

The Business Council Opposes Proposition 2 - Environmental Rights Amendment

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On November 2, New Yorkers will be voting on three amendments to the state's constitution. While three election-related amendments have received the most public attention to date, the proposal with the greatest potential impact on New York's economy is Proposition 2.

Proposition 2 would amend the state constitution's "bill of rights" to provide that "Each person shall have a right to clean air and water, and a healthful environment."

That sounds great, and not surprisingly, it polls well, with approval rates reported at more than eighty percent.

Regardless, we strongly recommend against its approval for two critical reasons.

First, given the existing body of federal and New York State environmental laws and enforcement mechanisms, this amendment is simply unnecessary. New York has broad, stringent environmental standards, and in many instances, its regulatory programs are broader, and its standards are more strict than those applied under federal law. Moreover, environmental laws are enforced by a professional environmental agency as well as the state attorney general. Further, all major federal environmental laws provide for citizen suit enforcement, and these provisions apply to federal laws whose enforcement is delegated to New York State.

Second, this amendment represents the worst form of lawmaking – a proposal with no meaningful definitions or parameters, which would result in tremendous uncertainty as to how it will be applied, left to be sorted out through years of litigation.

Importantly, like most states, New York's constitution already mandates environmental protections and correctly charges the state legislature with adopting policies to protect the environment and address air and water pollution and other potential adverse environmental impacts. In doing so, the legislature has recognized that environmental protections also require a consideration of economic growth, with both

attributes being of great value to New Yorker. New York's environmental quality review act law provides a straightforward explanation of this balancing act. "Protection and enhancement of the environment, human and community resources shall be given appropriate weight with social and economic considerations in public policy. Social, economic, and environmental factors shall be considered together in reaching decisions on proposed activities."

In contrast, this proposed constitutional amendment would be applied as a blunt instrument, with the potential to stop activities with any level of environmental impact regardless of their broader public benefits. New York's existing legal framework for environmental protection has proven to be effective at providing a high level of environmental protection, and the state legislature has shown its ability to act quickly to address new issues of concern.

In contrast, Proposition 2 would result in significant uncertainty about how our future environmental and economic policies will be shaped. New York voters should say no.