

# COMMISSION ON RACE & ACCESS TO OPPORTUNITY

## Minutes

November 6, 2023

### Call to Order and Roll Call

An informational meeting of the Commission on Race & Access to Opportunity was held on November 6, 2023, at 1:00 PM in Room 129 of the Capitol Annex. Representative Killian Timoney, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Senator David P. Givens Co-Chair; Representative Killian Timoney Co-Chair; Senator Gerald A. Neal, and Representatives George Brown Jr. and Samara Heavrin.

Guests: David Childs, D.D., Ph.D., Director, Black Studies Program, Northern Kentucky University; Cynthia B. Fox, Executive Director, KY Commission on Human Rights; Raymond Sexton, Executive Director, Lexington-Fayette Urban County Human Rights Commission; Brewer Conley, Youth Member, South Elkhorn Christian Church; Kennedy Fuqua, Youth Member, South Elkhorn Christian Church; and Cora Breitigan, Youth Member, South Elkhorn Christian Church.

LRC Staff: Brandon White and Brett Gillispie.

### A Discussion on Amending Section 25 of the Kentucky Constitution

David Childs, D.D., Ph.D., Director, Black Studies Program, Northern Kentucky University; Cynthia B. Fox, Executive Director, KY Commission on Human Rights; Raymond Sexton, Executive Director, Lexington-Fayette Urban County Human Rights Commission; Brewer Conley, Youth Member, South Elkhorn Christian Church; Kennedy Fuqua, Youth Member, South Elkhorn Christian Church; and Cora Breitigan, Youth Member, South Elkhorn Christian Church presented to the commission regarding a proposed amendment to Section 25 of the Kentucky Constitution.

Dr. Childs discussed the history of Reconstruction, the abolition of slavery, and Section 25 the Kentucky Constitution. The text was ratified in 1891 and bans slavery and involuntary servitude in the Commonwealth except as a sentence for a crime. This exception allowed for the widespread implementation and use of convict leasing laws, in which states leased primarily Black prisoners to private companies and plantations to exploit as unpaid and involuntary labor for their business ventures as a substitute for slave labor. The 13th Amendment to the United States Constitution contains similar language. Convict leasing occurred primarily during the Nadir of American Race Relations, a period lasting from the end of Reconstruction in 1877 to the early 1900s that marked the peak of racial violence and oppression of the Black community by white Americans as a backlash to the ending of slavery and post-Civil War gains in rights for Black Americans. In order to replenish their labor force lost due to the ending of slavery and maintain white supremacy in the former slave-holding states, southern legislatures passed Black Codes in order to impose harsh employment and criminal regimes on former slaves, forcing them into a state of indentured servitude through a variety of methods including convict leasing.

Dr. Childs has done extensive writing on Black Codes, the Civil War, and the legacy of

enslavement of Africans in the American South.

In response to a question from Chairman Timoney, Dr. Childs said that a form of convict leasing is still occurring today through the private prison system despite officially being made illegal due to the fact that companies are unfairly compensating prison labor. However, programs that fairly compensate or educate inmates and prepare them for their future are positive and should not be considered convict leasing or forced labor. In response to a follow-up question, Dr. Childs said that he is concerned about the exploitation of Black prisoners in for-profit prisons and views it as slavery by another name. Mr. Sexton added that Vermont specifically addressed the issue of voluntary employment and education programs when similar language in the Vermont Constitution was amended.

Mr. Sexton said that exception clauses in the U.S. and various state constitutions allowed for the implementation of Black Codes and the proliferation of forced labor in the second half of the 19th century. Black Codes were the predecessor to the Jim Crow regime abolished in 1964 by the Civil Rights Act. However, the exception clauses in the U.S. Constitution and the constitutions of a dozen states remain. Mr. Sexton commended the youth group of South Elkhorn Christian Church for their work in bringing the exception clause in Section 25 of the Kentucky Constitution to the attention of the Lexington-Fayette Urban County Human Rights Commission and other key policy makers.

Mr. Sexton read a statement on behalf of South Elkhorn Christian Church Senior Minister Michael Swartzentruber calling for the elimination of the exception clause in Section 25.

Ms. Fox said that slavery was a part of Kentucky before the Commonwealth was founded and that slavery was enshrined in the original 1792 Constitution of Kentucky. The Kentucky General Assembly rejected the 13th Amendment to the United States Constitution, only ratifying it in 1976, over one hundred years after the amendment was formally adopted. Kentucky was one of many states to adopt Punishment Clauses that targeted the formerly enslaved Black population alongside Black Codes in order to strip them of their rights and continue to exploit their forced labor long after the official demise of slavery. The harsh criminalization of common behaviors and situations such as unemployment and profanity filled jails with primarily Black laborers. She called for the removal of the exception clause from Section 25 of the Kentucky Constitution in light of this history.

In response to a question from Senator Neal, Dr. Childs said that the goal of the prison system should be reform and that employment and education programs should have that goal in mind.

Senator Neal thanked the presenters and said that he would be working to amend the language.

In response to a question from Representative Brown, Dr. Childs said that his books are likely banned in Kentucky or would be banned after gaining publicity.

Representative Brown said that the prison system is not helping former convicts become productive members of society, and that he intends to help amend the language, as well. He praised the youth of South Elkhorn Christian Church for their dedication and leadership.

Senator Givens proposed possible language to amend Section 25 of the Kentucky Constitution eliminating the exception clause and suggested the need for the electorate to be able to

understand the language that the General Assembly may adopt. Senator Neal and Senator Givens discussed the proposed language.

Ms. Conley, Ms. Fuqua, and Ms. Breitegan said that they were influenced to speak in favor of changing Section 25 by their trip to the Legacy Museum in Alabama which ignited a desire to make a positive change in Kentucky.

In response to a question from Chairman Timoney, Ms. Conley said that once the youth members became aware of the language of Section 25, they met with church leaders and community leaders including the Lexington-Fayette Urban County Human Rights Commission to discuss the issue and what their action plan should be. In response to a follow-up question, Ms. Conley, Ms. Fuqua, and Ms. Breitegan said that they brought up this issue with their educators and family.

Chairman Timoney praised the youth of South Elkhorn Christian Church for their activism and civic engagement and encouraged them to continue to get involved.

Representative Brown thanked the youth of South Elkhorn Christian Church for highlighting injustice and fighting to make a positive change.

Senator Neal thanked the youth of South Elkhorn Christian Church for their presentation and said that they reaffirmed his confidence in the next generation of Kentuckians.

Representative Heavrin said that she was proud to see young women taking leadership and speaking on hard topics and encouraged them to continue their work.

Ms. Conley said that she and her fellow members of the youth group of South Elkhorn Christian Church went on an antiracism mission trip to Birmingham, Alabama to view sites honoring Black History and the Civil Rights Movement including the Legacy Museum and the Lynching Museum. After the youth learned about the existence of the exception clause in Section 25, they were motivated by their experiences in Alabama to take action against the exception clause.

Ms. Fuqua said that Section 25 of the Kentucky Constitution permits enslavement as a punishment for a crime despite its abolition. She pointed out that this clause was ratified in 1891, 26 years after the abolition of slavery. She added that it is important to amend this section due to the painful history of slavery and the potential for further abuse. She hoped that others would be inspired by their actions to make positive changes in their own communities. She asked that the General Assembly eliminate the exception clause.

Ms. Breitegan reiterated the connection between the exception clause, slavery, and convict leasing. She said that this clause should never have been included in Kentucky's Constitution and should not still be there today. She said that there is no justifiable reason for the clause to remain in the constitution, and that removing it may set an example to other states. She added that the South Elkhorn Christian Church youth group is committed to doing whatever work is needed to eliminate this language.

Senator Neal said that he hopes that the commission will continue into the future, but that it needs to be able to provide formal policy recommendations to the General Assembly. He added that he has drafted legislation to reexamine past actions by the General Assembly for their

unintended negative consequences in criminal justice and health issues.

Senator Givens said that he sees the commission continuing forward in its work and believes that it is important to continue to provide a forum where speakers are able to come and have frank conversations with policymakers about issues involving racism and equity across the Commonwealth. He commended the speakers who have come before the commission for their hard work and dedication. He announced that he will not be returning as Co-Chairman of the commission in the 2024 interim and expressed disappointment in the record of attendance for members of the commission and expressed desire for accountability on attendance. He went on to say that it has been a joy for him to serve alongside the commission's members and staff in his three years as Co-Chairman.

### **Adjournment**

There being no further business, Chairman Timoney adjourned the meeting at 2:20 p.m.