



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: May 28, 2020

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Mr. J. Todd Webb, Chairperson *JTW*
State Council for Persons with Disabilities

RE: S.B. 191 (Equal Rights Amendment Expansion)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 204 which is the first leg of a constitutional amendment to add race, color, and national origin to the Article I, § 21 of the Delaware Constitution to explicitly declare that protection against discrimination based on race, color, and national origin is one of Delaware's fundamental rights. In January of 2019, the legislature passed an Equal Rights Amendment bill which amended the Delaware Constitution by providing that "Equality of rights under the law shall not be denied or abridged on account of sex." When Delaware passed the Equal Rights Amendment in 2019, they joined about half of the states across the country that had already passed Equal Rights Amendments to their state constitutions in order to provide protection against discrimination based on sex.

SB 191 would amend Article I, § 21 of the Delaware Constitution to say that "Equality of rights under the law shall not be denied or abridged on account of race, color, national origin, or sex." SB 191 would put Delaware on track to join at least 15 states that have added a provision to their state constitution that prohibits the denial or abridgement of equal rights under the law based on race, color, or national origin.

While adding protection to our state constitution for sex, race, color, or national origin is a move in a positive and progressive direction, SCPD recommends adding "disability" to the Equal Rights Amendment. SCPD believes that this is something important in order to provide

Delawareans with disabilities more protection against discrimination. In regard to constitutional equal rights, Delaware Law School Dean, Rod Smolla, has so eloquently stated that “There are specific laws, for example, dealing with discrimination on grounds of disability or age. These statutory civil rights laws, however, do not have the same resiliency or resonance as constitutional protections. Ordinary legislation, whether passed by the United States Congress or the General Assembly of Delaware, may be amended or entirely repealed as majorities come and go.” See An unfortunate omission: Delaware's lack of equal protection, Delaware Online, <https://www.delawareonline.com/story/opinion/contributors/2016/06/16/unfortunate-omission-delawares-lack-equal-protection/85833036/> (last visited May 7, 2020). Smolla has further said that “The whole point of a constitutional guarantee is to elevate certain foundational principles above the fray. Constitutional rights exist to insulate core values from the vicissitudes of politics, imbuing certain fundamental rights with higher moral and legal stature.” Id.

In May of 2016, an Equal Rights Amendment bill was proposed in Delaware that included equal protection for those with disabilities. Senate Bill 190, sponsored by Senator Karen Peterson, D-Stanton, would have amended the state constitution by adding, “Equal protection under the law shall not be denied or abridged because of race, sex, age, religion, creed, color, familial status, disability, sexual orientation, gender identity or national origin.” When this amendment was introduced, Senator Peterson said it “would offer stronger, broader protection and serve as a statement that Delaware treats all people equally.” She went on to say that “People with disabilities are routinely denied the right to work, the right to an inclusive education, and the right to live in our communities.” The bill was tabled in June of 2016.

Currently, there appears to be only three states that include those with disabilities in their state constitution Equal Rights Amendments. Article I, §2 of the Florida Constitution states that “All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.” Article I, §3 of the Louisiana Constitution provides that “No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.” Article I, §2 of the Rhode Island Constitution state that “No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof.”

Since an amendment to the Delaware constitution requires a two-thirds vote in the House and Senate, which must also be approved in two consecutive General Assemblies, passing an Equal Rights Amendment that includes protection for people with disabilities requires strong bipartisan support and effort. With all of the above in mind, **SCPD supports the bill, but is strenuously advocating for the bill to include people with disabilities as being a protected class who is**

entitled to equal rights under the Delaware constitution. SCPD recommends that Article I, § 21 of the Delaware Constitution should be amended to state that “Equality of rights under the law shall not be denied or abridged on account of race, color, national origin, disability, or sex.”

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations, recommendations and position on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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