

## **NEWS:**

# **House Grapples with Equal Rights Proposal**

**JUNE 16, 2017** – A proposed amendment to the state constitution drew a lengthy debate on Tuesday in the State House of Representatives before being defeated.

In opening the floor discussion of [House Bill 5](#), prime sponsor of the measure, House Majority Leader Valerie Longhurst, D-Bear, said it was primarily intended to grant equal rights protection under the Delaware State Constitution to women and people with disabilities.

While testifying in support of the bill, House Majority Attorney Natalie Woloshin, an author of the legislation, said it would add to the state constitution a new line that "no person shall be denied equal rights under the law." She maintained the additional language was needed to provide the previously cited groups with a level of protection they do not currently enjoy.

In subsequent testimony, House Minority Attorney Peggy Marshall Thomas questioned that reasoning. She said the Equal Protection Clause of the 14th Amendment to the U.S. Constitution already provides such safeguards. It specifies no state shall deny "to any person within its jurisdiction the equal protection of the laws."

Ms. Marshall Thomas said while many states have amended their state constitutions to provide broader rights than the federal government requires, those expansions have typically been delineated. "In order to protect greater classes, states have passed amendments to include, for example ... equal protection based on sex, age, additional classes which they chose to address," she said. "This particular bill does not specify any particular class."

State Rep. Mike Ramone, R-Pike Creek South, asked if the overly broad nature of legislation could be problematic. "Is it litigious?" he said. "Is it something that gets challenged in courts often?"

Ms. Marshall Thomas said she would "anticipate a lot of litigation regarding what this means."

That opinion was based on nearly 150 years of case law since the similar Equal Protection Clause was added to the U.S. Constitution.

According to the [Legal Information Institute at Cornell Law School](#), the clause is the most commonly used -- and frequently litigated -- phrase in the 14th Amendment. In fact, it figures prominently in a wide variety of landmark cases, including *Brown v. Board of Education* (racial discrimination), *Roe v. Wade* (reproductive rights), *Bush v. Gore* (election recounts), *Reed v. Reed* (gender discrimination), and *University of California v. Bakke* (racial quotas in education).

In an attempt to prevent the bill from sparking a wave of future legal actions, and its resulting unknown consequences, State Rep. Ruth Briggs King, R-Georgetown, proposed refining the bill's scope. Her amendment was defeated after the sponsor opposed the change.

As a constitutional amendment, House Bill 5 needed a supermajority of two-thirds of the House members, or a minimum of 28 votes, for passage. It failed, falling four votes short on a vote along party lines.

On Wednesday, Reps. Longhurst and Ramone circulated for sponsorship an alternative, more focused constitutional amendment specifying that "equal protection under the law shall not be denied or abridged to any person based on race, sex, age, religion, creed, color, familial status, disability, sexual orientation, gender identity, or national origin." The bill is expected to be introduced next week.

Because state constitutional amendments must be approved by two consecutive General Assemblies, the earliest the measure could be enacted is January 2019.