



## Florida Privacy Restoration Act

October 17, 2017

On Thursday, October 5, 2017, former Florida Supreme Court Justice Kenneth Bell filed public proposal #700698 with the 2017-18 Constitution Revision Commission (CRC) hereafter known as the “Florida Privacy Restoration Act.” The proposed amendment to Article 1, Sec 23 states:

*"Every natural person has the right to be let alone and free from governmental intrusion into the person's private life with respect to privacy of information and the disclosure thereof, except as otherwise provide herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."*

The goal of the proposed amendment is to restore the original intent of the drafters and framers of Florida’s Privacy Amendment and the people who adopted it – to safeguard informational privacy and to protect against the collection and/or disclosure of information by the government.

During the opening session of Florida's 1977-78 Constitution Revision Commission, Florida Supreme Court Chief Justice Ben F. 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.... It is a new problem that should probably be addressed.” July 6, 1977

After the proposed CRC privacy language failed on the 1978 ballot, Rep. Jon Mills of Gainesville sponsored similar language in the form of a joint resolution. It passed out of the Florida Legislature and

was placed on the ballot for the people to vote on in 1980. Rep. Mills, speaking to the public through the Florida Times Union *only days before the November 4, 1980 election*, stated:

“The goal is to provide individual and informational privacy. The bigger government gets, the more it tends to collect information on people. ... "Anybody [governmental bureaucracies] who wants information just throws it into forms," Mills said, adding businesses and homeowners are inundated with all sorts of official forms containing questions that are not the government's business. Mills further stated he expected the courts to express a conservative view on the amendment's applicability. "Right to Privacy Amendment Debated," Florida Times-Union, October 26, 1980.

The Senate sponsor was Sen. Jack Gordon of Miami. Of the amendment’s intent he said:

“Most people automatically assume they have this right, but in the increasingly sophisticated world we live with its wiretaps and excessive data collection, this amendment says you have the right to be left alone. The government should stay out of your business.” Knight – Ridder News Service, Tallahassee Democrat, November 2, 1980.

Furthermore, the Center for Governmental Responsibility stated in its 1980 report on the privacy amendment, “The impact of the privacy amendment would be to constrain the collection of information about individuals, and not limit public access to information properly collected.”

Based on the widely announced intent of the Legislature and thinking they were protecting informational privacy, the voters of Florida adopted the new privacy amendment by 59%.

In the 37 years since the adoption of the privacy clause, the court has cited Article 1, Sec 23 in 52 cases. Only 23 of those cases dealt with the issue of informational privacy and in only one of those cases did the court rule in favor of an individual asking for a right to informational privacy. See *Rasmussen vs South Florida Blood Service*, 500 So.2nd 533 (Fla. 1987). A right to informational privacy was denied to litigants in the holdings of the other 22 cases.

The rapid growth of the invasion of individual privacy through various forms of surveillance and the monitoring of personal electronic devices warrants the court’s focused attention on this growing problem of widespread public concern. This amendment protects Floridians against governmental intrusion into a person’s private life in two ways: 1) by restricting the government’s ability to collect personal and private information and 2) by restricting governmental disclosure of such information.

Florida’s citizens would be well served by restoring the original intent of the privacy language proposed by both the 1978-79 CRC and the 1980 Florida Legislature. This can be done through the adoption of this proposed language.

###

*More information on the Florida Privacy Restoration Act can be found at [FLPrivacy.org](http://FLPrivacy.org)*