

PR 4 Article 23 “Declaration of Rights; government for the people; equality of rights”

Senate Judiciary, January 29, 2026, 9:00 am

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Vermont Family Alliance (VFA) is a parental rights and minor protections advocacy group.

Vermont Family Alliance acknowledges that there have been many violations of equal rights in the past and is not opposed to an equal rights amendment with broader language, as recommended by Peter Teachout, Constitutional Law Professor, and only if it is equally applied.

Our main concern, after analyzing Prop 4, testimony by Constitutional Law Professor Peter Teachout, and listening to discussions on Prop 4 in both the Senate and House Judiciary Committees in 2024, is that the legislature will pass laws that discriminate against biological women, Christians, and traditional families by providing “expanded protections” to the finite list of state-sanctioned “historically marginalized populations” under Sec. 1 Purpose (b); and specifically under “gender identity” and “gender expression” in the proposed amendment.

Vermont Family Alliance is opposed to the passage of Proposition 4 by the General Assembly, to be put before the voters in November 2026 for the following reasons:

1. Proposition 4 presents a finite list of groups that would be protected by laws passed under Prop 4, at the exclusion of other groups.

A. Peter Teachout pointed out that the finite list of protected classes presents interpretive challenges for the courts in his testimony to the Senate Judiciary Committee on January 30, 2024. He recommended broader language, per the 14th Amendment of the U.S. Constitution, as follows:

[PR.4~Peter Teachout~Constitutional Aspects of PR. 4~1-30-2024.pdf](#)

“Every person is entitled to be treated with equal respect and dignity under the law, therefore government, acting either alone or in conjunction with private actors, shall not deprive any person of life, liberty, or property without due process of law or deny any person the equal protection of the laws. The legislature shall have the power to enforce the provisions of this article with appropriate legislation.”

- B. The Senate Judiciary Committee did not take up Teachout's suggestion for broader language and passed Prop 4 out of Committee with the finite list of groups.
- C. Teachout also stated in his testimony to the House Judiciary Committee on May 1, 2024, [PR4~Peter Teachout~Written Testimony~5-1-2024.pdf](#) that:

“... once you start listing protected classes, you raise the question of why the particular types of discrimination are listed and not others. The law has a technical term for this reflected in the Latin maxim, “expresio unius est exclusio alterius,” which means that if you include certain classes in a closed list you mean to exclude others. Because of the way PR 4 is currently framed, practitioners and courts will consequently be faced with difficult questions: Are members of the classes specifically listed in the amendment in PR 4 the only ones entitled to judicial protection against discrimination? If not, are they entitled to special protections that members of other classes are not entitled to? If neither of those, then what is gained by listing them?”

- D. Teachout suggested that, if possible, the House Judiciary Committee return Prop 4 to the Senate to request a “quick fix” by inserting language, “on grounds such as,” to expand protections to all groups of people. He wrote, “... it is important to remember we are considering the adoption of a constitutional amendment, a fundamental statement of governance that is supposed to guide us over the long term, so while we are doing it, it is important to try to get it right.”

The House Judiciary Committee passed Prop 4 out of Committee knowing that the language would cause issues with interpretation in the courts, because passing Prop 4 within the 2024 timeline was a higher priority than getting the language right.

2. Legislation passed under Prop 4 that, intentionally or consequentially, prioritizes the rights and protections of transgender women over biological women, will face court challenges.

Teachout stated in his January 30, 2024, testimony to Senate Judiciary that:

“The federal standard establishes the floor below which states cannot go, but it does not prevent states from providing greater protections. The limit is when the state law conflicts with federal constitutional law. That is the limitation that Vermont would face if it were to attempt to invoke a newly added equal protection clause as

support for adopting affirmative action programs giving preferences to members of historically disadvantaged groups. In a recent case involving challenges to affirmative action admission programs at Harvard and the University of North Carolina, the U.S. Supreme Court ruled that making race a factor in deciding who gets beneficial treatment – whatever the motivation and whether it serves to advantage or disadvantage a racial minority - constitutes a form of racial discrimination prohibited by the Equal Protection Clause in the 14th Amendment. So if the state constitution were to be amended to include an equal protection clause, that clause could not be invoked by the state as support for adoption of affirmative action programs that take this form. Since federal law is supreme, all such programs would be vulnerable to challenge under the federal Equal Protection Clause on grounds they constitute impermissible discrimination on the basis of race.”

VFA further asserts that any laws that elevate the rights of biological males that identify as female under “gender identity” and “gender expression” under Prop 4 will be challenged as in violation of the Equal Protection Clause in the 14th Amendment.

3. Legislators have already demonstrated they have a mindset to discriminate against some groups under Proposition 4.

The original 2019 proposed amendment contained “religion”. It was removed in 2023 and then added back in 2024, which suggests the likelihood that legislators will not exercise equal protections in laws introduced and passed under Proposition 4, but will actively attempt to discriminate against some groups by expanding “protections” for the finite list of groups, at the expense of other groups.

PR 4 2019 [Draft Proposition Template](#) with “religion”

PR 4 2023 [Draft Proposition Template](#) “religion” removed.

Senate Judiciary Committee added “religion” back in 2024.

4. Any laws passed under Prop 4 that expand protections for “gender identity” and “gender expression” over biological sex will be challenged as unconstitutional.

A. Any Vermont laws passed under Prop 4 that bump up against the Equal Protection Clause of 14th Amendment of the U.S. Constitution and SCOTUS decision [Students for Fair Admissions, Inc. v. President and Fellows of Harvard College](#) | 600 U.S. ____ (2023) | Justia U.S. Supreme Court Center will face a legal challenge.

- B. Mid Vermont Christian v. Saunders: given the preliminary injunction to allow Mid Vermont Christian back into the Vermont Principal's Association, we anticipate a decision in favor of Mid Vermont Christian regarding their participation in both interscholastic sports and town tuitioning.
- C. The SCOTUS decision coming in early summer 2026 on whether to uphold state bans on transgender males in girls' sports under Title IX will also serve as precedent, and we anticipate a decision in favor of upholding state bans, which will apply to states that allow transgender women to play in girls' sports.

5. **Legislators have failed to disseminate information to the public on Prop 4. There were fewer in attendance at the May 1, 2024, public hearing than there were members on the House Judiciary Committee that hosted the public hearing; and only six people, none of whom were from the general public, testified.**

[McGuinness: Lawmakers play fast and loose with Prop 4 “equality of rights” constitutional amendment - Vermont Daily Chronicle](#)

6. **Quite simply, Proposition 4 will give the Vermont legislature neither the constitutional upper hand nor the moral upper hand that it is seeking. The Vermont legislature simply cannot pass laws that expand protections for a finite list of Vermonters, while violating the rights of other groups, due to the Supremacy Clause of the U.S. Constitution and SCOTUS decisions.**