UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 19-CV-62591-BB

EGLISE BAPTISTE BETHANIE DE
FT. LAUDERDALE, INC., a Florida
Not-For-Profit Corporation, BERTHONY
AURELUS, YCHELINDE BRUTUS,
MARIANA BELIZAIRE, JARMUTH CHARLES,
QUESNER CHARLES, ELISENA CHARLOT,
ROSENA CELESTIN, SERAPHIN D'HAITI,
MAX DEMOSTHENE, MARIE DEMOSTHENE,
CLAIRE VALERIE DESTIN, ROSELIE
DOCTEUR, EMMANUEL DUVERNA,
MAX DUBOIS, WISNICK ESTELAN,
MAJORIE ESTELAN, ALINE SUZAN
FRANCOIS, MADELENE PIERRE GEDILUS,
NEREUS GEDILUS, GESLER ILSENAT,
MICHAEL ISEMAR, JEAN ISMAEL, JULIANNA
ISMAEL, BEZANA JEAN-BAPTISTE, GERTHA
JEAN-BAPTISTE, IRMA JEUDY, FLORENCE
JOLY, ERTA JOSEPH, HORAT JOSEPH, JOSETTE
JOSEPH, JULIA LAFRANCE, EPHISELLA MENAR,
GEORGE MENAR, MISELA MERONVIL, ESAIE
MICHEL, GERTHA MICHEL, ROSITA
MILHOMME, NICOLAS MOISE, LUTHANE MOISE,
LOUISE MUNNINGS, EMILE NOEL, FLORENCE
NOEL, ZIUS NOEL, DUMARSAIS PARFAIT,
HERTHA PARFAIT, CLAUDETTE PIERRE,
HERMANIE PIERRE, JEAN LOUIS PIERRELUS,
FENELON PROSPER, BONIFACE PETIT-BEAU,
BARCELOT PETIT-BEAU, LYDIEUNIE PETITBEAU,
VERDELINE PETIT-BEAU, KELDY
DENITA PIERRE, LINES PIERRE, LAVITA
PIERRE, ANEILA PIERRE-LOUIS, FANA RACINE,
MIRLANDE RACINE, JACKSON ROBERSON,
SOLANGE ROBERSON, ALIANE SAINTIL,
LUCKERNE SAINTIL, HERMANTILDE
SAINTIL, MARIE SANTIL, JEAN SOLVILIEN,
MUREGNE ST-LOUIS, ANDY SAINT-REMY,
ACCELINE SAINT-REMY, LEONNE SAINTREMY,
JOSEPH SYLVAIN, BIENNE TANIS,
LUCIA TANIS, ITONY TELUSNORD, MARIE

ANGELET TELUSNORD, DIENIVA THERVIL,
and LUDIE THERVIL,
Plaintiffs,
v.

THE SEMINOLE TRIBE OF FLORIDA and
AIDA AUGUSTE,
Defendants.
_______________________________________/

DEFENDANT AUGUSTE'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Defendant Aida Auguste (hereinafter "Defendant Auguste"), by and through her undersigned counsel, hereby moves this Court to dismiss the First Amended Complaint (DE 21) and the claims asserted against her pursuant to Federal Rule of Civil Procedure 12(b)(6), *with prejudice*. Defendant Auguste's arguments in support of this Motion are fully set forth in the attached Memorandum of Law.

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INTRODUCTION

As referenced below, the heart of this case is an ownership dispute over real and personal property located in Fort Lauderdale, Florida (hereinafter, "the Property"). Plaintiffs Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., a Haitian Baptist Church ("Church"), and Plaintiff Church's purported member, Andy Saint-Remy ("Plaintiff Saint-Remy"), have already filed a civil action against Defendant Auguste which is currently pending in the Circuit Civil Division of the Seventeenth Circuit Court of Broward County, Florida, Case No. CACE-19019270 (hereinafter, "the '270 case").[1] Similar to the '270 case, the instant federal action is based on the purported action(s) of Defendant Auguste in purportedly denying access to the Property (centered around the ownership dispute of the Church). Said another way, Defendant Auguste vehemently disputes any assertion or suggestion in this complaint or any other complaint that Plaintiff Saint-Remy or any other putative member of the Church as the right to bring this action or is otherwise authorized to act on behalf of the Church. That said, Plaintiffs' original complaint alleged claims pursuant to 42 U.S.C. § 1985(3), as well as state law claims for interference with business relationships and trespass. In response to Defendant Auguste's motion to dismiss the initial complaint (DE 10), Plaintiffs amended their complaint to assert only claims under 18 U.S.C. § 248(a)(2) against Defendant Auguste, on behalf of various purported church members who were dispersed from the Property on September 29, 2019.

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1. Defendant Auguste respectfully request this Court take judicial notice of the original complaint and the verified first amended complaint filed in the '270 case, a true and correct copy of which were attached to Defendant Auguste's motion to dismiss the initial complaint (DE 10), and which constitute public records that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201(b)(2); ECF No. 10-1 and 10-2. A court may take judicial notice "at any stage of the proceeding" and must take judicial notice "if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c)–(d). When deciding a motion to dismiss for failure to state a claim, a court may consider judicially noticed matters without converting the motion to one for summary judgment. *See Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) ("[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."); *see also Madura v. BAC Home Loans Servicing L.P.*, 2013 LEXIS 103639, at *13 (M.D. Fla. July 17, 2013) ("the Court accordingly takes judicial notice of the state and federal court documents pursuant to Fed. R. Evid. 201"). Because Plaintiffs incorporated the '270 case in their complaint by reference, this Court must consider it in ruling on this Rule 12(b)(6) motion to dismiss. ECF No. 1, at 4, ¶ 11.

RELEVANT FACTUAL BACKGROUND

On July 26, 2014, the Pastor of the Plaintiff Church—the Rev. Usler Auguste—passed away, leaving behind his wife and fellow church member, Defendant Auguste. *See* ECF No. 21, at 5, ¶ 7; ECF No. 10-2, at 2, ¶ 3. Upon the Pastor's death, disagreement over successive church leadership arose between Defendant Auguste and the Plaintiff Church's Board of Directors. *See* ECF No. 21, at 5, ¶¶ 7–8; ECF No. 10-2, at 2, ¶ 3, at 11, ¶¶ 60–61. All Parties to this action, with the exception of the Seminole Tribe of Florida, are Plaintiff Church members. *See id.* It has been alleged that on September 22, 2019, the Church's congregation met to designate a successor to the late Pastor Auguste and a disagreement ensued among attendees of the meeting. ECF No. 21, at 5, ¶ 8; ECF No. 10-1, at 11, ¶ 60.

Based on the First Amended Complaint (DE 21), Plaintiffs allege that on September 29, 2019, Defendant Auguste "escorted by six (6) armed (with SPD-issued handguns) officers wearing SPD uniforms" arrived at the Property and proceeded to disperse the attendees, change the locks, and lock the gates to the Property, and seized business records. ECF No. 21, at 6, ¶ 10. In contrast, the verified first amended complaint in the '270 case asserts it was "private security" who purportedly "supported" Defendant Auguste in said actions. ECF No. 10-2, at 11, ¶ 61. Specifically:

> 61. On Sunday, September 29, 2019, Defendants, without a court order and supported by private security guards, unlawfully invaded and seized the Property, changed the locks to the church building, expelled the members of Eglise Baptiste Bethanie who were on the Property for the purpose of participating in prayer services and posted No Trespassing signs on the fence surrounding the Property. As a consequence, the members of Eglise Baptiste Bethanie have been unlawfully and wrongfully deprived of their abilities and rights to gather on the Property for the purposes of engaging in communal prayer and Bible study. Moreover, Defendants have unlawfully attempted to persuade SunTrust Bank and Bank of America, N.A., to give Defendants control over the accounts belonging Eglise Baptiste Bethanie.

LEGAL STANDARDS

I. MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)

Rule 12(b)(6) provides a defense to pleaded causes of action where a complaint "fail[s] to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face."" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556); *see also Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010) ("In order to withstand a motion to dismiss, a complaint's factual allegations must be enough to raise a right to relief above the speculative level."). The Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff[s], and determine whether, under any reasonable reading of the complaint, [they] may be entitled to relief," but it is free to "disregard any legal conclusions." A complaint will not withstand a Rule 12(b)(6) challenge if it contains nothing more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." *Iqbal*, 129 S. Ct. at 1949 (internal citations omitted); *see also Twombly*, 550 U.S. at 555 ("[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

ARGUMENT

I. PLAINTIFFS' FEDERAL CLAIM UNDER 18 U.S.C. § 248(A)(2) SHOULD BE DISMISSED BECAUSE PLAINTIFFS HAVE PUT FORTH NO SET OF FACTS WHICH WOULD ENTITLE THEM TO RELIEF.

The factual allegations set forth in the First Amended Complaint are insufficient to show a violation under 18 U.S.C. § 248(a)(2). As such, Plaintiffs have failed to meet their burden of pleading with respect to the federal statutory claim and the First Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

As the name suggests, the Freedom of Access to Clinic Entrances Act, otherwise known as "FACE," was passed in an effort to ensure freedom of access to abortion clinics and facilities. As the statute's legislative history and ample case law suggests, the primary focus of the statute

has been to "to address a nation-wide campaign of blockades, invasions, vandalism, threats, and other violence barring access to reproductive health facilities." *U.S. v. Wilson*, 73 F.3d 675, 678 (7th Cir. 1995); *see also* H.R.Rep. No. 306, 103d Cong., 2d Sess. 6 (1993), reprinted in 1994 U.S.C.C.A.N. 699, 703.[2]

Section 248(a)(2), however, is a seemingly stand-alone subsection that addresses religious, rather than reproductive, freedom. The subsection sets forth civil penalties for anyone who "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship." 18 U.S.C. § 248(a)(2). Like section 248(a)(1), section 248(a)(2) apparently shares the same legislative intent, i.e., preventing blockades, invasions, vandalism, threats, and other violence barring access to religious institutions by those unaffiliated with said religious institution and campaigning against the same.

In *Towns v. Cornerstone Baptist Church*, a plaintiff applied to reinstate his church membership with Cornerstone Baptist Church. 2016 U.S. Dist. LEXIS 77575, at *3 (S.D.N.Y. June 13, 2016). While his request was pending, a heated and impromptu meeting was held during which the Deacon Board declined to reinstate plaintiff's membership but permitted him to continue attending services at the church. *Id.* at *4. Although the plaintiff thereafter attended church services, he criticized the church governance leading to further disagreements. *Id.* In response, the Deacon Board banned plaintiff from entering church property and maintained a police presence for several days to ensure plaintiff could not re-enter the property. *Id.* at *5. Plaintiff filed suit against Cornerstone Baptist Church, its Pastor and church leaders, and the New York City Police Department alleging federal civil rights violations pursuant to 18 U.S.C. § 248 and 42 U.S.C. §§ 1981, 1983, and 1985(3). *Id.* at *2. The district court granted defendants' motion to dismiss, finding, among other things, that (1) the dispute was a non-justiciable religious controversy and

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2. Section 2 of the enacting public law, entitled "Purpose," reads as follows: "Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article I of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act to protect and promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services." Pub. L. No. 103-259, 108 Stat. 694 (1994).

(2) the section 248 claim should be dismissed because the church could lawfully exclude plaintiff from its property. *Id.* at *39. Specifically, the court held:

> [A] religious institution such as Cornerstone is not restricted by the government from making its own private, religious decisions. **Cornerstone's decision to ban plaintiff from entering its property is not proscribed by FACE.** As discussed in the R&R denying plaintiff's motion for preliminary injunction, the legislative history of FACE supports the Court's interpretation. **Moreover, as Cornerstone banned plaintiff from entering its property, plaintiff cannot show that he could "lawfully exercise" his religious freedom at Cornerstone as required under the terms of the statute.**

Id. at *32 (emphasis supplied).

As in *Towns* and assuming plaintiffs' allegations as true, plaintiffs here have not—and cannot—allege sufficient factual evidence to show that they were "lawfully exercising" their religious freedom when Defendant Auguste dispersed them from the Property. The reason for this is two-fold. First, as a church member and widow of the late Reverend of Plaintiff Church, Defendant Auguste, like defendant Cornerstone in *Towns*, acted well within the lawful scope of her authority. When she secured the Property, Defendant Auguste was acting in her representative capacity and made a "private, religious decision" on behalf of the religious institution. Such conduct is neither anticipated by the statute nor proscribed by it. *Id.* at *32, n.5 ("Liability was contemplated where private individuals used physical action or violence to interfere with religious worship by 'physically blocking access to a church or pouring glue in the locks of a synagogue.' Plaintiff fails to allege the type of private intrusion on religious freedom contemplated by FACE whereas here it is the religious institution itself which banned plaintiff from entering its property.") (internal citations omitted). Religious institutions, through the actions of their governing members (e.g., Defendant Auguste), are free to expel and ban church members from their property. *See id.*; *see also* **Exhibit A** attached hereto, which Defendant August requests this Court also take judicial notice of (reflecting the most-recent public record of Plaintiff Church depicting Defendant Auguste as the president of Plaintiff Church); *Universal Express, Inc. v. U.S. S.E.C.*, 177 F. App'x 52, 53 (11th Cir. 2006) ("Public records are among the permissible facts that a district court may consider" and take judicial notice of).

Second, any attempt by this Court to determine whether Plaintiff Church's governance rights or other putative plaintiffs' rights were/are superior to Defendant Auguste's, and *vice versa*, would necessarily require this Court to intrude upon, interfere with, and decide non-justiciable matters of church governance, as discussed in greater detail below. *See Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 709 (1976) ("When rival church factions seek resolution of a [religious dispute or even a] church property dispute in civil courts there is a substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs"). In other words, the determination regarding who has the authority to expel church members from the Property—Defendant Auguste or Plaintiff Church—is squarely an issue of church governance that this Court would be forced to resolve before ruling on the section 248(a)(2) claims. *See Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 661 (Fla. 4th DCA 2018) (finding the ecclesiastical abstention doctrine prohibited the court from deciding a defamation suit arising out of an employment dispute between the plaintiff priest and defendant diocese). As a result, Plaintiffs are unable to show they were lawfully exercising their religious freedom, warranting a dismissal of the federal claims pursuant to Rule 12(b)(6).

In view of the foregoing, the First Amended Complaint (DE 21) fails to allege sufficient factual matter to state a claim for relief under section 248(a)(2) of the United States Code.

II. PLAINTIFFS' CLAIMS SHOULD BE DISMISSED BECAUSE THEY INVOLVE NON-JUSTICIABLE QUESTIONS OF CHURCH GOVERNANCE.

The Supreme Court of Florida in *Malicki v. Doe* held that "the First Amendment prevents courts from resolving internal church disputes that would require adjudication of questions of religious doctrine." *Malicki*, 814 So. 2d 347, 355 (Fla. 2002) (internal citations omitted). "The doctrine, which has roots in both the free exercise and establishment clauses of the United States Constitution . . . has its core application in cases where a court intrudes on a church's autonomous management of its own **internal affairs and property**, thereby either burdening or inhibiting the exercise of religious freedom (free exercise clause) or fostering an excessive government entanglement with religion (establishment clause)." *Diocese of Palm Beach, Inc.*, 249 So. 3d at 661 (emphasis supplied). In making its determination, the court must inquire "[1] as to the nature of the dispute and [2] whether it can be decided on neutral principles of secular law without court

intruding upon, interfering with, or deciding church doctrine." *See id.* at 662 (internal citations omitted).

Plaintiffs' own description of the factual background underpinning this proceeding is telling as to the nature of this dispute. Specifically, the First Amended Complaint alleges, "[p]rior to his death on July 26, 2014, the Pastor of Eglise Baptise (Defendant Auguste's late husband) was the Rev. Usler Auguste ("Pastor Auguste"). Since then, the Board of Directors of Eglise Baptiste and Auguste (the widow of Pastor Auguste) have **contended for the leadership** of Eglise Baptiste." ECF 21, at 5, ¶ 7 (emphasis supplied). The First Amended Complaint then goes on to describe a meeting of the congregation of Plaintiff Church that "was convened **for the purpose of approving a process for the selection and installation of a successor to the late Pastor Auguste**." ECF 21, at 5, ¶ 8 (emphasis supplied). When resolution attempts fell through, Defendant Auguste, as the widow of the late Pastor Auguste, cleared and secured the Property with the assistance of the Seminole Tribe police. It is this action on the part of Defendant Auguste that forms the basis of Plaintiffs' federal claim against her.

The factual circumstances, however, implicate church leadership rights, not *legal* rights. *See Towns v. Cornerstone Baptist Church*, 2016 U.S. Dist. LEXIS 77575, at *10 (S.D.NY. June 13, 2016) ("[Defendant's] decision to exclude plaintiff from its property is not a controversy that this Court can adjudicate, but rather presents a non-justiciable religious controversy"). Plaintiffs admit that the nature of the ongoing dispute is the selection of a new full-time pastor for Plaintiff Church. What's more, the First Amended Complaint alleges facts showing that internal resolution attempts among church leaders failed, serving as the catalyst for the instant action. In essence, Plaintiffs want this court to participate in resolving the church governance dispute. Legal precedent makes clear that church governance disputes, such as the one at issue here, are non-justiciable religious controversies barred by the ecclesiastical abstention doctrine and any attempt by the judiciary to preside over or resolve such disputes is improper. *See id.* ("[T]he First and Fourteenth Amendments of the United States Constitution generally prevent civil courts from adjudicating matters of ecclesiastical cognizance"); *Towns v. Cornerstone Baptist Church*, 2016 U.S. Dist. LEXIS 136679, at *7 (S.D.N.Y. Sept. 30, 2016) (granting motion to dismiss plaintiff's 18 U.S.C. § 248 claim where plaintiff alleged that his exclusion from the church stemmed from his ongoing disagreements with the pastor, Board of Deacons, and other congregants about church governance and religious belief); *Crowder v. Southern Baptist Convention*, 828 F. 2d 718, 724 (11th Cir. 1987)

(reaffirming the rule of deference to decisions of ecclesiastical bodies on matters of internal church governance).

The Supreme Court of the United States, in *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, explained:

> Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the American-Canadian Diocese. This is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. **Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals.** Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs.

426 U.S. at 708–11 (emphasis supplied).

Likewise, the heart of this case, irrespective of the change in claims asserted in the complaints, is a religious dispute that affects church property. In their First Amended Complaint, Plaintiffs assert a new federal ground for relief predicated upon religious freedom. It bears repeating, however, that the factual allegations in this case have not changed. Resolution of the federal FACE claim hinges on the determination of who—between Defendant Auguste and Plaintiff Church (namely those putative plaintiffs who think they should control Plaintiff Church)—is the rightful successor in church leadership to the vacancy created by Rev. Usler Auguste's passing. The claim hinges on this determination because Plaintiffs cannot have been "lawfully exercising" their religious freedom if they were refused entry onto the Property by someone with the authority to so refuse it. *See Towns*, 2016 U.S. Dist. LEXIS 77575, at *32. Thus, whoever is found to occupy said position will necessarily be able to act on behalf of the Church, which authority shall include the power to expel church members from the Property. If it is found that Defendant Auguste, as the widow of the late Rev. Usler Auguste, is the rightful successor,

then her action of expelling Plaintiffs from the Property will constitute a "private, religious decision" that FACE does not proscribe and that the law, in fact, *protects*. *See id.* at *32 (finding that decision to ban church member, made by the board of the church and approved by the Chairman and Vice Chairman, was made by the religious institution and could not be proscribed by the law).

III. PLAINTIFFS' FIRST AMENDED COMPLAINT (DE 21) MUST BE DISMISSED IN LIGHT OF PLAINTIFFS' IMPROPER CLAIM SPLITTING BETWEEN STATE AND FEDERAL COURTS.

The improper claim splitting exercised by Plaintiffs mandates that the First Amended Complaint (DE 21) be dismissed. Claim splitting is the practice by which plaintiffs file duplicative complaints in an attempt to expand their legal rights and remedies. *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017). "The claim-splitting doctrine thereby 'ensures that a plaintiff may not split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which relief is sought, and leave the rest to be presented in a second suit, if the first fails.'" *Id.* (quoting *Greene v. H & R Block E. Enters., Inc.*, 727 F. Supp. 2d 1363, 1367 (S.D. Fla. 2010). The rule against claim splitting prohibits spreading claims around in multiple lawsuits in order to "promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Id.* at 843. Improper claim splitting may arise where a second suit has been filed before the first suit has reached a final judgment. *Yellow Pages Photos, Inc. v. Dex Media, Inc.*, 2019 WL 2247701, at *4 (M.D. Fla. May 24, 2019).

In a case of first impression, the Eleventh Circuit recently addressed the issue of claim splitting and adopted the following two-part test whereby courts must analyze: (1) whether the case involves the same parties and their privies; and (2) whether separate cases arise from the same transaction or series of transactions. *Vanover*, 857 F.3d at 841–42. "Successive causes of action arise from the same transaction or series of transactions when the two transactions are based on the same nucleus of operative facts." *Id.* at 842. "What factual grouping constitutes a 'transaction,' and what groupings constitute a 'series,' are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* (quoting *Petro-Hunt, L.L.C. v. U.S.*, 365 F.3d 385, 396 (5th Cir. 2004).

With respect to the first part of the test, Defendant Auguste is a named defendant both in the instant case and in the '270 case. Plaintiff Church is the plaintiff both in the instant case and in the '270 case. As such, both cases involve the same parties and their privies.

Under the second half of the test, the factual groupings implicated here suggest a series of transactions underpinned by a common nucleus of operative facts. The original '270 complaint sought declaratory relief concerning who the rightful successor to the church leadership is, between Plaintiff Church and Defendant Auguste. ECF No. 10-1, at 4–5. On October 7, 2019, Plaintiffs filed a verified first amended complaint in the '270 case, specifically adding and incorporating the events that transpired on September 29, 2019, between the Parties—the purported actions of Defendant Auguste and the Seminole Tribe (also referred under oath as "private security guards") in dispersing the attendees, changing the locks, and locking the gates to the Property. ECF No. 10-2, at 11, ¶ 61. On the basis of these additional facts, Plaintiffs alleged two additional causes in the '270 case, i.e., (1) improper and intentional interference with business relationships and (2) ejectment—based on an alleged trespass. ECF No. 10-2, at 13–14, ¶¶ 70–76. Likewise, in the instant case, Plaintiffs alleged a claim pursuant to section 248(a)(2) on the basis of these same facts—Defendant Auguste's purported actions of dispersing the attendees and securing the Property.

The claims asserted in both the '270 case and this federal case arise from the same nucleus of operative facts—the unfortunate death of Pastor Auguste, the ensuing leadership dispute between Plaintiff Church and Defendant Auguste, and the actions that took place with respect to the Property. These factual groupings form a common series of transactions because they are related in time, origin, and motivation. The events arise out of the same church leadership and ownership dispute and the events that occurred on September 29, 2019, were a direct offshoot of this same dispute. This is further bolstered by the fact that Plaintiff Church amended its complaint in the '270 case to allege the additional related events that occurred on September 29, 2019, in connection with the original pleaded facts. Accordingly, both the '270 case and this federal case arose from the same transaction or, at the very least, the same series of transactions.

By initiating this federal lawsuit, Plaintiff Church has brought two lawsuits based on the same common nucleus of operative facts thereby improperly splitting Plaintiff Church's available claims, compelling Defendant Auguste to litigate these matters in separate courts and proceedings,

and undermining judicial economy. Specifically, this suit alleges a single ground for relief against Defendant Auguste—violation of 18 U.S.C. § 248—predicated on Defendant Auguste's action of clearing the Property in accordance with her presumed church leadership authority. Not only could this claim have been alleged in the '270 case, but it should have been so alleged because the claim directly relates to and arises out of the church governance dispute at the heart of the '270 case. Plaintiff Church has tacked on Defendant Auguste as a defendant in the instant action out of convenience while turning a blind eye to the well-established federal rule against claim splitting. As declared by the Eleventh Circuit, however, this improper practice of claim splitting hinders judicial economy, prejudices the legal rights of defendants, and mandates dismissal of this action *with prejudice*.

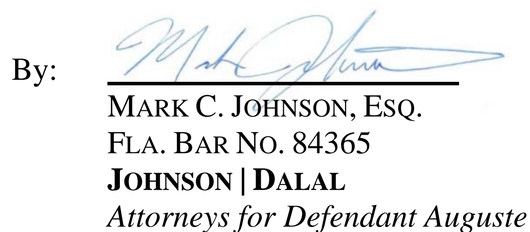
CONCLUSION

In taking all of the allegations in the First Amended Complaint (DE 21) as true and in the light most favorable to the Plaintiffs, it is apparent that the First Amended Complaint (DE 21) is wholly devoid of any factual evidence which, when taken as true, would entitle Plaintiffs to relief under 18 U.S.C. § 248. Further, Plaintiffs' practice of improper claim splitting and the non-justiciability of this church governance dispute mandate that the instant action be dismissed. For all of the foregoing reasons, Defendant Auguste respectfully requests this Court **GRANT** her Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), award her attorneys' fees as a prevailing party with respect to the section 248(a)(2) claim[3], and any other relief this Court deems just and proper.

Dated: December 11, 2019

Respectfully submitted,

By:



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JOHNSON | DALAL
Attorneys for Defendant Auguste

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3. In discussing FACE, the U.S. General Accounting Office has stated: "Courts have the discretion to award appropriate relief, including injunctions, damages, attorneys' fees, and costs of suit." U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-99-2, ABORTION CLINICS: INFORMATION ON THE EFFECTIVENESS OF THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT (1998).

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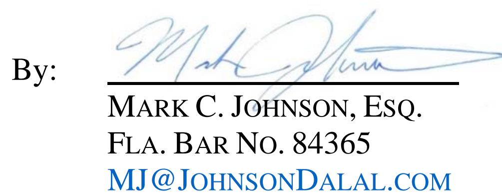
CERTIFICATE OF SERVICE

It is hereby certified that on December 11, 2019, a copy of the foregoing was electronically filed with the Court's CM/ECF system, which will send notification of such filing to counsel of record for Plaintiffs and counsel of Co-Defendant, The Seminole Tribe of Florida.

Respectfully submitted,

By: 

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