

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES HUNT WARCLOUD, et al. : CIVIL ACTION
 :
 v. :
 :
 MARTIN F. HORN, et al. : NO. 97-3657

MEMORANDUM AND ORDER

HUTTON, J.

March 16, 1998

Presently before this Court is the Plaintiffs' Motion Seeking this Honorable Court to Alter or Amend Judgment (Docket No. 51), and the parties' responses thereto. For the reasons stated below, the plaintiffs' Motion is **GRANTED**.

I. BACKGROUND

The plaintiffs have alleged the following facts. The plaintiffs, James Hunt Warcloud ("Warcloud") and James Four Deer Walking Robinson ("Robinson"), are inmates at the Pennsylvania State Correctional Institution at Graterford ("Graterford"). Warcloud and Robinson are both Native Americans.¹ The plaintiffs are "practitioners of the Native American 'spirituality' (religion)." Pls.' Compl. ¶ 31.

Prior to 1990, Warcloud was incarcerated in Delaware. In 1990, Warcloud was transferred to the Pennsylvania State

1. The plaintiffs state that Warcloud is "Cheraw/Cherokee/Lumbee/European (Native American)," while Robinson is "Cherokee/European (Native American)." Pls.' Compl. ¶¶ 13, 14.

Correctional Institution at Huntington ("Huntington"). Id. ¶ 33. While at Huntington, prison officials prevented Warcloud from practicing several facets of his religion. For example, prison officials refused to allow Warcloud to burn herbs. Id. ¶ 38. In an attempt to represent the interests of Native Americans at Huntington, Warcloud formed the "Cultural-Spiritual Brotherhood of Native Nations." Id. ¶ 42. Two years later, Warcloud was transferred to the State Correctional Institution at Mahanoy ("Mahanoy").

"Upon Warcloud's arrival to [Mahanoy], all of his sacred objects were confiscated, and placed within the property room, and not under the care of the religious department where these specific items due to their religious nature were to be placed accordingly." Id. ¶ 46. At some point during his incarceration at Mahanoy, several of Warcloud's religious objects were broken or vandalized. Id. ¶ 52. While at Mahanoy, however, Warcloud was successful in organizing "regular services and meetings . . . for the Native American community within." Id. ¶ 55. Moreover, he acted as a councilman and a co-founder of the "Sacred Circle of Native Nations," an organization representing and promoting the interests of Native American inmates. Id.

On August 17, 1995, Warcloud was transferred to Graterford. Id. ¶ 57. Upon his arrival at Graterford, Warcloud sent memorandums to the Graterford Superintendent, Donald Vaughn

("Vaughn"), and the Graterford Chaplaincy Program Director, Reverend Edward A. Neiderhiser ("Neiderhiser"), stating that he wished to describe his religious practices to them. Id. ¶¶ 59, 61. Further, Warcloud confronted leaders of "false" Native American religious groups. Id. ¶ 60. Neiderhiser and Warcloud corresponded and met several times in an attempt to resolve Warcloud's concerns. Id. ¶¶ 65, 88.

Warcloud sent a letter to the Department of Corrections Religious Services Administrator, Reverend Francis T. Menei ("Menei"), stating that he was being deprived of several sacred objects necessary to the practice of his religion. Id. ¶ 62. Menei responded to Warcloud's letter, informing him that Graterford's administrators could address his concerns. Id. ¶ 63.

On January 9, 1996, Warcloud filed a grievance, asking for permission to receive these sacred objects. Id. ¶ 64. The Department of Corrections Deputy Commissioner, Jeffrey A. Beard ("Beard"), and Neiderhiser responded, allowing Warcloud access to a few objects he requested. Id. ¶ 65. Warcloud has written several additional letters in an attempt to gain access to other religious items. Id. ¶ 67.

On October 10, 1994, Robinson, also a Graterford inmate, sent Neiderhiser a letter, requesting permission to conceive a program for Graterford's Native American inmates. Id.

¶ 69. Robinson met with Neiderhiser, and soon after Robinson formed the "First Native American Group" (the "Group"). Id. ¶ 71.

Robinson submitted several requests to Neiderhiser concerning Robinson's desire to purchase certain religious objects for the Group. Id. ¶ 73. Robinson wrote to Menei concerning the difficulty he experienced obtaining these objects. Id. ¶ 80. Menei informed Robinson that the Group needed a "Religious Coordinator for the Native Americans" at Graterford. Id.

While at Graterford, Robinson and Warcloud began working together to promote their shared religious interests. Id. ¶ 81. The plaintiffs formed the "Brotherhood of United Tribes" ("BOUT"), which was approved by Graterford officials and which obtained outside religious coordinators. Id. ¶¶ 82, 83.

BOUT members met with Neiderhiser to express their concerns that other religious groups at Graterford had greater access to religious materials than the Native Americans attempting to perform traditional ceremonies. Id. ¶¶ 88, 98-103. Moreover, the plaintiffs desired reasonable access to a sweat lodge. Id. ¶ 94. However, the plaintiffs' requests were denied. Id. ¶ 90.

The plaintiffs filed the instant suit on July 1, 1997. In their Complaint, they named the following parties as

defendants: (1) Commissioner of the Pennsylvania Department of Corrections ("DOC") Martin F. Horn ("Horn"); (2) Beard; (3) Menei; (4) unknown persons on the DOC Religious Advisory Committee; (5) Vaughn; (6) DOC Graterford Deputy Superintendent David Diguglielmo ("Diguglielmo"); (7) DOC Graterford Deputy Superintendent Michael Lorenzo ("Lorenzo"); and (8) Neiderhiser. In their Complaint, plaintiffs assert numerous causes of action under: (1) the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments; (2) the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb; (3) the American Indian Religious Freedom Act ("AIRFA") Amendments and American Indian Religious Freedom Joint Resolution Act, 42 U.S.C. § 1996; (4) the Pennsylvania Constitution; and (5) various state statutes.

On August 20, 1997, the defendants filed a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6). On September 19, 1997, the plaintiffs responded to the defendants' motion. On October 7, 1997, the defendants filed an amended motion to dismiss, which the plaintiffs failed to respond in a timely manner. On October 29, 1997, the Court granted the defendants' amended motion to dismiss as uncontested. On November 4, 1997, the plaintiffs filed the instant motion, asking the Court to alter or amend judgment, and to vacate or to reconsider this Court's Order of October 29, 1997.

II. DISCUSSION

A. Motion for Reconsideration Standard

It is unsettled among the courts how to treat motions to reconsider:

The [United States] Supreme Court has noted that "[s]uch a motion is not recognized by any of the Federal Rules of Civil Procedure. The Third Circuit has sometimes ruled on such motions under Federal Rule of Civil Procedure 59(e) and at other times under Rule 60(b). A motion to reconsider may, therefore, be treated as a Rule 59(e) motion for amendment of judgment or a Rule 60(b) motion for relief from judgment or order.

Broadcast Music, Inc. v. La Trattoria E., Inc., No. CIV.A.95-1784, 1995 WL 552881, at *1 (E.D. Pa. Sept. 15, 1995). In this case, the Court will treat the instant motion for reconsideration as a motion pursuant to Rule 59(e), rather than as a motion pursuant to Rule 60(b).

Federal Rule of Civil Procedure 59(e) provides in relevant part that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Generally, a motion for reconsideration will only be granted if: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa.

1993) (citing Dodge v. Susquehanna Univ., 796 F. Supp. 829, 830 (M.D. Pa. 1992)), aff'd in part, rev'd in part, 57 F.3d 270 (3d Cir. 1995); McDowell Oil Serv., Inc. v. Interstate Fire & Cas. Co., 817 F. Supp. 538, 541 (M.D. Pa. 1993). Furthermore,

"With regard to the third ground,... any litigant considering bringing a motion to reconsider based upon that ground should evaluate whether what may seem to be a clear error of law is in fact simply a disagreement between the Court and the litigant." Motions for reconsideration should not relitigate issues already resolved by the court and should not be used "to put forward additional arguments which [the movant] could have made but neglected to make before judgment."

Compton, 834 F. Supp. at 755 (quotations and citations omitted).

B. Analysis of Plaintiffs' Motion for Reconsideration

In the instant case, the Court granted the defendants' motion as uncontested, pursuant to Local Rule of Civil Procedure 7.1(c). See Order of 10/28/97, at 1. Seven days after the Court issued that order, the plaintiffs filed the instant motion, in which they argue that the Court dismissed the complaint prematurely. The plaintiffs contend that because they mailed their response within the time allotted, the fact that the Court did not receive the response on time is immaterial. Pl.'s Mot. at ¶¶ 5-6. Thus, the plaintiffs assert that they made a timely response, and that the defendants' motion should not have been granted as uncontested. Id. at ¶ 8.

Local Rule 7.1(c) provides that except for summary judgment motions, "any party opposing the motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested" E.D. Pa. R. Civ. P. 7.1(c). In addition, the Federal Rules of Civil Procedure provide that if service is made by regular mail, a party shall have an additional three days to respond to the motion. Fed. R. Civ. P. 6(e). For purposes of the Federal Rules of Civil Procedure, "[s]ervice by mail is complete upon mailing." Fed. R. Civ. P. 5(b).

The record clearly indicates that the defendants served the plaintiffs with their motion to dismiss by mail on October 7, 1997. Thus, this Court finds that the plaintiffs' response was due on October 24, 1997, seventeen days after the defendants mailed their motion. The plaintiffs, however, did not respond to the defendants' motion until October 27, 1997, three days after its response was due. Pls.' Mot. at 4. Consequently, this Court concludes that the October 28, 1997 Order dismissing the complaint conformed with the local rules, and thus was not premature.

Nonetheless, the plaintiffs argue that because they were "denied the sufficient time to go to the Law Library," they

were unable to respond any earlier. Pls.' Mot. ¶ 7. Given that a complaint filed by a litigant proceeding pro se must be evaluated using less stringent standards, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), and to prevent manifest injustice to the plaintiffs, this Court will reconsider the defendants' Motion to Dismiss to determine whether the plaintiffs stated any viable causes of action in their complaint.

C. Standard for Dismissal under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),² this Court must "accept as true the facts alleged in

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Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon

(continued...)

the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

D. Analysis of Plaintiffs' Claims

1. The RFRA

The plaintiffs seek relief under the RFRA. In City of Boerne v. Flores, 117 S. Ct. 2157, 2170-72 (1997), the United States Supreme Court found the RFRA unconstitutional. Accordingly, the plaintiffs fail to state a viable cause of action and the defendants' motion is granted with respect to the plaintiffs' RFRA claims.

2. The AIRFA

(...continued)

which relief can be granted

Fed. R. Civ. P. 12(b)(6).

The plaintiffs also seek relief under the AIRFA. However, the AIRFA does not "create a cause of action or any judicially enforceable rights." Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 455 (1988). Thus, defendants' motion is granted with respect to plaintiffs' claim based on the AIRFA.

3. First Amendment Claims

"[C]onvicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement including those under the First Amendment involving free exercise of religion." Cooper v. Tard, 855 F.2d 125, 128 (3d Cir. 1988) (citing O'Lone v. Estate of Shabazz, 107 S. Ct. 2400 (1977)). However, "lawful incarceration brings about the withdrawal or limitation of privileges and rights for various reasons including institutional security." Id. Thus, "[a] prison regulation may validly impinge on an inmate's constitutional rights if it is reasonably related to a legitimate penological interest." Scott v. Horn, No.CIV.A.97-1448, 1998 WL 57671, at * 7 (E.D. Pa. Feb. 9, 1998) (quoting Small v. Lehman, 98 F.3d 762, 765-66 (3d Cir. 1996)).

In applying this test:

the Court begins with the guiding principle that courts must show appropriate deference to policy decisions made by prison officials. O'Lone, 482 U.S. at 349, 107 S. Ct. at 2404. This principle of deference is based on the

recognition that prison officials are in the best position to make difficult decisions involving prison administration. Turner [v. Safley], 482 U.S. 78, 84-85, 107 S. Ct. 2254, 2259-60 (1987)]. As the Supreme Court has explained, the "evaluation of penological objectives is committed to the considered judgment of prison administrators, 'who are actually charged with and trained in the running of the particular institution under examination.'" O'Lone, 482 U.S. at 349, 107 S. Ct. at 2404 (quoting Bell v. Wolfish, 441 U.S. 520, 562, 99 S. Ct. 1861, 1886, 60 L.Ed.2d 447 (1979)). For that reason, the prison policy at issue here is evaluated under a reasonableness test, which is "less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights." O'Lone, 482 U.S. at 349, 107 S. Ct. at 2404.

To determine the reasonableness of prison management decisions, a court may consider the following factors: (1) whether there is a valid and rational connection between the prison regulation and the legitimate governmental interest justifying the regulation; (2) whether there are alternative means available to the prisoner to exercise the right; (3) the impact the accommodation of the asserted right will have on prison resources and guards; and (4) the existence of easy, obvious alternatives to accommodate the prisoner's rights. Turner, 482 U.S. at 89-90, 107 S. Ct. at 2262.

Scott, 1998 WL 57671, at * 7.

Thus, "in order to proceed on [a] free exercise claim, [the plaintiffs] must satisfy the 'reasonableness' test."

Muhammad v. Klotz, No.CIV.A.97-1552, 1998 WL 79910, at * 1 (E.D. Pa. Feb. 20, 1998); Robinson v. Ridge, No.CIV.A.96-6096, 1997 WL 816376, at * 2 (E.D. Pa. Dec. 16, 1997). In the instant case, the plaintiffs have alleged that the defendants imposed

regulations limiting their ability to practice their religion. More specifically, the plaintiffs assert that the defendants have refused to grant the plaintiffs access to a sweat lodge, Pls.' Compl. ¶¶ 93, 94, ceremonial herbs, Pls.' Compl. Exs. 17, 19, special tobacco, Pls.' Compl. Exs. 9, 14, and other ceremonial objects.³ While the defendants argue that their decision to deny access to these items is justified under the Turner analysis, the Court cannot consider the defendants' arguments at this stage. Accordingly, the defendants' Motion is denied with respect to the plaintiffs' First Amendment claims.

4. Fourth Amendment Claims

The plaintiffs allege that the defendants wrongfully seized the plaintiffs' religious objects from the plaintiffs' cells, in violation of the Fourth Amendment.⁴ However, "[a] right to privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure

3. The plaintiffs concede that they have been granted permission to meet as a group, Pls.' Compl. ¶¶ 71-73, to keep several ceremonial items, id. at ¶¶ 47, 50, 58, 65, and to wear a headband and a medicine bag, id. at ¶ 56.

4. The Fourth Amendment of the United States Constitution provides that:

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

institutional security and internal order." Hudson v. Palmer, 468 U.S. 517, 527 (1984). Thus, "prisoners retain no legitimate expectation of privacy in their cells for fourth amendment purposes." Jones/Seymour v. LeFebvre, 781 F. Supp. 355, 357 (E.D. Pa. 1991), aff'd, 961 F.2d 1567 (3d Cir. 1992) (TABLE) (citing Hudson, 468 U.S. at 527); Proudfoot v. Williams, 803 F. Supp. 1048, 1051 (E.D. Pa. 1992); Csizmadia v. Fauver, 746 F. Supp. 483, 490 (D.N.J. 1990). Accordingly, the plaintiffs fail to state a cause of action and the defendants' motion is granted with regard to the plaintiffs' Fourth Amendment claims.

5. Fifth Amendment Claims

The Fifth Amendment of the United States Constitution provide that no person shall be deprived of "life, liberty, or property without due process of law."⁵ U.S. Const. amend. V. While the Fifth Amendment guarantees due process of law, its prohibitions are limited to acts of the federal government.

5. The Fifth Amendment of the United States Constitution provides that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

Shoemaker v. City of Lock Haven, 906 F. Supp. 230, 238 (M.D. Pa. 1995). The plaintiffs allege that state officers, not federal officers, violated their constitutional rights while incarcerated in a state prison. Accordingly, the defendants' motion is granted with regard to the plaintiffs' Fifth Amendment claims.

6. Sixth Amendment Claims

Plaintiffs also assert Sixth Amendment⁶ claims. The plaintiffs fail to state a valid cause of action, however, because:

The explicit guarantees of the Sixth Amendment are applicable only to "criminal prosecutions." Kirby v. Illinois, 406 U.S. 682, 690 (1972). "It is well established that prison disciplinary proceedings are not 'criminal prosecutions' as that term is used in the Sixth Amendment." United States v. Gouveia, 704 F.2d 1116, 1121 (9th Cir. 1983) (en banc) (citations omitted), rev'd on other grounds, 467 U.S. 180 (1984), and "the full panoply of rights due a defendant in [criminal prosecutions] does not apply" in prison disciplinary proceedings. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). The Supreme Court has held that procedures for the confrontation and cross-examination of

6. The Sixth Amendment of the United States Constitution provides as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. amend. VI.

witnesses are not required in prison disciplinary proceedings nor do inmates have a right to either retained or appointed counsel in such proceedings. Wolff, 418 U.S. at 567-70; Baxter v. Palmigiano, 425 U.S. 308, 315, 322 (1976).

Robinson v. Vaughn, No.CIV.A.92-7048, 1993 WL 451495, at *6 (E.D. Pa. Nov. 1, 1993). Accordingly, the plaintiffs fail to assert a cause of action under the Sixth Amendment, and the defendants' motion is granted in that regard.

7. Eighth Amendment Allegations

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. While a "prisoner has no reasonable expectation of privacy in his cell that would entitle him to Fourth Amendment protection from unreasonable searches and seizures," Proudfoot, 803 F. Supp. at 1051, a prisoner may assert a viable cause of action under the Eighth Amendment. Hudson, 468 U.S. at 530. However, a prisoner must show that the prison officials, when conducting the search or seizure, acted "for 'calculated harassment.'" Proudfoot, 803 F. Supp. at 1051.

In Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321 (1991), the Supreme Court further explained this standard. The Court:

held that a plaintiff asserting a cruel and unusual punishment claim[] must meet both

parts of a two-prong test. The first prong is an objective inquiry that asks whether the inmate was deprived "of the minimal civilized measure of life's necessities." Wilson, 11 S. Ct. at 2324 (citing Rhodes[v. Chapman], 101 S. Ct. 2392, 2399).] The second prong is a subjective test in which the plaintiff must demonstrate that prison officials acted at least with deliberate indifference toward his religious needs. Id. at 2324-25.

Boone v. Commissioner of Prisons, No.CIV.A.93-5074, 1994 WL 383590, at * 9 (E.D. Pa. July 21, 1994), aff'd, Boone v. Leham, 60 F.3d 814 (3d Cir. 1995) (TABLE).

In the instant case, the plaintiffs were "not deprived of life's minimal necessities. The undisputed facts show that [the plaintiffs] had numerous opportunities to practice [their] religion and organize a faith group." Id. Accordingly, the plaintiffs "cannot meet the objective portion of the Eight Amendment test," id., and the plaintiffs fail to state a viable cause of action under the Eighth Amendment. Thus, the defendants' motion is granted with respect to the plaintiffs' Eighth Amendment claims.

8. Ninth Amendment Claims

The Ninth Amendment states that “[t]he enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.” U.S. Const. amend. IX. The Ninth Amendment “‘has never been recognized as independently securing’ any substantive constitutional rights.” Robinson, 1993 WL 451495, at * 6 (quoting Strandberg v. City of Helena, 791 F.2d 744, 748-49 (9th Cir. 1986)). Accordingly, the plaintiffs fail to state a viable cause of action under the Ninth Amendment, and the defendants’ motion is granted in that regard.

9. Fourteenth Amendment Claims

The plaintiffs assert that they have been denied equal protection under the Fourteenth Amendment, because their treatment differs from that afforded to other religious groups.⁷ “As to such claims, the reasonableness of the prison rules and policies must be examined to determine whether distinctions made between religious groups in prison are reasonably related to legitimate penological interests.” Benjamin v. Coughlin, 905

7. The Fourteenth Amendment provides in relevant part that:

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 any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

F.2d 571, 575 (2d Cir. 1990), cert. denied, 498 U.S. 951 (1990). Moreover, unless the regulations are "arbitrary," the plaintiffs' claim must fail, because religious discrimination "is governed by the religion clauses of the First Amendment, leaving for the equal protection clause only a claim of arbitrariness unrelated to the character of the activity allegedly discriminated against." Reed v. Faulkner, 842 F.2d 960, 962 (7th Cir. 1988).

The plaintiffs allege that their treatment differs from the treatment of other religious groups in three ways. First, the plaintiffs state that Catholic, Protestant, and Muslim groups have their own worship space at Graterford, while the plaintiffs are only granted use of a conference room. Pls.' Compl. ¶¶ 71, 72, 98. Second, the plaintiffs contend that other religious groups have full-time chaplains, while they do not. Pls.' Compl. ¶¶ 99, 101. Third, the plaintiffs assert that members of other religious groups have greater access to religious articles than they do. Accordingly, the plaintiffs have alleged that they are treated differently than other religious groups. While the defendants give reasons justifying the disparate treatment, the Court cannot consider these arguments at the Motion to Dismiss stage. Thus, the defendants' motion must be denied with respect to the plaintiffs' Fourteenth Amendment claims.

10. Pendent State Claims

Pursuant to 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over state law claims. However, the Court may decline supplemental jurisdiction if:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). The Court may properly decline to exercise supplemental jurisdiction and dismiss the State claims if any one of these applies. See Growth Horizons, Inc. v. Delaware County, 983 F.2d 1277, 1284 (3d Cir. 1993).

Where remaining state claims substantially predominate over the federal claims, the Court may dismiss the state law claims. This is especially so where the remaining state law claims are based on state constitutional law:

It is axiomatic that questions of state constitutional law are to be answered by state courts, rather than by the federal judiciary. Indeed, the existence of a serious question of state constitutional law may, where appropriate, require federal abstention. See, e.g. Harris County Comm'rs Court v. Moore, 420 U.S. 77, 84-85 (1975); Reetz v. Bozanich, 397 U.S. 82, 85 (1970). In discussing the federal courts' discretionary exercise of jurisdiction over

state claims, the Supreme Court has cautioned that "[n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surerfooted reading of applicable law." United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

Green v. Zendrian, 916 F. Supp. 493, 498 (D. Md. 1996) (citations omitted). "Federal courts have not hesitated to dismiss or remand state causes of action where the state claims would require 'elements of proof that are distinct and foreign to [the federal] claim,' and which would therefore 'caus[e] a substantial expansion of [the] action beyond that necessary and relevant to the federal claim.'" Id. (quoting James v. Sun Glass Hut of California, Inc., 799 F. Supp. 1083, 1085 (D. Colo. 1992)) (emphasis in original); see Bodenner v. Graves, 828 F. Supp. 516, 518 (W.D. Mich. 1993) (finding state law claims predominated where 28 claims over which court could exercise supplemental jurisdiction existed, compared to one claim over which court had original jurisdiction).

In the instant case, the plaintiffs assert claims under several Pennsylvania statutes, under multiple common law theories, and under fourteen sections of the Pennsylvania constitution. There are only two remaining federal claims for this Court to consider, both of which relate only to the plaintiffs' religious concerns and are subject to the same reasonableness test. Given these considerations, it is

appropriate to decline to exercise supplemental jurisdiction over the remaining state law claims. Accordingly, the defendants' motion is granted with regard to the pendent state law claims.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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v. :
MARTIN F. HORN, et al. : NO. 97-3657

O R D E R

AND NOW, this 16th day of March, 1998, upon consideration of the Plaintiffs' Motion Seeking this Honorable Court to Alter or Amend Judgment (Docket No. 51), and the parties responses thereto, IT IS HEREBY ORDERED that the plaintiffs' Motion is **GRANTED**.

IT IS FURTHER ORDERED that this Court's Order dated October 29, 1997 (Docket No. 47) is amended as follows:

1) the Amended Motion by Defendants to Dismiss (Docket No. 42) is **GRANTED** with respect to plaintiffs' Fourth, Fifth, Sixth, Eighth, and Ninth Amendment Claims;

2) the Amended Motion by Defendants to Dismiss (Docket No. 42) is **GRANTED** with respect to plaintiffs' pendent state law claims; and

3) the Amended Motion by Defendants to Dismiss (Docket No. 42) is **DENIED** with respect to plaintiffs' First and Fourteenth Amendment Claims.

BY THE COURT:

HERBERT J. HUTTON, J.