

# Bennington Banner

## **Sears among sponsors of bill ending qualified immunity; Public Safety commissioner has 'grave concerns'**

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Where would Steffen Gillom, the head of the NAACP's Windham County chapter, turn for justice if one of the four motor vehicle stops he experienced the year he moved to Brattleboro — in his words, for “driving while Black” — had gone wrong?

“Make no mistake, I was profiled,” he said Wednesday. “It has stayed with me.”

The remedy, according to Gillom, Rutland Area NAACP director Mia Schultz, and a coalition of advocates led by the American Civil Liberties Union of Vermont, is ending qualified immunity for law enforcement officers. That would allow people who have had their civil rights violated to get justice more easily in civil court, they said.

A bill proposed by four state senators including Bennington Sen. Richard Sears, and supported by a coalition of civil rights advocates, proposes to make that change. It's based on a Colorado law, and introduces the possibility of officers facing personal financial liability if found responsible in such cases.

Qualified immunity for government officials shields government employees from accountability when they are guilty of constitutional misconduct. It's not a law, but a court precedent set in a U.S. Supreme Court case, and Vermont's courts adopted the precedent.

It's been widely criticized as a legal loophole that has allowed police to avoid prosecution for violating constitutional rights and prevent people – especially Black, indigenous and people of color — from obtaining justice.

It's not every day the founders of Ben and Jerry's ice cream and the libertarian Cato Institute agree on much. But Ben Cohen, Jerry Greenfield and Jay Schweikert, a research fellow for the Cato Institute, all called for the end of qualified immunity, citing numerous cases in which justice for civil rights violations was prevented by the legal precedent.

“I support police officers. They do important hard work in our communities,” Sears said in introducing the proposal in a news conference called by the ACLU of Vermont. “My focus here is not tearing down police officers, but ensuring that people harmed by rare but unacceptable bad faith policing have access to justice.”

“I believe firmly that good law enforcement depends on community trust,” Sears added. “This reform is an important step to rebuilding that trust.”

But Vermont Public Safety Commissioner Michael Schirling said he's “gravely concerned” by the proposal and its potential impact on recruiting and retaining police officers. “We cannot continue doing enforcement without qualified immunity,” he said, adding that people who have been wronged can sue under current law.

Schirling said police, while doing a demanding, dangerous job, “continue to have diminishing support from some elected officials,” as well as attacks from the community. This would add to all these things putting their financial stability on the line.

“I have yet to run into anyone confident about doing their job without qualified immunity,” Schirling said. “It’s a fundamental piece of what’s necessary in order to serve in government.”

The proposal, which Sears said is based on a Colorado law, says police officers shall be indemnified “except that if the law enforcement agency determines that the law enforcement officer did not act in good faith and under reasonable belief that the action was lawful, then the law enforcement officer is personally liable and shall not be indemnified by the law enforcement agency for five percent of the judgment or settlement or \$25,000, whichever is less.”

Sears, who chairs the Senate Judiciary Committee, and fellow Senators Becca Balint, Philip Baruth and Kesha Ram Hinsdale are sponsoring the bill. It’s expected to be introduced when the Senate reconvenes in January.

Schirling indicated that a planned meeting with Sears to discuss the proposal, set for Friday, is now likely off.

“No one has engaged us regarding action on these questions,” he said. “There’s certainly much discussion to have at this stage, but there isn’t much point in trying to have a pre-emptive conversation.

“Unfortunately the introduction of this bill is going to do substantial damage to our already tenuous recruiting and retention,” he added.

State Police currently have 50 vacancies, Schirling said. That's 15 percent of VSP's authorized force of 333 troopers.

But advocates said a mechanism for punishing rogue officers who don't follow the law will improve trust in police departments and result in better cops on the beat.

“Qualified immunity doesn't serve anybody — it just keeps bad cops entrenched, leading to widespread community distrust, which makes it more difficult for the police to do our jobs,” Lt. Diane Goldstein of the Law Enforcement Action Partnership said. “If we are going to build a better, more equitable system for all, we need to rebuild relationships with the communities that we serve in order to effectively serve them. That all begins with qualified immunity reform.”

Gillom said about three years ago, when he first moved to Brattleboro, he was stopped four times in his neighborhood, near the intersection of Clark and Canal streets.

“Most of those stops were ‘Oh, we noticed your taillight was out or blinking,’” Gillom recalled, and he sought repairs. “But on the third and fourth time I started to think something is wrong here ... I think there were assumptions made — why I was in the neighborhood, what I was driving.”

“What if I would have been frustrated that night ... and I talked back a little too much and this person had a bad attitude or was having a bad night as well?” Gillom said. “Those are things I think about .. It doesn't matter who I am, what I've done, where I come from, how I talk, how I look. None of that mattered.”

For generations, Schultz said, parents in BIPOC communities have had “the talk” with their children about how to behave if stopped by a police officer. “This talk is commonplace in Black

and brown communities because we know the institution of policing does not protect our very lives.”

Ending qualified immunity, she said, will “send a message that accountability exists. That there will be from here on out consequences for actions, and this is long overdue.”