

Proposed Constitutional Amendments on the November 6, 2018 Ballot in New Hampshire

*prepared as an unbiased non-partisan voter service by the
League of Women Voters NH*

Two proposed amendments to the New Hampshire Constitution will appear on the November 2018 ballot. Voters will be asked to answer YES or NO to each. Voters should gather information on these amendments to vote wisely. Voters may choose to leave their answers blank without affecting the outcome of either question.

New Hampshire voters do not amend the Constitution lightly. The Constitution should be changed only when there is a compelling reason. The issue must have current relevance that will also stand the test of time and be as relevant in the future as it is considered today.

When a proposal to amend the Constitution is passed by a super-majority of both houses of the legislature, it must be placed on the ballot. Two-thirds (67%) of the votes cast on the question must be YES votes for the amendment to become part of our state's Constitution.

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Question 1 was approved 309 to 9 in the House and 22 to 2 in the Senate.

If passed **this amendment would allow taxpayers to have legal standing to challenge a governmental action in court without having to prove they were personally affected.**

The text of **Ballot Question 1** is below, with the additional new text in bold italics:

“Are you in favor of amending Article 8 of the first part of the constitution to read as follows (addition in bold italics):

All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable, and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. ***The public also has a right to an orderly, lawful, and accountable government. Therefore, any individual taxpayer eligible to vote in the State shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding.***”

Supporters point out that this presumption of taxpayers having standing was the practice until the NH Supreme Court in 2010 ruled that “without an injury or an impairment of rights” to an individual, simply being a taxpayer is not enough to confer legal standing to bring court action.

Opponents are concerned that the amendment would create frivolous lawsuits, clogging the courts and costing taxpayers money, in spite of court rules and systems already in place to prevent frivolous suits.

If you agree with the supporters on this question, you will vote YES.

If you agree with the opponents on this question, you will vote NO.

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Question 2 was approved 235 to 96 in the House and 15 to 9 in the Senate, just qualifying for the super-majority needed to be placed on the ballot.

If passed **the amendment would change the way courts balance governmental interest in gaining access to personal information versus the nature and degree of intrusion on an individual's privacy rights.** It would require the government to show a compelling state interest in obtaining access to personal and private information before a court would order such access. If the amendment is passed, NH would become the eleventh state in the country with a right to privacy in its constitution.

The text of **Ballot Question 2** is below, with the new text in bold italics:

“That the first part of the Constitution be amended by inserting after article 2-a the following new article: *[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.*”

Supporters of the amendment argue that while the NH Constitution already states that individuals have a right to be free from unreasonable search and seizure of person, property, and possessions, it does not specifically address information. In the digital age, when information is so readily available, there is a need for the Constitution to name informational privacy explicitly.

Supporters are concerned about how governmental access to information could be used or misused in the future. The amendment would provide broad protection against a wide array of governmental access to private and personal information outside the context of criminal investigation.

Opponents see the proposed wording as so broad and vague, it is likely to lead to problems for law enforcement and public safety. Opponents suggest it could be applied, for example, when the DMV asks whether one needs glasses or the school asks for children's vaccination records. It could affect the information on prescriptions that is kept by the NH Comprehensive Health Care Information System.

Supporters and opponents agree that if passed the amendment is likely to produce an increase in lawsuits.

Supporters say such lawsuits would further define individual privacy rights.

Opponents expect courts will be clogged by frivolous lawsuits, including those brought by individuals for common law enforcement and civil procedures.

If you agree with the supporters on this question, you will vote YES.

If you agree with the opponents on this question, you will vote NO.

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