Nos. 82-165, 82-246, 82-25

In the Supreme Court of the United States

OCTOBER TERM, 1982

BOSTON FIREFIGHTERS UNION, LOCAL 718,
PETITIONER,
v.
BOSTON CHAPTER, NAACP, INC., ET AL.,
RESPONDENTS.

BOSTON POLICE PATROLMEN'S ASSOCIATION, INC.,
PETITIONER,
v.
PEDRO CASTRO, ET AL.,
RESPONDENTS.

NANCY B. BEECHER, ET AL.,
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v.
BOSTON CHAPTER, NAACP, INC., ET AL.,
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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Brief Amici Curiae of The Affirmative Action Coordinating Center; The National Conference of Black Lawyers; The National Lawyer's Guild; The Center for Constitutional Rights

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Consent of Parties.

Amici Curiae file this brief with the consent of all the parties in support of the position advanced by the petitioners. Letters of consent have been filed with the Clerk of this Court.

Interest of Amici Curiae.

The thirty-six organizations joining in this brief as *amici curiae* (see appendix) represent many sections of American society with diverse interests. They share a mutual concern that the Court use the decision in this case to advance the commitment to rid our nation of the devastation of racial discrimination and race hatred. They are aware of the difficulty of this task.

These groups share an understanding that the continued exclusion of Blacks and other minorities from meaningful political and economic participation in public safety agencies is a legacy of slavery and racial discrimination.

Amici all recognize the importance in preserving seniority. They believe, however, that the Constitutional mandate to remove the badges and incidents of slavery must take precedence in this conflict.

Introduction and Summary of Argument.

The pursuit of racial equality in this country is at the crossroads again. In the fifth case in as many terms, this Court is called upon to chart the proper course. Either this Court will affirm the decision below (as *Amici* will strongly urge herein) and move the country forward toward racial equality, or this Court will reverse the decision below and catapult a return to an earlier era.

In this case, Petitioners seek the Court's assistance to eliminate the benefits of court ordered race conscious affirmative action designed to eradicate continuing vestiges of American slavery. They suggest that this country cannot afford to fulfill its constitutional mandate. *Amici* are not unaware that the

potential costs in affirming this case may be high. The time honored principle of seniority and its benefits are acknowledged openly by *Amici*. However, we believe that the costs of reversal are much higher. The social and political consequences of a retreat from the present course may very well cast a permanent shadow of racial inequality over this nation.

The narrow arguments advanced by Petitioners ignore or minimize the pressing urgency to fulfill the promises of the Thirteenth Amendment. The well-documented, gross exclusion of Blacks and other minorities from the public safety agencies in this country is one of the badges and incidents that has survived slavery and continues to perpetuate second class citizenship. The lower district court's modification of prior remedial orders designed to preserve meaningful participation by Blacks and other minorities in the Boston police and fire departments was well within the remedial flexibility that courts must enjoy when seeking to implement the mandate of the Thirteenth Amendment.

Argument.

I. The District Court's Modification of Prior Remedial Decrees was an Appropriate Exercise of Judicial Power Pursuant to the Thirteenth Amendment Mandate to Eradicate the Badges and Incidents of Slavery.

The Thirteenth Amendment commands the eradication of all forms of slavery and involuntary servitude, including all badges and incidents. Whenever a relationship with slavery is found, the Amendment provides more than ample power for ameliorating existing racial disparities. In the instant case,

that relationship is clear. Even a cursory examination of American history establishes the past and current exclusion of Blacks from public safety departments. This exclusion from meaningful or real participation in the principal government institutions for the security of person and property is a badge and incident of slavery. The Thirteenth Amendment required the Court's modification.

A. *Government Law Enforcement was an Integral Aspect of the Institution of Slavery.*

An effective system of human bondage must severely constrain or eliminate competitive economic opportunities for members of the enslaved group. The American system of slavery was maintained by virtually total exclusion of Blacks from independent participation in the economic mainstream.[1]

The law was clear. Slaves were property.[2] State laws collectively denied them any opportunity to own,[3] inherit,[4] or

[1] O. Patterson, Slavery and Social Death (1982); V. Harding, There is a River (1982); H. Gutman, Black Family in Slavery and Freedom (1977); S. Campbell, The Slave Catchers (1972); Higgs, Competition and Coercion: Blacks in the American Economy 1865-1914 (1977); W.E.B. DuBois, Black Reconstruction (1935).

[2] The slave codes of several states expressly conferred upon slaves the status of property. In Louisiana, slaves were considered to be real estate and as such subject to being mortgaged. Act of 1806 (Black Code) Laws of Louisiana, at 101-102 (1806). Alabama and South Carolina, however, recognized slaves to be chattel property. Act of 1852, Code of Alabama, at 390 (1852); Act of 1740, Statutes at Large for South Carolina, Vol. 7, at 397 (1825). The slave as property had no legal rights to possess anything, real or personal. The master had full rights to sell him, dispose of his person, his industry and his labor. The slave could not possess nor acquire anything that did not belong to his master.

The master's right to free his slaves shrank as slavery expanded. Manumission had been the primary source of free Negro increase during the post-Revolutionary decades, and Southern legislators worked to curb or abolish the practice. During the nineteenth century, lawmakers dismantled the last

remnants of the liberal manumission policies of the earlier era. The older seaboard states added restrictions to their manumission statutes, and the newer states of the Southwest enacted almost prohibitory regulations so that even the few masters who desired to liberate their slaves found it increasingly difficult. By the mid-1830's, most Southern states required slaveowners to get judicial or legislative permission to free their slaves and demanded that newly liberated bondsmen leave the state upon receiving their freedom. Those few states which still allowed slaveowners to emancipate their slaves also stipulated that manumitted Blacks migrate or risk being forcibly deported or re-enslaved. Legislators further discouraged emancipation by requiring masters to remove freed Negroes and by making those manumitted liable to seizure for unpaid debts even after emancipation. Berlin, Slaves Without Masters, (1st ed. 1974) at 138.

[3] No slave can own property, and any property purchased or held by a slave, not claimed by the master or owner, must be sold by order of any justice of the peace; one half the proceeds of the sale, after the payment of cost and necessary expenses to be paid to the informer, and the residue to the county treasury. Act of 1852, Code of Alabama, Sec. 1018 (1852).

[N]o person . . . shall suffer or allow any of his or their slaves to plant for themselves any corn, peas or rice, or to keep for themselves any stock of hogs, cattle or horses, under the penalty of twenty pounds current money . . . for every slave so suffered . . . the said penalty to be recovered . . . half to be paid to him or them who will inform and sue for same . . . Act of 1714, Statutes at Large of South Carolina, Vol. 7, at 368 (1840).

[4] The alienation between slaves and property was made complete by prohibiting slaves to acquire or dispose of property through inheritance.

> All free persons, even minors, lunatics, persons of insane mind and the like may transmit their estates and *ab intestato* inherit from others. Slaves alone are incapable of either. Act of 1825, Louisiana Civil Code, Art. 945 (1825).

> Every devise or bequest, to a slave or slaves, or to any person, upon a trust or confidence, secret or expressed, for the benefit of any slave or slaves, shall be null and void. Act of 1841, Statutes at Large of South Carolina, Vol. 11, at 169 (1873).

otherwise acquire,[5] personal property or real estate. Nor were they able to acquire marketable skills through gainful employment in trade or commerce.[6]

Free Blacks also were seldom as free as whites. Property and special qualifications were barriers to general participation in the vote by free Blacks. Most were subjected to special jurisdiction in the courts, often without the right to a jury trial. Free Blacks also often were restricted in their personal movements, subject to travel with passes.

This complete economic subjugation was enforced by the enactment of exclusionary laws and by actual domination and control. Organized violence in a variety of forms was used to

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[5] State laws imposing criminal sanctions for interracial marriage were not ruled unconstitutional until *McLaughlin* v. *Florida*, 379 U.S. 184 (1964) and *Loving* v. *Virginia*, 388 U.S. 1 (1967). These laws had the effect of precluding Blacks from obtaining property through marriage. *See* J. Johnston, Race Relations in Virginia and Miscegenation in the South 1776-1860 at 165 *et seq.* (1st ed. 1970); W. Jordan, White Over Black: American Attitudes Toward the Negro, 1550-1812, at 136-178 (1st ed. 1968); P. Wood, Black Majority: Negroes in Colonial South Carolina From 1670 Through the Stono Rebellion, at 98-100, 233-6 (1st ed. 1974).

[6] Section 13. No owner of slaves shall hire his slaves to themselves, under the penalty of a fine of five and twenty dollars for every offense. Act of 1806 (Black Code) Lislet's Digest to Laws of Louisiana, Sec. 13 (1828).

[I]t shall be altogether unlawful for any person or persons to hire any male slave or slaves, his or their time; and in cases any male slave or slaves be so permitted by their owners, to hire out their own time, labor or service, the said slave or slaves shall be liable to seizure and forfeiture . . . Act of 1822, Statutes at Large of South Carolina, Vol. 7, at 462 (1840).

[I]f any shop keeper, trader, or other person, shall . . . buy or purchase from any slave, . . . any other article whatsoever, or shall otherwise deal, trade or traffic with any slave not having a permit so to deal, trade or traffic, or to sell any such article, from or under the hand of his master or owner, or such other person as may have the care and management of such slave, such shop keeper, trader, or other person, shall, for every such offence, forfeit a sum not exceeding one thousand dollars, and imprisonment not exceeding a term of twelve months, nor less than one month. Act of 1817, Statutes at Large of South Carolina, Vol. 7, at 454 (1840).

enforce isolation, to recover fugitives, to frustrate conspiracy and to suppress insurrection. Immediate needs for labor were enforced on the plantation if necessary through the force of the master, overseer and drivers.

State, county and municipal rights of slave ownership were codified in slave codes. Enforcement of the codes was entrusted principally to state militia and county patrols. Federal military authority enforced provisions of the federal Constitution[7] and federal law regulating slavery. County and city

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[7] United States Constitution, Article I
Section 2, Clause 3

> Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons . . .

Section 9, Clause 1

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

United States Constitution, Article IV
Section 2, Clause 1

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States . . .

Section 2, Clause 3

> 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.

patrols of the state militia were central to the control of Black people. All white males, ages 16-60, were liable for patrol duty on a rotating basis.

In many places, the patrols and the militia were indistinguishable. Patrol duties included: "Patrolling the roads at night to prevent escapes, chasing and recovering fugitives, detecting and breaking up unauthorized gatherings of slaves, searching cabins for arms, and in general preventing any movement of slaves not authorized by a written pass." J. Scott, The Origins and Development of the KKK As A Badge of Slavery, at 2 (Jan. 1981) (available in Northeastern University School of Law Library); see also A.L. Higginbotham, In the Matter of Color (1978).

Patrols exercised, with government sanction, the power of summary judgement over the lives of the slaves. They were arresting officers, prosecutors, judges and hangmen, all rolled into one. Terror, intimidation and abuse of power was the norm, not the exception. In defense of the supremacy of the white slave-owning community, the power of the patrols extended over free Black people, as well as slaves, for offenses minor or imagined.[8]

The outbreak of the Civil War intensified the need for the patrol system. Southern secession eliminated the Constitutional guarantee of federal military support against Black uprisings. The Fugitive Slave Act became a dead letter. Well-founded fears of insurrection or flight increased during the war. Slaves began to desert their owners in droves. Many joined the ranks of the Northern army. The level and nature

[8] For the operation and organization of patrols in general *see*, J. Scott, Hard Trials on My Way: Slavery and the Struggle Against It 1800-60, 122-4 (1974); J.G. Taylor, Negro Slavery in Louisiana, 130, 170-1, 203-4 (1963); M. Mooney, Slavery in Tennessee, 10-14 (1957); J.H. Franklin, The Militant South 1800-61 (1956); K. Stampp, The Peculiar Institution: Slavery in the Antebellum South, 214-5 (1956).

of violence directed at slaves and other Blacks escalated significantly.[9] The success of efforts to enhance the effectiveness of slave patrols was uneven.[10] In spite of the Emancipation Proclamation, slave patrols, although seriously disrupted, were still in existence when the South surrendered at Appomattox in 1865.

B. *Exclusion from Participation in Public Safety Agencies Has Survived Slavery and Continues to be Used to Deny the Promise of Freedom.*

Neither the Emancipation Proclamation, the Thirteenth Amendment, or the initial Civil Rights Acts of 1866 were able to destroy the mosaic of restrictions that excluded Blacks from the economic mainstream.[11] Those determined to keep Blacks

[9] "In numerous instances mounted slave patrols ran runaways down with their horses, shot them on the road, or tied them to their horses and dragged them to the nearest jail." Leon F. Litwack, Been in the Storm So Long: The Aftermath of Slavery, 54 (1979).

[10] *See*, John Hope Franklin, From Slavery to Freedom: A History of American Negroes, 280-1 (2d ed. 1956).

[11] Slavery, at its root, was an economic phenomenon. Hence, it is not surprising that a prime concern of the framers of the Thirteenth Amendment was the economic well-being of newly freed Blacks. Congress was concerned that Blacks be accorded civil and political rights in order that they could protect and advance themselves economically. The Black Codes — i.e. the legislation passed in Southern states designed to return Blacks to a state of semi-slavery — was never far from the mind of Congress in exacting the anti-slavery amendment. Representative Godlove Orth of Indiana acknowledged that something more than merely the right not to be held as property was involved in abolition and added that the right of "personal freedom without distinction" was involved. Ebon C. Ingersoll of Illinois stressed that the amendment would bring Blacks the right to enjoy the rewards of their labor. James Harlan of Iowa emphasized that the amendment would give Blacks the right to own property — and, strikingly, the right to protect and advance their property rights by the right to bring suit, testify in court and to speak and write freely. Cong. Globe, 38th Congress, 2d Sess., 143 (January 6,

second class citizens forever — no more than "hewers of wood and drawers of water" — worked indefatigably.[12] They

1865); *See, e.g.* Cong. Globe, 38th Congress, 1st Sess. 1463 (April 7, 1864); Cong. Globe, 38th Congress, 2d Sess., 487 (January 28, 1865). Though there was not unanimity in Congress regarding the plan of some legislators (Sumner, Thaddeus Stevens, George Julian, Benjamin Wade, *et al.*) to allocate land to the freedmen, there was recognition that "special measures" had to be taken if Blacks were not to fall back into a second-class economic status. Congressional reports and documents of that era are replete with this concern. House Executive Documents, Report of the Secretary of the Treasury on the State of the Finances for the Year 1864: General Regulations Concerning Commercial Intercourse, Abandoned Property and the Employment and General Welfare of Freedmen, No. 3, 38th Congress, 1st Sess. Senate Executive Documents, Preliminary Report Touching the Condition and Management of Emancipated Refugees, Made to the Secretary of War by the American Freedman's Inquiry Commission, No. 53, 38th Congress, 1st Sess. (1864). Senate Executive Documents, "Final Report of the American Freedmen's Inquiry Commission to the Secretary of War, No. 53, 38th Congress, 1st Sess. (1864). The Freedmen's Bureau was both the clearest expression of congressional concern about the economic plight of the freedmen and the clearest expression of the reach of the Thirteenth Amendment. Though some have argued otherwise, it is certain that the Freedmen's Bureau was seen as a concrete realization of the anti-slavery amendment and was based upon it; *See* G. Bentley, A History of the Freedmen's Bureau, at 117, (1st ed. 1955). This was the view of conservative, moderate and so-called "radical" Congressmen alike. This is also the view of the two leading authorities on the Freedmen's Bureau and post-bellum land reform. *Compare*, W. Rose, Rehearsal for Reconstruction: The Port Royal Experiment, (1st ed. 1965); W. McFeely, Yankee Stepfather: General O. O. Howard and the Freedmen, at 199, 267 (1968); *See also*, W. McFeely, Unfinished Business: The Freedmen's Bureau and Federal Action in Race Relations, Key Issues in the Afro-American Experience, Vol. II, at 5 (Huggins, Kilson & Fox ed. 1971). Congress recognized and the Bureau proceeded to implement the incontrovertible fact that the peculiar status of Blacks as a result of slavery, necessarily meant that peculiar legislation had to be designed to fit their needs. In that sense, the Freedmen's Bureau can be seen reasonably as an early form of what is known today as "affirmative action." Further, the fact that the architects of the Thirteenth Amendment also authored the Freedmen's Bureau, is recognition of the sound *constitutional* basis for "affirmative action."

[12] It is undoubtedly certain that in approving the Thirteenth Amendment and its concomitant, the Freedmen's Bureau, Congress was attempting to af-

mounted an assault during the Reconstruction years immediately following the Civil War. One southern state after another enacted "Black Codes", locking Blacks into subordinate status as a substitute for slavery.[13]

Vagrancy and apprenticeship laws severely restricted the ability of Blacks merely to seek gainful employment to diversify their economic base.[14] Certain forms of economic activi-

fect directly the inferior economic status of Blacks, that the Black Codes were designed to promote. Congress was aware of the South Carolina legislation that forbade Blacks on farms to sell farm products without written authorization; the Mississippi law forbidding Blacks to rent or lease lands outside towns or cities; the special taxes that hit Blacks and Blacks alone; the provisions in virtually every Southern state's code containing detailed provisions on labor contracts, apprenticeship and vagrancy, all tailored to perpetuate a second-class economic status for Blacks. Not incidentally, after the Black Codes were passed, the migration of Blacks from rural areas — where the Codes were developed to maintain them as a form of cheap labor — to the cities was halted. T. B. Wilson, The Black Codes of the South, at 66-80, 96-116 (1st ed. 1952).

[13] The enactment of the Black Codes regulated the conditions of freedmen's labor and subjected them to the control of their former masters or other white men. While these codes were abolished during the period of Reconstruction, they later reappeared. G. Myrdal, An American v. Dilemma, at 228 (Harper & Row ed. 1962).

[14] The Virginia Vagrant Act of 1866 provided that "in case any vagrant shall, during his term of service, run away from his employer without sufficient cause, he shall be apprehended on the warrant of a justice of the peace and returned to the custody of his employer, who shall then have him, free from any other hire. Among those declared to be vagrants are all persons who, not having the wherewith to support their families, live idly and without employment, and refuse to work for the usual and common wages given to other laborers in the like work in the place where they are."

In ordering the non-enforcement of the Virginia Vagrant Act, General Terry stated, "In many counties of this State meetings of employers have been held, and unjust and wrongful combinations have been entered into for the purpose of depressing the wages of the freedmen below the real value of their labor, far below the prices formerly paid to masters for labor performed by their slaves . . . The effect of the statute in question will be, therefore, to compel the freedmen, under penalty of punishment as criminals, to accept

ty, as a matter of law, were closed to Blacks completely. Other fields of employment were open only upon terms different from those imposed upon whites.[15]

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and labor for the wages established by these combinations of employers. It places them wholly in the power of their employers and it is easy to foresee that, even where no such combination now exists, the temptation to form them offered by the statute will be too strong to be resisted, and that such inadequate wages will become the common and usual wages throughout the State. The ultimate effect of the statute will be to reduce the freedmen to a condition of servitude worse than that from which they have been emancipated — a condition which will be slavery in all but its name." E. McPherson, The Political History of the United States of America During the Period of Reconstruction (1st ed. 1880).

[15] [I]t shall not be lawful for a person of color to be the owner, in whole or in part, of any distillery where spirituous liquors of any kind are made, or of any establishment where spirituous liquors of any kind are sold by retail; nor for a person of color to be engaged in distilling any spirituous liquors, or in retailing the same in a shop or elsewhere. A person of color who shall do anything contrary to prohibitions herein contained shall be guilty of a misdemeanor, and, upon conviction, may be punished by fine or corporeal punishment and hard labor, as to the district judge or magistrate before whom he may be tried shall seem meet.

No person of color shall pursue or practice the art, trade, or business of an artisan, mechanic, or shopkeeper, or any other trade, employment, or business, (besides that of husbandry, or that of a servant under a contract for service or labor,) on his own account and for his own benefit, or in partnership with a white person, or as agent or servant of any person, until he shall have obtained a license therefor from the judge of the district court, which license the judge may grant upon petition of the applicant, and upon being satisfied of his skill and fitness, and of his good moral character, and upon payment by the applicant to the clerk of the district court of one hundred dollars if a shopkeeper or peddlar, to be paid annually, and ten dollars if a mechanic, artisan, or to engage in any other trade, also to be paid annually: Provided, however, that upon complaint being made and proved to the district judge of an abuse of such license, he shall revoke the same: And provided, also, that no person of color shall practice any mechanical art or trade unless he shows that he has served an apprenticeship in such trade or art, or is now practicing such trade or art. *Id.*

The right to contract, while recently made available to Blacks, continued to be burdened.[16] Nor could Blacks buy or sell property on the same terms and conditions as whites.[17]

These restrictions are merely illustrative. Pervasive racial discrimination and exclusion permeated every aspect and institution of American society.

Widespread private discrimination formed the bedrock for maintaining this new system of racial segregation. Gentlemen's agreements flourished and matured into restrictive covenants.[18] Legal sanctions encouraged, sustained, and sometimes even required general support and acceptance of private racial discrimination. Domination and control, in the final analysis, were the principal methods of enforcement.

Throughout the South, the slave patrol system was resuscitated, often in conjunction with a militia apparatus composed of Confederate army veterans. Renewed patrol activity initially was directed primarily at the control of Black labor.[19]

> For which the militia is to be reorganized appears clearly from the uses it was put to whenever a local organization was effected. *It is the restoration of the old patrol system*

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[16] All contracts between any persons whatever, *whereof one or more of them shall be a person of color* . . . shall be void as to all persons whatever unless the same be put in writing and signed by the vendors or debtors and witnessed by a *white* person who can read and write. (Emphasis added) *Id.*

[17] *See*, R. Higgs, Competition and Coercion; Blacks in the American Economy, 1865-1914, at 11-13, 91-92 (1st ed. 1977); Senate Executive Document, No. 6, 39th Cong., 2d Sess. (1866), Laws of South Carolina, 1865, at 275-276, 292-299; *In re Turner*, 14 Fed. Case 247 (1867).

[18] V. Wharton, The Negro In Mississippi, 1865-1890, at 79 (1965); Bentley, at 104-106; *Shelley* v. *Kramer*, 334 U.S. 1 (1947) (restrictive covenants were enforceable at law until this case was decided).

[19] Joint Committee on Reconstruction, 39th Congress, *Report*, Part III, 10 (Washington, D.C., 1966; reissued New York, 1970) [hereinafter cited as Joint Comm. Report.]

which was one of the characteristic features of the regime of slavery. . . . The militia, organized for the distinct purpose of enforcing the authority of the whites over the blacks, is in itself practically sufficient to establish and enforce a system of compulsory labor without there being any explicit laws for it . . . . [T]he reorganization of the county patrol system will result in the establishment of a sort of *permanent martial law* over the negro. (Emphasis added.)[20]

This focus expanded to include Black political and cultural activity. Black leadership often was targeted for assasination[21] and independent political gatherings were often broken up with brute force.[22] Federal efforts to curb patrol abuses were

[20] C. Schurz, Report on the Condition of The South (1969).

[21] "with increasing regularity . . . white terrorists focused their violence on blacks in leadership positions who symbolized to them the excesses of the present and the dangers of the future — teachers, clergymen, soldiers, and political activists. If black teachers and clergymen were not themselves mobbed or threatened, their schoolhouses and churches were often burned to the ground, and black pupils were apt to be assaulted or intimidated even when attending separate schools." L. Litwack, Been In The Storm So Long: The Aftermath of Slavery at 278 (1979).

[22] In the suppression of even the most innocuous independent political activity, Mobile, Alabama, has the dubious distinction of being perhaps the first U.S. city to spawn a fully-fledged police riot. General Thomas Kilby Smith, commanding the southern district of Alabama, described what happened on July 4, 1865 in Mobile when 6,000 Black inhabitants celebrated Independence Day. The Mobile police set upon them, beat them, raped them, and threw them in jail. He characterized the rioters as hirelings of the slave power, who "*having been Negro drivers and professional Negro whippers, were fitting tools for the work in hand.*" C. Schurz, Report on the Condition of the South, 9 App. (1969) (On this occasion, evidently, the police force became one gigantic town patrol. Their mob spirit, the General said, was only kept in check by the presence of federal troops.)

either nonexistent or woefully inadequate.[23] Some of the patrols merely were driven underground into one of the myriad of white supremacy organizations like the Klu Klux Klan (KKK).[24]

The 1877 political compromise signaled an end to the Reconstruction era. Federal troops withdrew from the South. Whites moved to reconsolidate their economic and political power. Many local governments institutionalized the patrols as police. Virtually all Blacks were disenfranchized quickly from the political process. Segregation and degradation were reimposed even more tightly then under the system of slavery. Lynching became virtually a regional recreational pasttime. Employment opportunities in the South were few and impenetrable. Government work of any kind was nonexistent.

A small but steady number of Blacks began migrating from the South to the North in search of work. Most found that they also were marked by their color in the North. They were woefully unskilled. They entered the labor market on the lowest rung in constant fierce competition with newly arrived British and European immigrants. Obstacles to obtaining a government job were formidable. White immigrant groups successfully closed ranks around local government jobs. This was equally true for Northern police and fire departments that were controlled by groups particularly successful at fending off Black access. Not only did the government take no affirmative action to address the situation, government civil service practices often actively encouraged job discrimination. For example, until 1942 the U.S. Civil Service Commission required

[23] See J.T. Trowbridge, The South: A Tour of its Battlefields and Ruined Cities, at 463 (1969).

[24] J. H. Franklin, From Slavery to Freedom, at 323 (1956); K. Stampp, The Era of Reconstruction 1865-1877, at 199-200 (1965); V. Wharton, Negro In Mississippi, 1865-1890 (1965).

applicants to submit photographs with job application, thus permitting race identification. United States Commission on Civil Rights, *A National Not a Special Interest*, at 12-18, 22-30 (1981). Traditional avenues of employment mobility were closed to Blacks during this period.[25]

The post-World War II economic expansion permitted Blacks to emigrate to Northern industrial cities. 1950-1970, government service sector jobs expanded greatly. Blacks filled lower level government jobs spurned by whites with access to private industry. Demands for jobs, public housing, welfare, health care and other basic services mounted. The private sector was unable or unwilling to respond.[26]

Black political agitation was the response. Predictably, the government heard white America. Criminal justice expenditures were increased to contain ghetto street crime and drug offenses.[27] White police presence in the Black community was expanded appreciably. Public sector unions primarily controlled by various ethnic groups bolstered their membership and militancy, against providing service to the Black community. By mid-1960, the long smoldering situation ignited. For many Blacks, the problem and the remedy focused on the police.[28] City after city erupted in riot. The country truly was stunned. The elite Kerner Commission on Law Enforcement and Administration of Justice scrutinized the criminal

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[25] U.S. Commission on Civil Rights, A National Not a Special Interest, 12-18, 22-30 (1981).

[26] J. Mollenkopf, "The Crisis of the Public Sector in America's Cities," Essays on the Political Economy of Urban America with special reference to New York, R. Alcaly and D. Mermelstein (Eds. 1977).

[27] President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 1102 (GPO 1967).

[28] H. Hill, "Race and Labor," The Journal of Intergroup Relations, vol. X, No. 1 (1982).

justice system.[29] The conclusion was direct. The appointment of minority police was a high priority objective of al departments in communities with a substantial minority population.[30]

> The problem is symbolic. In neighborhoods filled with people suffering from a sense of social injustice and exclusion, many residents will reach the conclusion that the neighborhood is being policed nor for the purpose of maintaining law and order but for the purpose of maintaining the status quo.[31]

Numerous studies and reports followed.[32] A federal government agency was created. But the conclusions remained the same.

Police departments did not respond warmly or voluntarily. Reported instances of police brutality increased. City after

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[29] National Advisory Commission on Civil Disorders, Report, 157-194 (Bantam ed. 1968).

[30] *Id.*

[31] President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (GPO 1967).

[32] National Advisory Commission on Civil Disorders, Report (Bantam ed. 1968); National Advisory Commission on Criminal Justice Standards and Goals, A National Strategy to Reduce Crime (GPO 1973); National Advisory Commission on Criminal Justice Standards and Goals, Report of the Task Force on Disorders and Terrorism (GPO 1976); National Commission on the Causes and Prevention of Violence, Violence in America (Bantam ed. 1969); National Commission on the Causes and Prevention of Violence, To Establish Justice and Insure Domestic Tranquility (Bantam ed. 1970); President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (GPO 1967); President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (GPO 1967).

city was assailed for its patterns and practices of police violence to Black residents. The inadequacy of fire and other municipal services also was challenged. Suit after suit was filed against police and fire departments alleging racial discrimination in hiring and promotions.[33] Numerous orders were entered directing strict compliance with affirmative action policies.

Despite some changes, the battle lines in the street have remained much the same. Police and Fire departments continue to function today much like the all white slave patrols. The minority population in Boston is over thirty per cent. The proposed layoffs in this case would have reduced minority representation to 6.2% in the police department and 9.1% in the fire department. These percentages would have provided only token, not meaningful, minority participation in violation of the Thirteenth Amendment. The District Court modification was consistent with the Constitutional requirement to remove all badges and incidents of slavery.

[33] *Stotts* v. *Memphis Fire Dept.*, 679 F.2d 579 (6th Cir. 1982); *Bronze Shields, Inc.* v. *N.J. Dept. of Civil Serv.*, 667 F.2d 1074 (3d Cir. 1981); *Ass'n Against Discrimination* v. *City of Bridgeport*, 647 F.2d 256 (2d Cir. 1981); *Guardians Ass'n of New York City* v. *Civil Serv.*, 633 F.2d 232 (2d Cir. 1980); *Alexander* v. *Aero Lodge No. 735, Intern. Ass'n, Etc.*, 565 F.2d 1364 (4th Cir. 1977); *Wygant* v. *Jackson Bd. of Educ.*, 546 F. Supp. 1195 (E.D.Mich. So. div. 6th Cir. 1982); *NAACP* v. *Detroit Police Officers Ass'n, Etc.*, 525 F. Supp. 1215 (E.D.Mich. So. div. 1981); *Bd. of Ed. of City of New York* v. *Califano*, 507 F. Supp. 827 (S.D.N.Y. 1981); *Oliver* v. *Kalamazoo Bd. of Ed.*, 498 F. Supp. 732 (W.D.Mich. So. div. 1980); *Acha* v. *Beame*, 438 F. Supp. 70 (S.D.N.Y. 1977); *Croker* v. *Boeing Co. (Vertol Div.)*, 437 F. Supp. 1138 (E.D.Pa. 1977); *Equal Emp. Opp. Com'n* v. *American Tel. & Tel. Co.*, 419 F. Supp. 1022 (E.D.Pa. 1976); *Watkins* v. *United Steel Workers of America, Loc. No. 2369*, 369 F. Supp. 1221 (E.D.La. 1974); *Commonwealth of Pa.* v. *Local U. No. 542, Int. U. of Op. Eng.*, 347 F. Supp. 268 (E.D.Pa. 1972); *City & Cty. of Denver* v. *District Court, Etc.*, Colo., 582 P.2d 678 (1975); *Chance* v. *Board of Examiners*, 79 F.R.D. 122 (S.D.N.Y. 1978); *Schaffer* v. *Tannian*, 17 EPD ¶ 8642 (E.D.Mich. So. div. 1978); *Youngblood* v. *Daizell*, 13 EPD ¶ 11, 511 (1976); *Cates* v. *Trans World Airlines, Inc.*, 12 EPD ¶ 11, 137 (S.D.N.Y. 1976); *U.S.* v. *Inspiration Consolidated Copper Co.*, 6 EPD ¶ 8918 (D.Ariz. 1973); and *U.S.* v. *U.S. Steel Corp.*, 5 EPD ¶ 8619 (N.D.Ala. So. div. 1973).

C. *It was Proper for the District Court to Conclude that the Historical Exclusion from Public Safety Agencies Constitutes a Badge and Incident of Slavery.*

For one hundred years, the nation has failed to acknowledge or define the new national substantive rights enacted by the Thirteenth Amendment.[34] The U.S. Supreme Court, however, has concluded that the Thirteenth Amendment, does not merely abolish chattel slavery. Congress is authorized to outlaw all forms of slavery and involuntary servitude, including all badges and incidents. State laws upholding slavery are nullified by reflex or self-executing charter.[35] These propositions reflect current controlling law that this Court twice has reaffirmed during the last decade.[36]

The only real issue left for debate is how to determine what is a badge or incident of slavery appropriate for Thirteenth

[34] A. Kinoy, *The Constitutional Rights of Negro Freedom*, 21 Rutgers L. Rev. 387 (1967) (hereinafter Kinoy I); A. Kinoy, *The Constitutional Right of Negro Freedom Revisited: Some First Thoughts on "Jones v. Alfred H. Mayer Company"*, 22 Rutgers L. Rev. 537 (1968) (hereinafter Kinoy II).

[35] *Civil Rights Cases*, 109 U.S. 3, 20, 34-36 (1883).

[36] *Civil Rights Cases*, 109 U.S. 3, 20, 34-36 (1883); *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Runyon* v. *McCrary*, 427 U.S. 160 (1976). In *Jones*, the Court upheld an effort by Black citizens to invoke federal equity power to restrain racial discrimination by private individuals in the sale of real estate. The Court found statutory authority for this exercise of federal judicial power in one of the original Reconstruction Statutes, the Civil Rights Act of 1866. Section one of this Act provided that "citizens of every race and color . . . shall have the same right . . . to inherit, purchase, lease, sell, hold, and convey real and personal property . . . as is enjoyed by white citizens. . . ." In resting judicial action upon this statutory basis the Court was forced to face the ultimate question of the source for Congressional legislation in the area of Negro rights in the power created by the Thirteenth Amendment "'to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.'" Kinoy II, *supra* at 538-9.

Amendment remediation. This question was addressed directly in the historic debate between Justice Bradley and Justice Harlan. Justice Bradley favored limiting the remediable badges and incidents of slavery to those "that interfered with their [Freedmen's] fundamental rights" of citizenship. *Civil Rights Cases*, 109 U.S. 3, 22 (1883).

> Congress, as we have seen, by the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens. *Id.*

Justice Bradley stressed the literal, legal trappings of slavery. He totally ignored the legislative history of the Thirteenth Amendment and denied the historical reality of the institution of slavery and its institutional aftermath.

Justice Harlan on the other hand, urged a more expansive reading of what were the badges and incidents of slavery. For Justice Harlan, the odious racial inferiority and white supremacy theories, articulated in *Dred Scott* v. *Sanford*, 60 U.S. 393 (1856) were overruled completely by the Thirteenth Amendment.

> I hold that since slavery, as the court has repeatedly declared, was the moving or principal cause of the adoption of (the Thirteenth) amendment and since that institution rested wholly upon the inferiority, as a race, of those held in bondage, their freedom necessarily involved immunity from, and protection against, all discrimination against them, because of their race, in respect of such civil rights as belong to freemen [*sic*] of other races. Congress, therefore, under its express power to enforce that amendment, by appropriate legislation, may enact laws to protect that people against the deprivation, *because of their race*, of any civil rights granted to other freemen in the same State; and such legislation may be of a direct and primary character . . . . 109 U.S. at 36 (citations omitted).

The more expansive view of Justice Harlan has best withstood the test of time. The facts presented in this particular case, however, fall well within the more restrictive parameters set by Justice Bradley and subsequently subscribed to by this Court in *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968) and *Runyon* v. *McCrary*, 427 U.S. 160 (1976).

The promise of the Thirteenth Amendment to recast the position of Blacks in the economic and political life of America remains unfulfilled. The pervasive and persistent exclusion of Blacks from meaningful participation in local and state public safety agencies is the direct result of a cohesive system of racial stigmatization. As the most visible and discretionary government law enforcement representative, the public safety officer daily defines the boundaries of society's social freedom. "Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes." *Jones, supra* at 441-442. Society is defined significantly by those who serve in

these positions. A direct consequence of Black exclusion from meaningful participation in these agencies is a denial to Blacks of the fundamental right "to full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens. . . ." 42 U.S.C. § 1981. This exclusion refuels a false sense of white superiority and Black inferiority. This, in turn, becomes a self-perpetuating justification for continuing the exclusion of Blacks not only in this area but throughout American society. "[R]acial discrimination [that] herds men into ghettos [*sic*] . . . is a relic of slavery." *Id.*

D. *The District Court Modification was Required by the Thirteenth Amendment and Supersedes any Tenth Amendment Objections.*

Petitioners proffer several different arguments in support of strict seniority layoffs pursuant to Mass. Gen. Laws ch. 31, § 39. All of these arguments are without force or effect in the face of the Thirteenth Amendment. *Marbury* v. *Madison*, 5 U.S. 137 (1803). The federal court remedial power to provide an effective remedy may set aside an otherwise valid state law. See, *e.g.*, *Louisiana* v. *United States*, 380 U.S. 145, 154 (1968); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 459-460 (1972); *United States* v. *Mississippi*, 339 F.2d 679, 684-85 (5th Cir. 1964); *United States* v. *Duke*, 332 F.2d 759, 767-69 (5th Cir. 1963).

The mandate of the Thirteenth Amendment is clear. A new separate and independent fundamental right of freedom for American Blacks was created. Paramount constitutional power now exists to ensure that members of the race of freedmen can assume positions as equal members of the political and economic community.

Application of the Massachusetts seniority statute would have decimated minority representation within both the

Boston police and fire departments. This would have resulted in the clear reversal of a ten year effort by the court to ensure the realization of political and economic rights for Blacks. The modification by the district court was consistent with the mandate of the Thirteenth Amendment to remove all barriers to the realization of the fundamental rights guaranteed by the Thirteenth Amendment.

> The "Thirteenth Amendment authorizes Congress not only to outlaw all forms of slavery and involuntary servitude but also to eradicate the last vestiges and incidents of a society half slave and half free . . . .". But the same opinions also indicate that the "entire Court," both the Bradley majority and the Harlan dissent, were likewise in agreement that the Thirteenth Amendment "is undoubtedly self-executing without any ancillary legislation . . . ." and that "[b]y its own unaided force and effect it abolished slavery, and established universal freedom." The "self-executing" nature of this "charter of universal freedom" is further emphasized by Justice Bradley's powerful description of the dual thrust of the Amendment, which, as he put it, not only has the effect of "nullifying all State laws which establish or uphold slavery . . . ." but has a "reflex character also, establishing and decreeing universal civil and political freedom throughout the United States . . . ." That the courts have an independent role to play in enforcing this self-executing charter of "universal civil and political freedom," whenever a case involving these rights properly comes before them as a case or controversy within Article III cognizance, is made dramatically clear by Justice Bradley's coupling of the Thirteenth Amendment together with the Fourteenth as "undoubtedly self-executing without any ancillary legislation . . . ." Kinoy II, at 545. (Citations omitted.)

Conclusion.

> The problem is how to establish — for the first time in our history — the terms on which colored minorities might be expected to accept the legitimacy of the social order itself, and therefore to grant it their allegiance and loyalty.[37] (Citation omitted.)

In the "real world of which we are all a part . . . in order to treat some persons equally, we must treat them differently."[38] Therefore, "to *be* equal is, first of all, to *become* equal. It is a process, wherein power can be obliged to help undo what power in the past has wrongly created."[39]

[37] L. Dunbar, "Toward Equality, Toward A More Perfect Union", in National Urban League, *The State of Black America 1982*, 47 (1982).

[38] *Regents of the University of California* v. *Bakke*, 438 U.S. 255, 407 (1978) (Justice Blackmun concurring).

[39] *Op. Cit.* at 50.

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APPENDIX

AMICI STATEMENTS OF INTEREST

The AFFIRMATIVE ACTION COORDINATING CENTER (AACC) is an organization created by the National Conference of Black Lawyers (NCBL), the Center for Constitutional Rights (CCR) and the National Lawyers Guild (NLG). with the participation of a cooperating network of civil rights, civil liberties, and other organizations. Many network organizations, as well as other groups have joined as amici in this brief.

The AACC was formed in response to the proliferation of attacks on affirmative actions programs. Its purposes are to stimulate and coordinate resources and legal strategies for the defense and expansion of affirmative action programs. The AACC has convened roundtables of civil rights, labor and women's rights

attorneys to discuss the WEBER, BAKKE, FULLILOVE, and WHITE cases.

AACC publishes an informational newsletter entitled AACC News. It is preparing several plain language publications on affirmative action in education and employment. The AACC has conducted and is planning other activities designed to increase communications and enhance joint efforts by all groups and individuals interested in strengthening effective affirmative action programs.

The NATIONAL CONFERENCE OF BLACK LAWYERS (NCBL) is an activist legal organization of Black lawyers, law professors, judges and law students dedicated to serving as the legal arm of the Black community. Since its inception in 1968, NCBL has been actively involved in the continuing struggle for equaly employment opportunity. Over the past five years, NCBL has led the struggle for the full implementation of the principles of affirmative action that have been affirmed by the Congress and the Courts. We are intimately concerned about how the operation of the last-hired,first-fired principle, if applied in this case, would disproportionately affect our constituency. Therefore, we urge this Court to find the modifications of the consent decree in this case to be a valid expression of the National mandate against race discrimination.

The NATIONAL LAWYERS GUILD (NLG) was founded in 1937 as a multi-racial and progressive alternative to the racially restrictive, conservative American Bar Association. Its commitment to civil rights dates back to efforts to eliminate the poll tax and white primaries. In 1962, the Guild dedicated its full resources to the legal support of the civil rights movement. In support of affirmative action, the Guild filed briefs in every affirmative action case since Bakke. The Guild standing committees Affirmative Action/Anti-Discrimination Task Force and the National Commission on the Oppression of Women have specifically considered and adopted the position advocated herein.

The NATIONAL LABOR LAW CENTER, founded in 1980 is a non profit legal and educational organization. It is a project of the National Lawyers Guild. It maintains a referral network of labor lawyers and a clearinghouse of information and research on current developments in labor law. It develops educational and training materials for lawyers and labor activists, provides some litigation and counseling services and pulishes a journal, Labor Update. Its purposes are to assist the efforts of workers to build unions where there are none and to strengthen and democratize their organizations. The National Labor Center urges support for the plaintiffs' position in that the decision of the lower courts provides an equitable relief which appropriately balances seniority and affirmative action where discrimination has been found or where the vestiges of past discrimination still exist.

The CENTER FOR CONSTITUTIONAL RIGHTS (CCR) was born of the civil rights movement and the struggles of Black people in the United States for true equality. CCR attorneys have been active in cases involving voting rights, jury composition, community control of schools, fair housing and employment discrimination. Through litigation and public education, they have worked to protect and make meaningful the constitutional and statutory rights of women, Blacks, Puerto Ricans, Native Americans and Chicanos.

The AFRO-AMERICAN POLICE LEAGUE, a fraternal organization made up primarly of Black members of the Chicago Police Department, urges affirmance of the decision of the Court of Appeals upholding modification of consent decrees covering the City of Boston Police and Fire Departments for three primary reasons.

First, the modification was necessary to eliminate the present and continuing effects of discrimination, in accordance with the original decrees' purpose. Second, the modification was constitutionally mandated, pursuant to the Thirteenth Amendment, to prevent perpetuation of past discrimination. Third, the modification was a proper exercise of the Court's power, in a discrimination case, to ensure that relief ordered not be canceled out by seniority-based layoffs.

The AMERICAN ASSOCIATION FOR AFFIRMATIVE ACTION, REGION I is a professional association for equal opportunity/affirmative action administrators and specialists, individuals and organizations sharing similar interests and concerns. The membership includes representatives from the private,public, academic, and health sectors. It is the New England component of the national Association, founded in 1974. There are approximately one hundred members. We support the decision below in the Boston police and firefighters cases.

THE ASIAN LAW CAUCUS, INC., is a community-based law office serving the Bay Area Asian community. Established in 1972, we handle cases in the areas of employment/labor, immigration, and general civil rights. We have worked with the Asian-American Legal Defense and Education Fund very closely for the past five years, and are active in the National Lawyers' Guild.

We support the arguments put forth in the AACC brief asking the court to maintain strong affirmative action programs when findings of racial discrimination have been made. In the long run, it is in the interest of all workers to support anti-racist measures which attempt to remedy the injustices of past and current discrimination.

Although seniority is an importan tool to protect against arbitrary actions by employers, we recognize that seniority,

when combined with racist policies, perpetuates discrimination and locks generations of minorities out of key sectors of employment.

We note that there is historic violence and harassment pertetrated by police departments upon Asian and other minority communities nationwide. Although we believe that an integrated police force will not resolve this situation, we would support all efforts to gain affirmative action in public and private employment.

THE BLACK AMERICAN LAW STUDENTS ASSOCIATION (BALSA) was founded in 1968 to advance the interests of Black law students and to direct and encourage those students into areas of service to the Black community. As an organization whose members have benefited from affirmative action, we are extremely disturbed that the national mandate that racial discrimination be eliminated from the institutional life and practice of the country may be undermined by the constant attack against well founded policies supporting affirmative action. BALSA firmly believes that the Thirteenth Amendment to the Constitution provides the proper judicial basis from which to evaluate affirmative action programs that are endangered by economic cutbacks.

BLACK EDUCATORS' ALLIANCE OF MASSACHUSETTS, was created for the purpose of advocating and lobbying for the interests of minority administrators, teachers, parents and students in Massachusetts. The Alliance, previously the Negro Teachers' Association, was founded during the mid-sixties in response to the lack of representation of minority issues in the teachers' unions and school committees. Its major goal is to advocate quality education and affirmative action. The Alliance represents several hundred Black teachers and administrators, and is an associate member of the New England Black Educators' Association. The Alliance , which faced similar attacks in the education sector, supports the holding of the court below.

BLACK WOMEN FOR POLICY ACTION is a Boston organization which has as one of its mandates securing jobs for minorities. Since 1977 it has been active in Boston Politics to ensure access for women and minorities in the public and private sector. It completely supports the need for minorities on the Boston Police and Fire Departments.

CASA LATINA, a project of Hampshire Community Action Commission of Northhampton, Massachusetts, has been in existence fourteen years serving the lower income population in Hampshire Cunty. We have advocated at every level, to have hispanic individuals hire by industiral , commercial and governmental employers.

Our main advocacy effort has been to have hispanics employed in the delivery of human services, including police and court services in the city.

The absence of hispanic police has meant that there has been consistent harassment of our community especially in low income family housing projects. Incidents have occurred when police reacted without understanding what people were saying to them. Unnecessary arrests were made. Innocent people have been sentenced in courts which

have no spanish-speaking staff interpreters.

We strongly support the power of the court to order and maintain affirmative action in the police and law enforcement sectors.

Entering its twelfth year at the Catholic University of America Law School, the Center for National Policy Review has recently achieved important breakthroughs:

The Center's recommendations for streamlining Federal fair employment programs to make them better serve the needs of employers, unions and victims of discrimination were largely adopted by the Carter Administration;

The Center's lawsuit, brought on behalf of eleven national and regional fair housing groups, led the Federal financial regulatory agencies to take firm action against redlining and other discriminatory practices of banks and savings institutions;

The Center as Cousel to the School Boards of Wilmington, Delaware and Indianapolis, Indiana helped win two major cases which produced peaceful and effective school desegregation for the metropolitan areas of each city;

The Center's study of the $11 billion Comprehensive Employment and Training Act (CETA) program helped secure more effective rules targeting jobs and training for the hard-core unemployed and prohibiting discrimination;

The Center also provides training for law student interns in the Civil Rights field.

THE CENTER FOR THIRD WORLD ORGANIZING is an organization of organizers, activists and scholars who train members of Black, Lations, Asian-American and Native American communities in organizing skills and techniques. Many of the organizations and individuals that we serve are deeply concerned about affirmative action and the protection of the rights of minorities. CTWO strongly supports the concept that the Thirteenth Amendment is the legal basis of all affirmative action programs. While we understand that this concept provides initial legal protection for Americans of African ancestry, we believe its acceptance and implementation as national policy will eventually evolve to provide similar protections for victims of discrimination from other racial and ethnic groups.

CONNECTICUT ALLIED BUSINESS LEGAL RIGHTS ASSOCIATION (CABLRA) is an organization of minority business men and women in Connecticut. Its purpose is to fight past discriminatory practices and enforce affirmative action with respect to Executive Order 11246. The CABLRA has been an amicus in minority contractor cases and supports the plaintiffs' stand on the necessity for affirmative action considerations in employment decisions.

The CIVIL RIGHTS COALITION FOR AFFIRMATIVE ACTION was formed in Boston in 1980 in response to the anti-affirmative action movement that is threatening this country. The Coalition members are individuals who have long worked for the rights of all people, particularly minorities and females, who have long been discriminated against, to have equal access to employment opportunities, in private, public and educational institutions. The Coalition has and will continue to make their views known to legislators, both on the local and national levels. Its members support the affirmative action order below.

EDUCATORS UNITED is a multi-racial organization of teachers and aides who work in the Milwaukee Public School System. Our purpose is to work for equal and quality public education.

We strongly believe that our government must ensure equality for minorities in the workplace through preferential treatment in hiring and layoffs. This is the only way past vestiges of discrimination will be eradicated and minority representation in the public workforce raised to a level that reflects the composition of the constituencies that are being served.

ESPERANZA UNIDA is a non-profit social service and educational community organization which serves injured and unemployed workers in Milwaukee, Wisconsin. The majority of the people we serve are Spanish-speaking. Our Organization has over 500 members and gives services to between 500 and 750 people per month. One of the primary concerns of our work is to return the injured and unemployed people we serve to the job market. The use of affirmative action has done much to give hope to our community. Any errosion of this principal, which is intended to correct the effects of discrimination, would be devastating to us. We also believe that the principal of equal participation of all people in the job opportunities of our communities is essential to stability and the preservation of this principal must be considered as a greater good to our society

when it conflicts with other principals. Without the continued use and support of affirmative plans the idea of equality has no meaning to us.

THE GREATER BOSTON INTERDENOMINATIONAL MINISTERIAL ALLIANCE is an ecumenical alliance of seventy churches and over 100 ministers in Boston who put spiritual principles into action on issues of moral, ethical and economic development.

Our members rode the school buses in Boston and went into the schools to see that Black children were treated fairly and to help implement integration.

Our members are active in securing an equitable contract share for minority contractors. Our prison committee has opposed racial injustice in the Massachusetts criminal system, and most recently campaigned to oppose capital punishment.

The Alliance engages in social action based upon a belief that inequities still exist which prevent all minorities from moving into mainstream America. These obstacles are a remnant of slavery. A white police force is, in particular, an image of oppression which ought not to be in a land where everyone was born to be free. The Greater Boston Interdenominational Ministerial Alliance believes that the principles of affirmative action contained in the court order are morally, ethically and spiritually correct and necessary in Boston.

This statement is an indication of a wholehearted endorsement of the Massachusetts Association of Afro American Police, Inc.'s efforts to gain full access to those privileges which are inherent within the Boston Police and Fire Department for each of its employees, regardless of race, creed, color or religion.

The LEAGUE OF MARTIN is a nonprofit organization incorporated in 1974 pursuant to Wisconsin sec. 181., Stats. Members of the League of Martin have been Milwaukee police officers and the organization's primary concern is racial discrimination within the Milwaukee Police Department. The League of Martin has undertaken numerous activities to eliminate discriminatory employment practices of the City of Milwaukee Police Department including, but not limited to, litigation and filing of charges of discrimination, by its members, with the United States Equal Employment Opportunity Commission.

With respect to litigation the League of Martin and individual black Milwaukee police officers are currently plaintiffs in a certified class action, League of Martin, et al., v. City of Milwaukee, et al., 81-C-1465, pending in the United States District Court of the Eastern District of Wisconsin. The League of Martin has also protested unlawful race discrimination in complaints to the Office of Revenue Sharing of the United States Treasury Department.

The League of Martin has consistently acted upon its belief that race discrimination is not only harmful, and in violation of the law, to the victims of the discrimination but also the legitimate objectives of professional, competent, and fair law enforcement. The League of Martin has also encouraged and supported the use of affirmative action plans to correct the effects of past discrimination.

MASSACHUSETTS BLACK LEGISLATIVE CAUCUS is an association of Black state legislators who have applied their political skills and experiences in order to facilitate the development and power of people of color throughout Massachusetts. The Caucus was originated in November, 1972, and presently consists of Representatives Royal Bolling, Jr, Doris Bunte, Sandra Graham, Raymond Jordan, Byron Rushing and Senator Royal Bolling Sr. We believe that the decision below is consistent with our goals.

MASSACHUSETTS CITIZENS AGAINST THE DEATH PENALTY is a coalition of five thousand individuals and organizations who have opposed the restoration and implementation of the death penalty in Massachusetts for the last two years. The race discrimination which permeates the imposition of the death sentence has been judicially recognized by the Massachusetts Supreme Judicial Court in Watson v. District Attorney, 1980 Mass. Adv.Sh. 2231 (1980), and by this Court in Furman v. Georgia, 408 US 238 (1972). Our entire campaign against such racism documents our support for the affirmative action remedy necessary for the Boston Police and Fire Departments.

MID-TOWN NEIGHBORHOOD ASSOCIATION, has represented Black, Hispanic and other minorities in West Milwaukee for twenty years. It was incorporated in 1952 to preserve, conserve, and improve properties within the area of association. It believes discrimination is a crime as destructive as murder and as expensive as war. Therefore it supports the affirmative action order in the Boston police and fire departments.

THE MILWAUKEE MINORITY FIREFIGHTERS ASSOCIATION ("MMFFA") is an organization of City of Milwaukee firefighters organized to cultivate and maintain professional competence among firefighters and to promote unity and brotherhood. The City of Milwaukee Fire and Police Commission continues under a consent order for affirmative action hiring due to past alleged discrimination. The MMFFA joins as amicus curiae because it believes that adopting the position advocated by the Boston Police Association and Firefighters Union would have a profound negative effect on the recruitment, retention, and promotion of minority firefighters across this country. The MMFFA also believes that the only way to properly integrate the fire and police departments at this time is through affirmative action.

MINORITIY EDUCATORS IN MASSACHUSETTS PUBLIC COLLEGES AND UNIVERSITIES is an organization consisting of 350 minority educators throughout the state of Massachusetts. The purpose of the organization is to provide a network for keeping minority educators in public institutions abreast of developments that relate to their respective roles and responsibility. The objectives are: to develop cooperation and mutual support among minorities in public institutions, to develop a clearing house for minorities with problems; to develop a viable communications system among minorities in public institutions to address issues, such as enrollment and financial aid that affect minority students admission and retention in public colleges and universities , and to respond to issues that affect the employment of minority professionals.

THE NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION (NAARPR) is a broad-based coalition of labor, political, church, civic, student and community organizations and individuals committed to repelling and bringing about an end to the growing repression in the United States. The NAARPR appears here as amici because the case Castro v. Beecher is yet another example of the need to stop attacks on affirmative action programs which are necessary to abolish the patterns and practices of institutionalized racism and to correct patterns and practices of discrimination against Afro-American, Native American, Latino American, Asian American, Pacific Island and other minorities. We affirm that discrimination cannot be abolished by policies that ignore its existence.

For this reason the NAARPR joins this brief. Should the Court's order modifying the consent decree in Castro v. Beecher be

struck down, the racist dogma of so-called "reverse discrimination" will be given "legal" credibility and ultimately be detrimental to the interests of the working people of the United States, white as well as Black. Statistics prove time and again that every economic gain made by Black Americans has improved not only their lives, but the lives of all working people in this country, and especially the poor.

THE NATIONAL BLACK UNITED FRONT, headquartered at 415 Atlantic Avenue in Brooklyn, N.Y. is a mass-based, grassroots, progressive organization. Under the chairpersonsip of Reverend Herbert Daughtry, we have amassed 24 chapters across the country. MBUF is concerned about the plight of the Afro-American community throughout the United States.

We believe that the legacy of Africans in America, who have suffered from over 200 years of enslavement and an additional 100 years of an apartheid-like system of racial separation, demands that this country provide reciprocity for the injustices committed against the Afro-American family and wage earner. Affirming the modification of the consent decree in this case would signal this Court's commitment to ending the injustices our communities have been confronting for years.

THE NATIONAL BLACK UNITED FUND is a national philanthropic organization. NBUF is dedicated to serving the needs of the underserved and oppressed Black community by rechanneling funds from that community back into the causes and issues that are necessary for the survival and prosperity of Blacks in America. NBUF is deeply concerned that in our worsening economy, the last hired-first fired pattern of Black employment will wipe away those minimal but significant against that Blacks have made through affirmative action. We believe that there must be a remedy under law for historical or continuing patterns of racial discrimination that does not end merely because of national economic problems. Therefore, we join with amici in asking the Court to sustain the affirmative action plan currently in place in the Boston Fire Department.

THE NATIONAL CENTER FOR TRADE UNION ACTION AND DEMOCRACY/LABOR TODAY ("TUAD") is an organization which was formed to provide a structure within which the various elements of the growing rank and file labor movement could join together in support of their common interests. Throughout the life of TUAD, it has stressed the importance of providing women and minority people with the jobs and opportunities that they have been denied due to discrimination and its effects. This is based upon an understanding that the rank and file members of the labor movement will only achieve their legitimate goals in life if no section of that movement is deprived of the right to strive for those goals. In furtherance of this understanding, TUAD has consistently,

since its formation in 1970, encouraged and supported the use of affirmative action plans to correct the effects of past discrimination in the work places of this country.

OFFICINA LEGAL DEL PUEBLO UNIDO, of San Juan, Texas, has, since 1975, been bringing grand jury, employment discrimination, farm worker and police brutality cases in the Rio Grande Valley of Texas. Through such cases, including Castaneda v. Partida, 430 US 482, we have always fought for equal access and retention of all minorities in all forms of employment.

OPERATION PUSH, INC. is a multi-racial national community-based civil rights organization with 90,000 members, headquartered in Chicago, Illinois. We are advocates for the poor and have worked with labor for the drafting, passage and enforcement of affirmative action legislation. We grew out of Operation Breadbasket, the economic arm of the Southern Christian Leadership Conference, lead by Dr. Martin Luther King.

Amicus is concerned that the discriminatory practices against Blacks and Hispanics by city and state civil service systems has a significant impact on employment opportunties for Blacks and minorities in the United States workplace. Our major educational projects, and our many contracts with major U.S. corporations to provide jobs for the poor will be jeopardized if court ordered affirmative action cannot be protected in times of layoff.

THE PARISH COUNCIL OF HOLY ANGELS CATHOLIC CHURCH at 3970 N. 12th Street in Milwaukee is organized as the elected governing body of parish concerns. As a Church ministering to the need of people of inner city Milwaukee, especially minorities, a chief concern has been the injustice to which minorities have been subjected. Affirmative action policies are one remedy for past exclusion from employment opportunities. Therefore, the Parish Council is very interested in the case of Boston Firefighters Union Local 718 v. NAACP, Boston Police Patrolmen Association, Inc. v. Castro; and Beecher v. NAACP. The Council sincerely hopes that efforts to create justice in the workplace will not be reversed.

THE SISTERS OF ST. DOMINIC based in Racine, Wisconsin is a national congregation of Catholic women religious of approximately 400. In 1977 the Sisters of St. Dominic stated that they would identify with the poor, oppressed and alienated and would work in an advocacy role helping them to secure what is rightfully theirs. The community holds that integration of te public work force is a value to be achieved and supercedes strict seniority in hiring and layoff procedures.

THE URBAN LEAGUE OF EASTERN MASSACHUSETTS, an affiliate of the National Urban League, is an interracial non-profit community service organization which has the following as its goals: the elimination of racial discrimination and segregation; and the procurement of equal rights and opportunities for Black Americans and the poor in all sectors of our society. Therefore, it is the mission of the Urban League of Eastern Massachusetts to close the gaps that exist between the races in economic, social, and political spheres through the provision of direct services consistent with the needs and goals of the poor and disadvantaged. There are approcimately three hundred members of the organization. The proportional layoff of police and fire officers eliminates segregation, ensures equal rights and closes part of the gap that exists between the races in Boston.

THE WISCONSIN BLACK LAWYERS ASSOCIATION (WBLA) is an organization of attorneys formed in 1973 for the purpose of, among other things, advocating needed legal and judicial reform to make justice available to all people; assisting the Black community in eliminating the root causes of poverty and powerfulness; defending Blacks from all who deny them basic human and legal rights; using legal tools and discipline for the advancement of educational, economic, housing, health delivery systems, social institutions for Blacks and a greater share of the better things available in this society.

The WBLA hereby declares its support of the court ordered integration under attack in the case of Boston Fire Fighters Union Local 718 v. NAACP; Boston Police Patrolmen Asssociation, Inc. v. Castro; and Beecher v. NAACP.

WOMEN FOR ECONOMIC JUSTICE, INC. was established by former members of the Massachusetts Governor's Commission on the Status of Women to publicize and ameliorate the economic problems which affect women in our economy. Toward that end we have instituted economic literacy programs around the state providing information to other women's groups. As part of that program we help women understand the relationship between economic status and racism and have held conferences on the issue of pay equity. A primary objective of our organization is the furtherance of affirmative action for women and third world people and the elimination of all forms of employment discrimination. We believe that the ability of the Court to maintain during a layoff the progress made in hiring minority firefighters and police is crucial to an ultimate end to

racial discrimination in the Commonwealth of Massachusetts.

THE WOMEN'S COALITION, INC. is an umbrella organization of thirteen women's organizations in Milwaukee, Wisconsin. The Coalition was established in 1972 to meet the needs of Milwaukee area women through organizing, establishing services, providing a meeting place for women, and creating a centralized information and referral service. Among its activities has been sponsoring annual "Take Back the Night" demonstrations and activitites related to the problem of sexual assault and violence against women, and thousands of persons have participated in these actions locally.

The Women's Coalition has always been committed to advocating equal rights and access by minorities and

women in American society. The coalition also perceives there to be a substantial problem in Milwaukee regard-ing police community relations, and believes affirmative action in hiring and retention of minorities and women to be an essential element of ameliorating such problems.

THE WOMEN'S JUSTICE CENTER of Detroit, Michigan which has been in existence for more than five years has the purpose of advocating the legal rights of women with an emphasis on employment discrimination. The Women's Justice Center has an interest in the outcome of this case because its accomplishments could easily be lost if there is not a continued sensitivity by the courts to the priority of preserving previously imposed remedies to past discrimination despite the challenge of difficult economic times.