

VIII. ARTICLE I, SECTION 1 OF THE CALIFORNIA CONSTITUTION

A state constitutional privacy guarantee was added to the California Constitution by an initiative passed in the 1972 general election. In construing constitutional provisions added by initiative, California courts frequently refer to the ballot arguments in favor of such initiatives as an indication of “legislative intent.” The following pages 11, 26, 27 and 28 from **PROPOSED AMENDMENTS TO CONSTITUTION – PROPOSITIONS AND PROPOSED LAWS TOGETHER WITH ARGUMENTS – GENERAL ELECTION, TUESDAY, NOVEMBER 7, 1972** are all of the arguments regarding the addition of an inalienable right of privacy to the rights guaranteed under the California Constitution.

<p>RIGHT OF PRIVACY. Legislative Constitutional Amendment. Adds right of privacy to</p> <p>11 inalienable rights of people. Financial impact; none</p>	YES	
	NO	
<p>(This amendment proposed by Assembly Constitutional Amendment No. 51, 1972 Regular Session, expressly amends an existing section of the Constitution; therefore, EXISTING PROVISIONS proposed to be DELETED are printed in STRIKEOUT TYPE and NEW PROVISIONS proposed to be INSERTED are printed in BOLDFACE TYPE)</p>	<p>PROPOSED AMENDMENT ARTICLE I SECTION 1. All men people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety, and happiness, and privacy.</p>	

11	RIGHT OF PRIVACY. Legislative Constitutional Amendment. Adds right of privacy to inalienable rights of people. Financial impact: None	YES	
		NO	

(For Full Text Measure, See Page 11, Part II)

<p>General Analysis by the Legislative Counsel</p> <p>A “Yes” vote on this legislative constitutional amendment is a vote, to amend the Constitution to include the right of privacy among the inalienable rights set forth therein.</p> <p>A “No” vote is a vote against specifying the right of privacy as an inalienable right.</p> <p>For further details, see below.</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Detailed Analysis by the Legislative Counsel</p> <p>The Constitution now provides that all men are by nature free and independent, and have certain inalienable rights, among which</p> <p style="text-align: center;">(Continued in column 2)</p>	<p>Cost Analysis by the Legislative Analyst</p> <p>The right to privacy, which this initiative adds to other existing enumerated constitutional rights, does not involve any significant fiscal considerations.</p> <hr/> <p style="text-align: center;">(Continued from column 1)</p> <p>are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.</p> <p>This measure if adopted, would revise the language of this section to list the right of privacy as one of the inalienable rights. It would also make a technical nonsubstantive change in that the reference to “men” in the section would be changed to “people”</p>
<p>Argument in Favor of Proposition 11</p> <p>The proliferation of government snooping and data collecting is threatening to destroy our traditional freedom. Government agencies seem to be competing to compile the most extensive sets of dossiers of American citizens. Computerization of records makes.</p>	<p>it possible to create “cradle-to-grave” profiles on every American.</p> <p><u>At present there are no effective estrains on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian.</u></p>

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.

Fundamental to our privacy is the ability to control circulation of personal information. This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.

Even more dangerous is the loss of control over the accuracy of government and business records on individuals. Obviously, if the person is unaware of the record, he or she cannot review the file and correct inevitable mistakes. Even if the existence of this information is known, few government agencies or private businesses permit individuals to review their files and correct errors.

The average citizen also does not have control over what information is collected about him. Much is secretly collected. We are required to report some information, regardless of our wishes for privacy or our belief that there is no public need for the information. Each time we apply for a credit card or a life insurance policy, file a tax return, interview for a job, or get a drivers' license, a dossier is opened and an informational profile is sketched. Modern technology is capable of monitoring, centralizing and computerizing this information which eliminates any possibility of individual privacy.

The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is compelling public need. Some information may remain as designated public records but only when the availability of such information is clearly in the public interest.

Proposition 11 also guarantees that the right of privacy and our other constitutional freedoms extend to all persons by amending Article I and substituting the term "people" for "men". There should be no ambiguity about whether our constitutional freedoms are for every man, woman and child in this state.

KENNETH CORY
Assemblyman, 69th District
GEORGE R. MOSCONE
State Senator, 10th District

Rebuttal to Arguments in Favor of Proposition 11

To say that there are at present no effective restraints on the information activities of government and business is simply untrue. In addition to literally hundreds of laws restricting what use can be made of information, every law student known that the courts have long protected privacy as one of the rights of our citizens.

Certainly, when we apply for credit cards, life insurance policies, drivers' licenses file tax returns or give business interviews, it is absolutely essential that we furnish certain personal information. Proposition 11 does not mean that we will no longer have to furnish it and provides no protection as to the use of the information that the Legislature cannot give if it so desires.

What Proposition 11 can and will do is to make far more difficult what is already difficult enough under present law, investigating and finding out whether persons receiving aid from various government programs are truly needy or merely using welfare to augment their income.

Proposition 11 can only be an open invitation to welfare fraud and tax evasion and for this reason should be defeated.

JAMES E. WHETMORE
State Senator, 35th District

Argument Against Proposition 11

Proposition 11, which adds the word "privacy" to a list of "inalienable rights" already enumerated in the Constitution, should be defeated for several reasons.

To begin with, the present Constitution states that there are certain inalienable rights "among which are those" that it lists. Thus, our Constitution does not attempt to list all of the inalienable rights nor as a practical matter, could it do so. It has always been recognized by the law and the courts that privacy is one of the rights we have, particularly in the enjoyment of home and personal activities. So, in the first place, the amendment is completely unnecessary.

For many years it has been agreed by scholars and attorneys that it would be advantageous to remove much unnecessary wordage from the Constitution, and at present we are spending a great deal of money to finance a Constitution Revision Commission which is working to do this. Its work presently is incomplete and we should not begin to lengthen our Constitution and to amend it piecemeal until at least the Commission has had a chance to finish its work.

The most important reason why this amendment should be defeated, however, lies in an area where possibly privacy should not be completely guaranteed. Most government welfare programs are an attempt by California's more fortunate citizens to assist those who are less fortunate; thus today, millions of persons are the beneficiaries

of government programs, based on the need of the recipient, which in turn can only be judged by his revealing his income, assets and general ability to provide for himself.

If a person on welfare has his privacy protected to the point where he need not reveal his assets and outside income, for example, how could it be determined whether he should be given welfare at all?

Suppose a person owned a house worth \$100,000 and earned \$50,000 a year from the operation of a business, but had his privacy protected to the point that he did not have to reveal any of this, and thus qualified for and received welfare payments. Would this be fair either to the taxpayers who pay for welfare or the truly needy who would be deprived of part of their grant because of what the wealthy person was receiving?

Our government is helping many people who really need and deserve the help. Making privacy an inalienable right could only bring chaos to all government benefit programs, thus depriving all of us, including those who need the help most.

And so because it is unnecessary, interferes with the work presently being done by the Constitution Revision Commission and would emasculate all government programs based on recipient need, I urge a “no” vote on Proposition 11.

JAMES E. WHETMORE
State Senator, 35th District

Rebuttal to Argument Against Proposition 11

The right to privacy is much more than “unnecessary wordage”. It is fundamental in any free society. Privacy is not now guaranteed by our State Constitution. This simple amendment will extend various court decisions on privacy to insure protection of our basic right.

The work of the Constitution Revision Commission cannot be destroyed by adding two words to the State Constitution. The Legislature actually followed the Commission’s guidelines in drafting Proposition 1 by keeping the change simple and to the point. Of all the proposed constitutions amendments before you, this is the simplest, the most understandable, and one of the most important.

The right to privacy will not destroy, welfare nor undermine any important government program. It is limited by “compelling public necessity” and the public’s need to know. Proposition 11 will not prevent the government from collecting any information it legitimately needs. It will only prevent misuse of this information for unauthorized purposes and preclude the collection of extraneous or frivolous information.

KENNETH CORY
Assemblyman, 69th District