

Dear Sen. Sears and other members of the Committee,

Thank you in advance for accepting this comment on S.178.

I write as an attorney who has been practicing law in Vermont for 30 years and trying many civil jury cases in that time. I think eliminating the unanimity requirement for civil verdicts is a bad idea.

1. First, Vermont has required unanimous verdicts since 1779. 240 years of history should not be jettisoned lightly.
2. Second, I believe a similar proposal was under consideration in the spring of 2015 and rejected then. I don't see what has changed to make this proposal an unworthy or unnecessary one then, but a worthy one now.
3. Third, at a time when diversity and inclusion are paramount concerns in our society, we should not be marginalizing and excluding 4 out of 12 voices on a jury panel. In eliminating the unanimity requirement, we potentially marginalize the minority voice on the jury. The majority can just ignore what the minority thinks, which is a shame. We want different views, life experiences, backgrounds, etc., to participate fully in the deliberations. We want the majority to have to take the minority's views seriously into account in arriving at a just, fair, and reasoned verdict. We want a verdict that reflects the principle of "debate, compromise, and agree" of the entire jury, not just the 8 who may think exactly alike and quickly make a decision. Since most juries have traditionally been middle class white people (and, historically, white men), the few people of color, poor, LBGTQ, etc., folks who are on the panel and who typically have different views can be simply ignored and excluded under this bill. Verdicts shouldn't be easy; they should involve some debate, argument, reflection, by a representative group of citizens, who are required to reach consensus.
4. Fourth, as someone who is closely involved in the court and trial systems, I fail to see the problem that this solution is trying to fix? There is perhaps a myth about hung juries caused by the occasional odd-ball juror, but I've tried 22 jury cases to verdict and never had a hung jury in my entire career. I am not aware of a "hung jury crisis." Is this bill being promoted by one side of the bar that simply wants to make their job easier? I can certainly understand that motivation, but it does not justify jettisoning 240 years of history.
5. Fifth, to the extent the plaintiffs bar may be talking about "bad" insurance companies holding up cases to coerce low settlements, many cases don't involve insurance at all. Defendants face financial ruin, loss of businesses and life savings, irreparable damage to reputation, etc., from civil suits, many of which are weak, minor, or frivolous. The unanimous verdict requirement provides these Vermont citizens and companies some protection from ruinous litigation.
6. Sixth, while a few states have adopted non-unanimity, research shows that justice has not been better served by this. On the contrary, recent research shows that unanimity leads to better outcomes, and non-unanimity does not fix the perceived "problems" behind this bill. Non-unanimity does not reduce the incidence of hung juries. See the attached study by the American Bar Foundation. [fall04\\_3 \(americanbarfoundation.org\)](#)

7. Lastly, Vermont has a wonderful tradition of jury trials. We actually try a fair number of cases in this state, which allows many of our citizens to participate in the judicial system as jurors. I suspect this bill is an attempt by the plaintiffs bar to force defendants to settle rather than exercise their right to a jury trial. That would also be a shame. There may be practical reasons why larger jurisdictions would want to reduce the number of jury trials, but that shouldn't apply to Vermont. We want jury trials.

Thank you for your consideration.

Walter Judge  
Burlington

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