



October 30, 2017

The Honorable Lisa Carlton, Chair, Declaration of Rights Committee  
Constitutional Revision Commission  
400 S. Monroe Street, The Capitol  
Tallahassee, FL 32399

Re: CRC Privacy Proposal 22

Dear Commissioner Carlton:

We are writing to express our grave concerns regarding CRC Proposal 22, Declaration of Rights, Right of Privacy, which would amend the constitutional right of privacy found in Article I, s. 23, Fla. Con., to limit privacy rights to “privacy of information and the disclosure thereof.”

While we are certainly concerned about the broader implications of such a severe constraint on privacy rights for all Floridians, the First Amendment Foundation is most alarmed by the dramatic impact this proposal would have on the constitutional right of access to public records.

The last line of the privacy provision states that the right of privacy “shall not be construed to limit the public’s right of access to public records and meetings *as provided by law.*” (emphasis added)

This language currently allows the Legislature to create exemptions from public disclosure requirements. If CRC Proposal 22 is adopted, legislative powers would be broadly expanded, and the Legislature could “provide by law” that certain “private” information is *not* public record. This would give the Legislature the power to selectively pull existing public records from the public domain.

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.

Under the current constitutional and statutory scheme, only the Legislature can create exemptions to the right of access guaranteed under Article 1, s. 24, Fla. Con. And although the FAF doesn’t always agree with some of the proposed public record exemptions, we believe

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the Legislature has done a very good job in protecting sensitive and personal information. Currently, there are scores of exemptions protecting medical information, social security numbers, personal financial information, and even home addresses when warranted.

Given the large number of such exemptions and the authority of the Legislature to create new exemptions to protect sensitive personal information, the exact purpose of Proposal 22 isn't clear – other than to allow sweeping revisions of existing disclosure laws.

If the proposed amendment passed, would public officials no longer be required to disclose personal financial information? Would text messages sent by a city manager on his personal cell phone to a lobbyist asking for expensive football tickets be considered “private” and thus not subject to disclosure under the public records law? Would applications for public employment or criminal history records fall under the privacy provision? Would lobbyists no longer have to disclose the identity of clients and gross compensation?

Given the alarming ambiguity of the phrase “privacy of information,” as well as the Legislature’s existing constitutional authority to create exemptions to protect sensitive personal information, we strongly encourage your committee to vote no on this unneeded change to the strong privacy provision in Florida’s Constitution.

We appreciate your attention to our concerns, Commissioner Carlton. If you have any questions, please do not hesitate to contact us.

Sincerely,



Barbara A. Petersen, President

cc: The Honorable Carlos Beruff, Chair, Constitutional Revision Commission  
Members, CRC Delegation of Rights Committee  
The Honorable Sandy D’Alemberte  
Members, CRC Coalition