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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

<p>AMERICAN FRIENDS SERVICE COMMITTEE, JOYCE CLAYTON, ORALEE CLAYTON SR.,</p> <p>Plaintiffs</p> <p>vs.</p> <p>JANICE K. BREWER, GOVERNOR OF THE STATE OF ARIZONA; CHARLES RYAN, DIRECTOR OF ARIZONA DEPARTMENT OF CORRECTIONS,</p> <p>Defendant.</p>	<p>Case No.</p> <p>CIVIL COMPLAINT FOR DECLARATORY RELIEF AND MOTION FOR PRELIMINARY INJUNCTION</p>
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12 American Friends Service Committee, (hereinafter AFSC), Joyce Clayton, and Oralee
13 Clayton Sr., by and through undersigned counsel, bring this complaint against the State of
14 Arizona, Janice K. Brewer Governor and the Department of Corrections(hereinafter ADC),
15 Charles Ryan, Director in their official capacities, pursuant to A.R.S. § 41-1609.01 et seq and
16 A.R.S. §12-1831 et seq. Plaintiffs seek declaratory and injunctive relief; declaring the Defendant
17 ADC in violation of A.R.S. § 41-1609.01, enjoining all Defendants from awarding any contracts
18 pursuant to A.R.S. § 41-1609 until such time as the requirements of A.R.S. 41-1609.01 have

1 been met, and enjoining the Defendants to disclose current contracts for the purpose of
2 determining if the Defendants are in breach of their duty of care with regard to those contracts.

3 **VENUE & JURISDICTION**

- 4 1. This Court has jurisdiction pursuant to Arizona Rules of Civil Procedure 8(a), and A.R.S.
5 § 12-821.01.
- 6 2. Venue is appropriate in the Maricopa County Superior Court, as that is where Defendants'
7 headquarters and principal place of business is located.

8 **PARTIES**

- 9 3. Plaintiff AFSC is an non-profit 501(c)3 corporation duly organized in Pennsylvania, with
10 one of its principal places of operations in Tucson, Arizona whose approximately 2818
11 members, volunteers, constituents, and donors are from throughout Arizona and consist
12 of both incarcerated and formerly incarcerated persons and their families and friends, as
13 well as persons who live in close proximity to private prisons; who are directly affected
14 by the breach of the state's duty regarding private for-profit prisons, causing both internal
15 and external security risks.
- 16 4. Plaintiff Joyce Clayton is the mother of Oralee Clayton Jr., a citizen of Arizona, and
17 taxpayer who is injured by the expenditure of state funds in violation of the laws of the
18 state. Mrs. Clayton is also injured by the fact that her son was exposed to riot conditions
19 in the Kingman prison operated by Management & Training Corporation (hereinafter
20 MTC), and continues to be in constant fear of riots in the future due to the inadequate
21 security at existing private prisons.
- 22 5. Plaintiff Oralee Clayton Sr. is the father of Oralee Clayton Jr., a citizen of Arizona and a
23 taxpayer who is injured by the expenditure of state funds in violation of the laws of the

1 state. Mr. Clayton Sr. is also injured by the fact that his son was exposed to riot
2 conditions in the Kingman prison operated by MTC, and continues to be in constant fear
3 of riots in the future due to the inadequate security at existing private prisons.

4
5 6. Defendant Governor Janice K. Brewer is the Governor of the State of Arizona.

6 7. Governor Brewer is sued in her official capacity as the Governor of the State of Arizona.

7 8. Governor Brewer's actions are taken in her official capacity and under color of law.

8 9. Defendant Charles Ryan is the Director of ADC, a state agency that is supervised by the
9 Governor.

10 10. Defendant Ryan is sued in his official capacity as the Director of Corrections of the State
11 of Arizona.

12 11. Defendant Ryan's actions are taken in his official capacity and under color of law.

13 **FACTS**

14 12. The Arizona state legislature passed HB 2010 during the Third Special Session of the
15 Forty-ninth Legislature, and was signed by the Defendant Governor on September 3,
16 2009, mandating ADC to issue a Requests for Proposals (hereinafter RFP) for 5000
17 private prison beds.

18 13. On February 23, 2010, Defendant Ryan issued an initial RFP, which was withdrawn after
19 the Kingman escapes. On January 24, 2011, Defendant Ryan re-issued RFP pursuant to
20 said legislation.

21 14. On July 30, 2010, three inmates escaped from the Kingman prison that is managed by
22 MTC.

1 15. On or about August 2, 2010, the inmates allegedly killed Gary Haas and Linda Haas
2 before they were recaptured.

3 16. Joyce & Oralee Clayton Sr. are in fear for their son's life for the reasons that follow:

4 a. Oralee Clayton Jr. has been incarcerated at the Kingman facility operated by MTC
5 since June 2009. His inmate number is 065383.

6 b. Mr. Clayton Jr. is African-American.

7 c. The Kingman facility saw a series of fights, riots, and disturbances starting in the
8 summer of 2010, just before the escape of three prisoners from Kingman, and
9 continuing into the winter. Incidents include:

10 • A riot on May 5, 2010 that guards were unable to control. Exhibit F.

11 • A May 31st race riot in which white inmates on the yard were reported to
12 have shouted, "Kill the n---s!" Exhibit F.

13 • A riot on June 2nd in which eight inmates were injured and taken to the
14 hospital. An ADC spokesman verified to the *Kingman Daily Miner* that
15 the fight was between white and black inmates and lasted 45 minutes.

16 Some of the inmates used padlocks wrapped in socks as weapons. Exhibit
17 G

18 • On October 17th and 18th there were "large inmate demonstrations" at the
19 two units within Kingman. Exhibit A.

20 • On November 4th, inmates threw rocks and ran the guards off the yard.
21 Exhibit F.

22 d. On November 21, 2010, Oralee Jr. submitted a request to ADC to be moved out of
23 the facility, citing the role of race in many of the disturbances.

- 1 e. Oralee Jr. has reported that there were approximately 120-200 African-American
2 prisoners and over 1,000 white prisoners in the unit at the time of the riots.
- 3 f. He reported to his parents that he fears for his life and feels he has to “sleep with
4 one eye open.”
- 5 g. Corrections officials contacted by the Tucson Weekly claimed they had no
6 knowledge of the transfer request, and to date no action has been taken. Exhibit F.
- 7 h. According to ADC's August 2011 Inmate Ethnic Distribution by Unit report, there
8 are currently 1,979 prisoners in Kingman’s Cerbat unit. Of those, 38.9% are
9 Caucasian and 12.3% are African-American. In Kingman’s Hualapai Unit, out of
10 the total population of 1,440 prisoners, 30.3% are Caucasian and 18.2% are
11 African-American. It is unclear whether this has changed since the riots last year.
12 Exhibit E.
- 13 i. Oralee Jr. also reports that the staff in the facility, run by MTC, are “not properly
14 trained in defusing problems and are not giving us proper safety and security.”
15 Another communication stated that there was “only one MTC guard working
16 dorms for 200 inmates.”
- 17 j. This issue is confirmed by the Director of ADC, Charles Ryan, in a “Cure Notice”
18 sent to MTC on December 29, 2010. Exhibit A. It states that a review of reported
19 incidents at Kingman revealed that, “from 2005 forward, there were 13 instances
20 of large groups of inmates refusing directives and/or chasing MTC staff off the
21 yard...this is a pattern of unacceptable inmate behavior, in which large inmate
22 groupings of hundreds of inmates react to dissatisfaction with MTC operations,
23 endemic inmate idleness, or other triggers.” The Cure Notice indicates that these

1 issues were repeatedly raised by ADC, but were not adequately addressed by
2 MTC.

3 k. The parents of Oralee Jr. are concerned that, even with the heightened level of
4 scrutiny of the Kingman facility after the escapes, problems persist that continue
5 to endanger their son's safety.

6 l. Until the ADC completes its statutorily required assessment of the safety and
7 quality of facilities currently under contract, there are no assurances that these
8 facilities are providing competent, quality care.

9 m. If the Department of Corrections awards a new contract to MTC or any of the
10 other private operators currently bidding, it is possible that Oralee Jr. could be
11 transferred to that facility.

12 n. If there is no oversight or accountability for these new contracts, there is nothing
13 to protect him from further harm.

14
15 17. Until ADC completes its statutorily required assessment of the safety and quality of
16 facilities currently under contract, there are no assurances that these facilities are using
17 money derived from tax revenue efficiently.

18 18. Pursuant to the escape and riot conditions at the Kingman prison operated by MTC,
19 Defendant Ryan withdrew the first RFP.

20 19. On January 24, 2011, ADC re-issued the Request for Proposal for 5,000 new private for-
21 profit prison beds (Solicitation # 110054DC)

22 20. According to ADC, bids have been received from Corrections Corporation of America
23 (hereinafter CCA), GEO Group, MTC, Emerald and LaSalle/Southwest Corrections.

1 21. The RFP states that the contracts will be for 5,000 minimum/medium security beds for
2 male prisoners. Two of the four vendors currently bidding, GEO Group and MTC,
3 currently hold multiple contracts with the state of Arizona, yet these facilities have never
4 been evaluated pursuant to A.R.S. § 41-1609.01 (K) or (M).

5 22. ADC held five public hearings around the state in August 2011.

6 23. In Exhibit C, a newspaper article from the Arizona Republic, confirmed that the ADC has
7 failed to conduct a single comparison study as required by A.R.S. 41-1609.01(K) but
8 claimed that one would be completed in 2012.

9 24. ADC announced that they will make a decision on which contract(s) to approve on or
10 after 16 September 2011.

11 25. Once the contracts are awarded, the Defendants will be bound by the contracts, and the
12 contractors may have a cause of action against the Defendants, should this Court rule in
13 favor of Plaintiffs.

14 26. If the contracts are awarded, Defendants will be powerless to enforce the state's standards
15 should the current conditions be declared deficient in the comparison study that is
16 scheduled to be completed in 2012.

17 27. There is no harm to Defendants if the injunction is granted, because the Defendants will
18 be complying with their statutory duty, and have the opportunity to complete the
19 mandatory comparison study before the contracts are awarded, therefore making a better
20 decision on how to spend state monies.

21 28. The harm to the Plaintiffs is great if the injunction is not granted because state monies
22 will have been spent improperly and without adequate safeguards, and they will forever

1 department shall conduct a biennial comparison of the services provided by
2 the vendor for the purpose of comparing private versus public provision of
3 services. The comparison of services shall be based on professional
4 correctional standards specified by the director and incorporated into the
5 contract and shall be used for the purpose of determining if the contractor is
6 providing at least the same quality of services as this state at a lower cost or
7 if the contractor is providing services superior in quality to those provided
8 by this state at essentially the same cost. In conducting the comparison of
9 services the director shall consider:

- 10 1. Security.
- 11 2. Inmate management and control.
- 12 3. Inmate programs and services.
- 13 4. Facility safety and sanitation.
- 14 5. Administration.
- 15 6. Food service.
- 16 7. Personnel practices and training.
- 17 8. Inmate health services.
- 18 9. Inmate discipline.
- 19 10. Other matters relating to services as determined by the director.

20 36. The intent of A.R.S. § 41-1609.01(K) appears on its face to be concerned with ensuring
21 that private prison providers are upholding the same standards as the state-owned and
22 operated prisons.

23 37. A.R.S. § 41-1609.01 (H) states:

24 A proposal shall not be accepted unless the proposal offers a level of quality
25 of services that are at least functionally equal to those that would be
26 provided by this state.

27
28 38. Until such comparison as required in section (K) is completed, section (H) cannot be
29 complied with.

30 39. Since two of the bidders for the current RFP already hold contracts with Arizona,
31 according to statute, they must be evaluated before additional contracts can be issued.

1 40. The language of the statute implies a duty of care owed by the Defendants to the citizens
2 of the State of Arizona to ensure that the contractors hired to perform dangerous services
3 take special precautions for the safety of the citizens.

4 41. A.R.S. § 41-1609.01(H) & (K) explicitly assert a duty of care, due to the inherently
5 dangerous activity of operating a prison.

6 42. It is clear that the legislature intended to retain control over its contractors in the form of
7 a comparison study every two years, for the purpose, among others, of preventing the
8 escape of violent felons who then harm innocent citizens in their desperate attempts to
9 evade recapture.

10 43. Defendant ADC has not retained control or oversight over the contractors as required, as
11 evidenced by:

- 12 a. The escape of three inmates from Kingman in 2010 that lead to the murder of an
13 elderly couple who were vacationing in Arizona.
- 14 b. The history of riots at Kingman which causes the fear that the son of Mrs. Clayton
15 and Mr. Clayton Sr. may be injured or killed in another riot.
- 16 c. An admission of Director Ryan in his Cure Notice to MTC that the ADC contract
17 monitor and his administrator were not performing their duties. Exhibit A.
- 18 d. An ADC assessment of the Kingman prison on 18/8/2010 (hereinafter Kingman
19 Security Assessment) that maintenance on the alarm system had not been
20 performed for over a year, the perimeter alarm system had been dysfunctional or
21 unreliable for nearly two years; that the Emergency Response Plan is not
22 compliant with ADC (p. 18); post orders were insufficient (p 22); and that MTC

1 had no agreements with local agencies after six years of operations (p 3). Exhibit
2 B.

3 e. In December 2010, corrective action was still not taken and security deficiencies
4 were still not remedied. Exhibit A.

5 f. Inmate idleness was noted as leading to management problems that affected
6 Plaintiffs Clayton among others. Exhibit A.

7 g. Systemic failure to improve operations and uncorrected areas of concern remain
8 after the Cure Notice.

9 44. An attempt by ADC to hold MTC accountable for its slow and incomplete effort to fix
10 security flaws at Kingman by suspending its guarantee of 97% occupancy was
11 circumvented by threat of a costly lawsuit by the vendor. ADC was forced to pay \$3
12 million of state taxpayers dollars for empty beds to MTC in spite of MTC's breaches of
13 the contract, dangerous security lapses, and resulting harm to the community. Exhibit C.

14 45. All the private for-profit prisons in Arizona had serious security problems, documented in
15 the AZ Dept. of Corrections Security Assessment from Shelly Sonberg, Southern Region
16 Operations Director, August 22, 2010 (hereinafter "General Security Assessment").
17 Exhibit D.

18 46. Among the problems cited in the General Security Assessment are: installation and
19 maintenance of security devices, separation and control of inmates and visitors,
20 accessibility of controls, violation of escape prevention methods, inventory and control of
21 weapons, searches of both staff and inmates, temperature control, sanitation, and unsafe
22 conditions. Exhibit D.

1 47. Both companies referred to in the General Security Assessment - MTC and GEO Group -
2 are under consideration for new contracts in the current bidding process. It is reasonable
3 to assume that, if a competent review of the performance of these prisons were completed
4 as required by ARS 41-1609.01 (K), there is a likelihood that the report would conclude
5 that these prisons are not providing a commensurate level of safety and security to state-
6 run prisons. Thus the contracts could not be awarded.

7 48. These failures of ADC to monitor and control private for-profit prisons as to control of
8 both internal and external risks to inmates and the public at large is evidence that this
9 duty was breached by the Defendants.

10 49. Plaintiff requests this Court to declare Defendants in violation of A.R.S. 41-1609.01(K)
11 and (H), and to enjoin the Defendants to comply before awarding any new private for-
12 profit prison contracts.

13 **SECOND CLAIM FOR RELIEF**

14 **VIOLATION OF A.R.S. § 41-1609.01 (M).**

15
16 50. Each and all of the allegations contained in the foregoing paragraphs are incorporated
17 herein as if fully set forth at this point.

18 51. A.R.S. § 41-1609.01(M) states:

19
20 The director of the state department of corrections shall provide the most
21 recent service comparison and cost comparison for contractors who
22 exclusively contract with the department to the joint legislative budget
23 committee for its review.

24
25 52. Given that the Defendants have never completed a service comparison pursuant to A.R.S.
26 § 41-1609.01 (H), it has therefore never provided the assessment to the Joint Legislative
27 Budget Committee for review.

1 53. Plaintiff requests this Court to declare Defendants in violation of A.R.S. § 41-
2 1609.01(M), and to enjoin the Defendants to comply before awarding any new private
3 for-profit prison contracts.
4

5 **THIRD CLAIM FOR RELIEF**

6 **DEFENDANT STATE OF ARIZONA AND DEPARTMENT OF CORRECTIONS**
7 **HAVE BREACHED THE DUTY OF CARE WITH REGARD TO EXISTING**
8 **CONTRACTS.**
9

10 54. Each and all of the allegations contained in the foregoing paragraphs are incorporated
11 herein as if fully set forth at this point.

12 55. A.R.S. § 41-1609.01(K). requires that a comparison be made of state versus private, for-
13 profit correctional facilities.

14 56. In order to make said comparison, existing contracts with private, for-profit facilities
15 must be available in order to ascertain if reporting requirements are met.

16 57. The State currently holds contracts with MTC to manage the Marana Community
17 Correctional Treatment Facility and the Arizona State Prison Complex, Kingman.

18 58. The State currently holds contracts with GEO Group to manage Arizona State Prison
19 Phoenix West, Arizona State Prison Florence West, and Central Arizona Correctional
20 Facility.

21 59. Defendants Governor of Arizona and Director of Corrections have breached their duty of
22 care with regard to oversight of existing contracts with private for-profit prison
23 corporations MTC and GEO Group because those contracts contain requirements that are
24 not being met.

1 60. Plaintiff requests this Court to order Defendants to disclose those contracts in order to
2 determine whether they have breached their duty of care in regard to the reporting
3 requirements similar to those in A.R.S. § 41-1609.01(K).

4 **PRAYER FOR RELIEF**

5 Therefore Plaintiff requests:

- 6 a. That this Court assume jurisdiction;
- 7 b. That this Court declare the conduct more fully described above to be in
8 violation of A.R.S. 41-1609.01(K) and (M);
- 9 c. That this Court issue an injunction ordering the defendants to comply with
10 A.R.S. 41-1609.01(K) prior to awarding any contracts for private, for-profit
11 prison beds;
- 12 d. That this Court order Defendants to produce existing contracts with MTC and
13 GEO Group to plaintiffs;
- 14 e. That this Court award Plaintiffs reasonable attorneys' fees and costs;
- 15 f. That this Court award such additional or alternative relief as may be just,
16 proper and equitable.

17
18 RESPECTFULLY SUBMITTED this ___ day of _____, 2011,

19
20
21 by _____
22 STACY SCHEFF
23 Attorney for Plaintiffs