

LEGISLATIVE RESEARCH SERVICES

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The Legislative Origins of Alaska's Constitutional Right to Privacy

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You asked for any documentation that might speak to the intent of John Havelock's framing of the right to privacy in the 22nd Amendment to Alaska's Constitution.

In 1972, Alaska voters overwhelmingly approved adding the right to privacy to the state constitution. There was nothing quite like it in the U.S. Constitution nor in any other state constitution. In the years that followed, though, a small group of states followed Alaska's example. Judicial interpretation of the right to privacy has been used to defend Alaskans' *right to use marijuana* at home and to *access an abortion*, among others.

Senate Joint Resolution 68

According to Gordon Harrison's *A Citizen's Guide to Alaska's Constitution*, the 22nd Amendment was borne out of a fear of surveillance by computer systems, which were an emerging technology. He writes:

In the early 1970s, the Alaska Department of Public Safety was developing the Alaska Justice Information System, a computerized database of information on the criminal history of individuals. Fearful that such a system was the precursor of a "Big Brother" government information bureaucracy, legislators responded with this constitutional amendment, which was handily ratified by the voters. (pg. 39)

Sen. Terry Miller drafted and introduced Senate Joint Resolution 68 in April 1972. The initial version (attached) was much longer than what ended up in the amendment and reveals some of the concerns of the day regarding government surveillance:

The right of the people to privacy is recognized and shall not be violated. The legislature shall provide for the prosecution and punishment of public officials and private parties who act in violation of this section, and shall provide civil remedies to supplement common law remedies to redress and prevent such violations. The legislature shall provide for the protection and security of information available to the state to the extent necessary to protect the rights of the individual recognized in this section and shall further provide for the protection and security of information gathered under this section by the state.

John Havelock, the attorney general at the time, is credited with offering a succinct version of the amendment. According to him, Sen. Miller shared a draft of the resolution, which Mr. Havelock thought was too wordy. “So I went back to the office and I wrote it the way it is now and went out in the hall, handed it to him, and that became the Privacy Amendment,” *Havelock recalled to Alaska Public Media* shortly before his death in 2021.

Havelock’s version is two short sentences, only 20 words long: “The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.” This is the final wording of the amendment, but there is evidence that the legislature did some of the wordsmithing, too. A selection of the minutes from a House Judiciary Committee meeting when the language was amended is quoted in *State v. Planned Parenthood of Alaska*, 28 P.3d 904 (2001):

[committee chairman Moran] wondered about the phrase “shall not be violated.” What really is the right to privacy? This needs to be defined. [Representative] Barber moved to delete [the] phrase.... Moran said that he would like to see the people have the right to privacy but would like it phrased like other sections of the constitution. [Representative] Banfield moved to delete the second sentence. There was no objection. Art [Peterson, committee counsel,] said we could say “shall implement this section” or “shall provide for the implementation of this section” and leave out the details. This would be stating principles generally ... which allows for easier administration. Barber felt that we were leaving out the penalty section. Moran said this would be covered in the “implementation.” [Representative] Rose agreed that leaving the entire first sentence with the broad general language of the second sentence providing for legislative implementation would be entirely adequate. It was decided to change “violate” to “infringe.”

The result of those amendments was the committee substitute (attached) that went to the floor for final passage. Each body needed to pass the resolution by a two-thirds vote. In the House it received 39 yeas and one nay (1972 House Journal pg. 1477). In the Senate, it passed with 16 yeas, two nays, and two excused (1972 Senate Journal pg. 970).

The amendment appeared on the ballot during that year’s primary election and passed with 86% yes votes. On August 22, 1972, SJR 68 became Article 1, Sec. 22 of Alaska’s Constitution.

Court Challenges and Affirmations

We found a little more insight into the legislature’s intent with SJR 68 in the Alaska Supreme Court *opinion* that struck down the Valley Hospital Association’s abortion ban in 1997, solidifying Alaskans’ right to abortion access pursuant to the constitutional right to privacy. The hospital had argued that the privacy amendment couldn’t provide protection for reproductive rights because the intent of the legislature was to protect individuals from government surveillance. “While the initial draft of the

amendment attempted to specify privacy interests to be protected,” Chief Justice Compton wrote, referring to Sen. Miller’s longer first draft, “the final constitutional amendment simply protected the right of the people to privacy. The plain language of article I, section 22 is a broad protection of privacy rights. The legislative history is insufficient to limit the general language of the privacy amendment.”

Regardless of the legislature’s intent in the first draft, John Havelock’s version passed both bodies and was ratified by a vote of the people. Its broad protection of privacy rights has been upheld in several state supreme court cases since 1972:

- 1975, in *Ravin v. State*, applied to marijuana use in the home
- 1977, in *Falcon v. Alaska Public Offices Commission*, applied to patient privacy and the state’s Conflict of Interest law
- 1997, in *Valley Hosp. Ass’n, Inc. v. Mat-Su Coalition for Choice*, applied to abortion access
- 1997, in *Alaska Wildlife Alliance v. Rue*, applied to disclosure of public employee and private contractor personal information

The following cases contain additional interpretation of the right to privacy and discussion of the legislature’s intent in proposing the amendment:

- 1981, *State Dept. of Revenue v. Oliver*, concerning the right to refuse to submit an income tax return on privacy grounds
- 2001, *State v. Planned Parenthood of Alaska*, concerning a statute requiring minors to obtain parental consent before obtaining an abortion
- 2019, *Doe v. Department of Public Safety*, concerning the Alaska Sexual Offender Registration Act
- 2024, *State v. McKelvey*, concerning law enforcement surveillance of a private home from a low-flying aircraft

We hope this is helpful. If you have questions or need additional information, please let us know.

Introduced: 4/3/72
Referred: Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST

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SENATE JOINT RESOLUTION NO. 68

HCS

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SEVENTH LEGISLATURE - SECOND SESSION

5

Proposing an amendment to the

6

Constitution of the State of Alaska

7

insuring the individual's right

8

of privacy.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. Article I, Constitution of the State of Alaska, is amended
11 by adding a new section to read:

12 SECTION 22. RIGHT OF PRIVACY. The right of the people to privacy
13 is recognized and shall not be violated. The legislature shall provide
14 for the prosecution and punishment of public officials and private
15 parties who act in violation of this section, and shall provide civil
16 remedies to supplement common law remedies to redress and prevent such
17 violations. The legislature shall provide for the protection and
18 security of information available to the state to the extent necessary
19 to protect the rights of the individual recognized in this section and
20 shall further provide for the protection and security of information
21 gathered under this section by the state.

22 * Sec. 2. The amendment proposed by this resolution shall be placed
23 before the voters of the state at the next statewide election in conformity
24 with sec. 1, art. XIII, Constitution of the State of Alaska, and the
25 election laws of the state.

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Original sponsor: Rules Committee by request

Offered: 5/31/72
Referred: Rules

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BY THE JUDICIARY COMMITTEE

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