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Testimony of Cary Brown, Executive Director, Vermont Commission on Women
Senate Committee on the Judiciary
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**Re: Proposed amendment to the Constitution of the State of Vermont: Declaration of rights,
government for the people, equality of rights**

Good morning. My name is Cary Brown and I'm the Executive Director of the Vermont Commission on Women. We are an independent state agency working to advance rights and opportunities for women and girls in Vermont, and we have been in existence since 1964.

Our work is guided by a collection of policy statements that are adopted by the full Commission and periodically reviewed and updated. The policy statement that guides my testimony today is one that was first adopted in 1995, and while some of the details may need to be updated, in its essence it rings as true today as it did over 30 years ago:

Whereas, the Vermont Constitution states "That all persons are born equally free and independent and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety," and

Whereas, although the Vermont Constitution guarantees equal rights for all persons, the reality is that this guarantee is neither recognized nor practiced by our society as a whole, and Whereas, in Vermont, as well as the rest of the nation, a great deal of work needs to occur in order to assure every citizen full civil rights as guaranteed under the Constitution, now therefore be it

Resolved that the Vermont Commission on Women supports legislation, policies, programs, and initiatives that facilitate full civil rights for all people regardless of race, color, religion, national origin, gender, sexual orientation, gender identity, ancestry, place of birth, age, physical disability, or mental disability.

VCW has been engaged in efforts to adopt an Equal Rights Amendment at both the federal and state levels throughout our 60-year history, but we came to the fight relatively late. Proposal 4 is built on the foundation of hundreds of years of efforts on the part of generations of American women to establish equal legal rights. In 1986, a proposed amendment to the Vermont Constitution that addressed protection on the basis of sex failed at the ballot. Some of the arguments heard at the time included the fear of legal and social consequences such as reproductive rights and gay rights. In Vermont we heard threats that passage of the ERA would lead to the interpretation of "sex" as inclusive of sexual orientation, leading to same-sex marriage and other protections of gay rights. Testimony at the time warned that we would be forced to hire homosexuals as teachers, or allow women to serve as pastors.

In the decades since, Vermonters have recognized that these other protections that we were warned against are in fact protections that are just as necessary as those against sex discrimination. We have a broader understanding of equity as well as the interconnectedness of forms of discrimination. Through

our laws we have recognized many of these rights, but laws can change. This is why Vermont amended our Constitution to include a right to personal reproductive liberty and to abolish slavery, and why the Vermont Commission on Women supports Proposal 4, which would explicitly prohibit the State of Vermont from engaging in discrimination and unequal treatment on the basis of sex, sexual orientation, gender identity, and gender expression, among other important protected classes. We believe it's long past time for Vermont to take this important step by providing additional constitutional protection for our residents.

We are living in a time when we can no longer take for granted that the legal and social gains made for equality based on sex (or any other class) will stand. We have never been able to take for granted that the courts will interpret the Constitution's current wording to protect people based on sex or any other class. While we cannot predict how the Vermont Supreme Court will decide to analyze cases under this proposed constitutional amendment, we do hope that it will trigger a heightened standard of review by the Court in accessing government actions that treat people differently based on their membership in a named protected class.

Today in public discourse we hear echoes of the sentiments that defeated the Equal Rights Amendment. At the time, Vermonters were told that constitutional protection would undermine traditional gender roles and destroy the very heart and structure of the family. They were told that equality in the constitution would erode the "natural" roles and norms of men as providers and women as caregivers.

I can attest on a personal note that growing up as a child in the 1970's, with a mother who hosted Women's Lib meetings in our living room, I never dreamed that my children would grow up to hear the Vice-President of the United States tell women that working full-time instead of having children is a path to misery, or to say, "We actually think God made male and female for a purpose. And we want you guys to thrive as young men and as young women, and we're going to help with our public policy to make it possible to do that."

We support and appreciate the move to create a standalone Equal Rights Amendment in Article 23 of the Vermont Constitution, as well as the inclusion of the language "Nothing in this Article shall be interpreted or applied to prevent the adoption or implementation of measures intended to provide equality of treatment and opportunity for members of groups that have historically been subject to discrimination." We believe that taken as a whole, this Equal Rights Amendment both sends a bold and timely message about our values and will offer Vermonters important protection from discriminatory state action.