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Editorial: More debate needed on ballot questions

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Virtually lost in the toxic fog of Trump-era politics are two proposed constitutional amendments that will be on the ballot on Nov. 6. Both have bipartisan support and one passed both houses of the Legislature overwhelmingly. Both are worthy of serious discussion and debate, but that's the problem. Relatively few people know ballot Questions 1 and 2 exist and the two-plus weeks left before the election is not time enough to give something so important as amending the state Constitution its due. For that reason, and at this point that reason alone, we urge readers to vote no on the amendments.

The first ballot question is too long to reprint in its entirety here but can be found, as can Question 2, on the web page of the New Hampshire chapter of the League of Women Voters at bit.ly/2P7bl34 (http://lwvnh.org/files/ballot_questions_2018_voter_guide.pdf).

In brief, Question 1 would undo a 2014 state Supreme Court ruling that, its proponents say, reversed more than a century of precedent that granted standing, meaning the right to bring an action in court, to any taxpayer seeking to challenge a potentially illegal action by state or local government. *Duncan v. New Hampshire* was a case challenging the constitutionality of a school voucher/scholarship program. Without ruling on the merits of the case, the high court denied standing to the plaintiffs seeking a declaratory judgment because they could not show that they had been harmed by the program. Should Question 1 pass, any taxpayer would, barring frivolous claims, have standing to sue the government over the expenditure of public funds.

Question 2, sponsored by Weare Republican Rep. Neal Kurk and Hampton Democratic Rep. Renny Cushing, is succinct but long on potential implications. It reads, "An individual's right to live free from government intrusion in private or personal information is natural, essential and inherent." It is an attempt to update the Fourth Amendment's right of a person to be "secure in their houses, papers and effects, against unreasonable searches and seizures" for the digital age.

Should a taxpayer, in a state that relies more heavily on property taxes to fund government than any other, have the right to sue when he or she feels that public money is being spent illegally? We're inclined to think so.

Should state government or its subdivisions be precluded from, in a worst-case scenario, using information acquired via the internet or otherwise assembling a dossier on residents absent a criminal investigation? Definitely. But opponents of both ballot questions warn of potential unintended consequences.

Would Question 1 lead to an explosion of lawsuits against government over, for example, expenditures on improvements to Concord's Main Street? Perhaps, at least until lawmakers and court rulings set the boundaries of what's possible under the amendment.

Would Question 2, as opponents fear, prevent schools from requiring student vaccination records or employees of the Department of Motor Vehicles from asking whether someone taking the eye exam for their driver's license was wearing contact lenses? Probably not, but those are only a few of opponents' concerns.

Of the privacy question, former state Supreme Court Justice Linda Dalianis said, "If it were to pass, it is more likely to cause more problems than it would solve. This is a version of the unintended consequences argument. People have good ideas and they think that constitutional amendments will solve their problems. . . . Typically that is not true. It tends to raise more questions than it answers."

To be enacted, a constitutional amendment must pass by a two-thirds majority of the state's House and Senate and a two-thirds vote of the electorate. More debate is needed before the jury of the public casts its vote.

(Correction: An earlier version of this editorial misstated the year of the Supreme Court case "Duncan v. New Hampshire.")