

2001 DRAFTING REQUEST

Assembly Joint Resolution

Received: 10/30/2000

Received By: dykmapj

Wanted: Soon

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing: him

This file may be shown to any legislator: NO

Drafter: dykmapj

May Contact:

Alt. Drafters:

Subject: Constitutional Amendments

Extra Copies: RPN
MGD

Pre Topic:

No specific pre topic given

Topic:

Creating an independent constituional right of privacy of individuals

Instructions:

See Attached 1999 AJR 42

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dykmapj 10/30/2000	gilfokm 10/30/2000		_____			
/1			pgreensl 10/31/2000	_____	lrb_docadmin 10/31/2000	lrb_docadmin 01/17/2001	

FE Sent For:

<END>

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Handwritten initials and number 14

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1/?	dykmapj	11-10/30 KMG	11/30 PG	10/30 PG/RS			

FE Sent For:

<END>

Dykman, Peter

From: Miller, Steve
Sent: Thursday, October 26, 2000 2:25 PM
To: Dykman, Peter
Subject: Redraft request for Marlin Schneider

Rep. Schneider has requested the following redrafts.
He understands that our priority at this time is drafting the Governor's budget.

99-0595/1

835
= 0806/11

2001

1999 ASSEMBLY JOINT RESOLUTION 42

Nov 10

April 9, 1999 – Introduced by Representatives SCHNEDER, CARPENTER, REYNOLDS, BOCK, PLALE, POWERS and YOUNG, cosponsored by Senators ERPENBACH, DECKER and DARLING. Referred to Committee on Judiciary and Personal Privacy.

2001

1 **To create** section 26 of article I of the constitution; **relating to:** creating an
2 independent right of privacy of individuals (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 1999 legislature on first consideration, establishes an independent right of privacy of individuals, which may not be infringed by law or by any person.

A proposed constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

3 ***Resolved by the assembly, the senate concurring, That:***

4 **SECTION 1.** Section 26 of article I of the constitution is created to read:

5 [Article I] Section 26. Every individual shall have a right of privacy, which may
6 not be infringed by law or by any person.

7 **SECTION 2. Numbering of new provision.** The new section 26 of article I of
8 the constitution created in this joint resolution shall be designated by the next higher
9 open whole section number in that article if, before the ratification by the people of
10 the amendment proposed in this joint resolution, any other ratified amendment has

1 created a section 26 of article I of the constitution of this state. If one or more joint
2 resolutions create a section 26 of article I simultaneously with the ratification by the
3 people of the amendment proposed in this joint resolution, the sections created shall
4 be numbered and placed in a sequence so that the sections created by the joint
5 resolution having the lowest enrolled joint resolution number have the numbers
6 designated in that joint resolution and the sections created by the other joint
7 resolutions have numbers that are in the same ascending order as are the numbers
8 of the enrolled joint resolutions creating the sections.

9 ***Be it further resolved, That*** this proposed amendment be referred to the
10 legislature to be chosen at the next general election and that it be published for 3
11 months previous to the time of holding such election.

12 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-0035/lan
LRB-0595/lan
PJD:kmg:hmh

March 1, 1999

of individuals

This joint resolution creates an independent right of privacy. I did not amend Article I, section 1 or 11, of the Wisconsin Constitution, which is the approach taken by some other states, because the right of privacy might then be limited just to criminal matters or just to governmental action or just to the protection granted under the 14th Amendment to the U.S. Constitution or just to the protection granted under all amendments to the U.S. Constitution.

By creating the right of privacy in the constitution it becomes a fundamental right. However, no fundamental right is absolute. The various rights must be balanced against competing interests. Often, when engaged in the balancing, the courts will use a standard of review that requires a statute that impacts a fundamental right to have a compelling state interest and be the least restrictive alternative. Of the ten states that have an explicit constitutional right of privacy, only Montana places the standard of review in the constitution. Because other provisions of our constitution do not set forth the standard of review, because only one state constitution sets it forth, and because I believe the Wisconsin Supreme Court will use this standard of review as they did in *State v. Miller*, 202 Wis2nd 56 (1996), I did not include the standard of review in this draft of the amendment.

You may wish to ~~refer~~ review

Atty. Peter J. Dykman
Deputy Chief
266-7098

two states on this issue:
SS. 895.50 and 942.08, stats.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0835/1dn
PJD:kmg.pg

October 30, 2000

This joint resolution creates an independent right of privacy of individuals. I did not amend Article I, section 1 or 11, of the Wisconsin Constitution, which is the approach taken by some other states, because the right of privacy might then be limited just to criminal matters or just to governmental action or just to the protection granted under the 14th Amendment to the U.S. Constitution or just to the protection granted under all amendments to the U.S. Constitution.

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Atty. Peter J. Dykman
Deputy Chief
266-7098



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

October 31, 2000

MEMORANDUM

To: Representative Schneider

From: Attorney Peter J. Dykman, General Counsel

Re: LRB-0835 Creating an independent constitutional right of privacy of individuals

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7098 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.