

1 Timothy C. Travelstead, Esq. (SBN 215260)  
S.D. Narayan, Esq. (SBN 130964)  
2 Scott C. Ku, Esq. (SBN 314970)  
NARAYAN TRAVELSTEAD P.C.  
3 7901 Stoneridge Dr., Suite 230  
Pleasanton, CA 94588  
4 Telephone: (650) 403-0150

**Electronically Filed  
by Superior Court of CA,  
County of Santa Clara,  
on 1/7/2021 2:47 PM  
Reviewed By: Y. Chavez  
Case #20CV372366  
Envelope: 5597151**

5 Attorneys for HINDU AMERICAN FOUNDATION

6  
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 IN AND FOR THE COUNTY OF SANTA CLARA, UNLIMITED JURISDICTION  
9

10 CALIFORNIA DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING, an agency  
11 of the State of California,

12 Plaintiff,

13 vs.

14 CISCO SYSTEMS, INC., a California  
15 Corporation; SUNDAR IYER, an individual;  
16 RAMANA KOMPELLA, an individual.

17 Defendants.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 20CV372366

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF HINDU  
AMERICAN FOUNDATION’S MOTION  
FOR LEAVE TO INTERVENE**

Date:  
Time:  
Dept.:

Date Action Filed: October 16, 2020  
Trial Date: None

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>BACKGROUND .....</b>	<b>2</b>
	<b>A. Hinduism Teaches the Inherent Equal Value of All Persons.....</b>	<b>2</b>
	<b>B. The State of California’s Colonial View of Hinduism is Inaccurate .....</b>	<b>3</b>
	<b>C. This Court is Not the Forum to Define Hinduism .....</b>	<b>3</b>
<b>III.</b>	<b>DISCUSSION .....</b>	<b>4</b>
	<b>A. Mandatory Intervention .....</b>	<b>4</b>
	1. Legal Standards.....	4
	2. Hindu American Foundation Has Significant Protectable Interests - Its Constitutional Rights. ....	5
	a) First Amendment Right to Free Exercise of Religion .....	5
	b) Procedural Due Process Rights.....	6
	3. California’s Action Will Significantly Impair Those Rights.....	8
	4. Existing Parties Are Not Representing the Constitutional Interests of Hindu Americans.....	9
	5. Motion is Timely.....	10
	<b>B. Permissive Intervention.....</b>	<b>10</b>
	1. Legal Standards.....	11
	2. HAF’s Free Exercise Rights Establish Common Legal Questions Sufficient to Support Permissive Intervention.....	11
<b>IV.</b>	<b>CONCLUSION .....</b>	<b>11</b>

**TABLE OF AUTHORITIES**

**Cases**

1

2

3 *Allen v. California Water & Tel. Co.* (1947) 31 Cal.2d 104..... 10

4 *Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078..... 5, 9

5 *Braunfeld v. Brown* (1961) 366 U.S. 599 ..... 5, 8

6 *California v. Tahoe Reg'l Planning Agency* (9th Cir. 1986) 792 F.2d 775 ..... 9

7 *Cantwell v. Connecticut* (1940) 310 U.S. 296 ..... 5

8 *Carlsbad Police Officers Assn. v. City of Carlsbad* (2020) 49 Cal.App.5th 135 ..... 4, 5, 11

9 *Catello v. I.T.T. General Controls* (1984) 152 Cal.App.3d 1009..... 5

10 *Chamness v. Bowen* (9th Cir. 2013) 722 F.3d 1110 ..... 5

11 *County of Orange v. Air California* (9th Cir. 1986) 799 F.2d 535 ..... 10

12 *Donnelly v. Glickman* (9th Cir. 1998) 159 F.3d 405 ..... 5

13 *Espinoza v. Mont. Dep't of Revenue* (2020) \_\_\_ U.S. \_\_\_ ..... 6

14 *FCC v. Fox TV Stations, Inc.* (2012) 567 U.S. 239 ..... 6

15 *Gillette v. United States* (1971) 401 U.S. 437..... 5

16 *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540 ..... 11

17 *League of United Latin Am. Citizens v. Wilson* (9th Cir. 1997) 131 F.3d 1297 ..... 10

18 *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250 ..... 4

19 *Sagebrush Rebellion, Inc. v. Watt* (9th Cir. 1983) 713 F.2d 525..... 5

20 *SEC v. Flight Transportation Corp.* (8th Cir. 1983) 699 F.2d 943 ..... 8

21 *SEC v. Navin* (N.D. Cal. 1995) 166 F.R.D. 435 ..... 8

22 *Serbian E. Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696..... 1

23 *Sherbert v. Verner* (1963) 374 U.S. 398..... 5

24 *Sierra Club v. United States EPA* (9th Cir. 1993) 995 F.2d 1478 ..... 8

25

26

27

28

1	<i>Starks v. Vortex Indus., Inc.starks</i> (2020) 53 Cal.App.5th 1113 .....	10
2	<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> (2017) 582 U.S. ____ .....	6
3	<i>United States v. City of Los Angeles</i> (9th Cir. 2002) 288 F.3d 391 .....	9
4	<i>United States v. Williams</i> (2008) 553 U. S. 285 .....	6
5		
6	<b><u>Statutes</u></b>	
7	California Civil Code § 51 .....	7
8	California Government Code § 11135 .....	7
9	California Government Code § 12940 .....	7
10	Code of Civil Procedure § 387.....	4, 10, 11
11		
12	<b><u>Constitutional Provisions</u></b>	
13	U.S. Constitution, 1st Amendment .....	5
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. INTRODUCTION**

The Hindu American Foundation (HAF), the largest and most respected Hindu educational and advocacy association in North America, moves to intervene in this action to protect the religious freedoms of Hindu Americans, and all Americans of faith, from the unconstitutional efforts of the State of California to decide the scope and nature of Hindu religious teachings and practices. The California Department of Fair Employment and Housing (DFEH) bases its case against Cisco Systems, Inc. on its assertion that the caste system is “a strict Hindu social and religious hierarchy,” and therefore an integral part of Hindu teachings and practices.

HAF’s position in this dispute is clear — a caste system is in no way a legitimate part of Hindu beliefs, teachings or practices. HAF vehemently opposes all types of caste-based discrimination; and takes great exception to the State of California defaming and demeaning all of Hinduism by attempting to connect a caste system to the Hindu religion. Worse, California has not simply stated that the caste system is an inherent part of Hinduism, it has filed a lawsuit that depends on that assertion to be a legally-accepted fact in order to establish its claim; it is axiomatic that a practice unconnected to religion cannot serve as the basis for a religious-discrimination claim. Therefore, California is asserting, for its religious discrimination claim to survive, that caste-discrimination is an inherent part of Hinduism. In doing so, California ventures into territory the First Amendment expressly prohibits.

California does what the First Amendment says it cannot, assert a government right to resolve questions of religious doctrine. Preventing the government from establishing religious doctrines or interfering with religious practices is as old a principle as the Republic itself. As American courts have recognized since the earliest days of our Constitution, those principles require a clear and unambiguous prohibition on any “civil determination of religious doctrine.” (*Serbian E. Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 708-09, 96 S. Ct. 2372, 2380.) For that reason, HAF does not seek to intervene in this litigation to hold a debate with California or the Court over what does or does not constitute Hinduism or Hindu belief, because the First Amendment bars California and this Court from having that debate.

1 The wisdom of that principle is reinforced by the complete lack of any objective  
2 evidence, law or context in the State of California’s assertion. Caste has no legal, social, or  
3 cultural definition in the United States, and is not an observable or objectively determinable trait  
4 or characteristic. The State of California has not provided any definition or workable method to  
5 determine anyone’s caste other than its assumption that Hindus of South Asian decent must  
6 identify as part of a specific caste and must ascribe to a religious and social hierarchy and engage  
7 in discrimination based on caste as an “inherent” part of their religious beliefs and practices.

8 As a result, the State of California’s attempt to violate the First Amendment rights of all  
9 Hindu-Americans also leads to a violation of their due process rights and would likely lead  
10 employers to actively discriminate against Hindu and South Asian Americans in order to avoid  
11 the undefined maze of legal uncertainty that would be California’s caste-discrimination bar.  
12 Hindus would effectively lose their due process rights by a state government wrongly labeling  
13 part of their religion as inherently illegal and discriminatory, regardless of the actual tenets of  
14 Hinduism and regardless of the evidence or facts of a particular case.

15 Stopping caste-based discrimination is a worthy goal that directly furthers Hinduism’s  
16 belief in the equality of the divine essence of all people. But wrongly tying Hindu beliefs to the  
17 abhorrent practice of caste-discrimination undermines that goal, violates the First Amendment  
18 rights of all Hindu-Americans, and can only lead to a denial of due process to Americans based  
19 on their religious affiliation.

20 The Hindu American Foundation intervenes in this case to protect Hindu-Americans  
21 from California’s effort to unconstitutionally undermine its member’s religion by attempting to  
22 define Hindu beliefs.

## 22 **II. BACKGROUND**

### 23 **A. Hinduism Teaches the Inherent Equal Value of All Persons.**

24 As the world’s oldest religion, with over 1.2 billion adherents, Hinduism represents a  
25 broad, pluralistic family of traditions. Its diversity is bound together by certain ancient, core  
26 teachings, not a single spiritual leader or book.

27 The core of Hinduism lies in its belief that the divine is equally present in all, and that  
28 this divinity is reflected in: the ultimate, eternal, omnipresent reality; the immortal, individual

1 soul; and reincarnation. That divinity leads Hindus to understand the purpose of human life as a  
2 quest for: (i) goodness or societal well-being (Dharma); (ii) material prosperity and security  
3 (Artha); (iii) mental and physical happiness (Kama); and (iv) wholeness or spiritual freedom  
4 (Moksha).

5 As a result of this shared divinity, Hinduism asserts a moral obligation (Dharma) to  
6 ensure that one's thoughts, words, and actions (Karma) uphold values like truth, non-injury,  
7 compassion, equanimity, generosity, and equal regard in order to honor the divine in all.  
8 Developed over millennia through the meditations, experiences, and faith of its sages, teachers,  
9 lay leaders, and practitioners, Hinduism represents a broad and diverse faith, with each of the  
10 over 1.2 billion Hindus experiencing its wisdom based on their own understanding of its  
11 precepts.

12 **B. The State of California's Colonial View of Hinduism is Inaccurate**

13 California's claims about Hinduism stem not from this deep and diverse history in the  
14 precept of the equal and divine value of all, but rather in the misinformed and misrepresentative  
15 assertions about Hinduism by Western European colonial occupation. Looking for tools to  
16 control the indigenous population that greatly outnumbered it, British colonial occupation  
17 defined Hinduism not based on the Hindu peoples' own understandings of Hinduism's precepts  
18 and practices, but rather on the British's own 18th and 19th century belief in their superiority  
19 over non-white, non-Christian peoples outside of Europe. British colonial government latched  
20 onto existing non-uniform, highly localized social and cultural divisions within India to devise a  
21 four-fold pan-Indian caste system to use to control the occupied. The caste system as defined by  
22 the State of California is merely a reflection of this British-created administrative tool and the  
23 scientific racism that was in vogue at the time. It is not based on any common understanding  
24 among Hindus of their own beliefs and traditions.

25 **C. This Court is Not the Forum to Define Hinduism**

26 Regardless of the source of the State of California's misunderstandings about Hindu  
27 beliefs and practices, this Court and this case are not the forums for that debate. Just as Catholics  
28 are free to define Catholicism and Muslims are free to define Islam, it is for Hindus alone to

1 define Hinduism, and the State of California cannot, as it seeks to here, adopt a legal definition  
2 of Hinduism that incorrectly includes caste, a caste system and caste-based discrimination. The  
3 State of California is attempting to define Hinduism against the beliefs of an overwhelming  
4 number of its own adherents, in direct violation of the constitutional right to the free exercise of  
5 religion. It is attempting to chain Hinduism to a discriminatory practice abhorred by and rejected  
6 by the vast majority of Hindu Americans.

7 And in doing so, the State of California is violating the First Amendment and due process  
8 rights of all Hindu Americans.

### 9 **III. DISCUSSION**

10 HAF moves to intervene in this action to protect the religious freedoms of Hindu  
11 Americans, and all Americans of faith, from the unconstitutional efforts of the State of California  
12 to decide the scope and nature of Hindu religious teachings and practices. HAF may intervene as  
13 a matter of right because the disposition of this action not only impedes its interest, but also  
14 impedes the interests of all Hindu Americans, to freely exercise Hinduism, guaranteed by the  
15 First Amendment in addition to their procedural due process. California's action will  
16 significantly impair those rights. And no existing parties can appropriately represent HAF's  
17 interests here. Attached to this motion is a copy of HAF's proposed Complaint in Intervention.  
18 (Declaration of Hindu American Foundation, "HAF Decl.," ¶ 3, Exh. 1.)

#### 19 **A. Mandatory Intervention**

##### 20 **1. *Legal Standards***

21 A nonparty to a lawsuit may intervene as a matter of right where "[a] provision of law  
22 confers an unconditional right to intervene" or where "the disposition of the action may impair or  
23 impede that person's ability to protect" its interest raised by the action. (Code Civ Proc. § 387  
24 subd. (d)(1); see also *Carlsbad Police Officers Assn. v. City of Carlsbad* (2020) 49 Cal.App.5th  
25 135, 148 ("*Carlsbad*"); *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202  
26 Cal.App.4th 1250, 1269.) Where intervention is granted, "[t]he intervener becomes a party to  
27 the action, with all of the same procedural rights and remedies of the original parties." (*Carlsbad*,  
28 *supra*, 49 Cal.App.5th at 148-149; quoting *Catello v. I.T.T. General Controls* (1984) 152



1 Cal.App.3d 1009, 1013–1014.) California’s standards for mandatory intervention mirror the  
2 federal rules on mandatory intervention, and California courts “may look to authorities  
3 construing the parallel federal rule for guidance.” (*Carlsbad, supra* 49 Cal.App.5th at 151.)

4 To establish the right to intervene in the absence of express statutory authority to do so, a  
5 nonparty must show: “(1) it has a significant protectable interest relating to the property or  
6 transaction that is the subject of the action; (2) the disposition of the action may, as a practical  
7 matter, impair or impede the applicant’s ability to protect its interest; (3) the application is  
8 timely; and (4) the existing parties may not adequately represent the applicant’s interest.  
9 (*Chamness v. Bowen* (9th Cir. 2013) 722 F.3d 1110, 1121; *Sagebrush Rebellion, Inc. v. Watt* (9th  
10 Cir. 1983) 713 F.2d 525, 527.)

11 A motion to intervene “traditionally receives liberal construction in favor of applicants  
12 for intervention.” (*Arakaki v. Cayetano* (9th Cir. 2003) 324 F.3d 1078, 1083; citing *Donnelly v.*  
13 *Glickman* (9th Cir. 1998) 159 F.3d 405, 409.) Courts are guided primarily by practical and  
14 equitable considerations. (*Id.*)

15 **2. *Hindu American Foundation Has Significant Protectable Interests -***  
16 ***Its Constitutional Rights.***

17 a) First Amendment Right to Free Exercise of Religion

18 “Congress shall make no law respecting an establishment of religion, or prohibiting the  
19 free exercise thereof.” (U.S. Const., 1st Amend.) “To be sure, the Free Exercise Clause bars  
20 ‘governmental regulation of religious *beliefs*.’” (*Gillette v. United States* (1971) 401 U.S. 437,  
21 462, 91 S. Ct. 828, 842; quoting *Sherbert v. Verner* (1963) 374 U.S. 398, 402.) “If the purpose or  
22 effect of a law is to impede the observance of one or all religions or is to discriminate invidiously  
23 between religions, that law is constitutionally invalid even though the burden may be  
24 characterized as being only indirect.” (*Braunfeld v. Brown* (1961) 366 U.S. 599, 607 (opinion of  
25 Warren, C. J.); quoted in *Sherbert, supra*, 374 U.S. at 402.) Neither federal nor state  
26 governments can interfere with Americans’ free-exercise rights. (*Cantwell v. Connecticut* (1940)  
27 310 U.S. 296.)

28 California’s Complaint directly violates these principles by seeking a legal conclusion  
that caste and a caste system are inherent to Hindu teachings and practice, and its usage

1 presumptively discriminatory. In the Complaint the Department of Fair Employment and  
2 Housing expressly claims that the caste system is “a strict Hindu social and religious hierarchy.”  
3 (Complaint ¶ 1, p. 2.) The Complaint clearly asserts, and bases its claims, that the caste system is  
4 a Hindu “religious” hierarchy.

5 Laws violate the Free-Exercise Clause of the First Amendment when they “impose  
6 special disabilities on the basis of religious status.” (*Espinoza v. Mont. Dep’t of Revenue* (2020)  
7 \_\_\_ U.S. \_\_\_ [140 S.Ct. 2246, 2254-2255, 207 L.Ed.2d 679, 689-690]; citing *Trinity Lutheran*  
8 *Church of Columbia, Inc. v. Comer* (2017) 582 U.S. \_\_\_ [137 S.Ct. 2012, 2016, 198 L.Ed.2d 551,  
9 555]; see also *Cantwell v. Connecticut* (1940) 310 U. S. 296, 303.)

10 Here, California seeks to do exactly what the Supreme Court has barred, imposing a  
11 special disability on an entire religion by wrongly defining its beliefs and then labeling those  
12 beliefs as inherently and illegally discriminatory. In fact, just the opposite is true. As HAF has  
13 consistently maintained, the idea of a social and religious hierarchy or a caste system is  
14 antagonistic to Hindu teachings; every person’s divine essence is entitled to equal dignity, worth  
15 and respect.

16 But HAF does not seek to intervene in this litigation to hold a debate with California or  
17 the Court over what does or does not constitute Hinduism or Hindu belief, because the First  
18 Amendment precludes either from taking a position on such a question. Under the Constitution,  
19 defining the Hindu religion is a right reserved for Hindus, not the State of California.  
20 California’s attempt to define the Hindu religion in violation of that right is what is at issue in  
21 this case and shows HAF has significant protectable interest in this litigation. (HAF Decl., ¶¶ 2,  
22 4.)

23 b) Procedural Due Process Rights

24 “A fundamental principle in our legal system is that laws which regulate persons or  
25 entities must give fair notice of conduct that is forbidden or required.” (*FCC v. Fox TV Stations,*  
26 *Inc.* (2012) 567 U.S. 239, 253.) A statute or regulation violates procedural due-process rights  
27 where it “is so standardless that it authorizes or encourages seriously discriminatory  
28 enforcement.” (*United States v. Williams* (2008) 553 U. S. 285, 304.) A law qualifies as

1 unconstitutionally vague not because it is difficult to prove, but where “it is unclear as to what  
2 fact must be proved.” (*Id.*, at 306.).

3       Indeed, the State of California’s position is so standardless that it would actually require  
4 the very discrimination that it seeks to ban. FEHA requires employers to accommodate religious  
5 beliefs. (Gov. Code § 12940 subd. (l) (1).) California wants to establish, as a legally-binding  
6 principle of law, that caste discrimination is a religious belief under Hinduism. Must an employer  
7 then accommodate requests for caste discrimination from employees as a religious  
8 accommodation?

9       California would doubtless answer no, because FEHA states that employers are not  
10 required to accommodate religious beliefs “under this subdivision if it would result in a violation  
11 of this part or any other law prohibiting discrimination or protecting civil rights.” (Gov. Code §  
12 12940 subd. (l)(3).)

13       But caste discrimination is not barred by any part of any other California law or  
14 regulation. The Fair Employment and Housing Act prohibits discrimination based on: “race,  
15 religious creed, color, national origin, ancestry, physical disability, mental disability, medical  
16 condition, genetic information, marital status, sex, gender, gender identity, gender expression,  
17 age, sexual orientation, or military and veteran status.” (Gov. Code § 12940 subd. (a).) Similar  
18 categories are listed in California’s other civil rights statutes. (See Gov. Code §§ 11135, 12940;  
19 Civ. Code § 51.) Nowhere does FEHA, its regulations, or any other provision of California law  
20 bar caste discrimination.

21       In seeking to declare caste an inherent part of Hindu beliefs, employers would be  
22 required to accommodate an employee’s request not to work with someone the employee  
23 believes to be of the “wrong” caste. An employer would have to accommodate an employee’s  
24 request not to be supervised by, or to supervise, persons perceived to be of the wrong caste, even  
25 where no other employee identifies with that or any caste or has any personal belief in the caste  
26 system. California would actually require employers to engage in the very discrimination that it  
27 seeks to prevent.

28       In fact, the only consistent factor the DFEH seeks to identify with caste is that it is an  
inherent part of Hinduism. That this “authorizes or encourages seriously discriminatory

1 enforcement” against Hindus and Americans of South Asian descent is self-evident. Without any  
2 context outside of its asserted connection to Hinduism, the DFEH has provided no meaning or  
3 definition of caste and would set up a legal structure that actually requires the discrimination it  
4 seeks to prevent.

5 **3. California’s Action Will Significantly Impair Those Rights**

6 It is self-evident that California’s attempts to define Hinduism will significantly impair  
7 the free-exercise and due-process rights of HAF and of all Hindu Americans. (HAF Decl., ¶ 5.)  
8 A protectable interest is significantly impaired, for intervention purposes, where “[a] judicial  
9 decision that would ‘as a practical matter’ foreclose the would-be intervenor’s interest.” (*SEC v.*  
10 *Navin* (N.D. Cal. 1995) 166 F.R.D. 435, 440; citing *Sierra Club v. United States EPA* (9th Cir.  
11 1993) 995 F.2d 1478, 1486; *SEC v. Flight Transportation Corp.* (8th Cir. 1983) 699 F.2d 943,  
12 948.)

13 California asks this Court to define Hinduism as a religion that believes in caste, a caste-  
14 based system, and caste-based discrimination as a matter of law. California asks this Court to  
15 hold that caste-based discrimination is a Hindu practice, and that Hindu religious beliefs and  
16 practices should legally be associated with inequality, bigotry, and discrimination.

17 This would do expressly what the U.S. Supreme Court says the First Amendment  
18 prohibits. It would use the Fair Employment and Housing Act “to discriminate invidiously  
19 between religions, . . . even though the burden may be characterized as being only indirect.”  
20 (*Braunfeld v. Brown* (1960) 366 U.S. 599, 607 (opinion of Warren, C. J.)) Worse, it would  
21 discriminate against Hinduism by ruling that it stands for a proposition the overwhelming  
22 majority of its adherents believe it actually abhors and expressly condemns, in direct violation of  
23 free-exercise rights of Hindu Americans.

24 Characterizing caste-based discrimination as a religious practice would defame  
25 Hinduism, categorize it as an inherently discriminatory religion based on a government decree  
26 about what constitutes Hindu beliefs. It would require employers to engage in caste-based  
27 discrimination in the name of accommodating religious beliefs that are not part of Hinduism.  
28 And it would lead to the widespread discrimination against hiring Hindu and South-Asian

1 Americans, as employers simply avoid the legally contradictory quagmire that the DFEH's  
2 assertions would put them in.

3 **4. Existing Parties Are Not Representing the Constitutional Interests of Hindu**  
4 **Americans**

5 No parties can appropriately represent HAF's interests here. (HAF Decl., ¶¶ 6-7.) The  
6 Court relies on three factors when considering whether an intervenor's interests are already  
7 adequately represented in the case: "(1) whether the interest of a present party is such that it will  
8 undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is  
9 capable and willing to make such arguments; and (3) whether a proposed intervenor would offer  
10 any necessary elements to the proceeding that other parties would neglect." (*Arakaki v. Cayetano*  
11 (9th Cir. 2003) 324 F.3d 1078, 1086; see also *California v. Tahoe Reg'l Planning Agency* (9th  
12 Cir. 1986) 792 F.2d 775, 778.)

13 None of the existing parties are in a position to assert HAF's arguments here, because the  
14 DFEH position is antagonistic to HAF's, and none have standing to assert its arguments, or the  
15 incentive to do so. (HAF Decl., ¶ 6.) As a governmental entity antagonistic to HAF and its  
16 constituents' rights, the DFEH cannot adequately represent HAF's interests here. (*United States*  
17 *v. City of Los Angeles* (9th Cir. 2002) 288 F.3d 391, 401-402.) The DFEH is seeking to legally  
18 define the beliefs and practices of Hinduism, in direct violation of the First Amendment. It  
19 cannot adequately represent the interests it is seeking to violate.

20 Nor can the other parties. Cisco is not a religious institution or entity, and none of the  
21 other defendants have the position or authority to represent the broad Hindu American  
22 community. (HAF Decl., ¶ 6.) As such, none of the parties have an interest or have standing to  
23 protect against the harm California is attempting to inflict here, to violate the free exercise rights  
24 of Hindu Americans. None of the parties have interests aligned with those of Hindu Americans.

25 Cisco's interest is to defend the claim that its supervisors violated the Fair Employment  
26 and Housing Act. Because they are not a religious entity, they cannot do so by invoking religious  
27 freedoms under the U.S. Constitution. While they may have a motive to argue that caste-based  
28 discrimination is not protected under law, they have no incentive or standing to assert the First  
Amendment or due process rights of Hindu Americans.

1 The individual defendants likewise cannot represent those interests. Neither have the  
2 position, authority or role to represent the broad, Hindu American community. Rather, their  
3 incentive is focused on arguing that caste-based discrimination is not identified as a protected  
4 characteristic under law.

5 Without HAF's intervention on the religious-freedom question, the State of California  
6 will be effectively unopposed in its efforts to violate the religious freedoms of Hindu Americans.  
7 (HAF Decl., ¶ 7.)

8 **5. Motion is Timely**

9 HAF's motion is timely. To determine whether a motion is timely, the Court looks to  
10 three factors "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the  
11 prejudice to other parties; and (3) the reason for and length of the delay." (*Starks v. Vortex*  
12 *Indus., Inc.* (2020) 53 Cal.App.5th 1113, 1126; *League of United Latin Am. Citizens v.*  
13 *Wilson* (9th Cir. 1997) 131 F.3d 1297, 1302; quoting *County of Orange v. Air California* (9th  
14 Cir. 1986) 799 F.2d 535, 537; *Allen v. California Water & Tel. Co.* (1947) 31 Cal.2d 104  
[permits intervention at any time before trial].)

15 The case is in its early stages, all parties have not yet appeared in the matter, and the  
16 initial Case Management Conference has not yet taken place. There will be no prejudice to the  
17 other parties as a result of this intervention because the litigation is still in a preliminary stage.  
18 This motion was filed with minimal delay as soon as the case became known to HAF.

19 Because the standards for mandatory intervention have been satisfied here, and because  
20 HAF has a significant constitutional interest in preventing California from violating its free  
21 exercise rights, HAF respectfully asks the Court to grant its Motion for mandatory intervention.

22 **B. Permissive Intervention**

23 Alternatively, HAF asks the Court to permit it to intervene permissively under Code of  
24 Civil Procedure section 387 subdivision (d)(2). HAF's interest in protecting its and its  
25 constituents' free exercise rights shares common questions of law and fact with the claims  
26 asserted by California. California's claim that the caste system is a "social and religious Hindu  
27 hierarchy" requires a finding by the Court that the caste system is a Hindu belief and practice.  
28 HAF's claim is that California's very attempt to assert that position violates Hindu Americans'

1 First Amendment Rights. Because of the shared legal questions involved, HAF asks the Court, in  
2 its discretion, to permit intervention here.

3 **1. Legal Standards**

4 Under Section 387 subdivision (d)(2), a party may be permitted to intervene, in the sound  
5 discretion of the Court, when the intervenor “is so situated that the disposition of the action may  
6 impair or impede that person’s ability to protect that interest, unless that person’s interest is  
7 adequately represented by one or more of the existing parties.” (Code Civ. Proc. § 387 subd.  
8 (d)(2); *Carlsbad, supra*, 49 Cal.App.5th at 148.) Permissive intervention is analyzed based on  
9 whether the case would, “as a practical matter impair or impede [the interveners’] ability to  
10 protect” its interest.” (*Carlsbad, supra*, 49 Cal.App.5th at 149; quoting *Hodge v. Kirkpatrick*  
11 *Development, Inc.* (2005) 130 Cal.App.4th 540, 554.)

12 **2. HAF’s Free Exercise Rights Establish Common Legal Questions Sufficient to**  
13 **Support Permissive Intervention**

14 California asserts that caste-based discrimination is a violation of the Fair Employment  
15 and Housing Act’s prohibition against discrimination on the basis of religion, race, ancestry,  
16 ethnic origin, and skin color. HAF asserts that the DFEH characterizing the caste system and  
17 caste discrimination as Hindu beliefs and practices violates the First Amendment rights of Hindu  
18 Americans. The positions, therefore present a clear and common question for the Court — does  
19 it violate the Free Exercise Clause of the First Amendment for the State of California to base a  
20 religious discrimination claim on what it asserts are the “inherent” precepts and practices of the  
21 Hindu religion, in spite of the core tenets of that very religion itself.

22 **IV. CONCLUSION**

23 Through this lawsuit, the State of California is attempting to establish, as a matter of law,  
24 the precepts and practices of Hinduism. The First and Fourteenth Amendments prevent  
25 California from doing so. Indeed, the attempt would actually end up requiring the very  
26 discrimination that the State seeks to prevent. For if it considers caste discrimination to be an  
27 inherent part of Hinduism, against the beliefs and practices of the Hindu religion itself, the Fair  
28 Employment and Housing Act would actually require employers to accommodate employees that  
engage in caste-based discrimination. To stop California from defaming Hinduism, ascribing to it  
an abhorrent practice that is anathema to its own teachings, and actually requiring the very

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

discrimination it seeks to prevent, the Hindu American Foundation respectfully asks the Court to grant its motion to intervene.

Dated: January 7, 2021

NARAYAN TRAVELSTEAD P.C.



---

Timothy C. Travelstead  
S.D. Narayan  
Scott C. Ku  
Attorneys for HINDU AMERICAN  
FOUNDATION