

CIVIL ACTION 95-1080

Defendants, Wayne Scott, Linda Moten, Jerry Groom, T. Crosby, Stan Cuyler, and, Glenda Taylor, acting in their individual and official capacity, is re-

sponsible for violation of Plaintiffs' Rights to Freedom of Religion and to be free of religious "Discrimination", in violation of Plaintiffs' rights under the First and Fourteenth Amendments of the United States Constitution; Article I, §6 of the Texas Constitution, and the Religious Freedom Restoration Act of 1993, as well as the Texas Tort Claims Act. All defendants has herein at all times specified in this complaint acted under Color of State Law in violations of Plaintiffs' rights.

A) Defendant - Wayne Scott, Acting in his official and individual capacities as Director of TBCJ-ID,, P.O.Box 99, Huntsville, Texas 77340, is responsible for depriving Plaintiff of her rights to live by and practice her sincere religious beliefs to the Creator in the Ways of worship of the American Indians. Plaintiff is a sincere practitioner of the American Indian Sacred Pipe Religion, and a member of the Native American Brotherhood Church, Incorporation.

B) Linda Moten - Defendant, acting in her individual and official capacities as Senior Warden at the Mt. View Unit for Women, Rt. 4 Box 800, Gatesville, Texas 76528-9399., is responsible for depriving Plaintiff of her religious freedom by depriving Plaintiff of all necessities in which she may practice her religion.

C) Jerry Groom - Defendant, acting in his individual and official capacities as Director of Chaplaincy., P.O.Box 99, Huntsville, Texas 77340., is responsible for depriving Plaintiff of her religious rights, by implimenting Native American Religious Policy AD. 7.30 (Rev. 2 April 14, 1994), which does not include all Native American Practitioners within TDCJ-ID., and excludes Native American Women.

D) Chaplain T. Crosby - Defendant, acting in her individual and official capacities as Unit Chaplain at the Mt. View Unit of TDCJ-ID., Rt. 4 Box 800, Gatesville, Texas 76528-9399., is responsible for religious discrimination and depriving Plaintiff of her freedom of religion to practice her Native American Prayer Pipe ceremony by directly dening and depriving Plaintiff of religious items to practice such ceremony and said items having been approved by the prison administration in Huntsville before hand.

E) Defendants - Stan Cuyler and Glenda Taylor, acting in their individual and official capacities as Vice Chairman and Chairman of the Native American Task Force of TDCJ-ID., P.O.Box 99, Huntsville, Texas 77340., is responsible for depriving Plaintiff and other Native American Women of their religious freedom rights to practice their Native American religious beliefs by implimenting TDCJ-ID Religious Policy while said policy excludes Native American Women.

#### STATEMENT OF FACTS

1. Plaintiff, Jolene Yellowquill, alleges that a newly implimented I.O.C., (An Informal Policy of the TDCJ-ID) has denied her access to Native American religious items which are necessary and essential to her religious practices.

Plaintiff was first informed that she would be allowed to have and receive the following Native American religious items: Sacred Prayer Pipe; Sacred Pipe bag; 1-Eagle Feather; Kinnickinnick; Sage; Cedar; Mishma; Sweetgrass; Bear-berries; I-sacred Stones; Medicine Pouch; Flat Cedar; along with various other items to practice her religious beliefs. These items are very expensive.

And Plaintiffs' family was out the following amount for these items:

1. Sacred Pipe-----\$160.00
  2. Sacred Pipe Bag-----\$300.00
  3. 1-Eagle Feather-----\$100.00
  4. Kinnickinnick-----\$10.00
  5. Sweetgrass-----\$10.00
- TOTAL COST: \$580.00

2. All of the above listed items were Blessed by a Native American Spiritual Advisor/Leader of Plaintiffs' Tribe. Plaintiff herein alleges that the TDCJ-ID Native American Religious Policy AD. 7.30 (Rev. 2 of April 14, 1994), discriminates and deprives some 400 Native American Tribes who are not Federally recognized within the United States. Plaintiff also alleges that said policy and defendants currently stated that any "Native American who does not have a B.I.A., (Bureau of Indian Affairs) number (enrollment number) will be excluded from the Prayer Pipe Ceremony.

Plaintiff herein would show the court that the sacred pipe is essential to her prayer worship to the Creator; and that any Policy which excludes her from using the sacred Pipe in prayer whenever she feels the need to pray, deprives her of the Freedom which is provided to other religious sects within TDCJ-ID, and further deprives Plaintiff of any prayer communication with the Creator in the Spiritual ancestrol ways of her People which dates back into the earlier days before the arrival of the Europeans in this home land of our People which we call "Turtle Island".

3. Plaintiff further alleges that defendants has denied all her written and spoken requests, as well as her "Inmate Grievances I-127 & I-128" seeking her rights to practice her religious beliefs.

4. On December 15th, 1993, Plaintiff received via the U.S., Mail, a small package of "Kinnickinnick" (A sacred herb blessed by a Spiritual Leader) within compliance with the existing I.O.C., in effect at that time. However, Plaintiff was informed by Ms. Shelton, a Unit Mailroom Clerk, that Chaplain T. Crosby, Unit Chaplain, denied Plaintiff her right to receive the package, thereby violating their own I.O.C., Policy and depriving Plaintiff of her rights to practice her Native American religion, and worship the Creator in the ancestrol Ways of her People.

5. Plaintiff herein would likewise show this honorable court that the following Native American Items are essential to her religious beliefs:

- |                                |                                     |
|--------------------------------|-------------------------------------|
| 1. Prayer Pipe.                | 10. Indian Moccassins.              |
| 2. Sacred Pipe Bag.            | 11. Sacred Sweat Lodge.             |
| 3. Medicine Bag.               | 12. Indian Flag.                    |
| 4. Medicine Bundle.            | 13. REligious Diet.                 |
| 5. Tobacco Ties.               | 14. Sacred Spirir Stones.           |
| 6. Sweetgrass Mixture.         | 15. Mishma & other Legal herbs.     |
| 7. Sweetgrass Braid.           | 16. Eagle Feathers (No Limitation). |
| 8. Flat Cedar.                 | 17. Choker Necklace.                |
| 9. Indian Flute (Spirit Blute) | 18. Windband (Worn at all times).   |
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19. Sage Bundle.
20. Smudge Pot.
21. Ceremonial Paints. (May use Pastel Oil Colors).
22. Recognition of Native American Brotherhood Church Spiritual Leader David C. Little Hawk, as well as other outside Native American Spiritual Leaders.

#### RELIGIOUS DISCRIMINATION

6. Plaintiff herein holds her religious beliefs sincere.
7. The Plaintiff use each of the religious items that have been denied to practice her religious beliefs and ceremonies.
8. The Defendants has prohibited plaintiff from freely practicing her religion.
9. No compelling state interest can justify the defendants' interference with plaintiffs' religious practice. Prison security does not require the defendants to deny plaintiff her religious items.
10. Defendants conduct has deprived plaintiff of her rights to the free exercise of religion secured to her under the First and Fourteenth Amendments to the United States Constitution, as well as the Religious Freedom Restoration Act of 1993.
11. Even if the governmental interest is legitimate and substantial, the restriction is greater than necessary to protect the interest involved.
12. Defendants has exhibited reckless disregard for plaintiffs' rights, and has intentionally and with deliberate and conscious indifference violated plaintiffs' rights to religious freedom.

#### INTERFERENCE WITH RIGHTS TO RECEIVE RELIGIOUS ITEMS

13. Plaintiff has ordered religious items which are essential to her religious worship to be sent to her at her present residence.
14. Such religious items has been wrongfully withheld from plaintiff by defendants.
15. Such materials/religious items have allegedly been withheld following a purported finding that the items would pose a danger to the security of the prison.
16. The finding that such items would present a clear and present danger to the security of the prison was the judgment of defendants which was based upon non-existent evidence to support such finding. The decision was not made by an impartial body operating within legal guidelines and with specific criteria.
17. The items was withheld from plaintiff with no prior notice or opportunity for plaintiff to be heard on the matter.
18. Defendants' conduct deprived plaintiff of her rights to freedom of religion secured to her under the First and Fourteenth Amendments to the United States Constitution, as well as the Religious Freedom Restoration Act of 1993.

## TITLE VI

19. Plaintiff participate in a federally funded prison system. Plaintiff have sustained a distinct and palpable injury directly traceable to the challenged action.

20. Defendants has purposefully discriminated against plaintiff Jolene Yellowquill based on her status as an American Indian.

21. The defendants is responsible for intentional discrimination, or in the alternative, the facially neutral practice has produced a significantly adverse impact on Ms. Yellowquill's cultural group.

## PENDANT CLAIMS

### A) FREEDOM OF RELIGION:

22. Defendants has violated the plaintiffs' freedom of worship as guaranteed by Article I, §6 of the Constitution of the State of Texas. Based on the above facts, the defendants has denied plaintiff the rights to worship the Creator according to her ancestral Ways and beliefs, interfered with rights of conscience in the matters of religion, and given preference by law to some religious societies or modes of worship to the ~~the~~ exclusion of others.

### B) TEXAS TORT CLAIMS ACT:

23. Because defendants denied plaintiff the right to practice of her chosen religion, the plaintiff has suffered severe emotional distress and high blood pressure; as well as family conflicts between plaintiff and her loved ones because of the funds (\$580.00) spent on the religious items.

24. Defendant state agency may be held to answer in a court of law for the violations because plaintiffs' personal injury was caused by the use of tangible personal property, so that sovereign immunity is waived under the Texas Tort Claims Act.

25. At all times material, all of the agents, servants, and employees of the defendants who were in any way connected with the violations were acting within the course and scope of their employment or official duties and in furtherance of the duties of their office or employment.

26. In preventing the plaintiff from practicing her chosen religion, TDCJ-ID and its agents', servants, and officers' negligence directly and proximately caused plaintiffs' injuries. Plaintiff has suffered.

27. Prior to the filing of this lawsuit, and within six months from the date of the violations described in this action, plaintiff presented notice of ~~their~~ her claims to:

Mr. Wayne Scott  
Director of TDCJ-ID  
P.O. Box 99  
Huntsville, Texas 77340-0099

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RELIEF

Plaintiff herein respectfully prays for the following relief:

- a) A Declaratory Judgment that the policies, practices, and acts described in this complaint violate plaintiffs' rights to freedom of religion and freedom from racial and religious discrimination under the First and Fourteenth Amendments to the United States Constitution; The Religious Freedom Restoration Act of 1993, 42 U.S.C., §2000bb-1; 42 U.S.C., §1983; Title VI of the Civil Rights Acts of 1964, 42 U.S.C., §2000d; Article I, §6 of the Texas Constitution; and the Texas Tort Claims Act, Texas Civil Practice & Remedies Code Annotated §101.001, et seq.
- b) Grant preliminary and, thereafter, permanent injunctive relief requiring defendants to allow plaintiff to have and use her religious items;
- c) Award plaintiff the sum of \$35,000.00 (Thirty-five thousand dollars) for the pains of mental anguish, high blood pressure and irreparable injuries;
- d) Award plaintiff the sum of \$20,000.00 (Twenty thousand dollars) for violation of her religious freedom and the deprivation of her religious worship;
- e) Award plaintiff the sum of \$580.00 (Five hundred and eighty dollars) for reimbursement for the cost plaintiff was out on the religious items;
- f) Award plaintiff her costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. §1988(b) and other applicable statutes
- g) Grant plaintiff compensatory damages, punitive damages, and any additional relief which the Court deems just and proper.

WHEREFORE PREMISES CONSIDERED,

RESPECTFULLY SUBMITTED,

EXECUTED: 3/14/95

Jolene Yellowquill  
Jolene Yellowquill #552121  
Rt. 4 Box 600  
Mt. View Unit  
Gatesville, Texas 76528-9399

Plaintiff herein DECLARES under the penalty of perjury that the foregoing complaint and statements contained herein are TRUE AND CORRECT.

Jolene Yellowquill  
Jolene Yellowquill #552121

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