

## **Overview of Proposal 2, As Proposed by the Senate**

### ***I. Constitutional Amendment Procedure***

See [Overview of Procedure to Amend the Vermont Constitution](#).

### ***II. Summary of Proposal 2***

Proposal 2 would amend the second half of Chapter I, Article 1 of the Vermont Constitution to clarify that slavery and indentured servitude in any form are prohibited. The second half of Art. 1 currently reads, “no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.”

Sec. 1 provides that this clarification is the Proposal’s purpose. Sec. 2 provides the actual text of the proposed amendment. This amendment would eliminate the above-quoted text and replace it with the statement, “slavery and indentured servitude in any form are prohibited.” Sec. 3 provides the standard effective date for a constitutional proposal, which would be upon ratification by the voters at the 2022 General Election.

### ***III. Background re: Vt. Const. Ch. I, Art. 1***

#### ***A. Origin***

The language of Vt. Const. Ch. I, Art. 1 has remained relatively unchanged since it was added in the original [1777 Vt. Const. Ch. I, Art. 1](#). The first half of Art. 1 provides that people are “born equally free and independent” and have “certain natural, inherent,

and unalienable rights,” which are enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining happiness and safety.<sup>1</sup>

The second half of Art. 1 begins with “therefore,” which seems to indicate that the second half is a result of those rights. This part provides, “therefore no person born in this country, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person’s own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, costs, or the like.”

The original 1777 Vt. Const. has been described as being based largely on the 1776 Pennsylvania Constitution.<sup>2</sup> However, the 1776 Pennsylvania Constitution did not have the second part regarding restrictions on a person being a “servant, slave or apprentice”; that language was added by the Vermont framers.<sup>3</sup>

#### *B. Amendments to Ch. I, Art. 1*

Vt. Const. Ch. I, Art. 1 has only changed three times. See [History of Amendments to Vt. Const. Ch. I, Art. 1](#). To summarize:

- In the [1793 Vt. Const.](#), this Article was made into one sentence (the 1777 Vt. Const. provided the second half as its own sentence).
- 1924’s 34<sup>th</sup> article of amendment—which came shortly after the 1920 ratification of the 19<sup>th</sup> Am. to the U.S. Const., which gave women the right to vote—eliminated reference to the age at which females were protected under Art. 1.
- 1994’s SCOV gender inclusive revision substituted “persons” for “men” and male pronouns.

<sup>1</sup> On multiple occasions, the SCOV has indicated that these rights on their own are not self-executing, meaning they need further legislative action to become operative. See e.g. [Benning v. State](#), 161 Vt. 472, 476-478 (1992) (Vt. Const. Ch. I, Art. 1 is “a recitation of some of the natural rights of men before entering the social compact, . . . ‘[W]hen men enter into the social compact, they give up a part of their natural rights, and consent that they shall be so far restrained in the enjoyment of them by the laws of society, as is necessary and expedient for the general advantage of the public.’” (citing [Lincoln v. Smith](#), 27 Vt. 328, 339-340 (1855))).

<sup>2</sup> See [“Records of the Council of Censors of the State of Vermont,”](#) Introduction (pg. 14) and [Vt. Const., History of Adoption](#) from the 1917 General Laws (pg. 3).

<sup>3</sup> See [Vt. Const; History of Adoption; 1917 G.L.](#) (pg. 3, bottom right) (“In the Vermont declaration of rights articles 2, 12, and 19 were added, as was the second part of article 1, wherein slavery was prohibited.”).

#### *IV. 13<sup>th</sup> Am. to the U.S. Const.*

The 13<sup>th</sup> Am. to the U.S. Const. was ratified in 1865. The 13<sup>th</sup> Am. provides: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

In the 1988 case U.S. v. Kozminski, the U.S. S. Ct. stated that “[o]ur precedents reveal that not all situations in which labor is compelled by physical coercion or force of law violate the Thirteenth Amendment. By its terms the Amendment excludes involuntary servitude imposed as a legal punishment for a crime. Similarly, the Court has recognized that the prohibition against involuntary servitude does not prevent the State or Federal governments from compelling their citizens, by threat of criminal sanction, to perform certain civic duties [citing previous caselaw upholding jury service, military service, and roadwork].<sup>4</sup>

#### *V. Slavery in Vermont*

The 1802 Vermont Supreme Court case Selectmen of Windsor v. Jacob, 1802 WL 782, 2 Tyl. 192 (1802) has been cited as a contemporaneous statement that Art. 1 prohibited all forms of slavery. “Our State constitution is express, no inhabitant of the State can hold a slave[.]”<sup>5</sup>

However, the value of this case has also been criticized, since it was in regard to a SCOV Justice’s responsibility regarding a woman he once enslaved. Moreover, historical research indicates that, while the Vt. Const. may have prohibited it, people of color were enslaved in the State. However, an 1820 Vermont Governor’s address also lamented Vermont not doing more to advocate against allowing another state into the Union “without a provision in its constitution, restricting the power of enslaving a part of the human family[.]”

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<sup>4</sup> U.S. v. Kozminski, 487 U.S. 931 , 943-944 (1988).

<sup>5</sup> Id. at 199.

## *VI. Indentured Servitude in Vermont*

In 1837, the Vermont Supreme Court appears to acknowledge that Vt. Const. Ch. I, Art. 1 provided an age-based restriction on indentured servitude when adjudicating an estate case. “The girls, being more than eighteen years of age, could not by our law be treated as infants. At common law, males and females were upon equal footing, in this respect. **But that section of the bill of rights in the Constitution of this State, which declares involuntary servitude illegal, and not allowable after males arrive at the age of twenty-one, and females at the age of eighteen years, has always been considered as fixing the age of majority of females at eighteen years.** And after so long a time of silent acquiescence, on the part of the people, and of virtual judicial construction by all the courts of the State, before whom it has ever become important to determine the question, we should not feel at liberty, now, to treat the question as open to discuss. **Such construction was contemporaneous with the adoption of the constitution, and expressive of the sense of its framers, and, as we think, for very sufficient reasons.**”<sup>6</sup>

*See also* [Prof. Teachout’s Primer on Indentured Servitude](#), which in Appendix D provides legal forms from 1847 to use in Vermont for minors’ indentured servitude.

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<sup>6</sup> Sparhawk v. Buell’s Adm’r, 9 Vt. 41, 78-79 (1837).