

Amendment T
No Exception to Involuntary Servitude Prohibition

1 **Amendment T proposes amending the Colorado Constitution to:**

- 2 ♦ remove language that currently allows slavery and involuntary servitude
3 to be used as punishment for the conviction of a crime.

4 **Summary and Analysis**

5 **Definitions.** "Slavery," as defined by Black's Law Dictionary, is a situation in
6 which one person has absolute power over the life, fortune, and liberty of another
7 person. The U.S. Supreme Court has defined "involuntary servitude" as a condition of
8 servitude in which one person is forced to work for another person by the use or threat
9 of physical restraint or physical injury, or by the use or threat of coercion through law
10 or the legal process.

11 **U.S. and Colorado Constitutions.** The 13th Amendment to the U.S. Constitution
12 was passed in 1865 to prohibit slavery and involuntary servitude, except as
13 punishment for a crime for which a person has been found guilty. The amendment
14 gives the U.S. Congress the power to enforce the amendment through legislation.

15 Similar to the U.S. Constitution, under Article II, Section 26 of the Colorado
16 Constitution, slavery and involuntary servitude are prohibited, except as punishment
17 for the conviction of a crime. Amendment T removes this exception.

18 **Offender work requirements in the criminal justice system.** The courts have
19 ruled that work requirements resulting from a conviction of a crime are allowable under
20 the above provisions of the U.S. and Colorado Constitutions. Offender work
21 requirements currently used in the Colorado criminal justice system may take the
22 following forms:

- 23 • *Prison work requirements.* All eligible offenders are expected to work
24 unless assigned to an approved education or training program.
25 Offenders are not required to work, but those who refuse to participate
26 may face a reduction in or loss of privileges or a delayed parole
27 eligibility date.
- 28 • *Community service.* A judge may sentence certain offenders to work a
29 specific number of hours providing community service. These programs
30 emphasize individual restitution for offenses through contributions to the
31 community. In some cases, community service is a condition of
32 probation.

- 1 • *Probation.* The courts require that an offender sentenced to probation
2 maintain suitable employment and/or pursue employment-related
3 education or vocational training.

*For information on those issue committees that support or oppose the measures on the ballot at the **November 8, 2016**, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:*

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

4 **Argument For**

- 5 1) The section of the Colorado Constitution that allows slavery and involuntary
6 servitude as punishment for a crime should be updated because it represents a time in
7 the United States when not all people were seen as human beings or treated with
8 dignity. Removing the language reflects fundamental values of freedom and equality,
9 and makes an important symbolic statement.

10 **Argument Against**

- 11 1) Amendment T may result in legal uncertainty around current offender work
12 practices in the state. Prison work requirements provide structure and purpose for
13 offenders, while enabling skill building and helping to reduce recidivism. Community
14 service programs allow offenders to engage with the community and make amends for
15 their crimes. Such practices have a place in the correctional system, and legal
16 challenges resulting from the passage of Amendment T could put the application of
17 these practices in jeopardy.

18 **Estimate of Fiscal Impact**

19 ***State revenue and spending.*** Amendment T may impact both state revenue and
20 spending. Should Amendment T be interpreted as prohibiting community service
21 sentences, more fines may be imposed in place of community service and fewer
22 probation fees may be collected from those currently sentenced to community service
23 as the sole condition of probation. Amendment T may also impact costs and workload
24 for the Department of Law, Department of Corrections, and Judicial Department due
25 to potential legal challenges.

26 ***Local government impact.*** Amendment T may increase jail and county court
27 costs for local governments and impact revenue and workload for the City and County
28 of Denver due to potential legal challenges.

Last Draft as Mailed to Interested Parties

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Last Draft Comments from Interested Parties

Amendment T No Exception to Involuntary Servitude Prohibition

Will Dickerson, representing Together Colorado as a proponent:

Thank you for the information about Amendment T and the opportunity to participate in the crafting of this important document. As I read through it I had some concerns about the argument against the measure. In the research that we did with a group of bipartisan senators, we found that this measure would NOT impact prison labor or community service. The research I refer to is attached. Specifically the congressional research center has done extensive work in this area a states that "Notably, the Amendment does allow a person convicted of a crime to be forced to work. Thus, prison labor practices, from chain gangs to prison laundries, do not run afoul of the Thirteenth Amendment. The Thirteenth Amendment has also been interpreted to permit the government to require certain forms of public service, presumably extending to military service and jury duty" -

<http://constitutioncenter.org/interactive-constitution/amendments/amendment-xiii>

This question came up while the House and Senate considered the bill and felt the incredibly narrow legal definition of involuntary servitude means that prison labor or community service will not be effected. This is why the bill passed 100-0 during the 2016 legislative session. There are 25 states in the USA that have no mention of involuntary servitude or slavery in their constitution yet they still have prisons and community service requirements within their state. I have also attached a list of all states and what their constitution reflects in regards to slavery and involuntary servitude.

I would urge you to consider these facts as you release this important document educating people about such an important matter. I am so grateful for your hard work in this matter and pray that this email finds you well.

Bless,

Will Dickerson
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Formerly Metro Organizations for People
1980 Dahlia St. - Denver CO 80220
www.togethercolorado.org

Mr. Dickerson also submitted a document containing the language of each state's constitution that pertains to slavery and involuntary servitude (Attachment A), as well as a document containing research that is pertinent to the measure (Attachment B).

State Constitution's and Amendments Abolishing Slavery		
State	Date State Entered the Union	Amendment Language
Alabama	1819	That no form of slavery shall exist in this state; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.
Alaska	1959	No mention of slavery or involuntary servitude in constitution
Arizona	1912	No mention of slavery or involuntary servitude in constitution
Arkansas	1836	There shall be no slavery in this State, nor involuntary servitude, except as a punishment for crime
California	1850	Slavery is prohibited. Involuntary servitude is prohibited except to punish crime.
Colorado	1876	
Connecticut	1788	No mention of slavery or involuntary servitude in constitution
Delaware	1787	No mention of slavery or involuntary servitude in constitution
Florida	1845	No mention of slavery or involuntary servitude in constitution Mention of involuntary servitude only: There shall be no involuntary servitude within the State of Georgia except as a punishment for crime after legal conviction thereof or for contempt of court.
Georgia	1788	
Hawaii	1959	No mention of slavery or involuntary servitude in constitution
Idaho	1890	No mention of slavery or involuntary servitude in constitution
Illinois	1818	No mention of slavery or involuntary servitude in constitution
Indiana	1816	There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted
Iowa	1846	There shall be no slavery in this State; nor shall there be involuntary servitude, unless for the punishment of crime.
Kansas	1861	There shall be no slavery in this state; and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted.
Kentucky	1792	Slavery and involuntary servitude in this State are forbidden, except as a punishment for crime, whereof the party shall have been duly convicted.
Louisiana	1812	Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.
Maine	1820	No mention of slavery or involuntary servitude in constitution
Maryland	1788	No mention of slavery or involuntary servitude in constitution
Massachusetts	1788	No mention of slavery or involuntary servitude in constitution
Michigan	1837	Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state.
Minnesota	1858	There shall be neither slavery nor involuntary servitude in the state otherwise than as punishment for a crime of which the party has been convicted.
Mississippi	1817	There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

link to Constitution

<http://alisondb.legislature.state.al.us/alison/codeofalabama/constitution/1901/CA-245563.htm>

<http://trgov.alaska.gov/treadwell/services/alaska-constitution.html>

<http://www.azleg.gov/Constitution.asp>

<http://www.arkleg.state.ar.us/assembly/Summary/ArkansasConstitution1874.pdf>

http://www.leginfo.ca.gov/const/article_1

<https://www.sga.ct.gov/asp/Content/constitutions/CTConstitution.htm>

<http://delcode.delaware.gov/constitution/>

<https://www.fisenate.gov/Laws/Constitution#A1>

<http://www.senate.ga.gov/Documents/eaconstitution.pdf>

<http://www.irbhawaii.org/con/>

<https://www.legislature.idaho.gov/idstat/IC/ArtI.htm>

<http://www.iga.gov/commission/irb/con1.htm>

<https://iga.in.gov/legislative/laws/const/>

<http://publications.iowa.gov/135/1/history/7-7.html>

<http://kslib.info/826/Kansas-Bill-of-Rights>

<http://www.lrc.ky.gov/legresou/constitu/list1.htm#Bill of Rights>

<http://senate.legis.state.la.us/documents/constitution/constitution.pdf>

<http://legislature.maine.gov/const/>

<http://msa.maryland.gov/msa/mdmanual/43const/html/000dec.htm>

<http://malegislature.gov/Laws/Constitution#cp10s00.htm>

[http://www.legislature.mi.gov/\(S/0gvoou0fc4iyax5lib1zzl\)/mleg.aspx?page=relcbject&objectName=mcl-Constitution-1](http://www.legislature.mi.gov/(S/0gvoou0fc4iyax5lib1zzl)/mleg.aspx?page=relcbject&objectName=mcl-Constitution-1)

<https://www.revisor.leg.state.mn.us/constitution/>

http://www.sos.state.ms.us/ed_pubs/constitution/constitution.asp

Missouri	1821	Provided always, That any person That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of escaping into the same, from whom labour or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid.	http://www.moga.mo.gov/mostatutes/ConstArticleIndexes/TO1.html https://courts.mt.gov/portals/113/library/docs/72constit.pdf
Montana	1889	No mention of slavery or involuntary servitude in constitution	http://nebraskalegislature.gov/laws/browse-constitution.php
Nebraska	1867	There shall be neither slavery nor involuntary servitude in this state, otherwise than for punishment of crime, whereof the party shall have been duly convicted.	
Nevada	1864	First. That there shall be in this state neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.	https://www.leg.state.nv.us/const/nvconst.html
New Hampshire	1788	No mention of slavery or involuntary servitude in constitution	https://www.nh.gov/constitution/billofrights.html
New Jersey	1787	No mention of slavery or involuntary servitude in constitution	http://www.njleg.state.nj.us/lawsconstitution/constitution.asp
New Mexico	1912	No mention of slavery or involuntary servitude in constitution	http://www.sos.state.nm.us/Public_Records_And_Publications/2013nmconst.pdf
New York	1788	No mention of slavery or involuntary servitude in constitution	https://www.dos.ny.gov/info/pdfs/Constitution.pdf
North Carolina	1789	Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.	http://www.ncga.state.nc.us/legislation/constitution/nconstitution.html
North Dakota	1889	Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state	http://www.legis.nd.gov/const/a01.pdf#20160415145451
Ohio	1803	There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.	https://www.legislature.ohio.gov/laws/ohio-constitution/article?sessionId=4f23db77b8dea480020f121eebf8?id=1
Oklahoma	1907	No mention of slavery or involuntary servitude in constitution	http://www.oklegislature.gov/ok_constitution.html
Oregon	1859	There shall be neither slavery, nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted	https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx
Pennsylvania	1787	No mention of slavery or involuntary servitude in constitution	http://www.legis.state.pa.us/WU01/LJ/L/CT/HTML/00/00.001.HTML
Rhode Island	1790	Slavery prohibited. — Slavery shall not be permitted in this state.	http://www.rilin.state.ri.us/riconstitution/Pages/Constfull.aspx
South Carolina	1788	No mention of slavery or involuntary servitude in constitution	http://www.sstatehouse.gov/sconstitution/sconst.php
South Dakota	1889	No mention of slavery or involuntary servitude in constitution	http://legis.sd.gov/Statutes/Constitution/DisplayStatute.aspx?Type=Statute&Statute=ON-5
Tennessee	1796	That slavery and involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, are forever prohibited in this state	https://www.tn.gov/sos/bluebook/11-12/TSS_TNFoundingDocs.pdf
Texas	1845	No mention of slavery or involuntary servitude in constitution	http://www.constitution.legis.state.tx.us/
Utah	1896	Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.	http://le.utah.gov/xcode/Article/UC_A1_1800010118000101.pdf

Vermont	therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.	http://legislature.vermont.gov/statutes/constitution-of-the-state-of-vermont/
Virginia	No mention of slavery or involuntary servitude in constitution	http://law.lis.virginia.gov/constitution/article1/
Washington	No mention of slavery or involuntary servitude in constitution	http://leg.wa.gov/lawsandagencies/documents/12-2010-wastateconstitution.pdf
West Virginia	No mention of slavery or involuntary servitude in constitution	http://www.legis.state.wv.us/WVCODE/WV_CON.cfm#article11
Wisconsin	There shall be neither slavery, nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.	http://docs.legis.wisconsin.gov/constitution/wi/000226/0000003
Wyoming	No mention of slavery or involuntary servitude in constitution	http://www.uwyo.edu/robertshistory/wyoming_constitution_full_text.htm
United States	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.	http://www.archives.gov/exhibits/charters/constitution_amendments_11-27.html

I have been conducting research this afternoon and found some really interesting information. The Heritage Foundation has completed an extensive analysis of the thirteenth amendment (the US constitution's amendment on slavery and involuntary servitude). From what I can tell, our amendment was patterned off of the US Constitutional amendment – the language is near exact. Below is a link and the body of information on the Heritage Foundation's analysis. If you look towards the bottom of the analysis it specifies the extremely narrow definition of involuntary servitude and how a challenge or two have come forward very unsuccessfully i.e. individuals claiming they were subject to involuntary servitude and it was ruled by the courts they were not.

The second link and information is from the National Constitution Center. The Constitution Center was created by Congress to disseminate information and legal analysis of the US Constitution. In their analysis, they specifically state that the law does still allow individuals incarcerated to work and this act doesn't violate the "involuntary servitude" provision.

The Heritage Foundation

<http://www.heritage.org/constitution/#!/amendments/13/essays/166/abolition-of-slavery>

The Thirteenth Amendment was intended to complete the destruction of slavery begun by the U.S. government during the Civil War in its policy of military emancipation. The official aim of the war was to preserve the Union and the Constitution against the attempt of eleven Southern states to secede from the Union by armed force. In an attempt to keep the peace and prevent further secession, Congress proposed a constitutional amendment on March 2, 1861, stating that the Constitution should never be amended to give Congress power to abolish or interfere with slavery within any state. Once the South had seceded, the status of slavery in the rebellious states was subject to change. Union policy recognized that emancipation of slaves employed in support of the rebellion was a legitimate war measure. The Emancipation Proclamation, issued by President Abraham Lincoln on January 1, 1863, signaled the transformation of an expedient military strategy into a settled executive policy for maintaining the freedom of slaves, emancipated by military means or through enforcement of confiscation and treason statutes enacted by Congress.

On the assumption that slavery was a state rather than national institution, antislavery advocates at first anticipated that military defeat of the Confederacy would result in its abolition through amendment of state constitutions. The Emancipation Proclamation shifted the focus of antislavery strategy to the national government. Lincoln's proclamation stated that "the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom" of emancipated slaves. The legal effect of the executive order on individual slaves was uncertain, however, and it was generally agreed that the proclamation did not repeal state constitutions and laws establishing slavery. To place slave emancipation on a secure constitutional footing, Congress proposed on January 31, 1865, to abolish slavery by constitutional amendment. Ratification of the Thirteenth Amendment, including approval by reconstructed governments in the former Confederate states, was completed on December 6, 1865.

The text of the Thirteenth Amendment reflects its historic character as the culmination of a movement that began during the American Revolution. Eschewing originality, the authors of the amendment relied on the language of the Northwest Ordinance of 1787, intended to keep slavery from being taken into national territory, to abolish it in lands where it had been established for over two centuries. This demonstration of textual fidelity to historic antislavery purpose expressed the desire of Congress to complete the Founders' system of constitutional liberty by making the personal liberty of individuals the concern of the national government.

The Thirteenth Amendment was intended to establish a positive guarantee of personal liberty, expressed in the negative form of a proscription of slavery or involuntary servitude. Viewed in historical context and in the tradition of American political thought, the amendment is an affirmation of the idea that liberty, in the most fundamental sense, consists in the right of individuals not to be interfered with in the exercise of their natural rights. As a guarantee of personal liberty for all persons in the United States, the amendment established a minimum national standard of equality.

The Thirteenth Amendment is libertarian in its nature and purpose, however, rather than egalitarian. The libertarian characteristic of the amendment was made clear in congressional debate in 1864. Congress rejected a more far-reaching proposal, which stated: "All persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have the power to make all laws necessary and proper to carry this declaration into effect everywhere within the United States."

By conferring power on Congress to enforce the prohibition of slavery throughout the United States, the Thirteenth Amendment altered the relationship between the states and the federal government. State power to recognize or establish slavery as a legal institution was withdrawn; to that extent, at least, state authority to regulate the personal liberty and civil rights of individuals within their jurisdiction was restricted beyond the limits imposed by the original Constitution. Unlike most other parts of the Constitution, which are designed only to limit governmental action, enforcement of the Thirteenth Amendment is not limited by the requirement that it apply only to actions by states or state officials. The amendment establishes a rule of action for private individuals as well as for state governments. In the language of constitutional law, enforcement of the amendment is not limited by the requirement that the amendment's prohibitions apply only to state action. The U.S. Constitution, for the most part, does not apply to individuals except when they act under color of law (e.g., the policeman who searches your house). The Thirteenth Amendment is different because it applies to private individuals acting in their private capacities. A person violates the Thirteenth Amendment if he keeps a slave. Where the fundamental right of personal liberty is concerned, the distinction between public and private spheres, which otherwise serves as a limitation on government power in the United States, is not recognized under the Thirteenth Amendment.

In the view of its congressional framers, the comprehensive sweep of the abolition amendment was balanced by its libertarian purpose. The scope of the enforcement power delegated to Congress thus depends on the meaning of slavery and involuntary servitude. Explicit definition of these terms in the

text of the Thirteenth Amendment was considered unnecessary because slavery was universally understood, and legally defined, as the right of a person to hold another human being as chattel. Slavery was appropriating the work of another person by irresistible power and not by his consent.

In legislative debate there was disagreement over the anticipated force and effect of the prohibition of slavery. The most narrow interpretation of the amendment viewed it as conferring only an individual right not to be held as the property of another. Except for this limitation, states otherwise retained authority to regulate the civil rights of persons within their jurisdiction, and private individuals enjoyed freedom of association, including the right to discriminate as they pleased in commercial and social interactions. This ultra-restrictive view of the abolition amendment was challenged by its congressional authors. They believed that prohibition of slavery and involuntary servitude necessarily implied the conferral of basic civil rights reasonably required to exercise the right of personal liberty guaranteed by the Thirteenth Amendment. Preeminent in their view were the rights to labor and enjoy the fruits thereof; to enter into marriage and establish family relationships; to make and enforce contracts; to bring suit and testify in court; and generally to receive the benefit of common-law protections of person and property. Content to rely on the Northwest Ordinance and reluctant further to engage the contentious issue of the effect of the abolition of slavery on the federal system, congressional authors refrained from writing specific civil rights guarantees into the text of the Thirteenth Amendment.

A year later, faced with restrictive laws (the "Black Codes") enacted by reconstructed state governments regulating the status and rights of blacks within their jurisdictions, Congress enacted civil rights protections that it believed necessary to vindicate the right of personal liberty conferred by the Thirteenth Amendment. This legislative response forms an important part of the framing of the Amendment because it can be viewed as an authoritative congressional construction of the national government's enforcement power.

The Civil Rights Act of 1866 declared that all persons born in the United States, except Indians not taxed, were citizens of the United States. Regardless of race, color, or previous condition of servitude, citizens had the same right to make and enforce contracts; to sue, be parties, and give evidence in court; to inherit, lease, or own property; and to have the full and equal benefit of all laws for the security of person and property as was enjoyed by white persons. The Civil Rights Act authorized the courts to protect persons denied the enumerated rights because of their race against anyone acting under color of state authority.

The constitutional basis for national civil rights legislation of this magnitude was a matter of dispute. Many Members of Congress were convinced that the classification and unequal treatment of black citizens under state laws in the reconstructed South were an infringement of liberty and a badge of servitude subject to legislative correction by Congress under Section 2 of the Thirteenth Amendment. Other lawmakers, objecting to the "Black Codes," doubted that the abolition amendment gave Congress power to displace the states in civil rights matters and impose criminal sanctions on their officers in the manner of the Civil Rights Act. To supply any supposed defect in constitutional authority to legislate on

civil rights under the Thirteenth Amendment, Congress therefore proposed a constitutional amendment that expressly authorized national legislation against state civil rights infringement. Affirming the rule of citizenship adopted by the Civil Rights Act, the Fourteenth Amendment prohibited states from abridging the privileges and immunities of citizens of the United States, depriving persons of life, liberty, and property without due process of law, or denying persons equal protection of the laws.

Judicial and legislative construction has, in substantial measure, conformed to the original understanding of the Thirteenth Amendment. Slavery and involuntary servitude have been defined in personal libertarian terms with respect to conditions of enforced compulsory service, rather than in social egalitarian terms based on a subjective and metaphorical view of slavery that focuses on social and cultural systems of dominance and subordination.

The most serious challenge to the Thirteenth Amendment was presented by labor arrangements in the post-Reconstruction South intended to restrict the mobility of black citizens. In the first half of the twentieth century, the Supreme Court invalidated as forms of involuntary servitude state laws restricting employment and contract liberty and authorizing compulsory labor for indebtedness. *Bailey v. State of Alabama* (1911), *United States v. Reynolds* (1914), *Taylor v. State of Georgia* (1942), *Pollock v. Williams* (1944). In a wide variety of cases concerning, among other things, military conscription, public work laws, discrimination in contracts, social security benefits, deportation of aliens, treatment of the criminally insane, labor union activities, and duties required of public school students, courts generally rejected claims of involuntary servitude in violation of the Thirteenth Amendment. In these cases the judiciary addressed the question of the meaning and unaided force and effect of the prohibitions in Section 1 of the amendment. In a second line of cases, dealing with the enforcement power of Congress under Section 2, a broader interpretation appears that suggests a more social egalitarian view of the Thirteenth Amendment.

In the *Civil Rights Cases* (1883), the Supreme Court stated that Congress's enforcement authority under Section 2 extended to the "badges and incidents of slavery." However, the Court adopted a narrow view of this concept, rejecting a claim that exclusion of black citizens from privately operated places of public accommodation was a badge of slavery. The Court declared that "compulsory service of the slave for the benefit of the master, restraint of his movements except by the master's will, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities, were the inseparable incidents of slavery."

Through most of the twentieth century, the Thirteenth Amendment was not utilized to try to dismantle state-sponsored racial discrimination. Federal civil rights enforcement policy in the 1950s and 1960s was principally based on the Fourteenth and Fifteenth Amendments. In 1968, however, the Supreme Court approved a dramatic expansion of the meaning of the "badges and incidents" of slavery in *Jones v. Alfred H. Mayer, Co.* The Supreme Court decided that racial discrimination in the sale of housing, in the form of a property owner's refusal to sell to a Negro buyer, was a "relic of slavery" prohibited under the Civil Rights Act of 1866. Avoiding the requirements of the state-action doctrine under the Fourteenth

Amendment, which made prohibition of private discrimination problematic, the Court relied on the antislavery amendment and permitted Congress to define for itself what the "badges and incidents" of slavery were. The Court declared: "Surely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and incidents of slavery, and the authority to translate that determination into effective legislation." The Court did not describe what limits Congress must observe in enforcing the amendment by "appropriate" legislation as required in Section 2. Again in *Runyon v. McCrary* (1976), the Court avoided the public/private distinction requirement of the Fourteenth Amendment legislation and held that exclusion of a black student from a private school was a denial of the right to make and enforce contracts guaranteed by the Civil Rights Act of 1866 and prohibited by the Thirteenth Amendment.

On the other hand, in cases outside of Congress's Section 2 enforcement power, the Court was more careful to limit the "badges and incident of slavery" doctrine to its historical context. For example, the Supreme Court found that a city's closing of its swimming pools, rather than operating them on a desegregated basis, was not a badge of slavery. *Palmer v. Thompson* (1971). In *City of Memphis v. Greene* (1981), the Court decided that the closing of a street in a white neighborhood, even if it had a disparate impact on blacks outside the neighborhood, was not a badge or incident of slavery in violation of the Thirteenth Amendment. These cases indicate that Section 1 of the Thirteenth Amendment, unaided by legislation, does not reach the badges and incidents of slavery not directly associated with involuntary servitude.

The most significant recent judicial exploration of the meaning of the Thirteenth Amendment reaffirms a narrow definition of involuntary servitude under federal statutes. In *United States v. Kozminski* (1988), the Supreme Court unanimously decided that private employers of two mentally retarded men, forced to labor in squalid conditions, violated statutes based on the Thirteenth Amendment. Controversy in the Court focused on the criteria used to determine the existence of involuntary servitude. The opinion of the Court stated that involuntary servitude is compulsory servitude by the use of physical restraint or injury, or by the use or threat of coercion through legal process. Disputing a concurring opinion, the majority declared that compulsion by psychological coercion is not involuntary servitude under the Thirteenth Amendment.

Slavery and involuntary servitude in constitutional law retain the essential meaning intended by the framers of the Thirteenth Amendment, and congressional legislation under its enforcement clause remains limited. Since the reappearance of the Thirteenth Amendment in civil rights litigation in 1968, Congress has chosen not to enact any further legislation identifying and proscribing "badges and incidents of slavery."

National Constitution Center

<http://constitutioncenter.org/interactive-constitution/amendments/amendment-xiii>

Notably, the Amendment does allow a person convicted of a crime to be forced to work. Thus, prison labor practices, from chain gangs to prison laundries, do not run afoul of the Thirteenth Amendment.

The Thirteenth Amendment has also been interpreted to permit the government to require certain forms of public service, presumably extending to military service and jury duty.

In addition to the first section's ban on slavery and involuntary servitude, the second section of the Thirteenth Amendment gives Congress the "power to enforce" that ban by passing "appropriate legislation." This provision allows Congress to pass laws pertaining to practices that violate the Amendment. For example, the Anti-Peonage Act of 1867 prohibits peonage, and another federal law, 18 U.S.C. § 1592, makes it a crime to take somebody's passport or other official documents for the purpose of holding her as a slave.

Amendment T
No Exception to Involuntary Servitude Prohibition
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AMENDMENT T
NO EXCEPTION TO INVOLUNTARY SERVITUDE PROHIBITION
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Amendment T
No Exception to Involuntary Servitude Prohibition

1 **Ballot Title:** Shall there be an amendment to the Colorado constitution concerning the removal of
2 the exception to the prohibition of slavery and involuntary servitude when used as punishment for
3 persons duly convicted of a crime?

4 *Be It Resolved by the Senate of the Seventieth General Assembly of the State of Colorado,*
5 *the House of Representatives concurring herein:*

6 **SECTION 1.** At the election held on November 8, 2016, the secretary of state shall submit
7 to the registered electors of the state the ballot title set forth in section 2 for the following
8 amendment to the state constitution:

9 In the constitution of the state of Colorado, **amend** section 26 of article II as follows:

10 **Section 26. Slavery prohibited.** There shall never be in this state either slavery or
11 involuntary servitude. ~~except as a punishment for crime, whereof the party shall have been duly~~
12 ~~convicted.~~

13 **SECTION 2.** Each elector voting at the election may cast a vote either "Yes/For" or
14 "No/Against" on the following ballot title: "Shall there be an amendment to the Colorado constitution
15 concerning the removal of the exception to the prohibition of slavery and involuntary servitude when
16 used as punishment for persons duly convicted of a crime?"

17 **SECTION 3.** Except as otherwise provided in section 1-40-123, Colorado Revised Statutes,
18 if a majority of the electors voting on the ballot title vote "Yes/For", then the amendment will become
19 part of the state constitution.