

Vermont must create a culture in which racial, ethnic and other cultural disparities are openly acknowledged and addressed • The State of Vermont has demonstrated leadership in this regard through the creation of a Racial Equity Advisory Panel and the hiring of the Executive Director of Racial Equity • The State must and will continue to address the challenges of achieving racial, ethnic and cultural equity across the State • The COVID-19 pandemic has highlighted racial inequities across the United States, including in Vermont • COVID-19 and other emergencies demonstrate that disparities in

REPORT OF THE VERMONT RACIAL EQUITY TASK FORCE

**SUBMITTED TO THE GOVERNOR
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work to reduce structural inequities to ensure that no one is more vulnerable than another based on immutable factors such as race or ethnicity • We must bring state leaders, agencies and interested parties together from across Vermont to examine existing law on hate crimes, evaluate systems of support and look to increase civic participation among racially diverse populations. Executive Order 02-20.

TASK FORCE MEMBERSHIP

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THE RACIAL EQUITY TASK FORCE EXPRESSES ITS GRATITUDE TO THOSE LISTED BELOW AND TO COUNTLESS OTHERS FOR THEIR ADVICE AND CONSULTATION DURING THE DEVELOPMENT OF THIS DOCUMENT

- Association of Africans Living in Vermont
- Brattleboro area Community Equity Collaborative
- National Association for the Advancement of Colored People
- Office of the Attorney General
- U.S. Committee for Refugees and Immigrants-VT
- Vermont Agency of Transportation
- Vermont Commission on Native American Affairs
- Vermont Department of Financial Regulation
- Vermont Department of Education
- Vermont Department of Health
- Vermont Department of Human Resources
- Vermont Department of Health
- Vermont Department of Labor
- Vermont Department of Libraries
- Vermont Department of Public Safety
- Vermont Health Disparities and Cultural Competence Committee
- Vermont Human Rights Commission
- Vermont Judiciary
- Vermont League of Cities and Towns
- Vermont Partnership for Fairness and Diversity
- Vermont Public Service Department
- Voices for Vermont's Children
- VT New American Advisory Council
- Former legislators and candidates for office

INTRODUCTION

Executive Order 02-20 directs the Racial Equity Task Force to examine structures of support for racially diverse populations, particularly in light of the disparities in health outcomes highlighted by COVID-19; review current state and federal law on hate speech and freedom of speech; study and present options for encouraging Vermonters from diverse, marginalized, or underrepresented racial and ethnic groups to run and serve in public office at all levels. The composition of the Task Force was designed to include equity practitioners and service providers, advocates, state government, and members of the community.

The Task force's first report, delivered September 1, 2020, contained 37 recommendations on topics including

- Housing
- language access
- public health
- emergency response
- broadband
- employment law
- school discipline

Several of those recommendations have been advanced or commenced since the completion of the report, and the Administration has signaled its commitment to implementing more of the recommendations in the coming biennium.

This report, focused on the charges related to free speech and public office, was considerably more complex and more difficult to develop for several reasons.

- First, the topic areas are highly charged in the present-day political climate. Over the course of the Task Force’s deliberations, the nation watched these very issues occur in real time—with sometimes fatal consequences. The months leading to the 2020 U.S. elections were marked by intense and acrimonious rhetoric that fanned the flames of racial and political tensions in the U.S. Further, the lineup of candidates in local, state, and federal elections served as a reminder of how far the country is from accomplishing accurate and equitable representation in public office. In Vermont, as in the rest of the U.S., the Millennial and Gen Z cohorts are the most racially diverse in the nation’s history. Yet, as the oldest Gen Z members became old enough to vote in 2020, the candidate pool from which they are asked to pick remain disproportionately skewed in age, sex, gender identity, and ethnicity.
- Next, the Task Force grappled with the legal limitations surrounding speech and hate crime laws. The Task Force is honored to include individuals and organizations with deep commitment to the protection of civil liberties. And yet, the group struggled to reconcile the deep tension between what needs to be done to protect historically marginalized people from bias-motivated behaviors and what is actually permissible under state and federal law. In short, there were no clear or easy answers to the question of how the state can strengthen protections for communities of color while also honoring the free speech and other rights afforded to the public.
- Last, the Task Force’s findings were particularly complex to develop because the visible and tangible problems of hate speech and lack of diversity in public office are driven by numerous upstream factors. This requires thoughtful and honest consideration of how the state can intervene in those upstream factors to effect change that ultimately disrupts hate crimes and diversifies public

office. For example: when a public body performs its duties during business hours, it decreases the likelihood that people with full-time jobs or predictable work schedules can be considered for membership on the body, because those duties would most likely conflict with the demands of their employment. This means those most likely to be able to participate are either those who are not employed full-time, or those with flexible work schedules. We know that many of our youth are not employed, which opens the possibility for them to be included in shaping their futures through service on a public body, but remember that “business hours” overlap with school hours, which eliminates that possibility. Further, those with children are often excluded due to limited access to childcare and inflexible work hours. There also tends to be a disparate impact based on socioeconomic standing, as community members who are paid through wages (not salary) and those with unsteady or insecure employment are less able to participate in activities during standard business hours. This leaves retired people as the most likely group to participate on the public body, which also automatically skews the median age of the members of the body. In this way, a factor like meeting schedule can be the determinant that limits age, profession, and the direction that a public body might take in its work. It can also limit which and how many members of the public can attend meetings and provide meaningful feedback to the body.

For these reasons, the Task Force has compiled a set of recommendations designed to address both upstream and downstream factors—that is, strategies that are preventative in nature, and strategies that are reparative/restorative in nature.

PROTECTING MARGINALIZED PEOPLE IN VERMONT

DECLARE RACISM A PUBLIC HEALTH EPIDEMIC

As defined by the CDC, public health is “the science and art of preventing disease, prolong life, and promoting health”. The magnified lens of COVID-19 provides consolidated quantitative and qualitative proof that racial and ethnic minorities are more prone to disease, shorter lives, and overall worse health outcomes due to systemic inequalities. For example, according to the Vermont Department of Health (VDH), determinants of worse health outcomes for Vermonter of color during the COVID-19 pandemic included higher exposure risks due to job occupation, more congregated living conditions, higher risk health-related behaviors such as smoking, and inaccessibility of PPE and hand sanitizer. These are only few of many determinants.

The American Health Association (AHA) concluded there are four categories of health determinants: socioeconomic, environmental, behavioral, and healthcare. VDH’s conclusions, listed above, directly align to the AHA framework. Further, the AHA finds that 50% of health outcomes are determined by where we live, 20% are determined by healthcare accessibility, and 30% are determined by behavior, such as exercise and diet (it is important to note that diet and exercise are often limited by the availability and affordability of healthy foods where we live, which is determined by whether the neighborhood is seen as worthy of investment). For example, centuries of policies and social culture has barred people of color from owning land. Land ownership (through property taxes) funds our education system. School quality and academic resources shape the types of jobs one can attain. Job type and salary usually determines the availability and extent of health insurance benefits. Further, job type contributes to stress and mental health burden, and can be the primary cause of exposure to health and safety hazards. As a rural state, Vermont hosts more nuanced challenges in addition to these: access to transportation, access to internet/technology, and employment opportunities. Intersectionality is compounded for people of color in Vermont, who compared to their white counterparts

- make less than \$17,000 annually¹;
- are 2.4 times more likely to be homeless
- are 2 times less likely to see a doctor because of cost² (VDH, 2016), and
- are 6.8 times more likely to be incarcerated³

These multi-sector disparities demonstrate, as Vermont’s own Tyeastia Green states, “It is important to frame racism as what it is—a system. It’s everywhere, making it extremely pervasive. It’s what we eat, drink, and breathe. It’s normalized.”⁴

According to the American Journal of Public Health, public health emergencies are “defined as much by their health consequences as by their causes and precipitating events” (2007). To address the causes of the public health consequences, we must provide “optimal development of capabilities across scenarios and better [prepare] communities for the broad spectrum of potential risks” (2007). “The integration of public health with health and non-health sectors [is] essential” (2018). Vermont’s Agency of Human Services understands the intersectionality of this systemic crisis, which is evident in its [Health Equity framework](#).

Due to the high-risk, systemic racial disparities present in Vermont’s public health environment, the Racial Equity Task Force recommends declaring racism a public health

¹ Vermont Housing Finance Agency, “2020-2025 Vermont Housing Needs Assessment”.

² Vermont Department of Health, “2015-2012 Racial and Ethnic Minority Health – Data Brief 2011-2012, Vermont Behavioral Risk Factor Survey”

³ Menard, Lisa, et al. “Act 164 Section 6: Incarceration Rates of People of Color”. October 15, 2018

⁴ Tyeastia Green, Director of Racial Equity, Inclusion and Belonging for City of Burlington

emergency. [Harvard's School of Public Health](#) agrees that this type of declaration is an “important first step [in focusing] on systems and structures.” According to the Association of State and Territorial Health Officials guidance (2012) on declaring state public health emergencies, such action will help eradicate racial and ethnic inequities by providing

- Authority to expend [emergency] funds and deploy personnel, equipment, supplies, and stockpiles;
- Activation of state emergency operations center and incident command system (ICS);
- Streamlining of state administrative procedures such as procurement requirements;
- Activation of statutory immunities and liability protections for those involved in response activities;
- Suspension and waiver of rules and regulations (and statutes, if allowed); and
- Advocacy for the federal department of health/human services to release funds and other resources - per Public Health Service Act Section 319.

Recommendations

- 1) Declare racism a public health epidemic

SUPPORT LEGISLATION TO STRENGTHEN HATE CRIMES PROTECTIONS IN VERMONT

Vermont has demonstrated great courage over the years to enforce human and civil rights laws through its various enforcement agencies. The state expanded its list of protected categories beyond the federal minimums, which gives legal recourse to Vermonters experiencing unlawful or otherwise actionable harassment. Still, the state can provide greater protection and support to victims by strengthening hate crimes protections in Vermont.

The Task Force recommends that the state mandate the reporting of hate crimes uniformly across all law enforcement agencies in the state. Such a mandate would not only streamline the data collection and reporting process, but would also ensure that individual cases do not “fall through the cracks” and that the state’s hate crimes data accurately represent the landscape of hate crimes in Vermont.

The Task Force further recommends adding confidentiality provisions for complainants in civil hate crimes investigations conducted by the attorney general's office. Currently, no such confidentiality provisions exist. This creates a chilling effect for prospective complainants who fear publicity and retaliation from parties other than the Respondent for bringing a case (such as future employers, housing providers, and community members). Further, it diminishes the attorney general's ability to conduct a thorough investigation. The Task Force also notes that there is a strong argument to be made for providing confidentiality provisions for respondents in such civil investigations, to protect respondents who may be unjustly accused of wrongdoing. The advantage of providing respondents with confidentiality is that it protects the identities of those who are wrongly accused. It also could protect the identity of the Complainant. The disadvantage is that such confidentiality makes it less likely that other victims can come forward to corroborate

information or be able to assist in making the investigation more thorough, So the depth and breadth of the respondent’s actions may not be fully known at the investigation stage. Therefore, the Task Force recommends at minimum providing confidentiality for complainants during civil investigations by the Attorney General's office, and recommends thorough consideration of the question of confidentiality for respondents.

Additionally, the Task Force recommends changes to state law to permit the attorney general's office to seek compensatory damages on behalf of victims of hate crimes. Currently, the Human Rights Commission is permitted to bring an action on behalf of the public’s interest and seek compensatory and punitive damages on behalf of the aggrieved individual(s). Given the overlap between the Attorney General's enforcement of hate crimes and The Human Rights Commission’s enforcement of human rights law, the Task Force finds it prudent to give victims of hate crimes the same opportunity under a civil action by the Attorney General's office that they may have in an action by the Human Rights Commission.

Last, the Task Force recommends thorough review and possible revision of the “malicious motivation” legal standard for hate crimes in Vermont. Similar to the Task Force’s recommendation to review the “severe and pervasive” standard and other high burdens set by courts in public accommodations, housing and employment laws, the legal standard to prove malicious motivation is unduly burdensome . As a result, many cases featuring egregious behavior are not pursued or do not result in a finding that a violation occurred. This further creates a chilling effect for prospective complainants who already face significant barriers in coming forward. This also gives license to bad actors to engage in bad behaviors because they’re not held legally accountable.

Recommendations

- 1) Mandate hate crimes reporting and uniformity in reporting across agencies;
- 2) Add confidentiality provisions for Complainants in AGO civil investigations;
- 3) Allow AGO to seek compensatory damages on behalf of victim;
- 4) Review “malicious motivation” standard for hate crimes

INCREASE FUNDING FOR STATE OFFICES FOCUSED ON ADVANCING EQUITY AND PROTECTING HISTORICALLY MARGINALIZED PEOPLE IN VERMONT

To eradicate systemic and individual racism, the State of Vermont must commit on-going resources to support the structural systems and entities in place that are designed to prevent and respond to discrimination in Vermont. As such, the RETF recommends that the Governor commit sufficient resources to support the work of the Vermont Human Rights Commission (HRC). This report briefly outlines the mission and work of the HRC, the needs of this entity and the recommendations to the Governor.

The Mission and Work of the HRC

The mission of the HRC is to promote full human and civil rights in Vermont and protect all individuals from unlawful discrimination. The work is not limited to any specific protected category of people but encompasses many protected categories including race, color, national origin, gender, disability, etc. in three different areas: State Government Employment, Places of Public Accommodations and Housing.

The HRC meets its mission through its statutory duties of Enforcement, Conciliation, Education and Advancing Policies:

Enforcement:

The HRC enforces the Vermont Fair Housing and Public Accommodations Act (VFHPA), 9 V.S.A. §4500 *et seq.*, and the Vermont Fair Employment Practices Act (VFPEPA) and Conditions for Employment under 21 V.S.A. §309 (flexible working arrangements) for State government employees.⁵ Most people think of places of public accommodations as commercial establishments but they also include hospitals, prisons, roads, schools, law enforcement entities and any establishment that provides goods or services to the general public. These statutes prohibit individuals or entities from taking adverse action (discriminating) against individuals in protected categories based on their membership in one or more of the protected categories. A violation of the school anti-harassment statute, 16 V.S.A. § 14, the gender-neutral bathroom for all single-stall bathrooms in the state, 18 V.S.A. § 1792, and most of the federal anti-discrimination laws fall within the purview of the HRC to review as they also violate the VFHPA and VFPEPA. Lastly, the HRC enforces the retaliation provisions of the state's paid parental leave act and worker's compensation laws.

In FY2020, the HRC opened 70 cases: 21 informal cases (resolved quickly with letter and preliminary negotiations) and 49 formal cases (accepted for processing and investigation).

Conciliation:

Settlements present an opportunity to achieve outcomes that may not be available through a lengthy investigation or litigation such as policy changes, employment opportunities, maintenance of housing or benefits and services, etc. Complainants and respondents are offered timely and meaningful access to mediation services or informal means of conciliation that promote mutually satisfactory resolutions to their disputes. Even private agreements that occur at mediation or elsewhere are the result of the HRC's diligence and efforts. They often occur in the middle or end of an investigation because preliminary findings come to light during the investigation and

⁵ Individuals with discrimination complaints concerning private employment file their complaints with the Vermont Attorney General's Office, Civil Rights Unit

staff attorneys encourage and support settlement discussions. Mediations are paid in part by HRC funds.

Of the cases closed in FY20, two-thirds (66.7%) were resolved by a settlement between parties, either within the Human Rights Commission conciliation framework or through a withdrawal of the case with a mediated or otherwise private settlement. The remaining one-third (33.3%) were resolved either through a Commission hearing (20.5%) or through an administrative closure of the case without a settlement (12.8%).

Education:

HRC staff offer information, referrals, educational programs and educational training to those who request these services. Staff have provided presentations and training to Legislators, housing providers, tenants, business owners, community members, attorneys, private and non-profit organizations and local community boards, schools and more. Additionally, the HRC endeavors to seek training in all post-investigative settlements and when appropriate, in pre-investigative settlements.

During FY20, the HRC trained a total of 840 people in 29 separate events and participated in and/or conducted 17 outreach events that reached approximately 1824 people. The numbers below do not capture the Civil Rights Conference that the HRC developed and delivered in November 2020.

Advancing effective public policies on human rights:

The HRC provides leadership in public policy development with respect to civil and human rights issues in Vermont and presents testimony to the Legislature on such issues as well as advice to the executive and judicial branches upon request. In addition to testifying before the Legislature on numerous bills, HRC staff also serve on the following taskforces, working groups and committees:

- The Governor's Racial Equity Task Force
- The Language Access External Advisory Committee for the Vermont Judiciary
- The Training Council's Fair and Impartial Policing Committee
- Diversifying The Educator Workforce Committee
- Hazing, Harassment, Bullying Advisory Panel
- Ethnic and Social Standards Advisory Working Group
- Governor's Workforce Equity and Diversity Council
- Vermont Criminal Justice Council
- Vermont Multilingual Communication Task Force
- Racial Justice Alliance Student Group
- Refugee and Immigrant Service Providers Network
- Thriving Communities Steering Committee
- Affordable Housing Coalition

- Montpelier-Roxbury School District, Equity Committee
- The School Resource Officer Working Group

Staffing Needs at the HRC

There are five Human Rights Commissioners appointed by the Governor, with the advice and consent of the Senate, for five-year terms. Commissioners may be re-appointed. The Commissioners are tasked with hiring, supervising, and directing the Executive Director and setting the overall policy of the organization. The Commissioners also meet regularly, usually monthly, to discuss and decide the merits of individual discrimination complaints.

The HRC also has a staff of six state employees:

The Executive Director is responsible for the administration of the office, management, and supervision of staff. The Executive Director oversees the development of civil rights training, develops the policy and legislative agenda at the direction of the Commissioners, serves as the legislative liaison and testifies before the Legislature, in addition to serving on task forces and committees. Additionally, the Executive Director is the legal counsel and reviews and approves all complaints, investigative reports, provides legal advice to the Commissioners, and serves as the senior attorney on all litigation arising out of investigations at the HRC that proceed to a formal recommendation and Commission vote of “reasonable grounds.” *The work of the Executive Director is too wide and varied to meaningfully focus on the type of system changes that are required to eradicate discrimination as to all of the different protected categories in Vermont. Furthermore, the lack of resources at the HRC does not permit the Executive Director to litigate every case that reaches a reasonable grounds determination.*

The Director of Policy, Education and Outreach serves as the other legislative liaison and testifies before the Legislature, in addition to the Executive Director. This position also develops trainings, organizes community events and forums, and maintains the agency’s website and social media platforms. The Director of Policy, Education and Outreach, the Executive Director, and the Commissioners are charged with developing and implementing a strategic outreach and education plan. *The work of a Policy Director should be separate from an Education and Outreach Coordinator to meaningfully effectuate change.*

The primary responsibility of the Executive Staff Assistant is to receive, analyze and respond to inquiries regarding potential complaints of discrimination, in addition to serving as the administrative assistant to Commissioners, Executive Director, and Staff Attorney Investigators. These duties include drafting complaints, resolving “informal” investigations, preparing and performing all administrative tasks associated with Commission Meetings, monitoring legislative bills, serving as vendor and records liaison, maintaining the case management system, performing data entry and analysis, and assisting with managing the federal grant to ensure compliance. *The*

work of the Executive Staff Assistant should be shared between two staff: an Office Manager and Intake Specialist so that complaints can be quickly processed and assigned without delay.

The HRC has three investigative attorneys whose primary duties are to conciliate and investigate cases pre-investigative report: All Staff Attorney Investigators carry an equal share of cases. After a case is opened and assigned to one of the three Staff Attorney Investigators, they develop an investigation plan and examination strategy; interview witnesses; request and review voluminous records and other evidence; and research relevant state and federal statutes and case law on all issues.

Staff Attorney Investigators are statutorily responsible for making efforts to conciliate in all matters and may provide input on the strengths and weaknesses of cases to assist the parties in settling. When matters do not result in a settlement either through conciliatory efforts or mediation, Staff Attorney Investigators complete their investigations and write investigative reports that are reviewed and approved by the Executive Director. Investigative Reports are lengthy, involving exhaustive factual findings and conclusions of law, and include a recommendation of “reasonable grounds” or “no reasonable grounds” to believe discrimination occurred.

While the number of cases at the HRC has remained steady over time, the complexity of cases has changed significantly. Because public accommodations extends beyond commercial buildings to include schools, hospitals, prisons and roads, this has brought many novel and legally complex cases to the Commission for review with no legal precedence or previous examples. Some of the legal questions raised and analyzed in recent years include:

- *Does the segregation of inmates with psychiatric disabilities in Vermont's correctional facilities violate the integration mandate and Vermont's Public Accommodations statute?*
- *What implications do particular state and federal constitutional amendments such as the 4th amendment (prohibition against unlawful search and seizure) and 5th Amendment (privilege against self-incrimination) have on whether or not a person in a protected category is deprived of services, benefits and privileges guaranteed under the Public Accommodations statute?*
- *Does the State have a legal obligation to people with disabilities who are not in the care and custody of DMH or DAIL and if so, does a failure to meet that obligation equate to a violation of the Olmstead provision of the American with Disabilities Act(ADA) and the Vermont Public Accommodations statute? Does the lack of community integrated housing in Vermont violate the public accommodations act as to persons with disabilities?*
- *Has a government agency created an administrative process that effectively puts a person with PTSD at a disadvantage with respect to obtaining government benefits, privileges, and services to which he is otherwise entitled?*

- *When a school fails to strictly adhere to a student's 504 plan, does a singular violation or culmination result in the denial of goods and benefits to the student? How are benefits and goods characterized in the school setting?*

The average case at the HRC takes a very long time to resolve. Based on recent data analysis, the average employment discrimination case takes 349 days; housing cases take 134 days and public accommodations cases (schools, hospitals, roads, prisons, etc.) take 418 days to resolve. But there are also outliers. Some HRC cases have taken more than 2-3 years to close.

There are many reasons for delays: The parties and witnesses are intermittently cooperative, make requests for extensions, file motions to dismiss, fail to cooperate with requests for information and more. In theory, an investigation could continue without the full cooperation of the parties or witnesses but in practice, the integrity of an investigation and ultimate recommendation is compromised without an exhaustive review of the evidence. Unfortunately, even if parties were not granted extensions or promptly responded to requests for information and interviews, HRC could not process the cases any faster. Factually and legally complicated cases often require extensive document review, numerous interviews and lengthy legal research before 50-100 page investigative reports are written, edited and produced and the HRC is in need of an additional staff attorney investigator.

Failure to resolve investigations in a reasonable amount of time at the HRC compromises evidence because witnesses disappear, memory lapses, documents are destroyed in their normal course and parties lose hope in the integrity of the process and drop out. More importantly, undue delays in the investigation process could compromise complainants' private right of action and due process rights and weaken the HRC's ability to carry out its mission.

Perhaps the HRC's greatest enforcement tools are its subpoena power and the right to represent the public's interest and seek relief for the aggrieved individuals in court; tools that the HRC does not routinely utilize because it does not have a full-time litigator.

Many complainants that come before the HRC are unrepresented. Their cases present novel and complex issues that could be meritorious but require court interpretation. Often, these cases are deemed too monetarily risky for a private attorney to pursue in court. As a result of the lack of staffing, the HRC routinely declines to litigate cases that have reached a reasonable grounds determination that discrimination occurred. This also results in fewer cases being heard and decided by Vermont's judges, who ultimately have the authority to interpret and apply the anti-discrimination laws of the state. Resultingly, Vermont looks to other jurisdictions in the interpretation of its own anti-discrimination statutes as opposed to developing this legal precedence for itself. The inability to access the Courts due to a lack of resources is contrary to the legislative intent of the HRC's enabling statute.

For these reasons, the RETF respectfully makes a recommendation to the Governor to add two positions to the HRC in the Governor’s Recommended Fiscal Year 2022 Budget:

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|--------------------------------|----------------------------------|
| 1. Litigator | \$150,000 in salary and benefits |
| 2. Staff Attorney Investigator | \$150,000 in salary and benefits |

The Task Force further recommends increasing staffing to support the Executive Director of Racial Equity. In the year and a half since the current Executive Director of Racial Equity was appointed, the need and demand for racial equity work across the state has grown exponentially. Partly due to the national protests for racial equity that shaped summer 2020, and partly due to the rapidly increasing number of municipalities and organizations recognizing Vermont’s demographic crisis, the state is called upon now more than ever to provide meaningful support to advance equity. This work often includes public education and engagement, technical assistance, policy review and policy advocacy, public testimony and other speaking engagements and lectures, investigation in individual complaints, management of the state’s racial equity portfolio, oversight of the state’s race data collection, and membership on a growing number on committees and working groups as prescribed by statute or appointment. Further discussion of the Director’s portfolio and work in 2020 is delineated in her January 2021 report to the General Assembly. As municipalities and organizations around the state grow their presence in the racial equity arena, so too does the state’s obligation to support them in that ever-expanding body of work. By adding staff support for the Executive Director of Racial Equity, the state can pursue more opportunities to advance equity beyond those listed above. For example, in its deliberations, the Task Force noted that in counties across the state, there is heavy discretion in whether the state’s attorney’s office will recommend prosecution in a given case (for example, a bias motivated crime). The lack of consistency in this area makes it unclear to Vermonters how or whether their cases will be addressed simply based on their zip codes. This is a worthy avenue of inquiry, and one that the Racial Equity Director may reasonably be expected to participate in. With additional staff support, this and other tasks can be given the attention they deserve.

For these reasons, the Task Force respectfully makes a recommendation to the Governor to add two positions to the Agency of Administration’s Racial Equity office in the Governor’s Recommended Fiscal Year 2022 Budget:

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|---------------------------------------|----------------------------------|
| 1. Policy and Data Analyst | \$150,000 in salary and benefits |
| 2. Education and Outreach Coordinator | \$100,000 in salary and benefits |

Recommendations:

- 1) Increase funding for the Human Rights Commission to add capacity to receive and address complaints;
- 2) Increase funding for the Agency of Administration Racial Equity office to add capacity to advance equitable policy across state government

BUILDING AN ANTI-HATE FOUNDATION FOR VERMONT'S FUTURE

Social views and ideologies are shaped from an early age. Exposure (or lack thereof) to people who look, act, and think differently can monumentally expand or restrict a child's success in navigating the world later in life. Data show that when school-age children are openly taught about inclusion and acceptance, they experience better mental and social health outcomes than children who do not learn these important lessons during their formative years. For these reasons, the Task Force recognizes that one of the best ways to reduce the incidence of hate speech and discrimination is to address these themes with youth.

HATE SYMBOLS IN SCHOOLS

According to the United Nations Office on Genocide Prevention, hate speech is any kind of communication (oral, written, and behavioral) that attacks or uses pejorative language in reference to a person's identity factor, including race, ethnicity, nationality, and religion. This includes the use and display of hate symbols. Use of hate speech and hate symbols is sometimes rooted in ignorance of why they are hateful and harmful, and they further marginalize already vulnerable communities.

Recognizing and respecting the right to protected speech, the Task Force notes for state leaders that intervention in this area is complex but highly rewarding. Schools should be safe places for learning. Hate speech and hate symbols make environments unsafe and inhibit learning for students, especially those with marginalized identities. This hurts everyone, and depresses academic outcomes compounding over the course of a student's school life. The Racial Equity Task Force recommends that the Agency of Education create a model policy that bans hateful symbols, explicitly including the Confederate flag, from school grounds. The Agency does not have to look far for successful models: schools like Mount Anthony Union High School in Bennington understand this need. While they "value the freedom to express individuality through dress," they recognize that dress should be "appropriate for a professional environment." In that school, inappropriate clothing includes that which "is suggestive of sexual innuendo, bigotry, gang affiliation" and explicitly names Confederate flags and swastikas under this designation.

The Task Force further recommends the Administration support any legislation designed either to ban the use and display of hate symbols, and/or designed to require schools to develop written policies on the matter.

Recommendations

- 1) Create a model policy that bans hateful symbols, explicitly including the Confederate flag, from school grounds;

- 2) Support legislation to require schools to develop written policies on the use and display of hate symbols in schools;
- 3) Support legislation to ban the use and display of hate symbols in schools

SUPPORT THE DISCONTINUATION OF CULTURALLY OFFENSIVE MASCOTS IN SCHOOLS

School mascots vary broadly in the subject matter and figures they portray. Some schools opt for animal mascots, others select mascots that offer a nod to a local geological feature or historically common profession. When the mascot is culturally offensive, the dialogue on whether to change it can quickly become volatile, and can end up sidelining the most important segment of the community: the students. With mascots that represent cultural groups, the images, words, symbols, and behavior that accompany the mascots can cause great harm to people of color, especially Indigenous people. These representations almost always keep the cultures “frozen in time” by representing them as historical figures who no longer exist in the current society. Further, they rely on tropes and stereotypes that unfairly depict and often mock entire ethnic groups. This results in negative psychological, social, and cultural consequences for Indigenous people, especially Indigenous youth.

The decision to retire culturally offensive mascots should be an easy one, because it centers the needs and lived experiences of people who have been directly harmed by the depictions the mascots perpetuate. A common claim of opponents is that they are “honoring” the cultural group in question, but this is a hollow claim--after all, there are far more tangible and meaningful ways to “honor” a historically marginalized community that don’t involve donning cartoonish representations of their ethnic group, or images that bear shocking similarity to harmful or incendiary ideologies. The best way to learn how to honor a cultural group is to ask. More often than not, members of a marginalized group can name myriad ways to honor their history and culture, including greater inclusion in the arts and creative sector, participation in decision-making that would be impactful to the community, revision of harmful policies that have historically shut that group out of opportunity, restorative justice and truth-and-reconciliation processes, and more. When communities dictate the ways in which they honor historically marginalized groups instead of empowering those groups to name the ways they need to be supported, they are deceiving only themselves by unilaterally deciding that their entertainment and sense of “tradition” supersedes the actual identity of the people in question. We remind those communities that there was tradition long before the arrival of Westerners, and that an imposed tradition is not inclusive of those centuries-old voices.

The Racial Equity Task Force recommends that the Agency of Education create a model policy on culturally offensive mascots. The Task Force further recommends the Administration support any legislation designed to ban or review the use of culturally offensive mascots.

Recommendations

- 1) Create a model policy on culturally offensive mascots;
- 2) Support any legislation designed to ban or review the use of culturally offensive mascots

SUPPORT THE WORK OF THE ETHNIC AND SOCIAL EQUITY STANDARDS IN SCHOOLS ADVISORY WORKING GROUP (ESESAWG)

A just and equitable society begins in the developmental stages of the human psyche. While children learn a great deal from their families, friends and communities, schools have traditionally served as the primary mechanism for teaching - not just reading and mathematics - but cultural norms and expectations and what it means to be an American. “The choices that teachers make regarding curriculum can liberate students of color or indoctrinate them into mainstream dominant culture.”⁶ Unfortunately, American schools have traditionally used curriculum to reinforce Eurocentric values.⁷ This is not surprising since teachers have historically been and remain today, white middle-class women.⁸ When teachers come from diverse backgrounds and all teachers intentionally and purposefully adopt a curriculum that is equitable: language, reasoning, writing, discussion and literacy is enriched, students are more engaged and connected to the curriculum and a sense of safety and belonging is fulfilled.⁹

As we grapple with responding to the social unrests across our nation and then the journey to unlearn and undo a lifetime of false racial and cultural associations, we must also make an unwavering and fearless commitment to overhauling our educational system now.

In a very substantial way, Vermont began this effort when it passed Act 1 in 2019 and engaged The Ethnic and Social Equity Standards Advisory Working Group to review Vermont’s education standards and recommend updates and additional standards to the State Board in an effort to fully recognize the historical and present-day contributions of different ethnic and social groups.

Of note, the Task Force believes the following ESESAWG recommendations can have a significant impact on hate speech reduction:

- a) *Expanding the definition of “College and Career ready” by adding to the current criteria ... understanding of the origins and character of ethnic, racial, political, and social diversity in local communities, the United States, and globally.*

This mandate will enhance Vermonters’ critical thinking in regards to the “history” and “perspectives” of ethnic and racial minorities in the U.S. It will further empower them to

⁶ White Paper, Reimagining Integration, Harvard School of Education.

⁷ Ibid.

⁸ Samuel, Aaliyah, (September 19, 2019) Why an equitable curriculum matters, NWEA.

⁹ Ibid.

identify and help eliminate hate speech in, out of, and after their student life.

- b) *Specify prohibited conduct as it relates to racism...Broaden the field of prohibited bias and discriminatory treatment to include the categories of ethnicity, caste, socio-economic status, non-citizenship status, religion, language, and linguistic abilities.*

The report recommends specifying what kind of conduct relates to racism and includes the example of banning the use of derogatory terms. The report further recommends addressing this misconduct using restorative practices, preparing students to acknowledge and address hate-infused behaviors. This mandate will help create an environment where it's safe to explore issues of bias and discrimination while challenging hate speech.

- c) *Conceptualize and require professional learning opportunities for school personnel to achieve success (a) in teaching courses and in evaluating staff and student performance related to ethnic and social studies...(b) in acquiring and demonstrating knowledge of what constitutes discriminatory and biased behavior by staff and students...(c) in instituting mitigation strategies and programs to uncover, report, and eliminate prohibited or unlawful conduct.*

The report seeks to assist school personnel in pushing for racial and ethnic equity in several ways: academically, financially, and procedurally. By empowering our educators and supporting/administrative staff in understanding how to effectively address hate speech, we empower a system to work towards generationally eradicating it.

- d) *Promote, with expert guidance as needed, the formation and funding of School Staff-Community Committees in supervisory unions to establish and evaluate programs in ethnic and social equity studies and restorative justice practices.*

Much of Vermont school systems is managed locally. By creating local accountability, it will ensure the outcomes the report intended (and those specifically mentioned here) are achieved.

By supporting these recommendations and empowering the ESESAWG to continue and expand its work, the state can make genuine change in the way students are socialized around hate, inclusion, and equity.

Recommendations

- 1) Adequately resource the working group;
- 2) Implement the working group's recommendations;
- 3) Engage the group in broader issues of equity in schools.

FAIR REPRESENTATION AND CULTIVATING INCLUSIVE LEADERSHIP

PROVIDE A HARDSHIP SUPPLEMENT FOR LOW-INCOME LEGISLATORS

Representation matters. Those who serve Vermont must understand—not just intellectually, but on a deep and personal level—the hardships inherent in Vermont life. These include costs and availability of child-care, the lack of healthcare benefits and family leave, low wages, scarcity of affordable housing, limited public transportation and the systemic barriers to achieving a financially secure, safe and well-balanced life. These are the life experiences that Legislators should draw from when competing demands for funds and interests are at stake. Studies show that women-identified legislators are more likely to introduce bills that advance the needs of women and Black legislators are more likely to introduce bills that advance the needs of the Black community.¹⁰ Interestingly, women of color, specifically Black and Latina legislators, are more likely to advance policies and introduce bills that meet the multiple needs of several disadvantaged groups. That is, they are often the leaders for sponsoring bills that protect and advantage women and people of color.¹¹ Thus, the absence of people of color legislators will often have a detrimental impact on communities of color.

For five months of work, Vermont Legislators earn only \$13,372 plus per diem. Consequently, those who serve are either independently wealthy, retired or have positions that provide them paid time-off or seasonal careers. Some make significant financial sacrifices to serve. Others are not able to do the same. There are many Vermonters who are qualified, competent, and would bring enlightened community-based reforms to the State but are otherwise shut out of Vermont’s citizen Legislature due to the low pay. Those left out include members of the people of color community who are deeply and personally impacted by all of the bills that never get passed or do become law but fail to live up to their promises because of compromises made in committees and on the floor.

To achieve a more representative Legislature, the RETF believes that a needs-based stipend (calculating household income and assets) should be awarded to members, beyond the annual pay and per diem. The funds should be appropriated by the Legislature, supported by the Governor and administered in a manner that protects the identity of the individual members who receive the stipend. The RETF believes that the Governor should also consider other mechanisms to incentivize diverse residents to join the Legislature such as supporting a prescribed session length and building economic opportunities that support small business owners and/or employers.

¹⁰ Reingold, Beth, Widner, Kirsten, Harmon, Rachel, *Legislating at the Intersections: Race, Gender and Representation*, Political Research Quarterly 2020, Vol. 73(4) 819-833.

¹¹ *Ibid*

Recommendation

- 1) Provide a hardship supplement for low-income legislators

BUILD A MORE INCLUSIVE JUDICIARY¹²

A Judiciary that reflects the people not only builds public trust and confidence, but it also ensures impartiality on both an individual and structural level. A homogenous Judiciary results in disparate treatment of people of color.¹³

This might explain why employment discrimination cases lose at every stage of litigation at statistically greater rates than any other civil plaintiff:

- 98% of employment discrimination cases disposed at the pre-trial stage are decided in favor of defendants compared to 66%-95% of civil cases;
- employment discrimination plaintiffs win only 39.9% of the time whereas other civil plaintiffs prevail closer to 51.3%;
- Lastly, bench trials result in even lower success rates for employment discrimination plaintiffs who prevail in only 18.7% of the time whereas other civil plaintiffs prevail at a rate of 43.6%-41.8%.¹⁴ An employment discrimination plaintiff has a better chance of prevailing before a jury than a judge. These same statistics are echoed at the appellate stage. Unfortunately, these outcomes create legal precedence that then determine the merits and success rates of cases that come before the Equal Employment Opportunity Commission,¹⁵ the Civil Rights Unit of the Attorney General's Office, and the Human Rights Commission, further mitigating the enforcement power of these entities.

Judges from underrepresented populations decide differently in sexual harassment and employment discrimination cases, equal protection, due process, freedom of association and fourth amendment violations.¹⁶ Judges who are Jewish decide cases that protect minority religions, and

¹² The RETF relied on the relevant statutes found at 4 V.S.A. § 601 et. seq., the governing rules for the JNB, information provided on the Court's website: <https://www.vermontjudiciary.org/attorneys/judicial-nominating-information>, VBA's published article by John Kellner, Esq., input from Vermont's Chief Justice Paul Reiber, Ella Spottswood, Esq. Co-Chair of the JNB (via email), and Patricia Gabel, State Court Administrator (via email) and the articles cited herein.

¹³ Root, Danielle, Faleschini, Jake and Oyenubi, Grace (October 3, 2019). Building a More Inclusive Federal Judiciary. Center for American Progress.

¹⁴ Selmi, Michael (Spring 2001). Why are Employment Discrimination Cases so Hard to Win, Louisiana Law Review, Vol 6, No. 3, p.560

¹⁵ Jameel, Maryam, Shapiro, Leslie, Yerardi, Joe (February 18, 2019). More than 1 million employment discrimination complaints have been filed with the government since 2010. Here's what happened to them. Washington Post.

¹⁶ Root, Danielle, Faleschini, Jake and Oyenubi, Grace (October 3, 2019). Building a More Inclusive Federal Judiciary. Center for American Progress.

Catholic and Evangelical judges decide harshly against LGBTQ rights. But diversity doesn't just improve potential outcomes in individual cases, it also elevates the decision-making of the Judiciary as a whole. It ensures that no singular perspective dominates adjudication. Studies have found that "ethnic and gender diversity on the bench has been shown to positively affect decision-making." Different perspectives result in innovation and thoughtful decision-making. In fact, just one female on an appellate court panel increases the likelihood that the male judges will rule in favor of plaintiffs in sexual harassment cases and just one Black judge on a panel increases the likelihood that non-Black judges will find for plaintiffs in affirmative action cases.

No judge exercises discretion in a vacuum where previous life experiences are set aside at the door of the courtroom. Judges who come from underrepresented populations draw from their lived experiences to evaluate the stories and perspectives and credibility of the parties and witnesses before them. We need more of them.

Vermont's Judiciary is made up of 63 Judicial Officers (Justices, Superior Judge, Probate Judge, Environmental Judges, Hearing Officer, Chief Superior Judge and Judicial Master); 20 female (32%) and 43 male (68%). Two (3.2%) Judicial Officers identify as members of a racial/ethnic group.¹⁷

In Vermont, judges are first selected by the Judicial Nominating Board (JNB or Board) before advancing to the Governor for final selection, pursuant to 4 V.S.A. § 601. The JNB consists of 11 members appointed by the Governor, Senate, House and Bar. Many of the board members are non-attorneys.

Judicial candidates must complete a lengthy and comprehensive application packet which includes disclosure of financial information. Candidates must also pass criminal background, professional disciplinary and reference checks. Board members are also permitted to conduct any inquiry of judicial candidates to determine general reputation.¹⁸ All "eligible" candidates are granted an interview, with a rare exception. All candidates deemed "qualified" for a judgeship, by the JNB, are forwarded to the Governor for consideration without limitation or ranking.¹⁹

The statute and rules provide very little guidance on the selection criteria. To be eligible, a candidate must be a Vermont resident and an experienced lawyer who is a judge or has practiced law in Vermont for a minimum of ten years, with at least five years preceding their application. Exceptions to the five-year requirement can be made for absences from practice due to family,

¹⁷ With the exception of a hearing officer and a judicial master, judicial officers are appointed or elected. This data does not include elected Assistant Judges, who are county executives paid by their counties when they sit as "side judges" and paid by the Judiciary for certain work in certain dockets when they sit alone, for which they are paid by Judiciary funds as part-time temporary employees.

¹⁸ Rule 9 of Rules of Judicial Nominating Board, CVR 90-800-001.

¹⁹ Rule 10 of Rules of Judicial Nominating Board, CVR 90-800-001

military, academic and medical leave. It's not clear how many candidates have been considered "eligible" through this exception.

The RETF discussed scenarios in which an attorney with fewer years of experience would have greater skills and experience than someone with more. The residency requirement may eliminate otherwise qualified candidates from diverse backgrounds and/or with experience working with diverse communities. Attorneys licensed to practice in Vermont, but reside in New Hampshire, New York or Massachusetts may have the necessary qualifications and skills to join the Bench, but would otherwise be excluded due to the residency requirement.

After review of the application process, the JNB board conducts interviews, which can be as short as 20-30 minutes per candidate. Every member of the Board is permitted to ask a question of their choice, but is not required to do so. There are no rules or policies that govern the broad spectrum of interview questions that may be asked of any candidate or all of them. Thus, candidates may be asked different questions. This also conflicts with the U.S. Equal Employment Opportunities Commission's guidelines for a consistent and fair interview process.

In addition to the eligibility criteria, the JNB must also consider the candidate's "integrity; legal knowledge and ability; judicial temperament; impartiality; communication capability; financial integrity; work ethic and administrative capabilities; experience, including courtroom experience; diligence; social consciousness; and public service."²⁰ Trial experience is specifically considered for a Superior Court position although trials occur in only 2% of felony cases; 1% in misdemeanors; and 12% major civil cases. Interestingly, about 5% of major civil cases are resolved through summary judgment which requires a written decision by the trial court. The rest are resolved by default or consent of the parties (29%) or dismissed or withdrawn by the parties (53%).²¹

To advance to the Governor, candidates must receive a majority of JNB votes. The Board votes by secret ballot. Although the qualification of one candidate should not affect the qualification of another, such comparisons may nonetheless explain some odd results. For example, some candidates deemed qualified in one search were found to not be qualified in a subsequent search. This could also be attributed to different board members serving at different times.

In 2017, the Judicial Conduct Board wrote to the JNB addressing complaints of gender bias in the selection process. By rule, the Board is prohibited from considering race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability of a candidate.²²

²⁰ 4 V.S.A. § 602(d) and Rule 11 of the Rules of the Judicial Nominating Board, CVR 90-800-001.

²¹ Fiscal 2019 Annual Statistical Report of the Vermont Judiciary. See also FY2018 Annual Statistical Report

²² Rule 5 of the Rules of the Judicial Nominating Board, CVR 90-800-001.

The task of the RETF is to make recommendations to the Governor, who by design is separate and independent of the JNB. But it would be remiss to not address the JNB process; a process that is instrumental in creating a diverse Judiciary in Vermont. Recently, the JNB completed implicit bias training which included some very important recommendations for consideration and adoption. The RETF re-emphasizes those recommendations herein:

1. Encourage and support the collection of gender and race/ethnicity data for attorneys licensed to practice in Vermont.
2. Reopen the search when the applicant pool does not match the available pool of attorneys.
3. Specifically learn the job of a judge and the skills and experiences required of effective judges by conducting surveys and interviewing judges.
 - a) What percentage of a judge's job is research and writing?
 - b) What percentage is devoted to non-trial work and assisting the parties in reaching agreements?
 - c) Does a zealous and reputable attorney make for an impartial and fair judge?
 - d) Is there a difference between an attorney with 10 years versus 5 years of experience or does it depend on the quality and complexity of cases handled by that attorney?
4. See the role of the JNB beyond the intermittent task of selecting candidates for a vacant position by considering its mission and goal of creating a highly qualified judiciary that reflects the people.
5. Use knowledge gained through the selection process to facilitate conversations, make recommendations and initiate legislative and policy changes that could eliminate barriers to women and people of color in joining the Bench.
6. Specifically identify diversity, inclusion, and equity as priorities in marketing materials and applications and target accordingly.
7. Eliminate the use of photographs to recall applicants.
8. Consider lived and professional experiences of candidates by asking specific questions of all candidates that demonstrate understanding of privilege, systemic and individual racism, prejudices, etc.
9. Eliminate unnecessary and overly-intrusive questions about financial disclosures that do not result in greater understanding of a candidate's financial integrity.
10. Standardize the interview process and develop a rubric for consistency in the interview questions.
11. Deliberate openly and critically before blind voting.
12. Review the selection process regularly and make changes as needed.
13. Engage in continuous training and improvement.

Recommendations

- 1) Encourage the Vermont Bar Association and Office of Attorney Licensing to collect race/ethnicity data for attorneys;
- 2) Encourage and support a rule change that will set forth professional and lived experiences with diverse communities as a criteria for selection of judges;
- 3) Support legislation to ease residency, years-of-practice, and trial-focused experience requirements for attorneys seeking seat on the bench;
- 4) Encourage, support, and create mentorship opportunities for new attorneys, specifically attorneys of color with retired judges in Vermont;
- 5) Encourage a consistent and impartial interview process

IMPLEMENT STRATEGIES TO SUPPORT EMERGING LEADERS

Community members often enter leadership positions over a period of years, often beginning at the local level in places such as school boards or town councils. In this way, local governance and community participation is an important entry point for community members to be actively engaged at the local, state, and federal levels of leadership. With hundreds of municipalities and long serving public officials across the state, there is a wealth of experience in public office and leadership that can and should be leveraged to assist new and prospective community leaders enter the realm of civic participation. For example, mentorship is widely regarded as a key method for preparing the next generation of leaders for success. Mentorship programs are common in jurisdictions across the country and in Vermont, and serve the important purpose of providing guidance to emerging leaders. This guidance comes from organizers and advocates, current and former public officials, industry experts, and others. The Task Force recommends that the state and its partners create more mentorship opportunities for emerging leaders and candidates. The Task Force further recognizes that many of Vermont leaders are long-serving and well-respected members of government and communities. As such, these leaders should engage in more visible and meaningful allyship to support candidates from underrepresented and historically marginalized groups, including communities of color. This support is critical for communities who look to their influential leaders for cues and guidance on whether and how to support emerging leaders.

In addition to vocal alliance and mentorship support, there is a great deal of emotional and social support needed for emerging leaders and candidates. Historically marginalized groups already face steep social challenges in Vermont, as the task force has noted in its September 1 2020 report. These challenges are further compounded during the campaign process, where being thrust into the public eye and being under heightened public scrutiny can exacerbate the emotional and mental fatigue candidates already face--even those from dominant groups and candidates who carry additional social privilege. The Task Force recommends that Vermont establish more emotional and social support for candidates who aim to run for office in order to combat this

emotional and mental fatigue, and to encourage people of all backgrounds to serve their communities without fear.

Mentorship Program

The Governor's Task Force on Racial Equity would like to respectfully present a structured mentorship model called Turn the Page KC as potentially noteworthy of replication in the state of Vermont. Former Kansas City, Kansas Mayor Sylvester "Sly" James officially created Turn the Page KC in 2011 to prioritize child literacy within Kansas City (KC). That same year, he appointed Mike English as Executive Director of this initiative. Mr. English promptly hired seven AmeriCorps Volunteers in Service to American (AmeriCorps VISTAs) to help him turn this initiative into an official 501(c)(3). After the establishment of the 501(c)(3), Mayor James required each member of his staff, and highly encouraged other state and local government employees to participate in the program, with many employees choosing to participate. It is important to note that these programs became successful because he allowed his staff to use part of their workdays to participate in the program, subsequently building community and shared experience among a powerful group of professionals. After successfully establishing the 501(c)(3), Mr. English tasked each VISTA with managing portfolios that contained several schools with which Turn the Page KC was partnered. Mr. English also tasked each VISTA with building out the program (e.g., managing the volunteer base, managing programmatic complications, coordinating literacy events within the schools, and marketing the program to prospective parents.) The Turn the Page KC program remains wildly successful and has worked to raise the literacy scores (And awareness) of seemingly countless young learners of color while also pairing them with influential mentors all across Kansas City.

The Task Force recommends adoption of the necessary components of this model towards establishing a mentorship program aimed at fostering underserved youth with a specified emphasis on the youth of color in Vermont. The Task Force also recommends the state consider taking similar steps to that of Mayor Sly James by (1) working to establish a 501(c)(3) that acts to systemically legitimize this initiative within the state of Vermont and (2) encourages and allows his staff to partake in this program to build co-staff solidarity. We also recommend (3) that the majority (if not all) of the VISTA volunteers selected to accomplish this task be Vermonters of color or Vermonters who belong to other historically disenfranchised communities. Lastly, we recommend that the same program (AmeriCorps VISTA) be used as a fiscally conservative but highly effective conduit to attain, foster, and maintain professional talent under the guidance of the appointed Executive Director.

Recommendations:

- 1) Create more mentorship opportunities for emerging leaders/candidates;
- 2) Encourage visible and meaningful allyship from long-time leaders and trusted leaders to support candidates of color;

3) Establish more emotional and social support for candidates for office

OFFER AN OPTIONAL “PLEDGE” DENOUNCING HATE AND VT NATIVISM THAT CANDIDATES FOR ELECTED OFFICE CAN TAKE

The Task Force strongly believes that actions to advance equity are far more valuable than feel-good equity statements. However, we note that public statements and pledges still play important roles in combating hate and in supporting historically marginalized communities. Since the summer of 2020, we have seen community groups, nonprofits, corporations, and government at all levels issue public statements in solidarity with communities of color and other marginalized communities. Many of these statements were accompanied by tangible and meaningful action, which made them all the more valuable. The Task Force notes that in Vermont, some of the most influential voices are those of public officials and state leaders they are respected members of our communities and in whose hands we have entrusted our fates and our futures. To that end, it is meaningful when these leaders vocally and visibly stand up for justice and speak out against hate. Again, we note that such statements should always be paired with tangible actions and genuine commitment. The Task Force recommends that a pledge be made available for state leaders to voluntarily adopt. This pledge would declare that the signatory stands against hate and bias, commits to advancing equity in their work, and ascribes to a set of values that includes equitable treatment for all.

Recommendations

- 1) Offer an optional “pledge” denouncing hate and VT nativism that candidates for elected office can take;

PROVIDE GRANT FUNDING FOR CIVICS RESOURCES

A foundational part of public service is the knowledge of how government is structured. Yet fewer and fewer schools and civic institutions are providing education about the local and state entities that govern our day-to-day lives. The complexity of government can be intimidating for a prospective candidate, especially one who hails from another state or country. Despite this, in every community there are residents with untapped leadership talent and a desire to contribute. Multiple Vermonters of color made headlines in 2020 when they sought election to a little-known post of “High Bailiff” in their respective counties, and the Task Force believes with more proactive education, the state can encourage younger and more diverse candidates to serve in public office. The Task Force recommends the state issue a grant (through an RFP process) for the creation of a comprehensive overview of all local and state held positions and the general structure of government in Vermont. The publication would be available in Vermont’s most commonly spoken languages, would be written in plain language, and would encourage diversity and inclusion. This resource would be an invaluable tool for residents, students, municipal officials, and anyone seeking to understand positions within government and how best to participate in the process.

Recommendations

- 1) Provide grants for organizations to create a multilingual, plain-language guide on VT local and state gov't structure and little-known positions.

PROMOTE INCLUSION ON SELECTBOARDS

The Racial Equity Task Force understands that harm inflicted on marginalized populations is partly due to a lack of diverse perspectives in the overly-homogenous make-up of our town government boards and committees in Vermont. The lack of representation in local level government often leaves racial, sexual, and other minorities unseen, unheard, and ostracized. This has prompted them to build coalitions or to contact different justice organizations (i.e., the ACLU, the NAACP, or grassroots organizations) in an attempt to advocate for their needs, rights, and for the creation of systems that make them feel safer and more included. For example, the 219-page [Brattleboro Safety Review Report](#) pushed for by a sizable group of concerned residents who are unsatisfied with the Brattleboro Selectboard's inaction on community and public policing issues serves as a tangible example of this dissatisfaction. The report was meticulously assembled—the findings and recommendations sections alone spanned more than 20 pages. The primary lesson in this sort of cycle is that when voices are missing from the table, inadequately-informed decisions are made, which leads to community-wide harm that instigates a reaction from those who are harmed and their allies in the community. Worse still, people in local leadership positions remain unaware of their biases or shortcomings, and perpetuate a system wherein marginalized voices are further excluded from community affairs.

For these reasons, the Task Force recommends the state work with entities such as the Vermont League of Cities and Towns to develop their capacity to perform equity work and develop programming to support localities. Further, the Task Force recommends that more effort be taken to make information accessible to members of the public who wish to serve in public office.

Recommendations:

- 1) Translate any informational materials and resources related to running for public office into Vermont's most commonly spoken languages;
- 2) Create an information/resource hub that notifies and instructs residents who may be interested in running for public office about important dates, payment requirements, and required documents;
- 3) Develop a model policy in the Secretary of State's office regarding equity in Selectboards and post/promote the policy broadly.

FOR FURTHER EXPLORATION

REIMAGING CAMPAIGN FINANCE

Several barriers exist for people of color to seek office, but among the greatest challenges is financing a campaign. Models of public financing should be considered to ensure equity and equality. A candidate's ability to serve should not rely on their fundraising capabilities, it should be based on the merits of their ideas and their commitment to their community. Public financing would put all candidates on the same playing field and it would encourage many to seek office who have been held back because of fundraising.

Another barrier is the complexity of campaign finance laws. Regardless of whether or not the state moves forward with public financing, the RETF recommends the Administration, the Secretary of State's office and the legislature work together to simplify campaign finance laws and consider expanding allowable uses. The most obvious example discussed was the ability to use campaign funds to pay for childcare as it relates to the candidate running for office. As we all know, running for office takes time and dedication, many times on nights and weekends. Allowing candidates to use campaign funds to assist in subsidizing their childcare expenses would acknowledge and reflect that challenge.

For these reasons, the Task Force recommends the state review models of public financing for public office and support legislation to accomplish this.

Recommendations

- 1) Secretary of State's office review campaign finance laws to make it easier for candidates to file, report and run for office.
- 2) Review models of public financing for public office and support legislative changes.

EXAMINE WAYS TO ACTIVELY INCREASE RACIAL REPRESENTATION IN BOARDS/COMMISSIONS

Much of the important work that happens in Vermont's local and state government occurs via boards and commissions. These entities perform extensive research, liaise with residents in all corners of the state, and provide insightful feedback and recommendations to the Judiciary, the Legislature, and the Executive leaders. With more than 300 boards and commissions in existence, Vermont has clearly demonstrated its strong reliance on the work of these entities.

As the state becomes increasingly diverse, the membership on boards and commissions should be reflective of the state's current and future diversity. By having representatives with lived experience serving in these roles, the state can ensure that all perspectives are being meaningfully included. This is true across many identities: ethnicity, race, gender identity, sexual orientation, ability, socioeconomic factors, educational attainment, and more. The Task Force notes that these are not "either-or" categories--that is, establishing a commission where one of these factors is

accounted for does not mean the commission is diverse or inclusive. For example, Vermont and other jurisdictions often seek to increase the representation of women-owned and minority-owned businesses in the business sector. Implementing an initiative to foster “diversity” by dealing exclusively with businesses owned by white women or businesses owned by people of various ethnicities who are all male-identified may not serve the spirit of the contracting goal, despite the fact that many beneficiaries may technically be able to “check a box” indicating their marginalized identity. Genuine diversity means including people with wide-ranging characteristics, and genuine inclusion means making all members feel welcome and incorporating their experiences and contributions in decision-making.

The Task Force recommends the state set goals and benchmarks for diversifying its boards and commissions. Because there is no current demographic data on membership, the state should begin collecting data, set equity goals, and review its progress every two years.

Recommended strategies include examining models from other jurisdictions, hosting networking events specifically aimed at building contacts with and visibility of underrepresented communities, utilizing diversity-focused distribution lists to announce vacancies and opportunities, and partnering with media and state agencies to produce informative public service announcements in multiple languages.

Recommendations

- 1) Examine ways to actively increase racial representation in boards/commissions

EXAMINE MODELS FROM OTHER JURISDICTIONS ON HOW TO REDUCE, TRACK, AND EDUCATE THE PUBLIC ABOUT HEALTH DISPARITIES AND OTHER DISPARITIES BY RACE

“Health disparities are systematic, plausibly avoidable health differences adversely affecting socially disadvantaged groups” (Healthy People 2020). Tracking, reducing, and educating on racial and ethnic health disparities can only be accomplished using a multi-sectoral approach. However, identifying specific policies that can promote health equity is a challenging task. The Racial Equity Task Force recommends examining and reviewing the efficacy of models and policies with similar outcomes being implemented in other states and in Vermont. This work has already been modeled for the state, and can be enhanced to suit the needs of our state: In 2014, the National Conference of State Legislators inventoried legislation that had been introduced across the country to address health disparities. These include, but are not limited to²³,

- New Jersey: Improve the state’s Centralized Intake System to incorporate community feedback about state services

²³ Sources: [Pew](#), [Maryland Health Dept](#), [NCSL](#), [NCLS](#)

- Maryland: MD Health Improvement and Disparities Reduction Act of 2012 sought to establish governance and accountability around health quality and cost outcomes regarding communities of color
- Indiana: Establish an education program for first-year medical students on addressing racial and ethnic health disparities
- Pennsylvania: Designate a month as a “Minority Health Month”

By examining these models, Vermont can leverage existing promising practices from around the country to improve its own system of tracking and reporting health and other disparities.

Recommendations

- 1) Examine models from other jurisdictions on how to reduce, track, and educate the public about health disparities and other disparities by race.

MAKE RACIAL EQUITY AN EXPLICIT CRITERION IN REDISTRICTING DECISIONS

Extensive political research and case law have demonstrated that in most of the U.S., states and localities have taken increasingly flagrant tactics designed to suppress and dilute the votes of communities of color. One such tactic is the use of multi-member districts.^{24,25} Most recently, the 2020 election cycle made the act of voting extraordinarily difficult for people of all social strata, in all regions. Clearly, the need for all voices to be heard cuts across every demographic group in the state. To encourage people of color to run for and succeed in public office, the state should continue to strive for an equitable field for all communities and ensure accurate representation. The Task Force recommends the Reapportionment Commission modernize its criteria to include racial and social equity as explicit considerations as it engages in its critical work.

Recommendations

- 1) Modernize the criteria of the Reapportionment Commission to include racial and social equity as explicit considerations

²⁴ American Civil Liberties Union. *Everything You Always Wanted To Know About Redistricting But Were Afraid To Ask!*. 2001.

²⁵ Michigan Law Review, *Racial Vote Dilution in Multimember Districts: The Constitutional Standard After Washington v. Davis*, 76 Mich. L. Rev. 694 (1978).

GLOSSARY

Equity The condition that would be achieved when a person’s race or other demographic group membership is no longer predictive of that person’s life outcomes

Historically marginalized Communities or groups that have historically experienced systemic barriers to access, resources, and infrastructure investments. May include communities of color, women, individuals who identify along the gender spectrum, immigrants and refugees, people with disabilities, and others who have received limited access to benefits, services, investments, and resources from public/private institutions, including the State of Vermont.

People of color Includes individuals who identify as Indigenous, Black, Asian, Latinx, or mixed-race/ethnicity.

Structural racism The normalization and legitimization of an array of dynamics – historical, cultural, institutional and interpersonal –that routinely advantage Whites while producing cumulative and chronic adverse outcomes for people of color.

SUMMARY OF RECOMMENDATIONS

Protecting Marginalized People in Vermont	
1	Declare racism a public health epidemic
2	Support legislation to mandate hate crimes reporting and uniformity in reporting across agencies
3	Support legislation to add confidentiality provisions for Complainants in AGO civil investigations
4	Support legislation to allow the Attorney General's Office to seek compensatory damages on behalf of victim
5	Support legislation to review the "malicious motivation" standard for hate crimes
6	Increase funding for the Human Rights Commission to add capacity to receive and address complaints
7	Increase funding for the Agency of Administration Racial Equity office to add capacity to advance equitable policy across state government
Building an Anti-Hate Foundation for Vermont's Future	
8	Create a model policy that bans hateful symbols, explicitly including the Confederate flag, from school grounds
9	Support legislation to require schools to develop written policies on the use and display of hate symbols in schools
10	Support legislation to ban the use and display of hate symbols in schools
11	Create a model policy on culturally offensive mascots
12	Support any legislation designed to ban or review the use of culturally offensive mascots
13	Adequately resource the Ethnic and Social Equity Standards in Schools Advisory Working Group
14	Implement the recommendations of the Ethnic and Social Equity Standards in Schools Advisory Working Group
15	Engage the Ethnic and Social Equity Standards in Schools Advisory Working Group in broader issues of equity in schools
Fair Representation and Cultivating Inclusive Leadership	
16	Provide a hardship supplement for low-income legislators
17	Encourage the Vermont Bar Association and Office of Attorney Licensing to collect race/ethnicity data for attorneys
18	Encourage and support a rule change to include professional and lived experiences with diverse communities as criteria for selection of judges
19	Support legislation to ease residency, years-of-practice, and trial-focused experience requirements for candidates to the bench
20	Encourage, support, and create mentorship opportunities for new attorneys, specifically attorneys of color with retired judges in Vermont
21	Encourage a consistent and impartial interview process for the Judicial Nominating Board
22	Create more mentorship opportunities for emerging leaders/candidates
23	Encourage visible and meaningful allyship from long-time leaders and trusted leaders to support candidates of color
24	Establish more emotional and social support for candidates for office
25	Offer an optional "pledge" denouncing hate and VT nativism that candidates for elected office can take
26	Provide grant funding for civics resources
27	Translate any information and resources related to running for public office into Vermont's most commonly spoken languages
28	Create an information/resource hub informing residents interested in running for public office about important dates, payment requirements, and required documents
29	Develop a model policy in the Secretary of State's office regarding equity in Selectboards and post/promote the policy broadly
For Further Exploration	
30	Review models of public financing for public office and support legislative changes

31	Examine ways to actively increase racial representation in boards/commissions
32	Examine models from other jurisdictions on how to reduce, track, and educate the public about health disparities and other disparities by race
33	Make racial equity an explicit criterion in redistricting decisions