



LEXINGTON-FAYETTE URBAN COUNTY HUMAN RIGHTS COMMISSION

Raymond A. Sexton, Executive Director
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Statement from Michael Swartzentruber, Senior Minister South Elkhorn Christian Church

I serve South Elkhorn Christian Church as Senior Minister, along with my colleague in ministry, Rev Holly Fuqua, Church moderator, Peter Brackney, and Outreach Leader, Barb Ellerbrook. We are here to support the amazing youth of our church who have recognized the injustice of Article 25 of the Kentucky Constitution, with its exception clause for slavery; and they are doing something about it—advocating to make a long overdue change that has escaped our collective attention and remains more than a symbolic vestige of the past, but an insidious invitation to the future; a future we can do something about.

These young people are intelligent, compassionate, and driven to put their faith in a God of limitless love into

action, to make a difference toward healing the historic brokenness of our community, and witness to a more inclusive, mutually flourishing vision of our shared life. They are catalysts in a needed movement to bring people together and do something for the well-being of all Lexingtonians, and all Kentuckians. I am so proud of them. I believe in them. And I hope you'll listen, learn, and do your part to follow their leadership. Thank you.



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Statement from Brewer Conley, Youth Member South Elkhorn Christian Church

Hello, my name is **Brewer Conley** and I am here today as one of the South Elkhorn Christian Church youth representatives. Back in June of 2022, some of the high school youth at my church went to Birmingham Alabama for an anti-racism mission trip. While we were there we went to multiple African American and equal rights monuments, as well as the Legacy Museum and the Lynching Museum. A few months after we got back, it was brought to our attention that there is still a slavery exception clause in the Kentucky Constitution. After everything that we saw in Birmingham this broke our hearts and we decided to put our resources together and take action. Although this exception clause is not being used, getting rid of it would send a huge message. The youth at my church have a goal to get equal rights for everyone and be role models for these future generations. So today, we are here in Frankfort, working towards our goals and making an impact on today's society. Thank you.



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Statement from Kennedy Fuqua, Youth Member South Elkhorn Christian Church

Hello. **My name is Kennedy Fuqua.** I am a new voter, and will be voting for my first time this coming Tuesday. As you now know, slavery is still legal in the state of Kentucky. Section 25 of the Kentucky Constitution states; "Slavery and involuntary servitude in this State are forbidden, except as a punishment for crime, whereof the party shall have been duly convicted." Now, if you are baffled by this, let me further explain the history. The last time this section was revised was September 28, 1891, after being ratified on August 3, 1891. It's been 132 years since this has been edited. And while that might sound crazy, I found it even crazier that since slavery in America was abolished in 1865, Kentucky ratified this section 26 years later. Let that sink in a little bit. 26 years after the United States abolished slavery, Kentucky added this clause. I have a few questions about this. First of all, why would slavery be permitted in Kentucky long after being abolished, and why is it still legal today? Though I'm sure others have tried in the past, why is it taking a group of kids in 2023 to start making a change? Maybe some of you didn't know this was still in the Kentucky State Constitution. I get that. I didn't know this until last year. That being said, it's still important to amend this section even though it's often overlooked. It's all about the what-ifs. Though many might say that no one would use this section for the worse, what if they did? What if nothing ever changes? That sounds like a world I would never want to live in. But that's the thing, we're living in that world right now. It's been 132 years. YEARS. There has been no change. So, let's go back to the what-ifs, shall we? What if this section was amended, and the world started to become a better place? What if others hear about what this group of teenagers are doing in Kentucky, and decide to make positive changes in their communities too? Doesn't that sound better? Now I ask you; why? Why would anyone think that this clause is still valuable in our Constitution? We believe this needs to be changed. It needs to be changed, but we can't do it alone. Will you sit back and let this detrimental phrase create potential problems, or do you help us do what's right, and fix it. We need your help and your support. Thank you for your time.



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Statement from Cora Breitigan, Youth Member South Elkhorn Christian Church

Hello, my name is **Cora Breitigan** and I am here with the South Elkhorn group. Our youth group has frequently discussed how we believe that involuntary servitude should be abolished from our state constitution. Before our youth group started talking about this topic, I was completely unaware that this exception clause existed. I discovered that it permits slavery as punishment for a crime, linking back to the United States' history of convict leasing. After the civil war, harsh and discriminatory laws targeted African Americans, sending them to prisons. The prisons would then lease these convicts to private railways, mines, and large plantations. While states profited, prisoners earned no pay and faced brutal conditions. This isn't something that should have ever been in our constitution and it certainly shouldn't be here today. Not only is this clause shocking to our generation, but it also reflects poorly on the state of Kentucky. The act of Kentucky removing this clause also might inspire the other 18 states with this clause to remove it. My youth group and I believe that every Kentucky citizen deserves the right to feel secure knowing that this clause is removed. Involuntary servitude strips the enslaved of their basic human rights. It's heartbreaking knowing that something like this would still exist in today's world and there isn't a single good reason why this clause should exist. As President Franklin D. Roosevelt once said, "The constitution was not intended to be static, but to be adaptable to changing needs." It is not acceptable to not work to remove this clause because it is too difficult or too long of a process. My youth group and I are committed to doing whatever it takes and we urge you to do the same. Thank you for your time.



LEXINGTON-FAYETTE URBAN COUNTY
HUMAN RIGHTS COMMISSION

Resolution

To All Whom These Present Shall Come:

WHEREAS, It is the purpose of the Lexington-Fayette Urban County Human Rights Commission to safeguard all individuals within Lexington-Fayette County from discrimination because of race, color, religion, national origin, sex, age, disability, familial status and sexual orientation / gender identity in connection with housing, employment and public accommodations; and

WHEREAS, The rights of inhabitants of Lexington and Fayette County are inextricably bound to the rights and protections bestowed upon all residents of the Commonwealth of Kentucky; and

WHEREAS, Section 25 of the Kentucky Constitution still allows for slavery and involuntary servitude as a punishment for a crime; and

WHEREAS, Section 25 was ratified on August 3, 1891, and revised on September 28, 1891, and has not been amended since; and

WHEREAS, Provisions like Section 25 were used by states and the Federal Government to allow formerly enslaved people to be unjustly targeted, disproportionately incarcerated, and forcibly exploited for their labor; and

WHEREAS, The exception clause for slavery and involuntary servitude negatively impacts Lexington and the Commonwealth of Kentucky, morally, socially and spiritually,

NOW, THEREFORE BE IT RESOLVED, the members of the Commission and the staff call on the Kentucky Legislature to amend Section 25 of the Constitution of Kentucky, striking the exception clause, so it would clearly and directly read, "Section 25 slavery and involuntary servitude in this State are forbidden."

FURTHER BE IT RESOLVED, that a copy of this Resolution be spread upon the Minute Book of This Commission, and dated at Lexington, Kentucky this 23rd day of January 2023. Furthermore, a suitably engrossed copy of this resolution be forwarded to the Lexington-Fayette Urban County Council and urge them to pass a similar resolution, to the Kentucky Commission on Human Rights and the Kentucky Legislature on behalf of the entire Lexington-Fayette Urban County Human Rights Commission.

On Behalf of the Commission:

Attest:


Barbara Ellerbrook
Commission Chair


James L. Dickinson
Commission Secretary

EMANCIPATION ON THE BALLOT

Why Slavery is Still Legal in America – And How Voters Can Take Action

BY SIMEON SPENCER

Former Thurgood Marshall Institute Research and Operations Associate

Last Juneteenth, members of Congress reintroduced a constitutional amendment to end slavery in the United States. You may be thinking, “Wait? Didn’t the Thirteenth Amendment *already* do that?” Not exactly.

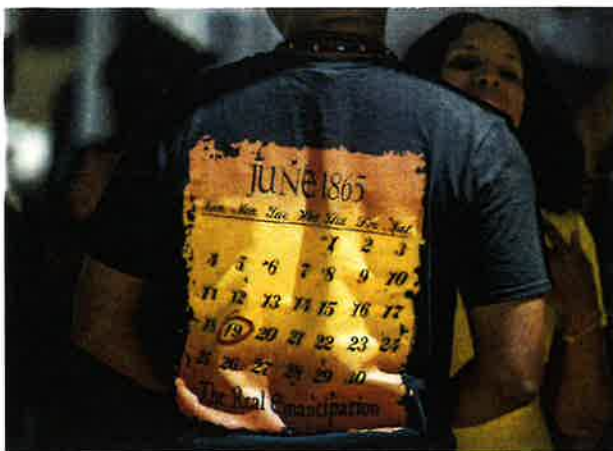
The Thirteenth Amendment to the U.S. Constitution is recognized by many as the formal abolition of slavery in the United States. However, it only ended chattel slavery – slavery in which an individual is considered the personal property of another. While formally eliminating the most recognizable form of slavery, the Thirteenth Amendment also enabled slavery to be transformed into something else that still has harrowing ramifications for Black people today.

Section I of the Thirteenth Amendment reads:

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

The Abolition Amendment, a joint resolution currently before the Senate Judiciary Committee, proposes amending the U.S. Constitution to include an article reading, “[n]either slavery nor indentured servitude may be imposed as a punishment for a crime,” which would formally close the exception loophole. However, the bar for passing a constitutional amendment is high, requiring a two-thirds vote by the House and Senate, as well as ratification by three-fourths of all state legislatures. Thus, this resolution has not gained much traction.

Because of this federal inertia, states have instead been driving efforts to eliminate slavery through ballot initiatives to amend their own constitutions. This November, voters in Tennessee, Oregon, Alabama, Louisiana, and Vermont will decide whether to revise their constitutions to remove exceptions to the abolition of slavery. If you are a resident in one of these states, you will soon have the opportunity to make your voice heard on this important issue this fall.



A man wears a T-shirt to commemorate Juneteenth during the Juneteenth Freedom Celebration in Irvine, California on June 19, 2022. (Photo by Leonard Ortiz/MediaNews Group/Orange County Register via Getty Images)



Ben Haith holds the Juneteenth flag in front of his home. Haith created the Juneteenth flag in 1997. The date on the flag, June 19, 1865, commemorates the date Gen. Gordon Granger issued General Order 3 that freed thousands of people enslaved in Texas nearly two years after the

POST-1865: AN EVOLUTION

Since the Thirteenth Amendment’s passage in 1865, its exception clause has enabled slavery to persist for generations through punitive systems. Following the Civil War, many southern states imposed **Black Codes**: laws that restricted Black people’s labor by requiring apprenticeships and labor contracts for employment, often with former owners of enslaved people. Black Codes also established systems of **convict leasing** and **vagrancy laws**, which incentivized the arrest, incarceration, and subsequent re-enslavement of Black people. These laws criminalized poverty, unemployment, and homelessness in order to meet the labor needs of former owners of enslaved people following emancipation.

Jim Crow laws, which have their roots in Black Codes, further entrenched systems of apartheid for Black Americans in almost every aspect of life in the post-Reconstruction era, including the criminal justice system. These laws legalized racial segregation throughout public life and were further ingrained through the establishment of the “separate but equal” doctrine by the U.S Supreme Court in *Plessy v. Ferguson*. For Black Americans, noncompliance with Jim Crow laws was often met with imprisonment — and violations of these laws and subsequent arrests could result simply from eating at a kitchen counter or entering a public space through the front door.

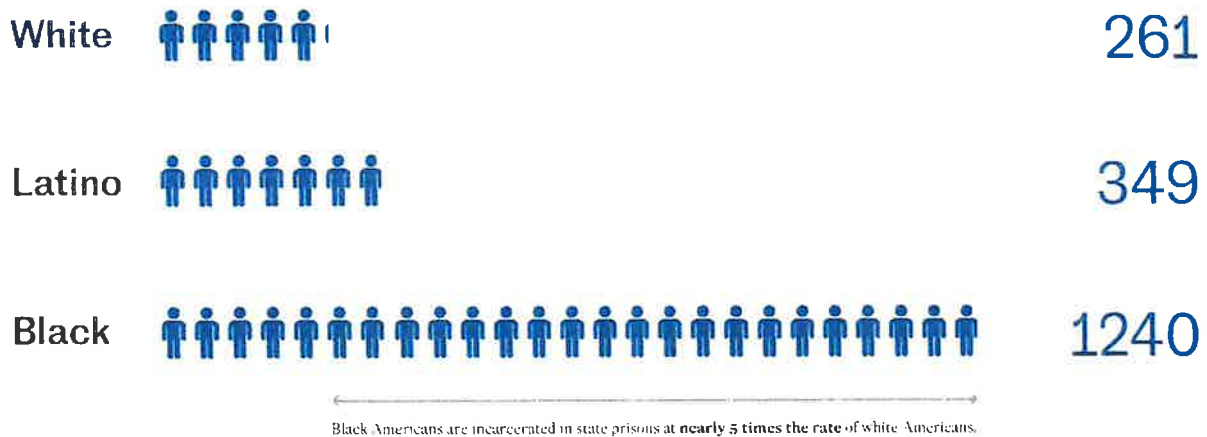
Following the end of the Jim Crow era, the **War on Drugs** fueled mass incarceration by disproportionately filling America’s prisons with Black Americans (Black men, in particular) and enforcing racial control through the criminal justice system. This resulted in a redesign of America’s racial caste system that nominally adhered to the principle of colorblindness following the fall of Jim Crow. Indeed, author and civil rights litigator Michelle Alexander has described this phenomenon as “**the New Jim Crow**.”

These are not just dark legacies of the past, however. Today, there are still incarcerated **Black Americans picking crops on plantations** across the country. Regardless of whether it’s through agricultural work or otherwise, the prison labor system creates a lack of control over one’s labor and freedom — particularly for Black people. It’s no surprise, then, to find that in some states, incarcerated workers are not paid at all.

Figure 1

 = 50 persons

Average Rate of Black, Latinx and White Imprisonment Per 100,000 Residents



DATA SOURCE: [Clemens, E. A. \(2020\). Frameworks \(2019\). Bureau of Justice Statistics, U.S. Census Bureau \(2018\). Age, sex, race, and Hispanic or Latino population in the United States: 2019. AL00116](#)

The ballot initiatives facing voters in 2022 reflect the continued growth of a promising state-level trend of closing this Thirteenth Amendment loophole. In 2016, Colorado first considered a ballot initiative that asked voters whether to remove language from the state's constitution that permitted slavery and involuntary servitude. Amendment A eventually passed in 2018 after 65% of voters in Colorado approved its adoption. It was the first state to explicitly abolish slavery *without exception* in its constitution since Rhode Island did so in 1842. This momentum continued in 2020, as successful ballot initiatives in Nebraska and Utah also removed language in their constitutions that permitted slavery as a criminal punishment, receiving 68% and 80% of the vote, respectively.

WHY BALLOT MEASURES MATTER, DESPITE THEIR LIMITATIONS

Currently, there are 19 states with constitutions that explicitly permit either slavery, involuntary servitude, or both as punishment for a crime. We cannot assume that people and state governments are wholly against slavery and involuntary servitude, as states are clearly taking advantage of these constitutional exceptions.

Ballot measures, while imperfect, are an important first step toward a full-throated repudiation of the slavery and involuntary servitude that continues in these states. Indeed, while some critics may characterize these measures as symbolic, they are important because the shift in the legal status of incarcerated workers may allow prison laborers' claims to certain worker protections and rights. Previous challenges by prison laborers for worker protections have failed, in large part, due to slavery and involuntary servitude loopholes.

However, following the passage of Amendment A, incarcerated workers in Colorado are now testing the extent to which the removal of their status as "slave" laborers affords them legal protections. Two men filed suit in February 2022, alleging that the state forced them to work despite their health conditions and, in doing so, violated the ban on slavery and involuntary servitude in Colorado's constitution. They are asking the courts to allow for a class-action lawsuit so that other incarcerated people can join this action.

Oregon will also provide another reflection point regarding the importance of passing state amendments to abolish slavery. On one hand, Senate Joint Resolution 10 (SJR 10) in Oregon – which is on the ballot in November – highlights why the state also must revise other existing state laws, such as Measure 17, which mandates 40 hours of weekly, involuntary labor by incarcerated individuals, and allows both private and public sectors to use that labor. However, as Riley Burton, the co-founder of the Oregonians Against Slavery and Indentured Servitude (OASIS) coalition, emphasized in a February 2022 *Esquire* interview, passing SJR 10 is still an imperative step toward eradicating codified slavery as the basis of the criminal justice system.

"We constantly get asked, 'Well, is this just a symbolic thing?'" Burton told Esquire, " ... and the question is, is the amendment being used as just a symbolic thing? If the basis of your system is built on slavery, then it will have an effect. And if it's not [built on slavery] then it won't."

What actually ensues if Oregon's ballot initiative passes is yet to be determined. However, it is still unquestionable that these ballot initiatives matter – especially to those most affected by them. Indeed, the incarcerated people in Oregon who worked on SJR 10 see passing it as a critical step toward fair wages – and as a way to remove their reality from obscurity.



"We constantly get asked, 'Well, is this just a symbolic thing? And the question is, is the amendment being used as just a symbolic thing? If the basis of your system is built on slavery, then it will have an effect. And if it's not [built on slavery], then it won't.'"

- **Riley Burton**, Oregonians Against Slavery and Indentured Servitude co-founder, in an interview with Esquire

CHANGES NEEDED BEYOND BALLOT MEASURES

Of course, much more still needs to be done to correct carceral systems that have existed for generations and address problematic practices and laws that will remain in place even if these state ballot measures pass. The limitations of these ballot initiatives highlight the extent to which our systems continue to rely on the cheap, uncompensated labor of people without freedom.

Take, for instance, the changes that might be made to the Tennessee Constitution if its ballot measure passes. The new language would read, "Slavery and involuntary servitude are forever prohibited. Nothing in this section shall prohibit an inmate from working when the inmate has been duly convicted of a crime."

The second sentence was included at the behest of the Tennessee Department of Correction due to concerns that incarcerated people in Tennessee, who are paid, may fall under the slavery ban. While incarcerated individuals in Tennessee are — technically — paid for working, the rate is a far cry from veritable compensation, at \$0.17 to \$0.75 per hour before any mandatory deductions.

Moreover, while some might say that some prison labor is technically voluntary, this ignores the fact that, for an incarcerated individual, refusing to work can result in the loss of privileges, solitary confinement, or the denial of parole. It also overlooks the notion that simple necessities sold to incarcerated people are often exorbitantly priced, especially when compared to the wages they earn. Exploitation and coercion are at the heart of it all. The lines between slavery and involuntary servitude and prison labor are, in some cases, distinguished only by a few cents on the dollar.



"The United States cannot in good faith confront the legacy of chattel slavery while still permitting vestiges of that economy to persist. Dehumanization allowed for the evils of chattel slavery. Dehumanization allows slavery and involuntary servitude to continue under the guise of a carceral state. The words in our constitutions matter, and people who are incarcerated remain people. Thus, what we allow to happen behind those walls says more about our humanity than anything they have done."

Some might say that prison labor has its virtues. Perhaps, some speculate, prison labor may help incarcerated people become contributing members of society after they are released. This conveniently disregards many truths. It ignores that incarcerated firefighters in California are barred from being employed as firefighters as free people. It disregards the discriminatory nature of criminal background checks in hiring. To paraphrase writer Mitchell S. Jackson in a February 2022 *Esquire* article — what, to a society that is unwelcoming, is the purported virtue of that labor? There are, certainly, incarcerated people who want something to do while serving their time. At the very least, that labor should be voluntary and fairly compensated.

The United States cannot in good faith confront the legacy of chattel slavery while still permitting vestiges of that economy to persist. Dehumanization allowed for the evils of chattel slavery. Dehumanization allows slavery and involuntary servitude to continue under the guise of a carceral state. While it would be unwise to equally conflate the specific horrors of chattel slavery with those of the modern carceral state, we should use the lessons of chattel slavery to inform what we do *today*. The words in our constitutions matter, and people who are incarcerated *remain* people. Thus, what we allow to happen behind those walls says more about our humanity than anything they have done.

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