

Anna Conley
ACLU of Montana Foundation
P.O. Box 9138
Missoula, MT 59807
Telephone: (406) 443-8590, Ext. 3056
Email: annac@aclumontana.org

Ron Waterman
Gough Shanahan Johnson & Waterman
33 S. Last Chance Gulch
Helena, MT 59691
Telephone: (406) 442-8560
Fax: (406) 442-8783
Email: r fw@gsjw.com

Kyle A. Gray
Adrian A. Miller
Holland & Hart LLP
P.O. Box 639
Billings, MT 59103-0639
Telephone: (406) 252-2166
Fax: (406) 252-1669
Email: kgray@hollandhart.com
Email: aamiller@hollandhart.com
ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

SUSAN F. FISH, TERRI WETZEL,
TASHA RAINEY, ANGELA ROMAN
NOSE, NICOLE MOORE, ROLANDA
WAGNER, and NICOLE LANCE,

Plaintiffs,

vs.

JO ACTON, ROBERT PAUL, SUE
ORAND, ANNAMAE SIEGRIED-
DERRICK, MARK HARTMAN,
CHARLOTTE DOLEZAL, MIKE
FERRITER AND MONTANA
DEPARTMENT OF CORRECTIONS,

Defendants.

) No. DV 11-0099-BLG-RFC-CSO

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

FIRST AMENDED COMPLAINT

INTRODUCTION

Plaintiffs are female prisoners currently or previously incarcerated at the Montana Women's Prison in Billings, Montana. Defendants have violated plaintiffs' equal protection rights set forth in the U.S. and Montana Constitutions, as well as 20 U.S.C. 1681 discriminating against Plaintiffs on the basis of sex.

While incarcerated at the Montana Women's Prison, Plaintiffs are forced to participate in a degrading and unbeneficial "Right Living Community" program. Female prisoners' only alternative to forced participation in the "Right Living Community" is prolonged solitary confinement with no access to job opportunities or education opportunities. All female prisoners, even those who have not been court ordered to obtain treatment, must participate in the "Right Living Community." The "Right Living Community" enables prisoners to engage in petty and vindictive behavior, and gives prisoners power over other prisoners' privileges and punishments.

No male prisoners are forced to participate in the "Right Living Community" or any similar program in the Montana State Prison. The only male prisoners required to participate in treatment are those court ordered to obtain treatment. Male prisoners' privileges and punishments are not tied to participation in forced treatment programs. Male prisoners have many options to be in work

dorm and/or general population, obtain work training and education, which are not contingent on their participation in forced treatment programming.

The Right Living Community is purported to serve as a substitution for the statutory right of prisoners in Montana to attend boot camp. Because they are women, plaintiffs are denied the ability to attend boot camp, a three month intensive military-style rehabilitation treatment and education program available to male prisoners which, upon successful completion, results in eligibility for sentence reduction or conversion to probation. Male prisoners sentenced to boot camp, sentenced to the custody of the Montana Department of Corrections, and sentenced directly to Montana State Prison can attend boot camp. Conversely, no female prisoners, even those who have been endorsed by their sentencing judges to attend boot camp, have the opportunity to attend boot camp.

For the duration of their incarceration, Plaintiffs have been denied equal protection of the law and are subjected to gender discrimination. This gender discrimination includes forced participation in the “Right Living Community” for female prisoners, while there is absolutely no forced participation in any similar program for male prisoners in Montana State Prison or any other private or regional prison for male prisoners in the state of Montana, and denial of the opportunity to attend boot camp. These acts of gender discrimination violate the

Fourteenth Amendment to the U.S. Constitution, as well as Article II, §4 of the Montana Constitution.

Forced participation in the “Right Living Community” and denial of boot camp also violate 20 U.S.C. § 1681 (commonly termed “Title IX”) as female prisoners are not receiving education opportunities equal to male prisoners. Female prisoners’ access to work training and education programming is conditioned on their forced participation in the “Right Living Community.” Denial of boot camp for female prisoners, which is an education program, also results in unequal education opportunities for male and female prisoners.

NATURE OF THE ACTION

1. Plaintiffs bring Count I of this action pursuant to 42 U.S.C. §1983 to redress violations of Plaintiffs’ rights under the Fourteenth Amendment to the U.S. Constitution to receive equal protection while incarcerated in the Montana Women’s Prison. In connection with Count I, Plaintiffs seek injunctive and declaratory relief against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their official capacities, and actual, nominal and punitive damages against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their individual capacities, as well as attorneys’ fees and costs.

2. Plaintiffs bring Count II of this action pursuant to 42 U.S.C. §1983 to redress violations of Plaintiffs’ rights under the Fourteenth Amendments to the

U.S. Constitution to be guaranteed equal protection under the laws while they are incarcerated in the Montana Women's Prison. In connection with Count II, Plaintiffs seek injunctive and declaratory relief against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their official capacities, and actual, nominal and punitive damages against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their individual capacities, as well as attorneys' fees and costs.

3. Plaintiffs bring Count III of this action to redress violations of 20 U.S.C. § 1681, which states, in part "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . ." 20 U.S.C. § 1681. In connection with Count III, Plaintiffs seek injunctive and declaratory relief against Defendant Department of Corrections, and actual, nominal and punitive damages against Defendant Department of Corrections, as well as attorneys' fees and costs from all defendants.

4. Plaintiffs bring Count IV of this action to redress violations of 20 U.S.C. § 1681, which states, in part "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving

Federal financial assistance . . .” 20 U.S.C. § 1681. In connection with Count IV, Plaintiffs seek injunctive and declaratory relief against Defendant Department of Corrections, and actual, nominal and punitive damages against Defendant Department of Corrections, as well as attorneys’ fees and costs from all defendants.

5. Plaintiffs bring Count V of this action to redress violations of Article II, §4 of the Montana Constitution, which guarantees equal protection of the laws, prohibits discrimination on the basis of sex and prohibits violations to human dignity. In connection with Count V, Plaintiffs seek actual, nominal and punitive damages against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their individual capacities, as well as attorneys’ fees, and court costs.

6. Plaintiffs bring Count VI of this action to redress violations of Article II, §4 of the Montana Constitution, which guarantees equal protection of the laws, prohibits discrimination on the basis of sex and prohibits violations to human dignity. In connection with Count VI, Plaintiffs seek Plaintiffs seek actual, nominal and punitive damages against Defendants Acton, Paul, Orand, Derrick, Hartman and Ferriter in their individual capacities, as well as attorneys’ fees, and court costs.

JURISDICTION AND VENUE

7. Jurisdiction is conferred upon this Court for Counts I, II, III and IV pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1343 because the matters in controversy arise under the Constitution and the laws of the United States.

8. Supplemental jurisdiction is conferred upon this Court for Counts V and VI pursuant to 28 U.S.C. 1367.

9. Venue is proper in this Court under 28 U.S.C. §1391(b) because a substantial part of the events that give rise to Plaintiffs' claims took place in Billings, Montana.

10. This Court has authority pursuant to 42 U.S.C. 1983 to award appropriate actual, consequential, compensatory, nominal and punitive damages, and has authority under 42 U.S.C. §1988 to award attorney fees and costs to successful civil rights plaintiffs.

PARTIES

11. Plaintiff Susan Fish is a prisoner in the general population at the Montana Women's Prison. For the approximately last five years Ms. Fish has been forced to participate in the "Right Living Community" (formerly known as "therapeutic community") at the Montana Women's Prison. In or around April 2012, Ms. Fish became eligible to participate in a new version of mandatory "Right Living Community" for prisoners over 55 who have participated in RLC for two

years in which she must attend fewer meetings and need not participate in “structure board” or crews, which are explained below.

12. Plaintiff Terri Wetzel is a prisoner in the general population at the Montana Women’s Prison. For approximately the last two years, Ms. Wetzel has been forced to participate in the “Right Living Community” (formerly known as “therapeutic community”) at the Montana Women’s Prison. On June 11, 2011, Gallatin County District Court Judge Holly Brown entered an order granting Ms. Wetzel’s Motion for Boot Camp Endorsement. Despite this endorsement, defendants have denied Ms. Wetzel the opportunity to participate in boot camp.

13. Plaintiff Tasha Rainey is a prisoner at the Passages Assessment, Revocation, Sanction and Hold Center. She was a prisoner at the Montana Women’s Prison from December 7, 2009 through March 19, 2012. One of Ms. Rainey’s male co-defendants, who was convicted of similar crimes arising from the same incident, has been released on probation since October, 2011 after successfully completing boot camp. Without the equal ability to attend boot camp, Ms. Rainey will remain incarcerated at Passages until September, 2013.

14. Plaintiff Angela Roman Nose is a prisoner in general population at the Montana Women’s Prison. The December 17, 2007 Sentencing Order by Montana District Court Judge Hagel, Yellowstone County District Court, sentencing Ms. Roman Nose states that the Court supports the Defendant’s application to

participate in the women's boot camp program as available throughout the DOC. Despite this support, because boot camp is not available to female prisoners, Ms. Roman Nose will discharge her full five year sentence with no sentence reduction and no rehabilitative programming in October, 2012.

15. Plaintiff Nicole Moore is a prisoner in general population at the Montana Women's Prison. On June 7, 2011, Ravalli County District Court Judge Jeffrey Langton entered a Memorandum giving Ms. Moore his permission and endorsement to participate in the boot camp program. Despite this support, Defendants have denied Ms. Moore the ability to attend boot camp.

16. Plaintiff Rolanda Wagner is a prisoner in general population at the Montana Women's Prison. Ms. Wagner is a young prisoner, and is an ideal candidate for boot camp. Despite this, Ms. Wager has been denied the ability to attend boot camp because there is no boot camp available for female prisoners.

17. Plaintiff Nicole Lance is a prisoner in general population at the Montana Women's Prison. Ms. Lance is a young prisoner, and is an ideal candidate for boot camp. Despite this, Ms. Wager has been denied the ability to attend boot camp because there is no boot camp available for female prisoners.

18. Defendant Jo Acton is, and at all relevant times was, Warden at the Montana Women's Prison.

19. Acting under the color of state law, Defendant Acton has acted with discriminatory intent and taken action she knew or reasonably should have known would violate plaintiffs' right to equal protection by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in "full and sincere" participation in the Right Living Community, conditioning privileges on "full and sincere" participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

20. Defendant Acton has acted with discriminatory intent and taken action she knew or reasonably should have known would violate plaintiffs' equal protection rights by depriving female prisoners of the ability to attend boot camp and receive a sentence reduction upon successful completion.

21. Defendant Acton has personally participated in violations of plaintiffs' equal protection rights by forcing all female prisoners alternatively to participate in the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

22. Defendant Action has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide

mandatory “Right Living Community Orientation Program” that is not the substantial equivalent of boot camp. The “Right Living Community Orientation Program” does not provide the same treatment, education and skills building, and cannot result in a sentence reduction.

23. With regard to Counts I, II, III and IV, Plaintiffs name Defendant Jo Acton in her official and individual capacity. With regard to Counts V and VI, Plaintiffs name Defendant Jo Acton in her individual capacity.

24. Defendant Robert Paul is, and at all relevant times was, Deputy Warden at the Montana Women’s Prison.

25. Acting under the color of state law, Defendant Paul has acted with discriminatory intent and taken action he knew or reasonably should have known would violate plaintiffs’ equal protection rights by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in “full and sincere” participation in the Right Living Community, conditioning privileges on “full and sincere” participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

26. Defendant Paul has acted with discriminatory intent and taken action he knew or reasonably should have known would violate plaintiffs’ equal

protection rights by depriving female prisoners of the ability to attend boot camp and receive a sentence reduction upon successful completion.

27. Defendant Paul has personally participated in violations of plaintiffs' equal protection by forcing all female prisoners alternatively to participate in the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

28. Defendant Paul has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide mandatory "Right Living Community Orientation Program" that is not the substantial equivalent of boot camp. The "Right Living Community Orientation Program" does not provide the same treatment, education and skills building, and cannot result in a sentence reduction.

29. With regard to Counts I, II, III and IV, Plaintiffs name Defendant Robert Paul in his official and individual capacity. With regard to Counts V and VI, Plaintiffs name Defendant Robert Paul in his individual capacity.

30. Defendant Sue Orand is, and at all relevant times was, Deputy Warden at the Montana Women's Prison.

31. Acting under the color of state law, Defendant Sue Orand has acted with discriminatory intent and taken action she knew or reasonably should have

known would violate plaintiffs' equal protection rights by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in "full and sincere" participation in the Right Living Community, conditioning privileges on "full and sincere" participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

Defendant Orand has acted with discriminatory intent and taken action she knew or reasonably should have known would violate plaintiffs' equal protection rights by depriving female prisoners of the ability to attend boot camp and receive a sentence reduction upon successful completion.

32. Defendant Orand has personally participated in violations of plaintiffs' equal protection rights by forcing all female prisoners to participate in the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

33. Defendant Orand has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide mandatory "Right Living Community Orientation Program" that is not the substantial equivalent of boot camp. The "Right Living Community Orientation

Program” does not provide the same treatment, education and skills building, and cannot result in a sentence reduction.

34. With regard to Counts I, II, III and IV, Plaintiffs name Defendant Sue Orand in her official and individual capacity. With regard to Counts V and VI, Plaintiffs name Defendant Sue Orand in her individual capacity.

35. Defendant AnnaMae Siegfried-Derrick is, and at all relevant times was, Operations Manager at the Montana Women’s Prison.

36. Acting under the color of state law, Defendant Siegfried-Derrick has acted with discriminatory intent and taken action she knew or reasonably should have known would violate plaintiffs’ equal protection rights by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in “full and sincere” participation in the Right Living Community, conditioning privileges on “full and sincere” participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

37. Defendant Siegfried-Derrick has acted with discriminatory intent and taken action she knew or reasonably should have known would violate plaintiffs’

equal protection rights by depriving female prisoners of the ability to attend boot camp and potentially receive a sentence reduction upon successful completion.

38. Defendant Siegfried-Derrick has personally participated in violations of plaintiffs' equal protection by forcing all female prisoners to participate in the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

39. Defendant Siegfried-Derrick has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide mandatory "Right Living Community Orientation Program" that is not the substantial equivalent of boot camp. The "Right Living Community Orientation Program" does not provide the same treatment, education and skills building, and cannot result in a sentence reduction.

40. With regard to Counts I, II, III and IV, Plaintiffs name Defendant AnneMae Siegfried-Derrick in her official and individual capacity. With regard to Counts V and VI, Plaintiffs name Defendant Sue Derrick in her individual capacity.

41. Defendant Mark Hartman is, and at all relevant times was, Lieutenant in Charge of Right Living Community at the Montana Women's Prison.

42. Acting under the color of state law, Defendant Hartman has acted with discriminatory intent and taken action he knew or reasonably should have known would violate plaintiffs' equal protection rights by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in "full and sincere" participation in the Right Living Community, conditioning privileges on "full and sincere" participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

43. Defendant Hartman has personally participated in violations of plaintiffs' equal protection rights by forcing all female prisoners to participate in the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

44. Defendant Hartman has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide mandatory "Right Living Community Orientation Program" that is not the substantial equivalent of boot camp. The "Right Living Community Orientation Program" does not provide the same treatment, education and skills building, and cannot result in a sentence reduction.

45. With regard to Counts I, II, III and IV, Plaintiffs name Defendant Mark Hartman in his official capacity. With regard to Counts V and VI, Plaintiffs name Defendant Mark Hartman in his individual capacity.

46. Defendant Mike Ferriter is, and at all relevant times was, Director of the Montana Department of Corrections.

47. Acting under the color of state law, Defendant Ferriter has acted with discriminatory intent and taken action he knew or reasonably should have known would violate plaintiffs' equal protection rights by forcing female prisoners to participate in the Right Living Community with knowledge that male prisoners are not forced to participate in any similar programming, punishing female prisoners for not engaging in "full and sincere" participation in the Right Living Community, conditioning privileges on "full and sincere" participation in the Right Living Community, and requiring female prisoners to live in solitary confinement as their only alternative to participation in the Right Living Community.

48. Defendant Ferriter has acted with discriminatory intent and taken action he knew or reasonably should have known would violate plaintiffs' equal protection rights by depriving female prisoners of the ability to attend boot camp and receive a sentence reduction upon successful completion.

49. Defendant Ferriter has personally participated in violations of plaintiffs' equal protection rights by forcing all female prisoners to participate in

the Right Living Community or reside in solitary confinement with no job opportunities and limited to no educational opportunities.

50. Defendant Ferriter has further personally participated in violations of plaintiffs' equal protection rights by denying female prisoners the ability to participate in boot camp and attempting to replace boot camp with a facility-wide mandatory "Right Living Community Orientation Program" that is not the substantial equivalent of boot camp. The "Right Living Community Orientation Program" does not provide the same treatment, education and skills building, and cannot result in a sentence reduction, is mandatory, perpetual, and cannot result in a sentence reduction.

51. With regard to Counts I, II, III and IV, Plaintiffs name Defendant Mike Ferriter in his official capacity. With regard to Counts V and VI, Plaintiffs name Defendant Mike Ferriter in his individual capacity.

52. Defendant Montana Department of Corrections ("DOC") is, and at all relevant times to this lawsuit was, the government agency in charge of the administration of all Montana state prisons including the Montana Women's Prison. The DOC has violated 20 U.S.C. 1681 by accepting federal funds and engaging in discriminatory acts that deprive female prisoners of education opportunities equal to such opportunities for male prisoners.

GENERAL ALLEGATIONS

A. Plaintiffs are deprived of the ability to go to boot camp.

53. Boot camp is a legislative program designed to provide alternative means of rehabilitating young felony offenders. Mont. Code Ann. §53-30-401 – 403. The program uses physical activity, military style discipline and intensive counseling to “correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation.” Section 53–30–403(3)(b), MCA.

54. The boot camp program was originally located in the Swan River Correctional Training Center. In 1997, the DOC opened the Treasure State Correctional Training Center (“TSCTC”) in Deer Lodge, Montana, which currently houses male prisoners participating in boot camp.

55. Boot camp has been very successful in decreasing new offense recidivism rates dramatically and providing valuable rehabilitation skills relating to structure, treatment and education to felony offenders.

56. Boot camp is based on military boot camp programs. Participants live, work, and train together in a structured, military-style setting. The program emphasizes physical activity and conditioning as well as intensive education, counseling and treatment programming. The program lasts from 3 to 6 months, and is followed by an aftercare program at the Great Falls pre-release center.

57. Mont. Code Ann. § 53-30-403(2) provides the prisoner eligibility requirements for the boot camp. The statute does not require that prisoners be sentenced to boot camp in order to attend, and does not provide that only males are eligible for boot camp.

58. Prisoners enter the TSCTC boot camp program by being sentenced to boot camp by a judge, or by applying and being accepted. Mont. Code Ann. § 46-18-201(4)(m) allows a judge to order an offender to complete boot camp prior to reducing his or her sentence. Prisoners may enter the program from various correctional programs and facilities, such as the Sanction, Treatment, Assessment, Revocation and Transition (START) Center, in Warm Springs, Montana and Missoula Assessment and Sanctions Center, in Missoula, Montana, or may enter directly from MSP.

59. Participation in boot camp is voluntary, and prisoners who successfully complete the program are eligible to have their sentences reduced or converted to probation.

60. Initially, female prisoners participated in boot camp at the TSCTC facility. In July, 2001, MWP started the Intensive Challenge Program (ICP), a boot camp for female prisoners. With the opening of the ICP, female prisoners no longer went through boot camp at the TSCTC.

61. At the time of its creation, the ICP served as a female counterpart to the male boot camp program, and was similarly structured. Prisoners would participate in intense physical training, counseling, and treatment. The program would last from 3-6 months, usually followed by an aftercare program. Many female prisoners successfully graduated from this program.

62. Graduates of the ICP could receive reduced or suspended sentences. In or around 2009, ICP was suspended. Defendants instituted an “orientation program” for the “Right Living Program” (“RLC”) program for new MWP prisoners, and attempted to characterize this RLC orientation as a boot camp equivalent. Today, female prisoners have no programs available for sentenced reduction upon successful completion.

63. However, the RLC orientation is nothing like boot camp. It is mandatory. All MWP prisoners are forced to participate. RLC orientation does not provide the same treatment and education skills. RLC orientation does not and cannot result in a sentence reduction. RLC orientation occurs in general population in MWP. Female prisoners’ only option aside from RLC orientation is solitary confinement. RLC orientation is not military-style, and it does not contain a similar intensive treatment component.

64. The statutes determining Boot Camp eligibility do not limit participation to male prisoners. TSCTC has taken female prisoners into its program. The ICP, when it ran as a boot camp, took only female prisoners.

65. Female prisoners no longer have access to a boot camp, nor any similar program that provides the same rehabilitation skills or sentence reductions and/or suspensions.

B. Plaintiffs are forced to participate in a mandatory “Right Living Community” program, formerly known as “therapeutic community.”

66. The Right Living Community program (“RLC”), formerly known as “therapeutic community” is a treatment program designed to restructure thinking patterns and change human behavior. Therapeutic community has predominately been utilized in the addiction treatment context, but has been utilized by MWP to attempt to restructure “criminal thinking.” The RLC was implemented at MWP in or around 2006.

67. Therapeutic community treatment programs were built on a premise that participation is voluntary in order for the treatment to be effective. Despite this premise, participation in RLC at MWP is mandatory.

68. RLC divides female prisoners within each general population pod into a hierarchy. The “structure board” is the highest level of this hierarchy. Prisoners on the “structure board” consist of two tiers. In the upper tier are the Senior

Coordinator, the Assistant Coordinator and the Senior Clerk. The lower tier of the “structure board” consist of prisoners who are “crew leads”, including the expeditor, education crew lead, environment crew lead, motivation crew lead, community representative and business crew lead. The remainder of the pod is the “family” or “community.”

69. Members of the “structure board” maintain power and authority over other prisoners in their “family.” This includes assigning tasks and homework to the rest of the “family” and assigning the “family” specific tasks to perform at RLC meetings, such as stating or reflecting upon an RLC principle or reflecting on a news or sports story. “Structure board” members also oversee inter-personal relationships between prisoners in their “family,” and are authorized to ensure that “family members” are treating each other with respect.

70. Because of the power “structure board” members have, their relationship with other prisoners in their “family” can have significant negative impacts on conditions of incarceration for other prisoners. This hierarchy gives certain prisoners power over other prisoners.

71. Female prisoners must participate in two “family” or “community” meetings each day. These meetings are run by the “structure board.” Participation in meetings is required, and non-participation results in disciplinary action and loss of privileges.

72. Female prisoners must also attend a “talking circle” on Wednesday nights, and “family night” on Friday nights, in which they are forced to participate in at least one half hour of activity with the other prisoners in their “family.” Participation in these meetings is required, and non-participation results in disciplinary action and loss of privileges.

73. RLC meetings consist of RLC-related statements, news and sports reports, and often include the singing of children’s songs and playing of children’s games such as “Simon says”, “the rain song”, and “musical chairs”. Other required activities in RLC meetings include sharing your favorite ice cream flavor, book, song or animal. “Full and sincere” participation in these activities is required. Plaintiffs and other female prisoners find forced singing of children’s songs and playing of children’s games degrading, humiliating, and non-rehabilitative.

74. Female prisoners must do RLC-related homework as a condition of their confinement. Failure to complete RLC-related homework results in disciplinary action and loss of privileges.

75. RLC, as administered by Defendants, requires prisoners to exhibit “full and sincere participation” in RLC activities, meetings and homework. Failure to exhibit “full and sincere participation” in RLC activities, meetings and homework results in disciplinary action and loss of privileges.

76. As administered at MWP, RLC does not have a beneficial impact on prisoners. RLC was designed to be voluntary, and it was designed to end after a finite period of time. Because Defendants administer RLC as a mandatory program with no finite duration, it does not provide prisoners with the intended benefits.

77. Plaintiffs, like all other MWP prisoners, must participate in RLC for the duration of their sentence at MWP. Prisoners at MWP do not receive any sentence reductions or suspensions for participation in RLC. Prisoners at MWP do not receive compensation for participation in RLC.

78. In an exception recently created, prisoners who have participated in RLC for two years and are over 55 years old, or have participated in RLC for four years and are under 55, are required to participate in a more limited way with RLC. Prisoners within this exception must attend at least two community meetings a week, be a phase 4 or 5, maintain compliant status, have not been convicted of any major infraction within 120 days, and be leaders in the community. If a person meets these requirements she does not have to be a part of the structure board, crew leads, or crew members, and for recreation she will be considered a phase four. She is still required to achieve and maintain all phase four expectations. Failure to maintain the criteria will result in a loss of eligibility and a return to full

participation in RLC. Like RLC for the rest of the prisoners, this reduced involvement in RLC is mandatory.

79. The only option for women who choose not to participate in RLC is to be housed in solitary confinement, commonly termed “administrative segregation” or “disciplinary detention” in C or F pod in MWP. C and F pod consist of isolation cells in which prisoners spend approximately 23 hours per day in their cells. Scientific research has established that prolonged solitary confinement causes significant psychological damage to prisoners.

80. Male prisoners in the Montana State Prison (“MSP”) are not required to participate in any treatment program unless ordered by a sentencing judge or by MSP personnel on a case-by-case basis to address issues relating to a specific prisoner’s needs. Many male prisoners at MSP are provided monetary compensation for participation in treatment programs. There is no facility-wide forced treatment or programming for male prisoners. Male prisoners are not obligated to have two daily meetings with their pod. Male prisoners are not stratified in a facility-sanctioned treatment-based hierarchy within their pod or housing unit. Male prisoners are not forced to participate in activities with other prisoners in their pod or housing unit. Male prisoners are not forced to sing children’s songs and play children’s games. Male prisoners are not forced to do treatment-related homework subject to punishment.

81. Male prisoners' privileges and punishments are tied solely to their classification and disciplinary record, and are not tied to participation in treatment programs that are not court ordered.

82. Male prisoners in court-ordered treatment programs receive compensation for participating in such treatment. Court-ordered treatment programs for male prisoners are of finite duration.

C. The RLC Phase System

83. In addition to the DOC classification system governed by DOC policy 4.2.1, female prisoners at MWP must participate in a "Phase" system as an integral part of RLC. Each phase has certain privileges and punishments. At MWP, prisoners are classified into four phase groups, with four being the group that receives the most privileges. Female prisoners begin on phase one.

84. Some of the benefits that come from "full and sincere" participation in the RLC and "phasing up" include increased activities, hobby and craft, gym, yard and recreation time, and priority when applying for jobs. Phase one prisoners get one hour of recreation five days a week and have no access to electronics, including personal television, or canteen food items. Phase two prisoners get two hours of recreation a day seven days a week, two hours of hobby time two days a week, but no personal television. Phase three prisoners get three hours of recreation a day, seven days a week; two hours of hobby time three days a week;

no canteen restrictions. Phases two through five get one night per week of evening yard. Phase four and five prisoners get five hobby permits, unlimited recreation time, unlimited hobby time during week days, no canteen restrictions, and evening yard as scheduled. They may also participate in the flower garden project, play Nintendo Wii, have monthly socials, and they get a state-issued colored polo shirt. Also the phase system influences where the prisoners are housed and when they participate in activities.

85. Consistently not modeling RLC values and/or behavior results in the loss of phase. When a prisoner loses a phase, in addition to the decreased privileges discussed above, her electronics and polo shirts are taken and are not returned until she earns her phase back. 30 days of clear conduct is required for a prisoner to go up one phase. Female prisoners at MWP who receive DOC write-ups also “lose phases,” which result in a loss of privileges. Female prisoners may receive write ups, punishments and awarenesses all for the same incident, and be punished multiple times for these various categories of infractions arising out of the same incident.

86. Male prisoners are not required to participate in a phase system separate from the standard DOC classification system.

87. Privileges and punishments of male prisoners at MSP are based on their DOC disciplinary record and classification. Male prisoners at MSP are not

required to participate in an additional “phase” system in order to receive certain privileges.

D. The RLC “Awareness” and Punishment Component

88. An integral part of RLC is an awareness program in which prisoners can make other prisoners “aware” when they act in ways contrary to the principles of the RLC. An “awareness” can be written or oral.

89. When an prisoner is “made aware” by another prisoner, the result is often RLC-related punishment, such as writing a list of “deterrences.” Deterrences are actions that a prisoner can take to avoid making the mistake for which she was made aware. For example, a prisoner who forgot to clear the chairs after a RLC meeting was made aware by another prisoner, and subsequently required to write 25 deterrences to avoid forgetting to clear the chairs again. Other common RLC-related punishments for being “made aware” include writing an essay on the mistake, extra cleaning duty, not being able to speak for a period of time, also known as a “silent task,” or being required to stand up and admit “self-defeating” behaviors to the other members of the “family.” These punishments for being “made aware” by other prisoners create a system when prisoners have power over other prisoners, including their privileges and punishments, in direct contradiction to DOC policy. Often, structure board members participate in disciplinary

interviews and suggest the punishment to be meted out to a prisoner who has been made aware.

90. The awareness procedure has been used as a vehicle to create hierarchies among prisoners, to encourage vindictive or petty behavior among prisoners. For example, prisoners can make an unpopular prisoner aware as often as possible, while avoiding making other prisoners aware. As such, the process enables prisoners to punish other prisoners in the name of the RLC.

91. When a prisoner obtains three written “awarenesses”, she must go to a “peer awareness circle”. When a prisoner obtains 5 written “awarenesses”, that prisoner receives a DOC write-up and a “clinical” punishment such as extra work, being forced to admit “self-defeating” behaviors in front of others, or attending a “conduct” seminar.

92. Male prisoners do not have a system of “awarenesses.” Male prisoners are not subject to treatment-related privileges and punishments for participation in a mandatory treatment program and for being “made aware” by other prisoners.

**COUNT I – DEFENDANTS’ IMPOSITION OF FORCED RIGHT LIVING
COMMUNITY PROGRAMING VIOLATES THE 5TH AND 14TH
AMENDMENTS TO THE U.S. CONSTITUTION
(ALLEGED ON BEHALF OF PLAINTIFFS FISH, WETZEL, RAINEY, ROMAN NOSE,
WAGNER AND LANCE)**

93. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 92 as fully restated here.

94. By their policies and practices described above, Defendants have discriminated against Plaintiffs on the basis of their gender, thereby violating their right to equal protection of the laws. These policies and practices have and continue to be implemented by Defendants and their agents or employees in their official capacities, and are the proximate cause of Plaintiffs’ deprivation of rights secured by the U.S. Constitution under the Fourteenth Amendment.

95. MWP is a medium and maximum security prison, and is the only prison that houses females sentenced to the DOC or sentenced specifically to MWP in the state of Montana. MWP prisoners sentenced to the DOC go through a screening and assessment process at the Passages Assessment and Sanctions Center, in Billings Montana.

96. MSP is a low, medium and maximum security prison that houses approximately 1400 male prisoners in the state of Montana. Prisoners sentenced to the DOC go through a screening and assessment process at the Missoula Assessment and Sanctions Center in Missoula, Montana. Although the DOC

houses some male prisoners in regional prisons and/or the Crossroads Correctional Facility in Shelby, Montana, the majority of male prisoners in Montana serve their sentences at MSP.

97. Prisoners at MWP are similarly situated to males at MSP. As prisoners in state prisons serving DOC or facility-specific sentences issued from state district court judges, female prisoners and male prisoners at MSP are sufficiently similar with respect to their conditions of incarceration, treatment programs available to them, and their interest in programs available to them for sentence suspension and/or reduction. As such, female prisoners at MWP are equivalent to male prisoners at MSP.

98. Despite the fact that female prisoners at the MWP are similarly situated to male prisoners at the MSP, female prisoners are subject to unequal treatment resulting from gender discrimination. As such, there is a lack of parity between female and male prisoners regarding forced participation in RLC. This gender discrimination is apparent from facially gender-based classifications.

99. Unlike female prisoners, male prisoners are not required to participate in mandatory therapeutic community programming. Unlike female prisoners, male prisoners' disciplinary status is not contingent on their participation in mandatory facility-wide programming above and beyond DOC and/or facility-specific discipline policies. Unlike female prisoners, male prisoners cannot have privileges

revoked for refusal to participate in mandatory facility-wide programming above and beyond the DOC and/or facility-specific discipline policies. Unlike female prisoners, male prisoners are not forced to choose between participation in mandatory facility-wide programming or administrative segregation, also known as solitary confinement. This gender discrimination and unequal treatment is not substantively related to the achievement of important governmental objectives.

100. Gender-neutral alternatives to the current unequal treatment of female and male prisoners are available, rendering the current lack of parity between female and male prisoners unnecessary. For example, the MWP has the option of making participation in RLC voluntary.

**COUNT II - DEFENDANT'S REFUSAL TO PROVIDE BOOT CAMP TO
FEMALE PRISONERS VIOLATES THE 5TH AND 14TH AMENDMENTS
TO THE U.S. CONSTITUTION
(ALLEGED ON BEHALF OF PLAINTIFFS WETZEL, RAINEY, ROMAN NOSE, MOORE,
WAGNER AND LANCE)**

101. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 100 as fully restated here.

102. By their policies and practices described above, Defendants have discriminated against Plaintiffs on the basis of their gender, thereby violating their right to equal protection of the laws. These policies and practices have and continue to be implemented by Defendants and their agents or employees in their

official capacities, and are the proximate cause of Plaintiffs' deprivation of rights secured by the U.S. Constitution under the Fourteenth Amendment.

103. MWP is a medium and maximum security prison, and is the only prison that houses females sentenced to the DOC or sentenced specifically to MWP in the state of Montana. MWP prisoners sentenced to the DOC go through a screening and assessment process at the Passages Assessment and Sanctions Center, in Billings Montana.

104. MSP is a low, medium and maximum security prison that houses approximately 1400 male prisoners in the state of Montana. Prisoners sentenced to the DOC go through a screening and assessment process at the Missoula Assessment and Sanctions Center in Missoula, Montana. Although the DOC houses some male prisoners in regional prisons and/or the Crossroads Correctional Facility in Shelby, Montana, the majority of male prisoners in Montana serve their sentences at MSP.

105. Prisoners at MWP are similarly situated to males at MSP. As prisoners in state prisons serving DOC or facility-specific sentences issued from state district court judges, female prisoners and male prisoners at MSP are sufficiently similar with respect to their conditions of incarceration, treatment programs available to them, and their interest in programs available to them for

sentence suspension and/or reduction. As such, female prisoners at MWP are equivalent to male prisoners at MSP.

106. Despite the fact that female prisoners at the Montana Women's Prison are similarly situated to male prisoners at the Montana State Prison, female prisoners are subject to unequal treatment resulting from gender discrimination. As such, there is a lack of parity between female and male prisoners the ability to attend boot camp. This gender discrimination is apparent from facially gender-based classifications. While male prisoners who have not committed crimes for which they may receive capital punishment and who are sentenced to boot camp, endorsed for boot camp, sentenced to the DOC's custody, or sentenced directly to MSP have the ability to go to boot camp, similarly situated female prisoners do not have the ability to go to boot camp. Unlike male prisoners, who have the ability to go to boot camp, followed by an aftercare program at the Great Falls pre-release center, and receive a sentence reduction, female prisoners do not have this option.

107. Defendants have repeatedly represented to female prisoners who have requested boot camp that they cannot go to boot camp unless they are sentenced to boot camp. Defendants' representations to female prisoners who have requested boot camp that they cannot go unless they are sentenced are false. Male prisoners regularly can and do attend boot camp without being sentenced to boot camp.

108. Gender-neutral alternatives to the current unequal treatment of female and male prisoners are available, rendering the current lack of parity between female and male prisoners unnecessary. For example, defendants can re-institute the Intensive Challenge Program previously available to female prisoners. Defendants can work with make female beds available in the Treasure State Correctional Training Center. Defendants can transfer females to out of state boot camp programs.

**COUNT III – DEFENDANTS ARE VIOLATING 20 U.S.C. §1681 BY
CONDITIONING PARTICIPATION IN WORK AND EDUCATION
PROGRAMS FOR FEMALE PRISONERS ON RLC PARTICIPATION
(ALLEGED ON BEHALF OF PLAINTIFFS FISH, WETZEL, RAINEY, ROMAN NOSE,
WAGER AND LANCE)**

109. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 108 as fully restated here.

110. The Montana Department of Corrections receives federal funding. As such, its education programs are governed by 20 U.S.C. §1681 (Commonly termed “Title IX”). Title IX requires equality in educational programs provided to men and women.

111. While male prisoners in MSP have access to work training and educational programming without being required to participate in RLC, female prisoners at MWP must participate in RLC to avoid 23 hour a day lockdown in C

and F pods. Work training and educational programming opportunities for female prisoners in C and F pods is significantly diminished.

112. By requiring mandatory participation in therapeutic community in order to avoid lockdown in solitary confinement with no or limited work training or education privileges, Defendant Department of Corrections is providing unequal educational opportunities to female prisoners.

**COUNT IV – DEFENDANTS ARE VIOLATION 20 U.S.C. §1681 BY NOT
PROVIDING BOOT CAMP TO FEMALE PRISONERS
(ALLEGED ON BEHALF OF PLAINTIFFS WETZEL, RAINEY, ROMAN NOSE, MOORE,
WAGNER AND LANCE)**

113. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 112 as fully restated here.

114. The Montana Department of Corrections receives federal funding. As such, its education programs are governed by 20 U.S.C. §1681 (Commonly termed “Title IX”). Title IX requires equality in educational programs provided to men and women.

115. Boot camp requires prisoners to participate in a number of general academic classes, rehabilitative classes, including “criminal thinking errors” and victimology. As such, it is an educational program. By not allowing female prisoners the opportunity to attend boot camp, Defendant Department of Corrections is providing unequal educational opportunities to female prisoners.

**COUNT V – DEFENDANTS’ IMPOSITION OF FORCED RIGHT LIVING
COMMUNITY PROGRAMMING VIOLATES ARTICLE II, §4 OF THE
MONTANA CONSTITUTION**

**(ALLEGED ON BEHALF OF PLAINTIFFS FISH, WETZEL, RAINEY, ROMAN NOSE,
WAGNER AND LANCE)**

116. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 115 as fully restated here.

117. Plaintiffs specifically re-allege the allegations set forth in Count I as fully restated here. Based on these allegations, Plaintiffs assert that defendants have engaged in gender discrimination, violated plaintiffs’ human dignity, and denied them equal protection of the laws in violation of Article II, §4 of the Montana Constitution.

**COUNT VI – DEFENDANT’S REFUSAL TO PROVIDE BOOT CAMP TO
FEMALE PRISONERS VIOLATES ARTICLE II, §4 OF THE MONTANA
CONSTITUTION**

**(ALLEGED ON BEHALF OF PLAINTIFFS WETZEL, RAINEY, ROMAN NOSE, MOORE,
WAGNER AND LANCE)**

118. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 117 as fully restated here.

119. Plaintiffs specifically re-allege the allegations set forth in Count II as fully restated here. Based on these allegations, Plaintiffs assert that Defendants have engaged in gender discrimination, violated Plaintiffs’ human dignity, and denied them equal protection of the laws in violation of Article II, §4 of the Montana Constitution.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare Defendants Acton, Paul, Orand, Derrick and Ferriter have violated the rights guaranteed to Plaintiffs under the Fourteenth Amendment to the U.S. Constitution through forcing female prisoners at the Montana Women's Prison to participate in the "Right Living Community";

B. Declare Defendants Acton, Paul, Orand, Derrick and Ferriter violated the rights guaranteed to Plaintiffs under the Fourteenth Amendment to the U.S. Constitution by not allowing female prisoners to attend boot camp and seek a sentence reduction;

C. Declare Defendants Acton, Paul, Orand, Derrick and Ferriter have violated the rights guaranteed to Plaintiffs under Article II, §4 of the Montana Constitution through forcing female prisoners at the Montana Women's Prison to participate in the "Right Living Community";

D. Declare Defendants Acton, Paul, Orand, Derrick and Ferriter have violated the rights guaranteed to Plaintiffs under Article II, §4 of the Montana Constitution by not allowing female prisoners to attend boot camp and seek a sentence reduction;

E. Declare Defendant Montana Department of Corrections has violated 20 U.S.C. 1681 through conditioning work training and education opportunities on

forced participation in the “Right Living Community” for female prisoners at the Montana Women’s Prison;

F. Declare Defendant Montana Department of Corrections has violated 20 U.S.C. 1681 by denying female prisoners the opportunity to attend boot camp and seek a sentence reduction;

G. Issue an Order: (i) enjoining and prohibiting Defendants Acton, Paul, Orand, Derrick and Ferriter, their successors and other current and future employees of the Montana Department of Corrections, from requiring mandatory participation in Right Living Community and/or Therapeutic Community and from imposing punishments and/or removing privileges for refusal to participate; (ii) requiring Defendants to provide female prisoners in Montana with the opportunity to participate in Boot Camp using the same criteria utilized for male prisoners in determining eligibility and sentence reduction/suspension;

H. Award plaintiffs actual, nominal, consequential, compensatory, punitive, nominal and any other damages that the Court may deem appropriate against Defendants Acton, Paul, Orand, Derrick and Ferriter for violations of Article II, §4 of the Montana Constitution;

I. Award plaintiffs actual, consequential, compensatory, punitive, nominal and any other damages that the Court may deem appropriate against Defendant Department of Corrections for violations of 20 U.S.C. 1861;

J. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988.

Dated this 31st day of August, 2012.

/s/ Anna Conley

ACLU of Montana Foundation

/s/ Ron Waterman

Gough Shanahan Johnson & Waterman

/s/ Kyle A. Gray

Holland & Hart LLP

ATTORNEYS FOR PLAINTIFFS