

1998 WL 1182060

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Superior Court of Massachusetts.

Randall Shield Wolf TRAPP et al.

v.

Lawrence DUBOIS et al.

No. 950779. | Feb. 27, 1998.

## Opinion

### ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

BOHN.

\*1 The above named plaintiffs are inmates at the North Central Correctional Institution in Gardner, Massachusetts ("NCCI") and members of the Native American Spiritual Council. They filed this action against defendants in 1995 alleging violations of their rights to religious freedom under various federal and state statutes, the First Amendment to the United States Constitution and the Massachusetts Declaration of Rights. Plaintiffs have filed their second motion for summary judgment on counts alleging violations of religious freedom based on the denial of space and funding for a sweat lodge and the prohibition on storage of religious items in their cells. For the following reasons, plaintiffs' motion for summary judgment is *denied*.

Under the Massachusetts Declaration of Rights, a law burdening religious practice must advance compelling state interests and must be narrowly tailored in pursuit of those interests. *Attorney General v. Desilets*, 418 Mass. 316, 321 n. 4, 636 N.E.2d 233 (1994); Mass. Declaration of Rights Pt. 1, Art 2. However, as a threshold matter, plaintiffs must prove that the activity interfered with by

the State is rooted in a legitimate and sincerely held religious belief. *Attorney General v. Bailey*, 386 Mass. 367, 375, 436 N.E.2d 139 (1982).

The plaintiffs' first motion for summary judgment was denied on February 26, 1996. The Court (Travers, J.) found genuine issues of material fact as to the sincerity of plaintiffs' beliefs, whether there is a compelling state interest in regulating the plaintiffs' exercise of their religion and whether the means employed to do so are the least restrictive available.

In support of the motion sub judicata, i.e., their second motion for summary judgment, the plaintiffs offer deposition testimony of defendant DuBois in which he stated that he had no reason to doubt the sincerity of their religious beliefs. That deposition testimony, however, is not necessarily binding on all parties and, furthermore can be rebutted at trial. Mass.R.Civ.P. 32(b). *See also* Mass. Prac. Vol 7, § 32.7. For that reason, defendant DuBois' opinion regarding the sincerity of plaintiffs' religious beliefs does not resolve the issues of fact identified by this Court in its earlier order; and, in any event, there remain genuine issues of material fact with respect to the state's interest in governing the exercise of plaintiffs' religious observances, even if those observances were found to be sincere.

With respect to their argument that defendants cannot prove a compelling state interest, plaintiffs have submitted deposition testimony of defendant Chalapatas in which he states that headbands were not a security risk to his knowledge. Plaintiffs have submitted no other evidence tending to prove that defendants will be unable to prove their burden of a compelling state interest and least restrictive means at trial. Again, plaintiffs have not met their burden on this claim.

\*2 Accordingly, plaintiffs' motion for summary judgment must be *denied*.