



February 18, 2022

State of Vermont, Senate Chamber
Senate Committee on the Judiciary
115 State Street
Montpelier, VT 05633-5301

Re: [S.178](#), *an act relating to supermajority verdicts in civil trials*

Dear Senate Committee on the Judiciary:

I write on behalf of MadFreedom to express our opposition to [S.178](#), an act relating to supermajority verdicts in civil trials, as introduced. As we understand [S.178](#), the bill would eliminate the requirement of unanimous jury verdicts in civil trials. In its place, [S.178](#) would authorize verdicts where only two-thirds (8 of 12) of jurors agree.

MadFreedom is a civil and human rights advocacy organization whose mission is to end the discrimination and oppression of individuals based on their perceived mental states. MadFreedom envisions a world where every person regardless of race, gender, sexuality, ableness, class and mental state has the freedom to live their life on their own terms without coercion and with equality under the law.

MadFreedom takes great interest in this bill because it raises issues of access to justice for our constituents. By access to justice, we mean a fair chance to secure one's rights under the law. Access to justice requires an ability to retain legal assistance, a fair and efficient court process in which people feel that they will be heard, understood, treated fairly, and understand the outcome.

There are at least three bills pending in the Vermont General Assembly that would require historically marginalized individuals to seek redress through private litigation: [S.254](#), an act relating to creating a private right of action against law enforcement officers for violating rights established under Vermont law; [S.226](#) and [H. 93](#), acts relating to establishing a homeless bill of rights and prohibiting discrimination against people without homes; and [S.140](#), an act relating to prohibiting civil arrests at courthouses.

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A private right of action is illusory for those without access to justice.

MadFreedom is concerned that [S.178](#), as introduced, would negatively impact what is already very limited access to justice for individuals who are members of groups that have been historically excluded from the civil justice system because of class, gender, race, perceived mental state, and perceived disability.

At least one proponent of [S.178](#) has argued that [S.178](#) is a racial justice issue and will serve to protect non-white plaintiffs from an “irrational” or racially biased juror. That argument, however, represents an incomplete assessment of the intersection of racial justice and access to justice.

A more complete assessment would include a consideration of the experience of jurors whose knowledge and experience are outside the dominant culture. In the absence of a requirement of unanimity in jury verdicts, it is very likely that those voices holding views outside the dominant culture will be silenced and erased.

This is more than a theoretical concern. That has been the experience of our constituents when they have served on boards and commissions created by this legislature. Ours has been a token presence, and our voices have been silenced both by the will of the majority or simply by ignoring what we offer.

There is also research about nonunanimous verdicts in criminal cases that suggests that nonunanimous verdicts disproportionately silence the voices of black jurors and disproportionately disadvantage black defendants.¹ There is no reason why this same result would not obtain in civil cases.

There are many safeguards already in place to protect against “irrational” or racially biased jurors or even compromise jury verdicts. Those safeguards include: (1) the use of jury questionnaires to ferret out biases; (2) peremptory and for-cause challenges during voir dire (jury selection) to prevent the selection of biased or irrational jurors; (3) a directed verdict; (4) a judgment notwithstanding the verdict; (5) additur; (6) remittitur; and (7) a motion for a new trial.

The only safeguard to ensure every juror gets a vote is the requirement of unanimity. For that reason, MadFreedom urges the Senate Committee on the Judiciary to retain the requirement of unanimity.

¹ Thomas W. Frampton, [The Jim Crow Jury](#), 71 Vanderbilt Law Review 1593, 1636 (2019)

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Should the Committee desire to change the rule on unanimity, MadFreedom urges the Committee to require more than a two-thirds vote. Massachusetts and New York, Vermont border states, each requires a supermajority of at least 80 percent (5 of 6 or 8 of 10 jurors, respectively). California requires a vote of at least 75 percent (9 of 12 jurors).

Thank you for your consideration of our concerns.

Very truly yours,



Wilda L. White
Founder