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February 22, 2022

Senator Richard Sears, Chair Vermont  
Senate Judiciary Committee  
Montpelier, VT

Re: Civil Jury Verdict Vote Reform Bill; S.178

Dear Senator Sears,

S.178 helps people by leveling the playing field and improving access to justice.

The Vermont Association for Justice is comprised of the Vermont professionals that primarily represent individuals, most often seeking recovery from a wrongdoer's insurance company. Collectively, we have a lot of real-life experience seeking justice for your constituents, and—compared to the critics of change—our advocacy is not clouded by a desire to protect a system that the Wall-Street insurance companies prefer.

We are also, here, intentionally speaking with one voice. Out of respect for your workload and the challenges of legislating remotely, we will not get into confusing grassroots back and forth with bill critics that largely represent insurance companies.

VTAJ supports S.178 because it is, simply, a fairer verdict vote rule that goes a long way toward preventing illegal verdicts. In the wake of the George Floyd tragedy, lawmakers vowed to reconsider the justice system to root out imbalance. S.178 is a modest change setting the current "option" of a supermajority jury verdict vote as the default standard. We support the bill because, without favoring either side, it will ensure more balance, reduce inappropriate "compromised verdicts," and bring Vermont in line with the nearly 40 states that have rejected Vermont's use of the most stringent standard possible.

**This is not about the criminal justice jury system.** The purpose of requiring a unanimous guilty verdict vote is to guard the innocent against wrongful conviction. The purpose of the civil jury verdict vote is different. It is about the fair resolution of disputes.

**This is not about departing from tradition.** Vermont court rules already allow the option of supermajority verdict voting, but the defense side—those objecting to the bill—will never agree. Why would they? As the mediators always first tell a plaintiff here, Vermont has an unusually stringent civil jury verdict requirement (i.e., 12 AND unanimous) and the insurance defense lawyer "only needs to get one hold out vote to win." You, the wrongfully harmed, "must convince all 12" to get justice.

**This is not about experimenting with the law.** About 40 states have more reasonable civil jury standards. Most state laws require some type of a slightly split decision verdict to prevail, not a unanimous vote.

**This is not a new issue.** In 2002, the Vermont Supreme Court on Jury Policy recommended the changes being considered now. They wrote, *“Only a minority of states retain the unanimous verdict requirement for civil cases. The trend to non-unanimous juries in civil cases reflects a recognition that an unanimity requirement leads to three negative consequences: lengthy and protracted deliberations, hung juries and compromised verdict. . . the Committee is most concerned with compromised verdicts which, it believes, have been a significant problem in Vermont. As Justice Louis Powell once observed: the unanimity requirement leads not to full agreement among the twelve, but to agreement by none and compromise by all. In civil actions where a jury must be unanimous to determine both liability and the amount of damages, the opportunity for one or two jurors to force a significant compromise is apparent.”*

As Judge Katz states in the Supreme Court report:

*“The compromise necessary to achieve unanimity must necessarily result in the majority of jurors feeling that they departed from strict adherence to [the judge’s instructions of law]. Hewing closely to the law and the charge is, over the long run, in the interest of the courts in demonstrating the ultimate rule law in the day-to-day lives of all Americans.”*

**This is not about silencing dissent.** It is about giving it a voice. The insurance-defense industry argues that illegal “compromised verdicts” give value to dissenting views. The opposite is true. S.178 allows the dissenting juror to stand tall and say, “I did not compromise my principles on this verdict. I was outvoted.” That is far different than requiring those who serve on juries to deliberate in an environment that encourages, if not requires illegal compromises to reach unanimity. “Compromised verdicts” are illegal verdicts.

Are lawmakers that vote against a bill powerless to influence the committee’s assessment of the issues? A jury reviews the case as a group before voting on a verdict. The law, at the end of the day, is about verdict voting at the end of deliberations. The purpose of the jury system is about a fair result, not a feeling that a dissenting juror should have a trump card in the verdict vote. No system is perfect, but it is a red herring to suggest dissenting views will not be considered unless they control the verdict vote.

**This is also not about hung juries.** The lack of hung juries is proof in favor of passing the bill, which is the opposite of what the insurance-defense industry claims. It is proof that inappropriate, “compromised verdicts” regularly happen.

We sincerely appreciate the Senate Judiciary Committee’s work. This issue affects individual Vermonters every day—litigants and jurors alike.

Sincerely,



Andrew Delaney, President Vermont Association for Justice