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

Re: Jason Davis Civil Rights Case

Dear Senate President Spilka:

Thank you for meeting with me again today.

I hope you are well. The Davis family really appreciates your longstanding support of the Jason Davis case.

The empirical and uncontroverted record in the Davis case teaches us that it is one of the most vile, despicable and reprehensible events ever to occur within the four walls of the Massachusetts Department of Mental Health. Nobody could ever contest that.

I am not a politician and never have been. I have been fighting for Jason Davis and his family though for twenty-six years both in the Courts and within the Legislature. I must speak frankly at this juncture though because, if I do not, I fear a sixth legislative defeat might well be visited upon the Davis family when it should not be. You know Jason Davis' story quite well, as evidenced by your longstanding support of his cause, and I will not reiterate it here. Each of my prior letters to you this year (1.29.19, 5.13.19, 6.18.19 and 6.28.19) and Jason's website (jasonstrongma.com) set forth Jason Davis' story with exacting detail.

Jason Davis, as you know, was a committed mentally ill inpatient savagely beaten bloody 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. The two principal Davis assailants were convicted violent felons who were hired fresh out of prison under a written State hiring policy.¹ The Davis case went all the way to the U.S. Supreme Court after

¹ The employment of the convicted violent felons constituted an extreme risk of harm to all mentally ill inpatients subject to their "care", including Jason Davis, given their prior employment related histories of violence (against patients) and

Jason Davis won the month long Federal Civil Rights trial against the Commonwealth. It was the Commonwealth though, not Jason Davis, which took two unsuccessful appeals. Jason Davis' tragedy will assist the mentally ill for decades to come insofar as his series of reported federal cases articulates some of the most profoundly important constitutional protections ever articulated by any Federal Court for the mentally ill. 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). **Indeed, the Massachusetts Legislature has expressly acknowledged the momentous federal constitutional contributions which Jason Davis made to the safety of the mentally ill.** The Legislature placed the following language in the body of a proposed Davis Legislative Bill that subsequently failed:

The payments ordered hereunder are so ordered because: (i) the litigant in Davis v. Rennie, et al. prevailed on a novel issue of substantial federal constitutional significance to the entire citizenry of the Commonwealth of Massachusetts; (ii) this substantial issue of federal constitutional significance was the subject matter of a precedential (reported) opinion which binds all State and Federal Courts in Massachusetts, Rhode Island, Maine, New Hampshire and Puerto Rico; and (iii) the litigant in Davis v. Rennie, et al. was required to defend the propriety of this constitutional issues (sic) in no less than three (3) federal courts wherein he prevailed in each such proceeding.

The words of Jason Davis' father really say all that needs to be said. In his June 20, 2014 letter to the Senate Ways and Means Committee – of which you were a member - he said this:

The position which the Commonwealth has historically taken, in regard to the payment by it of my son's Federal Civil Rights judgment, is that it will not indemnify intent based civil rights claims asserted against individual State employees. This "position" comes from the supposed dictate of a State statute. However, literally only weeks ago, the Commonwealth agreed to pay 3 million dollars to the Messier family for the intent based civil rights claims it had asserted against individual culprits for the death of their son Joshua. I applaud this payment and the Messier family richly deserves this respect. So does mine. In 2005 the legislature, at Governor Romney's urging, also paid intent based civil rights claims (Smith case) asserted against an individual State employee. I respectfully submit that our State should not hide behind a morally corrupt state

the national recidivism rate of 34.6 % amongst convicted violent felons. (See Recidivism of Prisoners released in 1983 (Bureau of Justice Statistics Special Report – Department of Justice)). In short, placing these convicted violent felon employees in direct patient care capacities was statistically not unlike placing a fox in a henhouse. A DMH employee coverup of the Davis incident also ensued which included the "doctored" of medical records and false allegations of misconduct by the DMH employees, who perpetuated the attack, against the hero State Police Officer who actually stopped the bloody beating of Jason Davis. It is incredible to note that this hero State Police Officer was actually an "adverse" and "hostile" witness to the Commonwealth's case since the Attorney General (Scott Harshbarger) represented a number of Jason Davis' attackers at trial including convicted violent felon Paul Rennie and the nurse (Joyce Weigers) who "doctored up" the medical records. How can a hero State Police Officer ever be "adverse" and "hostile" to a cause the Commonwealth takes up? Answer: this only occurs when the Commonwealth takes up unjust causes against the public good. It did so in Davis against its central creed. See Clerk of Superior Court v. Treasurer & Receiver General, 386 Mass. 517, 526, 437 N. E. 2d 157 (1982).

indemnification statute which it has sidestepped in the past to guard against injustice. Our government, after all, lies at the root of this entire problem: it hired the convicted violent felons who brutalized my son and it knew better than to place these felons in direct patient care capacities. It did so anyway. That acute physical and psychiatric harm was sustained by my son was a surprise to nobody. 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 law. It will also cement the proposition that the historic laws Jason made will be neither in vein 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. My son was actually a hero. Although plagued by mental illness and suicidal ideations, he endured a four week trial and two federal appeals in route to making historic constitutional law which now protects all mentally ill throughout our Nation. He should be treated like a hero and not the criminals who both attacked him and were then subsequently protected by the Commonwealth's Attorney General in a host of legal proceedings.

The political landscape has actually improved since 2014. There is no political opposition to the payment of the Davis case given the current positions of the Governor, Speaker, Representative Rogers, the House, the Senate and you:

- A. **Governor Baker:** In a 1.19.16 letter to the Davis family he informed them that he would defer to the Legislature as to whether it was desirous of paying the Davis judgment and whether it was desirous of suspending the statutory prohibition, contained in M.G.L. c. 258, in this context. See Exhibit 37 at jasonstrongma.com.
- B. **Senate President Spilka:** In 2014 you sent the Davis family an email which read, in part, as follows: "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...I will continue to work on this for this budget process - which is ongoing - and in the future."
- C. **Representative Rogers:** Representative Rogers said, in the best two public statements ever uttered relative to the Davis case, that: (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.”²; and (ii) “In my mind the liability of the Commonwealth has always been crystal clear.”³

- D. **Speaker Deleo**: In February 2014 I personally consulted with him about the Davis case. He then embraced the Davis case and agreed that it was a tragic situation.
- E. **Massachusetts Attorney General Maura Healey**: When she was a candidate for Attorney General in 2014, and while still Head of the Civil Rights Division at the Attorney General’s Office, she responded as follows to a lengthy email setting forth the gruesome facts of the Davis case: “Thanks for sending the materials along. I’m reviewing now. It’s a very sad situation. It was nice meeting you in Holliston. Did anything happen with the legislation?” See Exhibit 26 at jasonstrongma.com.
- F. **Massachusetts Senate and House of Representatives**: When Governor Patrick vetoed what would have only been a partial payment of the Davis case judgment, in 2014, the following occurred: (i) the Massachusetts Senate unanimously overrode this veto by a margin of 39-0; and (ii) the Massachusetts House of Representatives unanimously overrode this veto by the margin of 152-0.⁴ The Patrick administration subsequently chose though not to fund this legislation.
- G. **No legal obstacles**: Governor Patrick and Attorney General Coakley orchestrated payment of intent based civil rights claims in the Joshua Messier case. Governor Romney orchestrated payment of intent based civil rights claims, after a jury verdict entered, in the Dennis R. Smith case.⁵ These cases are legally indistinguishable from Davis.

There are not only no legal or political obstacles but there is a huge State budgetary surplus as well.

President Clinton’s words, when apologizing for the Tuskegee Experiment in the East Room of the White House on May 16, 1997, ring true here. **“What was done cannot be undone. But we can end the silence. We can stop turning our heads away. We can look at you in the eye and finally say on behalf of the American people, what the United States government did was shameful, and I am sorry.”** The Commonwealth of Massachusetts cannot turn its head away any longer. It has done so for twenty-six years. It is time to look the Davis family in the eye and do right. President Clinton also then observed that it **“is not only in remembering that shameful**

² <http://www.wcvb.com/article/family-waits-years-for-millions-after-son-beaten-at-hospital/8034736>

³ <https://www.bostonglobe.com/metro/2014/03/09/jason-davis-beating-foreshadowed-joshua-messier-tragedy/JUTn1QniHkN8SCnrwqk9IK/story.html>

⁴ See Exhibit 25, p. 24, 29 at jasonstrongma.com

⁵ See Exhibit 15, p. 1, 2-3, 6 at jasonstrongma.com

past that we can make amends and repair our nation, but it is in remembering that past that we can build a better present and a better future. And without remembering it, we cannot make amends and we cannot go forward.”

The Davis family specifically requests that the Commonwealth of Massachusetts: (i) pay the entire Third Amended Judgment entered in the Davis case;⁶ and (ii) acknowledge, in the public domain, that the Commonwealth of Massachusetts wronged Jason Davis and his family. I must respectfully submit that it is time to act as men and women should act when confronted with issues of this gravity. Justice should have been dispensed in this case decades ago.

Jason Davis deserves justice. It is long overdue. If justice is not to be dispensed now; then when? Thirty years out, forty years out, fifty years out or, perhaps, never? Never? Will that be the example of our Government? **We are 26 years out after five failed legislative attempts.** We cannot lurk in the shadows any longer since justice will not be obtained there. We are supposed to be a deep “blue” State with a time-honored Civil Rights legacy. Why, in the context of the Davis case, do we appear to be a bright “red” State with a concomitant absence of *any* Civil Rights legacy?

I must say, with all due respect, that enough is enough.

Please help Jason Davis and his family finally get immediate justice. It is time.

Thank you.

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

By: /s/ Christopher M. Perry

Christopher M. Perry

CMP/mcp

IN HAND & VIA EMAIL

Cc: William H. Davis
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⁶ Such sum is \$2,380,232 as of today (12.17.19) with a per diem of \$139.40.