

Gaddam Dasaratharam Reddy, Dr. Chitti Ramakrishna Moorthy, Shivakumar Kusuma Prabhat, Vijay Khanna, Subaramaniam Sundararaman, Lakshesh Shantilal Panchal, and Raj Gopal Iyer submit this memorandum in support of their motion for a preliminary injunction restraining Defendants from taking further action to violate the constitutionally protected autonomy of the Hindu Temple Society through an unconstitutional application of the New York Religious Corporations Law in the state judicial process.¹

This extraordinary relief is warranted. The actions taken against the Plaintiffs are extreme. The potential destruction of the Temple's religious polity is absolute. The bias of the parties involved is serious. This is the situation Plaintiffs face:

The Supreme Court of New York, through its officers and in conjunction with private individuals, will transfer religious and temporal authority of the Hindu Temple Society of North America over to a new board, elected in a process contrary to Hindu principles and including votes by Hindus and non-Hindus alike.

The New York State judiciary (both the trial and appellate courts) has done nothing to protect—or even acknowledge—the First and Fourteenth Amendment rights to free exercise, free speech, freedom of association, due process and equal protection, even after repeated attempts by the Temple to raise the issues. Plaintiffs have been unable to secure any hearing—much less a “full and fair” one—on these issues. The Temple is left with no choice but to seek redress from this Court, charged with the obligation of protecting fundamental Federal rights.

The constitutional rights of the Hindu Temple Society to practice its religion free of government interference is under imminent threat. The question before the Court is

¹ The State Court proceedings complained of here are in part the subject of appeals pending before the New York State Supreme Court Appellate Division, Second Department. (*In the Matter of Vengalla et al. v Nori et al.* Docket Nos. 2004-5595, 2004-4457; 2004-4652). Nine of the fifteen plaintiffs in this action are parties to those proceedings. Those nine Plaintiffs sought a discretionary interim stay of enforcement of the referee's proceedings pending appeal. The motion for interim relief was denied without opinion on July 23, 2004.

this: will the Hindu community of the Sri Maha Vallabha Ganapati Devasthanam (the “Temple”²) be allowed to “select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions,” *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335-336 (1987) (Brennan, J., concurring) (emphasis added), or will the State of New York take over that role, as it has explicitly and repeatedly said it will do within the next two weeks?

Plaintiffs are devout Hindus who set up a Temple in Queens in accordance with the beliefs and traditions they brought from India. For over 25 years the Temple has been allowed to manage its own affairs, with a minimum of friction with the State. Now, however, Defendants Venigalla, Rao, Mohan, Dama, Cherukupalli, and Aiyer (the “Insurgent Defendants”) are attempting to misuse the state’s judicial system to mount a hostile takeover of the Temple. They have been abetted in this endeavor by Defendants Golia and Piacentini (the “State Official Defendants”), who have stated that they will use their contempt powers to, among many other things:

- Entirely replace the form of religious polity and religious governance that the Temple adopted and used to govern itself since its inception, with a voting membership and election system including political campaigning, even though Hindu temples in general and this Temple in particular do not have a concept of “membership” (Referee’s Interim Report, Exh 16, p. 1, and Affidavits of Subramaniam Sundararaman and Shivakumar K. Prabhat, Exhs. 2 and 5);

² In this brief, Respondents the term “Temple” refers to the religious polity that is associated with the Temple building, or the Temple building itself. The term “Temple Society” refers to the legal entity that has been created pursuant to Article 9 of the New York State Religious Corporations Law. The term “Temple’s adherents” refers to those persons who are closely associated with the Temple, including without limitation the current Trustees and the Executive Committee. The “Trustees” are those who were elected or appointed as such pursuant to Article 9 of the Religious Corporations Law and the Certificate of Incorporation. Respondents do not use the word “member” as a defined term in this brief because the Plaintiffs and Defendants use the term to mean very different things. Plaintiffs use it as an honorary designation of persons who have made various levels of contributions to the Temple Society. Such persons have never had any right to vote for Trustees. Indeed, Article 9 of the Religious Corporations Law would prohibit granting such rights. Defendants, on the other hand, use the term member to mean individuals with the right to vote for the selection of Trustees. *See generally* Section II.

- Defendant Piacentini as Referee appointed by Defendant Golia, will solicit membership applications from everyone on the Temple's mailing list!—between 15,000 and 21,000 people which was compiled from any one who signed the guest book at the Temple including non-Hindus³, tourists, etc. (Exh. 16, p. 3; Exhs. 2 and 5);
- Determine, as non-Hindus, what the qualifications for “membership” are (Exh. 16, p. 2; Order of Defendant Joseph Golia dated December 12, 2003, Exh. 15, p. 2);
- Determine, as non-Hindus, who is a Hindu for purposes of “membership.” (Affidavits of Sundararaman and Prabhat, Exhs. 2 and 5);
- Draft, as non-Hindus, a “membership” application form (Exh. 16, p. 4; Exhs. 4 and 5);
- Determine, as non-Hindus, which persons on the mailing list will qualify as “members” (Exh. 16, p. 4);
- Require the Temple to hold elections among the “members,” in violation of the founding principles of the Temple, Hindu religious belief, and, in fact, Article 9 of the New York State Religious Corporations Law. (Exh. 16);
- Continue to block construction of the rajagopuram, the religious “heart of the temple” (Exh. 2);
- Continue to profane the Temple by involving themselves, non-Hindus, in the internal affairs of the Temple (Exh. 2; Exh. 16, pp. 4-5).
- Manage the affairs, as non-Hindus, of the Temple during the period leading up to and including the threatened election (Exh. 16, pp. 4-5);
- Turn over possession of all of the records, financial and otherwise, of the Temple (Exh. 16, p. 5);
- Take control of communications with devotees and other persons on the Temple's mailing list—information given in trust to the Temple—to third parties (Exh. 2. and Exh 16, p. 5);

Without intervention by this Court, the Hindu Temple Society will simply cease to exist as an independent, Hindu association and will be transformed by the Defendants—in the name of the State of New York—into something completely and offensively different.

³ Piacentini has stated that “If some Temple guests are contacted inadvertently, that is not a valid argument against the use of the mailing list.” (Referee's Response, p. 6).

This, the First Amendment cannot—and this Court should not—countenance. Plaintiffs are entitled to a hearing on their constitutional defenses to Defendants’ actions. The status quo must be protected until that time.

STATEMENT OF FACTS

A. FOUNDATION AND HISTORY OF THE TEMPLE.

In 1970 a group of Indians, led by Alagappa Alagappan, a career U.N. official, and C.V. Narasimhan, former Under Secretary General and Chef de Cabinet of the U.N., conceived the idea of developing a traditional Hindu Temple. At that time there were none in the U.S. (Paper on the history of the Temple by R. Scott Hanson of the University of Chicago, Presented at the International Conference on the Hindu Diaspora, Montreal, 1997, Exh. 8.). They determined to build it according to the Agama Sastras, the Hindu Scriptures on Temple construction, and to organize it according to the traditional forms of Hindu Temples in India. (Exh. 8).

Hindu temples in India are typically run by either a self-perpetuating board of trustees, among whose sacred duties are choosing successors to continue the work of the temple, or by trustees appointed by the entity which endows the temple. The June 28, 2004 Affidavit of Subramaniam Sundararaman, who was one of the initial Devotees of the Temple, beginning in 1970 explains the religious and traditional reasons for this:

“6. Indeed, the ethical precepts of Hinduism tell us that decisions about temples should be in the hands of elders who have demonstrated shown the wisdom, devotion and spiritual ability to steward the sacred place, and the place itself is sacred, apart from the people who come to it or their activities, the place itself is the body of the God.

“7. Traditionally in India the trustees or administrators of temples were usually chosen by descendants of the maharajahs or others who endowed or financed the temples in conjunction with spiritual leaders.

“8. Our Trustees have been chosen by the Board from among people who have demonstrated spiritual commitment to the Temple through their contributions of service, money and or time ...

“9. One of the purpose of Hindu practice is to learn and practice giving up ego, personal recognition, competition, jealousy, etc. This is how we are to reach a higher spiritual level. Politics is inimical to this practice and religious world view.

“10. Our Trustees have never taken any salary or money from the Temple. Service on the Board must be an act of spiritual service.” (Exh. 2).

To attempt to create the same sort of religious entity, the founders incorporated the Temple under Article 9 of the New York State Religious Corporations Law, which provides a self-perpetuating Board of Trustees as the sole method of corporate governance.⁴

In order to incorporate, it was necessary to have U.S. citizens make up the initial Board of Trustees. Several persons, for the most part associated with the U.N., were willing to assist in this matter. They are referred to in the complaint as the Proxy Organizers. They filed an RCL Article 9 Certificate of Incorporation in February of 1970. They also filed an application for federal tax exemption, Form 1023. The IRS Form

⁴ New York State’s Religious Corporations Law , Chapter 51 of the Consolidated Laws of New York State, contains a panoply of different mechanisms for the organization of different types of religious bodies; there are separate articles for Roman Catholic, Greek Orthodox, Congregational and other types of churches, each of which sets out the method of organization and church governance of churches organized under that particular article. The Plaintiff Hindu Temple Society of North America, Inc. was incontrovertibly organized under Article 9, the “Free Church” article (Articles of Incorporation of the Hindu Temple Society of North America, Inc. Exh. 7.)

Article 9 of the RCL is five brief paragraphs, RCL §§ 180, 181, 182, 182(a) and 183. Section 180 provides that seven or more people may create a free church. Section 182, entitled “Vacancies in boards of trustees” is the central provision concerning ongoing corporate governance. It states that

“Any vacancies occurring in the said board of trustees shall be supplied by the remaining trustees at any legal meeting of the members; but there shall always be at least five members of the board who are not ministers of the gospel or priests of any denomination.” (Emphasis added.)

The language is *mandatory* and *comprehensive*. It does not permit any other means of selecting trustees for an RCL Article 9 corporation. In addition to violating the Federal Constitution, the Defendants’ actions violate the RCL.

1023 asks “Have you issued or do you plan to issue membership, stock, or other certificates evidencing voting power in the organization?” In response the “No” box is checked. Complaint ¶ 46.

Accompanying Form 1023 were a set of draft bylaws of the Temple (the “1970 Draft Bylaws”) The 1970 Draft Bylaws were not completed and contained blanks that had not been filled in. The circumstances indicate that the 1970 Draft Bylaws were never adopted by the Temple, nor were they ever used in the governance of the Temple. Because there is no record of their ever being adopted, the presumption must be that the only time the 1970 Draft Bylaws were used was in the application to the IRS. (Exh. 2, ¶¶ 2-5, Exh. 16, p. 2)

These Draft Bylaws contain provisions for a potentially limitless voting membership, which would elect the Board of Trustees. This is the only place in the history of the Temple, prior to the actions complained of in this suit, where there is a reference to such a voting membership. This provision is contrary to Hindu tradition and the express provisions of Article 9 of the RCL. As such, these Draft Bylaws are void as conflicting with state law and the certificate of incorporation. It is these 1970 Draft Bylaws that Defendants have seized upon for justification for their “reorganization” of the Temple. (1970 Draft Bylaws, Article III, § 1, Exh. 7; Appellate Division Decision, Exh. 13; December 12 Order, Exh. 15; Referee’s Interim Report, Exh. 16).

However, these Bylaws were never adopted by the Temple. The June 28, 2004 Affidavit of Subramaniam Sundararaman, states:

“3. As to the alleged 1970 bylaws, we never saw them or used them, nor did I ever hear them referred to in the Temple. They were first shown to us by the petitioners in the State court action in connection with that action. They claim that they obtained it from the IRS and that it was apparently

submitted by the attorney for the proxy organizers of the Temple, in connection with the application for tax exempt status. All the proxy organizers and their attorney are now deceased.

“4. There is nothing in the records of the Society which shows that we ever had a copy of these 1970 bylaws or that they were ever adopted. Indeed, the Temple officials always discussed the Temple organization as a non membership religious corporation, and said that it was such because it was organized under religious and non profit laws that permitted this. We carefully worked with the bylaws that we believed we had and actually amended them about 12 times since 1978. None of them provided for voting membership. They did include various provisions for non-voting membership.

“5. The study of our Temple by Dr. Hanson, included in the record of the State court proceeding (but stricken without explanation from the record submitted to the Appellate Division on the first appeal by the Supreme Court Queens) shows that the Temple never conceived itself as having voting members.” (Exh. 2, Exh. 8, p. 10.)

The first building of the Temple was constructed in 1976 and consecrated on July 4, 1977, as the first traditional Hindu temple in the United States. The Temple was dedicated to the Hindu god Ganesh.

On June 15, 1978, the Board of Trustees of the Temple approved a set of bylaws (the “1978 Bylaws”). They were referred to as the first bylaws. The Temple has carefully tended its bylaws as evidenced by the fact that the 1978 Bylaws have been amended at least ten times and have been used as the primary corporate governance document for the Temple since their adoption.⁵

In all their filings in the State Court proceedings (outlined below) no party claims that the alleged “members” of the Temple have ever had any right to vote for Trustees of

⁵ The Board of Trustees of the Temple has an extensive system of financial control, including audited annual financial statements which are made available to all interested persons who attend the annual Assembly which the Temple invites all persons who are on its mailing list to attend every year in December. The Temple’s finances are not secret. Additionally, the Temple, on an ongoing basis, encourages and receives comments, questions and suggestions from devotees. It makes a practice of always responding to them. (Affidavit of Shivakumar K. Prabhat, Treasurer of the Temple, Exh. 5.)

the Temple, nor would state law permit such membership voting for Trustees. In fact, Defendant Aiyer has admitted that “The temple was managed in a totalitarian form from the very beginning.” (Letter from Krishnamurthy Aiyer to Roman Storzer, Apr. 13, 2004. Exh. 31.)

Except for the restrictions complained of in this lawsuit, the Board of Trustees have always exercised sole control of the religious and legal affairs of the Temple, including without limitation:

- management control over the Executive Committee;
- the power to appoint, hire, and dismiss priests;
- authority over the design and expansion of the Temple grounds according to Hindu religious principles;
- management control of the scheduling of religious services at the Temple;
- amounts charged for puja, wedding, and other religious services at the Temple;
- which divinities will be honored at the Temple;
- the forms of devotion that will occur at the Temple;
- control over the finances of the Temple;
- including whether to enter into contracts and to take on debt obligations; and
- all other aspects of religious and temporal activities associated with the Temple.

The Board of Trustees has in short exercised sole religious and legal control over the Temple for the entire period of its existence.

B. THE STATE COURT CONFLICT.

In 1998 there was an election among the Trustees for two lifetime seats on the Board of Trustees. Krishne Urs, at that time the Chairman of the Board and Raghavarao Polavarapu, Co-chair, were the candidates. The Board of Trustees did not approve their proposed selection as Lifetime Trustees. Urs and Polavarapu then brought suit in Queens County Supreme Court challenging the Board’s decision. A motion for preliminary relief was denied in that action, and to the best of Plaintiffs’ knowledge there have been no

further proceedings. (Exh. 9). In 1999 their regular terms on the Board expired and were not renewed.

Raghavarao Polavarapu is a native of Andhra Pradesh, as are Defendants Sambasiva Rao, Venigalla, Kattinger V. Rao, Anand Mohan, Venkaiah Dama, and Nehru E. Cherukupalli. After the conclusion of the Temple's 2002 Annual Assembly Defendant Venigalla approached Plaintiff Mysorekar and urged her to make Polavarapu a Trustee again. (Exh. 1). Subsequently some of the Defendants sent a report to several hundred Indians, the Telugu community, saying that they had reported the Temple to the New York State Attorney General. (Exh. 1).

Defendants Venigalla, Dama, Cherukupalli, Mohan and Rao filed a complaint with the Attorney General in April 2000. It alleged that they were entitled to membership rights, were being deprived of them and that there was financial mismanagement. The Attorney General investigated and has taken no action against the Temple or anyone associated with it. According to Mr. Alan Zion, of the Great Nations Investment Corporation, the company which had assisted the Temple in floating bonds in 1993, 1994 and 1997, Defendant Venigalla called him in 2000 and claimed that the Board of Trustees was illegal. An anonymous letter making the same claims was also received by the Temple's mortgage holder, The Bank of the West. (Exh. 1).

On June 10, 2001, Defendants Venigalla, Dama, Cherukupalli, Mohan, Rao and Aiyer filed a petition in the New York State Supreme Court, Queens County under the New York State Not-for-Profit Corporations Law and Religious Corporations Law. The Petition requested that the Court (a) dissolve the current Board, (b) appoint a temporary receiver, (c) direct the receiver to call a meeting of members to elect interim trustees, (d)

invalidate the current bylaws (e) preventing the Trustees from taking actions involving construction of the rajagopuram, (f) preventing the Trustees from communicating with the members to influence the votes of the members, (g) directing the method and criteria for deciding who are members and entitled to vote, and other relief. They also sought temporary relief to prevent the Trustees from taking any steps toward construction of the rajagopuram or making any expenditures for activities unrelated to the daily operation of religious activities unless failure to expend said funds would result in demonstrable injury to the Society or its financial condition.⁶ (Exh. 10).

On February 14, 2002, Defendant Golia issued a decision, later ratified in a final judgment dated April 18, 2002 (“April 2002 Judgment”) in the State Court Action, ruling, among other things, that

- (a) the number of trustees provided for in the 2001 Bylaws should be lowered from 18 to 7;
- (b) the number of trustees provided for in the 2001 Bylaws could be raised from 7 to 11 once a Certificate of Incorporation to that effect had been filed in accordance with the RCL;
- (c) the 2001 Bylaws were invalid insofar as they provided for more than 11 trustees, failed to provide for a class of voting members, and failed to provide for the right of the “members” to elect at least 6 members of the Executive Committee; and
- (d) that new bylaws should be enacted by the Board of Trustees.

All other relief requested was denied. (Exhs. 11 and 12).

⁶ Interestingly petitioners’ petition makes no reference to RCL Article 9, section 182 **Error! Main Document Only**.entitled “Vacancies in boards of trustees” (Exhibit 7.) Since the dispute was precisely about the filling of vacancies in the Board of Trustees, this would seem to be a vital section. As footnote 1, above demonstrates, section 182 makes clear that only the trustees can vote to choose trustees.

In rendering this Judgment the Supreme Court, Queens County, for reasons unknown, struck from its list of documents making up the record all of Respondents evidence concerning the 1970 Bylaws.

Petitioners introduced the 1970 Draft Bylaws into evidence for the first time late in the State Court Action, in October 2001. Respondents in the State Court Action then presented to Defendant Golia, by means of an affidavit of Plaintiff (and respondent in the State Court Action) Mysorekar (the “1970 Draft Bylaws Affidavit”), extensive evidence that the 1970 Draft Bylaws were not adopted, used, or even known to the Board of Trustees.

In the text of the Judgment in the list of documents considered, that affidavit is listed. However Defendant Golia, or an agent of Defendant Golia, struck the 1970 Draft Bylaws Affidavit of Mysorekar from the list of documents considered in rendering Defendant Golia’s decision. The 1970 Draft Bylaws Affidavit did not appear in the list of documents considered in rendering Defendant Golia’s decision. (Exh. 11, p. 2). Therefore none of the information that the 1970 Draft Bylaws had never been adopted would be available on appeal to the Appellate Division.

Petitioners in the State Court Action appealed the April 2002 Judgment to the Supreme Court of the State of New York, Appellate Division on a number of grounds.

On August 25, 2003, the Appellate Division, Second Department, in *Venigalla v. Alagappan*, 763 N.Y.S.2d 765 (N.Y. App. Div. 2003) (Mem.), reversed Defendant Golia’s ruling, holding that the 1970 Draft Bylaws had been duly adopted and governed the Temple. The Appellate Division ordered Defendant Golia to reinstate the 1970 Draft Bylaws, remove the Board of Trustees, appoint a referee to direct and oversee a

reorganizational meeting of the Temple for the purpose of electing a new Board of Trustees. The Appellate Division further ordered that the present Board of Trustees should remain in office until a new Board was elected. (Exh. 13).

On October 23, 2003, Defendant Golia appointed Defendant Piacentini as referee in accordance with the Appellate Division's order. (Exh 14).

On December 12, 2003, Defendant Golia ordered Defendant Piacentini to make the determination of "what constitutes a 'voting member'" and the respondents in the State Court Action to turn over custody of all financial, legal and other documents "that personally exist" to counsel for the respondents. Defendant Golia also threatened Respondents (some of whom are Plaintiffs in this lawsuit) by stating that "This Court fully intends to consider all available remedies in the event the respondents intentionally fail to comply with both the letter and the spirit of this Order." (Exh. 15).

On January 6, 2004, Defendant Piacentini issued his Interim Report (the "Referee's Report", Exh. 16). In the Referee's Report Defendant Piacentini stated that he was unable to "determine from existing books and records, who are members of the Society, or for that matter, how or when and for what reason they became lifetime members or general members, especially in view of the fact that members have never voted for Trustees." *Id.* Based on this finding, Defendant Piacentini purported to decide that he would determine who would be a voting member of the Society:

It is uncontroverted that the 1970 By-Laws of the Society have never been followed. I have therefore concluded that the only equitable and just procedure for me to follow in order to determine who is a voting member of the Society is to start from the premise that there are no voting members at this time.

Therefore, procedures are to be implemented by me to determine who should be a voting member of the Society.

Id. (emphasis added)

In the Referee's Report, Defendant Piacentini made several rulings:

1. That he would convene a Managing Committee made up of three representatives of the State Court Action petitioners and three representatives of the State Court Action respondents, with "me as Referee, casting any necessary tie breaking vote." Neither Mr. Piacentini nor the three representatives of the State Court Action petitioners have any ecclesiastical standing to decide the issues that they purport to decide.
2. That the Temple's mailing list, which contains the names of between 15,000 and 21,000 persons including anyone who ever signed the guest book at the Temple, would be used to "contact all prospective members, and a membership application which is to be drafted by me with input from the Managing Committee, will be sent to each member listed."
3. That "to maintain equity and parity between the parties" both the petitioners and the respondents would be allowed to include statements in the mailing to "prospective members[,] and that the Temple would not be allowed to send any mailings of its own to persons on the mailing list without the prior permission of Defendant Piacentini and without paying for a response by the State Court Action petitioners.
4. That many forms of expression, including fora such as the bulletin boards on the Temple grounds would be subject to the same sort of equal access rule.
5. That the mailing list of the Temple, as well as "all books and records of the Society" were to be turned over to counsel for the State Court Action petitioners.

Id. (emphasis added).

The State Court Action respondents filed a Motion to Reject the Referee's Interim Report and sought a stay of all proceedings before Defendant Piacentini, arguing that Defendant Piacentini's intrusion into matters of religious polity that are properly reserved to the Temple and its believers violates the Temple's rights under the First Amendment to the United States Constitution. Judge Golia denied the Motion on June 10, 2004. (Exh. 21).

On February 5, 2004, Defendant Piacentini responded to the Motion to Reject the Referee's Interim Report, expressing confusion as to why the only religious leaders the Temple has ever had, the Board of Trustees, should have a determinative role in deciding membership of the Temple. He also made an argument in opposition to the Trustee's objection to his unilateral claim for fees for serving as referee. (Exh. 17).

On April 19, 2004, Defendant Golia denied a motion (the "April 2004 Denial" Exh. 18), to admit Roman P. Storzer, counsel for Plaintiffs in this lawsuit, *pro hac vice* in the State Court Action. Defendant Golia stated that

"[i]t appears strange to me why the Becket Fund which professes to "vigorously defend the rights of free speech and free exercise of religious..." [sic] would support the concept that no one is entitled to become a member of a particular religious organization, and that no one should be entitled to vote regardless of their participation in donations and/or attendance at services."

These statements indicate that Defendant Golia was either unwilling or unable to comprehend the clear First Amendment issues in this case. The statement also takes as a premise that voting for the leadership is something properly imposed by the State of New York upon a religious group.

In an order dated June 10, 2004, but not transmitted to counsel for respondents in the State Court Action until June 21, 2004 (the "June Order" Exh. 21), Defendant Golia wrote that

"[t]he only indisputable fact in this long and protracted litigation is that the present Board of Directors [sic] of the subject Hindu Temple is illegitimate and remains in place only as a 'caretaker' regime until a new board can be elected by the voting members. Unfortunately there seems to be no list of voting members due to the extreme hubris of the existing board who have asserted that there are no members who are entitled to vote. Indeed according to the current board there are no members at all, only individual contributors who have attained the appellation of "devotee".

“The obstructionists’ [sic] actions of this oligarchy who steadfastly refuses to comply with the mandates of this Court as well as the Appellate Division can no longer be tolerated. Continued refusal shall result in severe sanctions.

“Given this extended and steadfast refusal to comply with any of my directives, creates the impression that the respondents have more at stake than the merits of their case, and if so, whether a referral to the District Attorney, to investigate the financial circumstances and any possibility of self dealing or improper disbursements, is warranted.”

Id. (emphasis added).

In fact, there had been no refusal by the Trustees to comply with any Court Order. There had, however, been the exercise of the Trustees’ legal rights to have the proceedings before the referee reviewed and either approved or modified by the Court. In addition to the threat of contempt and the threat of referral to the District Attorney, Defendant Golia also ordered that the costs of the referee would be paid by the State Court Action respondents rather than the Temple, thereby penalizing them personally for actions taken or omissions made by the Proxy Organizers and previous trustees, and for defending the lawsuit brought against them.⁷ (Exh. 21).

The June Order also scheduled a hearing before Defendant Golia and his law secretary, Mitch Kaufman, for the day after the June Order was transmitted to counsel for State Court Action respondents. (Exh. 21). After this meeting, at which the Trustees’ attorney pointed out that they had only the received Court’s decision on the objections to the Referee’s Report at 2:45 the previous afternoon. Respondents also stated their intention to abide by the Court’s Orders. The Referee scheduled a meeting for July 6,

⁷ The Trustees also filed a Motion to have the Referee disqualified after he appeared to hold ex parte meetings with some of the State Court petitioners. That motion was also denied, and in the order, dated July, 7, 2004, Defendant Golia accused the Trustees of attempting to “bait” the Court and its appointed Referee into some action which respondents can then assert either are improper or prejudicial or both” Among the actions he states as allegedly constituting this behavior are “repeated applications contesting each and every step taken by the referee” (EXHIBIT 23.)

2004 with the Managing Committee, for delivery of the mailing list, and to discuss the application for membership.

However, on July 1, 2004, after this meeting but before the Referee's scheduled meeting of July 6 (therefore providing no opportunity for Trustees to not comply with any order), counsel for the State Court Petitioners prepared an Order to Show Cause why the Trustees should not be held in contempt of court for failing to comply. Defendant Golia signed this order on July 13, 2004. (Exh. 15). State Court Petitioners' counsel did not serve the OSC. Instead, he sent it to various press outlets and Plaintiffs became aware of it only when the press sought comments on it, two weeks after it was signed.

Counsel for State Court Action respondents have immediately appealed Defendant Golia's ruling approving the Referee's Report to the Appellate Division, also asking for an interim stay precluding enforcement of the June Order. However, on July 26, 2004 the Appellate Division denied the motion for a stay pending appeal in a summary order, stating simply "Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is hereby ORDERED that the motion is denied" (Exh. 26).

Defendant Piacentini convened another meeting of the Managing Committee on July 6, 2004. Three representatives of the State Court Action respondents attended under written protest. In pertinent part Defendant Piacentini appeared to make determinations on the following matters:

- A. That applications for membership were to be sent to the Temple.
- B. State Court respondent representatives were to prepare a revised draft application
- C. Voting members had to be Hindus.

(Affidavits of Sundararaman and Prabhat, Exhs. 2 and 5). The Trustees have assiduously and scrupulously complied with all these directives.

At the July 6 meeting, Defendant Piacentini suggested that the case might be resolved *if the Trustees would postpone their appeals* of the Court's actions in approving the referee's Interim Report and other actions. He embodied this in a letter dated July 7, 2004 (Exh. 23) (Trustees' attorney's response, Exh. 24).

At a meeting of Defendant Piacentini's "Managing Committee" held on July 14, 2004, Defendant Piacentini issued the following directives to the Temple:

A. By 7/16/04, fax me the revised and corrected application form Temple letterhead.

B. By 7/20/04, Open a P.O. Box with 2 persons (Gandhi and Sundararaman) and let me know.

C. 7/23/04: Prepare the final application form and send it to the Mailing House, along with his covering letter. Give me the name and telephone number of the mailing house. The mailing should be done by 2nd or 3rd week of August/04 latest.

D. 7/23/04: Keep blank application forms in the Temple for people to pick up.

E. 7/2/304: Keep a Box of 2' x 2' in the Temple premises, to receive those applications. The box will have 2 locks- one by each side.

F. The last date for the Application forms to be post-marked should be 9/30/04.

G. Each week the P. O. Box and Drop off box are to be opened by the Managing Committee and vote on the membership acceptance. If there is tie, he will vote.

H. The members should send the check along with the application form and do not cash it, until approved.

I. The Plaintiffs can distribute any solicitation material in the Canteen and Auditorium area, as per my directives in the Interim report. (Affidavits of Sundararaman and Prabhat, Exhs. 2 and 5.)

At this meeting he set the qualifications for membership in a religious organization and set himself in a position to determine which applicants were Hindus. He also made clear that anyone at all can be solicited to be a member upon payment of fees of from three to ten dollars. He also determined that a family membership will be entitled to two votes. In fact Defendant Piacentini voted seven times to break ties during the meeting. Six of those votes were against the position of the State Court Respondent/ Temple Trustees and in favor of the State Court petitioners.⁸ Those votes were as follows:

A. On the question of whether members must be Hindus, Defendant Piacentini voted with the Temple Trustees.

B. On the question of whether the members must participate in the Temple, Defendant Piacentini voted against the Temple Trustees.

C. On the question of whether the members collectively work to pursue goals of the Society, Defendant Piacentini voted against the Temple Trustees.

D. On the question of whether the member is willing to meet with Managing Committee, Defendant Piacentini voted against the Temple Trustees.

E. On the question of whether to allow advertisement and unlimited solicitation of members by the State Court petitioners, even on Temple grounds, Defendant Piacentini voted against the Temple Trustees.

F. On the question of the Entrance Fee proposed by Temple Trustees, Defendant Piacentini voted against the Temple Trustees.

G. On the question of the method of collecting returned applications, Defendant Piacentini voted against the Temple Trustees.

Each and every one of these votes constitutes a governmental entanglement in ecclesiastical questions and religious polity. (Affidavits of Sundararaman and Prabhat, Exhs. 2 and 5)

⁸ The seventh vote was later changed in favor of petitioners as well. See *EXHIBIT 2*.

At the meeting of July 14, Defendant Piacentini reviewed and marked up a copy of the draft application, which the Temple Trustee representatives had prepared at his instruction, including a section of text which Defendant Piacentini had instructed them to copy from another form draft submitted by the State Court petitioners. Also in accordance with his instructions, they sent it to all members of the Managing Committee within the time frame that he ordered. Subsequently they received a fax from one of the State Court petitioners claiming that his entire form had been ordered substituted for the Temple Trustees form. This new form actually made two significant changes from what was approved at the meeting. When counsel to the Temple Trustee representatives wrote asking for clarification Defendant Piacentini wrote back, *inter alia*:

“It is not necessary, nor is it warranted for the respondents or the petitioners to have their attorneys send me an opinion on a matter that is strictly within the realm of the Managing Committee.

“You are reminded that if there is a lack of cooperation or any attempt on the part of Petitioners or Respondents to thwart the objectives of my appointment, that attempt will be met with Court intervention.” (Exh. 23.)

Apparently exercise of basic legal rights, or even an attempt to clarify exactly what the Referee means by his statements is viewed as inappropriate by the Referee in the context of this judicial proceeding. When the Temple Trustee representatives themselves (not counsel) requested clarification concerning the return address that was to appear on the letterhead, Defendant Piacentini did not respond.

Defendant Piacentini has also drafted a letter to accompany the membership application, which states unequivocally that persons who become members shall have the right to vote to choose the Trustees of the Temple. (Exh. 27)

August 4, 2004 Meeting with Defendant Piacentini

On the evening of August 4, 2004, after this action was filed, a meeting of Defendant Piacentini's Managing Committee took place. Present were Defendants Piacentini, Gandhi, Venigalla and Aiyer, Plaintiffs S.K.Prabhat, Mr. Sundararaman, and Dr. Saimamba Veeramachaneni. *See Sundararaman Supplemental Affidavit.*

The Membership application form issue was re-visited since Defendants Aiyer and Gandhi desired that the condition that "Applicant must be Hindu" to be deleted from the form. The Referee then stated that as per Bylaws, any one can become a voting member *irrespective of religion* and so he would vote with the other Defendants on that issue. Prabhat, Sundararaman, and Dr. Veeramachaneni objected to the Referee stating that at the last meeting, he voted for "Hindu" and now reversed himself and was voting with the Defendants yet again.. Defendant Piacentini stated: "This is my final version and I do not want that clause." The voting was 4 for deletion of that clause (Referee and 3 Petitioners) and 3 against (Respondents). Thus, if the Defendants are not enjoined, anyone, regardless of their religion will be allowed to vote on the sole religious and temporal authorities of the Temple. *Id.*

At this meeting the Managing Committee was informed that the mailing of the applications should begin some time during the week of Aug.23- 27. *Id.*

The members of the Managing Committee were ordered to meet and review the applications, "Accepting," "Rejecting" or "Disputing" them. The criteria for rejecting the applications as set forth in Defendant Gandhi's fax of July 27 were discussed (Exh. 29.) Those that are disputed were to be submitted to Defendant Piacentini, who said at this point, "I'm the Supreme Allied Commander." Sundararaman Supplemental Affidavit.

Without explanation, Defendant Gandhi later in the meeting referred to the Referee's Interim Report of January 2004 and stated that the Plaintiffs are only "caretakers" and hence they can only spend Temple's funds for day to day expenses. He asked the Referee whether the Plaintiffs have sought his approval for any expenses as per the court order of June 10, 2004. Referee started to look for the Orders. One of the Defendants gave him a copy and Defendant Piacentini started to read them. Other Defendants stated that the Judge's Order regarding the expenses was issued on December 12, 2003. They did not have that Order with them at the meeting. The Referee stated that he did not give any approval to the Respondents on expenses. He added "I am expecting another Order from the Court after the last meeting and I have not received it so far." Gandhi said "I have it." Aiyer said to Gandhi "You do not have it" and hushed him, thus creating the impression that the Defendants are privy to information from the Court which has not been made available to the Plaintiffs. *Id.*

STANDARD OF REVIEW

The Second Circuit standard for injunctive relief is well-known:

[t]o secure a preliminary injunction in district court, the moving party must demonstrate '(1) that it will be irreparably harmed in the absence of an injunction, and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits of the case to make it a fair ground for litigation, and a balance of hardships tipping decidedly in its favor.'

Mony Group, Inc. v. Highfields Capital Management, L.P., 368 F.3d 138, 143 (2d Cir. 2004) (quoting *Forest City Daly Hous., Inc. v. Town of N. Hempstead*, 175 F.3d 144, 149 (2d Cir. 1999)). This standard applies to the state law claims as well as the federal claims. *See, e.g., Equifax Servs., Inc. v. Hitz*, 905 F.2d 1355, 1361 (10th Cir. 1990) (state

law does not apply to preliminary injunction standards); 11A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2943, at 77-80 (1995) (state law standards for injunctive relief do not apply to applications for temporary restraining orders or motions for preliminary injunctions in federal court).

The facts before the Court clearly support the issuance of a preliminary injunction to maintain the status quo.

ARGUMENT

I. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT AN INJUNCTIVE RELIEF FROM THIS COURT

A. Plaintiffs Will Suffer Irreparable Harm If They Are Deprived of Their Constitutionally-Protected Rights For Even a Short Time

It is axiomatic that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)). The Second Circuit has extended this rule to hold that the deprivation of *any* constitutional right constitutes irreparable harm. *See Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 745 (2d Cir. 2000), *abrogated on other grounds*, *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 171 n.7 (2001) (“plaintiffs have met their burden of showing irreparable harm because the deprivation alleged involves a constitutional right”).

Here, Plaintiffs complain of the continuing and future loss of both First Amendment freedoms of religion and speech, as well as constitutional rights to equal protection and due process under the Fourteenth Amendment. The harms alleged are clearly irreparable because they go to the heart of Plaintiffs’ constitutional liberties.

They also have standing to allege these harms even before they occur: “the victim

of a conspiracy to violate First Amendment freedoms has standing to bring suit before the conspiracy has resulted in economic or tangible injury.” *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 426 (2d Cir. 1995). *See also Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (facial First Amendment challenge to law limiting expression prior to law’s enforcement was not premature).

Based on the federal constitutional claims alone, Plaintiffs have clearly met their burden of showing irreparable injury absent an injunction.

B. The Nature of the Harm Threatened Is Particularly Incapable of Post Hoc Remedy.

In addition to *Elrod’s* understanding that constitutional harms are particularly prone to be irreparable, the particular harms facing the Plaintiffs are incapable of later remedy by the courts, because they cannot be compensated for in monetary damages. “[I]rreparable harm may be found where damages are difficult to establish and measure.” *Register.Com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004) (citing *Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999)). The destruction of the relationship between the spiritual leaders of the Temple and the Temple’s devotees would not be reversible. Religious bodies that lose the trust of their participants have a particularly difficult time regaining adherents. By forcing the Temple’s leaders to communicate what they believe to be lies to the devotees, stripping those leaders of their authority, and publicly insulting them, the Defendants will have convinced the Temple’s devotees and the watching world that the Temple’s leaders serve only at the sufferance of the State of New York. This symbolic shaming of the largest Hindu temple in America will harm all citizens of the United States, and in a way that is not amenable to repair.

II. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CONSTITUTIONAL CLAIMS.

A. Defendants' Egregious Interference with the Hindu Temple Society is a Classic Violation of the "Church Autonomy" Doctrine.

Defendants are attempting to regulate and interfere with issues of membership, leadership, and doctrine of the Temple in a way that has never been countenanced before, and is doing so in a way that not only ignores, but willfully and dramatically violates the constraints of the United States Constitution:

religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations, and these organizations must be protected by the (Free Exercise) Clause.'

Corporation of Presiding Bishop, 483 U.S. at 335-336 (Brennan, J., concurring) (quoting Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1389 (1981) (alterations in original), and citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) and *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952)).

The Religious Corporations Law, N.Y. RELIG. CORP. LAW, §§ 1-455 (the "RCL"), regulates in great detail how religious institutions define and govern themselves.⁹ See, e.g., *Kedroff*; *Kreshik v. St. Nicholas Cathedral of Russian Orthodox Church of N. Am.*,

⁹ Unlike the few cases where courts have permitted limited interference (while continuing to respect church autonomy principles) with religious institutions, they have done so in order to resolve "property disputes." This is no such case. There is no "property" at issue here. It is a challenge to the leadership and administration of the Temple.

364 U.S. 855 (Mem.) (1960).¹⁰ Although there is no Article that accommodates Hindu religious exercise, the State of New York has accommodated—through the RCL—Christian churches of various denominations. *See, e.g.*, Article 18 (“Churches of the Byelorussian Autocephalic Orthodox Church in America”). Rather, the Hindu Temple Society beliefs were forced into the model of the “Free Church” (Article 9). This itself is a separate facial constitutional violation, *see infra* § II.H., but it also has had the effect of compelling the Temple to follow a Christian model, and now being punished for failing to do so.

1. *Defendants’ actions have interfered with central “matters of [Temple] governance.”*

The State Official Defendants are barred by the United States Constitution from involving themselves in religious disputes that arise within the Temple: “State governments, like the Federal Government, have been required to refrain from . . . insinuating themselves in ecclesiastical affairs or disputes” *McDaniel v. Paty*, 435 U.S. 618, 638 (1979) (citing *Serbian Eastern Orthodox Diocese*, 426 U.S. 696; *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Kedroff*, 344 U.S. 94; *United States v. Ballard*, 322 U.S. 78 (1944); *Watson v. Jones*, 13 Wall. 679, 727 (1872)). Despite this clear command, the Defendants have intruded into the religious sphere in four ways: (1) they have attempted to decide how the Temple should govern itself as a religious polity;

¹⁰ For instance, the RCL regulates specifically Protestant Episcopal churches (Article 3), Apostolic Episcopal churches (Article 3-A), Holy Orthodox churches (Article 3-B), the American Patriarchal Orthodox church (Article 3-C), Presbyterian churches (Article 4), Roman Catholic churches (Article 5), Christian Orthodox Catholic churches (Article 5-A), Ruthenian Greek Catholic churches (Article 5-B), Orthodox churches (Article 5-C), Reformed Dutch, Reformed Presbyterian and Lutheran churches (Article 6), Baptist churches (Article 7), United Church of Christ, Congregational Christian and Independent churches (Article 8), Ukranian Orthodox churches (Article 8-A), and the Holy Ukrainian Autocephalic Orthodox Church in Exile (Article 8-B).

(2) they have attempted to impose the idea of “membership” on a religious group for whom membership is a foreign concept; (3) they have intruded upon the daily workings of the Temple; and (4) they have attempted to impose the rule of a majority of persons whose only status is decreed by the State Court on the Temple. It is critical to note that the Defendants are the one who asked the religious questions in the first place. Had the Defendants not acted, there would be no religious dispute. The Defendants’ use of state power to trespass into the religious sphere must be firmly rejected by this Court.

The Defendants have violated the First Amendment by interfering with and attempting to answer questions of religious polity, *i.e.*, how the Temple structures and governs itself. The Supreme Court has consistently held that courts may not decide questions of church government or religious polity. As early as 1872, the Court held that “[c]ivil courts exercise no jurisdiction over matters “which concern[] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them” *Watson v. Jones*, 13 Wall. at 733 (emphasis added). The Supreme Court originated the modern form of what has come to be called the “church autonomy doctrine” in *Kedroff*, where it referred to

“a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”

Kedroff, at 344 U.S. at 116 (emphasis added). *See also Jones v. Wolf* at 608 (court proceedings “involv[ing] considerations of religious doctrine and polity” unacceptable).

The Defendants have violated this command¹¹ in several ways.

- a. Defendants have conspired to install Defendant Piacentini as the formal and practical head of the Temple's religious polity.

The most obvious way the State Defendants have interfered with the Temple polity is by deciding that they will decide every major point of how the Temple will be run as a polity, with little or no input from the Temple and its adherents. Referee Piacentini has taken (with Justice Golia's approval) all power upon himself:

- “the only . . . procedure for me to follow in order to determine who is a voting member of the Society” (Exh. 16, p.2);
- “procedures are to be implemented by me to determine who should be a voting member of the Society.” (Exh. 16, p.2);
- “a Managing Committee will have to be selected by me, as Referee, to decide who is to be accepted into membership.” (Exh. 16, p.3);
- “with me as Referee, casting any necessary tie-breaking vote.” (Exh. 16, p.4);
- “The Referee shall determine when and where meetings will take place to review [applications for membership] and the procedures to follow.” (Exh. 16, p.4);
- “a membership application which is to be drafted by me with input from the Managing Committee, will be sent to each member listed.” (Exh. 16, p.4);
- “The mailing of the application for membership to those listed on the Society's membership list shall be under my direction and supervision.” (Exh. 16, p.4). (Emphases added).

In fact, nearly everything the State Defendants have ordered the Temple to do intrudes upon the realm of how the Temple functions as a religious polity and not just as a legal entity designed by State law, “impermissibly substitut[ing] [his] own inquiry into [Temple] polity” for the Temple's own religious decisionmaking. *Serbian Eastern*

¹¹ The Court should note that this rule is absolute and not subject to exceptions as with strict scrutiny or some other balancing test. *See Watson v. Jones*.

Orthodox Diocese, 426 U.S. at 708. And there is no question in this case as to who the religious authorities, as opposed to the legal authorities,¹² of the Temple are: the Respondents. A Petitioner has admitted this: “The temple was managed in a totalitarian form from the very beginning.” Letter from Krishnamurthy Aiyer to Roman Storzer, Apr. 13, 2004 (Exh. 31) (emphasis added). Under the U.S. Constitution, the Defendants must defer to the wishes of the Respondents as to the religious questions of polity implicated by this lawsuit.

Moreover, the kind of detailed review of Temple government that the Defendants have already undertaken itself violates the Constitution. In *Serbian Eastern Orthodox Diocese*, the Court described a “detailed review” of internal church procedures as “impermissible under the First and Fourteenth Amendments” and venturing further into a “religious thicket” by evaluating “conflicting testimony concerning internal church procedures” *Serbian Eastern Orthodox Diocese*, 426 U.S. at 718-19. The Defendants have already gotten themselves caught in such a thicket by delving into the details of Temple governance.

But perhaps the greatest danger to the Hindu Temple Society’s religious freedom is the State Defendants’ complete failure to recognize such rights. When the Temple requested Justice Golia to stay the proceedings based on the existence of constitutional issues, his one-sentence hand-written response was: “Denied—This Court finds no emergency and finds no grounds warrant staying the apparently lawful actions of the

¹² Although the Appellate Division has declared that the current Trustees were not elected in accordance with the 1970 Bylaws, their status as the religious authorities of the Temple is unaffected by the Appellate Division’s order: since the Temple was begun, they have decided on the design of the Temple, what priests to hire, the religious calendar, and thousands of other questions pertaining to religious doctrine, practice, liturgy, and polity. Mysorekar Affidavit. No other group, including the Petitioners, can make a claim to be the body with religious authority within the Temple.

referee who is acting under authority of this Court.” (Exh. 20) Likewise, the Appellate Division responded to the Temple’s application for a stay by simply stating “Upon the papers filed in support of the motion and the papers filed in opposition thereto, it ORDERED that the motion is denied.” (Exh. 26).

One of the chief reasons that the Supreme Court has so assiduously protected the ability of religious bodies to have absolute freedom from state interference in governing themselves is that religious polity is really just a part of religious doctrine:

If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. . . . (T)he (First) Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration.

Serbian Eastern Orthodox Diocese 426 U.S. at 710 (citing *Presbyterian Church v. Hull Church*, 393 U.S. at 449) (alterations in original). See *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332 (4th Cir. 1997) (“Such a decision about the nature, extent, administration, and termination of a religious ministry falls within the ecclesiastical sphere that the First Amendment protects from civil court intervention.” (emphasis added)). By imposing a structure on the Temple, the Defendants have “inhibit[ed] the free development” of what the Temple and its adherents *believe* about themselves as a group.

- b. Defendants have conspired to force the Temple to accept members—and a pseudo-democratic concept of membership—that contravene its religious beliefs.

The membership question is one that has been imposed on the Temple and its adherents by the Defendants' misapplication of the Religious Corporations Law and the Appellate Division's order. But for this case and the Defendants' actions, the Temple adherents would never have addressed the question of who was a "member" and who not, because the concept is wholly foreign, Western idea that the Defendants have attempted to impose upon the Temple and its adherents. *See generally* Mysorekar Affidavit (Exh. 1). In Hinduism, it makes more sense to speak of devotees than it does to speak of members because believers do not typically "belong" to a particular temple, although they may have a temple they habitually visit. *Id.*

Membership is not something that civil courts have jurisdiction to decide: "Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church" *Watson v. Jones*, 13 Wall. at 730 (quoting *Shannon v. Frost*, 3 B. Monro, 253 (Ky. 1842) in rejecting English chancery's traditional practice of inquiring into church governance and doctrine). In *Bouldin v. Alexander*, the Supreme Court stated that it could only reach its holding because church membership was not an issue before it:

"This is not a question of membership of the church, nor the rights of members as such. It may be conceded that we have no power to revise or question ordinary acts of church discipline or excision from membership. . . . [W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off."

Bouldin v. Alexander, 82 U.S. 131, 139-40 (1872). Likewise, in *Jones v. Wolf*, the court held that it could only reach its holding because membership was not at issue. *See id.* at 607.

Lower courts agree.¹³ In *Solid Rock Baptist Church v. Carlton*, 789 A.2d 149 (N.J. Super. App. Div. 2002), a court ruled in a strikingly similar case that a democratic system of elections could not be imposed on a church:

[T]he [lower] court’s ruling set the stage for the court-monitored election at which the candidate slate proposed by the opposition faction loyal to the ousted pastor, and not pre-screened for eligibility by the nominating committee, won by majority vote. This shift in the balance of power, in turn, allowed for the eventual return of Carlton to the pastorship of Solid Rock. In other words, the court’s decision on the nominating process and procedure proved determinative of the underlying issues of church governance, polity, and ultimately doctrine.

Id. at 158 (emphasis added). The South Carolina Supreme Court reversed efforts similar to Justice Golia’s and Referee Piacentini’s in dealing with a church power struggle:

Here, the parties to this litigation asked the trial judge to determine what percentage of no-confidence votes was required to remove Williams and which members were eligible to participate in the vote. In a well meaning attempt to bring about an arbitrated settlement of this tragic church division, the trial judge agreed to make this determination.

It is not the function of courts, however, to dictate procedure for a church to follow.

Knotts v. Williams, 462 S.E.2d 288, 290-91 (S.C. 1995) (emphasis added, footnote omitted). And the Supreme Judicial Court of Massachusetts, in a dispute over “how members of vestry could be elected,” held that:

We are similarly persuaded that in this case the dispute is one of religious law and polity—the authority of the bishop and Diocesan convention to determine how members of a church vestry may be elected, whether a corporation member is in “communion” with the Parish, and whether the corporation’s constitution may be amended unilaterally in violation of canonical mandates. We conclude that the First Amendment requires that the complaint be dismissed for lack of jurisdiction.

¹³ Not only do modern courts refuse to interfere in such matters, but this principle has a substantial pedigree. See, e.g., *Burke v. Rector*, 117 N.Y.S. 255, 257 (Sup. Ct. Spec. Term 1909) (“The judicial power is reluctant to interfere in matters of religious or ecclesiastical arrangement, and will do so only when rights of property or civil rights are involved.”); *Gibson v. Singleton*, 101 S.E.178, 178-79 (Ga. 1919) (“Nor would the civil courts have jurisdiction of such case where it is alleged that the enforcement of such announcement of the pastor would result in an illegal and fraudulent election, and be violative of the rules of the church, . . .”).

Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts, 688 N.E.2d 923, 934 (Mass. 1997).¹⁴

Definition of “membership” of a religious organization is treated the same. See *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888) (“No power, save that of the church can rightfully declare who is a Catholic. The question is purely one of church government and discipline,”); *Waller v. Howell*, 45 N.Y.S. 790 (S. Ct. Spec. Term 1897) (“It is apparent, therefore, that the question of church membership is purely ecclesiastical, and that no civil right is involved in the plaintiffs’ claim to be regarded as communicants in the St. John’s Episcopal Church of Monticello.”). Resolving issues of elections and membership are clearly within the domain of the religious institution, and not the State.

- c. Defendants have conspired to shift power away from the Temple’s current Board of Directors

The Defendants’ actions, especially in according the Petitioners the same rights as Respondents in overseeing the election of a new Board of Trustees, constitute an unconstitutional transfer of power from one group within a religious polity to another. The Court in *Kedroff* rejected just such a transfer under the same statute at issue here - the New York RCL: “Here there is a transfer by statute of control over churches. This violates our rule of separation between church and state.” *Kedroff*, at 344 U.S. at 110. The Court went on to say that the State could not “intrude[] for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.” *Kedroff*, 344 U.S. at 119. Here the Defendants intend to administer the election through a board of their own making. Like the Legislature in *Kedroff*, which hoped to prevent Soviet control of the Russian

¹⁴ As here, the court in *Parish of the Advent* recognized that such a “dispute is not one of property as such; the claim is one of the corporate ‘independence,’” *Id.* at 933 (citing *Kedroff*).

Orthodox Cathedral in New York, the Defendants are imposing their version of congregationalism on a religious group. If the Court in *Kedroff* rejected the Legislature's attempt to keep an American church free from Soviet control, this Court should reject the Defendants' attempt to take control away from the Respondents.

This principle has been repeatedly enforced by courts refusing to inject themselves in such matters. In fact, the same appellate court ruled in 2001 that:

[T]he issues of whether the individual plaintiffs are members in good standing within the church and who, among the parties, represents the true Ebenezer Mar Thoma Church, both of which have been decided in the respondents' favor by the church's highest authorities, are not reviewable by a secular court of law

Ebenezer Mar Thoma Church v. Alexander, 279 A.D.2d 548, 549, 719 N.Y.S.2d 297, 297 (S. Ct. App. Div. 2001) (citing *Milivojevich, Watson*). In *Fussell v. Hail*, the Illinois Supreme Court refused to interfere with a church union, although the bill to enjoin proceedings "allege[d] that all the proceedings . . . are unlawful and void, because in all such proceedings the general assembly, synod and presbyteries have exceeded the authority vested in them" 84 N.E. 42 (Ill. 1908.).

This case is unlike the typical church property dispute because in most cases the dispute centers on which of two church groups (hierarchy v. local church; one congregational faction v. another congregational faction) has the best claim to legal title to the church property; there is generally no dispute about the membership or the form of the church polity. In this case, there is no question that the Temple belongs to the Temple Society. Instead, the dispute centers precisely on *who* the members are and *what* the "Temple" is as a religious polity.¹⁵

¹⁵ The Plaintiffs, by describing the religious beliefs that underpin Hindu ideas of devotion as opposed to Christian ideas of membership, are not asking this Court to evaluate the relative merit of certain religious

The “who” question does not typically arise in the church property dispute cases because most religious groups in the United States have defined membership rolls, inclusion or exclusion from which is determined according to religious precepts. For example, the *Jones v. Wolf* Court also stated that a neutral principles of law approach was acceptable based on the idea that “the majority faction generally can be identified without resolving any question of religious doctrine or polity. Certainly, there was no dispute in the present case about the identity of the duly enrolled members of the [divided] church when the dispute arose” *Jones v. Wolf*, at 607 (emphasis added).

By contrast, the Temple, like most Hindu temples, does not have a membership roll, or even a concept of “membership.” See Mysorekar Affidavit (Exh. 1). Believers in the Hindu religion instead revere temples as themselves holy places rather than as places where holy congregations meet. *Id.* To be sure, believers who visit a Hindu temple think of themselves as participating in a wider community. However, for most visitors, even visitors who come somewhat more frequently, there is not a sense of belonging as there might be for a member of a Christian church who visits that church. *Id.* Thus the Defendants’ concept of “member” that underlies their attempt to define the “membership” of the Temple is simply not broad-minded enough to comprehend the religious practice of the Temple’s adherents.

The “what” question does not typically arise in church property dispute cases because churches or other religious organizations normally have some sort of ecclesiastical law or religious precept that describes what the religious body is. See, e.g. 1 Timothy 3:15 (the church is “the household of God”). In Hinduism—and in the

beliefs. Rather, the Plaintiffs are merely asking this Court to take cognizance of religious beliefs that do in fact exist. See *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 431 (2d Cir. 1999).

Hinduism practiced at the Temple in particular—there is by contrast no agreed-upon body of religious law that defines what a temple is. *See* Mysorekar Affidavit (Exh. 1) . Hinduism tends to encourage each believer to seek their own method of approach towards the Divine, and therefore does not have a rule as to the concept of the body of Hindu believers. *See id.* Thus when the Defendants attempts to define the “members” of the Temple, they is attempting to make clear what must remain mysterious under Hinduism.

The Court should note that the Defendants must defer completely to the wishes of the Temple’s religious leaders in answering the “who” and “what” questions. *See LaValle v. Hayden*, 746 N.Y.S.2d 125, 129 (N.Y. 2002), and *State ex rel, Heitkamp v. Family Life Servs., Inc.*, 616 N.W.2d 826 (N.D. 2000). Like the Supreme Court in *Presbyterian Church v. Hull Church*, this Court cannot allow part of the civil court system to review religious leaders’ application of state law to religious questions:

Even if the general church had attempted to apply the state standard, the civil courts could not review and enforce the church decision without violating the Constitution. . . . Thus, a civil court may no more review a church decision applying a state departure-from-doctrine standard than it may apply that standard itself.

Presbyterian Church v. Hull Church, 393 U.S. 440, 451-52 (1969) (citing *School District of Township of Abington, Pa. v. Schempp*, 374 U.S. 203 (1963)). Although the Appellate Division has declared the 1978 Bylaws, as amended over the course of the years, legally infirm, the religious intent of the document must serve as a guide to determining who the religious leaders of the Temple are. This Court must reject the Defendants’ attempt to review the Temple’s many years of decisions about such religious questions.

C. Defendants’ Egregious Interference with the Hindu Temple Society Significantly Interferes With its Religious Exercise.

1. *Defendants' actions significantly interfere with the Temple's religious exercise*

The Defendants have “significantly interfered with [the Plaintiffs’] religious beliefs,” and thus violated the Constitution. *McEachin v. McGuinnis*, 357 F.3d 197, 203 (2d Cir. 2004). There are two major ways in which Defendants have interfered with the Plaintiffs’ religious belief: imposing governance and restricting religious practice.

- a. Defendants have conspired to impose a form of governance upon the Temple that is contrary to its beliefs and practices.

It is hard to imagine how the Defendants could have *more* intrusively interfered with the Plaintiffs’ religious beliefs about how the polity of the Temple should be formed than they already have:

- “the only ... procedure for me to follow in order to determine who is a voting member of the Society” (Exh. 16, p. 2);
- “procedures are to be implemented by me to determine who should be a voting member of the Society.” (Exh. 16, p. 2);
- “a Managing Committee will have to be selected by me, as Defendants, to decide who is to be accepted into membership.” (Exh. 16, p. 3);
- “with me as Defendants, casting any necessary tie-breaking vote.” (Exh. 16, p. 4);
- “The Defendants shall determine when and where meetings will take place to review [applications for membership] and the procedures to follow.” (Exh. 16, p. 4);
- “a membership application which is to be drafted by me with input from the Managing Committee, will be sent to each member listed.” (Exh. 16, p. 4);
- “The mailing of the application for membership to those listed on the Society’s membership list shall be under my direction and supervision.” (Exh. 16, p. 4). (Emphases added.)
- Under threat of contempt the Referee has ruled on the contents of the membership application, who is to be allowed to apply for membership, that being a Hindu is a requirement for membership, and that the question of who is a Hindu and

qualified to a member is to be decided, in the last analysis, by him. (Exhs. 2, 3 and 5)

- Under threat of contempt the Referee has ordered the Temple to have his application and letter printed and mailed, ***no later than the second or third week of August, 2004***, thereby irrevocably changing the devotees' view of their relationship to the Temple by subordinating it to the State. (Affidavits of Sundararaman and Prabhat, Exhs. 2 and 5).

This is the highwater mark of governmental intrusion. As the emphasis supplied shows, the Defendants have arrogated to themselves, acting together, all decisions about the form of the polity the Temple adherents will be saddled with. The Defendants have made no effort to take into account the fact that they are forming a religious polity or that their rulings implicate the religious beliefs of the Temple adherents. No one but the Defendants – not the State Court Respondents, any of the Temple's other adherents, nor the Petitioners – has any say in whether and how the members of the Temple will be chosen.

As noted *supra*, Hindu devotees simply do not possess the Western concept of “membership” that the Defendants are attempting to impose upon the Temple. (Exh. 1). The Temple has the right to be free from such an outside imposition.

- b. Defendants have conspired to prevent Plaintiffs from engaging in religious practices.

The second major area in which Defendants have conspired to interfere significantly with Plaintiffs' exercise of their religion is in their worship practices. For example, because Defendant Golia has forbidden the Trustees from entering into contracts that would allow them to expand the Temple, many of the Plaintiffs have not been able to worship the deities to which they are particularly devoted. Plaintiff Panchal is a devotee of Devi Kodiarmata. He has been the principal supporter of a proposal to move Devi Kodiarmata into a new and larger chapel so that many people would be able

to worship this deity. Yet these plans have been thwarted by the orders of Defendant Golia. (Exh. 15). Similarly, Defendant Piacentini's order allowing the Insurgent Defendants to solicit applicants for membership amongst devotees within the "Sancto Sanctorum" of the Temple is another example of Defendant Piacentini's complete disregard for the tenets of Hinduism or even basic etiquette within a house of faith. (Exh. 2). These outrages to the religious feeling of the Plaintiffs and other devotees of the Temple would be shocking even were they not accompanied by so many other constitutional violations.

2. *Defendants' actions are subject to strict scrutiny review.*
 - a. Defendants have conspired to deprive the Temple of its Free Exercise rights through a system of "individualized assessments."

"[W]here the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990) (quoting *Bowen v. Roy*, 476 U.S. 693, 708 (1986)). Here there could not be a more individualized system of assessment than the Temple has been subjected to. In part because the Temple is itself as a religious body *sui generis*, but primarily because the Defendants are using absolutely no standards in making their decisions, the State Defendants are clearly applying a system of individualized assessments to the Temple and the Trustees. State Defendants' actions are therefore clearly subject to strict scrutiny.

- b. Defendants have conspired to deprive the Temple of its Free Exercise rights through non-neutral application of the Religious Corporations Law.

Defendants have also conspired to deprive the Temple of its free exercise rights through skewed application of the RCL, itself not a “valid and neutral law of general applicability.” *Smith*, 494 U.S. at 879; *see also infra* Section II.H. Instead of deferring to the wishes of the spiritual and temporal leadership of the Temple—the Board of Trustees—the Defendants have attempted to topple those leaders and install new ones of their own. If the Hindu Temple were a Presbyterian Church or an Orthodox Synagogue, the Defendants wouldn’t even think to act in the way that they have. *See, e.g., Srour v. Board of Trustees of Sephardic Congregation of Har Ha Lebanon, Inc.*, 2004 WL 1261467 (N.Y.Sup. 2004). However, because Hinduism is an unfamiliar religion of a small minority in this country, the Temple’s leaders have been treated with far less deference than is due. Counsel for the Insurgent Defendants has admitted that the State Defendants are acting to democratize the Temple, something they would not dare to do if the religious body involved were a large church or synagogue. *See, e.g., Robert F. Worth, Hindu Temple to Challenge State Judge on Religious Grounds*, N.Y. TIMES, August 4, 2004. (Statement by opponent Krishnan Chittur that “the court is merely trying to ensure that the temple is managed in a democratic way”). Defendants’ unfair treatment of Plaintiffs demands strict scrutiny.

3. *Defendants lack any rational, much less compelling, justification to substantially burden the Temple’s religious exercise.*

The Defendants have absolutely no reason for significantly interfering with Plaintiffs’ religious exercise. The only justification given by Defendant Golia for forbidding the Temple to enter into contracts is that he wishes to avoid a wasting of the Temple’s assets. Yet to date **no** evidence has been adduced that such waste is going on. To the contrary, the Temple’s Board of Trustees have been vindicated by the New York

Attorney General. Ultimately Defendants Golia and Piacentini justify all of their interference with Temple governance and religious exercise (including the adding of new deities to the pantheon within the Temple) on the basis of the Appellate Division’s 2002 decision. (Exhs. 14, 15, 16, 17, 21 and 22). Yet compliance with the order of the Appellate Division is not a sufficient answer to Plaintiffs’ constitutional claims—if the Appellate Division’s 2002 order (*see* Exh. 13) is unconstitutional, then Defendant Golia is bound by the Supremacy Clause of the United States Constitution to disobey it.

D. Defendants’ Egregious Interference with the Hindu Temple Society Violates Its Free Speech Rights By Censoring Its Religious Speech.

1. *Defendants’ orders have prevented the Temple from being able to speak to its devotees.*
 - a. Defendants have conspired to apply a prior restraint preventing the Temple from “send[ing] any newsletters or publications to members”

By forbidding the Temple or the other Plaintiffs from speaking with anyone on the Temple’s mailing list,¹⁶ Defendant Piacentini has placed (and Defendant Golia has upheld) a prior restraint on speech, something that is almost always constitutionally dubious: “A ‘prior restraint on expression comes . . . with a heavy presumption against its constitutional validity.’” *Metropolitan Opera Ass’n, Inc. v. Local 100, Hotel Employees and Restaurant Employees Int’l Union*, 239 F.3d 172, 176 (2d Cir. 2001) (quoting *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) and citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (internal citations and quotations omitted)). “Indeed, prior restraints are ‘the most serious and the least tolerable infringement on First Amendment rights.’” *Id.* (quoting *Nebraska Press Ass’n v. Stuart*,

¹⁶ Plaintiffs of course maintain that there are no “members” of the Temple, because there is no concept of membership in Hinduism.

427 U.S. 539, 559 (1976)). This is because they unnecessarily stop speech before it starts: “‘If it can be said that a threat of criminal or civil sanctions after publication chills speech, [a] prior restraint freezes it, at least for the time.’”⁴⁴ *Id.* (quoting *Nebraska Press Ass’n*, 427 U.S. at 559) (alteration in original).

By using the threat of contempt, their control over procedure, and their ability to render decisions against the Plaintiffs, the Defendants have frozen the Temple’s and the other Plaintiffs’ speech right in its tracks. This kind of restraint can only be justified if there is an extremely compelling governmental interest, which there is not in this case. *See infra*, Section II.D.2.

- b. Defendants have conspired to prevent Plaintiffs from speaking while permitting the private Defendants to engage in equivalent speech.

Defendant Piacentini and Defendant Golia show even more disregard for freedom of speech by allowing the Insurgent Defendants to speak when the Temple and the other Plaintiffs must remain silent. While the State Court Action petitioners (including the Insurgent Defendants) can freely communicate with the devotees of the Temple, the Plaintiffs must ask for permission to speak with the Temple devotees. (Exh. 16). It is perhaps the case that the actions of the Defendants have been so intrusive that communications amongst the Temple and its devotees have been transformed into a government-operated forum, something that is forbidden by the Free Exercise and Establishment Clauses, *see* Sections II.A and II.B *supra*. Yet even if this is the case, all government restrictions on protected speech must be reasonable and viewpoint neutral, no matter what the forum. *See, e.g., Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985). Defendants’ prohibitions are neither. The restrictions on the

speech of the State Court Action respondents **only** are (1) not reasonable because they favor only one party, and (2) not viewpoint neutral because they favor only one party's viewpoint.

- c. Defendants have conspired to compel Plaintiffs to engage in certain undesired speech.

The First Amendment “includes both the right to speak freely and the right to refrain from speaking at all.” *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 645 (1943) (Murphy, J., concurring). This right not to be compelled to speak includes religious speech: “If there is any fixed star in our constitutional constellation, it is that **no official, high or petty**, can prescribe what shall be orthodox in politics, nationalism, **religion**, or other matters of opinion or force citizens to confess by word or act their **faith** therein.” *Id.* at 642 (emphasis added). This

freedom to keep silent as well as to speak is grounded in something broader than a national fear of the state. It is equally the product of our view of personhood, which encompasses what the Supreme Court later referred to as “freedom of thought,” “freedom of mind” and a “sphere of intellect and spirit.”

Carroll v. Blinken, 957 F.2d 991, 996 (2d Cir. 1992) (quoting *Wooley v. Maynard*, 430 U.S. 705 (1977)) (internal quotation omitted).

Here the Defendants are compelling, and will be compelling, the Plaintiffs to speak in a way they find intolerable. Whether through the compelled speech of the application form that is to be sent out on Temple letterhead, or through the compelled payment for mailings that the Plaintiffs completely disagree with, the Defendants have conspired to force the Plaintiffs to speak in a way that flies in the face of the Constitution. *See Carroll v. Blinken*, 957 F.2d at 998 (both speech acts and money that contributes to

speech acts are predicates for a compelled speech claim). Defendants are flagrantly violating the Free Speech Clause of the First Amendment.

2. *Defendants lack any rational, much less compelling, justification for restricting the Temple's speech.*

The Defendants have absolutely no compelling governmental interest in restricting the Plaintiffs' speech. The only justification given by Defendant Piacentini for the unreasonable prior restraints, viewpoint discrimination, and forced speech put into place by his directives is that he wants to preserve "parity" between the parties. (Exh. 16). This might be a governmental interest of some sort if the takeover being attempted was the takeover of one public company by another. There the purpose of the corporation – to make money for its shareholders – and the government's interest in thwarting fraud mean that the First Amendment is not a bar to the restrictions on speech found in the securities laws. But where a group of dissidents (whose association with a religious body is in some cases quite tenuous, *see e.g.*, Exh. 5) stage an attempt to take over a religious body, there is no compelling governmental interest in allowing the dissidents, who have no inherent legitimacy, the same rights as those who have acted and been acknowledged as the spiritual and temporal leaders of the Temple for more than 30 years.

Likewise, it should be noted that the only interest Defendants Golia and Piacentini appear to have in forcing the Trustees (including the Plaintiffs) to pay the Temple's legal costs and to pay for the mailing of the application forms to the Temple's mailing list is their interest in forcing the Trustees not to appeal their rulings to the Appellate Division or other fora. That this is the case is shown by Defendant Piacentini's offer to change the substance of his directives if the State Court Action respondents agreed not to press their

appeal to the Appellate Division. Once it became clear that the State Court Action respondents would not relinquish their constitutional claims, Defendant Piacentini reacted very angrily and imposed further costs on the State Court Action respondents (including Plaintiffs). (Exhs. 2, 23, and 24). It goes without saying that avoiding appeal of one's decisions is not a compelling governmental interest.

E. Defendants' Egregious Interference with the Hindu Temple Society Violates Its Right to Freely Associate for Expressive Purposes.

The Defendants have also violated the right of the Temple and its adherents to expressive association, in violation of the First Amendment. There is "implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-909, 932-933 (1982); *Larson v. Valente*, 456 U.S. 228, 244-246 (1982); *In re Primus*, 436 U.S. 412, 426 (1978); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 (1977)) (emphasis added). The right to expressive association "is an instrumental one: expressive association is protected 'as an indispensable means of preserving other individual liberties.' The right to associate also includes the right not to associate." *Hsu By and Through Hsu v. Roslyn Union Free School Dist. No. 3*, 85 F.3d 839, 858 (2d Cir. 1996) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984) and citing *Roberts* at 623).

The Defendants have attempted to force the Temple to become a membership organization, creating rights among, and bonds between, people who wish to be devotees of the Temple and its deities, not part of a group of fellow believers. The relationships at

the Temple are vertical, from the devotees towards the deities and the Temple that houses them, and not horizontal, among the devotees. (See Exh. 2 (“the place itself is sacred, apart from the people who come to it or their activities, the place itself is the body of the God”)). This is one of the purest examples imaginable of the State attempting to force someone to associate with someone they simply do not want to associate with. Hindu believers should not have to associate with other devotees as fellow members of a Temple congregation if they do not want to. The devotees certainly should not be required to associate with non-Hindus in acts of worship and in their interactions with each other as parts of the same religious polity.¹⁷ Clearly the Defendants’ ill-considered orders and directives vitiate the Temples’ (and its adherents’) right to association with *whom* they wish.

These same orders and directives also destroy the Temple devotees’ right to associate with others *how* they wish. The Defendants’ egregious intrusions into the governance of the Temple, outlined *supra*, Sections II.A and II.B, end any semblance of freely-chosen and -exercised rights of association.

Such restrictions on expressive association can only “pass constitutional muster if they serve compelling government interests unrelated to the suppression of ideas and those interests cannot be achieved through less restrictive means.” *Sanitation & Recycling Ind., Inc. v. City of New York*, 107 F.3d 985, 997 (2d Cir. 1997). The State’s interest here is in maintaining the niceties of the corporate formalities set forth in the Religious Corporations Law—hardly a compelling government interest. Indeed, to the extent that the strictures of the RCL inhibit expressive association more than the

¹⁷ Non-Hindus will certainly become “members” of the Temple if the process for choosing members set up by Defendant Piacentini and confirmed by Defendant Golia is implemented. (Exhs. 2 and 16).

provisions of the Non-Profit Corporations Law, it is impossible to see the State's interest as "unrelated to the suppression of ideas." *Id.*¹⁸

The Defendants' actions do not survive strict scrutiny and should be rejected by this Court.

F. Defendants' Egregious Interference with the Hindu Temple Society Have Deprived it of Due Process of the Laws.

1. *Defendants have not given Plaintiffs a meaningful opportunity to make their constitutional claims.*

The Defendants have denied the Plaintiffs the "touchstone" of procedural due process: "an 'opportunity to be heard . . . at a meaningful time and in a meaningful manner'" *Donk v. Miller*, 365 F.3d 159, 163 (2d Cir. 2004) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970)). Although the Plaintiffs have continually raised their constitutional claims before State Defendants since the time that the State Defendants began to interfere in the Temple's religious activities and governance, Defendants Golia and Piacentini have consistently refused even to address the merits of Plaintiffs' asserted constitutional interests. (Exhs. 17, 18, 20, 21, 22 and 25). Plaintiffs have thus been afforded **no** opportunity to have their constitutional claims heard, much less a meaningful one. Because "the state [may] not deprive [the Plaintiffs] of a significant liberty or property interest without affording notice and some opportunity to be heard prior to the deprivation[.]" the State Defendants must consider Plaintiffs' constitutional claims

¹⁸ The Defendants have also failed to use least restrictive means: "An infringement of the First Amendment right to expressive association—even if in pursuit of a compelling government objective—is justified only if there is no less restrictive means of achieving that end. 'Precision of regulation must be the touchstone' in the First Amendment context." *Id.* (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)). The Defendants' blunderbuss approach to religious polity in general and the Temple in particular is the antithesis of "precision of regulation." "For the life of [them]," they can't understand why the religious leaders of the Temple would find distressing their assumption of total control over the composition of the Managing Committee and who is allowed to vote for trustees and under what conditions. (Exh. 17). The Defendants clearly have not even considered using the least restrictive means.

before depriving the Temple’s spiritual leaders of their authority and forcing them to communicate with the Temple’s devotees in a way contrary to their religious beliefs. *Gudema v. Nassau County*, 163 F.3d 717, 724 (1998) (citing *Hodel v. Virginia Surface Mining & Reclamation Ass’n*, 452 U.S. 264, 299 (1981) and *Parratt v. Taylor*, 451 U.S. 527, 540 (1981)). In addition, Plaintiffs have no “meaningful postdeprivation remedy” available to them. *Gudema*, 163 F.3d at 724 (citing *Hudson v. Palmer*, 468 U.S. 517 at 531, 533 (1984)). As set forth in the Complaint and in the Statement of Facts *supra*, once Defendant Piacentini has forced the Plaintiffs to mail out membership applications to the Temple devotees, no state or federal court will be able to repair the damage done to the authority of the Temple’s spiritual leaders. Any postdeprivation remedy will therefore be meaningless.

The nature and quality of process due Plaintiffs requires at the very least some **mention**, however brief, of the merits of the constitutional arguments raised by Trustee Plaintiffs:

[T]he decisionmaker’s conclusion as to a [welfare] recipient’s eligibility must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law.

Goldberg v. Kelly, 397 U.S. 254, 271 (1970) (citing *Ohio Bell Tel. Co. v. PUC*, 301 U.S. 292 (1937); *United States v. Abilene & S.R. Co.*, 265 U.S. 274, 288-89 (1924); *Wichita R. & Light Co. v. PUC*, 260 U.S. 48, 57-59 (1922)). Yet the State Defendants continually refuse to consider the constitutional issues clearly implicated by their behavior. The State Defendants have also dismissed as “obstructionist” Trustee Plaintiffs’ repeated assertions

of their due process rights. (Exhs. 21 and 22). Rather than “[d]etermining how much process is due [by] weighing of the [i] private interest, [ii] risk of erroneous deprivation, and [iii] public interest[,]” Defendant Golia has denied Plaintiffs all process because it is his view – formed on the basis of written submissions to the court alone¹⁹—that the Plaintiffs’ “repeated applications” for relief from Defendant Piacentini’s unconstitutional behavior were submitted “for the sole purpose of delaying compliance.” *Donk*, 365 F.3d at 163 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); (Exh. 22).

The Supreme Court recently confirmed the continued vitality of the three *Mathews* factors in *Hamdi v. Rumsfeld*, 124 S.Ct. 2633 (2004):

Mathews dictates that the process due in any given instance is determined by weighing “the private interest that will be affected by the official action” against the Government’s asserted interest, “including the function involved” and the burdens the Government would face in providing greater process. The *Mathews* calculus then contemplates a judicious balancing of these concerns, through an analysis of “the risk of an erroneous deprivation” of the private interest if the process were reduced and the “probable value, if any, of additional or substitute safeguards.”

Id. at 2646 (quoting *Mathews*, 424 U.S. at 335) (internal citations omitted). When the process given the Plaintiffs in the State Court Action are weighed using the *Mathews* factors, it is clear that the process Defendants have afforded the Plaintiffs is wanting.

First, the “private interest[s] that will be affected by the official action” are extremely important²⁰: the Plaintiffs’ First Amendment constitutional rights to freedom of belief, freedom of speech, and the ability of the Temple to exist as a religious entity

¹⁹ The other possibility is that Defendant Golia has had *ex parte* or other off-the-record communications on which he relies. Such off-the-record communications would of course also offend principles of due process.

²⁰ Freedom of speech and freedom of belief are arguably the most important liberties in the constitutional hierarchy after liberty of the person.

functionally separate from the State of New York are second in the constitutional hierarchy to only freedom of the person, *i.e.*, from bodily restraint.

Second, “the Government’s asserted interest” here is not great. Unlike *Hamdi*, the Defendants do not have national security or anything of comparable value at stake. In fact, the only “burdens the [the Defendants] would face in providing greater process” are the time and effort it would take for them to consider and write about the constitutional issues in this case. The “public interest” would in fact be served by giving the Plaintiffs the benefits of their constitutional rights. As the situation now stands, the public interest has been harmed by the State Defendants’ continued assertions that they have the right to reorganize a religious body. In addition, the denial of process has created an appearance of bias against the Plaintiffs that does not serve the public interest.

Finally, when these factors are balanced, it is clear that “the risk of an erroneous deprivation” here is enormous, for the reasons set forth in Section I *supra*. The additional safeguards of actual consideration of the constitutional claims, permission to have counsel attend meetings of the Managing Committee, and permission to record the meetings of the Management Committee in some way are all of high “probable value.” Even more than in *Hamdi*, where the Government’s interests were—unlike those of the Defendants in this case—very weighty, the balance of interests here indisputably lies with the Plaintiffs. Plaintiffs simply must be provided with additional process.

2. *Defendants’ demonstrated actual bias against Plaintiffs has denied them a fair hearing in a fair tribunal*

Not only have Defendants not given Plaintiffs an opportunity to make their claim – they have also demonstrated actual bias and open hostility towards the Plaintiffs that flies in the face of the Due Process Clause’s requirement of a “fair trial in a fair

tribunal,' before a judge with no actual bias against the defendant or interest in the outcome of his particular case.” *Bracy v. Gramley*, 520 U.S. 899, 904-5 (1997) (quoting *Withrow v. Larkin*, 421 U.S. 35, 46 (1975) and citing *Aetna*, 475 U.S. 813, 821-822 (1986); *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)). “Not only is a biased decisionmaker constitutionally unacceptable but ‘our system of law has always endeavored to prevent even the probability of unfairness.’” *Withrow*, 421 U.S. at 47 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955) and citing *Tumey*, 273 U.S. at 532).

Defendant Piacentini has demonstrated actual bias against the Plaintiffs by, among other things, taking the following actions:

- Exhibiting open anger towards William Burke, counsel for the State Court Action respondents at the June 22, 2004 meeting with Defendant Golia’s law secretary, stating that he had high expenses to meet in his law practice and demanding to know how much Mr. Burke was charging his clients. There was a clear implication that because the State Court Action respondents were appealing his interim report, and he had not been awarded any interim fees, he was not able to meet the expenses of his law practice. (Exh. 4).
- Threatened Plaintiffs that if they would not agree with him he would use his deciding vote to side with the State Court Action petitioners on all issues. (Exh. 2)
- Voting with the State Court Action petitioners because, as he stated, there was no “meeting of the minds” (Exhs. 2 and 3).
- Colluding with the State Court Action Petitioners at the December 22, 2004 meeting to deprive the Petitioners of their rights. (Exh. 4).
- Denying the Plaintiffs the right to counsel at the meetings of the “Managing Committee.” (Exhs. 2 and 3).
- Refusing to allow the Plaintiffs to employ a court reporter, a tape recorder, or any other method of creating a record of the meetings of the “Managing Committee.” (Exhs. 2 and 3).
- Exhibiting anger and discourtesy towards Plaintiffs, including refusing to acknowledge their questions and cutting them off from speaking. (Exhs. 2 and 3).

Each of these actions indicates clear actual bias. First, Defendant Piacentini's pecuniary interest in the outcome of the constitutional questions raised by the Plaintiffs—and in the overarching question of whether he would consider these constitutional questions at all—create a probability of actual bias that is unconstitutionally high:

In pursuit of this end [preventing even the probability of unfairness], various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome

Withrow, 421 U.S. at 47 (citing *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Tumey*, 273 U.S. 510; *Commonwealth Coatings Corp. v. Continental Cas. Co.*, 393 U.S. 145 (1968)). Defendant Piacentini has a monetary incentive to schedule the reorganization of the Temple as soon as possible and, even more importantly, ignore any constitutional arguments that might delay payment of his fees. Instead of a process in which religious questions such as “who is a Hindu?” are deliberated over by those who believe in the religion, Defendant Piacentini has created a process in which he will decide such questions of faith himself – it is the quickest way to end his role in this lawsuit, and to collect his fees. (Exhs. 2 and 16).

Second, Defendant Piacentini has demonstrated his actual bias by threatening the Plaintiffs that he will use the deciding vote on the Managing Committee he awarded himself against the Plaintiffs unless they cooperate. (Exh. 2). The nature of this cooperation becomes clear from the letter Defendant Piacentini sent to the State Court Action respondents, in which he in essence offered to change the process he had set up if the State Court Action respondents would stop pursuing their appeal of the constitutional

issues to the Appellate Division. (Exh. 23) Once the State Court Action respondents made it clear that they were open to cooperation but still felt the process imposed on them was unconstitutional, Defendant Piacentini decided that there was no “meeting of the minds” and issued further directives detrimental to the Plaintiffs’ constitutional rights. (Exhs. 2 and 24).

Third, Defendant Piacentini has shown that he is prejudiced against the Plaintiffs by denying them counsel at, and the ability to create a record of, Managing Committee meetings.²¹ Why would a decisionmaker would deny a litigant these procedural safeguards—all at that litigant’s cost—unless he feels that there will be something such as actual bias to hide?²² Defendant Piacentini’s behavior is a textbook case of actual bias: a decisionmaker is using his power over the process to punish litigants for asserting their rights in another forum. Defendant Piacentini is clearly biased against the Plaintiffs, depriving them of their right to procedural due process.

Defendant Golia has also taken numerous actions that demonstrate his actual bias against the Plaintiffs:

- Issuing an order to show cause why the respondents in the State Court Action, including the Trustee Plaintiffs, should not be held in criminal²³ contempt, even though the Plaintiffs have complied with all of Defendant Golia’s orders and all of Defendant Piacentini’s directives (despite their unconstitutionality) precisely

²¹ Besides demonstrating actual bias, these measures are themselves violations of the right to procedural due process. *See infra*.

²² Indeed, the lack of rulings on the record makes it more difficult for Plaintiffs to raise their constitutional claims before the Appellate Division, this Court and other fora, because there is less documentary evidence available.

²³ The Order to Show Cause reads “the purpose of this hearing is to punish the individual respondents” (Exh. 25, p.1) (emphasis added). Civil contempt proceedings are nonpunitive and remedial. *See International Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994). Criminal sanctions like those under consideration by Defendant Golia are “entitled to full criminal process.” *Id.* at 833. The summary hearing ordered by Defendant Golia, which holds the prospect of an unconstitutional jailing of the Trustee Plaintiffs for indirect contempts (*i.e.*, contempts occurring outside the presence of the court), is therefore itself an unconstitutional threat to use the contempt power to stop the Plaintiffs from appealing or otherwise contesting the process. *Id.*

because they fear the effects on the Temple's religious polity if they, as the spiritual leaders of the Temple, are held in contempt. (Exh. 25).

- Threatening sanctions against counsel for the State Court Action respondents for arguing that Defendant Piacentini had misinterpreted Defendant Golia's dicta regarding Plaintiffs' First Amendment argument. (Exh. 22).
- Threatening to refer the State Court Action respondents to the District Attorney for investigation of their financial dealings. (Exh. 21).²⁴
- Requiring the State Court Action respondents to pay, without notice or hearing on the matter, for the defense of the Temple against the petition because the Board was found "to be improperly constituted and therefore necessitated this proceeding[.]"²⁵ (Exh. 21).
- Concluding, apparently on the basis of the parties and Defendant Piacentini's written submissions only,²⁶ that (a) the State Court Action respondents have engaged in a "clear attempt to 'bait' the Court and its appointed referee" (Exh. 22); (b) the "posture of the respondents" is "obstructionist" (Exh. 22); (c) the State Court Action respondents have made their constitutional and other arguments to Defendant Piacentini, Defendant Golia, and the Appellate Division "for the sole purpose of delaying compliance" (Exh. 22); (d) the State Court Action respondents have a "clear intent to avoid complying with the lawful mandates of this Court as well as those of the Appellate Division" (Exh. 21); (e) there is no list of voting members for the Temple because of "the extreme hubris of the existing board" (Exh. 21); (f) the Board of Trustees is an obstructionist "oligarchy"; and (g) the fact that the State Court Action respondents, including the Trustee Plaintiffs, asked the Defendant Golia to reject Defendant Piacentini's interim report "creates the impression that the respondents have more at stake than the merits of their case" (Exh. 21). Defendant Golia has no evidence before him on which to base any of these assertions about the Plaintiffs' intent, so they must be based on either *ex parte* discussions or other

²⁴ The Attorney General, who has responsibility under New York law for ensuring that religious and non-profit corporations do not engage in improper financial dealings, several years ago responded to the State Court Action petitioners' request to investigate the Temple and found nothing improper. If this Court feels it is relevant to the constitutional issues in this lawsuit, Plaintiffs can file all of their financial records with the Court. Plaintiffs have nothing to hide.

²⁵ This despite the fact that, even under the Defendants' erroneous interpretation of the RCL, the Board must act as caretakers for the Temple and the Temple is still a respondent in the State Court Action.

²⁶ Defendant Golia has been in the presence of counsel for the State Court Action respondents, William Burke, exactly once, and for a total of five minutes. (Exh. 4). Therefore Defendant Golia appears to be reaching his conclusions as to the intent and purpose of the State Court Action respondents' "repeated applications" to Defendant Golia and the Appellate Division for vindication of their constitutional rights on the submissions of the parties and Defendant Piacentini alone. This factor alone tends to show bias. Another possibility is that there have been *ex parte* or other uncontestable off-the-record communications between Defendant Golia and the other Defendants on which he is basing his conclusions as to the State Court Action respondents' intentions.

evidence not in the record, or irrational bias. In either case, they are procedurally infirm conclusions.

What all of these actions – the threats, the costs assessed without notice or hearing, the completely unfounded conclusions, the hostile and pejorative language directed towards the Plaintiffs – indicate is that Defendant Golia is biased against the Plaintiffs. Defendant Golia is no longer the “neutral and detached judge in the first instance” required by due process, but a judge whose control over procedure and the contempt power has ““summon[ed] forth . . . the prospect of the most tyrannical licentiousness[.]”” *Hamdi*, 124 S.Ct. at 2648 (quoting *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 617 (1993)) (internal quotation marks omitted); *Bagwell*, 512 U.S. at 831 (quoting *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 822 (1987) (Scalia, J., concurring in judgment)) (internal quotation marks omitted). The appearance of bias created by the text of Defendant Golia’s orders is alone sufficient to create a procedural due process violation. When those orders are taken in context, it is doubly clear that Plaintiffs have a substantial likelihood of proving that their right to procedural due process has been and will continue to be transgressed by Defendant Golia.

3. *Defendants’ holding of secret hearings – where counsel and a record are forbidden - violates the Due Process Clause*

Defendants Piacentini and Golia have held secret hearings at which the Plaintiffs were forbidden to bring counsel or to record the proceedings. (Exh. 4). Defendants Piacentini and Golia enforced these constitutional wrongs using the threat of contempt. Yet counsel is of crucial importance when fundamental liberty interests are at stake:

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.” We do not say that counsel must be provided at

the [welfare benefits] pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires. Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient. We do not anticipate that this assistance will unduly prolong or otherwise encumber the hearing.

Goldberg, 397 U.S. at 270-71 (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)).

In *Goldberg*, the interest at stake were welfare benefits – a property interest. In this case, the Defendants have decided, and have said that they will continue to decide, basic issues of freedom of religion and freedom of speech at meetings of the “Management Committee” where counsel are not allowed to attend. (Exh. 4). Plaintiffs must be given the benefit of counsel. Likewise, a record of the proceedings is essential process because it allows Plaintiffs to contest the proceedings and makes public the reasons for the Defendants’ decisions. *See, e.g., Goldberg*, 397 U.S. at 271.

For the foregoing reasons, it is clear that Defendants Golia and Piacentini have deprived and continue to deprive the Plaintiffs of basic procedural due process rights. They have shown a substantial likelihood of success on their state and federal due process claims against Defendants.

G. Defendants Have Conspired Together to Deprive the Temple of These Constitutional Rights in Violation of 42 U.S.C. § 1985(3).

Defendants’ actions also constitute a conspiracy under 42 U.S.C. § 1985(3) to deprive them of the equal protection of the laws. Title 42, Section 1985(3) provides that:

If two or more persons in any State or Territory conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; ... the party so injured or deprived may have an action for the recovery of damages

occasioned by such injury or deprivation, against any one or more of the conspirators.

Id. Here, because (1) the Defendants’ animus²⁷ towards Plaintiffs—as Hindus that believe that Hindu temples should be hierarchical and not democratic—lay “behind the conspirators’ action, and (2) ... the conspiracy ‘aimed at interfering with rights’ that are ‘protected against private, as well as official, encroachment,’” Plaintiffs have a substantial likelihood of success on their § 1985(3) claim against Defendants. *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 268 (1993) (citing *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Carpenters v. Scott*, 463 U.S. 825, 833 (1983)). “Proof that the [Defendants’]’ impetus was the [Plaintiffs’] religion suffices” to show the animus. *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 426-27 (2d Cir. 1995) (citing *Jews for Jesus, Inc. v. Jewish Community Relations Council of New York, Inc.*, 968 F.2d 286, 291 (2d Cir.1992); *Colombrito v. Kelly*, 764 F.2d 122, 130-31 (2d Cir.1985) *Taylor v. Gilmartin*, 686 F.2d 1346, 1356-58 (10th Cir. 1982); *Ward v. Connor*, 657 F.2d 45, 48 (4th Cir.1981)).

The conspiracy here is not a secret—all of the co-conspirators openly claim to want to remove what they view as an “illegitimate” and “dictatorial” Board of Trustees and replace it with one that believes in a democratic form of the Hindu religion. In fact counsel for the Insurgent Defendants has stated to the press that “the court was merely trying to ensure that the temple is managed in a democratic way.” Robert F. Worth, *Hindu Temple to Challenge State Judge on Religious Grounds*, N.Y. TIMES, August 4,

²⁷ Indeed, as set forth above, the vitriol has been unrelenting. Defendants have variously called Plaintiffs an “oligarchy,” a “dictatorship,” and “obstructionists,” filled with “extreme hubris,” interested only in preserving their “Sun King” positions. All of these epithets are directed at the Plaintiffs’ beliefs in a hierarchical Temple. Unfortunately, like many other unpopular groups of believers, Plaintiffs are now the victims of religious animus from those who are nominally their co-religionists.

2004. Because “[a] conspiracy, for these purposes, need not be shown by proof of an explicit agreement but can be established by showing that the “parties have a tacit understanding to carry out the prohibited conduct[,]” the Defendants’ stated intent to remove the Board of Trustees as the ecclesiastical and temporal power of the Temple suffices to show the “tacit understanding.” *LeBlanc-Sternberg*, 67 F.3d at 427 (citing *United States v. Rubin*, 844 F.2d 979, 984 (2d Cir.1988); *United States v. Wardy*, 777 F.2d 101, 107 (2d Cir.1985); *Snell v. Tunnell*, 920 F.2d 673, 702 (10th Cir. 1990)). Finally, a “claim under § 1985(3) may be established against a state if ‘it is proved that the State is involved in the conspiracy or that the aim of the conspiracy is to influence the activity of the State[.]’” *Id.* (quoting *United Brotherhood of Carpenters & Joiners of America, Local 610, v. Scott*, 463 U.S. 825, 830 (1983)). Here it goes without saying that the State of New York is involved in the conspiracy.

H. The New York Religious Corporations Law Is Facially Unconstitutional Because It Discriminates Among “Pre-Approved” and “Other” Religious Groups And Because It Acts As A Prior Restraint On Associational Expression

The RCL is a facially invalid statute because “it is unconstitutional in every conceivable application” insofar as it provides denomination-specific legal benefits to certain denominations but not others, and it requires minority faiths that do not enjoy such denomination-specific benefits to distort their religious structures to conform with the remaining available legal categories. *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984). This is because the system of categorization the RCL uses to sort religious groups is itself unconstitutional in two different respects.

First, the RCL violates the Free Exercise Clause and the Equal Protection Clause²⁸ because it makes a distinction between the 30-odd sorts of religious groups, e.g., Roman Catholic, Spiritualist, Baptist, and Coptic Orthodox, and all other religious groups, including Hindu, Muslim, and numerous smaller Christian groups. Each of the “pre-approved” faiths has sections of the RCL that have been custom-tailored to fit its particular form of religious polity. The other groups must make do with the two categories of “Free Churches,” N.Y. RELIG. CORP. LAW §§180-3 and “Other Denominations,” N.Y. RELIG. CORP. LAW §§190-211. The other groups often have problems similar to those that the Temple has had in this litigation because, for example, the “Free Church” category is not custom-tailored for Hindu temples. At the very least, the RCL must be held to be facially unconstitutional with respect to those religious groups that belong to the “Other” category.

Second, the other aspect of the RCL that renders it unconstitutional in every conceivable application is the fact that custom-tailoring can never be done so well that it does not, in Justice Brennan’s phrase, “inhibit[] the free development of religious doctrine” *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. at 370 (Brennan, J., concurring) (quoting *Presbyterian Church v. Hull Church*, 393 U.S. at 449). The problem with creating categories for specific religious bodies is that doctrine, especially about church polity, changes over time. This doctrinal drift will eventually mean that the polity will no longer fit its custom-designed RCL category. The RCL, however, will remain the same, reflecting a former state of affairs that may now be very different or even the opposite to current practice. However, it is safe to say that some

²⁸ It could also be argued that this system violates the Establishment Clause as well because the Pre-Approved religious groups could be seen as an oligopoly of established churches as opposed to the unestablished Others.

drag on doctrine would occur. Justice Brennan in fact predicted this development when, in comparing it to other states’ systems for providing religious groups with legal personality, he said of the RCL: “Such statutes must be carefully drawn to leave control of ecclesiastical policy, as well as doctrine, to church governing bodies.” *Maryland & Va. Churches*, 396 U.S. at 370. In fact, the RCL has been the source of many of the seminal church autonomy cases—*e.g.*, *Kedroff*, *Kreshik*—precisely because it is *sui generis*, and the categories it sets up are not flexible enough to track the multiplicity of ways that the religious spirit can see fit to organize itself.

Since the RCL will never be able to keep up with the “free development of religious doctrine,” it will in every instance burden those developments, thereby violating the Free Exercise Clause. For these reasons, its application to the Hindu Temple Society should be enjoined.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs’ Motion for Preliminary Injunction.

August 5, 2004	Respectfully submitted,
	<p style="text-align: center;">THE BECKET FUND FOR RELIGIOUS LIBERTY</p> <p style="text-align: center;">By: _____ ROBERT L. GREENE (RG5430) ROMAN P. STORZER ERIC C. RASSBACH 1350 Connecticut Avenue, N.W. Suite 605 Washington, D.C. 20036 (202) 955-0095</p>

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that on August __, 2004, copies of the foregoing Notice of Motion, Motion for Preliminary Injunction, and Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, were served upon the person(s) listed below, in the manner indicated.

Robert L. Greene