

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: Ananda Marga, Inc., a Colorado Nonprofit Corporation; et al.;</p> <p>Defendants: Acarya Vimalananda Avadhuta, an individual; et al.;</p> <p>And</p> <p>Intervenor: Ananda Marga Pracaraka Samgha-Ranchi</p>	
<p>Attorneys for Plaintiffs:</p> <p>Stephen Erwin, #32643 The Highlander Law Firm 885 Arapahoe Avenue, Boulder, Colorado 80302 Phone Number: 720-255-4354; FAX Number: 303-449-6126 Email: highlanderlaw@gmail.com</p> <p>Alexander Halpern, #7704 Alexander Halpern, LLC 1426 Pearl Street, Suite 420, Boulder, Colorado 80302 Phone Number: 303-449-6180; FAX Number: 303-449-6181 E-mail: ahalpern@halpernllc.com</p> <p>Attorneys for Individual Defendants:</p> <p>George W. Mueller, (#5292); gmueller@bwsmlaw.com Robert T. Cosgrove (#12217); rcosgrove@bwsmlaw.com Burns, Wall, and Mueller, P.C. 303 East 17th Ave., Suite 800, Denver Colorado 80203 Phone Number: 303-830-7000; FAX Number: 303-830-6708</p> <p>Timothy R. Obitts (CO Reg. #: 29107); TRO@GG-Law.com Gammon & Grange, P.C. 8280 Greensboro Dr., 7th Floor, McLean, VA 22102 Telephone: 703-761-5000 ext 119; Facsimile: 703-761-5023</p> <p>Attorneys for Intervenor Ananda Marga Pracaraka Samgha-</p>	<p>Case Number: 2010CV1867</p> <p>Div: 259</p>

<p>Ranchi</p> <p>Alan C. Friedberg, (#6042); afriedberg@penberg.com Pendleton, Friedberg, Wilson & Hennessey, P.C. 1875 Lawrence Street, 10th Floor Denver Colorado 80202 Phone Number: 303-831-1204; FAX Number: 303-831-0786</p>	
<p>PLAINTIFFS' JOINT MOTION TO STAY EXECUTION OF TAXATION OF COSTS, FINAL JUDGEMENT AND INJUNCTION PENDING DISPOSITION ON APPEAL</p>	

C.R.C.P. § 1-15 ¶ 8 Certification: Plaintiffs’ counsel has conferred in good faith with Defendants’ and Intervenor’s counsel, Timothy Obitts, by email about this motion. Defendants’ and Intervenor’s counsel objects to this motion.

COMES NOW Plaintiffs Ananda Marga, Inc. et al, through counsel, and respectfully requests this Court, pursuant to C.R.C.P. 54, 59 and 62(b)-(d), to enter an order of stay of taxation of costs, final judgment and injunction against Plaintiffs pending appeal, or in the alternative for a time necessary for the Court of Appeals to decide Plaintiffs’ expected motion to stay taxation of costs, final judgment and stay of injunction against Plaintiffs pending appeal. As grounds for this motion, Plaintiffs state:

1. On May 16, 2011, this Court entered a final judgment, order and injunction against Plaintiffs in the above styled matter.
2. Plaintiffs intend to file a Notice of Appeal pursuant to C.A.R. 3(a) and 4(a) within forty-five days of the date of this Court’s final judgment, order and injunction against Plaintiffs.
3. C.A.R. 8(a) provides in pertinent part: “Application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court.”

Memorandum of Law

Our research reveals that the Colorado appellate courts have not published any decisions setting forth the standards for granting a motion to stay an order or injunction pending appeal. There is, however, one recent unpublished decision discussing the “traditional standard” for a stay federal courts consider including four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Romero v. City of Fountain, Colorado, et al*, 2011 Colo.App. 11CA0690, quoting *Nken v. Holder*, ___ U.S. ___, 129 S.Ct. 1749, 1756 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Under Federal law, in determining whether to grant a stay of a district court order granting or denying an injunction, the appellate court considers the same factors. *See e.g., Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001).

I. Plaintiffs Are Likely To Succeed on The Merits

A. The *Romero* court recently adopted the formulation set forth by the Sixth Circuit in *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*¹ to evaluate a moving party’s necessary showing of probability of success on the merits. In that case, the Sixth Circuit held that:

[t]he probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff[] will suffer absent the stay. Simply stated, more of one excuses less of another. This relationship, however, is not

¹ *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153-54 (6th Cir. 1991)

without its limits; the movant is always required to demonstrate more than the mere “possibility” of success on the merits.”²

B. Summary judgment is proper only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. “The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party.” *Cung La v. State Farm Auto. Ins. Co.*, 830 P.2d 1007, 1009 (CO 1992, quoting *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (CO 1988). “[T]he mere existence of some factual dispute will not defeat a motion for summary judgment. Rather, the factual dispute must be genuine and material to the issues presented.” *Skidmore, Owings & Merrill v. Canada Life Assurance Co.*, 907 F.2d 1026, 1027 (10th Cir. 1990), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-8 (1986).

C. The District Court’s grant of summary judgment on Defendants’ and Intervenor’s counterclaims and request for relief and injunction was inappropriate because, as set forth below, numerous material disputed facts remain after the summary judgment motions were fully briefed and after Plaintiffs presented their case in chief at trial. Additionally, the Court in its ruling and finding of facts listed a number of trial exhibits on which it relied in order to determine no genuine issues of material fact remained, that based on Plaintiffs’ notes from trial testimony, and without the benefit of a full trial transcript, were not admitted into evidence at trial.³ The Court did not state whether it also relied on those exhibits and affidavits submitted with the parties’ summary judgment motions and briefs. Nonetheless, even considering the Court’s

² *Romero*, at 8, quoting Michigan Coalition at 153-154; See also *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002).

³ See Trial Findings and Order Transcript attached hereto as **Exhibit A** (“Trial Transcript”). These Trial Exhibits include: D192, D249, D310, D397, D247 and D178.

reliance on such exhibits, the significant genuine issues of material fact that remain include, without limitation:

1. It appears that the Court found that the record is undisputed that the Central Committee constituted pursuant to Ananda Marga's socio-spiritual treatise CaryáCarya (Central Committee)⁴ and the governing body of AMPS constituted pursuant to the AMPS Constitution (Governing Body)⁵ is the same entity. Despite the Court's findings, there is a material disputed issue regarding whether the Governing Body of AMPS (also sometimes called a central Committee) constituted pursuant to the AMPS Constitution and the Central Committee are the same entity with the same powers and authority. Plaintiffs presented testimony and there is substantial evidence on the record that the composition and validity of the Governing Body of AMPS has been in dispute since at least late 2003. The AMPS Constitution, admitted into evidence as Plaintiffs' Exhibit P9 clearly sets forth the procedures used for constituting the Governing Body of AMPS, including the election procedures for the General Secretary (as defined therein).⁶

⁴ See Trial Exhibit D141 (P15), Chapter 39 provides: "The purodhas of Ananda Marga will elect the members of the Central Committee from among themselves. The purodha pramukha will be the ex-officio President of the Central Committee, and he will constitute the Central Executive Committee according to his choice. If he wishes, he can include in the Central Executive Committee a maximum of three members from outside the Central Committee. The highest number of members of the Central Committee will be sixty and the lowest number will be 15. The number of the Central Executive Committee members will be decided by the President. In case of 80% of the members of the Central Committee so desire, the number of its members may be raised to more than 60." The General Secretary is not listed as a compulsory member of the Central Executive Committee.

⁵ See Plaintiffs' Trial Exhibit P9.

⁶ See Trial Exhibit P9, Paragraph 25(g) of the AMPS Constitution-Regulations of the Samgha state that the General Secretary: "Shall have the power to appoint different level Secretaries/Branch Secretaries/Assistant Secretaries/members, or agents and employees and transfer any of them according to law and these regulations for proper administration of the affairs of the society..."

⁶ Paragraph 9 of the AMPS Constitution clearly states that the General Secretary is an **elected** position, not an **appointed** position stating "There shall be a Governing Body (called "the Central Committee") consisting of not less than 10 and not more than 15 members and will be

2. The Court found that the record is undisputed that Bába created a structure for Ananda Marga going forward—significant, impressive in its detail, in its hierarchy, its doctrine and discipline. However, as noted above, the Court failed to evaluate or review the clear fact that organizational structures and hierarchy (governed by the Governing Body in India) are separate and distinct from policy-making bodies in India (the Central Committee). The Court appeared to dismiss evidence that AM Inc. is the highest policy-making body within the New York Sector, and testimony from numerous witnesses that the board of directors of AM Inc. were never required to, nor did they at any time, provide the Central Committee with any resolutions of the AM Inc. board of directors. Moreover, the Court appeared to dismiss testimony from the original Central Committee members that the Ananda Marga Central Committee had no role whatsoever in directing the Sectorial Secretaries in the management of the affairs of the various sectors.

In fact, Ac. Haratmananda Avt. testified that Bába himself directed him that the Sectorial Secretaries are the “General Secretaries” of the Sector and answer to no one. Additionally, the Court ignored evidence in an article with the first President of AM Inc., that the directors of AM Inc. had authority to take directions that came down from Central or refuse to adopt such directions if they were inapplicable to the sector.

3. The Court found it is undisputed that Bába, while he was incarcerated, managed administered, and controlled Ananda Marga and that his ability to do so was a result of the structure and the discipline that he had in place to promote this philosophy and this religion. The Court appears to be misconstruing what was really happening in India and throughout the world

composed of the life Founder Members and Elected Members. Elected Members shall be elected at the Annual General Meeting of the Society (Samgha). The officers of the Governing Body shall consist of the President, the *General Secretary*, the Treasurer and other officers and Members. Such officers *shall be elected by the Governing Body from amongst themselves.*” [emphasis added] There is no provision in the AMPS Constitution that the General Secretary is appointed unilaterally by the Purodha Pramukha or President of the Ananda Marga Central Committee constituted under CaryáCarya.

while Bába was incarcerated. It is more likely that the ability of Ananda Marga to thrive while he was in prison was a result of his system of coordinated cooperation and information sharing in a non-subordinated hierarchical system, and his practice of decentralized management in the sectors, rather than a result of a structure that was created in the AMPS Constitution and Caryácarya, which was not even attempted to be formed and operated until after his death in 1990.

4. The Court found it is undisputed that in 1969 the NY Sector was incorporated in Illinois at the behest and with the approval of Bába.⁷ In fact, Nagaraja Rao, who was the first Sectorial Secretary sent to the New York Sector to propagate the Ananda Marga mission, testified clearly that: Bába provided him with no input or direction regarding whether to form corporate entities in the United States; Bába did not review or approve any governing documents of any corporations formed in the United States, and; Nagaraja Rao was not even an officer or director of any corporate entity formed in the United States.

5. The Court found it was undisputed that “All witnesses agreed that AMPS has a pyramidal hierarchy.” This is factually wrong. Without the benefit of a full transcript of the witnesses’ testimony, it appears from trial notes of the Plaintiff that what the witnesses agreed to was only that the structure appeared to resemble a pyramid, but the witnesses disagreed that such pyramidal structure was subordinate in nature or connoted a subordinate hierarchy. The witnesses testified that the pyramidal order referred to by opposing counsel was a system of information sharing.

6. The Court found it was undisputed that highest level of religious minister is a Purodha, and that “Above the Acaryas or Avadhutas, Acaryas take an oath to abide by the

⁷ The Court also found it was undisputed that The Sectorial Office, formed in 1969, was nominally in Illinois, but that the Sector was headquartered in New York. However, the New York office was not set up until 1987.

organizational system in the conduct rules, and there's some great debate whether those are vows or oaths, but there was not a debate that they were conduct rules and that the parties agreed to abide by them.”⁸ Plaintiffs can find no evidence on the record showing that any Plaintiff who is an Acarya or Avadhuta has taken any oath or vow to abide by any particular “organizational system” and there is evidence on the record that posting orders were subject to review, debate and revision.⁹

This is partially true in that a Purodha has the highest level of training in Ananda Marga's spiritual form of yoga. However, Plaintiffs presented evidence in both documents and in testimony that the levels of yoga training in Ananda Marga do not provide the holder with any innate organizational authority. Despite the claims of Intervenor that a Purodha is equivalent to a Cardinal in the Roman Catholic Church, this claim is pure fiction. The organization structure of AM Inc. is clear evidence that this is not the case given that Ac. Tirthananda Avt. *is not* a Purodha and held the highest organizational position in the New York Sector, and Ac. Rainjitananda Avt., the corporate secretary, *is* a Purodha.¹⁰

7. The Court found it is undisputed that any decision of the Purodha Pramukha, “particularly as demonstrated during the lifetime of Bába, are unassailable, they are undisputable and remain.” This finding is taken out of context of the Caryácarya scripture. Plaintiffs presented testimony that the Purodha Pramukha only makes decisions in the context of his or her role as the Chair of the Central Purodha Board with the ability to break a tie voting decisions of such board. The Plaintiffs presented additional testimony that the Central Purodha Board only makes decisions related to Purodhas, or decisions appealed from the Avadhuta or Acarya Boards,

⁸ See Trial Transcript P.17, Lines 21-25

⁹ See Paragraph 7 below.

¹⁰ Although Plaintiffs are not experts in the structure of the Roman Catholic Church, it seems highly improbable a Cardinal can be posted to a local unit as a parish priest under the supervision of the local Bishop.

or in cases where a “complicated problem” arises in Ananda Marga, and that the Purodha Pramukha has no authority to make unilateral decisions affecting Ananda Marga.¹¹

The Court then appears to be confused regarding the role of the Purodha Pramukha holding that “I don’t remember the specific witness, but I think only one witness indicated that at one point there was a change in posting subsequent to the initial posting that was entered,” in an attempt to clarify that in some cases the decisions of the Purodha Pramukha can be challenged. However the evidence on the record is that the Purodha Pramukha has no role in posting workers in Ananda Marga and that role is generally reserved to the Establishment Committee with the General secretary signing such posting orders. On one occasion, which is a central event in this case, the Central Purodha Board of which Ac. Dhruvananda Avt. was a member did in fact decide that there was a “complicated problem” in Ananda Marga, which resulted in the stay of transfer of Ac. Tirthananda Avt. as the Sectorial Secretary of the New York Sector replacing him with Ac. Shubhatmananda Avt. In those Central Purodha Board resolutions, which *are* undisputed, Ac. Shubhatmananda Avt. was posted to the position of Central Office Secretary, Ac. Tirthananda remained in his post as the Sectorial Secretary of the New York Sector. This critical fact will be discussed further below.

¹¹ See Trial Exhibit P15, Chapter 40, which states in part: “In the event of any complicated problem or serious controversy in Ananda Marga, the decision of the central Purodha Board will be considered supreme. The decision which the members of the Central Purodha Board arrive at unanimously will be binding on the Society. If there is no unanimity among the members of the Board, the decision of the majority will be the Board’s decision. If two groups are equal in votes, the single vote of the chairperson will be considered as the vote of the board. Each and every Ananda Margi must obey the decision of the Purodha Board without any argument. The chairperson of the Purodha Board will be designated as the purodha pramukha. The decision of the *purodha pramukha* will be considered correct and final...the purodha pramukha will be elected by the votes of the purodhas...and will hold his post for life, but can resign the post for reasons of ill-health. The purodhas will also elect the other three members of the Purodha Board and their tenure will be five years.” Note there is no mention in Caryácarya that the Purodha Pramukha appoints the General Secretary.

8. There is a material disputed issue of fact regarding who is currently and who was the legitimate General Secretary of AMPS Central in 2005 and 2006. The Court found that it is undisputed that the General Secretary is appointed by the Purodha Pramukha despite and, in clear contradiction to the plain meaning of the AMPS Constitution, it appears the Court did not review or rely on what is likely one of the most important documents admitted into evidence in this case, namely, the AMPS Constitution, in making its findings and rulings.¹² Moreover, Caryácarya, on which the Court apparently did rely to determine the General Secretary is appointed by the Purodha Pramukha, and that it is this General Secretary who is charged with managing the affairs of AMPS Central, does not even mention the General Secretary as a position of the Central Committee.¹³

Who in fact held the position of General Secretary in 2005 is an important issue to the Plaintiffs' claims because if the India courts ultimately find that Intervenor was not in control of the Governing Body of AMPS in 2005, then the attempted transfer of Plaintiff Ac. Tirthananda Avt. by an invalid General Secretary of Intervenor AMPS-Ranchi was also invalid. The Court heard uncontested testimony from a member of the Kolkata Administration, Ac. Haratmananda Avt., and took judicial notice of, but apparently did not review or rely on, multiple pleadings and court orders pending in the India courts, which clearly set out the disputed control of the Governing Body of AMPS and the position of General Secretary since at least 2003.¹⁴

¹² See Trial Exhibit D141, Chapter 39

¹³ See Trial Exhibit D141, Chapter 39.

¹⁴ See Trial Exhibit P112.

The High Court of Purulia in appeal No. 2 of 2007 of case T.S. No. 314 of 2006¹⁵ the court holds, inter alia:

In chapter 39 of the hol[l]y code, there is a provision for Central Committee, As per that chapter the Purodha Pramukha will be the ex-officio President of the Central Committee. The minimum and maximum members of the Central Committee are different from the governing body per Constitution.¹⁶

...

This Constitution and its regulations clearly lay down about the governing body and its composition, election, life span and election of office bearers, etc. It has prescribed that the president will be the office bearer of the committee, elected by the governing body. There is specification in the rule 9 that the governing body will be composed of the life founder members and elected members. Elected members shall be elected at the Annual General Meeting of the Samgha.¹⁷

This the mentioning governing body as the Central Committee (does not ipso facto) mean and refer Central Committee referred to in regulation 6(a). It does not mean that the governing body under this regulation and the Central Committee under the holy code are the same. Had it those two bodies been same, then there cannot be provision of ex-officio president and another for elected president.¹⁸ [6,9 and thereon]. The things described in those two regulations cannot go together as regulation 7 brings some sort of disharmony.¹⁹

It can be concluded that the central committee mentioned in regulation and the reference of that committee made in regulation [6] -7 are not the same or have no business with the governing body referred to in regulation 9 and onwards.²⁰ (emphasis added)

Thus it is concluded that the governing body or as Central Committee should be construed and composed of in due course as laid down in regulations not as per the hol[l]y code.

...

Thus it is held by this Court that the submission of the Ld. Lawyer for the respondent on this point that the governing body should be framed in accordance

¹⁵ Id., Trial Exhibit P112, High Court of Purulia, appeal No. 2 of 2007 of case T.S. No. 314 of 2006 (Ac. Vandananda Avt. and Ac Parameshvarananda Avt., et al vs. Ananda Marga Pracaraka Samgha and Ac. Dhruvananda Avt., et al.).

¹⁶ Id. (INT-4093)

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. (INT-4094)

²⁰ Id. (INT-4094)

with the hol[ly] code or in accordance with the practice adopted thereby is not correct.²¹

“[W]here 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.”

Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 369-70 (1970) (*Sharpsburg*); accord, *Jones v. Wolf*, 43 U.S. 595, 605 (1979), citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723 (1976) (*Serbian Diocese*).

The court can neither decide nor presume that the AMPS-Ranchi faction and its General Secretary have the legitimate authority to act as the hierarchical superior of AM Inc. or fill the role of the “Ananda Marga Pracaraka Samgha-Central” and “General Secretary” described in the bylaws of AM Inc. However, AMPS-Ranchi and the Defendants’ counterclaims and defenses depend entirely upon their non-justiciable allegation that they hold that authority. For this reason alone, summary judgment for the Plaintiffs dismissing the counterclaims must be granted, and AMPS-Ranchi should be dismissed from the litigation for lack of a legal cognizable interest. Moreover, the individual Defendants’ asserted rights and defenses are directly dependent on the same point – the authority of AMPS-Ranchi and its General Secretary – and must likewise fail.

This also disposes of AMPS-Ranchi’s *Serbian Diocese* argument. From the very outset, this argument depends upon the allegation that AMPS-Ranchi and its General Secretary have a hierarchical authority that they cannot prove, either factually or, critically, as a matter of First Amendment limits on jurisdiction.

9. There is a material dispute regarding whether the Central Purodha Board lifted the stay of the attempted transfer of Ac. Tiirthananda Avt. in January of 2006. The Court found “**The evidence was, well, certain group of margiis, which later came to**

²¹ Id. (INT-4094)

be known as the core group, they appealed to the Purodha Group and obtained a stay. Well that's fine, I think they did obtain a stay, but that stay was later vacated. Again undisputed.’²²

It appears that the Court agrees that the Central Purodha Board, the “Highest Ecclesiastical Body” of Ananda Marga, resolved to stay the October 30, 2005 attempted transfer of Ac. Tirthananda Avt. by Ac. Dhruvananda Avt (a Purodha Board member at that time) to the Suva Sector. There are no documents on the record showing that the Central Purodha Board met after that resolution to lift the stay of transfer. Defendants’ and Intervenor have not offered, and the Court has not admitted, any evidence that any Central Purodha Board resolutions or directives stating that the stay was lifted or cancelled. Plaintiffs have consistently argued that the Central Purodha Board never met to resolve a purported request to rescind certain resolutions of the Central Purodha Board in 2006. Moreover, there is no evidence on the record showing that even if the Central Purodha Board did rescind certain resolutions in 2005 and 2006, the stay of the attempted transfer of Ac. Tirthananda Avt. was lifted as a result of such Central Purodha Board action.

The clear evidence that is on the record shows that – from October 30, 2005 until February 28, 2006 – Ac. Tirthananda Avt. remained as the Sectorial Secretary of the New York Sector, that no one objected to Ac. Tirthananda Avt. serving as the Sectorial Secretary of the New York Sector, and that no one other than Ac. Tirthananda Avt. claimed to be the acting Sectorial Secretary of the New York Sector.²³ The Court appears

²² Trial Transcript, P.31, Lines 7-11.

²³ The October 30, 2005 attempted transfer stated that Ac. Tirthananda Avt. was to report to the Suva Sector (Australia). In addition, the person who was to purportedly take over as Sectorial Secretary of the New York Sector, Ac. Shubhatmananda, Avt. was reassigned by Ac. Dhruvananda Avt. and Central Purodha Board in November of 2005 to the central post of

to have failed to consider and evaluate (not listing it as a document on which the court relied in making its findings) an extremely important piece of evidence in this case; namely Exhibit D339, which is the AMPS posting order for Defendant Ac. Vimalananda Avt. on February 28, 2006. This document is critical in that it clearly establishes that there is a material dispute regarding whether Ac. Tirthananda Avt. was the Sectorial Secretary in the mind of the Defendants and Intervenor on that date. This posting order unambiguously states: “Acarya Vimalananda Avadhuta is hereby posted as Sectorial Secretary, AMPS, New York Sector (NY Sector) *relieving* Acarya Tirthananda Avadhuta.”²⁴ It defies logic that if Intervenor believed that Ac. Tirthananda Avt. was not the Sectorial Secretary, but rather Ac. Dharmapremananda Avt. was acting as Sectorial Secretary for Ac. Shubhatmananda Avt., the posting order would have reflected as much.

And again, the record is replete with evidence that Intervenor and the Defendants recognized Ac. Tirthananda Avt. as the Sectorial Secretary of AM Inc and the New York Sector up until at least March of 2006.²⁵

10. The Court found that it is undisputed that:

Amongst the many duties and responsibilities of the Purodha Pramukha was, as I noted, the responsibility for appointment of the general secretary, but also appointment of the various members of the central committee,

Central Office Secretary, which he accepted and was installed. As such, the October 30, 2005 attempted transfer was at that time nullified and was never reinstated. On February 28, 2006, Ac. Dhruvananda Avt. did not attempt to reinstate or reissue the October 30, 2005 transfer, but issued a completely different posting order posting Ac. Vimalananda Avt., not Ac. Shubhatmananda Avt., to the post of Sectorial Secretary and purported to order Ac. Tirthananda Avt. to the Qahira Sector (Cairo) not Suva Sector. See Trial Exhibit D339.

²⁴ Trial Exhibit D339.

²⁵ Trial Exhibits 366 (also P78); P77, including the testimony of Ac Rainjitananda Avt establishing that Defendants Ac Dharmapremananda Avt who Intervenor claims was acting Sectorial Secretary of the New York Sector since October 30, 2005 attended the Sectorial Executive Committee meetings as the Sectorial ERAWS Secretary and did not object to Ac. Tirthananda Avt chairing the meetings as the Sectorial Secretary of the New York Sector.

which was an ecclesiastical governing body made up of Purodhas and elected from the general body of Purodhas.²⁶

This is a clear error of the Court and contradicts Caryácarya. The finding of the Court both states that members of the Central Committee are appointed by the Purodha Pramukha while at the same time elected from the general body of Purodhas. The members of the Central Committee are elected by the Purodhas.²⁷ Again, Caryácarya makes no mention of the position of General Secretary.²⁸

11. The Court found that it is undisputed that the General Secretary reports directly to the Purodha Pramukha. There is no evidence of this on the record and contradicts the AMPS Constitution.²⁹

12. Referring to the relationship between AMPS and AM Inc., the Court found that “There is great disagreement throughout the course of testimony regarding the nature and degree and extent to which this was subordination or creatively referred to as coordinated cooperation.” The Plaintiffs testimony regarding the coordinated cooperation vs. subordinated cooperation structure of Ananda Marga was hardly presented as Plaintiff’s own creative argument. In fact, the Plaintiffs presented testimony reflecting *Bába’s own words* that:

In the case of cooperation, something is done with equal rights, equal human prestige and equal *locus standi*. In every field of collective life there should be cooperation among the members of society. Where this cooperation is between free human beings, each with equal rights and mutual respect for each other, and each working for the welfare of the other, it is called "coordinated cooperation". Where people do something individually or

²⁶ Trial Transcript P.19, Lines 5-10.

²⁷ Trial Exhibit P15, Chapter 39.

²⁸ *Id.* However, as noted above, the General Secretary is an elected position as set forth in the amps Constitution. See note 6 above, which states that first a person must be elected to the Governing Body by the members of the society, and then that Governing Body selects who will hold officer positions, including that of the General Secretary. Moreover, it is the AMPS Constitution that provides the General Secretary with authority to manage the affairs of the society, not Caryacarya (See Trial Exhibit P9, Paragraph 25).

²⁹ See Trial Exhibit P9, Paragraph 25. The Purodha Pramukha is not mentioned *anywhere* in the AMPS Constitution.

collectively, but keep themselves under other people's supervision, then it is called "subordinated cooperation". ***In each and every stratum of life, we should do everything with coordinated cooperation and always avoid subordinated cooperation.***³⁰ [emphasis added]

This revolutionary organizational structure, markedly different from other organized religions, may not be intuitive to those used to western-based organized religions, but was fundamental to Bába's beliefs and structures, despite Intervenor's claims. Once one understands the philosophy of coordinated cooperation, the testimony of the first Sectorial Secretaries of the New York Sector and AM Inc. make perfect sense in that they coordinated with various systems and structures set up in India, but were not subordinate to such structures or any "superiors." It is also completely consistent with Ac. Haratmananda Avt.'s testimony that Bába declared Sectorial Secretaries the "General Secretary" of the sectors. It is also inconsistent with the Court's finding, or interpretation of Bába's intentions, that Bába intended AM Inc. would not "stand alone." Nowhere in the evidence or testimony did the Plaintiffs claim that AM Inc. would indeed "stand alone," but argued that AM Inc. worked within a coordinated cooperative hierarchical information sharing system, not a subordinated hierarchical system.

13. The Court held that it is undisputed that the initial Bylaws of AM inc in 1974 and the amendments in 1982 were approved by AMPS Central, and were done so consistent the hierarchical and ecclesiastical structure and pyramidal structure of AMPS, despite that there is no evidence on the record that AMPS Central reviewed or approved such AM Inc. Bylaws and the clear testimony of the primary authors of such documents who testified that neither Bába nor anyone else at AMPS Central reviewed or approved the documents. In addition, the 1969 articles

³⁰ Trial Exhibit 117, Excerpt from *Proutist Economics: A Discourse on Economic Liberation*, Prabhat Ranjan Sarkar (The Guru), First edition January 1992, Translated and compiled by Ac. Vijaya'nanda Avt. and Jayanta Kumar, © 1992 A'nanda Ma'rga Pracaraka Samgha (Central) read and discussed in trial testimony (a transcript of such testimony is not yet available).

of AMYS-IL and AMYS-Ks reveal that Nagaraja Rao, the then Sectorial Secretary, was not even an officer or director of those corporations and had no legal authority over such corporations.

This is a critical point because the Court appears to find it is undisputed that Bába had complete control over Ananda Marga in the sectors while he was alive, and directed every aspect of the organization and structure of Ananda Marga. If this was indeed true, then he must have accepted and directed that it was acceptable for the Sectorial Secretaries to structure sectorial corporations in a way that removed them from authority of AMPS Central or any subordinate structure in India.

Additionally Michael Hemmelgarn testified that he prepared and controlled the amendments to the AM Inc. Bylaws in 1982 and did not seek or acquire the approval from Bába or anyone at AMPS Central in making such amendments, not did anyone at AMPS Central object to such amendments. If in fact Bába intended the sectorial corporations to be organized “consistent with the hierarchical and ecclesiastical structure and pyramidal structure of AMPS” then it would seem he would have required such to incorporate CaryáCarya, the AMPS Constitution or other rules or conventions of AMPS in India.

The Court did find that “AMPS Central is a central authority for AMPS. Ananda Marga, Inc, is a part of the AMPS denomination, it has been testified to the constitution of the AMPS incorporates the CaryáCarya, AMPS is governed by the CaryáCarya, the AMPS procedural rules, other writings, and scriptures promulgated by Reverend Bába.”³¹ The Court did not, however, look at the AMPS Constitution to review the degree to which the AMPS Constitution incorporates CaryáCarya or any other procedural rules of Ananda Marga. In fact, the AMPS Constitution only incorporates specific chapters of CaryáCarya; namely Chapters 27, 35, 37 and 39, and states that “these Committees and Boards provided under Regulation 6 will be

³¹ Trial Transcript, Page 38, Lines 1-7.

constituted as detailed in CaryáCarya Part I, as revised from time to time.”³² What is important to note is that Chapter 40 is not listed or incorporated into the AMPS Constitution, which governs the constitution of the Central Purodha Board and Chapter 39 is only indirectly incorporated. Again, the courts in India have also held that the Central Committee constituted under CaryáCarya, Chapter 39 is not the same Central Committee/Governing Body constituted under the AMPS Constitution.³³

Finally, if Bába was intimately involved in the creation and preparation of the AMPS Constitution and the AM Inc. Governing Documents as claimed by Intervenor, then the fact that the AM Inc. Governing Documents *do not* incorporate CaryáCarya as does the AMPS Constitution provides clear evidence that such was intentional on the part of Bába, establishing Plaintiffs claims that Bába and the original Plaintiff directors of such United States corporate entities intended that AM Inc. and affiliates are not connected with AMPS Central in the same way the India AMPS corporation is.

D. In ruling on a motion to dismiss for failure to prove a prima facie case, the proper test is whether plaintiff produced some evidence which, when taken most favorably to him, proved a claim upon which relief could be granted. *Brown v. Central City Opera House Ass'n*, 36 Colo. App. 334, 542 P.2d 86 (1975), *aff'd*, 191 Colo. 372, 553 P.2d 64 (1976). In that case, the Colorado Supreme Court held that “We are concerned, however, with the fact that, so far as appears from the district court's ruling, it did not consider whether or not there was a valid contract by the defendant to pay the plaintiff and whether that contract remained in effect after December 30, 1972.”³⁴ As in this case and stated above, the District Court failed to consider key

³² See Trial Exhibit P9 (DFTS-0075)

³³ See Paragraph 8 above.

³⁴ *Brown v. Central City Opera House Ass'n*, 36 Colo. App. 334, 542 P.2d 86 (1975), *aff'd*, 191 Colo. 372, 553 P.2d 64 (1976) at 67-68.

exhibits and issues vital to Plaintiffs claims, most importantly that it was in fact disputed that the stay of transfer of Ac. Tirthananda Avt. was not lifted by the Central Purodha Board and in any event the October 30, 2005 attempted transfer was made an impossibility when Ac. Shubhatmananda Avt was reassigned to the central post.

For all of the reasons stated above, the Plaintiffs also state that they have met their burden to present evidence on which the requested relief in their claims may be granted, and as such the Court's dismissal of Plaintiffs claims under C.R.C.P. 41(b) was improper.

E. The District Court erred as a matter of law in interpreting the governing documents of both AM Inc. and AMPS. The Court held it is undisputed that the AMPS Corporate entity in India is the parent organization of AM Inc., holding that no ambiguity exists as to the meaning of the word "parent" in the context of the AM Inc. governing documents, despite clear testimony directly from the authors of such documents that the word parent was not meant to convey legal ownership or convey an ownership interest in AM Inc to AMPS. The record reveals that AM Inc. is a Colorado non-profit corporation with no capital stock and its assets do not revert to AMPS upon dissolution; that the governing documents of AM Inc. may be amended with only the approval of the Sectorial Secretary and directors of AM Inc., and that no approval of any parent organization or representative of AMPS is expressly required to make such amendments.

Moreover, the governing documents of AM Inc. do not incorporate the AMPS Constitution or any rules, regulations or procedures therein, and there is testimony that this was an intentional omission from the very beginning without any objection from Baba or any AMPS representative. Finally, there was testimony that none of the directors of AM Inc. are or ever were voting members of the Indian AMPS Society (non-profit corporation), and that non-Indian citizens can't even be members of an Indian non-profit Society under Indian law.

II. Plaintiffs and the Ananda Marga Adherents in the New York Sector Will Suffer Irreparable Harm Absent The Stay of Order and Injunction.

A. A plaintiff satisfies the irreparable harm requirement by demonstrating "a significant risk that [it] will experience harm that cannot be compensated after the fact by monetary damages." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009). Purely speculative harm will not suffice, but "[a] plaintiff who can show a significant risk of irreparable harm has demonstrated that the harm is not speculative" and will be held to have satisfied his burden. *Id.* (internal citations omitted).

B. Since the late 1960's Ananda Marga has grown and thrived in the United States and the New York Sector. During this time, schools, spiritual centers, and residences have been purchased and have been built, and adherents dedicated to the Guru's system of coordinated cooperation have donated family land and property to the mission. As a non-profit spiritual organization, Ananda Marga in the New York Sector relies on adherents to provide donations and volunteer their time in order to keep the programs operating efficiently, teachers employed and properties maintained. A vast majority of the affiliated organizations, including all of the Plaintiff Affiliates and their adherents in the United States, are shocked by AMPS-Ranchi's attempts to transform Ananda Marga into a dictatorial, dogmatic and strictly subordinate hierarchical church, which they firmly believe and hold is inconsistent with the Guru's wishes.

Parents sending their children to Ananda Marga affiliated schools in the New York Sector will likely pull their children from classes and stop paying tuition, leaving the schools unable to employ teachers and pay expenses; renunciate Acaryas living in Ananda Marga, Inc. spiritual centers will feel the wrath of Intervenor who will stop at nothing to throw anyone out on the street who fails to succumb to their new version of a subordinate pyramidal order; affiliates do and will question whether they can continue normal operations as Intervenor makes harassing

attempts to take over their boards and assets despite lack of authority to do so. And **finally**, the Kolkata Administration – which also has an appointed Sectorial Secretary and has appointed other Secretaries in the New York Sector – will likely make competing claims of control over both AM Inc and the affiliates to prevent the Ranchi Administration from taking complete control of the assets of AM Inc and the affiliates.

C. Many of the affiliated organizations have their own governing documents, including articles of incorporation and bylaws, with varying degrees of affiliation or subordination to AM Inc. Some have no legal relationship with AM Inc at all other than participating in AM Inc.'s group federal tax exemption in which the only supervisory role the AM Inc. board of directors has over the affiliated organization is to ensure it operates in a manner consistent with 501(c)(3) Federal Tax Rules. This court's order throws Ananda Marga in the United States into a complete state of confusion as Intervenor uses heavy hands in their attempt to take complete and immediate control of all affiliated organizations and making threats and demands to hand over property and access to bank accounts, whether the board of directors of AM Inc has authority to do so or not. The directors of such affiliates, especially those who have no legal connection to AM Inc., have their own fiduciary duty to protect the assets of their respective corporations; complying with Intervenor's interpretation of this Court's order that they must hand over control of their entities to people who are not officers or directors of the same, puts these directors at personal risk of violating their fiduciary duty.³⁵

D. There is a substantial likelihood that AMPS Ranchi will dissolve Plaintiff affiliate corporations, and sell off AM Inc. property and property of the affiliate organizations in order to

³⁵ A critical issue the Court failed to consider is that the Sectorial Secretary of the New York Sector of AM Inc. may *or may not* have control over the affiliate boards of directors or have any authority to require such to relinquish control of personal property, including bank accounts, of such affiliates. In fact, there is no evidence on the record that it has been the practice of Ac. Tirthananda Avt. to have signing authority on affiliate bank accounts, exercise any control over the boards of directors of the affiliates or act as an officer or director of such affiliates.

continue their legal battles in India. For example, AMYS-KS which was renamed the Ananda Marga Women's Welfare Department, Inc. and has its own female board of directors will likely be dissolved, because the only way AMPS-Ranchi can gain control of the board of directors is to dissolve the corporation, essentially leaving women of Ananda Marga in the New York Sector without a voice and with no assets to conduct their operations. Some of the AM Inc. properties have been held for decades and will never be able to be re-acquired, nor will similar properties be able to be acquired in the future once such properties are sold.

Moreover, once the Ranchi Administration (Intervenor) issues posting orders effectively taking control of AM Inc. and attempts to take over all of the affiliate boards of directors, and New York Sector adherents of Ananda Marga leave the mission for good, no conceivable compensatory or other corrective remedy could possibly provide complete relief.

III. Issuance of the stay will not substantially injure the other parties interested in the proceeding

A. After determining the harm that would be suffered by the moving party if the preliminary injunction staying the district court's order and injunction is not granted, the court must then weigh that harm against the harm to the defendant if the injunction is granted. *Universal Engraving, Inc. v. Duarte*, 519 F. Supp. 2d 1140, 1149 (D. Kan. 2007); See also, *Peak Med. Okla. No. 5, Inc. v. Sebelius*, 2010 U.S. Dist. LEXIS 122713 (N.D. Okla., Nov. 18, 2010), 2010 WL 4809319, at 15.

B. The purported transfers of the Sectorial Secretary of the New York Sector allegedly took place in 2005 and 2006. Since that time, the parties have managed to work together to manage and operate the mission in the New York Sector, and the mission has continued to grow, despite ongoing litigation in India regarding which faction controls the governing body and/or ecclesiastical positions of the organization. Defendants waited more than

four years before even attempting to reconstitute the board of directors of AM Inc. and the assets and property of the New York Sector have remained safe and secure during this time.

Moreover, an immediate order to hand over all of the assets and property to only one faction claiming control of Ananda Marga worldwide, will likely spur additional expensive litigation here in the United States as the Kolkata Administration seeks to protect its potential interest in AM Inc. and its property, causing further confusion amongst the affiliates.

IV. The Public Interest Lies in Maintaining the Status Quo

A. In considering the public interest factor, the Court is permitted to inquire whether there are policy considerations that bear on whether an injunction should issue. *Peak Medical*, 2010 U.S. Dist. LEXIS 122713, 2010 WL 4809319, at 17. State courts have held that rights affecting non-profit corporations election or appointment process for such corporations' respective boards of directors are important rights affecting public interest. *See generally, Ferry v. San Diego Museum of Art*, 180 Cal. App. 3d 35 (Cal. App. 4th Dist. 1986). Here, there is a significant public interest in not allowing one of three factions claiming control of an international spiritual and religious organization based in India from taking over a Colorado non-profit corporation's board of directors against the wishes of a vast majority of adherents of the Colorado Corporation in the United States, especially when control of the international organization is in dispute and **is the** subject of multiple lawsuits in India since 2003. This policy requires the Court to preserve the status quo so that important issues raised by this motion can be decided after full briefing and (if necessary and appropriate) oral argument.

Conclusion

For the reasons stated above, the Plaintiffs respectfully request this Court to enter a stay of execution of judgment, order, injunction and taxation of costs against Plaintiffs pending resolution of this matter on appeal. In the alternative, Plaintiffs request this Court to enter a stay

of execution of judgment, order injunction and any taxation of costs against Plaintiffs until Plaintiffs can seek a stay from the Colorado Court of Appeals pursuant to C.A.R. 3(a), 4(a) and 8(a). *See Bauer v. McLaren*, 332 F.Supp. 723 (S.D.Iowa 1971); Plaintiffs request this Court to enter an injunction enjoining Defendants and Intervenor from dissolving any AM Inc. affiliated corporations pending resolution of this matter on appeal; request this Court to enter an injunction enjoining Defendants and Intervenor from selling, transferring or otherwise disposing of any real property of AM Inc. or affiliates pending resolution of this matter on appeal; and Plaintiffs seek further relief as the court deems just and proper.

Respectfully submitted this 9th day of June 2011.

Original signature on file

Stephen Erwin
The Highlander Law Firm, LLC

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this day of June 9, 2011, a true and correct copy of the above and foregoing **PLAINTIFFS' JOINT MOTION TO STAY EXECUTION OF TAXATION COSTS, FINAL JUDGEMENT AND INJUNCTION PENDING DISPOSITION ON APPEAL** was served via LexisNexis File and Serve pursuant to C.R.C.P. 121 §§1-26, addressed to the following:

George W. Mueller, Esq.
Robert T. Cosgrove, Esq.
Burns, Wall and Mueller, P.C.
303 East 17th Avenue, Suite 800
Denver, Colorado 80203
gmueller@bwsml.com; rcosgrove@bwsml.com

Timothy R. Obitts, Esq.
Mae Cheung, Esq.
Gammon & Grange, PC
8280 Greensboro Dr., 7th Floor
McLean, VA 22102

Alan C. Friedberg, (#6042); afriedberg@penberg.com
Pendleton, Friedberg, Wilson & Hennessey, P.C.
1875 Lawrence Street, 10th Floor
Denver Colorado 80202

/Stephen Erwin, Esq./

Original signature on file