



ACLU of Vermont Testimony on H.492
James Lyall, Executive Director, ACLU of Vermont
House Committee on Judiciary
March 22, 2017

Good morning. My name is James Lyall and I'm the executive director of the American Civil Liberties Union of Vermont. It's an honor to be here to testify in support of H. 492 alongside so many community leaders who have dedicated their careers to advancing justice and equality in this state.

For fifty years, the ACLU of Vermont has been defending liberty in the Green Mountain State and working to give voice to all Vermonters, especially those to whom the full protections of the Bill of Rights are too often and too easily denied.

A growing body of data shows what people of color in Vermont have known for a long time: racial disparities pervade all aspects of our society—from schools to police stops, and from courthouses to prisons. The data consistently shows people of color are stopped, cited, and searched by police at a much higher rate than white drivers, and the same disparities persist in Vermont's prisons, where African Americans in this state are incarcerated at more than ten times the rate of white Vermonters.

This is a staggering level of inequity and it's unacceptable. We can and we must do better, and we can start by passing H. 492. The ACLU supports H.492 – both the creation of the racial justice oversight board, and the uniform application of the fair and impartial policing policy to all Vermont law enforcement agencies.

This testimony will focus on the second, key component of the legislation, Section 2366(a), requiring all state law enforcement to adopt the fair and impartial policing (FIP) policy in its entirety, which the ACLU views as a critical component of this legislation, for the following reasons:

1. The FIP Policy prevents racial profiling, and calls for noninvolvement in federal immigration enforcement. Nothing more. Nothing less.
2. The FIP policy was created through a 6-month process that involved numerous stakeholders and included careful consideration of federal laws 8 USC 1373 and 1644. The Vermont Criminal Justice Training Council director, the Attorney General's office, and other law enforcement representatives carefully reviewed and agreed to the policy. The Training Council director has confirmed that he believes that all parts of the policy comport with federal law, and the Attorney General just released guidance consistent with that position as well.

3. Still, when it comes to fair and impartial policing in Vermont, we currently have a patchwork approach—some departments have the full policy on the books, some have partial versions, others have their own versions. That is the opposite of fair and impartial. Immigrants and people of color should not have to question whether their civil rights will be protected equally when they cross town lines. This legislation fixes that problem by requiring a uniform policy, statewide.
4. Unfortunately, we have repeatedly seen local law enforcement officials choosing to collaborate with immigration agents in Vermont, resulting in civil rights violations – that’s what happened to ACLU client Abd Rababah, that’s what happened to Migrant Justice leader Lorenzo Alcutia, just as it has happened to other immigrants in this state. We will not tolerate that, and Vermont as a whole should not tolerate that – especially at a time when immigrant communities are under siege, as they are today. A uniform FIP policy is legally sound, and makes good policy sense by reducing the risk of liability for unconstitutional police practices and sending the message to local communities that they can trust police not to act as immigration agents.
5. Professor Stephanie Seguino’s latest report shows why this legislation is critical: though data collection practices have steadily improved, racial disparities in police stops and searches remain pronounced. In at least some places they are getting worse, not better, despite good faith efforts to address them. And the fact remains that any disparities in police stops, searches, or for that matter incarceration rates are unacceptable.

These problems have persisted for far too long—Vermont can and must take action to remedy them, and this legislation is an important step towards that goal. Which goes to the other key component of this legislation, the Racial Justice Oversight Board.

The ACLU supports the creation of an oversight board to consolidate and coordinate racial justice reform efforts in this state. The board has the potential to fill a critical role by ensuring that racial justice reform efforts are considered, reviewed, and advanced on a continuing basis.

In particular, the ACLU supports this legislation’s stated goal of empowering an oversight board to address institutionalized racism in Vermont—in education, health services access, employment, and housing policy. While police bias has been the focus of past and continuing efforts, it is also imperative that we better understand the effect of racial bias in the criminal justice system holistically—not simply as a matter of police bias, but taking account of courts, prosecutors, and other institutional actors whose decisions, as with those of all of us, are inflected with inherent bias and which contribute to staggering racial disparities in Vermont’s prison system. The oversight board would be well-positioned to further progress on this essential task.

Finally, we would emphasize that the creation of an oversight body—while it is a critical step forward—does not and cannot absolve the legislature, or any of us, from our shared responsibility to continue working, every day, to fight discrimination and work to eliminate racial disparities at all levels of society throughout this state.