FLORIDA PRIVACY RESTORATION ACT

Federal Privacy Rights Available in Florida

The three principal areas of "conduct" that the Florida Supreme Court has recognized as being protected by art. I, § 23, of the Florida Constitution are abortion, parental rights and the right to refuse unwanted medical treatment. But all three types of conduct were protected by decisions of the United States Supreme Court both before and after art. I, § 23, was adopted in 1980, and would not be in jeopardy regardless of whether art. I, § 23, is limited to privacy of information and the disclosure thereof, as its drafters intended and as the public understood.

Parental Rights

The Supreme Court has recognized parental rights over the care, control and custody of their children going in a series of cases going back to *Meyer v. Nebraska*, 262 U.S. 390 (1923) (education of children), if not earlier. Other cases recognizing such rights would include *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (education of children), *Wisconsin v. Yoder*, 406 U.S. 205 (striking down compulsory school attendance statute as applied to Old Order Amish), *Moore v. City of East Cleveland*, 431 US. 494 (1977) (striking down municipal ordinance restricting extended family living arrangements), and, most recently, *Troxel v. Granville*, 530 U.S. 57 (2000) (striking down statute purporting to give grandparents the right to insist upon visitation with grandchildren over the objections of the children's parents). There is no reason to believe that any of these precedents, pre- or post-art I, § 23, is in jeopardy of being overturned.

Right to Refuse Unwanted Medical Treatment

It has long been the common law rule that a person has the right to refuse unwanted medical treatment. The Supreme Court first recognized this right more than 125 years ago, *see Union Pacific Railroad Co. v. Botsford*, 141 US. 250 (1891), and has continued to recognize the existence of such a right. *See Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *Washington v. Harper*, 494 U.S. 210 (1990); *Cruzan v. Director*, *Missouri Dep't of Health*, 497 US. 26 (1990); and *Washington v. Glucksberg*, 521 U.S. 702 (1997). Again, there is no reason to believe that any of these precedents pre- or post-art. I, § 23, is in jeopardy of being overturned.

Abortion

The U.S. Supreme Court recognized a right to abortion in *Roe v. Wade*, 410 U.S. 113 (1973), almost eight full years before § 23 was adopted, and the High Court has reaffirmed the central holding of *Roe*–that States may not prohibit abortions before viability–most recently in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). There is not a majority on the Court that would overrule *Roe*, nor is such an overruling even on the horizon. Finally, regardless of the application of § 23, any post-*Roe* statute purporting to ban abortion in Florida could be challenged either on the basis of the inalienable rights and equality of rights language of art. I, § 2, or the due process language of art. I, § 9.