

## Written Testimony regarding Proposal 4

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I am an attorney admitted to the Connecticut Bar in good standing since 1989. I am not admitted in Vermont.

I lack confidence that very many legislators will even read, let alone heed, this legal opinion as to why [Proposal 4](#) is a complete waste of taxpayer resources, and so I am writing this opinion directly to Vermonters. This Proposal, which purports to expand existing constitutional rights to a list of novel protected classes, is not about enhancing the Rule of Law, but dismantling it.

I am not engaging in an ideological social justice battle here – our progressive legislators are. Using the Legislature and our State Constitution as political footballs has become common sport for the Progressives – such antics don't actually DO anything, as Vermonters see. But it does do one thing very clearly – it reveals that those making our laws don't understand, or else seek to undermine, the integrity of established laws. This has gone beyond virtue-signalling: it is a breach of fiduciary duty and public trust.

Vermont seeks to increase property taxes 20 percent, as well as income taxes, and Progs want to institute a new tax on unrealized gains. These are children playing clubhouse, but they don't know the rules.

While Vermont's economy plummets, and the standard of living drops while its retirees become homeless, "Progressives" are out to save Vermont from evil "rights violations." But here's the rub – no advocate for Proposal 4 has actually furthered a need for the legislative change aside from a feel-good virtue-signal. Not *one example* of what this law change would do to improve a single person's life or counter the dreaded "white supremacy" used to legitimize it has been offered. Proposal 4, then, is simply a platitude. (Similarly, Proposal 2, which pretended to end indentured servitude in Vermont, had no real purpose – no one in Vermont is being enslaved, are they?).

But hidden within this farcical game of Nero fiddling while Vermontistan burns, are hints of the real threat to Vermonters from the very people weaponizing our constitution for their personal protection. Jay Greene, a transgender carpetbagger who recently moved here to get paid to condemn Vermonters for not being sufficiently woke, gave this very revealing [testimony](#):

Greene stated (@59:45): “Repairing historical harm sometimes requires equitable treatment, not equal treatment, and equity sometimes means targeting programs to populations based on need rather than absolute equal treatment,” that religion is protected under the First Amendment of the United States Constitution, and according to his personal opinion, not necessarily the opinion of the Vermont Human Rights Commission, “I have concerns with some people using ‘freedom of religion’ as an excuse to deny the human rights of people like myself, transgender people and other people of the protected classes that are listed in Proposal 4.”

So Proposal 4 is being enacted because newly-arrived Jay Greene “has concerns” about people using “freedom of religion” as “an excuse to deny the human rights of people like myself, transgender people and other people of the protected classes that are listed in Proposal 4.” I am not aware that a single legislator followed up on this to ask *what* that hinted evil consists of – what is it about a person’s faith that “deprives another of human rights”? The hazy allegation was made, but not even a hypothetical example was employed. Is that because Lyons, Greene and the others know exactly who it is they are out to protect, and who they seek to attack, and that they HAVE NO evidence or foundation to offer for this initiative?

Reverend Mark Hughes, Executive Director of Vermont Racial Justice Alliance, offered a similar clarity @47:30: “We need to double-down to include the protection of every vulnerable category – Mr. Chair – respectfully, that’s everybody that’s not a white cis man.” This is a patently, overtly racist statement, but race-hustler Hughes has not even offered a single hypothetical instance of why this new legislation is necessary.

Creating separate classes of people for government benefits, treatment, or protection is facially unconstitutional. It violates, for instance, the Equal Protection Clause. If I allege Jay Greene is a woman (because she is biologically female, feigning to be male), have I “denied human rights”, or do I have a human right to my own opinion? Does the scriptural statement “He made them male and female” become hate speech under Proposal 4? Funny, the Vermont legislature seems unable to even *discuss* the most obvious questions raised by this bill – is that intentional, or just incompetent?

Jay is an advocate but lacks a law degree. Blatant prejudicial statements on the legislative record only substantiate my claim that this Proposal is unconstitutional on its face, and also unconstitutionally vague. Vermont’s Legislature solicited Professor Peter Teachout and the Office of Legislative Counsel to affirm the bill, but these witnesses have not raised any concerns that 1) there is no actual stated, factual purpose for this change – it won’t actually DO anything; 2) creating disparate treatment for people because of their gender delusions or sexual desires will violate existing federal laws.

Proposal 4 will thus accomplish nothing except expose the state to more lawsuits. Vermont's politically compromised Attorney General will spend Vermonters' money defending no matter how unconstitutional the law was *ab initio* – right from the beginning. As Senator Lyons testified ([@ 6:25](#)):

“This doesn't grant any additional rights to any group or individual. It simply allows for a contemporary look of who we are as a society, and guarantees the rights of those groups that have emerged over time and have demonstrated a need for equal treatment.”

Have any groups in Vermont demonstrated that they have not been treated equally, and thus that they need protection? This conclusion is repeatedly assumed but never established in even the most rudimentary way. If a Vermont baker refuses to bake a transgender cake, will existing law serve all equally? Why or why not? Vermonters are never told, because there is nothing to tell.

The proposal claims it grants *no new rights* but just issues a “reaffirmation,” we are told. So according to its own proponents, the law either does nothing or does something illegal (allocate wealth or privileges to certain classes). This platitudinal waste of taxpayer resources while Vermonters struggle is evidenced by Lyons' declaration of the purpose of her petty law (a product of this nouveau social justice attack on American liberties and constitutional foundations):

“It seems rational to change the constitution and put a baseline in place to demonstrate equal treatment. Article 7 does say equal treatment but it was written at a time when we didn't have some of the social groups in our country, or racial and ethnic discrimination we see at our time.

“We know how quickly the culture can change: 2016 – 2020 we saw a radical change in expressions of beliefs around individuals in our country and groups within the country.”

Here we go again. What is she talking about? What is our Progressive legislator saying when she talks of “2016-2020 we saw a radical change in expressions of belief....”? Those of us standing by ironclad constitutional precepts designed and interpreted to guarantee justice and *equality* are apparently being labeled here as the source of the need to undermine and weaken those protections. Again not a lawyer, Lyons is too ignorant of what leaves her mouth to see Marie Antoinette in the mirror. She and the progressives she serves are the Americans who have forced radical changes in expressions of beliefs” on the majority.

Where are the lawyers? You know – the real ones, who have litigated cases, not the bureaucrats who never have to defend their puffery. Legislative Counsel Eric Fitzpatrick comically claimed

“...the fact that it is in the Vermont Constitution makes this the final say as to how that language is interpreted, would be by the Vermont supreme court, the federal court I mean the United States Supreme Court don’t have any jurisdiction to interpret state constitutional law. So, I think that including language that expands upon, provides more detail on the protections of the Vermont constitution and therefore would be interpreted by the Vermont supreme court having the last word, by more aligned with what we want to see in Vermont as opposed to deferring to the federal courts of the united states constitution because those interpretations will depend on the makeup of the united states supreme court and the composition of the justices on that court. Put it in the Vermont constitution and you can rely on the fact that the last words of the state will be by the court in this state. (@ [14:08](#)).

This is an attorney paid a lot of money by Vermonters to advise the legislature “impartially” on Constitutional matters. Echoing Lyons, Fitzpatrick is clearly seeking to position the state to counter perceived intrusions of conservatives at the federal level. This is quite laughable from an attorney – giving a political opinion veiled as a legal one. But more, Vermonters do not need a law degree to witness how absurd this statement is. *OF COURSE* federal law trumps state laws that violate the federal Bill of Rights. Allocating state benefits or rights to people based on their sexual desires or delusions of gender identity runs afoul of federal constitutional protections that apply to all fifty states – it is called [federal preemption](#). Fitzpatrick talks as if Vermont can act with complete impunity. (Law Professor Peter Teachout does correctly state the law at p. 5 of his [testimony](#): “Since federal law is supreme, all such programs would be vulnerable to challenge under the federal Equal Protection Clause on grounds they constitute impermissible discrimination on the basis of race.”

Professor Teachout also claims that Vermont must change its laws to protect itself from a federal government overtaken by conservatives: “We live in a world where we can no longer count on the U.S. Supreme Court or the federal government to provide adequate protection against discrimination.” I’m very curious how such a claim can be credibly made – does Professor Teachout refer to [Roe v Wade](#), which Ruth Ginsberg saw as a horrible law? What on earth is he talking about?

This pattern of bypassing basic constitutional liberties of Vermonters on the taxpayer tab is getting old – and much too common. Current attacks on our Fish and Wildlife Department seek to undermine and bypass decades of excellent wildlife stewardship, initiated by extremist activists allowed too much power in Vermont. In 2022, Vermonters watched the liberal dog-and-pony show about amending the state constitution to “protect women’s rights,” which were already fully protected legally. The true purpose of that Alinskian subterfuge was always to advance a sanctuary state status for transgender children to flock to Vermont and hide from their parents to get life-destroying mutilations and drugs at taxpayer expense. Using the public body to further extremist political initiatives was done under the ruse of women’s rights. Vermonters will see how challenges to that legal sleight of hand pan out. In the interim, Proposal 4 seeks to add another scandalously idiotic amendment while the economy tanks.

Progressive legislators have not yet figured out that if they pass unenforceable, unconstitutional laws over and over, citizens will one day just ignore their “Ginny Cried Wolf again” histrionics. A legislature that exceeds its authority loses all authority. But more dangerously, since the Constitution apparently has no hold on our legislators, why on earth would any American follow laws made by criminals? Many of the progressives in this legislature are a disgrace to the Rule of Law, have no regard for the Constitution or established precedent (and actually regard our state and federal Constitutions as white supremacist and seek to undermine both), and display contempt for many of the Vermonters they were elected to serve. This is both malfeasance *and* nonfeasance, on full naked emperor display.

The further Vermonters look, the more they will see a lack of substance. In one statement, non-attorney Jay Greene [claims](#):

“Our office supports Proposal 4 because it creates an explicit commitment in the state constitution to the work of dismantling systemic racism,” said Greene who urged legislators to consider protections “based on equitable treatment and not just equal treatment.”

Greene shared an example of a program giving free bicycles to everyone who shows up. But if it only offers adult-sized, foot-powered bicycles, it leaves out, and consequently discriminates against, children and wheelchair users. “So equity is when you give people (the kind of) bicycles they need,” Greene said, noting that this may cost more or take more effort.

The question for the legislature is: is there a factual finding of “systemic racism”? That bogeyman is tossed about constantly but has zero teeth – it is just assumed and never proven. The visible problem that is apparently invisible to social justice ideologues is that the Constitution already guarantees EQUALITY and that most initiatives to reallocate wealth or rights based on “equity” by definition are *unequal*; unjust; and unconstitutional. It is telling that the absurd example of children’s bicycles is used: no real-life example – or even hypothetical – could be proffered.

And that’s what I want Vermonters to see and learn through this farcical charade: what the Constitution says, and how Ginny’s dreams and Jay’s absurdities seek to dismantle it. The evidence is here, jurisprudentially: to be constitutional, every law must at least serve a legitimate government purpose. The advocates for this bill, and the shills recruited to endorse it, cannot collectively provide a single factual justification for the bill, while explicitly proposing it would be used to transfer benefits to “protected” classes. This is just an ideological proclamation with nothing but a symbolic purpose – abusing legal process, the laws, and taxpayer funds for a personal moral display.

I do not oppose fairness, or advocate for discrimination against any group. However, Vermont’s progressive uni-party is already doing so – against the people of faith deliberately omitted from the language of Proposal 4. How about the persecution of a Christian school for forfeiting a basketball game due to a male “identifying” as a girl? How about the Randolph girls being sexually ogled by a trans-boy in their locker room? Vermont has already demonstrated an inability to equitably balance competing beliefs – now it reveals its plans to tighten the noose against people of faith, whom it has already failed completely.

Vermonters can see the marginalization in their midst, by emperors with no clothes, no facts, and no law. This is why I don’t bother writing to a deaf, destructive Progressive legislature determined to undermine and dismantle our laws and economy but directly to voters.

Vermonters, you are being governed by law-breaking ideologues. Proposition 4 is a political stunt with no substantive purpose, which may also run afoul of federal law. Get ready for world depression and local food shortages: your Legislature is out to lunch and will only pour gas on those fires.

