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Senate President Karen E. Spilka
Massachusetts State House
24 Beacon Street
Room 332
Boston, MA 02133

Re: Jason Davis Case

Dear Senate President Spilka:

I hope you are well.

Thank you for your support of the Jason Davis case during the last five years. I really mean it.

I would also like to thank you for permitting your staff to meet with me today in your offices about this matter.

I wanted to see if we could finally round the bend and obtain justice for Jason Davis' family. I have reached out to Representative John Rogers as well. Each of you proposed amendments during 2014 in payment of the entire federal court judgment in this case which now stands at \$2,335,562. Thank you again for filing this amendment in 2014.

As you know, Jason Davis was a committed mentally ill inpatient beaten half to death by convicted violent felons hired by the Commonwealth to be his "caretakers" at the Westborough State Hospital. He received acute psychiatric injuries and was beaten to the point where puddles of his own blood littered the hallway where he was beaten. These circumstances and injuries are a matter of public record and have been set forth, with great exactitude, in the First Circuit Court of Appeal's hallmark civil rights opinion in the Davis case. As you also know, the Davis case went all the way to the U.S. Supreme Court after a one month Federal Civil Rights trial. The Commonwealth took two appeals; not Jason Davis. 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).

It has been a long battle for the Davis family. The Davis family though has taken great solace, as it waits for its turn at the table of justice, in a quote from a 6.4.14 email from you to the family and others:

Clearly these are issues - both mental health and the Davis matter- that are very, very important to me. I have been working on improving mental health for years and as soon as you brought the Davis issue to my attention this Spring I said I would file an amendment in the budget. Clearly this is complicated by the fact there is not a judgment against the Commonwealth- the judgment is against individuals. However, of course I will continue to work on this for this budget process - which is ongoing- and in the future.

The family has also been heartened by two quotes from Representative John Rogers on Jason's case: (i) "The facts are uncontested. They [Department of Mental Health] hired, failed to train and failed to supervise these workers and to allow the State to walk away is just wrong."¹; and (ii) "In my mind the liability of the Commonwealth has always been crystal clear."²

The landscape has changed for the better since 2014. The principal change in the landscape is that Governor Baker is *not* of the opinion that the State indemnification statute is an obstacle to payment of the Davis case. Indeed, Governor Baker's legal counsel has expressly acknowledged as much in a letter sent to the Davis family. See p.2 of the attached 1.19.16 letter. (Exhibit 1, p.2). Reading the "tea leaves" from Governor Baker's letter also leads us to think that he would "sign off on" payment of the Davis case if the legislature saw fit to pay it.

In the last sentence of his 1.19.16 letter to the Davis family Governor Baker's legal counsel expressly acknowledged that the Legislature can suspend the prohibitions of c. 258, Section 9 and pay intent based civil rights claims if it sees fit to do so. (Exhibit 1, p.2). In that letter legal counsel for Governor Baker stated that:

"It would be open to the Legislature to determine based on all the facts that the outcome in this case warrants suspending the statutory prohibition on paying judgments against individual State employees. The Governor would consider whatever the Legislature chose to enact in this regard."

The 1.19.16 letter from Governor Baker's legal counsel to the Davis family is the death knell to the contention that the Davis case cannot be paid by the State. Its facts clearly warrant payment on many different fronts. Governor Baker's position is also consistent with prior gubernatorial practice. Both Governor Romney and Governor Patrick paid intent based civil rights claims which concededly could not have been paid under c. 258, Section 9. The statute admittedly only allows for indemnification of negligence-based claims. However, there is

¹ <http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736>

² <https://www.bostonglobe.com/metro/2014/03/09/jason-davis-beating-foreshadowed-joshua-messier-tragedy/JUTn1QniHkN8SCnrwqk9IK/story.html>

nothing in the statute which says that intent based civil rights claims cannot be paid through a legislative bill or through the settlement and judgment fund; it is just that they cannot be paid through c. 258, Section 9 itself. This is how both Governor Romney and Governor Patrick paid intent based civil rights claims, in the Messier and Smith cases, notwithstanding the dictate of the statute. The statute simply exerts no preemptive or preclusive effects on these other payment methodologies. Governor Baker and his legal counsel expressly embrace this principal in their 1.19.16 letter. See Exhibit 1, p.2.

Governor Patrick paid intent based civil rights claims in the Joshua Messier case. The Complaint filed in the Messier case expressly indicates that it is a "civil rights case" asserting civil rights claims which, once again, cannot be paid under c. 258, Section 9. I attach the first page of the civil Complaint filed in the Messier case. See Exhibit 2, p.1. Notwithstanding the inability to pay the Messier claims under c. 258, they were paid by Governor Patrick.

I also attach a Boston Globe article which demonstrates that Governor Romney paid an intent based civil rights judgment notwithstanding the fact it was not subject to indemnification under c. 258, Section 9. See Exhibit 3, p. 1. Lest it be forgotten, after the Davis verdict the State Attorney General made two offers of settlement, which he withdrew, both of which could not have been made under c. 258, Section 9 because the jury expressly found that Davis prevailed exclusively on intent based civil rights claims.

The long and short of the matter is that c. 258, Section 9 poses no obstacle for the Legislature if payment comes through the settlement and judgment fund or through a legislative bill. It is respectfully submitted that if the legislature would like to pay the Davis case it can do so regardless of the text of c. 258, Section 9. **Governor Baker and his legal counsel embrace this position.**

Mr. Davis made the following observations in a 2014 letter to the Senate:

I know that money will never bring back my son nor will it fully compensate our family for the torment visited upon him on August 12, 1993. However, what I do know is that the payment of the judgment in my son's Federal Civil Rights case will finally mark a place in time where the Commonwealth admits that it was both wrong and not above the law. It will also cement the proposition that the historic laws Jason made will be neither in vain nor unappreciated by the very government which subjected him to the torment which he suffered on August 12, 1993 and thereafter. Improvement, after all, only comes through full accountability. I respectfully submit that Governments should be characterized by integrity and honor which, to date, have been absent here.

I truly hope that you, Governor Baker, Speaker DeLeo and Representative Rogers can find a way to get justice for the Davis family after a 26 year wait. The savage attack on Jason took place on August 12, 1993.

Thank you for all you have done.

I hope we can finally get justice for Jason.

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

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

CMP/pmc
IN HAND

Cc: William H. Davis
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