



State of Vermont
Agency of Administration
Office of the Secretary
Pavilion Office Building
109 State Street, 5th Floor
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322 *Kristin L. Clouser, Secretary*
[fax] 802-828-2428

TO: Senate Committee on Judiciary
FROM: Office of Racial Equity
DATE: January 30, 2024
RE: Proposal 4: Declaration of rights; government for the people; equality of rights

Dear Chair Sears and members of the Senate Committee on Judiciary,

Thank you for the opportunity to testify on [Proposal 4](#), Declaration of rights; government for the people; equality of rights.¹ The Office of Racial Equity strongly supports the passage of Proposal 4. The statutory duties of Executive Director of the Office, 3 V.S.A. §5003, reads as follows:²

“(a) The Executive Director of Racial Equity (Director) shall work with the agencies and departments to implement a program of continuing coordination and improvement of activities in State government in order to combat systemic racial disparities and measure progress toward fair and impartial governance, including:

(1) overseeing a comprehensive organizational review to identify systemic racism in each of the three branches of State government and inventory systems in place that engender racial disparities...”

Proposal 4 creates an explicit commitment in the State Constitution to the work of dismantling systemic racism that is the purpose of the Office of Racial Equity. Proposal 4 is especially important in light of the June 2023 US Supreme Court decision in denying the federal constitutionality of race-based affirmative action programs. By passing Proposal 4, the Vermont state government is stepping up to protect Vermont residents in a way that reflects the recent decisions to create entities focused on equity, including the Office of Racial Equity and Division of Racial Justice Statistics.³

The term for the combined experience of discrimination based on multiple protected classes was coined by Kimberle Crenshaw in her foundational 1989 University of Chicago Legal Forum paper as “intersectionality.”⁴ People’s experiences include a multitude of labels or categories; it

¹ Full link text: <https://legislature.vermont.gov/bill/status/2024/PR.4>

² 3 V.S.A. §5003: <https://legislature.vermont.gov/statutes/section/03/068/05003>

³ Enabling statute of the Division of Racial Justice Statistics: 3 V.S.A. §5011-§5015, <https://legislature.vermont.gov/statutes/chapter/03/068>

⁴ Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. University of Chicago Legal Forum, 1989(1). <http://chicagounbound.uchicago.edu/uclfhhttp://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

is important to acknowledge the intersectionality of discrimination based on race and ethnicity with other protected classes. The Office supports the inclusion of “sex, disability, sexual orientation, gender identity, gender expression, or national origin” in Proposal 4. The Office remains neutral on the inclusion of religion in Proposal 4. The Office would not be opposed to the inclusion of religion in the list of protected classes, as religious discrimination often intersects with racialized discrimination; however the Vermont Constitution does protect religious freedom explicitly in Article 3. The Office will support Proposal 4 with or without the inclusion of religion in the list of protected classes.

The Office raises the question about the appropriateness of modifying Article 7, the “equality of treatment” article of the Vermont constitution. Repairing historical harms sometimes requires equitable treatment, not equal treatment. Equity sometimes means targeting programs to populations based on need rather than based on absolute equal treatment.⁵ We urge the Legislature to make sure the Proposal 4 is crafted to protect programs that are based on equitable treatment, not just equal treatment.

The Office further urges the Legislature to add language detailing the intent of the Proposal that directs the Legislature and the Vermont Supreme Court to interpret the amendment in a way that is intended to protect the rights of the protected classes listed in Proposal 4.

⁵ For more information on the difference between equity and equality, see United Way of the National Capital Area. (2021, June 22). Equity vs. Equality: What’s the Difference—Examples & Definitions. Unitedwaynca.Org. <https://unitedwaynca.org/blog/equity-vs-equality/>