMPS Central in India as its headquarters and himself, the *Purodha Pramukha* (head purodha), as the spiritual and administrative head of the organization. (CD1, 5-12-11, 54:22-55:20; CD3, Def. Ex. D72, pp. 6, 9; CD4, 5-16-11, 15:23-16:3.) The Purodha Pramukha is elected from among the purodhas and holds this position for life. (CD2, Pl. Ex. 15, p. 50.) His decisions are final and unappealable, although he can reverse his own decisions. (*Id.*; CD4, 5-16-11, 16:24-17:2.) During his lifetime, Reverend Baba held that role and, after Reverend Baba's physical death in 1990, Ac. Shraddhananda Avt. served as the unquestioned Purodha Pramukha until his death in 2008. (CD4, 5-16-11, 16:4-8.) Proceeding from the Purodha Pramukha are both ecclesiastical and administrative hierarchies.

The next highest ecclesiastical authority in AMPS Central is the Purodha Board, the members of which are also elected from among the purodhas. The Purodha Pramukha is its chairman. (CD4, 5-16-11, 16:19-24.) The Purodha Board performs several functions, one of which is to declare and resolve any "complicated problem or serious controversy." (CD2, Pl. Ex. 15, p. 50.) All adherents must obey the decision of the Purodha Board without argument. (*Id.*) The Purodha Board generally plays no role in the posting of Wholetimers. (CD1, 5-11-11, 7:24-8:1.)

Reverend Baba's pyramidal hierarchy for the administration of AMPS also places the Purodha Pramukha at the top of the pyramid. AMPS Central's highest policy-making body is the Central Committee, members of which are elected from among the purodhas. (CD4, 5-16-11, 19:13-15; CD2, Pl. Ex. 121, p. 22.) The Purodha Pramukha generally serves as President of the Central Committee or, if he chooses, may appoint another to serve as President. (CD4, 05-16-11, 16:11-15; CD2, Pl. Ex. 15, p. 47.) The Purodha Pramukha also appoints the General Secretary from the members of the Central Committee. (CD4, 5-16-11, 16:16-18; CD3, Def. Ex. D72, p. 9.)

The General Secretary has responsibility for the general administration of AMPS. Among his duties is the responsibility to post Wholetimer acaryas to various organizational positions throughout the global AMPS organization. (CD4, 5-16-11, 19:16-23; CD3, Def. Ex. D72, p. 9.) The General Secretary reports directly to the Purodha Pramukha in the exercise of his duties. (*Id.*) The General Secretary's posting orders are finalized once they are approved by the Purodha Pramukha and are effective immediately. (CD4, 5-16-11, 32:10-18.)

In addition to the authority to post Wholetimers, the General Secretary also has authority and responsibility to post Sectorial Secretaries, the highest ecclesiastical and administrative position within each AMPS Sector. (CD4, 05-16-

11, 20:13-23.) Reverend Baba divided the globe into nine geographical sectors and further subdivided each sector into smaller units. (*Id.*,18:14-25; CD3, Def. Ex. D72, p. 9.) He established organizational structures in each geographical unit that mirror the organizational structure of AMPS Central, with each unit ultimately reporting to the General Secretary. (CD4, 5-16-11, 19:24-20:8.)

A Sectorial Secretary is the head of each sector, is the representative of the General Secretary within the sector, and serves at the pleasure of the General Secretary. (*Id.*, 20:13-23.) The General Secretary has the power to remove Sectorial Secretaries from their positions and place them in a different sector and/or position. (*Id.*, 20:24-21:3.)

2. The Indian Legal Society AMPS Is The Legal Embodiment of the Religious Denomination AMPS.

Reverend Baba also registered AMPS as a legal society in 1956 in Bihar, India and later under the Societies Act of West Bengal in 1964. (CD3, Def. Ex. D72, p. 6.) The AMPS legal society's constitution explicitly incorporates the *CaryaCarya* in key places (CD2, Pl. Ex. 9, p. 7). Membership of the legal society is limited to those individuals who follow the principles of conduct as set forth in *CaryaCarya*. (*Id.*) Furthermore, the Constitution explicitly specifies that all committees and boards of the AMPS legal society "will be constituted as detailed

in *CaryaCarya* Part I” and that all objections and complaints shall be addressed according to the procedures stated in *CaryaCarya*. (*Id.* at p. 8.)

3. AMI Is the Legal Embodiment of AMPS New York Sector And Is Subject to the AMPS Hierarchy.

The AMPS sector that encompasses the United States is the New York Sector, and putative Plaintiff AMI is the legal embodiment of the AMPS New York Sectorial Office, AMPS’s U.S. headquarters. (CD4, 5-16-11, 25:13-14). From its founding, AMI’s Bylaws – both the original 1974 Bylaws and the 1982 Amended Bylaws – identified AMPS or AMPS Central as AMI’s parent organization and acknowledged the authority of the General Secretary to unilaterally appoint and remove the Sectorial Secretary, the corporation’s highest executive position. (CD2, Pl. Ex. 3, p. 1,3,13; CD2, Pl. Ex. 4, p. 1-2, 5.) The 1982 Amended Bylaws provide that any amendments to the Bylaws require the approval of the Sectorial Secretary. (CD2, Pl. Ex. 4, p. 5.) Prior to Tirthananda, every New York Sectorial Secretary since its inception in 1969 had obeyed the General Secretary’s posting orders. (CD1, 05-13-11, 39:12-24.)

4. Prior To This Action, Plaintiffs Never Accorded Any Legitimacy To Kolkata’s Self-Proclaimed Authority; Instead, AMI And Plaintiffs Remained Subject to Intervenor AMPS After The Split.

Following Reverend Baba’s death in 1990, disagreements ensued regarding the proper administration of the organization. These tensions led to a break in the

organization in 2003, when many purodhas and acaryas based in Kolkata, India left AMPS, formed a separate organization (“Kolkata”), and proclaimed that organization to be the spiritually true AMPS Central. (CD1, 5-9-11, 113:13-115:4; 5-10-11, 232:15-233:14, 233:25-234:4.) Kolkata also instituted civil actions in the Indian courts to be declared the legally true AMPS-Central as well. Since then, Kolkata and Intervenor AMPS, the original AMPS Central (referred to by Plaintiffs as AMPS-Ranchi) have been engaged in lawsuits over the control of AMPS in India.

When the breakaways formed Kolkata, they created an organizational structure largely parallel to Intervenor’s, complete with its own Central Committee and General Secretary. (CD1, 5-10-11, 16:23-17:13, 236:21-23.) Of particular relevance to this appeal, Kolkata created its own legal entity in the United States, appointed its own New York Sectorial Secretary, selected its own Board of Directors (which did not include any of the Individual Plaintiffs), and operated completely independently of AMI. (CD1, 5-12-11, 45:21-46:12; First Amended Complaint, ¶53; Plaintiffs’ Joint Answer to Defendants’ First Amended

Counterclaims, ¶5). Kolkata made no effort to claim any control over AMI or its programs, properties, or assets. (*Id.*)<sup>1</sup>

At no point prior to the filing of this action did AMI or the Individual Plaintiffs align themselves with Kolkata. (CD1, 5-9-11, 232:19-233:4.) Instead, after Kolkata's breakaway in 2003, there were two different individuals operating as New York Sectorial Secretary: Tirthananda, who had been appointed by Intervenor, and one appointed by Kolkata. (CD1, 5-12-11, 45:21-46:12, 153:23-154:1.) Kolkata's appointment of a separate Sectorial Secretary had minimal effect on Tirthananda's ability to function as Sectorial Secretary based upon his appointment by Intervenor. (*Id.*, 114:23-115:10.)

Even after the events that gave rise to this action in October 2005, the Individual Plaintiffs represented that AMI was aligned with Intervenor (CD3, Def. Ex. D203, p. 1), not with Kolkata (CD3, Def. Ex. D327, p. 1), and that Intervenor could "totally control Ananda Marga, Inc." by replacing the Sectorial Secretary (CD3, Def. Ex. D299, p. 1). As late as April 2006, AMI represented to at least one U.S. government agency that AMPS Central's office was in Ranchi, not Kolkata. (CD3, Def. Ex. D120, p. 1.) Plaintiff Rubens Teixeira served on the Intervenor's

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<sup>1</sup> Indeed, the first time Kolkata attempted to involve itself in AMI's affairs was on April 2, 2012, when Kolkata moved this Court for an extension of time to file an amicus curiae brief in this appeal.

Central Committee until the end of his term in 2007, two years *after* the events that gave rise to this action. (CD1, 5-09-11, 113:13-19.)

5. Plaintiffs Disregarded The Transfer of Tiirthananda, The “Ranchi” Sectorial Secretary, By Dhruvananda, The “Ranchi” General Secretary.

Plaintiff Tiirthananda was posted as the New York Sectorial Secretary by General Secretary Dhruvananda in 2003, months prior to the Kolkata breakaway. (CD1, 5-12-11, 109:4-22.) After the Kolkata breakaway, Dhruvananda remained General Secretary of Intervenor, the group with which AMI and Tiirthananda were aligned. (*Id.*, 121:13-24.) The Individual Plaintiffs do not purport to have questioned Dhruvananda’s legitimacy as General Secretary until after October 2005. (*Id.*, 149:23-150:9; 05-13-11, 38:2-7.)

On October 30, 2005, Dhruvananda transferred Tiirthananda to the Suva (Australia) sector and posted another individual as New York Sectorial Secretary. (CD4, 5-16-11, 30:20-25.) This posting order took effect immediately, according to AMPS custom and practice, and Tiirthananda ceased being the New York Sectorial Secretary on that day. (*Id.*, 32:10-24.) Contrary to AMPS’s hierarchical structure, Tiirthananda refused to obey the posting order, and the Individual Plaintiffs, the AMI Board, refused to recognize the order. (*Id.* at 31:23-32:9.)

6. Plaintiffs Unsuccessfully Appealed Tiirthananda's Transfer To The Purodha Board And To AMPS Central.

Despite Plaintiffs' representations to the contrary in this lawsuit, the outcome of their two appeals to AMPS authorities to reconsider Tiirthananda's transfer strongly confirm Tiirthananda's transfer. In November 2005, some New York Sector adherents expressed concern to the Purodha Board that Tiirthananda's transfer might destabilize the sector. (CD2, Pl. Ex 83, p. 2-4.)<sup>2</sup> They did not question the legitimacy of Dhruvananda as General Secretary in that appeal. (*Id.*) The Purodha Board stayed Tiirthananda's transfer in November 2005 (CD4, 5-16-11, 31:7-11), but on January 6, 2006, vacated its decision to stay Tiirthananda's transfer. (*Id.*; CD1, 5-12-11, 187:23-188:13; CD3, Def. Ex. D323, p. 10.)

On April 1, 2006, the New York Sector sent a delegation, including some named Plaintiffs, to the "Central Office" (i.e., Intervenor) to express once again their concern over the transfer of Tiirthananda. (CD1, 5-10-11, 61:9-62:2; CD3, Def. Ex. D366, p. 2.) Once again, Plaintiffs did not raise any concern about Dhruvananda's legitimacy as General Secretary in that meeting. (CD3, Def. Ex. D316, p. 2.) Instead, they suggested again that the transfer would destabilize

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<sup>2</sup> While Defendants have been unable to locate in the trial transcript reference that Plaintiffs' Exhibit 83 was admitted during trial, the trial judge stated that "[w]ithout exclusion he reviewed and considered . . . and [found] most helpful . . ." Plaintiffs' Exhibit 83. As such, we respectfully request this Court to consider, as Judge Martinez did, Plaintiffs' Exhibit 83. (05-16-2011, 8:25-9:6.)

the sector. (*Id.*) Intervenor nonetheless decided to enforce Tiirthananda's transfer posting. (*Id.*) None of Plaintiffs' efforts ever rose to the level of requesting, initiating, or participating in any dispute resolution process created by Reverend Baba. (CD4, 5-16-11, 34:15-23.)

7. Plaintiffs Admitted To Kolkata That Intervenor Had Complete Control of AMI.

Tiirthananda and the Individual Plaintiffs were informed of the Purodha Board's January 2006 decision to vacate the stay only a few days later. (CD3, Def. Ex. D392.) Nonetheless, the Individual Plaintiffs continued to ignore the posting/transfer order and began discussions to attempt to amend AMI's bylaws in an *ex post facto* effort to restrict the General Secretary's power to appoint and remove the Sectorial Secretary (CD1, 5-12-11, 132:18-133:25). The Individual Plaintiffs allegedly finalized the purported amendments on February 10, 2006 (the "2006 Amendments"). (CD3, Def. Ex. D148, p. 6.)

Kolkata learned of the 2006 Amendments in 2010, four years after the fact, and reprimanded the Individual Plaintiffs for attempting to make the "parent organization [AMPS] and its Sectorial Secretary ... an ineffective nominal instrument," thereby violating "the basic spirit and the organizational system as cherished by Baba." (CD3, Def. Ex. D299, p. 2.) The chastised Individual Plaintiffs explained to Kolkata officials *three months after their initiation of this*

*lawsuit* that they amended the Bylaws because they recognized that the “Ranchi regime” (Intervenor) had complete control of AMI under the 1982 Bylaws and could exercise that by replacing AMI’s Sectorial Secretary. (*Id.*, p. 1.)

8. Intervenor AMPS Appointed New Directors for AMI and Revoked All Of Tiirthananda’s Religious Titles.

Once the Purodha Board withdrew its decision to stay the transfer in January 2006, Dhruvananda reiterated Tiirthananda’s transfer from the New York Sectorial Secretary position. Because the individual who had been originally posted to replace Tiirthananda in October 2005 had been reposted during the stay, Dhruvananda posted Defendant Ac. Vimalananda Avt. (“Vimalananda”) as New York Sectorial Secretary on February 28, 2006, and ordered Tiirthananda to report to the Qahira Sector (Cairo) for his next posting assignment. (CD4, 5-16-11, 33:22-34:4; CD3, Def. Ex. D339.) That posting order was approved by the unquestioned Purodha Pramukha. (CD4, 5-16-11, 33:22-34:4.) Tiirthananda disregarded that posting order, and the Individual Plaintiffs refused to acknowledge Vimalananda as the New York Sectorial Secretary. (CD1, 5-12-11, 137:5-138:2.) Thus, there were three individuals who called themselves New York Sectorial Secretary: (1) one appointed by Kolkata, who operated as the Sectorial Secretary of a separate organization; (2) Vimalananda, who was appointed by Intervenor as the Sectorial Secretary of AMI; and (3) Tiirthananda, who was no longer appointed by

anyone. (CD1, 5-12-11, 135:6-136:4.) Tirthananda and the Individual Plaintiffs effectively disassociated themselves (and their purported control of the New York Sector) from any group claiming to be the legitimate AMPS ecclesiastical authority (*Id.*).

From 2006 through January 2009, Intervenor directed Tirthananda multiple times to turn over charge of the New York Sector to Vimalananda, obey the posting order and report to his new post (CD3, Def. Ex. D181-D187.) Nonetheless, Tirthananda continued to represent himself, and the other Individual Plaintiffs continued to treat him, as the Sectorial Secretary. After several years of attempting to obtain compliance from the Individual Plaintiffs, Dhruvananda finally directed Vimalananda to select new AMI Board members, which he did in October 2009. (CD2, Pl. Ex. 101.) Shortly thereafter, AMPS Central revoked Tirthananda's titles of tattvika, acarya and avadhuta (CD3, Def. Ex. D188). Plaintiffs then brought this action seeking to be declared the rightful Board of AMI, and Defendants counterclaimed for comparable relief.

### **SUMMARY OF THE ARGUMENT**

This case arose from Plaintiffs' filing of a declaratory judgment action asking for judicial resolution of questions about the governance of AMI. Plaintiffs notably did **not** request that the court determine any questions of church property

law. Rather, they asked that the court resolve the question of who controlled AMI, a religious organization. Defendants' counterclaims sought a corresponding declaration in Defendants' favor.

In deciding this case strongly in favor of Defendants, the trial court considered the testimony of 7 witnesses and over 230 admitted exhibits. In addition to this trial evidence, the trial court also considered extensive summary judgment briefing, affidavits, and exhibits. Based upon its careful consideration of this extensive record and the relevant legal authorities, the trial court made detailed factual findings. The court's evaluation of the trial testimony included (but was not limited to) its credibility determinations regarding Plaintiffs' witnesses, whose direct testimony was repeatedly and thoroughly contradicted by their testimony on cross-examination as well as by the extensive documentary evidence. Indeed, the contradictions in Plaintiffs' testimony were so glaring, and the documentary evidence supporting Defendants so strong, that Defendants did not need to put on any testimony at trial. On the basis of this evidence, the trial court entered judgment under C.R.C.P. 41(b) dismissing Plaintiffs' claims and granted Defendants' summary judgment motion on Defendants' counterclaims.

The trial court determined that this case is factually on all fours with and directly controlled by the U.S. Supreme Court's decision in *Serbian Eastern*

*Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) (“*Serbian*”). Plaintiffs, however, ignore this finding of the trial court and, indeed, entirely ignore the facts, reasoning, and outcome of *Serbian* altogether. The reason is obvious: this case is factually almost identical to *Serbian*, which means that the trial court’s findings and rulings must stand.

Rather than address *Serbian* directly, Plaintiffs adopt a new tactic on appeal. Despite having initiated this action seeking a judicial declaration that Intervenor AMPS’s transfer of Tirthananda was ineffective, and despite alleging that these claims were fully justiciable by the trial court, Plaintiffs now contend that Defendants’ mirror image counterclaims seeking enforcement of that transfer – and perhaps even Plaintiffs’ own claims – are nonjusticiable. After asserting at trial and in briefing that the trial court could decide this case without resolving any issues of disputed religious doctrine, Plaintiffs now assert that resolution of Defendants’ counterclaims would impermissibly require resolution of questions of religious doctrine. (Am. Op. Br., pp. 24-34.) And after having originally framed this action in their Complaint as involving issues of governance and control, Plaintiffs now attempt to claim that the dispute instead is actually a pure church property dispute. (Am. Op. Br., p. 22-24.)

Plaintiffs’ self-contradictions are now legal as well as factual. But despite Plaintiffs’ factual and legal contortions, at least two things are clear, and they are all that this Court needs to dispose of this appeal. First, the trial court did not resolve any disputed issue of religious doctrine. It made a factual finding, based on the extensive testimony and documentary evidence presented by Plaintiffs’ witnesses, that Dhruvananda was AMPS General Secretary with unquestioned authority to transfer Tiirthananda in October 2005. Second, this case is “legally and factually on all fours” with *Serbian* and thus the trial court correctly reached the same result.

## **ARGUMENT**

### **I. THE CORRECT STANDARD OF REVIEW IS MANIFESTLY ERRONEOUS, NOT *DE NOVO*.**

Plaintiffs’ primary arguments on appeal rely upon their subtle mischaracterizations of the trial court’s findings and of the applicable standard of review for such findings on appeal. Plaintiffs purport to challenge the trial court’s grant of summary judgment, likely because this Court generally reviews a summary judgment ruling *de novo*. However, Plaintiffs’ challenges rest upon their mischaracterization of one specific factual finding made by the trial court in its grant of Defendants’ Rule 41(b) motion for involuntary dismissal of Plaintiffs’ claims – the factual finding that the Dhruvananda “was the undisputed stand-alone

General Secretary of AMPS Central.” (Am. Op. Br., pp. 21-22.) Plaintiffs do not get the benefit of *de novo* review with regard to such a factual finding. Instead, this Court must not disturb the trial court’s factual finding unless Plaintiffs carry their burden to establish, based on the record, that the trial court’s finding was manifestly erroneous. *In re Marriage of Hoyt*, 742 P.2d 963, 964 (Colo. App. 1987).

## **II. PLAINTIFFS’ ATTACK ON THE TRIAL COURT’S JUDICIAL NOTICE OF INDIAN COURT RULINGS IMPROPERLY RAISES A NEW ISSUE ON APPEAL.**

Plaintiffs objection that it was error for the trial court to take judicial notice of a ruling by a court in India confirming the status of Dhruvananda as General Secretary of AMPS (Am. Op. Br., pp. 31-32) is not only erroneous and hypocritical, it is also a new issue never presented to the trial court and thus waived. Despite having ample opportunity to do so, Plaintiffs did not object to the trial court taking notice of any rulings by Indian courts proffered by Plaintiffs and Defendants alike. To the contrary, Plaintiffs in fact *requested* that the trial court take judicial notice of a number of rulings by Indian courts. (CD1, 5-13-11, 135:12-139:10.) Defendants’ request for the trial court to take judicial notice of certain India court rulings was to include in evidence Indian appellate court rulings that reversed some of the Indian lower court rulings proffered by Plaintiffs. (*Id.*)

As a general rule, an issue not presented to or raised at the trial court will not be considered on appeal. *GF Gaming Corp. v. Taylor*, 205 P.3d 523, 528 (Colo. App. 2009), citing *Beauprez v. Avalos*, 42 P.3d 642, 649 (Colo. 2002). A party asserting error must have made specific objection to such error in the proceedings below. *Hancock v. Dept. of Revenue*, 758 P.2d 1372, 1377 (Colo. 1988) (internal citations omitted). Failure to object at trial on the grounds asserted in the appeal is deemed a waiver of the objection. *People v. Watson*, 668 P.2d 965, 967 (Colo. App. 1983). Here, Plaintiffs have waived their objection to the trial court taking judicial notice of a Indian court opinion not only by failing timely to object but by Plaintiffs asking the same court to take judicial notice of similar evidence.

### **III. THE TRIAL COURT CORRECTLY FOLLOWED *SERBIAN* IN GRANTING DEFENDANTS' COUNTERCLAIMS WITHOUT RESOLVING ANY DISPUTED ISSUE OF RELIGIOUS DOCTRINE.**

This case involves a dispute over ecclesiastical control of a religious organization. The dispute arises from the decision by the highest authorities within AMPS to reassign Tirthananda, a subordinate religious officer, from a position of ecclesiastical authority within the United States, and from the subsequent actions of Tirthananda and the other Individual Plaintiffs to disregard the decisions of the AMPS religious authorities. Consequently, as the trial court correctly recognized, this case is directly controlled by the Supreme Court's decision in *Serbian*. Under

*Serbian* and its progeny, where ecclesiastical authorities have rendered a decision regarding ecclesiastical governance (such as the appointment or removal of a minister), the First and Fourteenth Amendments require that secular courts defer to and enforce the decision of the ecclesiastical authorities. *Id.* at 710.

On appeal, Plaintiffs would have this Court believe that Defendants' counterclaims – and, logically, even Plaintiffs' original claims – are not justiciable because they would require a secular court to resolve a disputed issue of religious doctrine between Intervenor AMPS and Kolkata. However, no such resolution of religious doctrine was necessary for nor involved in the trial court's resolution of Plaintiffs' claims or of Defendants' counterclaims. Rather, Plaintiffs claims and Defendants' counterclaims are justiciable under *Serbian* upon the facts as presented at trial by Plaintiffs' own witnesses and documents.

**A. The Kolkata Split Is Irrelevant To Resolution Of This Case.**

Plaintiffs assert that because Intervenor and Kolkata are engaged in litigation in India over which is the true governing body of AMPS, neither this Court nor the trial court can resolve Defendants' counterclaims without resolving disputed issues of religious doctrine. Notably, Plaintiffs took the opposite position in opposing Defendants' post-trial motion for attorney fees. (Plaintiffs' Fees Opposition, pp. 5-6.) But contrary to Plaintiffs' current position, the dispute between Kolkata and

Intervenor was legally and factually irrelevant to the resolution of the dispute before the trial court and continues to be irrelevant to this appeal. Although Plaintiffs presented testimony of a dispute in India over the legitimacy of Intervenor beginning as early as 2003 when the Kolkata dissidents separated from AMPS, the record was uniform that AMI and the Individual Plaintiffs did not follow Kolkata. Instead, even after this split and after the filing of Plaintiffs' Amended Complaint, Plaintiffs acknowledged Intervenor as the legitimate AMPS and recognized Intervenor's authority over them.

First, after the 2003 Kolkata breakaway, AMI and the Individual Plaintiffs continued to operate under the authority of Intervenor. After the Kolkata dissidents formed a separate organization in India, AMI and the Individual Plaintiffs remained subordinate to Intervenor. (CD1, 5-10-11, 232:15-233:14, 233:25-234:4; 5-12-11, 45:21-46:12, 153:23-154:1.) Even after Kolkata created a separate AMPS organization in the United States and appointed a separate New York Sectorial Secretary, AMI continued taking orders from Intervenor, not from Kolkata. (*Id.*)

Second, both before and after October 2005, Plaintiffs continued to represent in sworn filings with U.S. government agencies that AMI was under the authority of Intervenor, not Kolkata. (CD3, Def. Ex. D120, p. 1.)

Third, Plaintiffs continued to participate in the activities of Intervenor, not Kolkata. Indeed, one of the Plaintiffs served on Intervenor's Central Committee from 2002 through 2007. (CD1, 5-09-11, 113:13-19.)

Fourth, Plaintiffs continued to acknowledge and act consistently with the authority of Intervenor, not Kolkata, even after Dhruvananda ordered the transfer of Tiirthananda. Plaintiffs twice appealed Tiirthananda's transfer to Intervenor, not to Kolkata. Plaintiffs appealed first to the Central Purodha Board, the highest AMPS judicial body, then to Intervenor AMPS, which the Plaintiffs still considered the "Central Office." (CD2, Pl. Ex. 83, pp. 2-4; CD1, 05-10-11, 60:23-62:2; CD3, Def. Ex. D316, p. 2.)

Fifth, as late as July 2010, after Plaintiffs filed their Amended Complaint in this action, Plaintiffs represented to Kolkata in an email that Plaintiffs' purported 2006 Bylaws Amendments had been calculated to prevent Intervenor from exercising its total control over AMI, and Plaintiffs acknowledged that Intervenor could exercise such control by simply appointing a new Sectorial Secretary. (CD3, Def. Ex. D299, p. 1.) Kolkata, despite its ongoing disputes with Intervenor, scolded Plaintiffs for violating "the basic spirit and the organizational system as cherished by BABA." (*Id.*, p. 2.)

Plaintiffs' contention that they did not acknowledge the October 2005 and February 2006 posting orders because of the dispute between Intervenor and Kolkata is a desperate after-the-fact attempt to justify what was, in reality, simply a decision to disregard a posting order the Plaintiffs disliked. Further, Plaintiffs proffer this justification only in this litigation – in all of their other documents and communications during and regarding that time period, Plaintiffs acknowledge Intervenor's authority over them and offer other reasons for disobeying the posting order. The dispute between Intervenor and Kolkata is simply not relevant to the resolution of this case. For that reason, the trial court stated explicitly that it was not resolving that dispute. (CD4, 5-16-11, 30:7-17; 36:1-18.) Instead, the trial court resolved Plaintiffs' claims and Defendants' counterclaims based upon the facts presented by Plaintiffs' trial testimony and extensive documentary evidence and in a manner perfectly consistent with *Serbian*.

**B. The First Amendment Required The Trial Court To Defer To The Decision Of The AMPS Hierarchy.**

1. *Serbian Is The Controlling Authority.*

Contrary to Plaintiffs' assertions on appeal, but consistent with Plaintiffs' earlier assertions (Plaintiffs' Fees Opposition, p. 5), this case is not a dispute regarding ownership of church property. It is, rather, a dispute regarding control of a religious denomination arising out of a local religious official's refusal to

acknowledge and abide by a transfer order from his ecclesiastical superiors. As such, it is “factually and legally on all fours” with *Serbian* (CD4, 5-16-11, 36:1-5), which is the directly controlling precedent.

In *Serbian*, the Supreme Court stated that the First and Fourteenth Amendments to the Constitution require secular courts to defer to and enforce the decisions of the highest authorities of a hierarchical religious organization concerning the structure and administration of that organization. 426 U.S. at 709, citing *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring). The religious organization’s decision to remove an ecclesiastical official within that hierarchy is the paradigmatic situation in which the Constitution requires a secular court’s deference to the organization’s decision. *Hosanna Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 704 (U.S. 2012) (“[T]he [f]reedom to select the clergy ... is part of the free exercise of religion protected by the First Amendment against government interference”) (internal quotations omitted), quoting *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952). Such deference is required even when, as here, deference has the practical effect of determining control of church property because the case “essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil

tribunals.” *Serbian*, 426 U.S. at 709-10 (citations omitted), *quoting Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969).

This approach is consistent with subsequent Supreme Court First Amendment decisions, including those applying the “neutral principles of law” approach to resolution of disputes that are strictly about church property and do not involve removal of religious officials and control of religious organizations. As the Supreme Court stated in *Jones v. Wolf*, 443 U.S. 595 (1979), its leading “neutral principles” decision: “the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. [Citations omitted.] As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine *or polity* by the highest court of a hierarchical church.” *Id.* at 602 (emphasis added).

This approach is also consistent with Colorado decisions in similar disputes. Although Colorado has adopted the neutral principles of law approach to pure church property disputes, the Colorado courts have nonetheless applied the *Serbian* analysis to disputes about the identity of church leaders or members. *See, e.g., Moses v. Diocese of Colorado*, 863 P.2d 310, 320 (Colo. 1993), citing *Serbian* and *Kedroff*, 344 U.S. 94 (1952); *Levitt v. Calvary Temple of Denver*, 33 P.3d 1227, 1230 (Colo. App. 2001) (ruling that “a civil court simply has no authority to

reverse” a decision by the hierarchy of the church “no matter how arbitrary or unfair, to expel Levitt or any other member”). Therefore, where the facts reflect a church governance decision by the ecclesiastical authorities within the church, secular courts must enforce that decision. That is precisely what the trial court did here.

2. Plaintiffs Vainly Attempt To Avoid *Serbian*.

The trial court found this case to be “factually and legally on all fours” with *Serbian* (CD4, 5-16-11, 36:1-5). Plaintiffs ignore this finding and never address the court’s analysis or the facts, reasoning, and outcome of *Serbian*. Rather, Plaintiffs mention *Serbian* only as a passing “see also” citation (Am. Op. Br., pp. 16, 24). But this case is factually almost identical to *Serbian* (see section III.D below). Plaintiffs instead attempt to avoid *Serbian* by re-characterizing the present case as a pure church property action under *Jones*, 443 U.S. 595 (1979), and *Bishop & Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986). Plaintiffs’ efforts fail, for multiple reasons.

First, in framing their Complaint and Amended Complaint, Plaintiffs did not actually plead any church property claims. Rather, Plaintiffs’ Complaints invoked the court’s jurisdiction to resolve what Plaintiffs described as corporate governance issues. For relief, Plaintiffs requested a declaratory judgment regarding the

governance of a hierarchical religious body recognized by the Internal Revenue Service as a “church.” Plaintiffs’ Complaints are conspicuously devoid of claims – and even terms – normally found in church property disputes. Defendants’ counterclaims mirrored Plaintiffs’ claims.

Second, the evidence on summary judgment and at trial likewise dealt with church governance and control, not ownership of church property. No deeds, title documents, or bank statements were offered, let alone admitted, as exhibits. Rather, the primary exhibits offered by Plaintiffs (and by Defendants) were documents about the organization of ecclesiastical entities, such as founding documents (CaryaCarya), constitutions, articles of incorporation, and bylaws, about the appointment, transfer, and removal of ecclesiastical officials, publications, and correspondence. Thus, the claims presented, relief sought, evidence introduced, and ultimately the decision below all closely track *Serbian*.

3. Plaintiffs Misconstrue *Mote*, The Neutral Principles Analysis And The Trial Court’s Decision.

There are a number of additional flaws in Plaintiffs’ purported application of the “neutral principles” analysis here. First, Plaintiffs incorrectly equate the command that courts must decide church disputes without resolving underlying controversies over religious doctrine with the specific type of “neutral principles” approach applied in church property cases. This erroneously limits the

constitutional command to a single method of resolving all church disputes, contrary to the instructions of the Supreme Court in *Jones*:

the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, ‘a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.’

*Jones*, 443 U.S. at 602 (emphasis in original).

Second, Plaintiffs’ reasoning is based upon their distortions of the decision below. The trial court did not *resolve* an ecclesiastical question. To the contrary – the ecclesiastical question has been resolved by the highest ecclesiastical authorities within AMPS. Rather, Plaintiffs, after failing in two appeals to AMPS’ ecclesiastical judicatories, invoked court jurisdiction in an effort to set aside those decisions.

Third, Plaintiffs misunderstand the “neutral principles” analysis. They fail to acknowledge the repeated statements in *Mote*, *Jones*, and other cases that courts must defer to the determinations of the denomination’s highest decision-makers regarding not only religious doctrine, but also religious governance, internal organization, and appointment, control, and removal of church officials. *Mote* specifically emphasized “the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of

hierarchical polity on matters of *discipline*, faith, *internal organization*, or *ecclesiastical rule, custom, or law.*” 716 P.2d at 93 (emphasis added), *quoting Serbian*, 426 U.S. at 713. Similarly, *Jones* mandates that “the [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine *or polity* by the highest court of a hierarchical church organization.” *Jones*, 443 U.S. at 602 (emphasis added). *See also id.* at 609 n.8.

Plaintiffs’ argument that Defendants’ counterclaims are not justiciable is thus both factually and legally erroneous. Factually, Plaintiffs’ arguments all rely upon their mischaracterizations of the dispute at issue and even of the events in this action. Legally, Plaintiffs’ arguments rest upon their inaccurate characterizations of *Jones* and *Mote* and their determined avoidance of *Serbian*. Plaintiffs’ assertion that Defendants’ counterclaims are nonjusticiable is a legal ploy, adopted only after Plaintiffs had pursued the internal AMPS appeal and review process to the full and been rebuffed every time.

**C. The Trial Court Made Neutral Factual Findings Based Upon the Evidence And Plaintiffs’ Credible Testimony.**

The trial court correctly found that Dhruvananda was the undisputed General Secretary of AMPS Central in October 2005 with the authority to transfer Tiirthananda. On appeal, Plaintiffs attempt to portray this finding as a resolution of a disputed issue of religious doctrine. It was not. Plaintiffs further attempt to

portray this finding as based almost exclusively upon an Indian court order. It was not. Ironically, Plaintiffs' only accurate statement regarding the trial court's finding was that "the trial court weighed the disputed evidence concerning Dhruvananda's purported status as General Secretary in October 2005 . . ." (Am. Op. Br., p. 26.) What Plaintiffs attempt to sidestep, however, is that the contradictory evidence weighed by the trial court was the Plaintiffs' own witnesses' testimony and documents.

As finder of fact, it was the proper province of the trial court to weigh conflicting testimony, determine credibility, and make factual findings. Upon considering Plaintiffs' own "disputed evidence," the trial court determined that the extensive documentary evidence and the testimony of Plaintiffs' witnesses on cross-examination were more credible than the inconsistent direct testimony of Plaintiffs' witnesses. On that basis, the trial court made the factual finding that Tiirthananda had been transferred by the AMPS General Secretary in October 2005. Plaintiffs may dislike this factual finding, but that dislike cannot convert it to manifestly erroneous.

1. Plaintiffs Cannot Fabricate A Genuine Issue of Material Fact Through Self-Serving Testimony.

Throughout the course of this litigation, Plaintiffs have consistently claimed that numerous material facts were in dispute. Upon closer scrutiny, however, the

alleged “disputes” were fabrications based solely upon Plaintiffs’ self-serving litigation statements that were contradicted by their own documents, prior inconsistent statements, and their own testimony upon cross-examination. Here, too, Plaintiffs attempt to fabricate a dispute about the legitimacy of the General Secretary in October 2005. But the only “dispute” in the record regarding this point is between the statements of Plaintiffs’ witnesses on direct examination and of those same witnesses on cross-examination or in prior documents. The fact that Plaintiffs’ witnesses contradict themselves does not constitute a dispute for purposes of summary judgment.<sup>3</sup>

2. It Was Undisputed That Dhruvananda Was AMPS General Secretary With Authority To Remove Tiirthananda On October 30, 2005.

On appeal, Plaintiffs contend that they chose not to obey Dhruvananda’s posting order because of a dispute in India between Intervenor and Kolkata. To the contrary, though, as discussed above, Plaintiffs’ own witnesses and documents

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<sup>3</sup> At the summary judgment stage, a plaintiff’s version of the facts must find support in the record. *Thomson v. Salt Lake County*, 584 F.3d 1304, 1312 (10th Cir. 2009). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Thomson*, 584 F.3d at 1312).

reflect that they considered Dhruvananda to be the AMPS General Secretary during and after October 2005.

At trial, two of Plaintiffs' own witnesses, one a named Plaintiff, testified that Dhruvananda was the General Secretary of AMPS in 2005 and in 2006 (CD1, 05-09-11, 70:10-25, 93:10-13; 05-10-11, 13:23-14:6; 05-11-11, 50:10-14). Two other named Plaintiffs, including Tirthananda himself, testified that they did not consider Dhruvananda to have become illegitimate as General Secretary until December 2005 at the earliest. (CD1, 05-12-11, 149:23-150:9; 05-13-11, 38:2-7.)

The documentary evidence further supports the trial court's ruling. A 2007 article authored in part by Tirthananda purports to recount the entire history of the AMPS conflict. (CD3, Def. Ex. D323.) When discussing the events of 2005 and 2006, at no point does this article question the legitimacy of Dhruvananda as General Secretary or even mention such a dispute. Instead, the article frequently refers to Dhruvananda as "Dada GS [General Secretary]" and questions primarily his declaration of a Central Emergency in December 2005. (*Id.*, pp. 8-10.) The documents regarding Plaintiffs' two appeals to Intervenor of Tirthananda's transfer make no reference to any dispute concerning Dhruvananda's legitimacy as a ground for the appeal. (CD2, Pl. Ex. 83, pp. 2-4; CD3, Def. Ex. D316, p. 2).

Most tellingly, the Individual Plaintiffs candidly admitted to Kolkata *after the Plaintiffs filed their lawsuit* that, at the time of the purported 2006 amendments to the AMI Bylaws, Intervenor could exercise total control over AMI simply by posting a different New York Sectorial Secretary (CD3, Def. Ex. D299, p. 1) – which is precisely what the Intervenor had done by transferring Tiirthananda. After weighing the credible testimony and evidence, the trial court had a more than sufficient basis in the record for its factual finding that Dhruvananda was the undisputed General Secretary with authority to transfer Tiirthananda.

3. The Trial Court Did Not Rely On Indian Court Rulings.

Plaintiffs also misrepresent the trial court’s factual finding as impermissibly based upon a ruling by Indian courts. This distorts the court’s analysis. The trial court found that Dhruvananda was the unquestioned General Secretary of AMPS with the authority to transfer Tiirthananda based upon its own weighing of the contradictory testimony of Plaintiffs’ witnesses and of the documentary evidence, not by taking judicial notice of the rulings of Indian courts. The court twice explained this basis for its ruling twice:

And what is not in dispute, it is not, it is not in dispute, I found no evidence to the contrary, was that on the date and time of that transfer and change in posting Dhruvananda was 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, 05-16-11, 31:2-8).

The evidence before me has shown that at the time of the quoted transfer of posting October 30, 2005, Dhruvananda was the unquestioned general secretary. [While] there had been some disarray beginning in the time of the passing of Reverend Baba, his successor, Purodha Pramukha, was still alive at the time all of these things were occurring.

Dhruvananda was appropriately in the position of general secretary, he had all of the authority, responsibilities of the general secretary and within that authority and his responsibilities made the decision to transfer [Tiirthananda] pursuant to Ananda Marga custom, code, structure....

(*Id.*, 31:18-32:5).

It is true that the court subsequently took judicial notice of an order from an Indian court stating that Dhruvananda is the General Secretary of AMPS and ordering Dhruvananda to also act as Purodha Pramukha until the resolution of the pending cases. (*Id.*, 35:6-11.)<sup>4</sup> In doing so, the trial court simply noted that its own ruling was not in conflict with rulings of courts in India. It is not error for a court to take judicial notice that a foreign court has reached a conclusion consistent with its own.

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<sup>4</sup> Note that the Plaintiffs' characterization of both the trial court's judicial notice and the statements in the Indian court ruling differ from the actual statements by both courts. *Compare* Am. Op. Br., p. 32 with CD4, 5-16-11, 35:6-11, and with CD3, Def. Ex. D347, p. 68.

4. It Was Undisputed That The Purodha Board Vacated Its Decision To Stay Tirthananda's Transfer In Early January 2006.

Plaintiffs' arguments on appeal also rely upon their mischaracterization of the Purodha Board's stay of Tirthananda's transfer as an "indefinite" stay. (Am. Op. Br., pp. 13, 28.) However, Plaintiffs conveniently ignore the trial court's factual finding, based upon the testimony of Tirthananda himself, that the Purodha Board vacated the stay. After testifying that the Purodha Board had never lifted the stay of his transfer (CD1, 05-12-11, 183:7-13), Tirthananda admitted on cross-examination that on January 6, 2006, the Purodha Board vacated all of its decisions made from September 30, 2005, to January 6, 2006, which included the decision to stay his transfer. (CD1, 05-12-11, 187:23-188:13.) Once again, the trial court determined Tirthananda's testimony on cross-examination to be more credible. The court thus found it undisputed that the Purodha Board, the highest AMPS judicatory, vacated its stay of Tirthananda's transfer. (CD4, 05-16-11, 31:7-11.) Notably, although Plaintiffs portray this stay as "indefinite" multiple times in their Amended Opening Brief, they have not challenged this particular factual finding by the trial court. They have, instead, altogether failed to mention that factual finding to this Court, presumably hoping that this critical fact will be overlooked.

5. Plaintiffs Knew That Intervenor's Transfer Of Tirthananda Was Legitimate And Binding.

Finally, there was also abundant evidence that Plaintiffs themselves considered the transfer posting to be not only legitimate but binding upon them, and simply chose to ignore it. Twice they appealed Tirthananda's transfer order to Intervenor, first to the Purodha Board, and later to Intervenor's Central Office. (*Id.*; CD2, Pl. Ex. 83, p. 2-4; CD3, Def. Ex. D316, p. 2.) However, when the Purodha Board vacated its earlier decision to stay the transfer, Plaintiffs ignored that decision. Again, when they did not receive the answer they wanted from Intervenor's Central Office in April 2006, Plaintiffs disregarded that as well. These are not the actions of people who questioned the legitimacy of the transfer, but rather of people who simply disagreed with a legitimate transfer. Such disagreement is hardly the manifest error required to overturn the trial court's factual finding.

**D. The Facts of This Case Are Virtually Identical To Those In Serbian, Compelling The Outcome Reached By The Trial Court.**

The trial court's resolution of Plaintiffs' claims and Defendants' counterclaims was based solely upon the court's consideration of Plaintiffs' own (often conflicting) testimony and the documents stipulated to or authenticated by Plaintiffs' own witnesses. As the court found, this case is "factually and legally on

all fours” with *Serbian* and therefore requires the same outcome. (CD4, 5-16-11, 36:2-5.)

In *Serbian*, authorities in the international church instituted disciplinary proceedings against the local bishop of the church’s American Diocese, Bishop Milivojevich. 426 U.S. at 703. After doing so, the authorities reorganized the American Diocese into three smaller dioceses. Bishop Milivojevich objected to this reorganization and refused to comply with orders from the ecclesiastical hierarchy limiting his activity during the disciplinary process. *Id.* at 704. As a result, the international church authorities removed Bishop Milivojevich from his position as bishop of the American Diocese. Instead of complying with this order, the bishop and his followers declared that the American Diocese had seceded from the international church and was no longer under its authority. The domestic governing authorities of the American Diocese then changed its governing documents and re-called Bishop Milivojevich to serve as its Bishop. *Id.* at 705-706. Then, before the disciplinary proceedings begun by international church authorities reached a conclusion, Bishop Milivojevich filed a civil lawsuit seeking a declaration that he was rightful bishop of the American Diocese and an injunction enjoining the international church from interfering with property titled to the American Diocese. The Illinois Supreme Court entered judgment for the

bishop, using a neutral principles of law analysis. But the United States Supreme Court reversed and instead deferred to and enforced the decisions of the highest authorities within the international church hierarchy, expressly recognizing that its decision would necessarily be dispositive of issues of property ownership and control. *Id.* at 709.

Like the church in *Serbian*, AMPS is an international hierarchical religious organization with a well-established ecclesiastical governance structure that is set forth in AMPS's founding documents and ensconced in AMPS customs and practices. Within that governance structure, the General Secretary has the authority to assign Wholetimer acaryas throughout the world at all levels of the organization, including the position of Sectorial Secretary. Wholetimer acaryas take oaths to follow strict codes of conduct, which require them to obey their posting orders from the General Secretary.

Like Bishop Milivojevich, Tirthananda disagreed with a decision from AMPS to transfer him to a different sector and replace him with someone else. Even though Plaintiffs acknowledged Dhruvananda as the legitimate General Secretary in October 2005, Tirthananda nonetheless refused to acknowledge the transfer posting.

Like Bishop Milivojevich, Tirthananda and his followers purported to declare themselves no longer under the authority of AMPS and refused to hand over control of AMI. Just as the bishop's followers attempted to revise governing documents of the American Diocese and recalled Bishop Milivojevich to serve as its bishop, Plaintiffs purported to amend the Bylaws of AMI and to continue Tirthananda as Sectorial Secretary.

Like Bishop Milivojevich, all of Tirthananda's ministerial titles were revoked.

And finally, like Bishop Milivojevich, Plaintiffs filed a civil suit for declaratory judgment and injunctive relief, hoping that the secular courts would override the decisions of the AMPS ecclesiastical authorities.

Moreover, this case presents an even more compelling argument for deference to AMPS's highest authorities. Unlike *Serbian*, where it does not appear that Bishop Milivojevich attempted to appeal the international church's decisions, Plaintiffs twice appealed the decision to AMPS authorities, and twice they ignored the resultant decisions to enforce the ecclesiastical transfer order.

The trial court, faced with the striking similarities between the facts of this case and those of *Serbian*, rightly decided to enforce the decision of AMPS's highest ecclesiastical authorities to transfer Tirthananda as New York Sectorial

Secretary on October 30, 2005, the necessary outcome under *Serbian*. This ruling is consistent with the relevant First Amendment jurisprudence in such cases and should not be disturbed.

#### **IV. DEFENDANTS ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES.**

Defendants hereby request an award of additional attorneys' fees for defending against this appeal. When a party is awarded attorneys' fees for a prior stage of the proceedings, it may recover reasonable attorneys' fees and costs for successfully defending the appeal. *Kennedy v. King Soopers Inc.*, 148 P.3d 385 (Colo. App. 2006), *citing Levy-Wegrzyn v. Ediger*, 899 P.2d 230, 233 (Colo. App. 1994), and *Henderson v. Bear*, 968 P.2d 144, 148 (Colo. App. 1998) (party awarded fees under § 13-17-201 is entitled to reasonable attorneys' fees for defending the appeal).

#### **CONCLUSION**

For the foregoing reasons, this Court should affirm the trial court's dismissal of Plaintiffs' claims under C.R.C.P. 41(b) and grant of Defendants' motion for summary judgment, and should order that additional attorneys' fees be awarded to Defendants.

Dated: September 4, 2012

Respectfully submitted,

*Original signature on file*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of September, 2012, a true and correct copy of the above and foregoing **ANSWER BRIEF** was served via LexisNexis File and Serve addressed to the following:

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