

# ACLU

## Vermont



## The Defender

### FALL 2022 NEWSLETTER



**D**EMOCRACY, IT HAS been said, is not a spectator sport. As we approach the midterm elections, it is all too clear just how fragile our democracy is, and how much its survival depends on our collective engagement at every level—local, state, and federal—in courts, statehouses, and communities.

The courts, alone, will not save us, and the U.S. Supreme Court drove that point home in its last term, the most disastrous for civil liberties and human rights in recent history.

In overturning *Roe v. Wade*, the Court abandoned five decades of legal precedent and, for the first time ever, took a constitutional right away from the American people. This shameful ruling is a direct attack on the rights, dignity, and bodily autonomy of women and all people who can become pregnant. It will endanger the health of millions, cost lives, and cause unspeakable suffering. **We must not accept any of this—and we won't** (see page 2).

In other major decisions—on the separation of church and state, gun control, indigenous justice, and climate change—the Court's extremist majority abandoned any pretext of political neutrality, inventing sweeping new legal doctrines out of whole cloth.

In addition to the devastating impact all of this will have on countless people's lives, it's striking how much damage the Court has done to its own legitimacy in such a short time.

**The ACLU, our supporters, and our allies know this is not a time to hold back.** While strategic litigation will always be one tool in our toolbox, as threats to our democracy mount, it's imperative that we involve more people in the political process now, in November, and beyond—by organizing, educating, protesting, engaging with elected leaders—and, as always, by voting.

Collectively, we can change the course of history, and that's exactly what the ACLU is built to do. **Thank you for all you do to make this essential work possible.**



James Duff Lyall  
Executive Director

# Vermont's Historic Opportunity to Defend Abortion Rights

**B**y overturning *Roe v. Wade*, the Supreme Court has set off a chain reaction of repression, with states banning abortion and criminalizing essential care throughout entire regions of the country.

With an estimated 36 million Americans losing their right to an abortion, **strong state-level protections are now more essential than ever before**, and the ACLU is advancing every available strategy to support those efforts nationwide.

In Vermont, we are well-positioned to defend reproductive freedom and send a strong message that Americans will not tolerate having their rights taken away. **That starts with the Reproductive Liberty Amendment (Article 22) this November.** After a four-year legislative process in which the ACLU and our partners were engaged every step of the way, this ballot measure is now in voters' hands.

If passed, Article 22 would explicitly enshrine abortion rights in the Vermont state constitution—protecting every person's freedom to make their own reproductive decisions, including whether and when to become pregnant, use temporary or permanent birth control, or seek abortion care—**giving Vermont the strongest reproductive healthcare protections in the country.**



▲ **Indi Schoenherr**, ACLU of Vermont Advocacy Fellow, speaks at the "Bans Off Our Bodies" rally in Montpelier in May 2022

Looking further ahead, we will do all we can to ensure that in-state providers are protected and that everyone in Vermont has access to reproductive healthcare, regardless of where they are from. In the meantime, we are focused on informing and educating voters about the significance of Article 22.

We know that the right to decide if and when to become a parent is central to an individual's dignity and well-being, and Vermonters this year have the opportunity to protect and affirm that fundamental right for ourselves, our neighbors, and future generations. We must take full advantage of that opportunity.



"I think what we're seeing right now is the Supreme Court is not reflecting the will of the majority of Americans. If this decision is being kicked back to the states, we need to use every tool we can to stand up as a majority of Americans and say, 'We are in favor of protecting reproductive rights.'"

**FALKO SCHILLING, ACLU OF VERMONT ADVOCACY DIRECTOR**, "THE ACTIVISTS GOING STATE BY STATE TO MAKE ABORTION RIGHTS CONSTITUTIONAL LAW," *VANITY FAIR*, JUNE 22





## HOLDING PROSECUTORS ACCOUNTABLE

Vermont's elected prosecutors, known as state's attorneys, have tremendous power in our communities—including the power to advance smart justice reforms, as opposed to fueling a system of mass incarceration.

State's attorneys are accountable to you, the voters, but much of what they do is hidden from public view. That's why, this election year, the ACLU of Vermont launched **Your Vote, Your Prosecutor** to inform voters about their state's attorney candidates ahead of election day.

As part of this effort, we sent surveys to all the candidates, asking their positions on key issues such as police abuse, the opioid crisis, and racial disparities in the criminal legal system. While several of them responded quickly, fully ten out of seventeen candidates refused to respond to any of our questions, underscoring the lack of transparency and accountability in many prosecutors' offices.

This November, Vermont voters will have a choice between forward-thinking, data-driven, effective reforms that reflect our values, and the harmful, counter-productive policies that have failed our communities for too long. Ask your candidates which approach they support. Then, vote.

Find out if your candidate responded, and how, at [acluvt.org/states-attorneys](https://acluvt.org/states-attorneys).

## STATE'S ATTORNEYS & POLICE OVERSIGHT

Prosecutors are known for enforcing our criminal laws, but they also have an important role to play in holding police accountable and ensuring the fairness of our court system. Specifically, when they learn of police misconduct that undermines an officer's credibility—like bias, lying, or theft—prosecutors are constitutionally obligated to inform defense counsel by issuing a “Brady letter.”

Though considered a best practice, **there is currently no centralized mechanism for reporting or tracking Brady letters in Vermont**, and local practices vary widely. Generally, Vermont's prosecutors do little to investigate potential credibility problems, beyond relying on police to self-report, and do not share concerns with other jurisdictions.

Following a *VT Digger* investigation, we obtained an up-to-date inventory of Brady letters from Vermont's state's attorneys and created the state's first centralized database of Brady letters. With this information, Vermonters can better track problem cops and see whether local prosecutors are meeting their obligations with respect to police oversight.

Learn more at [acluvt.org/vermont-brady-letter-database](https://acluvt.org/vermont-brady-letter-database).

<input type="checkbox"/>	Letter Date	Officer	Agency	State's Attorney	County
1	1/13/2022	Darin Barber	Hardwick	Zaleski	Caledonia
2	12/3/2021	Darin Barber	Hardwick	Zaleski	Caledonia
3	10/4/2021	Lance Martel	Essex	George	Chittenden
4	9/8/2021	Sommers	Vermont State Police	Kennedy	Rutland
5	9/8/2021	Pfindel	Vermont State Police	Marthage	Bennington
6	9/8/2021	Witkowski	Vermont State Police	Marthage	Bennington
7	7/26/2021	Shaun Smith	Springfield	Goodenough	Windsor
8	4/29/2021	Brent Navari	Burlington	George	Chittenden
9	4/5/2021	Nicholas Cianci	Vermont State Police	Zaleski	Caledonia
10	3/12/2021	Logan Defelice	Springfield	Goodenough	Windsor
11	3/9/2021	Travis Trybulski	Williston	George	Chittenden
12	2/9/2021	Christopher Bohl	Bennington Sheriff	Marthage	Bennington

[VIEW THE DATABASE →](#)

UPCOMING

ACLU OF VERMONT  
**Annual Membership Meeting (virtual)**  
**Wednesday, November 16 at 5:30pm**  
 Stay tuned for details at [acluvt.org](https://acluvt.org)





# IN THE STATE HOUSE

**I**N 2022, THE ACLU of Vermont advocated on a wider range of civil liberties issues than ever before. With our allies, we helped introduce proactive legislation, tracked more than one hundred bills, and testified numerous times before House and Senate committees.

We are incredibly grateful for the many supporters who mobilized to make their voices heard and helped advance and defend the civil liberties of everyone who calls this state home.

## SMART JUSTICE

Good public policy requires good data. Without that information, we cannot address the extreme racial disparities that persist in Vermont's criminal legal system and achieve better outcomes for our communities. That's why creating a system to collect and analyze data has been a top ACLU priority for the past several years—and now we have it.

H.546 was signed into law in May, creating the Division of Racial Justice Statistics, which will facilitate the collection, analysis, and public distribution of comprehensive data from across Vermont's criminal legal system. This legislation is

the culmination of four years of advocacy by the ACLU, our allies, and supporters, and we join them in celebrating this important racial justice milestone in Vermont.

## POLICE ACCOUNTABILITY

Two years after nationwide protests against police brutality and systemic racism, Vermonters are still demanding more progress towards meaningful police accountability. Disappointingly, due to resistance by state law enforcement leaders, several police reform bills were gutted or defeated outright this year.

**Vermonters are still demanding more progress toward meaningful police accountability.**

S.254 would have eliminated qualified immunity for police, making it easier for victims of police misconduct to get justice in civil court—a proposal supported by three in four Vermonters. After a storm of misinformation from police leaders, however, legislators requested an independent legal



analysis of qualified immunity before taking any further action.

Other police reform bills met similar fates: concrete reforms watered down to studies for future consideration. Undeterred, we will be redoubling our efforts in 2023 to advance the bold and necessary police reforms that Vermonters overwhelmingly favor.

## IMMIGRATION

When immigration agents are allowed to conduct arrests in courthouses, our justice system cannot operate fairly and effectively. That's why we celebrated the passage of S.140, which prohibits immigration arrests in Vermont courthouses, creating a right of action for people who have had their rights violated and providing the opportunity for them to collect damages and attorneys' fees.

We were proud to support Migrant Justice and other partners in championing this important immigrants' rights legislation.

## DRUG POLICY AND HARM REDUCTION

As Vermont communities experience record overdose deaths, the cruelty of the failed war on drugs—and the need for better public health and harm reduction strategies—is all too apparent. While some limited drug policy reforms were advanced in 2022, legislators have yet to act on more effective solutions and Governor Scott has emerged as a major obstacle.

Notably, the governor vetoed H.505, a bill that would have helped to reform our drug laws and address racist disparities in sentencing, and H.728, a bill that would have required a study of overdose prevention sites and advanced more robust public health strategies to address substance use disorder.

We and our coalition partners will continue working to center harm reduction, public health, and antiracism in the drug policy debate, and we are not giving up. Our communities are suffering, and it is past time for policymakers to respond.

# HOW TO SUPPORT THE ACLU OF VERMONT

We are so grateful to you—our friends, donors, and supporters—who make this work possible at such a critical time.



Dr. William Boyd, Board President,  
ACLU of Vermont

## WHY I'M IN THIS FIGHT

When my father was head of the Georgia NAACP 75 years ago, he told me he was fighting for voting and other rights so I wouldn't have to. A generation later, while working at the ACLU of Florida, I told my kids I was continuing my dad's fight so their children might not have to.

Today I tell my grandkids—and anyone else who will listen—that every-one must fight to secure liberty and equality for all, through organizations like the ACLU that are always standing up for human rights, here in Vermont and nationwide. That imperative will outlive us all.

## TAKE ACTION

Please join us and make your gift today, so that together we can ensure a safe and equitable Vermont for generations to come.

**You may use the enclosed envelope or mail your gift to:**

**ACLU Foundation of Vermont  
PO Box 277  
Montpelier, VT 05601**

Or, make your gift online at  
**[aclvt.org/donate](https://aclvt.org/donate)**

To receive information on making a gift of stock, a tribute gift, or leaving a legacy in your will, visit [aclvt.org/give](https://aclvt.org/give) or call (802) 223-6304.

# LITIGATION UPDATES

## OPEN GOVERNMENT

Because we recognize that a truly participatory democracy requires government transparency and accountability, we work to ensure that state and local officials who represent the people of Vermont are held to the highest standards.

That's why we're heading back to the Vermont Supreme Court, this time to challenge the State's withholding of public records related to oversight of the EB-5 Foreign Immigrant Investor Program—the program that led to the largest financial fraud in Vermont history. We represent the Vermont Journalism Trust (VJT), which operates *VT Digger*, which requested the records pursuant to Vermont's Public Records Act.

After the trial court ordered the State to turn over certain records to VJT, the State has refused to tell us which records it is *not* providing, in violation of a clear statutory mandate. We are asking the Supreme Court to enforce the Public Records Act's requirement that, if a public body is going to withhold public records, it must at a minimum disclose what it is withholding and why.

This case is the latest in our ongoing efforts to ensure that public records are truly available to the public, and that our government officials are accountable to the people they serve.

**FOR MORE LITIGATION UPDATES, VISIT OUR WEBSITE AT [ACLUVT.ORG/CASES](https://acluvt.org/cases).**

## FOURTH AMENDMENT RIGHTS & BORDER PATROL ACCOUNTABILITY

In partnership with ACLU affiliates in New Hampshire and Maine, we are challenging the use of unconstitutional Border Patrol checkpoints on I-93 in Woodstock, New Hampshire and elsewhere in northern New England. During these checkpoints, Border Patrol has detained hundreds—if not thousands—of people lawfully traveling in northern New England without any suspicion that they have committed a crime.

Filed on behalf of ACLU clients Jesse Drewniak and Sebastian Fuentes, the lawsuit argues these checkpoints—conducted primarily for general crime control and drug



**Sebastian Fuentes, ACLU Client**

interdiction, which is unconstitutional—are beyond the scope of Border Patrol's more limited authority to detect border crossers.

Drewniak, a resident of Hudson, New Hampshire, was traveling home from a fly-fishing trip in the White Mountains when he was ensnared in an August 2017 checkpoint in Woodstock. Fuentes, a resident of Bretton Woods, New Hampshire, was first stopped at the Woodstock checkpoint in the Fall of 2017, and again in August 2018 and June 2019.

The federal court denied in part CBP's first motion to dismiss last spring, and another motion to dismiss is pending.

## *Brigham v. State*

### 25th anniversary of landmark win for education equity

In February 1997, in response to an ACLU lawsuit, Vermont's Supreme Court struck down the state's inequitable education funding system, establishing that all Vermont schoolchildren should be afforded equal educational opportunity—regardless of the property wealth of their town and its ability to generate revenue. This decision paved the way for Act 60, Vermont's current funding system, which operates on the principle of shared responsibility for educating our children.

Lead counsel and longtime ACLU member Bob Gensburg spent his life advocating for and defending civil liberties. Following *Brigham* until his death in 2017, Gensburg worked tirelessly to prevent actions that could undermine children's right to equal educational opportunity. As we continue fighting for education equity in Vermont schools, we celebrate *Brigham's* legacy and the dedicated social justice advocates who came before us.

# NEW STAFF

## JENNA BURKHARDT (SHE/HER)

*Senior Manager for People and Culture*



Jenna Burkhardt joined the ACLU of Vermont in June, after five years coordinating the human resources and operations functions at the Institute for Sustainable Communities (ISC), an international NGO working towards community-driven, equity-centered solutions addressing climate change and its disparate impacts. She previously served

in a variety of operational and programmatic support roles at the Committee on Temporary Shelter (COTS) in Burlington.

Jenna is looking forward to ensuring that ACLU staff have the tools, resources, and support they need to do transformational work.

## JESS VENABLE-NOVAK (THEY/THEM)

*Advocacy and Outreach Manager*



Jess Venable-Novak joined us in September after more than a decade of work in the LGBTQ+ movement, most notably as the statewide Director of Education at the Pride Center of Vermont. Jess brings with them years of experience at the intersection of advocacy, facilitation, and community building within the national non-profit sector and in state-level politics.

Jess is excited to serve Vermonters across the state by making space for them to discover the power of their own stories.

Meet the rest  
of the staff

[acluvt.org/about/staff](https://acluvt.org/about/staff)

# FAREWELL

## General Counsel Jay Diaz

left the ACLU of Vermont in August, after seven years with the organization. During that time, Jay argued and won two landmark Vermont Supreme Court cases limiting the reach of U.S. Border Patrol and expanding access to public records, respectively; fought back against the criminalization of poverty, including multiple legal settlements on behalf of low-income Burlington residents; and helped secure lifesaving medical care for incarcerated Vermonters denied Hepatitis C treatment, among other victories.

We are deeply grateful to Jay for his many contributions to advancing the civil liberties of everyone who calls Vermont home, and we wish him well in his next endeavors!



Shahinaz Geneid concluded a legal internship at the ACLU of Vermont in September. A dual degree student at Northeastern University, Shahinaz is completing a JD-PhD focusing on international human rights law and policy.



Thank you, Shahinaz, for all your great work!

JOIN US ON SEPTEMBER 18  
BURLINGTON PRIDE 2022







Vermont

**ACLU of Vermont**

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[www.acluvt.org](http://www.acluvt.org)



Vermont

## THE ACLU IS BUILT FOR THIS MOMENT.



Staff Retreat at Knoll Farm, Waitsfield, VT, August 2022

Together we face historic threats to our civil liberties, and the fate of our democracy hangs in the balance. When you give to the ACLU Foundation of Vermont, you are also supporting our nationwide network of ACLU affiliates, with skilled advocates on the ground in all fifty states, the District of Columbia, and Puerto Rico.

Your generosity makes a direct impact in our state—while also allowing the ACLU to defend our rights and liberties nationwide.

**Thank you for your support.**

[www.acluvt.org](http://www.acluvt.org)

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