

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 19-CV-62591-BLOOM/VALLE

EGLISE BAPTISTE BETHANIE
DE FT. LAUDERDALE, INC., etc.,
et al.,

Plaintiffs,

v.

THE SEMINOLE TRIBE OF FLORIDA,
et al.,

Defendants.

**PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANT AIDA AUGUSTE'S MOTION TO DISMISS
THE FIRST AMENDED COMPLAINT
(Fla. Bar No. 133162)**

I INTRODUCTION

Defendant Aida Auguste (“Auguste”), on December 11, 2019, invoking Rule 12(b)(6), Federal Rules of Civil Procedure, moved to dismiss the First Amended Complaint in the above styled civil action. [ECF 26]

Because the First Amended Complaint states claims upon which relief can be granted against Auguste under the provisions of 18 U.S.C. §§ 248(a)(2) and 248(c)(1), Plaintiff Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. (“Eglise Baptiste”) and the individual Plaintiffs respectfully urge that Auguste’s dismissal motion be denied.

II THE STATUTORY FRAMEWORK

Section 248, Title 18, United States Code, is entitled *Freedom of access to clinic entrances* and in pertinent part provides:

(a) Prohibited activities.— Whoever-

* * * * *

(2) 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;...

* * * * *

Shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

(b) Penalties.— Whoever violates this section shall-

(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 1 year, or both;

except that for an offense involving exclusively a nonviolant physical obstruction, the fine shall be not more than \$10,000 and the length or imprisonment shall be not more than six months,

or both, for the first offense, and the fine shall, notwithstanding section 3571, be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense, and except that if bodily injury results, the length of imprisonment shall be not more than 10 years, and if death results, it shall be for any term of years or for life.

(c) Civil remedies.-

(1) Right of action.-

(A) In general.— Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B)... and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

(B) Relief.— In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to receive, in lieu of actual damages, an award of statutory damages in the amount of \$5,000.00 per violation...

U.S. Senior District Judge Jack B. Weinstein, in *Zhang Jingrong v. Chinese Anti-Cult*

World Alliance, 311 F. Supp. 514 (E.D.N.Y. 2018), has observed:

In what appears to have been an attempt to soften *Bray*, see *supra* Section III(C), Congress passed the Freedom of Access to Clinic Entrances Act of 1994 (“FACEA”). Kathleen M. Sullivan

and Noah Feldman, *Constitutional Law* 883 (19th Ed. 2016); H.R. Conf. Rep. No. 103-488, at 7-8, *reprinted in* 1994 U.S.C.C.A.N. 724, 724-25 (May 2, 1994) (“Prior to the Supreme Court's decision in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993), the conduct described in [the FACEA] was frequently enjoined by federal courts in actions brought under 42 U.S.C. 1985(3), but in that case the Court denied a remedy under such section to persons injured by the obstruction of access to abortion-related services.”).

The FACEA contains a provision about religious freedom:

Whoever ... [1] *by force or threat of force* or by physical obstruction, [2] *intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with* [3] *any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom* [4] *at a place of religious worship* shall be subject to the penalties provided in ... the civil remedies provided in subsection (c).

18 U.S.C. § 248(a)(2) (emphasis added).

The FACEA allows plaintiffs to obtain “*appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages*, as well as the costs of suit and reasonable fees for attorneys and expert witnesses.” 18 U.S.C. § 248(c)(1)(B) (emphasis added). A plaintiff may choose, “*in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.*” *Id.*

The magistrate judge's report and recommendation on the motion to dismiss concluded that “the plain language of § 248 dictates that it provides protection to those seeking to exercise their First Amendment right of religious freedom at a place of religious worship. *Zhang Jingrong v. Chinese Anti-Cult World All.*, 287 F.Supp.3d 290, 307 (E.D.N.Y. 2018). Although the statute's history and name suggests a connection to abortion clinic access, legislative history support the conclusion that

practicing religion at a religious site is protected by the FACEA:

This provision, much like the one found at 18 U.S.C. 247, is a reflection of the profound concern of the Congress over *private intrusions on religious worship*, and the judgment of the Congress that the exercise of the right to religious liberty deserves federal protection [I]t covers only conduct occurring *at or in the immediate vicinity of a place of religious worship*, such as a church, synagogue or other *structure or place used primarily for worship*. Examples of conduct that would be prohibited and would give rise to a civil cause of action under this Act would be physically blocking access to a church or pouring glue in the locks of a synagogue.

H.R. Conf. Rep. No. 103-488, at 9, reprinted in 1994 U.S.C.C.A.N. 724, 726 (May 2, 1994) (emphasis added).

311 F. Supp. 3d at 553-554.

* * * * *

The [Freedom of Access to Clinic Entrances Act] functions somewhat similarly to the New York Civil Rights Law. It prohibits violent interference with religious practice. *See supra* Section IV(C)(2). There are four statutory elements:

Whoever ... [1] by force or threat of force or by physical obstruction, [2] intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with [3] any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom [4] at a place of religious worship [may be found liable].

18 U.S.C. § 248(a)(2).

311 F. Supp. 3d at 563-564.

III THE FIRST AMENDED COMPLAINT’S ALLEGATIONS

In pertinent part, the First Amended Complaint alleges that:

2. Eglise Baptiste is (a) a Florida not-for-profit corporation, (b) a Haitian Baptist church and (c) affiliated with the Southern Baptist Convention. It adheres to the congregationalist mode of Christian church governance. Eglise Baptiste’s principal place of business is located at 2200 N.W. 12th Avenue, Fort Lauderdale, Broward County, Florida 33311, and it possesses fee simple title to the approximately ten (10) acres of improved real property commonly known by the foregoing address and bearing Tax Identification Number 4942-28-32-0010 (“the Church Property”). The Church Property is located 11.1 miles from SemTribe’s reservation in Hollywood, Florida.

THE DEFENDANTS

3. SemTribe is a Native American tribe which has been recognized by the United States Department of the Interior pursuant to 25 U.S.C. § 5123. The Supreme Court of the United States has characterized the several Native American tribes, including SemTribe, as “dependent domestic sovereigns”. SemTribe owns and maintains a reservation in Hollywood, Florida, and is governed by a Tribal Counsel, which is established by the Constitution And Bylaws of SemTribe. The Seminole Police Department (“the SPD”) is an agency of SemTribe and operates under the supervision of the Tribal Council.

4. Auguste is a resident of Broward County, Florida. She is not subject to any legal disabilities.

* * * * *

THE FACTS

7. Prior to his death on July 26, 2014, the Pastor of Eglise Baptiste 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.

8. On Sunday, September 22, 2019, a meeting of the congregation of Eglise Baptiste was convened for the purpose of approving a process for the selection and installation of a successor to the late Pastor Auguste. Despite the peacemaking efforts of a mediator assigned to Eglise Baptiste by an affiliate of the Southern Baptist Convention, the September 22, 2019, congregational meeting devolved into a pushing, shoving and punching affair between the supporters of the Board of Directors and the supporters of Auguste. The Fort Lauderdale Police Department was summoned and its officers helped to restore order.

9. Eglise Baptiste, on September 24, 2019, filed a civil action for declaratory and injunctive relief against Auguste and her supporters in the Circuit Civil Division, Seventeenth Circuit Court, Broward County, Florida, which came to be styled *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Aida Auguste, et al.*, Case No. CACE-19-19270 (4) ("Case No. 19-19270"). Undersigned counsel for Plaintiffs in this action commenced and continues to represent Eglise Baptiste in Case No. 19-19270.

10. On Sunday morning, September 29, 2019, Eglise Baptiste conducted its weekly Sabbath services in the religious structure located on the Church Property. While those services were in progress, Auguste and her supporters, escorted by six (6) armed (with SPD-issued handguns) officers wearing SPD uniforms (who had traveled from SemTribe's reservation in two vehicles, one of them an SPD marked squad car), without judicial or other valid authorization: (a) entered the Church Property, (b) disabled the Church Property's surveillance cameras (c) expelled from the Church Property all the worshipers who opposed Auguste, (d) changed the locks to the doors of the religious structure located on the Church Property, (e) seized the business records of Eglise Baptiste and (f) locked the gates to the Church Property. Auguste and her supporters continue to occupy the Church Property to the exclusion of Plaintiffs and to control Eglise Baptiste's personal property, including Eglise Baptiste's

bank accounts.

* * * * *

PLAINTIFFS' CLAIMS FOR RELIEF

Count 1-Eglise Baptiste v. SemTribe and Auguste/18 U.S.C. § 248(c)(1)

Eglise Baptiste sues SemTribe and Auguste and alleges:

12. Eglise Baptiste realleges and incorporates by reference the matters set forth in ¶¶ 1 through 11 of this First Amended Complaint.

13. SemTribe and Auguste on September 29, 2019, violated 18 U.S.C. § 248(a)(2) when SemTribe's police officers and Auguste, by force or threat of force or by physical obstruction, intentionally injured, intimidated or interfered with, or attempted to injure, intimidate or interfere with Eglise Baptiste's exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

14. Eglise Baptiste has been compelled to engage the professional services of Metschlaw, P.A., for the purposes of preparing, commencing and prosecuting to final judgment this civil action. In that regard, Eglise Baptiste has obligated itself to pay that law firm reasonable attorneys' fees and to reimburse that law firm's necessary, out-of-pocket, non-overhead expenditures incurred during the prosecution of this civil action.

15. As the proximate result of the foregoing conduct of SemTribe and Auguste on September 29, 2019, Eglise Baptiste has sustained injuries and losses for which, pursuant to 18 U.S.C. § 248(c)(1), Eglise Baptiste is entitled to recover from SemTribe and Auguste compensatory damages, punitive damages, the costs of this civil action, attorneys' fees and expert witness fees.

Wherefore, Eglise Baptiste demands judgment, jointly and severally, against SemTribe and Auguste for compensatory and punitive damages and awarding Eglise Baptiste the costs of this civil action, attorneys' fees and expert witness fees.

* * * * *

Count 4-Berthony Aurelus v. SemTribe and Auguste/18 U.S.C. § 248(a)(2)

Plaintiff Berthony Aurelus sues SemTribe and Auguste and alleges:

22. Plaintiff Berthony Aurelus realleges the matters set forth in ¶¶ 1 through 11 of this First Amended Complaint.

23. Plaintiff Berthony Aurelus (a) is a resident of Broward County, Florida, (b) is a member of Eglise Baptiste, (c) is not subject to any legal disabilities, (d) attended the September 29, 2019, Sabbath services in the religious structure located on the Church Property, (e) was expelled from the Church Property by SemTribe's police officers, and (f) continues to be excluded from the Church Property by Auguste and her supporters.

24. SemTribe and Auguste on September 29, 2019, violated 18 U.S.C. § 248(a)(2) when SemTribe's police officers and Auguste, by force or threat of force or by physical obstruction, intentionally injured, intimidated or interfered with, or attempted to injure, intimidate or interfere with Plaintiff Berthony Aurelus's exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

25. Plaintiff Berthony Aurelus has been compelled to engage the professional services of Metschlaw, P.A., for the purposes of preparing, commencing and prosecuting to final judgment this civil action. In that regard, Plaintiff Berthony Aurelus has obligated himself/herself to pay that law firm reasonable attorneys' fees and to reimburse that law firm's necessary, out-of-pocket, non-overhead expenditures incurred during the prosecution of this civil action.

26. As the proximate result of the foregoing conduct of SemTribe and Auguste on September 29, 2019, Plaintiff Berthony Aurelus has sustained injuries and losses for which, pursuant to 18 U.S.C. § 248(c)(1), Plaintiff Berthony Aurelus is entitled to recover from SemTribe and Auguste compensatory damages, punitive damages, the costs of this civil action, attorneys' fees and expert witness fees.

Wherefore, Plaintiff Berthony Aurelus demands judgment, jointly and severally, against SemTribe and Auguste for compensatory and punitive damages and awarding Plaintiff Berthony Aurelus the costs of this civil action, attorneys' fees and expert witness fees.

III ARGUMENT

A. The First Amended Complaint States Claims Upon Which Relief Can Be Granted Against Auguste Under The Provisions Of 18 U.S.C. §§ 248(a)(2) And 248(c)(1).

Auguste's Sunday, September 29, 2019, invasion of the Church Property, as described in the First Amended Complaint, must have been conceived and executed by Auguste and her supporters in a conscious effort to satisfy each of the elements of a cause of action under 18 U.S.C. §§ 248(a)(2) and 248(c)(1):

(1) *By force or threat of force*: Auguste and her supporters, on September 29, 2019, when they invaded the Church Property, were accompanied by six (6) *uniformed and armed* police officers, thereby qualifying, at a minimum, as a "threat of force".

(2) *Intentionally intimidates or interferes with or attempts to intimidate or interfere*: Auguste, her supporters and her armed escorts on Sunday, September 29,

2019, intentionally interfered with, by expelling, the individual Plaintiffs from the Church Property.

(3) *Any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom*: Auguste, her supporters and her armed escorts on Sunday, September 29, 2019, invaded the Church Property when the individual Plaintiffs were lawfully engaged in their Sabbath morning prayers, a form of exercise of the First Amendment right of religious freedom.

(4) *At a place of religious worship*. The individual Plaintiffs were lawfully praying in the religious structure located on the Church Property when they were expelled by Auguste, her supporters and her armed escorts.

In summary, the allegations of the First Amended Complaint fit the criteria of 18 U.S.C. §§ 248(a)(2) and 248(c)(1) and Rule 12(b)(6), Federal Rules of Civil Procedure, like the proverbial glove. For this reason alone, Auguste's dismissal motion should be denied.

B. Auguste's Claim Of Authority To Expel The Individual Plaintiffs From The Church Property Cannot Be Addressed In Her Dismissal Motion.

In her dismissal motion, Auguste argues that, as the "successor" to the late Founding Pastor, she was "authorized" to "secure" the Church Property by expelling the individual Plaintiffs during the prayer service on Sunday morning, September 29, 2019.

At most, Auguste's claim of "authority" to "secure" the Church property by expelling the individual Plaintiffs would constitute an affirmative defense to the First Amended Complaint, to be asserted only by means of an answer, *not* a dismissal motion.

C. The First Amended Complaint Does Not Ask That The Court Unconstitutionally Intervene In The Doctrinal Affairs Of Eglise Baptiste.

Auguste, in her dismissal motion, suggests that Plaintiffs, in the First Amended Complaint, are asking the Court unconstitutionally to intervene in the doctrinal affairs of Eglise Baptiste and its members.

Nothing could be further from the truth. In their First Amended Complaint, Plaintiffs seek only to vindicate their rights under 18 U.S.C. §§ 248(a)(2) and 248(c)(1) and the Free Exercise of Religion Clause of the First Amendment to the United States Constitution.¹

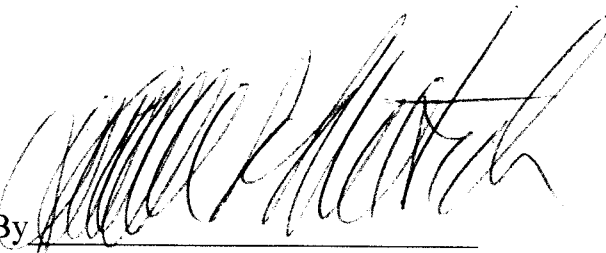
IV CONCLUSION

Auguste's motion to dismiss the First Amended Complaint for failure to state claims upon which relief can be granted should be denied.²

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¹ Judge Weinstein has upheld the constitutionality of 18 U.S.C. §§ 248(a)(2) and 248(c)(1). *See, Zhang Jingrong v. Chinese Anti-Cult World Alliance*, 314 F. Supp. 3d 420 (E.D.N.Y. 2018).

² The Sunday, September 29, 2019, invasion of the Church Property and the expulsion of the individual Plaintiffs by Auguste, her supporters and her armed escorts violated 18 U.S.C. § 248(a)(2), for which criminal penalties are prescribed by 18 U.S.C. §248(b) and civil remedies are prescribed by 18 U.S.C. § 248(c)(1). During the pre-trial discovery and jury trial phases of this civil action, the applicability of the Fifth Amendment privilege against compelled self-incrimination will be of concern to the parties, their counsel and the Court.

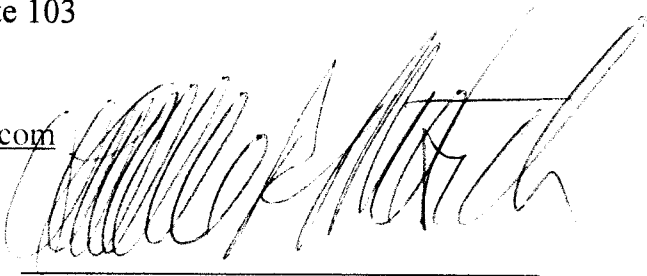
By 
LAWRENCE R. METSCH
FBN 133162

CERTIFICATE OF SERVICE

I hereby certify that, using the District Court's CM/ECF facility, true copies of the foregoing memorandum of law have been electronically served this 16th day of December, 2019, on:

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