



Prison Slavery Up for a Vote in 5 States

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Voters in Alabama, Louisiana, Oregon, Tennessee, and Vermont will be asked to consider whether their state constitutions permit slavery or indentured servitude for people convicted of crimes. "None of the proposals would force immediate changes inside the states' prisons, though they could lead to legal challenges related to how they use prison labor," points out the Associated Press, noting that nearly 20 state constitutions still permit slavery or indentured servitude as a punishment.

These statutes can be used to justify exploitative practices for prison labor, such as paying prisoners less than \$1 per hour for their work or threatening them with a loss of privileges if they don't work.

But there's a move to change this. Since 2018, three states—Colorado, Nebraska, and Utah—used ballot measures to remove this language from their constitutions. (Some California lawmakers wanted a measure on their state's ballot, but the push for this failed in the state's Senate earlier this year.)

Now, voters in five more states will consider a similar change.

It's unclear, however, how much difference the measures in question would make. "The five states' bills do not make it clear whether paying an inmate a few cents per hour would qualify as slavery," notes *The Washington Post*. Nor do any measures get specific about what sort of labor practices inside prisons would not be permitted.

Tennessee state Sen. Raumes Akbari told the A.P. that her state's ballot measure wouldn't prevent prison labor altogether but that it would help put an end to exploitative and unpaid labor. "We understand that those who are incarcerated cannot be forced to work without pay, but we should not create a situation where they won't be able to work at all," Akbari said. The Tennessee ballot measure states: "Slavery and involuntary servitude are forever prohibited. Nothing in this section shall prohibit an inmate from working when the inmate has been duly convicted of a crime."

Oregon's measure asks voters whether to remove language permitting slavery and involuntary servitude as a punishment for crime while adding language explicitly stating that "an Oregon court or a probation or parole agency may order the convicted person to engage in education, counseling, treatment, community service or other alternatives to incarceration, as part of sentencing for the crime, in accordance with programs that have been in place historically or that may be developed in the future, to provide accountability, reformation, protection of society or rehabilitation."

Vermont's measure would remove exceptions to the prohibition on slavery and indentured servitude; it currently states that it's OK if "bound by a person's own consent" or "bound by law for the payment of debts, damages, fines, costs, or the like."

The Alabama measure—part of a larger revision of the state's constitution—would remove language that says "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."

The most controversial of the upcoming ballot measures is the one in Louisiana, which some advocates say will backfire (even one of the original sponsors of the measure, Rep. Edmond Jordan, is now telling people to vote against it). From the A.P. article:

The nonprofit Council for a Better Louisiana warned that the wording could technically permit slavery again, as well as continue involuntary servitude.

Louisiana's Constitution now says: "Slavery and involuntary servitude are prohibited, except in the latter case as punishment for a crime." The amendment would change that to: "Slavery and involuntary servitude are prohibited, (but this) does not apply to the otherwise lawful administration of criminal justice."

"This amendment is an example of why it is so important to get the language right when presenting constitutional amendments to voters," the nonprofit group said in a statement urging voters to choose "No" and lawmakers to try again, pointing to Tennessee's ballot language as a possible template.

Supporters of the amendment say such criticisms are part of a campaign to keep exception clauses in place.

The state proposals are part of a larger push to do away with forced or exploitative labor as a criminal punishment—something expressly permitted by the U.S. Constitution.

The 13th Amendment says that the U.S. shall permit "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted." The provision was used in former Confederate states to protect some form of slavery by criminalizing minor actions and targeting black people with enforcement.

A federal court has dismissed a lawsuit against Biden's student loan debt forgiveness program:

Earlier today, US District Judge Henry Autrey issued a decision dismissing a lawsuit filed by six states challenging the legality of President Biden's massive \$400 billion loan forgiveness plan. The court dismissed the case based on the procedural doctrine of standing, which—among other things—requires plaintiffs to show the government policy they are challenging has caused them some sort of "injury." The standing ruling is based on very dubious reasoning, and I think it is highly likely to be overturned on appeal. Even if stands, the states have a pretty obvious way to get around it.

Standing is a genuine problem for efforts to challenge the loan forgiveness plan in court. But, like most other observers, I thought the state lawsuit could easily get over this hurdle because at least one of the plaintiff states—Missouri—has a state agency—the Higher Education Loan Authority of the State of Missouri (MOHELA)—that services student loans, including some that will be partially or fully forgiven by the Biden plan. The Biden loan forgiveness program will predictably reduce MOHELA's revenue from those loans, and even a small financial loss is enough to qualify for standing under Supreme Court precedent.

The judge didn't deny that MOHELA might be harmed by the loan debt forgiveness program. But he found that Missouri did not "establish it has standing to sue on MOHELA's behalf," even though MOHELA is a state agency.

Meanwhile, at the Supreme Court:

Biden's new independent contractor proposal takes away worker options. The Biden administration's recent announcement regarding independent contractors has been misleadingly portrayed as something that all independent contractors want and will celebrate. For instance: "Biden wants to let gig workers be employees," a *Washington Post* story said, describing the Department of Labor's move as "mak[ing] it easier" for independent contractors to be classified as employees, thereby "granting them access to benefits and federal labor protections." But the proposed order doesn't just *make it easier*, notes Walter Olson at the Cato Institute—it forces this status upon them.

Not every gig worker or independent contractor *wants* to be a full employee. The designation may come with some additional labor protections and benefits, but it can also mean less flexibility, less ability to work additional gigs, and more workplace requirements. It could also mean unemployment, as some companies that rely on contractors cut positions (or close down) if they can't afford to hire them as employees.

"The proposed Labor Department regulation doesn't grant permission, it imposes a requirement," writes Olson. "It would force employee status on many workers who actively wish to remain independent contractors. Unless you grasp that, you're not going to grasp the mounting anger among many freelancers, independent truckers, and others whose livelihood is threatened by DOL's proposal to sharply restrict independent contracting in the workplace."