

Rebecca Buck

From: Mark Hughes <mark@justiceforallvt.org>
Sent: Wednesday, March 14, 2018 11:03 AM
To: Richard Sears; Alice Nitka; Tim Ashe; Jane Kitchel; Robert Starr; rawestman@gmail.com; Rebecca Buck; Stephanie Barrett
Cc: Donovan, Thomas; David Zuckerman; Pearce, Beth; Condos, Jim
Subject: Please Fund and Vote Out S.281
Attachments: Questions and Answers - S.281- Updated 02092018 .pdf; Racial Justice Reform Coalition - Research - 01302018 .pdf

Madam Chair and members of the Committee,

Please honor the hard work done the Government Operations Committee by funding and reporting out S.281.

We have every indication in Vermont that systemic racism is a real thing and disparities persist. It is also clear that civil liberty protections are being dismantled at a national level. This legislation moves us in the right direction.

Any serious effort in programmatically mitigate systemic racism in Vermont will need to be funded. **Please consider that even the funding being requested is insufficient for a position with such authority and responsibility (indicative of the issue that we seek to resolve).**

Research and FAQs are submitted for your consideration.

Respectfully,

Mark



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"It is impossible to struggle for civil rights, equal rights for blacks, without including whites. Because equal rights, fair play, justice, are all like the air: we all have it, or none of us has it. That is the truth of it." Maya Angelou



Racial Justice Reform Coalition Questions and Answers (Q&A) S.281 (amended): Equity Commission (Updated February 2, 2018)

Question - What is the problem?

Answer - Systemic racism disenfranchises and demoralizes people of color across Vermont. For people of color, this imbalance of equity and opportunity creates incarceration at disproportionate rates, lack of equal access to descent and affordable housing and suitable employment and education and the unequal access to suitable healthcare and the unavailability of much needed economic opportunity. The problems presented by systemic racism goes beyond a global system of inequity in the United States. It speaks to the moral condition of our hearts and the future of our children. The problem can best be summarized in the words of the Reverend Dr. Martin Luther King, Jr.:

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

Question - Why is S.281 Important now?

Answer – The racial climate in the United States continues to deteriorate. Civil liberty protections at the national level are trending downward. Numerous reports, many recent, continue to indicate a continuation of Vermont’s poor performance in providing of equity, opportunity and equality in areas of housing, employment, education economic development and the criminal justice system. The Vermont Human Rights Commission is neither staffed, nor funded to sufficiently to serve as the gatekeeper of the civil liberties of Vermonters in protected categories.

S.281 prioritizes a revisit of some of the key, original proposals suggested in Act 54 last year. It takes into account the report that Act 54 produced, and other national and local reports and developments. It is important because now it is clearer than ever that there must be a centralized governance authority responsible for overseeing and taking responsibility for this important work.

Question – What is the intent of the “Strike All Amendment” to the bill and why is it important?

Answer – A strike all amendment is a method that legislative council uses to replace the entire content of a bill with new content. The reason for this amendment is that the bill originator and sponsor were unable to move through the desired revision process prior to the deadline for Senate bill submission. The strike all language is the intended language of the bill originator and sponsor.

Question – What does S.281 Seek to Accomplish?



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Answer – This bill is intended to provide a comprehensive legislative approach to address systemic racism in Vermont history. **S.281 Addresses the following:**

- 1) **Implement a permanent Commission to provide systemic racism mitigation to state and educational organizations** including
 - a. Race data collection
 - b. Equity and Diversity Policy
 - c. Systemic Racism Awareness Training
 - d. Other responsibilities and authority will include:
 - i. Advising government and institutions of education on systemic racism
 - ii. Advising and consulting executive and legislative branches of assessment of policy racial impact
- 2) **Provide additional civil liberty protections**
 - a. Mandate uniform standards and practices surrounding Use of Force, De-escalation and cross-cultural awareness, including
 - i. Race data collection
 - ii. Model Policy
 - iii. Model Training
 - b. Prohibits of racial profiling by law enforcement
- 3) **Revise appointment process, composition and operational procedures of the Human Rights Commission (HRC):**
 - a. Change Appointment process and demographics
 - b. Eliminate requirement for informal resolution prior to reasonable grounds determination
 - c. Communicate the HRC as the official entry point for reporting alleged discrimination
 - d. Mandate separation of roles of investigators and litigators

Question - What is the difference between Act 54 and S.281?

Answer – Last year H.492 (which became Act 54) was crafted to create an organization with the authority to manage and oversee of the implementation of racial justice reform across the State, including within the criminal justice system). H.308 established a panel to review and provide recommendations to address systemic racial disparities in statewide systems of criminal and juvenile justice; calls for the Attorney General and HRC Director to provide recommendations in other systems and extends the deadline and provides updates on the Fair and Impartial policing Policy. **In our analysis, H.308 directly addresses five of 20 twenty original intents of H.492. S.281 is seeks to implement the original intentions**



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of last year as well as provide additional civil liberty protections and enhance the Human Rights Commission.

Question - Don't we need to wait for the Panel's recommendations?

Answer – We have the recommendations of the recommendations for addressing systemic racism in housing, education, employment, health services and economic development. There are also numerous other of existing and emerging reports from years of assessing systemic racism in Vermont that contain various perspectives on how it should be addressed. Though this report may be out in front of a couple of suggestions surrounding law enforcement, the legislation is sound and precedence exists.

Question - Why is Use of Force and Racial Profiling a part of this bill?

Answer – Vermont Race traffic stop reporting and outside (Sentencing Project) reporting indicates that people of color are INCREASINGLY being more disproportionately stopped by law enforcement in Vermont. It stands to reason that disproportionate contact with law enforcement naturally leads to use of force being used disproportionately against people of color. Burlington, with a demographic of 3.8 percent African American last year reported 18 percent of their use of force against African Americans. Vermont must ensure that the basic constitutional tenet of equal treatment under the law is upheld and must therefor use every tool at its disposal to ensure that it is so.

Question- Why is it important that the Human Rights Commission (HRC) be changed?

Answer - First, the work addressing systemic racism naturally leads us to ask how it differs from the work of the HRC. The HRC was created to address explicit discrimination, one form of which is racism. Existing and previous directors and legislators acknowledge that the organization has “never been adequately funded”. This lack of funding has rendered the Commission unable to carry out its operational functions with a separation of roles of investigators and litigators. It has also hampered the Commission's ability to conduct sufficient outreach and forced internal processes which seem to prioritize case disposal to enhance throughput. The commission's appointment process and diversity composition are not reflective of an organization that is charged with being the gatekeeper of most ALL of the civil liberties of protected categories of people of Vermont. This is troubling to all of us in light of the consistent walking back of civil liberties at a national level.



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Question - How will this approach provide a solution?

Answer – 1) There will be a centralized authority in managing the Systemic Racism Mitigation Strategy. 2) The approach will be data-driven. 3) Key processes in state government educational organizations will be standardized. 4) The approach used in achieving compliance will be consultative in nature. 5) This approach will provide the transparency required to address systemic racism mitigation.

Question - How will we know if it has been successful?

Answer – High impact / high discretion data points will be monitored in State and Educational organizations. The commission will review and make publicly available collected data; report to the legislature, and establish and maintain a community feedback loop; monitor of HRC, legal aid, ACLU and other NGOs activity.

Question- Why the proposed amendment?

Answer - Our last revisions failed to meet the deadline the Senate had to “check out” the bill. The proposed amendment is equivalent to a completely different bill (strike all) including a **FUNDED Independent Commission**. The bill sponsor and Legislative Council were involved throughout the process.

Question – Why Does the Amendment Seek to Update the HRC?

Existing and previous directors and legislators acknowledge that the organization has “never been adequately funded”. This lack of funding has rendered the Commission unable to carry out its operational functions with a separation of roles of investigators and litigators. It has also hampered the Commission’s ability to conduct sufficient outreach and forced internal processes which seem to prioritize case disposal to enhance throughput. The commission’s appointment process and diversity composition are not reflective of an organization that is charged with being the gatekeeper of most ALL of the civil liberties of protected categories of people of Vermont. This is troubling to all of us in light of the consistent walking back of civil liberties at a national level.

Question - Why Can’t the Commission be Placed Under the Human Rights Commission?

Answer – Placing the Equity Commission in HRC will detract from HRC’s mission of protecting civil liberties of ALL protected categories in all constructs and fail to give the Equity Commission the focused attention required. This seems unwise,



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particularly in light of the fact that as a result of our national civil liberties crisis, this is a time when we need the HRC most.

Question - Why Can't the Commission be Placed Under the Secretary of Administration?

Placing the Equity Commission under Secretary of Administration severely impacts the commission's sustainability, makes it beholden to Executive Branch, and limits the commission's impact with the Legislature and Judiciary. Finally, it flies in the face of addressing SYSTEMIC RACISM in State government.

Question – Will using Results-based Accountability (RBA) work to mitigate systemic racism across State Government

Answer - RBA is an important tool in measuring outcomes and ideally should be used across the ENTIRE government, including law enforcement. It should not however be confused with the ability collect race data where decisions are made (at the root of the problem). It is the collection of this high impact /high discretion data that has enabled us to make unprecedented progress with law enforcement in Vermont. The mitigation approach proposed in the amendment put forward by the coalition and the bill sponsor provides this ability. **The Department of Justice has effectively used this process across the United States and our own legislature has successfully used this approach (data collection, policy and training) in addressing systemic racism with law enforcement in Vermont for the past 5 years! It is unclear why this strategy would be abandoned at such a critical time as a decision to roll out a mitigation strategy statewide**



Racial Justice Reform Coalition: Report on Systemic Racism in Vermont January 25, 2018

Executive Overview

The racial climate in the United States continues to deteriorate. Civil liberty protections at the national level are trending downward. Numerous reports, many recent, continue to indicate a continuation of Vermont's poor performance in providing of equity in areas of housing, employment, education and economic development. The Vermont Human Rights Commission is neither staffed, nor funded to sufficiently to serve as the gatekeeper of the civil liberties of Vermonters in protected categories. **There must be a state agency with sole responsibility for managing a program to address systemic racism in Vermont.** Equally important is our responsibility to ensure that those who would violate Vermonter's civil liberties by the use of racial profiling or use of force be placed on notice – There is a cost associated with violating another Vermonter's civil liberties. We must, for the first time as a State make a bold and historic statement by placing the Human Rights Commission's work as a priority both morally and financially. Finally, we must begin the process of examining our appointment processes and diversity composition of some of the vital governmental commissions that may have been susceptible to contributing to systemic racism.

Increasingly, we are reminded of the continuation of racial tensions across the United States. From the Charleston church shootings to the Charlottesville White supremacy rally, the nation continues to struggle with the impact of systemic racism. Vermont sought to confront these impacts under the legislative charge of Act 54 (2107), Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel. In short, this legislation calls for an update in the Fair and Impartial Policing Policy and seeks "recommendations" to address the criminal and juvenile justice systems, employment, housing, education, health services access and economic development.

This report will highlight the existing and deteriorating nature of systemic racism in the United States and Vermont. It is our hope that in light of this report, the Racial Justice Reform Coalition Legislative Agenda for 2018 will be adopted and implemented immediately. It will be in keeping with the highest traditions of the values of justice as Vermont continues to work to mitigate systemic racism.

Vermont

Vermont has prided itself in being the first state to abolish slavery. A closer examination reveals that the Vermont Constitution, enacted 1777, updated 1786 and 1793 and amended through 2010 constitutionalized slavery for minors and for the punishment of crime from the beginning to this day. In fact numerous documented accounts of slavery in Vermont exist, some from prominent families such as Ethan Allan and Stephen Jacob.



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As a result, and not unlike other parts of this country, Vermont has a vast array of well-documented issues, which are born out of both overt and systemic racism.¹

*Article 1. [All persons born free; their natural rights; slavery prohibited]
“That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, **after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age or bound by law for the payment of debts, damages, fines, costs, or the like.**”²*

Education

There have long been reports of racism in our public schools in Vermont. The impact of this oppression goes far beyond simple unequal treatment of children. Numerous incidents have been and continue to be reported concerning the treatment of children of color in our schools. Notable is the highly disproportionate rate at which children of color are disciplined, up to and including expulsion. A 1999 report indicated, “Racial harassment appears pervasive in and around the State's public schools. The elimination of this harassment is not a priority among school administrators, school boards, elected officials, and State agencies charged with civil rights enforcement. In some instances, administrators and government leaders have denied the existence of the problem...” **The Vermont Human Rights Commission was cited as not having sufficient resources to “effectively address racial harassment incidents once they are reported.”** A progress report in 2003 indicated that “problems cited in its 1999 Report persist despite significant efforts to find solutions.”³ Finally a report from Vermont Legal Aid in 2015 indicated that Black/African-American and Native American students were two to three times more likely than White students to be suspended.⁴

Housing

Vermont Legal Aid produced a Housing Discrimination Law Project report in 2015. Overall testing results indicated that housing providers “generally disfavor African American renters, renters of foreign origin, renters with children, and renters with disabilities.”⁵

¹ Vermont's 1777 Slavery ban had a complicated reality

² Vermont Constitution AS ESTABLISHED JULY 9, 1793, AND AMENDED THROUGH DECEMBER 14, 2010
<http://legislature.vermont.gov/statutes/constitution-of-the-state-of-vermont/>

³ Racial Harassment in Vermont Public Schools – A Progress Report, Vermont Advisory Committee to the United States Commission on Civil Rights <http://www.usccr.gov/pubs/sac/vt1003/vt1003.pdf>

⁴ Kicked Out: Unfair and Unequal Student Discipline in Vermont Schools
<http://hrc.vermont.gov/sites/hrc/files/publications/Kicked-Out.pdf>

⁵ Vermont Legal Aid Housing Discrimination Law Project
<http://www.vtlegalaid.org/sites/default/files/Rental%20Discrimination%20Report%202014.pdf>



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Criminal Justice System

Vermont leads the nation in the rate of incarcerated African Americans proportional to their representation in the population with one in 14 African American males incarcerated and makes the top five in disparities (10:1). Though African Americans make up 1.6 Americans of the population in Vermont, 10 percent of our prison population is African American.⁶

A report produced in 2012 showed African American stop rates (per 1000) over the age of 18 were double that of white stop rates in Burlington and South Burlington. African Americans are arrested at significantly higher rates than whites in Burlington and South Burlington. The search rate in Burlington was double that of whites, while the search rate in South Burlington was six times that of whites and the penalties were between 9-14% heavier on average for African American drivers than white drivers in Burlington and South Burlington.⁷ A Use of Force Study conducted in 2017, Burlington revealed that 18 percent of all use of force was against African Americans where they represent less than four percent of the population.⁸

A follow-up report on race traffic stops in the Burlington area in 2014 stated, “The Burlington Police Department continues to register disparities in traffic stops and outcomes by race and ethnicity. The most significant disparity we can identify is in the treatment of Black and White drivers. Blacks continue to be over-stopped relative to their share of the estimated population and Whites under-stopped (results that are statistically significant).”⁹ The Vermont State Police have conducted similar data collection before and after the legislative mandate for all law enforcement agencies to collect data. They too reported significant racial disparities in traffic stops and search rates, though hit rates (paraphernalia discovery) were lower.¹⁰ In 2016 it was determined that the racial disparities identified in Chittenden County (four agencies) and by the State Police indicated a worsening of the problem.

National

On a national level civil rights continue to erode due in large part to the change in administration. The Department of Justice is limiting the issuance of consent

⁶ The Color of Justice: Racial and Ethnic Disparities in State Prisons <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>

⁷ Racial Disparities in Policing? An Assessment of 2009-10 Traffic Stop Data in Chittenden County, Vermont <http://justiceforallvt.org/wp-content/uploads/2016/06/Racial-Disparity-policing-Report.pdf>

⁸ Burlington Police Department Use of Force Report <http://justiceforallvt.org/wp-content/uploads/2018/01/Burlington-UOF-1.25.17-1.pdf>

⁹ Have the Burlington Police Made Progress in Reducing Racial Disparities in Traffic Policing : A Comparison of 2009-10 and 2011-12 <http://justiceforallvt.org/wp-content/uploads/2016/06/HAVE-THE-BURLINGTON-POLICE-MADE-PROGRESS-IN-REDUCING-RACIAL-DISPARITIES-IN-TRAFFIC-POLICING.pdf>

¹⁰ <http://justiceforallvt.org/resources/research/law-enforcement/race-traffic-stop-data/vermont-state-police/>



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decrees. The Department of Education has laid out plans to loosen requirements on investigations into civil rights complaints and Education Secretary Betsy DeVos has also proposed cutting over 40 positions from the civil rights office. The Department of Labor has proposed dissolving the office that handles discrimination complaints. In its 2018 fiscal plan, new leadership at the Environmental Protection Agency has proposed entirely eliminating the environmental justice program, which addresses concerns that almost exclusively impact minority communities.¹¹

Eric Dreiband has recently been nominated to lead the Civil Rights Division at the Justice Department. His work defending major corporations against discrimination lawsuits continues to cause a wave of criticism from civil rights organizations and LGBTQ activists. The NAACP Legal Defense Fund said that Dreiband's nomination serves to undermine "fundamental civil rights priorities." Jesselyn McCurdy, deputy director of the ACLU's Washington Legislative Office, characterized Dreiband as someone "with a history of restricting civil rights."¹²

Vanita Gupta, former Civil Rights Division Director, said the next leader "...must respect the role of what has been called the conscience of the federal government," and referred to Dreiband as "woefully unqualified to lead the Civil Rights Division."¹³

"Black Identity Extremists"

An [F.B.I. report](#) leaked in October and scrutinized during an oversight hearing of the House Judiciary Committee warns of an emergent domestic terror threat sweeping the nation and threatening the lives of law enforcement officers: the so called "Black Identity Extremist" ("B.I.E.") movement. The Intelligence Report was the first mention of this new term "Black Identity Extremist" and deemed them a violent threat, asserting that black activists' grievances about radicalized police violence and inequities in the criminal justice system have spurred retaliatory violence against law enforcement officers. It links incidents of violence by a handful of *individual citizens* to "B.I.E. ideology" and suggests that "perceptions of unjust treatment of African-Americans and the perceived unchallenged illegitimate actions of law enforcement will inspire premeditated attacks against law enforcement."¹⁴

¹¹ Trump administration quietly rolls back civil rights efforts across federal government <https://www.pbs.org/newshour/politics/trump-administration-quietly-rolls-back-civil-rights-efforts-across-federal-government>

¹² Civil Rights groups criticize Trump's DOJ pick <http://edition.cnn.com/2017/09/06/politics/eric-dreiband-civil-rights-trump-justice-department/index.html>

¹³ Civil right activists raise alarm over DOJ Trump picks <http://www.cnn.com/2017/07/01/politics/eric-dreiband-justice-department-civil-rights-lgbt/index.html>

¹⁴ <https://www.nytimes.com/2017/11/15/opinion/black-identity-extremism-fbi-trump.html>



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Executive Orders, Convictions

A list of Executive Orders addressing topics such as immigration, environmental protection, public safety, violence against law enforcement, the Affordable Care Act and the White House Initiative on Historically Black Colleges all adversely impact black, brown and poor people¹⁵ 8% of all adults in the United States have a felony conviction. 23% of all African American Adults have a felony conviction and 33% of all African American males in the United States have a felony conviction (2010)¹⁶

Law Enforcement and Disproportionate Sentencing

In November 2017 the United States Attorney General announced an award of 98.5M to hire 802 additional law enforcement officers in 179 jurisdictions across the United States. In September 2017, the Justice Department announced additional priority consideration criteria for FY2017 COPS Office grants. Applicants were notified that their application would receive “additional points” in the application scoring process by “certifying their willingness to cooperate with federal immigration authorities within their detention facilities.” Cooperation may include “providing access to detention facilities for an interview of aliens in the jurisdiction’s custody and providing advance notice of an alien’s release” from custody upon request. Vermont Law Enforcement Agencies awarded funding include Essex, Franklin and Orange Sheriffs’ Departments as well as the Hardwick and Winhall Police Departments.¹⁷

Black male offenders continued to receive longer sentences than similarly situated White male offenders. Black male offenders received sentences on average 19.1 percent longer than similarly situated White male offenders during the Post-Report period (fiscal years 2012-2016)¹⁸

International

This year, the United Nations, in response to recent events in the United States, issued a formal warning under its 'early warning and urgent action' procedure. The Committee, which monitors implementation of the International Convention on the

¹⁵ List of Donald Trump’s Executive Orders

<https://www.nbcnews.com/politics/white-house/here-s-full-list-donald-trump-s-executive-orders-n720796>

¹⁶ The Scope and Spatial Distribution of People with Felony Records in the United States 1948 – 2010

https://link.springer.com/epdf/10.1007/s13524-017-0611-1?author_access_token=iXD6oheXE1c1ur2WRWhpkfe4RwlQNchNByi7wbcMAY4uMYrYNkMZx911WjnbPAWM-g13AQLmw4x8-VaL1oT3wS1z7bR6Mcpluw6uJspKuwHQtd1alIFBkHajdo4QVT1CPUCL7C_5xQhC8-ZXzjA6g%3D%3D

¹⁷ Attorney General Sessions Announces 98.5M to hire Community Policing Offices

<https://www.justice.gov/opa/pr/attorney-general-sessions-announces-98-million-hire-community-policing-officers>

¹⁸ Demographic Differences in Sentencing – US Sentencing Commission

https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf



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Elimination of All Forms of Racial Discrimination (CERD) stated that “there should be no place in the world for racist white supremacist ideas or any similar ideologies that reject the core human rights principles of human dignity and equality.” They concluded by calling for the US government to “investigate thoroughly the phenomenon of racial discrimination targeting, in particular, people of African descent, ethnic or ethno-religious minorities, and migrants,”¹⁹

This call comes on the heels of a scathing report issued by the United Nations in 2016. The report stated, "Despite substantial changes since the end of the enforcement of Jim Crow and the fight for civil rights, ideology ensuring the domination of one group over another continues to negatively impact the civil, political, economic, social, and cultural rights of African-Americans today." The report went on to say that "The persistent gap in almost all the human development indicators, such as life expectancy, income and wealth, level of education and even food security... reflects the level of structural discrimination that creates de facto barriers for people of African descent to fully exercise their human rights." This report expressed concerns regarding “alarming levels of police brutality and excessive use of lethal force... committed with impunity” and the human rights situation of African-Americans. The report highlighted that the war on drugs has led "to mass incarceration that is compared to enslavement, due to exploitation and dehumanization of African-Americans."

The report also underscored that environmental concerns disproportionately affect minority communities across the country and heavily censored US states that prevent individuals from voting based on their criminal histories and those that have in recent years implemented stringent voter-ID laws. According to the Sentencing Project, 5.85 million Americans cannot cast ballots due to felony convictions, including one out of every 13 blacks.²⁰

Conclusion

It is undeniable that civil liberty protections are being dismantled on a national level on almost a daily basis. As recent as 2016, reports and studies from local, regional and national researchers have indicated that disparities in Vermont are worsening. We in Vermont owe it to ourselves to stand at the gate to protect the civil liberties of ALL Vermonters. Just as there was a time that the federal government had to intervene at the state level to protect civil liberties, the time has come that states stand for those vitally important liberties.

¹⁹ UN rights experts criticize US failure to unequivocally reject racist violent events
<http://www.un.org/apps/news/story.asp?NewsID=57399#.WhMbE2JSy34>

²⁰ In US Visit, UN Experts Insist That Washington Needs to Consider Reparations for Slavery <https://news.vice.com/article/in-us-visit-un-experts-insist-that-washington-needs-to-consider-reparations-for-slavery>



**I Support
Racial
Justice
Reform in
Vermont**

#racialjusticereformvt

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It is through this process that we will be able to begin taking the steps that must be taken to ensure that we do our share to address systemic racism at its core. Then and only then will Vermont be able to stand out proudly in this nation as a state that did its part in accepting our responsibility to make this nation a place where there is truly liberty and justice for all.