

Amber Burke

From: Andy MacIlwaine <amacilwaine@DINSE.COM>
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To: Maxine Grad; Tom Burditt; Kevin Christie; Selene Colburn; Kate Donnally; Kenneth Goslant; Martin LaLonde; Felisha Leffler; William Notte; Robert Norris; Barbara Rachelson; Amber Burke
Subject: [External] S.178

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Dear Members of the House Committee on the Judiciary,

I write to voice my opposition to S. 178, an act relating to supermajority verdicts in Vermont civil trials. As a litigator, my practice consists of mostly civil defense work, but like many of my Vermont lawyer colleagues I also handle plaintiff cases. In my view, this bill would not help litigants on either side of the bar, it would not solve any perceived “problems” with the civil jury process, and it would not advance or serve the rights and protections guaranteed to litigants under the Vermont and U.S. Constitutions.

In civil cases, unlike criminal matters, the plaintiff’s burden is already extremely low. They only need to prove their case by a preponderance of the evidence. Trial courts routinely instruct that only a *bare* preponderance is necessary for a plaintiff to meet its burden—a slight tipping of the scales. In re M.L., 2010 VT 5, ¶ 25, 187 Vt. 291, 301, 993 A.2d 400, 407 (2010) (“A bare preponderance is sufficient, though the scales drop but a feather’s weight.”). The requirement of unanimous verdicts serves as an important counterbalance to plaintiff’s low evidentiary burden. If S. 178 becomes law, it would diminish the already low threshold for plaintiffs and create a less equal playing field that is fundamentally at odds with established protections for defendants.

This bill also has the potential to significantly impede parties’ ability to settle cases without the need for trials. If S. 178 becomes law, plaintiff lawyers will use this as leverage to inflate settlement demands. This will disincentivize early settlement, drive up the cost of litigation, and increase the already large burden on the court system. This is perhaps why the civil trial court judges who were polled about S. 178 do not support the proposed law.

I therefore ask that the Committee uphold the well-established requirement of unanimity in Vermont.

Andy MacIlwaine



Wm. Andrew MacIlwaine

Attorney

209 Battery Street | Burlington, VT 05401

P: 802-859-7086 **F:** 802-859-8786

E: amacilwaine@dinse.com **W:** dinse.com

[Bio](#) | [V-Card](#) | [LinkedIn](#)

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