



Testimony of Rev. Mark Hughes  
Executive Director, Vermont Racial Justice Alliance  
Senate Judiciary Committee  
January 21, 2026  
Proposal 4 (P.R.4): Equal Protection Amendment to the Vermont Constitution

Good morning, Chair and members of the Senate Judiciary Committee.

My name is Reverend Mark Hughes. I serve as Executive Director of the Vermont Racial Justice Alliance, and I have worked for many years with communities and state partners addressing civil rights, systemic racism, and democratic integrity.

I appear before you today in strong support of Proposal 4, the Equal Protection amendment to the Vermont Constitution.

I want to begin by stating something plainly for the record: **the warnings that brought us here were correct.** What we anticipated—constitutionally, legally, and morally—has now materialized.

And I want to acknowledge the gravity of this moment. This Committee is operating at the intersection of **constitutional amendment, civil rights collapse at the federal level, and long-term judicial stewardship of the State of Vermont.** History will look back on moments like this not by what was debated, but by what was secured.

Almost three years ago, we undertook the effort to advance an Equal Protection amendment because we were following the trajectory of Vermont's own work and watching the direction of federal constitutional law.

That trajectory includes:

- **Act 54 (2017)** — Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel
- **Act 9 (2018)** — Office of Racial Equity
- **Executive Order 04-18**
- **Proposal 4 (2019)** — Constitutional abolition of slavery
- **Act 33 (2021)** — Health Equity Advisory Commission

- **Joint Legislative Resolution R-113 (2021)** — Racism declared a public health emergency
- **Act 182 (2022)** — Racial justice data and accountability

In November 2022, **88 percent of Vermonters** approved the amendment abolishing slavery. Vermonters demonstrated a shared understanding that **truth is the foundation of justice**.

At the same time, we warned that **statutory progress without constitutional grounding would not survive** a hostile turn in federal doctrine.

That warning has been validated.

We are no longer talking about erosion. We are witnessing **systemic dismantling**.

Over the past year, the federal government has:

- Neutralized the **Department of Justice Civil Rights Division**, including voting rights and police oversight
- Weakened or sidelined the **EEOC** and **OFCCP**
- Effectively dismantled **HUD fair housing enforcement**
- Crippled **Title VI enforcement** through the Department of Education
- Closed or defunded **EPA environmental justice offices**
- Abandoned **USDA programs** designed to remedy documented discrimination
- Actively chilled civil rights education, DEI, and remedial policy nationwide

At the same time, the Supreme Court has:

- Ended affirmative action
- Weakened voting rights enforcement
- Overturned settled precedent
- Reframed equal protection as abstract race-neutrality divorced from historical harm

Let me be clear for the record:

**The federal civil rights posture today is among the most hostile to remedial equality that this country has seen since the nineteenth century.**

This moment bears an unavoidable comparison to the **1880s**, the period following Reconstruction.

Then:

- Constitutional amendments existed on paper

- Federal enforcement collapsed
- Courts narrowed doctrine
- States were left exposed
- Racial hierarchy was restored through law, policy, and indifference

Decisions such as *Slaughter-House*, *The Civil Rights Cases*, and *Plessy v. Ferguson* hollowed out the Fourteenth Amendment for nearly a century.

What we are witnessing today is not identical—but it is **structurally analogous**.

**Equality is again being treated as symbolic rather than enforceable.**

**Disparate harm is again deemed constitutionally irrelevant.**

History teaches us this lesson clearly:

**When equal protection collapses, democracy collapses with it.**

Federal equal protection doctrine is not equipped to address modern discrimination.

Under current jurisprudence:

- Intent is required
- Disparate impact is discounted
- Rational basis review dominates
- Strict scrutiny is weaponized against remedial policy
- Structural and algorithmic discrimination remains largely invisible

Systemic racism operates through facially neutral systems—housing finance, employment screening, zoning, policing tools, education pipelines.

When courts refuse to see impact, they legitimize inequality.

This is how equal protection becomes **hollowed out while remaining formally intact**.

Despite these realities, **Vermont has no Equal Protection clause in its Constitution.**

Article 7—the Common Benefits Clause—was never intended to serve that function. As Professor Peter Teachout testified before this Committee, it addresses special privileges, not classification-based discrimination.

Using Article 7 to do equal protection work is using the wrong tool for the task.

Approximately **22 states** have explicit Equal Protection provisions. Vermont does not.

In the current federal environment, that absence is no longer academic—it is dangerous.

In periods when federal civil rights enforcement collapses, **state courts become the last line of constitutional defense.**

History shows that when courts become aligned with—or deferential to—hostile doctrines, the consequences are profound and long-lasting:

- Civil rights statutes are narrowed or invalidated
- Disparate harm becomes normalized
- Vulnerable communities lose protection
- Democratic legitimacy erodes

At moments like this, **judicial independence, constitutional clarity, and moral courage** are not abstract ideals—they are safeguards against catastrophe.

The integrity of Vermont’s highest court matters most **when equal protection is under threat**, not when it is secure.

Proposal 4 provides Vermont with:

- A **state constitutional foundation** for equal protection
- Independence from federal doctrinal collapse
- Capacity to address disparate impact and systemic harm
- Authority to scrutinize discriminatory algorithms
- Constitutional support for durable civil rights policy

It does not mandate outcomes.

It does not override federal law.

It does not eliminate judicial review.

It provides **authority and clarity**—precisely when they are most needed.

Courts interpret constitutions through **text and intent.**

Vermont has repeatedly declared—through statute, executive order, resolution, and constitutional action—that **eradicating systemic racism is a compelling state interest.**

I want to state this clearly for the constitutional record:

**Proposal 4 is intended to give constitutional effect to Vermont's determination that eradicating systemic racism is a compelling state interest and to ensure that state action may be evaluated based on both purpose and effect.**

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As a Christian minister, I must also say this:

Our moral traditions teach us to **care for the poor, defend the oppressed, and set the captives free**. They teach us that **silence in the face of injustice is not neutrality—it is complicity**.

This is not about Republicans or Democrats.

Not red or blue.

Not left or right.

**This is about right and wrong.**

And these are not ordinary times.

**Now is not a time for silence.**

**Now is a time to stand up and speak out for justice.**

Equal protection is not special treatment.

It is the condition under which law is legitimate and democracy endures.

After Reconstruction, this nation failed to act—and paid a terrible price.

Proposal 4 is Vermont's opportunity to choose differently.

I urge this Committee to advance P.R.4 and ensure that equal protection in Vermont is not symbolic, not contingent, and not left to chance.

Thank you for your careful attention. I am prepared to answer questions.

*Rev Mark A Hughes*

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