

Table 3 Presentation

December 4, 2019

**Sampling of Multi-Jurisdictional Interpretations
of State Privacy Amendments**

**Robinson v. City of Seattle
Court of Appeals of Washington, Division One
102 Wn. App. 795 *; 10 P.3d 452 (2000)**

City of Seattle required a pre-employment urinalysis drug test for approximately half its positions. Taxpayers challenged the constitutionality of this program. Article I, section 7 of the Washington State Constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." This protects the citizenry's personal autonomy.

The Court's inquiry was whether the City has unreasonably intruded into a person's private affairs. Holding that the testing constitutes a warrantless search without particularized grounds for suspicion, it found that the City must show the program is narrowly drawn to achieve a compelling governmental interest. branches of privacy under article I, section 7. The City argued that its pre-employment testing requirement satisfies the "special needs" test because of the City's need to avoid hiring drug abusing applicants in "safety-sensitive" jobs. It also argued that an applicant who applies with knowledge of the test has no reasonable expectation of avoiding it and so in effect consents to it. It also described its goal to avoid increased absenteeism, diminished productivity, greater health costs, increased safety problems, potential liability to third parties and more frequent turnover.

The Court held that given the "special solicitude of article 1, section 7 for the privacy rights of individuals," an application for government employment does not constitute voluntary submission to an invasion of constitutional rights. It noted that the City was unable to explain what duties implicating public safety are performed by certain employees, such as accountants, ushers, librarians, administrative assistants and public relations specialists. While the Court recognized the legitimate interest in efficiency and finances, it found that the privacy interest was greater. Ultimately, the Court held that the privacy standard was satisfied only as to testing of City applicants whose duties will genuinely implicate public safety.

Loder v. City of Glendale
California Supreme Court
14 Cal. 4th 846, 59 Cal. Rptr. 2d 696, 927 P.2d 1200 (Cal. 1997)

A taxpayer filed a suit challenging an employment-related drug testing program adopted by the City of Glendale. Under the program, all individuals who conditionally had been offered new positions with the city (both newly hired persons and current city employees approved for promotion to a new position) were required to undergo urinalysis testing for a variety of illegal drugs and alcohol as part of a preplacement medical examination. One basis for the lawsuit was Art. I, § 1 of the California Constitution, which relates to privacy and states: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

A divided California Supreme Court found the requirement constitutional under both the Fourth Amendment and the California constitution. It relied heavily on the fact that all applicants were required to undergo a "lawful medical examination," and concluded that the program resulted in a significantly lesser degree of intrusion than would otherwise occur.

People v. Buza,
California Court of Appeals, Fifth District
4 Cal. 5th 658, 721, 230 Cal. Rptr. 3d 681, 731,
413 P.3d 1132, 1174 (2018)

California's DNA Act requires law enforcement officials to collect DNA samples and fingerprints from all persons who are arrested and/or convicted of felony offenses. It also permits the government to store DNA with the potential to reveal it later. Buza was arrested for felony arson charge and ultimately convicted. At the time of his arrest, officers swabbed his cheek as part of a routine booking procedure at county jail in accordance with the Act.

On appeal, Buza challenged the securing of his DNA on the basis of California's right to privacy embodied in Article I, section 13, which has the purpose of protecting citizens from governmental surveillance and other forms of information gathering. The Court of Appeals held that DNA Act's collection requirement is valid as applied to an individual who, like Buza, was validly arrested on probable cause to hold for a serious offense. According to the Court, the requirement was not unreasonable.

Gomillion v. State
Court of Appeal of Florida, Second District
267 So. 3d 502 (Fla. Dist. Ct. App. 2019)

Gomillion was charged with one count of leaving the scene of an accident and one count of carelessly or negligently causing serious bodily injury while driving on a canceled, suspended, or revoked license after rear-ending a taxi and causing serious injuries to the driver and her passenger. Gomillion fled the scene, leaving his vehicle behind, but was soon found hiding under a trailer. He had been injured during the accident so was brought to the hospital for treatment where medical professionals tested his blood for purposes of medical treatment as opposed to law enforcement purposes. DNA was recovered from the vehicle's airbag, which had deployed during the accident, was tested and the results eventually showed that it matched Gomillion.

After Gomillion was charged and while preparing for trial, the State issued a subpoena of Gomillion's toxicology records. Before the records were released, Gomillion objected, arguing that the subpoena impinged on his right to privacy under article I, section 23, which states that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life." The State argued that toxicology records might help impeach Mr. Gomillion at trial. The Court rejected the State's argument that it had a compelling interest in the records, noting that it had not presented evidence making it reasonable to believe that the toxicology records will turn up evidence that Mr. Gomillion was under the influence of drugs or alcohol at the time of the accident. It held: "The fact that he is alleged to have left the scene of an accident, standing alone, is insufficient to make that showing, as there are myriad reasons unrelated to drug or alcohol use someone might do so." The arrest affidavit contained no information about Gomillion's smell, appearance, or demeanor that would support the assumption that he had been under the influence. Without that evidence, the State could not establish a nexus between the toxicology records and its case against Gomillion. In the absence of that nexus, there was no compelling state interest to override Gomillion's constitutional right to privacy.

Thomas v. Smith
Court of Appeal of Florida, Second District
882 So. 2d 1037 (Fla. App. 2004)

The State required disclosure of an individual's social security number on the application for homestead tax exemption. Applications without the social

security numbers were summarily rejected, resulting in the properties being taxed without the exemption. The taxpayers who had to pay the higher rate for that reason filed suit, asserting that the required disclosure of their social security numbers violated Article I, section 23, of the Florida Constitution, which provides: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." That provision has been recognized as ensuring that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others."

The trial court rejected the taxpayers' argument on the basis of the State's legitimate need for the SSN's. It did not properly evaluate the intrusion on the taxpayers' privacy. Finding that the taxpayers' did have a legitimate expectation of privacy in their SSN's, the Court of Appeal vacated the trial court decision and remanded the case for a proper assessment of whether the State had demonstrated a compelling state interest in requesting disclosure of an individual's social security number on the application; and, if so whether the required disclosure meets the least intrusive means test.

State v. Conforti,
Court of Appeal of Florida, Fourth District
688 So. 2d 350 (Fla. 4th DCA 1997)

An undercover police officer entered Studio XXX and paid \$ 80.00 for a "two female entertainment package." In a private room, two women danced erotically, masturbated and performed cunnilingus on each other. "The sex acts were performed rhythmically, in conjunction with the music, as part of the performance. The dancers contended that they attempted to communicate the message of eroticism. The officer testified that he, in fact, received the message." Both women were arrested and charged with engaging in lewd acts but the trial court dismissed the charges on constitutional grounds, including Florida's constitutional right to privacy. The Court of Appeals reversed, holding that the dancers had no legitimate expectation of privacy in the conduct which formed the basis for the criminal charges.

Hope Clinic for Women, Ltd. v. Flores
Illinois Supreme Court
2013 IL 112673, ¶ 67, 372 Ill. Dec. 255, 272-73, 991 N.E.2d 745, 762-63

Plaintiffs challenged the Parental Notice of Abortion Act, asserting that it violates the privacy clause found in the Illinois Constitution, article I, section 6 by unreasonably intruding upon a minor woman's right to bodily autonomy and her right to make medical decisions about her reproductive health care. The Court rejected the argument, stating: "while a minor clearly has an expectation of privacy in her medical information, which includes the fact of her pregnancy, the intrusion on the minor's privacy occasioned by the Act is not unreasonable." It weighed the minor's right against the State's "interest in ensuring that a minor is sufficiently mature and well-informed to make the difficult decision whether to have an abortion" It held: "To advance that interest, it is reasonable for the state to encourage an unemancipated minor under the age of 18 who wishes to have an abortion to seek the support of a parent or other interested adult, or to require her to prove her maturity by obtaining a judicial waiver in a waiver process that is expedited and confidential."

State v. Reid

New Jersey Supreme Court

194 N.J. 386, 389, 945 A.2d 26, 27 (2008)

Shirley Reid allegedly logged onto a website from her home computer. The site belonged to a company that supplied material to her employer's business. The supplier's website captured the ten-digit IP address. While on the supplier's website, Reid allegedly changed her employer's password and shipping address to a non-existent address. The supplier told Reid's employer what had occurred and provided the IP address. The employer reported the IP address to local authorities, which issued a subpoena to Reid's internet provider. The provider revealed that the IP address was assigned to Reid, who was subsequently indicted and convicted of theft.

On appeal, the Court reversed Reid's conviction, finding that Article I, Paragraph 7 of the New Jersey Constitution protects an individual's privacy interest in subscriber information. In so holding, the Court noted that with IP addresses, the government can learn intimate details about one's personal affairs, including "the names of stores at which a person shops, the political organizations a person finds interesting, a person's ... fantasies, her health concerns, and so on."

State v. Morris

165 Vt. 111, 114, 680 A.2d 90, 92 (1996)

An informant told an officer that Morris was selling marijuana from his apartment. Police officers went to his apartment building and seized five or six

opaque trash bags that had been set out for collection near the curb. The bags were later searched and police found marijuana seeds and stems. Based on the items found in the trash, the police sought and obtained a warrant to search defendant's residence. Morris filed a motion to suppress the evidence seized from his apartment on the ground that the search warrant was based on evidence discovered during an illegal warrantless search of his garbage. The trial court denied the motion and Morris appealed following his conviction.

The Vermont Supreme Court reversed on the basis of Article 11 of the Vermont Constitution, which protects persons "from unreasonable, warrantless governmental intrusions into affairs which they choose to keep private." The Court held that Morris had an objectively reasonable privacy interest in the contents of the trash bags. Consequently, the police should have obtained a warrant before searching through Morris's trash. The warrantless search of defendant's trash violated Vt. Const. art. 11, ch. I, and the warrant to search defendant's home, which depended on the contents of the trash bags, was infirm.