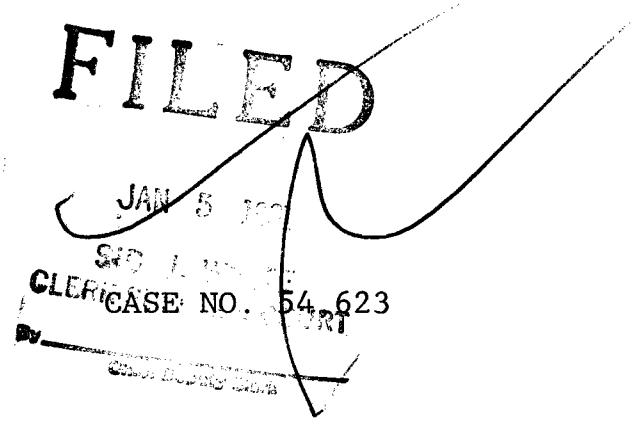
IN THE SUPREME COURT OF FLORIDA.




DEAN FORSBERG and
WALTER FREEMAN,

Appellants,

vs.

THE HOUSING AUTHORITY OF
THE CITY OF MIAMI BEACH
and MURRAY GILMAN, Executive
Director,

Appellees.

. . . . . .

DIRECT APPEAL FROM THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

# SUPPLEMENTAL BRIEF OF APPELLEES

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## INTRODUCTION

This brief is filed in response to the Court's order of November 26, 1980, directing the parties to brief the question of the applicability of Article I, Section 23, Florida Constitution, to the issues in the case.

Article I, Section 23, of the Constitution, grants to the people of Florida the right to be "let alone" and "free from governmental intrusion" into their private lives. What this right to privacy means will undoubtedly be the subject of extensive litigation. It is obviously a concept meaning many things to many people. To some, it may mean that government may not prohibit or limit consensual conduct within the confines of the home. To many, it may mean that government may not collect information of a private or personal nature.

While the perameters of the right in these areas are subject to interpretion, one point is beyond debate: The right to privacy in Florida's Constitution, while it may constrain the collection of certain information about individuals, does not serve to limit public access to information properly collected.

As will be shown in this brief, the drafters of Article I, Section 23, were well aware of the distinction between the collection of information and its disclosure under the public records law. They clearly determined that the benefits to the public from the open government laws of this state outweigh the interests of individual privacy and made every attempt to assure that the privacy amendment would not erode the principles of open government.

## I. APPELLANTS HAVE NO CONSTITUTIONAL RIGHT OF PRIVACY UNDER ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION.

Article I, Section 23, of the Florida Constitution guarantees to "[e]very natural person . . . the right to be let alone and free from governmental intrusion into his private life . . . ." In the case at bar, Appellants have not challenged the Miami Beach Housing Authority's right to gather information from tenants. Msrs. Forsberg and Freeman have, rather, challenged the agency's authority to open its records to the public after the information at issue has already been acquired in the legitimate exercise of the Housing Authority's responsibility. See Section 421.08, Fla. Stat. (1979).

Any alleged "governmental intrusion" occurred at the time this information was solicited, not at the time it was made available to the public. The history of the provision, both in the Legislature and during the 1978 Constitution Revision Commission deliberations, clearly demonstrates that the drafters were primarily concerned with this governmental collection function.

> A major concern leading to adoption of the privacy right is the increasing capacity of State and local government to collect and store large amounts of information about citizens . . . .
>
> While the right of privacy will not prevent government from obtaining the information it needs to carry out its functions, it should limit the intrusion to that which is clearly necessary for the governmental objective . . . .

. . . . .

> In short, government will be able to collect necessary information in order to carry out its functions . . . but the right of privacy should restrict such inquiries to that which government genuinely has a need to know.

Cope, A Quick Look at Florida's New Right of Privacy, 55 Fla. B.J. 13 (1981). See also 2 Transcript of Florida Constitution Revision Commission proceedings. 54-60 (Jan. 9, 1978) (Commissioner Lew Brantley cites information-gathering activities of Florida law enforcement agency.) cf. Transcript of Florida Senate Floor Debate at 7 (May 14, 1980). (Sen. Edgar Dunn voices concern that government may be completely prohibited from collecting needed information.)

Not only the history of Florida's new privacy right, but its very language renders it completely inapplicable to the case at bar. The last sentence of Section 23 explicitly protects the public's right to know from intrusion on the basis of the individual's right to be let alone: "This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

A. THE INFORMATION AT ISSUE FALLS WITHIN THE PUBLIC RECORDS EXCEPTION OF ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION.

The public records exception set out in Section 23 explicitly protects the public's right of access to records and meetings "as provided by law," notwithstanding the right to privacy guaranteed by the new constitutional provision. See Transcript of House Governmental Operations Committee (April 9, 1980) at 3; Transcript of House Governmental Operations Committee (April 16, 1980) at 1-2; House Floor Debate (May 5, 1980) at 1; Senate Floor Debate (May 14, 1980) at 1. Section 119.011(1), Florida Statutes (1979), defines public records as "all documents . . . or other material . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (Emphasis added.)

The information which Appellants seek to withhold from public view was voluntarily provided to the Authority as a condition to obtaining federally subsidized housing. See Appellants' Initial Brief at 3. At the time, no constitutional right to disclosural privacy had been recognized by this Court or by the United States Supreme Court. In fact, the existence of such a right under the United States Constitution was expressly rejected in Paul v. Davis, 424 U.S. 693, 713 (1976):

> [Respondent] claims constitutional protection against the disclosure of the fact of his arrest on a shoplifting charge. His claim is based, not upon any challenge to the State's ability to restrict his freedom of action in a sphere contended to be "private," but instead on a claim that the State may not publicize a record of an official act such as an arrest. None of our substantive privacy decisions hold [sic] this or anything like this, and we decline to enlarge them in this manner.

This Court recently relied upon Paul v. Davis, supra, to similarly conclude that such a right to disclosural privacy had no basis in either the federal or the Florida Constitution:

> The principles involved in Paul and in the present case are strikingly similar. Both involve the release of information concerning an official act of government that is allegedly damaging to the protestants. In Paul, the Court found no privacy interest to protect, and in the present case we reach the same conclusion.

Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 638 (Fla. 1980) (hereinafter cited as Byron Harless).

Thus, Msrs. Forsberg and Freeman had no constitutionally-protected expectation of privacy when they disclosed the information at issue to the Housing Authority. See Katz v. United States, 389 U. S. 347 (1967). To the contrary, under the laws of Florida Appellants were on notice that information "received . . . in connection with the transaction of official business by any agency" was automatically subject to public disclosure absent an express statutory exception. Section 119.011(1), Fla. Stat. (1979); Section 119.07(3), Fla. Stat. (1979). The only question is whether the facts of the case at bar invoke the application of Florida's Open Records Act, which has been expressly incorporated into Article I, Section 23, as an exemption from the right to be let alone. Chapter 119, unquestionably applies to the case at bar.

The Miami Beach Housing Authority is a public agency within the definition contained in Section 119.011(2), Fla. Stat. (1979):

> "Agency" means any state, county, district, authority, or municipal office, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. (Emphasis added.)

As an agency, the Authority gathers information, like the data at issue in the case at bar, in order to fulfill its responsibility of leasing housing "only to persons of low income." Section 421.10(1)(a), Florida Statutes (1979). This information, then, is collected "in connection with the transaction of official business." It therefore clearly constitutes a "public record" within the statutory definition of that term.

This Court recently construed that definition broadly to include:

> Any material prepared in connection with official agency business which is intended to perpetrate, communicate,or formalize knowledge of some type.

Byron Harless at 640.

Unlike the information at issue in Byron Harless, the data in the case at bar was collected as a prerequisite to determining eligibility for public housing. Such information as family income,assets, age, and employment history is vital to the proper allocation of publicly subsidized housing resources. See, 42 U.S.C.S. §§1401-40 (1976 and Supp. 1979). Thus, there

can be no question that the records maintained by the Miami Beach Housing Authority are public records within both the statutory definition of Section 119.011(1) and the judicial construction of that definition as set forth by this Court in Byron Harless.

Since the information at issue, once collected, constitutes a public record, it may not be withheld from public view. Section 119.07(1)(a), Florida Statutes (1979), requires that all public records be available for inspection and examination. Only those records specifically exempted by statute from that requirement may be deemed "confidential." Section 119.07(3)(a), Florida Statutes (1979); See also Section 119.07(3)(b), Florida Statutes (1979).

In Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979), this Court held that Florida's Public Records Act exempts only those records which the Legislature specifically exempts by law. Id., at 424. In Wait, Justice Alderman, speaking for the Court, rejected the contention that certain common-law privileges operate to exempt information from public disclosure: "If the common law privileges are to be included as exemptions, it is up to the legislature, and not this Court, to amend the statute." Id.

No statutory exception removes public housing records from the requirements of Chapter 119. See section 119.07(3)(b)

through (k), Fla. Stat. (1979); see also Section 119.07(b), Fla. Stat. (Supp. 1980). Unless and until the Legislature chooses to exempt the information contained in those records from the Public Records Act, that data must be made available for inspection and examination. This legislative commitment to open government is explicity recognized in Florida's new constitutional right to be let alone.

## B. THE LEGISLATIVE HISTORY OF SECTION 23 DEMONSTRATES THAT THE PUBLIC'S RIGHT OF ACCESS TO PUBLIC RECORDS CANNOT BE LIMITED BY THE RIGHT TO PRIVACY.

As originally drafted, House Joint Resolution 387 read:

> Every natural person has the right to be let alone and free from unwarranted governmental intrusion into his private life.

On March 11, 1980, the Executive Reorganization Subcommittee of the House Governmental Operations Committee amended HJR 387 to delete "unwarranted" and to add "except as otherwise provided herein." Transcript of Executive Reorganization Subcommittee of Governmental Operations meeting (March 11, 1980). Significantly, the latter phrase was primarily added to affirm Florida's commitment to "open government." Article II, Section 8, of the Florida Constitution requires public officials and candidates to "file full and public disclosure of their financial interest." Adopting the reasoning of the 1978 Constitution Revision Commission, which had proposed a similar constitutional right to be left alone, the House Subcommittee approved the addition of "except as otherwise provided herein" to protect the integrity of the financial disclosure provision. See Id., at 1, 5-6.

The full House Committee on Governmental Operations further amended the resolution to exempt not only financial disclosure

from privacy challenges, but also to exempt Florida's public meetings and public records laws. At the Committee's April 9, 1980, meeting, Representative Jon Mills explained that "people are concerned that the right to privacy as a constitutional amendment would be exercised against the public records law." Transcript of House Governmental Operations Committee meeting (April 9, 1980), at 3. Barry Richard, representing the Florida Press Association and Florida Society of Newspaper Editors, spoke in favor of an amendment to explicitly exempt the public meetings and records laws from the proposed right to privacy:

> The only thing that the amendment is designed to do . . . [is] to make clear that this does not intend to limit the right of the legislature by law to continue to keep open the doors of government through the government-in-the-sunshine/public records law. . . [I]t retains within the legislature the option to define public records law and government-in-the-sunshine law.

Id.

On April 16, 1980, the Committee unanimously approved HJR 387 with its explicit open government exception:

> This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

See Transcript of House Governmental Operations meeting (April 16, 1980), at 2. The House of Representatives passed proposed Section 23 in a vote of 98 to 4. Transcript of House Floor Debates

(May 5, 1980), at 1.

During the Senate floor debate on HJR 387, Senator Jack Gordon explained that the proposed constitutional right to privacy "does not interfere with the public records law." Transcript of Senate Floor Debate (May 14, 1980), at 1. The Senate approved the resolution with only two dissenting votes. Id., at 9.

The Florida Legislature was clearly aware of the possible conflict which might arise between a constitutional right of privacy and Florida's statutory commitment to the public's right of access to public meetings and records. The case at bar presents that conflict, as anticipated by the Legislature. In balancing the people's right to know against the individual's right to be let alone, the Legislature explicitly and clearly intended that greater weight be given the right to know.

Thus, Article I, Section 23 provides no basis for Appellants' challenge to the disclosure of information contained in a public record.

C. ASSUMING, ARGUENDO, THAT ARTICLE I, SECTION 23, APPLIES TO THE CASE AT BAR, FLORIDA'S COMPELLING INTEREST IN OPEN GOVERNMENT OUTWEIGHS APPELLANTS' RIGHT OF PRIVACY.

This Court has consistently affirmed Florida's Commitment to open government. In Petition of Post-Newsweek Stations, Florida, Inc.,370 So.2d 764 (Fla. 1979), Justice Sundberg wrote for a unanimous Court: "A democratic system of government is not the safest form of government, it is just the best man has devised to date, and it works best when its citizens are informed about its workings." Id. ct 781. The Post-Newsweek opinion involved allowing television cameras in the courtroom. Other decisions have supported actions by the Legislature and the electorate to require public officials and candidates to file full financial disclosure statements. Plante v. Gonzalez, 575 F.2d 1119 (5th Cir.) Cert.denied 439 U.S. 1129 (1978).

In addition, Florida has long been recognized as a leader among states in requiring governmental bodies to conduct their business in public view. Section 286.011(1), Fla. Stat. (1979), states:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

This Court has strongly supported this "Sunshine Law."

See Canney v. Board of Public Instruction, 278 So.2d 260 (Fla. 1973); City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971).

Similarly, Chapter 119 has been construed by this Court to apply to all public records absent an explicit statutory exemption. Byron Harless, Supra; Wait v. Florida Power and Light Co., Supra.

The legislative history of Article I, Section 23 clearly demonstrates that lawmakers sought to elevate both the Open Meetings Law and the Public Records Act to the the status of a compelling State interest when balanced against an asserted right to be let alone. The February 7, 1980, staff analysis prepared by the House Committee on Governmental Operations on HJR 387 states: "This section does not limit the public's right of access to public records and meetings as provided by law." An even stronger statement is contained in the staff analysis prepared by the Senate Committee on Rules and Calender:

> The amendment to the Resolution instructs the Courts not to use this constitutional provision to invalidate the public records and public meetings statutes, two of the statutory areas that may be subject to challenge if this provision is adopted by the people.

Senate Staff Analysis and Economic Impact Statement, Committee on Rules and Calender at 2 (May 6, 1980) (Emphasis added.)

During House floor debate on the right to privacy resolution, Rep. Mills explained that it "has a provision dealing with records and open meetings to protect us." Transcript of House Floor Debate at 1 (May 5, 1980). The resolution passed 98 to 4. Id. During debate on the Senate floor, no opposition was raised to the provision's open government exception. Transcript of Senate Floor

Debate (May 14, 1980). The resolution was approved 34 to 2. Id.

The intent of the Legislature to recognize the compelling nature of Florida's open government laws if challenged on the basis of the right to privacy is obvious. That intent is underscored when Article I, Section 23 is compared to the right of privacy unsuccessfully proposed by the 1978 Constitution Revision Commission. The Commission's proposal included three separate additions to the Declaration of Rights article of the Florida Constitution:

> SECTION 23. Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.
>
> SECTION 24. Public records.-- No person shall be denied the right to examine any public record made or received in connection with the public business by any nonjudicial public officer or employee in the state or by persons acting on the officer's or employee's behalf. The legislature may exempt records by general law when it is essential to accomplish overriding governmental purposes or to protect privacy interests.
>
> SECTION 25. Open meetings. --No person shall be denied access to any meeting at which official acts are to be taken by any nonjudicial collegial public body in the state or by persons acting together on behalf of such a public body. The legislature may exempt meetings by general law when it is essential to accomplish overriding governmental purposes or to protect privacy interests.

Cope, To Be Let Alone: Florida's Proposed Right of Privacy, 6 Fla. St.U.L.Rev. 673, 675-76 (1978)

Unlike the 1980 Legislature's intent to balance conflicts between privacy and open government in favor of the latter, the Constitution Revision Commission sought "to maintain a constitutional balance between the two," i.e., to require the courts to accord

equal importance to the two rights. Dore, Of Rights Lost and Gained, 6 Fla. St.U.L.Rev. 657 (1978); See also Transcript of House Governmental Operations Committee at 1 (April 16, 1980). There can be no question, therefore, that the Legislature viewed the state's interest in preserving open government as a compelling one.

The Electorate, too, expressed its intent by approving section 23, with its explicit exception to protect public access, by a vote of 1,722,980 to 1,120,302. Cope, A quick look at Florida's new right of privacy, 55 Fla. B.J. at 14 N.3.

## ISSUE II.

CONSTITUTIONAL GUARANTEES OF PRIVACY, AS APPLIED IN OTHER JURISDICTIONS, WOULD NOT PROHIBIT DISCLOSURE OF THE INFORMATION AT ISSUE IN THE CASE AT BAR.

Only three States - Alaska, California, and Montana - have Constitutions which guarantee a right of privacy comparable to that set forth in Article I, Section 23 of the Florida Constitution. Cope To Be Let Alone: Florida's Proposed Right of Pirvacy, 6 Fla.St.U.L.Rev. 673 (1978). These three "strong, freestanding right[s] of privacy" are nevertheless distinguishable from one another and from Florida's right to be let alone.

Article I, Section 22 of the Alaska Constitution states: "The right of the people to privacy is recognized and shall not be infringed . . . ." Unlike Florida's Section 23, no explicit provision is made for legislative exceptions to the constitutional right of privacy.

Nevertheless, the Alaska Supreme Court has construed an individual's right to privacy to be subject to a balancing against the State's interest in invading that privacy. State v. Glass, 583 P.2d 872 (Alaska 1978).

In Ravin v. State, 537 P.2d 494 (Alaska 1975), the Alaska Court held that the right to privacy guaranteed by the State Constitution is not fundamental. Consequently, governmental invasions of individual's privacy will be upheld if the State can demonstrate that the intrusion is substantially related to a legitimate State interest. Id. at 504. The Ravin Court further construed Alaska's privacy provision as having been "intended to give recognition and protection to the home."

and activities which take place there. Id.

Other Alaska cases have dealt with disclosural privacy, but only in the context of physician-patient relationships. See Gunnerud v. State, 611 P.2d 69 (Alaska 1980) (defendant not entitled to discovery of psychiatric report on adverse witness); Falcon v. Alaska Public Offices Commission, 570 P.2d 469 (Alaska 1977) (school board member who was physician not required to disclose names of patients to comply with conflict of interest law). While no Alaska case is factually comparable to the case at bar, other decisions indicate that Article I, Section 22 of the Alaska Constitution would not prohibit disclosure of the public housing information at issue here. The Alaska Supreme Court has consistently held that the right to privacy is neither fundamental nor absolute. State v. Erickson, 574 P.2d 1 (Alaska 1978); Ravin v. State, supra; Gray v. State, 525 P.2d 524 (Alaska 1974). It must be balanced against the importance of the end which the State seeks to achieve by its allegedly intrusive action. State v. Glass, supra. In addition, the individual's expectation of privacy must be one which society recognizes as reasonable. Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980).

In the case at bar, Appellants allege that their privacy was invaded when Mr. Gilman, acting for the Housing Authority, permitted the inspection of public records containing eligibility information about tenants. See Appellants' Initial Brief at 3. Applying Alaskan principles to the case at bar, the State of Florida clearly has a substantial - even a compelling - interest

in granting public access to the housing records in question. Both the Florida Legislature and this Court have consistently affirmed this State's commitment to open government. See Chapter 119, Fla. Stat. (1979) (Open Records Act); Chapter 286, Fla. Stat. (1979) (Open Meetings Act); Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633 (Fla. 1980); Wait v. Florida Power and Light Co., 372 So.2d 420 (Fla. 1979).

More significantly, the people of Florida have consistently approved the open government concept with their support at the polls. See Art. II, Section 8, Fla. Const. (financial disclosure); Art. I, Section 23 (privacy subject to open records and open meetings laws). Thus, the balancing analysis which Alaska's courts have applied to that State's right of privacy would, when applied to Florida's new right to be let alone, require that the information at issue here be accessible to the public.

Both California and Montana have adopted much broader privacy provisions than the one recently approved by Florida's voters. Article I, Section 1 of the California Constitution, unlike any other State's right of privacy, extends to private as well as to State action. Cope at 682. California case law indicates that little distinction has been made by the courts between the test of invasion of privacy and the constitutional right to be free from governmental intrusion. See, e.g., Solis v. Southern California Rapid Transit District, 164 Cal. Rptr. 343 (Ct. App. 1980). The California courts have, however, required the State to demonstrate a compelling state interest in any action taken which intrudes upon an individual's privacy.

See City of Santa Barbara v. Adamson, 164 Cal. Rptr. 539 (Ct. App. 1980). As demonstrated supra, the State of Florida has such an interest in promoting open government. Thus, even under the sweeping right to privacy contained in the California Constitution, Appellants' challenge in the case at bar would not lie in the face of Florida's compelling state interest in open government.

The Montana Constitution contains the compelling state interest standard of scrutiny within the constitutional privacy provision itself, Article II, Section 10, Montana Constitution.

It is clear that the Florida constitutional privacy provision was also envisioned by its drafters to require the demonstration of a compelling state interest in any case wherein an individual's right to privacy is infringed. See Transcript of Executive Reorganization Subcommittee of Governmental Operations, March 11, 1980 meeting; Transcript of Senate Rules Committee, May 6, 1980 meeting; See also, Cope, A Quick Look at Florida's New Right of Privacy, 55 Fla. B.J. 13 (1981). Florida's compelling interest in open government would certainly seem to meet this strict standard of review in any of the states which have rights to privacy similar to Florida's.

## ISSUE III

ARTICLE I, SECTION 23 MAY NOT BE APPLIED RETROACTIVELY TO THE CASE AT BAR.

Appellants' cause of action stems from a policy implemented on July 19, 1977, by the Miami Beach Housing Authority to open its records to public view. Appellants' Initial Brief at 3. See also 1977 Op. Atty. Gen. Fla. 077-69 (July 11, 1977). At that time, Florida had no constitutional right of privacy. Byron Harless, 379 So.2d 633 (Fla. 1980) nor did the United States Constitution protect individuals against the disclosure of personal information. Id. at 638. Appellants' reliance on the First District Court's opinion in Byron, Harless, Schaffer, Reid and Associates, Inc. v. State ex rel Schellenberg, 360 So.2d 83 (Fla. 1 DCA 1978) in their Initial Brief has been seriously undercut by this Court's rejection of that court's reasoning:

> In essence, the district court formulated a general federal right of privacy the care of which is described as the "inviolability of personhood." We find that the district court's conclusion is unsupported by either the decisions of this Court or those of the Supreme Court of the United States.

Byron Harless at 636.

Since no right of disclosural privacy existed at the time the instant cause of action arose, Article I, Section 23 which became effective on January 6, 1981, may not be applied to

the case at bar.

In McCord v. Smith, 43 So.2d 704 (Fla. 1949), this Court held that the retrospective provision of a legislative act was not unconstitutional because it "does not establish new or violate or take away, vested rights." Id. at 709. The case at bar presents exactly the converse situation. Article I, Section 23, creates a new constitutional right, effective January 6, 1981. Assuming, arguendo, that Appellants may properly invoke that right to prohibit the disclosure of information contained in public records, they may not do so retrospectively. See also, Dewberry v. Auto-Owners Ins. Co. 363 So.2d 1077 (Fla. 1978); Walker and LaBerge, Inc. v. Holligan, 344 So.2d 239 (Fla. 1977); Fleeman v. Case, 342 So.2d 815 (Fla. 1976).

Furthermore, to apply this previously unrecognized right of privacy, see Byron Harless, supra, to the case at bar would deprive the public of its statutorily-granted right of access to public records. Section 119.07(1)(a), Florida Statutes (1979), requires that "[e]very person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so. . . ." Only the Legislature may limit this right through specific statutory exemptions. Wait v. Florida Power & Light Co., 372 So.2d at 421. In the case at bar, no such statutory exemption exists. See Section 119.07(3)(a)-(k), Florida Statutes (1979; Section 119.07(6), Florida Statutes (Supp.1980). Thus, any right of disclosural privacy claimed prior to January 6, 1981, could be based on policy, not statute. Policy alone is clearly an

insufficient basis for exempting public records from the explicit mandate of Chapter 119. Rose v. D'Alessandro, 380 So.2d 419 (Fla. 1980).

Public policy should be an extremely relevant consideration, however, in this Court's initial construction of Article I, Section 23. While the right of privacy provision is clearly not applicable to the case at bar due to its explicit public records exception, it will undoubtedly be invoked in a host of other fact situations. The courts of Alaska, California, and Montana have resolved controversies involving a wide range is issues, in which the right to privacy has been raised. See Anderson v. State, 562 P.2d 351 (Alaska 1977) (sexual conduct between adult and minor); Ravin v. State, 537 P.2d 494 (Alaska 1975); People v. Privitera, 591 P.2d 919 (Cal. 1979) cert.denied 444 U.S. 949 (1980) (use of laetrile); People v. Davis, 154 Cal. Rptr. 817 (Ct. App.1979) (cocaine); State v. Coburn, 530 P.2d 442 (Mont. 1974) (suppression of evidence). Litigants in Florida will undoubtedly attempt to assert this newly adopted right of privacy and argue that it should be applied retroactively to cases involving such things as sexual activity, possession of drugs, and law enforcement activities.

This Court should foreclose such a possibility by holding that Article I, Section 23 may be applied only to intrusions arising after the provision's effective date.

## CONCLUSION

Article I, Section 23, is clearly inapplicable to the case at bar. The provision's very language exempts the disclosure of public records from the scope of the right to privacy. In addition, Section 23 should be applied only to causes of action arising after January 6, 1981, the effective date of the new right to privacy. This Court should affirm the ruling of the Court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Supplemental Brief has been furnished to Lester C. Wisotsky, Esquire, Legal Services of Greater Miami, Inc., Senior Citizens Law Center, 420 Lincoln Road, Suite 443, Miami Beach, Florida 33139; and to John Lazarus, Esquire, Larry Baker, Esquire, and Charlene Carres, Esquire, Legal Services of Greater Miami, Inc., 1393 S.W. 1st Street, Suite 330, Miami, Florida 33135, by U. S. Mail, this 5th day of January, 1981.

Frank Vickory
Assistant Attorney General