Written by **Joe Wolverton, II, J.D.** on November 13, 2018

New Hampshire Voters Approve Sweeping Privacy Amendment

Over 80 percent of citizens of New Hampshire voted to approve an amendment to the state's constitution that declares an individual's privacy to be a natural right that must remain free from government intrusion.

Question 2 on the statewide ballot asked voters in the Granite State to approve or reject the following proposed additional language to the New Hampshire Constitution: "An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."

In New Hampshire, a constitutional amendment needs a two-thirds (66.67 percent) vote vote of electors to be approved, and with 98 percent of the votes counted, 81 percent of the electorate (402,092 voters) approved the amendment.

The results are an impressive victory for the right of the individual to be free from government interference in his life and a significant setback for the ever-expanding surveillance state.

State Representatives Neal Kurk (R-Hillsborough 2) and Robert Cushing (D-Rockingham 21) sponsored the amendment in the New Hampshire General Court. What became Question 2 on Tuesday's ballot was introduced into the state legislature as Constitutional Amendment Concurrent Resolution 16 (CACR 16) on November 6, 2017. On February 22, 2018, the New Hampshire House of Representatives passed the resolution by a vote of 235 to 96. On May 2, 2018, the New Hampshire Senate followed their colleagues' lead, voting 15 to nine to pass CACR 16.

As a result of the voters' overwhelming support for this constitutional protection of their liberty, the amendment added an Article 2-b to the New Hampshire Constitution. The following text was added:

> Article 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.

Representative Kurk was quoted in the *New Hampshire Union Leader* saying that the purpose of the amendment was to "update" the Fourth Amendment for the information age.

Despite the amendment's obvious appeal, there were those who opposed the measure, predicting pitfalls for police. In advance of the vote, the *Kenne Sentinel* published the following op-ed:

> 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."… Voters should say no to Question 2.
>
> Kurk, in support of his proposal, responded, "A constitutional amendment in my view should be a statement of principle," Kurk said. "It's not a specific solution that deals with a specific problem."

In fairness, there's no way to know how a court would interpret any word written into a statute or a constitutional amendment, but it is the unalienable right of the people and their elected representatives to do all in their power to protect the people's liberty from being abridged by any government agency or agent. The new language does just that, specifically.

Believe it or not, prior to this proposal's approval, New Hampshire's constitution had no explicit provision protecting the people from government surveillance. Any challenge to the government's growing intrusion into formerly private areas of life had to come through the courts or by trying to convince lawmakers to enact legislation offering some modicum of a check on the surveillance state's penetrating power.

With Question 2's passage, however, the people of New Hampshire no longer need to rely on political give-and-take for the protection on one of their most fundamental rights.

Given the role that rebellion against the unreasonable, unwarranted searches and seizures by government played in igniting the spark that lit the fires of armed resistance in America and the American War for Independence, it is dismaying that liberty now is so lightly prized that there were over 94,000 people in New Hampshire who either voted *against* having their privacy protected from government intrusion!

James Otis is a name that is almost completely forgotten by contemporary Americans, but he was once the most famous lawyer in the colonies, and it was his renowned recrimination of unreasonable searches in Boston that earned him fame and influenced his countrymen to resist the tyranny of these deprivations.

At a trial challenging the constitutionality of the General Writs of Assistance, Otis spoke eloquently and persuasively in favor of freedom from the unreasonable searches being carried out by 18th-century government agents:

> Now, one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient.
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> This wanton exercise of this power is not a chimerical suggestion of a heated brain. I will mention some facts. Mr. Pew had one of these writs, and, when Mr. Ware succeeded him, he endorsed this writ over to Mr. Ware; so that these writs are negotiable from one officer to another; and so your Honors have no opportunity of judging the persons to whom this vast power is delegated. Another instance is this: Mr. Justice Walley had called this same Mr. Ware before him, by a constable, to answer for a breach of the Sabbath-day Acts, or that of profane swearing. As soon as he had finished, Mr. Ware asked him if he had done. He replied, "Yes." "Well then," said Mr. Ware, "I will show you a little of my power. I command you to permit me to search your house for uncustomed goods" — and went on to search the house from the garret to the cellar; and then served the

> constable in the same manner.

In 1788, nearly three decades after the speech of Otis in defense of the right to be free from government intrusion, his equally eminent sister, Mercy Otis Warren, echoed her brother's bold attack on despotism. Writing under the pseudonym "Columbian Patriot," Warren said:

> There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence — the daring experiment of granting writs of assistance in a former arbitrary administration is not yet forgotten in the Massachusetts; nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure.

Today, though, we live in the post-9/11 era, where the rights guaranteed by the Fourth Amendment and almost all others in the Bill of Rights have been forcibly seized from the people and laid by agents of government on the altar of "safety from terrorism."

At least the people of New Hampshire now live in a place where the state's constitution explicitly excludes the government from encroaching into the private sphere of individual liberty.

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