No. 20-791

October Term 2020

IN THE SUPREME COURT OF THE UNITED STATES

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

Petitioners,

v.

THE SEMINOLE TRIBE OF FLORIDA, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, CASE NO. 20-10173

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November 27, 2020

QUESTIONS PRESENTED

Six members of a reservation-based tribal police force, while in uniform, using a marked vehicle and carrying departmental firearms, during a sabbath service intervened in an off-reservation dispute over the leadership of a church and installed a dissident faction of the congregation.

This petition presents two significant questions:

(1) Is a Native American tribe sovereignly immune from a civil suit for damages caused by the off-reservation violations by its police officers of the "place of religious worship" provisions of the Freedom of Access To Clinic Entrances Act of 1994, 18 U.S.C. § 248(a)(2) ("the Access Act")?

(2) Are the "place of religious worship" and civil remedies provisions of the Access Act, as applied to a congregational leadership dispute, unenforceable because those provisions violate the Establishment of Religion and Free Exercise of Religion Clauses of the First Amendment to the United States Constitution?

The Court of Appeals and the District Court answered the foregoing questions in the affirmative.

The former question was reserved for future resolution in Footnote 8 of Justice Kagan's opinion for the Court in *Michigan v. Bay Mills Indian Community,* 572 U.S. 782, 799 (2014):

> 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)[1]

As to the latter question, with the exception of the Court of Appeals' decision in this controversy, no court has held that the "place of religious worship" and civil remedies provisions of the Access Act are unenforceable because they violate the Establishment of Religion and Free Exercise of Religion Clauses of the First Amendment to the United States Constitution. Indeed, the Eleventh Circuit in this case so held even though, in *Cheffer v. Reno,* 55 F. 3d 1517, 1522-1523 (11th Cir. 1995), it had upheld the abortion clinic provisions of the Access Act against an attack premised upon the Free Exercise of Religion Clause of the First Amendment and the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb-2 to 2000bb-4.

The U.S. Department of Justice, *sub silentio,* declined Petitioners' invitation to

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[1] The Chief Justice, in his concurring opinion in *Upper Skagit Indian Tribe v. Lundgren,* ___ U.S. ___, _____, 138 S. Ct. 1649, 1656 (2018), observed:

> I do not object to the Court's determination to forgo consideration of the immovable-property rule at this time. But if it turns out that the rule does not extend to tribal assertions of rights in non-trust, non-reservation property, the applicability of sovereign immunity in such circumstances would, in my view, need to be addressed in a future case. See, *Michigan v. Bay Mills Indian Community,* 572 U.S. 782, 799, n. 8 (2014) (reserving the question whether sovereign immunity would apply if a "plaintiff who has not chosen to deal with a tribe [ ] has no alternative way to obtain relief for off-reservation commercial conduct").

defend, before the Court of Appeals, the constitutionality of the "place of religious worship" provisions of the Access Act against an "as applied" attack under the Establishment and Free Exercise Of Religion Clauses of the First Amendment to the Constitution. Consequently, the Court of Appeals' refusal, in this case, to enforce the "place of religious worship" provisions of the Access Act came about without the involvement of the Department of Justice.

The (a) extra-territorial scope of Native American tribal sovereign immunity from civil litigation and (b) constitutionality, as applied, of the "place of religious worship" provisions of the Access Act are significant issues warranting the issuance of a Writ of Certiorari to the Eleventh Circuit.

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TABLE OF AUTHORITIES

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., a Florida not-for-profit corporation ("Eglise Baptiste"), is the owner of the "place of religious worship" located at 2200 N.W. 12th Avenue, Fort Lauderdale, Florida 33311, and was the corporate plaintiff in Case No. 19-CV-62591-Bloom, U.S. District Court for the Southern District of Florida ("Case No. 19-62591"), and the corporate appellant in Case No. 20-10173, U.S. Court of Appeals for the Eleventh Circuit ("Case No. 20-10173").

Petitioners Andy Saint-Remy, et al., the members of Eglise Baptiste who on September 29, 2019, were expelled from and thereafter denied access to the "place of religious worship", were the individual plaintiffs in Case No. 19-62591 and the individual appellants in Case No. 20-10173.

Respondent The Seminole Tribe of Florida ("Sem Tribe"), whose police officers provided the muscle for the seizure of the "place of religious worship", was the corporate defendant in Case No. 19-62591 and the corporate appellee in Case No. 20-10173.

Respondents Aida Auguste, et al. ("Auguste"), comprising the dissident faction of Eglise Baptiste, were the individual defendants in Case No. 19-62591 and the individual appellees in Case No. 20-10173.

PETITION FOR WRIT OF CERTIORARI

Petitioners pray that a Writ of Certiorari issue to review the decision of the Eleventh Circuit in Case No. 20-10173.

CITATIONS TO OPINIONS BELOW

A copy of the August 10, 2020, [unpublished] opinion of the Court of Appeals in Case No. 20-10173, reported as *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida,* 824 Fed. Appx. 680, 2020 U.S. App. LEXIS 25205, is Attachment "A"to this Petition.

A copy of the January 3, 2020, Omnibus Order of the District Court in Case No. 19-CV-62591-BB, reported as *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida,* 2020 U.S. Dist. LEXIS 617, 2020 WL 43221, is Attachment "B" to this Petition.

STATEMENT OF JURISDICTION

The Court's subject-matter jurisdiction exists by virtue of 28 U.S.C. § 1254(1). The Eleventh Circuit issued its decision on August 10, 2020. Pursuant to the Court's order of March 19, 2020, concerning the COVID-19 public health emergency, Petitioners have 150 days from August 10, 2020, in which to petition the Court for the issuance of a Writ of Certiorari to the Eleventh Circuit.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

In their First Amended Complaint to the District Court, filed December 1, 2019 [ECF #21], Petitioners in pertinent part alleged:

> 1. This is a civil action for damages under 18 U.S.C. § 248(c)(1)[2] (Counts 1 and 4-83) for which subject-matter

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[2] Section 248, Title 18, United States Code, is entitled *Freedom of access to clinic entrances.* In pertinent part, it provides:

> **(a) Prohibited activities-** Whoever-
>
> * * * * * * *
>
> (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;
>
> * * * * * * *
>
> 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.
>
> * * * * * * *
>
> **(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

jurisdiction exists by virtue of 28 U.S.C. §§ 1331 and 1343(a)...

EGLISE BAPTISTE

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

THE DEFENDANTS

3. SemTribe is a Native American tribe which has been

> set forth in subparagraph (B)... and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.
>
> **(B) Relief.**- In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

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

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

* * * * * * * *

THE FACTS

7. Prior to his death on July 26, 2014, the Pastor of Eglise Baptise was the Rev. Usler Auguste ("Pastor Auguste"). Since then, the Board of Directors of Eglise Baptiste and Auguste (the widow of Pastor Auguste) have contended for the leadership of Eglise Baptiste.

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

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

19270 (4) ("Case No. 19-19270"). Undersigned counsel for Plaintiffs in this action commenced and continues to represent Eglise Baptiste in Case No. 19-19270.

10. On Sunday morning, September 29, 2019, Eglise Baptiste conducted its weekly Sabbath services in the religious structure located on the Church Property. While those services were in progress, Auguste and her supporters, escorted by six (6) armed (with SPD-issued handguns) officers wearing SPD uniforms (who had traveled from SemTribe's reservation in two vehicles, one of them an SPD marked squad car),[3] 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.

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[3] Because SemTribe's personal property was used by the SPD officers who entered the Church Property on September 29, 2019, SemTribe should be held vicariously liable in compensatory and punitive damages to Plaintiffs. *See, K.M. ex rel. D.M. v. Publix Super Markets, Inc.*, 895 So. 2d 1114 (Fla. 4th DCA 2005).

PLAINTIFFS' CLAIMS FOR RELIEF

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

Eglise Baptiste sues SemTribe and Auguste and alleges:

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

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

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

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

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

* * * * * * * *

Count 71- Andy Saint-Remy v. SemTribe and Auguste/ 18 U.S.C. § 248(c)(1)

Plaintiff Any Saint-Remy sues SemTribe and Auguste and alleges:

357. Plaintiff Andy Saint-Remy realleges the matters set forth in ¶¶ 1 through 11 of this First Amended Complaint.

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

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

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

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

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

On December 11, 2019, Auguste moved pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, to dismiss the First Amended Complaint for failure to state a claim upon which relief could be granted. [ECF 26] In that dismissal motion, Auguste contended that enforcement of the "place of religious worship" and civil remedies provisions of the Access Act would violate the Establishment of Religions and Free Exercise of Religions Clauses of the First Amendment to the United States Constitution.[4]

SemTribe, on December 13, 2019, moved pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, to dismiss the First Amended Complaint for lack of subject-matter jurisdiction. [ECF 28] In that dismissal motion, SemTribe contended that it was protected from suit by Native American sovereign tribal immunity, even though the alleged misconduct of SemTribe's police officers had taken place off-reservation.

The District Court, in an Omnibus Order, on January 3, 2020, granted the foregoing dismissal motions. [ECF 50] A Final Judgment of dismissal was entered on January 9, 2020. [ECF 54] Petitioners filed their Notice of Appeal on January 14, 2020.

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[4] The First Amendment to the United States Constitution provides:

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

[ECF 55]

The Eleventh Circuit, on August 20, 2020, in an unpublished decision, affirmed the District Court's dismissal of Petitioners' claims. Sustaining SemTribe's claim of tribal sovereign immunity, the Court of Appeals stated:

> "Indian tribes benefit from the same common-law immunity from suit traditionally enjoyed by sovereign powers."... However, tribal sovereign immunity is not absolute; tribes are "domestic dependent nations" and "are subject to plenary control by Congress."... Therefore, suits against tribal entities are barred by tribal sovereign immunity, "unless the plaintiff shows either a clear waiver of that immunity by the tribe, or an express abrogation of the doctrine by Congress."
>
> Here, the underlying suit fails to satisfy either prerequisite and is thus barred. First, everyone agrees Seminole Tribe did not expressly waive immunity from suit... ("[W]aivers of tribal sovereign immunity cannot be implied on the basis of a tribe's actions, but must be unequivocally expressed." And second. § 248 does not evidence any clear and unequivocal Congressional intent to abrogate tribal sovereign immunity... ("[C]ongressional abrogation must come from "the definitive language of the statute itself'[;]... "Legislative history and inferences from general statutory language are insufficient.'").
>
> That the plaintiffs allege criminal violations under § 248 cannot change our conclusion; where tribal sovereign immunity applies, it "bars actions against tribes regardless of the type of relief sought."... Also unavailing is the plaintiffs' contention that tribal sovereign immunity is inapplicable here because the alleged conduct occurred off-reservation. "To date, [the Supreme Court has] sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred" nor has the Court "drawn a distinction between governmental and commercial activities of a tribe."

> In short, Congress knows how to expressly subject an Indian tribe to private suit in state or federal court; it did not do so when it enacted § 248... Seminole Tribe is entitled to tribal sovereign immunity and was appropriately dismissed from this suit. (Citations omitted)

Eleventh Circuit Opinion, pp. 2-4.

Addressing the First Amendment question, the Eleventh Circuit reasoned:

> The plaintiffs claim that the district court erred in dismissing the claims against Auguste because their claim- rather than involving ecclesiastical disputes- is merely a property dispute. That framing ignores two threshold issues. Before reaching the plaintiffs' § 248 claim, a court would need to determine whether Auguste was the rightful successor to the church's leadership and, if she was, whether Auguste had the authority to exclude the plaintiffs from the church's property. Answering these questions would require us to inquire whether church rules, policies, and decision-making and questions of church governance are manifestly ecclesiastical... ("[Q]uestions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concerns.") (Citations omitted)
>
> Auguste's decision to exclude the plaintiffs from the church property and the related events are part and parcel of ecclesiastical concerns (e.g., matters of church governance, administration and membership). The adjudication of these issues would "excessively entangl[e] [us] in questions of ecclesiastical doctrine or belief"- the very types of questions we are commanded to avoid...

Eleventh Circuit Opinion, pp. 5-6.

REASONS FOR GRANTING THE PETITION

By means of Footnote 8 to the majority opinion in *Michigan v. Bay Mills Indian Community, supra,* the Court reserved for future decision the precise question concerning Native American tribal sovereign immunity which is presented in this case: is SemTribe immune from suit for damages arising from its police officers' off-reservation violations of the "place of religious worship" provision of the Access Act? For this reason alone, the foregoing Petition for Writ of Certiorari should be granted.

The "place of religious worship" provision of the Access Act was congressionally intended to enhance the protections afforded to worshipers by the Establishment of Religion and Free Exercise of Religion Clauses of the First Amendment to the United States Constitution. Instead, in this case, the Court of Appeals stood the First Amendment on its head by invoking it as the constitutional basis for refusing to apply the "place of religious worship" provision of the Access Act to the threat of force by means of which Auguste and SemTribe's police officers, on September 29, 2019, expelled Petitioners from, and seized control of, the Church Property. Because the Court of Appeals' misapplication of the First Amendment cannot be ignored, the foregoing Petition for Writ of Certiorari should be granted.[5]

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[5] The pre-eminence of the protections afforded to individuals who seek to gather in "places of religious worship" by the First Amendment's Free Exercise of Religion Clause was recently confirmed by the Court's issuance of an injunction barring the enforcement of the portion of the Governor of New York's Executive Order 202.68 which imposed COVID-19-related occupancy limits on places of religious worship. *Roman Catholic Diocese Of Brooklyn, New York v. Cuomo,* 592 U.S. ___ (Matter No. 20A87, November 25, 2020).

CONCLUSION

The foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, Case No. 20-10173, should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing petition have been electronically served this 27th day of November, 2020, on:

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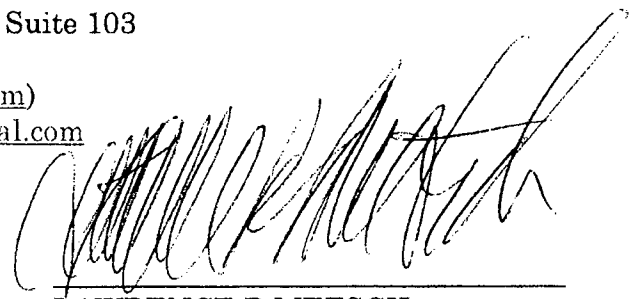

LAWRENCE R.METSCH

ATTACHMENT
"A"

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10173
Non-Argument Calendar

D.C. Docket No. 0:19-cv-62591-BB

EGLISE BAPTISTE BETHANIE DE FT. LAUDERDALE, INC.,
a Florida Not-For-Profit Corporation,
ANDY SAINT-REMY,

Plaintiffs-Appellants,

versus

SEMINOLE TRIBE OF FLORIDA,
AIDE AUGUSTE,

Defendants-Appellees.

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

(August 10, 2020)

Before WILSON, MARTIN, and ANDERSON, Circuit Judges.

PER CURIAM:

Before the district court, Eglise Baptise Bethanie De Ft. Lauderdale, Inc., and Andy Saint-Remy (plaintiffs) sued the Seminole Tribe of Florida and Aide Auguste (defendants), alleging various causes of action including claims under 18 U.S.C. § 248. The Tribe moved for dismissal under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, arguing that, because it is a federally recognized Indian tribe, it was entitled to tribal sovereign immunity. Auguste sought dismissal as well and argued, in part, that the plaintiffs' allegations involved non-justiciable questions of internal church governance. The district court agreed with the defendants and dismissed the action. This appeal followed. We affirm the district court.

DISCUSSION

I.

We write for the benefit of the parties and thus assume their familiarity with the facts. Turning to the merits, we consider first the district court's dismissal of the plaintiffs' claims against the Tribe. We review a district court's dismissal of a complaint due to tribal sovereign immunity de novo. *Furry v. Miccosukee Tribe of Indians of Fla.*, 685 F.3d 1224, 1227–28 (11th Cir. 2012).

"Indian tribes benefit from the same common-law immunity from suit traditionally enjoyed by sovereign powers." *Williams v. Poarch Band of Creek Indians*, 839 F.3d 1312, 1317 (11th Cir. 2016) (internal quotation mark omitted).

However, tribal sovereign immunity is not absolute; tribes are "domestic dependent nations" and "are subject to plenary control by Congress." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). Therefore, suits against tribal entities are barred by tribal sovereign immunity, "unless the plaintiff shows either a clear waiver of that immunity by the tribe, or an express abrogation of the doctrine by Congress." *Williams*, 839 F.3d at 1317.

Here, the underlying suit fails to satisfy either prerequisite and is thus barred. First, everyone agrees Seminole Tribe did not expressly waive immunity from suit. *See Sanderlin v. Seminole Tribe of Fla.*, 243 F.3d 1282, 1286 (11th Cir. 2001) ("[W]aivers of tribal sovereign immunity cannot be implied on the basis of a tribe's actions, but must be unequivocally expressed."). And second, § 248 does not evidence any clear and unequivocal Congressional intent to abrogate tribal sovereign immunity. *See Furry*, 685 F.3d at 1233 ("[C]ongressional abrogation must come from 'the definitive language of the statute itself'[;] . . . 'legislative history and inferences from general statutory language are insufficient.'").

That the plaintiffs allege criminal violations under § 248 cannot change our conclusion; where tribal sovereign immunity applies, it "bars actions against tribes regardless of the type of relief sought." *Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1208 (11th Cir. 2009). Also unavailing is the plaintiffs' contention that tribal sovereign immunity is inapplicable here

because the alleged conduct occurred off-reservation. "To date, [the Supreme Court has] sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred" nor has the Court "drawn a distinction between governmental and commercial activities of a tribe." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754–55 (1998); *see also Bay Mills Indian Cmty.*, 572 U.S. at 800 (discussing *Kiowa* and quoting its relevant holding).

In short, Congress knows how to expressly subject an Indian tribe to private suit in state or federal court; it did not do so when it enacted § 248. *See Furry*, 685 F.3d at 1233. Seminole Tribe is entitled to tribal sovereign immunity and was appropriately dismissed from this suit.

II.

Next, we turn to the plaintiffs' claims against Auguste. We review de novo a district court's legal conclusions underlying its dismissal of a complaint for lack of jurisdiction, and we review the district court's "findings of jurisdictional facts for clear error." *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1328 (11th Cir. 2013).

"[R]eligious controversies are not the proper subject of civil court inquiry." *Serbian E. Orthodox Diocese for U.S. and Can. v. Milivojevich*, 426 U.S. 696, 713 (1976). We have long recognized that both the Establishment and Free Exercise Clauses require a "prohibition on judicial cognizance of ecclesiastical disputes."

Crowder v. S. Baptist Convention, 828 F.2d 718, 721 (11th Cir. 1987). "By adjudicating religious disputes, civil courts risk affecting associational conduct and thereby chilling the free exercise of religious beliefs." *Id.* And "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." *Id.*

The interplay between these two constitutional provisions generally requires that we refrain from adjudicating matters involving "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Id.* at 722. Moreover, we "are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Milivojevich*, 426 U.S. at 713.

The plaintiffs claim that the district court erred in dismissing the claims against Auguste because their claim—rather than involving ecclesiastical disputes—is merely a property dispute. That framing ignores two threshold issues. Before reaching the plaintiffs' § 248 claim, a court would need to determine whether Auguste was the rightful successor to the church's leadership and, if she was, whether Auguste had the authority to exclude the plaintiffs from the church's property. Answering these questions would require us to inquire into church rules, policies, and decision-making and questions of church governance are manifestly

ecclesiastical. *See id.* at 717 ("[Q]uestions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern.").

Auguste's decision to exclude the plaintiffs from church property and the related events are part and parcel of ecclesiastical concerns (e.g., matters of church governance, administration, and membership). The adjudication of these issues would "excessively entangl[e] [us] in questions of ecclesiastical doctrine or belief"—the very types of questions we are commanded to avoid. *See Crowder*, 828 F.2d at 722 (footnote omitted).

Summed up, the district court correctly determined that it could not adjudicate the claim against Auguste because the dispute was "strictly and purely ecclesiastical in its character." *See Milivojevich*, 426 U.S. at 713. The claim against Auguste was appropriately dismissed.

We therefore **AFFIRM** the district court's dismissal of the plaintiffs' complaint.

ATTACHMENT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-62591-BLOOM/Valle

EGLISE BAPTISTE BETHANIE DE FT. LAUDERDALE, INC., and ANDY SAINT-REMY,

Plaintiffs,

v.

SEMINOLE TRIBE OF FLORIDA and AIDA AUGUSTE,

Defendants.
_____/

OMNIBUS ORDER

THIS CAUSE is before the Court upon Defendant Seminole Tribe of Florida's ("Defendant Seminole Tribe") Motion to Dismiss, ECF No. [28] (the "Seminole Tribe's Motion"), Defendant Aida Auguste's ("Defendant Auguste") Motion to Dismiss, ECF No. [26] ("Auguste's Motion"), and Plaintiffs'[1] Motion for Leave to File a Second Amended Complaint, ECF No. [25] ("Motion to Amend"), (collectively, the "Motions"). The Court has carefully reviewed the Motions, all opposing and supporting submissions, the record in this case, and the applicable law, and is otherwise fully advised. For the reasons set forth below, the Seminole Tribe's Motion is granted; Auguste's Motion is granted; and Plaintiffs' Motion to Amend is denied.

I. BACKGROUND

Plaintiffs initiated this action on October 17, 2019, asserting claims against Defendants Aida Auguste and the Seminole Tribe of Florida (collectively, "Defendants"). ECF No. [1]. On December 1, 2019, and with the Court's permission, *see* ECF No. [15], Plaintiffs filed their

[1] The First Amended Complaint in this action, ECF No. [21] ("Amended Complaint"), lists seventy-eight named Plaintiffs, which the Court will refer to collectively as "Plaintiffs."

Amended Complaint, ECF No. [21], which asserts eighty-three counts: Counts 1 and 4-83 assert violations of the Freedom of Access to Clinic Entrances, 18 U.S.C. § 248(a)(2) ("FACE Act") by each individual Plaintiff against Defendants; Count 2 asserts a claim of Interference with Business Relationships by Plaintiff Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. ("Eglise Baptiste") against Defendant Seminole Tribe; and Count 3 asserts a claim of Trespass by Eglise Baptiste against Defendant Seminole Tribe. *See generally* ECF No. [21].

The Amended Complaint alleges that on July 26, 2014, the then-Pastor of Eglise Baptiste, Reverend Usler Auguste ("Pastor Auguste"), passed away. ECF No. [21] ¶ 7. Since then, the Board of Directors of Eglise Baptiste and Defendant Auguste, Pastor Auguste's widow, have contended for the leadership of Eglise Baptiste. *Id.* On September 22, 2019, the congregation convened for a meeting to approve the process for the selection and installation of Pastor Auguste's successor. *Id.* ¶ 8. The congregational meeting ultimately "devolved into a pushing, shoving and punching affair between the supporters of the Board of Directors and the supporters of [Defendant] Auguste," which necessitated police intervention to restore order. *Id.* On September 24, 2019, based on the events that occurred at the congregational meeting, Eglise Baptiste filed a civil action for declaratory and injunctive relief against Defendant Auguste and her supporters in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, which is ongoing. *Id.* ¶ 9.

On September 29, 2019, "Eglise Baptiste conducted its weekly Sabbath services in the religious structure located on the Church Property." *Id.* ¶ 10. While those services were in progress, Defendant Auguste and her supporters, escorted by six armed officers from the Seminole Police Department, and without judicial authorization entered church property, "disabled the Church Property's surveillance cameras," "expelled from the Church Property all the worshipers who opposed Auguste," "changed the locks to the doors of the religious structure located on the Church Property," "seized the business records of Eglise Baptiste," and "locked the gates to the Church

Property." *Id.* Defendant Auguste and her supporters continue to occupy the church property and control Eglise Baptiste's personal property, including its bank accounts. *Id.* Further, Defendant Auguste and her supporters have continued to exclude Plaintiffs from the church property. *Id.*

The Amended Complaint also contains the following allegation:

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

Id. ¶ 11.

In the Seminole Tribe's Motion, Defendant Seminole Tribe argues that Plaintiffs' Amended Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction because it is a federally recognized Indian tribe that is entitled to tribal sovereign immunity. Plaintiffs filed a Response in Opposition. ECF No. [31]. Defendant Seminole Tribe filed a Reply. ECF No. [35].

In Auguste's Motion, Defendant Auguste seeks dismissal of Plaintiffs' Amended Complaint, arguing that it (1) fails to state a claim under Federal Rule of Civil Procedure 12(b)(6); (2) involves non-justiciable questions of internal church governance; and (3) improperly attempts to split causes of action. Plaintiffs filed their Response in Opposition, ECF No. [30], to which Defendant Auguste filed a Reply. ECF No. [33].

Finally, in the Motion to Amend, Plaintiffs request leave to file a Second Amended Complaint, ECF No. [25-1] ("Second Amended Complaint"), to correct typographical mistakes, drop the claims of tortious interference and trespass, add a claim for injunctive relief, drop and add certain individuals as Plaintiffs, and name seventeen additional individuals as Defendants.

Defendants each filed their respective Responses in Opposition, ECF Nos. [27] & [29], to which Plaintiffs filed a Reply, ECF No. [32]. In addition, Plaintiffs filed a Notice of Supplemental Authority in support of their Motion to Amend, ECF No. [34], which cited to *Crawford's Auto Center, Inc. v. State Farm Mutual Automobile Insurance Co.*, No. 17-12583, 2019 WL 6974428, at *1 (11th Cir. Dec. 20, 2019).

II. LEGAL STANDARD

A. Rule 12(b)(1)

A motion brought pursuant to Federal Rule of Civil Procedure 12(b)(1) challenges the district court's subject-matter jurisdiction and takes one of two forms: a "facial attack" or a "factual attack." *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-29 (11th Cir. 1990). "A 'facial attack' on the complaint 'require[s] the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion.'" *McElmurray v. Consol. Gov't of Augusta-Richmond Cty.*, 501 F.3d 1244, 1251 (11th Cir. 2007) (quoting *Lawrence*, 919 F.2d at 1529). "A 'factual attack,' on the other hand, challenges the existence of subject matter jurisdiction based on matters outside the pleadings." *Kuhlman v. United States*, 822 F. Supp. 2d 1255, 1256-57 (M.D. Fla. 2011) (citing *Lawrence*, 919 F.2d at 1529); *see Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1233 (11th Cir. 2008) ("[A] factual attack on a complaint challenges the existence of subject matter jurisdiction using material extrinsic from the pleadings, such as affidavits or testimony."). Further, the "[p]laintiff bears the burden of proving the existence of subject matter jurisdiction." *Desporte-Bryan v. Bank of Am.*, 147 F. Supp. 2d 1356, 1360 (S.D. Fla. 2001) (citing *Boudreau v. United States*, 53 F.3d 81, 82 (5th Cir. 1995)).

"In assessing the propriety of a motion for dismissal under Fed.R.Civ.P. 12(b)(1), a district court is not limited to an inquiry into undisputed facts; it may hear conflicting evidence and decide

for itself the factual issues that determine jurisdiction." *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243 (11th Cir. 1991). As such, "[w]hen a defendant properly challenges subject matter jurisdiction under Rule 12(b)(1) the district court is free to independently weigh facts, and 'may proceed as it never could under Rule 12(b)(6) or Fed.R.Civ.P. 56.'" *Turcios v. Delicias Hispanas Corp.*, 275 F. App'x 879, 880 (11th Cir. 2008) (quoting *Morrison v. Amway Corp.*, 323 F.3d 920, 925 (11th Cir. 2003)).

B. Rule 12(b)(6)

Federal Rule of Civil Procedure 8 requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that Rule 8(a)(2)'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). In the same vein, a complaint may not rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (alteration in original) (quoting *Twombly*, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. These elements are required to survive a motion brought under Rule 12(b)(6) that requests dismissal for failure to state a claim upon which relief can be granted.

When reviewing a motion under Rule 12(b)(6), a court, as a general rule, must accept the plaintiff's allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration All.*, 304 F.3d 1076, 1084 (11th Cir. 2002). However, this tenet does not apply to legal conclusions, and courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550

U.S. at 555; *see Iqbal*, 556 U.S. at 678; *Thaeter v. Palm Beach Cty. Sheriff's Office*, 449 F.3d 1342, 1352 (11th Cir. 2006). Moreover, "courts may infer from the factual allegations in the complaint 'obvious alternative explanations,' which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer." *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (quoting *Iqbal*, 556 U.S. at 682).

A court, in considering a Rule 12(b)(6) motion, "may consider only the complaint itself and any documents referred to in the complaint which are central to the claims." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (citing *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997)); *see also Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340 n.3 (11th Cir. 2005) ("[A] document outside the four corners of the complaint may still be considered if it is central to the plaintiff's claims and is undisputed in terms of authenticity." (citing *Horsley v. Feldt*, 304 F.3d 1125, 1135 (11th Cir. 2002))).

C. Motion to Amend

Federal Rule of Civil Procedure 15 governs amended pleadings generally and provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave," which "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). A plaintiff should be afforded the opportunity to test his claim on the merits as long as the underlying facts or circumstances may properly warrant relief. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

"A district court need not, however, allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). The law in this Circuit is clear that "a district court may properly deny leave to amend the

complaint under Rule 15(a) when such amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004); *see also Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1292 n.6 (11th Cir. 2007) (same); *Thompson v. City of Miami Beach, Fla.*, 990 F. Supp. 2d 1335, 1343 (S.D. Fla. 2014) ("[A] district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile." (citation omitted)). Ultimately, whether to grant or deny leave to amend is within the discretion of the district court. *Foman*, 371 U.S. at 182.

III. DISCUSSION

Defendant Seminole Tribe moves to dismiss Plaintiffs' Amended Complaint for lack of subject-matter jurisdiction under Rule 12(b)(1) due to its entitlement to tribal sovereign immunity. Defendant Auguste also moves to dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(6) because (1) Plaintiffs fail to sufficiently allege a claim under the FACE Act upon which relief can be granted; (2) Plaintiffs' claims involve non-justiciable questions of church governance; and (3) the claims in the Amended Complaint constitute improper claim splitting. In addition, Plaintiffs move for leave to file a Second Amended Complaint. The Court will address each Motion in turn.

A. Defendant Seminole Tribe's Motion to Dismiss

The Seminole Tribe's Motion seeks dismissal of Plaintiffs' Amended Complaint, arguing that, absent any clear and unequivocal Congressional or tribal waiver, which is not present here, Defendant Seminole Tribe is entitled to tribal sovereign immunity. Defendant Seminole Tribe further argues that its entitlement to sovereign immunity applies in this case regardless of the nature of the relief sought, the type of tribal actions challenged, or the location where the challenged conduct occurred. Despite this immunity, Defendant Seminole Tribe argues that Plaintiffs may still seek legal recourse against other individuals, as evidenced by Eglise Baptiste's

pending state court action. Plaintiffs, on the other hand, argue that Defendant Seminole Tribe is not entitled to tribal sovereign immunity because the Amended Complaint alleges off-reservation criminal conduct pursuant to § 248(c)(1). Thus, Plaintiffs contend that tribal sovereign immunity does not extend to such off-reservation criminal conduct. In reply, Defendant Seminole Tribe notes that Plaintiffs fail to cite to any law to support their assertions that tribal sovereign immunity would not apply to the challenged conduct here. Likewise, Defendant Seminole Tribe asserts that § 248(c)(1) does not allow private individuals to initiate criminal prosecutions under the FACE Act. Rather, the FACE Act only creates civil remedies for private individuals. As such, Defendant Seminole Tribe contends that it is entitled to tribal sovereign immunity.

"Tribal sovereign immunity is a jurisdictional issue." *Furry v. Miccosukee Tribe of Indians of Fla.*, 685 F.3d 1224, 1228 (11th Cir. 2012). "[E]ven if a federal court has statutory jurisdiction, Indian sovereign immunity is a 'consideration [that] determines whether a court has jurisdiction to hear an action.'" *Inglish Interests, LLC v. Seminole Tribe of Fla., Inc.*, No. 2:10-cv-367-FtM-29DNF, 2011 WL 208289, at *2 (M.D. Fla. Jan. 21, 2011) (quoting *Taylor v. Ala. Intertribal Council, Title IV J.T.P.A.*, 261 F.3d 1032, 1034 (11th Cir. 2001)).

"Indian tribes[2] are 'domestic dependent nations' that exercise 'inherent sovereign authority.'" *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). "As dependents, the tribes are subject to plenary control by Congress. And yet they remain 'separate sovereigns pre-existing the Constitution.' Thus, unless and 'until Congress acts, the tribes retain' their historic sovereign authority." *Id.* (citing *United States v. Lara*, 541 U.S. 193, 200 (2004); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978); *United States v. Wheeler*, 435 U.S. 313, 323 (1978)).

[2] The Seminole Tribe of Florida "has long been recognized as an Indian tribe." *Inglish Interests, LLC*, 2011 WL 208289, at *1.

> Among the core aspects of sovereignty that tribes possess — subject, again, to congressional action — is the "common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo*, 436 U.S. at 58. That immunity . . . is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 890 (1986); *cf.* The Federalist No. 81, p. 511 (B. Wright ed. 1961) (A. Hamilton) (It is "inherent in the nature of sovereignty not to be amenable" to suit without consent). And the qualified nature of Indian sovereignty modifies that principle only by placing a tribe's immunity, like its other governmental powers and attributes, in Congress's hands. *See United States v. U.S. Fidelity & Guaranty Co.*, 309 U.S. 506, 512 (1940) ("It is as though the immunity which was theirs as sovereigns passed to the United States for their benefit").

Id. at 788-89. As such, "an Indian tribe is subject to suit *only where* Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (emphasis added). Likewise, "[t]ribal sovereign immunity, where it applies, bars actions against tribes regardless of the type of relief sought." *Freemanville Water Sys., Inc. v. Poarch Band of Creek Indians*, 563 F.3d 1205, 1208 (11th Cir. 2009) (citing *Kiowa Tribe of Okla.*, 523 U.S. at 760 (barring suit for money damages); *Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Indians of Fla.*, 166 F.3d 1126, 1127 (11th Cir. 1999) (barring suit for injunctive relief)).[3]

"Abrogation requires a congressional determination that, as a matter of federal law, Indian tribes shall be subject to certain kinds of suit. Waiver, on the other hand, occurs when the tribe itself consents to the jurisdiction of the state or federal courts." *Furry*, 685 F.3d at 1236 (citing *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Fla.*, 63 F.3d 1030, 1048 (11th Cir. 1995)). "Moreover, both abrogation and waiver require the use of express and unmistakably clear

[3] "[C]ase law has [also] extended Indian sovereign immunity to entities other than the literal 'tribe.'" *Inglish Interests, LLC*, 2011 WL 208289, at *6 (citing *Taylor*, 261 F.3d at 1036 (applying Indian sovereign immunity to intertribal consortium)). "Tribal sovereign immunity may extend to subdivisions of a tribe, including those engaged in economic activities, provided that the relationship between the tribe and the entity is sufficiently close to properly permit the entity to share in the tribe's immunity." *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1183 (10th Cir. 2010) (footnote omitted) (citing *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1292 (10th Cir. 2008)); *see also Allen v. Gold Country Casino*, 464 F.3d 1044, 1046-47 (9th Cir. 2006) (recognizing that tribal sovereign immunity extends to subordinate economic tribal entities); *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 29 (1st Cir. 2000) (same).

language by either Congress or the tribe." *Id.* (citing *Sanderlin v. Seminole Tribe of Fla.*, 243 F.3d 1282, 1286, 1289 (11th Cir. 2001); *Florida v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1241-43 (11th Cir. 1999); *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1130-31).

The Court of Appeals for the Eleventh Circuit has explained that "Congress abrogates tribal immunity only where the definitive language of the statute itself states an intent either to abolish Indian tribes' common law immunity or to subject tribes to suit under the act." *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1131. Moreover, it is well established that "Congress may abrogate a sovereign's immunity only by using statutory language that makes its intention unmistakably clear, and [any] ambiguities in federal laws implicating Indian rights must be resolved in the Indians' favor." *Seminole Tribe of Fla.*, 181 F.3d at 1242 (citing *Fla. Paraplegic Ass'n, Inc.*, 166 F.3d at 1131) (footnote omitted); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55-56 (1996) ("Congress' intent to abrogate [tribal sovereign] immunity from suit must be obvious from 'a clear legislative statement.'" (quoting *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 786 (1991))).

"A general authorization for suit in federal court is not the kind of unequivocal statutory language sufficient to abrogate" sovereign immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 246 (1985). Similarly, "[t]he [United States] Supreme Court has made it plain that waivers of tribal sovereign immunity cannot be implied on the basis of a tribe's actions, but must be unequivocally expressed." *Sanderlin*, 243 F.3d at 1286 (quoting *Seminole Tribe of Fla.*, 181 F.3d at 1243 & n.8); *see also Santa Clara Pueblo*, 436 U.S. at 58; *Okla. Tax Comm'n*, 498 U.S. at 509 ("Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation.").

"To date, [the Supreme Court's] cases have sustained tribal immunity from suit without drawing a distinction based on where the tribal activities occurred." *Kiowa Tribe of Okla.*, 523 U.S. at 754; *see also Bay Mills Indian Cmty.*, 572 U.S. at 785 ("[A]bsent such [a Congressional]

abrogation (or a [tribal] waiver), Indian tribes have immunity even when a suit arises from off-reservation commercial activity."). Likewise, the Supreme Court has not yet "drawn a distinction between governmental and commercial activities of a tribe." *Kiowa Tribe of Okla.*, 523 U.S. at 754-55; *see also Bay Mills Indian Cmty.*, 572 U.S. at 800 (noting that the Supreme Court, in *Kiowa Tribe of Oklahoma*, "'decline[d] to draw any distinction' that would 'confine [tribal sovereign immunity] to reservations or to noncommercial activities'" (quoting *Kiowa Tribe of Okla.*, 523 U.S. at 758)). Similarly, the Eleventh Circuit has held that tribal sovereign immunity applied, where there was no tribal waiver or Congressional abrogation of this immunity, in a case alleging that the Seminole Tribe of Florida's gambling operations on its reservation violated various criminal laws. *Seminole Tribe of Fla.*, 181 F.3d at 1240, 1243-44, 1245; *see also Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1300 (11th Cir. 2015) (holding that a tribe is entitled to sovereign immunity in a suit alleging violations of criminal laws on the reservation).

The Eleventh Circuit has also rejected the argument that "tribal [sovereign] immunity [must give way to] federal jurisdiction when no other forum is available for the resolution of claims." *Seminole Tribe of Fla.*, 181 F.3d at 1243 (citing *Fluent v. Salamanca Indian Lease Auth.*, 928 F.2d 542, 547 (2d Cir. 1991) (rejecting this proposition); *Ute Distrib. Corp. v. Ute Indian Tribe*, 149 F.3d 1260, 1266 n.8 (10th Cir. 1998) ("The proposition that tribal immunity is waived if a party is otherwise left without a judicial remedy is inconsistent with the reasoning of *Santa Clara Pueblo*."); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir. 1990) ("Sovereign immunity may leave a party with no forum for its claims."); *Florida Paraplegic Ass'n, Inc.*, 166 F.3d at 1134 (implying that lack of forum in which to pursue claim has no bearing on tribal sovereign immunity analysis)).

In this case, it is undisputed that Defendant Seminole Tribe did not expressly waive its immunity from suit. *See, e.g.*, ECF No. [21] ¶ 11. Further, "waivers of tribal sovereign immunity

cannot be implied on the basis of a tribe's actions, but must be unequivocally expressed." *Sanderlin*, 243 F.3d at 1286 (quoting *Seminole Tribe of Fla.*, 181 F.3d at 1243 & n.8). Likewise, Plaintiffs cite to no statutory language in § 248 that evidences any clear and unequivocal Congressional intent to abrogate tribal sovereign immunity, nor did the Court independently find any such language. *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1131. Absent some definitive language making it unmistakably clear that Congress intended to abrogate tribal sovereign immunity in enacting the FACE Act, the Court concludes that Defendant Seminole Tribe is entitled to immunity from suit in the instant action.[4]

Further, the Court is unpersuaded by Plaintiffs' arguments with regard to the inapplicability of tribal sovereign immunity for off-reservation criminal tribal conduct. As explained above, the Supreme Court has repeatedly emphasized that tribal sovereign immunity applies regardless of where the challenged tribal actions occurred. *See Kiowa Tribe of Okla.*, 523 U.S. at 754; *see also Bay Mills Indian Cmty.*, 572 U.S. at 785. The Supreme Court has also never drawn a distinction on the application of this immunity from suit based on the nature of the challenged actions. *Kiowa Tribe of Okla.*, 523 U.S. at 754-55; *see also Bay Mills Indian Cmty.*, 572 U.S. at 800. Likewise, in *Seminole Tribe of Florida*, the Eleventh Circuit affirmed the district court's holding that sovereign immunity barred a suit against a tribe for alleged violations of criminal laws on the tribe's reservation. 181 F.3d at 1240, 1243-44, 1245; *see also PCI Gaming Auth.*, 801 F.3d at 1300. Notably, while Plaintiffs represent that they have found no case extending immunity from suit to off-reservation criminal tribal actions, they also provide no case law that supports limiting such

[4] *See, e.g., Furry*, 685 F.3d at 1233 ("Moreover, [Eleventh Circuit] case law is clear that congressional abrogation must come from 'the definitive language of the statute itself' and that 'legislative history and inferences from general statutory language are insufficient.' Nowhere in the text of [the statute] is there *any* mention of tribal immunity from suit, much less an express and unequivocal abrogation of tribal immunity with respect to private lawsuits alleging that an Indian tribe has violated state tort law. Congress well understood how to expressly subject an Indian tribe to private suit in state or federal court; it simply did not do so by enacting [this statute]." (quoting *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1131)).

immunity in this case. *See Phillips v. Hillcrest Medical Ctr.*, 244 F.3d 790, 800 n.10 (10th Cir. 2001) ("A litigant who fails to press a point by supporting it with pertinent authority, or by showing why it is sound despite a lack of supporting authority or in the face of contrary authority, forfeits the point. [The Court] will not do his research for him." (citation omitted)).

Absent any authority to the contrary, this Court concludes that Plaintiffs have failed to satisfy their burden of establishing jurisdiction here. *See Furry*, 685 F.3d at 1236 ("Cobbling together a new exception to tribal immunity would directly conflict with the Supreme Court's straightforward doctrinal statement, repeatedly reiterated in the holdings of this Circuit, that an Indian tribe is subject to suit in state or federal court "*only where* Congress has authorized the suit or the tribe has waived its immunity." (quoting *Kiowa Tribe of Okla.*, 523 U.S. at 754)). Thus, Defendant Seminole Tribe is entitled to tribal sovereign immunity in the instant action based on the extensive case law from both the Supreme Court and the Eleventh Circuit establishing that an Indian tribe is entitled to immunity from suit unless there is a clear waiver by the tribe or some unequivocal statutory abrogation of such immunity by Congress. *See Kiowa Tribe of Okla.*, 523 U.S. at 754; *Bay Mills Indian Cmty.*, 572 U.S. at 785; *Furry*, 685 F.3d at 1233; *Sanderlin*, 243 F.3d at 1286 (quoting *Seminole Tribe of Fla.*, 181 F.3d at 1243 & n.8); *Fla. Paraplegic, Ass'n, Inc.*, 166 F.3d at 1131.[5] Accordingly, Defendant Seminole Tribe is dismissed from this action.

B. Defendant Auguste's Motion to Dismiss

In Auguste's Motion, Defendant Auguste argues that Plaintiffs' Amended Complaint should be dismissed because it fails to state a claim under 18 U.S.C. § 248(a)(2) and it asserts claims on non-justiciable questions of church governance. Similarly, Defendant Auguste argues that the Amended Complaint should be dismissed due to the improper claim splitting between state

[5] Further, Defendants are correct in noting that, where alternative avenues through which a party may seek legal redress exist, as is the case here given Plaintiffs' ongoing state court action, sovereign immunity is not waived. ECF No. [21] ¶ 9; *see also Seminole Tribe of Fla.*, 181 F.3d at 1243-44.

and federal courts. Plaintiffs take the contrary position, arguing that the Amended Complaint sufficiently alleges facts to support a claim under § 248(a)(2). Moreover, Plaintiffs state that they do not seek judicial resolution of non-justiciable doctrinal affairs; rather, they seek only to vindicate their rights under the FACE Act. Before the Court can examine the merits of Defendant Auguste's arguments, it must first address the threshold jurisdictional issue of whether Plaintiffs' Amended Complaint raises non-justiciable questions of internal church governance.[6]

The Supreme Court and the Eleventh Circuit have explained that under the principles of separation of church and state, "[c]ivil courts lack jurisdiction to entertain disputes involving church doctrine and polity." *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). 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)).

> "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." [*Crowder*, 828 F.2d at 721.] These concerns require civil courts to abstain from deciding issues connected to "theological controversy, church discipline, ecclesiastical government, or conformity of members of the church to the standard of morals required of them," *id.* at 722 (quoting *Watson v. Jones*, 20 L. Ed. 666 (1871)), and

[6] Although the arguments for dismissal in Auguste's Motion are raised pursuant to Rule 12(b)(6), the non-justiciability of matters of ecclesiastical cognizance presents jurisdictional issues that this Court has an independent obligation to address. *See Hallandale Prof'l Fire Fighters Local 2238 v. City of Hallandale*, 922 F.2d 756, 759 (11th Cir. 1991) ("Before rendering a decision, . . . every federal court operates under an independent obligation to ensure it is presented with the kind of concrete controversy upon which its constitutional grant of authority is based; and this obligation on the court to examine its own jurisdiction continues at each stage of the proceedings, even if no party raises the jurisdictional issue and both parties are prepared to concede it." (citing *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990))).

> to accept as binding the decisions of religious organizations regarding the governance and discipline of their clergy.

Id.

Therefore, as a general rule, "religious controversies are not the proper subject of civil court inquiry," and "courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Serbian E. Orthodox Diocese for the U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976); *see also Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.").

Moreover, the First Amendment requires that civil courts decide religious disputes "without resolving underlying controversies over religious doctrine," *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969), and this principle "applies with equal force to church disputes over church polity and church administration," *Milivojevich*, 426 U.S. at 710; *see also Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 114-15 (1952) (noting that the rule against judicial review of religious disputes "is applicable to 'questions of discipline, or of faith, or of ecclesiastical rule, custom, or law.'" (quoting *Watson*, 20 L. Ed. 666)). As such, "[c]ivil courts may apply neutral principles of law to decide church disputes that 'involve[] no consideration of doctrinal matters.'" *Myhre*, 719 F. App'x at 928 (quoting *Jones v. Wolf*, 443 U.S. 595, 602, 603 (1979)); *see also Crowder*, 828 F.2d at 722 ("The [Supreme] Court's decisions . . . [have] recognized that where the method of resolution of the controversy avoids excessively entangling the judiciary in questions of ecclesiastical doctrine or belief, the [F]irst [A]mendment might permit

a court to adjudicate the matter." (footnote omitted) (citing *Presbyterian Church*, 393 U.S. 440; *Jones*, 443 U.S. 595)).

With these First Amendment concerns in mind, the Supreme Court has explained that "civil courts may not decide . . . whether [a] church complied with the procedural rules contained in the church constitution and penal code in defrocking one of its bishops." *Crowder*, 828 F.2d at 725 (citing *Milivojevich*, 426 U.S. at 721-24). Nor may courts "use the guise of the 'neutral principles' approach to delve into issues concerning whether the general church acted beyond its authority under the church constitution in declaring a reorganization of the diocese." *Id.* (citing *Milivojevich*, 426 U.S. at 721-24). "Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy." *Church of God at Sharpsburg, Inc.*, 396 U.S. at 369-70. "[Q]uestions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern." *Milivojevich*, 426 U.S. at 717.

Furthermore, "[d]isputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice. Because of the religious nature of these disputes, civil courts should decide them according to principles that do not interfere with the free exercise of religion." *Jones*, 443 U.S. at 616 (citing *Milivojevich*, 426 U.S. at 709, 720; *Presbyterian Church*, 393 U.S. at 445-446, 449; *Kedroff*, 344 U.S. at 107, 121-22). "The only course that achieves this constitutional requirement is acceptance by civil courts of the decisions reached within the polity chosen by the church members themselves." *Id.* at 617.

Likewise, "[a] dispute involving the application of church doctrine and procedure to discipline one of its members is not appropriate for secular adjudication." *Myhre*, 719 F. App'x at 928 (citing *Milivojevich*, 426 U.S. at 723; *Crowder*, 828 F.2d at 726). "[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." *Grunwald v. Bornfreund*, 696 F. Supp. 838, 840 (E.D. N.Y. 1988) (citing *Gonzalez v. Archbishop*, 280 U.S. 1 (1929); *Bouldin v. Alexander*, 21 L. Ed. 69 (1872); *Watson*, 20 L. Ed. 666); *see also Ram v. Lal*, 906 F. Supp. 2d 59, 70 (E.D. N.Y. 2012) (collecting cases); *Askew v. Trustees of the Gen. Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 776 F. Supp. 2d 25, 30-31 (E.D. Pa. 2011), *aff'd*, 684 F.3d 413 (3d Cir. 2012).

"[A]n indispensable part of any church is the collection of individuals who have joined together in worship and constitute the church's membership." *Burgess v. Rock Creek Baptist Church*, 734 F. Supp. 30, 33 (D.D.C. 1990). A religious organization's "own internal guidelines and procedures must be allowed to dictate what its obligations to its members are without being subject to court intervention. . . . [These] [r]eligious bodies must be free to decide for themselves, free from state interference, matters which pertain to church government, faith and doctrine." *Dowd v. Society of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988) (per curiam) (citations omitted); *see also Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring in judgment) ("Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is [] a means by which a religious community defines itself.").

"For essentially the same reasons that courts have refused to interfere with the basic ecclesiastical decision of choosing the minister or priest of a church," courts have also refused to "interfere with the fundamental ecclesiastical concern of determining who is and who is not [a church] member." *Burgess*, 734 F. Supp. at 33 (citing *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1356-57 (D.C. Cir. 1990); *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1576-77 (1st Cir. 1989); *Hutchison v. Thomas*, 789 F.2d 392, 393,

396 (6th Cir. 1986); *Kaufmann v. Sheehan*, 707 F.2d 355, 358-59 (8th Cir. 1983)). If a religious body's "decision to terminate [a] plaintiff's membership was a matter of ecclesiastical cognizance, the First Amendment and Supreme Court case law preclude" adjudication of the plaintiff's claims in federal court. *Id.* "The mere expulsion from a religious society, with the exclusion from a religious community, is not a harm for which courts can grant a remedy." *Grunwald*, 696 F. Supp. at 840-41; *see also Paul v. Watchtower Bible & Tract Soc'y*, 819 F.2d 875, 879-83 (9th Cir. 1987) (even if conduct was tortious, Jehovah's Witnesses' "shunning" of disassociated member was part of church's polity and was a privileged religious practice under First Amendment). "Thus, federal 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." *Grunwald*, 696 F. Supp. at 840.

"Put simply, '[a] civil court presiding over church disputes must be particularly careful not to violate the Free Exercise and Establishment Clauses by ruling against one party and for the other party based on the court's resolution of the underlying controversy over religious doctrine and practice.'" *Ram*, 906 F. Supp. 2d at 70 (quoting *Burgess*, 734 F. Supp. at 31). In doing so, a court 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." *Natal*, 878 F.2d at 1577.

Here, the Court concludes that any adjudication of the claims asserted in Plaintiffs' Amended Complaint would violate the First Amendment because it "would require judicial intrusion into, rules, policies, and decisions which are unmistakably of ecclesiastical cognizance." *Id.* Contrary to Plaintiffs' contentions that their FACE Act claims do not involve non-justiciable questions of church governance, 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. Questions of church government are fundamentally ecclesiastical in nature. *Milivojevich*, 426 U.S. at 717 ("[Q]uestions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern."); *Church of God at Sharpsburg, Inc.*, 396 U.S. at 369 (Brennan, J., concurring) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.").[7]

Further, "the principles governing the separation of church and state extend to [a religious organization's] decision to exclude [a] plaintiff from entering its property." *Towns v. Cornerstone Baptist Church*, No. 14-cv-6809, 2015 WL 13738012, at *3 (E.D. N.Y. July 20, 2015), *report and recommendation adopted sub nom. Towns v. Church*, No. 14-cv-6809, 2016 WL 792406, at *1 (E.D. N.Y. Feb. 29, 2016). Therefore, a religious organization's "decision to exclude [a] plaintiff from its property, and thereby from its religious services and events, is a decision of ecclesiastical cognizance which cannot be disturbed by a federal court." *Id.* Likewise, decisions by a religious body to terminate a plaintiff's membership are of a "fundamental[ly] ecclesiastical concern." *Burgess*, 734 F. Supp. at 33.

[7] *See also Jones*, 443 U.S. at 616 ("Disputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice. Because of the religious nature of these disputes, civil courts should decide them according to principles that do not interfere with the free exercise of religion."); *Milivojevich*, 426 U.S. at 710 (explaining that the principle that federal courts should not decide religious disputes "applies with equal force to church disputes over church polity and church administration"); *Church of God at Sharpsburg, Inc.*, 396 U.S. at 369-70 ("[W]here the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy."); *Crowder*, 828 F.2d at 725 (noting that courts may not "use the guise of the 'neutral principles' approach to delve into issues concerning whether the general church acted beyond its authority under the church constitution in declaring a reorganization of the diocese" (citing *Milivojevich*, 426 U.S. at 721-24)).

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." *Crowder*, 828 F.2d at 722. 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." *Ram*, 906 F. Supp. 2d at 70 (quoting *Burgess*, 734 F. Supp. at 31). Because this Court cannot, consistent with the First Amendment, entertain issues concerning church governance, administration, or polity, *Milivojevich*, 426 U.S. at 710; *Myhre*, 719 F. App'x at 929, Plaintiffs' Amended Complaint must be dismissed.

C. Plaintiffs' Motion to Amend

Finally, Plaintiffs' Motion to Amend requests leave to file a Second Amended Complaint to correct typographical mistakes, drop the claims of tortious interference and trespass, add a claim for injunctive relief, drop and add certain individuals as Plaintiffs, and name seventeen additional individuals as Defendants. Defendant Auguste opposes the Motion to Amend, arguing that allowing Plaintiffs to file the Second Amended Complaint would be futile because the amended pleading will nonetheless be subject to dismissal as a matter of non-justiciable church governance. Defendant Seminole Tribe also opposes the Motion to Amend, noting that granting leave to amend would be futile due to Defendant Seminole Tribe's entitlement to tribal sovereign immunity.

Generally, a district court should freely grant leave to amend pleadings when justice so requires. Fed. R. Civ. P. 15(a)(2). However, as noted above, leave to amend need not be given if amendment would be futile. *Bryant*, 252 F.3d at 1163. "[D]enial of leave to amend is justified by futility when the 'complaint as amended is still subject to dismissal.'" *Burger King Corp. v. Weaver*,

169 F.3d 1310, 1320 (11th Cir. 1999); *see Dysart v. BankTrust*, 516 F. App'x 861, 865 (11th Cir. 2013) (same); *St. Charles Foods, Inc. v. Am.'s Favorite Chicken Co.*, 198 F.3d 815, 822-23 (11th Cir. 1999) ("When a district court denies the plaintiff leave to amend a complaint due to futility, the court is making the legal conclusion that the complaint, as amended, would necessarily fail."). "The futility threshold is akin to that for a motion to dismiss; thus, if the amended complaint could not survive Rule 12(b)(6) scrutiny, then the amendment is futile and leave to amend is properly denied." *Bill Salter Advert., Inc. v. City of Brewton, Ala.*, 2007 WL 2409819, at *2 (S.D. Ala. Aug.23, 2007) (citing *Fla. Power & Light Co. v. Allis Chalmers Corp.*, 85 F.3d 1514, 1520 (11th Cir. 1996) (amendment is futile if cause of action asserted therein could not withstand motion to dismiss)).

Based on the analysis above, the Court concludes that permitting any further amendment would be futile in this case. It is clear that Plaintiffs' Second Amended Complaint would not survive a motion to dismiss due to the same issues discussed above with regard to tribal sovereign immunity and the non-justiciable questions of church governance. In comparing Plaintiffs' Amended Complaint with the proposed Second Amended Complaint attached to their Motion to Amend, the Court concludes that the claims asserted in both amended pleadings raise similar claims and tell "essentially the same story." *Crawford's Auto Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.*, No. 17-12583, 2019 WL 6974428, at *7 (11th Cir. Dec. 20, 2019) (citing *Hall*, 367 F.3d at 1263 (affirming dismissal "because the three new claims asserted, like those in [the] first amended complaint, would have been subject to dismissal as a matter of law")). The Second Amended Complaint asserts claims under the FACE Act that similar to those asserted in the Amended Complaint. *See generally* ECF No. [25-1]. The primary difference between these pleadings is that the Second Amended Complaint asserts such claims against Defendant Auguste, Defendant Seminole Tribe, and the seventeen additional church-member Defendants who accompanied Defendant Auguste to seize control of the church property. *Id.* This proposed Second

Amended Complaint, like Plaintiffs' Amended Complaint, would still be subject to dismissal as a matter of law based on tribal sovereign immunity and the non-justiciability of ecclesiastical questions.

In their Notice of Supplemental Authority, Plaintiffs cite to *Crawford's Auto Center, Inc.* for the proposition that "a proposed amended complaint is 'futile' when the District Court has previously involuntarily dismissed a similar complaint pursuant to rule 12(b)(6)." ECF No. [34] at 2. Plaintiffs argue that their Motion to Amend therefore may not be denied on grounds of futility because this Court has not involuntarily dismissed any of Plaintiffs' complaints. However, as detailed in the analysis above on the two Motions to Dismiss, the Court concludes that Plaintiffs' Amended Complaint must be dismissed as a matter of law. As such, the Eleventh Circuit's holding in *Crawford's Auto Center, Inc.* that Plaintiffs rely upon in their Notice of Supplemental Authority does not affect this Court's conclusion that the Motion to Amend must be denied because granting Plaintiffs leave to file the Second Amended Complaint would be futile in this case.

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Seminole Tribe of Florida's Motion to Dismiss, **ECF No. [28]**, is **GRANTED**.
2. Defendant Aida Auguste's Motion to Dismiss, **ECF No. [26]**, is **GRANTED.**
3. Plaintiffs' Motion for Leave to File a Second Amended Complaint, **ECF No. [25]**, is **DENIED**.
4. The above-styled action is **DISMISSED WITH PREJUDICE**.
5. To the extent not otherwise disposed of, any scheduled hearings are **CANCELED**, all pending motions are **DENIED AS MOOT**, and all deadlines are **TERMINATED**.

6. The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Miami, Florida, on January 3, 2020.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record