

**[FILED]**

JUN 12 2000

CLERK  
U. S. DISTRICT COURT  
MIDDLE DIST. OF ALA.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

JAMES LIMBAUGH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 93-D-1404-N
	)	
LESLIE THOMPSON, et al.,	)	
	)	
Defendants.	)	
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NATIVE AMERICAN PRISONERS,	)	
OF ALABAMA - TURTLE WIND	)	
CLAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 96-D-554-N
v.	)	
	)	
STATE OF ALABAMA DEP'T OF	)	
CORRECTIONS, et al.,	)	
	)	
Defendants.	)	

ORDER AND JUDGMENT

This cause is now presented to the court on two separate Recommendations Of The Magistrate Judge, both filed September 10, 1999. The first Recommendation Of The Magistrate Judge ("Recommendation One," docket number 192-1) addresses the following two issues on which the Parties could not reach a settlement: (1) the Department of Corrections' ("DOC") ban on the use of a sweat lodge; and (2) the DOC's requirement regarding hair length. On January 31, 2000, Plaintiffs filed an Objection to Recommendation One, titled "Objection To The Recommendation Of

**EOD** 6-12-00

The Magistrate Judge That Is Addressed To The Sweat Lodge And Hair Length Issues" ("Pl.'s Objection").<sup>1</sup> The second Recommendation Of The Magistrate Judge ("Recommendation Two," docket number 193-1) addresses the issues agreed upon by the Parties in their Stipulation filed on March 5, 1998. Neither Party filed an objection to Recommendation Two.

After careful consideration of the arguments of counsel, the relevant law, and the record as a whole, it is CONSIDERED and ORDERED that Plaintiffs' Objection to Recommendation One be and the same is hereby OVERRULED and that the Recommendation One be and the same is hereby ADOPTED, APPROVED and AFFIRMED. Accordingly, it is further CONSIDERED, ORDERED and ADJUDGED that Judgment be and the same is hereby ENTERED in favor of Defendants on the sweat lodge and hair length issues.

It is further CONSIDERED and ORDERED that Recommendation Two be and the same is hereby ADOPTED, APPROVED and AFFIRMED. Accordingly, it is further CONSIDERED, ORDERED and ADJUDGED that Judgment be and the same is hereby ENTERED in favor of Plaintiffs in accordance with the findings and conclusions contained in the Recommendation Of The Magistrate Judge concerning the issues agreed upon by the Parties in a Stipulation filed on March 5,

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<sup>1</sup>Defendants filed a Brief In Opposition To Plaintiffs' Objections on March 17, 2000. On April 3, 2000, Plaintiffs filed a Reply To Defendants' Brief In Opposition.

1998.

Lastly, the court notes that Plaintiffs correctly point out in their Objection that the Magistrate Judge did not address Plaintiffs' Motion For Leave To Amend Complaint Without Reproducing The Entire Pleading (Docket Number 188-1) or Plaintiffs' Motion To Amend Complaint To Add A Claim Based On The Newly Enacted Alabama Religious Freedom Amendment (Docket Number 189-1) (collectively, "Motions To Amend").

Under 28 U.S. C. § 1367(c)(1), a court may decline to exercise supplemental jurisdiction over a state law claim if the claim "raises a novel or complex issue of State law." The Alabama Religious Freedom Amendment was ratified on January 6, 1999. That amendment prohibits state government from burdening a person's freedom of religion unless the government demonstrates the existence of a compelling governmental interest, and the action taken is the least restrictive means of furthering the compelling interest. The court notes that there is no reported Alabama decision construing this amendment to the Alabama Constitution. After careful consideration, the court declines to delve into how and under what circumstances the Alabama Religious Freedom Amendment would constrain, if at all, the responsibilities of the correctional officials under the circumstances of this case. Further, this issue presents a complex question of state constitutional law which no Alabama

appellate court has addressed, and this court, in the interest of comity, should not address it in the first instance. See Chandler v. Miller, 73 F.3d 1543, 1546 n.3 (11th Cir. 1996), overruled on other grounds, 520 U.S. 305 (1997). Accordingly, it is CONSIDERED and ORDERED that Plaintiffs' Motions To Amend be and the same are hereby DENIED.

Done this the 12<sup>th</sup> day of June, 2000.

  
UNITED STATES DISTRICT JUDGE