

To: Vermont House and Senate Committees on Education
From: Harrison Stark, Staff Attorney, ACLU of Vermont
Re: S.219 – Follow-Up Regarding Protections for Students
Date: 4/8/2022

Thank you for the opportunity to submit follow-up testimony on S.219 clarifying any confusion regarding the American Civil Liberties Union of Vermont's position on S.219's anti-discrimination provisions protecting students.

On April 5, the ACLU of Vermont submitted testimony urging the General Assembly to “wait to enact legislation like S.219 until next year,” by which point the U.S. Supreme Court will have decided *Carson v. Makin*, a First Amendment challenge to Maine's student-aid program. The memo went on to argue that *Carson* may provide additional guidance for the legislature regarding what types of limitations or restrictions on funding religious instruction are permissible, and under what circumstances. Accordingly, to avoid the risk that judicial invalidation of S.219 might complicate future legislative action, and to maximize the flexibility of any future statute implementing Vermont's Compelled Support Clause, the memo advocated waiting to move forward with legislation like S.219 until next session, at which point the Supreme Court may have made the full parameters of the First Amendment clearer.

We write to clarify that any rationale to wait for further Supreme Court guidance does not apply to S.219's anti-discrimination provisions protecting students in school operations or admissions, as those provisions raise no constitutional questions or concerns. Indeed, Vermont already prohibits schools from discriminating; the Vermont Public Accommodations Act (VPAA), 9 V.S.A. § 4502 *et seq.*, fully protects students from discrimination at “any school” to the same extent as any “restaurant, store, establishment, or other facility at which services, facilities, goods, privileges, advantages, benefits, or accommodations are offered to the general public,” *id.* § 4501(1). In fact, the ACLU is currently in litigation to ensure that schools comply with the VPAA's legal mandate. Requiring schools receiving public tuition to simply confirm that they abide by their existing legal obligations and will enforce the VPAA's robust anti-discrimination protections is a common-sense—and hopefully uncontroversial—proposal.

Accordingly, the ACLU fully supports immediately enacting a legislative or regulatory requirement bolstering the VPAA's applicability in the educational context. Our timing-related suggestions apply only to the provisions of S.219 addressing religious worship or instruction, as those are the issues that may become clearer after the Supreme Court's current term.



PO Box 277
Montpelier, VT 05601
(802) 223-6304
aclvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director

In its everyday work, through education, advocacy, and litigation, the ACLU of Vermont fights to protect Vermont's students from discrimination based on race, gender, sexual orientation, disability, or other protected characteristics. We commend the legislature on its commitment to ensuring that students may attend school free from discrimination, and we look forward to working together further to ensure Vermont's promise of equal educational opportunity remains accessible to all.



Sincerely,

A handwritten signature in black ink, appearing to read "Harrison Stark". The signature is fluid and cursive.

Harrison Stark
Staff Attorney
ACLU of Vermont

PO Box 277
Montpelier, VT 05601
(802) 223-6304
acluvt.org

James Duff Lyall
Executive Director

Falko Schilling
Advocacy Director