

## RESOLUTION 05-05-06

### DIGEST

#### United States Constitution: Right to Privacy

Recommends legislation be sponsored to add Amendment XXVIII to the United States Constitution to establish an inalienable right to privacy in one's person and property.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE (WITH RECOMMENDED AMENDMENTS)

#### History:

No similar resolutions found.

#### Reasons:

This resolution recommends legislation be sponsored to add Amendment XXVIII to the United States Constitution to establish an inalienable right to privacy in one's person and property. This resolution should be approved in principle (with recommended amendments) because the vast majority of American citizens have recognized the individual right to privacy in their state constitutions and, with increased globalization, privacy rights of Americans need federal recognition and protection.

Americans have historically indicated that they consider the individual's right to privacy as inalienable as the right to life, liberty, and the pursuit of happiness. Forty-six (46) states and the District of Columbia have recognized the individual's right to privacy in their state constitutions. Furthermore, all fifty states and the federal government have regularly enacted various statutory provisions protecting individual privacy rights.

The right of privacy has been on the federal stage most recently in the areas of protected health information ("PHI") and identity theft. During the 108th Congress (2003-2004), more than 300 bills involving a range of privacy issues, including the Identity Theft Penalty Enhancement Act (H.R. No. 1731, 108th Cong. (2004)), were introduced. Identity theft has become pervasive nationally and internationally and threatens citizens both privately (regarding the theft of personal financial and medical information) and publicly (regarding homeland security). The fifteen countries of the European Union have even been systematically enacting national legislation implementing the E.U. Data Protection Directive to ensure the privacy rights of their citizens. Given the uniform concern nationally for the protection of individual privacy rights, and given the growing threats to those rights with increased globalization, it makes sense to have the right to privacy recognized at the federal level for all American citizens.

It is recommended that the phrase "within the jurisprudence of the United States of America" be removed to avoid ambiguity and to make it consistent with other provisions of the Constitution.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored by Senators Boxer and Feinstein in the United States Senate and members of the California delegation in the United States House of Representatives to add an Amendment XXVIII to the Constitution of the United States to read as follows:

- 1 Amendment XXVIII
- 2 All persons shall have an inalienable right to privacy in their person and their property and
- 3 shall not be deprived of this right without due process of law.

(Proposed new language underlines; language to be deleted stricken)

Proponents: Duncan Crabtree-Ireland, Leon Goldin, Maggie Grover, Mark Hart, Jody Hoeninger, Andi Liebenbaum, Lawrence Liebenbaum, Lilys McCoy, Sam Overton, Alan Ramos, Tina Rasnow, Matthew St. George, George Wailes, Jim Weixel, Michael White

#### STATEMENT OF REASONS

Existing Law: Only provides a common law right to privacy within the “penumbra” of rights found within the existing amendments to the Constitution of the United States.

This Resolution: Would establish an explicit right to privacy for each person in their person and property.

The Problem: The current right to privacy on the federal level only exists in case law. As such, it is subject to reinterpretation by judicial *fiat*. Whether such reinterpretation would expand the existing right or restrict it is not the issue. Rather, it is the recognition that the development of the modern nation-state and information technology now require that our liberties such as the sanctity of individual decisions regarding one’s person and the protection of confidentiality in one’s personal records should be explicitly established by a vote of the people. Numerous state constitutions, including our state of California, have been amended by the vote of the people to establish the right to privacy independent of case law. While this may be confused by the parsing-down of its possible interpretation into special interest issues, the necessity of its establishment as a specific right in federal constitutional law is beyond dispute.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute, or rule.

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