



FOCUS: WHAT'S A CIVIL LIBERTIES ISSUE?

The work of the American Civil Liberties Union focuses on protecting civil liberties. It's a narrow focus.

Many people mistake "civil liberties" for other rights. It's not enough to say "my rights have been violated" to make a civil liberties

claim. Many rights are based on laws passed by legislatures and Congress. Other rights may be based on ethical or moral principles. Civil liberties, however, are rights that come from the U.S. or a state constitution.

THE RANGE OF CIVIL LIBERTIES

Our civil liberties include rights such as the right of free speech, of trial by jury, and of freedom from unreasonable searches. The Declaration of Independence states that we are born with these rights ("endowed by our Creator"); they are not "given" to us by government.

The Bill of Rights affirms that government will not violate our rights. The list of rights in the Bill of Rights is not meant to be inclusive of all of our rights. Instead, government may not limit or restrict any right — mentioned in the Constitution or not — unless it has been given authority to do so.

Courts interpret whether the government has been given the authority to limit or restrict rights. That's why conflicts over rights are usually settled through litigation.



The Constitu-

tion only protects us from violations by the government. ("The government" includes local, county, state, and federal governments, and all entities of government, including institutions such as schools and prisons. It does not usually include organizations that simply accept government funds.) The Constitution does not protect us from violations by private companies or organizations.

There is an important exception to the rule that the Constitution doesn't protect us from actions by private entities, however. The exception is what's called "public accommodation" protections. These protections cover actions by government *and* private entities. These protections are based on the "equal treatment" provisions in our Constitution (principally the 14th Amendment). This prevents a private entity that accommodates the public from discriminating against customers, clients, or employees on the basis of race, religion, ethnic background, gender, disability, and other so-called "protected" categories.

CIVIL LIBERTIES AND CIVIL RIGHTS

The term "civil rights" has come to be applied to those rights connected with equal treatment — the right to be treated like everyone else regardless of the factors that make up "protected" classes (race, religion, ethnic background, gender, disability, and others).

"Civil liberties" are a broader category of rights that includes civil rights as well as other basic freedoms — freedom of speech, freedom from unreasonable searches, and the right to a fair trial, for example.

Many states, including Vermont, have created special agencies to enforce civil rights laws. Such agencies accept complaints from individuals who feel they have been discriminated against because of their race, religion, gender, or other "protected" status.

Vermont has such an agency — the Vermont Human Rights Commission. While the ACLU takes on civil rights cases, we also refer Vermonters to the HRC since it has special investigatory powers that the ACLU, as a private organization, does not have.



Protecting Our Rights

The most frequent question we get at the ACLU-VT is, "They can't do that, can they?"

The short answer is that if "they" (usually the government) *have* done it, then they can.

But the important follow-up question is whether, under the Constitution, "they" can get away with it.

This is where individual citizens come in. Ordinary people must be willing to stand up for their rights.

A lawsuit to force government to do what the Constitution requires needs a plaintiff who feels her rights have been violated and doesn't want government to get away with breaking the Constitution's guarantees.

FIGHTING FOR CIVIL LIBERTIES IN COURT

The ACLU-VT's first criterion for taking on a case is that it must involve a civil liberties issue. But we don't take all civil liberties cases. That's because another important criterion is that there be a reasonable chance of winning in court if the case goes to litigation.

Civil liberties are strengthened when court challenges bring new, more expansive, definitions of our liberties. Civil liberties can be weakened, though, if a case is lost. A judge's decision sets a precedent that other judges will follow, unless overturned by an appellate court. Litigation must, therefore, be taken very seriously

The ACLU-VT's third criterion for taking a case is that, if won, others in similar situations will be helped. The facts, in



other words, must not be specific to one person and one situation but to a group of people who do, or may, face a similar injustice. The judge's decision in the previous case sets a precedent that can help others in later cases.

Equal Protection

The 14th Amendment was added to the Constitution after the Civil War. It guarantees that all citizens are treated fairly. States may not deny "to any person...the equal protection of the laws." Civil liberties under the Constitution apply to everyone, regardless of race, color, or creed.

Rights Need Constant Renewal

Robert Jackson, a former U.S. Supreme Court Justice, said that civil liberties are like electricity. They can't be easily stored. You have to keep generating them or, like an electric light, they go out. Jackson warned, "There is no such thing as an achieved liberty." That's why protecting civil liberties never ends.

WHAT'S NOT A CIVIL LIBERTIES ISSUE?

The ACLU-VT receives about 500 complaints and inquiries a year regarding what people believe to be violations of their rights.

Of that number, roughly half are not civil liberties issues. Instead, they are:

1. Family issues such as divorces and child custody cases. As long as court procedures designed to give everyone a fair hearing are followed, civil liberties issues are rarely at stake in family cases.

2. Housing problems, such as landlord actions to collect back rent, or evictions. The Legislature has established procedures covering many landlord-tenant issues. As long as those procedures are followed and "due process" has been afforded all parties, civil liberties usually aren't part of housing problems.

3. Property disputes. Ownership rights are regulated mainly by state law. The only constitutional right directly connected to property issues is the right to fair compensation if gov-

ernment takes your property by eminent domain — to build a highway, for example, or some other useful public purpose.

4. Employment issues. These generally don't raise constitutional issues unless you've been denied a fair hearing guaranteed by a contract or by general labor practices. Due process rights may then become involved. Discrimination based on protected status makes up some employment complaints; these are civil liberties issues because they involve the right to be treated equally regardless of race, religion, gender, and other protected classes.

5. Traffic tickets. Police must treat drivers equitably when enforcing traffic laws and must meet standards for "reasonable suspicion" when stopping you and "probable cause" when searching your car. Beyond these areas, however, enforcement of traffic laws usually doesn't involve civil liberties. The state has broad powers to regulate safety on the highways.

Got the card?



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For information about how to become a member of the ACLU (or to give a gift membership to a friend or make a contribution to the cause), contact us at info@aclvt.org, or give a call to the office at (802) 223-6304.



AMERICAN CIVIL LIBERTIES UNION OF VERMONT
137 ELM STREET, MONTPELIER, VT 05602