

No. 21-81

In the Supreme Court of the United States

BURT W. NEWSOME AND NEWSOME LAW, LLC,
Petitioners,

v.

CLARK ANDREW COOPER; BALCH & BINGHAM, LLP;
JOHN W. BULLOCK, JR.; CLAIBORNE PORTER SEIER;
AND DON GOTIER,
Respondents.

*On Petition for Writ of Certiorari to the
Supreme Court of Alabama*

**MOTION SEEKING LEAVE TO FILE AMICUS CURIAE
BRIEF AND BRIEF OF CHURCH OF LUKUMI BABALU
AYE, INC., AMICUS CURIAE
IN SUPPORT OF PETITIONERS**

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**RULE 37.2 MOTION SEEKING LEAVE TO FILE
AMICUS CURIAE BRIEF**

The Church of Lukumi Babalu Aye, Inc., (“amicus”), hereby moves, pursuant to S. Ct. R. 37.2 for leave to file a brief amicus curiae in support of the petition for a writ of *certiorari* to the Supreme Court of the United States. *Amicus* is filing this motion for leave because we have been unable to secure consent from Respondents.¹ A copy of the proposed brief is attached hereto.

As more fully explained at the outset of the attached brief, *Amicus* is a not-for-profit church formed under the laws of the State of Florida. The Church and its congregants were the subject of a prior ruling from this Court in the matter known as, *The Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). *Amicus* is committed to the freedom of expression and free exercise of religion. It actively advocates for those individuals and entities which have faced significant Due Process violations in their dealings with municipal and other governmental entities, as well as rulings obtained from the legal system. Petitioners appear to have been so harmed by the rulings of the Supreme Court of Alabama and the lower courts in that state all of which have resulted in a significant deprivation of Due Process rights when those courts failed to observe the mandates of Rule 58(c) of the Alabama Rules of Civil Procedure.

¹ Consent was sought from Counsel for all parties, but only Petitioner’s Counsel responded affirmatively consenting to the filing of this Amicus Curiae brief.

This brief should assist the Court’s assessment of whether to grant *certiorari*. *Amicus* sets forth how the Circuit Courts of both Shelby and Jefferson Counties, as well as the Supreme Court of Alabama abandoned Rule 58(c)’s requirement that all rendered Orders be uploaded to the State Judicial Information System (“SJIS”) so that proper notice is provided and Due Process reserved for taking an appeal from a final Order. Instead, those Circuit Courts and the Supreme Court relied upon, adopted, and effectively ratified an undocketed Order by declaring it an “implicit” Order, from which all appellate rulings at issue in this matter were subsequently based. By legitimizing the “implicit” Order which otherwise violated the proscriptions of Rule 58(c), a cascading onslaught of Due Process violations occurred causing the expungement order of the Shelby County Circuit Court to be overturned, the Dismissal and Release Agreement to be reinstated, cloaking unintended and unidentified third parties with the protections of that Agreement, and the imposition of substantial legal fees all without having a properly docketed final Order from which all the state court appeals could be taken.

Those state court rulings issued with conscious disregard for Rule 58(c) of the Alabama Rule of Civil Procedure should be overturned and Petitioner Newsome’s properly docketed expungement order, which remains on file today, properly recognized by the Supreme Court of Alabama and lower Circuit Courts. Correspondingly, the Dismissal and Release Agreement should be declared a nullity as a record expunged by operation of law in accordance with the Shelby County

Circuit Court expungement order docketed as required in the SJIS system.

The Church of Lukumi Babalu Aye, Inc., has no vested interest in the outcome of this matter. It merely seeks to fulfill its mission to advocate for those individuals and entities which have suffered significant constitutional violations at the hand of municipal entities and Courts which have upheld those actions which negatively impact upon the lives and business interests of the aggrieved parties.

Amicus hopes to make this Court aware of what it believes are the broad implications and Due Process impingement that the rulings from the Shelby and Jefferson Circuit Courts and Supreme Court of Alabama have had as a result of abdicating their duty to impose the docketing mandate of Rule 58(c) of the Alabama Rules of Civil Procedure.

Accordingly, *Amicus* respectfully requests that the Court grant leave to file the attached brief as *amicus curiae*.

Respectfully submitted,

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**INTEREST AND BRIEF OF CHURCH OF
LUKUMI BABALU INC., AS AMICUS CURIAE
IN SUPPORT OF PETITIONERS**

The Church of the Lukumi Babalu Aye, Inc. (“The Church”), is a not-for-profit corporation organized under Florida law in 1973.¹ The Church and its congregants were the subject of a favorable prior ruling from this Court in the matter known as, *The Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

The Church is committed to the freedom of expression and exercise of religion. It actively advocates for those individuals and entities which have been denied significant Due Process in their dealings with municipal and governmental entities as well as Courts in the jurisdictions where they reside.

Petitioners have been harmed by the rulings of the Circuit Courts in Shelby and Jefferson Counties which were ratified by the Supreme Court of Alabama. Their injury stems from the simple abdication of those Courts from enforcing the requirements of Rule 58(c) that all Orders be uploaded and docketed with the SJIS system. Abidance by that Rule makes an Order official, final, and appealable. Because all the appellate courts of Alabama relied upon an undocketed “implicit” order

¹ No counsel for a party authored any part of this brief. And no one other than the amicus curiae, its members, or its counsel financed the preparation or submission of this brief. The parties received timely notice of the filing of this brief. Consent was sought from Counsel for all parties, but only Petitioner’s Counsel responded affirmatively consenting to the filing of this Amicus Curiae brief.

which was not entered into the SJIS system as required by Rule 58(c), it would appear that there was no valid final Order from which an appeal could be taken. Lacking a valid final and appealable Order in the SJIS system, the appellate rulings and ramifications thereof which overturned the Trial Court's expungement order and vacation of the Dismissal and Release Agreement appear to be unripe and devoid of critical Due Process protections guaranteed under the Fourteenth Amendment to the United States Constitution.

The Church of Lukumi Babalu Aye, Inc., submits this *Amicus Curiae* brief in support of the Petition for a Writ of *Certiorari*.

CORPORATE DISCLOSURE

Pursuant to Rule 29.6 of this Court, The Church of Lukumi Babalu Aye, Inc., is a non-profit organization which has no parent corporations and no publicly-held corporation owns any stock in those entities.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment of the United States Constitution provides in relevant part:

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

U.S. Const. amend. XIV.

SUMMARY OF THE ARGUMENT

The confounding procedural history of the state court proceedings are reminiscent of the old poem most often attributed to Benjamin Franklin, entitled: "For The Want Of A Horseshoe Nail". That poem analyzes a sequence of simple events in a mythical wartime supply chain to deduce how a simple failure can lead to widespread catastrophic results. It reads:

"For the want of a nail the shoe was lost,
 For the want of a shoe the horse was lost,
 For the want of a horse the rider was lost,
 For the want of a rider the battle was lost,
 For the want of a battle the kingdom was lost,
 And all for the want of a horseshoe-nail."

Poor Richard's Almanack, 1789;
See also, https://en.wikipedia.org/wiki/For_Want_of_a_Nail

As discussed below, that insightful lesson about the cascading impact of a simple failure of operations is adaptable to the instant matter. The procedural history and resulting harms caused by the successive courts failures to abide by Rule 58(c) demonstrate the vast magnitude of Due Process violations that resulted - all for the want of observance of the SJIS docketing requirement under the Alabama Rules of Civil Procedure.

Applied here, that causality chain and cascading impact of constitutional impingement goes something like this:

For the want of a docketed SJIS Order, the expungement order was improperly lost,

For want of the expungement order, the D&R agreement releasing remote third parties was reinstated,

For want of abidance to Rule 58(c), an undocketed Order was drafted, but not filed,

For want of filing, the undocketed Order was void and appeals could not be properly taken,

For want of proper appeals, the subsequent rulings from the Circuit Courts of Shelby and Jefferson Counties, as well as the Supreme Court of Alabama were flawed and Due Process was lost,

All for the want of compliance with Rule 58(c) of the Alabama Rules of Civil Procedure.

This Court should grant Certiorari to redress the Due Process violations caused by abdication of the Circuit Courts of Shelby and Jefferson Counties, as well as the Supreme Court of Alabama, to follow the mandate of Rule 58(c) of the Alabama Rules of Civil Procedure.

ARGUMENT

Rule 58 of the Alabama Rules of Civil Procedure mandates the procedures by which a court order is

rendered and docketed. More specifically, a Judge may render an order or judgment by:

- (1) separate written document,
- (2) by including the order or judgment in a judicial opinion,
- (3) by endorsing upon a motion the words "granted," "denied," "moot," or words of similar import, and dating and signing or initialing it,
- (4) by making or causing to be made a notation in the court records, or
- (5) by executing and transmitting an electronic document to the electronic-filing system. *Ala. R. Civ. P. 58(a)*.

Once rendered, that order or judgment rendered must then be docketed in the following manner:

"Upon rendition of an order or a judgment as provided in subdivision (a)(1-4) of this rule, the clerk shall forthwith enter such order or judgment in the court record. **An order or a judgment shall be deemed "entered" within the meaning of these Rules and the Rules of Appellate Procedure as of the actual date of the input of the order or judgment into the State Judicial Information System.** An order or a judgment rendered electronically by the judge under subdivision (a)(5) of this rule shall be deemed "entered" within the meaning of these Rules and the Rules of Appellate Procedure as of the date the order or judgment is electronically transmitted by the judge to the electronic-filing system. The entry of the judgment or order shall not be delayed for the

taxing of costs. Interest upon a judgment runs from the date the court renders the judgment.”

Ala. R. Civ. P. 58(c). [Emphasis Added].

It is clear from Rule 58(c) that the uploading of an Order or Judgment to the SJIS system is required to provide both public notice of it and the imprinting of the Clerk’s electronic time stamp upon it to officially commence the time periods in which appellate or other action must be taken with regard to it. That rule provides consistency in Court proceedings and ensures the finality of orders so that appeals may be properly taken. That Rule is very similar to the purposes of Rule 58 of the Federal Rules of Civil Procedure to ensure notice to the parties that an Order or Judgment has become “official” and the ability to take timely appeal from it thereafter.

The protracted procedural history of the instant matter in the Alabama state courts makes clear what results when the docketing requirement of Rule 58(c) is abandoned.

Petitioner Newsome litigated and obtained an expungement order from the Circuit Court, Shelby County. *See, Record on Appeal, Pg. 105.* That Order was docketed in the SJIS system and effectively caused all of the records from Mr. Newsome’s arrest and prosecution to be expunged from his record. The Judge who issued that Order in the system at the Circuit Court, Shelby County, Alabama, retired soon thereafter. *See, Record on Appeal, Pg. 118.* As a direct consequence of the expungement order, the Dismissal and Release Agreement was also vitiated as it was

derivative of the then expunged criminal records and proceeding. *See, Record on Appeal, Pgs. 10-11; 110-118.* As such, the D&R agreement became a nullity and whatever restrictions against Petitioners filing civil or criminal claims against ascertainable and unknown third party private citizens who were directly or indirectly related to the criminal case were no longer applicable. *Id.* That SJIS docketed expungement order was the subject of extensive subsequent litigation. *Id.*

Motion and litigation practice continued and that expungement order previously docketed in the SJIS system was supplanted by a subsequent ruling reversing the expungement order which consequently reinstated the prohibitions on civil actions contained in the D&R Agreement. *See, Record on Appeal, Pg. 116.* However, that reversal order was never docketed in the SJIS system as required by Rule 58(c). *See, Record on Appeal, Pg. 25.*

A non-docketed order should not be deemed final and appealable until such time that it is entered into the SJIS system in accordance with Rule 58(c). But, the lack of compliance with Rule 58 was not deemed to be a barrier to several subsequent appeals which wended their way through the Circuit Courts of Shelby and Jefferson Counties, as well as the Supreme Court of Alabama. *See, Record on Appeal, Pgs 25; 110-118.* On June 8, 2016, the Supreme Court ordered that the previously undocketed order reversing the expungement order be entered into the SJIS system. *See, Record on Appeal, Pg. 126.*

The Supreme Court of Alabama sidestepped the failure to abide by Rule 58(c) and instead found that

there was an “implicit” order which overturned the expungement order which was valid and binding even if not docketed in the SJIS system. *See, Record on Appeal, Pgs. 5-45.*

By so ratifying that defalcation of the Alabama Rules of Procedure, the Supreme Court countenanced and sanctioned the fact that several appeals of significant constitutional magnitude, including the imposition of substantial attorneys fees, were permissible even if the single order which set the cascading violations in motion was not final or ripe for an appeal. This error was not *de minimis* – it was catastrophic – all for the want of abidance of the docketing requirements set forth in Rule 58(c) of the Alabama Rules of Civil Procedure.

This Court should reverse the Supreme Court of Alabama and remand the matter back to state court with instruction to abide by the last order properly docketed with SJIS in accordance with Rule 58 - the Order granting expungement to Petitioner Newsome and vacation of the Dismissal and Release Agreement.

CONCLUSION

By grant of *Certiorari* this Court can undo the injustices inflicted upon Petitioners by the Supreme Court of the State of Alabama when it abdicated its duty to uphold Rule 58 of the Alabama Rules of Civil Procedure and instead opted to approve the Due Process violations engaged in by the lower courts.

Respectfully Submitted,

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