

November 17, 2017

DELIVERED VIA EMAIL

Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Re: Vote No on Proposal 22, Amending Art. 1, Section 23

Dear Chair Carlton and Declaration of Rights Committee Commissioners:

On behalf of more than 100,000 supporters state-wide, the American Civil Liberties Union (ACLU) of Florida submits this testimony urging the Constitution Revision Commission to reject Commissioner Stemberger's Proposal to limit Floridians' privacy protections (Proposal 22).



Right of Privacy – Article I, Section 23

We urge the Commission to preserve the explicit right of privacy detailed in Article 1, Section 23 of the Florida Constitution, which provides:

“Every natural person has the right to be let alone and free from governmental intrusion into the person’s 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.”

Art. I, Section 23, Florida Constitution.

Commissioner Stemberger's proposal would eliminate all existing privacy protections from Florida's Constitution except for those specifically relating to informational privacy. While Florida's Constitution currently (and since 1980) has broadly protected Floridians from government intrusion into all aspects of a person's "private life," Commissioner Stemberger is attempting to strip away all such protections except "with respect to informational privacy and the disclosure thereof." (Proposal 22)

Florida's Greater Right to Privacy

Florida is one of several states, including Alaska and Montana, with an explicit privacy provision in its Constitution that provides greater protections against government overreach than the Federal Constitution. This privacy amendment, which was added to the Constitution directly by Florida citizens in a 1980 general election, "was intentionally phrased in strong terms . . . in order to make the privacy right as strong as possible," Winfield v. Div. of Pari-Mutuel Wagering, Dept. of Bus. Regulation, 477 So. 2d 544, 548 (Fla. 1985). Indeed, the drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to ensure the broad application of this right. Id.

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Unlike the U.S. Constitution, which contains only an *implicit* right of privacy, Florida’s Constitution explicitly safeguards “the right to be let alone and free from governmental intrusion into the person’s private life.” As the Florida Supreme Court stated, “[s]ince the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.” *Id.* The Florida Supreme Court is vested with interpreting and applying the Florida Constitution (Art. V, Section 1 and Section 3) and its decisions deserve respect as an integral part of our system of government that rests on separation of powers.

Florida’s broad right of privacy protects us against numerous forms of governmental intrusions into our private lives beyond just our private information. It protects us from government surveillance. It provides us with the right to be free from government scrutiny of activities we engage in in our own homes. It protects against intrusion into our most private medical decisions (including end-of-life and reproductive health decisions), and it protects our right to marry and engage in adult consensual intimacy.

If Proposal 22 is adopted, these fundamental protections that we have enjoyed and relied upon for decades will disappear, and Floridians’ rights against government overreach will—for the first time in nearly four decades—be vulnerable to the whims of federal actors.

Florida’s Constitution Already Protects Informational Privacy – Proposal 22 Does Not Add Any New Protections

Article 1, Section 23 already protects Floridians’ informational privacy against governmental intrusions. *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1989) (Florida’s right of privacy “ensures that individuals are able ‘to determine for themselves when, how, and to what extent information about them is communicated to others’” (citation omitted)). Thus, Proposal 22 not only severely limits a host of privacy protections—it is also duplicative and unnecessary.

This proposal is not about safeguarding informational privacy, which is already protected under the Florida Constitution. It is about stripping away all existing privacy protections other than informational privacy. The way this proposal is written is misleading to the public. We urge the Commission to be honest with the public about the practical effect and implications of this proposal—which is to limit, not enhance, the Florida Constitution’s existing protections against government overreach.

Floridians Reject Limiting State Constitution's Greater Privacy Protections for Abortion

Florida citizens have already rejected attempts to reduce Florida's constitutional protections for abortion. In 2012, Florida voters considered Amendment 6, which provided that the Florida Constitution "may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution." The proposed amendment would have thus opened the door to more governmental interference with Florida women's private decision-making around pregnancy.

But Florida's citizens overwhelmingly rejected Amendment 6 by a margin of 55%-45%. Moreover, polls of Floridians have consistently found that a majority of Floridians support legalized abortion.



Because Florida voters rejected the 2012 amendment that expressly sought to allow greater governmental interference with the private decision to end a pregnancy, it is no coincidence that the current proposed amendment does not even mention abortion. Rather, Proposal 22 misleads the public into thinking it will enhance protections for informational privacy, and nothing more.

Parental Notification for Minors

Some Commissioners have expressed concern regarding a young woman's access to abortion. Florida is one of 12 states that require parental notification before a minor may obtain abortion care. Guttmacher Institute, *Parental Involvement in Minors' Abortions* (Oct. 1, 2017), available at <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>. Parental notification is established in Florida's Constitution (Article X, Section 22: "Parental Notice of Termination of a Minor's Pregnancy") and in Florida's statutes (§ 390.01114: "Parental Notice of Abortion Act").

Specifically, Florida's Constitution provides:

SECTION 22. Parental notice of termination of a minor's pregnancy.—The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. *Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy.* The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

This parental notification provision of Florida's Constitution was a legislatively referred constitutional amendment that was approved by the voters in the November 2004 election. The provision constitutionally



authorized the legislature to create parental notification laws, resulting in the passage of Section 390.1114, Florida Statutes, the “Parental Notice of Abortion Act.”

Thus, Florida’s constitution and statutes both provide for a system of parental notification. In Florida, while parents must be notified of a decision to terminate a pregnancy, parents cannot compel their child to have a child through a consent requirement.

While “parental consent” may sound benign, a government requirement for parental consent puts teens—particularly those who experience or are at risk of experiencing abuse—in danger. Unfortunately, it is well known that not all teens come from loving and supportive families. This is exemplified through statistics of child abuse and neglect, “parental consent/forced” child marriages, and the prevalence of child sexual abuse, with perpetrators often being a legal guardian or parent or person in the care and control of minors. Minors who have a loving and trusting relationship with their parents will choose to seek out their parents help and assistance if they are pregnant. A consent requirement is unnecessary for parents who have bonds of love and trust with their children and dangerous for minors who don’t.

This is why major medical organizations like the American Medical Association, the American Academy of Pediatrics, the American Public Health Association, and the American College of Obstetricians and Gynecologists oppose parental consent requirements. See Am. Acad. Pediatrics, *The Adolescent’s Right to Confidential Care When Considering Abortion* (Feb. 2017), at <http://pediatrics.aappublications.org/content/139/2/e20163861>. As the American Academy of Pediatrics has explained:

[These] health professional organizations have reached a consensus that a minor should not be compelled or required to involve her parents in her decision to obtain an abortion, although she should be encouraged to discuss the pregnancy with her parents and/or other responsible adults. These conclusions result from objective analyses of current data, which indicate that legislation mandating parental involvement does not achieve the intended benefit of promoting family communication but does increase the risk of harm to the adolescent by delaying access to appropriate medical care or increasing the rate of unwanted births.

Id. Proposal 22 flies in the face of this medical consensus.

Conclusion

Given our current climate of threats to the full spectrum of our privacy rights, Floridians need our broad and independent constitutional privacy protections now more than ever. We urge this Commission not to exclude a woman’s right

to privacy and decisional autonomy from Florida's Constitution, and not to eliminate all other privacy protections with the exception of information.

Thank you for your consideration of the above and we look forward to working with you as this process moves forward. Please do not hesitate to contact me at (786) 363-2713 or kbailey@aclufl.org if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kirk Bailey". The signature is written in a cursive, flowing style.

Kirk Bailey
Political Director

