

Eric Paris Whitfield  
La-Meik Taylor  
Eastern NY Correctional Facility  
30 Institution Road, PO Box 338  
Napanoch, NY 12458-0338

February 1, 2023

Dear Legislators:

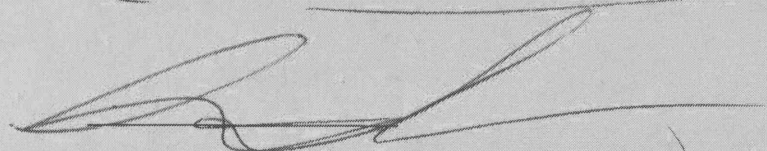
Please find enclosed a copy of the Incarcerated Individual's Agenda Memorandum. This project is conceived, critically analyzed, and written by La-Maik Taylor and myself (Eric Paris Whitfield). What we hope will come of this memorandum—is vigorous debate and subsequent dismantling of the Thirteenth amendment, which has (and is) disproportionately harming Black and Brown United States citizens. Below is a brief bio of the writers:

La-Meik Taylor is a Bard College Graduate; and ally of the Newburgh LGBTQ+ Center; a team Captain for the Bard College Intercollegiate Debate Team; an executive board member of Jaycees (a National Organization that helps strengthen ties between Incarcerated Individuals and their families/communities); and, currently working on a program to assist reentry efforts for Incarcerated Individuals.

Eric Paris Whitfield is a Bard College Graduate; a Team leader with the Newburgh LGBTQ+ Center (whereas he facilitates workshops to write Op-eds, essays, personal narratives for New York state legislative bills); Empowerment Avenue writer; Study and Struggle book reviewer; Tufts University published poet; a NYC Inside/Outside Coalition activist; and, currently working to dismantle the New York state "Felony Murder Law" (for more information see, IG: @freericwhitfield).

We are incarcerated, but we are not without a voice. We have a fundamental right, as United State Black and Brown citizens to challenge sacrosanct policies, laws, and constitutional amendments: in an effort to bring about greater, *Equity Under the law*.

Respectfully yours,



## Table of Contents

Introduction .....	1
Issue I: Citizenship .....	3
Issue II: Voting Rights .....	8
Issue III: Health Care .....	12
Conclusion .....	13

## Introduction

Within carceral spaces, Incarcerated Individual's ("I/I's") United States citizenship is abridged, and their status is structurally assigned as "slavery" or "involuntary servitude" as a punishment for being duly convicted of a crime. Moreover, I/I's status of "slavery" or "involuntary servitude," encourages policies that serve to deteriorate the mental and physical health of the incarcerated. In recent years, many states have challenged their constitutions where it makes mention of "slavery" or "involuntary servitude" as punishment for a crime. Likewise, carceral spaces that do not provide constitutionally adequate mental health practices have come under attack, as scientific and empirical evidence emerges to illustrate the deleterious effects of carceral conditions. However, there are still many unchallenged components of imprisonment that adversely affect I/I's and their families in covert and inconspicuous ways. After experiencing the effect of mass incarceration and other racially motivated forms of slow and structural violence for generations, members of Black and Brown communities normalize the practice of imprisonment and embody its wide-arcing toxicities.

As imprisonment and its consequences become increasingly intertwined with Black and Brown life, the toxic effects of the carceral space becomes an experience accepted as normal. As a result, the people who interact with this space, both directly and indirectly, begin to normalize the embodiment of carceral toxicity. Through a contemporary analysis of the carceral system, there is a clear, and often demonstrated, reality that I/I's do not have full United States citizenship. In the Incarcerated Individual's Agenda Memorandum, we point to how the Thirteenth amendment inflicts an inferior secondary citizen status upon, mostly, the Black and Brown people, which extends into their reentry back to their communities in society. These harms are often not examined in its entirety; therefore, it is in a lived experience of I/I's that we present these issues to the Black and Latino Caucus legislative body. These issues, in a way, are not separate from many of those persistent issues Blacks and Latinos face in our collective pursuit of equity and civic duty, as well as obligation, in their participation in United States' democracy. We I/I's are stakeholders in our United States citizenship and those responsibilities thereof.

"We, too, are part of this society, and while we don't want to disrupt its orderly process, we cannot, in good conscience sit by while we are ignored in all the basic policies which affect the community's life." -- Martin Luther King Jr.

Our nation is in constant change because it is dedicated to its core values rooted in the idea: "We the people of the United States, in order to form a more perfect Union, establish justice, insure tranquility, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." For people of color, our citizenship is a continuing struggle for these creeds to be held true.

In order to progress the American people, it is the Black and Brown citizen who are constantly called upon to oppose and change old habits. What this means, in short, is that every American citizen of proper age must challenge traditional privileges to navigate uncharted waters towards new and inclusive ways to perfect what it means to be an American citizen. However, any effort to reach these goals requires that the white hegemonic elites to give up the status quo. For some, that becomes problematic because, in their eyes, the U.S. Constitution's Preamble was not written to include 'every' American citizen. We call upon the American leaders who are dedicated to the advancement of all United States citizens (to include I/I's) to have, and remain having, their fundamental status as American citizens, with their rights to participate in their civic duty through the ballot. Whether your label is "Reformer," "Maverick," or "progressive," you are at your core an American in a position of power with the ability to breathe life into those elderly words "We the people of the United States." For "We the people to finally be true, the legislative body must end "slavery" and "involuntary servitude" in the United States, by abolishing the Thirteenth amendment.

## Issue I: Citizenship

Citizenship implies the status of freedom with accompanying responsibilities. Citizens have certain rights, duties, and responsibilities that are denied or only partially extended to aliens and other noncitizens residing in a country. In general, full political rights, including the right to vote and to hold public office, are predicated upon citizenship. When thinking about citizenship for I/I's, we first must look at those barriers which prevent it. The full text of the Thirteenth amendment is as follows:

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. Congress shall have power to enforce this article by appropriate legislation.

The amendment was passed by the Senate on April 8, 1864, but did not pass in the House until January 31, 1865. The joint resolution of both bodies that submitted the amendment to the states for approval was signed by Lincoln on February 1, 1865, however, he did not live to see its ratification. Assassinated by John Wilkes Booth, he died on April 15, 1865, and the amendment was not ratified by the required number of states until December 6, 1865.

There was strong opposition to the extension of the franchise to African Americans. Following the end of Reconstruction in 1877, the Supreme Court of the United States limited voting protections under federal legislation, and intimidation and fraud were employed by white leaders to reduce voter registration and turnout among African Americans. As whites came to dominate state legislatures once again, legislation was used to strictly circumscribe the right of African Americans to vote. Poll taxes, literacy test, grandfather clauses, whites-only primaries, and other measures disproportionately disqualified African Americans from voting. The result was that by the early 20th century nearly all African Americans were disfranchised. The story of Black and Brown people's struggle to attain first-class citizenship is one of the epic chapters in American history. For the incarcerated Black and Brown

American citizen, this struggle has been even more obscure, because when we look further into the history of why Black and Brown people have had their citizenship stripped, and impeded, we learn it has been through slave-codes, Jim Crow ordinances, racist laws rooted in the Constitution that serves to put Black and Brown people back in their proper place: perpetually in the status of slavery or involuntary servitude.

Disfranchisement for Black and Brown demographic is hardly a new phenomenon. The story of Black and Brown people's bid for equal citizenship, in America, has ebbed and flowed since their arrival on the shores of Virginia, in 1619. At that time, some African were pseudo 'free' before becoming indentured servants, and then forced into slavery through laws. To this very salient point, there has been the slow, frequently frustrating, ever-hindering, ascent towards Black people's status as free, and subsequently their citizenship. As it pertains to the Emancipation Proclamation, the de facto freedom it purported to offer, a Civil War amendment, has not been well settled with other binding law (Fourteenth and Fifteenth amendments). The Emancipation Proclamation has not been able to efficiently offer Black and Brown citizens fully integrated United States citizenship.

Thus, every "stride towards freedom," borrowing from Dr. Martin Luther King Jr., suggests just how hard-fought Black and Brown people have strived towards self-determination, which has come at the hands, strategies, and techniques employed by an almost powerless minority. Black and Brown people have had to insist on having those rights and privileges monopolized (and controlled) by the often arrogant majority. The problem then with having de facto citizenship status for Black and Brown people is that there is a very precarious line between having citizenship and having it abridged because of incarceration. Black and Brown people are constantly influx with changes, sometimes positive, sometimes negatives, which varies significantly in time, situation, and geographical location. Yet, here, in this space of incarceration, there is still little doubt that Black and Brown people in "free society," are at a hair-break-away from losing their citizenship, once arrested, charged, and convicted.

The United States has the largest prison population in the world, as well as the highest per-capita incarceration rate. However, the incarceration rate is four times higher even as the United States crime rate is lower than at any time since the 1960s. While the United States makes up about five percent of the world's population, it has twenty-one percent of the world's prisoners. African Americans (Blacks/Afro-Latinos) are incarcerated at more than five times the rate of whites. The imprisonment rate of African Americans for drug charges is almost six times that of white people even while African Americans and whites use drugs at similar rates. If African Americans and Hispanics were incarcerated at the same rate as whites, prison and jail population could be reduced by almost forty percent. Moreover, Black and Brown United States citizenship is linked to their being arrested, charged with a crime, and convicted, which systemically serves to keep Black and Brown people perpetually as an inferior class.

The concept of first-class citizenship for Black and Brown people in "free society" should not rely on the thin and fragile capriciousness of being arrested, cycled through an overburdened (and often flawed) court system, and then convicted under the law. The concept of first-class citizenship, as used here, is a concept meant to include only serves to abridge citizenship, as in stark contrast to the Fourteenth amendment, which reads in part,

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the United States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunity of citizenship of the United States, nor shall any State deprive any person within its jurisdiction the equal protection of the law.

It is well documented that the Thirteenth amendment, along with the other "Reconstruction Amendments, i.e., the Fourteenth and the Fifteenth were all laws drafted, in part, by Republicans (in Mississippi, South Carolina, and Georgia). These were amendments set up and rooted in continuing the policing and controlling of the Black and Brown body. These Republicans sought to carve

out a caveat to impose their own policy of reconstruction on the formerly enslaved. In the Thirteenth amendment is where we can see how the continuation of bondage in servitude for Black and Brown people is sustained, as a form of post slavery through law, enshrined in the Thirteenth amendment.

But, the Congressional 1865 Thirteenth amendment is in direct contradiction to President Abraham Lincoln's, prior, 1863 Emancipation Proclamation. The caveat that allows for servitude, within the Thirteenth amendment, rebuffs the very foundation of the Emancipation Proclamation, which is worth reading at length, but provided here in part:

Whereas, on the 22nd day of September, in the year of our Lord 1862, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

That on the 1st day of January, in the year of our Lord 1863, all persons held as slaves within any state or designated part of a state, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free, and the executive government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons and will do no act or acts to repress such person, or any of them, in any efforts they may make for their actual freedom... by proclamation, designate the states and parts of states, if any, in which the people thereof, respectively shall then be in rebellion against the United States; and the fact that any state or the people thereof shall on that day be in good faith represented in Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such states shall have participated shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such state and the people thereof are not then in rebellion against the United States... by virtue of the power and for the purpose aforesaid, I do order and declare that all persons held as slaves within said designated states and parts of states are, and henceforward shall be, free, and that the executive government of the United States, including the military and naval authority thereof, will

recognize and maintain the freedom of said person... And upon this act, sincerely believed to be an act of justice, warranted by the Constitution..."

The Emancipation Proclamation actually did not 'free' a single slave, since, the rebellion in which it authorized emancipation were under Confederate control, and in the Border states where emancipation might have been effected, it was not authorize. Nonetheless, the Emancipation Proclamation existed prior to those "Reconstruction" amendments were established, to include the Thirteenth amendment. It has yet to be challenged as nonbinding law. States that have written into their constitutions, predicated on this uncontested violation of abridging United States citizens' citizenship. The Thirteenth amendment maintains a status of "slavery" and "involuntary servitude" status for I/I's, as the caveat for it, sole intent, has been to ensure that purpose.

Yet, the Fourteenth amendment forbids any United States' citizen, Black, Brown or otherwise, to have their citizenship abridged, for any reason. According to the Fourteenth amendment, the state is in violation when it abridges a United States citizenship and convert their status into slavery or in involuntary servitude, as it is well established in,

[1868] Section 1--All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

The United States, nor any of its jurisdictions, have a Constitutional right (through congress or otherwise) to strip an American of their citizenship status and replace it with enslavement or involuntary service status. An I/I's 'debt' to society does not give 'good' cause for the ability of an conviction to strip or abridge an I/I's United States citizenship. Without the fundamental right to retain United States citizenship, post-conviction, attaches erasure of other principled rights, such as voting. Keeping in mind, it was the United States legislation (August 6, 1965) that aimed to overcome

legal barriers at the state and local levels that prevented Black/Brown Americans from exercising their right to vote under the Fifteenth amendment (1870). The Constitution of the United States is precedent law, which each state (and territory in the United States) must adhere to. The Fifteenth amendment significantly widened the enfranchisement of Black and Brown citizens and is considered among the most far reaching pieces of civil rights legislation in the United States history. Frankly, we think it simply common sense to extend the rights for United States citizens participation in their civic duty, as non-abridged I/I's citizens.

## **Issue II: Voting Rights**

According to the Fifteen amendment, the right to vote is a cornerstone of the United States form of Republic governance. The amendment states, "The right of citizens of the United States to vote shall not be denied or abridge by the United States or by any State on account of race, color, or previous condition of servitude. Section 2--The Congress shall have power to enforce this article by appropriate legislation."

It is worth mentioning, here, that at least for some of our white I/I United States citizens, they retain their right to vote, while being incarcerated. Their privilege as a "citizen of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," and it has not, for them, in the states of Maine and Vermont. Also worth pointing out, here, these two states have about (on average) a ninety-five percent white demographic.

Without the right to vote, how does an United States citizen essentially participate in their most fundamental obligation in the democratic processes? They cannot. White I/I's citizens in Vermont and Maine never lose their right to vote, and by extension neither do they lose their most fundamental status as an United States citizen to make their voices be heard through the ballot. Maine and Vermont are in compliance with the voting rights law(s) and the Fourteenth/Fifteenth amendments, however, the other forty-eight states are not, or they strategically choose to be in violation.

For Black and Brown people voting has always remained precarious and dependent on the whims of hegemonic forces, rooted in white supremacist ideology. Meanwhile, Black and Brown people have struggled to have their voices heard concerning societal harms, societal opportunities, and social participation obtained through the ballot. Black and Brown people, to include some of you who are reading this, have made moderate success given that you yourself have had to be overly-qualified. Yet, many more Black and Brown people have been systematically disenfranchised through (amongst other institutions) the carceral system, which, again, removes (and perpetually curtails) I/I's citizenship: designated status being in "slavery" and "involuntary servitude," as retained in the Thirteenth amendment.

For the formerly incarcerated, their citizenship status hardly changes, and because of the frequent changes and variation in voting laws, I/I's have a real fear of engaging in the voting process. As a result, I/I's often remain de facto "disenfranchised even when they might be legally eligible to vote," says Richard Fording, a political science professor at the University of Alabama. The Sentencing Project recently released findings that show an "estimated 4.6 million people, roughly 2% of the voting-age population in the United States, will be ineligible to vote as a result of felony disenfranchisement laws and policies. The study also shows that "more than one in 10 Black adults are legally barred from voting." And, across the country "one in 19 Black people of voting age are barred from voting, a rate 3.5 times higher than their white peers. DeSantis' election task force, in the State of Florida, has detained 15 out 19 Black people for attempting to exercise their right to vote (post-released from prison/jail). The South has historically had the most arcane and complex laws limiting voter eligibility after time in prison, but, this phenomenon is hardly unique to the South. Many of these laws date to the Reconstruction era, when they were designed to limit the political participation of the nations's Black and Brown citizens.

A prominent minister at a 1959 "loyalty rally" once remarked: "The ballot is the only concrete symbol that politicians fully understand. With it he or she sees you as a man or a woman, not as a boy and girl, he [the politician] sees you through the eyes of respectability." Frankly, Black and Brown people

cannot have full political participation until the Thirteenth amendment is dismantled (to include those other states that have a similar caveat in their state constitution). Black and Brown I/I's must have their full United States citizen's rights reabridged, so that they may be able to fully exercise their duty to vote. As an United States I/I, under the Fourteenth/Fifteenth amendments, shall not have their "Citizenship abridged," or prevented by "Race no bar to voting rights." United States citizenship is fundamentally grounded on its citizens to participate in the democratic process. Black and Brown I/I's (to include those who have served out their sentences) are stripped of their citizenship, but more, this act does not subside once released from prison, and after "their punishment for [a] crime." It appears quite obvious that there is a purposeful intent set forth in the Thirteenth amendment to reclassify Black and Brown folks citizenship as 'other.'

As I/I's, we assert that the Thirteenth amendment allows for the reclassification of Black and Brown people's citizenship after they have been convicted of a crime, reading in part: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. This amendment us in stark contrast to the Fourteenth amendment, again, which states,

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and the States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunity of citizens of the United States, nor shall any State deprive any person within its jurisdiction the equal protection of the law.

The Fourteenth amendment reads that a United States citizen shall not enforce any laws which abridge the privileges or immunity of citizens, Black/Brown and I/I's, of the United States. Hence, the Thirteenth amendment is in violation of the Emancipation Proclamation, Fourteenth and Fifteenth amendments, in word and spirit. Lest we forget, the status of "slavery" and "involuntary servitude," has been abolished in the United States by decree of the Emancipation Proclamation and (at least two of the three) "Reconstruction Amendments."

Even as an I/I, who happens to also be an United States citizen, my rights as a citizen are not arbitrarily converted into "slavery" or "involuntary servitude," because I have been convicted of a crime. My "punishment for [a] crime," is not in having my citizenship abridged, it is in the sentence that I have been court ordered to serve. That is my 'debt' to society. Again, the Emancipation Proclamation, which still is binding law, actually forbids any state to hold anyone in slavery or involuntary servitude in any state. In fact, the Emancipation Proclamation, clearly, states "all person held as slaves within any state or designated part of a state, the people [the State] whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free." Free in our United States citizenship, even while we serve time for our punishment.

Freedom is not merely having the liberty to move about. Freedom is much more for Blacks and Latinos in the United States. Freedom is in our equitable United States citizenship. Freedom is maintaining one's birthright (or naturalization) as a United States citizen, but more, never to be placed back into slavery or involuntary servitude--we have already served that 400-year-sentence, for being born Black and Brown.

For these reasons presented, above, we want our United States citizenship restored, we are not slaves, although we most certainly are made to perform prison labor as "involuntary servitude." Nevertheless, any suggestion that we are to be held in this secondary, or less, citizenship status proscribed within the Thirteenth amendment, you will find violates the Emancipation Proclamation, Fourteenth and Fifteenth amendments. Black and Brown United States I/I's have a right to retain their full United States citizenship status, as well as to be enfranchised as voters, similarly to what is already afforded to our white I/I's fellow citizens who live in the states of Maine and Vermont.

### Issue III: Health Care

The willingness of the state, its institutions, and agents to provide and ensure access to health care is a key component of citizenship. Health care represents the nourishment of one's mind and body, and ultimately, the holistic development of a person as citizens. In fact, citizens vote to improve the conditions surrounding their overall health and the level of care that I/I's receive. We have to analyze how the citizenship for Blacks and Brown I/I's are also tethered to their fundamental constitutional right for medical care, seldom, neglected, or ignored, while I/I's are within the carceral system. Then, we are better able to evaluate the ways in which the citizenship of I/I's is abridged, because inadequacies in their health care is in direct relationship to I/I's not having full status as United States citizens, because of the Thirteenth amendment.

Ironically, I/I's are the only group of people who do have a constitutional right to health care. This protection was the result of a 1976 legal decision made by the United States Supreme Court, in the case of *Estelle v. Gamble*. While incarcerated in a Texas correctional facility, J.W. Gamble injured his back after a 600-pound bale of hay fell on him, while conducting farm labor. Mr. Gamble, an I/I, refused to return to work as a result of his injury and lack of medical care he received. As a consequence, security staff sited him with disciplinary infractions and ordered him to be placed in solidarity confinement. Gamble then submitted a written lawsuit alleging that the Texas Department of Corrections violated his constitutional rights. After a series of dismissals, the US Supreme Ct. heard Gamble's case and ruled in his favor. Justice Thurgood Marshall argued "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' *Gregg v. Georgia*, *Supra*, at 173 (joint opinion), proscribed by the Eight amendment." Here, the language used by Justice Marshall established that by denying I/I's medical care is a form of "cruel and unusual punishment." This landmark decision acknowledged that despite incarceration I/I's maintain their rights to equitable standards of health care, as is ordinarily accessible for most United States citizens.

However, incarceration is a punitive system, disproportionately affecting Black and Brown people, negates those constitutional protections for adequate health care standards. More specifically, the Thirteenth amendment codification of "slavery" and "involuntary servitude" diminishes the constitutional protections established for I/I's, as in the case *Estelle v. Gamble*. The entrenched status of slaves and servants within the label of criminal prevents I/I's from attaining and recognition as human beings, let alone United States citizens. Status as an United States citizen promotes inclusion and unity, yet the notion of slaves, servants, or criminals normalizes the objectification and animalization of United States incarcerated citizens.

I/I's constantly struggle to overcome this paradox of citizenship. Without access to rights so fundamental to citizens and citizenship itself, the protective casing established through *Estelle v. Gamble* is abridged. This means that carceral institutions implemented new rules and regulations designed to protect the overall health and wellbeing of I/I's, only when forced to do so. Forced to do so, because the unconstitutionality of *Gamble's* living conditions were challenged and found to be unconstitutional.

Although *Estelle v. Gamble* provides a crucial platform for understanding politics of carceral health care, the focus remains entirely on physical aspects of health. The hegemonic idea narrates prisons as a rehabilitative space; yet, recent studies associate the effects of incarceration with Post Traumatic Stress Disorder ("PTSD"). In this sense, the act of mass incarceration itself inflicts a series of psychological and emotional damages on I/I's. If we are to take the weight of *Estelle v. Gamble* seriously, that means we also must pay attention to the ways in which carceral spaces inflict "cruel and unusual punishment" imposed on I/I's through psychological and emotional "deliberate indifference."

## Conclusion

Black and Brown I/I's are United States citizens. The Thirteenth amendment is in opposition to every foundational tenant of those democratic and constitutional provisions that uphold the identity of United States

citizenship. For this reason, and under no circumstance, should that citizenship be abridged. I/I's status must not be structurally reassigned as "slavery" or "involuntary servitude" as punishment for being duly convicted of a crime, because to do so impairs that citizenship. We I/I's are a part of this society, and more, 95% of I/I's will be returning back to society. Many of us have an opportunity to return back to our communities as contributing stakeholders. How we are conditioned, disenfranchised, and medically underserved, while imprisoned, will have injurious effects, on I/I's, once released. Because we understand that secondary citizenship is not a part of United States citizenship, we do want to disrupt the status quo. And because "slavery" or "involuntary servitude" is not satisfactory to us as part of our conditions as being incarcerated. In closing, we draw on the words of Martin Luther King Jr., "We cannot, in good conscience sit by while we are ignored in all the basic policies which affect the community's life."

\*

\*

\*