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Sentinel Editorial

Ballot questions: Voters should say 'yes' to Question 1, 'no' to Question 2

WILFRED BILODEAU Oct 28, 2018

Voters receiving their ballots Nov. 6 — and those who obtain absentee ballots before then — will find more than candidates among the choices to make. This year, there are two ballot questions to be settled by the voters. Both would change the state's constitution, and therefore require approval by two-thirds of voters. Only one deserves that support.

Question 1 would allow any taxpayer who's registered to vote to seek a court declaration that the state or a local government is or has authorized misusing public funds in a way that violates the constitution, a law or ordinance. It arose in response to a 2014 N.H. Supreme Court ruling that found ordinary taxpayers have no standing to sue the government unless they can show some injury to themselves other than just misuse of tax dollars.

To be more precise, the court found that there is no constitutional provision for anyone but the governor — with the approval of the Executive Council — or the Legislature to request an advisory opinion from the court, which, the court ruled, is what suing in only a taxpayer capacity amounts to. The ruling upended a 2012 law enacted specifically to give that standing to any taxpayer.



Supporters of the question argue there's a longstanding history of taxpayers being able to sue; the court disagreed, finding such lawsuits have only been allowed when other criteria have been met. Regardless of the history, voters must decide whether pretty much everyone being able to sue their town or the state is a good idea. Lawmakers seem to think so; the bill sending the measure to the ballot passed both chambers with overwhelming support.

It seems as though taxpayers ought to have some more direct way of addressing situations where they feel the government is or potentially may be using their tax dollars unconstitutionally or unlawfully, other than by waiting for the next election and "voting the bums out." We find the idea that individual taxpayers or voters aren't harmed enough by unconstitutional or unlawful actions to warrant legal standing to go against the very nature of a democratic form of government that's built on civil liberties.

The major worry seems to be that such legal standing will clog the courts with frivolous lawsuits by everyone who simply doesn't like what the government is doing. But Question 1 addresses that; it would only allow taxpayer lawsuits when there are no other legal means for addressing the complaint. So if you already have the right to sue, appeal or otherwise seek satisfaction, you can't file a lawsuit under this measure. For example, a property owner who believes his assessment is unlawful cannot sue under the amendment because he can challenge the assessment through normal local governmental avenues and, eventually, the courts. And the courts have long dealt with nuisance lawsuits without becoming so clogged that they cannot function properly. Should this standing change that, we believe lawmakers could find a remedy.

We are wary of tinkering with the state's constitution, especially given the general lack of public awareness regarding such measures. They are debated within legislative chambers and may be reported on during that time, but then go without much attention for months before popping up on

Election Day with no accompanying explanation. Further, the rights and standing they affect are so powerful as to override virtually every other law or policy on the books. They should not be adopted lightly. However, the court has made clear regarding this issue that barring this particular remedy, taxpayers will not have the right to sue when they believe their government has acted beyond the constitution or law. Thus, constitutional action is the only option.

Question 1 deserves passage.

Question 2 is a deceptively simple measure that could have far-reaching repercussions. It would add to the constitution a vaguely worded right to privacy from government intrusion, using this text: “An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.”

It’s a concept we think almost anyone would find appealing. Who doesn’t want protection from government spying or the release of personal information? But the devil is in the details, and with Question 2, there are none. There’s no caveat giving police the right to a search warrant, nor protecting the public’s right to know. There’s no real way of knowing how a court would interpret the terms “essential” or “inherent.”



While vague language, as backers of Question 2 note, isn’t necessarily bad in constitutional terms, neither is it necessarily an advantage. Proponents note 10 states have privacy language built into their constitutions, but in every one of those cases that language is more specific than what New Hampshire’s lawmakers are proposing. Each, at the very least, notes the right does not interfere with “the authority of law.” We think there’s a reason for such carve-outs.

There are also concerns that the Supreme Court could view this new right as superseding or limiting other established constitutional rights because it's the most recent expression of the "will of the people." That could wreak havoc with public records and right-to-know laws, which in New Hampshire are already too often abused or ignored.

In short, it's a change laden with the potential for unintended and troubling legal consequences. We haven't yet heard an argument why state lawmakers can't pass legislation that would advance personal privacy concerns without butting heads with other constitutional protections.

Unlike Question 1, this measure should not be added to the constitution without much more public debate and, in our view, rewriting to make clear its intent and effect.

Voters should say no to Question 2.

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