

No. _____

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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QUESTIONS PRESENTED

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 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

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").

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.

TABLE OF CONTENTS

	<u>Page</u>
COVER PAGE.....	1
QUESTIONS PRESENTED.....	2
TABLE OF CONTENTS.....	5
TABLE OF AUTHORITIES.....	6
PARTIES TO THE PROCEEDINGS BELOW.....	7
PETITION FOR WRIT OF CERTIORARI.....	8
CITATIONS TO OPINIONS BELOW.....	8
STATEMENT OF JURISDICTION.....	9
STATEMENT OF THE FACTS AND PROCEDURAL HISTORY.....	10
REASONS FOR GRANTING THE PETITION.....	19
CONCLUSION.....	20
CERTIFICATE OF SERVICE.....	21

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>UNITED STATES CONSTITUTION</u>	
First Amendment.....	2, 3,4,16,16f,19
<u>FEDERAL STATUTES</u>	
18 U.S.C. § 248.....	2,3,4,10f,11f
28 U.S.C. § 1254(1).....	9
<u>FEDERAL RULES OF CIVIL PROCEDURE</u>	
Rule 12(b)(1).....	16
Rule 12(b)(6).....	16
<u>CASES</u>	
<i>Cheffer v. Reno</i> , 55 F. 3d 1517 (11 th Cir. 1995).....	3
<i>Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida</i> , 824 Fed. Appx. 680, 2020 U.S. App. LEXIS 25205 (11 th Cir. 2020).....	8,17,18
<i>Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida</i> , 2020 U.S. Dist. LEXIS 617, 2020 WL 43221 (S.D. Fla. 2020).....	8,16
<i>K.M. ex rel. D.M. v. Publix Super Markets, Inc.</i> , 895 So. 2d 1114 (Fla. 4 th DCA 2005).....	13f
<i>Michigan v. Bay Mills Indian Community</i> , 572 U.S. 782 (2014).....	2,3,19
<i>Roman Catholic Diocese of Brooklyn, New York v. Cuomo</i> , 592 U.S. ____ (Matter No. 20A87, November 25, 2020).....	13f
<i>Upper Skagit Indian Tribe v. Lundgren</i> , ____ U.S. ____, 138 S. Ct. 1649 (2018).....	3f

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

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 Council, 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.

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 Andy 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.

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

⁵ The pre-eminence of the protections afforded to worshipers by the First Amendment's Free Exercise of Religion Clause was 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 ___ day of November, 2020, on:

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