

Senate Committee on Health and Welfare  
Vermont General Assembly

May 11, 2026

Dear Chair Lyons and Members of the Committee:

The ACLU Foundation of Vermont is writing to express our concern regarding the extraordinary delegation of authority to the Agency of Human Services in Sections 4 and 8 of House Bill No. 938, “An act relating to establishing the Vermont Homelessness Response Continuum.”



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Our democracy is premised on the idea that the people ought to have—indeed, they have the right to have—a role in government. Article 6 of the Constitution of the State of Vermont recognizes that the power of government is “originally inherent in and consequently derived from the people,” such that “all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.” Where a law or rule is promulgated in the absence of appropriate process, in accordance with Article 9, the people shall not be “bound by any law but such as they have in like manner assented to, for their common good.” We the People, in our democracy, have a right to have our voices heard. House Bill No. 938 deprives the people of Vermont, including the people experiencing homelessness who are directly impacted by the bill, of that right.

As currently drafted, House Bill No. 938 gives the Agency of Human Services the authority to set policies of general applicability that affect the fundamental rights of people experiencing homelessness through emergency rules until October 1, 2027. The most fundamental and basic rights of people experiencing homelessness—to shelter and services and to due process protections through notice and appeal—are not set out in the language of the bill. Rather, the bill purports to give the Agency of Human Services the power to subject people experiencing homelessness to “emergency” rules for over a year during a time when there is no imminent peril to public health, safety, or welfare other than the ongoing peril of homelessness itself. There is no basis for singling out a program meant to respond to the most fundamental need of people experiencing homelessness—shelter—for exclusion from the standard protections of the rulemaking process.

The Vermont Administrative Procedures Act (VAPA) strikes a balance between advancing democratic ideals and providing administrative agencies with the ability to use their institutional expertise to govern effectively. The VAPA requires agencies to maximize the involvement of the public in the development of rules and allow for consistent public participation in the rulemaking process. 3 V.S.A. § 800. Emergency rules



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“may be adopted after whatever notice and hearing the agency finds practicable under the circumstances,” and an agency is only required to make “reasonable efforts” to ensure that emergency rules “are known to persons who may be affected by them.” 3 V.S.A. § 844(a). Because there is so little process afforded in the development and implementation of emergency rules, pursuant to VAPA, they “shall not remain in effect for more than 180 days.” 3 V.S.A. § 844(b).

It should not be the case that people experiencing homelessness get less democracy and less process when it comes to rules impacting their right to access shelter, their right to notice, and their right to appeal. They should not be subject to emergency rules for more than twice the length of time permitted by the VAPA. The Vermont Supreme Court has noted that, “[w]here citizens’ constitutional rights are concerned, we must be especially vigilant in assuring that elected officials—and not appointed administrators—are making policy.” *Martin v. Agency of Trans. Dep’t of Motor Vehicles*, 2003 VT 14, ¶ 14. The level of delegation of authority here, with the authority to implement emergency rules for a period of over a year, is an extreme and unfettered delegation of legislative authority that denies equal protection of the laws to people experiencing homelessness. This is not what democracy looks like. *See Village of Waterbury v. Melendy*, 109 Vt. 441, 199 A. 236 (1938).

We encourage the Committee to provide appropriate constitutional guardrails for the rulemaking authority of the Agency, to order an opportunity for public comment and hearing prior to implementation of emergency rules, to include language in the bill indicating that no emergency rule promulgated pursuant to the act shall have a presumption of validity, and that the emergency rules shall remain in effect no later than December 1, 2026.

Respectfully,

A handwritten signature in black ink, appearing to read "Jessica Radbord".

Jessica Radbord  
Senior Staff Attorney  
ACLU Foundation of Vermont

**ACLU**  
Vermont