

Proposition 2 (Declaration of rights; eliminating reference to slavery)

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BACKGROUND

This testimony is in the response to the Senate Committee on Government Operations' request to the Vermont State Archives and Records Administration (VSARA) for information regarding QUALIFICATIONS OF FREEMEN AND FREEWOMEN § 42. [VOTER'S QUALIFICATIONS AND OATH] in the Vermont Constitution, specifically:

- Intent/definition of “freeman” in the original 1777 Constitution
- Inclusion of “Freewoman” under Proposal 11 of 1991 for Justices of the Supreme Court to revise Chapters I and II of the Constitution in gender inclusive language
- Any evidence of individuals of color being able to vote in Vermont prior to the passing of the 15th Amendment (or denied right to vote prior to the passing of the Voting Rights Act of 1965)

The following information may be helpful to the Committee.

“FREEMEN” IN THE 1777 CONSTITUTION

The preamble of the 1777 Constitution states:

“We the representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government, confessing the goodness of the Great Governor of the Universe (who alone, knows to what degree of earthly happiness, mankind may attain, by perfecting the arts of government), in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves.”

Chapter I (A Declaration of the Rights of the Inhabitants of the State of Vermont) and Chapter II (Plan or Frame of Government) declared the following:

1. *“That all elections ought to free; and that all **freemen**, having a sufficient evident common interest with, and attachment to, the community, have a right to elect officers, or be elected into office.”*

2. *“The Commonwealth or State of Vermont, shall be governed hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the **Freemen** of the same...”*
3. *“The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence...”*
4. *“Every **man** of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behavior, and will take the following oath (or affirmation), shall be entitled to all the privileges of a **freeman** of this State.”*
5. *“The House of Representatives of the **Freeman** of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the **freemen** of every town in this State, respectively.”*
6. *“The members of the House of Representatives shall be chosen annually, by ballot, by the **freemen** of this State, on the first Tuesday of September, forever (except this present year) and shall meet on the second Thursday of the succeeding October...”*
7. *“The doors of the house in which the representatives of the **freemen** of this State shall sit, shall be open for the admission of all persons, who behave decently, except only when the welfare of the State may require the doors to be shut.”*
8. *“The stile of the laws of this State shall be,—‘Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of Vermont, in General Assembly met, and by the Authority of the same.’”*
9. *“In order that the **Freemen** of this State might enjoy the benefit of election, as equally as may be, each town within this State, that consists, or may consist, of eighty taxable inhabitants, within one septenary or seven years, next after the establishing this constitution, may hold elections therein...”*
10. *“The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. The **freemen** of each town shall, on the day of election for choosing Representatives to attend the General Assembly...*

*The Lieutenant Governor and Treasurer, shall be chosen in the manner above directed; and each **freeman** shall give in twelve votes for twelve councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.”*
11. *“All commissions shall be in the name of the **freemen** of the State of Vermont, sealed with the State seal, signed by the Governor, or in his absence the Lieutenant-Governor, and attested by the Secretary; which seal shall be kept by the Council.”*

12. *“All prosecutions shall commence in the name and by the authority of the **freemen** and the State of Vermont, and all indictments shall conclude with these words, “against the peace and dignity of the State.” The style of all process hereafter, in this State, shall be,—The State of Vermont.”*
13. *“That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the **freemen** in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probate, commissioned by the Governor and council, during good behavior, removable by the General Assembly upon proof of mal-administration.”*
14. *“As every **freeman**, to preserve his independence (if without a sufficient estate), ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit, the usual effects of which are dependence and servility, unbecoming **freemen**, in the possessors or expectants; faction, contention, corruption and disorder, among the people.”*
15. *“In order that the freedom of this Commonwealth may be preserved inviolate, forever, there shall be chosen, by ballot, by the **freemen** of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty-five, and on the last Wednesday of March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chosen—except that they shall not be out of the Council or General Assembly—to be called the Council of Censors..”*

INTENT/DEFINITIONS (COUNCIL OF CENSORS, 1785-86)

The 1777 Constitution also declared the following, which remained unchanged following the Council of Censor’s proposals of 1785¹:

*“That all men are born equally free and independent, and have certain natural and inherent rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety. Therefore, no **male person**, born in this country, or brought from over sea, ought to be holden by law, to serve any person, in this commonwealth, as a servant, slave, or apprentice, after he arrives to the age of twenty-one years; nor **female**, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law for the payment of public or private demands.”*

¹ See Chapter 1, A Declaration of the Political Rights and Privileges of the Inhabitants of the State of Vermont (https://www.sec.state.vt.us/media/46721/Council_of_Censors.pdf)

The addition of “freeholder,” and the context in which “freeholder” existed, in the Council of Censors' proposals of 1785 may be of interest.

- Chapter 1 (A Declaration of the Political Rights and Privileges of the Inhabitants of the State of Vermont) provided for:

*Section VII: “That no warrant or writ to attach the person or estate of any **freeholder** within this state, shall be issued in civil action, without the person or persons, who may request such warrant or attachment, first make oath, or affirm, before the authority who may be requested to issue the same, that he, or they, are in danger of losing his, her or their debts.”*

- Chapter 2 (Plan or Frame of Government) called for:

*Section VII: “...each organized town in this State, on the first Tuesday in September annually, shall have liberty to choose one able, discreet **freeholder**, to represent them in a county convention, to be held at such time and place as the Legislature shall by law...”*

*Section IX: “The Council of this State shall consist of one able, discreet **freeholder**, to be chosen from each county in the State by **freemen** residing in the same county...”*

*Section X: “The freemen of each town shall, on the first Tuesday of September, in every year, bring in to the constable, their votes for some able, discreet **freeholder**, residing in this State, to be Governor, with his name fairly written; who shall seal them up in the presence of the **freemen**.”*

*Section XVIII: “Every **male freeholder**, in the right of **himself or his wife**, of the age of twenty-one years and upwards, having resided in this State for the space of one whole year next preceding any election of representatives, or who has rented a tenement therein for the said time, of the yearly value of four pounds, and been rated, and actually paid taxes to this State for the same, who is of a quiet and peaceable behavior, shall be entitled to vote in the election of such officers as are to be chosen by the **freemen**.”*

FEBRUARY 1879 CONGRESSIONAL DEBATE

Vermont’s intent/definition of “freeman” was debated in the United States’ Senate on February 1, 1879² in reference to bill (S. No. 376), a bill to “provide for ascertaining and settling

² See: <https://www.govinfo.gov/content/pkg/GPO-CRECB-1879-pt1-v8/pdf/GPO-CRECB-1879-pt1-v8-38.pdf>

private land claims in certain States and Territories.” The question raised during the debate was “whether or not the Congress of the United States had the power under the fifteenth amendment to the Constitution to provide for the punishment of those voting at State elections who denied to a person the right to vote in consequence of race, color, or previous condition of servitude.”

While we are on this subject of freemen and free negroes, &c., I should like to ask the Senator from Vermont for information, what is the meaning of the word “freemen” in the constitution of Vermont?

Mr. EDMUNDS. I am not prepared to answer.

Mr. MORGAN. Does it not mean a man who is not a slave?

Mr. EDMUNDS. I do not know.

Mr. MORGAN. It is in the constitution of the Senator’s own State.

Mr. EDMUNDS. It may be there.

Mr. MORGAN. The word “freemen” is introduced in the constitution of that State as one of the qualifications of a voter. He must be a free man. In one of the amendments which they have adopted to that constitution the same term is used. I will read article 8:

That all elections ought to be free and without corruption, and that all freemen, having a sufficient evidence, common interest with, and attachment to the community, have a right to elect officers and be elected into office, agreeably to the regulations made in this constitution.

Now, the Senator says he does not know what the word “freemen” means there.

Mr. EDMUNDS. I think now on reflection I can state one thing it means. It means to distinguish between free men and free women. I can see that far without further reflection.

Mr. MORGAN. That is a very nice distinction; a very small variation.

Mr. EDMUNDS. It is quite important sometimes.

Mr. MORGAN. We have got it now down to the difference between a free man and a free woman. Recollect this is the constitution of 1793. Everybody in the United States understands, I expect, at least would understand upon the mere reading of it, without the explanation of the Senator from Vermont, that it meant to contradistinguish a man who was free from a man who was not free, and not a man from a woman. I do not think there was any constitutional prescription put into the constitution of Vermont for the purpose of distinguishing a man from a woman. I think that was hardly a subject of ordination in that constitutional convention. The distinction was between free men and men who were not free. I will read section 21:

Every man, of the full age of twenty-one years, having resided in this State for the space of one whole year next before the election of representatives, and is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a freeman of this State:

You solemnly swear (or affirm) that whenever you give your vote or suffrage touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any man.

“FREEMEN” DEFINITIONS AT THE NATIONAL LEVEL

John Bouvier’s *Law Dictionary*, first published in 1839, was very popular in the 19th century and continues to be published today as *Bouvier’s Law Dictionary and Concise Encyclopedia*. A first of its kind, Bouvier’s goal was to create a legal dictionary specific to United States and its legal system and his sources were legislation and court decisions (Federal and State) as well as American customs.

The following 19th century definitions published in Bouvier’s *Law Dictionary* may be of interest:

Freehold in law: A freehold which has descended to a man, which he may enter at pleasure, but which he has not entered on.

Freeholder: The owner of a freehold estate. Such a man must have been anciently a freeman; and the gift to any man by his lord of an estate to him and his heirs made the tenant a freeman if he had not been so before.

Freeman: One who is not a slave. One born free or made so.

REMAINING QUESTIONS

Additional time is needed to research the following, should they still be of interest:

- Inclusion of “Freewoman” under Proposal 11 of 1991 for Justices of the Supreme Court to revise Chapters I and II of the Constitution in gender inclusive language
- Any evidence of individuals of color being able to vote in Vermont prior to the passing of the 15th Amendment (or denied right to vote prior to the passing of the Voting Rights Act of 1965)