

Testimony of Norman C. Smith, Esq.  
before the  
House Human Services Committee  
Regarding Proposal 5 – Proposed Article 22  
addition to  
Chapter 1 of the Vermont Constitution

Mdm. Chairman and Members of the Committee.

Thank you for allowing me to testify regarding Proposal 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 Bachelor's 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 the Vermont Supreme Court's Probate Court Rules Committee.

I am here speaking as a member of Vermonters for Good Government. I wish to clarify. The Vermont Alliance For Ethical Healthcare no longer exists. I am here for Vermonters for Good Government.

When I last testified before this Committee I pointed out the problems with Proposal 5 as then drafted. The reference to guaranteeing “the liberty and dignity to determined [one's] own life's course” was deleted. I am hopeful that today's testimony will convince you not to go forward with this new Proposal.

The Proposal now guarantees “personal reproductive autonomy.” Several questions exist. First, is this Amendment necessary? In 2019, the Legislature passed Act 47 which

guarantees the right to abortion. It is very difficult to amend a statute once it is in place. The likelihood of the statute being amended or even repealed is very slight. As a result, abortion rights in Vermont are protected.

Second, even if the US Supreme Court were to overturn *Roe v. Wade*, the law in Vermont would not change. The Decision would leave to the States the adoption of laws and regulations regarding abortion. Vermont has already guaranteed the right to abortion.

Third, Proposal 5 purports to protect Personal Reproductive Autonomy. The language of the proposal is too vague. It fails to define “Personal Reproductive Autonomy.” It is not defined in Vermont or federal law, and is so open-ended it could mean many things. If it was meant to protect abortion rights, it should have said so. If it is intended to protect other “reproductive rights,” it should have spelled them out. We do not know what medical procedures may occur in the future, or what the science may reveal. This Proposal could prevent, or at least make very difficult, the Legislature’s adoption of appropriate laws and regulations applying to them.

Fourth,. As I’m sure you’ve heard before, Proposal 5 could lead to abortions right up to the point of birth. We realize that this may be very rare, but rare does not make right. The vast majority of Vermonters, if they realized that, would be opposed to this Proposal.

Fifth, Reproductive procedures may well change over time. Reproductive rights are not limited to abortion. They could include the following:

1. human cloning for reproductive purposes;
2. gestational surrogacy trafficking (achieved by in vitro fertilization and then followed by human embryo transfer, and after birth the handing over of a born human child in exchange for payment);
3. trafficking in human embryo creation (creation of a human embryo by IVF and the subsequent sale or trade of such human embryos for implantation in another’s womb for the purposes of reproduction);
4. designer babies (creation of designer embryos using gene editing techniques and the implantation and birthing of such genetically modified human beings);

Additionally, the word “autonomy” is not defined in the Proposal. This could raise the following issues:

1. Would a minor girl’s rights to “personal reproductive autonomy” be “infringed” if she were prohibited from having sexual relations with her chosen partner, or her partner was prohibited from having sexual relations with her.?

I participated in a Legislative Drafting Clinic in Law School. We learned that when drafting legal documents, including legislation, the language should be clear and concise, and provide certainty. Proposal 5 fails all tests. It is not clear. It leaves the term “Personal Reproductive Autonomy” undefined. As a result, it does not provide certainty. We are left to the Vermont Supreme Court to define what that means.

I urge this Committee to recommend against the adoption.

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