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Vermont Senate Committee on Judiciary

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VFA is a parental rights and minor protections advocacy group

Proposition 4 ‘Declaration of rights: government for the people; equality of rights’

Proposition 4 Summary of Constitutional Violations:

- Violates Vermont State and U.S. Constitutions
- Creates a hierarchy of rights that oppresses the rights of specific religious groups
- Creates an unconstitutional mandate through which oppressive laws could be passed that would marginalize religious rights, along with providing the framework for frivolous lawsuits
- State-sanctioned ‘marginalized’ groups will be the recipients of benefits and programs not afforded to all persons under the proposed amended language of Article 7, under Proposition 4, Purpose, Section 1(b)
- Intends to ‘strengthen protections’ for State-sanctioned protected classes in Vermont State courts above Federal Law and the SCOTUS, which is not possible under the Supremacy clause Article VI, paragraph 2, of the U.S. Constitution.

Proposition 4, Section 1 PURPOSE

- Does not appear on the ballot placed before the voters
- Was not covered in the walk-through: it is necessary to review and receive testimony on the Purpose Section before the Senate Judiciary Committee moves to mark-up and vote
- Is unconstitutional: violates the spirit and intent of the law under both Articles 1 and 7 (Common Benefits), Chapter 1 the Vermont Constitution

Proposition 4, Section 1 PURPOSE does not appear on the ballot before the voters.

A publication by Peter R. Teachout, *Trustees and Servants: Government Accountability in Early Vermont*, February 02, 2012, lays out accountability of our legislators under Article 6 of our State Constitution.

Article 6, [Officers servants of the people] *That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.*

Teachout explains in <https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/teachout.pdf>

P 3/49, “. . . public officials are regarded not as rulers but as the “trustees and servants” of the people, and hence should be “accountable” to the people “at all times” for their decisions and actions.”

P 46/49, “. . . it seems fairly clear that the framers of the State’s first constitution were genuinely committed to the principles of democratic accountability . . . They did so by requiring that the doors of the Assembly be kept open, by setting up a procedure for printing a roll call vote on particular measures, **by establishing a cooling off period for legislation during which acts under consideration would be disseminated to the people . . .**”

How do you intend to educate the public on the Purpose and intent to roll out benefits and programs for State-sanctioned ‘marginalized’ groups at taxpayer expense under Proposition 4?

Committee did not review Purpose Section of Proposition 4

Legislative Counsel did not provide walk-through of the relevant Purpose section nor receive testimony.

There is problematic language in the Purpose Section 1(a), *“This amendment would expand upon the principles of equality and liberty by ensuring that the*

government does not create or perpetuate the legal, social, or economic inferiority of any class of people.” **Proposition 4 intends to do exactly the opposite by elevating the status of State-sanctioned ‘marginalized’ groups over other groups.**

“This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by any other provision in the Vermont Constitution.” **This sentence does not appear in the amendment language itself; judges will not be rendering decisions based upon this alleged intent.**

*Section (b) Providing for equality of rights as a fundamental principle in the Constitution would serve as a foundation for protecting the rights and dignity of historically marginalized populations and **addressing existing inequalities.** This amendment would reassert the broad principles of personal liberty and equality reflected in the Constitution of the State of Vermont with authoritative force, longevity, and symbolic importance.*

To the contrary, the intention of Proposition 4 violates the spirit of the law: the broad principles of personal liberty and equality under Article 1, Chapter 1

Article 1. [All persons born free; their natural rights; slavery and indentured servitude prohibited]

That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore, slavery and indentured servitude in any form are prohibited.

“Unalienable” is defined as “impossible to take away or give up”

Citizen’s rights to “enjoy”, “acquire”, and “pursue”, “possess”, and “obtain”, are all active verbs, with the expectation that individuals actively pursue prosperity through effort and work, not through State-sanctioned programs and benefits.

Proposition 4 intends to create exclusive and separate emoluments and privileges from the community, which is in direct opposition of the intent of the Common Benefits clause under Article 7, Chapter 1, as understood in *Baker v. The State of Vermont*, Section II, C. Historical Context:

This is the same quote that Professor Teachout cited, except in full context by including the final sentence in the paragraph:

The historical origins of the Vermont Constitution thus reveal that the framers, although enlightened for their day, were not principally concerned with civil rights for African-Americans and other minorities, but with equal access to public benefits and protections for the community as a whole. The concept of equality at the core of the Common Benefits Clause was not the eradication of racial or class distinctions, but rather the elimination of artificial governmental preferments and advantages. The Vermont Constitution would ensure that the law uniformly afforded every Vermonter its benefit, protection, and security so that social and political preeminence would reflect differences of capacity, disposition, and virtue, rather than governmental favor and privilege.(FN9)

source: <https://law.justia.com/cases/vermont/supreme-court/1999/98-032op.html>

Proposition 4 intents to create privileged cliques based on race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, and national origin.

“National Origin” is not defined: Will this term give the legislature license to create a law that would allow for non-citizen voting under Proposition 4?

Proposition 4 violates the following articles under Chapter 1 of the Constitution of the State of Vermont:

Article 1 [All persons are born free, natural rights, slavery prohibited]

Article 3 [Freedom in religion; right and duty of religious worship]

Article 13 [Freedom of Speech and of the press]

Article 18 [Regard to fundamental principles and virtues necessary to preserve liberty]

That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought, therefore to pay particular attention to these points, in the choice of officers and representatives, and have a right, in a legal way, to exact a due and constant regard to them, from their legislators and magistrates, in making and executing such laws as are necessary for the good government of the State.

Proposition 4 Creates a hierarchy of rights: oppresses religion

Religion is intentionally excluded. It was repeatedly claimed during the Committee meeting on January 30th to be “already covered” under Article 3, Chapter 1 of the Vermont State Constitution, yet the language in Article 7 would be amended in a way that would create a hierarchy of rights, interpreted under strict scrutiny by Vermont State courts.

Specifically, Prop 4 would oppress the rights of persons and groups practicing Judaism, Christianity according to the Gospel of Jesus Christ, and Islam to live, speak, and act according to their beliefs without the threat of a legal suit against them if their beliefs, statements, and actions are perceived by a member of a State-sanctioned ‘marginalized’ protected class to violate their rights, including the state-protected person’s right to “dignity”, which is undefined in the Purpose section of Proposition 4, and is also undefined in Professor Teachout’s recommended stand-alone amendment.

Persons practicing Judaism, Christianity, and Islam would be marginalized by intentionally excluding “religion” as a protected class – despite the fact that Jews and Christians are the two most historically marginalized groups.

Jay Greene, Racial Equity Policy & Research Analyst for the Office of Racial Equity, pointed out that some individuals identify under several categories of protected classes, and therefore qualify for more protections and benefits under the proposed amendment. Greene stated, “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.” This is a clear statement that Jay Greene thinks his rights supersede another person’s right to live out their faith and is a foreshadowing of the State laws and policies we can expect if Proposition 4 were to pass.

Proposition 4 would burden taxpayers with the costs of administrating and providing benefits and programs afforded only to State-sanctioned protected groups.

Peter Teachout, Professor at Vermont Law School, noted the “finite list” of protected classes and recommended a provision for open-ended application to include emerging ‘marginalized’ groups. Such a provision would be a blank check for the State to enact programs at whim.

Teachout recommended a stand-alone amendment instead of inserting language into Article 7, Chapter 1. He recommends:

*“Every person is entitled to be treated with equal respect and dignity under the law, therefore government, acting either alone or in conjunction with private actors, shall not deprive any person of life, liberty, or property without due process of law or deny any person the equal protection of the laws. **The legislature shall have the power to enforce the provisions of this article with appropriate legislation.**”*

“Respect” and “dignity” are subjective.

The last sentence blatantly provides power to the legislature to enact programs that benefit State-sanctioned, protected classes at taxpayer expense.

Senator Lyons, the lead sponsor of Proposition 4, stated during her testimony before Senate Judiciary on January 30 that she did not know of anyone who would not be a member of at least one of the listed groups; *race, ethnicity; sex; disability; sexual orientation; gender identity; gender expression; or national origin*. Is she saying that everyone in Vermont qualifies as a member of at least one ‘historically marginalized’ group, and is therefore eligible to receive benefits and access to programs as a member of a protected group? If yes, what does this expensive bureaucracy to collect taxes and then redistribute these tax revenues to every citizen in Vermont look like? How many employees does the State plan to employ to enact benefits and programs, and

will this be an ever-growing list under professor Teachout's recommendation to make provision for the addition of more State-sanctioned 'marginalized' groups?

Reverend Mark Hughes, Executive Director of Vermont Racial Justice Alliance, stated @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."

Proposition 4 violates the Constitution of the United States of America

- Eventually a case will arise in which Proposition 4 would be challenged as being unconstitutional, in part under Article VI, paragraph two, the [Supremacy Clause](#) of the U.S. Constitution, because Prop 4 Intends to 'strengthen protections' in Vermont State Courts over SCOTUS for State-marginalized groups in equal rights discrimination, which is not possible under the Supremacy clause Article VI, paragraph 2, of the U.S. Constitution. Prop 4 also violates Articles 1 and 14 of the U.S. Constitution. Vermont taxpayers would bear the burden of the State's defense in a challenge against a State Constitutional amendment that is clearly unconstitutional.

Senator Lyons stated in her introduction of Proposition 4 that "religion" is covered under the First amendment of the U.S. Constitution, yet the intent under Proposition 4 to 'strengthen protections' in State courts in favor of State-sanctioned 'marginalized' groups would create an additional financial burden for defendants in cases pursued by claimants who are afforded a protected status under State provisions.

Proposition 4 is unconstitutional in its intent to provide benefits and protections to State-sanctioned groups at the exclusion of other individuals and groups. It is bad governance. There is no amendment to the language that will make Proposition 4 more constitutional or less damaging.

Vermont Family Alliance strongly recommends the Senate Committee on Judiciary cease from working on Proposition 4, and vote "nay" on advancing Proposition 4 today.

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I, Renee McGuinness, claim immunity from accusation or prosecution, action or complaint under Articles 14 and 20, Chapter 1 of the Constitution of the State of Vermont:

Article 14 [Immunity for words spoken in legislative debate]

The freedom of deliberation, speech, and debate, in the Legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Article 20 [Right to assemble, instruct, and petition]

That the people have a right to assemble together to consult for their common good—to instruct their Representatives—and to apply to the Legislature for redress of grievances, by address, petition or remonstrance