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April 12, 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 Senator Warren:

Thank you for considering the issues set forth in my March 22, 2018 letter which bears the caption set forth above. I look forward to the April 13, 2018 meeting with your staff. I have represented Jason Davis and his family since 1996.

I would like to formally propose the legislative amendment to 42 U.S.C. §1983 as outlined in my prior letter:

I. PRESENT TEXT OF 42 U.S.C. §1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

II. PROPOSED AMENDMENT TO 42 U.S.C. §1983

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 is 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.

III. LEGAL JUSTIFICATIONS FOR PROPOSED AMENDMENT

The legal justifications for the proposed amendment are nowhere better stated than in the 1989 dissents of Justices Marshall, Brennan, Stevens and Blackmun in Will v. Michigan, 491 U.S. 58, 71-94 (1989). They determined that the constitutional rights, which are embedded in the proposed statutory amendment, are sacred to our Democracy. Id., at 71-94. The Case of committed mentally ill patient Jason Davis is the poster child for why it is that the Will experiment is a failed one. 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). Additional legal justifications are set forth in letters to President Obama and Representative John Lewis, both of which were previously provided, and a Huffington Post article posted on January 12, 2018.[1]

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 because of the holdings in Will v. Michigan. The statutory cure is at hand. In the Davis case the State placed Jason Davis in a mental health facility where an historical wave of violence was acute, ongoing, documented and well known to all who cared to know. It also provided caretakers to him which included convicted violent felons hired pursuant to a written hiring policy. When expected and, indeed, statistically probable harm[2] befell Jason Davis the State, relying as it could on Will, told him to take the matter up with the convicted violent felons who brutalized him insofar as it was washing its hands of the matter. The inequities which the Will holdings perpetuate are too numerous to list here but none is more vexatious than the hollowness which it brings to many of our constitutional provisions. The Commonwealth of Massachusetts was itself charged with the obligation to keep Jason Davis safe under the Constitution. See Youngberg v. Romeo, 457 U.S. 307, 315, 324 (1982). Yet when it failed miserably in this regard it informed Jason Davis and his family to take the matter up with the violent felons who attacked him. Youngberg, 457 U.S., at 315, 324; Will, 491 U.S., at 58 -71. These violent felons were not, however, charged with insuring

[1] These two letters are also Exhibits 51-53 on the website (jasonstrongma.com) where the Huffington Post link is set forth as well. https://www.huffingtonpost.com/entry/corruption-in- massachusetts_us_5a5853c4e4b00b4ea8d0837c

[2]The employment of convicted violent felons Philip Bragg and Paul Rennie, by the Massachusetts Department of Mental Health at the Westborough State Hospital, constituted an extreme risk of harm to all mentally ill inpatients subject to their "care", including Jason Davis, given their histories of violence and the national recidivism rate of 34.6 percent amongst convicted violent felons. See Recidivism of Prisoners released in 1983 (Bureau of Justice Statistics Special Report – Department of Justice). In short, placing Philip Bragg and Paul Rennie in direct patient care capacities was not unlike having a fox guard the henhouse. Not surprisingly, Bragg and Rennie were the principal aggressors in the two savage beatings of Jason Davis on August 12, 1993. See Davis v. Rennie, 264 F. 3d 86 (1st Cir. 2001).

his safety; this was the State's obligation under the Constitution. Ibid. The State eviscerates constitutional rights when only its employees are responsible for protecting them. Will implements claim shifting and damage shifting to private individuals while concurrently wholly immunizing the State from ***all liability*** for civil rights damage claims. Will also effects the shifting of the State's obligation to provide constitutional protections into the abyss as the combined effect of Youngberg and Will make all too clear. If States are immunized from damage claims, resulting from their failure to provide the very protections which the Constitution compels them to provide, such protections will simply not be provided. They were not in Davis. This is the failed constitutional experiment which is Will. It is constitutionally stunning to note, at this late date, that private individuals alone are legally responsible for the defense and payment of civil rights damage claims asserted in the aftermath of egregiously unconstitutional conduct committed by the ***State itself***. As incredible as it may seem, States have simply had no legal obligations, relative to these claims, since 1989. The Will dissenters cogently demonstrated that this concept alone defeats one of the central purposes of the Reconstruction Era civil rights statutes which was to hold States themselves accountable for their ***own*** unconstitutional conduct.[3] Will, 491 U.S., at 71-94. The Will construction threatens the continued vitality of our Constitution. Accountability and the rule of law are hallmarks of any sound Democracy. The Will rule of law seriously erodes each of these concepts.

IV. BENEFACTORS OF AMENDMENT

The current construction of the Federal Civil Rights Act under Will threatens and has harmed our Nation's men, woman and children across the entire spectrum of all civil rights claims. It harmed my client, Jason Davis. The proposed amendment would benefit every person in the United States. We can just imagine myriad societal ills that could be healed if we held States accountable to an adequate level of care in the mental health context and all others across the wide spectrum of civil rights claims.

[3]When civil rights claimants are relegated to claims against only State employees and their personal financial assets these claims are only sparingly asserted. This is clearly one of the great chilling effects of the Will holdings. Civil rights litigators most usually spend inordinate amounts of time to perfect their cases. These cases truly are labors of love. The prospect of obtaining a "paper judgment", against employees who clearly lack the ability to pay the multi-million dollar jury verdicts which are many times obtained in the civil rights arena, is an acute disincentive for private litigants to continue to serve as private attorneys general in the administration of our civil rights laws. Thousands of hours of litigation work routinely go uncompensated in such circumstances. As an example, it bears noting that more than 2500 hours of litigation time was expended in the District Court litigation alone in the Davis case. Thus, when States are wholly immunized from defending against and paying civil rights damage claims, as they are under Will, this produces a chilling effect on the assertion of civil rights claims against those responsible. Will certainly has had this effect. When these civil rights cases are not brought the great benefit which private civil rights litigators provide – including highlighting system errors, mandating reform and creating valuable constitutional precedents – is lost forever. The Supreme Court has long recognized the benefits of what it refers to as these "private attorneys general". "As an initial matter, we reject the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms. *See Carey v. Piphus*, 435 U. S. 247, 266 (1978). And Congress has determined that 'the public as a whole has an interest in the vindication of the rights conferred by the [Federal Civil Rights Act], over and above the value of a civil rights remedy to a particular plaintiff…'" City of Riverside v. Rivera, 477 U.S. 561, 574 (1986) (brackets supplied).

Thank you, Senator, for considering this legislative amendment to 42 U.S.C. §1983.

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

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

CMP/pmc
Via Email Only