No._____

G.G.E., E.M.B. and G.D.E. through their next friend Geoffrey Courtney;	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
VS.	§	
RICK PERRY, in his official capacity as Governor of the State of Texas, THOMAS SUEHS, in his official capacity as Executive Commissioner of the Texas Health and Human Services Commission, CHRIS TRAYLOR, in his official capacity as Commissioner of the Texas Department of Aging and Disability Services, VIRA BENSON, in her official capacity as Director of the Austin State Supported Living Center, WILLIAM LOWRY, in his his official capacity as Director of the Mexia State Supported Living Center, and GALE WASSON, in her official capacity as Director if the Lufkin State Supported Living Center,	§	TRAVIS COUNTY, TEXAS
Defendants.	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs G.G.E., E.M.B., and G.D.E., through their next friend, Geoffrey Courtney, and on behalf of a class of persons similarly situated, complain of Rick Perry, in his official capacity as Governor of the State of Texas, Thomas Suehs, in his official capacity as Executive Commissioner of the Texas Health and Human Services Commission ("HHSC"), Chris Traylor, in his official capacity as Commissioner of the Texas Department of Aging and Disability Services ("DADS"), Vira Benson, in her official capacity as Director of the Austin State

Supported Living Center ("Austin SSLC"), William Lowry in his official capacity as Director of the Mexia State Supported Living Center ("Mexia SSLC"), and Gale Wasson in her official capacity as Director of the Lufkin State Supported Living Center ("Lufkin SSLC") and in support thereof would respectfully show the Court:

1. DISCOVERY CONTROL PLAN

Discovery should be conducted under Level 2 of TEX. R. CIV. PRO. 190.3.

II. PRELIMINARY STATEMENT

1. Plaintiffs G.G.E., E.M.B., and G.D.E., by and through their next friend, and on behalf of the class, file this petition for declaratory relief, temporary and permanent injunctive relief, and attorney's fees and costs. Plaintiffs G.G.E., E.M.B. and G.D.E. are non-violent, non-dangerous individuals who are capable of living in an integrated, community setting. Because Texas statutes do not provide for any periodic judicial review after a person with a developmental disability has been involuntarily committed, G.G.E, E.M.B. and G.D.E. have been and continue to be committed to State Supported Living Centers (SSLCs) against their will and without their consent, in violation of their right to the due course of law under the state constitution and state statutes. Like the rest of the class they represent, without a periodic judicial review to determine the need for their continued involuntary confinement, they will remain unnecessarily institutionalized because they do not have the sophistication or skills to seek representation and review of their involuntary confinement. The individual Plaintiffs who have been involuntarily confined for a total of 134 years, file this action individually and on behalf of a class seeking declaratory and injunctive relief prohibiting the Texas Department of Aging and Disability Services from continuing to deprive them, and those similarly situated, of their liberty without a

periodic judicial determination of whether they continue to meet the criteria for continued confinement to a SSLC under Texas law.

III. JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to TEX. CONST. art. V, § 8; TEX. HEALTH & SAFETY CODE §591.022; and TEX. GOV'T CODE §§ 24.007, 24.008, and 24.011.

3. Venue is proper under TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(3), 15.005 and 65.023.

IV. WAIVER OF SOVEREIGN IMMUNITY

4. The doctrine of sovereign immunity does not bar this lawsuit. Plaintiffs seek only prospective declaratory and injunctive relief, not damages. The rights of Plaintiffs and others similarly situated have been and continue to be violated by Defendants' unconstitutional acts and omissions. A suit for declaratory and injunctive relief against a governmental entity for violations of state statutory or constitutional rights is exempted from the doctrine of sovereign immunity by the TEX. CONST. art. I, § 29.

V. PARTIES

5. Plaintiff G.G.E. has been confined to Austin SSLC for the past 39 years. He was voluntarily admitted by his parents at the age of nine on October 28, 1971. Upon reaching the age of eighteen in 1980, G.G.E. was involuntarily committed by a court to Austin SSLC pursuant to the Mentally Retarded Persons Act of 1977, TEX. REV. CIV. STAT. art. 5547-300, § 2(c) by the Travis County Court at Law No. 4 on June 6, 1980. He is a resident of Travis County, Texas. Since 1980, he has not had a single judicial review of the necessity or propriety of his involuntary commitment. As permitted by Rule 44 of the Texas Rules of Civil Procedure, G.G.E.'s claim is brought by Geoffrey Courtney as next friend.

6. Plaintiff E.M.B. has been confined to a SSLC for the past 59 years. At the age of six, she was involuntarily committed to Austin SSLC after being adjudged "feeble-minded" by the Dallas County Court on July 28, 1951. She had no representation at this hearing. In 1957, she was transferred to Mexia SSLC, where she currently resides. She was not consulted as to whether she wished this transfer, which effectively separated her from her family. She has not had a judicial review of her commitment since 1951. She is still a legal resident of Travis County, Texas. As permitted by Rule 44 of the Texas Rules of Civil Procedure, E.M.B.'s claim is brought by Geoffrey Courtney as next friend.

7. Plaintiff G.D.E. has been confined to Lufkin SSLC for the past 36 years. He was voluntarily admitted by his mother at the age of twelve on July 6, 1972. He was later discharged and was readmitted voluntarily by his mother on July 23, 1974 at the age of fourteen. Upon reaching the age of eighteen in 1979, G.D.E. was involuntarily committed to Lufkin SSLC pursuant to the Mentally Retarded Persons Act of 1977, TEX. REV. CIV. STAT. art. 5547-300, § 2(c) by the Angelina County Court at Law on February 20, 1979. He has not had a judicial review of his confinement since 1979. He is a resident of Angelina County, Texas. As permitted by Rule 44 of the Texas Rules of Civil Procedure, G.D.E.'s claim is brought by Geoffrey Courtney as next friend.

8. Defendant Rick Perry is the Chief Executive Officer of the State of Texas. He is responsible for directing, supervising, and controlling the executive departments of state government as well as seeking funds from the legislature to implement the programs and deliver the services of those executive agencies. TEX. CONST. art. 4, § 9, 10. Defendant Perry appoints the Executive Commissioner of the Health and Human Services Commission, and approves the appointment of the Commissioner of the Department of Aging and Disability Services. TEX.

GOV'T CODE §531.005, TEX. GOV'T CODE § 531.0056(a). He is sued in his official capacity. He may be served with process in his official capacity at the office of the governor, State Insurance Building, 1100 San Jacinto, Austin, Texas, 78701.

9. Defendant Thomas Suehs is the Executive Commissioner of the Texas Health and Human Services Commission ("HHSC"). He is responsible for appointing the Commissioner of the Texas Department of Aging and Disability Services, who in turn appoints the directors of the state schools. TEX. GOV'T CODE § 531.0056. Defendant Suehs must "manage and direct the operations of each health and human services agency," including DADS; and "supervise and direct the activities of each agency director." TEX. GOV'T CODE § 531.0055(e). He is sued in his official capacity. He may be served process in his official capacity at his office at the Health and Human Services Commission, Brown-Heatly Building, 4900 N. Lamar Blvd. Austin, TX 78751.

10. Defendant Chris Traylor is currently the duly appointed Commissioner of Department of Aging and Disability Services ("DADS"). In that capacity, he serves as chief executive and administrative officer of DADS. TEX. HUM. RES. CODE § 161.051. His duties include observing and executing the mandates and regulations established pursuant to the constitution and the laws of this State. TEX. HUM. RES. CODE § 161.071. Defendant Traylor may be served process in his official capacity at his office at the Department of Aging and Disability Services, 701 W. 51st St., Austin, Texas 78751.

11. Defendant Vira Benson is the duly appointed Director of Austin SSLC and is responsible for the administration of Austin SSLC in compliance with Texas law and regulation. TEX. HEALTH & SAFETY CODE § 551.0225. In her capacity as Director of Austin SSLC, defendant Benson must "establish policy to govern the center". TEX. HEALTH & SAFETY CODE § 551.0225(d). Defendant Benson must also "oversee admission and discharge of residents,"

"ensure that the civil rights of residents and clients of the center are protected," and "ensure the health, safety and general welfare of clients of the center." TEX. HEALTH & SAFETY CODE § 551.0225(c). Defendant Benson may be served process in her official capacity at her office at the Austin State Supported Living Center, 2203 W. 35th St. Austin, Texas 78703.

12. Defendant William Lowry is the duly appointed Director of Mexia SSLC and is responsible for the administration of Mexia SSLC in compliance with Texas law and regulation. TEX. HEALTH & SAFETY CODE § 551.0225. In his capacity as Director of Mexia SSLC, defendant Lowry must "establish policy to govern the center". TEX. HEALTH & SAFETY CODE § 551.0225(d). Defendant Lowry must also "oversee admission and discharge of residents," "ensure that the civil rights of residents and clients of the center are protected," and "ensure the health, safety and general welfare of clients of the center." TEX. HEALTH & SAFETY CODE § 551.0225(c). Defendant Lowry may be served process in his official capacity at his office at the Mexia State Supported Living Center, 540 Chapel Drive, Mexia, Texas 76667.

13. Defendant Gale Wasson is the duly appointed Director of Lufkin SSLC and is responsible for the administration of Lufkin SSLC in compliance with Texas law and regulation. TEX. HEALTH & SAFETY CODE §551.0225. In her capacity as Director of Lufkin SSLC, defendant Wasson must "establish policy to govern the center." TEX. HEALTH & SAFETY CODE § 551.0225(d). Defendant Wasson must also "oversee admission and discharge of residents," "ensure that the civil rights of residents and clients of the center are protected," and "ensure the health, safety and general welfare of clients of the center." TEX. HEALTH & SAFETY CODE § 551.0225(c). Defendant Wasson may be served process in her official capacity at her office at the Lufkin State Supported Living Center, 6844 N US Highway 69, Pollok, Texas 75969.

14. Whenever Plaintiffs use the word "Defendants" in this petition, they mean Defendants, their agents, employees, and all those acting in concert with them or at their direction.

VI. STATE ACTION

15. Defendants were at all times and in all matters herein material acting under the color of state law when they subjected Plaintiffs to the wrongs and injuries hereinafter set forth.

16. All Defendants are policymakers for their respective agencies and the State of Texas and, as such, acted under color of state law for the purposes of formulating the policies and procedures implicated under the facts of this cause of action, and for the purposes of training and supervising the employees of these agencies to provide appropriate care and treatment to persons with mental retardation at SSLCs.

VII. CLASS ACTION

17. Plaintiffs seek to maintain this action individually and on behalf of a class of similarly situated persons pursuant to Rule 42 of the Texas Rules of Civil Procedure. The class of all persons similarly situated is defined to include: "all current or future persons who have been or will be involuntarily committed to a State Supported Living Center under TEX. HEALTH & SAFETY CODE ch. 593."

18. As authorization for bringing this action as a class action, Plaintiffs aver:

a. The members of the class are so numerous that joinder of all members is impracticable. The class consists of all current and future individuals with developmental disabilities who have been or will be involuntarily committed to a state supported living center under TEX. HEALTH & SAFETY CODE ch. 593. Currently, there are approximately 4,200 individuals in this situation, in thirteen different State Supported Living Centers across the State of Texas.

b. There are questions of law and fact common to the class. Plaintiffs and each class member claim that lack of periodic judicial review of involuntary commitments to State Supported Living Centers has led to delays, in some cases for years, of their discharge from institutionalized settings to a less restrictive environment in violation of the Texas Constitution, Chapter 121 of the Texas Human Resource Code, and the Persons with Mental Retardation Act.

c. The claims of the Plaintiffs are typical of the claims of the class. The Plaintiffs and each class member are languishing in institutions and are being denied their liberty without a periodic judicial determination of whether they continue to meet the criteria for continued confinement to a SSLC under Texas law.

d. Defendants are acting in a manner generally applicable to the class. Plaintiff and every other class member remain involuntarily confined to state supported living centers for years without any judicial review of the necessity of their continued confinement. The class can only be adequately protected by final injunctive and declaratory relief, with respect to the class as a whole, that enjoins Defendant from continuing to deprive the class of procedural due process.

e. The Plaintiffs and their next friend will fairly and adequately protect the interests of the class; they promise vigorous and complete prosecution of this action. Their attorneys have experience and credentials in this area of the law and in class actions.

VIII. FACTUAL ALLEGATIONS

1. INSTITUTIONALIZATION AND COMMITMENT

19. Involuntary institutionalization of persons with intellectual disabilities has historically been justified on several erroneous grounds, including that persons with intellectual disabilities were not

worthy to interact with society at large, were by nature inferior, were inherently dangerous to others, were likely to procreate and have offspring with intellectual disabilities, and because they were unable to care for themselves, were in need of the permanent protection of an institution. [1, 2]

20. Empirical evidence is now available to show that institutionalization serves to promote learned helplessness among residents, as well as other harmful physical and psychological effects, for example, adversely affecting residents' motor-learning skills, communications skills, and general social competency.[3]

21. It is now widely accepted that quality of services, supports, satisfaction and overall quality of life improve dramatically when individuals move from large state institutions to community-based alternatives.[4] The overwhelming majority of studies show that community-based services are superior to congregate arrangements.[5] This recognition has led to widespread public outcry over the conditions at institutions for people with disabilities, and over the quality of life of the individuals unnecessarily confined to them as access to and knowledge about community based services has improved. Evidence also suggests that behavioral outcomes for individuals who remain in institutions exhibit more challenging behaviors than those residing in the community.[6]

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[1] James W. Trent, INVENTING THE FEEBLE MIND: A HISTORY OF MENTAL RETARDATION IN THE UNITED STATES 131-268 (1994).

[2] David L. Braddock & Susan L. Parish, *An Institutional History of Disability*, HANDBOOK OF DISABILITY STUDIES 33-48 (2001).

[3] Shannon Kim, Sheryl A. Larson, K. Charlie Lakin, *Behavioural outcomes of deinstitutionalisation for people with intellectual disability: a review of US studies conducted between 1980 and 1999*. 26 JOURNAL OF INTELLECTUAL & DEVELOPMENTAL DISABILITY, 35, 35-50 (2001).

[4] *E.g.* James Conroy, Scott Spreat, Anita Yuskauskas, Martin Elks, Marty Wyngaarden Krauss, *The Hissom Closure Outcomes Study: A Report on Six Years of Movement to Supported Living*, 41 Mental Retardation 263 - 275 (2003).

[5] *E.g.* Agnes Kozma, Jim Mansell, Julie Beadle-Brown, Eric Emerson, *Outcomes in Different Residential Settings for People With Intellectual Disability: A Systematic Review*, 114 Am. J. on Intellectual and Developmental Disabilities 193 - 222 (2009).

[6] Roger J. Stancliffe, Brian H. Abery, *Longitudinal Study of Deinstitutionalization and the Exercise of Choice*, 35 Mental Retardation 159 - 169 (1997).

22. Texas' State Supported Living Centers have all of these same shortcomings and more. Since 2005 the United States Department of Justice ("DOJ") has been investigating conditions at these facilities under the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997 ("CRIPA").

23. In 2009, the DOJ and the State of Texas entered into a settlement agreement covering all thirteen State Supported Living Centers. The Agreement requires Texas to ensure that, among other things, protections, supports and services in medical, therapeutic, and habilitative services do not substantially depart from the generally accepted professional standards of care. It also requires that all residents of SSLCs receive services for their disabilities in the most integrated community settings.

24. In accordance with this Agreement teams of professional monitors chosen jointly by the DOJ and the State of Texas are completing on-site compliance monitoring visits to SSLCs. These teams have begun issuing monitoring reports, which find that the SSLC care and treatment continues to substantially depart from the generally accepted professional standards of care:

> ▪ "It was apparent that the Facility was not sufficiently staffed to meet the needs of the individuals served. Individuals were frequently observed to be sitting idly with no interesting materials or activities to keep them engaged. General conditions of the Facility were found to be poor, with some homes lacking all but basic furniture, and others being in disrepair or poorly kept. Basic needs of some individuals were not being met as people were observed to have dirty hair, poorly fitting and worn clothing or other indicators of limited care and support."[7]
>
> ▪ "There was insufficient [physical therapy] staff to ensure that all individuals received appropriate and timely supports and services."[8]

[7] Maria Lawrence, *UNITED STATES V. STATE OF TEXAS* MONITORING TEAM, BASELINE REPORT ON AUSTIN STATE SUPPORTED LIVING CENTER p. 192 (2010), available at http://www.dads.state.tx.us/monitors/reports/austin-6-11-10.pdf

[8] Alan Harchik, *UNITED STATES V. STATE OF TEXAS* MONITORING TEAM, BASELINE REPORT ON LUFKIN STATE SUPPORTED LIVING CENTER P. 166 (2010), available at http://www.dads.state.tx.us/monitors/reports/lufkin-6-25-10.pdf

- "There was insufficient clinical staff to ensure that all individuals received appropriate and timely physical and occupational supports and services."[9]

- There were "[i]nsufficient number of speech language pathologists available to develop and implement communication programs, provide competency-based staff training, and provide monitoring oversight to determine progress and efficacy of the systems."[10]

25. These problems have not ceased. In January 2010, a *Texas Tribune* investigation of abuse and neglect in SSLCs found that since 2000, 75 employees have been fired for "Class 1 Abuse."[11]

26. In December 2010, the Texas Public Policy Foundation[12] issued a report on SSLCs. Among other things, they found that the current system of SSLCs "suffers from higher provider rates but lower quality of care" then community based facilities.[13] In addition, they noted that "SSLCs have a history of abuse and neglect that has not been cured . . . some of the cases were the same types of neglect that have plagued these centers for years."[14]

27. In spite of the current conditions in Texas' state run institutions and the dramatic increase in community based services, individuals previously committed to SSLCs often remain unnecessarily institutionalized because there is no procedure that allows for independent review of their initial commitment.

28. Chapter 593, Subchapter C of the Person with Mental Retardation Act (PMRA) governs commitment to SSLCs. During the original commitment an individual receives a judicial hearing with legal representation to determine whether or not they meet commitment criteria and

[9] Alan Harchik, *UNITED STATES V. STATE OF TEXAS* MONITORING TEAM, BASELINE REPORT ON MEXIA STATE SUPPORTED LIVING CENTER p. 13 (2010), available at http://www.dads.state.tx.us/monitors/reports/mexia-5-28-10.pdf

[10] Lawrence, *Baseline Report on Austin SSLC*, at 162

[11] Emily Ramshaw, "DisabilityWorkers Rarely Prosecuted for Violence", *The Texas Tribune* (20 Jan. 2010)

[12] The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute.

[13] Arlene Wohlgemuth, Spencer Harris, *Privatize State Supported Living Centers, A Fiscal Necessity and Quality of Care Requirement*, Texas Public Policy Foundation Policy Perspective, December 2010, at 1.

[14] *Id* at 3.

can be confined to the SSLC. However, the order involuntarily committing an individual to a SSLC is a *lifetime commitment*. *See generally* TEX. HEALTH & SAFETY CODE §593.041, *et seq*.

29. This means that once an individual is committed, he or she will never again receive a judicial hearing with representation and notice to review the basis and need for their continued confinement in a segregated, congregated, institutional setting. For the Individual Plaintiffs alone, this has resulted in 134 years of institutionalization without an independent review of their need for continued confinement.

30. For many individuals this means that they were committed when the only requirement for commitment was a judicial determination of "feeblemindedness" or "high grade moron." For others the criteria for involuntary commitment changed dramatically in 1978 and required a court to find that the individual met the following criteria before involuntary committing someone to a SSLC for life:

i. that because of their mental retardation they either represent a substantial risk of physical impairment or injury to himself or others, or is unable to provide for and are not providing for their most basic personal physical needs;

ii. that they cannot be adequately and appropriately habilitated in an available, least restrictive setting; and

iii. that the residential care facility to which they will be committed must be able to provide habilitative services, care, training, and treatment appropriate to the individuals needs.

TEX. HEALTH & SAFETY CODE §593.052(a)(2)-(4). This criteria for commitment has gone relatively unchanged for the last 33 years.

31. In the 33 years since the last change in commitment criteria, the State of Texas has dramatically increased the availability of less-restrictive community-based services, and now guarantees the availability of community-based services for persons currently confined in SSLCs. 40 TEX. ADMIN. CODE §§ 9.151-9.189. Yet, there is no independent judicial review that

considers this change in commitment criteria, or changes in availability of services outside of the institution.

32. Once an individual has been committed to an SSLC, the only known way to be discharged from the institution is if the individual's Personal Support Team ("Team") recommends their discharge into the community. At least annually the Team meets to discuss the individual's need for services, progress and preferences, including whether the SSLC continues to be the least restrictive environment available.

33. The Team is composed solely of treating professionals employed by the SSLC. At this meeting, there are approximately eight treating professionals, and the individual being discussed. These treating professionals are the same people who exercise complete control over the individual's daily life, including (among other things) what they eat, what they wear, what time they get up in the morning, what type of work they do, their level of supervision, how much freedom they have to move around the SSLC campus, and opportunities for visits off-campus.

34. Although surrounded by professionals who control every aspect of their everyday lives, there is a presumption that individuals committed to SSLCs, due to having an intellectual disability, will be able to effectively advocate for themselves (often without representation, and without assistance) in this extremely intimidating setting.

35. This annual meeting is the only known procedure for review of an individual's lifelong involuntary commitment to the SSLC system. In spite of the importance of this process, the monitoring reports noted that these meetings "appeared to be brief and/or done in a rote manner,"[15] "were often hurried,"[16] or that the meetings did not consistently identify the "individuals' preferences and strengths, as well as their needs for protections, supports, and

[15] Harchik, *Baseline Report on Mexia SSLC*, at 193.
[16] Harchik, *Baseline Report on Lufkin SSLC*, at 221.

services."[17] The monitors indicated that "[s]uccessfully facilitating this type of discussion will require additional specialized training of the persons responsible."[18]

36. Due to the failure of the Team referral process to identify individuals who no longer meet commitment criteria and provide an opportunity to move to a less-restrictive environment, individuals remain involuntarily committed to segregated, congregated institutions even though the institutions may no longer be the least restrictive environment.

2. PLAINTIFF G.G.E.

37. Prior to Plaintiff G.G.E.'s confinement to the Austin SSLC, he resided with his parents and siblings. At that time, he understood and responded to some Spanish and was able to participate in group activities, groom and dress himself with limited assistance, and express clear food and clothing preferences.

38. In 1977 G.G.E.'s parents needed to pursue seasonal work out of state and determined that they could not bring G.G.E. along with them and thus placed him in the Austin SSLC. On information and belief, this was the last time G.G.E. would see or talk to his family.

39. The last time there was an independent review of the appropriateness of G.G.E.'s continued confinement to the Austin SSLC was 30 years ago in 1980 when he was involuntarily committed.

40. At that court commitment on May 9, 1980, G.G.E.'s treating professionals at Austin SSLC stated, among other things, that

> [G.G.E.'s] self-help skills are well developed. He has no toileting accidents, picks out his own clothes, washes his face and hands, and brushes his teeth with some staff assistance. He is somewhat mischievous and aggressive but presents no major behavior problems. Community placement is not being considered at this time due to lack of family and community resources.

[17] Lawrence, *Baseline Report on Austin SSLC*, at 201.
[18] Harchick, *Baseline Report on Lufkin SSLC*, at 220.

41. Based on this evaluation the Court ruled that G.G.E. should remain involuntarily confined at Austin SSLC solely because of the lack of family and community resources.

42. Even though the only reason G.G.E. was not allowed to remain in the community in 1980 was due to the lack of family and community resources, there has been no independent judicial review or determination by a court as to whether he meets the legal standards for commitment in the 30 years the Plaintiff has been confined to the facility.

43. During the 30 years that G.G.E. has been institutionalized, the State of Texas has dramatically increased the availability of community opportunities for persons confined to SSLCs, and guarantees community resources for persons currently confined in SSLCs that now must be offered to individuals with disabilities like G.G.E. who with the availability of these community resources no longer meet commitment criteria. 40 TEX. ADMIN. CODE §§ 9.151-9.189.

44. Unfortunately, during the 30 years that Plaintiff G.G.E. has been confined to SSLCs, he has not received appropriate habilitative services, causing his physical, medical, and psychological condition to deteriorate. His self-help skills have regressed, he is unable to communicate, he currently requires the use of assistive devices to feed him, and requires staff assistance with toileting, dressing, bathing, and brushing his teeth. However, even with this deterioration he does not meet the current commitment criteria.

45. G.G.E.'s loss of communication skills during his confinement at the Austin SSLC is directly related to the lack of appropriate services at the Austin SSLC. In fact, although at the time G.G.E. was admitted to the Austin SSLC he understood routine directives in Spanish, the SSLC did not perform a bilingual speech-language evaluation until 20 years after his admission.

46. On July 16, 1997, an Austin SSLC social worker performed an evaluation of G.G.E. Under the heading "Alternative Placement," the social worker wrote:

> [G.G.E.] has an active referral with Community Services for an appropriate alternate placement at this time. [G.G.E.] needs to reside closer to his family to facilitate contact. His family has stated that they would like [G.G.E.] placed in a group home closer to their home in Flatonia, Texas.

Under "Recommendations from Social Services" the social worker wrote "Explore community living". This was over thirteen years ago.

47. Eleven years later, on March 7, 2008, the Personal Support Team ("Team") composed of treating professionals from Austin SSLC met to discuss and evaluate Plaintiff G.G.E.'s needs through the development of his yearly Personal Support Plan. In the Personal Support Plan dated March 7, 2008, the Team stated that "[G.G.E.] had a referral for community placement, as far back as 1995, in Flatonia, TX in order to be closer to his family. There were no developments during this time."

48. On March 6, 2009, the Team met again to discuss and evaluate Plaintiff G.G.E.'s needs through the development of his yearly Personal Support Plan. The Team reviewed whether the current placement continued to be the least restrictive environment available to G.G.E. In the Personal Support Plan dated March 6, 2009, the Team stated, among other things, that:

> [G.G.E.'s] needs could be met in an alternative setting with the following supports: Regular medical access to a primary care physician and most important would be behavioral concerns which warrant psychiatric needs. The preferred home should not be on a busy street because [G.G.E.] has a history of running out doors.

49. Although the State's treatment professionals found that Plaintiff G.G.E.'s needs could be met in a less restrictive environment, the Team did not request that G.G.E. be discharged and served in a more appropriate, less restrictive environment, or that the SSLC even begin to allow

G.G.E. to visit potential community placements. Instead, without providing any reason, they recommended that G.G.E. "remain at the Austin State School . . . "

50. On February 18, 2010, the Team again met and found that Plaintiff G.G.E.'s needs could be met in a less restrictive environment. In the Personal Support Plan dated February 18, 2010, the Team stated "[G.G.E.'s] needs could be met in an alternate setting" but noted that "[G.G.E.] has not yet visited any community living options".

51. Although for the last 15 years G.G.E.'s treating professionals found that G.G.E.'s needs could be met in a less restrictive environment, the Team failed to request that G.G.E. be discharged from the SSLC, referred for a community placement, or even visit potential community options.

52. Because there is no independent judicial review of G.G.E.'s need for continued confinement, G.G.E. continues to be unnecessarily confined in a segregated, congregated, institutional setting.

3. PLAINTIFF E.M.B.

53. Prior to Plaintiff E.M.B.'s confinement to Austin SSLC, she resided with her parents and siblings.

54. E.M.B. was involuntarily committed to Austin SSLC in 1951 at the age of six, after her parents filed a petition in the Dallas County Court to have E.M.B. declared a "feeble-minded person" and committed to the Austin SSLC.

55. The last time there was an independent review of or determination by a court of whether E.M.B meets the legal standards for commitment and continued confinement to a SSLC was 59 years ago when she was involuntarily committed.

56. On June 26, 2008 E.M.B.'s Personal Support Team composed of professionals employed by Mexia SSLC met to discuss and evaluate her needs through the development of her Personal Support Plan. The Team reviewed whether the current placement continued to be the most appropriate setting available to E.M.B. In the Personal Support Plan dated June 26, 2008, the Team agreed that E.M.B.'s needs could be met in the community and that she might benefit from community placement.

57. Although the Team found that E.M.B.'s needs could be met in a less restrictive environment, it did not request that E.M.B. be discharged and served in a more appropriate, less restrictive environment. Instead, the Team recommended that E.M.B. go on visits to local group homes to determine whether or not she would enjoy living in such an environment. The team stated that once she had completed these visits they would reconvene to discuss possible referral to the community.

58. On October 17, 2008, E.M.B. visited a group home with Mexia SSLC staff. In a document dated October 17, 2008, under the section entitled "How did they respond," staff noted "E.M.B. was very happy about the group home."

59. On July 22, 2009, the Team met again to discuss and evaluate Plaintiff E.M.B.'s needs. In the Personal Support Plan Addendum dated July 22, 2009, the Team stated, among other things, that:

> The PST agreed that [E.M.B.] should be referred for community placement. All of her identified needs could be met in the community and no barriers were identified. The PST feels that she should have the opportunity to live in the least restrictive environment possible while still meeting her needs. A referral was made at the consensus of her team that she be placed in a three to four bedroom HCS group home in the Austin area near her brother.

60. On April 19, 2010, the Team met again to discuss providers for E.M.B.'s community placement. In the Personal Support Plan Addendum dated April 19, 2010, the Team stated that three providers had been chosen in the Austin/Travis County area.

61. On May 24, 2010, E.M.B.'s Team met yet again to discuss and evaluate her living option needs. The Team noted that E.M.B. had been recommended for community placement almost a year earlier, and that "when participating in small group home tours [E.M.B.] appeared to be comfortable and at ease," and thus, "the PST's recommendation on May 24, 2010 is that this community referral remains appropriate."

62. E.M.B.'s brother, J.B., is not her legal guardian and has only visited his sister once in the past five years. He has only written twice to the staff, (but again never sent a single card to his sister), and telephoned the Mexia staff, (but never his sister), in her entire fifty-year confinement. Nevertheless, during the May 24, 2010 meeting, the Team noted that J.B. wanted E.M.B. to remain at Mexia SSLC. "The PST stated that they understood this and sympathized with him but it is their responsibility to determine her least restrictive environment. . . "

63. On June 30, 2010, J.B. sent a letter to Superintendent William Lowry, Director of the Mexia SSLC, stating that he did not want E.M.B. removed from Mexia SSLC.

64. On July 5, 2010, Superintendent Lowry, who has never participated in E.M.B.'s treatment planning, sent a memorandum to E.M.B.'s Team requesting that they "discontinue community placement efforts at this time." Based on this request, on July 28, 2010, a Placement Review Team recommended that community placement efforts discontinue at this time and that Mexia SSLC continue to attempt to determine E.M.B.'s preferences for community living.

65. On October 26, 2010, E.M.B.'s Team took her on a group home tour. She, along with one other resident of Mexia SSLC, went to visit a sample group home in Mexia. The home was

operated by Newstart HCS provider. The staff members that accompanied E.M.B. on the group home tour indicated that E.M.B. could not be happier.

66. Even though the State's own treatment professionals determined over the previous two years that Plaintiff E.M.B. no longer needs to be confined in a SSLC and that her needs could be met in a less restrictive environment, E.M.B. continues to be unnecessarily confined in a segregated, congregated, institutional setting for reasons unrelated to her own needs.

67. Because there is no independent judicial review of E.M.B.'s need for continued confinement, E.M.B. continues to be unnecessarily confined in a segregated, congregated, institutional setting.

4. Plaintiff G.D.E.

68. Prior to Plaintiff G.D.E.'s confinement to the Austin SSLC, he resided with his mother and siblings. At that time, he was assessed as having normal vision and hearing, was able to walk with orthopedic shoes, dress himself with assistance, and express clear food and activity preferences.

69. When he was 11 years old G.D.E.'s parents voluntarily admitted him to the Lufkin SSLC for a 30-day observation, after which he was discharged. Two years later, in 1974, G.D.E. was again voluntarily admitted to Lufkin SSLC by his family. Upon admission, G.D.E.'s mother told staff that her health was bad and she was unable to return to work because there was no one to watch G.D.E.

70. In his application for admission to the Lufkin SSLC, G.D.E.'s mother wrote "[t]here is nothing in Tyler for [G.D.E.] to do or to be done for him (medical or training)." At the time of this admission G.D.E. was not enrolled in school, and was not receiving any community supports or services.

71. The last time there was an independent review of the appropriateness of G.D.E.'s continued confinement to the Lufkin SSLC was 31 years ago, in 1979, when he was court committed.

72. On March 18, 2008, Plaintiff G.D.E.'s Personal Support Team composed of his treating professionals who are employed by Lufkin SSLC found that there were no barriers that would prevent G.D.E from moving into a less restrictive environment. Among other things, the Team stated:

> [G.D.E.] has no major medical issues that would pre-empt movement into the community or elsewhere . . . [G.D.E.] displays no maladaptive behaviors that require psychiatric/psychological intervention. This is not a barrier."

73. Although the State's treatment professionals found no barriers to prevent Plaintiff G.D.E. from moving to a less restrictive environment, the Team did not request that G.D.E. be discharged or served in a more appropriate, less restrictive setting. Instead, the Team stated [G.D.E.'s] mother, who is not his legal guardian, "is not interested in [community] services" and found that "the most appropriate living option at the current time is Lufkin State School."

74. One year later, on March 18, 2009, G.D.E.'s Team met again and even though his Team again did not identify any barriers to community placement, his Team did not request that G.D.E. be moved to a community placement because "[G.D.E.'s mother] prefers that [G.D.E.] remain at Lukfin State School . . . "

75. Another year later, on March 18, 2010, the Team again met, and again did not identify any behavioral/psychiatric, medical, safety, mobility, or quality of life related barriers to community placement. Upon determining that G.D.E.'s non-guardian mother would like for him "to remain at Lufkin State Supported Living Center", the Team again decided not to recommend G.D.E. move to the community.

76. However, in this plan the Team did note that G.D.E. had not been exposed to community living options, and recommended that G.D.E. participate in visits to wheelchair accessible group homes.

77. On August 30, 2010, the day G.D.E. was scheduled for his first group home tour, Lufkin SSLC rescinded their recommendation that G.D.E. participate in group home visits at the request of G.D.E.'s non-guardian mother. In an email dated August 30, 2010, Lufkin SSLC staff stated the non-guardian parent was "adamantly opposed to placement" and that "we have been instructed not to pursue placement at this time."

78. Although the State's treatment professionals found no barriers to community placement, and felt that a group home visit was appropriate, the Team did not move forward with their own recommendation for a group home visit solely based on the request of a non-guardian parent with no clinical training.

79. Even though over the past two years the State's own treatment professionals were unable to identify whether G.D.E. continues to meet commitment criteria for ongoing confinement in a SSLC, G.D.E. continues to be confined in a segregated, congregated, institutional setting based solely on the preference of a non-guardian family member.

80. Because there is no independent judicial review of G.D.E.'s need for continued confinement, G.D.E continues to be unnecessarily confined in a segregated, congregated, institutional setting.

IX. IRREPARABLE HARM

81. Plaintiffs continue to be unnecessarily confined in violation of their statutory, substantive and procedural due course of law protections. Unless injunctive relief is granted, there is a substantial probability that Plaintiffs will suffer irreparable injury for which there is no adequate

remedy at law due to the Defendants' failure to provide Plaintiffs with an independent judicial determination of the continued appropriateness of their commitment in a segregated, congregated, institutional setting, with notice and legal representation. If the Plaintiffs continue to reside at SSLCs without procedural due course of law protections, their significant liberty interest guaranteed by the Texas Constitution and Texas state law will continue to be violated. Plaintiffs have suffered, and will continue to suffer, great and irreparable loss of liberty as a proximate result of the acts and conduct of the Defendants, unless the Defendants, their employees, and those acting in concert with them and at their direction are enjoined from continuing their practice of depriving Plaintiffs of their liberty without periodic judicial review.

X. FIRST CAUSE OF ACTION: PROCEDURAL DUE COURSE OF LAW

82. Paragraphs 1 through 81 of this petition are incorporated herein by reference.

83. Plaintiffs allege a cause of action under the Texas Constitution against all Defendants in their official capacities for their denial of G.G.E., E.M.B. and G.D.E.'s state constitutional right to liberty without procedural due course of law protections afforded by TEX. CONST. art. I §§ 13, 19, and 29.

84. An order involuntarily committing an individual to a SSLC is a lifetime commitment. Once committed to a SSLC, the Plaintiffs and the class have not been and will not be provided with any other periodic hearings with notice and legal representation, before an impartial judicial decision maker with authority to review the basis and need for the individuals continuing confinement in a segregated, congregated, institutional setting.

85. Additionally, because the Plaintiffs and the class do not have the sophistication or skills to seek representation and review of their involuntary confinement, they will never have the ability to request a review before an impartial decision maker with authority to review the basis

and need for the individuals continuing confinement in a segregated, congregated, institutional setting.

86. By not providing Plaintiffs notice and representation of periodic reviews by a judicial decision maker, the Defendants, intentionally, or with deliberate indifference, are depriving the Plaintiffs of their liberty without due course of law in violation of the Texas Constitution.

87. If Plaintiffs G.G.E., E.M.B and G.D.E. and the class continue to be committed to SSLCs without due course of law protections – a periodic review hearing by an judicial decision maker to determine the appropriateness of their continued confinement in a segregated, congregated, institutional setting – their significant liberty interest guaranteed by the Texas Constitution will continue to be violated for which there is no adequate remedy at law.

XI. SECOND CAUSE OF ACTION: SUBSTANTIVE DUE COURSE OF LAW

88. Paragraphs 1 through 87 of this petition are incorporated herein by reference.

89. Plaintiffs allege a cause of action under the Texas Constitution against all Defendants in their official capacities for their denial of G.G.E., E.M.B and G.D.E. state constitutional right to the substantive due course of law protections afforded by TEX. CONST. art. I §§13, 19, and 29.

90. By not discharging Plaintiffs to an appropriate less restrictive setting, the Defendants knew Plaintiffs would remain involuntarily confined to a segregated, congregated, institutional setting in deprivation of Plaintiffs' right to liberty.

91. Defendants failed and refused to implement appropriate policies, practices, or procedures, and failed to train their staff adequately on the appropriate policies, practices or procedures regarding the referral and release of clients who no longer meet commitment criteria. In doing so, these Defendants knew or should have known that they were acting against the clear dictates of current law, and knew or should have known that as a direct consequence of their deliberate

decisions, the very situation that occurred, i.e., that the continued involuntary confinement of Plaintiffs in a segregated, congregated, institutional setting, in all reasonable probability would occur.

XII. THIRD CAUSE OF ACTION: PMRA

92. Paragraphs 1 through 91 of this petition are incorporated herein by reference.

93. Plaintiffs further allege a cause of action against all Defendants under section 594.011 of the Persons with Mental Retardation Act ("PMRA").

94. Section 594.011 of the Texas Health and Safety Code requires a service provider to "transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines: (1) that the client's placement is no longer appropriate to the person's individual needs; or (2) that the client can be better treated and habilitated in another setting; and (3) placement in another setting that can better treat and habilitate the client has been secured."

95. By failing to recommend and facilitate Plaintiffs' transfer to community-based placement Defendants have caused Plaintiffs to remain under an involuntary commitment in a segregated, congregated, institutional setting in violation of their statutory rights under the PMRA to reside in the least restrictive setting.

XIII. INJUNCTIVE RELIEF

96. Plaintiffs request that, after notice and hearing, this Court enter a temporary and permanent injunction enjoining Defendants, their agents, or employees from failing to provide Plaintiffs and all of the similarly situated individuals with periodic hearings, with notice and legal representation, before an impartial judicial decision maker with authority to review the basis and need for the individuals continuing confinement in a segregated, congregated, institutional setting.

XIV. DECLARATORY RELIEF

97. Plaintiffs request that, after notice and hearing, pursuant to TEX. CIV. PRAC. & REM. CODE § 37.001, this Court should enter a declaratory judgment that the policies, regulations, and practices of the Defendants of not giving the Plaintiffs and those similarly situated the periodic judicial review hearing with notice and representation violates the provisions of the PMRA and Texas Constitution.

XV. EXCLUSION OF FEDERAL CLAIMS

98. Plaintiffs hereby give notice to all that they only allege state claims in this suit and specifically exclude, and do not intend to litigate herein, any federal cause of action. The only causes of action which they intend to litigate in this Court are those concerning rights arising under the laws and constitution of the sovereign State of Texas.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this court:

(a) Declare that the Defendants failure to provide periodic judicial review hearings to individuals in the SSLC's, with notice and representation is a denial of procedural due course of law as guaranteed by the Texas Constitution;

(b) Declare that the Defendants' policies and procedures of failing to ensure that individuals who no longer meet the criteria for commitment to a state supported living center are discharged through a community referral violates the substantive due course of law provisions of the Texas Constitution, and the PMRA;

(c) Temporarily and permanently enjoin the Defendants, their agents, or employees from failing to conduct periodic judicial review hearings, with notice and representation to individuals in the SSLCs;

(d) Temporarily and permanently enjoin the Defendants, their agents, or employees from failing to implement policies and procedures to ensure that all residents of State Supported Living Centers who have been determined to be appropriate for community-based services are discharged to the community through a community referral, or given access to judicial determination of the continued legal appropriateness of the placement;

(e) Enter an order awarding Plaintiffs reasonable attorney's fees and costs for the preparation and trial of this cause of action, and for its appeal, if required; and

(f) Grant all other and additional relief to which Plaintiffs may be entitled in this action, at law or equity.

Respectfully submitted,

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