

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LACOYA FLUELLEN, FRANKLIN ALLEN,)
ANTARES BANKS, MCKLOYD BROOKS,)
ROME BURNETT, LANE CHERRY,)
CHADWICK COCHRAN, ALBERT LEE)
ELLISON, EDDIE EVANS, ROBERT)
HAMPTON, CURTIS HERRING, JONAS)
HOPKINS, JEFFREY HUGHES, ALBERT)
JONES, NORMAN MADDOX, JEFFREY)
MCDONALD, RICHARD RALPH, FRANKLIN)
RIVERS, LARRY SMITH, GRADY VAUGHN)
and TONY WISE, on behalf of themselves and all)
persons similarly situated,)

Plaintiffs)

v.)

JIM WETHERINGTON, Commissioner of the)
Georgia Department of Corrections;)

JAMES DEGROOT, Statewide Mental Health)
and Mental Retardation Program Supervisor for)
the Georgia Department of Corrections;)

MICHELLE MARTIN, Warden of Phillips)

)
FIRST
AMENDED
COMPLAINT
(REFILED)

Civil Case No.:
1:02-CV-479-JEC

Class Action

State Prison;)
)
 CYNTHIA NELSON, Deputy Warden for)
 Security at Phillips State Prison;)
)
 JAMES BROWN, Deputy Warden for Care and)
 Treatment at Phillips State Prison; and)
)
 ELEANOR BROWN, Director of Mental Health)
 at Phillips State Prison, in their official capacities,)
)
 Defendants)
 _____)

I. INTRODUCTION

1. This suit is brought by prisoners at Phillips State Prison who are mentally ill and/or mentally retarded, seeking protection from physical, mental and sexual abuse; from excessive use of force; from improper and prolonged placement in administrative and disciplinary segregation for manifestations of their mental impairments; and from the ongoing risk of suicide, self-injury and death that now exists at the prison.

2. Plaintiffs and members of the class suffer from mental illnesses, such as schizophrenia and bipolar disorder, which cause them to experience delusions or other symptoms that interfere with their ability to comprehend and relate rationally to what is happening around them. Some plaintiffs and members of the class are

also mentally retarded; their intellectual functioning is so limited that they are not capable of understanding and processing information beyond a basic level. In addition, some plaintiffs and class members take extremely powerful anti-psychotic medications – in some instances against their will – which impair their thought processes. All of the plaintiffs and the class they seek to represent are impaired with regard to their abilities to cope with the demands of life within the prison and are in need of monitoring, care and treatment.

3. The approximately three hundred mentally ill and/or mentally retarded inmates at the prison do not receive monitoring, care and treatment that is individualized to meet the specific mental health needs of inmates. Instead, the prison staff attempts to control the mentally ill and the mentally retarded by force, intimidation and an excessive use of physical and medical restraint and seclusion. Prisoners who are mentally ill and/or mentally retarded are punished for manifestations of their impairments and limitations which are beyond their control. They are also punished for failure to comply with institutional rules even though it is extremely difficult or impossible for some prisoners to comply with the rules because of their mental impairments and the abusive and chaotic environment of the prison. Prisoners are improperly punished by excessive force, mental abuse,

psychological intimidation and placement in administrative and disciplinary segregation for extended and repeated periods, where isolation and discrimination causes their mental health to decline even further.

4. The defendants are six public officials who bear final responsibility for the treatment, care and custody of the mentally ill and mentally retarded prisoners at Phillips State Prison. Through their practices, policies and customs, these officials have acted with deliberate indifference to the systematic physical and mental abuse and mistreatment of named plaintiffs and the plaintiff class. They have failed to protect class members from the substantial risk of sexual abuse and serious physical abuse, including death, and at the hands of other prisoners, or from the substantial risk of self-harm and suicide.

5. Accordingly, the plaintiffs bring this action on behalf of themselves and all other similarly situated prisoners at Phillips State Prison in Buford, Georgia, pursuant to 42 U.S.C. § 1983, the First, Eighth and Fourteenth Amendments to the United States Constitution, 29 U.S.C. § 794 (the Rehabilitation Act), and 42 U.S.C. § 12131 et seq. (the Americans with Disabilities Act of 1990), seeking declaratory and injunctive relief.

II. JURISDICTION

6. This action is brought pursuant to 42 U.S.C. § 1983, 29 U.S.C. § 794, and 42 U.S.C. § 12131 et seq. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343, and the United States Constitution.

7. This Court is authorized to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

III. VENUE

8. The Northern District of Georgia is an appropriate venue for this action under 28 U.S.C. § 1391(b)(2) because a "substantial part of the events or omissions giving rise to the claim[s] occurred" in this district, at Phillips State Prison in Buford, Georgia.

IV. PARTIES

9. The twenty-one named plaintiffs are currently in Georgia Department

of Corrections (“GDC”) custody at Phillips State Prison, where they are subjected to unconstitutional and unlawful treatment. The named plaintiffs seek to represent themselves and all other current and future prisoners at Phillips State Prison whose abilities to cope with the demands of life within the correctional environment are impaired or in need of monitoring due to mental illness and/or mental retardation. The named plaintiffs are individuals with a disability, as that term is defined in 29 U.S.C. § 705(9) and 42 U.S.C. § 12102.

10. Defendant JIM WETHERINGTON is Commissioner of the Georgia Department of Corrections. As Commissioner, WETHERINGTON is responsible for the daily supervision of operations at the Georgia Department of Corrections. He is the highest ranking official in the Georgia Department of Corrections. Defendant WETHERINGTON is sued in his official capacity as Commissioner of the Georgia Department of Corrections.

11. Defendant JAMES DEGROOT is the Statewide Mental Health and Mental Retardation Program Supervisor. Defendant DEGROOT is responsible for developing, implementing and overseeing a comprehensive system of mental health and mental retardation services to treat the seriously mentally ill and mentally retarded inmates and probation detainees in accordance with Georgia Department of

Corrections policy and procedures and professional standards of care. Defendant JAMES DEGROOT is sued in his official capacity as Statewide Mental Health and Mental Retardation Program Supervisor.

12. Defendant MICHELLE MARTIN is Warden of Phillips State Prison. Defendant Martin is responsible for the day-to-day operations of Phillips. She, in conjunction with the Deputy Warden for Security, establishes and implements conditions, practices and policies of the prison relating to security. Defendant MARTIN is sued in her official capacity as Warden of Phillips State Prison.

13. Defendant CYNTHIA NELSON is Deputy Warden for Security at Phillips State Prison. Defendant NELSON is responsible for the general supervision and control of the prison's security staff. She, in conjunction with the Warden, establishes and implements conditions, practices and policies of the prison relating to security. Defendant NELSON is sued in her official capacity as Deputy Warden of Security at Phillips State Prison.

14. Defendant JAMES BROWN is Deputy Warden for Care and Treatment at Phillips State Prison. Defendant BROWN has authority over the operation of all medical, mental health and mental retardation programs at Phillips State Prison. As Deputy Warden for Care and Treatment, defendant BROWN is

responsible for the general supervision and control of the prison's medical staff.

Defendant BROWN is sued in his official capacity as Deputy Warden for Care and Treatment at Phillips State Prison.

15. Defendant ELEANOR BROWN is Director of Mental Health at Phillips State Prison. Defendant BROWN is responsible for the general supervision and control of the prison's psychiatric staff. Defendant BROWN is sued in her official capacity as Director of Mental Health at Phillips State Prison.

16. At all times relevant to the events described herein, defendants were employed by and acted under color of law of the state of Georgia.

V. CLASS ACTION ALLEGATIONS

17. The plaintiffs bring this action on behalf of themselves and on behalf of all others who are similarly situated pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of all individuals whose abilities to cope with the demands of life within the correctional environment are impaired or in need of monitoring due to mental illness and/or mental retardation, who are now or will be in the future incarcerated at Phillips State Prison.

18. The class is so numerous that joinder of all members is impracticable.

The prison houses approximately three hundred mentally ill and/or mentally retarded prisoners. This population changes often as prisoners are transferred in and out of the prison or released.

19. There are questions of law and fact common to the class. These include the nature and constitutionality of conditions, practices, policies and treatment of mentally ill and/or mentally retarded persons at Phillips State Prison.

20. The conditions, policies, practices and treatment challenged in this action apply with equal force to the named plaintiffs and all members of the class so that the claims of the named plaintiffs are typical of those of the class.

21. The named plaintiffs will fairly and adequately represent the interests of the class. They possess the requisite personal interest in the subject matter of the lawsuit. They are represented by a law office that is experienced in class-action litigation involving excessive use of force in prisons and jails, and prison and jail conditions, including the provision of constitutionally adequate medical and mental health care.

22. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

VI. STATEMENT OF FACTS

A. Background.

23. Phillips State Prison is located in Buford, Georgia, with 1,036 beds in the main building and approximately 150 beds in an Annex building. Many of the men at Phillips State Prison have been found to be “guilty but mentally ill” under § 17-7-131 of the Georgia Code. Phillips State Prison is one of only two prisons in the Georgia Department of Corrections that is designated and purportedly equipped to confine and treat the most severely mentally ill male prisoners in the State of Georgia. Such prisoners are classified as mental health “Level IV”. Prisoners at other prisons whose psychiatric condition deteriorates to a Level IV classification cannot be accommodated at those prisons; therefore, those prisoners are transferred to Augusta State Medical Prison or Phillips State Prison for treatment and incarceration. Phillips State Prison also incarcerates prisoners who are classified at lower mental health levels, known as Level II and Level III patients.

24. With the exception of the probation detainees described below, nearly all prisoners who are mentally ill and/or mentally retarded are housed together at Phillips State Prison in buildings D1, D2, E1, E2, F1, F2, and G2. Approximately

twelve cells in the F1 building are designated as Acute Care Units (“ACU”). Another five cells in the infirmary are designated as Crisis Stabilization Units (“CSU”).¹ Administrative segregation, protective custody and punitive isolation cells for mentally ill and/or mentally retarded prisoners are located in D2 and F1. Mentally ill probation detainees are housed together in an open dormitory in building 1 of the Annex (“Annex-1”), unless they are locked down in an isolation unit in D or F buildings or in CSU.

25. Mental health patients at Phillips State Prison suffer from illnesses including, but not limited to, schizophrenia, schizoaffective disorder, major depressive disorder, bipolar disorder, psychotic disorder not otherwise specified (“NOS”), and depressive disorder NOS, and post-traumatic stress disorder. Many of the mental health patients at Phillips State Prison are mentally retarded in that they have limited intellectual functioning far below that of an average person, which further compromises their ability to cope with the ordinary demands of life within the correctional environment.

26. Mentally ill prisoners at Phillips State Prison also include

¹ The Georgia Department of Corrections’ Standard Operating Procedure VF01-0010 specifies that mental health patients who are suffering an acute mental health crisis are classified as Level V, and must be placed in a Crisis Stabilization Unit.

approximately 50 individuals who violated the conditions of their probation and were sentenced as probation detainees to Probation Detention Centers (“PDCs”), but because of their mental illnesses have been transferred to be held in detention at Phillips State Prison. These individuals were sentenced to detention at the West Georgia PDC, Larmore PDC, Northwest PDC, Rockdale-Dekalb PDC, Camp Phillips PDC, Davis PDC, or the Whitworth PDC. When such individuals displayed symptoms of mental illness, or requested mental health treatment, however, they were transferred to Phillips State Prison.

27. According to the Georgia Department of Corrections’s Health Services Overview for 2001, defendants estimate that approximately 14% of the state’s total male prison population consists of mental health patients. The provision of humane and adequate medical and mental health treatment and services to these patients is essential to the orderly administration of the prison system as a whole, and for the protection of the general public when mentally ill and mentally retarded individuals return to the community. Nevertheless, mental health programming is treated as an extraneous expense by the defendants, who rely upon kickbacks from prisoners’s collect phone calls to fund services for prisoners with mental illness.

B. Mentally ill and/or mentally retarded prisoners are subjected to systematic mental abuse and physical brutality at the hands of correctional staff.

28. The correctional staff who have contact with mentally ill and mentally retarded prisoners at Phillips State Prison have not consistently received adequate specialized training to safely manage the special needs and problems of mentally ill and mentally retarded prisoners, and to recognize signs and symptoms of mental illness. Instead, prison staff use force and threats of force indiscriminately to control and terrorize this vulnerable population.

29. Due to the defendants' failure to train, supervise and discipline prison staff, staff members frequently respond to any perceived misbehavior of mentally ill and mentally retarded prisoners by physically assaulting them or threatening to beat or kill them if they do not change their behavior. Often in such instances, prison staff issue disciplinary reports against the prisoners in order to justify their unnecessary brutality.

30. In some cases, the unnecessary and inappropriate use of physical force and intimidation by prison staff provokes the mentally ill and/or mentally retarded prisoner, who is already having difficulty coping with the prison environment. This

provocation creates an increased risk that the prisoner will attempt to defend himself from a threat or perceived threat, necessitating an even greater use of force to control the prisoner. Mentally ill and/or mentally retarded prisoners who are engaged in these physical altercations with correctional staff are often beaten and restrained in shackles and handcuffs, or placed in five-point restraints and involuntarily injected with Haloperidol (“Haldol”) or other anti-psychotic drugs. In several instances, correctional staff have continued to beat prisoners even after the prisoner was physically restrained.

31. Some staff at Phillips State Prison sexually abuse or threaten to sexually abuse mentally ill and/or mentally retarded prisoners by taunting them with sexual gestures and remarks, making inappropriate advances towards them, or forcing them to engage in sexual conduct.

32. Defendants do not properly discipline, train or supervise, prison staff who use inappropriate and indiscriminate violence and intimidation against or sexually abuse mentally ill and/or mentally retarded prisoners. Defendants are aware of this conduct and the harm it causes mentally ill and/or mentally retarded prisoners, but nevertheless fail to respond adequately. As a result, these prisoners live in constant fear of unjustified and unpredictable physical violence at the hands

of the prison staff, and do not have anywhere to turn to obtain relief from this violence.

33. The following incidents, presented upon information and belief, took place within the ten months preceding this complaint, and typify the physical and verbal abuse to which prisoners who are mentally ill and/or mentally retarded are regularly subjected at Phillips State Prison:

A. In or around May 2001, Prisoner 1, who is mentally ill, was requesting a grievance form from his counselor in order to write a formal grievance about having been raped by five prisoners three months earlier in Autry State Prison. When an officer came by and ordered everyone to lock down, Prisoner 1 felt it was imperative that he get the grievance form before it was too late to file a grievance, so he continued talking with his counselor. The officer grabbed Prisoner 1's arm, Prisoner 1 pulled his arm back, and the officer called for backup from another officer. Together, the two officers threw Prisoner 1 to the ground and broke his nose. Afterwards, Prisoner 1 was stripped naked and locked down in an isolation cell with nothing but a metal bed and a paper gown. Prisoner 1 filed an administrative grievance about this incident, but never received a response to his grievance. He has asked his counselors about the grievances, but has not gotten a response from them either.

B. On or about May 31, 2001, Prisoner 2, who is mentally ill, spit on a counselor in the presence of a lieutenant. In response, the counselor and lieutenant both spit on Prisoner 2. The lieutenant then entered the cell, pushed Prisoner 2 and kicked his feet out from under him, put his knee in Prisoner 2's back, grabbed his head and bashed it against the floor. After placing Prisoner 2 in handcuffs and leg shackles, the lieutenant walked Prisoner 2 through the sallyport gate. He then put Prisoner 2 in a headlock and dragged the prisoner in leg shackles on a forced run to the second gate, about 75 feet away. At the infirmary, Prisoner 2 was put in five-point

restraints and shot with Haldol. Prisoner 2 filed an administrative grievance about this incident and filed a timely appeal.

C. In or around July 2001, while locked down in an isolation cell, Prisoner 3 was unable to get any medical attention for a toothache. He banged on his cell door until two officers responded. They placed Prisoner 3 in cuffs and took him to the shower area. From the shower area, a different two officers escorted Prisoner to an isolation cell. After Prisoner 3 complied with an order to remove all his clothing and was placed in a paper gown, the officers dragged Prisoner 3 behind the fence separating the strip cells from the regular cells. One officer took a swing at Prisoner 3 as the other officer grabbed Prisoner 3 from behind and threw him to the ground. While on the ground, Prisoner 3 was stomped on and kicked by the two officers. Prisoner 3 was issued a disciplinary report. Internal affairs investigated the incident, and the disciplinary report was subsequently dismissed. Prisoner 3 is housed in one of the mental health units.

D. In or around July 2001, Prisoner 4, who is mentally ill, stopped up his toilet and flooded his cell because his mental health medication was making him feel sick. A lieutenant came to Prisoner 4's cell and told him, "I'll beat your ass for that." The officer accompanying the lieutenant left the cell with Prisoner 4's cellmate. Now alone in the cell with Prisoner 4, the lieutenant ordered Prisoner 4 to sit down. When Prisoner 4 refused, the lieutenant put him in a choke hold, struck him with his fists, and kicked him, breaking one of Prisoner 4's teeth. Prisoner 4 then refused to take a shot of Haldol, and was put in five-point restraints. The lieutenant who beat him in his cell came and struck him again while he was in five-point restraints, knocking out Prisoner 4's front bottom tooth.

E. In or around August 2001, Prisoner 5, who is mentally ill, was placed in handcuffs and ordered to pack up his belongings so he could be transferred to another cell. A second officer entered Prisoner 5's cell and jumped him from behind. Still in handcuffs, Prisoner 5 attempted to stab the officer with a pen. The officer struck Prisoner 5 numerous times, knocking his teeth loose, bloodying his nose and mouth, and leaving him in severe pain. A third officer watched the assault but did not intervene. As the

officers left the cell, they told Prisoner 5 that they would assault him again. Prisoner 5 wrote a grievance and directed it to Defendant Nelson, who told him that she believed his story. Prisoner 5 never received a response to his grievance.

F. On or around September 11, 2001, Prisoner 6 was on the 18th day of a 14-day lockdown sentence. When he could not get a counselor to talk to him about why he remained on lockdown status, Prisoner 6 kicked the door of his cell. Prisoner 6 is mentally ill. An officer ordered Prisoner 6 to "stop kicking the door or I'll beat your ass." The officer and a lieutenant then entered the cell of Prisoner 6. The officer kicked the prisoner's feet out from under him, and then hit him in the face with a pair of metal handcuffs. Prisoner 6 was then dragged to the shower, where he was left handcuffed and with shackles around his legs. Officers yelled at Prisoner 6 in an effort to intimidate him while he was handcuffed and shackled. Prisoner 6 attempted to file a grievance on or around September 11, 2001, about this incident, but his counselor talked him out of it. Prisoner 6 filed a grievance on or around November 5, 2001, and in late November 2001, he received a response stating that the grievance had been forwarded to Internal Affairs.

G. On or about September 17, 2001, Prisoner 7, who is mentally ill, was roused from sleep by an officer. He was struck from behind by the officer, and then handcuffed by a second officer. The first officer then hit Prisoner 7 in the face with a pair of handcuffs, and then again with his radio. A third officer entered the cell and stood on the prisoner's legs. The first officer struck Prisoner 7 again in the face. Prisoner 7 was written up with a disciplinary report. The day Prisoner 7 was placed in disciplinary lockdown (D2), he requested a grievance form from his counselor. The counselor did not give him a form.

H. On or around November 2, 2001, Prisoner 8, who is mentally ill, was punched in the face, kicked, and had his head knocked against the wall by two lieutenants and a sergeant. Prisoner 8 is mentally ill. Following the assault, Prisoner 8 requested that he be sent to the infirmary to receive medical care. He was not sent. Prisoner 8 filed a grievance and believes it was sent to Internal Affairs.

I. On or around November 5, 2001, Prisoner 9 was kicking on his cell door asking to speak to a lieutenant about a recent disciplinary report he had received for refusing to take his hands out of his pockets. An officer entered the cell of Prisoner 9, grabbed him by his throat, and threw him against the wall. The officer then pushed Prisoner 9 to the ground and stepped on his hand. He kicked Prisoner 9 in his side at least once before allowing him to get up. Prisoner 9 is a mentally ill prisoner housed in general population. Prisoner 9 wrote a grievance about this incident and appealed it.

J. On or around November 8, 2001, prisoners from the E building were coming back from the gym. An officer stopped Prisoner 7, a mentally ill prisoner housed in building E, and asked him to remain outside while everyone went back into the unit. The officer told Prisoner 7 to take a shower and change his shirt. The officer then demanded that Prisoner 7 show him his penis. Prisoner 7 became scared and walked away. The officer gave Prisoner 7 a disciplinary report for failure to follow instructions and insubordination. Prisoner 7 filed a grievance on the sexual harassment about two or three days after it happened, but he never received a response. When he let out of disciplinary lockdown, he asked his counselor about his grievance, but the counselor said he did not know anything about it.

K. On or around November 15, 2001, an officer accused Prisoner 10, who is mentally ill, of attempting to stab the officer. Three officers and a lieutenant came to Prisoner 10 and ordered him to cuff up through the tray slot. Fearful for his safety, Prisoner 10 said he did not want to cuff up, believing the officers would have to videotape their own actions if Prisoner 10 refused to cuff up. The lieutenant told him, "Cuff up or I'll make you," as he and the officers opened the door. One of the officers threw Prisoner 10 on the floor, and his head hit the concrete floor. The lieutenant continued to curse at Prisoner 10, and put him in a choke hold until Prisoner 10 passed out. When Prisoner 10 regained consciousness, he was being pushed into the shower while handcuffed. He hit his head against the wall of the shower. An officer ordered Prisoner 10 to take a shower to wash off the blood from his forehead and mouth. Prisoner 10 filed a grievance about this incident, which was returned to him on or around the end of December 2001, stating that it was forwarded to Internal Affairs. Prisoner 10 also appealed the disciplinary report he

received after this incident.

L. In or around November 2001, Prisoner 11, who is mentally ill, was in an isolation cell when a lieutenant entered his cell, grabbed him by his shirt, and jerked his feet off the ground. The lieutenant told Prisoner 11, "I'm going to whoop your ass and make your brains swell up in your head." The lieutenant set Prisoner 11 down, then pushed the prisoner's face into the cell door, injuring him.

M. In or around November 2001, Prisoner 12 exchanged argumentative words with a lieutenant. The lieutenant punched Prisoner 12 in the jaw, slammed him to the ground and kned him in the face. Prisoner 12 is mentally ill.

N. On or around December 14, 2001, Prisoner 13 was pulled out of his morning mental health class at the annex and sent up the hill to the "shakedown shack." On the way up the hill, Prisoner 13 vomited, and some of the vomit hit the boot of a Certified Emergency Response Team ("CERT") officer. The officer cursed at Prisoner 13. At the shakedown shack, the CERT officer pushed Prisoner 13 against the fence, choked him until he fell to the ground, then grabbed Prisoner 13 neck with both hands and choked him. The CERT officer then took Prisoner 13 inside the building, slammed him against the wall, choked him again, and threw him to the floor. After Prisoner 13 was stripped, the CERT officer ordered Prisoner 13 to pick up his clothes, and "karate-chopped" him on the back of his neck when Prisoner 13 reached for his clothes. A second CERT officer participated in the beating inside the building, and a third officer saw the beatings and did not intervene. The CERT officer yelled at Prisoner 13, "The only convict I like is a dead convict." Prisoner 13 was handcuffed throughout the beatings. Internal Affairs took a statement from Prisoner 13 on or around January 21, 2002. He could not file a timely grievance about this incident because he was locked down for two weeks and did not have a writing instrument.

34. These practices are ongoing at the Phillips State Prison. Plaintiffs and other class members continue to suffer the treatment typified by the incidents

described above.

C. Defendants fail to take reasonable measures to protect class members from the risk of serious physical injury - including death, physical assault, and sexual abuse - at the hands of fellow prisoners.

35. Prisoners at Phillips State Prison who are mentally ill and/or mentally retarded are subjected to physical and sexual abuse and intimidation by other prisoners. Defendants know about the abuse and fail to take even the most basic steps to prevent it. The constant threat of sexual assault leads to an increased risk of violence among Plaintiffs and to further decline in their mental health.

36. The defendants place mentally ill and/or mentally retarded prisoners together in administrative and disciplinary segregation cells without adequate consideration of whether the prisoners are a danger to one another and without taking proper precautions to prevent physical and sexual assault.

37. Phillips State Prison does not have sufficient correctional staff who are adequately trained to monitor and supervise mentally ill and/or mentally retarded prisoners who may pose a risk of violence to other prisoners. Nor does the prison have sufficient correctional staff who are adequately trained to protect those mentally ill and/or mentally retarded prisoners who are particularly vulnerable to physical and sexual assault and intimidation.

38. Sexual abuse among prisoners is condoned, ignored, or encouraged by prison staff, who fail to take adequate steps to reduce or prevent the incidence of abuse. For example, when Prisoner 14 first arrived at Phillips State Prison in 1999, he was raped repeatedly by several prisoners. He was transferred to Augusta State Medical Prison for over a week as a result of the injuries he sustained during this assault. Since this incident, Prisoner 14 has been raped again by other prisoners. In addition, Prisoner 14, who is seriously mentally ill and mildly retarded, feels compelled to exchange sex for commissary items such as cigarettes and coffee because he has no money. As a result of these numerous sexual encounters and assaults at Phillips State Prison, Prisoner 14's mental health has declined. Defendants have not taken adequate steps to prevent the sexual abuse of prisoners such as Prisoner 14. Prisoner 14 asked his counselor in early December 2001 for a grievance form, and the counselor said he would bring one back, but never did.

39. Prisoners who are particularly vulnerable to physical and sexual assault and intimidation include juveniles, especially those with mental illness or mental retardation. When these juveniles and other vulnerable prisoners attempt to protect themselves from harm, there is a substantial risk that they will be assaulted by guards and issued a disciplinary report.

40. Due to defendants' deliberate indifference to risk of harm, in the past ten months at least two prisoners have been killed by other prisoners at Phillips State Prison:

A. On or around April 3, 2001, Ricky Lamar was killed by another prisoner while working outside the Annex. Ricky Lamar died of massive head injuries. Prisoners working in and around the Annex are consistently in contact with mentally ill probation detainees housed in the mental health dorm of the annex.

B. On or around October 21, 2001, David Strickland was killed while double-bunked in an administrative segregation cell. Before he died, David Strickland had repeatedly told guards that he was fearful for his life and asked them to move him from the cell. Both Mr. Strickland and his cellmate, who was accused of causing the death of Mr. Strickland, suffered from serious psychiatric disorders, and had been placed in segregation for disciplinary reasons.

41. Because of practices described herein, and because of defendants' deliberate indifference to the threats created by these ongoing practices, there is substantial likelihood of similar deaths in the future.

D. Defendants fail to take reasonable measures to protect mentally ill prisoners from the risk of self-inflicted serious physical harm, including extreme forms of self-mutilation and suicide.

42. Because of their mental illness, many mental health patients at Phillips State Prison cut themselves with razors and other sharp instruments. Prisoners who hurt themselves are punished for this behavior, and do not receive appropriate

treatment for their underlying mental health problems. The punitive response to and inadequate treatment of self-mutilating prisoners result in repeated and escalating episodes of self-injury.

43. Mental health patients who enter Phillips State Prison with a known history of serious suicide attempts and other self-injurious behaviors, as well as those who repeatedly cut or otherwise injure themselves while at Phillips State Prison, are not monitored adequately to prevent further attempts. One extreme form of self-injurious behavior engaged in by mental health patients at Phillips State Prison includes “cutting parties,” where several prisoners engage in self-mutilation by repeatedly cutting themselves. Defendants are aware of self-cutting and, in particular, “cutting parties”; yet, razors and other sharp metal objects are readily available and their use inadequately monitored.

44. Defendants’ failure to monitor and protect mental health patients from self-injury has resulted in serious injuries and death that could have been prevented. The following incidents, presented upon information and belief, demonstrate the actual harm that has already resulted from the lack of adequate monitoring, supervision and treatment of mental health patients:

A. Prisoner 12 arrived at Phillips State Prison with a known history of numerous serious suicide attempts using sharp objects to cut and gouge

himself. On or around September 21, 2001, Prisoner 12 was given a razor from the unit control room. He took the razor to his cell, cut his arms several times, and made a four-inch gash on his leg. The CERT team took Prisoner 12 to the infirmary and placed him in four-point restraints, where he remained from that Friday evening until Monday morning when a doctor came on duty and was able to evaluate him. Prisoner 12 did not file a grievance about his self-cutting, because his self-cutting has been treated as a disciplinary infraction.

B. Prisoner 15 cut himself on his arms, throat, and chest on numerous occasions while at Philips SP, even while he was in an administrative segregation unit. Although he was placed in a crisis stabilization unit each time he cut himself at Phillips State Prison, the treatment he received in this unit and the follow-up treatment he received after he was stabilized did not address his mental health needs. Prisoner 15 did not file a grievance about his self-cutting (self-cutting is a disciplinary infraction).

C. In or around July 2001, David Moates died during a “cutting party.” Before the death of Mr. Moates, a mental health aide informed defendant Nelson that there was a knife blade in a certain cell. Despite the warning, Mr. Moates was placed in that cell. Mr. Moates cut himself so severely that he bled to death. The prison has concluded that his subsequent death was a suicide. Mr. Moates obviously could not file a grievance about this incident prior to his death.

45. Defendants’ failure to take reasonable measures to protect class members from self-inflicted harm is an ongoing omission and creates an impermissible risk of serious physical harm, including extreme instances of self-mutilation and suicide.

E. Defendants fail to provide prisoners who suffer from psychiatric disorders such as schizophrenia, bipolar disorder and major depressive disorder constitutionally adequate assessment, evaluation, treatment, and monitoring for their mental illnesses.

46. Treatment plans for mental health patients at Phillips State Prison are not designed to meet the specific treatment needs of the mentally ill individual, but rather serve the need of the prison for convenience.

47. Defendants do not provide adequate mental health staff to deliver individualized mental health treatment to prisoners and probation detainees suffering from serious mental illnesses such as schizophrenia, bipolar disorder and major depression. The number of mental health counselors, mental health nurses, psychologists, and psychiatrists is insufficient to meet the basic mental health needs of the mentally ill prisoners at Phillips State Prison.

48. Supportive counseling, when it occurs at all, generally consists of cursory “interviews” in public spaces where there is no possibility of confidential conversation. Because of high caseloads or for other reasons, mental health counselors in the “supportive living units” do not develop, implement or monitor individualized treatment plans for prisoners in their care. Meaningful mental health counseling is in such short supply that prisoners are often pressed into service as “mental health aides” to assist in counseling other prisoners with serious mental illnesses.

49. Defendants do not provide adequate access to mental health therapy

and counseling for mentally ill prisoners who require these services. In particular,

Phillips State Prison

lacks rehabilitation services, individual therapy, sexual abuse therapy, and other appropriate programming to serve the individual mental health needs of its patients.

50. Because Phillips State Prison is responsible for securing mentally ill probation detainees from the six probation detention centers named in paragraph 26, and is one of only two men's state prisons providing any mental health programming for Level IV patients, the defendants shuffle prisoners between the various crisis stabilization units, acute care units, segregation units, and supportive living units to make room for the constant influx of prisoners and detainees transferred from other institutions. As a result, housing assignments for mentally ill prisoners are often determined more by the administrative needs of the prison and the Georgia Department of Corrections than by the mental health needs of the prisoner.

51. Mentally ill patients at Phillips State Prison are not informed of their right to refuse medication nor are they afforded sufficient protection from involuntary administration of medication, despite the existence of written Standard Operating Procedures ("SOPs") that, if followed by prison security and medical

staff, might provide adequate protection. Involuntary administration of medication includes not only those instances where an administrative review board has determined medication may be forced, but also the much more common practice of security staff and mental health counselors forcing prisoners to take medication by telling them they will be stripped of all their clothing and placed in an isolation cell, “taken care of” by the CERT team, or otherwise punished if they refuse.

52. There is inadequate review of the mental health progress of patients who are involuntarily medicated, resulting in prolonged and unnecessary use of forced medication. Both official and *ad hoc* decisions to forcibly medicate prisoners are made for the convenience of staff and not for the protection or treatment of the mental health patient.

53. Upon information and belief, the following incidents typify the inadequately supervised and cavalier use of forced medications at Phillips State Prison:

A. Prisoner 16 suffers from schizoaffective disorder and has been on Haldol since 1992, when he was at Augusta State Medical Prison. He would like to discontinue the Haldol shots, but has been told repeatedly that he will be locked down in an isolation cell if he refuses to take the shot. When Prisoner 16 was placed in disciplinary lockdown (D2), he twice asked for a grievance form because he had been locked down for so long. Both times, the counselors agreed to bring him one, but never did.

B. After Prisoner 1 was assaulted and had his nose broken by two officers in or around May 2001, as described in paragraph 33.A., he was stripped naked and locked down in an isolation cell with nothing but a metal bed and a paper gown. He did not receive any mental health counseling. Rather, Prisoner 1 was prescribed a total of fourteen pills. He does not know the names or effects of these drugs. He informed the prison that he would like more counseling and does not want to take all of these medications. Prison staff informed Prisoner 1 that he would be returned to the isolation cell if he refuses to take all the pills.

C. Prisoner 17 was forced to take monthly Haldol injections against his will. On or around November 26, 2001, Prisoner 17 filed a grievance requesting that he no longer be forced to take Haldol shots. A week after he submitted the grievance, Prisoner 17 was ordered to remove all his clothing and was placed in an isolation cell containing nothing but a metal bunk. Prisoner 17 continues to receive Haldol shots. Six weeks after filing his grievance, Prisoner 17 had not received any response.

D. Prisoner 4 was placed in five-point restraints in or about July 2001 for refusing to take a Haldol shot. While restrained, he continued to verbally refuse to take any medication. Despite his protests, he remembers being administered two Haldol shots and additional pills.

E. Prisoner 18 was locked down in an isolation cell on or around November 2001 for refusing to take his medication for schizophrenia. He stayed in lockdown for two weeks, and nurses or counselors told him that he would never get out unless he took his medication. He was transferred out of lockdown when he agreed to start taking the medications, but was soon moved back to a more restrictive setting when he refused to take his medications. Prisoner 18 would like to discontinue his medication and receive more counseling, but has been told that he will be thrown into a isolation cell and forcibly medicated if he does not continue to take his medication. Prisoner 18 has filed a grievance about being forced to take medication. It is uncertain whether he has received a response.

F. Prisoner 19, who is severely mentally ill and mentally retarded,

strongly believes that he will be killed by guards if he refuses to take a Haldol shot every two weeks and pills every day. Accordingly, he submits to the pills and Haldol shots. On some occasions, Prisoner 19 has not been able to get a grievance form from his counselor or his counselor has told Prisoner 19 that the issues he wants to complain about are “not grievable.” One time Prisoner 19 was able to write a grievance about his mental health treatment, but Defendant Nelson wrote back to him that the allegations did not support the facts. When Prisoner 19 asked Defendant Nelson to appeal the grievance, she responded that the grievance did not need to be appealed.

G. Prisoner 20 is involuntarily administered Haldol every two weeks, because he is concerned that he has soap in his saliva, and has expressed this concern to mental health staff. However, he is not functionally impaired, nor is he a danger to himself or others. Prisoner 20 has repeatedly requested mental staff not to forcibly medicate him with Haldol because it impairs his ability to concentrate. Prisoner 20 asked his counselor for a grievance to write about needing medication for the side effects of his mental health medication. His counselor told him that this was not a grievable issue. He also wanted to grieve the fact that he was forced to take injections of Haldol. Prisoner 20 was told by his counselor that this was not a grievable issue either.

54. The practice of forcibly medicating mental health patients against their will, even when the patient is not functionally impaired or a threat to the safety of himself or others, is ongoing and continues to affect plaintiffs and other class members.

55. The wholesale subordination of treatment goals to security interests in the forced-medication of mental health patients negates any positive therapeutic effects that may be achieved by the mental health staff with the current level of

evaluation, treatment and monitoring.

56. The abusive and volatile environment created by security staff exacerbates the psychiatric symptoms of mental health patients, including but not limited to feelings of paranoia, dissociation from reality, and feelings of extreme hopelessness. The current level of evaluation, treatment and monitoring by mental health staff is insufficient to overcome this hostile, anti-therapeutic environment.

F. Defendants punish class members at Phillips State Prison for exhibiting symptoms of mental illness and/or mental retardation, causing their mental health to worsen.

57. Prisoners with mental illness are punished when they exhibit symptoms of their illness, such as when they cut themselves with razor blades or other sharp instruments, when they move slowly due to the side effects of their medication, or when they speak in response to auditory or visual hallucinations.

58. Defendants do not provide adequate independent psychiatric evaluation of the connection between a prisoner's disciplinary infraction and his mental illness to determine whether the mental health patient should be punished, which increases the risk of inappropriately punishing prisoners because they are sick. The disciplinary procedure as written and as applied does not reasonably accommodate mentally ill or mentally retarded prisoners.

59. After the prison determines that a mental health patient should be disciplined, defendants do not provide adequate independent psychiatric evaluation to determine a disciplinary measure appropriate to the prisoner's mental illness. Mental health patients who are punished for exhibiting symptoms of mental illness are repeatedly locked down in isolation cells, typically for two or three weeks at a time, but sometimes for months at a time. Locking these mentally ill individuals in isolation cells for extended periods of time often leads to decompensation of their mental state, resulting in further mental breakdown.

60. Upon information and belief, the use of punitive isolation cells in response to symptoms of mental illness are typified by the following incidents:

A. After cutting himself in the incident described in paragraph 44.A., Prisoner 12 was given a disciplinary report for "cutting" and locked down in a punitive isolation cell for 42 days.

B. Prisoner 21 is a mentally ill juvenile. In or around the middle of December, 2001, Prisoner 21 heard officers telling other prisoners that he was a "snitch," and felt his life was in grave danger. After officers ignored his repeated requests to see the captain, Prisoner 21 "snapped" and smeared peanut butter from his lunch tray on his face and body and on the walls of his cell. He was given a disciplinary report for "insubordination and threatening an officer." Prisoner 21 appealed his disciplinary report.

C. Prisoner 22 is a mental health patient with an extensive history of self-mutilation. In October 2001, Prisoner 22 was housed in the D2 unit and heard Mr. Strickland being killed in a nearby cell. Prisoner 22 responded to the stress by cutting himself, and was subsequently given a disciplinary

report and placed in an isolation cell for “destruction of state property.”

61. The ongoing practice of issuing disciplinary reports for behavior arising out of mental health and/or mental retardation, along with the failure to adequately treat mental illness and the lack of access to rehabilitative and treatment programming, results in class members serving longer sentences than prisoners in general population. The accrual of disciplinary sanctions plays a significant role in causing class members to spend more time in prison by delaying their parole eligibility date and/or increasing the chances that they will be denied parole.

G. Defendants have acted and continue to act with deliberate indifference to plaintiffs' serious mental health needs and to the substantial risk of serious harm caused by the brutality of prison staff, self-injurious conduct and assaults by other prisoners.

62. The practices, policies and procedures challenged in this lawsuit were developed and implemented with deliberate indifference to the

substantial risk of serious harm faced by mentally ill and/or mentally retarded prisoners at Phillips State Prison. Defendants have known about this risk, which is longstanding, pervasive, well-documented, and apparent to any knowledgeable observer. They have been placed on notice by numerous documented examples of drastic deterioration in prisoner mental health resulting from improper treatment; and through numerous complaints, oral and written, formal and informal, by prisoners and family members of prisoners affected by the prison's constitutional deficiencies. Defendants have also been put on notice by the occurrence of three violent deaths in less than a year, a number far higher than normal for the state's prisons. The defendants' practices, policies and procedures have caused and, unless changed, will continue to cause, needless human suffering, deterioration of mental status, and an increased risk of death.

H. Defendants have established an administrative grievance procedure that discriminates against mentally ill and mentally retarded prisoners, and has interfered with their access to the courts.

63. The administrative grievance procedure of the prison requires a prisoner to complete an informal grievance process before he can even receive a formal grievance form. This policy discriminates against mentally ill and/or mentally retarded prisoners who are strongly encouraged by their mental health counselors - the gatekeepers to the grievance procedure - to forego or withdraw a grievance. There is no reasonable accommodation in the grievance process for mentally ill and/or mentally retarded prisoners.

64. Defendants have interfered with the access of lawyers from the Southern Center for Human Rights, a non-profit law office, to class members for the purpose of providing legal assistance and legal information to them. This interference has taken the form of prison staff opening legal mail outside the presence of prisoners, demanding that mentally ill and/or mentally retarded prisoners return opened legal mail to prison staff, and, upon a request by lawyers and paralegals from the Southern Center for Human Rights for a legal visit,

interrogating the prisoners about their interest in seeing a lawyer. These practices needlessly interfered with the ability of prisoners to understand and pursue administrative and legal remedies for the mistreatment and abuse described in this *Complaint*.

65. In addition to preventing mentally ill and/or mentally retarded prisoners from obtaining relief in federal court, the lack of an available grievance process increases the risks of negative responses to their environment, including self-mutilation and rages.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

66. The plaintiffs have exhausted all administrative remedies to the extent that they were available.

67. Administrative remedies are not available to many members of the putative class due to the refusal of prison staff to provide prisoners with grievance forms, prison staff' coercion of and interference with efforts by mentally ill and/or mentally retarded prisoners to file timely grievances and appeals, explicit threats by prison staff toward mentally ill and/or mentally retarded prisoners, and lack of access to the grievance process due to prisoners' mental illness, mental retardation, illiteracy, and/or the effects of medication. To make matters worse, prison staff continually change the rules or the application of the rules for prisoners to obtain, file and appeal a grievance. For example, some counselors tell prisoners that they can get a grievance form only from the chief counselor, which can take several days or longer; other counselors give prisoners grievance forms immediately. Some prisoners are told that forced medication is not grievable, others are told that it is grievable. Some prisoners receive responses to their grievances, others do not. The lack of consistency makes the process impossibly confusing for persons who are already compromised by mental illness and/or mental retardation.

VII. CAUSES OF ACTION

68. Plaintiffs support the following claims by reference to paragraphs 1-5, 9-27, and 62-67 of this *Complaint*, in addition to the paragraphs cited below in

support of each claim:

69. Defendants' policies and practices in failing adequately to train, supervise and discipline prison staff who physically, sexually and verbally abuse class members constitute deliberate indifference to a substantial risk of serious harm and amount to cruel and unusual punishment in violation of plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 28-41 of this *Complaint*.

70. Defendants' policies and practices in failing to administer minimally adequate mental health treatment to class members, forcing them to take medication against their will, and punishing them for exhibiting symptoms of their mental illness, constitute deliberate indifference to inmates' serious psychiatric needs and amount to cruel and unusual punishment in violation of plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 46-61 of this *Complaint*.

71. Defendants' policies and practices in failing to protect class members from physical and sexual abuse by other prisoners constitute deliberate indifference

to a substantial risk of serious harm and amount to cruel and unusual punishment in violation of plaintiffs' rights under the Eighth and Fourteenth Amendment to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 35-41 of this *Complaint*.

72. Defendants' policies and practices in failing to protect class members from self-inflicted serious injury and suicide constitute deliberate indifference to a substantial risk of serious harm and amount to cruel and unusual punishment in violation of plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 42-45 of this *Complaint*.

73. Despite the existence of Standard Operating Procedures ("SOP") designed to regulate the forced medication of mental health patients, defendants' failure to in fact apply minimally adequate procedural

safeguards when force-medicating mentally ill prisoners violates plaintiffs' rights to substantive and procedural due process under the Fourteenth Amendment to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 51-56 of this *Complaint*.

74. Defendants' discrimination against class members in the provision of programming, including a failure to modify their programs to accommodate prisoners with mental illness and/or mental retardation, violates § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987, and Title II of the Americans with Disabilities Act, as codified in 24 U.S.C. § 12131 et seq. In support of this claim, plaintiffs incorporate by reference paragraphs 46-50, 58, 61 and 63 of this *Complaint*.

75. Defendants' discrimination against class members in the grievance and disciplinary system, including the failure to reasonably accommodate the needs of mentally ill and/or mentally retarded prisoners, violates § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987, and Title II of the Americans with Disabilities Act, as codified in 24 U.S.C. §

12131 et seq. In support of this claim, plaintiffs incorporate by reference paragraphs 33, 38, 57-61 and 63-65 of this *Complaint*.

76. Defendants' failure to train prison staff adequately to manage the special needs and problems of mentally ill and/or mentally retarded prisoners discriminates against class members in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987, and Title II of the Americans with Disabilities Act, as codified in 24 U.S.C. § 12131 et seq. In support of this claim, plaintiffs incorporate by reference paragraphs 28-45 of this *Complaint*.

77. Defendants' discrimination against class members in recreational and/or vocational programs, including the failure to provide recreational and/or vocational programs reasonable and appropriate for mentally ill and/or mentally retarded prisoners, violates § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended by the Civil Rights Restoration Act of 1987, and Title II of the Americans with Disabilities Act, as codified in 24 U.S.C. § 12131 et seq. In support of this claim, plaintiffs incorporate by reference paragraphs 49 and 61 of this *Complaint*.

78. Defendants' interference with mentally ill and/or mentally retarded prisoners' use of the prison's administrative grievance procedure as described in paragraphs 63, 64 and 67, above, has denied class members access to the courts in violation of their rights under the First and Fourteenth Amendments to the United States Constitution. In support of this claim, plaintiffs incorporate by reference paragraphs 63-67 of this *Complaint*.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court:

79. Assume jurisdiction over this action;

80. Adjudge and declare that the acts and omissions of the defendants with regard to the class members violate the First, Eighth and Fourteenth Amendments of the United States Constitution; the Rehabilitation Act, 29 U.S.C. § 794; and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132 et seq.;

81. Enjoin defendants, their agents, officials, employees, and all persons acting in concert with them, under color of State law or otherwise, from continuing the unconstitutional and illegal acts, conditions, and practices described in this complaint;

82. Award plaintiffs the costs of this lawsuit and reasonable attorney's fees; and

83. Order such additional relief as the Court may deem just and proper.

Respectfully submitted this 15th day of March, 2002 (and refiled March 20, 2002),

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Tamara Serwer, GA Bar No. 617053
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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LACOYA FLUELLEN, et al.,)
)
)
 Plaintiffs,)
) Civil Case No.

v.) 1:02-CV-479-JEC
)
JIM WETHERINGTON, et al.,) Class Action
)
Defendants.)
_____)

CERTIFICATE OF COMPLIANCE

I, Lisa Kung, do hereby certify that the foregoing document has been prepared in 14-point Times New Roman font and complies with LR 5.1B.

Respectfully submitted this 20th day of March, 2002.

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

_____)	
LACOYA FLUELLEN, et al.,)	
)	
Plaintiffs,)	
)	Civil Case No.
v.)	1:02-CV-470-JEC
)	
JIM WETHERINGTON, et al.,)	Class Action
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

I, Lisa Kung, do hereby certify that on this date I have caused to be served a copy of the *First Amended Complaint (Refiled)* by hand delivery upon defendants' attorney at the following address:

John C. Jones
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-1300

Respectfully submitted this 20th day of March, 2002.

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