

255 (D. Mass. 2018), defendant has renewed his motion for summary judgment as to Count Three.

In *Pimentel*, this Court concluded: “The SJC has never held that there is a right of action to enforce the Declaration of Rights. It did suggest, 35 years ago, in dicta, that such a right ‘may’ be available. . . [However] [n]o Massachusetts appellate court, in the 35 years since *Phillips [v. Youth Dev. Program, Inc., 390 Mass. 652 (1983)]*, has ever held that such a right exists.” 323 F. Supp. 3d at 273-74. In light of this history, the Court held that “it is emphatically not the role of the federal courts to develop and expand upon state law. If this Court were to conclude that such a right existed, no Massachusetts court would have an opportunity to consider that decision—including, among other things, an opportunity to consider the wisdom of the policy embedded in such a decision and the potential consequences for litigants and the courts. It is up to the courts of Massachusetts, not this Court, to make that choice.” *Id.*

Because the Court finds there is no private right of action under Article 26, defendant’s supplemental motion for summary judgment as to Count Three is GRANTED.

So Ordered.

Dated: October 19, 2018

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge