

[Heading]

Dear Senator;

Under the Constitution of Massachusetts, specifically Article 7, it reads:

Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

As underlined in *Loring v. Young* (1921) 132 N.E. 65, 239 Mass. 349 "the will of the people must always prevail". Unlike members of the House, Senators represent the entire state, and in Massachusetts a large segment of your constituents have, and continue to be gravely impacted by the collateral consequences associated with the evident shortcomings seen throughout our criminal justice system. While the United States is home to less than 5% of the world's population, it presently holds a little over 20% of its prisoners. As concerning as this is for all of our citizens, it is universally known that African Americans' interaction with the criminal justice system is greater than any other demographic in this country. Figures have steadily shown that they are stopped and searched, arrested, convicted, and sentenced to harsher penalties under what has been branded as facially neutral laws.

We at Stuck On Reply, along with other groups across the Commonwealth, have been discussing this issue with the communities who have been most impacted by the disparities in the system. We have been committed to share with them how the structural inequities seen in the criminal justice system serves to exacerbate the inequalities that are already prevalent in our society, and are in fact deepened by them.

According to a report issued by the Executive Office of the President of the United States in April of 2016 entitled "Economic Perspectives On Incarceration And The Criminal Justice System" the projected lifetime chance of African Americans to eventually serve prison time almost

doubles any group. Also noted in the report is the data which reveals that "U.S. incarceration has grown rapidly over the last three and half decades, driven by changes in the criminal justice policy, not underlying changes in crime."(pg.3)(emphasis added) What's concerning to us is how laws are being utilized to systemically disenfranchise African Americans at a level akin to the legislative provisions ratified after the successful passing of Thirteenth Amendment of the United States in 1865. How have we arrived at a place in history where the protection, safety, prosperity, and happiness of African Americans in this country is as concept as foreign as it had been pre-Emancipation Proclamation?

The Thirteenth Amendment of the United States Constitution, having been ratified by the legislatures of twenty-seven of the thirty-six states in 1865, currently reads as follows:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have the power to enforce this article by appropriate legislation.

(emphasis added)

This Amendment is seen by most Americans as representing one of the most instrumental steps shown to African Americans to eventually guarantee them the fundamental rights which appertain to the essence of citizenship, but at it's core is a notation that was enacted to continue to reinforce their status of being constituted as civilly dead in this country. This of course is it's exception clause. The 13th Amendment's exception clause has it's origins in Article 6 of Thomas Jefferson's Northwest Ordinance of 1787. This provision sought to place "free" and "fugitive" Blacks into private slavery rather than the public penal sector as a punishment for crimes fashioned from racially discriminatory laws. History has shown that it's passing by the then Senate and House did not represent a collective shift in the moral stance held to keep African Americans confined to a subservient class. The political economy more than any force inspired the "duly convicted" exception's insertion within the 13th Amendment, and the enactment as a whole.

Even while this Amendment was being debated, our then Republican Senator from Massachusetts, Charles Sumner, had voiced his legitimate concern that the dehumanizing system that this Amendment was to end as part of a sordid chapter of America's history had at it's heart language that could easily re-establish it:

Now unless I err, there is an implication from the word that men may be enslaved as a punishment of crimes whereof they shall have been duly convicted. There is a reason ...for at that time...I understand it was the habit in certain parts of the country to convict persons or doom them as slaves for life as punishment for a crime, and it was not proposed [through this Amendment] to prohibit this habit.

At the time his position on the wording of this Amendment was seen by those who had taken part in the congressional sessions as a reach, but the loophole that he noticed soon converted the criminal justice system into a profit centered instrument of contracted prison labor that had now disproportionately impacted Blacks who had been newly emancipated. As discussed by author Dennis Childs in his book "Slaves of the State" (2015):

How exactly was the statutory criminalization of Black freedom that occurred in the antebellum period lawfully propelled into the future, producing various formations of neoslavery from the privatized public dominative regimes of convict leasing, peonage, and criminal-surety to the no less dominative and economically interested public systems of the county chain gang, County Farm, and penitentiary plantation? How, for instance, was it possible for the poverty-and-hunger induced crime of hog stealing to move so nimbly from being deemed "petty larceny" by Maryland's state Legislature ...to being dubbed "grand larceny" by Mississippi's state Legislature after the supposed suspension of it's Black Code?

Slave auctions seamlessly transitioned into convict leasing even after the passing of the Thirteenth Amendment due to then President Andrew Johnson's actions to reconstruct the South to again give States the freedom to legislate discriminatory provisions aimed exclusively at criminalizing African Americans. The Congressional Committee on Reconstruction highlighted how the "use of vagrancy laws and extra-legal coercive devices forced Blacks back into agricultural labor under strict discipline". This was a practice actually validated by every

state and federal case dealing with peonage from *Clyatt v. United States* (1904) until it was later reversed decades later. There is also a long line of legal precedent, going all the way back to *Slaughterhouse* (16 Wall 36, 21 L.Ed 395) which have found that prisoners cannot lay claim to the abolitionist aspect of the Thirteenth Amendment due to it's allowance of "slavery and involuntary servitude" as a penal sanction.

History has shown that new ways to target African Americans have been invented with the intent of creating the criminal class that statistics now show them magnifying in modern America. The question is was this by coincidence or by design? When the initial architects of this country's legislative system were men who themselves held invidious racial prejudices based in the criminogenic stigma placed on African Americans, why then is it so difficult to conclude that the laws they enacted were camouflaged with a discriminatory intent? Just as the institution of slavery could not have grown without legislative measures that had allowed for it to be practiced throughout this country, the mass incarceration of African Americans today could not exist without the enforcement of "color-blind" statutes discriminatorially administered as openly as anytime in this country's history.

The doctrine of "separate but equal" upheld in *Plessy v. Ferguson* (163 U.S. 537) and the distinction in *Plessy* and *The Civil Rights Cases* (109 U.S. at 11) between civic and social equality paved the way for decades of public and private racism supported by law in the United States. When the Supreme Court had considered the separate but equal Doctrine as one where constitutional protection could be extended, it had taken over half a century for a new bench to renounce it's standing during the historic ruling in the school desegregation case, *Brown v. Board of Education* (347 U.S. 483). When will the Senate and the House hold their predecessors accountable for their passing of an Amendment that had a foreseen paralyzing impact on African Americans since it's inception?

The Thirteenth Amendment's exception clause has directly contributed to the systemic subjugation of Black people in this country, and it's amending would represent more than an symbolic undertaking to begin to remove some of the most overt vestiges of legislative pro-neoslavery

provisions that exist today. At this very moment this Amendment is the main obstacle in preventing those currently incarcerated from introducing legitimate claims under the Fair Labor Standards Act (29 USCS § 202) where they are being forced to work for a private employer during their incarceration while being paid little to nothing at all. All Federal prisoners who are physically and mentally able to work must do so under it's mandatory program legislated under 18 USCS § 4121. The Involuntary Servitude passage in the Thirteenth Amendment, which was initially crafted for the "duly convicted", has been subtly incorporated into the culture of detainment which hold pre-trial detainees in addition to immigration hold overs. As seen in McGarry v. Pallito (687 F.3d 505) a pre-trial detainee successfully sued the institution where he was being held due to their premature enforcement of the Involuntary Servitude provision within the Thirteenth Amendment.

As a part of the elected Representation for the citizens of Massachusetts, we would like to extend an invitation to you, and other members of our Massachusetts delegation to constructively take part in one of our planned events centered on amending the 13th Amendment. In the end it is our aim that you will exercise your powers under Article 5 in the United States Constitution by introducing a joint resolution to rescind the exception clause from the Thirteenth Amendment by petitioning for an immediate repeal. Utilizing the same methodical outline shown which had lead to the successful repealing of the Eighteenth Amendment through the Twenty-First Amendment we are confident that you can get Washington to send it back to the states for immediate ratification.

In closing, as poetically vesseled through the mind of Alice Walker, the Pulitzer prize winning author:

In the end freedom is a personal and lonely battle, and one faces down fears of today so that those of tomorrow might be engaged

Sincerely;