

CASE NO. 20-10173

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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

Appellants/Plaintiffs,

v.

THE SEMINOLE TRIBE OF FLORIDA,
et al.,

Appellees/Defendants.

On Appeal From The United States District Court For
The Southern District Of Florida, Fort Lauderdale
Division, Case No. 19-CV-62591, Hon. Beth Bloom,
United States District Judge

BRIEF OF APPELLANTS

LAWRENCE R. METSCH (FBN 133162)
METSCHLAW, P.A.
Attorneys for Appellants
20801 Biscayne Blvd., Ste. 300
Aventura, FL 33180-1423
Telephone: (305) 792-2540
Telecopier: (305) 792-2541
E-Mail: lmetsch@metsch.com

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

Appellants/Plaintiffs Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., et al. (hereinafter collectively referred to as “Eglise Baptiste”), by their undersigned attorneys, hereby certify that the following persons/entities are interested in the outcome of the above styled matter:

1. EGLISE BAPTISTE BETHANIE DE FT. LAUDERDALE, INC., a Florida Not-For-Profit Corporation, Plaintiff/Appellant.
2. BERTHONYAURELUS, Plaintiff/Appellant.
3. YCHELINDE BRUTUS, Plaintiff/Appellant.
4. MARIANA BELIZAIRE, Plaintiff/Appellant.
5. JARMUTH CHARLES, Plaintiff/Appellant.
6. QUESNER CHARLES, Plaintiff/Appellant.
7. ELISENA CHARLOT, Plaintiff/Appellant.
8. LOUBINS JOSEPH, Plaintiff/Appellant.
9. SERAPHIN D’HAITI, Plaintiff/Appellant.
10. MAX DEMOSTHENE, Plaintiff/Appellant.
11. MARIE DEMOSTHENE, Plaintiff/Appellant.
12. CLAIRE VALERIE DESTIN, Plaintiff/Appellant.
13. ROSELIE DOCTEUR, Plaintiff/Appellant.
14. EMMANUEL DUVERNA, Plaintiff/Appellant.
15. MAX DUBOIS, Plaintiff/Appellant.
16. WISNICK ESTELAN, Plaintiff/Appellant.
17. MAJORIE ESTELAN, Plaintiff/Appellant.
18. ALINE SUZAN FRANCOIS, Plaintiff/Appellant.
19. MADELENE PIERRE GEDILUS, Plaintiff/Appellant.
20. NEREUS GEDILUS, Plaintiff/Appellant.
21. GESLER ILSENAT, Plaintiff/Appellant.
22. MICHAEL ISEMAR, Plaintiff/Appellant.
23. JEAN ISMAEL, Plaintiff/Appellant.
24. JULIANNA ISMAEL, Plaintiff/Appellant.
25. CIKA BEZANA JEAN BAPTISTE, Plaintiff/Appellant.
26. IRMA JEUDY, Plaintiff/Appellant.

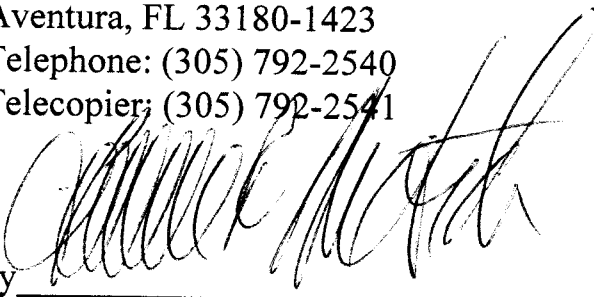
27. FLORENCE JOLY, Plaintiff/Appellant.
28. ERTHA JOSEPH, Plaintiff/Appellant.
29. HORAT JOSEPH, Plaintiff/Appellant.
30. JOSETTE JOSEPH, Plaintiff/Appellant.
31. JULIA LAFRANCE, Plaintiff/Appellant.
32. FISELLA MENAR, Plaintiff/Appellant.
33. MISELA MERONVIL, Plaintiff/Appellant.
34. ESAIE MICHEL, Plaintiff/Appellant.
35. ROSITA MILHOMME, Plaintiff/Appellant.
36. NICOLAS MOISE, Plaintiff/Appellant.
37. LUTHANE MOISE, Plaintiff/Appellant.
38. LOUISE MUNNINGS, Plaintiff/Appellant.
39. EMILE NOEL, Plaintiff/Appellant.
40. FLORENCE NOEL, Plaintiff/Appellant.
41. ZIUS NOEL, Plaintiff/Appellant.
42. DUMARSAIS PARFAIT, Plaintiff/Appellant.
43. CLAUDETTE PIERRE, Plaintiff/Appellant.
44. HERMANIE PIERRE, Plaintiff/Appellant.
45. JEAN LOUIS PIERRELUS, Plaintiff/Appellant.
46. FENELON PROSPER, Plaintiff/Appellant.
47. BONIFACE PETIT-BEAU, Plaintiff/Appellant.
48. BARCELOT PETIT-BEAU, Plaintiff/Appellant.
49. LYDIEUNIE PETIT-BEAU, Plaintiff/Appellant.
50. VERDELINIE PETIT-BEAU, Plaintiff/Appellant.
51. LINES PIERRE, Plaintiff/Appellant.
52. LAVITA PIERRE, Plaintiff/Appellant.
53. ANEILA PIERRE-LOUIS, Plaintiff/Appellant.
54. FANA RACINE, Plaintiff/Appellant.
55. MIRLANDE RACINE, Plaintiff/Appellant.
56. JACKSON ROBERSON, Plaintiff/Appellant.
57. ALIANE SAINTIL, Plaintiff/Appellant.
58. HERMANTILDE SAINTIL, Plaintiff/Appellant.
59. MARIE SAINTIL, Plaintiff/Appellant.
60. JEAN SOLVILIEN, Plaintiff/Appellant.
61. ANDY SAINT-REMY. Plaintiff/Appellant.
62. ACCELINE SAINT-REMY, Plaintiff/Appellant.
63. LEONNE SAINT-REMY, Plaintiff/Appellant.

64. JOSEPH SYLVAIN, Plaintiff/Appellant.
65. BIENNE TANIS, Plaintiff/Appellant.
66. LUCIA TANIS, Plaintiff/Appellant.
67. ITONY TELUSNORD, Plaintiff/Appellant.
68. MARIE ANGELET TELUSNORD, Plaintiff/Appellant.
69. DIENIVA THERVIL, Plaintiff/Appellant.
70. LUDIE THERVIL, Plaintiff/Appellant.
71. ELVIRE CHARLES, Plaintiff/Appellant.
72. FENISE PIERRE, Plaintiff/Appellant.
73. RACHEL AUGUSTAVE, Plaintiff/Appellant.
74. GUIRLANDE TOUSSAINT, Plaintiff/Appellant.
75. HENRIOT RACINE, Plaintiff/Appellant.
76. RODRIGUE JONVIL, Plaintiff/Appellant.
77. MISELA STINFIL, Plaintiff/Appellant.
78. PAULETTE ZETRENNE, Plaintiff/Appellant.
79. RODRIGUE ZETRENNE, Plaintiff/Appellant.
80. GEORGES PHILIPPE, Plaintiff/Appellant.
81. THE SEMINOLE TRIBE OF FLORIDA, Defendant/Appellee.
82. AIDA AUGUSTE, Defendant/Appellee.
83. JOHAM CHARLES, Defendant/Appellee.
84. USLANDE AUGUSTE, Defendant/Appellee.
85. WILLIAM ISMA, Defendant/Appellee.
86. ANIDA AUGUSTE ISMA, Defendant/Appellee.
87. VILCIAS ALCIDE, Defendant/Appellee.
88. MAUDE PIERRE, Defendant/Appellee.
89. MAFER MILHOMME, Defendant/Appellee.
90. ANNALISE MILHOMME, Defendant/Appellee.
91. FRANK LOUIS, Defendant/Appellee.
92. ROSEMENE LOUIS, Defendant/Appellee.
93. PREVAINQUEUR MORENEY, Defendant/Appellee.
94. ODANE MARC, Defendant/Appellee.
95. ELIO PAUL VALBRUN, Defendant/Appellee.
96. MARLENE VALBRUN, Defendant/Appellee.
97. LIFRANC CYRIAC, Defendant/Appellee.
98. ELISLANNE CYRIAC, Defendant/Appellee.
99. JOHN WESLEY HYACINTHE, Defendant/Appellee.
100. Hon. Beth Bloom, U.S. District Judge.

101. Hon. Alicia O. Valle, U.S. Magistrate Judge.
102. Lawrence R. Metsch and Metschlaw, P.A.- Attorneys for Plaintiffs/Appellants.
103. Mark D. Schellhase and Emily L. Pineless and GrayRobinson, P.A.- Attorneys for Defendant/Appellee The Seminole Tribe of Florida.
104. Charles C. Johnson and Abdul-Sumi Dalal, Johnson|Dalal- Attorneys for Defendants/Appellees Aida Auguste, et al.

METSCHLAW, P.A.
Attorneys for Eglise Baptiste
20801 Biscayne Blvd., Ste. 300
Aventura, FL 33180-1423
Telephone: (305) 792-2540
Telecopier: (305) 792-2541

by



LAWRENCE R. METSCH
FBN 133162

Dated: February 24, 2020

STATEMENT REGARDING ORAL ARGUMENT

This appeal presents two (2) important questions of national first impression:

(1) Is a Native American tribe immune from suit for damages arising out of the off-the-reservation conduct of its police officers who violated 18 U.S.C. § 248?

(2) Does 18 U.S.C. § 248, as applied to the potentially violent culmination of a church leadership dispute, conflict with the Establishment and Free Exercise Of Religion Clauses to the First Amendment to the United States Constitution?

Because each of the foregoing issues would be red meat for a law school's advanced appellate moot court competition, Eglise Baptiste respectfully request that the Court hear the oral arguments of counsel for the parties to this civil action.

TABLE OF CONTENTS (PAGE 1 OF 2)

	<u>Page</u>
Cover Page.....	1
Certificate Of Interested Persons And Corporate Disclosure Statement.....	2
Statement Regarding Oral Argument.....	6
Table Of Contents.....	7
Table Of Citations.....	9
Statement Of Subject-Matter and Appellate Jurisdiction....	11
Statement Of The Issues.....	12
Statement Of The Case.....	13
A. The Course Of Proceedings In The District Court.....	13
B. Statement Of The Facts.....	15
C. The Standard Of Review.....	17
Summary Of The Argument.....	20
Argument And Citations Of Authority.....	21
I. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT SEMTRIBE WAS IMMUNE FROM SUIT UNDER 18 U.S.C. § 248 FOR THE OFF-THE-RESERVATION CONDUCT OF ITS POLICE OFFICERS.....	21

TABLE OF CONTENTS (PAGE 2 OF 2)

	<u>Page</u>
II. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT, AS APPLIED TO THE FACTS OF THIS CASE, UNDER THE “ECCLESIASTICAL QUESTION” DOCTRINE, 18 U.S.C. § 248 VIOLATES THE ESTABLISHMENT AND FREE EXERCISE OF RELIGION CLAUSES OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND SHIELDS THE AUGUSTE DEFENDANTS FROM LIABILITY IN DAMAGES TO, AND COMPULSION BY INJUNCTIVE ORDERS IN FAVOR OF, EGLISE BAPTISTE.....	25
Conclusion.....	30
Certificate Of Compliance.....	31
Certificate Of Service.....	32

TABLE OF CITATIONS (PAGE 1 OF 2)

	<u>Pages</u>
<u>UNITED STATES CONSTITUTION</u>	
First Amendment.....	6,12,13,14,19f,20, 21,24,25,28f
<u>UNITED STATES CODE</u>	
18 U.S.C. § 247.....	27,27f,28f
18 U.S.C. § 248.....	6,12,14,17,17f, 18f,19f,20,25,28,28f
28 U.S.C. § 1291.....	11
28 U.S.C. § 1331.....	11
28 U.S.C. § 1343.....	11
28 U.S.C. § 1367.....	13
42 U.S.C. § 1985(3).....	13,14
<u>CASES</u>	
<i>Cheffer v. Reno</i> , 55 F. 3d 1517 (11 th Cir. 1995).....	28
<i>Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.</i> , 523 U.S. 751, 118 S. Ct. 1700 (1998).....	21
<i>Michigan v. Bay Mills Indian Community</i> , 572 U.S. 782, 134 S. Ct. 2024 (2014).....	21,22

TABLE OF CITATIONS (PAGE 2 OF 2)

	<u>Pages</u>
 <u>CASES</u>	
<i>Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Presbyterian Church</i> , 393 U.S. 440 (1969).....	25,26
<i>Wilkes v. PCI Gaming Authority</i> , ___ So. 3d ___, 2017 WL 4385738 (Ala. 2017), <i>cert. denied sub nom, Poarch Bank of Creek Indians v. Wilkes</i> , , ___ U.S. ___, 139 S. Ct. 2739 (2019).....	22,23
<i>Zhang Jingron v. Chinese Anti-Cult Alliance</i> , 314 F. Supp. 3d 420 (E.D.N.Y. 2018), <i>appeal pending</i> , Case No. 18-2626 (2d Circuit), Argued October 3, 2019.....	29
 <u>FEDERAL RULES OF CIVIL PROCEDURE</u>	
Rule 12(b)(1).....	13,14
Rule 12(b)(6).....	13,14,27

**STATEMENT OF SUBJECT-MATTER AND
APPELLATE JURISDICTION**

The District Court possessed subject-matter jurisdiction in Case No. 19-CV-62591 by virtue of 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights).

This Court possesses subject-matter jurisdiction in this case by virtue of 28 U.S.C. § 1291 (appeal from a final judgment of the District Court).

STATEMENT OF THE ISSUES

I. DID THE DISTRICT COURT ERR WHEN IT DETERMINED THAT APPELLEE/DEFENDANT THE SEMINOLE TRIBE OF FLORIDA (“SEMTRIBE”) WAS IMMUNE FROM A CIVIL ACTION FOR MONEY DAMAGES ARISING FROM THE OFF-THE-RESERVATION VIOLATIONS BY SEMTRIBE’S POLICE OFFICERS OF A CRIMINAL STATUTE, 18 U.S.C. § 248?

II. DID THE DISTRICT COURT ERR WHEN IT DETERMINED THAT, AS APPLIED TO THE CONDUCT OF APPELLEES/DEFENDANTS AIDA AUGUSTE, ET AL. (“THE AUGUSTE DEFENDANTS”), THE CIVIL DAMAGES AND INJUNCTIVE RELIEF PROVISIONS OF 18 U.S.C. § 248 WERE UNENFORCEABLE BECAUSE THOSE STATUTORY PROVISIONS VIOLATED THE ESTABLISHMENT AND FREE EXERCISE OF RELIGION CLAUSES OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION?

STATEMENT OF THE CASE¹

A. The Course Of Proceedings In The District Court

On October 17, 2019, Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., a Florida not-for-profit corporation, and Andy Saint-Remy, invoking 42 U.S.C. § 1985(3) and Florida common law, 28 U.S.C. § 1367, filed a Complaint in the United States District Court for the Southern District of Florida (“the District Court”) against SemTribe and Aida Auguste (“Auguste”) for damages and injunctive relief, thereby commencing Case No. 19-CV-62591-Bloom/Valle (“Case No. 19-62591”). [ECF 1] Plaintiffs, on October 20, 2019, demanded trial by jury in Case No. 19-62591. [ECF 4]

SemTribe, invoking Native American tribal sovereign immunity, on November 14, 2019, moved to dismiss the Complaint pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure (lack of subject-matter jurisdiction). [ECF 8]. Auguste, on November 15, 2019, invoking the First Amendment’s “ecclesiastical question” doctrine, moved to dismiss the Complaint pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure (failure to state a claim upon which relief could be granted). [ECF 10]

¹ References to the Record will appear in this brief as follows: “ECF ___”).

On December 1, 2019, a First Amended Complaint was filed in Case No. 19-62591. [ECF 21] The First Amended Complaint:

(1) added seventy-eight (78) individuals as Plaintiffs and seventeen (17) individuals as Defendants (“the Auguste Defendants”);

(2) abandoned Eglise Baptiste’s claims under 42 U.S.C. § 1985(3) and Florida common law; and

(3) relied exclusively on 18 U.S.C. § 248.

The Auguste Defendants, on December 11, 2019, moved pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, to dismiss the First Amended Complaint on the basis that it was barred by the “ecclesiastical question” doctrine arising from the Free Exercise and Establishment of Religion Clauses of the First Amendment to the United States Constitution. [ECF 26]

SemTribe, on December 13, 2019, moved pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, to dismiss the First Amended Complaint on the basis of SemTribe’s claimed Native American tribal sovereign immunity from civil suit. [ECF 28]

Eglise Baptiste, on December 16, 2019, responded in opposition to ECF 26 [ECF 30]. On December 16, 2019, Eglise Baptiste also responded in opposition to ECF 28 [ECF 31]

The District Court, on January 3, 2020, issued an Omnibus Order in which it dismissed the First Amended Complaint and directed the Clerk of the Court to close the case. [ECF 50]² Eglise Baptiste, on January 8, 2020, pursuant to Rule 58, Federal Rules of Civil Procedure, moved for the entry of a final judgment. [ECF 51] The District Court, on January 9, 2020, entered a final judgment adverse to Eglise Baptiste. [ECF 54] Eglise Baptiste's notice of appeal to this Court was filed on January 14, 2020. [ECF 55]

B. Statement Of The Facts

Eglise Baptiste, in its First Amended Complaint, alleged that:

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.

² The District Court's January 3, 2020, Omnibus Order has been electronically reported: 2020 WL 43221.

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.

11. The judicial doctrine of tribal sovereign immunity does not insulate SemTribe from the claims which Plaintiffs have asserted against SemTribe in this civil action because: (a) the actions of SemTribe's police officers took place more than eleven (11) miles from SemTribe's Hollywood, Florida, reservation, (b) prior to September 29, 2019, Plaintiffs had not had an opportunity to negotiate with SemTribe for a waiver of SemTribe's tribal sovereign immunity; and (c) other than through this civil action, Plaintiffs have no means by which to secure monetary compensation for SemTribe's infringements of Plaintiffs' rights under Federal and Florida law. (Footnote omitted)

C. The Standard Of Review

This Court conducts a *de novo* review of the District Court's determinations that: (a) SemTribe is immune from Eglise Baptiste's claim for damages under 18 U.S.C. § 248³; and (b) as applied to the facts of this case, 18 U.S.C. § 248 violates the

³ Section 248, Title 18, U.S. Code, in pertinent part provides:

(a) Prohibited activities- Whoever-

(1) 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 because that person is or has been, of in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or 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; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worhsip,

Shall be subject to the penalties provided in subsection (b) and the civil

remedies provided in subsection (c), except that a person 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 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall not be 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 s subsequent offense; and except that if bodily injury results, the length of imprisonment shall not be more than 10 years, and if death results, it shall be for any term of years or his life.

(c) Civil remedies-

(1) Rights 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), except that such an action may br brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in

Establishment and Free Exercise of religion clauses of the First Amendment to the United States Constitution.⁴

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.

(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 recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

⁴ The First Amendment to the United States Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

SUMMARY OF THE ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT SEMTRIBE WAS IMMUNE FROM SUIT UNDER 18 U.S.C. § 248 FOR THE OFF-THE-RESERVATION CONDUCT OF ITS POLICE OFFICERS.

Because SemTribe’s police officers violated a *criminal* statute, 18 U.S.C. § 248, the doctrine of Native American tribal sovereign immunity is inapplicable to this case.

II. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT, AS APPLIED TO THE FACTS OF THIS CASE, UNDER THE “ECCLESIASTICAL QUESTION” DOCTRINE, 18 U.S.C. § 248 VIOLATES THE ESTABLISHMENT AND FREE EXERCISE OF RELIGION CLAUSES OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND SHIELDS THE AUGUSTE DEFENDANTS FROM LIABILITY IN DAMAGES AND INJUNCTIVE ORDERS.

The “ecclesiastical question” doctrine is inapplicable to the facts of this case because: (a) the dispute between Eglise Baptiste and the Auguste Defendants does not arise from a disagreement over religious doctrine or practice, and (b) 18 U.S.C. § 248 supplies the “neutral principles” required to avoid the strictures of the Establishment and Free Exercise of Religion Clauses of the First Amendment to the United States Constitution.

ARGUMENT AND CITATIONS OF AUTHORITY

I. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT SEMTRIBE WAS IMMUNE FROM SUIT UNDER 18 U.S.C. § 248 FOR THE OFF-THE-RESERVATION CONDUCT OF ITS POLICE OFFICERS.

The Supreme Court, in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 118 S. Ct. 1700 (1998), over the dissent of three justices, held that a Native American tribe was entitled to sovereign immunity from suit on a promissory note which it had signed, regardless of whether the promissory note had been signed on or off the reservation and notwithstanding that the promissory note related to the tribe's commercial activities.

In *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 134 S. Ct. 2024 (2014), the Supreme Court, over the dissent of four justices, held that the State of Michigan's suit against the Native American tribe- to enjoin the operation of a casino on land owned by the tribe which was located outside the tribe's reservation-was barred by tribal sovereign immunity. Footnote 8 to Justice Kagan's majority opinion stated:

Adhering to *stare decisis* is particularly appropriate here given that the State, as we have shown, has many alternative remedies; it has no need to sue the Tribe to right the wrong it alleges... We need not consider whether the situation would be different if no alternative remedies

were available. *We have never, for example, specifically addressed (nor, so far as we are aware, has Congress) whether immunity should apply in the ordinary way if a tort victim, or other plaintiff who has not chosen to deal with a tribe, has no alternative way to obtain relief for off-reservation conduct. The argument that such cases would present a “special justification” for abandoning precedent is not before us.* (Emphasis supplied)

572 U.S. at 799, 134 S. Ct. at 2036.

Research has revealed one factually analogous, post-*Bay Mills* reported decision addressing the question posed, but reserved, in Footnote 8: *Wilkes v. PCI Gaming Authority*, ___ So. 3d ___, 2017 WL 4385738 (Ala. 2017), *cert. denied sub nom Poarch Band of Creek Indians v. Wilkes*, ___ U.S. ___, 139 S. Ct. 2739 (2019).

In *Wilkes, supra*, a motorist and passenger brought suit against a truck driver and the driver’s employer, a casino and hotel owned by a Native American tribe, raising negligence and wantonness claims and seeking compensation for injuries sustained in an off-reservation head-on collision. The Alabama State Circuit Court entered summary judgment for the defendants on the basis of tribal sovereign immunity and the plaintiffs appealed. In an opinion written by Chief Justice Stuart, the Supreme Court of Alabama reversed:

Wilkes and Russell did not voluntarily choose to engage in a transaction with the tribal defendants; rather, they were merely traveling on the public roads of this State when they were injured in an automobile accident involving- and, by

all accounts, caused by- a Wind Creek-Wetumpka employee driving a Wind Creek-Wetumpka vehicle. Thus, to the extent that the *Bay Mills* Court buttressed its decision affording tribal sovereign immunity to tribes with regard to claims stemming from a tribe's commercial activities by reasoning that plaintiffs could "bargain for a waiver of immunity" beforehand, ___ U.S. ___, 134 S. Ct. at 2035, that rationale has no application to the tort claims asserted by Wilkes and Russell. Moreover, for the reasons explained by Justice Thomas in his dissent in *Bay Mills*, we likewise conclude that none of the other rationales offered by the majority in *Bay Mills* as support for continuing to apply the doctrine of tribal sovereign immunity to tribes' off-reservation commercial activities sufficiently outweigh the interests of justice so as to merit extending that doctrine to shield tribes from *tort* claims asserted by individuals who have no personal or commercial relationship to the tribe, ___ U.S. ___. 134 S. Ct. at 2045-2055 (Thomas, J., dissenting) (explaining that the doctrine of tribal sovereign immunity as articulated by the Supreme Court in *Kiowa* lacks "substantive justification" and the majority's reasons for continuing to uphold the doctrine- deference to Congress, *stare decisis*, etc.,- are insufficient in light of the lack of a justification, and the "unfairness and conflict it has engendered").

___ So. 3d at ___.

In *Wilkes*, the Supreme Court of Alabama concluded that the doctrine of Native American tribal sovereign immunity did not insulate the tribe from suit for the off-the-reservation *torts*, allegedly committed by the tribe's employee, of the negligent and wanton operation of a motor vehicle. This case presents a misconduct scenario dramatically more egregious than that addressed in *Wilkes*.

In this case, SemTribe's police officers- using a SemTribe-marked police department vehicle, wearing SemTribe's police department-issued uniforms, and carrying SemTribe's police department-issued firearms- traveled more than eleven miles from SemTribe's Hollywood, Florida, reservation to the church property in Fort Lauderdale, Florida, on Sunday morning, September 29, 2019, and then, in violation of a *criminal* statute, 18 U.S.C. § 248: (1) expelled the individual Appellants (who were participating in Sabbath religious services) from the church property; and (2) stood guard over the Auguste Defendants' seizure of the church's real and personal property.

Nevertheless, the District Court granted SemTribe's motion to dismiss the First Amended Complaint on the basis of Native American tribal sovereign immunity. Eglise Baptiste's response to the District Court's grant of a free pass to SemTribe is: in modern-day America, Native American tribal sovereign immunity should not serve as a barrier to SemTribe's accountability in damages to Eglise Baptiste for the off-the-reservation *criminal* misconduct of SemTribe's police officers.

The District Court erred when it granted SemTribe's motion to dismiss the First Amended Complaint on the basis of Native American tribal sovereign immunity. For this reason, the District Court's final judgment should be reversed and the cause should be remanded for a jury trial on Eglise Baptiste's claim for damages against

SemTribe.

II. THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT, AS APPLIED TO THE FACTS OF THIS CASE, UNDER THE “ECCLESIASTICAL QUESTION” DOCTRINE, 18 U.S.C. § 248 VIOLATES THE ESTABLISHMENT AND FREE EXERCISE OF RELIGION CLAUSES OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND SHIELDS THE AUGUSTE DEFENDANTS FROM LIABILITY IN DAMAGES TO, AND COMPULSION BY INJUNCTIVE ORDERS IN FAVOR OF, EGLISE BAPTISTE.

The Supreme Court, in *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Presbyterian Church*, 393 U.S. 440 (1969), reasoned:

Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there 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. Because of these hazards, the First

Amendment enjoins the employment of organs of government for essentially religious purposes, *Abington School District v. Schempp*, 374 U.S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

393 U.S. at 449.

That the District Court mis-characterized the dispute between Eglise Baptiste and the Auguste Defendants as one involving religious doctrine or practice (rather than a power struggle implicating control of church real and personal property) is evident from the language of ¶¶ 7 and 8 of the First Amended Complaint:

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.

Because the District Court, as to the Auguste Defendants, dismissed the First Amended Complaint for failure to state a claim upon which relief could be granted, Rule 12(b)(6), Federal Rules of Civil Procedure, there were neither pleading allegations nor sworn statements before the District Court upon which it could conclude that the dispute between Eglise Baptiste and the Auguste Defendants implicated an “ecclesiastical question”.

In the ordinary dispute over control of a religious institution’s property, the parties and the civil courts would be compelled to look to *state* law in order to discern the “neutral principles” endorsed by the Supreme Court, *supra*. However, in *this* instance, resort to Florida law for the purpose of discerning the applicable “neutral principles” would be inappropriate because Congress, by enacting 18 U.S.C. §§ 247⁵

⁵ Section 247, Title 18, U.S. Code, is entitled *Damage to religious property; obstruction of persons in the free exercise of religious beliefs* and in pertinent part provides:

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section-

(1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or

(2) intentionally obstructs, by force or threat of force, including by threat of force against religious real property, any person in the

and 248, has (1) sought to protect the free exercise of religion guaranteed by the First Amendment to the United States Constitution and (2) thereby supplied the requisite “neutral principles” for resolving the dispute between Eglise Baptiste and the Auguste Defendants.⁶

This Court, in a different factual context, has previously addressed the constitutionality of 18 U.S.C. § 248. In *Cheffer v. Reno*, 55 F. 3d 1517, 1522 (11th Cir. 1995), which involved the blocking of access to abortion clinics, this Court held that 18 U.S.C. § 248 did not infringe on the plaintiffs’ free exercise of religion, as guaranteed by the First Amendment to the United States Constitution, because the

enjoyment of that person’s free exercise of religious beliefs, or attempts to do so;

shall be punished as provided in subsection (d).

* * * * *

(f) As used in this section, the term “religious real property” means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship, or real property owned or leased by a nonprofit, religiously affiliated organization.

⁶ It is ironic that the District Court, in its Omnibus Order, declined to enforce 18 U.S.C. § 248 (a statute intended by Congress to fortify the free exercise of religion) against the Auguste Defendants by invoking the Establishment and Free Exercise Of Religion Clauses of the First Amendment to the United States Constitution.

statute was “generally applicable and neutral toward religion”. *See, also, Zhang Jingrong v. Chinese Anti-Cult World Alliance*, 314 F. Supp. 3d 420 (E.D.N.Y. 2018)(Congress acted constitutionally when it included religious institutions in 18 U.S.C. § 248), *appeal pending*, Case No. 18-2626 (2nd Circuit), oral argument presented on October 3, 2019.

The District Court erred when it granted the Auguste Defendants’ motion to dismiss the First Amended Complaint on the basis of the “ecclesiastical question” doctrine. For this reason, the District Court’s final judgment should be reversed and the cause should be remanded for a jury trial on Eglise Baptiste’s claim for damages and, depending upon the outcome, consideration of the imposition of equitable relief against the Auguste Defendants.

CONCLUSION

The District Court's final judgment should be reversed. This cause should be remanded to the District Court for a jury trial and, depending upon the outcome thereof, consideration of the imposition of equitable relief against the Auguste Defendants.

Respectfully submitted,

METSCHLAW, P.A.
Attorneys for Eglise Baptiste
20801 Biscayne Blvd., Suite 300
Aventura, FL 33180-1423
Telephone: (305) 792-2540
Telecopier: (305) 792-2541
E-Mail: l.metsch@metsch.com

by 

LAWRENCE R. METSCH
FBN 133162

CERTIFICATE OF COMPLIANCE

1. Type-Volume

This document complies with the word limit of FRAP 32(a)(5), FRAP 32(a)(6) and 11th Cir. Rule 27-1(a)(10) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 5,054 words.

2. Typeface and Type-Style

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

Dated this 24th day of February, 2020.

METSCHLAW, P.A.
Attorneys for Appellants/Plaintiffs
20801 Biscayne Blvd., Ste. 300
Aventura, FL 33180-1423
Telephone: (305) 792-2540
Telecopier: (305) 792-2541
E-Mail: lmetsch@metsch.com

By 

LAWRENCE R. METSCH
FBN 133162

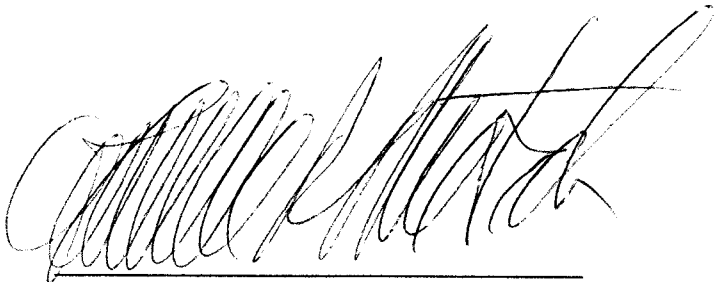
CERTIFICATE OF SERVICE

I hereby certify that, using the Court of Appeals' CM/ECF facility, true copies of the foregoing Brief of Appellants have been electronically served this 24th day of February, 2020, on:

Mark D. Schellhase, Esq. (Mark.schellhase@gray-robinson.com)
Emily Lauren Pineless, Esq. (Emily.pineless@gray-robinson.com)
GrayRobinson, P.A.
225 N.E. Mizner Blvd., Suite 500
Boca Raton, FL 33432-4086
E-Mail: ingrid.reichel@gray-robinson.com

Mark C. Johnson, Esq. (MJ@JohnsonDalal.com)
Abdul-Sumi Dalal, Esq. (AD@JohnsonDalal.com)
Johnson|Dalal
111 North Pine Island Road, Suite 103
Plantation, FL 33324
E-Mail: JT@Johnson|Dalal.com
E-Mail: Service@Johnson|Dalal.com

Hon. Rosa I. Rodriguez
Circuit Judge, Retired
Salmon & Dulberg
Suite 620
19 West Flagler Street
Miami, FL 33130
E-Mail: rosa@sd-adr.com



LAWRENCE R. METSCH