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Vermont Senate Judiciary Committee
Re: Some Questions Concerning Proposal 4 to Amend the Vermont Constitution

Dear Judiciary Committee;

Introduction

My name is Laura Wisniewski. I am a resident of Hinesburg, VT. I am writing as a concerned Vermont citizen. I'm aware that an enormous amount of research, thought and experience has gone into Proposal 4, and I'm grateful to its creators and sponsors.

I strongly support the intention of Proposal 4, which is to ensure all Vermonters equal rights under the law. If I understand correctly, one goal of this amendment is to make equal protection less vulnerable to the vicissitudes of reactionary social movements, regressive legislation, and politicized federal court rulings. I agree with this goal. Given the recent tendency of federal courts, including the Supreme Court, to decide in favor of explicit wording rather than implicit intention, I believe that an amendment to the VT Constitution that explicitly guarantees equal protection is necessary and overdue.

I also agree with the [testimony of Professor Teachout](#) in that it would be best to amend the State Constitution with a separate Article for equal protection. I also agree with Professor Teachout that such an amendment should include protection from "private actors" and that the amendment should include language that leaves room for groups not specifically listed in the current Proposal 4.

I'm submitting some questions that came up for me when I read the proposal. I hope they are helpful to the Committee.

Why is 'religion' excluded?

The proposed amendment forbids discrimination based on the following: "race, ethnicity, sex, disability, sexual orientation, gender identity, gender expression, or national origin." I agree that these categories should be listed. I notice that "religion" is now missing from this list although it was included in the list of protected classes in the 2019 draft.

- I contacted several sponsors of the amendment in recent days in an attempt to understand the rationale for excluding religion. I was told by one Senator, "In my experience in the legislature, equal protection of religion has most often been invoked to deny people abortion

or trans-affirming care, or to exclude certain families or children from fully expressing themselves in educational and other public settings.”

This is unfortunately true; however, is it equal or equitable to deny protection to religious groups who have been and continue to be targets of civil rights abuses and hate crimes because their protection has the potential to be “weaponized?”

- Another Senator answered, “...that category [religion] is individually flexible offering significant complexity to legal interpretation.”

This is also true. But the category of ethnicity, as one example, is also individually flexible and has been defined in different ways under different circumstances, including in official documents of the State. For instance:

The [Vermont State Board of Education Manual of Rules and Practices Series 2000 – Education Quality Standards](#) says, “‘Ethnic Group’ means a group whose members identify with each other based on certain criteria, including a common history, ancestry or culture, religion, national, social or geographic origin, skin color, language, and experiences of discrimination and social exclusion.”

[Vermont’s Act 1 of 2019](#) says, “‘Ethnic groups’ means:

- (A) nondominant racial and ethnic groups in the United States, including people who are Abenaki, people from other indigenous groups, people of African, Asian, Pacific Island, Chicana, Latina, or Middle Eastern descent; and
- (B) groups that have been historically subject to persecution or genocide.”

- Another argument for removing “religion” from the proposed equal protection amendment is that citizens of religious groups are already explicitly protected under Article 3 of the Vermont Constitution:

“...nor can any person be justly deprived or abridged of any civil right as a citizen, on account of religious sentiments, or peculiar mode of religious worship;...”

Does this Article adequately address religious *identity* in addition to “religious sentiments” or “mode of religious worship”? For example, a non-practicing Jew was still considered a Jew in Nazi Germany. Furthermore, as Jay Greene Executive Director of the Office of Racial Equity pointed out in their testimony on Proposal 4, “religious discrimination often intersects with racialized discrimination.”

Why is the wording exclusive?

One strength of Proposal 4 is that it looks at the past, present *and* future. It seeks to lay “a foundation for protecting the rights and dignity of historically marginalized populations and addressing existing inequalities.” It also looks ahead. It anticipates a social and political environment in which Vermont citizens may more and more need to turn to the State Constitution for civil rights protection. Senator Lyons was recently [quoted](#) in *Vermont Digger*: “We know how quickly the culture can change, we’ve seen that.”

- The sentence: “This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution” has been moved from the amendment itself where it appeared in the 2019 version of Proposal 4. Because the list of protected ‘categories’ is explicit and exclusive in the 2023 draft, doesn’t the absence of “religion” as a category of persons to be protected imply that minority religious groups are not “historically marginalized populations”?

Antisemitism and Islamophobia have been well documented and are on the rise nationally and here in Vermont. [According to the US Department of Justice](#), 9.6% of hate crimes in Vermont in 2022 were religiously motivated. This doesn’t include bias incidents that were not considered criminal offenses. The FBI’s Uniform Crime Reporting Program [defines hate crime](#) as: “... a committed criminal offense which is motivated, in whole or in part, by the offender’s bias(es) against a: race, religion, disability, sexual orientation, ethnicity, gender, gender identity.”

If, however, the creators of this amendment consider religion to be covered under the umbrella of ethnicity as is suggested by The VT Board of Education and ACT 1, then wouldn’t it make sense to clearly define ‘ethnicity’ in this proposed amendment itself?

- Given the rise of White Nationalism, Christian Nationalism and other racist and anti-democracy movements in this country, I can unfortunately imagine that, in the near future, people who are old, sick, poor, unhoused, differently sized, etc. will also need *explicit* protection under the law. And there may be categories we can’t imagine at this point. Are there other classes such as “economic, physical, and social circumstances” that are both explicit and inclusive that could be included in the language of the amendment? Would it make sense, at the very least, to add “including, but not limited to” to the itemized list of protected classes?

In closing

I understand and strongly agree that the groups currently listed in Proposal 4 must be explicitly protected by the State Constitution. I also understand that removing “religion” from the proposal may remove a complicated and charged obstacle to approval and passage of the amendment. I

painfully understand that there is a risk of providing opportunity to those religious groups intent on attacking the people and ideals that the amendment so rightly aims to protect. I also know that when I see the glaring absence of 'religion' in this amendment, I wonder where I, as a Jewish person, and where members of other religious minorities, will stand if, as a recent Pew Research survey found, the [45% of Americans who believe the U.S. should be a Christian country](#) have their way.

From what I understand about the process of amending the Constitution, this amendment needs to protect people who are vulnerable now as well as people who will be vulnerable in the future, so I appreciate the care with which you are considering it. I'm grateful to live in a state committed to protecting the rights of *all* Vermonters equally.

Thank you for the opportunity to share my questions.

Warmly,

Laura Wisniewski