

# 2017-18 Florida Constitution Revision Commission

## Proposal 22

### The Florida Privacy Restoration Act

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Presented to:

Declaration of Rights Committee

By CRC Commissioner

John Stemberger





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**PUBLIC PROPOSAL FILING DEADLINE (October 6):** The CRC has adopted October 6 as the deadline to submit public proposals. We encourage Floridians to submit their proposals as soon as possible.

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**PUB 700698: Right of Privacy**  
by Kenneth Bell

**ARTICLE I: DECLARATION OF RIGHTS, Section 23. Right of privacy.**

SECTION 23. Right of privacy.

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 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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# Public Proposal Filed by Former Supreme Court Justice Kenneth Bell

- “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.”



**FLORIDA**  
**PRIVACY**  
**RESTORATION ACT**

# The Florida Privacy Restoration Act, Proposal 22, is about two things

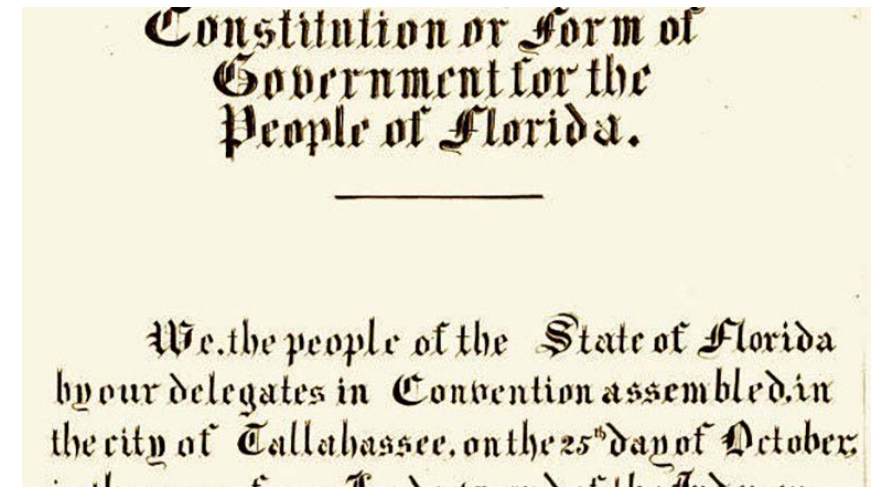
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1) Restoring the original intent of the drafters, framers and people who adopted the amendment.

2

2) Restraining the Florida Supreme Court's gross overreach by ignoring the original intent of the amendment and producing bad public policy.

# The origin & history behind Florida's Privacy Right Found in Article 1, Section 23



# Wiretapping of DNC phones by agents of Nixon's campaign...



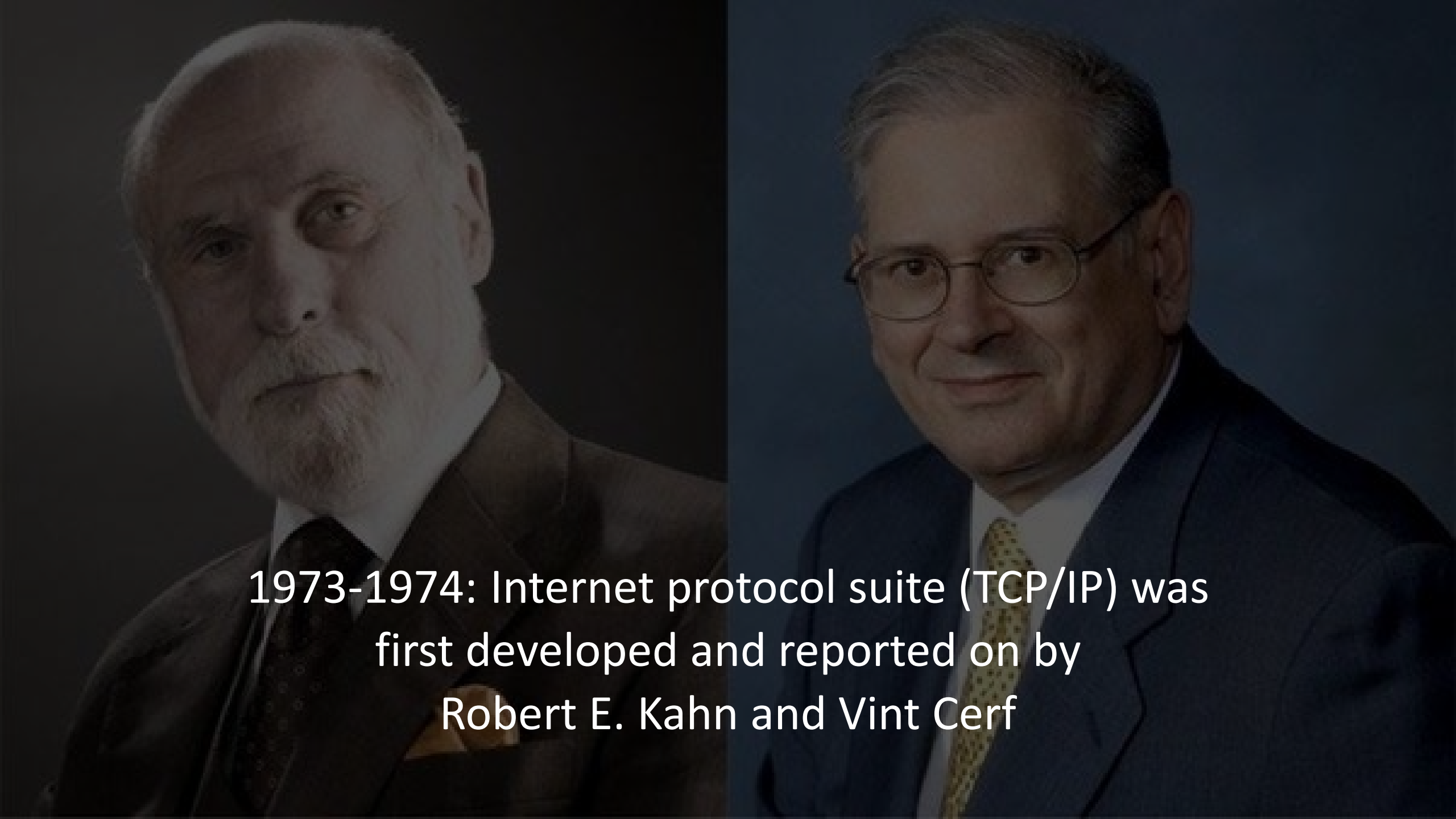
# 1974: Widespread Wiretapping by the CIA

On December 22, 1974 the New York Times reported...

“CIA directly conducted a massive, illegal domestic intelligence operation during the Nixon Administration against the antiwar movement and other dissident groups in the United States...”



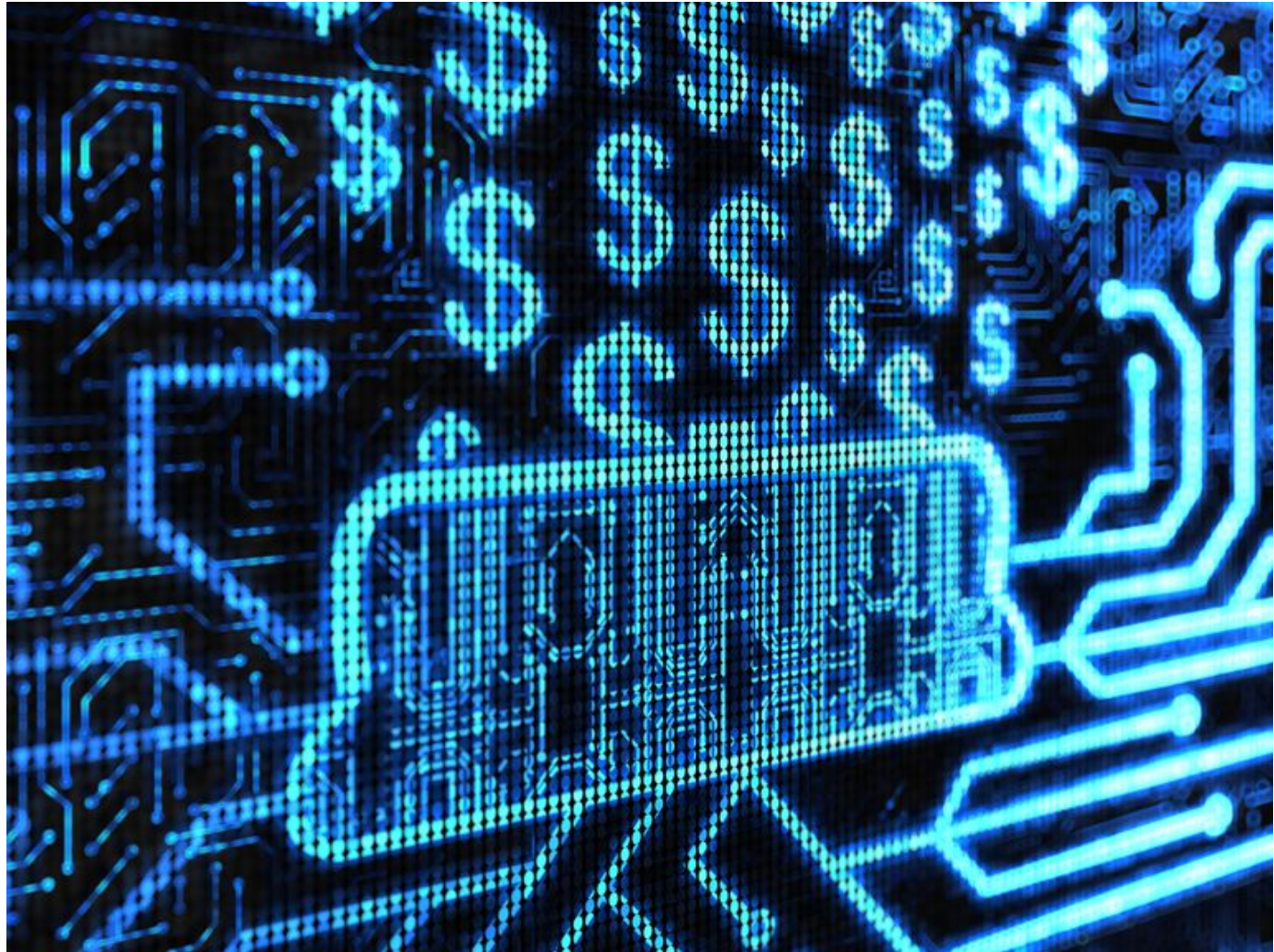




1973-1974: Internet protocol suite (TCP/IP) was  
first developed and reported on by  
Robert E. Kahn and Vint Cerf



Banking Wire  
Transfers  
Occur





# Late 70's Rise of Facsimile Machines

As a result of growing concerns over government's overreach into the area of personal informational privacy, the U.S. Congress created the "Privacy Protection Study Commission" ...

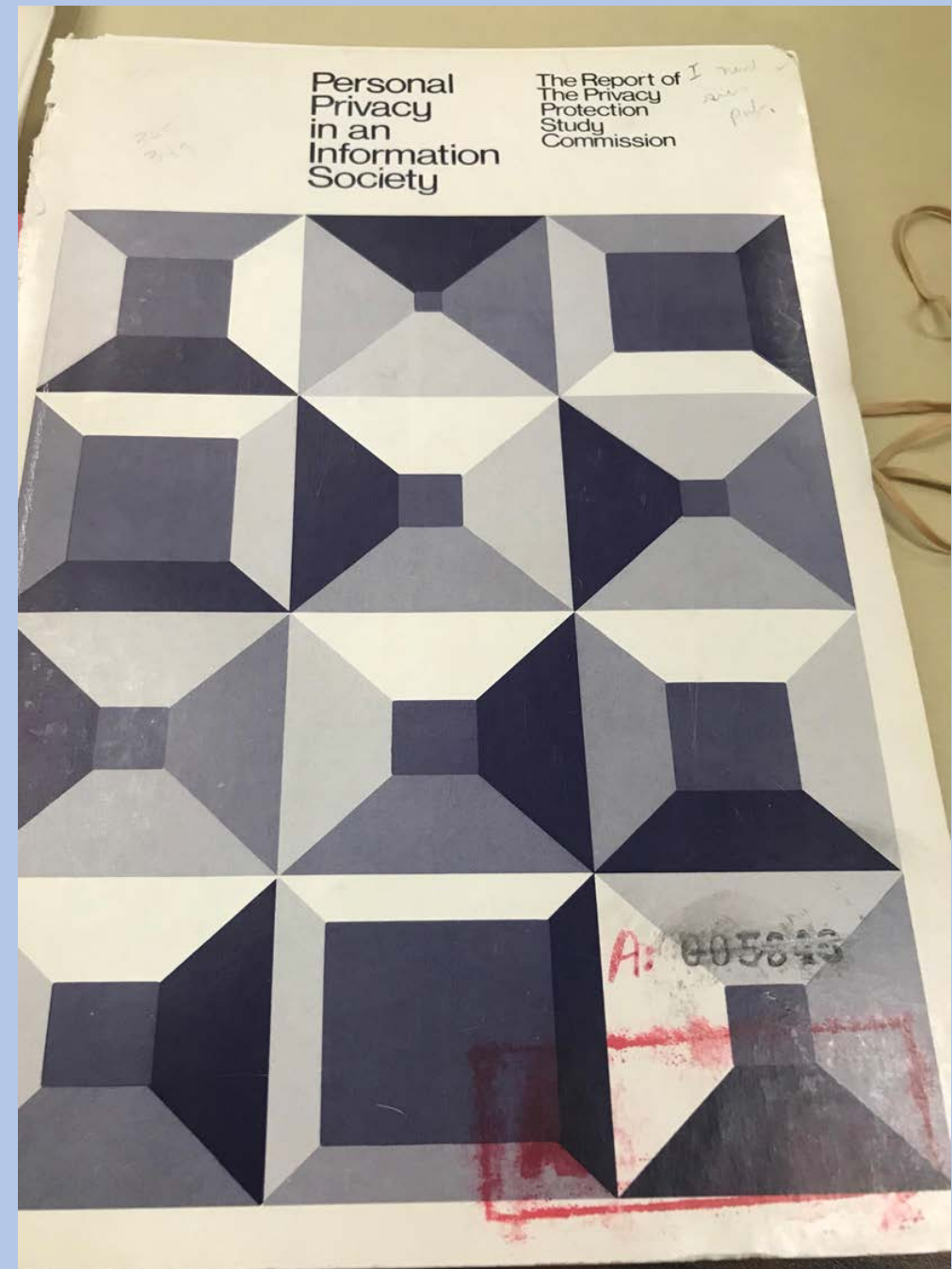


The purpose  
of the  
Privacy Study  
Commission  
was to  
conduct a...

“...study of the data banks, automatic data processing programs, and informational systems of governmental regional, and private organizations, in order to determine the standards and procedures in force ***for the protection of personal information.***”



The commission's final report, "*Personal Privacy in an Information Age*" recommended that states adopt freestanding constitutional privacy amendments to address these growing concerns...





## 1977-1978 Constitutional Revision Commission

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“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.”

- Florida Supreme Court Chief Justice Ben F. Overton on July 6, 1977



# Text for Article 1, Section 23 Proposed by the 1978 CRC

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.



# The 1978 Amendment was opposed by most daily newspapers and media organizations because of concerns over public records.

St. Petersburg Times editorials

"The policy of our paper is very simple — merely to tell the truth."  
— Paul Poynter, publisher, 1912-1950

10-A TUESDAY, DECEMBER 6, 1977

## Rights in conflict

"Nineteen eighty-four is not that far away from us, and protection from governmental intrusion is important," says Talbot "Sandy" D'Alemberte, chairman of Florida's Constitution Revision Commission.

We'll buy that.

BUT WE ALSO share D'Alemberte's concern that the commission, in its zeal to secure one right, not endanger another that's even more fundamental to a free society.

And we believe that part of a right-of-privacy proposal by the commission's Ethics, Privacy and Elections Committee poses a clear threat to the people's right to know.

We have no serious quarrel with the proposal's first part, which asserts a person's "right to be let alone and free from governmental intrusion into his private life." Florida's 1968 Constitution already protects the individual from "unreasonable searches and seizures, and against unreasonable interception of private communications by any means." The new provision would expand his protection against the Big Brother world envisioned in George Orwell's 1984.

PEOPLE DON'T want government meddling in their personal lives, spying on them without cause, or storing unnecessary and often inaccurate information about them in computer data banks. Further protection is needed. The only question, and one the revision

SENATE INFORMATION SERIES  
ROOM 2, EXECUTIVE OFFICE

**vacay laws and the people's right to be informed about their government and other aspects of the life around them. Regardless of its intent, such a constitutional mandate could have a chilling effect on newsgathering and would provide a convenient excuse for governmental secrecy that can only be harmful to the public interest.**

Because the press necessarily is the public's surrogate in these complex times, the need for a proper balancing of rights concerns not just journalists but all Americans.

Much of the expanding federal and state privacy legislation properly is intended to protect the individual from unwarranted prying, not only by government but by credit, insurance and other private interests. With increasing frequency, however, evolving law and court rulings are hindering the press's ability to gather information and make its own judgment about its newsworthiness.

In a democracy, the decision about what is and what isn't news can never be left to the bureaucrats. Nor can it be assumed by court authorities.

DESPITE SETBACKS from time to time, Florida has earned a national reputation for open government. Its "sunshine" laws have been copied by other states, and by the federal government as well. Even now, the revision commission is considering proposals to

As our editors see it

## Election season ends with your vote today

The long months of campaigning have ended, the final hands shaken, the last speeches uttered, and now it is time for you to make the decision.

Below, you will find our recommendations. Whether you accept or reject them, we urge you to vote.

Some reminders:

In seven races — president, U.S. senator, property appraiser, sheriff, tax collector, supervisor of elections, 5th district county commissioner — you may vote for a write-in candidate if you wish. To do that, you must first push up the slide located directly above the office involved to expose a paper ballot.

Six Florida Supreme Court justices and seven district court judges are being voted on under the new merit-retention system. You vote "yes" if you want them to continue in office and "no" if you wish them removed.

The voting for judge of the Second Judicial Circuit is not under the merit-retention system. There, you must make a selection between J. Hall Jr. and Malory Horne.

The straw ballot asking voter opinions on a consolidated government for Tallahassee and Leon County is not binding. It will simply let city and county commissioners know whether voters are interested in pursuing the idea. Any final consolidation plan would have to be approved at a later election.

There will be no runoff in any race, including that for supervisor of elections, where 11 write-in candidates are running against the single person on the ballot.

The Democrat recommends

**PRESIDENT:**  
No selection ✓ ✓ ✓

**U.S. SENATE:**  
Bill Gunter ✓ ✓ ✓

**U.S. HOUSE:**  
Don Faqua ✓ ✓ ✓

**STATE SENATE:**  
Elliott Messer ✓ ✓ ✓

**SHERIFF:**  
Eddie Boone ✓ ✓ ✓

**DISTRICT ONE**  
Doug Nichols ✓

**DISTRICT FIVE**  
Lee Vause ✓

**SCHOOL BOARD:**

**DISTRICT ONE**  
George Anderson ✓

**DISTRICT TWO**  
Bill Wilson ✓

**DISTRICT FOUR**  
Emily Millett ✓

**CONSOLIDATION:**  
(Straw Ballot) FOR ✓ ✓

**FLORIDA SUPREME COURT:**  
(Merit Retention)

James C. Adkins — YES ✓

James E. Alderman — YES ✓

Joe Boyd — NO ✓

Arthur J. England Jr. — YES ✓

Parker Lee McDonald — YES ✓

Ben F. Overton — YES ✓

**DISTRICT COURT OF APPEAL:**  
(Merit Retention)

Anne Cawthon Booth — YES ✓

Gaye P. McCord Jr. — YES ✓

E.R. (Dick) Mills Jr. — YES ✓

Leander J. Shaw Jr. — YES ✓

Douglass B. Shivers — YES ✓

Larry G. Smith — YES ✓

Winifred L. Wentworth — YES ✓

**CIRCUIT JUDGE:**  
(Second Judicial Circuit)

J. Lewis Hall Jr. ✓

**STATE CONSTITUTIONAL AMENDMENTS:**

1. Abolish Revision Commission AGAINST ✓

2. Right to Privacy AGAINST ✓

3. Legislative Bill Reading

ORLANDO SENTINEL STAR  
1/12/78

## Sentinel Star

James D. Squires Editor  
Charles T. Brumback President

Joseph J. McGovern Executive Editor  
Robert J. Bonnell Managing Editor  
Emmett Peter Chief Editorial Writer

Orlando, Florida, Thursday, January 12, 1978

## Danger in privacy guarantee

THE CONSTITUTION Revision Commission has approved a proposal for a far-reaching privacy guarantee to be included in the Florida Constitution.

Contesting rights-of-privacy legislation in this day and age is akin to editorializing in favor of sin. It just isn't accepted or, sorry to say, understood.

The proposal before the commission is fraught with danger. It would require the legislature to enact laws protecting individuals from businesses. That is about as broad a mandate as one can get.

ON THE SURFACE, such a constitutional amendment seems innocent enough. Who can quarrel that those pesky phone calls used to peddle everything from portraits to tombstones are a nuisance at times?

But, as Chief Justice Ben Overton of the Supreme Court warned, such a privacy amendment could serve to keep the press from covering certain events. He warned it would endanger freedom of the press and urged the words "unwarranted intrusion" be included. The wording was turned down.

There are laws aplenty right now on the books to assure the privacy of citizens. In fact, privacy suits against newspapers have far outpaced libel in recent years.

This is another example of governmental intrusion into the processes of obtaining information about which the public is entitled to know.

CERTAINLY this proposed amendment will face a First Amendment challenge and properly so. The First Amendment clearly states "Congress shall pass no law ... abridging the freedom of speech or of the press."

Writing such into the Florida Constitution would merely be an attempt to circumvent the First Amendment and go further down the road to secrecy than even the U.S. Congress is prepared to do.

Let us hope wiser heads prevail before this bad amendment becomes bad law.

# 1978 CRC Privacy Amendment fails with 43.1% of the vote

Florida Department of State  
Division of Elections  
**November 7, 1978 General Election**

*Official Results*

## Constitutional Amendment

### Revision of Florida Constitution (basic document)

	Yes	No
Total	623,703	1,512,106
% Votes	29.2%	70.8%

### Declaration of rights (rev. of Art. I, Sec. 2)

	Yes	No
Total	1,002,479	1,323,497
% Votes	43.1%	56.9%



## House Sponsor Representative Jon Mills

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*"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 said he would expect courts to express a conservative view on the amendment's applicability. (emphasis added)*

"Right to Privacy Amendment Debated," --John Mills, legislative sponsor of Joint Resolution on privacy, Florida Times-Union, October 26, 1980.





## Senator sponsor Senator Jack Gordon

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“Most people automatically assume you have a right of privacy. But in the increasingly sophisticated world we live in with its wiretaps and **excessive data collection**, this amendment says you have a right to be left alone.”

- Knight-Ridder News Service, “Dull Amendments Cover Big Issues” November 2, 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 to 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.

Filed in Office Secretary of State May 19, 1980.

# ARTICLE I

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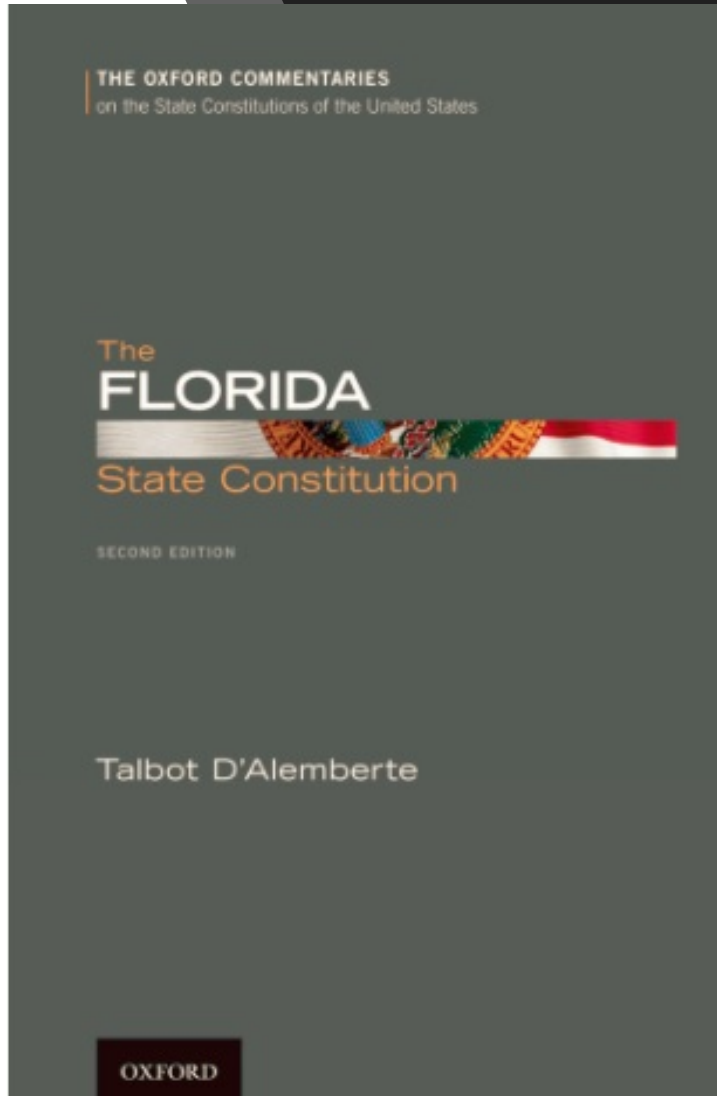
Filed in Office Secretary of State May 19, 1980.



Excerpt from the textbook “The Florida State Constitution” by Talbot “Sandy” D’Alemberte

“After the wide-ranging proposals of that commission met defeat in 1978, this provision was taken up separately by the legislature in 1980 and passed by the electorate. **Although it was opposed by most media organizations in the state** on grounds that it might interfere with Florida’s broad concepts of open government, this section does not limit open government.”

Florida at Page 68





# 1980 Legislative Privacy Amendment passes by 60.6% (a 17.5% increase in the vote)

**Florida Department of State  
Division of Elections**

**November 4, 1980 General Election**

*Official Results*

## **Constitutional Amendment**

### **Right of privacy (Art. I, Sec. 23)**

	<b>Yes</b>	<b>No</b>
<b>Total</b>	1,722,987	1,120,302
<b>% Votes</b>	60.6%	39.4%



The privacy amendment was adopted **37 years** ago and the Florida Supreme Court has produced **53 cases** citing Article 1, Section 23

Former Supreme Court Justice Major Harding at the CRC Declaration of Rights workshop set forth **five categories** of privacy cases decided by the court.

1) Informational Privacy Rights

2) Rights of Parents

3) Right to Refuse Medical Treatment

4) Right to Abortion

5) Right to Free Movement

## A summary of privacy cases in Florida

TOPIC	# of cases	% of total cases	Privacy Right Found?	
			Yes	No
Informational Privacy	23	47.92%	1	22
Parental Rights	10	20.83%	9	1
Abortion	4	8.33%	3	1
Free Movement	3	6.25%	2	1
Right to Refuse Medical Treatment	3	6.25%	3	0
Miscellaneous Rights Denied	6	12.50%	0	6
Dicta	4			

Privacy Right Found	18	33.96%
Privacy Right Denied	31	58.49%
Privacy Right in Dicta	4	7.55%
<b>TOTAL</b>	<b>53</b>	<b>100.00%</b>

# Informational Privacy

- 23 Florida Supreme Court cases involving informational privacy.
- Out of all 53 cases decided by the court over a 37-year period, an informational privacy right was found in only one case-- *Rasmussen vs South Florida Blood Service*, 500 So 2d 533 (Fla 1987)
- In the Rasmussen case, the court found an informational privacy right for those who contracted the AIDS virus and then donated blood inflecting Mr. Rasmussen.



# Parental Privacy Rights

## 9 Parents Rights Cases

- 2 contract cases
  - Can a parent waive a child's contract rights?
  - Answer NO.
- 7 grandparents rights cases
  - Can a grandparent override parents rights?
  - Answer NO.



# Right to Refuse Medical Treatment

## 3 Right to Refuse Medical Treatment Cases

### 1) *Public Health Trust of Dade County v. Wons* (1989)

Right to privacy includes right to refuse blood transfusion based on religious beliefs

### 2) *In re Guardianship of Browning* (1990)

Surrogate or proxy may exercise right to refuse medical treatment

### 3) *Matter of Debreiul* (1993)

Hospital may not override patients privacy right to refuse blood transfusion even if new born baby's life is at stake in pregnancy



# Right to Abortion

## 4 Abortion Right Cases

### 1) *In Re T.W. A Minor (1989)*

Held parental consent laws unconstitutional

### 2) *Renee B. v. FL Agency for Health Care Admin (2001)*

Held no right to public funding of abortion

### 3) *North FL Women's Health & Counseling v. State (2003)*

Held the parental notification statute unconstitutional

### 4) *Gainesville Woman Care, LLC, et al. v. State (2017)*

Opined that the 24 hour reflection/waiting period before abortion is likely unconstitutional







Next, do you favor or oppose each of the following proposals? A law requiring women under 18 to get parental consent for any abortion

	<b>Favor</b>	<b>Oppose</b>	<b>No opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>
2011 Jul 15-17	71	27	2
2005 Nov 11-13	69	28	3
2003 Jan 10-12	73	24	3
1996 Jul 25-28	74	23	3
1992 Jan 16-19	70	23	7

GALLUP

Gallup Polls show the public favors **parental consent laws** before doctors perform abortions on minor girls.

**69% -74%** support



Next, do you favor or oppose each of the following proposals? A law requiring women seeking abortions to wait 24 hours before having the procedure done

	<b>Favor</b>	<b>Oppose</b>	<b>No opinion</b>
	<b>%</b>	<b>%</b>	<b>%</b>
2011 Jul 15-17	69	28	3
2003 Jan 10-12	78	19	3
1996 Jul 25-28	74	22	4
1992 Jan 16-19	73	23	4

GALLUP

Gallup Polls also show the public favors **24-hour waiting and reflection periods** before abortions are performed

**69%-74%** Support

Legal Memo  
from CRC Staff  
William Hamilton  
to William Spicola

“The primary concern of the 1977-1978 CRC was that technological advances in communication rendered private citizens more vulnerable to government intrusion.”

2017 - 2018

Legal Memo  
from CRC Staff  
William Hamilton  
to William Spicola

“Abortion does not appear to have been a concern of the Commissioners or the Legislature when they were considering a State Constitutional Right of Privacy. The same could be said for the newspapers and the citizens who wrote to the CRC.”

2017 - 2018

In *Gallant v. Stephens*, 358 So. 2d 536 (1978), the Florida Supreme Court held and reaffirmed long standing precedent dating back to 1960 that the intent of the framers and the people adopting it must be ascertained before interpreting a constitutional provision.

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“In construing provisions of the Florida Constitution, we are obliged to ascertain and effectuate the intent of the framers and the people. State ex rel. Dade County v. Dickinson, [230 So. 2d 130](#) (Fla. 1969); Gray v. Bryant, [125 So. 2d 846](#) (Fla. 1960). Where possible, we are guided by circumstances leading to the adoption of a provision. In this case we have attempted to discern the rationale which led to the adoption of the last sentence in Article VII, Section 9(b). Its history in the 1966 Constitution Revision Commission and in the Florida Legislature supports appellee's view of its import. “

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“It is reasonably clear from the minutes and notes of the Commission, and from the reports of the Legislature, that the focus of the last sentence of Section 9(b) was the delivery of municipal-type services by counties to all county residents, rather than the more narrow delivery of services solely to residents of intra-county municipalities.” *Gallant* at (emphasis added)

*State vs JP, 907 So. 2d 1101 (Fla. 2004)*

## Juvenile Curfew Ordinance

### Struck Down using Privacy Clause

City of Tampa passed a curfew ordinance seeking to further the following interests:

- 1) “the protection of juveniles, other citizens, and visitors from late night and early morning criminal activity;
- 2) the reduction of juvenile criminal activity; and
- 3) the enhancement and enforcement of parental control over children.”





# Justice Raoul Cantero Dissenting...

“The majority essentially holds that minors have a fundamental right to roam in public unsupervised during any time of the day or night. This would protect a minor’s right to be on the street in the middle of the night, **regardless of the costs to the community in the form of higher crime rates, law enforcement costs and other negative consequences.** Neither the record in this case nor common sense suggests that the purported independence of juveniles to be out in the public during the late night and early morning hours constitutes such a fundamental right.”





*Wyche vs State*, 619 So. 2d 231 (Fla. 1993)  
**Prostitution Loitering Ordinance**  
Struck Down Using Privacy Clause

“Prior to enacting this ordinance, the City evidently recognized that people were loitering in public areas for the purpose of engaging in illegal acts, such as prostitution or lewd or indecent acts. The City has an obligation to protect its streets and its citizenry from the harm that frequently results from this type of activity, and the City responded by enacting an ordinance aimed at preventing the harm.”



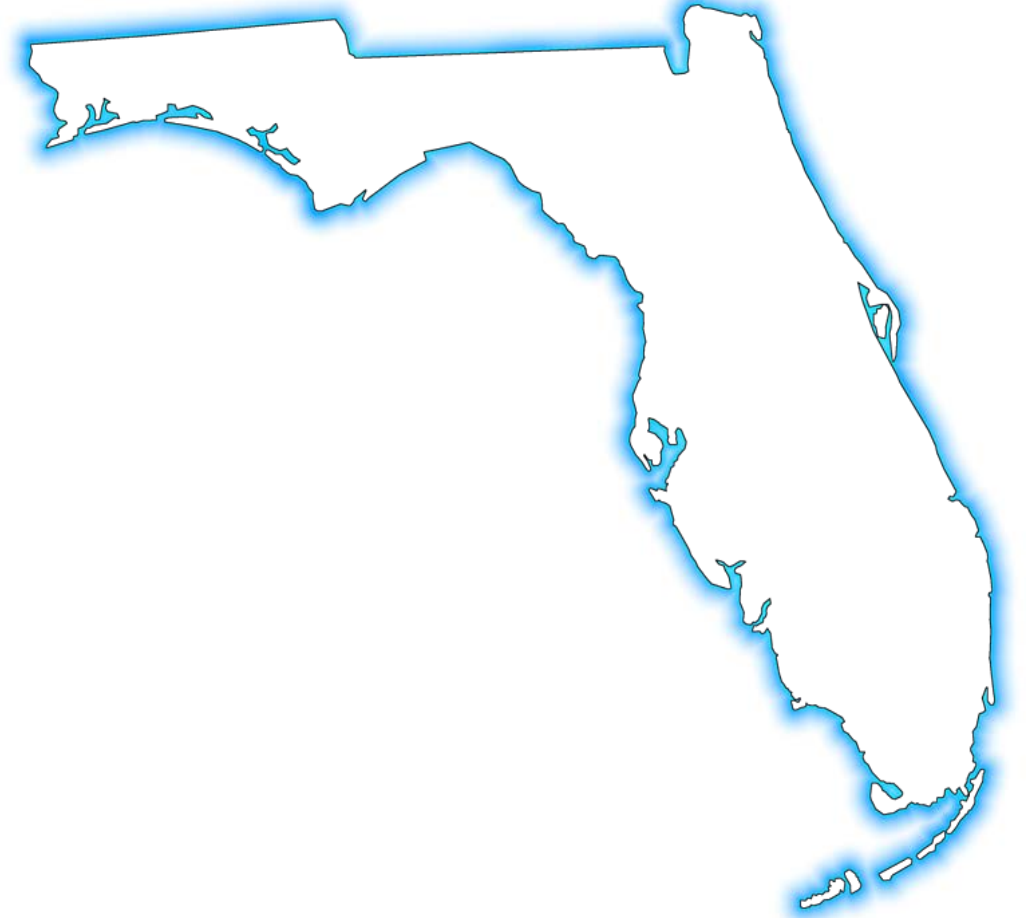
# Justice Parker Lee McDonald Dissenting

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“It is reasonable to **consider criminal activity taking place on public streets in full view of citizens and individuals, such as minors**, who may be endangered or negatively influenced by such acts, as constituting a more severe offense than those crimes committed elsewhere.”

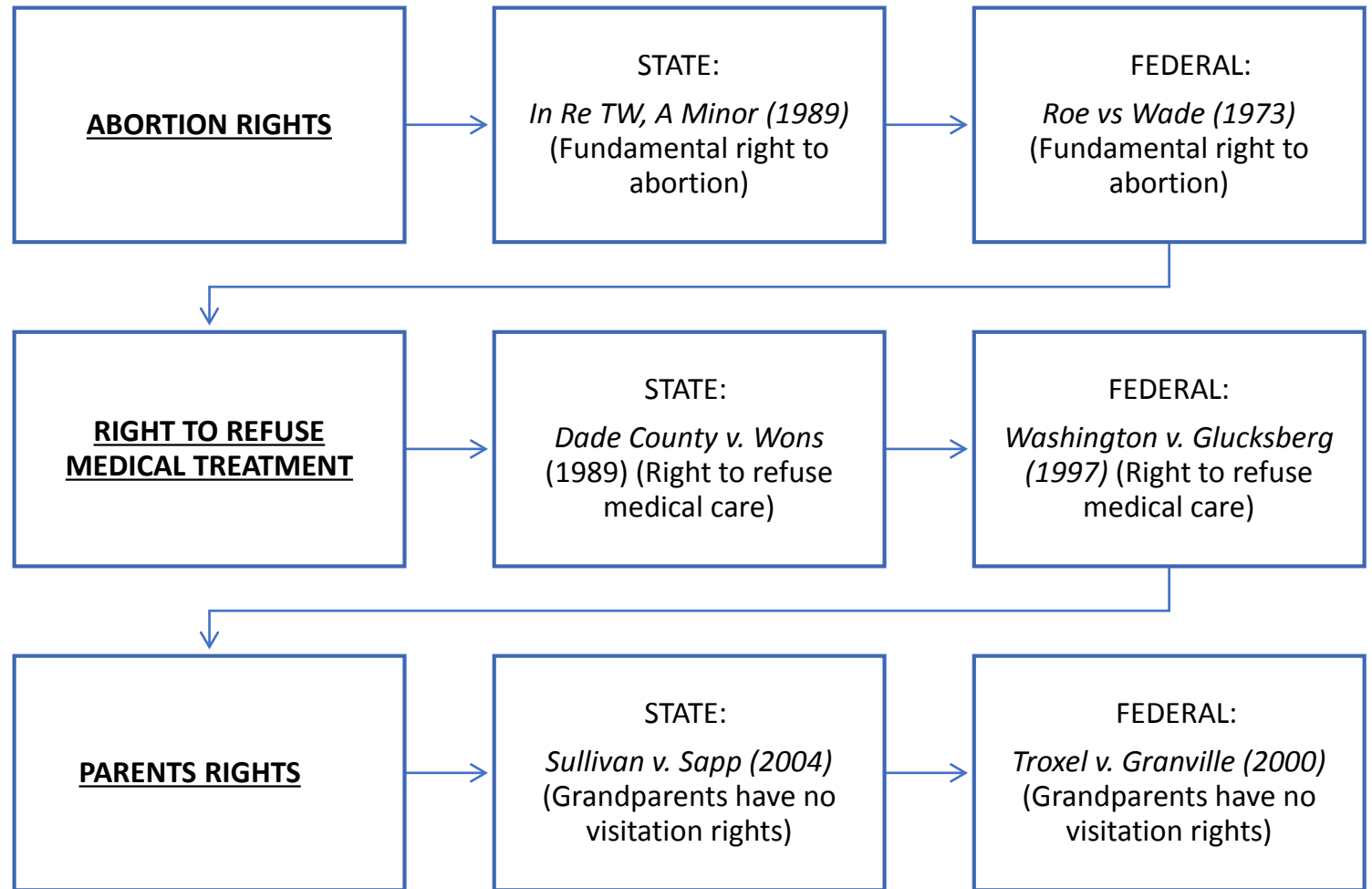


No new legitimate rights  
would be taken away  
under Proposal 22....



...because of  
federal law  
Privacy Rights  
involving conduct  
mirrors Florida's  
cases on privacy.

•



In all of these cases there is an overreach which produces bad policy endangering children, undermines parents & communities and efforts of law enforcement, the majority of the Florida Supreme Court neglects to apply its own precedent in order to interpret Article 1, Section 23.



# Arguments in Opposition to Proposal 22

## ACLU

“Rights that we have enjoyed and relied upon for decades will disappear.”

## Anti-Defamation League

“abolishing a woman’s constitutional right to an abortion”

and

“Undermine a parent or guardian’s right to child rearing such as the right to home school or provide alternative forms of education.”

## Freedom of Press Foundation

“Equally troubling is the potential for the courts to hold that certain information is ‘private’ pursuant to the revised privacy right and thus not subject to disclosure under Florida’s public records law.”

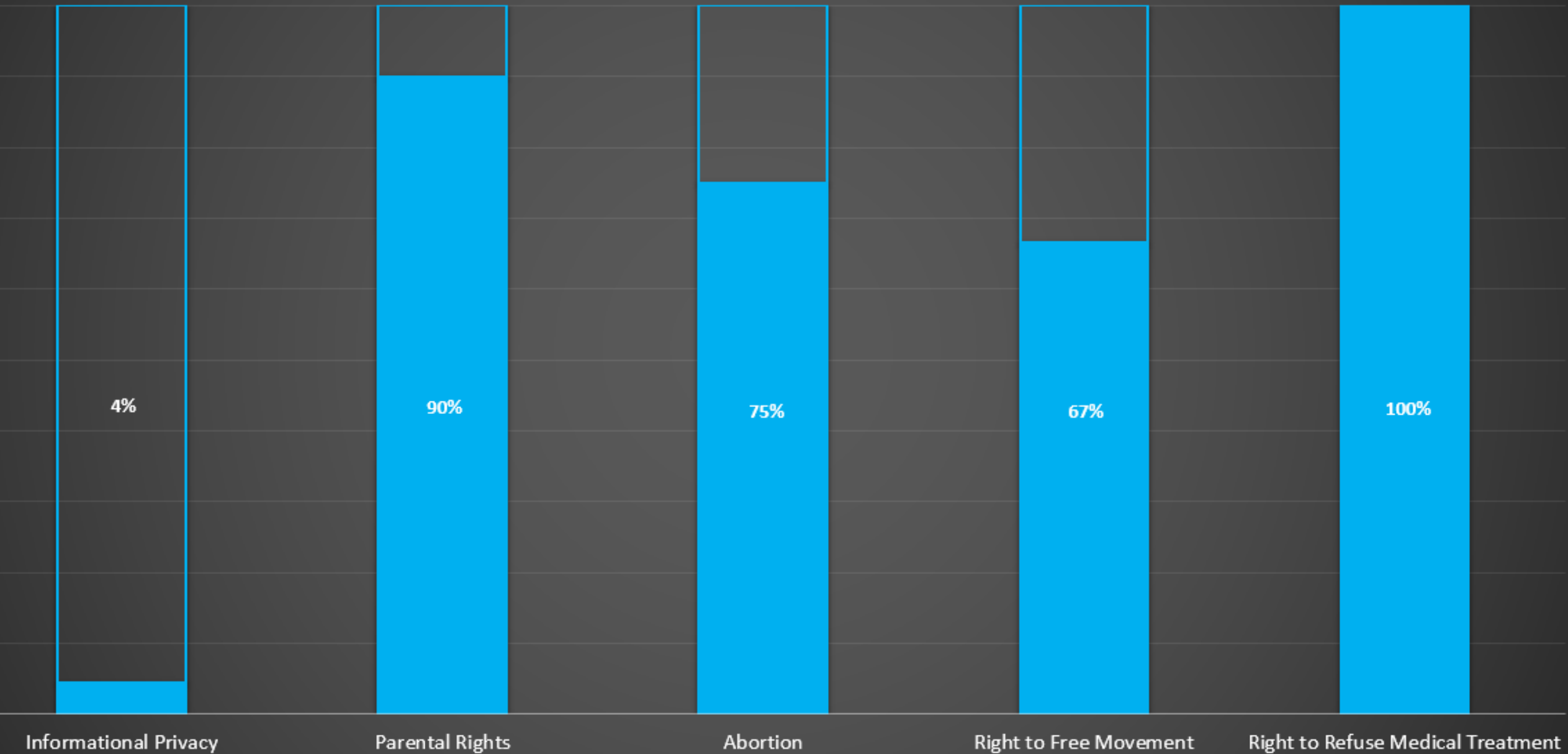
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## News Media Organizations & Editorial Boards Opposed

1978 Privacy Language  
1980 Privacy Language  
2018 Privacy Language



## Article 1, Section 23 Privacy Right Cases



Legitimate informational privacy issues are being ignored.

Instead, the court is abusing the right to privacy which is

- \* Endangering children
- \* Eroding parents rights
- \* Undermining community values
- \* Interfering with law enforcement's ability to fight crime.



Positive  
Campaign,  
Libertarian  
Leaning Themes  
Appealing to the  
General Public

# YES 2 Restore PRIVACY

Vote YES on 2

