

Natural Resources, Fish and Wildlife
19-0040 - An act relating to changes to Act 250
March 27, 2018
Mark Hughes, Executive Director,
Justice For All

Good Morning.

For the record, I am Mark Hughes, a ten-year resident of Vermont, residing in Burlington. I am a retired army officer and the executive Director of Justice For All, which peruses racial justice within Vermont's criminal justice system through advocacy, education, and relationship building. I am also the coordinator of the Vermont Racial Justice Alliance, a group of Vermont organizations, including Justice For All, that addresses racial justice in Vermont by promoting policies that advance racial justice and equity and develops strategies to ensure effective implementation. The Vermont Racial Justice Alliance architected Act 54 (2017), Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel and Act 9 (2018), The racial Equity Director and Panel.

The opinions that I present here are my own and are not meant to serve as a formal position of the Alliance or Justice For All. Some of the information that I present will be uncomfortable and you will have a natural inclination to want to push back. Nonetheless, there are some facts that we all need to reconcile with in reviewing this behemoth policy that has served as the cornerstone of land use in Vermont for the past 50 years

In the course of our work in addressing racial disparities in the criminal justice system our research uncovered disparities in housing, education, employment, health services access and economic development. This should come to many as no surprise in that today the wealth of the average white person is 13 times that of the average African American. White Vermonters are about four times more likely to own homes their black counterparts. The numbers are increasingly disturbing from suspension and expulsion rates to likelihood of discriminatory practices against prospective renters. We must not tell ourselves that these challenges are new to Vermont or the nation. If anything, they were worse in 1970, when this policy was created. We can't avoid asking ourselves why legislators did not question the implications of Act 250 on racial equity and diversity in 1970.

Answering that question is not within the scope of my assignment today. With Mikaela Osler's testimony on the record and in the interest of moving along, unless anyone objects, I'd like only to be on record with general consensus and concurrence with the uncomfortable understatement that racial tension did indeed exist in Vermont, as it did in all of the nation in 1970 and our priorities as state ominously shifted towards the creation of Act 250 as opposed to the major issue of the day. This seems indisputable.

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In 2017 the General Assembly passed Act 54, Racial Disparities Criminal and Juvenile Justice System Advisory Panel. "During the 2017 Legislative Session, with the backdrop of both national and Vermont specific statistics, from police stop, search and arrest data to sentencing data that shows disproportionate numbers of People of Color in our jails and prisons. Act 54 established an advisory panel to examine racial disparities in the criminal and juvenile justice systems and report back to the Legislature with recommendations." It also charged the Attorney General and the Human Rights Commission and interested stakeholders, with "developing a strategy to "address racial disparities within the state systems of education, labor and employment, access to housing and healthcare and economic development. This task was the result of testimony that one cannot fully examine and understand the disparities in the criminal and juvenile justice systems without looking at the intersections of systemic racism in other state (and private) systems." In my life experience and research I have come to understand that the reverse is also true.

Here is some of what the report from the Attorney General and Human Rights Commissioner stated

"The Civil Rights Movement of the fifties and sixties saw enormous progress on issues related to race. Additional laws were enacted to protect the rights of People of Color including Title VII of the Civil Rights Act of 1964 which prohibited employment discrimination based on race, color, national origin and religion. Four years later, housing discrimination based on these categories was outlawed by the Fair Housing Act of 1968. While these laws, in theory, provide remedies for intentional discrimination or discrimination that has an adverse impact on particular protected classes, they have not changed the underlying racial oppression. This is because White people continue to control virtually every power structure in the country, including federal, state and local governments and their agencies, corporations, businesses, schools, etc. When coupled with racial bias, whether it is explicit or implicit, this power of the majority results in the oppression of those in the "minority."

In 2018 the General Assembly created Act 9, a bill designed to mitigate systemic racism in all systems of State government and create a culture of inclusiveness. A couple of the responsibilities of the Racial Equity Director include "overseeing a comprehensive organizational review to identify systemic racism in each of the three branches of State government and inventory systems in place that engender racial disparities" and managing and overseeing the statewide collection of race-based data to determine the nature and scope of racial discrimination within all systems of State government". Clearly, the essence of this law was premised in a

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legislative consensus that systemic racism exists across all State systems in Vermont.

In 2017 while Act 54 was moving through the General Assembly, ACT 47, 2017 a Commission on Act 250: the Next 50 Years (the Commission) was passed. The charge; to “review the vision for Act 250 adopted in the 1970s and its implementation with the objective of ensuring that, over the next 50 years, Act 250 supports Vermont’s economic, environmental, and land use planning goals.” Act 250, now codified as 10 V.S.A. chapter 151, In Sec. 1 (D) states that “it is necessary to regulate and control the utilization and usages of lands and the environment to insure that, hereafter, the only usages which will be permitted are not unduly detrimental to the environment, will promote the general welfare through orderly growth and development and are **suitable to the demands and needs of the people of this state.**” The commission was charged with the review of the goals of Act 250, including the findings set forth in 1970 Act 250 and the Capability and Development Plan adopted in 1973 and “**assess, to the extent feasible, the positive and negative outcomes of Act 250’s implementation from 1970 to 2017.**” Now 50 years later we are back to the same question. Why did the commission not consider the impact of Act 250 on racial equity and diversity? Why would the commission not consider the racial equity and diversity implications given our national history; the land use implications; Act 54; Act 9, and the social and racial reality on the ground in the United States today? Further, **section (e) (2) (H) of ACTC47 charges the Commission to submit a report, including “review and recommendations relating to such other issues related to Act 250 as the Commission may consider significant.”** It has been said the history has a way of repeating itself and this is starting to look like that.

If the work that you are doing to ensure that Act 250 supports ALL “Vermont’s economic, environmental, and land use planning goals”, It is important in this process that you as leaders in government are listening to community and building an inclusive vision. You must hold yourselves accountable for the strategies necessary to make that vision reality.

This means that the status quo must be challenged. We must willingly go to the places where we are able to confront the historical and current injustices experienced by communities of color in Vermont and the role that government institutions have played in creating and maintaining racial inequities. As uncomfortable and frustrating as that might feel, it is the charge of those who lead and govern.

Please continue “the work” on this bill that has all but certainly contributed to racial inequity and disparities in Vermont for the past 50 years. Call in additional

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witnesses to discuss these implications and embrace this part of the work as a normal and expected part of listening to the community. Remember that we will build the trust necessary to arrive at community owned visions, needs, and solutions.

We're going to have to make some structural changes to address history of inequality. This includes changing public policies to ensure that they promote racial equity; making sure money goes to the people who need it most; adapting processes to enable us to effectively do the work and including communication feedback loops that hold us accountable to community priorities.

The only way we can get to equity is by our elected and appointed representatives listening and responding with bold and decisive action. Here are some suggestions that I request you consider in your deliberations:

§ 6021 BOARD

Board selection should be decentralized to enable appointment nomination by legislature and professional organizations. A portion of the members should be drawn from diverse backgrounds to represent the interests of communities of color throughout the State that have experience working to implement environmental justice and racial equity and diversity programs, to the extent possible.

§ 6026. DISTRICT COMMISSIONERS

Same as § 6021.

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(11) Racial Equity and Diversity

- (A) Inequities in land ownership and distribution
- (B) Disproportionate environmental impact
- (C) Limitations to access to any area Statewide
- (D) Any limitation that excludes racial diversity

§ 2293. DEVELOPMENT CABINET

Add the Racial Equity Director

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Sec. 20. RACIAL EQUITY REVIEW

The Executive Director of Racial Equity in coordination with the Human Rights Commission will review the language and all processes associated with Act 250 to determine the extent to which disparities exist that contribute to adverse impacts on racial equity and diversity on or No later than 30 September 2019.

Miscellaneous Act 9 Emerging Requirements

1. Race-based Data Collection
2. Fairness and Equity Policy
3. Training on systemic racism and the institutionalized nature of race-based bias

Here is a quote from the Act 54 Attorney General Human Rights Commission Task Force Report.

“We live in a White Supremacy culture. White supremacy culture is the idea (ideology) that white people and the ideas, thoughts, beliefs, and actions of white people are superior to People of Color and their ideas, thoughts, beliefs, and actions. White supremacy culture is reproduced by all the institutions of our society, In particular the media. Add to this, White Privilege and White Fragility and we begin to see how difficult it is to escape the current cycle despite a “belief” in equality of access and opportunity. For example, studies show that the difference in wealth accumulation of White households compared to Black households has actually increased since the 2009 recession. In 2010 White people had eight (8) times the wealth of Black people; by 2013 the rate was 13 times according to a Pew Research Center analysis of data from the Federal Reserve’s Survey of Consumer Finances. Thus there is far more to be done to address disparities than simply passing some laws and letting nature take its course.”

Please ensure that you take additional testimony on “racial equity and diversity and environmental justice. Thanks for allowing me an opportunity to testify on this matter. I am happy to answer any questions that the Chair may allow.

Thank you for your service.

Mark Hughes