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March 22, 2018

Senator Elizabeth Warren
317 Hart Senate Office Building
Washington, D.C. 20510

Re: Jason Davis - Civil Rights Case **[Proposal: Amendment to Federal Civil Rights Act & Justice for Brutalized Mentally Ill Person]**

Dear "Casework" Employees:

Thank you for reading this letter.

I have been the lead attorney for Jason Davis and his family since 1996.

The reported federal opinions in the Davis series of cases evidence the fact that its constitutional precedents offer some of the most profound and important constitutional protections ever adopted for the Nation's mentally ill by any Federal Court.[1] See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001); Davis v. Rennie, 997 F. Supp. 137 (D. Mass. 1998); Davis v. Rennie, 553 U.S. 1053 (2002); Davis v. Rennie, 178 F. Supp. 2d 28 (D. Mass. 2001).

The issues raised in this letter are clearly Federal in nature and affect every Congressional District in Massachusetts and, indeed, the Nation. It is viable to suggest that the constitutional issues raised in this letter are some of the most important our Country has ever faced. Justices Marshall,

[1] *Davis* was the first case in the history of the United States to specifically hold that the Due Process of the Fourteenth Amendment to the United States Constitution forbids Doctors, Nurses and Mental Health Care Workers from standing idly by while one of their own physically brutalizes an involuntarily committed mentally ill inpatient in a State hospital. Davis v. Rennie, 264 F. 3d 86 – 116 (1st Cir. 2001). This case has been cited literally hundreds of times, throughout the Country, since it was decided. The *Davis* case is manifestly a landmark civil rights case in the mental health arena. The Massachusetts legislature has expressly acknowledged as much. The Commonwealth, for its part, argued in three federal courts – including the U.S. Supreme Court - that there was no constitutional obligation for health care workers to stop fellow employees from physically brutalizing mentally ill inpatients. This position was not only immoral but, if embraced, would have forever jeopardized the safety of the mentally ill inpatients in this State. All three federal courts rejected the Commonwealth's flawed and immoral constitutional contention. The First Circuit wrote at length as to precisely why the Commonwealth's position was blatantly unconstitutional. Davis, 264 F. 3d 86 – 116. Suffice it say that the Commonwealth wanted to "win at any cost" even if it impaired the safety of the mentally ill. Jason Davis was one of the real heroes for he sought and obtained justice when the Commonwealth had no interest in doing so. He did its job.

Brennan, Stevens and Blackmun - four of the greatest legal minds in our Nation's history – clearly thought so. See Will v. Michigan, 491 U.S. 58, 71-94 (1989).

I very much respect Senator Warren. That said, I know she will probably not be able to help us since she is a Democrat and five powerful Massachusetts Democrats lie at the root of the hateful and evil conduct undertaken against my mentally ill client. Country over party should certainly prevail here but it rarely ever does. It is most always "business as usual" even when the most vulnerable amongst us – the mentally ill - are hurt by Democratic power brokers. This is precisely what happened here. Four reported federal decisions and an avalanche of uncontroverted Court, Executive Branch and Legislative documents do not lie.

I hope I can meet with Senator Warren and that she sees fit to help us. We would ask Senator Warren to stand with the Davis family, in the public eye, relative of the case of Jason Davis. Only State Representative John Rogers has done so to date. Everybody else has stood down. Great Civil Rights leaders do not stand down to avoid ruffling the feathers of power brokers in their own party.

The jury verdict was rendered some 20 years ago and all appeals by the Commonwealth have long since been exhausted. There are no pending legal proceedings nor will there be. We need justice for the family but, beyond that, there are real changes in federal law which could help all U.S. Citizens in a very dramatic way. **There is a gigantic hole in the federal civil rights act which makes it a toothless giant in many contexts. This hole can be easily fixed as proved below.** The Davis case is the poster child for why it is that we have such a giant hole in the Federal Civil Rights Act and the harm done by it.

I set forth the links for the WCVB-TV video (2014) on the Davis case and two links to articles by the Boston Globe (2014) and Huffington Post (2018). These three items take just a few minutes to review and highlight the toothless giant status of the Federal Civil Rights Act:

WCVB Channel 5 TV Video
http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736

Boston Globe article – March 10, 2014

https://www.bostonglobe.com/metro/2014/03/09/jason-davis-beating-foreshadowed-joshua-messier-tragedy/JUTn1QniHkN8SCnrwqk9IK/story.html

Huffington Post article -January 12, 2018

https://www.huffingtonpost.com/entry/corruption-in-massachusetts_us_5a5853c4e4b00b4ea8d0837c

When an acutely ill, involuntarily committed mentally ill inpatient is beaten nearly half to death by convicted violent felon State employees, while in State "care", the State should not be able to run away from the 2.3M Federal Jury verdict that is rendered. Massachusetts did here. The State hired these felons and knew then that violence was statistically likely given recidivism statistics alone. The State appealed to the Federal Appeals Court after losing a one-month trial and then tried to appeal to the U.S. Supreme Court. It lost in all three federal courts. The State then ran away

from the case and never paid the judgment. It did so because Will v. Michigan, 491 U.S. 58, 71-94 (1989) allows it to do so. At trial, Jason Davis proved that the Defendants evilly and maliciously injured and maimed him. He died not long after his trial at age 38. We live in a civilized society where the adage that the "King can do no wrong" is not supposed to prevail. This adage has prevailed in Massachusetts for 25 years regarding the Davis case because of Will v. Michigan. Five trips through the Massachusetts legislature and numerous political chess games have failed for 25 years notwithstanding the wins in the Courts. The letter by Mr. Davis to the Massachusetts Senate in 2014, about his deceased son Jason, is attached. It too is a quick read which further highlights the inequities brought to bear by Will v. Michigan. This letter is a heart wrenching piece of literature.

The harmful impact of and cure for the Will v. Michigan case, which case contains the holdings which perpetuate the gigantic hole in the Federal Civil Rights Act, has been dissected in the attached letters to President Obama and Representative John Lewis. States, as Massachusetts did in the Davis case, litigate the heck out of these federal civil rights cases but when they lose they run for the proverbial woods and never pay the judgment because Will v. Michigan allows them to do precisely that. The Huffington Post wrote at length about the harmful impact of Will v. Michigan in its very recent article. (See above link – "Corruption in Massachusetts"). The Davis case is an evil tale of injustice which has been covered up and ignored for decades by those in State power. It is time that the bright light of day shined upon one of the most sordid matters in the history of the Massachusetts Department of Mental Health. The Jason Davis case ***is literally*** the poster child for why it is that Will v. Michigan exacts such a negative impact on the administration of our Federal Civil Rights Act. Nobody in a position of power can state that what the Commonwealth did to Jason Davis was "right". It was both wrong and evil. AG Scott Harshbarger promised to pay the Davis verdict in 1998. We should hold him to his word.

It would be the work of a billion men and women to undo the harmful impact of Will v. Michigan. With all due respect to the Will v. Michigan majority, Justices Marshall, Brennan, Stevens and Blackmun were the intellectual soul, brain trust and moral compass of the Supreme Court in 1989. The Will dissenters manifestly had four of the greatest legal minds ever to grace the Supreme Court. Their dissents, like Justice Harlan's 1896 dissent in Plessy, were the correct dissertations of the law as their plain words and the sands of time have so clearly taught us. The impassioned pleas of Justices Marshall, Brennan, Stevens and Blackmun should no longer be the lone cries in the constitutional wind. Justice Stevens would of course be an invaluable witness in congressional hearings, aimed at amending 42 U.S.C. §1983 in the manner proposed here, given his scintillating dissent in Will v. Michigan.

The proposed statutory amendment would be inserted after the period which succeeds the word "Columbia", in the last sentence of 42 U.S.C. §1983, and reads as follows: "For the purposes of this section, the term person shall include a State and a Commonwealth together with their departments, offices, officers acting in their official capacities, agencies, entities, bodies politic and bodies corporate." This proposed statutory amendment cures the four principle ills of which the Will dissenters complained: (i) the inability to make the State a party to civil rights damage claims; (ii) the inability to compel States to pay civil rights damage claims; (iii) the inequities inherent in the ability to assert civil rights damage claims against Municipalities but not States; and (iv) the evisceration of one of the central purposes of the Reconstruction Era civil rights

statutes, i.e., holding the States themselves financially accountable. Will, 491 U.S., at 71-94 (Brennan, J. dissenting; Stevens, J. dissenting).

We have a national epidemic of violence against our citizens by those acting under color of State law. The proposed amendment is certainly a methodology which can eradicate some of this violence while concurrently recouping the core objectives which spawned the Reconstruction Era civil rights statutes in the first place. It is important to mark a place in time where we all join the Will dissenters in our attempt to again construe the Federal Civil Rights Act in a manner which is consistent with how our founders wanted it to be construed. The Democrats may well soon control Congress following the mid-term elections. The timing could be no better for the proposed amendment. The pleas of the Will dissenters should be met with silence no longer. This silence is now in its twenty-ninth year. We need to bookend these pleas with Federal Legislation so the Legislative Branch is also heard. The Will dissents and this proposed legislation will collectively serve the same function that the Plessy dissent did – they will serve as beacons of righteousness and mark a place in time when justice is sought.

The Davis family needs justice. Everybody has stood down in the face of power excepting State Representative John Rogers who was quoted on TV in 2014 by Janet Wu: "The facts are uncontested. They hired, failed to train and failed to supervise these workers and to allow the State to walk away is just wrong." The timing for the proposed legislation could be no better. The police shootings around the country would go uncompensated in the Courts, due to dictate of Will v. Michigan, no longer if the federal civil rights act were amended.

Lastly, I attach a sixty (60) page letter sent to Governor Baker and AG Maura Healey via federal express on 11.3.17 on the Davis case. It sought justice for Jason Davis. This letter also sets forth the numerous problems with State mental health care for the involuntarily committed and the cure for each of these problems. There has been no response. The silence is deafening. The reported federal opinions in the Davis case, as noted, evidence the fact that its constitutional precedents offer some of the most profound and important constitutional protections ever adopted for the Nation's mentally ill by any Federal Court. Massachusetts has ignored these precedents and failed to implement them. The reforms are set forth on pages 52-53 of the Governor Baker letter. A good many of these reforms are needed in all 50 States as is self-evident from reading the letter. These reforms should be the subject matter of a federal statute for the protection of our Nation's mentally ill.

The last issue is who did the wrongs here? Governor Patrick, AG Maura Healey, AG Martha Coakley, AG Scott Harshbarger, AG Thomas Reilly and Governor Baker inflicted these injustices upon Jason Davis and failed to implement change called for by the Davis reported opinions. The Governor Baker letter proves as much. The proof comes right from the State's "pen" not mine. All evidence consists of empirical data which is uncontroverted. I am in a Democratic State where all the power is held by Democrats. I am a died in the wool Democrat myself. That said, the Davis family and I have been getting the "good ole boy" treatment from Democrats for 25 years. I humbly and respectfully submit that President Kennedy, Senator Robert F. Kennedy and Senator Edward M. Kennedy would not stand down here notwithstanding the fact that it was several democratic power brokers who did terrible things to Jason Davis and his family. **What these five democratic power brokers did is disgusting and we should not stand silently by in**

the aftermath of their egregious conduct. Country over party. The uncontroverted record is clear as to what each one of them did: they intentionally tried to hurt Jason Davis and impair his ability to get justice. The Governor Baker letter is a proverbial treatise on their conduct. The truth is the truth.

Our Country is in dire need of expansive mental health reform. The Davis case, given the reforms proposed in Governor Baker letter and the Will cure, could be a large predicate for this federal legislation. All 50 States need many of the cures spoken to in the Governor Baker letter. Acute and diverse mental health issues are needlessly taxing our Nation. The mentally ill are suffering intensely. It is time to launch comprehensive federal legislation relative to numerous issues raised in the Davis case and others. It is long overdue. Massachusetts' favorite Son enacted the most profound and comprehensive mental health legislation ever enacted while President in 1963. I hope we can follow in President Kennedy's footsteps. The need is acute.

It is shameful what five powerful Democrats did to Jason Davis. That wrong must be righted and the expansive reforms must be undertaken so that the mentally ill do not die or get maimed any longer in Massachusetts and, indeed, the Nation. I hope the Senator stands with us. We could accomplish much good together. The great power of government has been holding down our cause for too long. Only Massachusetts State Representative John Rogers has stood up so far. We all need his courage. The issues are too monstrous to ignore any longer. Too many Democrats are afraid to confront fellow Democrats when they do wrong.

Is Massachusetts really content to perpetuate its twenty-five (25) year old cover up into perpetuity and are we going to help it do so? This would be the work of pure cowardice and pure politics. Worse yet, it would be yet another example of Party over Country. We cannot fault the Republicans for doing just that (Senate Intelligence Committee) and then turn around and do the same thing ourselves. To date, the Democrats have done just that regarding the Jason Davis case. I must say, with all due respect, that enough is enough. Why is everybody so afraid to stand with Jason Davis?

All data, excepting the President Obama and Representative Lewis letters, is also on the website: jasonstrongma.com

I would respectfully request a meeting with the Senator. We need her voice to cure many ills which plague our mentally ill across this Nation.

Sincerely
BRENDAN J. PERRY & ASSOCIATES, P.C.

By:/s/ *Christopher M. Perry*
Christopher M. Perry

CMP/pmc
Attachments
Via Email Only