



CENTER *for* HEALTH LAW
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Federal Court Certifies Class of Vermont Inmates Challenging Unlawful Restrictions to Hepatitis C Treatment

Vermont correctional facilities deny hundreds of inmates access to life-saving treatment without medical justification; Coronavirus underscores danger of withholding access to critical care.

(CAMBRIDGE, MA – April 2, 2020) – The coronavirus pandemic underscores our government’s fundamental responsibility to preserve public health by containing the spread of communicable viral infections. State prisons, where conditions are a breeding ground for a virus, are currently at the center of such efforts.

While direct antiviral treatment for COVID-19 remains unavailable, we do have a cure for another infectious viral disease that affects hundreds of Vermont prisoners and thousands of Vermonters in the community—hepatitis C (HCV). Yet, Vermont’s prison officials continue to deny this cure to hundreds of incarcerated Vermonters diagnosed with HCV.

On Monday, Judge William K. Sessions of the United States District Court for the District of Vermont in Burlington handed these inmates a victory when he certified a class of Vermont inmates challenging these practices. In a 23-page opinion, Judge Sessions denied the State’s Motion to Dismiss the lawsuit and approved the request of two individuals to stand-in for all other inmates being denied critically necessary medical treatment for HCV. The lawsuit, entitled *West v. Smith*, will now enter into the discovery phase of litigation.

The Center for Health Law and Policy Innovation (CHLPI) and the ACLU of Vermont, with cooperating counsel James Valente of Costello Valente & Gentry, P.C. filed the class action lawsuit in May 2019 on behalf of Richard West, a former Vermont inmate, and Joseph Bruyette, a current Vermont inmate.

The [Complaint](#) describes the policy and practice of the Agency of Human Services (AHS), Department of Corrections (DOC), and Centurion of Vermont to delay and deny antiviral treatment to prisoners diagnosed with chronic HCV. The Plaintiffs argue that DOC's refusal to provide treatment is unconstitutional because it violates the Eighth Amendment's prohibition on cruel and unusual punishment. The recent decision by the federal district court in Burlington will allow West and Bruyette to represent all inmates who have been or will be denied effective, efficient, and medically appropriate HCV treatment.

"Certification of a class is an extraordinarily important step forward. Our lawsuit asks the court to require that Vermont recognize the basic health care rights of all individuals in DOC custody. DOC is obligated to provide access to medically necessary care. With a class certification in hand, Vermont can no longer characterize our lawsuit or the many grievances of its prisoners as isolated individual complaints, but instead must explain Vermont DOC's system-wide failures to the public and the court," said Jay Diaz, Senior Staff Attorney at the American Civil Liberties Union of Vermont.

"We look forward to presenting evidence that Vermont Corrections has a widespread practice of delaying and denying treatment for Hepatitis C while individuals are in its custody. If the cure for any other communicable viral infection – like coronavirus or HIV -- was to be discovered, we would not tolerate withholding or delaying treatment from our prison population while officials stood by and watched. There would be no acceptance for the official line of: 'We need to wait until you get really sick before we treat you.' But that's what inmates in Vermont with Hepatitis C are being told. It's unconscionable," said Kevin Costello, Director of Litigation at the Center for Health Law and Policy Innovation at Harvard Law School.

"HCV is curable and preventable, and no one deserves to be denied effective treatment. If we are going to stop the spread of HCV infection in Vermont and across the United States, it is critical that we expand access to DAA treatment to all who need it. Class certification should force a long overdue public reckoning with the fact that Vermont officials have needlessly endangered people's lives and allowed a curable disease to spread," said Lia Ernst, Senior Staff Attorney at the American Civil Liberties Union of Vermont.

HCV is a progressive infectious disease that if left untreated is likely to cause a variety of medical symptoms, including hypertension, cardiovascular disorders, permanent liver damage, and in some cases, cancer and death. More than five years ago, the FDA approved breakthrough medication with few side effects that effectively cures the disease. With high initial prices for DAA drugs, several correctional health facilities created unfair systems to reduce their costs, including by limiting access to DAA therapies based on disease severity (as measured by liver damage), and based on periods of sobriety from drugs and/or alcohol before treatment, among other things.

Advocates in Vermont have long sought to end correctional facilities' unfair restrictions to HCV treatment, a practice that prolongs suffering and increases individuals' risk of long-term, poor health outcomes. The danger, however, is further underscored by the current

Coronavirus pandemic, which poses a higher risk of life-threatening symptoms for those with pre-existing conditions.

The opinion and order to certify the class is here: <https://www.chlpi.org/wp-content/uploads/2013/12/VT.pdf>

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[About the Center for Health Law and Policy Innovation of Harvard Law School \(CHLPI\)](#)

The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses and disabilities. CHLPI works with consumers, advocates, community-based organizations, health and social services professionals, government officials, and others to expand access to high-quality health care; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective health care systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health and public health law and policy. For more information, visit <http://www.chlpi.org>.

[About the American Civil Liberties Union of Vermont](#)

The American Civil Liberties Union of Vermont is dedicated to advancing the civil rights and civil liberties of all Vermonters. Since its founding in 1967, the ACLU of Vermont has been the state's premier guardian of liberty, working in the courts, the legislature, and in communities to preserve the individual rights and liberties guaranteed by our Constitution and the Bill of Rights.

Our efforts are focused on broad range of issues impacting Vermonters' constitutional rights, including freedom of speech, criminal justice reform, racial justice, women's rights, LGBT rights, disability rights, voting rights, prisoners' rights, immigrants' rights, religious liberty, privacy, and more. We strive to ensure that the most vulnerable communities and those who have historically been denied their rights are afforded the same protections as everyone else, including children, prisoners, people with disabilities, immigrants, homeless individuals, and low-income communities.

In Vermont and across the country, the ACLU fights for the principle that every individual's rights must be protected equally under the law.