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Adoption is a purely statutory cause of action, a creation of our Legislature. Korbin v. Ginsberg, 232 So.2d 417 (Fla. 4th D.C.A. 1970).

This action allows the Courts to originate a family relationship which, in the eyes of the law, is viewed the same as a family relationship formed by our natural biological processes. Fla. Stat. §63.172. Indeed, the Florida Adoption Act clearly points out that "...the adopted person thereafter is a stranger to his former relatives for all purposes." Fla. Stat. §63.172(b).

The "creation," if you will, of a family via Florida's Adoption Act is a special and significant action. The stated purpose of this action is to:

...protect and promote the well-being of persons being adopted and their natural and adoptive parents and to provide to all children who can benefit by it a permanent family life.

Our Legislature's provision for the protection of confidentiality allows biological relatives of a prospective adoptee the opportunity to consent privately to the adoption of their children when they may be unwilling or unable to do so publicly. More importantly,

confidentiality allows the court to protect and promote the best interests of the child.

This confidentiality encourages adoptions. Destroying this confidentiality under the guise of promoting First Amendment freedoms will threaten the viability of adoptions in Florida. Simply put, adoptions are a private matter. That is why our Legislature has mandated that court records of adoption are confidential and not available to the public. Fla. Stat. §§63.022(j) and 63.162(2-6).

In addition to being necessary to promote adoptions, this Legislative design is in total harmony with the Florida Constitution's recognition of rights to privacy. Fla. Const., Art. I, §23. Further, it is in accord with the Federal Constitution, as recognition and enforcement of "rights to privacy" have largely been left to the States. Shevin v. Sunbeam Television Corp., 351 So.2d 723 (Fla. 1977).

It is only with caution that this writer attempts to assert a position which appears somewhat contrary to First Amendment freedoms. Freedom of speech and of press are such a cherished part of our system

of government that anyone advocating privacy must seemingly overcome not only the academic hurdles established by the language of the Constitution and interpretative cases, but must also overcome an invisible but almost palpable wall of protective concern that is personal to each of us. It's almost as if there is an unwritten presumption that matters sought to be done in private are wrong. Thus, opposing a First Amendment freedom is akin to opposing America or motherhood. But perfection eludes all Americans and all mothers and we have no reason to presume that First Amendment freedoms are unrestricted.

In this context, it seems important to note that First Amendment freedoms are not absolute. Indeed, historically, our founding fathers' concern was not to allow anyone to say or print everything about anything, but rather was to eliminate the restraints of ..."[c]ensorship, licensing, and seditious libel, which is defamation of the government or authority." First America Dev. Corp. v. Daytona Beach News Journal Corp., 196 So.2d 97, 99 (Fla. 1966).

In our instant case, the press is not being censored. It may print whatever it wishes, except

information obtained from court records relative to the adoption. Jordan v. Pensacola News-Journal, Inc., 314 So.2d 222 (Fla. 1st D.C.A. 1975). In closing the court proceedings, our Legislature has only provided a workable method of protecting this confidentiality. It would do little good to say the court records were confidential and then allow public access to the hearings where these records were formulated. See, e.g., Marston v. Gainesville Sun Pub. Co., Inc., 341 So.2d 783 (Fla. 1st D.C.A. 1976)

The authorities relied upon by Respondents are in the main, criminal cases concerned only with the balancing of the right of a free press (1st Amend. U. S. Const. and §4 Art. I Fla. Const.) with the right to a fair trial (6th Amend. U. S. Const. and §16 Art. I Fla. Const.). These authorities do not contain any discussion of rights to privacy and thus should not be held to directly dispose of the instant case.*

Similarly, although a civil case, Publicker Industries, Inc. v. Cohen, 52 U.S.L.W. 2641 (Case #83-

*Petitioner attempted to develop this argument more fully in Petitioner's Brief §B at page 12.

1022, Third Civ. 5-22-84), does not squarely apply. Unlike the instant case, Publicker deals with a civil closure issue in the absence of a state statute or state constitutional provision protecting privacy.

Admittedly, Petitioner has found no interpretive authority "on all fours." The instant case apparently remains one of first impression. Significantly, this matter presents the daunting question of whether providing for confidentiality in adoptions is even within the ambit of our Legislature's power. Petitioner urges that since the Legislature can "create" the statutory cause of action of adoption, it can also provide for the confidentiality of the action as a method of promoting its use and protecting the best interests of the adoptee and the adoptive and natural relatives.

You either have privacy or you don't. If you "balance" it, you lose it. The confidentiality of adoptions pursuant to Fla. Stat. §63.162(1) is a legitimate and constitutional exercise of state power and is necessary for the viability of the Florida Adoption Act.

Respectfully submitted,

Daniel S. Wallace

DANIEL S. WALLACE, ESQUIRE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail this 14th day of August, 1984 to the Honorable C. McFerrin Smith, Circuit Court Judge, Courthouse Annex, Room 202, 125 East Orange Avenue, Daytona Beach, Florida 32014; David A. Monaco, Esquire, 444 Seabreeze Boulevard, Suite 900, Daytona Beach, Florida 32015; Isham W. Adams, Esquire, 121 Broadway, Daytona Beach, Florida 32018; F. Daun Fowler, Attorney-at-Law, 841 South Ridgewood Avenue, Daytona Beach, Florida 32014 and Mark C. Menser, Assistant Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014.

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