Filing # 169958633 E-Filed 03/29/2023 11:42:15 PM

SC22-1050, SC22-1127

In the Supreme Court of Florida

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA ET AL.,
Petitioners,

v.

STATE OF FLORIDA ET AL.,
Respondents.

On Petition for Discretionary Review from
the First District Court of Appeal
DCA No. 1D22-2034

APPENDIX TO ANSWER BRIEF ON THE MERITS
VOLUME 2

ASHLEY MOODY
Attorney General

JOHN GUARD (FBN374600)
Chief Deputy Attorney General
JAMES H. PERCIVAL (FBN1016188)
Chief of Staff
NATALIE P. CHRISTMAS (FBN1019180)
Counselor to the Attorney General

Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
henry.whitaker@myfloridalegal.com

HENRY C. WHITAKER (FBN1031175)
Solicitor General
DANIEL WILLIAM BELL (FBN1016188)
JEFFREY PAUL DESOUSA (FBN110951)
Chief Deputy Solicitors General
NATHAN A. FORRESTER
Senior Deputy Solicitor General
DAVID M. COSTELLO (FBN1004952)
Deputy Solicitor General
DARRICK W. MONSON (FBN1041273)
Assistant Solicitor General
ZACHARY GROUEV (FBN1038628)
Solicitor General Fellow

March 29, 2023 *Counsel for Respondents*

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CONSTITUTION REVISION COMMISSION

Tallahassee
Florida

****Full Commission****

Volume II

BEFORE:	Talbot D'Alemberte, Chairman
DATE:	January 9, 1978
TIME:	Commenced at 1:30 p.m. Terminated at 5:30 p.m.
PLACE:	Old Senate Chambers The Capitol Tallahassee, Florida
REPORTED BY:	Catherine Wilkinson, CSR, CP, RPR, Notary Public in and for the State of Florida

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Suite 608 Lewis State Bank Building

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TRANSCRIPT FOR: January 9, 1978 P.M.

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APPEARANCES:

COMMISSIONERS:

Talbot D'Alemberte, Chairman
Edward R. Annis
James W. Apthorp
Dubose Ausley
Thomas H. Barkdull, Jr.
Dempsey J. Barron
Lew Brantley
Yvonne B. Burkholz
William C. Clark
LeRoy Collins
John M. DeGrove
Dexter Douglass
William H. Gardner
Freddie L. Groomes
Lois Harrison
Mark C. Hollis
William G. James
James W. Kynes, Jr.
John E. Mathews, Jr.
Jesse J. McCrary, Jr.
John H. Moore, II
Richard V. Moore
Jon C. Moyle
Marcelino Oliva
Ben F. Overton
Kenneth A. Plante
Jan Kaminis Platt
Nathaniel W. Polak
Donald H. Reed, Jr.
Nathaniel Reed
B. K. Roberts
John L. Ryals
Robert L. Shevin
J. B. Spence
Stella F. Thayer
John T. Ware

ALTERNATES:

Charlotte F. Hubbard
James Elliott Messer
Warren W. Morgan

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P R O C E E D I N G S

MR. CHAIRMAN: Mr. Secretary, please call the roll.

(At this time the roll was called.)

MR. SECRETARY: A quorum is present, Mr. Chairman.

MR. CHAIRMAN: Commissioners, are there further matters on reconsideration that can be taken up? What is your pleasure? If not, let's go to the special order calendar.

Please read Proposal No. 132.

MR. SECRETARY: Proposal 132, by the Committee on Ethics, Privacy and Elections. A proposal to revise Article 1, Declaration of Rights, creating a new Section 23, establishing a right of privacy.

MR. CHAIRMAN: Commissioner Moyle, are you prepared to discuss this proposal?

COMMISSIONER MOYLE: Yes, sir.

MR. CHAIRMAN: Commissioner Moyle will be recognized. Please give your attention to him.

COMMISSIONER MOYLE: Commissioners, I have asked to approach the well to give you the committee report on the right of privacy. The reason I did that is a good portion of it is in written form, and it was

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a little easier to handle from the well. So, I hope you will indulge me.

The committee has done a substantial amount of work on the right of privacy. We have had testimony; we have had tremendous support from various governmental offices; and have done a lot of hard work. You might recall Commissioner Ben Overton, when we opened the constitution revision session, he first raised the issue concerning privacy. And Commissioner Overton asked the question, "Who, ten years ago, really understood that personal and financial data on a substantial part of our population could be collected by government or business and held for easy distribution by computer operations distribution systems. There is a public concern about how personal information concerning an individual is used; whether it be collected by government or by business. The subject of individual privacy and privacy laws is in a new and developing stage. It is a problem that should be addressed."

Now, these were Commissioner Overton's words on our opening day. The Ethics, Privacy, and Elections Committee addressed this issue. As I indicated, there was a lot of discussion, debate, and testimony. Let me take you back, if I can, to in August when we had

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the hearing in Gainesville. You will remember a young man by the name of Jerry Polk. He was the editor of the "Florida State University Law Review." He made an outstanding presentation to this commission urging favorable consideration of a provision protecting the right of privacy.

If you will recall, back in our public hearings this same theme went throughout. We heard in different words and different terminology -- we heard the theme of right of privacy, governmental intrusion, and whatever words were used. We heard it over and over again in most of our public hearings. Mr. Polk outlined a short history of the privacy development in the United States. He indicated that a right of privacy does not appear in the Bill of Rights in the United States Constitution.

In the realities of early America, early Eighteenth Century and Nineteenth Century made this understandable. As one writer described it, the eyes and ears were the only instruments for physical surveillance. Penetration of the mind was possible only by torture or by compelled testimony. There was little record keeping about individuals.

Now, given this early setting in America, and in constitutional law, it is understandable that

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our statutory and common law concentrated on establishing shields of privacy to protect individual and organizational autonomy. Now, as technology changed, so did the law.

In 1890 Louis Brandeis wrote a law review article, "The Right To Privacy," urging recognition of a cause of action for invasion of privacy. Today the invasion of privacy is a tort that is generally recognized all over the country. In 1965 the US Supreme Court held that the Federal constitution protected zones of privacy, specifically a person's decision about marriage and procreation. Thus, the Court invalidated a Connecticut law prohibiting the use of contraceptives to married persons.

Presently as we look to the future, there are growing concerns in our society about threats to privacy from technological advances and the increasing interdependence of our society.

Now, while we have addressed the protection of privacy throughout our history, we today stand on the threshhold, the Twenty-first Century, with no general constitutional right of privacy as a matter of either Federal or state law.

So, we have at this point certain very specific privacy interests in certain very specifically

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defined areas which are entitled to protection under the law. In 1967 the United States Supreme Court placed the responsibility for protecting privacy squarely upon the states when it said: "The protection of a person's general right to privacy, his right to be let alone, is like the protection of his property and of his life, left largely to the law of the individual states."

Today ten state constitutions contain some type of privacy provision; however, only three -- Alaska, California, and Montana -- actually have a separate section stating in essence that the right of privacy shall not be infringed. These separate or free-standing privacy provisions clearly identify privacy as an independent right with the same dignity and importance as the rights of free press, free speech, religious belief, and association.

The Ethics, Privacy, and Elections Committee devoted a significant amount of time in October and November to the issue of privacy. Mr. Chairman and Commissioners, at this point I would like to publicly acknowledge and thank our staff attorney, Pat Dore professor at Florida State law school, who gave us a tremendous amount of support, and did an excellent job. We appreciate it.

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The committee was unanimously of the opinion that a free standing right of privacy ought to be added to the declaration of rights. While the committee was unanimous that the right of privacy should be recognized in the constitution, there was debate -- a great deal of debate and a lot of discussion, and tremendous attention was given to the precise language. And this is important, Commissioners. I would like for you to understand -- and I would like to place emphasis on the fact that a lot of time has been spent on this precise language.

The committee feels that Proposal 132 is the best of numerous drafts. I would like to read it. "(a) Every individual has the right to be let alone and free from governmental intrusion into his private life. (b) The legislature shall protect by law the private lives of the people from intrusion by other persons."

Now, the reason that there are two rights of privacy, A and B, you have them separated -- is that the committee felt that the prohibition against governmental intrusion was important enough to be recognized as a self-executing right in the declaration of rights. The prohibition against intrustion by private entities into the lives of our citizens is much

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more complicated, much more complex, and perhaps much more unchartered.

Therefore, this aspect of privacy is established as the policy of the State of Florida, and the legislature is directed to protect by law these individual privacy interests. This provision is not self-executing.

Commissioners, I think that the growing complexity of American society has accentuated the needs for individual rights of privacy. It is becoming apparent that the major responsibility for developing individual rights to privacy rests with the states. The Supreme Court has been reluctant to extend the right of privacy as a matter of Federal constitutional law. And we also have to realize that the states are very much involved in the business of keeping records about their residents.

Now, the Privacy Protection Study Commission, which was created as a result of the Federal Privacy Act of 1977 states: "The records a state government keeps about the individuals under its jurisdiction are often as extensive as those kept on the same individuals by the Federal government. And in some respects even more so. The individual needs to be assured that these records do not form the basis for governmental intrusion

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into his private life."

However, the privacy report indicates that the states are not doing their part to insure this individual privacy. Altogether, the commission's inquiry into state record-keeping practices forces it to conclude that an individual today cannot rely on state government to protect his interests in the records and record keeping practices of either state agencies or private entities. This is still another reason why the states must bear the major burden of developing a right to privacy which rests with the Supreme Court's recent decision in the National League of Cities, in that case.

Here the Court ruled that the Federal government could not legislate in ways that operated directly to displace the states' freedom to structure integral operations in areas of traditional governmental function. If you accept that public record keeping is a traditional governmental function, it would seem that the states then are responsible for making any privacy reforms. The need for right of privacy against governmental intrusion can further be illustrated by focusing on specific areas where the individual's right of privacy is in jeopardy.

One area is that of banking and consumer

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credit operations. Banks and credit companies are storehouses of information that either government or private concerns may find attractive. Information on personal accounts and transactions is required to be kept by the institutions, and it is surprisingly simple for government agencies to obtain this information. They may gain access by a formal process such as a subpoena or a court order. However, this privacy report indicates that the great bulk of material that is divulged to governmental agencies is done so voluntarily by the institutions following an informal request by government.

Often the customer involved is not notified. Indeed, only three states require a bank or credit company to notify the client of a credit investigation and the fact that somebody is requesting credit information about them. It should be noted that even if the customer discovers that the government was seeking his bank records, he would not be able to object.

In the United States versus Miller, the Court held that a bank customer has no standing to assert his Fourth Amendment rights when access is sought by a Federal agency. The Court was of the opinion that the customer had no expectation of privacy.

California, Commissioners, changed that by

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putting in an amendment in their constitution to guard against the nonexistence of an expectation of privacy.

Mailing lists developed by private businessmen are often compiled from government. For instance, the Department of Motor Vehicles. So long as that information is collected, it will be able to provide mailing lists and information that can be developed by private businessmen.

So far -- and I am skipping around a little bit, Commissioners, because I don't want to make this too long -- but I do want to deal now very briefly with intrusion by private entities into the private life of an individual. Any consideration of the subject of privacy must also deal with an individual's ability to be free from private intrusion in his personal life. As I indicated earlier, the Committee found this to be complicated, sensitive. And for that reason it is not a self-executing part of the declaration of rights, but is established as a policy of the State of Florida.

Now, the problems of private intrusion into an individual's private life are acute. Private businessmen with almost no regulation compile reams of personal information about their customers and

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clients. In addition, there are generally very few restrictions on the disclosure of this private information. Only a few examples are needed to illustrate. Banking records is one example. Banking records provide fruitful but a private source of information about an individual. Most states are lax in their regulation of the disclosure of such records. Only three states -- Illinois, Maryland, and California -- require bank records to be kept confidential. They may only be disclosed in those states upon court order.

Florida restricts the disclosure of records maintained by savings and loan associations, but does not restrict the disclosure of banking records. Another area of concern is credit applications. The Federal Equal Credit Opportunity Act bans the use of certain facts such as race, sex, and religion in considering loan applications. Some states have gone further in prohibiting even the collection of this type information on credit applications. Florida does not have a provision in this area. Florida does restrict the disclosure by collection agencies of debt information to third persons.

Still another area which is sometimes abused is the information compiled by insurance carriers. Only a few states regulate the matter in which insurers

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collect, use, or disclose information about individuals. Florida does not.

A handful of states regulate the collection, use, and disclosure of information about private sector employees. Only two states, California and Maine, give employees the right to inspect their personal records.

These few examples only scratch the surface of intrusions by private entities into the private lives of individuals. The problem areas, while bound by the common thread of being private intrusion, are very factually diverse. For this reason, it appears that the problem of private intrusion into individual lives can best be handled by the legislature. And it is for that reason that these two issues are separated and presented to you as they are today. I will be glad to respond to any questions.

MR. CHAIRMAN: Let me ask that we entertain questions, and then we will go to the amendatory process. Commissioner Hollis is recognized now.

COMMISSIONER HOLLIS: I hesitate to object to this, Mr. Chairman. It is like objecting to motherhood. But I have some serious questions that popped in my mind as you were giving your presentation.

What about surveillance of criminals. There

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is a criminal element in Florida. There are surveillance things that are authorized by the courts through the legal process, I suppose, to try to maintain some surveillance of those people. Will this be eliminated?

COMMISSIONER MOYLE: No. It will not.

COMMISSIONER HOLLIS: How will it not eliminate that?

COMMISSIONER MOYLE: Let me call on Commissioner Douglass, who is a criminal lawyer, and who is much more expert on the subject than I, to respond.

COMMISSIONER HOLLIS: A criminal lawyer?

COMMISSIONER MOYLE: Among other things.

MR. CHAIRMAN: Commissioner Douglass is recognized.

COMMISSIONER HOLLIS: As a criminal lawyer --

COMMISSIONER DOUGLASS: To answer your question, not as a criminal lawyer, but as someone who has been studying this along with the committee, and this question was dealt with by the committee. The way you conduct surveillance today, as you have described, is by court sanction and search warrant. This would not affect the search warrant activities that are now conducted under the constitution. It would not invade that area as is under the constitution.

COMMISSIONER HOLLIS: That is an absolute

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assurance?

COMMISSIONER DOUGLASS: Well, I can assure you as well as I can assure you about anything that we are talking about. But, you know, as reasonably as you can be assured that this is the law, the law would continue to be for search warrants under the provisions in the constitution, to be properly executed. And this issue would not affect that at all.

COMMISSIONER HOLLIS: Is that the way criminal surveillance is being done at this time?

COMMISSIONER DOUGLASS: The only evidence that is admissible from surveillance is being done that way. There are areas which you have probably read about in the press where some agencies perhaps have exceeded their constitutional authority, and the evidence they collect is not admissible.

COMMISSIONER HOLLIS: I have two more questions, if you will, whoever has the floor. What about the illegal acts in private homes?

COMMISSIONER DOUGLASS: Okay. I have studied that. I want to be candid with you, because I don't want you to be misled by this. The Arizona court just recently held that under their privacy provisions -- which is essentially not saying the same as this that is proposed. This was developed by

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judicial interpretation of their constitution, instead of just saying they have the right to privacy in the constitution, the court developed it, which is one of the reasons we think it ought to be in our constitution. Because then instead of court-developed laws, it would be laws developed in the constitution.

Arizona held that their right to privacy holding did not prevent the state from prescribing or prohibiting the use of marijuana in homes. And it rejected that type of activity, criminal activity -- which the state characterized it as -- or activity that was prohibited and was bad in itself -- this was not protected by the right of privacy.

Now, Alaska, on the other hand, had a provision similar, and has a right to privacy -- held just the opposite. The Alaska court held that the rights to privacy in Alaska embraced the use of marijuana in the home; that the state could not make that a crime in Alaska because of Alaska's right to privacy provision.

I would like to amplify and say, for whatever it is worth, that the commentators who commented on the Alaska case point out that the Alaska court bottomed their decision on the fact that Alaska was remote, and that privacy was more important. And they

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used this language -- if you live up in the Yukon, you can do whatever you darn well please. They really said that in their opinion.

Arizona, on the other hand, which is not quite as urban as we are, I suppose, but is certainly a more comparable state to ours, held just the opposite. There is no assurance of what our court would hold. I have to say that. But I believe faced with the proposition of whether or not the right to privacy protects criminal activities, that the court will hold that it does not.

I would, if I was the court, which I will never get to.

COMMISSIONER HOLLIS: I have one more question.

MR. CHAIRMAN: Commissioner Moyle and Douglass, why don't we resolve who has got the floor, and who will respond to the question.

COMMISSIONER MOYLE: Well, some of the questions I will respond to and some Mr. Douglass will. We have decided to divide it up.

MR. CHAIRMAN: Then if you will address the questions to Commissioner Moyle, and then they will work out the arrangements about using the floor.

COMMISSIONER HOLLIS: The final question

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that I have written down -- it may prompt others during the answer to the question -- what about investigations of employees?

MR. CHAIRMAN: Commissioner Douglass is recognized.

COMMISSIONER DOUGLASS: I will answer that by saying that we are essentially dealing with Section B of the proposal, which says that the legislature shall implement laws to protect privacy rights of individuals. We would be dealing then with what the legislature implemented. They would have the discretion to implement a law, so that you would have -- assuming that the legislature implemented the law -- you would have a restriction that would apply to employers seeking information from employees and so forth. It would.

But how that was done under this provision would be left to the legislature. It would not be self-executed, so that we couldn't say under this provision what limitations would be imposed, except that there would be limitations which would apply in that situation, which is one of the evils that has been addressed by this.

And it is not all evil, you must understand that. If you are going to hire somebody, you have to

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have essential information. And you have to have some privileged information that will remain privileged between employers, for example, and people who are engaged in that. But the legislature will be charged under this constitutional provision with developing the law, at which time the specific issue that might arise, that you and I might sit down and then take up, would have to be addressed by the legislature.

Now, that was the main reason, Commissioner Hollis, for separating instead of just saying flatly that there is a right to privacy -- separating A and B. Part A deals with the governmental intrusion into private lives, and Part B is not self-executing. It requires the legislature to develop the law that will apply to protecting privacy. And I may have sounded like I am taking the long way to get to your question, but the answer is that under Section B, with the legislature directed to make some law to protect privacy, there would be some regulation of what went on between an employer and employee.

Is that a fair answer? Or is that a little too vague? I will try to be more specific.

COMMISSIONER HOLLIS: It is what I have come to expect from lawyers.

COMMISSIONER DOUGLASS: I am not trying to

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be a lawyer. I am trying to be like J. B. Spence. But, no, seriously, I want to answer as best as I can.

MR. CHAIRMAN: All right. Are there any other questions? Commissioner Burkholz would like to propound a question.

COMMISSIONER BURKHOLZ: I think I am going to revert to my role as an English teacher and ask Commissioner Douglass or Commissioner Moyle to define for me being let alone. I had problems with that when it was first proposed, and I guess it offends my instructional background.

Secondly, I need a definition of the word intrusion. The problems which many of us are concerned about -- and many of us have spoken about -- really may exceed the meaning or the dictionary meaning of the word intrusion. If you can define those for me -- in the context that I support your concept, while I also accept the fact that you say that is the best available language, would you believe I am uncomfortable with the language as it is. Maybe we are being too brief here, Commissioner Moyle, and maybe to satisfy me and to satisfy some other members of the Commission, a definition -- and I don't know if it belongs in the constitution. This is the same question we argued about this morning. But I have real problems

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with that verb, you know, being let alone. There is no such thing in correct English. Style and Drafting can deal with it, but I need to know what that means.

COMMISSIONER DOUGLASS: Well, I think I can probably answer it this way. The exact language grew out of the development of the right of privacy we have. It originated primarily in the Brandeis Law Review article, and then it was enunciated in some earlier cases. I think Katz versus US was one of them. They adopted this language for the precise reason that you and I are discussing it. They felt that this was more precise language in view of the court decision than to use what might sound to be grammatically more correct. But basically the answer is that it is the historical language used by the courts in dealing with the question of privacy.

And that the cases that have been built up defining, you know, what things are private have used this language consistently. So, it is more of a word of art in the law than anything else. And it is more precise in definition than saying you have the right to privacy. Because when you use that language, you are automatically tying into a number of cases that have been interpreted. That is the reason for the choice. We argued about this in committee back and forth. And

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we had about twenty drafts. And we finally concluded in committee unanimously that this language was the safest language to insure, one, that you had the right of privacy -- as we all understood it; and, two, that it would not be unbridled, that it would be interpreted in accordance with established precedents -- not altogether, of course, because there are going to be new cases coming up from time to time. But it would be more of a guide to the court than the other.

Now, the second question you asked -- the question you asked was about the word intrusion?

COMMISSIONER BURKHOLZ: Governmental intrusion.

COMMISSIONER DOUGLASS: That also arises primarily from the historical significance and out of the Brandeis decisions and out of these other things. However, there was a great deal of debate and division among the committee members on the use of the word intrusion and unwarranted intrusion. And we finally voted five to two, as I recall, to use the word intrusion only because that carried with it, in the advice of our counsel, to the committee, and also most of our own individual research -- when you said against governmental intrusion, you also meant unwarranted governmental intrusion, because you always under your

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other provisions of the inorganic -- or the organic law -- are entitled -- or the government is entitled to intrude to some extent.

If you use the word unwarranted, which incidentally Chief Justice Overton wanted, in connection with it, it was the feeling of the majority of the committee that this weakened the right; that it left open an individual right in given situations to say that you have an individual right, but you really don't. Consequently, the majority of the committee rejected the language "unwarranted."

Now, the word "intrusion" in effect is a definition, hopefully, adopted from legal precedent which presents the invasion of your privacy by state action.

COMMISSIONER BURKHOLZ: In other words, those two are synonomous in your mind?

COMMISSIONER DOUGLASS: That is correct, within the framework of the developed law.

COMMISSIONER BURKHOLZ: Let me ask you one last question. Did you consider -- and I am sure you did -- parallelism of those two sections so that the first is: "Every individual shall be free from governmental intrusion into his private life" without the "be let alone" -- just a right to be free from

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governmental intrusion? Again, you know, your modifiers concern me there, too,of what they are free from.

COMMISSIONER MOYLE: I promise you that any combination of words that you can come up with we have tried.

COMMISSIONER DOUGLASS: We tried. And I think the answer gets to the whole question, what we tried to do in the committee was use language which would guarantee a personal, individual right; but that would be defined by the courts in light of precedents that existed and not to chart a new course or to get unwarranted or unforeseen results out of it. This language would be the best to guarantee what we all understood to be the right of privacy in the legal sense. I think that is the fairest answer I can give you.

COMMISSIONER BURKHOLZ: It is probably the only one that would satisfy me, so you have said all the right things.

MR. CHAIRMAN: Commissioner Moyle, there are several more questions now. I recognize Commissioner Annis for a question to propound, and then Commissioner Platt, and then Commissioner Overton.

COMMISSIONER ANNIS: First of all, in observation on part A, medical information -- pertinent

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medical information is often very individualistic and intimate. The medical profession has been concerned for some time with the demand of government as a third party payor for services rendered that they have access to complete and full medical records. We have been assured over a period of time that there was built into the computer mechanism of HEW as it recalls records from hospitals for Medicare and Medicaid recipients that there were built in safeguards. And yet recently the government admitted that on running a check they broke through their own security time and time again, so that any operator of the computer could, in fact, call up the most personal, intimate record -- anything that was on the microfilm record of that individual patient. So, a very serious matter of concern -- and one which raises the question, how are we going to create such a safeguard.

The second, when we talk in terms of the legislature shall protect by law the private laws of the people from intrusion by other persons, how does that affect such things as disclosure for those who offer themselves for public office?

COMMISSIONER MOYLE: Dr. Annis, the answer to your question, in several of our drafts they contained exceptions for the disclosure amendment, along with this

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language. And after a great deal of discussion, it was decided on two or three levels -- one, that if this were passed and became a part of the constitution, it would not obviate the effect of disclosure amendments. But in the event there might be some questions about it, that this was not going to be an isolated problem. There are going to be a lot of things we put in this constitution that may have impact upon other provisions. So, it was discussed in our committee. I think we had the majority of the members of the Style and Drafting, and it was thought that we could best handle that by provision -- a savings provision as a part of our overall work product, so that unless specifically mentioned, the enactment of something like this would not, in fact, exist in parts of the constitution.

Secondly -- and this is a good opportunity to approach this particular subject -- as you are aware, open government and open meetings are pending on reconsideration. And as I tried to explain when this came up last December, the open government and open meetings did not get the constitutional majority. We felt really that we should have taken privacy up first. Because if this is passed and adopted by this body, then I think the open government and open meetings will be important. And I think they would be necessary.

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And to get the constitutional majority, we need to get them in the constitution.

COMMISSIONER DOUGLASS: I have an answer to your first question. In relation to doctor-patient records or medical records, if I am not mistaken -- and I may be because this is sort of off the top of my head here -- the New York court has held that computer-type stuff and so on -- drug information and so on is entitled to protection. And what happens, if somebody violates that right, such as we have got here, you can either sue him for violation, whoever does it, or it can be a crime.

So, there are teeth involved in this. But it is a self-executing provision. And it does reach the concerns you have and I have. And there are indications from other jurisdictions -- one recently from California -- that recognize the privacy provisions in their constitution as it relates to a doctor-patient relationship of prescribing medicine.

I think all of these are embraced by this, and I think it is extremely important in view of the many records that are kept in computer banks and so on, because that is privacy rights of the individual and the doctor, and is essential for health care. Otherwise, you will never have good health care because

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you can't find a history.

And this is anticipating that. And to answer your question, if somebody violates it, you can sue them because it is a self-executing right for the damage, and probably punitive damages because it is violation directly of a constitutional right. But you can also make it a crime.

Does that answer your question?

COMMISSIONER ANNIS: Thank you.

MR. CHAIRMAN: Commissioner Platt.

COMMISSIONER PLATT: How would this affect our nuisance laws and laws dealing with disturbing the peace?

COMMISSIONER DOUGLASS: It would not.

COMMISSIONER PLATT: It would not? How would it not?

COMMISSIONER DOUGLASS: All right. In order to be a public nuisance, it has to be already less than private under the present laws. In order to disturb the peace it has to be less than private to disturb the peace. You cannot disturb the peace in private. That is the law. I can disturb the peace by myself all I want to. I am not being flippant. It just is not. It would not affect the laws dealing with disturbing the peace, nor would it affect public

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nuisances becusse they haven't by their definition been public.

COMMISSIONER PLATT: Then another one says, "Free from governmental intrusion into his private life." And the main discussion deals with personnel, private personnel and private enterprise. How would this affect receiving information and asking for information regarding governmental employees?

COMMISSIONER DOUGLASS: It would have an effect. It would require that certain information would be determined by the courts in all probability, or the legislature; and that you are entitled to privacy protection; and you would have it. It would be probably not a great deal different than it is presently, because most governmental agencies today -- and I am sure yours does -- make a conscious effort to protect the privacy of all of its employees and prospective employees.

This would give it status to the point where it would be required.

COMMISSIONER PLATT: But you are talking about a different aspect of it. I am saying what if government wants to know background material about a prospective employee? Now, is this going to be a bar to government to find out that background

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information?

COMMISSIONER DOUGLASS: I think not.

COMMISSIONER PLATT: How do you know? If you are an employee, and you are going to apply for a job in government, this could be a bar.

COMMISSIONER DOUGLASS: I could answer and say that the courts, for example, get around the right of self incrimination. When they stop you because you were exercising the privilege of driving an automobile, and you go ahead and waive your right to self incrimination and take the test, the same type of reason would apply. If you voluntarily apply for a position with a state agency, certain information, as a condition of that applying, will be required; one of which would be possibly waiving some rights you might ordinarily have.

COMMISSIONER MOYLE: Commissioner Douglass, may I reply. Remember that the right of free association and free expression is going to include some of these same questions. And there will be unknown answers about individual rights and unknown answers to this and some questions that are asked, because it will be by reasonable interpretation. And you have to assume that there is going to be a reasonable interpretation. Just like this wouldn't overrule the Fletcher

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versus --

COMMISSIONER PLATT: Do you agree this could be a possible bar -- would you agree that this could be a possible bar for finding out information about prospective governmental employees?

COMMISSIONER MOYLE: It could be possible.

COMMISSIONER PLATT: Possible?

COMMISSIONER MOYLE: As long as the information requested is relevant, pertains to the job that is being sought, the ability to perform that job, I don't see how that could be affected. Now, if it asks information that was not relevant, then, yes, it could be.

COMMISSIONER PLATT: Then let me ask you another question. How would this affect the obtaining of information on the part of government in the situations like the census, or surveys that are made in order to get certain information -- amounts of income level. We find in government so many times the Federal government distributes money based on income. And you have to find out what income the particular individuals have. How does this relate to that specific information?

COMMISSIONER MOYLE: The collection of this information -- and this is strictly my reaction to it --

COMMISSIONER PLATT: This is what happens.

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COMMISSIONER MOYLE: All I can do is tell you what we think. The question came up in the committee, as I recall, and the discussion centered around the fact that if the collection of information by government had a rational purpose and was reasonable and would satisfy a judicial test, which is going to be developed in this area by the Florida Supreme Court, then it would not be affected. If it were not relevant, and it was strictly for purposes of invading one's privacy, then it would be affected.

COMMISSIONER PLATT: So, you are saying then this language is not an absolute?

COMMISSIONER MOYLE: No, not any more than free speech or free association or any other thing.

COMMISSIONER PLATT: One other question. Commissioner Hollis asked the question about government surveillance and for witnesses and for criminal surveillance. And Commissioner Douglass answered and responded in terms of a previous amendment that is in our constitution -- present constitution. If we adopt this language, will this in any way supersede that other language?

COMMISSIONER MOYLE: The answer is I do not think it will.

COMMISSIONER PLATT: But you don't know?

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COMMISSIONER MOYLE: Well, yes. Let me explain to you. This is the same question asked by Commissioner Annis about the disclosure amendment. In guarding against the possibility of this having impact, adverse impact, if you will, on other parts of the constitution, I am confident that we will have what I call the savings clause coming out of Style and Drafting where, unless it is specifically intended, the impact, it will say the enactment of the various provisions by constitutional provision are not intended to supplant or replace or affect or alter other existing provisions of the constitution that aren't amended.

MR. CHAIRMAN: If there are no further questions, I believe that Commissioner Overton has an amendment on the desk. Let's go through the amendatory process. Please read Commissioner Overton's amendment.

MR. SECRETARY: By Commissioner Collins and Overton. On page 1, line 3, insert "unwarranted" after the word "from" and on line 5 insert "unwarranted" after the word "from."

MR. CHAIRMAN: Commissioner Overton to discuss the amendment.

COMMISSIONER OVERTON: Commissioners, you have heard some of the discussions and some of the history that came up from the Ethics and Privacy

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Committee. This was a proposal that both Commissioner Collins and myself suggested and recommended. And we were on the short end of a five-to-two vote. But let me, if I might, tell you the specific reason for this. And I don't think it is an extra term anymore than the term "unreasonable search and seizure" is in that provision.

But I think it crystallizesand clarifies the provisions so that you will not have the type of construction and interpretation of this privacy provision as it pertains to subparagraph A, as it pertains to governmental intrusion like the State of Alaska has, as it concerns the matter of marijuana in the homes.

And as to paragraph B, I think that there would -- it would be a question as to whether this provision, in fact, overrules what we term the Fletcher case where the Supreme Court of Florida decided about 18 months ago, which involves a photographer that was requested to come into a private dwelling that had burned by a fire marshall to take a picture of where a body had been. And in that instance, that picture happened to be published. And the suit -- an action was brought on the grounds of an invasion of privacy. The court said that was proper under those circumstances in

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that particular case.

Now, there are circumstances that could justify an intrusion. The matter of surveillance was brought up. Is the matter of surveillance outside particular premises? Is the matter -- is that unwarranted or not? Particularly if it is done by a judicial decree. What I am saying is the matter of electronic surveillance, where there is a judicial order authorizing it. So, this is the reason for the insertion of the term. I think that what Commissioner Douglass has said was that his interpretation of the act with it in is the same as was mine and Mr. Collins is with the insertion of these particular words.

COMMISSIONER DOUGLASS: That is not what I said.

COMMISSIONER OVERTON: Well, it is what I think you mean as far as the Fletcher case and as far as the marijuana case is concerned.

COMMISSIONER DOUGLASS: That's right.

COMMISSIONER OVERTON: And under these circumstances, I feel that this provision should be amended accordingly.

MR. CHAIRMAN: All right. Commissioner Moyle and Commissioner Douglass wish to be opponents. Are there other proponents? Commissioner Collins and

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Commissioner Shevin. I will recognize Commissioner Douglass to open for the opponents.

COMMISSIONER DOUGLASS: First of all, I did not say exactly what Commissioner Overton indicated. What I said was that the use of the word "unwarranted" was a weasel word. Now, I want to make that clear. It is a weasel word to afford to the courts the opportunity to dilute an important right that everybody thinks they have got anyway. Now, that is a lot of difference in saying that it says the same thing, because what Commissioner Overton and Commissioner Collins want is the opportunity for the court to say that since you use the word "unwarranted" you have got the individual right to privacy against intrusion by the state in all those instances except where we as the court in our wisdom find otherwise because of the use of this word "unwarranted."

Now, the bugaboo that is in the suggestion that if you don't use "unwarranted," the word "intrusion" doesn't mean intrusion escapes logic. You could not have the functional literacy test on that basis. Now, you might have some other tests, but it would not be the functional literacy tests.

When the right is you don't have the right to intrude, then you don't have the right to intrude.

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But the state always has the right to reasonable search and seizure guaranteed in another provision of the constitution. It always has the right to -- the inherent right to perform the functions of government. And the courts will not be -- will not be, I say -- invited by the use of this weasel word, "unwarranted," or whatever you want to use, to dilute an individual right.

If there is anything we do in this whole constitutional provision, this area right here is one of the most important. And the reason for leaving it pure, if you please, is because this is the one area in law that the Federal government has said the states must regulate privacy rights as a general rule. They have left it to the states.

And if you will recall, gentlemen -- and I think some of the commissioners here are very familiar with this -- the Federal courts held that unless the states protected bank records, then they were subject to full disclosure, dissemination, and everything else. And they said if the states do have a right to privacy to protect your bank records -- and you know, most people think their bank records are protected. They are not. Under the right to privacy, they would be. They would be protected from outside forces going in

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and getting your bank records, whatever they be. And we do have a statute that protects your records of your savings and loan deposits, but not bank deposits. And consequently, this right to privacy is important in that area.

The courts -- if you use the weasel words, which courts always want -- if they would give them the final determination of whether or not there was an individual right, instead of the constitution -- and we need to be pure on this point and stick with it and keep it like it is in order to guarantee the people the right they are entitled to, which is the personal right to privacy.

MR. CHAIRMAN: Commissioner Collins.

COMMISSIONER COLLINS: We may not be able long to hold on to this society if there were not available the right of some invasion of privacy. I think we should start with that premise. I think for us to suggest here that we put in the constitution an absolute bar for the invasion of privacy would violate and do serious harm to our necessary operations within the society to make it democratic and make it hold water and make it stand and be good.

All of us, of course, were alarmed and shocked over this past weekend up in Illinois where

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some kind of deranged father brutally killed six of his children and left them, and then ran to another state where he was apprehended. If a passerby had been in front of that house at the time that brutal crime was going on, and if that passerby had any reason to know that might be going on in that house, he could not have gone in and done anything to protect some of the lives of some of those children.

We have in our law, in our statutes many provisions on the invasion of privacy that is essential and necessary -- for discovery in civil actions and up and down the line, but which are not specifically guaranteed in the constitution. Discovery is a big one. And if Commissioner Douglass has a client, it will not take me long under our rules of discovery to get his client under oath and find out everything he knows about what he is up to, under his own oath. And that is a serious violation of his privacy. On the other hand, he can do the same thing as far as my client is concerned. He can get all that information. He can get it because we have statutes, and we have rules that permit that for proper handling and disposition and development of litigation in our country under our system.

There are many other instances that I could

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recite. All in the world Justice Overton and I are trying to do here is to make this meaning something that can be useful and something that can be effective. We don't take out any language in regard to the improper invasion, but we insert before "invasion" the simple word "unwarranted." Now, that means just what we all know it means. That means that under circumstances provided in the constitution where we are alarmed and concerned about apprehension of criminals, it means that under the provisions about statutes, under other provisions about court rules, under this disclosure provision that Commissioner Annis just referred to -- it means that in those warranted situations where it could not be held that the exercise of lawful authority would not proceed as provided, and provided for good reason.

Now, I like the idea of protecting privacy, but I submit to you that if we leave this in the shape it is in now without some appropriate qualifications, and we can't think of a better one -- and we argued this out in our committee and spent a lot of time on it. Justice Overton and I can't think of a better one. The Attorney General has a slightly different idea about this. He has another word, but he would probably be in the minority of the three -- Justice Overton, the

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Attorney General, and me. But we all agree very definitely we do have to have some qualifying language here to make this operable, to make it effective, and to make it worthwhile.

MR. CHAIRMAN: Commissioner Moyle -- I am sorry, Commissioner Shevin.

COMMISSIONER SHEVIN: Mr. Chairman and Members of the Commission, I had considered the use of the word "unreasonable." I really don't think there is much difference between unwarranted and unreasonable. And since we are talking about an intrusion into the lives of private citizens, perhaps the word unwarranted, as Commissioner Collins has ably stated, perhaps that is a better word, whether it is a warranted intrusion as to whether it is reasonable or unreasonable. I think you have got to have some clarifying language. Otherwise, what you are getting into is, I believe -- well, for instance, we have statutes that allow for electronic surveillance in organized crime investigations. And I think quite clearly if this constitutional amendment were adopted, those statutes would probably be rendered void. They would probably be rendered unenforceable.

COMMISSIONER DOUGLASS: Will you yield?

COMMISSIONER SHEVIN: Yes.

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COMMISSIONER DOUGLASS: They are authorized now by the constitution.

COMMISSIONER SHEVIN: They are authorized under unreasonable searches and seizures.

COMMISSIONER DOUGLASS: And that is the only basis on which you can have a legal intrusion of that kind.

COMMISSIONER SHEVIN: And then you have to have an interpretation by the court as to which constitutional provision will prevail.

COMMISSIONER DOUGLASS: I would presume that you would --

COMMISSIONER D. REED: Point of order.

MR. CHAIRMAN: State your point of order.

COMMISSIONER D. REED: The gentlemen are arguing. They are not debating.

COMMISSIONER DOUGLASS: Well, would you not presume that Style and Drafting is definitely going to have that in a provision?

COMMISSIONER SHEVIN: I tried to say that once, and I was told by Commissioner Reed not to presume that Style and Drafting was going to be doing anything.

COMMISSIONER DOUGLASS: Then don't presume that, but even under constitutional construction you just don't have that possibility. You are not going

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to eliminate the constitutional right of law enforcement to get a court order to surveil or have electronic surveillance because that is in the constitution. It is not being changed. And when you say that the statutes which implement that are going to be rendered unconstitutional by this, even as the Attorney General of the state, who may not be as well educated as the other lawyers in this body, you can certainly recognize that that is not the law.

MR. CHAIRMAN: Commissioner Shevin.

COMMISSIONER SHEVIN: I recognize we will be giving the court a choice between the interpreting of the Fourth Amendment provision and this amendment provision and trying to decide which one prevails. All that I do recognize -- and I really don't want to get into this debate -- is that I think it is improper to put into the constitution such a strong provision that does not allow for any flexibility on the basis of whether it is an unwarranted invasion. And all I am suggesting is by the addition of this language, as proposed by Commissioner Collins and Commissioner Overton, that we would have a good privacy provision that would not lock us into a situation where no governmental action could ever survive the provision of privacy. We also have the very critical issue of privacy being raised on issues

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like financial disclosure and on ethics provisions. All of that I think would very much come into question with a provision that doesn't at least allow for governmental intrusion, if it is in the area of warranted, as opposed to unwarranted.

MR. CHAIRMAN: Commissioner Spence -- I am sorry, Commissioner D. Reed.

COMMISSIONER D. REED: Will the gentleman yield to one question?

COMMISSIONER SHEVIN: Yes.

COMMISSIONER D. REED: Is what you are saying then the word "intrusion," means any intrusion, however slight?

COMMISSIONER SHEVIN: I think that could be a very logical interpretation.

MR. CHAIRMAN: Commissioner Spence is recognized as an opponent.

COMMISSIONER SPENCE: Yes. I would like to speak in opposition to the play on semantics by inserting the word "intrusion." I think it might be helpful to -- "unwarranted," excuse me. I think it might be helpful to get this matter in focus. We are talking about a brand new right that presently doesn't exist in this state -- the right to be let alone. I can assure you that I can pick up the telephone and in two or three

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days have a folder on any one of you, in the greatest detail, by just a couple of phone calls. And Big Brother is watching. And Big Brother is creeping in. And that alarms me.

And I think that when you put unwarranted in there, I honestly believe it is a weasel word. Now, what you are really saying is, one, let's recognize a new right -- the right to be let alone -- stage one. Stage two, let's let the legislature hear from the citizens of this state about how much they want to be let alone. And it has to go through the legislative process up here. And people will come and say, I want to be let alone in this regard or that regard or the other regard.

And it will be debated up here, and it will be passed. And we will have the legislature speaking at the request of the public on what the right to be let alone is, as seen by the legislature. And then those people who litigate about this matter will take it over to the Supreme Court, and the Supreme Court will look at what the legislature did. And they will say that it is either constitutional or not constitutional.

The constitution is merely what the court says it is the next time. I mean, Justice Hugo Black said many times that the constitution is what we say it

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is. They have the final voice. And those of you who are uncomfortable with this that say, let me get a little computer out and give you a hypothetical and tap it out, and let me give you the answer -- the answer will depend upon what the citizens of this state persuade the legislature -- the areas that they would like to be left alone in, as tested by the Supreme Court.

And I think it is a play on words when you put "unwarranted intrusion" in there. We are going to do our job and go home. And I honestly believe that those that take the ball to the 50 yard line and go home -- the legislature and the court -- will both be responsible and reasonable and protect a new right that we greatly need.

Thank you. I am going to oppose the proposed amendment and vote for the proposal as Mr. Moyle has given it to us.

MR. CHAIRMAN: Commissioner Hollis.

COMMISSIONER HOLLIS: Commissioners, I very much would like to support the concept of this right, but I honestly cannot without the word "unwarranted." I think it is needed. I think it gives us the protection that we need. It brings out this new right, gives it to the citizens of Florida, but with some reasonableness

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that I think is very much needed.

And just simply, the only way I can support it is with the inclusion of this word. I hope you will vote for the amendment.

MR. CHAIRMAN: Commissioner Moyle as an opponent.

COMMISSIONER MOYLE: Commissioners, let me refer you to our existing constitution and read something to you, and see how you like it, and how you react to it.

"Section 2, Article 1, basic rights. All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry."

There shall be no law, no reasonable law respecting the establishment of religion. I don't think a person in here would go along with those kinds of limitations on basic rights in the constitution. And I suggest that we are in that same category by putting "unwarranted" as an amendment to Proposal 132 in Sections A and B. The committee debated this for not only once, but two or three times. And respectfully, Commissioner Overton and Commissioner Collins, I think you were on the dissenting or in the dissenting opinion

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of a five-to-two vote. And the committee held that Fletcher was not overruled by this, and that the sense of what the arguments that Commissioner Shevin and Commissioner Hollis are making is included in this.

But we did not want to be in a position to dilute this very important basic right. And I don't believe the horribles that you have heard praised will happen. I agree with Commissioner Spence, I have confidence in the Florida Supreme Court's interpretation and implementation of this new right that intrusion carries with it the term of unwarranted. It is just about a double negative. Intrusion has to be unwarranted when you define it.

So, for that reason, the same reason I wouldn't want to put "reasonably" on a law affecting religion or "reasonably" on a law concerning my right to free speech, I don't want to put "reasonably" or "unwarranted" on this provision concerning privacy. And I urge you to defeat the amendment.

MR. CHAIRMAN: Commissioner Overton to close on the amendment.

COMMISSIONER OVERTON: Commissioners, I think everything has been said that probably can be said about this. I don't think that the term -- including the term "unwarranted" does -- well, let's put it -- is

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in the same context as the term "unreasonable" is as it pertains to search and seizure. I feel the term is necessary to make this a workable provision. And workable in the light of both as to governmental intrusion and as to intrusion by private persons. I ask your support of the amendment.

MR. CHAIRMAN: As many as favor the amendment as proposed by Commissioner Overton, please signify by saying aye; opposed by saying nay. I believe the amendment fails adoption.

Do you wish a roll call? There is a showing of more than three hands. Let's have a roll call.

(Whereupon, a voice vote was taken.)

MR. CHAIRMAN: The amendment fails adoption, and the vote, Mr. Secretary.

MR. SECRETARY: 11 yeas; 24 nays.

MR. CHAIRMAN: Are there other amendments on the desk? Commissioner Shevin, is it necessary to close your amendment? That amendment is withdrawn. Are there other amendments on the desk?

MR. SECRETARY: An amendment by Commissioner Mathews. On page 1, line 2, after "individual" insert "except office holders and candidates as defined in Section 8 of Article 2."

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MR. CHAIRMAN: Commissioner Mathews is recognized.

COMMISSIONER MATHEWS: Mr. Chairman and Commissioners, I raised this with several of the sponsors who seemed to feel this can be taken care of by some construction phrase or something of that nature. I am not convinced when you have a new provision of the constitution that was adopted after the ethics and government one, that you can by a note of construction resolve what is obviously a conflict in the language. Now, there isn't any question that every citizen, including office holders and candidates, have the right and the -- you did not put the limited word here -- and I would withdraw this if you had the word "unwarranted" in there. But the absolute right to be free from intrusion, then you in effect have repealed the ethics and government section, it seems to me.

Now, if somebody can show me otherwise -- but I have argued these constitutional questions when there were conflicts. And invariably, as far as I know, the court always -- f there is a clear-cut expression, they are going to take the one, the latest one that is adopted is controlling. So, I don't know completely the answer to this thing. And I am trying -- my purpose in offering it was to call attention to an inconsistency

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that I think is built in unless you somehow or another resolve it, as other languages are doing, except as otherwise provided in the constitution.

Then certainly, I think, this will serve the purpose of telling you you are going to have two conflicting provisions in the constitution without some qualification on an absolute right, because after all, an office holder or cabinet office is a citizen, an individual.

MR. CHAIRMAN: Commissioner Mathews, will you yield to Commissioner Moyle?

COMMISSIONER MATHEWS: I yield.

COMMISSIONER MOYLE: Commissioner Mathews, as we discussed earlier, the committee did not intend the impact of the Sunshine Amendment with the enactment of this. I really would not have any objection to passing this amendment as a safeguard. But I would like to ask you this question: If in Style and Drafting you are able to come up with the type of savings clause I was talking about, which relates to this and others, which satisfies you, would you as chairman of this committee be able to take this out and --

COMMISSIONER MATHEWS: As long as what Style and Drafting did was consistent with what this body voted to do, I would like to take the simplest and

D. 003313

easiest route. I just haven't seen any savings clause that you could be sure would have the same constitutional effect as a very short amendment saying "except for this provision."

MR. CHAIRMAN: Is there further debate on this?

MR. SECRETARY: We have an amendment to the amendment on the desk.

MR. CHAIRMAN: Is there an amendment?

MR. SECRETARY: An amendment to the amendment.

MR. CHAIRMAN: There is an amendment to the amendment on the desk. Let's have that amendment to the amendment read, please.

MR. SECRETARY: Amendment to the amendment, by Commissioner Ware, on line 2. After the word "candidates" insert "and employees."

COMMISSIONER WARE: That should say "officers and employees."

COMMISSIONER MATHEWS: I have no objection to that.

COMMISSIONER WARE: Commissioner Mathews, that is the language in the present constitutional amendment. You just pick out two, and I think it ought to be consistent with the present constitution.

D: 003320

MR. CHAIRMAN: All right. As many as favor the amendment to the amendment, please signify by saying aye; opposed by saying nay. Now, Commissioner Brantley, what do you wish to talk on? For what purpose do you rise?

COMMISSIONER BRANTLEY: I want to talk on the amendment to the amendment.

MR. CHAIRMAN: I apologize. Did I take that vote too hastily?

That amendment is now amended by Commissioner Ware's amendment, and you are recognized on the amendment as amended.

COMMISSIONER BRANTLEY: Mr. Chairman and Commissioners, I don't know really whether I strongly oppose this, or whether I really favor it. But I have some real concern in this whole area such as I had with the word "award" and "representation" on this floor to the commissioners. To my personal knowledge, although intended to be absolutely correct, in certain instances of governmental entities in our state this is not correct. What you are doing with this amendment is you are singling out state office holders. You are singling out the constitutional officers as defined in the other sections of the constitution.

If you adopt this, you are further

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prohibiting the legislature from extending the financial disclosure law. You are saying that the legislature, or in some future year may not say that, or the constitution revision commission 20 years hence may be covered by financial disclosure.

Also, you are saying that your appointed authorities and your elected officials at the local level, other than those mentioned in the constitution, can never be covered in the financial disclosure. Let me tell you what concerns me about this whole area, other than the provision of the amendment as is offered by the Committee on Privacy and Elections. I am going to tell you of a personal experience.

Several years ago, Mr. Chairman and Commissioners, we had allegations running around this capital that there was a law enforcement agency of this state investigating private citizens and office holders. The Speaker of the House, his so-called leadership team got concerned about it. The then President of the Senate and his so-called leadership team got concerned about it. I was invited to that particular meeting in the president's office. And not with my permission, but I was selected to head an investigation into that law enforcement agency.

Not knowing anything about investigations,

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and not liking necessarily to go out and accuse people of something that they may not necessarily be doing, I hired two retired FBI agents. They taught me enough, Mr. Chairman, about the method of record keeping of that particular agency to ask intelligent questions. Because, you see, the dossiers were split into about three different parts, and they were kept on varying levels of the building.

The first thing we did, we entered that agency building, surprisingly to them, with no fore-warning, with one of their agents. We went to the head of that department and said that we wanted to go to building so-and-so and room so-and-so.

The first thing we did, we walked in there, and there were papers scattered everywhere -- on top of desks, in boxes, in file cabinets, on file cabinets, in cardboard boxes -- just literally hundreds of pounds of newspaper clippings and reports and so forth. And I told them before we went in there, I said, "You don't ask any questions. I ask the questions."

I walked in and said to a young lady who appeared to be in charge, "Are you purging your files?" And she said, "No, we are discarding material we don't need."

I said, "Did your boss tell you to do that?"

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She said, "Oh, yeah." I said, "I wonder why he told you to do it." And she said, "Man, we've got to get rid of this before the legislature sees it."

She didn't know I was a legislator. We go to another room, and we start asking questions about file number so-and-so and X-number -- whatever those codes are. I have forgotten, so I can't tell you. And I said, let me see the file on so-and-so -- and at random picked out names. And, yes, I finally got around to asking the question, "Let me see file number so-and-so on that fellow named Lew Brantley."

She was anxious to get it for me. And I said, "Go to that other room and get me that other file." And she got that other file. And I don't mind telling you that I was somewhat apprehensive to read my file. But I did. And then I got tough.

I started calling office holders' names and asking for the files to be brought. Yes, there were files on those office holders. And there were files on private citizens.

That no longer exists, Mr. Chairman, but it did exist. And I can represent to you that some of those files that were brought to me were active files. And on the advice of our counsel, I did not look. I did not open those files.

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I can represent to you that there might have been a reason for all of that, because a couple of names that I did, as a matter of fact, see have later been convicted of crimes. But I can represent to you, too, that there is absolutely no reason in my judgment for a police department of this state to surveil people.

I can represent to you that along about that same time my wife -- and she was in the gallery earlier -- was tailed on two different occasions. In one particular incident, we found out why the surveillance for my wife. She was being surveilled for security reasons. And for that I am very grateful. We never learned about the other times.

I can represent to you that there are those in this room that were surveilled. I can tell you to ask that department, did a court -- Justice Overton -- did a court authorize that? No. The court was not aware of it, nor were the private citizens, nor were the office holders. They weren't aware of it. That department works for the chief executive of this state.

Now, I am not trying to say that the chief executive ordered that. I don't mean to imply that. But if he didn't, he had a department head who took it upon himself to investigate private citizens.

Now, I think you have a right to privacy.

D. 003325

I can tell you that that department, by the way, is, in my judgment, today one of the most efficiently operated departments in our state. We didn't have the clout to go out there and stop that because we didn't have the authority. We have attempted to do it through the appropriations bill. We said, "If you are going to have that many people running around and checking on other folks without any real need, you don't need all the money you are asking for for all these additional employees to surveill."

Yes, we caught havoc for it, but we got the job done because that was our responsibility. And it does fall back to that old question, if you can't stand the heat, get out of the kitchen.

But I have to tell you, some way or not, Mr. Chairman, and Commissioners, there has got to be a way to protect the privacy of individuals. And under Senator Mathews' amendment, whomever that second person was that was tailing my wife, she isn't an office holder. She is not a candidate. But even under that amendment, they still tailed and surveilled private citizens that you might not want surveilled.

I hope that never happens again in this state. I hope it never happens anywhere in this country, but I am going to tell you that that did happen

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right here in this state. And I think we ought to keep the amendment as it is without amending it. We ought to keep a proposal so that every person can be guaranteed the right of privacy without intervention of government, unless you want to specify in the constitution that in order to surveill somebody you have got to have a court order. That wouldn't offend me at all. I would like that.

But we ought not to let any governmental agency do the things that have happened in this state. Thank you, Mr. Chairman.

MR. CHAIRMAN: Let's see. There is a substitute amendment on the desk. Before taking further debate on this amendment, let's have the substitute read. The substitute is by Commissioner Plante.

MR. SECRETARY: Substitute amendment by Commissioner Plante and Commissioner Moyle. Page 1, line 3, after "life" insert "except as otherwise provided in this constitution."

MR. CHAIRMAN: Commissioner Mathews, for what purpose do you rise?

COMMISSIONER MATHEWS: The introducers of the substitute spoke to me before it was put up. I think it does the same thing, perhaps in a better way, than my amendment does.

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MR. CHAIRMAN: All right. Let's take a vote. Is there any debate on this? If not, as many as favor the substitute, please signify by saying aye; opposed by saying nay. All right. The substitute is adopted.

COMMISSIONER MOYLE: May I ask a question, please. Is it the sense of the body that in the event we were able to come up with -- through Style and Drafting -- with a provision that would accomplish the same thing, this can be eliminated from the provision?

MR. CHAIRMAN: Commissioner Moyle, I believe that -- if I can answer the question for you and state the sense that -- and if there are objections to my statement -- I believe Style and Drafting would be authorized to make non-substantive changes. If they came up with some general language on rules of construction that would do the same thing, I am sure it would be acceptable to the body. And the body would certainly want to have that reviewed and pointed out to them. That would be within the authority of Style and Drafting. If that is an agreeable statement -- and Commissioner Mathews seems to indicate that is within the rules he intends to adopt.

All right. Are there further amendments?

MR. SECRETARY: No further amendments.

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MR. CHAIRMAN: Do we have any further debate on the proposal?

Let's line up further debate on the proposal as amended. Commissioner D. Reed, what side do you take?

COMMISSIONER D. REED: I am going to be against it.

MR. CHAIRMAN: Commissioner Ware, you had asked for recognition a moment ago. Was that to offer a substitute?

COMMISSIONER WARE: Yes.

MR. CHAIRMAN: All right. Are there any others? If it is agreeable, I am going to close off this debate with Commissioner Reed as an opponent and Commissioner Moyle to close as a proponent. He will share time with Commissioner Douglass as a proponent. Is that all right? Okay. Commissioner D. Reed as an opponent.

COMMISSIONER D. REED: Mr. Chairman, I wonder if I could ask a question first. I had Proposal 132 with the exception of the amendment just passed. Have there been any other amendments to sub-B of that section?

MR. CHAIRMAN: None that have been adopted.

COMMISSIONER D. REED: My only concern, among

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others, is that sub-B seems to say that the legislature shall protect by law the private laws of the people from intrusion by other persons. I don't understand whether that sentence is designed to grant the right such as the first sentence does. It appears that the first sentence grants an individual a right from governmental intrusion, and then the second sentence seems to say that where the intrusion is by another person; that is, if I want to pay somebody, a private investigator, to surveil another person for whatever reason, that is a private person interfering with the I suppose, right of privacy of another. I am trying to find out what Florida constitutional right to privacy that second sentence is founded upon, or is that a grant of that, if a grant is in fact what we are talking about, a right of privacy. Or as a matter of fact, do I have a constitutional right to privacy, whether or not this passes? And isn't this really true that this whole provision is extremely confusing, doesn't really accomplish anything. And I apologize to you because a few moments ago when Mr. Moyle was talking, I was a little asleep. And so I may have missed the thrust of his argument in favor of this proposition anyhow.

And I am wondering what the big malady is,

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or the problem, and what the problem really is we are trying to cure here, both with subsections A or B, or if, as a matter of fact, what would happen if we killed this thing? Would the people's lives be interfered with on some kind of continuing basis about which I have no knowledge, having lived a sheltered life.

I really am wondering if we aren't biting off more than we can chew by granting some kind of right that nobody seems to know exactly what we are granting. And the answer that Mr. Moyle has given and the answers I have heard by all these lawyers around here, they are giving the typical answer here. And that is, "We are not too sure exactly what it does, but don't worry about it."

Or will the legislature pass laws on it where we can just take it to court, to the Supreme Court, or some other court, and they can tell us what it means. If that is the way you are going to do it, it seems to me to take this out to the people a few months from now, if, in fact, it ever gets out to the people -- this is further going to compound the problem we are already building. And that is, we are adding a lot of good stuff to this constitution that really isn't going to help it all that much.

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I hope we will maybe start thinking in terms of deleting some of the language in the constitution and not adding all these nifty ideas.

I just wonder if maybe Mr. Moyle in closing can explain to me why the language in the second part, that is, sub-B -- and particularly I am concerned about the fact that it doesn't seem to me -- well, it seems to me that every individual has the right to be let alone and free from intrusion by other persons. You know, it seems that natural persons might even fit, instead of just from governmental intrusion.

I just think it is, you know, time to kill one of these things that are coming out of that committee.

MR. CHAIRMAN: Commissioner D. Reed yields the floor. If you will inform the Chair how he is to tell when you are asleep, we will make arrangements to wake you up.

COMMISSIONER D. REED: Thank you.

MR. CHAIRMAN: Commissioner Moyle, how will you split the time in closing?

COMMISSIONER MOYLE: Commissioner Douglass and I will split the ten minutes.

MR. CHAIRMAN: Commissioner Douglass is recognized.

COMMISSIONER DOUGLASS: All right. As we

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have not amended it, the only amendment is that the proposal as it was drawn, with the added language, "except as otherwise provided in this constitution," which protects and defends against all the arguments that were raised in the other debate, particularly by Commissioner Shevin and Commissioner Overton.

Now, we get down to the point, at this point, in response to Commissioner D. Reed. And had he been involved in writing the Bill of Rights, I doubt very seriously if we have ever had them with the philosophy that is being expressed by him. Because anything that is new, according to him, deserves to be deleted.

This is not really new. This is codifying into the state constitution a right that everybody thinks they have anyway. And they really find out too late that they don't have it.

Now, what this gets down to is one of the most important issues before the people. This protects every individual -- for every individual the right to privacy, the right against the government intruding into the private lives where it is not necessary for the government to do so. And if there is anything that we do, as we move into the computer age, and as we move into the area of urban society where people live in great

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crowded conditions, where people -- the privacy of individuals becomes more important to their well being than most other rights that they might have, whatever they might be. And the right to keep the government from unduly burdening, as was proposed by Governor Collins, that is embraced in the right of privacy because one of the burdens that they put on you could be to invade your private life and your private rights.

There is not a person in this room who doesn't cherish his private right, his right to be let alone by the government. There is not a person in this room who doesn't cherish the right to be let alone by others within the scope of his living his life. And yet we can have serious debate by a few people -- very few people -- that we are not entitled to have this in the constitution.

I submit to you because of the Federal law that it has to be in the constitution if the people of Florida are to have rights to privacy and to protect our lives and our families and ourselves from the intrusions into our lives, so that we may live a full and complete life.

If we give anything to our children that is meaningful in the way of individual rights, it will be the constitutionally guaranteed right to privacy. And I

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will yield to Commissioner Shevin, who is on his feet for a question.

MR. CHAIRMAN: Commissioner Shevin.

COMMISSIONER SHEVIN: Commissioner Douglass, we talked about this privacy right, but since we are building a record, I think it is necessary to clarify it. There has been some question raised about discovery process. Commissioner Collins raised that question about witnesses who might refuse to testify, even though subpoened in a private litigation, because they could say, "Well, we refuse to come in andtestify. We are asserting our right to privacy. We don't want to be interfered with."

There have been those kinds of questions raised.

Did your staff go into that, and are you of the view that this would not cause any problems with regard to litigation, discovery, and the like?

COMMISSIONER DOUGLASS: That is correct. The staff of the committee specifically went into those questions because they were raised by the committee. And they concluded that this provision would not alter the discovery law as we presently know it; that those provisions would not be changed by this provision in the constitution. And what research I did,

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I would be willing to conclude that they are correct. But, of course, they are much more informed that I am.

I certainly wouldn't want you to rely on my legal opinion. I relied on theirs also. Commissioner Shevin, if there is anything that gets down to just an issue of guaranteeing individual rights that is really going to be sacred to our children, I feel it is this right, because it is one that -- Commissioner Brantley said it. It prevents the sort of nonsense, Big Brother watching us, Little Brother watching us, whoever, to the extent that if that does occur, you have a right to punish that person, either by governmental fiat, or whatever.

But it grants a protection of what we all consider to be our inherent rights, and it is one that should be in our state constitution to make for people a more meaningful life. Because I want to guarantee you, I have been under surveillance by the government. And it is not fun. And I took the advice of an old senator who said, "Just say everything, and they won't know what you said anyway."

Well, what if they are surveilling you and you don't know it, and you find out later, and it ruins your life? At least under this provision, you have got recourse. At present you don't have any recourse

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about it except to laugh and say that when they tapped your home you hope they got your teenage daughter talking to her boyfriend, because you always wanted to do that, too. But by golly, all kidding aside, this is a gut issue, and it should be voted up for the people to vote on having an individual right to privacy guaranteed in the constitution. And leave it to the legislature in the private area to spell out the rights against private intrusion into your lives.

It is very important, and I urge you to vote for this proposal.

MR. CHAIRMAN: Commissioner Moyle to close.

COMMISSIONER MOYLE: Commissioners, I think that this proposal is important, and I think it is significant. And I would like for you to know that the committee worked hard and long on this proposal. And I am sorry in establishing a record and explaining the proposal that the length and monotony of my presentation made some members go to sleep. However --

MR. CHAIRMAN: There are other reasons for that. The attention span of some members may not be what it is supposed to be, Commissioner Moyle.

COMMISSIONER MOYLE: However, there is one thing I am very, very, grateful for, and that is that the record of the proceedings of this constitution

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revision commission will reveal for all posterity and history to know that Commissioner D. Reed was asleep when we put one of the most important issues that we have had before us. I urge the support of the amendment.

MR. CHAIRMAN: All right. Commissioner Hubbard would like to propound a question to Commissioner Moyle.

COMMISSIONER HUBBARD: Commissioner Moyle, will you yield?

COMMISSIONER MOYLE: I yield.

COMMISSIONER HUBBARD: If you vote to pass this provision -- and since you thought it was necessary to add on and include the words "except as otherwise provided in this constitution" what about a process which is not provided for in this constitution, but by statute. For example, as you know, the process law by the Florida Ethics Commission is not provided by the constitution, but is provided by Section 112, Florida Statutes. What about that type of governmental intrusion, which may be warranted?

Just for the record, I think that should be clarified.

COMMISSIONER D. REED: Will the gentleman yield to one question?

MR. CHAIRMAN: Let him respond to this

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question first.

COMMISSIONER MOYLE: I am not sure I really understand the question.

COMMISSIONER HUBBARD: The intrusion --

COMMISSIONER MOYLE: The statute is inconsistent with the provision in the constitution.

COMMISSIONER HUBBARD: That is correct. That may be correct.

MR. CHAIRMAN: Will you yield to Commissioner D. Reed?

COMMISSIONER D. REED: Just one question. Commissioner Moyle, would you believe me that you are --

MR. CHAIRMAN: He seems to be awake now, Commissioner Moyle, and would like to ask a question.

COMMISSIONER D. REED: Commissioner Moyle, would you believe me that you are partially correct when you say that all posterity will record the fact that I was asleep in your presentation. But would you also believe me if I told you that all posterity will likewise record that it was you who put me there.

COMMISSIONER MOYLE: On this issue, Commissioner Reed, I think that is fine.

MR. CHAIRMAN: Commissioner Collins has a question.

COMMISSIONER COLLINS: After your response

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to Commissioner Hubbard's question, when you admitted that the statute was in conflict with this absolute right of invasion of privacy, that the statute would fail, would you not then agree that our whole statutory system for discovery in the courts would also fail if this is adopted?

COMMISSIONER MOYLE: I don't think so, Commissioner Collins. You know, in the committee we spent two hours debating this. I think we answered the question thoroughly. I think the research and memorandums prepared covered the point. And we don't think it will have an impact on discovery and the judicial process.

COMMISSIONER COLLINS: Please explain how you reconcile that statement with the statement you gave Commissioner Hubbard with respect to another statute. She was talking about one statute, and now I am talking about another one. Neither one of them embraces the constitution; and yet they are essential and a normal part of the law enforcement procedures of this state.

COMMISSIONER MOYLE: Commissioner Collins, when I replied to Mrs. Hubbard, I am not even sure what statute she is talking about.

COMMISSIONER COLLINS: The statute that

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created the ethics commission.

COMMISSIONER MOYLE: As a matter of constitutional construction, if the law is in violation of the provisions of the constitution, then it is going to fail. In the area of discovery, as we went through it thoroughly in the committee, I think we found that in Article 5 -- and you know, it is an entirely different situation.

COMMISSIONER COLLINS: I don't know anything in Article 5 that provides for the discovery process, but I may not be as familiar with that as I should be. I don't think, as Mr. Overton recalls, in Article 5 that it authorizes the legislature to expressly create a --

COMMISSIONER MOYLE: As I recall, Justice Overton was in agreement with us on the impact of this on judicial discovery and rules of procedure. He might want to comment.

COMMISSIONER COLLINS: That isn't what he said on the floor of this convention just a few minutes ago. He was supporting our amendment.

MR. CHAIRMAN: Ladies and gentlemen, now we are in final closing argument on this part. Questions are proper of Commissioner Moyle. Are there further questions? Commissioner Ware has a question of

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Commissioner Moyle if you will yield.

COMMISSIONER MOYLE: I yield.

COMMISSIONER WARE: Commissioner Moyle, the debate so far hasnot dealt on the state's regulation of conduct between private individuals. And I just want to make clear in my mind your position. And I assume that under Paragraph A there would be no legitimate or legal basis upon which a statute could be enacted which would regulate conduct between private individuals and privacy?

COMMISSIONER MOYLE: No, I think --

COMMISSIONER DOUGLASS: I tried to answer that earlier, Commissioner Ware, by saying that the courts that have interpreted this -- for example, I was dealing with marijuana provisions, which make it a crime to smoke marijuana under any conditions. And in Arizona they held that the rights to privacy in that state did not proscribe the legislature from making that a crime.

COMMISSIONER WARE: You feel the legislature could prohibit certain conduct of any individual?

COMMISSIONER DOUGLASS: As long as it is --

COMMISSIONER WARE: Subject to that purpose?

COMMISSIONER DOUGLASS: That is correct. I believe that would be the interpretation. And I think

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our court would follow that type of construction. Now, I think maybe you were out of the room, but the state of Alaska did go the other way. And Alaska, however, based theirs in part on the nature of the state. They went into great discussion about that. I believe, in my own mind -- I am satisfied that the court would not allow the sanction of criminal activities on the basis of the right to privacy.

(Brief pause)

MR. CHAIRMAN: The debate is now closed. We will have a roll call vote.

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 29 yeas, 4 nays.

MR. CHAIRMAN: By your vote you have adopted Proposal 132. Commissioner Moyle.

COMMISSIONER MOYLE: Mr. Chairman and Members of the Commission, I think perhaps if we can revert to matters on reconsideration, we can handle --

MR. CHAIRMAN: Commissioner Moyle, let me handle two matters, first of all. I wanted the Chair to publicly thank your committee and your committee staff, particularly Professor Dore and pay tribute to Jerry Polk, who had worked on this for a long time. Whatever your views might be on this subject, I think

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your committee and staff have worked hard, and we have to pay a tribute to you. I personally have seen many, many drafts in this area. I know how much you have struggled with all these questions. I compliment you and Commissioner Douglass and the committee.

COMMISSIONER DOUGLASS: Mr. Chairman, it should be emphasized that the credit for the tremendous amount of work in this goes to our staff. And I am not always in favor of staffs, as some of you people in the legislature know, but the research that was done in this is available for all of you. And it is the best I have seen. And it was done under the direction of Ms. Dore.

But some of the people who worked on it just did a tremendous job, and some from General Shevin's office were of great help in this area. And I think the staff in this case should be -- I know they worked 20 hours a day on a lot of this research because they were asked to do it at 5:00 o'clock and it was ready the next morning at 10:00. I really can't say how much they did in the way of accurate and succinct research. They were tremendous.

MR. CHAIRMAN: Commissioner Annis, did you have a comment on that subject? If not, let me recognize Commissioner Spence next to make an introduction

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that we neglected earlier.

Commissioner Spence, I observe that your son has been terribly hardworking this morning. We have been trying to introduce him for some time.

COMMISSIONER SPENCE: He wasn't here this morning because he was doing something else, but I would like to take a moment, if I may, to introduce my number two son, John Spence.

(Discussion off the record.)

MR. CHAIRMAN: Commissioner Annis, for what purpose do you rise?

COMMISSIONER ANNIS: Mr. Chairman, for a point of personal privilege. Mr. Chairman and Members of the Commission, the workings of this Commission have been rather lengthy on occasion, and I think the press has done a pretty good job of reflecting and evaluating the views expressed.

But a short time ago I was called out to answer a phone call from Gainesville. When I answered, I was asked to elaborate on my views this morning as allegedly expressed on this floor, that should we add the term "sex" to this constitution, that it would, in my view, make it easier for homosexuals to get married and also to adopt children.

Now, if I made such statements, I don't

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remember. Nor do I recall that they were made on the floor of this body by any other member that would have been merely a point of misunderstanding or false recognition and attributed to me. I do think that it is good to reflect the various points of view. I think, however, that we have the right to expect when we are quoted individually, that the quotation is an accurate one.

MR. CHAIRMAN: Commissioner Annis, thank you. As some member observed at some point, they do indeed do an excellent job, and their accuracy generally parallels that of the public courts. I don't vouch for that in one way or the other.

Now, Commissioner Moyle, do you wish to return to matters on reconsideration?

COMMISSIONER MOYLE: Mr. Chairman, if we could take up Proposals 137 and 138, pending reconsideration. I think they fit logically right behind the right of privacy. I don't think we need to spend a lot of time.

Both of these proposals received a favorable vote from the Commission in December; however, they failed because of a lack of constitutional majority of 19 votes. One of them is open meetings. "No person shall be denied" -- if you will turn to it, you can all

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read it. You will recognize that we indicate privacy interests in both of these.

Really, we should not have brought them up in December. They should have been brought up after the privacy provision. We feel, our staff feels, and our committee feels that both of these are necessary with the enactment of the right of privacy. Close to the end of the constitution, the guarantee that we will have open meetings and that the government will be open and records will be available unless they are exempted by legislative action.

And we put a burden on the legislature that they shall not be exempted unless it is essential to protect privacy interests or overriding governmental purposes.

This goes into both of the provisions. I will be glad to answer any questions.

MR. CHAIRMAN: Show 137 up. This is now for vote on reconsideration by which Proposal No. 137 failed to obtain the necessary 19-vote majority. Is that correct, Commissioner Moyle? It did receive a majority?

COMMISSIONER MOYLE: 16 to 12 or 16 to 14, something like that.

MR. CHAIRMAN: There has been a debate on this

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CONSTITUTION REVISION COMMISSION

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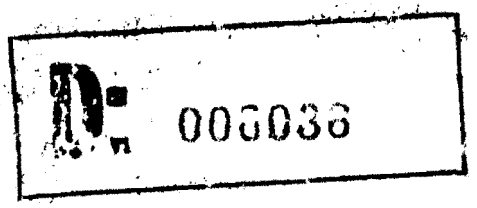
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FULL COMMISSION

— — —

BEFORE:	TALBOT D'ALEMBERTE, Chairman
DATE:	Tuesday, March 7, 1978
TIME:	Commenced: 9:10 A.M. Terminated: 5:40 P.M.
PLACE:	Old Senate Chambers The Capitol Tallahassee, Florida
REPORTED BY:	Catherine Wilkinson, CSR, CP, RPR

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MR. CHAIRMAN: Commissioner D. Reed, he is in chambers. Do you want to take it up now?

COMMISSIONER D. REED: I know there is a Cabinet meeting. If he is not going to be here long enough, I will pass it until he will be here.

MR. CHAIRMAN: We will temporarily pass. Commissioner Shevin does ask that we temporarily pass that.

MR. SECRETARY: By Commissioners Collins, Overton, and Shevin, on Page 9, Article 1, Section 23(a), line 2. Insert the word "unwarranted" between the words "from" and "government." And in subparagraph (b) insert the word "unwarranted" between the words "from" and the word "intrusion."

MR. CHAIRMAN: All right. Who is handling this amendment? Commissioner Collins?

COMMISSIONER COLLINS: Yes. I would like to move the adoption.

MR. CHAIRMAN: Commissioner Collins moves the adoption of the amendment to insert the word "unwarranted."

COMMISSIONER COLLINS: Mr. Chairman and Commissioners, this matter was considered by the Commission before, and a second amendment to this was rejected. The sponsors at that time, Commissioners

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Shevin and Commissioner Overton and I, felt very strongly that there should be some limited language in respect to this prohibition against government intrusion. And we still feel that way, and would like for you to revisit this with open minds. And we are hoping that upon further consideration, that you will reverse the position you took before and set this limitation.

MR. CHAIRMAN: Now, are there questions of Commissioner Collins?

COMMISSIONER BIRCHFIELD: Yes.

MR. CHAIRMAN: Commissioner Birchfield.

COMMISSIONER BIRCHFIELD: As I understand the amendment, you are saying we ain't going to be fettered with any unwarranted intrusion?

COMMISSIONER COLLINS: That is right, sir.

COMMISSIONER BIRCHFIELD: Is that not the case today? If it is not warranted, wouldn't a person already have redress?

COMMISSIONER COLLINS: Our position is that notwithstanding the appeal -- for an individual to be left alone -- that this society of ours requires at times some circumstances on intervention by government. And this would tend to -- it might tend to negate actually many, many statutes on our books that provide

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for instructions and other things that might be regarded as intrusions into private lives. And so we feel like if you are going to have a prohibition, that it should be preceded by the term "unwarranted" or the term "unreasonable" as Commissioner Shevin first suggested.

We don't see much difference in those two terms, rather than leave it just in its absolute application, which the present form provides.

I would also like to call to your attention that on the road at our last hearing the League of Cities and their spokesman, Joe Little, addressed himself very specifically on this matter. I had no idea that he felt as he did, or that that organization felt as it did.

But that organization called to our attention that this would seriously impair many laws in this state. And according to Mr. Little, who said that he had been in conference with other professors at the University of Florida law school, that this even could do some very serious damage to our tax laws.

It just so happens, whether we like it or not, that to have a cohesive society and effective government, and with the protection of people against those few who would be hurtful to them, that some

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inspections and some intrusions into private lives are necessary. And so what we are speaking for here is reason and rationalization. We are speaking for sound law enforcement.

I was talking to a candidate the other day in the current race for one of our state-wide offices who had been around over the state. And I asked him what it was the people were most concerned about. And he said the people were most concerned about law enforcement and the prosecution of criminals and the prohibition against criminals taking advantage of private citizens.

Now, this law could materially weaken any number of statutes that we have on the books now that might be serving and are serving, I would assert, importantly to protect the private citizen against the criminal.

In fact, while I have, of course, the highest respect and appreciation for the high standards that my colleague here, Commissioner Moyle, represents, I believe that if there is an unlawful element, and if they wanted to put something in this constitution, this is something that could easily serve their purposes. Because the criminal these days in time finds every possible way to conceal the indication of his wrong.

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And he can certainly intertwine what additions there are that are wrong into private lives in such a way so that if you have an absolute intrusion against invasion of private lives, well we can introduce some more serious difficulties at the least against what our law enforcement officers are trying to do and are seeking to do.

I would also call your attention to the fact that in many, many programs of the state we have inspection services. The citrus industry -- and in fact the whole agricultural industry, for example, depends upon inspections being made in order to determine if there are contagious diseases in crops in this state.

Now, I imagine in practically every instance the owner of a grove is perfectly willing for the state forces to move into that grove and inspect it to see if there is an infestation that the other growers should be protected against, spreading to them. At the same time, if he is not allowed to do that, the laws of this state allow the state inspectors to accomplish that. And it is essential that they do that if we are to have an effective program in this field.

I haven't gone into detail about all the statutes in this state that provide for inspections and provide for what may be an intrusion into the

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private lives. But I know there are many.

I believe that soundness, reason, and rationalization require that we put some kind of recognition of the fact that they can be warranted with reasonable and proper intrusions at times in order to protect the majority of the people against what might be a wrong by a minority.

I have been addressing myself thus far solely to the first one. I would like to call your attention to what Joe Little says about this. I won't reread his entire statement, but he says: "Section 23-A suggests interpretations so broad as to undermine the basic police powers of the state."

Now, that is a very serious charge, and yet I think there is sound support for making that charge. As a matter of fact, a colleague of mine who teaches constitutional law suggested to me that it might even diminish the taxing powers of this state.

Of course, that is a serious concern for all of us who are concerned basically in protecting the state. He goes on to say very specifically: "One of the essential purposes of the revision in the constitution is to clarify and remove confusion and obscurity. It is wrong, and I believe in responsibility for creating an obscurity, especially concerning so

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important an issue as the basic powers of government."

What he is referring to there is the fact that this exempts provisions made in the constitution.

He said that: "The provision prohibiting the intrusion would not be as insidious and evil if we left out that intention, because it might be assumed and interpreted by the court that there would be reasonable exceptions and reasons for not specific application of this kind of a prohibition under the necessities of certain statutes and things of that kind."

But once you say that this does not apply to other constitutional rights, which the author was anxious to put in here in order to protect the government in the sunshine provisions of the constitution, that this tends to exclude those other needs for protection regarding statutes that are in effect. And also we ought to take into concern that it is not just the laws that are in effect now, but it's the straight-jacket in the sense that we may be putting our legislature in, in the future, because there will be times, and there are bound to be times when some intrusion in private life is necessary in order to protect the society.

We submit -- Justice Overton, Commissioner Shevin, and I -- we submit that this is a reasonable,

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fair, and a proper thing to do -- add this one word. And if we don't add this one word, well, we can expect some very serious problems from any effort to administer this provision.

MR. CHAIRMAN: Now, Commissioner Collins, I believe that Mr. James has a substitute amendment to offer. Let's get that on the desk now, as we have this additional alternative available.

COMMISSIONER COLLINS: I have finished my remarks.

MR. CHAIRMAN: Thank you, Commissioner Collins. Please read Commissioner James' substitute amendment.

MR. SECRETARY: By Commissioner James --

COMMISSIONER JAMES: On Page 8, line 30.

MR. SECRETARY: On Page 8, line 30, Article 1, Section 23, strike all of line 30, and on Page 9, lines 1 through 6, strike all of lines 1 through 6.

MR. CHAIRMAN: Commissioner James.

COMMISSIONER JAMES: I think my drafter forgot to renumber the sections after we adopt this. But, Mr. Chairman and members of the Commission, I think that Commissioner Collins has outlined to you better than I could all the problems that have been raised concerning the right of privacy provision in

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Section 23 that we added. I don't think the word "unwarranted" or "unreasonable" is going to help it any. I think it just creates problems in inspections, creates problems in law enforcement. This I am primarily concerned about. And I wonder if you could have comprehensive planning acts, whether you could have zoning and things of this nature what would not be considered by this constitutional guarantee as some kind of a governmental intrusion that would be unallowed by this adoption of it.

Also, as I went to the Jacksonville and Miami hearings and stayed home for a couple of weeks and listened to what we had done here on constitutional revision, the message I got loud and clear was that we had done too much; that there were some things in here that were really tremendous. And they admired the Commission for having the courage to face the issues that they have, but to load it up with 89 different things -- there were some things the members of the Commission themselves confessed they don't know what the effect will be. Even though some of the senators seemed to enjoy loading it up, hoping that -- I see Commissioner Brantley is enjoying 89 of them very much over there -- in hopes that it will cause it by its own weight to sink and drown, I think we ought to start

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today and take the amendments that I have got -- and I have a series of amendments. All of them delete. None of them add a thing. None of them put more language in our constitution. They merely try to clean up the document so that we can have something we can take around the state and hopefully will be able to convince the people we have not wasted money and time in coming together in this Constitution Revision Commission to work.

So, I would urge you to consider, after listening to the debate originally -- listening to Commissioner Collins today in telling you the problems that he finds in this particular section -- to vote to just eliminate it from our work product.

And that is exactly and all my amendment will do. I want to yield some of my remaining time to my colleague, Commissioner Birchfield.

MR. CHAIRMAN: Commissioner Birchfield is recognized.

COMMISSIONER BIRCHFIELD: Thank you, Mr. Chairman. We tried our best to point out the problems that this section would create when we first considered it. Now, the proponents of it recognize that it is fraught with problems. And they come before us today to clean it up and to eliminate problems. And

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their method of doing that is to say that the government cannot mess with you unless it is warranted.

I will submit to you that is already the law.

COMMISSIONFR MOYLE: Will the gentleman yield?

COMMISSIONER BIRCHFIELD: Yes, sir.

COMMISSIONER MOYLE: Commissioner Birchfield, would you believe me, sir, when I told you that the committee in its deliberations not only discussed, but voted at least two different times on the inclusion of the word "unwarranted" and probably spent two or three -- well, I won't say hours -- but a very, very long time in our committee in deliberation on this very subject. And that our final determination was that it would make as much sense to put "unwarranted intrustion" as it would to put "reasonable free speech."

COMMISSIONER BIRCHFIELD: Is that a helpful hint or a -- a question?

COMMISSIONER MOYLE: Mr. Birchfield, you just said that the proponents are coming along now and finding problems with it. I am pointing out to you that you are totally inaccurate. The point that Commissioner Collins brought up was not something that we found out since we passed it. It was something that we discussed and spent a great deal of time and a lot of consideration on in committee. So, to say that

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Commissioner Collins, a proponent of privacy, comes up now and finds something wrong with it is inaccurate.

COMMISSIONER BIRCHFIELD: Well, it seems to me like if he has not found something wrong with it, that we are curing something that ain't sick. And I will suggest to you that the way to solve the whole problem is to take the James proposal and knock this thing out.

What this really is is an annuity for every lawyer in the State of Florida. And I realize that it is against my self interests to speak against it. But nobody knows what this thing means -- nobody. And to have it a law by saying "unwarranted" or "unreasonable," it just makes it even more unreasonable. And I would just urge you to vote for the James amendment and let us get back to those things where we know what we are doing.

MR. CHAIRMAN: Commissioner Birchfield, will you yield to Commissioner D. Reed?

COMMISSIONER BIRCHFIELD: I yield.

COMMISSIONER D. REED: Commissioner Birchfield, in subsection A, what does it mean: "Every natural person has the right to be let alone, except as otherwise provided in the constitution"?

COMMISSIONER BIRCHFIELD: It means you can do

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what you want to if nothing don't happen.

COMMISSIONER D. REED: Anything you want to do? Anything at all?

COMMISSIONER BIRCHFIELD: If you are natural. And if you're unnatural, this is not protecting you.

COMMISSIONER D. REED: In other words, an unnatural person doesn't have the same rights to be let alone as a natural person?

COMMISSIONER BIRCHFIELD: No, sir. And that's as it should be.

COMMISSIONER D. REED: It is? Okay. In subsection B, Commissioner Birchfield, does that mean by omission that the legislature shall not protect the public lives of people from intrusion by other persons? In other words, if my public life -- if I am an elected public official or an officer of some kind -- not even elected -- and I have any kind of public life whatsoever, that I am not protected against intrusion by other people, not by government, but other people? They can nib around in my business all they want. Is that the significance of that?

COMMISSIONER BIRCHFIELD: I think any court that can find the right of public employees to bargain collectively out of a prohibition against striking could reach the conclusion you have just suggested.

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COMMISSIONER D. REED: Does this mean, for instance, Commissioner Birchfield, that now we are talking about the private lives of people and protecting the private lives of people by other persons. Does that mean, for instance, that if I had an employee who was dipping into my petty cash drawer during the course of that employment, that if I tried to put that person under surveillance or otherwise watch or snoop on that person to try to determine whether or not I'm getting ripped off by that person, that I would be possibly violative of a law that would be constructed as a result of this section of the constitution?

COMMISSIONER BIRCHFIELD: That is a very real question. I don't know whether this is intended to prohibit unwarranted state action only, or whether it would be considered the action you as an employer would take would be unwarranted or not.

COMMISSIONER D. REED: Commissioner, what that subsection B says is that the legislature shall protect by law the private lives of the people from intrusion by other persons. I am not talking about government. I am not talking about a law enforcement agency. I am talking about one person snooping around into the private life of another person under conditions or circumstances that might be otherwise warranted, but

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which would be mandatorily precluded by the language in that sentence.

COMMISSIONER BIRCHFIELD: I think you are exactly right.

COMMISSIONER D. REED: Then this is a horrible, horrible section; is it not?

COMMISSIONER BIRCHFIELD: That is the reason I am urging that we support the James amendment, which would remove the section in its entirety.

MR. CHAIRMAN: Commissioner Moyle.

COMMISSIONER MOYLE: Commissioners, you just heard a good deal of incorrect information. I hope you will understand that. We spent a long time earlier debating and discussing this privacy. And what Commissioner Reed has just talked about is inaccurate.

The first right of privacy you see, number A, if you will go back to our public hearings, you will remember that time and time again, particularly late in the day when you didn't have the scheduled speakers, you would have citizens come in there complaining about governmental intrusion. They didn't use the word "privacy" or "intrusion." That is what they were talking about -- too much government.

This is what "A" is designed to do. "A" is a free-standing right of privacy, just like freedom of

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speech. And each citizen in this state, natural person, has the right to be let alone. That is language that has been judicially interpreted. It comes from judicial decisions. That is why the committee chose to use the language "let alone."

And free from governmental intrusion. Now, I just want you to think back. I want you to think back about the CIA. I want you to remember Commissioner Brantley. Do you remember Commissioner Brantley standing right here talking about a department in Florida state government that tailed him and his wife and had files on them? Do you remember that? That is governmental intrusion that we are talking about.

Now, the second one, number B, is the type of privacy that is not self-executing, Commissioner Reed. And the committee very carefully drafted it so that it would not be self-executing. It says: "The legislature shall protect by law the private lives of the people from intrusion by others."

And that is the type of stuff that goes into information gathering, where they keep credit companies, where banks pass out your credit information. That is what that is designed for. And we do not think that should be a self-executing right of the constitution. So, we put a duty on the legislature to enact by law and

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protect by law the lives of the people from intrusion.

So, I urge you to defeat the James amendment. And while I am up, I will go ahead and mention the amendment by Governor Collins.

We have discussed this. I think it has been voted on. This will be the third or fourth time. It was voted on twice in committee, and once on the floor of the Commission. And now it is coming up again.

I think the best argument for putting "unwarranted" in front of the word "intrusion" is maybe we should take the right of freedom of speech, and in front of that "right of freedom of speech" put "reasonable" -- that everyone has the right of reasonable free speech. You don't give a right on condition.

I urge you to defeat both of these amendments.

MR. CHAIRMAN: Commissioner Overton as an opponent, and then Commissioner James to close.

COMMISSIONER OVERTON: First of all, with respect to this particular provision, this is not something unique. There are privacy provisions in other state constitutions -- Arizona, Alaska -- I believe Hawaii -- California. But let me say this: The amendment -- and I recognize what Commissioner Moyle is saying -- that this has been voted on previously.

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I look at the amendment as being a clarifying amendment as to what the intent of this Commission is. Because there have been cases that law enforcement looked at as hurting their ability to enforce the laws.

One of those arose in the State of Alaska concerning possession of marijuana in the home. The other concerns a case by the Supreme Court of Florida involving a photographer in the premises upon which a fire had occurred. And the attack was made, and the issue that was before our court was the matter of the photographer going in. I might say at the invitation of the fire inspector, it was an invasion of privacy. And our court had held that was not. I do not feel it was the intent of the committee, nor was it the intent of the Commission to either adopt the view of the Alaska court or to overrule the opinion of the Supreme Court of Florida in the Fletcher case.

And consequently, I think that the amendments that have been proposed by Commissioner Collins, Commissioner Shevin, and myself are appropriate and are appropriate clarifying amendments. I do feel that the provision is a proper provision and should remain in the constitution. As I stated when I began, it is not a unique provision. I urge your defeat of the substitute amendment. And I ask your support of the amendment

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proposed by Commissioner Collins, Commissioner Shevin, and myself.

MR. CHAIRMAN: Commissioner James to close.

COMMISSIONER JAMES: Mr. Chairman and members, in no way am I condemning the opponents that have attempted to come up with a privacy provision in our constitution to meet some of the comments at these public hearings. I think they worked on it long and hard. I think they are sincere in their efforts to provide some means to answer the people's pleas that they have heard.

But the same people that stood before us in those hearings are the people that come and say, "Well, we ought to license the mechanics because they do horrible work on our cars." They are the same ones who say that they want to use their property any way that they please until their neighbor fills their yard up with junk. Then they come along and say, "We ought to do something with the government to cause the neighbor to get the junk out of his yard to improve the neighborhood." These are people that demand privacy.

You say one is executing and one is not. The word in "B" is "shall." And it doesn't give your legislature any flexibility whatsoever. It says you will do it. So, even though it might leave it to us to

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do, it is still in the constitutional language that you are talking about adopting. It says that we will absolutely do it with nothing -- no alternatives left to us.

Commissioner Shevin wants the beaches open. That is intrusion. Many people on the beach think that they own private land right on the beach. And yet you are going to say that you want to put in here a provision that will help them not to be able to allow the members of the public to get to the ocean or get to the beach, possibly. I don't know whether you want it or not.

But it is filled with problems. One of our commissioners told me either last night or the night before that they were on some television program and they were asked, well, what does it mean. And they were somebody that supports it or worked for it. And they said they honestly could not answer the question of what exactly it does mean and what some of the problems will be with it.

I think it is fine that we recognize that we tried to do something that we thought was right, but we don't understand what we are doing. We don't understand what will happen because of it. And we ought not to include it in the document because it will be just

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another area that the people will complain about, the law enforcment will complain about, and will cause the document to be defeated.

I urge you to adopt my amendment, which would just remove from our work draft this section on privacy.

MR. CHAIRMAN: Please call the roll --

COMMISSIONER POLAK: Will the gentleman yield?

MR. CHAIRMAN: The gentleman has yielded the floor, Commissioner Polak. I will call for the roll on the substitute amendment.

COMMISSIONER COLLINS: Mr. Chairman, may I make a parliamentary inquiry?

MR. CHAIRMAN: Yes.

COMMISSIONER COLLINS: Is there any way to vote on the pending amendments that precede the vote that was offered as a substitute? I mean as far as that is concerned, as far as my feelings are concerned, if Commissioner Shevin's and Commissioner Overton's and my amendment should fail, I want to vote to knock the whole thing out because I think that is in the best interest of the people of Florida. At the same time, I think that there is value in it if it is doctored a little by this language that we have offered, but unfortunately is being resisted by the opponents.

MR. CHAIRMAN: Commissioner Collins, the

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procedure we are handling right now is we will have to take the vote on the substitute first. And there is no other way to avoid that. So, these things sometimes are a matter of tactics, but I promise you Commissioner James will find a way to get back to it again if he needs your vote at some point.

Let's call the roll on the substitute amendment proposed by Commissioner James and Commissioner Birchfield.

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 15 yeas, 19 nays.

MR. CHAIRMAN: Commissioner Shevin?

COMMISSIONER SHEVIN: May I address the main amendment?

MR. CHAIRMAN: Let me announce the vote. The substitute fails adoption.

Now, before we get back, I understand there is another substitute on the desk. Let's try to dispose of all the amendatory process. Please read the substitute amendment by Commissioner D. Reed.

MR. SECRETARY: By Commissioner D. Reed, on Page 9, lines 5 and 6, strike all of lines 5 and 6.

MR. CHAIRMAN: Commissioner D. Reed is recognized.

COMMISSIONER D. REED: Mr. Chairman and

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members of the Commission, the effect of my substitute would be to carry with it the amendment which would insert "unwarranted" in section A, and it would also delete all of subsection B. So that subsection A, as it is presently worded, would remain as a part of the document, and subsection B would be deleted.

Now, I don't want to leave -- and I think Mr. James felt the same way -- I don't want to leave the impression with the members of the Commission -- and I certainly don't want the Commission to leave the impression that by deleting that kind of language from the document we are working on, that in anywise does the Commission condone interference in the private lives of the people by other persons. But I just think that you are just opening a tremendous problem for both the courts and the citizens of this state trying to deal with that question and that issue in the fashion that the language here does.

I just think in an abundance of caution we would be much wiser to leave that question to the legislature. If that language is not in this document, at least under the theory of constitutional government, that power is preserved to the people. And the legislature, if it wants to, can address itself to that kind of intrusion without the constitutional mandate.

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Because the constitution is a limitation on power. And so to the extent that we want to limit the legislature's abilities to do something, we ought to insert those limitations in the document. We don't have to grant the legislature the power to do something. It has that authority, that innate authority, because all power not granted to the Federal government or reserved to the state is in the people, which is the legislature.

By taking that language out, we have not prohibited the legislature from getting into that field of privacy at such time as it wants to.

I urge your adoption of the amendment.

MR. CHAIRMAN: Commissioner Moyle, do you wish to speak on this?

COMMISSIONER MOYLE: No.

MR. CHAIRMAN: Okay. It has been debated in part in earlier debate. Can we take the vote now on Commissioner D. Reed's substitute, which would strike --

MR. SECRETARY: All of subsection B.

MR. CHAIRMAN: All of subsection B, Article 1, Section 23.

Please call the roll.

(Whereupon, a voice vote was taken.)

MR. CHAIRMAN: By your vote you have adopted

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the substitute amendment by Mr. Reed.

Now, Commissioner James, are there other amendments on the desk?

COMMISSIONER JAMES: I have an amendment on Page 4, Section 9.

MR. SECRETARY: 23 yeas, 8 nays.

MR. CHAIRMAN: You have adopted Commissioner Reed's substitute.

Now, that has the effect, Commissioner Collins, of displacing the "unwarranted."

COMMISSIONER SHEVIN: We could offer it again.

COMMISSIONER JAMES: It is in there.

COMMISSIONER COLLINS: The only effect this amendment would have would be to delete subsection B, as I understand it? That would leave my pending amendment to insert "unwarranted" in subsection A?

MR. CHAIRMAN: Commissioner Collins, I think that is not the effect of it. Commissioner D. Reed?

COMMISSIONER D. REED: Mr. Chairman, now, in self defense I explained that the effect of my amendment would be to carry with it the amendment that is offered by Mr. Collins -- Commissioner Collins and Commissioner Overton and Commissioner Shevin. And that, in effect, then would leave subsection A as it is

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presently drafted, and would delete subsection B.

Now, if you want now to get to the question of "unwarranted," I believe that you would now have to offer an amendment to the proposal as amended. That process would still be open.

My amendment did not -- my amendment carried with it all of the -- my substitute amendment carried the entire amendment with it. And, therefore, the word "unwarranted" in no effect is before this body, because of the adoption of the substitute carried with it the original amendment.

MR. CHAIRMAN: All right. Ladies and gentlemen, I would permit Commissioner Collins to replace the amendment that was -- I think that is fair, and I think that will give the Commission a chance to vote on that.

Commissioner Collins, we now have before us then -- I will let you reoffer the amendment drafted by yourself, Commissioner Shevin, and Commissioner Overton. It may be technically deficient, but that point I think the Commission, too, wants to address by a vote. I believe Commissioner Collins now has made an opening statement on this. This is the amendment to insert "unwarranted."

Commissioner Collins, may I suggest that I

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line up debate and recognize you in closing? Is that agreeable?

COMMISSIONER COLLINS: That is agreeable.

MR. CHAIRMAN: All right. Commissioner Shevin.

COMMISSIONER JAMES: Mr. Chairman.

MR. CHAIRMAN: Yes?

COMMISSIONER JAMES: Since they changed things by removing "B," and now we are going back to Commissioner Collins' amendment to put in "unwarranted." Would it not be then proper to accept my amendment that would strike now "A," since "B" has been stricked, and just take a vote?

There are some people I know that would be gone and would want to vote the whole thing out.

MR. CHAIRMAN: Commissioner James, that amendment is available to you. Why don't you draft it. Now, Commissioner Collins, Commissioner Shevin, would you please check to see that the amendment is in proper form. There is no longer a "B," so you don't need the full amendment as it was there before.

All right. Now, Commissioner James will want to offer a substitute amendment striking Section A.

COMMISSIONER JAMES: I am ready to vote. I think we know what it is. I don't want to debate.

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MR. CHAIRMAN: This will now be a substitute amendment. Commissioner Shevin.

COMMISSIONER SHEVIN: Just briefly, the fact that we struck "B" has nothing to do with "A." "B" deals with the question of the legislature providing laws to protect people from other people. "A" deals with a right of privacy to protect people from government.

So, the fact that you voted to strike "B" does not automatically mean that you ought to want to strike "A."

I would urge the same negative vote on "A" that we had before on the James amendment.

COMMISSIONER JAMES: Mr. Chairman.

MR. CHAIRMAN: Commissioner James.

COMMISSIONER JAMES: I would like to withdraw my amendment.

MR. CHAIRMAN: I thought technically you would come to that decision, Commissioner James.

All right. We are now on the amendment proposed by Commissioner Overton, Commissioner Collins, and Commissioner Shevin. I will line up debate. This is for the insertion of the word "unwarranted."

We have had a great deal of debate now. Who wishes to debate this additionally?

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COMMISSIONER SHEVIN: Just very briefly.

MR. CHAIRMAN: I think we will line up debate this way. Commissioner Shevin. Then Commissioner Moyle as an opponent. Commissioner Collins to close. We will take the vote. Is that agreeable? All right. Debate is closed.

Commissioner Shevin is recognized as a proponent. Ladies and gentlemen, please give your attention to Commissioner Shevin.

COMMISSIONER SHEVIN: Mr. Chairman and members of the Commission, let me first say that if the word "unwarranted" is not inserted, this does not mean that I personally am against the free-standing right of privacy. I would disagree with Commissioner Collins to that extent. I still think that a constitutional free-standing right of privacy is a good thing to have in the new proposed constitution.

I believe the word "unwarranted" will make it better. I think it will avoid legal intanglements. It will cut down a great deal on litigation. And it will avoid impinging upon the police power of the state.

For those reasons I think we can make it a better provision by adding the word "unwarranted." I would urge the adoption of the amendment.

MR. CHAIRMAN: Commissioner Moyle as an

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opponent.

COMMISSIONER MOYLE: Commissioners, I want to point out that the committee in considering the use of the word "unwarranted" and in recommending this right of privacy to the full Commission, in no way intended to disrupt the police power of the state, and in no way intended to disrupt the taxing authority of any branch of government of this state.

We spent many, many hours working on this right of privacy. We took votes in the committee on use of the word "unwarranted." And it was felt very strongly that the court in interpreting the word "instruction" would follow the same type of judicial tests that are followed in interpreting the word "free speech."

Now, you all know while we have the right of free speech, you can't stand up in a theater and yell, "fire." We have all heard that since we were little.

There are reasonable restrictions on it. The same thing is going to happen through the judicial interpretation of the word "intrusion." I think you are making a basic mistake if you feel that the right of privacy is important enough to the citizens of this state to be inserted in the constitution of Florida as a part of Article 1, the Declaration of Rights.

006075

Then it ought not to be a conditional right. It makes just as much sense to say "reasonable free speech" as it does "unwarranted intrusion." And intrusion is unwarranted. It is a double negative.

So, I urge you to defeat the amendment. It has been defeated three times before, and I urge you to defeat it now. I yield.

MR. CHAIRMAN: Will you yield to Commissioner Reed?

COMMISSIONER MOYLE: Yes.

COMMISSIONER D. REED: As I understand it now, if we put the word "unwarranted" in that section, would that not have the effect of giving the legislature the authority to construct legislation which would permit intrusion by government into the privacy of individuals on grounds that the legislature might think are warranted. And by the same token, if we just leave that word out, that construction cannot be given to that section; isn't that correct?

COMMISSIONER MOYLE: I think so.

COMMISSIONER D. REED: So, wouldn't the more conservative and more reasonable approach to that kind of language, again in an abundance of caution, be not to tamper with a word that can have different meanings?

COMMISSIONER MOYLE: I think that is correct,

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Commissioner.

COMMISSIONER D. REED: Therefore, you are saying that this amendment really is one that should be defeated?

COMMISSIONER MOYLE: Right.

MR. CHAIRMAN: Commissioner Collins to close.

COMMISSIONER COLLINS: Mr. Chairman and Commissioners, the nearest parallel that we have to this question in the present constitution is the provision in the Declaration of Rights regarding searches and seizures. Now, in that section of the Declaration of Rights, we protect the people against searches and seizures. But we don't protect the people against all searches and seizures because there are circumstances under which, for the good of our society, there must be searches and seizures.

So, what do we do, and what does the United States Constitution do in its Bill of Rights, and what have we always done? They provide for the protection of the people against unreasonable searches and seizures -- unreasonable searches and seizures.

Now, this is precisely what we are trying to do here now. I don't think that Mr. Moyle or anybody in his good mind would suggest that that unreasonable be taken out of the constitution regarding searches and

D: 006077

seizures, because it is important and necessary that we have a qualification in there.

Now, here we have a parallel to that. We just use the word "unwarranted" instead of the word "unreasonable." And I think they could be used synonymously, actually. We do have in this amendment "unwarranted." There must be a sound basis for prohibiting or for protecting if the society through its government feels that there should be an inspection.

Now, that is clearly and deeply imbedded into our laws. If we do this without some qualifications, why we have just opened ourselves into a position of negating or qualifying or restricting numerous of our laws that are essential and important for the protection of the people of this state.

So, I urge you to adopt this amendment.

MR. CHAIRMAN: We are prepared now to vote on the amendment proposed by Commissioners Collins, Overton, and Shevin. Please call the roll.

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 19 yeas, 14 nays.

MR. CHAIRMAN: I am sorry, again, Mr. Borwn.

MR. SECRETARY: 19 yeas, 14 nays.

MR. CHAIRMAN: Thank you. The amendment is adopted.

D: 006073

All right. Are there further amendments to that section? If not, please read the next amendment.

MR. SECRETARY: By Commissioner James, Article 1, Section 24, Page 9, lines 9 through 18. Strike all of lines 9 through 18.

COMMISSIONER JAMES: Mr. Chairman, I would like to temporarily pass those two amendments, if I could. I have to check on that privacy thing we just did because I had those two amendments drafted in hopes that we would review --

MR. CHAIRMAN: I understand.

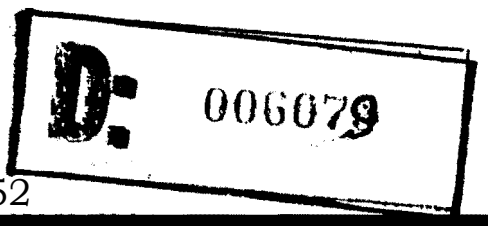
COMMISSIONER JAMES: So, I have to hold back on those. I don't want to remove them yet, but I want to temporarily pass them.

MR. CHAIRMAN: Yes, sir. Please read the next amendment.

MR. SECRETARY: Article 1, Section 20, by Commissioners Reed, James, and DeGrove. On Page 8, lines 16 through 18, strike: "All publicly owned, leased, or managed beaches and seashore recreational areas shall be open to the public without differentiation as to terms and conditions of use."

COMMISSIONER D. REED: Mr. Chairman.

MR. CHAIRMAN: All right. Commissioner D. Reed.



COMMISSIONER BURKHOLZ: Mr. Chairman, I have a point of personal privilege.

(Discussion off the record)

MR. CHAIRMAN: Commissioner Barkdull.

COMMISSIONER BARKDULL: I would like to move to reconsider the vote by which Amendment No. 14 to Article 1, Section 23(a) passed. This was the privacy one. I was on the prevailing side.

MR. CHAIRMAN: Is that the one with the "unwarranted" insertion?

COMMISSIONER BARKDULL: Yes.

MR. CHAIRMAN: You have heard the motion. It has been extensively debated. Let's try a voice vote.

As many as favor the motion to reconsider, please signify by saying aye; opposed by saying nay.

I rule it fails. Do you want a roll call? Let's call the roll. This is the motion to reconsider the vote by which the amendment sponsored by Commissioners Collins, Shevin, and Overton inserting the word "unwarranted" in Article 1, Section 23(a); is that correct, Commissioner Barkdull? Okay. The motion is to reconsider. If you favor the motion to reconsider, please answer the roll call. Call the roll.

(Whereupon, a voice vote was taken.)

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MR. CHAIRMAN: By your vote you have voted to reconsider. Can we take the vote now on final passage of the amendment proposed Commissioners Collins, Overton, and Shevin, and insert the word "unwarranted" in the privacy provision, Article 1, Section 23. This will be on final passage. Is it agreeable to call the roll?

COMMISSIONER POLAK: Is that to add it?

MR. CHAIRMAN: If you wish to add it, you will vote aye; if you don't want to add it, you will vote nay.

Let's call the roll. We have had this before the Commission so many times. I don't think a voice vote is going to get us there.

Please call the roll. Commissioner Collins, for what purpose do you rise?

COMMISSIONER COLLINS: I think there is some confusion in the chamber, and I don't think it is understood. This is back now on the amendment that Commissioners Shevin and Overon and I offered. And an "aye" vote is for sustaining the rightness of that position. A "no" vote would be opposed to that amendment.

MR. CHAIRMAN: That is correct, sir. We have now voted to reconsider. We are on final passage of the

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amendment, which would add the word "unwarranted" to the privacy provision. This has been debated one time today. Please call the roll.

(Whereupon, a voice vote was taken.)

MR. CHAIRMAN: By your vote the amendment fails adoption.

COMMISSIONER JAMES: There is an amendment on the desk.

MR. SECRETARY: 11 yeas, 24 nays.

COMMISSIONER JAMES: I have an amendment to Article 1.

MR. CHAIRMAN: Let's see. Commissioner James, I need to finish on --

COMMISSIONER JAMES: It is on the same subject matter we just dealt with, Article 1, Section 23.

COMMISSIONER BARKDULL: Inquiry of the Chair.

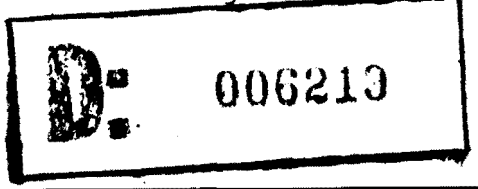
MR. CHAIRMAN: Commissioner Barkdull.

COMMISSIONER BARKDULL: It is my understanding that Amendment No. 14 was defeated.

MR. CHAIRMAN: That is correct. By a vote of 11 for and 24 against.

COMMISSIONER SPENCE: Mr. Chairman.

COMMISSIONER JAMES: Mr. Chairman, my amendment merely strikes lines 1 through 3, which is



all that is left.

MR. CHAIRMAN: Commissioner James, we will come back around again. This has gotten before us on a motion to reconsider. Let's stick with the Cabinet issues until we can conclude those. We will come back, Commissioner Platt. I won't let the time pass by. We are just about to finish, I think, with the Cabinet amendments. I am reluctant to keep going back and forth.

Commissioner Spence.

COMMISSIONER SPENCE: Would you entertain a motion to reconsider in the right of privacy, Section B, this morning.

MR. CHAIRMAN: The motion is to reconsider on actions taken today. It must be made today, and then they will be taken up at any time.

COMMISSIONER SPENCE: I make that motion, if I may, to reconsider on paragraph B the right of privacy. I was on the prevailing side.

MR. CHAIRMAN: This has again been up for debate. This is the motion to reconsider the vote by which Section B was stricken.

COMMISSIONER SPENCE: Yes.

MR. CHAIRMAN: If you favor the motion to reconsider, please signify by saying aye; opposed by

D: 006220

saying nay.

All right. Let's have everybody please take your seats, and let's call the roll on the motion to reconsider proposed by Commissioner Spence. I will explain it and make sure everybody understands it. Commissioner Douglass?

COMMISSIONER DOUGLASS: Could I ask for a waiver of the rules to speak for just a few minutes on this?

MR. CHAIRMAN: All right. Ladies and gentlemen, let's see if there is debate on this. Commissioner Douglass wants to be a proponent. Are there opponents on the motion to reconsider? If not, Commissioner Douglass, you are recognized for three minutes.

COMMISSIONER DOUGLASS: Thank you, Mr. Chairman. Ladies and gentlemen, this is Section B that we are talking about, which provided that the legislature shall protect by law the private lives of the people from intrusion by other persons. Now, this is not a self-executing provision, as you know. What this does is mandate that the legislature shall pass laws to protect the private lives of people from other private persons, which includes corporations, computerized things, and all the other things that we

D: 006221

have talked about.

We debated this many times. We passed it by a substantial vote after the debate. We passed it many, many times. I cannot understand how this morning in looking at the roll call, I talked to people who said they did not realize they were deleting this. What this does is give the legislature the direction to protect the private lives of individuals from other private persons.

The opposition to this, you will recall, came primarily from certain areas of the press who felt that this might create some limitation on their invading private rights in reporting the news. And this was the main objection. I think we all debated this fully and well, and we felt that the people should be afforded, or the legislature should be afforded the right to set up guidelines where private lives -- whether you be a public official or not -- can be invaded.

If this is in there, then you will have the right to recourse, whether you are a public official or otherwise, when your private life is invaded. And the legislature can set up orderly rules for it, rather than making it a self-executing right of privacy.

I wasn't here this morning when the debate

D. 006222

took place, but I sincerely urge you to reconsider the vote by which this was deleted, and put it back in the proposal because it is an area that we all know needs protection. And the legislature should be directed and have the authority to protect the private lives of individuals from banks releasing their information or from newspapers invading their privacy improperly.

They should be accountable for it if they do. I think this is a very important right, and we shouldn't write it off so easily as we have. I ask your vote for reconsideration on this particular proposal.

MR. CHAIRMAN: Commissioner Harrison and then Commissioner D. Reed.

COMMISSIONER HARRISON: May I ask, will the Commissioner yield for a question?

COMMISSIONER DOUGLASS: Yes.

COMMISSIONER HARRISON: Could not the legislature do that anyway? We don't have to have it in the constitution?

COMMISSIONER DOUGLASS: I am not sure but that they could. I think giving them the direction to do it in the constitution, if they did not, the right would develop judicially, orderly rather than the way it has developed.

COMMISSIONER HARRISON: But if it is such an

D: 006223

important issue, the legislature will surely address it.

COMMISSIONER DOUGLASS: I think it should be a constitutional right that the legislature implement it. This is an important enough right to be in the constitution.

MR. CHAIRMAN: Commissioner D. Reed.

COMMISSIONER D. REED: Mr. Chairman and members of the Commission, it was my amendment that deleted that Subsection B which deals with the private right of privacy as it affects private persons. I am sorry that Commissioner Douglass wasn't here this morning, but I am convinced that neither his vote nor his debate would have changed the outcome. I suggest to you that there is no reason to go back through and replow this field again. There are just only so many hours in a day.

We can't keep readdressing these issues. He waffled a little bit, but I think he would admit to you that the language that is in the constitution, if it is deleted, does not preclude the legislature from enacting legislation in that particular field.

Now, let's leave it to the legislature. Let's stay out of the mandating of the legislature to invade a particular area if it sees no reason to do so.

D: 006224

I urge that you vote no on the motion to reconsider.

MR. CHAIRMAN: Please call the roll on the motion to reconsider.

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 19 yeas, 15 nays.

MR. CHAIRMAN: By your vote you have --

COMMISSIONER D. REED: At the appropriate time I would like to be recognized as a proponent of the amendment.

MR. CHAIRMAN: You have voted to reconsider. And we are now on final passage of the proposal which would strike Subsection B of Article 1, Section 23.

COMMISSIONER DOUGLASS: If you want to vote the same way you did on reconsideration, will you vote "no" on this one?

MR. CHAIRMAN: That is correct, Commissioner Douglass. Now, do we need extensive new debate on this subject?

COMMISSIONER DOUGLASS: Can you reverse the roll call?

MR. CHAIRMAN: There is objection to reversing the roll call. I will call the roll again.

Commissioner D. Reed, it is your proposal. I will let you close on it. So, please be brief. You

D: 006225

are recognized, Commissioner D. Reed.

COMMISSIONER D. REED: The proposal that my amendment deleted from the document is as follows: "The legislature shall protect by law the private lives of the people from intrusion by other persons."

Notwithstanding the fact that that sentence is almost incapable of definition, and notwithstanding the fact that it is going to take the courts the next 30 years to interpret what that means, and under what circumstances that mandate is complied with, even if the legislature does it; notwithstanding all that, you don't have to put one word in the constitution to allow the legislature the latitude if it wants to, to get into the field and intrude into the area of privacy.

Now for goodness sakes, the constitution is supposed to be a document of limitation. What we do not limit -- what we do not limit to the legislature, what we do not grant to the Federal government is reserved to the people and the legislature can do as it sees fit. The sentence escapes definition.

The sane thing to do, if you are at all concerned about the constitutional language that will be adopted by the people of this state, is to take that language out. The only way to take that out is to vote yes on my amendment. I urge you to vote yes.

D-M 006226

MR. CHAIRMAN: Will you yield to Commissioner Platt?

COMMISSIONER D. REED: Yes.

COMMISSIONER PLATT: Would this particular section require greater governmental intrusion into regulation of business?

COMMISSIONER D. REED: Well --

COMMISSIONER PLATT: Isn't that the effect of it? It will mean more governmental regulation of private enterprise?

COMMISSIONER D. REED: Commissioner Platt, what that says is that the legislature shall protect by law the private lives of the people -- all nine million of them in all walks of life and all kinds of circumstances from intrusion by other persons. Now, the word "persons" --

COMMISSIONER PLATT: Couldn't the --

COMMISSIONER D. REED: Now, the word "person" as you see in other parts of the constitution is not limited to natural persons, but in fact the word "persons" would include in its definition corporations as well.

So from that standpoint, there is no limit to which the legislature would be mandated to go. And the problem could very well be that the legislature could

D: 006227

adopt an act that attempts to deal with the question of privacy as it relates to persons. But some yoyo from someplace in the state might decide that the legislature has not gone far enough in complying with this constitutional mandate, and will clog the courts even further and clog the dockets even further with decisions that will have to be made on the part of the court as to interpreting the language that even the people in this room cannot interpret.

COMMISSIONER PLATT: So, the answer is, yes, this will mean more governmental regulation of private enterprise?

COMMISSIONER D. REED: Absolutely.

MR. CHAIRMAN: Call the roll on final passage of the proposal by Commissioner D. Reed to strike Article 1, Section 23(b).

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 17 yeas, 16 nays.

MR. CHAIRMAN: All right. By your vote this fails to obtain sufficient votes for adoption. All right.

COMMISSIONER JAMES: Wait a minute. Where does that leave us?

COMMISSIONER BURKHOLZ: It stays in.

MR. CHAIRMAN: You have adopted it. It has

D: 006223

been reconsidered. And on reconsideration it fails passage.

So, 23(b), whatever it means, is in there.

COMMISSIONER POLAK: Whatever it means? Dexter told you.

MR. CHAIRMAN: You weren't listening very carefully, Commissioner Polak. All right. Let's go back to Article 4 and complete Article 4.

Are there other amendments to Article 4?

MR. SECRETARY: By Commissioner Ausley, Page 41, lines 24, insert: "The responsibility for settling and approving the accounts of the state shall be assigned by law to an officer who is not the chief fiscal officer responsible for disbursing of the state funds."

COMMISSIONER AUSLEY: Read the amendment, please.

MR. SECRETARY: By Commissioner Ausley, Amendment 6 to Article 4, on Page 41, line 24, insert: "The responsibility for settling and approving accounts of the state shall be assigned by law to an officer who is not the chief fiscal officer responsible for disbursing state funds and keeping securities."

MR. CHAIRMAN: All right. Commissioner Ausley.

COMMISSIONER AUSLEY: Mr. Chairman, I don't

D 006229

COMMISSIONER D. REED: I don't know. I'm just going over Mr. Moyle's calendar.

MR. CHAIRMAN: Well, that will be the first time that has happened.

COMMISSIONER D. REED: That is the reason I wanted to announce that. That is the privacy thing. I guess we are going to keep going until we get it right.

MR. CHAIRMAN: Commissioner Barkdull has a point of order.

COMMISSIONER BARKDULL: You can't make a motion to reconsider twice on the same item.

MR. CHAIRMAN: Commissioner Barkdull, is this Article 1, Section 23(b)?

COMMISSIONER BARKDULL: Correct.

MR. CHAIRMAN: This is not the same motion to reconsider, Commissioner Barkdull. Here is where we have come. Article 1, Section 23(b) has been addressed twice by this Commission. Once it was reconsidered after it had passed favorably, and a motion to reconsider the vote by which it passed favorably was voted. This is a different motion to reconsider, and I will entertain the motion.

COMMISSIONER BARKDULL: I understand the Chair's ruling, and I am in sentiment with the motion.

D: 006297

MR. CHAIRMAN: Commissioner Barkdull, I hope that is the correct ruling. Commissioner Collins, for what purpose do you rise?

COMMISSIONER COLLINS: I would like to reconsider a matter which deals directly --

MR. CHAIRMAN: I will not take that at this time, Commissioner Collins. What I would like to do is keep the attention focused on this one motion to reconsider. I think you can understand what it is. We realize it has been discussed now. May we take the vote on that motion to reconsider.

COMMISSIONER D. REED: Are all our votes in the chambers?

MR. CHAIRMAN: I have no idea, Commissioner D. Reed, and I doubt if anyone else does.

Let's take the vote. If you favor the motion to reconsider, please signify by saying aye; opposed by saying nay.

I rule that there are 19 votes, before we reach the same results, and I rule the motion to reconsider carries in calling final roll call. Can we do that? Will that reach the same point? I think it would.

Let's call the roll. We have had debate. I am sorry, Commissioner Spence?

D: 006295

COMMISSIONER SPENCE: I would like for someone to explain where we are at the moment. I am confused.

MR. CHAIRMAN: Commissioners, if there is any doubt on the motion to reconsider, I will have a roll call vote on that.

COMMISSIONER BARKDULL: Let's call the roll on the motion to reconsider.

MR. CHAIRMAN: Let's have a roll call vote on the motion to reconsider. Please call the roll on the motion to reconsider.

(Whereupon, a voice vote was taken.)

MR. SECRETARY: 19 yeas, 16 nays.

COMMISSIONER AUSLEY: Mr. Chairman, I would like to move that the time of adjournment be extended until such time as all motions for reconsideration are made and placed.

MR. CHAIRMAN: All right. You have heard the motion. If you favor the motion, please signify by saying aye; opposed by saying nay.

All right. It carries. Ladies and gentlemen, what I would like to ask is see if there are other motions to reconsider and entertain those at this time, just in fairness to the Commissioners, in case there are any matters that are getting away from us. There

D: 006293

are always ways that you can eventually come back. So, don't feel in great peril. I will now recognize Commissioner D. Reed.

COMMISSIONER D. REED: Mr. Chairman, couldn't we just go ahead and take the final vote now on that amendment, and then go on with the other motions to reconsider?

MR. CHAIRMAN: If there are no other motions to reconsider.

COMMISSIONER COLLINS: Mr. Chairman, I have a motion to reconsider.

MR. CHAIRMAN: Please state your motion.

COMMISSIONER COLLINS: I was the sponsor of Amendment No. 5 to Proposal No. 258. Commissioner James offered a substitute for that. And on the vote on the substitute it failed passage by 15 yeas and 19 nays. I voted on the prevailing side, the negative side.

I would like to now move that vote be reconsidered.

MR. CHAIRMAN: I am sorry. Commissioner Collins, please state the substance of that. I missed it.

COMMISSIONER COLLINS: First, the substitute amendment for Amendment 5, the substitute was offered

D: 006300

by Commissioner James.

MR. CHAIRMAN: Let's see. Commissioner Collins --

COMMISSIONER COLLINS: It failed by a vote of 15 yeas to 19 nays. I voted on the negative side, the prevailing side. I would like to move that be reconsidered.

MR. CHAIRMAN: Commissioner Collins, I think we have to have more motions to get there.

Commissioner James, isn't this a collateral matter?

COMMISSIONER JAMES: Mr. Chairman, this was my amendment that would strike A and B. At the present time A and B are still in there. And it was not passed. And it would only take a simple vote to reconsider it, and we would be back on an amendment that would do away with the entire Section 23.

MR. CHAIRMAN: Commissioner James, you can reach the same point now by offering an amendment to the pending proposal. And otherwise, you are going to have to take steps all the way back through to reach the point where a substitute amendment was offered.

COMMISSIONER JAMES: Let me ask the Chair a question. If the privacy provision stays exactly as it is now, which is exactly how it was when I came in

D: 006301

here this morning, then how can I offer the same amendment?

MR. CHAIRMAN: You have a proposal now by Commissioner D. Reed to strike Subsection B, and you may offer an amendment to include Subsection A.

COMMISSIONER JAMES: My question is: Suppose his fails, and then mine fails, and I try to offer it again, and someone raises a point that that already came up, it was defeated, and you didn't move to reconsider?

MR. CHAIRMAN: I am going to place the motion to reconsider. Let's be sure we understand what it is.

COMMISSIONER JAMES: Let me explain it to everybody.

MR. CHAIRMAN: There is a motion to reconsider. Let me place this in one motion. The principal proposal was what, now?

COMMISSIONER COLLINS: 258, Article 1, Section 23.

MR. CHAIRMAN: And the proposal then was offered by whom?

COMMISSIONER JAMES: It was a substitute amendment offered by myself.

MR. CHAIRMAN: Who offered the main amendment?

COMMISSIONER COLLINS: I did.

MR. CHAIRMAN: The motion I will place then

D: 006302

is the motion to reconsider the vote by which the amendment proposed by Commissioner Collins --

COMMISSIONER BIRCHFIELD: Who made that motion, Mr. Chairman?

MR. CHAIRMAN: That is the motion I have to place in order to get to the motion Commissioner James wants to place. That is the order. It is a collateral matter. You have to go all the way back to where we were at first.

Do you see what I am saying, Commissioner James? You have just got to do that. And you are going to stumble over some bodies along the way. So, why don't you spend some time tonight and think of another way to put it, and we will try to be liberal enough in our rules to allow you to raise the point we need to raise.

I hope we can take this up with a point, I guess, in Article 5 tomorrow. We will go forward all the way through, and then we will come back and try to go through one more time with amendments beginning with Article 1. And hopefully by the time we have gone through it twice, we will have reached the consensus of the body or we will be so tired we are willing to quit, one of the two.

COMMISSIONER BARKDULL: May I make an inquiry

D: 006303

FLORIDA CONSTITUTION REVISION COMMISSION

IN RE: Hearing held on March 8, 1978

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PLACE: Old Senate Chambers
Tallahassee, Florida

TIME: Commenced: 9:00 A.M.
Terminated: 12:30 P.M.

Reported by:

JERRY L. ROTRUCK, CM

Court Reporter

D: 006309

JERRY ROTRUCK
PAUL RAYBORN
EUGENIA LAWRENCE
LINDA ADAMS
BETH GARNER

FEDERAL
COURT
REPORTING
224-0722 • 224-0728

DEPOSITION SUITE
220 E. COLLEGE AVE
TALLAHASSEE, FLA. 32302
215 EAST WASHINGTON STREET
THOMASVILLE, GEORGIA 31792

MR. CHAIRMAN: All right. The proposal is adopted. Commissioner D. Reed?

COMMISSIONER D. REED: I would like to move that we take up the matter on reconsideration having to do with the subsection b and the right of privacy.

MR. CHAIRMAN: All right. Now, Commissioner -- Now, ladies and gentlemen, we can go at this in two different ways, and it's the pleasure of the Commission. We can either take it up now or we can go on through, go on and continue through and we can pick it up again when we come back. And it's the pleasure of the Commission. I'll accept your adoption.

COMMISSIONER D. REED: Mr. Chairman, I don't intend to debate it, Mr. Chairman. I think we could take it up and either pass it or kill it, vote it one way or the other as long as the members know what we're doing. I don't care to debate it.

MR. CHAIRMAN: All right. Now, what I propose to do is let me see whether you want to take it up now or if you're willing to take it up now. Commissioner Barkdull.

COMMISSIONER BARKDULL: Mr. Chairman, I think that whatever we do, whether we take it up now or we leave it in the order to pick it back up when we get into the Declaration of Rights or Article I section,

D: 006384

JERRY ROTRUCK
PAUL RAYBORN
EUGENIA LAWRENCE
LINDA ADAMS
BETH GARNER

FEDERAL
COURT
REPORTING
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220 E COLLEGE AVE
TALLAHASSEE, FLA 32302
215 EAST WASHINGTON STREET
THOMASVILLE, GEORGIA 31792

that the position of the Commission on this situation ought to be consistent, that we should either take them up within the discretion of the Commission as we go along or we should take them up by the article. And whichever way we go on this we ought to remain consistent.

MR. CHAIRMAN: Commissioner Barkdull, I think that's well taken. Let's just see what the sentiment is of the Commission if I can just take a voice vote if there is any sentiment. If you favor taking up the Article I, section 22 issue now, please signify by saying aye. If you'd rather wait until we get back on Article I issues, please say nay.

All right. Let's take it up now. And I'll place a similar motion on all reconsideration matters.

COMMISSIONER SHEVIN: Mr. Chairman.

MR. CHAIRMAN: Yes, Commissioner Shevin.

COMMISSIONER SHEVIN: A point of parliamentary inquiry. Has the motion to reconsider been adopted or are we now voting on the motion to reconsider?

MR. CHAIRMAN: No, it was adopted yesterday, sir.

COMMISSIONER SHEVIN: So we're now voting on the main proposal which is delete section 23b.

MR. CHAIRMAN: That's correct.

Commissioner Douglass, to remind everybody

D: 006383

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where we came from on all this, yesterday morning the Commission voted to take out 23b. Yesterday afternoon sometime you voted to put it back in. It was reconsidered just as we reached 5:30 yesterday. The vote on reconsideration passed. They attempted then to take the vote yesterday afternoon. I told them that I would not permit that because the time of adjournment had passed and it could be taken up today. Now, that was, I think that was my announcement yesterday that got us in this posture in part, Commissioner Barkdull.

COMMISSIONER BARKDULL: I would like instructions from the Chair, because I want to be sure I know what way we're voting. Now, if you vote aye, are you taking out b or are you leaving it in?

MR. CHAIRMAN: All right. I hope we won't debate this at great length.

COMMISSIONER BARKDULL: I'm not interested in debating. I just want to be sure I understand which way ---

MR. CHAIRMAN: This is a proposal to delete Article I, section 23b, and if you vote aye you'll be taking that section out. All right. Commissioner Douglass, you're an opponent of this and why don't I give you a couple minutes, give Commissioner D. Reed a couple minutes, and let's try to get the vote out of the way.

D: 006386

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Commissioner Douglass.

COMMISSIONER DOUGLASS: I think vote no on this if you're for the right of privacy, and I think we have expressed our opinion time and time again that we're for this. And it keeps coming back up as a result of people that won't give up. Now, this time let's vote no, and let's leave it like we've got it. And I urge you to vote for the right of privacy, give to the Legislature the right to protect people's privacy which is what this section does in the areas of their medical records, in the areas of their personal lives that the Legislature deems should be protected. I think this is an important thing and 1984 isn't too far off, and we need to protect the privacy rights of our citizens. And let's vote no on D. Reed's fourteenth effort.

MR. CHAIRMAN: All right. Commissioner James, for what purpose do you rise?

COMMISSIONER JAMES: Substitute amendment upon the desk.

MR. CHAIRMAN: All right. Please read Commissioner James' substitute amendment.

MR. SECRETARY: By Commissioner James on page 1, line 30, strike all of line 30 and all of page, all of lines 1 through 6 on page 9.

MR. CHAIRMAN: All right. Commissioner James,

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this would strike out sections a and b?

COMMISSIONER JAMES: Yes. Mr. Chairman, Members of the Commission, you know that we've spent almost an entire day on this. We tried to put in unwarranted and then they did put it in and they took it back out. No one seemed to know what they did yesterday. No one seems to be able to tell me today what it does. I think it's going to cause a great deal of trouble with proper law enforcement in the State of Florida. I think we ought to just now recognize the fact that we didn't know what we did, we tried to do what was right. Unfortunately, we can't determine that so we ought to strike the entire privacy clause.

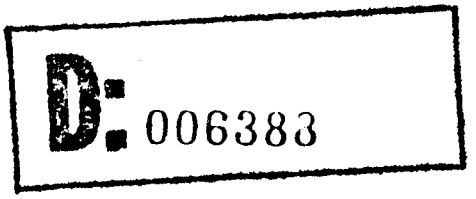
MR. CHAIRMAN: Commissioner James, Mr. Brown just pointed out to me we do have a procedural problem. This -- We are voting on a substitute, so this would be a substitute to a substitute; and I apologize, so this would not be in order.

COMMISSIONER JAMES: How did that happen?

MR. CHAIRMAN: I'm not quite sure myself, but Mr. Brown is certain of it and that's where we are. So ---

COMMISSIONER JAMES: I trust him.

MR. CHAIRMAN: That's right. Okay, so I would rule that's out of order.



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Commissioner D. Reed, I have no doubt that you can figure out a way to get at it again, but it can't be done in this manner.

COMMISSIONER D. REED: I'm only doing it because I was told to.

MR. CHAIRMAN: All right. Commissioner D. Reed to close then on the substitute. Commissioner D. Reed.

COMMISSIONER D. REED: Yes, I can't -- there is nothing more I think that can be said on this issue. If you want to delete subsection b according to one of our representatives that walked around and got your commitment, you will vote yes. If you have not been contacted, you can either vote no, abstain, or vote yes, however you please.

MR. CHAIRMAN: All right. Please call the roll on the proposal.

(Whereupon, a roll call vote was taken.)

MR. SECRETARY: Twenty ayes, fourteen nays.

MR. CHAIRMAN: All right. The amendment is adopted. Commissioner James?

COMMISSIONER JAMES: Amendment on the desk.

MR. CHAIRMAN: All right.

COMMISSIONER JAMES: It's an amendment I did not number, but it just strikes all of line 30 and then

D: 006383

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on page 9, 1 through 3.

MR. CHAIRMAN: Now, Commissioner James, is that in Article I?

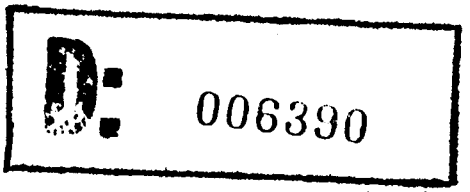
COMMISSIONER JAMES: That's where we are, aren't we, sir?

MR. CHAIRMAN: Well, no. We're there only because we are taking up something on reconsideration. Commissioner James, I'm sorry. I think I placed the Commission in this posture, but let me explain to you how it happened.

A motion to reconsider was made yesterday afternoon as it had to be made. Commissioner Ausley made a motion that we extend the time of adjournment until we'd taken up all motions to reconsider and disposed of those motions. We took that up. Commissioner Reed tried to then place the question. I told him it could not be placed yesterday afternoon but it could be placed today. And, so I made that announcement and I think he proceeded on that assumption. So we will recognize that when we come back to Article I.

COMMISSIONER JAMES: Mr. Chairman, I'm not going to move it because I've been informed by part of the leadership that it hasn't got a chance anyhow.

MR. CHAIRMAN: You will have an opportunity when it comes back around.



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SUMMARY OF PROPOSED REVISIONS

TO THE FLORIDA CONSTITUTION

These proposals were presented to the
Constitution Revision Commission at
the public hearings and through the mail.

September 27, 1977

ARTICLE I

§1. Whether Article I, §1, providing for political power, should be modified to:

(a) read: "All political power is inherent in the people, and the legislature shall enact no law interfering with political freedom unless a compelling state interest is demonstrated. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people."

(b) provide that each citizen is to have equal right to run for and hold office.

§2. Whether Article I, §2, providing for basic rights, should be modified to:

(a) specifically prohibit discrimination on the basis of race, religion or physical handicap.

(b) prohibit discrimination on the basis of sex.

(c) guarantee equal protection to corporate persons.

(d) specifically prohibit discrimination on the basis of sexual preference.

(e) prohibit discrimination on the basis of age.

(f) prohibit abortions.

(g) guarantee a right to have an abortion.

(h) allow the regulation or prohibition of the property rights of aliens.

(i) add "age, or stage of biological development, including the unborn" after "physical handicap" and enforce to the extent consistent with decisions of the United States Supreme Court and with the federal Constitution.

(j) include the right to a "clean and healthy environment."

(k) tie this section to the Fourteenth Amendment, making this section at least co-extensive therewith.

(l) provide for a right to privacy in general terms; not to be infringed without showing a compelling state interest.

(m) prohibit smoking in public places.

(n) provide for "access to adequate housing in a suitable environment regardless of race, color, creed or economic condition."

(o) eliminate "natural" before the word "persons", so as to include corporations within this section.

(p) revise the provision relating to "aliens ineligible for citizenship" in light of the recent United States Supreme Court decision.

(q) include a positive statement of the grounds on which the rights of citizens may be abridged.

(r) provide a basic right to equal public education.

(s) add non-membership in any group.

---

§3. Whether Article I, §3, providing for religious freedom, should be modified to:

(a) prohibit state aid to religious schools.

(b) more clearly prohibit state aid to any religion.

(c) allow indirect aid to religious schools.

---

§4.. Whether Article I, §4, providing for freedom of speech, should be modified to:

(a) provide that truth alone is a complete defense.

(b) allow privilege to reports of matters of general or public concern in the absence of actual malice.

(c) eliminate all reference to standards of proof.

(d) provide that no law shall be passed relating to freedom of speech.

(e) revise the defamation provision to establish standards for dealing with "public figures."

ETHICS, PRIVACY AND ELECTIONS COMMITTEE

MEETINGS & MATERIALS

FLORIDA CONSTITUTION REVISION COMMISSION

Senate Office Building
Tallahassee, Florida 32304
Telephone 904/488-6091

Commissioners

Talbot D'Alemberte, *Chairman*
Edward R. Annis
James W. Apthorp
DuBose Ausley
Thomas H. Barkdull, Jr.
Dempsey J. Barron
William O. Birchfield
Lew Brantley
Yvonne B. Burkholz
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LeRoy Collins
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Dexter Douglass
William H. Gardner
Freddie L. Groomes
Lois Harrison
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William G. James
James W. Kynes, Jr.
John E. Mathews, Jr.
Jesse J. McCrary, Jr.
John H. Moore, II
Richard V. Moore
Jon C. Moyle
Marcelino Oliva
Ben F. Overton
Kenneth A. Plante
Jan Kaminis Platt
Nathaniel W. Polak
Donald H. Reed, Jr.
Nathaniel Reed
B. K. Roberts
John L. Ryals
Robert L. Shevin
J. B. Spence
Stella F. Thayer
John T. Ware

Alternates

Charlotte F. Hubbard
James Elliott Messer
Sybil Mobley
Warren W. Morgan

Executive Director

Steven J. Uhlfelder

October 10, 1977

Minutes

Ethics, Privacy and Elections Committee
October 5, 1977

The meeting was called to order by the Chairman at 10:20 a.m.

Members Present

Chairman Moyle
Vice Chairperson Harrison
Commissioner Collins
Commissioner Douglass
Commissioner McCrary
Commissioner Overton
Commissioner Plante

Commissioner Spence was not present. The Chairman announced that his absence was excused.

Alternate Commissioner Hubbard was not present.

The Chairman outlined the scope of the Committee's jurisdiction as follows:

Article VI; Article III, Section 18; Article II, Section 8; Article I, Section 4 and that portion of Article I, Section 12 concerned with interception of private communications.

The subject matter within the Committee's jurisdiction falls into three groups: Ethics; Elections; Privacy, Free Speech and Open Government. Within each group the Committee will consider the following proposals to amend existing provisions in the Constitution and the following proposals to add new provisions.

Group I - Ethics

Includes Article II, Section 8 - Ethics in Government

Section 4 was distributed and discussed. The memorandum addressed the impact of deleting the third and fourth sentences in Section 4 and substituting the following language: "In all defamation actions, truth shall be a defense and, in all matters of public or general interest, the publication shall be privileged in the absence of actual malice." There was considerable discussion on whether a standard not required by United States Supreme Court interpretations of the First Amendment in the defamation area should be put into the Florida constitution. The Chairman directed staff to determine whether Florida has a criminal libel statute. The Chairman asked the Committee to be prepared to discuss and to take action on two proposals concerning Section 4 at the next meeting: (1) delete sentences three and four; (2) delete sentences three and four and substitute the language proposed above. The Chairman also directed the staff to make copies of the Florida Supreme Court decisions in Firestone v. Time, Inc. available to the Committee.

A preliminary discussion of a right to privacy was invited by the Chairman. Mr. Gerald B. Cope, Jr., Editor-in-Chief of the Florida State University Law Review, appeared and discussed the proposal for a right to privacy that he had submitted to the Commission, August 25, 1977, at the public hearing in Gainesville, Florida. The language proposed by Mr. Cope reads: "The right of the people to privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Mr. Cope explained that the language was derived from the Montana constitutional provision with some modifications derived from the Alaska constitutional provision. There was discussion concerning whether the words "without the showing of a compelling state interest" weakened the statement of the right to privacy. Mr. Cope expressed the view that since the courts would have to resolve conflicts between the right of privacy and governmental action, inclusion of the compelling state interest standard in the constitution would indicate to the courts that privacy was an important right not to be violated except under compelling circumstances.

Commissioner Collins moved the acceptance in principle of the language appearing at page seven of Mr. Cope's statement to the Commission on August 25, 1977, subject to such refinements of language that may be necessary. It was agreed that this issue would be considered again at the next meeting.

Commissioner Douglass left the meeting at 12:10 p.m.

Commissioner Collins suggested that the language of Article I, Section 12 relating to interception of private communications remain essentially unchanged. The Chairman

Done

FLORIDA CONSTITUTION REVISION COMMISSION

Senate Office Building
Tallahassee, Florida 32304
Telephone 904/488-6091

October 17, 1977

Commissioners

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Edward R. Annis
James W. Apthorp
DuBose Ausley
Thomas H. Barkdull, Jr.
Dempsey J. Barron
William O. Birchfield
Lew Brantley
Yvonne B. Burkholz
William C. Clark
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John M. DeGrove
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Executive Director

Steven J. Uhlfelder

Minutes
ETHICS, PRIVACY AND ELECTIONS COMMITTEE
October 14, 1977

The meeting was called to order by the Chairman at 10:37 a.m.

MEMBERS PRESENT	MEMBERS ABSENT
Chairperson Moyle	Commissioner McCrary
Vice Chairperson Harrison	Commissioner Plante
Commissioner Collins	Commissioner Spence
Commissioner Douglass	
Commissioner Overton	Hubbard - alternate

Without objection the minutes of the October 6, 1977 meeting were approved as written.

With the approval of the Committee, the Chairman began with agenda item VI - a consideration of the defamation provision in Article I, Section 4. Chairman D'Alemberte made a presentation to the Committee concerning the defamation provision in Section 4. The analysis of the issue he suggested to the Committee recognized the dichotomy between private issues and public issues and private persons and public figures. The standard to be used when a public figure involved in a public issue is libelled is actual malice, that is the publication must be made with actual knowledge of its falsity or with a reckless disregard for its truth or falsity. Where the person is private and the issue is private, it is clear that the burden of proof should not be as demanding as in the first instance. The standard for recovery in the latter circumstance should be negligence. That leaves the public person/private issue and private person/public issue situations. The actual malice standard should not apply in cases of a public person libelled in a private issue. Where a private person is libelled in a public issue, the actual malice standard should be applied. That analysis is the same reached by the Florida Supreme Court in Firestone v. Time, Inc.

Commissioner Douglass discussed the delicate balance that must be struck between provision for a free press and the rights of individual privacy.

The Chairman directed the Committee's attention to the proposal pending before it. The proposal would delete the last two sentences in Section 4 and substitute in its place the following: "In all defamation actions, truth shall be a defense and, in all matters of public or general interest, the publication shall be privileged in the absence of actual malice."

Commissioner Douglass moved that the general remarks of the Chairman of the Commission relating to Article I, Section 4 be approved by the Committee subject to drafting appropriate language to replace the last two sentences in Section 4, and that at the next meeting the Committee go into full discussion of the language and make a final recommendation as to what language to adopt.

Chairman Moyle suggested that in addition to the actual language which is amended in Section 4, he would like to have a statement of intent accompanying it so that there is no doubt about the Committee's intention in changing the language.

Commissioner Collins asked whether the removal of the language "in all criminal prosecutions and civil actions" was important. The Chairman asked staff whether there were any criminal libel statutes in Florida. Ms. Gleason passed out copies of several statutes making certain kinds of libel punishable as misdemeanors. There was general agreement that the suggested new language "In all defamation actions" was broad enought to cover criminal libel. The Chairman asked staff to consider it further before the next meeting.

Commissioner Douglass' motion was approved unanimously. The Chairman requested that Commissioners Douglass and Overton be responsible for drafting the statement of intent to accompany the Committee's final action on Section 4.

The Chairman next moved to a consideration of agenda item VII concerning the proposal on a right to privacy. The Chairman passed out several proposals concerning the relation between the right to privacy and open government. There was a discussion between Chairman D'Alemberte and Commissioner Douglass concerning whether the right of privacy was to be protected against governmental invasion alone or whether it should be protected against private and governmental invasion. Chairman D'Alemberte said he was more concerned about government intrusion on privacy. He suggested language to meet that concern: "The right of citizens to individual privacy shall not be infringed by government." Chairman D'Alemberte expressed approval of using the language "compelling state interest" in connection with the right of privacy but cautioned that use

of the phrase in the privacy context alone might lead future courts to apply a less stringent standard of review where other rights were threatened. Commissioner Douglass on the other hand expressed concern that the court would use the compelling state interest standard to diminish individual rights.

Chairman D'Alemberte suggested that staff prepare a paper on the meaning of the phrase and suggested that the Committee might want to consider alternative terms.

Discussing the proposals, Commissioner Collins observed that the financial disclosure required should be qualified by "as required by law."

The Chairman asked whether the Committee was prepared to take final action on a right to privacy. Commissioner Douglass voiced concern about the absence of three Commissioners at the meeting and suggested that final action be delayed until the next meeting. Commissioner Harrison agreed the decision should be delayed until the staff completed the research on the compelling state interest.

Commissioner Collins suggested the following language: "No person shall be deprived of the right to examine information and documents of governmental entities without the showing of a compelling state interest." The Chairman noted that although a right to privacy could not be considered in isolation, the point raised by Commissioner Collins spoke to the question whether a constitutional provision regarding open meetings and open records should be recommended. Commissioner Collins stated that such a provision should be put into the constitution but in a way that would prevent serious harm to another person or to the government.

The Chairman expressed his impression that the Committee wanted to recommend a right to privacy and a right to open government. The problem is how to accomplish both objectives without doing violence to other constitutional guarantees.

Mr. Gerald B. Cope offered the observation that the relationship between the right of privacy and the open government question was important and needed to be addressed explicitly. In the public records area, he suggested that the Committee might consider reserving some flexibility for the judiciary to deal with individual cases which had not been addressed by the legislature.

Mr. Baya Harrison expressed his concern that individual privacy not be confused with some notion that government has a right of privacy to conduct its business in a nonpublic way. He would exclude the judiciary from any open government requirement. Mr. Harrison's letter of October 6, 1977,

suggesting a proposal for open government was discussed.

Ms. Sharyn Smith, Assistant Attorney General, addressed the Committee on the relationship between privacy, open meetings and public records. She submitted a proposal for the Committee's consideration. In the privacy area, her proposal would provide for protection against governmental intrusion only. She stressed the importance of defining the concept of privacy sought to be protected by the proposed constitutional right. She stated that the Committee should be careful not to permit the right of privacy to impact upon public records and the Sunshine Amendment.

Commissioner Collins asked whether the government should have any right to protect the confidentiality of information it receives in the performance of its business. Ms. Smith indicated that under her proposal, if the government had a compelling interest, the legislature could provide for the confidentiality of specified records.

Commissioner Harrison asked what the compelling state interest really meant. Ms. Smith explained that essentially it was a federal standard requiring government to demonstrate that no less drastic means were available to accomplish an important government interest. Commissioner Douglass expressed his opposition to use of the phrase, which he fears will water down the basic right of privacy. Right to open government should be in the constitution; financial disclosure for public officials which is in the constitution should be retained. All eventualities cannot be dealt with in the constitution.

Commissioners Douglass and Overton expressed the view that a right of privacy should protect against private as well as governmental intrusion. Commissioner Collins stated that, in his opinion, the right should be protected against governmental invasion. He indicated that the private invasion of privacy should be addressed by the legislature. The Chairman indicated that in his opinion both private and governmental intrusion needed to be addressed.

Mr. Baya Harrison suggested that Ms. Smith's proposal regarding privacy be placed in Article I, that Section 21 of Article I regarding access to courts be placed in Article V; that an open government, public records provision be placed in Article X. In his opinion, the recommended placement puts all the provisions in a proper context. In answer to a question from the Chairman, Mr. Harrison agreed that there are public records which should be confidential. Most of the one hundred and sixty legislative exceptions to the current public records law are well founded, in his opinion.

Commissioner Douglass moved that the Committee state that it approves in principle a statement in the constitution protecting

the right of the people to privacy limited only by properly drafted provisions relating to open government and a guarantee of open government and financial disclosure as provided in Article II, Section 8 and that at the next meeting the Committee staff suggest several drafts to accomplish those purposes, prepare comments on the impact of each draft on the issues under consideration and if possible disseminate the material to the Committee prior to its next meeting. Commissioner Collins inquired whether it was the sense of the motion to include private as well as governmental invasion of privacy. Commissioner Douglass answered in the affirmative. The Chairman asked whether open government also included public records. Commissioner Douglass said it did. The motion was approved by a unanimous voice vote.

The Chairman asked whether existing state statutes could be successfully challenged as violative of the right to privacy if it is added to the constitution. Commissioners Collins, Douglass and Overton agreed that such challenges would be successful.

The Chairman recessed the meeting at 12:30 p.m. to be reconvened promptly at 1:30 p.m.

Consideration of agenda item XI - the conflict of interest provision in Article III, Section 18 - was deferred until the next meeting.

Agenda item X concerning the oath proposed by Commissioner Collins for inclusion in Article II, Section 5(b) was taken up. Commissioner Collins distributed copies of a revised version of the provision. The phrase "with due diligence" was removed from the original proposal. Commissioner Collins moved that the proposed oath be included in Article II, Section 5(b). Commissioner Douglass stated that the language was vague and would be subject to federal constitutional challenge as pointed out in the memorandum dated October 13, 1977 re: Article II, Section 5(b). He also raised the question whether a public official could ever perform his functions under the terms of the oath. There was a lengthy discussion concerning the meaning of the language in the proposed oath. Concern over lawsuits was expressed by Commissioners Douglass and Overton. The Chairman referred the proposed oath to the staff for refinement of language which will avoid the federal constitutional vagueness problems if possible. The provision will be considered at the next meeting.

Commissioner Douglass moved that the language concerning the unreasonable interception of private communications remain as it is presently in Article I, Section 12. It was agreed that any action concerning a right to privacy should not impact upon this specific provision. The Chairman explained that if the motion is approved, the Declaration

MEMORANDUM

TO: Committee on Ethics, Elections and Privacy

FROM: Patricia R. Gleason
Staff Attorney

DATE: October 19, 1977

RE: Interpretation of "Compelling State Interest".

PART I. The "Compelling State Interest" Standard as employed by the United States Supreme Court.

The United States Supreme Court has developed a "compelling state interest" standard as part of its analysis of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Basically, state legislation is subject to challenge under the Equal Protection Clause if such legislation contains classifications which invidiously discriminate against certain persons or classes of persons. In reviewing such legislation, the Supreme Court has traditionally applied one of two tests to determine whether or not the legislation is unconstitutional. The first test requires that a rational basis exist for the legislative classification; the second test reflects a much higher standard, the classification must be necessary to serve a compelling state interest.[1]

The "rational basis" standard is the test used most often by the Supreme Court when it considers economic or social legislation.[2] The court will subject the statutory scheme to minimal judicial scrutiny, while according great deference to the judgment of the Legislature. Thus, it has been stated that the rational basis test is one which

> "permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in

> some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 366 U.S. 420 (1961), (citations omitted).[3]

Similarly, in Dandridge v. Williams,[4] the court defined the scope of the rational basis test as follows:

> "In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the constitution simply because the classification 'is not made with mathematical nicety or because it results in some inequality. Lindsley v. Natural Carbonic Gas Com., 220 U.S. 61
>
> The problems of government are practical ones and may justify, if they do not require, rough accommodations--illogical, though it may be, and unscientific." Metropolic Theatre Co.v City of Chicago, 228 U.S. 61, (1969-70).[5]

The foregoing discussion makes clear that state legislation which is subjected to the rational basis standard or judicial review will generally be sustained by the Court. This is so because the rational basis test requires only that the state point to <u>any</u> reasonable objective which could be accomplished by the statutory classification. The fact that the Legislature may have drawn the statute in a clumsy manner, or that the objective could have been attained by less objectional means, will not operate to strike legislation when it is analyzed under the rational basis test.

Application of the <u>compelling state interest</u> standard, however, subjects state legislation to much closer judicial examination. The Court has applied the compelling state interest test to legislation which concerns the fundamental rights of privacy,[6] interstate travel[7] or voting;[8] and where the basis of the classification drawn by the Legislature is "suspect" such as with race[9] or alienage.[10] For example, in Roe v. Wade,[11] the Court was concerned with legislation which it determined impacted upon the fundamental right of privacy. The court declined to adopt the "rational basis" standard and instead stated:

> Where certain "fundamental rights" are involved the Court has held that regulation limiting these rights may be justified only by a "compelling

> state interest" [citations omitted] and that legislative enactments must be narrowly drawn so as to express only the legitimate state interests at stake.[12]

Similarly, in Shapiro v. Thompson[13] the Court applied the compelling state interest standard to invalidate a state law which required a one year waiting requirement prior to the receipt of welfare benefits. The court ruled that the subject statute infringed the constitutional right to travel, and further explained:

> [A]ny claissification which serves to penalize the exercise of [the] right [of interstate travel], unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.
>
> * * *
>
> Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest.[14] (emphasis applied by the court)

An examination of the foregoing cases and numerous other federal cases reveals that application of the "compelling state interest" standard to challenged legislation would roughly result in the following:

(1) The statute would be subject to strict or close judicial scrutiny.

(2) The state would be required to bear the burden of justifying the statute.

(3) The state's interest in the legislation must indeed be compelling--the classification must be absolutely necessary to achieve the legitimate purpose.

(4) The enactment must be extremely precise and narrowly drawn to achieve its purpose.

In summary, the United States Supreme Court has often used the phrase "compelling state interest" to delineate the requisite governmental burden in cases involving legislation which impacts upon constitutional rights. The compelling state interest standard places an extremely high burden upon the state to justify its actions and has consistently been employed by the Court to indicate a higher standard of judicial review.

PART II

THE "COMPELLING STATE INTEREST" STANDARD IN FLORIDA

The two-tiered equal protection analysis described in the preceding section is admittedly a matter of federal constitutional law. The states, in interpreting their own constitutions, are not bound to apply this same doctrine. Nevertheless, it appears from a recent Florida case that the Florida Supreme Court has not only recognized the federal equal protection approach, but has also adopted it as its own.

One of the Florida Supreme Court's early statements dealing with the compelling state interest standard is the pre-Roe case of Walsingham v. State.[1] In Walsingham, the court avoided ruling directly on the constitutionality of Florida's abortion statute by ruling that the instruction given by the trial court was defective.[2] The court concluded that a physician who recommends or concurs in a recommendation for an abortion "should not be subject to a virtually absolute threat of criminal prosecution and punishment unless the State has a compelling interest in regulating such conduct."[3] The majority opinion, however, did not intimate as to what would constitute a "compelling interest."

Concurring Justice Ervin expanded more upon the compelling interest standard. He said that "[t]o take away her right to total control of that body, including the elimination of parts of it, the State must show a strong compelling and necessary interest."[4] He indicated that the state would not have a compelling interest to forbid abortion during the early months of pregnancy--a view that the United States Supreme Court adopted in Roe.

The Florida courts have generally viewed restrictions on the right to interstate travel as being subject to the compelling state interest standard. In Hall v. King,[5] the Florida Supreme Court invalidated Section 475.25(2) which caused a real estate broker's license to be revoked when he no longer resided in the state. Since the residency requirement caused a chilling effect on interstate travel, it could not be upheld absent a "reasonable, compelling state interest." The court construed this standard very strictly, and held that the state's interests in discipling and advicing its brokers was not compelling. Likewise, Mick v. Florida State Bd. of Denistry,[6] on very similar grounds recently invalidated a provision stating that a dentist who does not maintain a residence and domicile in the state can only be given a conditional renewal certificate.

Somewhat confusing, however, is the 1974 decision by the Florida Supreme Court in Cassia v. Cassia.[7] The plaintiff's divorce action was dismissed since it failed to allege that she had resided in Florida for six months. Responding to the restriction on the right to travel argument, the court interpreted Shapiro v. Thompson as follows:

> The [United States Supreme] Court applied the "compelling state interest" test. Under this test, a state, in order to demonstrate that it has not violated the equal protection clause, need only show that the classification involved bears a reasonable relationship to a permissible state objective. However, when the classification abridges the exercise of a fundamental right, the state must demonstrate "a compelling interest."[8]

The court concluded that "insuring the integrity of its judicial decrees as against future collateral attack in distant courts" was a compelling interest, and upheld the statute. The disturbing thing, however, is the underlined language in the above quotation. It appears that under the compelling state interest test as interpreted in that section, the state need only show that its "classification involved bears a reasonable relationship to a permissible state objective." Such a standard is actually more similar to the minimum scrutiny "rational basis" test described in Section II.[9]

The "compelling interest" standard was briefly mentioned in Goldtrap v. Askew,[10] in which the Florida Supreme Court upheld Florida's financial disclosure law against an attack that it violated the plaintiff's right to privacy. Justice England, speaking for the court, said "Florida has a compelling interest in protecting its citizens from abuse of the trust placed in their elected officials . . . ." However, there was no indication of what the compelling state interest standard was, or whether it comported with the federal compelling state interest test.

In the very recent case of Laird v. State,[11] it appears that the court has settled any confusion as to its equal protection standard of review by recognizing and impliedly adopting the federal two-tier formula. Speaking for the court, Justice Sunberg said:

> None of the parties really argued whether the legislature lacks a "national basis" for its decision to ban private possession

> of cannabis. (Since we have determined that there is no fundamental right to smoke marijuana, the test becomes whether there is a "rational basis" for outlawing such an activity as opposed to a "compelling state interest" in the subject matter of the legislation.)[12]

In a footnote to this section, the court added:

> For a critical discussion of this two-tier model, see Massachusetts Bd. of Retirement v. Murgia, ____ U.S. ____, 96 S.Ct. 2568-2573, 49 L.Ed.2d 520 (Marshall, J., dissenting.)[13]

Thus it appears that the Florida Supreme Court has approved of the compelling state interest standard and the two-tiered equal protection approach of the federal constitution. While there may have been some early confusion in Florida as to the meaning of "compelling state interest," it seems clear that after Laird, Florida will follow the equal protection analysis of the United States Supreme Court. This will mean that when the compelling state interest test applies, the court will view the classification with the strictest scrutiny.

FOOTNOTES--PART I

1 The Court is currently engaged in refining a new test which falls somewhere in between the "rational basis" and "compelling state interest" standard. The new test has been most often applied to gender classifications. See, e.g., Reed v. Reed, 30 L.Ed.2d 225 (1971); Craig v. Boran, 50 L.Ed.2d 397 (1976).

2 See Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1920).

3 Craig v. Boran, 50 L.Ed.2d 397, J. Rehnquist dissenting p. 401 (1976).

4 Dandridge v. Williams, 25 L.Ed 491 (1969).

5 Id. at 495.

6 Griswald v. Connecticut, 381 U.S. 479 (1966).

7 Shapiro v. Thompson, 394 U.S. 618 (1969).

8 Kramer Union Free School District, 395 U.S. 621 (1969).

9 McLaughlin v. Florida, 379 U.S. 184, 192 (1964).

10 Graham v. Richardson, 408 U.S. 365 (1971); Sugarman v. Dougall, 413 U.S. 634 (1973).

11 Roe v. Wade, 410 U.S. 113 (1972).

12 Id. at 155.

13 394 U.S. 184, 192 (1964).

14 Id.

1 250 So.2d 857 (Fla. 1971).

2 The instruction was fatal because the trial court had not said that the abortion would be justified if it was to protect the mother's health, or if it were advised by two physicians.

3 Supra note 1 at 862.

4 Id. at 863.

5 266 So.2d 33 (Fla. 1972).

6 347 So.2d 138 (Fla. 1st D.C.A. 1977).

7 291 So.2d 569 (Fla. 1974).

8 Id. at 570 (emphasis added).

9 Consider Swinney v. Untreiner, 272 So.2d 805 (Fla. 1973). In Swinney, the court upheld Florida's version of the "Hatch Act" which limits the political activity of state officials. Although challenged on equal protection grounds, the majority opinion did not discuss the compelling state interest standard.

Dissenting Justice Ervin argued that restraints on speech an association as involved in this case are allowable "only if it is shown they are necessary to protect 'compelling state interests.'"

10 334 So.2d 20 (Fla. 1976).

11 342 So.2d 962 (Fla. 1977). In Laird, the court held the right to privacy did not protect one who smoked marijuana in his own home.

12 Id. at 965.

13 Id. at footnote 4.

MEMORANDUM

TO: Commissioner Douglass

FROM: Patricia Dore

RE: Right to Privacy Proposals

DATE: November 14, 1977

The two state constitutional provisions dealing with the right of privacy without specific reference to the status - governmental or private - of the invader are Alaska and Montana. The Alaska provision reads:

> The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

The Montana language states:

> The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Jerry Cope's original proposal was a combination of the Alaska and Montana provisions. It states:

> The right of the people to privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

There are problems with all three formulations - the compelling state interest standard, the directive for legislative implementation, recognizing the right belongs to the people rather than to the individual, and using the word "privacy" rather than some other phraseology which has no federal analogue. All of these objections are met by the following formulation:

> The right of the individual to be let alone and free from intrusion into his private life is

recognized and shall not be infringed.

My latest effort to draft a provision concerning governmental intrusion provides:

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

Simply deleting "governmental" would seem to yield a strong statement of the right but without specifying as against whom it operates.

THE RIGHT OF PRIVACY AS A MATTER OF STATE CONSTITUTIONAL LAW

Presentation to the

Constitution Revision Commission

August 25, 1977

Gainesville, Florida

Mr. Chairperson, members of the Constitution Revision Commission, and members of the public. Thank you very much for the invitation to appear before you today. I'm Jerry Cope, a third-year law student at the Florida State University College of Law, where I serve as Editor-in-Chief of the Law Review. During the past several months I've been preparing a paper for publication in the law review on the question of whether there ought to be a right of privacy written into a state constitution. It was on that basis that I was asked to appear today.

At your opening session, Chief Justice Overton stated,

> [W]ho, ten years ago, really understood that personal and financial data on a substantial part of our population could be collected by government or business and held for easy distribution by computer operated information systems? There is a public concern about how personal information concerning an individual citizen is used, whether it be collected by government or by business. The subject of individual privacy and privacy law is in a developing stage . . . . [M]any appellate courts

in this nation now have substantial right of privacy issues before them for consideration. It is a new problem that should be addressed. 1/

I think that poses the issue very well. As Senator Edward Long has said, in talking about the United States Congress, "while technology races, legislation crawls." 2/

It may come as a surprise to you--as it did to me-- that ten states actually mention privacy in their state constitutions. Eight of those ten states have added privacy into their state constitutions since 1968.

In the next few minutes I would like to deal with a few major points about privacy and then take a look at some of the privacy provisions of state constitutions. Then I would like to respond to questions.

The first point I would make is that historically we have taken a lot of steps to protect privacy in this country, even though we haven't always talked about a right of privacy. "Right of privacy" isn't used in the Bill of Rights to the United States Constitution. Nonetheless, given the technology of the 1780's and the 1790's, the Bill of Rights was perfectly adequate to protect privacy. As one writer has put it,

> The technological realities of eighteenth and early nineteenth century America limited communication to direct speech or letter. Eyes and ears were the only instruments for physical surviellance; penetration of the mind was possible only by torture or compelled testimony; and there was little extensive

record keeping about individuals. Given this setting, American Constitutional, statutory, and common law concentrated on establishing shields of privacy to protect individual and organizational autonomy, insure personal and family privacy in the home, and safeguard confidentiality in the basic modes of communication. 3/

As technology changed, the law changed also. By the late 19th century, the telephone, the microphone, and the kodak camera were all invented. 4/ In the 1870's, Justice Thomas Cooley created the phrase, "the right to be let alone." 5/ And in 1890, in a now famous law review article, Samuel Warren and Louis Brandeis--later to be Justice of the United States Supreme Court--coined the term "the right to privacy." 6/

Oddly enough, Warren and Brandeis wrote their article out of irritation at the newspapers of the day. At a time when the upper echelons of Boston society were expected to keep their names out of the newspaper, the Samuel Warren family was being written about with some regularity in the society columns. They complained that:

> The press is overstepping in every direction the obvious bounds of propriety and decency. Gossip is no longer the resource of the idle and the vicious, but has become a trade, which is pursued with industry as well as effrontery. 7/

Brandeis and Warren recommended that the courts allow persons to sue for "invasion of privacy." While it hasn't

proved to be much help in saving persons from the social columns, most courts in the country now allow a person to sue for invasion of privacy in certain limited circumstances, such as when an advertiser uses your name or endorsement without your permission. 8/

In 1965, protection was extended to privacy in another way. The United States Supreme Court in Griswold v. Connecticut 9/ invalidated a Connecticut law forbidding the distribution of information about contraceptives. The court held that zones of privacy protect one's decisions about marriage and procreation.

Finally, in the 1960's and 1970's there has been increasing concern about threats to our privacy from the advance of technology and the growing interdependence of our society. Legislation has been passed in some areas, regulating wiretapping and confidentiality of government records.

While we have been concerned about privacy over the course of our nation's history, the second major point I would make is that we do not have a general constitutional right of privacy as a matter of federal or state law. What we have are certain specific privacy interests in certain very specifically defined areas. The United States Supreme Court has stated:

> The protection of a person's general right to privacy--his right to be let alone by other people--is, like the protection of his property and of his very life, left largely to the law of the individual States. 10/

Thus, the question is squarely before the states--and hence this Constitution Revision Commission--to decide exactly what protection, if any, should be conferred on the right of privacy for the people.

I would like to call your attention now the the papers that have been placed before you. On these pages you have the privacy language of the 10 states whose constitutions contain a privacy provision. For ease of discussion, I have organized these into three groups.

In the first group are states who have given privacy the status of a separate constitutional right. Alaska and Montana actually have a separate section saying that, in essence, the right of privacy is recognized and shall not be infringed. California has included privacy in its statement of inalienable rights, along with rights of life, liberty, property and the pursuit of happiness.

These three constitutions have what I would call a "free-standing" right of privacy. Privacy is clearly and separately identified as an independent right with the same stature or dignity afforded the other major rights in the constitution.

In the next group are states having an "intermediate" privacy right. These include Florida, Hawaii, Illinois, Louisiana, and South Carolina. In all of these states the privacy protection has been included as part of the prohibition against unreasonable search and seizure. Florida's provision is the narrowest of the group. It protects

against the unreasonable interception of private

communications by any means. . . . 11/

Safeguarding against wiretapping is plainly one of the major concerns of the five states in this group.

Some states, like Hawaii, took a broader view. The Hawaii constitution drafting committee stated

> [I]nclusion of the term "invasions of privacy" will effectively protect the individual's wishes for privacy as a legitimate social interest. The proposed amendment is intended to include protection against indiscriminate wiretapping as well as undue government inquiry into and regulation of those areas of a person's life which are defined as necessary to insure "man's individuality and human dignity." 12/

However, the placement of the privacy right in the section on unreasonable search and seizure has tended to limit the stature of the privacy protection in Hawaii. Thus, the Hawaii Supreme Court has held:

> We do not find in that provision any intent to elevate the right of privacy to the equivalent of a first amendment right. 13/

The final group consists of Washington and Arizona. Those states have identically worded provisions stating that:

> No person shall be disturbed in his private affairs, nor his home invaded, without authority of law. 14/

Washington adopted its provision in 1889 and Arizona its provision

in 1910. These are the least relevant for our purposes because in practice they have served as the functional equivalent of the prohibition on unreasonable searches and seizures. Despite the unusual language, the Washington and Arizona sections have not served as the launching point for a generalized privacy right.

If you decide to consider establishing a privacy right in the constitution, there are a number of issues which need to be examined. I only have time to mention them in passing.

1. A definition of privacy. There is considerable debate over what a right of privacy should consist of. The states do not seem to have undertaken an effort to develop a comprehensive definition of privacy. Instead, as with other fundamental constitutional rights, the precise boundaries have been left for case-by-case adjudication.

2. Conflict with other constitutional rights. There is a tension--or outright conflict--between the right to privacy and the right to know. The question is, where do we strike the balance? Please note that the Montana Constitution expressly addresses this point by establishing a right to know, a right to privacy, and talks about what happens when the two come into conflict.

3. Whether self-executing or not. You would need to decide whether the privacy right should be self-executing or whether it should be implemented by the legislature. The privacy provision of the ten states are all self-executing--even that of Alaska, despite the fact that the Alaska section calls for implementation by the legislature.

4. Standard of review. While most of the state constitutions do not expressly establish a standard of review for the privacy right, the Montana Constitution incorporates the "compelling state interest" standard. For a strong privacy right, the standard of review should be equivalent to the standard used for other important personal rights, like freedom of speech.

I would conclude with the following analysis and recommendations.

It would seem to me that the function of a declaration of rights within a constitution is to describe the relationship of the individual to his or her government and to other members of the society. John Stuart Mill said:

> [T]he practical question, where to place the limit--how to make the fitting adjustment between individual independence and social control--is a subject on which nearly everything remains to be done. . . . No two ages, and scarcely any two countries, have decided it alike; and the decision of one age and country is wonder to another. 15/

Mill proposed "one very simple principle":

> That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the libery of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community,

against his will, is to prevent harm to others. . . . Over himself, over his own body and mind, the individual is sovereign. 16/

As the modern writer H. L. A. Hart has stated,

> it is a question of justification . . . . [W]e are committed at least to the general critical principle that the use of legal coercion by any society calls for justification as something prima facie objectionable to be tolerated only for the sake of some countervailing good. 17/

It seems to me that we use the term "right of privacy" as a sort of shorthand for that zone of autonomy which we believe every individual should have. I would recommend that there be a free-standing right of privacy as a separate section in the Florida Constitution. I would suggest something on the lines of the Montana provision, slightly modified. The proposed text is reproduced on the handout. It reads:

> The right of the people to privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

I would like to close with a quotation from Justice Louis Brandeis, the person who coined the term "right to privacy." Writing a dissent in a 1928 wiretap case, Brandeis said:

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness.

They recognized the significance of man's spiritual nature, of his feeling and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone, the most comprehensive of rights and the right most valued by civilized man. 18/

PUBLIC TESTIMONY
BEFORE THE
FLORIDA CONSTITUTION REVISION COMMISSION
SUMMARIES OF POINTS RAISED AT HEARINGS
February 21, 22, and 23, 1978

Prepared By

The Center for Governmental Responsibility

could be significant in close cases. It was his prediction that this change in the constitution would have the unfortunate effect of promoting a greater reliance on use of informations.

No disapproval was expressed by any speaker of the change made in §15(a).

SECTION 20: Natural resources and scenic beauty. (Proposals 34 and 100)

There was concern expressed over the choice of language in the revised §20. Several persons pointed out that the last phrase in the last sentence, "on the same terms and conditions," was "ungrammatical" and did not make any sense. Better language was suggested by one speaker: "All public beaches and seashore recreation areas shall be open to the public without differentiation as to the terms and conditions of use."

SECTION 23: Right of privacy. (Proposal 132)

Proposal 132 received only negative criticism. It was argued that the proposal's language was too broad and might forbid, among other things, legitimate credit checks. To cure such problems, it was proposed that the word "unreasonable" be inserted before "governmental intrusion" and before "intrusion."

The point was made that the "right of privacy" language needs to be considered in light of its broad legal implications, and that it is already the subject of a substantial body of law. The language "except as otherwise provided in this Constitution" at the end of the first paragraph, it was said, is extraneous and adds nothing to what would be done in the normal course of constitutional interpretation. What the language does do,

however, is prevent the judiciary from finding inherent limitations in the privacy right. To the extent that it does so, it undermines the state's police power.

Another concern raised was whether §§23(a) and 23(b) are contradictory. It was asserted that the prohibition on invasions into private lives is in itself an intrusion into one's private life.

SECTION 24: Public records. (Proposal 138)

Several concerns were expressed with regard to the new §24. It was questioned whether, for instance, business tax records and policemen's addresses ought to be protected from public inspection. It was also argued that the relationship between government attorneys and government clients deserves special consideration in light of a court ruling that the present Sunshine and Public Documents law applied to that relationship. The issue raised is whether the language of the provision allows the legislature the flexibility to protect these privacy interests.

Several persons took the position that enactment of §24 as part of the constitution is inappropriate. University of Florida law professor, Joe Little, observed that, while the proposal essentially constitutionalizes existing statutory law, it may not be sufficiently flexible to allow the legislature to make desirable exceptions to the basic "open documents" policy. He argued that the "overriding governmental purposes" wording may be too strong a limitation and might be changed to read simply "proper purposes." In the alternative, Little suggested that a policy statement to the effect that public records be open in general would probably be sufficient.

SECTION 25: Open meetings. (Proposal 137)

No comments were aimed directly at §25, but it was clear that many of the criticisms of §24, whose language in part tracks that of §25 and whose thrust is similar, were viewed as pertinent to §25. See supra discussion of §24.

MISCELLANEOUS

It was suggested by several speakers that the death penalty should be abolished. In a similar vein, it was suggested that abortion be prohibited.

REPORT AND RECOMMENDATIONS OF

ATTORNEY GENERAL

ROBERT L. SHEVIN



to the

1978 CONSTITUTION REVISION COMMISSION

June, 1977
Tallahassee, Florida

state regulation under Art. I, §8, includes an absolute prohibition of the possession of certain firearms.

The scope of permissible state regulation was explored in Rinzler v. Carson, 262 So.2d 661 (Fla. 1972), when the Court upheld the constitutionality of a statute that prohibited certain weapons, including machine guns. In State v. Astore, 258 So.2d 33 (2 D.C.A. Fla. 1972), a court upheld the same statute from a vagueness attack.

(2) This provision is similar to Art. I, §20, Const. 1885.

(3) Ch. 790, F.S., prohibits certain weapons; §493.21, F.S., provides for licenses.

(4) Art. X, §2 (state militia).

(5) None.

ARTICLE I, §9 - DUE PROCESS

(1) This section provides that no person shall be deprived of life, liberty or property without due process of law. It also prohibits the state from compelling a defendant to be a witness against himself or from being put in jeopardy of conviction for the same crime twice.

Due process is one of the most amorphous terms used in the Constitution. Yet, no precise definition is possible because of the wide range of interest that is protected by the concept of due process. Florida courts have implicitly interpreted due process under this section as co-extensive with

the due process clause of the Fourteenth Amendment, U.S. Constitution. It must be emphasized that procedural due process is an extremely flexible doctrine that requires a balancing of the claimant's interest against the social interest in the action. In Phillips v. Guin & Hunt, Inc., 344 So.2d 568 (Fla. 1977), the Court held that a hearing is required before taking property or promptly after it is taken pursuant to a distress warrant.

The concept of due process also includes substantive due process. The distinction is that the latter concept is not concerned with the mechanism by which the state affects a property interest but questions the right of the state to legislate in the area at all. This concept is identical to the requirement that the legislation in question serves a valid function under the state's police power. Farrugia v. Frederick, 344 So.2d 921 (1 D.C.A. Fla. 1977).

The double jeopardy provision under the section also incorporates the federal doctrine of collateral estoppel. The state cannot retry someone for a different crime if a prior acquittal necessarily determined an essential element in the defendant's favor that must be proved in order to convict the defendant in the second trial. Eagle v. State, 249 So.2d 460 (1 D.C.A. Fla. 1971). There is an important limitation on the state because the doctrine of double jeopardy does not bar all second prosecutions arising out of the same set of facts or

COMMITTEE ON GOVERNMENTAL OPERATIONS

BILL #: CS/HJR 387 OTHER COMMITTEE REFERENCE: None

SPONSOR(S): Reps. Mills, Kiser & Moffitt SIMILAR/COMPANION BILLS:

RELATING TO: Constitutional Amendment relating to a right of privacy

February 7, 1980

I. SUMMARY

A. Present Situation

Presently, in Florida, there is no general state constitutional right of privacy.

B. Probable Effect of Proposed Changes

Passage of this resolution would submit for referendum, a constitutional amendment creating § 23, Art. I, State Constitution.

Section 23, Article I, State Constitution, would guarantee every natural person freedom from governmental intrusion into his private life except as otherwise provided in the Constitution. This section does not limit the public's right of access to public records and meetings as provided by law.

II. PRIVATE SECTOR/STATE/LOCAL FISCAL IMPACT

Not determinable at this time.

III. COMMENTS

According to the United States Supreme Court, "the protection of a person's general right to privacy--his right to be let alone by other people--is, like the protection of his property and his very life, left largely up to the law of the individual states." Katz v. U.S., 389 U.S. 347, 350-351 (1967). However, the Florida Supreme Court, in Laird v. State, 342 So. 2d 962 (Fla. 1977), held that it was clear that Florida has no general state constitutional right of privacy.

Additionally, the Florida Supreme Court overturned a First District Court of Appeal decision recognizing constitutional "Privacy of Personhood" and concluded that "under the federal constitution a person's disclosural privacy is not as broad as was found by the district court and that under our state constitution no broader right is granted." Shevin v. Harless, Schaffer, Reid and Associates, Inc., Case Nos. 54,405 and 54,406, Filed January 17, 1980.

At least ten (10) states have adopted express language in their constitutions to protect privacy, including Florida whose 1968 constitutional provision also protects "private communications" from unreasonable searches and seizures. Three (3) of these states have adopted a free-standing constitutional state right-of-privacy similar but not identical to the one being examined.

A similar amendment was agreed upon by the Constitution Revision Commission and included in the 1978 constitutional revision "package" for referendum.

IV. AMENDMENTS

None

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PREPARED BY: Tina M. Williams

STAFF DIRECTOR:

PRIVACY

The purpose of this paper is to provide an informal overview of the right to privacy as a constitutional guarantee. It will attempt to identify the parameters of "the right to be let alone"[1] as it has been defined in the Federal Court System. This paper will also briefly highlight recent significant state-level developments on the right to privacy.

The right to privacy is (at the very least) an expansive topic. Theoretically, it has been predicated upon the constitutional guarantees of life, liberty and the pursuit of happiness,[2] the Fourth Amendment,[3] and natural law.[4] The following study does not attempt to deal with the multiple roots nor the innumerable implications of the right to privacy. It should provide, instead, a general background of the constitutional boundaries of privacy.

Federal Constitutional Right of Privacy

The constitutional "right to be let alone" has long been an area of concern in both federal and state courts. Evolution of the modern concept of privacy began in 1886, when the United States Supreme Court noted for the first time that the Constitution, through the Fourth- and Fifth Amendments, protects "the privacies of life."[5] From this foundation the constitutional right to privacy has slowly expanded through a multitude of federal and state court decisions.

The most celebrated federal cases relating to the constitutional right of privacy are encompassed in what is often referred to as the "Griswold Constellation."[6] Decisions in the following cases circumscribe the scope of constitutional privacy in the following areas: (1) decisional autonomy: Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973); Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society of Sisters, 268 U.S. 510 (1975); Meyer v. Nebraska, 262 U.S. 390 (1923); Allgeyer v. Louisiana, 165 U.S. 578 (1897); Paul v. Davis, 424 U.S. 693 (1976). (2) Governmental Surveillance: Katz v. United States, 389 U.S. 347 (1967). (3) Governmental Collection of Information: Whalen v. Roe, 429 U.S. 589, 599 (1977); Nixon v. Administrator of General Services, 433 U.S. 425 (1977); Stanley v. Georgia, 394 U.S. 557 (1969); California Bankers Ass'n v. Schultz, 416 U.S. 21, 78-80 (1974). In the words of Florida Supreme Court Justice J. Alderman, "[t]hese protected interests can be said to comprise the federal constitutional right of privacy."[7]

The exact dimensions of the federal right of privacy are hard to pinpoint and deficiencies have often been alleged. Justice J. Alderman, in discussing the federal right to privacy, stated that "this right of privacy cannot be characterized as a general right because its application has been strictly limited."[8] On the other hand, other scholars have interpreted the penumbral effect of privacy decisions in a much broader way. An article from Am. Jur. states "Of the courts that have aligned themselves one way or the other on the question, an overwhelming majority has affirmed the existence of the right of privacy as such. In other words, the great preponderance of authority supports the view that independently of the common rights of property, contract, reputation, and physical integrity, there is a legal right called the right of privacy, the invasion of which is a tort."[9]

State Constitutional Right of Privacy

Historically, the parameters of privacy protection provided under state constitutions were based upon and virtually identical to those afforded by the Federal Constitution (i.e., decisional autonomy in areas of family, marriage, contraception, abortion, and protection from unreasonable searches and seizures and surveillance). State level responsibility for development of a right to privacy was and is a slowly evolving concept. The United States Supreme Court has on numerous occasions delegated this responsibility. In Katz v. U.S., supra, the Court held that "The protection of a person's general right to privacy--his right to be left alone--is left to the law of the individual states."[10] Again in Prudential Ins. Co. v. Cheek "The Federal Constitution does not confer any right of privacy that is beyond the power of the states to restrict."[11] In accepting this responsibility, many states have adopted express language in their constitutions to address specific areas of privacy. In 1972 three states adopted freestanding general rights of privacy to their constitutions.[12] These three states (Alaska, Montana and California) are distinguished as having expanded prospective constitutional privacy protection beyond its federally defined boundaries.

The freestanding general rights to privacy adopted by Alaska, Montana and California, along with recent privacy legislation in many states, appear to be an attempt to remedy ever-increasing concern over governmental intrusion into a person's private affairs. One of the principle arguments used in support of the 1978 Florida Constitution Revision's right to privacy proposal[13] was that "the increased complexity and intensity of

modern civilization have rendered man more sensitive to the technological improvements in the means of communication and have more and more subjected the intimacies of his private life by those who pander to commercialism and to prurient and idle curiosity. A legally enforceable right of privacy is deemed to be a proper protection against this type of encroachment upon the personality of the individual."[14] Of the states with freestanding constitutional rights to privacy, the effect appears to have been more preventative than destructive in terms of developing case law. That is to say that few state court decisions interpreting this right have ventured beyond the federally protected right.

The "right to privacy" as provided in the California, Alaska and Montana constitutions are difficult to compare. Inherent differences exist in terminology and apparently intent. In all three cases it appears that protection under the amendment will be decided on a case-by-case basis. Alaska appears to be the most "progressive" state in regard to court decisions on the right of privacy. Several cases[15] have greatly broadened the "umbrella" of privacy protection under the Alaska Constitution. On the other hand, the California Supreme Court has interpreted their constitutional right as "a more focused privacy concern"[16] dismissing, as inapplicable, Alaska's broader interpretation. Each state has gone in its own direction in determining exactly what falls within the penumbral rights afforded privacy protection.

The history of court decisions, where state constitutions place increased importance on the right to privacy, shows us one thing--"It is clear that this right is never absolute."[17] As with other fundamental rights, "there will always be areas where countervailing state interests may override an individual's privacy right."[18]

CONCLUSION

In summary, the constitutional right of privacy has been a topic of debate since the late 1900's. Over the last century, especially the last two decades, this right has gradually expanded. On a federal level, it has generally been defined in terms of decisional autonomy regarding fundamental matters,[19] informational autonomy,[20] and freedom from governmental surveillance.[21] The United States Supreme Court has been careful in defining an overall right to privacy, leaving that responsibility to the individual states.[22]

Many states have enacted privacy legislation and have adopted language to address specific areas of privacy. Several states have gone a step further to incorporate a freestanding rights of privacy into their constitution.[24] Court decisions resulting from these freestanding rights to privacy are varied although most, to date, are in keeping with privacy protection provided under the Federal Constitution.

FOOTNOTES

1. Melvin v. Reid, 112 Cal. App. 285, 297 P. 91; Cason v. Baskin, 155 Fla. 198, 20 So.2d 243, 168 ALR 430, later app. 159 Fla. 31, 30 So. 2d 635; Pavesich v. New England Mut. L. Ins. Co. 122 Ga. 190, 50 SE 68. Annotation: 138 ALR 22, 30, § 168 ALR 446, 449, 14 ALR2d 750, 755, § 2. From 62 Am. Jur. 2d, "Privacy" § 4.

2. Mapp v. Ohio, 367 US 643, 6 L. Ed. 2d 1081, 81 S. Ct. 1684; Frank v. Maryland, 359 US 360, 3 L. Ed. 2d 877, 79 S. Ct. 804, reh. den. 360 US 914, 3 L. Ed. 2d 1263, 79 S. Ct. 1292; McDonald v. United States, 335 US 451, 93 L. Ed. 153, 69 S. Ct. 191. Annotation: 14 ALR2d 750, 755, § 2. From 62 Am. Jur. 2d, "Privacy" § 4.

3. Pavesich v. New England Mut. L. Ins. Co. 122 Ga. 190, 50 SE 68; Voelker v. Tyndall, 226 Ind. 43, 75 NE2d 548. Annotation: 138 ALR 22, 32 s. 168 ALR 446, 449, 14 ALR2d 750, 755, § 2. From 62 Am. Jur. 2d, "Privacy" § 4.

4. "The right to be let alone" was coined by Thomas Cooley in his Treatise on the Law of Torts in 1880. The phrase was also used in Warren and Brandeis' 1890 law review article and in a number of court decisions since. For this reason it was selected for the Constitution Revision Commission's proposal in lieu of a more contemporary or grammatically correct phrase. From Gerald B. Cope, "To be Let Alone," 6 Fla. St. L. Rev. 731, 732 (Summer 1978).

5. Boyd v. United States, 116 U.S. 616, 630 (1886).

6. "Griswold Constellation." This phrase is taken from Gerald B. Cope's article, "To be Let Alone," 6 Fla. St. L. Rev. 780 (Summer 1978).

7. Shevin v. Harless, Schaeffer, Reid and Associations, Inc., Case Nos. 54,405 and 54,406, Filed January 17, 1980, page 5.

8. Id.

9. Santiesteban v. Goodyear Tire & Rubber Co. (CA5 Fla.) 306 F.2d 9 (applying Florida law); Pavesich v. New England Mut. L. Ins. Co., 122 Ga. 190, 50 SE 68; Biederman's of Springfield, Inc. v. Wright (Mo.) 322 SW2d 892; Hull v. Curtis Publishing Co. 182 Pa. Super 86, 125 A.2d 644. Annotation: 138 ALR 22, 25, s. 168 ALR 446, 448, 14 ALR2d 150, 755, § 2. 62 Am. Jur. 2d, "Privacy," § 3.

10. Katz v. United States, 389 U.S. 347, 350-51 (1967).

11. Prudential Ins. Co. v. Cheek, 259 U.S. 530, 66 L. Ed. 1044, 42 S. Ct. 516, 27 ALR 27. From 62 Am.Jur. 2d, "Privacy," § 4.

12. Alas. Const. art. I, § 22. Section 22. Right of Privacy.--The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section. Adopted by amendment, 1972. Cal. Const. art. I, § 1: Section 1. Inalienable Rights.--All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. Adopted by amendment, 1972. Mont. Const. art. II, § 10: Section 10. Right of privacy.--The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. Constitution adopted, 1972. From Gerald B. Cope, "To Be Let Alone," 6 Fla. St. L. Rev. Appendix VIII.

13. This statement is made based upon my interpretation of notes from the Ethics, Privacy and Election Committee meetings.

14. Oscar C. Sattinger, J. D. Am. Jur. 2d, "Privacy," § 5.

15. For example, in Ravin v. State, 537 P. 2d 494 (Alas. 1975), the Alaskan Sup. Ct. declared a statute outlawing the possession and use of marijuana unconstitutional because it impermissibly conflicted with the constitutional right of privacy.

16. White v. Davis, 13 Cal. 3d. 757; 533 P. 2d 222; 120 Cal. Rptr. 94 (1975). From "Privacy: To Be Or Not To Be," 10 Pacific Law Journal 779 (1979).

17. Roe v. Wade, 410 U.S. at 154 from "Privacy: To Be Or Not To Be," 10 Pacific L. J. 780 (1979).

18. Id.

19. Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973); Loving v. Virginia, 338 U.S. 1 (1967); Paul v. Davis, 424 U.S. 693 (1976).

20. Whalen v. Roe, 429 U.S. 589, 51 L. Ed. 2d 64, 73, fr. 24 (1977); Stanley v. Georgia, 394 U.S. 21, 78-80 (1974).

21. Katz v. United States, 389 U.S. 347 (1967).

22. According to the United States Supreme Court, "the protection of a person's general right to privacy--his right to be let alone by other people--is, like the protection of his property and his very life, left largely up to the law of the individual states." Katz v. U.S., 389 U.S. 347, 350-351 (1967).

23. (Alaska, Montana and California) Cope, "To Be Let Alone," Fla. St. L. Rev. Appendix VIII.

DATE: May 9, 1978 -- Revised

COMMITTEE ACTION: 1. FAV. w/1 amd. 5-8-78

ANALYST	STAFF DIRECTOR
1. Walker	Carnes
2.	
3.	

2. _____

3. _____

SENATE

STAFF ANALYSIS AND ECONOMIC STATEMENT

HEALTH & REHABILITATIVE SERVICES COMMITTEE

AMEND. OR CS ATTACHED _____

BILL NO. AND SPONSOR: SM 737 Senator McClain and Others

SUBJECT: Right to life

REFERENCES: Health and Rehabilitative Services
Rules and Calendar

I. SUMMARY:

The bill requests the United States Congress to call a convention to amend Article V of the Constitution of the United States to protect the right to life of unborn persons.

II. PURPOSE:

A. Present Situation:

The Constitution of the United States does not define the word "person". Recent decisions by the United States Supreme Court allow abortions and establish guidelines for state intervention.

B. Effect on Present Situation:

The amendment proposed in this bill would apply the "person" in Article V, as well as in the Fifth and Fourteenth Amendments, to all human beings including unborn children. It would allow abortions only to prevent the death of the mother and in cases of rape.

III. ECONOMIC CONSIDERATIONS:

A. Economic Impact on the Public: YES X NO ___

Prohibiting abortions as this bill does would undoubtedly have an economic impact on the public through reduced medical costs for legal abortions. However, the cost of increased illegal abortions and the cost attendant to additional children who might now never be born are impossible to estimate.

B. Economic Impact on State or Local Government: YES X NO ___

Since Congress recently ended money for Medicaid abortions, the state does not fund abortions; however, children born to mothers receiving economic assistance would increase the payments to those mothers.

IV. COMMENTS:

None

AGENDA

APRIL 16, 1979

SENATE COMMITTEE MEETING

COMMITTEE: RULES AND CALENDAR

MEMBERS: DEMPSEY J. BARRON, CHAIRMAN
HARRY A. JOHNSTON, II, VICE CHAIRMAN

W. D. CHILDERS	VERNON C. HOLLOWAY	CURTIS PETERSON	ALAN TRASK
EDGAR M. DUNN, JR.	KENNETH H. MACKAY, JR.	JAMES A. SCOTT	JOHN T. WARE
JACK D. GORDON	DAVID H. MCCLAIN	PAT THOMAS	
WARREN S. HENDERSON	KENNETH M. MYERS	TOM TOBIASSEN	

TIME AND PLACE: 10:30 -12:00 NOON, COMMITTEE ROOM A, SENATE OFFICE BLDG.

TAB	Bill No. & Introducer	Relating to:	Bill History	Committee Action
1	SM 118 SENATOR MCCLAIN	RIGHT TO LIFE	NO OTHER REFERENCE	Favorable

Florida House of Representatives - 1979

HM 388

By Representative Barrett and others

A memorial to the Congress of the United States making application to the Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to more effectually protect the lives of unborn human offspring.

WHEREAS, on account of the decisions of the Supreme Court of the United States in Roe v. Wade, 410 U.S. 113, and Doe v. Bolton, 410 U.S. 179, the laws of all fifty states in effect on January 22, 1973, aimed at protecting unborn human offspring, became unconstitutional, and

WHEREAS, many of the laws passed by the states since January 22, 1973, aimed at protecting the unborn have been declared unconstitutional by federal courts, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Legislature of the State of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which would more effectually protect the lives of unborn human offspring.

BE IT FURTHER RESOLVED that the purview of any convention called by the Congress pursuant to this resolution be strictly limited to the consideration of an amendment of the nature as herein proposed, and that this application and request be deemed null and void, rescinded, and of no effect

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if such convention not be limited to such specific and exclusive purpose.

BE IT FURTHER RESOLVED that this application by the Legislature of the State of Florida constitutes a continuing application pursuant to Article V of the Constitution of the United States, until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida Congressional delegation, and to the presiding officers of each house of the several state legislatures.

****

HOUSE SUMMARY

Makes application to Congress to call a convention for sole purpose of proposing U.S. constitutional amendment to protect the lives of unborn human offspring.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

By Senators McClain, Trask, Spicola, Fechtel, Poole, Tobiassen, Scott, Maxwell and Henderson

Senate Memorial No. ____

A memorial to the Congress of the United States making application to the Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to more effectually protect the lives of unborn human offspring.

WHEREAS, on account of the decisions of the Supreme Court of the United States in Roe v. Wade, 410 U.S. 113, and Doe v. Bolton, 410 U.S. 179, the laws of all fifty states in effect on January 22, 1973, aimed at protecting unborn human offspring, became unconstitutional, and

WHEREAS, many of the laws passed by the states since January 22, 1973, aimed at protecting the unborn have been declared unconstitutional by federal courts, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida:

That the Legislature of the State of Florida does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States which would more effectually protect the lives of unborn human offspring.

BE IT FURTHER RESOLVED that the purview of any convention called by the Congress pursuant to this resolution be strictly limited to the consideration of an amendment of the nature as herein proposed, and that this application and request be deemed null and void, rescinded, and of no effect

This public document promulgated at .1 of $5.94 per printed page for 1,000 copies to inform the legislature and the public of proposed legislation.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

if such convention not be limited to such specific and exclusive purpose.

BE IT FURTHER RESOLVED that this application by the Legislature of the State of Florida constitutes a continuing application pursuant to Article V of the Constitution of the United States, until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida Congressional delegation, and to the presiding officers of each house of the several state legislatures.

****

SENATE SUMMARY

Makes application to Congress to call a convention for sole purpose of proposing U.S. constitutional amendment to protect the lives of unborn human offspring.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

Journal

of the

House of Representatives

First Regular Session

of the

Sixth Legislature

[under the Constitution as Revised in 1968]

APRIL 3 through JUNE 6, 1979

[Including a record of transmittal of Acts subsequent to sine die adjournment]

By the Committee on Community Affairs—

HB 382—A bill to be entitled An act relating to salaries of county officers; increasing the salaries for all county officers listed in chapter 145, Florida Statutes, by the same amount as the average increase for state employees; limiting any annual increase to 5 percent; providing for the establishment of lower salaries; providing for public hearing and advertising of such hearing; providing for annual certification of salaries by Department of Community Affairs; directing the Division of Statutory Revision to make necessary changes in Florida Statutes; providing an effective date.

—was read the first time by title and placed on the Calendar without reference.

By Representative Eckhart—

HB 383—A bill to be entitled An act relating to landlord and tenant; creating part IV of chapter 83, Florida Statutes, consisting of ss. 83.800-83.822, Florida Statutes, entitled the "Florida Dormitory Space Landlord and Tenant Act," relating to the rental of dormitory space in or by the State University System; providing definitions; providing that rental agreements under the act are made in good faith; providing for unconscionable rental agreements; providing for the duration of tenancies; describing prohibited provisions in rental agreements; providing attorney's fees; providing for disclosure; setting forth the landlord's obligation to maintain premises and the tenant's obligation to maintain dormitory space; providing for the landlord's right of access to dormitory space; providing remedies; providing for the disbursement of funds held by the court under certain circumstances; providing for the power of the court to award possession of the premises and to enter money judgments; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary.

By Representatives Robinson, Hagler, Boles, Kutun, Spaet, and Liberti—

HB 384—A bill to be entitled An act relating to sales and use tax; amending s. 212.051, Florida Statutes; exempting from the sales and use tax expenditures for any device, systems, equipment, or machinery used for the control or abatement of pollutants from stationary sources; requiring that such expenditures be certified by a qualified professional engineer in order to qualify for the exemption; providing an effective date.

—was read the first time by title and referred to the Committees on Tourism & Economic Development, Finance & Taxation, and Appropriations.

By Representatives Crawford and Eckhart—

HB 385—A bill to be entitled An act relating to the tax on sales, use and other transactions; amending s. 212.08(5)(a), Florida Statutes, 1978 Supplement, to exempt feed for racing greyhounds from said tax; providing an effective date.

—was read the first time by title and referred to the Committees on Regulated Industries & Licensing, Finance & Taxation, and Appropriations.

By Representatives McPherson and Spaet—

HB 386—A bill to be entitled An act relating to the tree, Melaleuca quinquenervia, popularly known as Cajeput or Punk Tree; prohibiting the sale or transportation over public highways of such species for the purpose of replanting; providing a penalty; providing an effective date.

—was read the first time by title and referred to the Committee on Natural Resources.

By Representative Easley—

HB 387—A bill to be entitled An act relating to motor vehicle noise abatement; amending s. 316.293(3), Florida Statutes, 1978 Supplement, authorizing any law enforcement officer to arrest a driver of a motor vehicle who is in violation of the motor vehicle noise abatement law under certain circumstances; providing an effective date.

—was read the first time by title and referred to the Committee on Criminal Justice.

By Representatives Barrett, J. W. Lewis, Kelly, Boles, Mitchell, Brantley, Shackelford, Allen, M. E. Hawkins, Ewing, Danson, Jennings, Mica, Kiser, Burrall, Nuckolls, Dunbar, Bush, J. H. Smith, Melby, Myers, Nergard, Kershaw, and Hazouri—

HM 388—A memorial to the Congress of the United States making application to the Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to more effectually protect the lives of unborn human offspring.

—was read the first time by title and referred to the Committee on Health & Rehabilitative Services.

By Representative Danson—

HB 389—A bill to be entitled An act relating to consumer protection; creating s. 501.145, Florida Statutes; requiring that a notice be printed on the face of any written solicitation which closely resembles the format of a bill, invoice, or statement of account; providing a penalty; providing an effective date.

—was read the first time by title and referred to the Committee on Commerce.

By Representative Danson—

HB 390—A bill to be entitled An act relating to saltwater commercial fishing; amending s. 370.06(2), Florida Statutes, 1978 Supplement, and adding a new subsection (3) to said section; providing for a nonresident and alien personal license fee of $100; providing for a resident personal license fee of $75; providing an exemption from the licensing provisions; prohibiting purchase of seafood products from unlicensed persons; requiring that license holders have adequate catch preservation methods; requiring the Department of Natural Resources to establish a commercial fisheries information system in conjunction with the license program; establishing a Marine Fisheries Management Revolving Trust Fund; providing for allocation of trust fund moneys; providing an effective date.

—was read the first time by title and referred to the Committees on Natural Resources, Finance & Taxation, and Appropriations.

By Representative Kelly—

HB 391—A bill to be entitled An act relating to state-maintained roads; amending s. 339.301(1), Florida Statutes; authorizing the use of portions of the right-of-way of such roads within the corporate limits of a municipality for certain purposes upon approval by the Department of Transportation; providing an effective date.

—was read the first time by title and referred to the Committee on Transportation.

HB 392—Withdrawn

By Representatives McPherson and Spaet—

HB 393—A bill to be entitled An act relating to disabled persons; amending s. 316.1964(1) and (2), Florida Statutes, removing the requirement that disabled persons must be licensed to operate a motor vehicle to be exempt from parking fees; providing an effective date.

—was read the first time by title and referred to the Committee on Veterans Affairs.

By Representatives Price and Morgan—

HB 394—A bill to be entitled An act relating to forest protection; amending s. 590.02(4)(a), Florida Statutes, authorizing the Department of Agriculture and Consumer Services

Journal

of the

House of Representatives



Second Regular Session
of the
Sixth Legislature
under the Constitution as Revised in 1968

and of the
82nd Regular Session
since Statehood in 1845

APRIL 8 through JUNE 7, 1980

[Including a record of transmittal of Acts subsequent to sine die adjournment]

tion; providing for the hospitalization of persons incompetent to stand trial; providing for the inapplicability of statutes of limitation and former jeopardy to such persons; providing for the hospitalization of persons adjudicated not guilty by reason of insanity; providing for the jurisdiction of the committing court; providing for conditional release of such persons and for the termination of court jurisdiction; amending s. 394.467, Florida Statutes, to conform to the act; transferring ss. 394.905 and 394.906, Florida Statutes, relating to treatment programs of persons found incompetent and the use of chemical weapons in forensic units to part II of chapter 925, Florida Statutes, repealing ss. 394.467(5), 394.901, 394.904, 918.15 and 925.10, Florida Statutes, to abolish conflicting provisions with respect to persons incompetent to stand trial or adjudicated not guilty by reason of insanity; providing an effective date.

—was read the third time by title. On passage, the vote was:

Yeas—97

The Chair	Foster	Kiser	Ready
Allen	Fox	Kutun	Reynolds
Bankhead	Gallagher	Lewis, J. W.	Richmond
Barrett	Gardner	Lewis, T. F.	Robinson
Batchelor	Gersten	Liberti	Rosen
Boles	Girardeau	Lippman	Ryals
Brantley	Grant	Lockward	Sample
Burnsed	Gustafson	Malloy	Shackelford
Burrall	Haben	Mann	Smith, C. R.
Bush	Hagler	Margolis	Smith, L. J.
Campbell	Hall	Martin	Spaet
Carlton	Hattaway	McPherson	Thomas
Carpenter	Hazouri	Melby	Thompson
Conway	Healey	Mica	Tygart
Cox	Hieber	Mills	Upchurch
Crady	Hodges	Mitchell	Ward
Crotty	Hollingsworth	Moffitt	Warner
Danson	Jennings	Myers	Watt
Deratany	Johnson, A. E.	Nergard	Weinstock
Dyer	Johnson, B. L.	Nuckolls	Williams
Easley	Johnson, R. C.	Ogden	Woodruff
Eckhart	Jones, C. F.	O'Malley	Young
Ewing	Jones, D. L.	Patterson	
Flynn	Kershaw	Plummer	
Fontana	Kirkwood	Price	

Nays—None

Votes after roll call:

Yeas—Evans, Morgan, Patchett, Sadowski, Davis, L. R. Hawkins, Meek, M. E. Hawkins, Silver, Hodes, Flinn

So the bill passed, as amended. On motion by Dr. Lehman, the rules were waived and the bill was immediately certified to the Senate.

CS for HJR 387—A joint resolution proposing the creation of Section 23 of Article I of the State Constitution relating to the right of privacy.

Be It Resolved by the Legislature of the State of Florida:

That the creation of Section 23 of Article I of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1980:

ARTICLE I

DECLARATION OF RIGHTS

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

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the substance of the amendment proposed herein shall appear on the ballot as follows:

Proposing the creation of Section 23 of Article I of the State Constitution establishing a constitutional right of privacy.

—was read the third time. On passage, the vote was:

Yeas—98

The Chair	Fox	Kiser	Price
Allen	Gallagher	Kutun	Ready
Bankhead	Gardner	Lehman	Reynolds
Barrett	Gersten	Lewis, J. W.	Richmond
Batchelor	Girardeau	Lewis, T. F.	Robinson
Boles	Gordon	Liberti	Rosen
Burnsed	Grant	Lippman	Ryals
Bush	Gustafson	Lockward	Sample
Campbell	Hall	Malloy	Shackelford
Carlton	Hattaway	Mann	Silver
Carpenter	Hazouri	Margolis	Smith, C. R.
Conway	Healey	Martin	Smith, L. J.
Cox	Hector	McPherson	Spaet
Crady	Hieber	Meek	Thomas
Crotty	Hodges	Melby	Thompson
Danson	Hollingsworth	Mica	Upchurch
Deratany	Jennings	Mills	Ward
Dyer	Johnson, A. E.	Moffitt	Warner
Easley	Johnson, B. L.	Myers	Watt
Eckhart	Johnson, R. C.	Nergard	Weinstock
Ewing	Jones, C. F.	Nuckolls	Williams
Flinn	Jones, D. L.	Ogden	Woodruff
Flynn	Kelly	O'Malley	Young
Fontana	Kershaw	Patterson	
Foster	Kirkwood	Plummer	

Nays—4

Burrall	Haben	Hagler	Tygart

Votes after roll call:

Yeas—Mitchell, Evans, Morgan, Patchett, Sadowski, Davis, L. R. Hawkins, M. E. Hawkins, Hodes

So the joint resolution passed by the required Constitutional three-fifths vote of the membership. On motion by Mr. Mills, the rules were waived and the joint resolution was immediately certified to the Senate.

HB 272—A bill to be entitled An act relating to advanced life support services; amending s. 401.46(2), Florida Statutes, requiring certain emergency medical services systems to employ or contract with a medical director; providing for the responsibilities of such directors; providing an effective date.

—was read the third time by title. On passage, the vote was:

Yeas—106

The Chair	Fox	Kershaw	Plummer
Allen	Gallagher	Kirkwood	Price
Bankhead	Gardner	Kiser	Ready
Barrett	Gersten	Kutun	Reynolds
Batchelor	Girardeau	Lehman	Richmond
Boles	Gordon	Lewis, J. W.	Robinson
Brantley	Grant	Lewis, T. F.	Rosen
Burnsed	Gustafson	Liberti	Ryals
Burrall	Haben	Lippman	Sample
Bush	Hagler	Lockward	Shackelford
Campbell	Hall	Malloy	Silver
Carlton	Hattaway	Mann	Smith, C. R.
Carpenter	Hawkins, L. R.	Margolis	Smith, L. J.
Conway	Hazouri	Martin	Spaet
Cox	Healey	McPherson	Thomas
Crady	Hector	Meek	Thompson
Crotty	Hieber	Melby	Tygart
Danson	Hodes	Mica	Upchurch
Deratany	Hodges	Mills	Ward
Dyer	Hollingsworth	Mitchell	Warner
Easley	Jennings	Moffitt	Watt
Eckhart	Johnson, A. E.	Myers	Weinstock
Ewing	Johnson, B. L.	Nergard	Williams
Flinn	Johnson, R. C.	Nuckolls	Woodruff
Flynn	Jones, C. F.	Ogden	Young
Fontana	Jones, D. L.	O'Malley	
Foster	Kelly	Patterson	

Nays—None

Journal
of the
SENATE
State of Florida

—

ELEVENTH REGULAR SESSION

UNDER THE CONSTITUTION AS REVISED IN 1968

APRIL 3 THROUGH JUNE 6, 1979

tion of title insurers and attorneys from licensing and bonding provisions; creating s. 627.7864, Florida Statutes; requiring title insurance permits for certain employees in offices and branch offices of title insurers and title insurance agents; providing for examination of applicants for permits by the Department of Insurance; providing for the exemption of attorneys and certain others from taking examination; creating s. 627.7865, Florida Statutes; providing for permit and title insurance agent license fees and taxes; creating ss. 627.7866-627.7878, Florida Statutes; providing grounds for refusal, suspension, or revocation of license or permit and procedure therefor; providing penalty, administrative fine, and probation; providing for hearings, witnesses, compelled testimony, and penalty; providing an effective date.

—was read the first time by title and referred to the Committees on Commerce and Ways and Means.

By the Committee on Judiciary-Criminal and Senators Spicola, Poole, Dunn, Carlucci and Steinberg—

SB 110—A bill to be entitled An act relating to involuntary hospitalization; amending s. 394.467(1), (5)(b), (6), Florida Statutes, 1978 Supplement; prescribing criteria for the involuntary hospitalization of a person acquitted of criminal charges by reason of insanity; providing for the continued hospitalization of a person so committed upon a showing that the person continues to meet such criteria; authorizing the conditional release of certain involuntarily hospitalized patients; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Criminal.

By the Committee on Judiciary-Criminal and Senators Spicola, Poole, Dunn, Carlucci and Steinberg—

SB 111—A bill to be entitled An act relating to bail; creating s. 903.125, Florida Statutes; providing entitlement to a hearing on bail for certain persons; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Criminal.

By the Committee on Judiciary-Criminal and Senators Spicola, Poole, Dunn, Carlucci and Steinberg—

SB 112—A bill to be entitled An act relating to classes and definitions of offenses; amending s. 775.08(2), Florida Statutes; providing that offenses set out in ss. 316.061(1), 316.067, 316.072(3), 316.192, 316.193 and 316.1935, Florida Statutes, are classified as misdemeanors; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Criminal.

By Senators Tobiassen, Trask and Fechtel—

SB 113—A bill to be entitled An act relating to the tax on sales, use, and other transactions; amending s. 212.08(5)(b), Florida Statutes, 1978 Supplement; exempting the purchase of agricultural machinery and equipment to be used in certain new businesses from the tax on sales, use, and other transactions; providing a partial exemption from the tax for such purchases to be used in certain expanding facilities or plant units; providing an effective date.

—was read the first time by title and referred to the Committee on Agriculture, Ways and Means Subcommittee D and the Committee on Ways and Means.

By Senators Gorman, Anderson, Fechtel, Holloway, Neal, Peterson, Poole, Scott, Stuart, Tobiassen, Williamson, Winn, Henderson and Trask—

SB 114—A bill to be entitled An act relating to sentencing; creating s. 921.165, Florida Statutes; designating certain offenders as repeat felony offenders and requiring such offenders to be sentenced to and to serve a specified term of imprisonment; amending s. 948.01(1), Florida Statutes; prohibiting a repeat felony offender from being placed on probation prior to serving the minimum term of imprisonment; amending s. 947.16(1), Florida Statutes, 1978 Supplement; prohibiting a repeat felony offender from being paroled prior to serving the minimum term of imprisonment; providing a limitation; providing an effective date.

—was read the first time by title and referred to the Committees on Corrections, Probation and Parole; and Ways and Means.

By Senators Gorman, Trask, Holloway, Fechtel, Winn, Anderson, Neal, Poole and MacKay—

SB 115—A bill to be entitled An act relating to driving while under the influence of alcoholic beverages, model glue, or controlled substances; amending s. 322.261, Florida Statutes; providing that any person accepting the privilege of operating a motor vehicle within the state is deemed to have given his consent to submit to certain chemical tests; requiring certain persons to submit to such tests; authorizing certain voluntary tests in addition to those consented to and required; deleting provisions relating to suspension of the driving privileges of a person refusing to submit to a breath test; authorizing the use of reasonable force to facilitate the testing of a person who resists the administration of a blood or urine test as required by the act; requiring that such tests be administered by certain qualified persons in specified medical facilities; limiting the liability of certain medical institutions and personnel; providing an effective date.

—was read the first time by title and referred to the Committee on Judiciary-Criminal.

By Senator McKnight—

SB 116—A bill to be entitled An act relating to the Department of Administration; adding a new paragraph (c) to s. 110.022(1), Florida Statutes, directing the department to establish and maintain a cost-of-living pay differential applicable to all positions in the Career Service System; providing a definition; providing an effective date.

—was read the first time by title and referred to the Committee on Governmental Operations; Ways and Means Subcommittee E and the Committee on Ways and Means.

By Senator McKnight—

SB 117—A bill to be entitled An act relating to the Florida Hazardous Substances Law; adding s. 501.075(8), Florida Statutes; prohibiting the introduction, delivery for introduction, or receipt and subsequent delivery or proffered delivery in commerce of a hazardous substance in an improperly sealed container; providing that the use of such a container results in the substance being labeled a banned hazardous substance; providing a definition; indicating applicable penalties and remedies; providing an effective date.

—was read the first time by title and referred to the Committee on Commerce.

By Senators McClain, Trask, Spicola, Fechtel, Poole, Tobiassen, Scott, Maxwell, Henderson and Hair—

SM 118—A memorial to the Congress of the United States making application to the Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to more effectually protect the lives of unborn human offspring.

—was read the first time by title and referred to the Committee on Rules and Calendar.

By Senator Skinner—

SB 119—A bill to be entitled An act relating to sports activities; creating the Sunshine State Commission on Sports; providing for the membership, functions, duties, and compensation of the commission; providing for public meetings; providing for promulgation of rules and hiring of staff; authorizing the organization of the Sunshine State Games; prohibiting involvement in pari-mutuel events; providing an appropriation; providing an effective date.

—was read the first time by title and referred to the Committees on Commerce, Governmental Operations and Ways and Means.

Journal
of the
SENATE
State of Florida

TWELFTH REGULAR SESSION

UNDER THE CONSTITUTION AS REVISED IN 1968

APRIL 8 THROUGH JUNE 7, 1980

In addition to the original sponsor Senators voting in the affirmative were recorded as co-introducers of SR 1353.

SPECIAL ORDER, resumed

SB 1154—A bill to be entitled An act relating to the Housing Development Corporation of Florida; amending s. 420.101(1)(d), Florida Statutes; revising eligibility requirements for directors of the corporation; amending s. 420.123(1), (2), Florida Statutes; repealing certain conditions on loans by stockholders to the corporation; providing for members' approval of proration of loan calls among themselves; providing an effective date.

—was read the second time by title. On motion by Senator Ware, by two-thirds vote SB 1154 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—30

Mr. President	Gorman	Maxwell	Skinner
Anderson	Grizzle	McClain	Steinberg
Beard	Hair	McKnight	Trask
Carlucci	Henderson	Myers	Vogt
Childers, D.	Hill	Neal	Ware
Childers, W. D.	Jenne	Peterson	Williamson
Dunn	Johnston	Scarborough	
Gordon	MacKay	Scott	

Nays—None

Votes after roll call:

Yea—Holloway, Winn

SJR 935 was taken up and on motion by Senator Gordon, by two-thirds vote CS for HJR 387 was withdrawn from the Committee on Rules and Calendar.

On motion by Senator Gordon—

CS for HJR 387—A joint resolution proposing the creation of Section 23 of Article I of the State Constitution relating to the right of privacy.

—a companion measure, was substituted for SJR 935 and read the second time by title.

Senator Dunn moved the following amendment which failed:

Amendment 1—On page 1, line 15, between "from" and "governmental" insert: any unreasonable

On motion by Senator Gordon, by two-thirds vote CS for HJR 387 was read the third time in full as follows:

CS for HJR 387—A joint resolution proposing the creation of Section 23 of Article I of the State Constitution relating to the right of privacy.

Be It Resolved by the Legislature of the State of Florida:

That the creation of Section 2, Article I of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1980:

ARTICLE I

DECLARATION OF RIGHTS

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

BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the substance of the amendment proposed herein shall appear on the ballot as follows:

Proposing the creation of Section 23 of Article I of the State Constitution establishing a Constitutional right of privacy.

—and passed by the required constitutional three-fifths vote of the membership and was certified to the House. The vote on passage was:

Yeas—34

Mr. President	Gorman	McClain	Thomas
Anderson	Grizzle	McKnight	Tobiassen
Barron	Hair	Myers	Trask
Beard	Henderson	Neal	Vogt
Carlucci	Hill	Peterson	Ware
Chamberlin	Holloway	Scarborough	Williamson
Childers, W. D.	Jenne	Scott	Winn
Fechtel	Johnston	Skinner	
Gordon	Maxwell	Steinberg	

Nays—2

Dunn	Frank

Votes after roll call:

Yea—MacKay

SJR 935 was laid on the table.

On motion by Senator Thomas, by two-thirds vote SR 1350 was withdrawn from the Committee on Rules and Calendar.

SR 1350—A Senate resolution encouraging all schools to allow official representatives of military forces reasonable access to school facilities for recruiting purposes.

On motion by Senator Thomas SR 1350 was read the second time in full and unanimously adopted.

The following Senators were recorded as co-introducers of SR 1350: Senators Anderson, Beard, Carlucci, Chamberlin, Childers, D., Childers, W. D., Dunn, Fechtel, Frank, Gordon, Gorman, Grizzle, Hair, Henderson, Hill, Holloway, Jenne, Johnston, MacKay, Maxwell, McClain, McKnight, Myers, Neal, Peterson, Poole, Scarborough, Scott, Skinner, Steinberg, Stuart, Tobiassen, Trask, Vogt, Ware, Williamson and Winn.

The President recognized the following representatives of the military forces present in the Chamber: Maj. Gen. James F. Cochran, Jr., Commanding General, Fort Stewart, Georgia; Brig. Gen. Donald W. Connelly, Deputy Command General, U. S. Army Recruiting Command, Fort Sheridan, Illinois; Captain J. T. High, Commander U. S. Navy Recruiting, Macon, Georgia; Colonel C. E. McDaniel, Commander U. S. Marine Recruiting, Atlanta, Georgia; Miss Jill Snell, Miami Army Recruiting District; Tom Johnston, Miami Army Recruiting District; Gary Mastrodonato, Miami Army Recruiting District; Lieutenant Sanford McLaurin, Air Force Recruiting District, Patrick Air Force Base; Robert L. Eaton, Department of Education.

In addition, the President introduced Maj. Gen. Charles G. Cleveland, Vice Commander, Air Training Command, Randolph Air Force Base, Texas, who addressed the Senate briefly.

On motion by Senator Stuart, the rules were waived and the Senate reverted to—

MOTIONS RELATING TO COMMITTEE REFERENCE

On motions by Senator Stuart, by two-thirds vote SB 192 was withdrawn from the committee of reference and indefinitely postponed.

SPECIAL ORDER, continued

SB 1156—A bill to be entitled An act relating to the use of county and public roads and highways; amending s. 125.42, Florida Statutes; authorizing a board of county commissioners to grant a license to any person to construct, maintain, repair, operate, and remove lines for closed circuit television along or across certain public roads; authorizing the board of county commissioners to grant exclusive or nonexclusive licenses to perform certain operations on water, sewage, gas, power, telephone and closed circuit television and other public utilities under, on, over, across, and along such roads; providing an effective date.

—was read the second time by title.

Senator Scarborough presiding

The Committee on Economic, Community and Consumer Affairs offered the following amendments which were moved by Senator Thomas and adopted:

Amendment 1—On page 1, lines 28 and 29, strike: *closed circuit television,* and other public utilities and insert: , ~~and~~ other public utilities *and television*

Reference:

Article I, Section 23

Ballot Title:

Right of Privacy

Ballot Summary:

Proposing the creation of Section 23 of Article I of the State Constitution establishing a constitutional right of privacy.

Full Text:

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

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Right to be let alone

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Government(al) intrusion

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Private life

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Respectfully submitted,

ASHLEY MOODY
Attorney General

/s/ Henry C. Whitaker
HENRY C. WHITAKER (FBN1031175)
Solicitor General
DANIEL WILLIAM BELL (FBN1016188)
JEFFREY PAUL DESOUSA (FBN110951)
Chief Deputy Solicitors General
NATHAN A. FORRESTER
Senior Deputy Solicitor General
DAVID M. COSTELLO (FBN1004952)
Deputy Solicitor General
DARRICK W. MONSON (FBN1041273)
Assistant Solicitor General
ZACHARY GROUEV (FBN1038628)
Solicitor General Fellow

JOHN GUARD (FBN374600)
Chief Deputy Attorney General
JAMES H. PERCIVAL (FBN1016188)
Chief of Staff
NATALIE P. CHRISTMAS (FBN1019180)
Counselor to the Attorney General

Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399
(850) 414-3300
henry.whitaker@myfloridalegal.com

Counsel for Respondents

Date: March 29, 2023

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served by the Florida Courts E-Filing Portal, or by email, on March 29, 2023, to the following:

Benjamin J. Stevenson
ACLU FOUNDATION OF FLORIDA
3 W. Garden St., Ste. 712
Pensacola, FL 32502

Daniel Tilley
ACLU FOUNDATION OF FLORIDA
4343 West Flagler St., Ste. 400
Miami, FL 33134

Nicholas Warren
ACLU FOUNDATION OF FLORIDA
336 East College Ave., Ste. 203
Tallahassee, FL 32301

April A. Otterberg
Shoba Pillay
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654

Tassity S. Johnson
JENNER & BLOCK LLP
1099 New York Ave., NW,
Ste. 900
Washington, D.C. 20001

Attorneys for Petitioners

Whitney Leigh White
Jennifer Dalven
Andrew Beck
Johanna Zacarias
ACLU FOUNDATION
125 Broad Street
New York, NY 10004

Attorneys for Petitioners Gainesville Woman Care, LLC d/b/a Bread and Roses Women's Health Center; Indian Rocks Woman's Center, Inc. d/b/a Bread and Roses; St. Petersburg Woman's Health Center, Inc.; and Tampa Woman's Health Center, Inc.

Autumn Katz
Caroline Sacerdote
CENTER FOR REPRODUCTIVE RIGHTS
199 Water St., 22nd Floor
New York, NY 10038

Attorneys for Petitioner A Woman's Choice of Jacksonville, Inc.

Jennifer Sandman
PLANNED PARENTHOOD
FEDERATION OF AMERICA
123 William St., 9th Floor
New York, NY 10038

Carrie Y. Flaxman
PLANNED PARENTHOOD
FEDERATION OF AMERICA
1110 Vermont Ave., NW,
Ste. 300
Washington, DC 20005

Attorneys for Petitioners Planned Parenthood of Southwest and Central Florida;
Planned Parenthood of South, East and North Florida; and Shelly Hsiao-Ying Tien, MD., M.P.H.

/s/ Henry C. Whitaker
Solicitor General