

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

REPLY BRIEF OF APPELLANTS

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**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.

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Dated: April 26 2020

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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.

First, in *Michigan v. Bay Mills Indian Community*, 572 U.S. 792 (2014), the Supreme Court, in a 5-4 decision, held that the State of Michigan's suit to enjoin a Native American tribe from operating a casino on land located outside the tribe's reservation was barred by tribal sovereign immunity. Justice Kagan's majority opinion, in Footnote 8, issued the following caveat:

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 commercial conduct. The argument that such cases would present a "special justification" for abandoning precedent is not before us... (Citation omitted)

572 U.S. at 799.¹

¹ Footnote 8 to the majority opinion in *Michigan v. Bay Mills Indian Community*, *supra*, is ambiguous: if neither the Supreme Court nor Congress had previously considered the tribal sovereign immunity implications of off-reservation tortious conduct, how could there be an abandonment of precedent?

The September 29, 2019, off-reservation conduct of SemTribe’s police officers was not merely *tortious*² or in furtherance of a *commercial* activity; it was *criminal*, a brazen violation of 18 U.S.C. § 248(a)(2).

Second, the *only* recognized immunity from legal proceedings springing from *criminal* conduct is *diplomatic* immunity. However, the Federal Courts have consistently *rejected* the notion that Native American tribes are protected by *diplomatic* immunity. *See, e.g., United States v. Parsons*, 2018 U.S. Dist. LEXIS 44454, 2018 WL 1385908 (D. Nebraska 2018), and cases cited therein.

Third, the use, in 18 U.S.C. § 248(a) of the word “whoever” signals that Congress intended to abrogate tribal sovereign immunity for violations thereof. Stated simply, if Congress had determined to exempt Native American tribes from liability for statutory compensatory and punitive damages under 18 U.S.C. § 248(c), it could easily have done so.

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Because the police officers on September 29, 2019, wore SemTribe police uniforms, carried SemTribe police firearms and traveled in a SemTribe police automobile, the actions of those police officers rendered applicable the doctrine of *respondeat superior* and exposed SemTribe to pecuniary liability to Eglise Baptiste. *See, e.g., K.M. ex rel. D.M. v. Publix Super Markets, Inc.*, 895 So. 2d 1114 (Fla. 4th DCA 2005), and *Knight v. Merhige*, 133 So. 3d 1140 (Fla. 4th DCA), *review dismissed*, 2014 Fla. LEXIS 1576 (Fla., May 8, 2014), *review denied*, 2014 Fla. LEXIS 3392 (Fla., November 17, 2014), *review denied sub. nom Sitton v. Mehridge*, 2014 Fla. LEXIS 3395 (Fla., November 17, 2014).

In summary, the District Court erred when it dismissed Eglise Baptiste's claims under 18 U.S.C. § 248 against SemTribe on the basis of tribal sovereign immunity.

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.

In *Jones v. Wolf*, 443 U.S. 595 (1979), the Supreme Court held that the State of Georgia was constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute, but that the First Amendment to the United States Constitution prohibited courts from resolving such disputes on the basis of religious doctrines.³

This Court, in *Crowder v. Southern Baptist Convention*, 828 F. 2d 718 (11th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988), affirmed the District Court's dismissal of a challenge to the parliamentary procedures of the Southern Baptist Convention. Judge Kravitch's opinion for this Court observed:

³ The Presbyterian church the property of which was contested in *Jones v. Wolf*, *supra*, was affiliated with a national church with a hierarchical governing structure. While it is affiliated with the Southern Baptist Convention, Eglise Baptiste independently governs itself in the congregationalist tradition.

Applying this balance of interests to the facts of this case, we conclude that the district court correctly found that civil court resolution of this controversy would violate the *first amendment*. This controversy is one step removed from a major doctrinal conflict between two factions within the Southern Baptist Convention. Although a civil court might be able to avoid questions of religious beliefs or doctrines in ruling on the issue of whether the SBC Committee on Boards elected at the 1985 Convention was entitled to serve in that capacity, "questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern."...

We need not rely, however, upon the risk that a court would have to resolve questions of religious doctrine and belief in order to decide this case because other interests implicated by the controversy strongly favor deferring to the decisions of the messengers at the 1985 Convention and the 1985 SBC Executive Committee. First, the SBC provides its own rules for determining how the membership of the Committee on Boards is to be selected. In this case, a majority of messengers at the 1985 Convention voted in favor of the nominees for the Committee on Boards submitted by the Committee on Committees. Appellants appealed to the Executive Committee of the SBC to contest Chairman Stanley's rulings. The Executive Committee rejected the arguments of appellants' counsel and affirmed the election of the 1985 Committee on Boards. The *first amendment* strongly favors deference to such a decision by the highest church judicatory concerning a matter of church governance. Second, the controversy bears only a tangential relationship to property rights. Although appellants contend that the SBC bylaws create enforceable contract rights under Georgia law, the denial of these alleged rights is unrelated to any question of ownership of property that would give rise to a state interest in assuring prompt resolution of the controversy by a civil court forum. The

state has little interest in determining which individuals within the SBC choose the nominees for positions in which they administer assets that are undisputably owned by the SBC. Finally, appellants' interest in obtaining a civil court forum is insubstantial. Appellants received a hearing and a decision on their claims before the highest SBC tribunal. Moreover, appellants have made no allegation of fraud or collusion on the part of Chairman Stanley or any SBC officer or organization.

In balancing these interests, we hold that the *first amendment* bars civil court resolution of this controversy concerning a matter of ecclesiastical government. We therefore affirm the judgment of the district court dismissing this action. (Citations omitted)

828 F. 2d at 726-727.

This dispute is all about property, not about religious doctrine. Indeed, SemTribe and Auguste and her supporters, on September 29, 2019, without judicial approval and by threat of force, collaborated to seize control of the real and personal property of Eglise Baptiste.

This dispute cries out for the application of “neutral principles of law” by an independent judiciary. Those “neutral principles of law” have been provided for the resolution of this controversy by 18 U.S.C. § 248. Significantly, in *Cheffer v. Reno*, 55 F. 3d 1517 (11th Cir. 1995), this Court, citing with approval the decision in *American Life League, Inc. v. Reno*, 47 F. 3d 642, 654 (4th Cir. 1995), held that 18 U.S.C. § 248 “is generally applicable and neutral toward religion and, therefore, does

not offend the First Amendment's Free Exercise Clause." 55 F. 3d at 1522.

In summary, the District Court erred and invited anarchy into this nation's religious institutions when it dismissed Eglise Baptiste's claims under 18 U.S.C. § 248 against Auguste and her supporters on the basis of the "ecclesiastical question" doctrine.

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 2,268 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 26th day of April, 2020.

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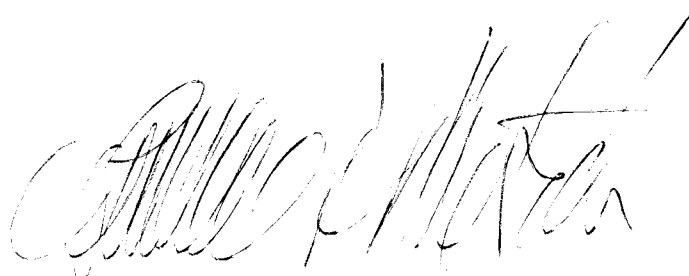
CERTIFICATE OF SERVICE

I hereby certify that, using the Court of Appeals' CM/ECF facility, true copies of the foregoing Reply Brief of Appellants have been electronically served this 27th day of April, 2020, on:

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