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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

<p>JANE DOE(S) 1-5, Plaintiffs, v. CARROLL COLLEGE, Defendant.</p>	<p>Cause No.:</p> <p>COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND JURY DEMAND</p>
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The above-captioned Plaintiffs on behalf of themselves and all others similarly situated (“Plaintiffs”) respectfully file this Complaint against Defendant Carroll College (“Defendant”) and allege as follows:

PRELIMINARY STATEMENT

1. This action seeks to remedy Defendant’s ongoing Title IX violations. Title IX of the Education Amendments of 1972 (“Title IX”) was passed to provide women with a civil rights tool to combat gender inequities rife throughout the

public education system. Despite Title IX being in effect for more than 40 years, enforcement actions like this unfortunately are still necessary. Plaintiffs, along with many more females like them who attend Carroll College (“Carroll College”), are forced to bring this Title IX action to gain equal access to sports opportunities, treatment, and benefits on par with their male student counterparts. Defendant administers an athletics program at Carroll College affording more participation opportunities to male students while treating and benefitting male athletes better than female athletes. Carroll College’s female students are being denied a level “playing field” due to the discriminatory actions and inactions of Defendant.

STATEMENT OF THE CASE

2. This action seeks declaratory and injunctive relief. Defendant has violated Title IX of the Education Amendment of 1972 and the regulations adopted thereto by illegally denying Plaintiffs equal opportunities, treatment, and benefits that must necessarily accompany participation in federally funded educational athletic programming.

3. Defendant’s denial of equal opportunity treatment and benefits constitutes sex discrimination against the Plaintiffs. Specifically, Defendant has discriminated against Plaintiffs in the following areas: the provision of athletic opportunities; provision of equipment and supplies; scheduling of games and practice times; provision of locker rooms, practice, and competition facilities;

coaching; provision of medical and training services and facilities; funding and fundraising opportunities; travel; publicity; and support.

4. This action seeks to redress the deprivation of Plaintiffs' rights to receive the equal opportunity, treatment, and benefits which must necessarily accompany interscholastic and other school-sponsored athletics. This action seeks a declaratory judgment that Defendant has violated Plaintiffs' rights under federal law. This action further seeks injunctive relief requiring Defendant to immediately cease its discriminatory conduct and remedy the effects of its discriminatory conduct. Plaintiffs specifically seek injunctive relief which, among other things, requires that Defendant provide Plaintiffs with opportunities, treatment, and benefits in accordance with Title IX.

JURISDICTION AND VENUE

5. Plaintiffs' claims arise under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*, and its interpreting regulations. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

6. Jurisdiction for declaratory and other relief is invoked pursuant to 28 U.S.C. §§ 2201(a) and 2202. A declaration of the correct interpretation of the legal requirements described in this Complaint is necessary and appropriate to determine the respective rights and duties of the parties to this action.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

8. Plaintiffs are and/or were student athletes attending Carroll College whose identity has been protected out of fear of retaliation by Carroll College.

9. Plaintiffs Jane Does 1-3 are student athletes who attend Carroll College. Jane Does 1-3 play softball at Carroll College. Defendant discriminated against Jane Does 1-3 on the basis of her sex by denying her equal athletic opportunity, treatment, and benefits.

10. Plaintiffs Jane Does 4 and 5 were student athletes who graduated from Carroll College within the last two years. Jane Does 4 and 5 played softball at Carroll College. Defendant discriminated against Jane Does 4 and 5 on the basis of their sex by denying them equal athletic opportunity, treatment, and benefits.

11. Jane Does 1-5 shall be referred to collectively herein as “Plaintiffs.”

12. Plaintiffs, in good faith, anticipate that additional current and past students at Carroll College will join in the lawsuit as it progresses.

13. Defendant Carroll College is a private liberal arts college in Helena, Montana. Carroll College receives federal funding and, therefore, all of its programs and activities are governed by the requirements of Title IX pursuant to 20 U.S.C. § 1687.

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STATEMENT OF FACTS

14. Defendant has, by its conduct, violated Title IX by discriminating against female student athletes at Carroll College, including Plaintiffs, by failing to provide opportunities, treatment, and benefits in accordance with the law.

15. Carroll College was put on notice of its discriminatory conduct and actions by multiple coaches that have advised Carroll College of its Title IX violations. Despite the notice from its own employees, Carroll College has failed to acknowledge its discriminatory conduct, cease its discrimination, or take steps to remedy its Title IX violations.

16. Plaintiffs are informed and believe, and based thereon allege, Carroll College is a four-year private liberal arts college with approximately 1,350 students. Approximately 58% of the student body is female and approximately 42% of the student body is male.

Lack of Female Sports Opportunities

17. Defendant has discriminated, and continues to discriminate, against female students at Carroll College by failing to provide them with equal athletic participation opportunities, despite female students' demonstrated athletic interests and abilities to participate in sports.

18. Plaintiffs are informed and believe, and based thereon allege, that females constitute approximately 58% of the student population at Carroll College

and males comprise approximately 42% of the student population.

19. However, Plaintiffs are informed and believe, and based thereon allege, that female students account for approximately 39% of student athletes at Carroll College, despite having the interests and abilities to participate in greater numbers, comprising a 19% participation gap.

20. In order to achieve athletic participation opportunities for female students that are substantially proportionate to their representation in Carroll College's student body, Carroll College would need to add approximately 72 additional female athletes, constituting several additional female teams. This failure to provide females with substantially proportionate participation opportunities, despite their interests and abilities to participate, has occurred without justification or defense by Defendant.

21. Defendant has no history or continuing practice of expanding its Carroll College athletics program in response to the developing interests and abilities of female students.

22. Carroll College's female students have the abilities to participate in interscholastic athletics and are interested in participating in interscholastic athletics in greater numbers.

23. Defendant has failed to fully and effectively accommodate female students' interests and abilities to participate in interscholastic sports in greater

numbers.

24. Defendant's failure to provide adequate participation opportunities and a full range of teams for female sports severely limits female students' participation in the Carroll College athletics program and discourages interested females from participating in sports.

Sex-Based Discrimination in Athletic Treatment and Benefits

25. Defendant has unlawfully discriminated against female student athletes in violation of Title IX with respect to athletic treatment and benefits in areas including, but not limited to: (1) provision of practice and competition facilities; (2) provision of training facilities and locker rooms; (3) funding, scholarships, and fundraising opportunities; (4) provision of equipment and supplies; (5) scheduling of games and practice times; and (5) travel.

(1) Practice and Competition Facilities

26. Defendant provides inequitable locker rooms, practice, and competitive facilities to female student athletes. In addition, Carroll College discriminates against female student athletes in that it fails to properly maintain the facilities provided to female athletes.

Softball Playing Fields

27. Defendant provides every male student athlete participating in or on an athletic team, outside of golfers, with dedicated on-campus practice and playing

facilities. Since the male athletes have their own dedicated facilities, they have priority use of their facilities—the male athletes do not have to share their facilities with city sponsored athletic programs, youth programs, or general recreational use.

28. In contrast, the softball team plays on an off-campus facility owned by the city of Helena. The city controls access to the field. The softball team is forced to share the field with youth programs and adult recreational leagues. The members of the softball team also are not allowed to use the city facilities outside of the schedule set by the city. As a result, the softball players have no facility for extra individual practice outside of the designated team practice times.

29. The male facilities are also well maintained by Carroll College for both practices and games. Since the facilities for male athletics are on-campus, Carroll College has complete control of the facilities, which gives it the ability to limit access to any other potential users and eliminate wear and tear on the facilities. Carroll College also provides equipment and college employees to perform the necessary maintenance for the fields.

30. The softball team is required to perform its own maintenance on the city field with inadequate equipment. Each season, when the softball team assumes maintenance of the city-owned softball field, the field is in an unplayable condition due to overuse by various other programs that the city allows to use the facility. The infield is inadequately watered, hard, and uneven. There are cigarette

butts and rocks through the infield. The outfield grass is usually dead. The field is simply unusable for college level athletics. The softball team is then required to bring the field to a playable condition. Carroll College has failed to provide any equipment to maintain or repair the field. Often times the softball team has to borrow maintenance equipment from a local high school. Once the field is brought to a playable condition, the softball team is required to perform significant maintenance to keep the field playable.

31. Since the softball team does not have exclusive access to the field, there is no way to limit use of the field once the considerable maintenance and repairs have been performed. Instead, after repairs and maintenance are performed other organizations, and the public in general, continue to use the field adding to the softball team's ongoing maintenance obligations. Without exclusive use of the fields, the softball team is unable to take preventive measures such as tarping the field or removing snow to make sure that the field remains playable during the season.

32. Snow has been a consistent problem for the softball team. Again, since the field is owned and controlled by the city of Helena, the softball team is unable to prevent the accumulation of snow or to remove snow from the field without the approval of the city. Given the inability to remove snow, the field remains unplayable for a significant amount of the softball season, resulting in less

practice time and only a handful of home games. In contrast, Carroll College removes snow from both the football field and soccer field to allow out-of-season spring practice for both the football team and men's soccer team. Carroll College even goes so far as to bring in temporary lighting for the football team so that it can practice at 5:00 a.m. in order to avoid the need for male athletes to miss practice in order to attend class.

33. The city owned softball field also lacks any type of batting cage, team room, or permanent storage for equipment.

Significantly Different Game Day Experience

34. In addition to the superior quality of their facilities, male athletes are provided with game day facilities that include concession stands, a press box and sound system, public bathrooms, the ability to live stream games, stadium seating, and adequate team facilities.

35. In contrast, the softball team does not have a concession stand and uses portable bathrooms. The dugouts at the city-owned softball field are too small for a college team. There are no bullpens to warm up pitchers during a game. There is no press box or sound system for in-game announcements or music. Fans sit on metal bleachers. There is a portable score board on a trailer that is moved to the outfield on game day. The softball team is unable to live stream games due to inadequate internet bandwidth.

36. Simply put, the male sports programs play in some of the best facilities in the Frontier League while the softball team plays on a city owned little league field.

(2) Provision of Training Facilities and locker rooms

37. Female student athletes experience inequitable access to training and practice facilities in comparison to their male counterparts. Male student-athletes are provided all of the necessary training and practice facilities and are given priority in scheduling time in facilities used by both male and female student athletes.

38. The softball team has no batting cages at the city-owned field. While the softball team is currently provided with an indoor hitting facility, the space is not maintained for adequate use by the softball team. Old equipment, including portions of a gym floor, is stored in the hitting area, decreasing the amount of usable space. Furthermore, the space is routinely used for non-softball purposes such as dog-training or basketball practice, limiting access for the softball team. Finally, Carroll College plans to turn the space into offices with no plan to replace it with another facility. Once the hitting space is converted to offices, the softball team will have no type of hitting facility.

39. The Carroll College weight room has weights, supplies, and equipment more oriented toward male student athletes as opposed to female

student athletes. In addition, the team's access to the weight room is extremely limited and available on a request-only basis. The team has no dedicated time in the weight room. Requests to use the weight room are often denied so that the weight room can be used by the football team and other male student athletes.

40. The softball team is not provided an exclusive locker room. The softball team shares a "team room" with the female track and cross-country teams. During home games, the "team room" is provided to the visiting team to use as a locker room, leaving the softball team without any type of facility at all to use on game days.

41. The only indoor defensive training space available to the softball team is the basketball gym. Given the number of teams using the gym space, softball is often third or fourth on the priority list, significantly limiting the amount of indoor practice time available for the team.

(3) Funding, scholarships, and Fundraising Opportunities

42. Defendant fails to provide females with equitable funding, scholarships, and fundraising opportunities as compared to male athletes.

43. On information and belief, Carroll College provides approximately 44 scholarships to male student athletes but provides only 31.6 scholarships to female student athletes. While the male student body only makes up approximately 42% of the undergraduate enrollment at Carroll, they receive 58% of the available

scholarships. In fact, the only program that receives the maximum amount of scholarships allowed by the NAIA is the football team.

44. On information and belief, male student athletes also receive 55% of the athletic budget, compared to 45% for the female-student athletes. The football team and male basketball teams are allowed sport specific booster clubs.

Promotional material for the Quarterback Club, the football specific booster club, provides that “[f]unds generated by the QB Club can be used at the discretion of the head Football Coach and Athletic Director.” And that “[y]our financial support will also help us provide a first-class experience for the Fighting Saints Football program.” In contrast, Carroll does not allow the softball team, or any other female sport, to have a sport specific booster club.

45. The lack of a concession stand, along with limited home games, decreases the softball team’s ability to raise funds through concessions at home games.

46. The inequitable distribution of the athletic budget, lack of scholarships, and prohibition against female sport specific booster clubs limits the ability of female sports to recruit athletes.

(4) Provision of Equipment and Supplies

47. Defendant inequitably provides equipment and supplies to female student athletes as compared to male student athletes.

48. Defendant consistently budgets an inequitable amount of funds for male athletic programs to purchase equipment for their various programs. Defendant also consistently cuts the equipment budgets for female athletics at a disproportionate rate when compared to male programs. As a result of the inequitable budgeting the female programs have less equipment, older equipment, and an inability to replace damaged or old equipment in a proper manner.

(5) Scheduling of Games and Practice Times

49. Female teams have fewer opportunities to play games and experience the benefits of competition in comparison to their male counterparts. For example, due to budget cuts the softball team struggles to play a full 28-game schedule as allowed by the NAIA. Furthermore, given the lack of maintenance and snow removal on the softball field, the softball team is only able to hold a handful of home games each season.

(6) Travel

50. Defendant does not provide female student athletes with equitable travel benefits in comparison to their male counterparts.

51. Given the inequitable funding and consistent cuts to female sports budgets, travel expenses for the softball team have been cut. The softball team now takes vans, driven by volunteers, to away games instead of buses. The team also stays additional nights on travel trips to avoid the cost of a second driver. The

extra nights on travel trips cuts into the time student athletes have for course work and practice time to prepare for the next opponent. The softball team also relies on host families for meals instead of incurring restaurant expenses.

FIRST CLAIM FOR RELIEF
(Defendant's Violation of Title IX Regarding Unequal Treatment and Benefits)

52. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations contained in the preceding paragraphs.

53. Title IX provides, "No person in the United States shall, on the basis of sex, be excluded from participating 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(a). Therefore, all programs at Carroll, including the athletic programs, are subject to the requirements of Title IX. 20 U.S.C. § 1687.

54. Since the passage of Title IX, Defendant has received and continues to receive federal financial assistance and the benefits therefrom. Therefore, all programs at Carroll, including the Carroll athletic program, are subject to the requirements of Title IX. 20 U.S.C. § 1687.

55. Title IX's implementing regulations provide that "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in

any interscholastic or intercollegiate club, or intramural athletics offered by a recipient, and the recipient shall provide any such athletics separately on such basis.” 34 C.F.R. § 106.41(a).

56. Under Title IX, schools must provide “equal treatment and benefits” to members of both sexes in their athletic programs. A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (Dec 11, 1979) (codified at 45 C.F.R. 26) (hereinafter “1979 Policy Interpretation”).

57. Equal treatment and benefits are assessed based on an overall comparison of the male and female student athletic programs, including an analysis of the following factors, among other considerations: “The provision of equipment and supplies; Scheduling of games and practice time; Travel . . . ; Opportunity to receive coaching . . . ; Assignment and compensation of coaches . . . ; Provision of locker rooms, practice and competitive facilities; Provision of medical and training facilities and services; . . . Publicity” and a school’s “failure to provide necessary funds for teams for one sex.” 34 C.F.R. § 106.41(c)(2)-(10).

58. The regulations require that sponsors of interscholastic athletics comply with the regulations within three years of their effective date, or no later than July 21, 1978. The regulations further require that sponsors of interscholastic athletics take such remedial actions as are necessary to overcome the effects of sex discrimination in violation of Title IX. 34 C.F.R. §106.3(a).

59. Plaintiffs are informed and believe, and based thereon allege, that Defendant has not taken remedial actions and that any remedial actions which Defendant has taken in past years have been insufficient to satisfy Defendant's obligations under Title IX.

60. Plaintiffs have informed Defendant that its actions constitute violations of Plaintiffs' Title IX rights. Defendant has failed to remedy or address the violations.

61. As a proximate result of these unlawful acts, Plaintiffs have suffered and continue to suffer irreparable injury.

62. Plaintiffs are entitled to relief, including declaratory relief and injunctive relief, attorneys' fees, and costs.

SECOND CLAIM FOR RELIEF
(Defendant's Violation of Title IX Regarding Participation Opportunities)

63. Plaintiffs restate and incorporate by reference, as though fully set forth herein, the allegations contained in the preceding paragraphs.

64. Under Title IX, schools must provide both sexes equivalent athletic participation opportunities. *See* 1979 Policy Interpretation.

65. Compliance in the area of equivalent participation opportunities is determined by a three-part test:

- a) Whether interscholastic level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or
- b) Where the members of one sex have been and are underrepresented among interscholastic athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities of the members of that sex; or
- c) Where the members of one sex are underrepresented among interscholastic athletes, and the institution cannot show a continuing practice of program expansion such as that cited above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program. 1979 Policy Interpretation at 71,418 (Section VII(C)(5)(a)).

66. With respect to the first part of the three-part test, Plaintiffs are informed and believe, and based thereon allege, that the ratio of female to male athletes at Carroll College is not substantially proportionate to the overall ratio of enrolled female to male students at Carroll College and that the interests and

abilities of the female students at Carroll College in participating in interscholastic sports have not been fully and effectively accommodated by Defendant.

67. Further, with respect to the test's second part, Defendant cannot show "a history and continuing practice of program expansion which is demonstrably responsive to the developing interest and abilities" of Carroll College's female students. *Mansourian v. Regents of the Univ. of Cal.*, 602 F.3d 957, 964-65 (9th Cir. 2010) (*citing* Department of Education, Office for Civil Rights, Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (1996)). Rather, female students have historically been and continue to be underrepresented in the Carroll College athletics program.

68. Finally, with respect to part three, despite this underrepresentation and despite the interests and abilities of female students at Carroll College to participate on additional teams, Defendant has not adequately expanded the athletics program in a responsive manner to female students' interests. The burden is on Defendant to assess and respond to interest. *See Ollier*, 768 F.3d at 858.

69. As a proximate result of these unlawful acts, Plaintiffs have suffered and continue to suffer irreparable injury.

70. Such injunctive relief may include, but is not limited to, the provision of the full range of teams and participation slots in existing sports, including novice, junior varsity, and varsity-level opportunities for female student athletes.

71. Plaintiffs are entitled to relief, including declaratory relief and injunctive relief, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully pray that this Court:

- (1) Enter an order declaring that Defendant has discriminated on the basis of sex against female students in violation of Title IX. Such order would declare that Defendant has engaged in discrimination against female students, including Plaintiffs, on the basis of gender in violation of Title IX and the regulations promulgated thereunder (including with respect to unequal treatment and benefits and opportunities).
- (2) Issue a permanent injunction requiring Defendant to remediate their violations of federal law prohibiting sex discrimination by, among other required actions, providing female student athletes with treatment and benefits equal to those provided to male student athletes and affording female students the equal opportunity to participate in school-sponsored sports. Such injunction would restrain Defendant and its officers, agents, employees, successors, and any other persons acting in concert with them from discriminating and/or retaliating on the basis of sex against female students. Plaintiffs are entitled to injunctive relief to end Defendant's unequal, discriminatory, and unlawful treatment of female student

athletes with respect to athletic treatment, benefits and opportunities. Because of Defendant's acts and omissions, Plaintiffs continue to be deprived of the rights guaranteed by the law. Failure to grant the injunctive relief requested will result in irreparable harm to Plaintiffs in that Plaintiffs' rights will be violated and that Plaintiffs will not be able to participate in interscholastic and/or other school-sponsored athletics on an equal basis with their male classmates. Accordingly, Plaintiffs do not have an adequate remedy at law for this harm. This threatened harm far outweighs any possible harm that granting injunctive relief might cause Defendant. The injunctive relief sought would in no way disserve the public interest but, on the contrary, would prevent discrimination based on gender and would promote the goal of full equality under the law. The permanent injunction would specifically serve in: (a) restraining Defendant and its officers, agents, employees, successors, and any other persons acting in concert with them from continuing to maintain practices and policies of discrimination against Plaintiffs and other female athletes on the basis of gender, and (b) requiring Defendant, immediately upon issuance of the injunctive order, to adopt and implement a budget and plan which corrects and remediates Defendant's violation of Title IX. Such a plan should include, among other things, providing Plaintiffs and

other female athletes with equitable opportunities, treatment, and benefits in comparison to those provided to male athletes.

- (3) Award reasonable attorneys' fees and costs, pursuant to 28 U.S.C. § 1988 and any other applicable provisions of federal law as Plaintiffs have been required to retain the undersigned attorneys to prosecute this action; and
- (4) Order such other and further relief as the Court deems appropriate.

JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated this 14th day of February, 2020.

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