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The Impacts of Compulsory Prison Labor Ballot Initiatives on Pregnant & Postpartum Incarcerated Women of Color

A POLICY BRIEF BY
THE RACIAL JUSTICE PROJECT

NOVEMBER 2022

DISCLAIMER

This policy paper does not urge the public to vote in any particular way on these amendments, but rather seeks to inform voters of the measures' meaning and impact.



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Introduction

The 13th Amendment to the United States Constitution purported to abolish the institution of slavery, but it created an exception for compulsory labor performed by people convicted of crimes. In November 2022, voters in Alabama, Vermont, Louisiana, Tennessee, and Oregon will be asked to vote on ballot initiatives that would strike language from their state constitutions that currently allows states to force incarcerated people to perform labor with minimal or no pay.¹ This policy brief examines the legal language of these ballot initiatives and evaluates whether each measure, if approved by voters, will actually close the compulsory labor loophole. In addition, this policy brief focuses on the particular impact that these measures may have on incarcerated women of color.

This policy paper examines the legal language, legislative history, and practical effect of each of the ballot initiatives that aim to change state laws relating to prison labor, with an emphasis on how these proposals could impact incarcerated women. This paper presents a gendered analysis of compulsory prison labor by focusing on the reality that women, in comparison with men, are more likely to encounter a particular form of compulsory prison labor: being forced to perform work assignments during pregnancy and immediately after giving birth.² Performing compulsory work assignments without proper accommodations while pregnant or postpartum can lead to negative physical and mental health outcomes, including death.

This policy brief has three important findings:

- First, while all five ballot measures purport to eliminate the compulsory prison labor exemption, only two measures (Alabama and Vermont) would actually

Post-Election Update November 10, 2022

On November 8, 2022, voters in Alabama, Vermont, Oregon and Tennessee approved ballot measures that strike 13th Amendment-like language from their state's constitution. Previous language had created a loophole, allowing each state prison system to force people experiencing incarceration to work for little or no pay if they were duly convicted of a crime. It is important to note that the exact language of each measure varies. While the measures in Alabama and Vermont unequivocally close the loophole, those in Tennessee and Oregon may close the loopholes, but this is dependent on how these measures are interpreted and implemented.

Most importantly, voters in Louisiana did not approve a similar measure on their ballot that purported to eradicate their state's compulsory labor exemption for incarcerated people, but may have actually expanded the forced labor loophole to all those who interact with the criminal legal system – not just those who are convicted.

For an in-depth analysis about the importance of these ballot initiatives, and their specific implications for incarcerated pregnant and postpartum women of color, please read this policy brief.

remove this exemption if approved by voters. The measures in Tennessee and Oregon may close the forced labor loophole, depending on how they are interpreted. Most importantly, the measure in Louisiana could actually expand the compulsory labor exemption to include all those that interact with the criminal legal system, which includes more people than those who have been duly convicted of a crime.

- Second, this brief originally aimed to determine how these measures would impact incarcerated pregnant and postpartum women of color; however, it is very difficult to evaluate the impact of compulsory prison labor policies in most states because very few states actually generate publicly available data on the people held in their prison and jail systems. Even in states that generate some data on their populations of incarcerated people, the data is insufficiently specific to measure the impact on particular groups, such as women of color or pregnant and postpartum women. For instance, only two states (Alabama and Louisiana) have disaggregated race and sex data of their female prison population readily accessible. The other three states (Oregon, Vermont and Tennessee) disaggregate their data only by race *or* gender, so the number of women of color incarcerated within those states' prison systems is not available. In addition, there is not readily accessible data that reveals how many incarcerated women are pregnant and/or postpartum so examining how many such women are being forced to work without adequate accommodations is indeterminable.
- Third, analyzing compulsory prison labor through a gendered lens reveals that incarcerated women are often forced to perform labor while pregnant, and/or immediately postpartum, without reasonable accommodations. The ballot initiatives that would eradicate the compulsory prison labor loophole could ensure that incarcerated women are not required to work during these medically vulnerable periods.

Background

In state prisons across the country, roughly 800,000 incarcerated people³ are forced to engage in industrial labor such as harvesting vegetables, picking cotton,⁴ making license plates,⁵ sewing clothing,⁶ and performing custodial labor for governmental buildings⁷ for minimal or no pay.⁸ People who are incarcerated who want to work should be able to work, and they should also be compensated for their labor.

The Law & Impact of Compulsory Prison Labor

While the 13th Amendment to the U.S. Constitution aimed to end the legal institution of slavery in most instances, it included an exemption allowing states to force people who have been convicted of a crime to be punished by working under conditions that would otherwise constitute slavery or involuntary labor:

*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.* [emphasis added]

After the ratification of the 13th Amendment in 1865, many states quickly adopted similarly phrased prison slavery exemption language in their state constitutions.⁹ As of today, 19 states still have a prison slavery exemption in their constitution.¹⁰ This language has empowered state governments to force incarcerated people to perform jobs with little or no pay since they are not protected by the Fair Labor Standards Act.¹¹ Furthermore, numerous reports have noted the inhumane working conditions that incarcerated people are subject to during confinement. For instance, a recent watershed report from the Southern Prisons Coalition to the United Nations Committee on the Elimination of All Forms of Racial Discrimination shows that many regulations put in place to protect employees' safety do not apply to incarcerated workers and if an incarcerated worker is injured while working, they must prove that the prison officials knew that those conditions posed a substantial risk of serious injury but did nothing to protect the worker from harm.¹²

Women are the fastest growing population in state prisons. According to the Vera Institute for Justice, "The number of women incarcerated in the United States has skyrocketed in the last four decades, increasing 700 percent in 40 years.¹³ In 2019, there were more than 231,000 women and girls¹⁴ held in prisons and jails across the country. It's hard to believe that 50 years ago, almost 75 percent of counties held not a single woman in jail."¹⁵ Women of color are disproportionately among incarcerated women because they are more likely to experience an arrest,¹⁶ conviction, and incarceration¹⁷ when compared with their white female counterparts.¹⁸ As such, "slavery exemptions" could have an outsized impact on women of color.¹⁹

Race also plays a significant role in the types of jobs that women are involuntarily assigned while incarcerated.²⁰ For instance, according to the American Civil Liberties Union, incarcerated women of color are more likely to be given involuntary field and manual labor assignments—such as picking cotton²¹ or corn²²—as compared with incarcerated white women who are more likely to be given desk jobs.²³ What's more, incarcerated individuals who refuse to work frequently experience retaliation and are often placed into solitary confinement as punishment.²⁴

Compulsory Prison Labor Ballot Measures

The compulsory prison labor measures on the ballot this November are an important benchmark in the longstanding movement to eradicate *all forms* of slavery in the U.S.

Yet, oftentimes, ballot initiatives (BI) are written in ways that are legally confusing and politically misleading. This can sometimes cause people to vote in support of a measure that they in fact oppose, or vice versa. For instance, in 2016, voters in Colorado voted "no" on Amendment T, which asked the question:

Shall there be an amendment to the Colorado Constitution concerning the removal of the exception to the prohibition of slavery and involuntary servitude when used as punishment for persons duly convicted of a crime?

²⁵

However, just two years later in 2018, Colorado voters voted "yes" to Amendment A which more clearly asked:

*Shall there be an amendment to the Colorado Constitution that prohibits slavery and involuntary servitude as punishment for a crime and thereby prohibits slavery and involuntary servitude in all circumstances?*²⁶

Legal scholars and advocacy groups both agreed that people voted against the 2016 amendment not because of “overt racism and more [because of] the confusing way the amendment was written.”²⁷ This example helps illustrate that language matters.

The next section of this brief will examine the legal language of each compulsory prison labor measure on the November 2022 ballot to determine, if passed, whether these measures would impact incarcerated women, and in particular, incarcerated women of color.

Examination of Legal Language & Legislative History

Alabama

Ballot Initiative Language

This November, Alabama voters will have the chance to approve an overhaul of the entire state constitution to remove all racially discriminatory language, including that which applies to education, voting, and forced prison labor.²⁸ Currently, Article 1, Section 32 of the state constitution reads:

*That no form of slavery shall exist in this State; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.*²⁹

If approved, section 32 of the newly enacted Constitution of Alabama of 2022 would read:

*No form of slavery shall exist in this state; and there shall not be any involuntary servitude.*³⁰

Approval of this amendment will actually eliminate the current state constitution’s slavery exemption that currently allows Alabama state prisons to force people who are incarcerated to perform involuntary labor.³¹

Legislative History

This is not the first time that Alabama voters will have a chance to remove the compulsory labor exemption from the state’s constitution.³² Two previous ballot initiatives aimed at removing racially discriminatory language from the constitution failed to be approved by voters.³³ In 2004, Alabama voters declined to pass a measure that would have removed portions of the state constitution that allowed for the “separation of school by race,” and a provision related to the poll tax.³⁴ A state anti-poverty non-profit, Alabama Arise, suggests that this measure failed because some “feared that change could force lawmakers to increase taxes and boost public school funding.”³⁵ In 2012, voters again voted down a ballot measure that would have expunged this language.³⁶

Compulsory Prison Labor: Work & Pay

In Alabama, most people who are experiencing imprisonment are required to work, yet they are not paid for the jobs that they are forced to perform, such as food preparation, laundry, and facility maintenance.³⁷ A small number of incarcerated people, including men and women, are paid 25 to 75 cents per hour for making goods such as office furniture and janitorial products.³⁸

Vermont

Ballot Initiative Language

Vermont considers itself to be the first state to outlaw slavery.³⁹ But, just like 19 other states, its constitution still contains an exemption for prison labor.⁴⁰ Vermont is the only state that has a slavery exemption for those who owe a debt, damages or fines.⁴¹

This November, voters will decide whether or not to amend their state constitution to excise its compulsory labor exemption. More specifically, Proposition 2 reads:

*To see if the voters will amend the Vermont Constitution by amending Article 1 of Chapter 1 to read: "Article 1. [All persons born free; their natural rights; slavery and indentured servitude prohibited] That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore ~~no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like~~ slavery and indentured servitude in any form are prohibited."*⁴²

This proposition would remove the present constitutional compulsory labor exemption.⁴³

Legislative History

This is the first time that an anti-slavery measure will be before Vermont voters.⁴⁴

Compulsory Prison Labor: Work & Pay

People incarcerated within the Vermont Department of Corrections perform jobs within the prison itself, like custodial work and working within the facility's kitchen.⁴⁵ Right now, people incarcerated in Vermont are constructing a school building.⁴⁶ They are also only making 25 cents per hour.⁴⁷

Louisiana

Ballot Initiative Language

In Louisiana, voters will consider Amendment No. 7,⁴⁸ which asks:

*Do you support an amendment to prohibit the use of involuntary servitude except as it applies to the otherwise lawful administration of criminal justice?*⁴⁹

If approved by voters, the new language would read:

*(B)(1) Slavery and involuntary servitude are prohibited, ~~except in the latter case as punishment for crime.~~*⁵⁰

However, the ballot measure then appears to add the slavery exemption back into the state constitution through a new subsection that would read:

(2) Subparagraph (1) of this Paragraph does not apply to the otherwise lawful administration of criminal justice.

This ballot initiative is legally problematic for many reasons. First, its language is confusing. While it purports to strike language that pertains specifically to incarcerated people in one section, the next section adds new vague language that could be interpreted in countless ways.

In other words, this ballot initiative does not actually remove the compulsory labor exemption, it just changes the exemption itself by making its parameters more vague and confusing. Most importantly, if voters approve the measure, then slavery and involuntary servitude will only be prohibited as “punishment for a crime,” yet, it will be allowed for “otherwise lawful administration of criminal justice,” which this measure fails to define. This proposed language could potentially expand the compulsory labor exemption by, for example, allowing the state to force people who are arrested and charged with a crime, but not yet convicted of a crime, to perform involuntary labor. This is especially troubling for a state that incarcerates more people before trial than any other state on record.⁵¹

Legislative History

In 2021, Louisiana Rep. Edmond Jordan, a Democrat, sponsored a bill to completely excise the prison slavery exemption from the state’s constitution, without a new exception.⁵² His bill failed in committee with a 9-5 vote.⁵³ Opponents argued that the bill was unnecessary, intangible and purely symbolic.⁵⁴ The bill was then amended to include the vague exception for “the otherwise lawful administration of criminal justice” and the updated language unanimously passed both houses of the Louisiana legislature.⁵⁵

Compulsory Prison Labor: Work & Pay

In Louisiana state prisons, people who are incarcerated are forced to perform manual field labor, such as harvesting crops and cutting grass,⁵⁶ on former plantations.⁵⁷ Other incarcerated people are forced to carry out assignments like sewing, printing, and even custodial work inside of the Governor’s mansion.⁵⁸ This work is often unpaid, and when people are paid, their wages average between 2 to 40 cents per hour.⁵⁹

Tennessee

Ballot Initiative Legal Language

This November, voters in Tennessee will be asked to vote on the following proposal⁶⁰:

*Shall Article I, Section 33 of the Constitution of Tennessee be amended by deleting the section and substituting instead the following?
Section 33. 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.*

If approved,⁶¹ this amendment would prohibit forced prison labor, but still allow people who are incarcerated to work on their own accord for pay or as part of on-the-job training.⁶²

Legislative History

It appears to be the first time that Tennessee voters will approve or disapprove an anti-slavery measure.

Compulsory Prison Labor: Work & Pay

Upon entrance into the state prison system, people who are incarcerated are given mandatory work assignments such as “preparing food, cleaning the institutions, landscaping, laundry, recycling, and maintaining buildings and equipment.”⁶³ Incarcerated workers in “institutional work lines pick up trash along roadways, clean out underbrush in fields surrounding the perimeter of the prison, cut firewood, and plant, tend and harvest crops.”⁶⁴ Notably, the Tennessee Department of Corrections utilizes a “system of incentives and disincentives” to ensure a “positive” work performance.⁶⁵ In Tennessee, incarcerated workers are either unpaid or make on average 17 to 59 cents per hour.⁶⁶

Oregon

Ballot Initiative Language

This November, Oregon voters will have the opportunity to vote to approve or reject Oregon Measure 112, which provides:

Amends Constitution: Removes language allowing slavery and involuntary servitude as punishment for crime.

A “yes” vote amends the constitution to remove language allowing slavery and involuntary servitude as punishment for crime; yet the measure would still allow work programs to be ordered as part of sentencing.⁶⁷ A “no” vote retains current language prohibiting slavery and involuntary servitude except as punishment for crime.⁶⁸

There is a law in Oregon that requires a nonpartisan committee to write a short and simple explanation of each ballot measure.⁶⁹ In this summary, the committee recognizes

that this ballot measure “would work in tandem with 10 Section 41 of the Oregon Constitution, which establishes work requirements for adults in custody, and is not intended to repeal that section.”⁷⁰ Thus, this ballot initiative would remove the compulsory prison labor exemption, but keep intact language that still allows the state to require individuals to perform labor through the state work requirements program. It is unclear how this measure would impact current provisions requiring incarcerated people to enroll in work programs.⁷¹

Yet, most incarcerated workers in the state of Oregon are not paid, and it is uncertain how ballot measure 112 may affect this practice.⁷²

Legislative History

Ballot measure 112 appears to be the first time that Oregon voters will vote on a prison slavery exemption. However, in 2002 voters passed a ballot initiative to remove state constitutional language that declared:

*No free negro, or mulatto, not residing in this state at the time of the adoption of this constitution, shall come, reside, or be within this State, or hold any real estate.*⁷³

Oregon has a long anti-Black history.⁷⁴ The state notoriously outlawed slavery, but in an effort to protect an all-white majority, its constitution also did not permit free Black individuals to live in the state.⁷⁵ Therefore, if passed, this ballot measure would impact all incarcerated people and it would have a particular significance for incarcerated people of color, who historically were not even welcomed in the state.

Compulsory Prison Labor: Work & Pay

The many jobs that people perform include custodial services, laundry services,⁷⁶ fabricating metals, producing garments and textiles, contact center support, print and mail, and furniture production.⁷⁷ Incarcerated people also perform manual and skilled labor such as forestry work, parks maintenance, landscaping, building maintenance, roofing and painting, limited construction, and other projects.⁷⁸ There is no verifiable evidence of how much—if any—wages are paid to incarcerated workers in Oregon.

Specific Impacts of Compulsory Prison Labor Reforms on Incarcerated Women

The negative impact that pregnant, birthing, and postpartum women experience while incarcerated cannot be separated, or considered wholly distinct, from the pregnancy, birthing, and postpartum experiences that women face outside of the prison walls.⁷⁹ Research that shows the rampant maternal mortality crises, particularly the high rates of maternal mortality experienced by Black women, has been widely reported.⁸⁰ Yet, less is known about the maternal mortality rates of incarcerated women, including incarcerated women of color. Furthermore, in an effort to reduce maternal mortality, and other birthing complications, the Equal Employment Opportunity Commission,⁸¹ along with many organizations and advocates, have recommended that pregnant people be given

reasonable accommodations so that they can more safely perform their work assignments.

When state prisons are able to force incarcerated women to perform slave-like labor, particularly immediately following childbirth, the harm is no longer just personal to the incarcerated person themselves, but also to their infants, their families, their communities, and society writ large. Unlike their incarcerated male counterparts, many incarcerated women of reproductive age who enter the prison system while pregnant, or become pregnant while incarcerated, must give birth while in prison. And, current compulsory prison labor exemptions could be interpreted to allow prisons to force pregnant women to work mandatory assignments without adequate accommodations. Compulsory prison labor policies also enable prisons to force postpartum women to resume their work assignments without adequate rest and recovery times.

The American College of Obstetricians and Gynecologists (ACOG) recommends that prisons provide reasonable accommodations for incarcerated pregnant people.⁸² ACOG recognizes that pregnant individuals who are required to stand or participate in repetitive, strenuous, physical lifting are at risk of preterm birth and small-for-gestational-age infants.⁸³ For postpartum incarcerated workers, ACOG recommends that prisons grant incarcerated workers a mandatory recovery period of 4–6 weeks after delivery before forcing them to resume any normal activity.”⁸⁴ This also includes work assignments. ACOG suggests that prisons must take this recovery period into account before assigning work to such individuals during the postpartum period.⁸⁵

[Listening to the Advocates](#)

In preparation for this brief, the author interviewed experts who have been directly impacted by the carceral system, advocates who have been engaged in research that examines compulsory labor practices within prisons, and experts on the intersection of incarceration and maternal health.

Taylor Nuevelle is the Founder and Executive Director of Who Speaks for Me?, a national nonprofit she designed while incarcerated that interrupts and dismantles the “trauma-to-prison-pipeline” for women, girls, and LGBTQ people. Ms. Nuevelle experienced incarceration within the federal prison system, yet her experience illuminates what happens within the confines of women’s prisons. She reports:

The pregnant women that I did time with still had to work. They were not given any reasonable accommodations. Usually, the hospital clears people to come back to work within 36 hours after giving birth. When they return from medical they are immediately required to work again. There is absolutely no acknowledgement that you even gave birth. The biggest issue that I see is postpartum depression, which could be alleviated if the physical and mental health of pregnant and birthing incarcerated workers was acknowledged.

She also shared a story of how a fellow incarcerated woman, Abigail,⁸⁶ was treated during her pregnancy, birthing, and postpartum experience:

Abigail found out she was pregnant after she had been arrested. She wanted an abortion, but because she was only 17 years old she had to get permission from her parents. However, they wouldn't grant her permission to have an abortion because it was against their religious views. She was forced to carry the pregnancy to term. After turning 18, and being sentenced to 10 years, she gave birth. The prison gave her a furlough to deliver and placed her in her parents' custody. But, just a week after she gave birth, she was forced to go to a prison camp to work. When she was working, her breastmilk came in, but she wasn't able to breastfeed since she was separated from her infant. She became really depressed. She couldn't get out of bed to work. She was punished for not working and sent to a county jail that was even further away from her child.

In another instance, Ms. Nuevelle spoke of another pregnant incarcerated woman who gave birth but continued to bleed for over 30 days after giving birth. The postpartum woman put in a sick call but the prison sent her to the wrong doctor. As a result of continuous bleeding, she became anemic and suffered other postnatal complications that could have been avoided if the prison system had provided her with proper medical care.

Carolyn Sufrin, MD, PhD works for the Department of Gynecology and Obstetrics at Johns Hopkins School of Medicine's Center for Medical Humanities and Social Medicine. She is also the Director of Advocacy and Research on Reproductive Wellness of Incarcerated People⁸⁷ and the lead author of the ACOG guidance on care for pregnant and postpartum individuals experiencing incarceration.⁸⁸ In her words, policies governing reasonable accommodations “vary from facility to facility, and in some cases, it may not even be a written policy.” With respect to data in a forthcoming Pregnancy in Prison Statistics (PIPS) study⁸⁹ that focuses on pregnancy policies, Dr. Sufrin noted that:

We conducted a baseline survey of pregnancy policies and accommodations. [While], the manuscript reporting results from that baseline survey is still in press, I can share that 4 out of 22 state prison systems [within our study] did not allow pregnant people to work, and 9 out of 22 state prison systems routinely lightened the workload for jobs.

Jennifer Turner, a human rights researcher, lawyer, and co-author of the groundbreaking report *Captive Labor*,⁹⁰ investigated accounts of incarcerated workers who were forced to work while experiencing severe medical issues.

Ms. Turner's research revealed that when incarcerated mothers are punished for not working, they are often placed in solitary confinement and intentionally separated from their children through loss of visitation privileges and loss of even written communication.

Other research has shown that when an incarcerated person “fails to perform their assigned jobs with ‘reasonable speed and efficiency’ they are often placed into solitary confinement for 30 days for first offense and up to 180 days for a third offense.”⁹¹ The harms of solitary confinement are well known,⁹² and being placed into solitary confinement for refusing to engage in slave-like labor is particularly heinous.

For birthing people in particular, ACOG recommends that pregnant people, including those in the postpartum period, should not be placed in solitary confinement.⁹³ ACOG acknowledges that the mental health impacts of solitary confinement are compounded during pregnancy and the postpartum period.⁹⁴ For instance, they suggest that “being in solitary confinement can limit access to timely health care, especially when urgent pregnancy concerns arise, and solitary confinement can also limit mobility and often by default results in bedrest, which has documented harms in pregnancy.”⁹⁵

Impact of Current Prison Labor Referenda on Incarcerated Pregnant and Postpartum Women

If a majority of voters vote “yes” for the ballot measures in Alabama, Vermont, Tennessee, and Oregon, then people who are incarcerated may have the ability to demand a reasonable wage for all types of work. Furthermore, incarcerated pregnant and postpartum women may be able to request and receive reasonable accommodations. If voters vote “no,” then all incarcerated workers, including those who are pregnant and postpartum, may still to be forced to work without pay, without any recourse, and without reasonable accommodation.

Most notably, if the Louisiana ballot measure is approved by voters, incarcerated pregnant and postpartum workers, including those who are women of color, could be negatively impacted for two specific reasons:

1. In 2020, Louisiana voters approved an anti-abortion ballot measure that effectively prohibited abortion in the entire state. Thus, “forced birth” is currently legally happening inside of its state prisons and there is no way for incarcerated women to access abortion in another state. Therefore, women of reproductive age who enter the state prison system and are pregnant, or become pregnant, will have to carry those pregnancies to term and the prospect of forced labor while pregnant or during postpartum is highly likely.
2. Most significantly, Louisiana’s ballot measure, if approved, could actually expand the compulsory prison labor exemption, which would heavily impact all pregnant, birthing and postpartum women who interact with the criminal legal system, and not just those experiencing incarceration.

If Louisiana voters vote “no,” then the exemption will not be expanded, but the state can continue to force all incarcerated workers, including those who are pregnant and postpartum, to work without pay, without reasonable accommodation, and without any real recourse.

Conclusion

The prospect of new measures in Alabama, Louisiana, Oregon, Vermont, and Tennessee that would actually close the compulsory prison labor loophole could have a particular impact on women who give birth while in prison, by requiring prisons to amend or eradicate their compulsory labor policies to provide reasonable accommodations for incarcerated pregnant and postpartum women. In addition, closing the compulsory labor exemption could help ensure that women who choose to give birth are not forced to work immediately after giving birth, which could help reduce the maternal mortality rate of incarcerated women.

Voters should understand that while these laws purport to remove their state's involuntary servitude exemption, only two actually will close such loophole - Alabama and Vermont. However, the measures in Tennessee and Oregon may or may not eliminate the exemption, depending on how they are interpreted. Most concerning, if approved, is the measure in Louisiana which may expand the current compulsory prison labor exemption.

¹ This policy paper does not urge the public to vote in any particular way on these amendments, but rather seeks to inform voters of the measures' meaning and impact.

² Note that many people are able to become pregnant, not just those who identify as women. However, this paper uses the term women to describe the pregnancy and postpartum experiences of people assigned female at birth inside of women's prisons.

³ "Captive Labor: Exploitation of Incarcerated Workers," ACLU, Jun. 15, 2022, <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers#:~:text=Our%20nation%20incarcerates%20more%20than,people%20working%20on%20the%20outside.>

⁴ *Id.*, "In Louisiana's Angola prison, the majority of incarcerated people work in the fields. They harvest vegetables and pick cotton, enduring temperatures that average 92 degrees Fahrenheit and can rise as high as 105 degrees. To make a 7:00 a.m. start time, incarcerated people get up at 5:00 a.m. and are typically out in the fields until 4:00 p.m."

⁵ "License Plate Manufacturing Solutions for Correctional Facilities," 3M, last accessed Oct. 29, 2022, https://www.3m.com/3M/en_US/vehicle-registration-us/applications/correctional-facility-solutions/.

⁶ <https://www.prisonblues.net/>

⁷ "Cheap Inmate Labor Bothers Some Louisiana Lawmakers," Julia O'Donoghue, *The Times-Picayune*, https://www.nola.com/news/politics/article_f8dcd03-98dd-54e9-b058-88230a4e47e0.html.

⁸ "Captive Labor," ACLU, *supra* fn 3.

⁹ The following 20 states currently have 13th Amendment-like language in their state Constitutions: Alabama, Arkansas, California, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, Ohio, Oregon, Tennessee, Vermont, and Wisconsin): "Captive Labor: Exploitation of Incarcerated Workers," ACLU and Global Human Rights Clinic at University of Chicago Law School, 2022, https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf. Note that Colorado recently abolished their state Constitutional slavery loophole in 2018. Utah and Nebraska removed their slavery loophole by ballot initiative in 2020. And, Rhode Island abolished their slavery loophole 180 years ago in 1842, see: "Rhode Island, Slavery, and the Slave Trade" in *EnCompass: A Digital Sourcebook of Rhode Island History*, Joanne Pope Melish, Rhode Island Historical Society, last accessed October 29, 2022, <http://library.providence.edu/encompass/rhode-island-slavery-and-the-slave-trade/rhode-island-slavery-and-the-slave-trade/>.

¹⁰ "Emancipation on the Ballot: Why Slavery Is Still Legal in America - And How Voters Can Take Action," Simeon Spencer, NAACP Legal Defense Fund, updated Oct. 18, 2022, <https://www.naacpldf.org/13th-amendment-emancipation/>.

¹¹ "Prisoners are Not for Sale: Incarcerated Workers Deserve Employee Status," Natalie Hurst, UC Law Review, <https://uclawreview.org/2020/11/24/prisoners-are-not-for-sale-incarcerated-workers-deserve-employee-status/>; "Involuntary Servitude: How Prison Labor is Modern Day Slavery," Shira Hoffer, *Harvard Political Review*, Feb. 3, 2022, <https://harvardpolitics.com/involuntary-servitude-how-prison-labor-is-modern-day-slavery/>; "The Uncounted Workforce" on *The Indicator from Planet Money*, Cardiff Garcia & Darius Rafieyan, NPR, <https://www.npr.org/transcripts/884989263>.

¹² See: *Id.*; "Report Details Racial Discrimination, Violation of Human Rights in Southern Prisons," Jacob Holmes, *Alabama Political Reporter*, Jul. 18, 2022, <https://www.alreporter.com/2022/07/18/report-details-racial-discrimination-violation-of-human-rights-in-southern-prisons/> ("several states in the United States have also failed to meet several of the UN's Standard Minimum Rules for the treatment of incarcerated people, including; Work should help to prepare incarcerated people for their release from prison, including life and job skills; safety measures and labor protections for incarcerated workers should be the same as those that cover workers who are not incarcerated; and incarcerated workers should receive equitable pay, be able to send money home to their families, and have a portion of their wages set aside to be given to them upon release").

¹³ "The Sentencing Project: Fact Sheet," last accessed, Oct. 31, 2022, <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/>.

¹⁴ "Women's Mass Incarceration: the Whole Pie 2019," Aleks Kajstura, the Sentencing Project, Oct. 29, 2019, <https://www.prisonpolicy.org/reports/pie2019women.html>.

¹⁵ “Women’s Incarceration Rates Are Skyrocketing. These Advocates Are Trying to Change That,” *Nazish Dholakia*, Vera Institute of Justice, May 17, 2021, <https://www.vera.org/news/womens-voices/womens-incarceration-rates-are-skyrocketing>.

¹⁶ “Policing Women: Race and Gender Disparities in Police Stops, Searches, and Use of Force,” Prison Policy Initiative, May 14, 2019, <https://www.prisonpolicy.org/blog/2019/05/14/policingwomen/>. See also, *Invisible No More: Police Violence Against Black Women and Women of Color*, Andrea Ritchie, 2017.

¹⁷ See, the Sentencing Project, Fact Sheet: Incarcerated Women and Girls, Nov. 2020, <https://www.sentencingproject.org/app/uploads/2022/08/Incarcerated-Women-and-Girls.pdf>, “In 2020, the imprisonment rate for Black women (65 per 100,000) was 1.7 times the rate of imprisonment for white women (38 per 100,000). Latinx women were imprisoned at 1.3 times the rate of white women (48 vs. 38 per 100,000). The rate of imprisonment for Black and Latinx women has declined since 2000, while the rate of imprisonment for white women has increased. Between 2000 and 2020, the rate of imprisonment in state and federal prisons declined by 68% for Black women, while the rate of imprisonment for white women rose by 12%. The overall female incarcerated population stands nearly five times higher than in 1980. Between 1980 and 2020, the number of incarcerated women increased by more than 475%, rising from a total of 26,326 in 1980 to 152,854 in 2020. The total count in 2020 represents a 30% reduction from the prior year—a substantial but insufficient downsizing in response to the COVID-19 pandemic, which some states began to reverse in 2021.” Notably, “over half (58%) of imprisoned women in state prisons have a child under the age of 18.”

¹⁸ Scholar Michelle Goodwin calls this phenomenon, the new Jane Crow: “a modern adaptation of the intersectionality to which [Pauli Murray] referred to in the 1940s to describe the unyielding, state-sanctioned violence against Black women.” “The New Jane Crow: Women’s Mass Incarceration” for “Racing National Security,” Michele Goodwin, *Just Security*, Jul. 20, 2022, <https://www.justsecurity.org/71509/the-new-jane-crow-womens-mass-incarceration/>; “Invisible Women: Mass Incarceration’s Forgotten Casualties,” Michele Goodwin, 94 Texas Law Review 2, http://texaslawreview.org/wp-content/uploads/2016/03/Goodwin.Final_.pdf; “Fact Sheet: Incarcerated Women and Girls,” The Sentencing Project, updated Nov. 2020, <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>; “Beyond the Count: A Deep Dive into State Prison Populations,” Leah Wang et al, Prison Policy Initiative, Apr. 2022, <https://www.prisonpolicy.org/reports/beyondthecount.html>.

¹⁹ “Profile of Prison Inmates, 2016,” Lauren G. Beatty & Tracy L. Snell, U.S. Department of Justice: Bureau of Justice Statistics, Dec. 2021, <https://bjs.ojp.gov/content/pub/pdf/ppi16.pdf>; “Fact Sheet: Incarcerated Women and Girls,” The Sentencing Project, *supra* note 17.

Note that the U.S. Department of Justice’s Bureau of Justice Statistics does not provide intersectional data that accounts for both race and gender. In addition, this data includes people imprisoned in federal and state prisons.

²⁰ *Supra* note 3, Dolfinette Martin now works at Operation Restoration, a reentry organization for women in New Orleans. While incarcerated in Louisiana, she was assigned to manual agricultural labor in the fields. She described how white women worked in “prestigious jobs”—the dining hall, housekeeping, or the “snack shack” for visitors. But “there weren’t a lot of white girls in the field,” she observed. “The only people who could approach the Deputy Warden to ask for a job were white women,” she said.

²¹ Black male prisoners have also reported being forced to pick cotton. See, *Supra* note 3, “In Arkansas, Kaleem Nazeem was repeatedly placed in solitary confinement for months at a time at multiple state prisons, including Cummins Unit and Varner Unit, for refusing to pick cotton. He said, “I had an aversion to picking cotton. The first time I refused to pick cotton, I was placed in solitary confinement. I said I weren’t picking no cotton. For the whole cotton season, four months, I stayed in solitary confinement. Every time the cotton season came around and I found myself on hoe squad, then I opted out and found myself in solitary confinement.” He added, “I was truly experiencing modern day slavery. It was like, to me, to pick cotton was one of the symbols of slavery to me. I was trying to push back on what was basically a former reality for my ancestors and a present reality for me at that time.”

²² *Id.*

²³ *Supra* note 3.

²⁴ *Id.* “In Louisiana, if an incarcerated person refuses to work, fails to perform their assigned jobs with ‘reasonable speed and efficiency,’ or does not answer during work roll calls, they can be placed in solitary confinement for up to 30 days for first offense and up to 180 days for a third offense, although in practice people are placed in confinement for indefinite periods of time for these work offenses.” For example: people imprisoned in Louisiana stated that “Most of my lockdown came from refusing to

be a slave...working in fields of corn, etc. Free people riding horses with guns telling you to pick this, do that, and/or write you up for disciplinary just because he or she can." See also: "The United States of America's Compliance with the Convention on the Elimination of All Forms of Racial Discrimination," U.S. Southern Prisons Coalition, Jul. 14, 2022, <https://www.naacpldf.org/wp-content/uploads/Report-on-Southern-Prisons-Final-Copy-7.14.22.pdf> ("Not only is there a disproportionate use of solitary confinement based on race, but disparities are exacerbated at the intersection of race and gender. Across reporting jurisdictions, Black females only accounted for 21.5% of the total female custodial population, however, they comprised 42.1% of the female restrictive housing population"). "Time-In-Cell 2019: A Snapshot of Restrictive Housing," Correctional Leaders Association & The Arthur Liman Center for Public Interest Law at Yale Law School, September 2020, https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019.pdf.

²⁵ Amendment T, Colorado Ballot Initiative, 2016, <https://www.sos.state.co.us/pubs/elections/Initiatives/ballot/Statements/2016/AmendmentT/BallotTitle.pdf>.

²⁶ Sample Ballot, San Miguel County, Colorado, 2018, <https://www.sanmiguelcountyco.gov/DocumentCenter/View/3851/2018-General-Election-Sample-Ballot---All-Precincts>; Colorado House Concurrent Resolution 18-1002, https://leg.colorado.gov/sites/default/files/initiative%2520referendum_afinal.pdf.

²⁷ "Colorado Passes Amendment A, Voting to Officially Abolish Prison Slavery," P.R. Lockhart, Nov. 7, 2018, <https://www.vox.com/policy-and-politics/2018/11/6/18056408/colorado-election-results-amendment-a-slavery-forced-prison-labor-passes>.

²⁸ Sec. 286.02. Recompile of Constitution of Alabama. "The Legislature, upon the recommendation of the Director of the Legislative Services Agency through a proposed draft, may arrange this constitution, as amended, in proper articles, parts, and sections removing all racist language, delete duplicative and repealed provisions, consolidate provisions regarding economic development, arrange all local amendments by county of application during the 2022 Regular Session of the Legislature, and make no other changes." Many non-profit groups like Alabama Citizens for Constitutional Reform have been fighting for constitutional reform for over two decades: "Our History," Alabama Citizens for Constitutional Reform, last accessed Oct. 29, 2022, <https://www.constitutionalreform.org/our-legacy/>.

²⁹ See the 1901 ratified Alabama state Constitution, last accessed Oct. 31, 2022, <https://constitutii.files.wordpress.com/2013/02/alabama.pdf>.

³⁰ See: Proposed Alabama Constitution of 2022, Statewide Provisions, last accessed Oct. 29, 2022, <https://www.legislature.state.al.us/pdf/lsa/proposed-constitution/2022-constitution-statewide.pdf>.

³¹ See: "Women's Services Inmate Handbook," Alabama Department of Corrections: Research and Planning, Nov. 1, 2017, <http://www.doc.state.al.us/docs/PublicFemaleInmateHandbook.pdf>. Upon entrance to the Julia Tutwiler Prison for Women facility every inmate receives a handbook that discusses how to find their regular work assignment while also reinforcing the reality that their work can be involuntarily mandated. Even for inmates who are eligible to participate in the work-release program and work in the community for pay, the amount of money that they make is almost negligible because there are so many fees that they must pay to the state.

³² https://apnews.com/article/election-2020-race-and-ethnicity-alabama-constitutions-elections-d0278cbb8d1f72a73d06fd088316b5e5?utm_campaign=SocialFlow&utm_medium=AP&utm_source=Twitter

³³ Alabama Approves Bid to Cut Racist Phrases from Constitution, Jay Reeves, *Associated Press*, Nov. 4, 2020, <https://thehill.com/homenews/state-watch/524523-alabama-voters-approve-measure-to-remove-racist-phrases-from/>. See: "Alabama Voters Pass Amendment 4 to Address Constitution's Legacy of Racial Injustice," Equal Justice Initiative, updated Nov. 4 2020, <https://eji.org/news/amendment-4-addresses-alabama-constitutions-legacy-of-racial-injustice/>: In 2020, 67% of Alabama voters yes on Amendment 4 which allows the Alabama Constitution of 2022 question to appear on the November 2022 ballot.

³⁴ See: 2004 Proposed Amendments Statewide, Alabama Secretary of State, last accessed Oct. 29, 2022, <https://www.sos.alabama.gov/alabama-votes/voter/election-information/2004/proposed-amendments-state>; Amendment 2: "Proposing an amendment to the Constitution of Alabama of 1901, to repeal portions of Section 256 and Amendment 111 relating to separation of schools by race and repeal portions of Amendment 111 concerning constitutional construction against the right to education, and to repeal Section 259, Amendment 90, and Amendment 109 relating to the poll tax."

³⁵ "Why *Alabama Arise* Supports Amendment 4," Jim Carnes, *Alabama Arise*, Oct. 16, 2020, <https://www.alarise.org/blog-posts/why-alabama-arise-supports-amendment-4/>.

³⁶ Sample Ballot, Autauga County, Alabama, 2012, https://www.sos.alabama.gov/sites/default/files/voter-pdfs/2012-sample-ballots/autauga-2012-sample.pdf?_ga=2.24270002.963749893.1664134326-2077489013.1663767206; “Proposing an amendment to the Constitution of Alabama of 1901, to repeal portions of Amendment 111, now appearing as Section 256 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, relating to separation of schools by race and to repeal Section 259, Amendment 90, and Amendment 109, relating to the poll tax. (Proposed by Act No. 2011-353).” The 2012 ballot initiative likely failed because the measure left in wording that did not guarantee a free public education to school children, which Black lawmakers believed could be used to actually increase segregation via voucher programs and charter schools. “Alabama to Vote on Removing Racist Words from Constitution,” Verna Gates, *Reuters*, Oct. 26, 2012, <https://www.reuters.com/article/us-usa-alabama-constitution/alabama-to-vote-on-removing-racist-words-from-constitution-idUSBRE89POVG20121026>; “Alabama Voters to Decide on Amendment to Remove Racist Sections from Constitution,” *The Associated Press*, Oct. 15, 2012, <https://www.al.com/wire/2012/10/alabama-voters-to-decide-on-am.html>.

³⁷ “Alabama Inmates Stage Protest Over Free Labor System,” Nick Ramsey, *MSNBC*, Apr. 18, 2014, <https://www.msnbc.com/the-last-word/alabama-inmates-stage-prison-protest-free-labor-msna310641>.

³⁸ *AL.com*; <https://www.al.com/news/2017/04/not-just-license-plates-produce.html> Note that some prisoners that work for particular prison programs are paid 25 to 75 cents an hour. See: *Supra* note. 3. “Captive Labor: Exploitation of Incarcerated Workers,” “More than 76 percent of incarcerated workers report that they are required to work or face additional punishment such as solitary confinement, denial of opportunities to reduce their sentence, and loss of family visitation, or the inability to pay for basic life necessities like bath soap. They have no right to choose what type of work they do and are subject to arbitrary, discriminatory, and punitive decisions.” See also: “Not Just License Plates: 54 Products Alabama Prisoners Get 25 to 75 Cents an Hour to Make,” Connor Sheets, *AL.com*, Apr. 2, 2017, <https://www.al.com/news/2017/04/not-just-license-plates-produce.html>.

³⁹ “Campaign Wants Vermont Anti-Slavery Amendment at Forefront of 2022 Elections,” Peter Hirschfeld, *Vermont Public Radio*, Jul. 21, 2022, <https://www.vermontpublic.org/local-news/2022-07-21/campaign-wants-vermont-anti-slavery-amendment-at-forefront-of-2022-elections>.

⁴⁰ See *supra* note 11.

⁴¹ State of Vermont Executive Department: A Proclamation, last accessed Oct. 31, 2022, <https://governor.vermont.gov/sites/scott/files/documents/22084%20Notification%20of%20Proposal%202%20to%20Amend%20the%20Vermont%20Constitution.pdf>.

⁴² Executive Proclamation on Vermont Constitutional Amendment Proposal 2, Jun. 15, 2022, <https://governor.vermont.gov/sites/scott/files/documents/22-084%20Notification%20of%20Proposal%202%20to%20Amend%20the%20Vermont%20Constitution.pdf>.

⁴³ “Campaign Wants Vermont Anti-Slavery Amendment at Forefront of 2022 Elections,” Peter Hirschfeld, *supra* note 38; “Campaign Countdown: Inside Prop 2, Vermont’s Slavery Prohibition Clarification,” Christina Guessferd, *WCAX3*, Sep. 21, 2022, <https://www.wcax.com/2022/09/21/campaign-countdown-inside-prop-2-vermonts-slavery-prohibition-clarification/>; “Lasting Changes: Revisions to Vermont’s Constitution – Dealing With Slavery and Abortion – Are on the Ballot This Fall,” Kevin McCallum, *Seven Days*, Sep. 27, 2022, <https://www.sevendaysvt.com/vermont/lasting-changes-revisions-to-vermonts-constitution-dealing-with-slavery-and-abortion-are-on-the-ballot-this-fall/Content?oid=36569560>.

⁴⁴ In the past twenty years, Vermonters have only considered two other ballot measures. In 2002 voters approved a measure that set a retirement age for Judges (age 70) and in 2010 voter approved Proposal 5 which allows 17-year-olds to vote in primaries if they turn 18 by election day. See: Vermont 2010 Ballot Measures, *Ballotpedia*, last accessed Oct. 29, 2022, https://ballotpedia.org/Vermont_2010_ballot_measures.

⁴⁵ “Culinary Training Program Kicks off at Chittenden Regional Correctional Facility,” Melissa Pasanen, *Seven Days*, Sep. 14, 2021, <https://www.sevendaysvt.com/vermont/culinary-training-program-kicks-off-at-chittenden-regional-correctional-facility/Content?oid=33822890>. Note: Funded by a U.S. Department of Justice grant, this pilot program will be the facility’s only on-site job-training program.

⁴⁶ *Id.*, “The Winooski School District’s almost-completed \$62 million school expansion project has been in the news for being behind schedule and incurring rising costs. What is likely unknown to the city’s residents and most Winooski school officials is the project’s use of over \$400,000 worth of incarcerated labor, worth millions in real labor costs, on average making less than \$1 an hour.” Prison

labor is usually procured using subcontracts, so that businesses, like schools, can be constructed whether knowingly or unknowingly using prison labor.

⁴⁷ *Supra* note 3, “Captive Labor: Exploitation of Incarcerated Workers,”

https://www.aclu.org/sites/default/files/field_document/2022-06-15-captivelaborresearchreport.pdf Note, this pay scale was last revised in 1988.

⁴⁸ Act 246 of the 2022 Regular Session of the Louisiana Legislature proposing to amend Article I, Section 3 of the Louisiana Constitution,

https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ProposedConstitutionalAmendments_November_8_2022.pdf.

⁴⁹ Currently, Article I, Section 3 of the Constitution of Louisiana, reads as follows: Right to Individual Dignity Section 3. (A) No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. (B)(1) Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.” See:

<https://senate.la.gov/Documents/LAConstitution.pdf>

⁵⁰ Coding note from the ballot measure itself: “words in struck through type are deletions from existing law; words underscored are additions.” Louisiana Legislature Act 246,

<http://www.legis.la.gov/legis/ViewDocument.aspx?d=5201>

⁵¹ “Justice Can’t Wait: An Indictment of Louisiana’s Pretrial System,” ACLU Louisiana, 2020,

<https://www.aclu.org/en/justice-cant-wait-indictment-louisianas-pretrial-system#:~:text=The%20landmark%20report%20%E2%80%93%20Justice%20Can,state%20on%20record%20since%201970>.

⁵² “This ‘Slavery Exception Clause’ Won’t Be Removed From Louisiana Constitution After Proposal Fails,” Blake Peterson, *The Advocate*, May 11, 2021,

https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_4b9263e8-b277-11eb-9011-378ff2d13d60.html.

⁵³ Louisiana House Bill 196, Constitutional Amendment to Prohibit Slavery and Involuntary Servitude, Representative Edmond Jordan, last accessed Oct. 29, 2022,

<https://www.legis.la.gov/legis/BillInfo.aspx?i=240030>.

⁵⁴ Rep. Mike Johnson, a Pineville Republican, who voted against the measure, said “he wished Jordan would instead focus legislation on correcting tangible wrongs in the state’s prison system, like the exorbitant fees prisoners and their families pay to make phone calls. This is set up in such a way, I worry, if you were to disagree and vote against this bill it might appear to some that a vote no would be a vote yes for slavery,” Johnson said. “This is being billed as an antislavery bill. Well, everybody up here, I hope, is anti slavery.” “This ‘Slavery Exception Clause’ Won’t Be Removed From Louisiana Constitution After Proposal Fails,” Blake Peterson, *supra* note 52.

⁵⁵ Louisiana House Bill 298, Constitutional Amendment on Involuntary Servitude and the Administration of Criminal Justice, Representative Edmond Jordan, last accessed Oct. 29, 2022,

<http://www.legis.la.gov/legis/BillInfo.aspx?i=241924>.

⁵⁶ See: *Supra* note 3, “Captive Labor: Exploitation of Incarcerated Workers,” “A formerly incarcerated respondent to a survey conducted by the ACLU remarked that while at Louisiana Correctional Institute for Women, they cut grass on a “chain squad,” reminiscent of chain gangs after the Civil War.”

⁵⁷ “Corporations Are Making Millions of Dollars from US Prison Labor, Michael Sainato, *The Real News Network*, Jan. 5, 2022, <https://therealnews.com/corporations-are-making-millions-of-dollars-from-us-prison-labor>.

⁵⁸ “Lawmaker Seeks to End Louisiana’s ‘Slavery Exception’ Clause,” *The Associated Press*, Apr. 8, 2021, <https://apnews.com/article/legislature-constitutions-forced-labor-legislation-slavery-4b06efb402c3e5cea6844f58b31ca497>;

“A Peculiar Exception: Louisiana’s Voters Deserve Say About Slavery Clause,” Terry Landry, SPLC Action Fund, Nov. 12, 2021,

[https://www.splcactionfund.org/blog/2021/11/12/peculiar-exception-louisianas-voters-deserve-say-](https://www.splcactionfund.org/blog/2021/11/12/peculiar-exception-louisianas-voters-deserve-say-about-slavery-)

[clause#:~:text=During%20the%202021%20regular%20session,on%20the%20November%202022%20ballot](https://www.splcactionfund.org/blog/2021/11/12/peculiar-exception-louisianas-voters-deserve-say-about-slavery-clause#:~:text=During%20the%202021%20regular%20session,on%20the%20November%202022%20ballot);

<https://thecounter.org/how-corporations-buy-and-sell-food-made-with-prison-labor/>; “How Corporations Buy—and Sell—Food Made with Prison Labor,” H. Claire Brown, *The Counter*, May 18, 2021, <https://thecounter.org/how-corporations-buy-and-sell-food-made-with-prison-labor/>;

<https://therealnews.com/corporations-are-making-millions-of-dollars-from-us-prison-labor>.

⁵⁹ Work in cellblocks and field lines pays \$0.02 per hour. Vocational programs pay \$0.04 per hour. Legal

workers and educational tutors are paid on a different pay scale, at \$0.25 to \$0.80 per hour. Some

incarcerated workers must work for an initial period of up to three years without pay until they are eligible to be paid. Eligible incarcerated people may choose between earning a wage and receiving “good time” credits off their sentence. See: *Supra* note 3, “Captive Labor: Exploitation of Incarcerated Workers;” “Prison Enterprises - Evaluation of Operations,” Louisiana Department of Public Safety and Corrections, May 1, 2019, at 4,

https://www.prisonlegalnews.org/media/publications/Louisiana_Legislative_Auditor_-_Prison_Enterprises_-_Evaluation_of_Operations_Dept._of_Public_Safety_and_Corrections_2019.pdf. See also: The Louisiana prison population harvest crops that are sold to private corporations, and then sold to the public. For example, from 2017-2020, Louis Dreyfus Commodities, a well-known commodities trader, purchased \$2.4 million worth of corn and soybeans produced by prison labor.

⁶⁰ 2022 Proposed Constitutional Amendments, Tennessee Secretary of State, last accessed Oct. 30, 2022, <https://sos.tn.gov/amendments>.

⁶¹ Note that in Tennessee, there is a two-step process for amendments to change the Constitution. See: *Id.* “Two things must happen for an amendment to pass and become part of the Constitution. The first is the amendment must get more yes votes than no votes. The second is that the number of yes votes must be a majority of the total votes in the gubernatorial election. This longstanding process Tennessee uses to determine the result for proposed Constitutional amendments was confirmed by a court decision following the 2014 general election.”

⁶² “State Legislature Approves 2022 Ballot Initiative to Abolish Slavery from Tennessee Constitution,” Tennessee Senate Democrats, *Medium*, <https://tnsenatedems.medium.com/state-legislature-approves-2022-ballot-initiative-to-abolish-slavery-from-tennessee-constitution-a8d6009f5f34>.

⁶³ Offender Jobs, Tennessee Department of Correction, last accessed Oct. 30, 2022, <https://www.tn.gov/correction/redirect---rehabilitation/offender-jobs.html#:~:text=More%20than%205%2C000%20offenders%20work.and%20maintaining%20buildings%20and%20equipment>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Supra* note 3, “Captive Labor: Exploitation of Incarcerated Workers,”

⁶⁷ Legislative Referral, Oregon Secretary of State, Aug. 24, 2021, <https://sos.oregon.gov/admin/Documents/irr/2022/402cbt.pdf>.

⁶⁸ *Id.*

⁶⁹ Oregon Revised Statutes Chapter 251.205-215, last accessed Oct. 30, 2022, https://www.oregonlegislature.gov/bills_laws/ors/ors251.html.

⁷⁰ Ballot Measure, Oregon Secretary of State, last accessed Oct. 30, 2022, <https://sos.oregon.gov/elections/Pages/initiatives-referendums-referrals.aspx>. See: Section 34(2) “Upon conviction of a crime, an Oregon court or a probation or parole agency may order the convicted person to engage in education, counseling, treatment, community service or other alternatives to incarceration, as part of sentencing for the crime, in accordance Enrolled Senate Joint Resolution 10 (SJR 10-A) with programs that have been in place historically or that may be developed in the future, to provide accountability, reformation, protection of society or rehabilitation.”

⁷¹ Legislative Referral, Oregon Secretary of State, *supra* note 67.

⁷² “Instead of wages, compensation is paid via the Performance Recognition and Award system, through which workers may receive points that may be converted to a monthly monetary award.” *Supra* note 3, “Captive Labor: Exploitation of Incarcerated Workers.”

⁷³ “Oregon’s Racist Language Faces Vote,” Peter Prengaman, *The Edwarsville Intelligencer*, Sep. 26, 2002, <https://www.theintelligencer.com/news/article/Oregon-s-Racist-Language-Faces-Vote-10487849.php>. Note that this language was included in the original Oregon Constitution of 1857.

⁷⁴ “Blacks in Oregon Meet Hostility,” Shemia Fagan, Oregon Secretary of State, last accessed Oct. 30, 2022, <https://sos.oregon.gov/archives/exhibits/constitution/Pages/before-blacks.aspx>; “Portland Has Become the Focal Point of Black Lives Matter Protests in America, But It Has a Tortured History When It Comes to Race,” Ashley Collman, *Insider*, Jul. 30, 2020, <https://www.insider.com/portland-oregon-troubled-history-black-residents-2020-7>.

⁷⁵ “The great majority of new Oregonians *simply* wanted to create an all-white society free of the racial problems threatening to cause an American civil war. By strength of numbers they soon passed legislation prohibiting slavery and banning free blacks. Thus, while small numbers of blacks were tolerated in Oregon throughout the 1840s and 1850s, they struggled on the margins of society with few friends and fewer rights.” “Blacks in Oregon Meet Hostility,” Shemia Fagan, *supra* note 74.

⁷⁶ “Oregon Hospitals Rely on Prison Labor to Do Their Laundry During the Pandemic,” Tess Riski, *Willamette Week*, Apr. 22, 2020, <https://www.wweek.com/news/2020/04/22/oregon-hospitals-rely-on-prison-labor-to-do-their-laundry-during-the-pandemic/>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ “Pregnancy, Systemic Disregard and Degradation, and Carceral Institutions,” Lauren Kuhlik and Carolyn Sufrin, 14 *Harvard Law and Policy Review* 2, <https://harvardlpr.com/wp-content/uploads/sites/20/2020/11/Kuhlik-Sufrin.pdf>.

⁸⁰ “Working Together to Reduce Black Maternal Mortality,” CDC, Apr. 6, 2022, <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html>.

⁸¹ Enforcement Guidance on Pregnancy Discrimination and Related Issues, EEOC Office of Legal Counsel, Jun. 15, 2015, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>.

⁸² Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals, Committee Opinion No. 830 of the American Council of Obstetricians and Gynecologists, Jul. 2021, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>

⁸³ *Id.*

⁸⁴ Physical Activity and Exercise During Pregnancy and the Postpartum Period, Committee Opinion No. 650 of the American College of Obstetricians and Gynecologists, December 2015, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/04/physical-activity-and-exercise-during-pregnancy-and-the-postpartum-period>. Note that one of the tables was corrected in ACOG Committee Opinion No. 804: Physical Activity and Exercise During Pregnancy and the Postpartum Period: Correction, https://journals.lww.com/greenjournal/Fulltext/2021/10000/ACOG_Committee_Opinion_No_804_Physical_Activity.29.aspx.

⁸⁵ Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals, Committee Opinion No. 830 of the American Council of Obstetricians and Gynecologists, *supra* note 81.

⁸⁶ Name has been changed for privacy.

⁸⁷ Advocacy and Research on Reproductive Wellness of Incarcerated People, last accessed Oct. 30, 2022, <https://arrwip.org/>.

⁸⁸ Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals, Committee Opinion No. 830 of the American Council of Obstetricians and Gynecologists, *supra* note 81.

⁸⁹ “Pregnancy in Prison Statistics (PIPS) Project,” Advocacy and Research on Reproductive Wellness of Incarcerated People, last accessed Oct. 30, 2022, <https://arrwip.org/>.

⁹⁰ *Supra* note 3.

⁹¹ *Id.*, “Although in practice people are placed in confinement for indefinite periods of time for these work offenses. Dolfnette Martin, the housing director at Operation Restoration who was formerly incarcerated in Louisiana, attested that “the choice [was] work or go to solitary.”

⁹² The harms of solitary confinement are well known. See: “The Research Is Clear: Solitary Confinement Causes Long-Lasting Harm,” Tiana Herring, Prison Policy Initiative, Dec. 8, 2020, https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/; “Solitary Confinement: Inhumane, Ineffective, and Wasteful,” Southern Poverty Law Center, Apr. 4, 2019, <https://www.splcenter.org/20190404/solitary-confinement-inhumane-ineffective-and-wasteful>; “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics,” Jeffrey L. Metzner and Jamie Fellner, 38 *Journal of the American Academy of Psychiatry and the Law* 1, <https://jaapl.org/content/38/1/104>.

⁹³ Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals, Committee Opinion No. 830 of the American Council of Obstetricians and Gynecologists, Jul. 2021, Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals, Committee Opinion No. 830 of the American Council of Obstetricians and Gynecologists, *supra* note 81.

⁹⁴ *Id.* See also, Position Statement on Solitary Confinement (Isolation), National Commission on Correctional Health Care, Apr. 10, 2016, <https://www.ncchc.org/solitary-confinement>.

⁹⁵ *Supra* note 84.