



**TO: Sen. Peter Shumlin, Sen. Richard Sears, Sen. Susan Bartlett,  
Rep. Shap Smith, and Rep. Martha Heath**  
**FROM: Allen Gilbert, executive director, ACLU-Vermont**  
**DATE: Dec. 31, 2008**  
**SUBJECT: Cuts to Vermont Judiciary**

The American Civil Liberties Union of Vermont is concerned about the prospect of reduction in Vermonters' access to the courts in the face of the current budget crisis. Although we are pleased that the judiciary apparently will not have to make further deep cuts for the current fiscal year,<sup>1</sup> we are dismayed by the recently announced temporary court closings and urge you to fund Vermont's court system at a level that guarantees public access to the courts. The Vermont court system has already been cut to the bone by years of insufficient funding. We fear that any reduction in court functioning beyond the status quo will place Vermonters' right to a speedy criminal trial in serious jeopardy and will threaten the constitutional guarantee of civil justice by imposing unreasonable delays upon litigants.

The Vermont court system has been underfunded for quite some time. From 2002 to the present, the Legislature has annually allocated less than 1% of the state budget to the Judiciary.<sup>2</sup> This meager level of funding places Vermont squarely in the bottom tier of a recent American Bar Association state court funding study, in the company of the Mississippi, Louisiana, Texas, Florida, Virginia and Georgia state court systems.<sup>3</sup>

The Vermont judiciary's financial situation is illustrated by comparing its funding to the funding levels of nearby judicial systems in fiscal year 2006, the most recent year for which data are readily available. In that year, Connecticut allocated its judicial system 2.7% of the state budget,<sup>4</sup> Massachusetts 2.6%,<sup>5</sup> Rhode Island 2.3%,<sup>6</sup> Maine 1.5%,<sup>7</sup> New York 1.5%,<sup>8</sup> and New

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1 Louis Porter, *Courts Budget Not Yet Slashed*, Montpelier-Barre Times Argus, Dec. 29, 2008 at A1.

2 See Vt. Legis. Joint Fiscal Office, Appropriations History, <http://www.leg.state.vt.us/jfo/Appropriations.htm> (last visited Dec. 21, 2008) (showing appropriations spreadsheets for fiscal years 2002 (allocating \$23m of \$3.14b, or 0.73% of the state budget, to the judiciary), 2003 (\$26.3m of \$3.35b, 0.79%), 2004 (\$27.8m of \$3.63b, 0.77%), 2005 (\$28.9m of \$4.13b, 0.70%), 2006 (\$30.9m of \$4.24b, 0.73%), 2007 (\$33m of \$5.29b, 0.62%) and 2008 (\$36m of \$5.4b, 0.67%)).

3 American Bar Ass'n, State Budget Appropriations to the Judicial Branch (2004), [http://www.abanet.org/jd/courtfunding/pdf/state\\_budget\\_tables.pdf](http://www.abanet.org/jd/courtfunding/pdf/state_budget_tables.pdf).

4 Connecticut Gen. Assembly Office of Fiscal Analysis, Conn. State Budget 2005-2007 7, 481 (2005), <http://www.cga.ct.gov/OFA/Documents/OFABudget/2005/Book/OpenBook.htm> (allocating \$423.9m to the judiciary out of \$15.3b total expenditures).

5 See Comm. of Massachusetts, Comprehensive Annual Financial Report 140 (2006), [http://www.mass.gov/Aosc/docs/reports\\_audits/CAFR/2006/page\\_140.pdf](http://www.mass.gov/Aosc/docs/reports_audits/CAFR/2006/page_140.pdf); 2005 Mass. Acts ch. 45 (allocating \$519.8m to the judiciary, excluding funding for indigent defense, out of \$26.6b total expenditures).

6 See State of Rhode Island, Single Audit Report A111-12 (Mar. 12, 2007), <http://www.oag.state.ri.us/reports/sa2006.pdf> (\$117.5m spent by judiciary, excluding funding for indigent defense, of \$5.1b total expenditures).

7 Maine Judicial Branch, 2006 Fiscal Year Summary Annual Report 2 (2006) [http://www.courts.state.me.us/maine\\_courts/annual\\_reports/annualreport/Annualreport2006/SummaryFY06.pdf](http://www.courts.state.me.us/maine_courts/annual_reports/annualreport/Annualreport2006/SummaryFY06.pdf).

Hampshire 1.3%.<sup>9</sup>

Setting the judiciary's budget against its case load illustrates the funding gap even more starkly. In 2006, the Vermont judiciary was budgeted approximately \$30,852,800, and had 204,264 new matters filed in its courts – \$151 per case filed. During that same period, the Rhode Island judiciary was allocated \$1,014 per case filed,<sup>10</sup> Connecticut \$680, Massachusetts \$371, New Hampshire \$249, and Maine \$196.

Notwithstanding this wide funding gap, Vermonters come into contact with their court system more frequently than do residents in neighboring states. In 2006, Vermont had approximately 32,905 new cases filed (in all courts) for every 100,000 residents.<sup>11</sup> In the same period, Massachusetts had 21,759 cases filed per 100,000 residents, Maine approximately 20,000, New Hampshire 19,563, Connecticut 17,842, and Rhode Island 10,912. Moreover, Vermonters rely upon the court system for resolution of their most sensitive and complicated personal problems to a greater degree than other New Englanders. In 2006, Vermont courts handled approximately 3,357 new domestic relations cases per 100,000 residents, a rate double the median national rate of 1,594 cases per 100,000.<sup>12</sup>

These figures suggest that the Vermont courts have made the best of a bad budget for some time. The ACLU of Vermont and its members are concerned that any measure that cuts the judiciary's budget further will result in the public effectively losing access to the courts. The availability of courts to provide a fair means of trying criminal defendants, to resolve private disputes, and to act as a check upon overreaching of the other two branches of government are bedrock principles of our republic. Closing courts or suspending trials sends an unfortunate message that justice is a matter of grace that can be denied whenever budgets get tight. Such drastic actions should be as unthinkable as shuttering all executive branch agencies or suspending the legislative session. We should learn from the example of our neighbor, New Hampshire, and avoid such an occurrence at all costs.<sup>13</sup>

cc: Hon. Paul Reiber, Chief Justice of Vermont

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The 1.5% figure excludes the .4% of expenditures included in the Maine judiciary's budget allocation for indigent defense.

8 See State of New York, Report of the Chief Administrator of the Courts for the Calendar Year January 1, 2006 - December 31, 2006 23 (2006), <http://www.courts.state.ny.us/reports/annual/pdfs/2006annualreport.pdf>; State of New York, 2006-2007 Enacted Budget Report 2 (2006),

[http://www.budget.state.ny.us/pubs/archive/fy0607archive/enacted/2006-07\\_Enacted\\_Budget.pdf](http://www.budget.state.ny.us/pubs/archive/fy0607archive/enacted/2006-07_Enacted_Budget.pdf) (judiciary allocated \$1.63b of \$112.5b total budget).

9 State of New Hampshire Judicial Branch, Biennial Report 2005-2006 (2006), [http://www.courts.state.nh.us/press/report06\\_web.pdf](http://www.courts.state.nh.us/press/report06_web.pdf).

10 The Rhode Island courts spent approximately \$1.5m on capital improvements in fiscal year 2006. Excluding that \$1.5m, the court system was allocated \$1001 per incoming case. State of Rhode Island, *supra* note 6, at A111.

11 Nat'l Center for State Courts, *Examining the Work of State Courts* tbl.2 (2008), [http://www.ncsconline.org/D\\_Research/csp/2007\\_files/Examining%20Final%20-%202007%20-%201%20-%20Whole%20Doc.pdf](http://www.ncsconline.org/D_Research/csp/2007_files/Examining%20Final%20-%202007%20-%201%20-%20Whole%20Doc.pdf).

12 *Id.* at 32.

13 See Bob Drogin, *Trials Halted to Save Money*, L.A. Times, Dec. 22, 2008 at A-1 (describing the partially-shuttered New Hampshire courts as having "become a poster child for the problem" of chronic judicial underfunding, and quoting Rockingham County prosecutor James Reams deeming the trial moratorium as "bring[ing] our system almost to a screeching halt . . . it's a monumental waste of time").