

## Research on Systemic Racism

### Racial Justice Reform Coalition Legislative Agenda

#### Executive Overview

**We must create an entity that is the single apparatus accountable for tracking our progress in addressing systemic racism.** We must also look at new and innovative ways to track and address situations when people are robbed of these precious liberties. It is important that specific attention be given to the Human Rights Commission to ensure that it is adequately funded and positioned to protect the people of color of this state. And we must begin the process of examining our appointment processes and diversity composition of some of the vital governmental commissions that may have been susceptible to contributing to systemic racism.

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

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

#### Vermont

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

*Article 1. [All persons born free; their natural rights; slavery prohibited]*

*“That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, **after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving***

*to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.”<sup>1</sup>*

As a result, and not unlike other parts of this country, Vermont has a vast array of well-documented issues, which are born out of both overt and systemic racism.<sup>2</sup>

### *Education*

There have long been reports of racism in our public schools in Vermont. The impact of this oppression goes far beyond simple unequal treatment of children. Numerous incidents have been and continue to be reported concerning the treatment of children of color in our schools. Notable is the highly disproportionate rate at which children of color are disciplined, up to and including expulsion. A 1999 report indicated that “racial harassment appears pervasive in and around the State's public schools. The elimination of this harassment is not a priority among school administrators, school boards, elected officials, and State agencies charged with civil rights enforcement. In some instances, administrators and government leaders have denied the existence of the problem and do not acknowledge the need for improvements in overall race relations within the State. As the numbers of minority students increase, there will be a concurrent rise in the number of racial harassment incidents that will not be adequately dealt with by school administrators and State civil rights enforcement agencies.” The Vermont Human Rights Commission was cited as not having sufficient resources to “effectively address racial harassment incidents once they are reported.” The report included a plea for leadership elected officials, business leaders, and education to bring about improved race relations.<sup>3</sup> A progress report in 2003 indicated that “problems cited in its 1999 Report persist despite significant efforts to find solutions.”<sup>4</sup> Finally a report from Vermont Legal Aid in 2015 indicated that Black/African-American and Native American students were two to three times more likely than White students to be suspended.<sup>5</sup>

### *Housing*

Vermont Legal Aid produced a Housing Discrimination Law Project report in 2015. Overall testing results indicated that housing providers “generally disfavor African American renters, renters of foreign origin, renters with children, and renters with disabilities.”<sup>6</sup>

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<sup>1</sup> Vermont Constitution AS ESTABLISHED JULY 9, 1793, AND AMENDED THROUGH DECEMBER 14, 2010  
<http://legislature.vermont.gov/statutes/constitution-of-the-state-of-vermont/>

<sup>2</sup> Vermont's 1777 Slavery ban had a complicated reality  
<https://www.usatoday.com/story/news/nation/2014/04/02/vermont-slavery-ban/7200493/>

<sup>3</sup> Racial Harassment in Public Schools, Vermont Advisory Committee to the United States Commission on Civil Rights  
<https://www.law.umaryland.edu/marshall/usccr/documents/cr12r1112.pdf>

<sup>4</sup> Racial Harassment in Vermont Public Schools – A Progress Report, Vermont Advisory Committee to the United States Commission on Civil Rights  
<http://www.usccr.gov/pubs/sac/vt1003/vt1003.pdf>

<sup>5</sup> Kicked Out: Unfair and Unequal Student Discipline in Vermont Schools  
<http://hrc.vermont.gov/sites/hrc/files/publications/Kicked-Out.pdf>

<sup>6</sup> Vermont Legal Aid Housing Discrimination Law Project  
<http://www.vtlegalaid.org/sites/default/files/Rental%20Discrimination%20Report%202014.pdf>

### *Criminal Justice System*

Vermont leads the nation in the rate of incarcerated African Americans proportional to their representation in the population with one in 14 African American males incarcerated and makes the top five in disparities (10:1). Though African Americans make up 1.6 percent of the population in Vermont, 10 percent of our prison population is African American.<sup>7</sup> As a result of work conducted by The Uncommon Alliance, Burlington, South Burlington, UVM and Winooski agreed to voluntary race traffic stop data collection. A report produced in 2012 showed African American stop rates (per 1000) over the age of 18 were double that of white stop rates in Burlington and South Burlington. Blacks were also proven to be arrested at significantly higher rates than whites in Burlington and South Burlington. The search rate in Burlington was double that of whites, while the search rate in South Burlington was six times that of whites. Finally, the penalties were between 9-14% heavier on average for African American drivers than white drivers in Burlington and South Burlington.<sup>8</sup> Stephanie Seguino, a co-author of the report, indicated, "This study underscores that these jurisdictions reflect similar disparities found in many other parts of the US. We have work to do to reduce and eventually eliminate the role of bias in policing in our area."<sup>9</sup> A follow-up report on race traffic stops in the Burlington area in 2014 stated, "The Burlington Police Department continues to register disparities in traffic stops and outcomes by race and ethnicity. The most significant disparity we can identify is in the treatment of Black and White drivers. Blacks continue to be over-stopped relative to their share of the estimated population and Whites under-stopped (results that are statistically significant)."<sup>10</sup> The Vermont State Police have conducted similar data collection before and after the legislative mandate for all law enforcement agencies to collect data. They too reported significant racial disparities in traffic stops and search rates, though hit rates (paraphernalia discovery) were lower.<sup>11</sup> In 2016 it was determined that the racial disparities identified in Chittenden County (four agencies) and by the State Police indicated a worsening of the problem.

### **National**

On a national level civil rights continue to erode due in large part to the change in administration. The Department of Justice is limiting the issuance of consent decrees. The Department of Education has laid out plans to loosen requirements on investigations into civil rights complaints and Education Secretary Betsy DeVos has also proposed cutting over 40 positions from the civil rights office. The Department

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<sup>7</sup> The Color of Justice: Racial and Ethnic Disparities in State Prisons  
<http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>

<sup>8</sup> Racial Disparities in Policing? An Assessment of 2009-10 Traffic Stop Data in Chittenden County, Vermont  
<http://justiceforallvt.org/wp-content/uploads/2016/06/Racial-Disparity-policing-Report.pdf>

<sup>9</sup> Quotes from the Uncommon Alliance  
<http://justiceforallvt.org/wp-content/uploads/2016/06/Race-Data-Collection-Quotes-4-2-2012.pdf>

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

<sup>11</sup> <http://justiceforallvt.org/resources/research/law-enforcement/race-traffic-stop-data/vermont-state-police/>

of Labor has proposed dissolving the office that handles discrimination complaints. In its 2018 fiscal plan, new leadership at the Environmental Protection Agency has proposed entirely eliminating the environmental justice program, which addresses concerns that almost exclusively impact minority communities.<sup>12</sup>

Eric Dreiband has recently been nominated to lead the Civil Rights Division at the Justice Department. His work defending major corporations against discrimination lawsuits continues to cause a wave of criticism from civil rights organizations and LGBTQ activists. The NAACP Legal Defense Fund said that Dreiband's nomination serves to undermine "fundamental civil rights priorities." Jesselyn McCurdy, deputy director of the ACLU's Washington Legislative Office, characterized Dreiband as someone "with a history of restricting civil rights."<sup>13</sup>

Vanita Gupta, former Civil Rights Division Director, said the next leader "...must respect the role of what has been called the conscience of the federal government," and referred to Dreiband as "woefully unqualified to lead the Civil Rights Division."<sup>14</sup>

#### *"Black Identity Extremists"*

An [F.B.I. report](#) leaked in October and scrutinized during an oversight hearing of the House Judiciary Committee warns of an emergent domestic terror threat sweeping the nation and threatening the lives of law enforcement officers: the so called "Black Identity Extremist" ("B.I.E.") movement. The Intelligence Report was the first mention of this new term "Black Identity Extremist" and deemed them a violent threat, asserting that black activists' grievances about racialized police violence and inequities in the criminal justice system have spurred retaliatory violence against law enforcement officers. It links incidents of violence by a handful of *individual citizens* to "B.I.E. ideology" and suggests that "perceptions of unjust treatment of African-Americans and the perceived unchallenged illegitimate actions of law enforcement will inspire premeditated attacks against law enforcement."<sup>15</sup>

#### *Executive Orders, Convictions*

A list of Executive Orders addressing topics such as immigration, environmental protection, public safety, violence against law enforcement, the Affordable Care Act and the White House Initiative on Historically Black Colleges all adversely impact black, brown and poor people<sup>16</sup>

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<sup>12</sup> Trump administration quietly rolls back civil rights efforts across federal government  
<https://www.pbs.org/newshour/politics/trump-administration-quietly-rolls-back-civil-rights-efforts-across-federal-government>

<sup>13</sup> Civil Rights groups criticize Trump's DOJ pick  
<http://edition.cnn.com/2017/09/06/politics/eric-dreiband-civil-rights-trump-justice-department/index.html>

<sup>14</sup> Civil right activists raise alarm over DOJ Trump picks  
<http://www.cnn.com/2017/07/01/politics/eric-dreiband-justice-department-civil-rights-lgbt/index.html>

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

<sup>16</sup> List of Donald Trump's Executive Orders  
<https://www.nbcnews.com/politics/white-house/here-s-full-list-donald-trump-s-executive-orders-n720796>

8% of all adults in the United States have a felony conviction. 23% of all African American Adults have a felony conviction and 33% of all African American males in the United States have a felony conviction (2010)<sup>17</sup>

### *Law Enforcement and Disproportionate Sentencing*

In November 2017 the United States Attorney General announced an award of 98.5M to hire 802 additional law enforcement officers in 179 jurisdictions across the United States. In September 2017, the Justice Department announced additional priority consideration criteria for FY2017 COPS Office grants. Applicants were notified that their application would receive “additional points” in the application scoring process by “certifying their willingness to cooperate with federal immigration authorities within their detention facilities.” Cooperation may include “providing access to detention facilities for an interview of aliens in the jurisdiction’s custody and providing advance notice of an alien’s release” from custody upon request. Vermont Law Enforcement Agencies awarded funding include Essex, Franklin and Orange Sheriffs’ Departments as well as the Hardwick and Winhall Police Departments.<sup>18</sup>

Black male offenders continued to receive longer sentences than similarly situated White male offenders. Black male offenders received sentences on average 19.1 percent longer than similarly situated White male offenders during the Post-Report period (fiscal years 2012-2016)<sup>19</sup>

### **International**

This year, the United Nations, in response to recent events in the United States, issued a formal warning under its 'early warning and urgent action' procedure. The Committee, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) stated that “there should be no place in the world for racist white supremacist ideas or any similar ideologies that reject the core human rights principles of human dignity and equality.” They concluded by calling for the US government to “investigate thoroughly the phenomenon of racial discrimination targeting, in particular, people of African descent, ethnic or ethno-religious minorities, and migrants,”<sup>20</sup>

This call comes on the heels of a scathing report issued by the United Nations in 2016. The report stated, "Despite substantial changes since the end of the

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<sup>17</sup> The Scope and Spatial Distribution of People with Felony Records in the United States 1948 – 2010  
[https://link.springer.com/epdf/10.1007/s13524-017-0611-1?author\\_access\\_token=jXD6ohexE1c1ur2WRWhpkfe4RwlQNchNBvi7wbcMAY4uMYrYNkMZx9I1WjnbPAWM-g13AQImw4x8-VaL1oT3wS1z7bR6McpJuw6ulspKuwHQrTd1allFBkHajdo4QVT1CPUCL7C\\_5xQhC8-ZXziA6g%3D%3D](https://link.springer.com/epdf/10.1007/s13524-017-0611-1?author_access_token=jXD6ohexE1c1ur2WRWhpkfe4RwlQNchNBvi7wbcMAY4uMYrYNkMZx9I1WjnbPAWM-g13AQImw4x8-VaL1oT3wS1z7bR6McpJuw6ulspKuwHQrTd1allFBkHajdo4QVT1CPUCL7C_5xQhC8-ZXziA6g%3D%3D)

<sup>18</sup> Attorney General Sessions Announces 98.5M to hire Community Policing Offices  
<https://www.justice.gov/opa/pr/attorney-general-sessions-announces-98-million-hire-community-policing-officers>

<sup>19</sup> Demographic Differences in Sentencing – US Sentencing Commission  
[https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf)

<sup>20</sup> UN rights experts criticize US failure to unequivocally reject racist violent events  
<http://www.un.org/apps/news/story.asp?NewsID=57399#.WhMbE2JSy34>

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

The report also underscored that environmental concerns disproportionately affect minority communities across the country and heavily censored US states that prevent individuals from voting based on their criminal histories and those that have in recent years implemented stringent voter-ID laws. According to the Sentencing Project, 5.85 million Americans cannot cast ballots due to felony convictions, including one out of every 13 blacks.<sup>21</sup>

### **Conclusion**

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

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

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<sup>21</sup> In US Visit, UN Experts Insist That Washington Needs to Consider Reparations for Slavery  
<https://news.vice.com/article/in-us-visit-un-experts-insist-that-washington-needs-to-consider-reparations-for-slavery>