

ACA 51 - PRIVACY

Staff Analysis

Source: John Billett

Purpose: Make privacy an inalienable right guaranteed by the Constitution.

History: The measure is similar to ACA 69 (1971 session) which was defeated in the Assembly Judiciary Committee along with a companion bill, AB 2933.

Legislative Counsel: Miss Roth

Analysis: Adds pursuing and obtaining privacy to the inalienable rights mentioned in the State Constitution. Already in this category are pursuing and obtaining safety and happiness.

In addition, it substitutes "persons" for "men" in Section 1 of Article I of the State Constitution.

Comment: This Constitutional Amendment puts the State on record regarding the right of privacy. At a time when people are becoming increasingly uneasy about potential and real abuses of privacy, it would be highly desirable for the California Constitution to state that individuals are entitled to privacy. The right to privacy has been upheld in the Supreme Court case of Griswold vs. Connecticut.

Question: Would this measure have legal implications beyond the readily obvious; for instance, would the right to privacy overturn legal authority for wiretapping, etc.

Staff: Milner

## THE RIGHT TO PRIVACY - CASE LAW

The right to pursue and obtain privacy is not spelled out in either the State or the Federal Constitutions but has a firm basis as established by the United States Supreme Court and other case law.

In Griswold v. Connecticut (1965), the U.S. Supreme Court recognized the constitutional right of privacy emanating from the penumbral application of the fundamental rights guaranteed by the First, Third, Fourth, Fifth and Ninth Amendments to the Constitution. Justice Douglas wrote:

"specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures'. The Fifth Amendment in its Self-Incriminating Clause enables the citizen to create a zone of privacy which the government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people'.

"The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U.S. 616, 630, 5 S. Ct. 524, 532, 29 L Ed 746, as protection against all governmental invasions 'of the sanctity of a man's home and the privacies of life'."

- (1. Griswold v. Connecticut 381 U.S. 479, 85 S. CT. 1678, 14 L Ed 2d 510.)

With Stanley v. Georgia, the right of privacy had become a constitutional imperative. The decision in the "Stanley" case was explicitly founded upon the inherent limitations on the State's power to inquire into the "private" lives of its citizenry.

"Also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.

"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 feelings 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."

More recently, in Wisconsin v. Constantineau (1971), the Supreme Court recognized limitations on the ability of the State to collect and to disseminate potentially derogatory information about individuals.

When our Constitution was drafted, physical searches and seizures and interrogation constituted the primary forms of governmental surveillance. Our privacy was protected then by the Fourth Amendment against unreasonable searches and seizures and the Fifth Amendment protection against compulsory self-incrimination.

(2. Stanley v. Georgia 394 U.S. 564, 89 S. CT. 1247)

With the technological revolution and the age of cybernetics, these amendments, as they have been traditionally viewed, do not offer sufficient protection against state surveillance, record collection and government snooping into our personal lives. We must, therefore, develop new safeguards to meet the new dangers.

Proposition 11 puts the State on record that privacy is essential to our other freedoms. It further expands the evolving view of privacy emerging from case law. The right of privacy has emanated from our other constitutional protections. With the right of privacy explicitly written into the Constitution, it will itself become the basis for an expansion of constitutional protections.

The growing pervasiveness of government demands our immediate attention. Proposition 11 will be a definitive statement of the necessity to control government interference in our personal lives and bring the issue clearly before the public and the courts. The major contribution of this amendment is to make the public aware that its freedoms are being slowly eroded, that this trend must be reversed. Passage of Proposition 11 will serve notice on the Legislature and the Courts that the public will not permit the continual abrogation of their rights. The right to privacy must be clearly spelled out and must be firmly adhered to.