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February 20, 2018

The Honorable Helen Head, Chair
House General, Housing & Military Affairs
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: H. 412- An act establishing a homeless bill of rights and prohibiting discrimination against people without homes

Dear Chair Head and Members of the Committee:

Thank you for the opportunity to provide further information regarding this bill. I attended Chief Whipple's testimony about H. 412. I do not think there is anything in the bill that would trump existing criminal laws. To the extent that anyone's behavior crosses over into trespassing, assault, threatening, interfering with traffic, etc. the bill as written would not limit law enforcement's ability to regulate behavior that is a public safety problem any more than having a public accommodations law that prohibits discrimination based on race, color, national origin, disability, etc. would limit law enforcement's ability to enforce criminal laws. Anti-discrimination provisions just prohibit actions taken based on protected status. They require equal, not special treatment. But perhaps to the extent there may be concerns, some language expressly stating that nothing in the law is intended to affect the enforcement of existing criminal laws could be added.

As to the ordinance issue, I think it probably would be helpful to have the ACLU specifically address that issue. I am not familiar with cases in this area of the law, but I think there have been successful constitutional challenges to ordinances that prohibit panhandling, etc. The Chief alluded to that when he said Barre was considering an ordinance limiting panhandling and backed down after hearing, I presume, from the ACLU regarding the constitutionality of such measures. I know Berlin also considered such an ordinance a few years back and was similarly dissuaded by their Chief of Police at the time.

As to the issue re: regulating parks, again, existing law does not prevent neutral ordinances that apply to everyone equally. If no one can sleep in the park, that is not targeting just homeless people, it also targets youths who might want to party there, or families who want to camp cheaply, etc. The only possible challenge would be if there was a disparate impact on a protected class (housing status) but those cases are extremely difficult to prove so it would be very unlikely.

Thank you for your work on this bill. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "KLR", with a long horizontal flourish extending to the right.

Karen L. Richards
Executive Director and Legal Counsel