



# OREGON'S SENATOR JEFF MERKLEY

## *The Abolition Amendment*

### The Problem

The 13<sup>th</sup> Amendment abolished slavery after the Civil War—but not for all. Lawmakers left a loophole, also known as the “Exception Clause,” within the Amendment that outlawed slavery “*except as a punishment for crime whereof the party shall have been duly convicted.*” As a result, slavery continued for those convicted of crimes, no matter how minimal their offense.

Immediately following ratification of the 13<sup>th</sup> Amendment, during Reconstruction and accelerating after Reconstruction ended, Southern jurisdictions arrested Black Americans in large numbers for minor crimes codified in “Black Codes,” like loitering or vagrancy. Then sheriffs would exploit the Exception Clause to lease out the imprisoned individuals to work landowners’ fields—in some cases on the very plantations where they had previously been enslaved.

### The Solution

The *Abolition Amendment*, led by Senator Jeff Merkley (D-OR) and Representative Nikema Williams (D-GA-5<sup>th</sup>), would correct this historic Constitutional loophole. Congress must pass the *Abolition Amendment* to end slavery completely and finally remedy this dark history.

In the 117<sup>th</sup> Congress, the *Abolition Amendment* received the support of a bipartisan group of over 200 total cosponsors and the endorsement of over 60 advocacy organizations. Additionally, over a dozen states have pursued changes to their respective state Constitutions. So far, a mix of red and blue states—Colorado, Nebraska, Utah, Alabama, Oregon, Tennessee, and Vermont—have successfully amended their state Constitutions.

### The Impact

The *Abolition Amendment* would make the 13<sup>th</sup> Amendment’s text clearly and completely ban slavery by removing the confusing and historically misused Exception Clause.

After an extensive legal analysis (provided at request), we have concluded that the *Abolition Amendment* would not affect state or federal work programs, community service, or civic engagement offered as alternatives to incarceration or other forms of punishment.

Similarly, the *Abolition Amendment* would not impact wage litigation, as these cases fall under the scope of the Fair Labor Standards Act (FLSA), rather than the 13<sup>th</sup> Amendment. Because FLSA protections apply only to workers who are ‘employees’—a category in which prisoners are not expressly included—the *Abolition Amendment* would have no impact on this issue.

For further questions about the *Abolition Amendment*, please contact Jordan Schott at [jordan\\_schott@merkley.senate.gov](mailto:jordan_schott@merkley.senate.gov) or at (202) 306-3891.