

No. 20-10173

IN THE
United States Court of Appeals for the Eleventh Circuit

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

Plaintiffs—Appellants,

v.

THE SEMINOLE TRIBE OF FLORIDA, et al.,

Defendants—Appellees.

On Appeal from the United States District Court for the Southern District of Florida

(Hon. Beth Bloom, United States District Judge)

No. 19-CV-62591

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Appellee Aida Auguste, by her undersigned counsel, hereby certifies that the Certificate of Interested Persons contained in Appellants', Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., et al. (collectively, "Baptiste"), Motion for Injunction Pending Appeal ("the Motion") is complete.

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**STATEMENT OF SUBJECT MATTER AND APPELLATE
JURISDICTION**

The District Court's subject matter jurisdiction, or lack thereof, is one of two ultimate issues on appeal in this matter (the other issue being asserted against Appellee Seminole Tribe of Florida). For reasons further espoused in the argument sections below, subject matter jurisdiction in this case is barred by the ecclesiastical abstention doctrine. As such, the District Court properly dismissed the 18 U.S.C. § 248 claim asserted by Baptiste against Auguste in the First Amended Complaint.

Pursuant to 28 U.S.C. § 1291, this Court maintains appellate jurisdiction over this appeal, which was timely filed on January 14, 2020, from final judgment rendered January 9, 2020.

STATEMENT REGARDING ORAL ARGUMENT

Auguste is not requesting oral argument in this appeal because it is unnecessary in light of the established and clear precedent on the sole issue on appeal asserted against Auguste. Oral argument would not provide a more substantive understanding of the facts or legal issue in this case beyond that already laid out in the Parties' respective briefs and would further and unjustifiably waste court and party resources.

STATEMENT OF THE ISSUES

Does the ecclesiastical abstention doctrine divest a court of subject matter jurisdiction where a claim brought pursuant to the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, turns on the resolution of an ecclesiastical dispute over a pastoral vacancy and right to control a church?

STATEMENT OF THE CASE

A. Relevant Factual Background

On July 26, 2014, the Pastor of Eglise Baptiste Bethanie de Fort Lauderdale—the Rev. Usler Auguste—passed away, leaving behind his wife and fellow church member, Defendant Auguste. App’x p.16; Supp. App’x p.4.¹ Upon the Pastor’s death, disagreement over successive church leadership arose between Auguste and Baptiste’s Board of Directors. App’x p.16; Supp. App’x p.4. All Parties to this action, with the exception of the Seminole Tribe of Florida, are members of the church. App’x p.16; Supp. App’x p.4. It has been alleged that on September 22, 2019, Baptiste’s congregation met to designate a successor to the late Pastor Auguste and a disagreement ensued among attendees of the meeting. App’x p.16–17; Supp. App’x p.4. Specifically, the First Amended Complaint alleges that:

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.

1. For ease of reference, citations to Appellant Baptiste’s Appendix shall be styled App’x p.__; citations to Appellee Auguste’s Supplemental Appendix shall be styled Supp. App’x p.__; and citations to Appellant Baptiste’s principal brief shall be styled App. Brief. p.__.

App'x p.16.

Baptiste further alleged 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. App'x p.17.

B. Procedural History

On September 24, 2019, Baptiste filed a civil action for declaratory and injunctive relief against Auguste 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), asserting claims for ejectment and intentional interference with business relationships. Supp. App'x p.210. While this state case was pending, Baptiste filed suit against Auguste in the United States District Court for the Southern District of Florida, asserting claims under 42 U.S.C. § 1985(3),² interference with business

2. Section 1985(3) states:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, 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; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully

relationships, and trespass. Supp. App'x p.5–8. Auguste filed a motion to dismiss pursuant to Rule 12(b)(6), Rule 12(b)(1), and improper claim splitting between the state and federal courts. Supp. App'x p. 26, 31–38. In response, Baptiste filed a First Amended Complaint in the federal proceeding, wherein all three of the original claims against Auguste were dropped and a new claim for relief pursuant to 18 U.S.C. § 248(c)(1)³ was added. App'x p.12. Auguste filed a motion to dismiss the First Amended Complaint based on Rule 12(b)(6), improper claim splitting, and the non-justiciability of the claim pursuant to the ecclesiastical abstention doctrine. Supp. App'x p.198, 203–211. During the pendency of these motions, Baptiste also filed a motion for leave to file a Second Amended Complaint, a motion for a

qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, 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.

42 U.S.C. § 1985(3).

3. Section 248(c)(1) states:

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), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, 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.

18 U.S.C. § 248(c)(1).

preliminary injunction, and a motion to compel production of an electronically stored video file of the events that transpired on September 29, 2019, which was disclosed by Auguste in her initial disclosures. Supp. App'x p.53, 219, 234. In an Omnibus Order, the Court granted Auguste's motion to dismiss, denied Baptiste's motion to amend, and denied all other pending motions as moot. App'x p.133. The Court based its dismissal of the claims against Auguste on the lack of subject matter jurisdiction of the Court to hear an action barred by the ecclesiastical abstention doctrine. App'x p.152–55.

Upon the entry of final judgment by the Southern District Court of Florida, Baptiste filed a notice of appeal to this Court and thereafter filed two motions with the Southern District Court: (1) pursuant to Rule 27(b)(2) of the Federal Rules of Civil Procedure, a motion for permission to depose Auguste to perpetuate her testimony pending the disposition of this appeal, and (2) pursuant to Rule 8(a)(1)(C) of the Federal Rules of Appellate Procedure, a motion for injunction pending appeal. App'x p.159; Supp. App'x 255, 260. Auguste filed responses in opposition to both motions, arguing that (1) the Southern District Court still lacked subject matter jurisdiction to rule on the motions, (2) the motions failed to satisfy, or even address, the standard required for the grant of an injunction and perpetuation of testimony, and (3) sanctions should be imposed against counsel for Baptiste based on the

unreasonable vexatious multiplication of proceedings in violation of 28 U.S.C. § 1927 and Rule 37 of the Federal Rules of Civil Procedure. Supp. App'x p.264, 279.

The Court denied both of Baptiste's motions, finding that it lacked subject matter jurisdiction to hear them. Supp. App'x p.292, 297–98. Thereafter, Baptiste, for a *third* time, moved for an injunction, requesting that this Court grant it an injunction pending appeal pursuant to Rule 8 of the Federal Rules of Appellate Procedure. Supp. App'x p.299. Auguste opposes that motion and has already filed her response brief.

C. Standard of Review

The dismissal of a complaint for lack of jurisdiction is reviewed de novo and related factual findings are reviewed for clear error. *Myhre v. Seventh-Day Adventist Church Reform Movement Am. Union Int'l Missionary Soc'y*, 719 F. App'x 926, 928 (11th Cir.), *cert. denied*, 139 S. Ct. 175 (2018); *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328 (11th Cir. 2013).

SUMMARY OF THE ARGUMENT

The District Court lacks subject matter jurisdiction to hear the FACE Act claim asserted against Auguste because it cannot adjudicate the claim without first determining whether Baptiste was lawfully exercising its right to religious freedom when it was dispelled from the church property. Because Auguste and Baptiste (through one of the putative plaintiffs, and his supporters, named in this case) are both vying to fill the pastoral vacancy position left by the passing of Auguste's late husband, each Party believes that it is the rightful successor and that it may, in its representative capacity on behalf of the church's Board of Directors, lawfully exclude the other from the property.

If the Court were to hear the FACE Act claim on its merits, it would inevitably rule for one faction of the church—either Auguste and her supporters or Baptiste⁴ and its supporters—and against the other. This the judiciary cannot do without contravening the guarantees of the First Amendment and the doctrine of ecclesiastical abstention. To this end, the neutral principles approach cannot be used to resolve this religious controversy because its application to the factual

⁴ As noted by Auguste in her motion to dismiss the first amended complaint, Auguste vehemently disputes any assertion or suggestion in any complaint of Baptiste 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. *See* Supp. App'x p.201.

circumstances of this case again places the Court in the position of ruling on a matter of ecclesiastical polity and governance.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED THE 18 U.S.C. § 248(A)(2) CLAIM BECAUSE IT LACKS SUBJECT MATTER JURISDICTION TO HEAR THE CLAIM.

In its brief, Baptiste makes two distinct arguments: (1) that the District Court mischaracterized the dispute between Baptiste and Auguste “as one involving religious doctrine or practice (rather than a power struggle implicating control of church real and personal property);” and (2) that “by enacting 18 U.S.C. §§ 247 and 248 . . . [Congress] supplied the requisite ‘neutral principles’ for resolving the dispute between Eglise Baptiste and [] Auguste.” App. Brief. p.26–28. In turn, Auguste addresses both arguments and notes that 18 U.S.C. § 247 is irrelevant and inapposite to the issue raised on appeal because Baptiste “cannot bring an action for a violation of 18 U.S.C. § 247, as private citizens cannot enforce criminal statutes, and Section 247 does not expressly provide for a private right of action.” *Powell Bey v. Jones*, 2019 U.S. Dist. LEXIS 77555, at *4 (E.D.N.Y. May 7, 2019); *see also Levai v. Law*, 235 F. App'x 684, 685 (9th Cir. 2007) (stating that section 247 “provide[s] no basis for civil liability”).

A. The ecclesiastical abstention doctrine divests the District Court of subject matter jurisdiction to hear the 18 U.S.C. § 248(a)(2) claim because resolution of the claim turns on the resolution of the parties' ecclesiastical dispute over church hierarchy and governance.

As a preliminary matter, it is worth noting that the jurisdictional issue in this case does not implicate the constitutionality of the Freedom of Access to Clinic Entrances Act (“FACE Act”), 18 U.S.C. § 248, separate and apart from the specific facts of this case. Contrary to any implication or argument by Baptiste, Auguste does *not* wage a constitutional attack against the FACE Act; rather, Auguste simply seeks to bar the statute’s application under the particular facts of this case pursuant to the well-established ecclesiastical abstention doctrine. It is in keeping with this position that the District Court correctly held that, “any adjudication of the claims asserted in [Baptiste’s] Amended Complaint would violate the First Amendment because it would require judicial intrusion into, rules, policies, and decisions which are unmistakably of ecclesiastical cognizance.” App’x p.152 (internal citations omitted).

The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I. “[C]ivil actions involving ecclesiastical disputes implicate both the Establishment and Free Exercise Clauses” of the First Amendment. *Myhre*, 719 F. App’x at 928 (citing *Crowder v. S. Baptist Convention*, 828 F.2d 718, 721 (11th Cir. 1987)). “[B]y entering into a religious controversy and putting the enforcement

power of the state behind a particular religious faction, a civil court risks ‘establishing’ a religion.” *Crowder*, 828 F.2d at 721. As such, “the First Amendment prevents courts from resolving internal church disputes that would require adjudication of questions of religious doctrine.” *Malicki v. Doe*, 814 So. 2d 347, 355 (Fla. 2002) (internal citations omitted). “The [ecclesiastical abstention] doctrine . . . 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. v. Gallagher*, 249 So. 3d 657, 661 (Fla. 4th DCA 2018). 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).

Baptiste’s 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 Baptiste (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.” App’x p.16.

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.” App’x p.16. After resolution attempts fell through several days later, Auguste, as the widow of the late Pastor Auguste, purportedly cleared and secured the Property with the assistance of the Seminole Tribe police. App’x p.17. It is this action on the part of Auguste that forms the basis of Baptiste’ legal claim against her. App’x p.18–19.

The factual circumstances, however, implicate church leadership rights, not legal rights. *See Towns v. Cornerstone Baptist Church*, No. 14-cv-6809, 2016 U.S. Dist. LEXIS 77575, at *10 (E.D.N.Y. June 13, 2016), *report and recommendation adopted*, No. 14-cv-6809, 2016 U.S. Dist. LEXIS 136679, at *1 (E.D.N.Y. Sept. 30, 2016), *appeal dismissed*, 2017 U.S. App. LEXIS 22726, at *1 (2d Cir. June 21, 2017) (“[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”). Baptiste recognizes that the nature of the ongoing dispute is the selection of a new full-time pastor for the church. What’s more, the First Amended Complaint alleges facts showing that internal resolution attempts among church leaders failed, serving as the catalyst for this legal action. App’x p.16–17. In essence, Baptiste wants this court to participate in resolving the church governance dispute. Case 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 section 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*, 828 F. 2d at 724 (reaffirming the rule of deference to decisions of ecclesiastical bodies on matters of internal church governance). Baptiste has not cited one single case (in its brief or to the District Court) controverting or casting doubt on the case precedent referenced above.

“Disputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice.” *Jones v. Wolf*, 443 U.S. 595, 616 (1979). Questions touching on a determination of who shall or shall not be a priest, minister or member of a church constitute basic ecclesiastical decisions, adjudication of which is precluded by the First Amendment and Supreme Court case law interpreting the same. *Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 33 (D.D.C. 1990); *see also Grunwald v. Bornfreund*, 696 F. Supp. 838,

840 (E.D.N.Y. 1988) (“[F]ederal courts will not interfere with the decisions of a religious body adjudicating the relationships of members in that body; as a matter of jurisprudence federal courts will defer to the decision of the religious body”).

At the heart of this case is an ecclesiastical dispute that affects church property. *See Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577 (1st Cir. 1989) (Emphasizing that courts must “look to the substance and effect of [the] plaintiffs’ complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious [dispute,] . . . the First Amendment is implicated.”). In their First Amended Complaint, Baptiste asserted a new federal ground for relief predicated upon religious freedom. App’x p.18. The factual allegations in this case, however, never changed. *See* Supp. App’x p.4–5; App’x p.16–18. Resolution of the FACE Act claim hinges on the determination of who—between Auguste and Baptiste (namely those putative plaintiffs who think they should control the church)—is the rightful successor in church leadership to the vacancy created by Rev. Usler Auguste’s passing. Baptiste cannot have been “lawfully exercising” their religious freedom if they were refused entry onto the Property by someone with the authority to refuse it. *See Towns*, 2016 U.S. Dist. LEXIS 77575, at *32. Thus, whoever is found to occupy this position of governance or authority will necessarily be able to act on behalf of the Church, which authority shall include the power to expel church members from the property. *See id.* If

Auguste, as the widow of the late Rev. Usler Auguste, is deemed the rightful successor, then her action of expelling Baptiste from the property will constitute a “private, religious decision” that the FACE Act 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); *Grunwald*, 696 F. Supp. at 840 (citing *Gonzalez v. Archbishop*, 280 U.S. 1 (1929)) (“[W]here a religious body adjudicates relations among its members, courts will not interfere with the decisions of those bodies made in accordance with those bodies’ rules”).

In *Towns v. Cornerstone Baptist Church*⁵, 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 between the parties. *Id.* In response, the Deacon Board banned plaintiff from entering church

5. It bears noting that the procedural history in this case also mirrors that of *Towns*. 2017 U.S. App. LEXIS 22726, at *1 (2d Cir. 2017). There, the plaintiff also appealed the district court’s dismissal of his claim and moved for an injunction pending appeal. *Id.* The Second Circuit Court of Appeals denied the request for an injunction and dismissed the appeal as frivolous and “lack[ing] an arguable basis in law or fact.” *Id.*

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 the FACE Act and 42 U.S.C. §§ 1981, 1983, and 1985(3). *Id.* at *2. The district court in *Towns* granted defendants' motion to dismiss, finding, among other things, that (1) the dispute was a non-justiciable religious controversy and (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 [defendant's] is not restricted by the government from making its own private, religious decisions. [Defendant'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 [defendant] banned plaintiff from entering its property, plaintiff cannot show that he could "lawfully exercise" his religious freedom at [defendant's property] as required under the terms of the statute.

Id. at *32.

As in *Towns* and assuming Baptiste's allegations as true, Baptiste has not—and cannot—allege sufficient factual evidence to show that it was "lawfully exercising" its religious freedom when Auguste dispersed its constituents from the

Property. The reason for this is because, as a church member and widow of the late Reverend of the church, Auguste, like the defendant in *Towns*, acted well within the lawful scope of her authority. When she secured the property, Auguste was acting in her representative capacity and made a “private, religious decision” on behalf of the religious institution. *See id.* 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., Auguste), are free to expel and ban church members from their property. *See id.*

Here, the Court must favor the view of one church faction (Auguste and her supporters) over the other (Baptiste and the putative plaintiffs) in order to hold that no violation of the FACE Act was committed, i.e., that Auguste was properly exercising her church governance rights when she expelled Baptiste from the church property. Likewise, the Court would simply reverse the faction it would be endorsing if it found that a violation of the FACE Act did take place, i.e., that Baptiste had the lawful authority to remain on the property because it, rather than Auguste, is the

rightful successor to the pastoral vacancy. In either scenario, the Court would be deciding matters of church polity and governance that it could not accomplish without contravening the ecclesiastical abstention doctrine. *See id.* at 725 (“[A]mbiguity in the locus of church authority may itself necessitate an impermissible inquiry into church polity”).⁶

As the Southern District Court explained:

Ultimately, Defendant Auguste’s decision to exclude Plaintiffs from church property and the ensuing events are so inextricably intertwined with matters of church governance, administration, and membership — regardless of the legal theories presented — that the adjudication of such issues would “excessively entangle[e] the judiciary in [ecclesiastical] questions.” Any adjudication of Plaintiffs’ claims in the instant action would “violate the Free Exercise and Establishment Clauses by ruling against one party and for the other party based on the [C]ourt’s resolution of the underlying controversy over religious doctrine and practice.” Because this Court cannot, consistent with the First Amendment, entertain issues concerning church governance, administration, or polity, Plaintiffs’ Amended Complaint must be dismissed.

App’x p. 152 (internal citations omitted).

6. Auguste submits that an adjudication on the merits of the FACE Act claim in this case will implicate substantial public policy considerations. Specifically, the dangerous precedent set by such a holding would allow a rival faction within any religious organization to assert a FACE Act claim against any opposing faction that denies it access to a religious building or gathering place. Rival factions vying for the same governance or leadership position(s) could thereby initiate lawsuits predicated on the FACE Act as a strategic tactic of regaining possession and governance of the religious organization as a whole.

Accordingly, adjudication of Baptiste’s FACE Act claim is barred by the ecclesiastical abstention doctrine and the lower court’s dismissal of the claims should be affirmed.

B. The FACE Act does not supply the “neutral principles” of law required to resolve the instant church property dispute because application of the statute necessitates an impermissible inquiry into church polity.

Although not argued at the District Court (thereby deeming it waived), Baptiste argues that the FACE Act supplies the “neutral principles” required to resolve the property dispute at issue in this case. App. Brief p.27–28. As a preliminary matter, Baptiste cites no case law or legal authority, other than the plain language of the statute, in support of this position. *See* App. Brief p.27–28. Based on Auguste’s research of the relevant case law, no court has discussed or ruled on whether the provisions of the FACE Act may supply the neutral principles of law required to resolve litigation over religious property. Under the factual circumstances of this case, however, the FACE Act does not supply the requisite neutral principles of law because adjudication of the claim necessarily requires the Court to determine who the rightful successor to the church is—Baptiste or Auguste.

The Supreme Court of the United States has held that a court may adopt any one of various approaches for settling church property disputes so long as the approach chosen involves no consideration of doctrinal matters. *See Md. & Va.*

Eldership of Churches of God v. Church of God, Inc., 396 U.S. 367, 368 (1970) (Brennan, J., concurring). “[C]ivil actions involving ecclesiastical disputes implicate both the Establishment and Free Exercise Clauses” of the First Amendment and, as such, constitute non-justiciable issues. *Myhre*, 719 F. App’x at 928 (citing *Crowder*, 828 F.2d at 721). “[T]he neutral principles approach avoids the constitutional prohibition against entanglement in questions of religious doctrine, polity, and practice, since the neutral principle of law approach relies on objective, well-established concepts of law that are familiar to lawyers and judges.” *Garcia v. Church of Scientology Flag Serv. Org.*, 2015 U.S. Dist. LEXIS 178033, at *12–13 (M.D. Fla. 2015).

[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without “establishing” churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. 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.

Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969).

Under this approach, civil courts can determine ownership by studying provisions of general state corporation laws, deeds, reverter clauses, charters, and church constitutions pertaining to ownership and control of church property. *Md. & Va. Eldership of Churches of God*, 396 U.S. at 370. However, “the state's interest in providing a civil court forum for ecclesiastical disputes is substantially diminished where the controversy does not concern formal title to property.” *Crowder*, 828 F.2d at 725–26.

Baptiste has gone to great lengths to characterize the instant dispute as a property ownership dispute, yet it relies solely on a *civil rights* statute for vindication of its purported property rights. Ironically, Baptiste’s legal basis for its claim is neither its deed nor its church constitution; nor is it a general state corporation law or charter. *See* App’x p.13. Instead, Baptiste seeks legal relief under a federal statute the very application of which calls for the District Court’s resolution of ecclesiastical polity. As the District Court correctly recognized, “the foundational issue that must be resolved before addressing the merits of the claims is whether Defendant Auguste had the authority to exclude Plaintiffs from church property as Pastor Auguste’s rightful successor.” App’x p.150–51; *see also* 18 U.S.C. § 248(a)(2) (prohibiting the obstruction, injury, intimidation, or interference with “any person *lawfully* exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship”) (emphasis supplied); *Towns*, 2016 U.S. Dist. LEXIS

77575, at *30–33 (finding that “as [defendant] banned plaintiff from entering its property, plaintiff cannot show that he could “lawfully exercise” his religious freedom at [defendant’s church] as required under the terms of the [FACE Act]”).

It is precisely this use of the neutral principles approach that has consistently been admonished by courts. Civil court may not use the *guise* of the neutral principles approach to delve into issues concerning matters of religious doctrine, polity, or governance. *Crowder*, 828 F.2d at 725; *Md. & Va. Eldership of Churches of God*, 396 U.S. at 370 (“Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues”); *Kelley v. Decatur Baptist Church*, 2018 U.S. Dist. LEXIS 73068, at *4 (N.D. Ala. 2018). “[T]he promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application. These problems . . . should be gradually eliminated as recognition is given to the obligation of ‘States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.’” *Jones*, 443 U.S. at 604 (citing *Presbyterian Church*, 393 U.S. at 449).

Where the application of neutral principles of law requires a court to examine or resolve questions of church polity and governance, the neutrality inherent in the neutral principles approach is destroyed, barring the court’s resolution of the case.

Presbyterian Church, 393 U.S. at 449 (“First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice”); *Myhre*, 719 F. App’x at 928 (“Civil courts lack jurisdiction to entertain disputes involving church doctrine and polity”); *Crowder*, 828 F.2d at 721 (“By adjudicating religious disputes, civil courts risk affecting associational conduct and thereby chilling the free exercise of religious beliefs. Moreover, by entering into a religious controversy and putting the enforcement power of the state behind a particular religious faction, a civil court risks ‘establishing’ a religion”).

Baptiste cites the Supreme Court case *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, but overlooks its significance in this case. App. Brief p.25–26; *see also* 393 U.S. 440 (1969). In *Presbyterian Church*, the Supreme Court was called upon to resolve a church property dispute that arose between the general church and two local churches over control of the properties used by the local churches. *Presbyterian Church*, 393 U.S. at 442. The local churches filed suit in state court to enjoin the general church from trespassing on the disputed property, title to which was in the local churches. *Id.* at 442–43. The case was submitted to the jury “on the theory that Georgia law implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of

affiliation by the local churches.” *Id.* at 443. Although the departure-from-doctrine element of Georgia’s implied trust theory is an otherwise neutral principle of trust law, the Supreme Court held that its application to the facts in that case violated the tenets of the First Amendment because it required the civil courts “to engage in the forbidden process of interpreting and weighing church doctrine.” *Id.* at 451. Justice Brennan, in delivering the opinion of the Court, emphasized that the concept of separation between church and state “leaves the civil courts *no* role in determining ecclesiastical questions in the process of resolving property disputes.” *Id.* at 445–47 (emphasis in original). Likewise, the FACE Act may be an otherwise neutral law, but its *application* to the factual circumstances of this case calls on the District Court (or a jury) to decide a matter of ecclesiastical governance and polity, which it cannot do.

Accordingly, as neutral as the FACE Act may be,⁷ its application to the factual circumstances presented in this case is not. A property ownership dispute brought pursuant to the clear language of a deed, charter, or church constitution may be

7. Baptiste’s reference to *Cheffer v. Reno* and *Jingrong v. Chinese Anti-Cult World Alliance* is inapposite to the discrete issue in this appeal because the cases cited address constitutional attacks on the FACE Act, which is not at issue in the instant appeal. App. Brief p.28–29; see also 314 F. Supp. 3d 420 (E.D.N.Y. 2018), *appeal pending*, Case No. 18-2626 (2d Cir.) (the issue on appeal in *Jingrong* was whether Congress, in passing the FACE Act, had exceeded its authority under the Commerce Clause); 55 F.3d 1517 (11th Cir. 1995) (appellants in *Cheffer* brought several constitutional attacks on the FACE Act, including that it is facially unconstitutional and violative of the First, Eighth, and Tenth Amendments and of the Religious Freedom Restoration Act of 1993). At no point has Auguste argued that the FACE Act is unconstitutional, nor did the District Court make such a ruling.

readily resolved without any inquiry into issues of religious doctrine or polity. A dispute brought pursuant to the FACE Act, however, by one church faction against another wherein both are contending for leadership of the church, requires the Court to determine which one is the rightful successor and, by extension, which one has the right to lawfully expel the other off the church property. This Court has already ruled on the impermissibility of the judiciary to decide such an issue. *Crowder*, 828 F.2d at 727 (Edmondson, J., concurring) (“I concur in the court's judgment because adjudication of this case by the federal courts would require the courts to favor the view of one element of the Southern Baptist Convention over the view of another directly concerning the Convention's governance”). As the late Eleventh Circuit Judge Phyllis A. Kravitch aptly stated in *Crowder*, “[t]his controversy is one step removed from a major doctrinal conflict between two factions within the [church].” *Id.* at 726. Even Baptiste’s characterization of the First Amended Complaint describes the dispute as one arising out of the “conten[tion] for the leadership of Eglise Baptiste” and the “selection and installation of a successor to the late Pastor Auguste.” App’x p.16. (“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*”). In light of this underlying church governance dispute, it is clear that the

FACE Act is merely being used as a guise to definitively vest leadership of the church with Baptiste. Resolution of this federal claim invariably turns on resolution of the ongoing church leadership dispute which the Court cannot undertake without violating the guarantees of the First Amendment. *Crowder*, 828 F.2d at 725 (“[A]mbiguity in the locus of church authority may itself necessitate an impermissible inquiry into church polity”).

Accordingly, section 248(a)(2) does not supply the neutral principles of law necessary to resolve the church property ownership dispute at issue in this case.

CONCLUSION

For all the foregoing reasons, Auguste respectfully requests this Court affirm the Southern District Court’s dismissal of Baptiste’s First Amended Complaint based on a lack of subject matter jurisdiction to hear the ecclesiastical dispute.

Respectfully submitted,



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