Cornerstone Advises “No” on Question 2

**What is Question 2?**

Question 2 is a ballot question that, if approved, would add the following to the New Hampshire Constitution: “[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.”

In addition to elections to state and federal offices, New Hampshire has two proposed state constitutional amendments on the November ballot. The second one is brief and deceptively appealing: An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.

Asserting privacy in an age of big data, government snooping, and unwarranted intrusion is a good idea. Unfortunately, since 1973, abortion advocates have asserted “privacy” to justify the termination of human life. Moreover, in some states with privacy amendments to the state constitution, courts have ruled that such amendments provide greater protection for abortion than does Roe v. Wade.

For that reason, in spite of the threats to authentic privacy, Cornerstone recommends a “no” vote on Question 2.

Cornerstone recognizes that there is a legal argument to be made that this amendment can only be used to construct policy regarding “informational privacy,” as opposed to “decisional privacy.” Roe v. Wade was decided on the basis of decisional privacy, however, given the past unpredictability of decisions in this area and the extreme pressure created by activism, Cornerstone is concerned that the distinction between “informational privacy” and “decisional privacy” is too thin to prevent the Question 2 language from being used to concoct abortion rights. Absent explicitly limiting language, Cornerstone believes this language could—and will—be used in an effort to expand the scope of abortion protections in NH, even though that application would in fact deviate from the original intent of the amendment.

**Explicit privacy protections provide the basis for court challenges to expand abortion**

From the Center for Reproductive Rights, “Using State Constitutions to Protect Reproductive Rights”:

Where the state constitution recognizes rights to privacy or gender equality that are more extensive than those recognized in the federal constitution, state constitutional challenges can provide an effective strategy for defending and expanding reproductive rights.

For example, the constitutions of Alaska, California, Florida and Montana, unlike the federal constitution, have explicit provisions that protect the right of privacy. Supreme Courts in each of those states have relied on those privacy provisions to strike down restrictions on abortion that would be allowed under the federal constitution.
Granite Staters fought long and hard against abortion extremists to get a partial-birth abortion ban and a parental notification statute on the books. If New Hampshire voters approve a privacy amendment without explicit abortion neutrality, we will be one lawsuit away from seeing those laws struck down.

It’s instructive to note a recent U.S. Supreme Court move underscoring what happens when voters try to rectify constitutional provisions that are misused to justify abortion. The Court announced on October 1 that it would not hear a challenge to a 2014 ballot measure passed by Tennessee voters that said “nothing in this [state] Constitution secures or protects a right to abortion.” Abortion advocates have been fighting that ballot result for four years.

And why was the Tennessee ballot measure needed in the first place? Because in 2000, a Tennessee court ruled that the state constitution gave abortion greater protection than did federal law.

Think about that: it took 14 years for voters to reverse an ill-advised pro-abortion court decision, and then it took four years after that for the U.S. Supreme Court to decline to hear a challenge by abortion advocates to the voters’ decision.

A better way: Abortion neutrality

What would make a privacy amendment stronger and less open to misuse? Abortion neutrality, incorporated into the language of the amendment: Nothing in this state constitution secures or protects a right to abortion. Unfortunately, Question 2 can’t be amended before Election Day to include that sentence.

Privacy is a vital concern. Let the New Hampshire House and Senate go back to the drawing board next term and come up with a privacy amendment that is abortion-neutral.

To legislators who believe that abortion-neutrality language is unneeded, we can only reply that what matters is what courts believe. The lessons from other states in this regard are sobering.

Privacy matters. So does the right to life. Don’t let a ballot question trick you into picking the former over the latter. If we are to have a right to privacy explicitly recognized in the New Hampshire constitution, it must be abortion-neutral. Say no to Question 2.

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