No. _____

In the
Supreme Court of the United States

STEPHANIE LOGSDON SMITH, BRIDGETT DENNIS PARSON, ESTATE OF CAMMIE MUSINSKI, BY ALAYNA MUSINSKI, ADMINISTRATOR,
Petitioners,

v.

COMMONWEALTH OF KENTUCKY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Borrowing the form of Justice Alito's framing of the question presented in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (June 24, 2022), in this case "[t]he critical question is whether the Constitution, properly understood, confers a [private right of action against an individual State when that State *itself* violates the explicit prohibitions against slavery and involuntary servitude of Section 1 of U.S. Const. amend. XIII]" by and through a State-employed probation and parole officer who makes personal sex slaves of female probationers and parolees while they are in the State's care and custody.

"In *Jones*[*v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968)], the Court left open the question whether § 1 of the [13th] Amendment by its own terms did anything more than abolish slavery. It is also appropriate today to leave that question open…." *Memphis v. Greene*, 451 U.S. 100, 126 (1981). *See also General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 390 n.17 (1982) ("We need not decide whether the Thirteenth Amendment itself…accomplished anything more than the abolition of slavery."). Today is the day for the Supreme Court of the United States to answer the question finally and formally.

Stephanie Logsdon Smith, Bridgett Dennis Parson and Cammie Musinski (collectively the "Petitioners") are each someone's mother, sister, daughter, wife and citizens of the United States of

America with all rights appurtenant thereto. After mild brushes with the law, each was on probation or parole in the care and custody of the Commonwealth of Kentucky Department of Corrections under the supervision of Ronald Tyler—hired, trained, supervised, and employed by the Commonwealth of Kentucky. Tyler repeatedly threatened to taint and falsify Petitioners' court mandated drug test urine specimens, revoke their probation or parole and send them back to hell if they did not comply with his sexual demands. Scared and powerless to resist Tyler's state authority, the women were raped and sexually assaulted by Tyler at will multiple times—his personal sex slaves. Sometimes he did not even bother to remove his state-issued badge and gun before sex.

Tyler and the head of the Department of Corrections were fired by their employer, the Commonwealth of Kentucky. Tyler was indicted and prosecuted by his former employer, the Commonwealth of Kentucky, on multiple counts of rape and sodomy of multiple female probationers and parolees he supervised in addition to the Petitioners. Yet, after the filing of this lawsuit, Tyler was inexplicably permitted by the Commonwealth of Kentucky to plead guilty on November 16, 2021, in Bullitt County, Kentucky, state court to a single count of official misconduct with no input from the victims. The Federal Bureau of Investigation and the Department of Justice investigated. Tyler was indicted by a federal grand jury on July 19, 2022, and arrested by the FBI on July 22, 2022. He is charged with four counts of violation of 18 U.S.C. § 242 (with

aggravated sexual abuse) and one count of violation of 18 U.S.C. § 1512.

PARTIES TO THE PROCEEDINGS

Petitioners are Stephanie Logsdon Smith, Bridgett Dennis Parson, and Estate of Cammie Muskinski, by Alayna Musinski, Administrator. They were the plaintiffs-appellants below.

Respondent is the Commonwealth of Kentucky, the defendant-appellee below.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings directly related to or arising from the same trial court case number as the case in this Court within the meaning of Rule 14.1(b)(iii).

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The decision of the Sixth Circuit (App 1) is reported. The district court's opinion granting dismissal (App 16) is not reported. The district court's entry of judgment is found at App 37.

JURISDICTION

The judgment of the Sixth Circuit was entered on June 3, 2022. App 1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

U.S. Const. art. I, § 8, cls. 1, 12-13; U.S. Const. amend. XI; U.S. Const. amend. XIII; U.S. Const. amend. XIV; 42 U.S.C. § 1983; and Fed. R. Civ. P. 12(b)(6). Reproduced at Appendix D.

STATEMENT OF THE CASE

The question presented here remains unanswered 157 years after passage of U.S. Const. amend. XIII by Congress on January 31, 1865. Does the Thirteenth Amendment really mean what it says or is it just a bunch of fancy words? Did 750,000 Americans give their last full measure of devotion in a Civil War for nothing? Was a backwoods lawyer from Kentucky at the time of his assassination foolishly carrying around the pollyannaish belief in his head that his greatest achievement as president of the United States—formal abolition of slavery—*actually* mattered?

I. Proceedings in the District Court

Petitioners filed suit against the Commonwealth of Kentucky and its Governor alleging violations of U.S. Const. amend. XIII and 42 U.S.C. §1983. Respondent Commonwealth of Kentucky and its Governor moved to dismiss under Fed. R. Civ. P. 12(b)(6). Petitioners amended their complaint in response ***expressly disclaiming*** any cause of action or allegations under 42 U.S.C. §1983 and dropped all claims naming the Governor.

Respondent filed a second Fed. R. Civ. P. 12(b)(6) motion to dismiss which was granted by the District Court holding that the Commonwealth of Kentucky is entitled to sovereign immunity and the Petitioners have no recourse under U.S. Const. amend. XIII. The District Court ruled that unless Congress passes legislation pursuant to § 2 of U.S. Const. amend. XIII specifically forbidding (*malum prohibitum*) state-employed probation and parole officers from using parolees and probationers as personal sex slaves then these Petitioners have no redress for monetary damages against the Commonwealth of Kentucky *itself* for rape (an act *malum in se*) because of sovereign immunity under U.S. Const. amend. XI.

The *malum in se* act of rape was subjugated by the District Court to the status of a mere *malum prohibitum* offense for which the Commonwealth of Kentucky will not be held accountable because Congress did not so legislate despite—as *proprietor* of its corrections business—having been in the best

position to stop or at least deter it (with proper training and supervision of its employees). That simply cannot be the law of these United States of America.

The Petitioners counter that Congress *did* pass specific legislation forbidding state-employed probation and parole officers from using parolees and probationers as personal sex slaves. It was ratified by enough States and became the supreme law of the land as U.S. Const. amend. XIII.

The Petitioners timely filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit.

II. Proceedings in the Sixth Circuit

The Petitioners' appeal argued that the District Court erred as a matter of law in granting Respondent's motion to dismiss. The Sixth Circuit held "because the Thirteenth Amendment neither provides a cause of action for damages, nor abrogates Kentucky's sovereign immunity, and Kentucky did not otherwise waive its sovereign immunity, the district court appropriately dismissed Plaintiffs' claims." There is not a single published opinion of this Supreme Court in its 233-year history which explicitly holds there is *not* such a private cause of action. Unsurprisingly, the appellate panel gave wide berth to that legal argument and only addressed 42 U.S.C. § 1983.

The District Court and the Sixth Circuit foist an untenable course of legal action upon the

Petitioners. This Court has held there is no *respondeat superior* or vicarious liability under 42 U.S.C. § 1983. *See Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978). Moreover, 42 U.S.C. § 1983 cannot apply because the Petitioners have sued a *State* directly under U.S. Const. amend. XIII, not a "person" acting under color of state law as contemplated by 42 U.S.C. § 1983. This Court has "held that a State is not a 'person' as that term is used in § 1983, and is not suable under the statute, regardless of the forum where the suit is maintained." *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 201 (1991).

Yet, in contravention of the logic of *Hilton*, Respondent argued to both the District Court and the appellate panel that *Foster v. Michigan*, 573 F. App'x 377, 291 (6th Cir. 2014) stands for the proposition that "§ 1983 provides the exclusive remedy for [the] constitutional violations" the Petitioners allege they have suffered under U.S. Const. amend. XIII. If a State is not a "person" and cannot be sued under § 1983…how can the Sixth Circuit properly hold that 42 U.S.C. § 1983 is the sole remedy for violation of U.S. Const. amend. XIII by Kentucky to which § 1983 does not even apply?

Petitioners do *not* seek to use 42 U.S.C. § 1983 to sue the individual probation and parole officer (Tyler) who was acting under color of state law. Rather, they demand damages directly from the Commonwealth of Kentucky's treasury. Nonetheless the District Court and Sixth Circuit insist the Petitioners' *only* remedy for the heinous acts

committed against them is a 1983 action against Tyler. He earned approximately $30,000 annually…is judgment proof…has no assets…will file bankruptcy…and if he does not, what recompense is a pittance wage garnishment? What deterrent effect would it have, especially since the one with the most power to prevent it—Kentucky—has no obligation to indemnify any judgment against him as its employee and thus no incentive to take corrective action? In short, the remedy prescribed by the District Court and the Sixth Circuit is no remedy at all.

The District Court and the Sixth Circuit insist the Petitioners really want a common law or equitable remedial way around the past refusal of this Court to craft a version of *Monell* that circumvents sovereign immunity. Both 42 U.S.C. § 1983 and 42 U.S.C. § 1988 derive from U.S. Const. amend. XIII. Interestingly, 42 U.S.C § 1988 explicitly *embraces* the "common law" theory the District Court disdains when "in all cases where [the laws of the United States] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, *the common law* [emphasis added], as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause." Justice Harlan's concurrence in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 410 (1971)] six months before

his death is a primer on the exercise of equitable remedial powers by federal courts against threatened invasions of constitutional interests (such as the rape and sexual abuse endured by the Petitioners).

The Sixth Circuit also rejected the Petitioners' argument that ratification of U.S. Const. amend. XIII by the States abrogated their sovereign immunity even if a private right of action did exist under U.S. Const. amend. XIII. Both lower courts relied upon this Court's standard arsenal of U.S. Const. amend. XI jurisprudence. However, this Court's analyses in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (June 24, 2022), *Torres v. Texas Department of Public Safety*, No. 20-603 (June 29, 2022) and *PennEast Pipeline Co. v. New Jersey*, 141 S. Ct. 2244 (2021) undermine the reasoning of the District Court and the Sixth Circuit.

REASONS FOR GRANTING THE WRIT

Most state and federal courts reflexively proclaim there is no private right of action under U.S. Const. amend. XIII, yet some federal Circuit Courts of Appeal are not as resolute. *See, e.g, Murray v. Earle*, 334 F. App'x 602, 607 (5th Cir. 2009) ("It is not altogether clear that there is a private right of action…for violations of the Thirteenth Amendment.") and *Arnold v. Board of Education*, 880 F.2d 305, 309, 315 n. 12 (11th Cir. 1989) ("[w]hether a claim may be brought directly under the thirteenth amendment remains undecided"). One State supreme court has even held in the affirmative. *See Bayh v. Sonnenburg*, 573

N.E.2d 398, 410 (Ind. 1991) ("We conclude suit may be based directly on the [13th] amendment when attacking slavery itself or other forms of compulsory labor akin to slavery."). So, if these Petitioners were raped by the State of Indiana they would have redress but not one mile across the Ohio River in Kentucky? So much for equal protection under the law….

"The true spirit of constitutional interpretation in both directions is to give full, liberal construction to the language, aiming ever to show fidelity to the spirit and purpose." *Kansas v. Colorado*, 206 U.S. 46, 91 (1907). "Full, liberal construction to the language" of U.S. Const. amend. XIII showing "fidelity to the spirit and purpose" can only be achieved by 1) recognizing the enumerated private right of action vested in individuals by U.S. Const. amend. XIII and 2) acknowledging by its ratification the abrogation of *any* concept of State sovereign immunity.

The law according to the District Court and the Sixth Circuit is that any individual State may physically rape and sexually assault its own citizens (in violation of the State's own laws against such conduct by *individual* citizens) with impunity and immunity from civil suit and criminal prosecution because Congress has not enacted legislation under U.S. Const. amend. XIII, § 2 specifically prohibiting the obvious. The Petitioners' counterargument is that it is unthinkable that the Founding Fathers wrote a constitution permitting such an outcome.

Tyler's acts of rape and sexual assault in the scope and course of his employment constitute State action. *See*, *e.g.*, *Griffin v. Maryland*, 378 U.S. 130, 135 (1964) ("If an individual is possessed of state authority and purports to act under that authority, *his action is state action* [emphasis added]. It is irrelevant that he might have taken the same action had he acted in a purely private capacity or that the particular action which he took was not authorized by state law. *See*, *e. g.*, *Screws v. United States*, 325 U.S. 91."). See also *Holmes v. Jennison*, 39 U.S. 540, 573 (1840) ("It must be remembered that states can act only by their agents and servants; and whatever is done by them, by authority of law, is done by the state itself.").

Tyler's State action on its face violates both § 1 of U.S. Const. amend. XIII and XIV. "We conclude that a 'holding to involuntary servitude 'occurs when (a) the servant believes that he or she has no viable alternative but to perform service for the master (b) because of (1) the master's use or threatened use of physical force, or (2) the master's use or threatened use of state-imposed legal coercion (*i.e.*, peonage), or (3) the master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent." *U.S. v. Kozminski*, 821 F.2d 1186, 1192 (6th Cir. 1987), *cert.* granted, *United States v. Kozminski*, 487 U.S. 931, 952 (1988). *See also Claiborne*, *infra,* wherein the Sixth Circuit held that a rape victim had a clearly established fundamental right under the substantive component of the Due Process Clause to personal security and to bodily integrity.

I. Like U.S. Const. amend. II, there is an enumerated private right of action to enforce the U.S. Const. amend. XIII prohibitions against slavery and indentured servitude not being properly recognized by courts.

Constitutional interpretation is not always intrinsically textual. There are often pre-textual, pre-enactment, deeper principles at issue. The Supreme Court of the United States has recognized these "deeper principles" in many opinions over the years. For example, if due process, even without the words "equal protection" includes an equal protection concept as the Court ruled in *Bolling v. Sharpe*, 347 U.S. 497 (1954), then why cannot prohibited private action in violation of U.S. Const. amend. XIII also include State action? *Hans v. Louisiana*, 134 U.S. 1 (1890), interpreted the sovereign immunity of U.S. Const. amend. XI to stretch beyond the narrow instance of a federal court entertaining a diversity suit against the State to also encompass a suit by a citizen of a State against that State. Like that of *Bolling*, the holding of *Hans* simply cannot be extracted from the text of U.S. Const. amend. XI. Holdings such as *Bolling* and *Hans* must, therefore, derive from an implication.

Importantly, this Court recently in *Dobbs* made clear the importance of an express reference to a particular right in the Constitution and whether that right is "rooted in the Nation's history and tradition and whether it is an essential component of 'ordered liberty.'" *Dobbs* at 1. The prohibitions

against slavery and indentured servitude in U.S. Const. amend. XIII are an "essential component of 'ordered liberty.'" A Civil War in which 750,000 Americans died over the issue seemingly qualifies as "rooted in the Nation's history and tradition" supporting Thomas Jefferson's observation that "[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."

The Supreme Court of the United States has inferred from the language of the Constitution the existence of other implied yet inalienable rights. "But arguments such as the State makes have not precluded recognition of important rights not enumerated. Notwithstanding the appropriate caution against reading into the Constitution rights not explicitly defined, the Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees. For example, the rights of association and of privacy, the right to be presumed innocent, and the right to be judged by a standard of proof beyond a reasonable doubt in a criminal trial, as well as the right to travel, *appear nowhere in the Constitution or Bill of Rights* [emphasis added]. Yet these important but unarticulated rights have nonetheless been found to share constitutional protection in common with explicit guarantees." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579-80 (1980). See, *e. g.*, *NAACP v. Alabama*, 357 U.S. 449 (1958) (right of association); *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Stanley v. Georgia*, 394 U.S. 557 (1969) (right to privacy); *Estelle v. Williams*, 425 U.S. 501, 503 (1976), and *Taylor v. Kentucky*, 436 U.S. 478, 483-486 (1978)

(presumption of innocence); *In re Winship*, 397 U.S. 358 (1970) (standard of proof beyond a reasonable doubt); *United States v. Guest*, 383 U.S. 745, 757-759 (1966), *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969) (right to interstate travel); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Reynolds v. Sims,* 377 U.S. 533, 554 (1964) ("Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections."); and, *Brown v. Board of Education*, 347 U.S. 483 (1954) (separate but equal).

There are even recognized implied structural principles such as executive privilege and prohibition against Congress "commandeering states"—none of which appear in the actual text of the Constitution. Yet, even if this Court reversed all precedent recognizing any implied, unenumerated Constitutional right whatsoever, it cannot ignore the fact that slavery and indentured servitude are expressly prohibited by the literal text of U.S. Const. amend. XIII.

This Court is no doubt aware of the Second Amendment "ammunition" argument presently percolating in the Third, Fourth and Ninth Circuits:

> "[A]mmunition as a category is protected by the Second Amendment because "*without bullets, the right to bear arms would be meaningless* [emphasis added]."

United States v. Hasson, Case No.: GJH-19-96, at *9 (D. Md. Sep. 20, 2019) (*aff'd United States v. Hasson*,

26 F.4th 610 (4th Cir. 2022). The Constitution does not reference ammunition any more than it does abortion. Yet multiple circuit courts of appeal have held that without an implied (almost obvious) right to own ammunition the Second Amendment right to bear arms is meaningless. Similarly, without a private right of action to enforce its prohibitions, U.S. Const. amend. XIII is meaningless. Its core purpose would be gutted—a mere historical suggestion rather than a historic mandate imposed upon losers of a Civil War fought over the very prohibitions listed in the Amendment.

The Second Amendment was ratified on December 15, 1791, but this Court did not acknowledge the enumerated right to bear arms was vested in individuals until *District of Columbia et al. v. Heller*, 554 U.S. 570 (2008)—217 years later. The individual right of the Petitioners to seek redress for violation of its prohibitions against slavery and indentured servitude is in plain sight in U.S. Const. amend. XIII, § 1—just as was the individual right to bear arms in U.S. Const. amend. II before *Heller*. In his *Heller* opinion, Justice Scalia even noted the Second Amendment's "drafting history [was] of dubious interpretive worth…." However, by comparison, the drafting history behind the intent and language of the Thirteenth Amendment is beyond reproach and crystal clear.

Petitioners contend there is to be construed from the plain language of § 1 of U.S. Const. amend. XIII a direct cause of action against a State *itself* for monetary damages for violation of the prohibitions

against slavery and involuntary servitude. Even this Court's opinion in *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017) ending *Bivens*-style implied causes of action still left the door open to new *Bivens*-style causes of action echoing Justice Harlan's *Bivens* concurrence: "It is true that, if equitable remedies prove insufficient, a damages remedy might be necessary to redress past harm and deter future violations. For people in Bivens' shoes, it is damages or nothing. [*Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 410 (1971)]." *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1858 (2017). As an aside, *Bivens* does not apply to this case because a federal official is not being sued; rather, a State *itself* is being sued directly under U.S. Const. amend. XIII.

An injunction (see *Ex parte Young*, 209 U.S. 123 (1908)) proscribing future rape of other women in the Petitioners' position does not un-rape *these* Petitioners. Such an injunction is the epitome of Harlan's "nothing" as is an uncollectible judgment against a penniless Tyler under 42 U.S.C. § 1983. *Nothing* but monetary damages will compensate for and deter rape and sexual abuse by Kentucky.

And the perceived flood of litigation against which this Court has cautioned so many times in the past? *See*, *e.g.*, *Davis v. Passman*, 442 U.S. 228, 248 (1979) ("Finally, the Court of Appeals appeared concerned that, if a damages remedy were made available to petitioner, the danger existed 'of deluging federal courts with claims . . . .' "). If so many women like the Petitioners are being raped by probation and parole officers such that recognition of

a private right of action under U.S. Const. amend. XIII would open floodgates of litigation then there is a greater problem within state corrections departments than even the Petitioners believe. Or is the real concern a flood of litigation by black Americans seeking slavery reparations? Or something even more nefarious like backdoor re-litigation of a right to abortion because being forced to carry an unwanted fetus might be analogized by some as a form involuntary servitude? Are the basic human rights of the Petitioners going to be subjugated to this Court's institutional fear of litigious bogeymen?

II. A private right of action to enforce the explicit prohibitions of U.S. Const. amend. XIII is rooted in the Nation's history and tradition and it is an essential component of "ordered liberty."

Slavery in Kentucky

Harriet Beecher Stowe said she based the novel *Uncle Tom's Cabin* on several interviews with people who escaped slavery while she was living in Cincinnati, across the Ohio River from Kentucky. Kentucky exported more slaves than did most states. From 1850 to 1860, 16 percent of enslaved African Americans were sold out of Kentucky, as part of the forced displacement to the Deep South of a total of more than a million African Americans before the Civil War. Many slaves were sold directly to plantations in the Deep South from the Louisville slave market or were transported by slave traders

along the Ohio and Mississippi rivers to slave markets in New Orleans, hence the later euphemism "sold down the river" indicating any sort of betrayal.

Abraham Lincoln once had just such an encounter. He and his very good friend Joshua Speed met in Springfield, Illinois, during the 1830s. Although Speed returned to his native Kentucky plantation called “Farmington,” near Louisville, they remained friends throughout life. In a letter, Lincoln expressed his thinking about slavery, which contrasted with Speed, who grew up at Farmington and owned slaves. The year before Lincoln wrote this letter, the Kansas-Nebraska Act passed Congress, repealing the Missouri Compromise of 1820, and opened the territories to slavery. The passage of this bill proved a turning point in Lincoln's career. As he observed, "I was losing interest in politics, when the repeal of the Missouri Compromise aroused me again."

Springfield, Illinois

August 24, 1855

Dear Speed:

> You know what a poor correspondent I am. … You know I dislike slavery; and you fully admit the abstract wrong of it. So far there is no cause of difference. But you say that sooner than yield your legal right to the slave -- especially at the bidding of those who are not themselves interested, you would see

> the Union dissolved. I am not aware that any one is bidding you to yield that right; very certainly I am not. I leave that matter entirely to yourself. I also acknowledge your rights and my obligations, under the constitution, in regard to your slaves. I confess I hate to see the poor creatures hunted down, and caught, and carried back to their stripes, and unrewarded toils; but I bite my lip and keep quiet. In 1841 you and I had together a tedious low-water trip, on a Steam Boat from Louisville to St. Louis. You may remember, as I well do, that from Louisville to the mouth of the Ohio, there were, on board, ten or a dozen slaves, shackled together with irons. That sight was a continued torment to me; and I see something like it every time I touch the Ohio, or any other slave-border.

Kentuckians viewed Lincoln's Emancipation Proclamation in September 1862 as a betrayal. United States. President (1861-1865: Lincoln). *The Emancipation Proclamation*. Bedford, Mass.: Applewood Books, 1998. That it did not apply to Kentucky (as a border state which had not formally seceded from the Union) was of little matter. Many Kentuckians saw it as portending the end of slavery in their State. The reaction of Kentuckians was so fierce that Union General H.B. Wright reported to Washington in December 1862 that he was convinced that at least two-thirds of the legislature favored

secession and would proclaim it if given an opportunity to do so. Harrison, Lowell H. (1983). "Slavery in Kentucky: A Civil War Casualty." *The Kentucky Review* (Fall ed.). 5 (1): 36. History is mute as to why the legislature never again took up the secession question.

President Lincoln had serious concerns that the Emancipation Proclamation might be reversed or found invalid by the judiciary after the war. "The Reputation of Abraham Lincoln". C-SPAN.org. He saw constitutional amendment as a more permanent solution. After winning reelection in the election of 1864, Lincoln's top legislative priority was passage of U.S. Const. amend. XIII.

While the Constitution does not provide the president any formal role in the amendment process, after hard-won Congressional passage on January 31, 1865, the joint resolution was sent to Lincoln for his signature. Harrison, "Lawfulness of the Reconstruction Amendments" (2001), p. 389. Under the usual signatures of the Speaker of the House and the President of the Senate, President Lincoln wrote the word "Approved" and added his signature on February 1, 1865, signifying its personal importance to him. The Thirteenth Amendment is the *only* ratified amendment signed by a President.

The measure was swiftly ratified by nearly all Northern states, along with almost enough border states (except Kentucky) up to Lincoln's assassination. However, the push to finality came via his successor, President Andrew Johnson, who

"encouraged" the reconstructed Southern states of Alabama, North Carolina, and Georgia to ratify it in order to regain representation in Congress. See *White v. Hart*, 80 U.S. 646, 648 (1871) ("With her constitution thus modified, Congress enacted 'that the State of Georgia, having complied with the Reconstruction Acts, and the fourteenth and fifteenth amendments to the Constitution of the United States having been ratified in good faith by a legal legislature of said State, it is hereby declared that the State of Georgia is entitled to representation in the Congress of the United States'* Act of June 15th, 1870, 16 Stat. at Large, 363, 364."). Georgia ratified U.S. Const. amend. XIII on December 6, 1865, which brought the count to the required 27 states, leading to its formal proclamation as officially part of the Constitution by Secretary of State William Seward on December 18, 1865.

Kentucky—Lincoln's birthplace and boyhood home for several years of his youth—did exactly what Lincoln feared might happen after the Civil War ended. It did not ratify U.S. Const. amend. XIII until 1976(!) (second to last only to Mississippi in 1995) and tried to maintain the institution of slavery despite not even seceding from the Union over the issue. Any realistic assessment of the purpose of U.S. Const. amend. XIII must conclude that it was to prevent states such as Kentucky from maintaining systemic slavery and indentured servitude—the *casus belli*—after the end of the Civil War. The canonical *ex-post* application of its prohibitions to the conduct of *individuals* was merely reaction to the ascendant Jim Crow South, the Klan and Black Codes.

U.S. Const. amend. XIII, Section 1 – "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.

While it is true that suits attacking the 'badges and incidents of slavery' must be based on a statute enacted under § 2, suits attacking compulsory labor, *i.e.*, indentured servitude and sexual slavery, arise directly under prohibition of § 1, which is *'undoubtedly self-executing without any ancillary legislation' and '[b]y its own unaided force and effect . . . abolished slavery, and established universal freedom* [emphasis added].' *The Civil Rights Cases*, 109 U.S. at 20, 3 S. Ct. at 28." *Channer v. Hall*, 112 F.3d 214, 217 n.5 (5th Cir. 1997). U.S. Const. amend. XIII, § 1, upon which this lawsuit is based, is "self-executing without any ancillary legislation" required and logically provided a direct private right of action according to its interpretation by this Court of the United States in *United States v. Stanley*, 109 U.S. 3 (1883) as part of *The Civil Rights Cases* (*Id.*). The involuntary sexual servitude or slavery endured by the Petitioners is far more grievous than the "compulsory labor" referenced in *Channer*, *supra*.

"The great object of the Thirteenth Amendment was liberty under protection of effective government…." *Butler v. Perry*, 240 U.S. 328 (1916). What are Petitioners' legal rights when "effective government," *i.e.*, the Commonwealth of Kentucky, is *ineffective* and, in fact, *itself* deprives them of their

liberty interest under the Thirteenth Amendment? If "[t]he State alone has sovereignty and jurisdiction to protect personal liberty against the lawless acts of individuals and against lawless violence [internal citations omitted]," *Clyatt v. United States*, 197 U.S. 207, 210-11 (1905), then what legal recourse do Petitioners have when the State itself deprives them of personal liberty by "lawless acts" of rape and sexual abuse? Thomas Jefferson declared on July 4, 1776, that when in the course of human events it happens, revolution and a new form of government may be necessary. Petitioners are unable to take such bold action with one lawyer and no army, so it's monetary damages from Kentucky or nothing.

The notion that § 1 of U.S. Const. amend. XIII applies directly to the States is further supported by the fact that the Supreme Court did not even apply it to *individuals* until 1883—18 years after formal adoption. "Under the Thirteenth Amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." *United States v. Stanley*, 109 U.S. 3, 23 (1883).

As for a private right of action under Section 1, "This [Thirteenth] amendment, as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation…. By its own unaided force and effect it abolished slavery, and established universal freedom." *Stanley* at 20-21. What was being "self-execut[ed] without any ancillary

legislation?" *Something* surely was coming into existence.

"But, like the Senate, the House was moved by a larger objective — that of giving real content to the freedom guaranteed by the Thirteenth Amendment. Representative Thayer of Pennsylvania put it this way: '[W]hen I voted for the amendment to abolish slavery . . . I did not suppose that I was offering . . . a mere paper guarantee. And when I voted for the second section of the amendment, I felt . . . certain that I had . . . given to Congress ability to protect . . . ***the rights which the first section gave*** [emphasis added] . . . .' " *Jones v. Mayer Co.*, 392 U.S. 409, 433-34 (1968). Clearly even this single anecdote demonstrates that members of Congress understood that Section 1 was vesting in individuals some type of right(s).

"If an act of Congress admits of two interpretations, one within and the other beyond the constitutional power of Congress, the courts must adopt the former construction." *United States v. Coombs*, 37 U.S. 72 (1838). Petitioners ask this Court to interpret § 1 of U.S. Const. amend. XIII and, *if it is indeed admitting of two interpretations*, adopt the construction which supports the intent of a private right of action against a State directly for that State's violation of § 1 of U.S. Const. amend. XIII.

This Court in *Stanley* declared the terms of U.S. Const. amend. XIII to be "absolute and universal." The proper interpretation of Section 1

must support such a declaration and find a private right of action exists directly against a State for its violation. "MR. JUSTICE HARLAN dissenting: In *Prigg v. Commonwealth of Pennsylvania*, 41 U.S. 539 (1842), this court had occasion to define the powers and duties of Congress in reference to fugitives from labor. Speaking by MR. JUSTICE STORY it laid down these propositions:

> That *a clause of the Constitution conferring a right should not* be so construed as to make it shadowy, or unsubstantial, or *leave the citizen without a remedial power adequate for its protection* [emphasis added], when another construction equally accordant with the words and the sense in which they were used, would enforce and protect the right granted.... The terms of the Thirteenth Amendment are *absolute and universal* [emphasis added]."

United States v. Stanley, 109 U.S. 3, 26 (1883).

This Court has explicitly recognized that the construction of § 1 of U.S. Const. amend. XIII imbued Congress with powers to protect freedom and civil rights fundamental to freedom. Similar powers must surely be vested in individuals against States directly which infringe directly upon civil rights fundamental to freedom. "Had the Thirteenth Amendment stopped with the sweeping declaration, *in its first section* [emphasis added], against the existence of slavery

and involuntary servitude, except for crime, Congress would have had the power, by implication, according to the doctrines of *Prigg v. Commonwealth of Pennsylvania*, repeated in *Strauder v. West Virginia* [100 U.S. 303 (1880)], to protect the freedom established, and consequently, to secure the enjoyment of such civil rights as were fundamental in freedom. That it *can* [emphasis added—but need *not*] exert its authority to that extent is made clear, and was intended to be made clear, by the express grant of power contained in the second section of the Amendment." *United States v. Stanley*, 109 U.S. 3, 28 (1883).

"In fine, the legislation which Congress is authorized to adopt in this behalf is…corrective legislation…such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the amendment, they are prohibited from making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the [Thirteenth] amendment, they are prohibited from committing or taking." *United States v. Stanley*, 109 U.S. 3, 13-14 (1883). Thus, this Court held that U.S. Const. amend. XIII prohibits States from passing laws violative of the Amendment; but the logical precursor must be that States cannot engage directly in slavery or indentured servitude in the first instance.

It would be absurd to consider U.S. Const. amend. XIII jurisprudence as allowing States to directly engage in slavery and indentured servitude, but as *not* allowing States to pass a law permitting

its citizens to engage in slavery and indentured servitude. Surely a State cannot *itself* be permitted to directly engage in acts violative of U.S. Const. amend. XIII while at the same time being prohibited from passing a *law* violative of the same. A State cannot logically be simultaneously both permitted and prohibited with respect to violations of U.S. Const. amend. XIII.

Importantly, U.S. Const. amend. XIII, § 1, exempts penal labor from its prohibition of forced labor ("except as a punishment for crime whereof the party shall have been duly convicted…."). The responsibility to respond to most crime rests with State and local governments. Police protection is primarily a function of cities and towns. Corrections is primarily a ***proprietary***—not regulatory—function of State governments. Why shouldn't a State be held liable like any other private corrections business? *See, e.g., South Carolina v. United States*, 199 U.S. 437, 446 (1905) ("When a State enters into business…it lays down its sovereignty so far.")

If the prohibitions against slavery and involuntary servitude were not intended to apply directly to the States themselves, then why did Congress need to create such an exception in Section 1? *Inclusio unius est exclusio alterius*: the inclusion of one is the exclusion of another. The inclusion of an exception for criminal punishment (the province of individual States) from the prohibition against slavery and indentured servitude in U.S. Const. amend. XIII excludes any exception from application of the remainder of § 1 of U.S. Const. amend. XIII to

the individual States. To wit, this Court has even held as much:

> "The Thirteenth Amendment in its prohibitory feature is aimed solely at the States by its own language. The words 'except as a punishment for crime whereof the party shall have been duly convicted' could necessarily apply only to the States, and the full meaning and scope of the Amendment is by this language made plain. …*The offense is against the State* [emphasis added]."

Clyatt v. United States, 197 U.S. 207, 212 (1905).

U.S. Const. amend. XIII, Section 2 – "Congress shall have power to enforce this article by appropriate legislation.

The District Court held that Section 2 requires Congress to enact legislation specifically forbidding state-employed probation and parole officers from making personal sex slaves of probationers and parolees before the rape and sexual abuse of women like the Petitioners is actionable directly against Kentucky *itself*. Aren't the prohibitions of Section 1 clear enough? Why must Congress legislate the obvious?

The Nuremburg-type argument goes like this: some things—genocide, rape, murder—are so inherently bad that it is not necessary to legislate against them. Such would not be "appropriate" legislation because it is unnecessary. It is illogical to

hold that it is necessary for Congress to enact legislation prohibiting a State from making personal sex slaves of its probationers and parolees when § 1 of U.S. Const. amend. XIII already makes the prohibition clear…and the States themselves have all enacted criminal laws against rape and sexual abuse. Why is it either "appropriate" or "necessary and proper" for Congress to enact legislation under § 2 to forbid individual States from violating their own criminal laws against rape and sexual abuse?

Moreover, the Sixth Circuit has already found freedom from rape and sexual assault to be a fundamental Constitutional right under U.S. Const. amend. XIV. *Doe v. Claiborne County ex rel. Claiborne County Board of Education*, 103 F.3d 495, 507 (6th Cir. 1996) ("We therefore hold that Doe had a clearly established right under the substantive component of the Due Process Clause to personal security and to bodily integrity, that such right is fundamental, and that Davis's sexual abuse of Doe violated that right."). It is improper for the Sixth Circuit to require Congressional legislation under U.S. Const. amend. XIII, § 2, before it recognizes the same Constitutional right to be free from rape and sexual harassment it already recognizes under U.S. Const. amend. XIV.

By analogy the Petitioners call attention to U.S. Const. amend. XV, § 2 which is textually the same as U.S. Const. amend. XIII, § 2:

> Section 1. The right of citizens of the United States to vote shall not be denied

> or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

"While in the true sense, therefore, *the Amendment gives no right of suffrage* [emphasis added], it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, *that as the command of the Amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed* [emphasis added] …." *Guinn v. United States*, 238 U.S. 347, 361-63 (1915).

In *Guinn* this Court saw an implied right to vote in U.S. Const. amend. XV based on the same wording of its § 2 as that of § 2 of U.S. Const. amend. XIII. Why did the *Guinn* Court not see the same "division of authority" requiring specific legislation be enacted to enforce § 1 of XV as the District Court here? Why should the self-executing nature of XV be any different from that of XIII which this Court even acknowledged as being "self-executing" thirty- two years prior in *Stanley*?

Without an implied right to vote, U.S. Const. amend. XV is meaningless. Just as U.S. Const. amend. II's right to bear arms is meaningless without an implied right to own ammunition as discussed, *supra.* U.S. Const. amend. XIII has no intellectually honest meaning if there is no private right of

enforcement vested in the very individuals made slaves or indentured servants in violation of its explicit prohibitions.

III. Knowing and voluntary ratification of U.S. Const. amend. XIII by the States abrogated their sovereign immunity to suit thereunder.

It was rare in the 1787 Constitution for states to be constrained. As Lincoln noted in his letter to Speed, *supra*, Article IV, Section 2, clause 3, even went so far as to placate some states by ensuring they had the right to reclaim runaway slaves:

> Article IV - The States
>
> Section 2 - State citizens, Extradition
>
> (No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, But shall be delivered up on Claim of the Party to whom such Service or Labour may be due.) [**This clause in parentheses is superseded by the 13th Amendment.**]

It is therefore even more notable, in terms of abrogation of state sovereign immunity, that U.S. Const. amend. XIII not only expressly prohibited slavery and indentured servitude within the United States, but it expressly revoked a "right" given to

States in the "plan of the [1787] Convention." Not only was state sovereign immunity expressly abrogated by U.S. Const. amend. XIII, but by its adoption States explicitly, knowingly, and voluntarily *stripped themselves* of an original Constitutional right.

"Sovereign immunity" of States was not even mentioned in the 1787 Constitution. It took a lawsuit in 1793 by Alexander Chisolm of South Carolina against the State of Georgia for unpaid Revolutionary War debts to trigger adoption of U.S. Const. amend. XI in 1795 after this Court found for Chisholm by ruling that Article III, Section 2 of the Constitution took away the States' sovereign immunity because the list of cases that could be heard by this Supreme Court in that section included "Controversies . . . between a State and Citizens of another State."

There are myriad treatises and legal opinions analyzing and interpreting U.S. Const. amend. XI. Petitioners will not here repeat *ad nauseum* the holdings of *Hans v. Louisiana*, 134 U.S. 1 (1890); *Ex parte Young*, 209 U.S. 123 (1908); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985); *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991); *Seminole Tribe of Florida v. Fla.*, 517 U.S. 44 (1996); and *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U.S. 627 (1999). The appetite of this Court to consider sovereign immunity under U.S. Const. amend. XI waxes and wanes with the prevailing political winds. Nonetheless, "[h]aving

weathered decades of doctrinal scrutiny and storm, *Fitzpatrick* continues to stand firmly for the proposition that the Fourteenth Amendment altered the federal-state balance in a way that allows Congress to neutralize state sovereign immunity in certain instances." *See* "Reconciling State Sovereign Immunity with the Fourteenth Amendment," 129 Harv. L. Rev. 1068 (Feb. 10, 2016). Yet, U.S. Const. amend. XIII is at issue in this case, not U.S. Const. amend. XIV despite the Sixth Circuit's finding of a fundamental Constitutional right against rape and sexual assault thereunder in *Claiborne*, *supra*; however, XIV jurisprudence hints at how this Court has and will and has not and will not interpret and apply U.S. Const. amend. XIII in relation to U.S. Const. amend. XI.

Fitzpatrick and its progeny consider exclusively Congress' power to abrogate state sovereign immunity pursuant to the U.S. Const. amend. XIV, with special emphasis on section 5. This Court has never overruled *Fitzpatrick*, but it has certainly trimmed or overruled its own precedent interpreting, expanding and contracting *Fitzpatrick* in cases like *Hans*, *Ex parte Young*, *Seminole*, and *Florida Prepaid*, *inter alia*—which is really of no significance to this case based entirely on U.S. Const. amend. XIII. In those U.S. Const. amend. XIV cases this Court at various times strained to permit suits against the States for monetary damages then strained just as much if not more to retract the permissions previously granted. The overarching theme is always "abrogation of State sovereign immunity" by the terms of the 1787 Constitution or

subsequent amendments and Congressional action and what section 5 or section 1 (or any other section) of U.S. Const. amend. XIV or various federal statutes enacted by Congress permitted.

U.S. Const. amend. XIII, however, is a different matter entirely. Relatively few have dared tread upon that island in the sea of constitutional jurisprudence compared to how much time others have spent traipsing all over the island of the U.S. Const. amend. XIV. By its very language the U.S. Const. amend. XIII achieved explicitly (abrogation of state sovereign immunity) what courts for years have debated was only implicit (or was it?) in the language of the U.S. Const. amend. XIV. See *Fitzpatrick*, 427 U.S. 445, 453 (1976) "[U.S. Const. amend. XIV] quite clearly contemplates limitations on [states'] authority." See also *Id.* at 456 "[w]hen Congress acts pursuant to § 5, not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, but it is exercising that authority under one section of a constitutional Amendment whose other sections by their own terms embody limitations on state authority."

U.S. Const. amend. XIII was not enacted by Congress only to be subsequently analyzed *ad nauseum* in U.S Const. amend. XIV terms as to whether state sovereign immunity is abrogated under XIII or not. U.S. Const. amend. XIII is a standalone proposition independent of any U.S. Const. amend. XIV analysis. This Court recognizes as much in its U.S. Const. amend. XIII jurisprudence…which is less abundant than its U.S.

Const. amend. XIV jurisprudence…but no less emphatic—perhaps even more so.

In *Alden v. Maine*, 527 U.S. 706 (1999), the Rehnquist Court announced even greater expansion of sovereign immunity thereby cutting back further (but sparing) *Fitzpatrick*. State sovereign immunity is not a doctrine limited to either U.S. Const. amend. XI or even Article III. Rather, it is derived "from the structure of the original Constitution itself." *Alden*, 527 U.S. at 728-729. However, the language of the 1787 Constitution, as discussed *supra*, was not at all explicit about state sovereign immunity compared to the explicit prohibitory language of U.S. Const. amend. XIII.

In *Seminole Tribe*, this Court adopted the narrow view that *Fitzptrick* was merely an opinion about changes to the federal-state balance after the Civil War and stressed the unique properties of U.S. Const. amend. XIII. *Alden* did not involve U.S. Const. amend. XIII, but in this light, it must surely be considered just as unique if not more so than the U.S. Const. amend. XIV. After all, what altered the federal-state balance more than U.S. Const. amend. XIII knowingly and voluntarily stripping States of an original Constitutional "right" to the return of their runaway slaves? What—literally—altered the federal-state balance more than the Civil War?

This Court has consistently relied upon this balance-altering shift to explain why § 5 of U.S. Const. amend. XIV enables the federal government to override state sovereign immunity: "*Fitzpatrick* was

based upon [the] rationale…that the Fourteenth Amendment, adopted well after the adoption of the Eleventh Amendment and the ratification of the Constitution, operated to alter the pre-existing balance between state and federal power achieved by Article III and the Eleventh Amendment." *Seminole Tribe of Fla.* at 59. By ratifying the Fourteenth—and arguably the Thirteenth Amendment based on the exact same logic—the States "surrender[ed] a portion of the sovereignty that had been preserved to them by the original Constitution," including their right to sovereign immunity. *Alden* at 756. "The States have consented…to some suits pursuant to the plan of the Convention or to *subsequent constitutional Amendments* [emphasis added]." *Alden* at 755. Based upon the logic of this Court's Fourteenth and Eleventh Amendment jurisprudence such as *Alden*, *Torres* and *PennEast*, there can be no doubt that the States consented to suit pursuant to ratification of the Thirteenth Amendment.

Pursuant to Article V two thirds of the "several States" had to call a Convention for proposing U.S. Const. amend. XIII. Then, three fourths of the "several States" (including a few former Confederate states) had to ratify U.S. Const. amend. XIII. In plain view of U.S. Const. amend. XI—and eight months after Robert E. Lee's still-fresh surrender to Ulysses S. Grant at Appomattox Court House—the "several States" knowingly and voluntarily relinquished sovereign immunity with respect to a Constitutional "right" to maintain slavery first given them on September 17, 1787, in Article IV, Section 2, clause 3.

Unless the legal reasoning is that the "several States" hid their fingers crossed behind their backs when ratifying U.S. Const. amend. XIII, it cannot be logically argued that the "several States" retained sovereign immunity (of whatever derivation) against suit for violation of U.S. Const. amend. XIII when they knowingly and voluntarily ratified it. See *Neal v. Delaware*, 103 U.S. 370, 389-90 (1880) ("The presumption should be indulged, in the first instance, that the State recognizes, as is its plain duty, an amendment of the Federal Constitution from the time of its adoption, as binding on all of its citizens and every department of its government, and to be enforced….") "[B]inding on…every department of its government" binds the Kentucky Department of Corrections to the U.S. Const. amend. XIII prohibitions against slavery and indentured servitude.

This Court recently considered sovereign immunity in *PennEast Pipeline Co. v. New Jersey*, 141 S. Ct. 2244 (2021) and *Torres v. Texas Department of Public Safety*, No. 20-603 (June 29, 2022). In *PennEast* it held that States may be sued if they agreed their sovereignty would yield to the exercise of a particular federal power as part of the "plan of the Convention." In *Torres* it held that the States by ratification of the Constitution waived sovereign immunity under the war powers granted to Congress in Article I because "[b]y ratifying [the Constitution], the States well knew that their sovereign immunity would give way to national policy to build and maintain the Armed Forces." *Torres* at 3.

Applying *Torres*, when ratifying U.S. Const. amend. XIII the States knew well that their sovereign immunity would give way to national policy that prohibited slavery and indentured servitude. U.S. Const. amend. XIII is the strongest form of "war powers" ever asserted by Congress in U.S. history: the imposition of terms of surrender and re-admission to the Union upon rebel states. It was a direct, antithetical repudiation of the Constitution of the Confederate States (March 11, 1861), Art. I, Sec. 9(4): "No bill of attainder, ex post facto law, or law denying or impairing the right of property in negro slaves shall be passed."

The rebel states were forced to ratify U.S. Const. amend. XIII to regain representation in the United States Congress. Is that not a raw exercise of Article I war powers by Congress light of *Torres*? It is disingenuous considering the historical record to argue individual States are entitled to sovereign immunity if they directly violate U.S. Const. amend. XIII. Else, the Amendment stands for absolutely nothing at all. Further still, *Dobbs* strongly suggests that *Hans* should be overruled because its judicially created concept of state sovereign immunity is simply not present in the text of the Constitution any more than is abortion.

This Court's analysis and reasoning in *Allen v. Cooper*, 140 S. Ct. 994 (2020), also supports the Petitioners' claims:

> "In our constitutional scheme, a federal court generally may not hear a suit

> brought by any person against a nonconsenting State. **That bar is nowhere explicitly set out in the Constitution** [emphasis added]. … Not even the most **crystalline abrogation** [emphasis added] can take effect unless it is 'a valid exercise of constitutional authority.' *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 78, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000)."

Allen v. Cooper, 140 S. Ct. 994, 1000-01 (2020)

What could be a more "crystalline abrogation" of state sovereign immunity than U.S. Const. amend. XIII which by its very ratification was a knowing and voluntary waiver, *i.e.*, revocation, of a Constitutional "right" given to states in the original Constitution?

The *Allen* Court also wrote at 1002-03:

> **Relying on the above account of the Framers' intentions, the Court found that the Bankruptcy Clause itself did the abrogating** [emphasis added]. [*Central Virginia Community College v. Katz*, 126 S. Ct. 990 (2006)] at 379, 126 S.Ct. 990 ('[T]he relevant "abrogation" is the one effected in the plan of the [Constitutional] Convention'). Or stated another way, **we decided that no congressional abrogation was needed because the States had already "agreed in the plan of the**

> **Convention not to assert any sovereign immunity defense" in bankruptcy proceedings** [emphasis added]. *Id.*, at 377, 126 S.Ct. 990. … **Our decision, in short, viewed bankruptcy as on a different plane, governed by principles all its own** [emphasis added]."

What can possibly be more "on a different plane, governed by principles all its own" than slavery and indentured servitude? If it was so with bankruptcy, then with respect to slavery and indentured servitude why was "congressional abrogation" needed if the "States had already 'agreed in the plan of the [ratification of U.S. Const. amend. XIII] not to assert any sovereign immunity defense'?"

If bankruptcy jurisdiction is of a "singular nature" then what about of U.S. Const. amend. XIII jurisdiction over slavery and indentured servitude? Is there a more "singular nature" than enslavement of another human? The *Allen* court even noted "The nation's first Bankruptcy Act [of 1800], for example, empowered those courts to order that States release people they were holding in debtors' prisons." *Allen* at 1003. Even 65 years before ratification of U.S. Const. amend. XIII, bankruptcy law bowed to the superior concept that persons could not be enslaved or rendered involuntarily subservient by debt.

Just as the *Allen* Court found the Bankruptcy Clause of the Constitution itself did the abrogating of State sovereign immunity without need for

Congressional action, so must U.S. Const. amend. XIII be logically interpreted…because this Court has already held as much in *The Civil Rights Cases* at 20 and *Channer* at 217 n.5, *supra*.

If there exists a "bankruptcy exceptionalism" then what must we label the slavery and indentured servitude prohibitions of U.S. Const. amend. XIII? After all, no war with 750,000 casualties was fought over bankruptcy law. Surely "slavery exceptionalism" far exceeds in importance any "bankruptcy exceptionalism" and trumps any concept of State sovereign immunity.

CONCLUSION

History; We the People; the Petitioners; 750,000 Civil War deaths; and, this Court's precedent, *e.g.*, *Jones v. Alfred H. Mayer Co.* and *Memphis v. Greene*, strongly suggest that this petition for a writ of certiorari should be granted and the Question Presented answered finally and formally.

Respectfully submitted,

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