

Testimony of Norman C. Smith, Esq.
before the
Senate Committee on Health and Welfare
Regarding Proposal 5 – Proposed Article 22
addition to
Chapter 1 of the Vermont Constitution

Chairman Lyons, Vice Chairman Westman, and Members of the Committee.

Thank you for allowing me to testify regarding Proposition 5 – Declaration of Rights;
Right to Personal Reproductive Liberty

My name is Norman Smith. I was born and raised in St. Johnsbury, graduating from St. Johnsbury Academy in 1973. I attended the Massachusetts Institute of Technology, graduating in 1977 with a bachelors degree in Urban Studies and Planning. I then studied law at the Boston University School of Law, graduating in 1980. I clerked in 1980 – 81 for Albert W. Barney Jr. , then Chief Justice of the Vermont Supreme Court. I now serve on the Vermont Supreme Court’s Probate Court Oversight Committee and Probate Court Rules Committee.

I am a sole practitioner in Essex Junction, where much of my practice focuses on probate, wills, trusts, powers of attorney, and advanced directives. I help and serve many elderly and disabled clients. Over the years I have managed the finances of several elderly clients who had no one who could help them. I have served as a court-appointed Guardian for several people.

I am before you on behalf of the Vermont Alliance for Ethical Healthcare. The purpose of the Alliance is to promote the provision of excellent health care at the end of life in an ethical manner and to oppose efforts to legalize physician-assisted suicide or euthanasia in Vermont.

Proposal 5 purports merely to protect reproductive liberty. As written, however, it does much more than that. The first line of proposed Article 22 states, “That the people are guaranteed the liberty and dignity to determine their own life’s course.” I do not know what this means. It is

written so broadly and open-ended that the Legislature is leaving it up to the Courts to interpret its meaning. What is one's "own life's course?" Is it making medical decisions for oneself? Is it deciding on a lifestyle? Does it include the right to harm oneself?

This sentence could be interpreted to remove all purported protections under Act 39, Vermont's "Patient Choice at End of Life" Act. The Act sets forth a process to ensure that a patient is making an informed and free decision to seek a lethal prescription from a doctor. Although this provision is important, a litigant could claim that this process interferes with one's own decision to "determine [his or her] own life's course" by delaying the process and placing a "burden" upon one's decision to end one's life with the assistance of a physician.

In addition, a Court could, and probably would, interpret this sentence to invalidate Section 5292 of the Act, which states that the Act is not to be "construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia." A litigant could argue, quite successfully, that this provision interferes with the person's ability to determine his or her own life's course, and that doctors, and even nonmedical individuals, should be able to euthanize individuals who request it. In an extreme case, it could be interpreted to authorize parents to euthanize or allow to die a newborn because the newborn will interfere with their "own life's course" due to the newborn's disabilities or condition.

On a personal note, as the father of a daughter, and the uncle of a niece, proposed Article 22 concerns me. It could be interpreted to invalidate bans on prostitution. My daughter and my niece will not engage in prostitution, but the hypothetical possibility is frightening!

Additionally, a Court could interpret Article 22 to require all forms of marriage arrangements, including multiple partners.

In all of these cases, the proposed Amendment requirement for justification "by a

compelling State interest achieved by the least restrictive means” does not apply. Those words apply only to restrictions on the right to “personal reproductive autonomy.”

In closing, proposed Article 22 is so open-ended and vague that many unintended consequences will result. I urge this Committee, and the Senate, to reject its adoption.

I am happy to take any questions if you have them.