

Louisiana Law Review

Volume 51
Number 2 *November 1990*

Article 6

11-1-1990

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Louisiana Constitutional Law

John Devlin*

INDIVIDUAL RIGHTS

During the past two terms,¹ the Louisiana appellate courts rendered a number of noteworthy decisions interpreting the Declaration of Rights of the Louisiana Constitution of 1974, including significant contributions to the law of procedural due process,² freedom of speech,³ and freedom of religion,⁴ as well as to the constitutional law of juvenile procedure⁵

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1. Since no discussion of Louisiana Constitutional Law was included in the last "Developments" issue, this article considered decisions of both the 1988-1989 and the 1989-1990 terms.

2. *In re Adoption of B.G.S.*, 556 So. 2d 545 (La. 1990), holding that provisions of the Louisiana private adoption statute, which drastically limited the ability of an unwed father to resist termination of his parental rights where the natural mother wished to place the child for adoption, violated the father's state and federal constitutional rights to procedural due process.

3. *State v. Burgess*, 543 So. 2d 1332 (La. 1989), holding that the state and federal constitutional guarantees of freedom of speech precluded enforcement of former La. R.S. 18:1463(B) (Supp. 1990), which prohibited distribution of political campaign literature alleging that particular candidates are affiliated with other candidates, and of former La. R.S. 18:1463(C)(1) (Supp. 1990), which prohibited distribution of anonymous statements containing "scurrilous, false, or irresponsible adverse comment" about candidates.

4. *Babcock v. New Orleans Baptist Theological Seminary*, 554 So. 2d 90 (La. App. 4th Cir. 1989), writ denied, 558 So. 2d 607 (1990), holding, over the dissent of Judge Ciaccio, that neither the federal nor state constitutional guarantees of freedom of religion precluded the courts from entertaining the claim of a seminarian that the seminary breached its contractual commitment when it dismissed him without following its established procedures for imposing such discipline. See also, to similar effect, *First Union Baptist Church v. Banks*, 533 So. 2d 1305, 1308 n.1 (La. App. 3d Cir. 1988), indicating that the courts had jurisdiction over an action challenging the authority of a church's purported board of directors to remove the pastor of that church, at least where the action did not require the court to inquire into the merits of any church discipline of that pastor.

5. *State in Interest of Newton*, 559 So. 2d 801 (La. App. 1st Cir. 1990) (holding that even in the absence of express statutory authorization, courts have inherent power to review juvenile proceedings for constitutional errors patent); *State in Interest of Handy*, 559 So. 2d 795 (La. App. 1st Cir. 1990) (same).

and criminal procedure.⁶ Of these developments, two stand out as potentially farthest-reaching in their effects: 1) the Louisiana Supreme Court's recognition that the express guarantee of "privacy" in the state constitution independently protects some matters of personal choice from unjustified government interference;⁷ and 2) the continuing efforts of the Louisiana courts to articulate and consistently apply the independent analysis of the state constitution's guarantee of equality that was announced five years ago in *Sibley v. Board of Supervisors of Louisiana State University*,⁸ and to differentiate that analysis from the "tier" approach used to analyze the cognate federal right to equal protection of the laws.⁹

6. In several of these decisions, the Louisiana courts have continued to demonstrate their willingness to interpret state constitutional rights guarantees in a manner that is informed by but independent of, and may grant rights beyond those guaranteed by, similar provisions of the federal Bill of Rights. See, e.g., *State v. Church*, 538 So. 2d 993 (La. 1989) (holding that DWI roadblocks, though permissible under the search and seizure provisions of the federal fourth amendment, nonetheless violate the more stringent requirements of the state constitutional guarantee of privacy, La. Const. art. I, § 5); *State v. Spellman*, 562 So. 2d 455 (La. 1990) (holding that La. Const. art. I, § 16 entitled a prisoner to a reasonable continuance of trial so that he could appear before the jury in his own civilian clothes); *State v. Walland*, 555 So. 2d 478 (La. App. 4th Cir. 1989) (reviewing conflicting federal precedents and holding that La. Const. art. I, § 16 entitled defendant to separate trial following trial of codefendant, where codefendant offered to testify on behalf of defendant if, but only if, codefendant was tried first); *State v. Golden*, 546 So. 2d 501 (La. App. 2d Cir. 1989) (unlike federal eighth amendment, La. Const. art. I, § 18 precluded court from limiting bail to "cash only"). The Louisiana courts' willingness to move beyond cognate federal law is not confined to the area of criminal rights. See, for example, the discussion at notes 56-61, *infra*. Nor is such willingness to move beyond federal models unique to Louisiana. On the contrary, it places Louisiana firmly within the mainstream of the "new federalism" in state constitutional interpretation. See generally, Williams, *In the Supreme Court's Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result*, 35 S.C.L. Rev. 353 (1984); Collins & Galie, *Models of Post-Incorporation Judicial Review: 1985 Survey of State Constitutional Individual Rights Decisions*, 55 U. Cin. L. Rev. 317, 325 (1986).

In other cases involving criminal rights, the Louisiana courts have continued to explore the nuances of search and seizure law under both the federal and state constitutions. See, e.g., *State v. Honeyman*, 560 So. 2d 825 (La. 1990) (where the state does not rely on a statutory presumption of intoxication, results of a blood alcohol test will be admissible as evidence so long as state shows that the test is sufficiently reliable to satisfy the requirements of due process; distinguishing the higher standard of reliability required where the state relies on such a test to establish the statutory presumption); *In re Mullins & Pritchard, Inc.*, 549 So. 2d 872 (La. App. 1st Cir. 1989) (oil production facilities fall under the "pervasively regulated industry" exception to the warrant requirement for administrative searches); *State v. Peters*, 546 So. 2d 829 (La. App. 1st Cir. 1989) (placing electronic beeper on car, by warrant, did not violate defendant's right to privacy).

7. *Hondroulis v. Schuhmacher*, 553 So. 2d 398, 415 (La. 1989), discussed *infra* at notes 20-28, holding that "the Louisiana Constitution's right to privacy also provides for a right to decide whether to obtain or reject medical treatment."

8. 477 So. 2d 1094 (La. 1985).

9. See *infra* text accompanying notes 56-85.

Interpreting the State Constitutional Right of Privacy: Hondroulis v. Schuhmacher and Beyond

"Privacy" is a word of many legal meanings. As a concept in private law, the right of privacy is deeply rooted in the jurisprudence of virtually all states, including Louisiana.¹⁰ As a concept in constitutional law, in contrast, the right of privacy is far more recent in origin and problematic in meaning. Its existence and nature were first recognized and explored by federal courts interpreting the "penumbras" of certain express federal rights and the implications of the general federal guarantee of "liberty," of which one cannot be deprived without due process of law.¹¹ The concept was thereafter adopted by some states into their state constitutional jurisprudence, either by express state constitutional amendment¹² or by state judicial interpretation of pre-existing generally

10. The Louisiana law of privacy in its sense as a private tort (or *délict*) has been rooted both in Louisiana Civil Code article 2315 and in the guarantee of "privacy" contained in The Louisiana Constitution of 1974, article I, § 5, which is set out at note 17 *infra*. In analyzing the parameters of the concept of privacy in this sense, the Louisiana courts have "adopted, in wholesale fashion, the four branch analysis of Dean Prosser and the Restatement (Second) of Torts." *Easter Seal Society v. Playboy Enterprises*, 530 So. 2d 643, 647 (La. App. 4th Cir. 1988) (citing *Jaubert v. Crowley Post-Signal, Inc.*, 375 So. 2d 1386, 1388-89 & n.2 (La. 1979)). See also, to like effect, *Roshto v. Hebert*, 439 So. 2d 428, 430 (La. 1983).

It is worthy of note that this year marks the 100 year anniversary of the seminal article that originally conceptualized and articulated the right of privacy in this sense as a private tort. Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890). For an overview of the current jurisprudence see generally, W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on the Law of Torts* at 849-69 (5th ed. 1984).

11. Though hints of things to come can be found in earlier decisions, the first clear statement that such interests could rise to the level of constitutionally protected rights can be found in *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678 (1965) in which the Court held that the federal Bill of Rights required invalidation of a Connecticut statute which restricted the ability of a married couple to obtain and use contraceptives. During the years following *Griswold*, the federal supreme court extended the autonomy strand of its privacy analysis to further secure the right of an individual to read or watch whatever he pleases within the privacy of her own home, to marry or refrain from marriage, to choose to become or to refrain from becoming pregnant, and to choose whether or not to continue a pregnancy already in progress. See, e.g., *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169 (1986); *Zablocki v. Redhail*, 434 U.S. 374, 98 S. Ct. 673 (1978); *Carey v. Population Services Int'l*, 431 U.S. 678, 97 S. Ct. 2010 (1977); *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S. Ct. 1932 (1977); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 94 S. Ct. 791 (1974); *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 535 n.7, 93 S. Ct. 2821, 2826 n.7 (1973); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973); *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739 (1973); *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243 (1969).

12. Between 1968 and 1980, eight states amended their respective state constitutions to provide explicit protection for a right of "privacy." These amendments took several

worded state guarantees.¹³ As it has developed over the last twenty-five years, the right of privacy in its constitutional sense has generally been conceived as potentially protecting three related but distinguishable types of interests: the right to be free of unreasonable surveillance and intrusion ("search and seizure" rights);¹⁴ the right to prevent the accumulation

forms. The initial approach, adopted by four states—Hawaii, Illinois, South Carolina & Louisiana—simply added language prohibiting "unreasonable . . . invasions of privacy" to each state's respective guarantee of freedom from unreasonable searches and seizures. Haw. Const. art. I, § 7; Ill. Const. art. I, § 6; S.C. Const. art. I, § 10; La. Const. art. I, § 5. California pursued a unique approach, adding "privacy" to the list of fundamental rights declared to be basic and inalienable. Cal. Const. art. I, § 1. The final approach, also adopted by four states—Montana, Alaska, Hawaii (acting for a second time) and Florida—involved the enactment of wholly new, free standing sections of the states' respective declarations of rights, each of which was phrased differently from the others but all of which explicitly protected some right of "privacy." Mont. Const. art. II, § 10; Alaska Const. art. I, § 22; Haw. Const. art. I, § 6; Fla. Const. art. I, § 23.

13. In a process that began in the early 1970's and is still underway, courts in several states, including New Jersey, Massachusetts, Minnesota and Connecticut, followed the lead of *Griswold* and its progeny and concluded that various broadly phrased provisions of their respective state declarations of rights also should be construed to provide protection for the right of individuals to make a wide range of basic decisions regarding their personal and family lives free from governmental coercion or interference. See *Doe v. Maher*, 40 Conn. Supp. 394, 418-40, 515 A.2d 134, 146-57 (Conn. Super. Ct. 1986). *Brophy v. New England Sinai Hospital, Inc.*, 398 Mass. 417, 429-30, 497 N.E.2d 626, 632-33 (1986); *Moe v. Secretary of Administration and Finance*, 382 Mass. 629, 645-59, 417 N.E.2d 387, 397-404 (1981); *Jarvis v. Levine*, 418 N.W.2d 139, 146-48 (Minn. 1988); *State v. Gray*, 413 N.W.2d 107 (Minn. 1987); *In re Farrell*, 108 N.J. 335, 529 A.2d 404 (1987); *In re Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985); *State v. Baker*, 81 N.J. 99, 112-13, 405 A.2d 368, 374 (1979); *State v. Saunders*, 75 N.J. 200, 216-17, 381 A.2d 333, 341 (1977); *State v. Ciuffini*, 164 N.J. Super. 145, 395 A.2d 904 (N.J. Super Ct. App. Div. 1978).

14. The concept of constitutional privacy in this sense, as a shield against surveillance and intrusion, is enshrined in the federal fourth amendment and was first articulated long ago. See, *Olmstead v. United States*, 277 U.S. 438, 478, 48 S. Ct. 564, 572 (1928) (Brandeis, J., dissenting from the Court's decision upholding the constitutionality of a wiretap, and arguing that the federal constitution protects a fundamental "right to be let alone" by the government); *Boyd v. United States*, 116 U.S. 616, 630, 6 S. Ct. 524, 532 (1886) (noting that the federal fourth and fifth amendments operate to protect "the privacies of life").

In its modern incarnation the right of privacy in this sense appears to have two branches. One, dating from *Stanley v. Georgia*, 394 U.S. 557, 564-65, 89 S. Ct. 1243, 1247-48 (1969), ascribes a special significance to the home as a place where government cannot intrude without sufficient reason. A second branch dates from *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507 (1967), in which the Court held that federal fourth amendment protections against unreasonable searches and seizures apply where, but only where, the person has a "reasonable expectation of privacy" in the conduct of the particular activity being observed or recorded. While the federal Supreme Court has continued to employ the *Katz* test in fourth amendment cases, it has often taken a very narrow view of whether an asserted "expectation" of privacy is in fact "reasonable". See, e.g., *Smith v. Maryland*, 442 U.S. 735, 99 S. Ct. 2577 (1979) (no reasonable expectation of privacy in the telephone numbers one dials); *United States v. Miller*, 425 U.S. 435, 96 S. Ct. 1619 (1976) (no

and dissemination of certain kinds of information about oneself ("disclosural" rights);¹⁵ and the right to make certain choices about one's personal or family life free of governmental coercion ("autonomy" rights).¹⁶

Louisiana is one of the minority of states that has adopted an express guarantee of "privacy" into its state constitution. Article 1, section 5 of the Louisiana Constitution of 1974 states that "[e]very person shall be secure . . . against unreasonable . . . invasions of privacy."¹⁷ While the existence of a state constitutional right to privacy is thus beyond dispute, the question of how that right is to be interpreted has been less certain. The state guarantee of privacy has long been understood independently to protect individuals from unreasonable sur-

reasonable expectation of privacy in banking records); *United States v. White*, 401 U.S. 745, 91 S. Ct. 1122 (1971) (no reasonable expectation that other party to a conversation would not consent to secretly broadcast that conversation to others).

15. The constitutional right of privacy in this sense has been frequently asserted before but never vindicated by the federal Supreme Court. See, e.g., *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869 (1977) (upholding a statute requiring disclosure of medical information about individuals but indicating that, in limited circumstances not present in that case, the federal constitutional right of privacy might forbid such activity). See generally Peck, *Extending the Constitutional Right to Privacy in the New Technological Age*, 12 Hofstra L. Rev. 893, 907-08 (1984).

16. Privacy in this sense might include not only the sort of "family" and procreative rights currently given protection under the federal constitution, see *supra* note 11, *infra* notes 35-38 and accompanying text, but also such matters as the asserted rights to engage in consensual non-standard sexual activity, to control one's personal appearance or to maintain a particular "lifestyle." While these other aspects of the right of privacy in its autonomy sense have generally not received federal constitutional protection, see *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841 (1986) (no federal constitutional protection for consensual homosexual sodomy); *Kelley v. Johnson*, 425 U.S. 238, 96 S. Ct. 1536 (1976) (no federal constitutional prohibition on school forcing students to cut their hair); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974) (upholding a zoning ordinance prohibiting more than two unrelated persons from sharing living quarters), they are conceptually similar to those "autonomy" rights which do receive federal protection. As is noted *infra* at notes 41-48, these additional aspects of the right of autonomy have in some cases been given protection by state courts construing state constitutions.

17. La. Const. art. I, § 5 provides in full as follows:

§ 5. Right to Privacy

Section 5. Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by the search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

This provision was adopted by the Louisiana Constitutional Convention of 1973 on January 19, 1974. The proposed new constitution, including this language, was ratified by the voters on April 20, 1974.

veillance and intrusion¹⁸ as well as from unjustified disclosure of private information.¹⁹ Until last term, however, no Louisiana case had squarely held that the state constitutional guarantee of privacy also independently protects "autonomy" rights—that is, the fundamental right of individuals to make certain decisions regarding their family and personal lives free from governmental interference, unless that interference can be justified as necessary to promote a compelling state interest.

In *Hondroulis v. Schuhmacher*,²⁰ the Louisiana Supreme Court took the significant step of squarely holding, for the first time, that the state right of privacy includes and independently protects at least some "autonomy" rights.²¹ The case was not one which would appear on its face to have been a likely candidate to raise important constitutional issues. It involved an ordinary medical malpractice claim brought by a patient who had suffered significant injury during a lumbar laminectomy. Plaintiff claimed that she was unaware of the risks of the surgery and would not have consented if she had known. Defendant moved for summary judgment on the ground that the plaintiff had signed a consent form which tracked the statutory requirements of Louisiana Revised Statutes 40:1229.40 by describing broad categories of injury that might result from medical treatments generally.²² The trial court granted defendant's motion for summary judgment and the court of appeal affirmed, holding that a validly procured patient signature on a consent form tracking the language of Louisiana Revised Statutes 40:1229.40 establishes a heavy presumption of informed consent, which plaintiff had failed to rebut.²³ On its first hearing of the case, the Louisiana Supreme Court also affirmed.²⁴

On rehearing, however, the state supreme court reversed, holding that "the decision to obtain or reject medical treatment" falls within a cluster of personal choices protected from unjustified government interference both implicitly by the federal Constitution and explicitly by the state constitution.²⁵ In the court's words:

Art. I, Section 5 of the 1974 Louisiana Constitution expressly guarantees that every person shall be secure in his person against

18. See, e.g., *State v. Hernandez*, 410 So. 2d 1381 (La. 1982); *Parish National Bank v. Lane*, 397 So. 2d 1282 (La. 1981).

19. See, e.g., *Trahan v. Larivee*, 365 So. 2d 294, 300 (La. App. 3d Cir. 1978).

20. 553 So. 2d 398 (La. 1989). The case is noted, and the non-constitutional aspects of the decision are discussed, at Note, *Hondroulis v. Schuhmacher: The Crusade Back to Canterbury*, 50 La. L. Rev. 1195 (1990).

21. 553 So. 2d at 414-15.

22. *Id.* at 410-11.

23. *Hondroulis v. Schuhmacher*, 521 So. 2d 534 (La. App. 4th Cir. 1988).

24. *Hondroulis v. Schuhmacher*, 531 So. 2d 450 (La. 1988), rev'd 553 So. 2d 398 (La. 1989).

25. *Hondroulis v. Schuhmacher*, 553 So. 2d 398, 414 (La. 1989).

unreasonable "invasions of privacy." This safeguard was intended to establish an affirmative right to privacy impacting non-criminal areas of law and establishing the principles of Supreme Court decisions [construing the federal Constitution to protect autonomy rights] in explicit statement instead of depending on analogical development. Accordingly, we conclude that the Louisiana Constitution's right to privacy also provides for a right to decide whether to obtain or reject medical treatment. (Citations omitted.)²⁶

Turning to Louisiana Revised Statutes 40:1229.40, the court held that the Louisiana informed consent statute, as interpreted by the court of appeal, violated this constitutional standard because it encouraged physicians "merely to present patients with a form copying the phraseology of the statute, rather than to fully inform each patient in layman's terms of the nature and severity of the particular material risks to be encountered in her case," and because that diminution of a patient's ability effectively and intelligently to control her own medical treatment served no compelling government interest.²⁷ In order to avoid constitutional infirmity, the court construed Louisiana Revised Statutes 40:1229.40 to create a rebuttable presumption of "consent" but no presumption of "informed consent," and, accordingly, reversed the grant of summary judgment to the doctor defendant.²⁸

The conclusion of the *Hondroulis* court that the state constitution's reference to "privacy" should be construed to include protection for "autonomy" rights of the kind recognized under the federal constitution appears well founded. The placement of the guarantee of privacy within section 5 of the state Declaration of Rights—a section which largely parallels the federal fourth amendment in restricting the state government's search and seizure authority—could be taken to indicate that the rights it protects are relatively narrow in scope.²⁹ However, while the drafting history of the section is not completely clear, it does indicate that the crucial language was also intended to incorporate and protect disclosural and autonomy interests. The relevant language was drafted by the Committee on Bill of Rights and Elections of the Louisiana Constitutional Convention of 1973, working from proposals submitted by various interested parties. Some proposals, such as a draft Bill of

26. Id. at 415.

27. Id. at. 416.

28. Id. at 417-22.

29. But see Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 La. L. Rev. 1, 21 (1974), noting that section 5 as a whole was "deliberately placed apart from the other criminal procedure guarantees which are grouped together in Sections 13 through 21" in order to make evident that the rights it grants extend beyond mere matters of search and seizure.

Rights submitted by delegate Weiss, included a separate freestanding guarantee of "privacy" which would have provided explicit protection for autonomy interests.³⁰ Other proposals omitted any reference to privacy and would have apparently protected citizens only against unreasonable searches and seizures.³¹ The final language appears to have been a compromise between these competing drafts, intended to incorporate the substance of the broader proposals without the need for a separate freestanding "privacy" section.³²

The issue of the substantive scope of the right of privacy was not discussed during the convention's plenary debate on this section³³ and was also apparently not extensively debated during the ratification campaign. There is thus no direct evidence of what the framers and ratifiers might have subjectively intended by that language. However, the state supreme court has, on other occasions, resolved difficult issues of constitutional interpretation by treating the crucial language in the document as "a term of art or technical term" which must be "interpreted according to its received meaning and acceptance with those learned in the field"³⁴ By 1974, "privacy" had certainly become a "term of art" in the field of constitutional law, and its application to autonomy rights and disclosural rights had long since been well established. Given the notoriety accorded such federal "privacy" cases as *Griswold v. Connecticut*,³⁵ *Loving v. Virginia*,³⁶ *Stanley v. Georgia*³⁷ and *Roe v.*

30. The proposal of Dr. Weiss provided at section 5(A) that "Everyone has the right to privacy. No law shall authorize arbitrary or abusive interference with one's private life, family, home or communications." 10 Records of the Louisiana Constitutional Convention of 1973: Committee Documents 100-01 (1977). See also, to the same effect, id. at 7 (testimony of Dr. Francine Merritt and Ms. Debra Millenson).

31. See, e.g., the proposal of delegate Jenkins. Id. at 101.

32. See generally Hargrave, *supra* note 29, at 20-22.

33. The bulk of the Convention debate on section 5 focused instead on two questions: who would have standing to assert that a particular search was conducted in violation of the section's terms; and whether it created a civil right of action against law enforcement personnel who conduct illegal searches and seizures. 6 Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts 1072-77 (1977).

34. *State Bond Commission v. All Taxpayers*, 510 So. 2d 662, 665 (La. 1987) (citing La. Civ. Code art. 15).

35. 381 U.S. 479, 85 S. Ct. 1678 (1965), holding that the implied federal right of privacy precluded a state from unreasonably interfering with the ability of married couples to obtain birth control.

36. 388 U.S. 1, 12, 87 S. Ct. 1817, 1824 (1967), relying on a privacy-based right of untrammelled choice as to one's marriage partner as additional support for the Court's decision striking down anti-miscegenation laws.

37. 394 U.S. 557, 564-65, 89 S. Ct. 1243, 1247-48 (1969), holding on both first amendment and privacy grounds that states may not criminalize mere possession of allegedly obscene material in the privacy of one's own home.

Wade,³⁸ all of which had been decided and published before section 5 was drafted, adopted and ratified, the presumption that the drafters and ratifiers of the state constitution were aware of the possible import of including an explicit right of "privacy" in the state constitution seems eminently reasonable.³⁹

The holding of *Hondroulis* that the state constitution provides independent protection for at least some sorts of autonomy interests will likely produce much future litigation, as the Louisiana courts will be required to decide what other similar autonomy interests, in addition to the right to determine one's own medical treatment, are also included in the state constitutional right of "privacy." Recent decisions of the United States Supreme Court that may signal a narrowing of the definition and level of protection to be given privacy rights under the federal Constitution⁴⁰ have both reemphasized the importance of cognate state guarantees as alternative sources of protection for such fundamental interests and provided litigants with a strong incentive to press their state constitutional claims. Potential candidates for inclusion within the concept of privacy in the autonomy sense that have been recognized as

38. 410 U.S. 113, 93 S. Ct. 705 (1973), holding that the federally protected right of privacy in the "autonomy" sense required invalidation of state statutes which placed unreasonable restraints on the ability of a pregnant adult to obtain an abortion.

39. Though I have elsewhere criticized the Louisiana courts' use of this rather mechanical approach to constitutional interpretation in cases where the drafters were in fact unlikely to have been consciously aware of the supposed "technical" meaning of the words they chose, Devlin, *Developments in the Law, 1986-1987, Louisiana Constitutional Law*, 48 La. L. Rev. 335, 348-54 (1987), the argument has validity in situations such as this, where the drafters were much more likely to have understood the import of the language they chose.

To be sure, the court in *Hondroulis* did not explicitly rely on this rule of interpretation in reaching its conclusion that section 5 protects autonomy rights. Neither did that court explicitly distinguish, for purposes of determining the scope given such rights under federal law, between federal decisions which preceded and those which post-dated the 1973 constitutional convention. However, the court's reliance on such a process of reasoning is no less proper for being implicit, and it does remain that sufficient pre-convention federal precedents already existed by 1974 to make it plain to all that a constitutional right of "privacy" could well include affirmative rights of this sort. See generally Devlin, *State Constitutional Autonomy Rights in an Age of Federal Retrenchment: Some Thoughts on the Interpretation of State Rights Derived From Federal Sources*, 3 *Emerging Issues St. Const. Law* 195 (1990).

40. See *Cruzan v. Director, Missouri Dept. of Health*, 110 S. Ct. 2841 (1990) (holding that a state's interest in the continued life of a permanently comatose patient can override her parents' right to act on her behalf to stop life support, at least in the absence of clear evidence that the patient would choose to die under those circumstances); *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989) (permitting significant procedural restrictions on the ability of pregnant women to obtain abortions); *Bowers v. Hardwick*, 478 U.S. 186, 106 S. Ct. 2841 (1986) (holding that the federal Constitution provides no privacy based protection for homosexual acts between consenting adults).

explicitly or implicitly protected by the constitutions of other states—protected independently of and to a greater extent than such rights are protected by the federal Constitution—include the rights of individuals to control their personal appearance,⁴¹ to refuse nutrition,⁴² psychological treatments,⁴³ or potentially life-prolonging medical treatments,⁴⁴ to live with whom and in the manner they wish,⁴⁵ to possess controlled items or substances in the privacy of their own homes,⁴⁶ to engage in consensual sexual activity with other adults,⁴⁷ and to choose whether or not to obtain an abortion.⁴⁸ Which, if any, of these other types of autonomy

41. See, e.g., *Friedman v. District Court*, 611 P.2d 77, 78 (Alaska 1980) (judge can regulate the dress of attorneys before him to some extent, but "cannot adopt a dress code which is unduly rigid or which attempts to dictate matters of taste and esthetic preference" without violating state constitutional right of privacy); *Breese v. Smith*, 501 P.2d 159 (Alaska 1972) (interpreting state constitutional right of privacy to strike down school regulations limiting the length of male students' hair).

42. *Corbett v. D'Alessandro*, 487 So. 2d 368 (Fla. 2d Dist. Ct. App. 1986), review denied, 492 So. 2d 1331 (Fla. 1986).

43. *Jarvis v. Levine*, 418 N.W.2d 139, 146-48 (Minn. 1988) (right of privacy gives involuntarily committed mental patient the right to resist administration of neuroleptic drugs; a hearing with procedural rights required before those rights can be overridden).

44. See *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215, 741 P.2d 674, 682 (1987) (en banc); *Satz v. Perlmutter*, 379 So. 2d 359 (Fla. 1980), affirming, on the opinion below, *Satz v. Perlmutter*, 362 So. 2d 160 (Fla. 4th Dist. Ct. App. 1978); *In re Guardianship of Barry*, 445 So. 2d 365 (Fla. 2d Dist. Ct. App. 1984); *Brophy v. New England Sinai Hospital, Inc.*, 398 Mass. 417, 429-30, 497 N.E.2d 626, 632-33 (1986); *In re Farrell*, 108 N.J. 335, 529 A.2d 404 (1987); *In re Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985).

45. See *Robbins v. Superior Court*, 38 Cal. 3d 199, 695 P.2d 695, 211 Cal. Rptr. 398 (1985) (right of welfare recipients to live in own homes); *City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 129-31, 610 P.2d 436, 439-40, 164 Cal. Rptr. 539, 542-43 (1980) (rejecting federal precedents and striking down zoning ordinances banning households containing unrelated persons); *State v. Baker*, 81 N.J. 99, 112, 405 A.2d 368, 374 (1979).

46. See *Ravin v. State*, 537 P.2d 494, 500-11 (Alaska 1975) (state constitution precludes criminalization of mere possession of marijuana for personal use within the confines of one's home); *State v. Kam*, 69 Haw. 483, 490-96, 748 P.2d 372, 377-80 (1988) (finding state constitutional protection for in-home possession of pornography). But see *State v. Harlan*, 556 So. 2d 256 (La. App. 2d Cir. 1990), reaffirming prior holdings to the effect that the Louisiana constitutional right of privacy does not embrace any right to consume marijuana, even within the confines of one's own home.

47. See *State v. Gray*, 413 N.W.2d 107 (Minn. 1987) (indicating that state sodomy statute may violate state constitutional right of privacy if applied to consenting adults acting in private; rejecting federal *Bowers* analysis and result); *State v. Saunders*, 75 N.J. 200, 216-17, 381 A.2d 333, 341 (1977) (relying on both federal and state constitution to strike down statute criminalizing consensual heterosexual activity between unmarried adults); *State v. Ciuffini*, 164 N.J. Super. 145, 395 A.2d 904 (N.J. Super. Ct. App. Div. 1978) (state constitutional right of privacy precludes criminalization of homosexual activity between consenting adults).

48. See *Committee to Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (1981) (abortion funding rights); *Doe v. Maher*, 40 Conn. Supp. 394, 418-40, 515 A. 2d 134, 146-57 (Conn. Super. Ct. 1986) (state constitution

rights will also be found to be protected by the Louisiana constitution remains for future determination.⁴⁹

As this article goes to press, the Louisiana Supreme Court has just rendered an opinion further interpreting the right of privacy granted by section 5, and coming to two conclusions that may be of enormous future importance. In *Moresi v. State of Louisiana, Department of Wildlife and Fisheries*,⁵⁰ the court both: 1) indicated for the first time that the protections of section 5 "go beyond limiting state action" and apply directly to limit invasions of privacy interests by private, non-governmental parties;⁵¹ and 2) squarely held, also for the first time, that a violation of section 5 may give rise to a private cause of action for damages, similar to actions of the sort recognized under the federal Constitution in the famous *Bivens* case.⁵² These conclusions will significantly expand the practical ability of Louisianians to resist invasions of their privacy interests. For example, *Moresi* appears to cast doubt upon the substantive results of cases such as *Ballaron v. Equitable*

contains an independent unexpressed right of privacy which was violated by refusal of state authorities to fund abortions for indigent women); *In Re T.W.*, 551 So. 2d 1186 (Fla. 1989) (striking down a statute requiring parental consent to a minor's abortion on the basis of the state constitution's express guarantee of privacy). See also, to somewhat similar effect, *Conservatorship of Valerie N. v. Valerie N.*, 40 Cal. 3d 143, 707 P.2d 760, 219 Cal. Rptr. 387 (1985) (striking down statute absolutely forbidding sterilization of retardates); *Family Life League v. Department of Public Aid*, 112 Ill. 2d 449, 454, 493 N.E.2d 1054, 1057 (1986) (announcing that state provision incorporates some rights of the type recognized in *Griswold* and *Roe*); *Moe v. Secretary of Administration and Finance*, 382 Mass. 629, 645-59, 417 N.E.2d 387, 397-404 (1981) (rejecting analogous precedent decided under the federal constitution to hold that refusal of state authorities to fund abortions for indigent women violated the state constitution's penumbral guarantee of privacy).

49. Since *Hondroulis* was decided, its holding that the state constitution protects rights of privacy in the autonomy sense has been cited and relied upon in other decisions involving patients' right to refuse unwanted medical treatment. See *Rajnowski v. Saint Patrick's Hospital*, 564 So. 2d 671, 681 (La. 1990) (Dennis, J., concurring in denial of rehearing); *Roberson v. Provident House*, 559 So. 2d 838, 845 (La. App. 4th Cir. 1990) (Barry, J. dissenting). However, as of this writing, no case yet appears to have extended the analysis of *Hondroulis* to autonomy rights of other types.

50. *Moresi v. State of La., Through the Dept. of Wildlife and Fisheries*, No. 90-C-0205 (La. Sept. 6, 1990) (1990 WL 130051, 1990 Lexis 1808) [hereinafter *Moresi*].

51. *Id.* at 21 (citing Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 La. L. Rev. 1, 21 (1974)). The argument that section 5 might apply to private actors was occasionally mentioned before *Moresi*. See, e.g., *Parish National Bank v. Lane*, 397 So. 2d 1282, 1285 n.7 (La. 1981); *St. Julien v. South Central Bell Telephone Co.*, 433 So. 2d 847, 851 (La. App. 3d Cir. 1983). In none of these cases, however, did the court indicate any view on the issue.

52. *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971), cited at *Moresi*, No. 90-C-0205 slip op. at 22.

Shipyards, Inc.,⁵³ in which the fourth circuit denied that the state constitution grants employees a right to refuse lie detector examinations required by their employers. So too perhaps with respect to random or mass drug tests imposed by employers or other non-governmental entities.⁵⁴ Moreover, the prospect of a damages recovery, which *Moresi* also supports, will likely serve as further inducement for individuals to assert these rights.

Though the particular violation alleged in *Moresi* involved the "search and seizure" rather than the "autonomy" aspects of the state constitutional right of privacy, the court did cite *Hondroulis* with approval⁵⁵ and there is no apparent reason why the court's conclusions regarding private causes of action and the application of section 5 to non-governmental parties should not apply to autonomy rights as well. If so, *Hondroulis* and *Moresi* may ultimately come to be seen as marking a watershed in the constitutional history of Louisiana.

Equal Protection Under the State Constitution: Is Sibley's Third Category Distinguishable From Federal "Rational Basis" Review?

The guarantee of equal treatment in the Louisiana Declaration of Rights, Louisiana Constitution article I, section 3,⁵⁶ differs markedly from the terse federal guarantee of "equal protection of the laws,"⁵⁷ both in its language and in the purposes of its framers.⁵⁸ For these reasons, the Louisiana Supreme Court held in *Sibley v. Board of Su-*

53. 521 So. 2d 481 (La. App. 4th Cir. 1988). *Ballaron* based its decision on a view that such tests did not amount to an actionable invasion of privacy rather than on any explicit holding that section 5 applied only to state actors.

54. Compare *Luck v. Southern Pacific Transportation Co.*, 218 Cal. App. 3d 1, 218 Cal. App. 3d 1492B, 267 Cal. Rptr. 618 (Cal. Ct. App. 1st Dist. 1990) (petition for cert. filed August 28, 1990) (California constitution protects privacy interests from infringement by non-governmental entities; precludes private employer from requiring mass drug testing of employees); *Semore v. Pool*, 217 Cal. App. 3d 1087, 266 Cal. Rptr. 280 (Cal. Ct. App. 4th Dist. 1990) and cases cited therein.

55. *Moresi*, No. 90-C-0205 slip op. at 20 (La. Sept 6, 1990).

56. La. Const. art. I, § 3 provides as follows:

§ 3. Right to Individual Dignity

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

57. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

58. On the drafting history and purposes of this section, see generally Hargrave, *supra* note 29, at 6-10; Jenkins, *The Declaration of Rights*, 21 Loy. L. Rev. 9, 16-19 (1975).

*pervisors of Louisiana State University*⁵⁹ that the state provision must be interpreted independently of federal equal protection jurisprudence and the "tier" framework of analysis that was developed under that federal guarantee.⁶⁰ As articulated in *Sibley*, the proper approach to analysis of the state constitutional guarantee of equality is also tripartite in form, but differs significantly from the federal model in its content:

Article I, Section 3 commands the courts to decline enforcement of a legislative classification of individuals in three different situations: (1) When the law classifies individuals by race or religious beliefs, it shall be repudiated completely; (2) When the statute classifies persons on the basis of birth, age, sex, culture, physical condition, or political ideas or affiliations, its enforcement shall be refused unless the state or other advocate of the classification shows that the classification has a reasonable basis; (3) When the law classifies individuals on any other basis, it shall be rejected whenever a member of a disadvantaged class shows that it does not suitably further any appropriate state interest.⁶¹

During the years since *Sibley* was decided, however, Louisiana courts have experienced difficulty in consistently applying the analysis announced in that case, and in differentiating it from the federal "tier" approach.⁶²

During the last two terms, the Louisiana courts have continued to struggle with the issue of how claims of violation of the state constitutional right of equality—particularly equality claims of the third type identified in *Sibley*, *i.e.* those not based on any of the classifications

59. 477 So. 2d 1094 (La. 1985).

60. According to the traditional federal analysis, equal protection challenges to government action are decided according to one of three standards, depending on the type of right or distinction at issue. Most government activities are presumed constitutional and will be upheld unless "a challenging party [can] prove the challenged action to be completely unrelated to any legitimate governmental objective" ["rational basis" review]. But where government activities infringe on fundamental constitutional rights or distinguish between individuals on the basis of a "suspect" classification such as race or religion, "government action is not presumed to be constitutional, and will not be upheld by the Court unless shown to be necessarily related to a compelling state interest" ["strict scrutiny" review]. Finally, government activities which classify on other bases, such as gender, will be reviewed according to an "intermediate" standard according to which a court "will uphold government conduct if it is substantially related to an important governmental interest." *Sibley*, 477 So. 2d at 1105, and cases cited. See generally J. Nowack, R. Rotunda & J. Young, *Constitutional Law*, § 14.3, at 528-42 (3d ed. 1986).

61. *Sibley*, 477 So. 2d at 1107-08 (footnotes omitted).

62. For an overview and analysis of the first three years experience under *Sibley*, see generally Comment, *Equal Protection—The Louisiana Experience in Departing From Generally Accepted Federal Analysis*, 49 La. L. Rev. 903 (1989).

expressly enumerated in section 3—should be resolved. Many courts have strictly followed the approach set forth in *Sibley* for analyzing claims of this type, placing the burden of production and persuasion on the opponent of the challenged state action but nonetheless subjecting that state action to a serious and searching scrutiny, beyond that which typically characterizes federal “rational basis” review.⁶³ Other courts have tended to amalgamate the state and federal analyses, holding that the two standards “are quite similar,” at least where no enumerated or suspect classification or fundamental right is at issue.⁶⁴ In *Pierre v. Administrator, Louisiana Office of Employment Security*,⁶⁵ the Louisiana

63. See, e.g., *Whitnell v. Menville*, 540 So. 2d 304, 311 (La. 1989) (remanding case so that, among other things, plaintiff would be given the opportunity to show that the three year prescriptive period against physicians “does not suitably further any appropriate state interest”); *Winston v. Orleans Parish School Board*, 545 So. 2d 1174, 1178-79 (La. App. 4th Cir.), writ denied, 550 So. 2d 631 (1989) (holding that plaintiff had failed to show that the school board’s refusal to give job security to school cafeteria workers despite granting it to other school workers did not suitably further the state’s appropriate interest in avoiding long-term liability for expenses which the federal government might in the future cease to subsidize); *LaMark v. NME Hospitals, Inc.*, 542 So. 2d 753, 754-56 (La. App. 4th Cir. 1989) (holding that single statutory cap on all medical malpractice claims arising out of a particular event was not a classification based on “physical condition,” and that plaintiffs had failed to show that it did not suitably further the state’s appropriate interest in ensuring the availability and affordability of medical care).

Other decisions have reached what appear to be correct results according to the *Sibley* analysis without extensive discussion of just how its standards are to be applied. See, e.g., *Williams v. Kushner*, 549 So. 2d 294 (La. 1989) (avoiding an unconstitutional differentiation between litigants with medical malpractice claims pending against state defendants and litigants with similar claims pending against private defendants by reforming La. R.S. 40:1229.43 (Supp. 1990) to exempt future medical expenses from the statutory damage cap for pending as well as future claims, and thus to conform with La. R.S. 40:1299.39 (Supp. 1990)); *Edwards v. Liberty Mutual Ins. Co.*, 552 So. 2d 699, 702-03 (La. App. 3d Cir. 1989), writ denied, 556 So. 2d 61 (1990) (rule denying all workers compensation benefits for any week in which claimant received unemployment benefits suitably furthered state’s legitimate pecuniary interests); *Accountants’ Ass’n of Louisiana v. State*, 533 So. 2d 1251, 1256 (La. App. 4th Cir. 1988) (plaintiff produced “no evidence” that the statutory limits on activities of unlicensed accountants does not tend to accomplish the state’s objective of protecting the public).

64. *Miller v. State Civil Service Comm’n*, 540 So. 2d 482, 486 (La. App. 1st Cir. 1989), holding that rule denying additional salary credit for experience gained outside Louisiana while giving credit to those with experience within the state violated neither the federal nor the state guarantees of equality. After determining that the rule did not infringe on the fundamental right of interstate travel, the court had no trouble concluding that it would pass muster under the federal “rational basis” test. The court then concluded, without extensive analysis, that the same result would obtain under the state provision. *Id.* at 486. See also, to the same effect, *Bridley v. Alton Ochsner Medical Found. Hosp.*, 532 So. 2d 905 (La. App. 5th Cir. 1988), discussed *infra* at notes 74-76.

65. 553 So. 2d 442 (La. 1989), holding that an amendment to the Louisiana Employment Security Law, La. R.S. 23:1601(2) (1985), which had the effect of awarding benefits to certain claimants who had previously filed what were at the time invalid claims

Supreme Court apparently joined this trend, taking a long and unfortunate step toward blurring the distinction between the federal and state constitutional standards by saying that state equality claims not based on any enumerated category should be analyzed in a manner "essentially the same" as that applied under federal minimal scrutiny, "rational basis" review.⁶⁶

There are, of course, good reasons why analogies between state and federal constitutional standards should be clearly drawn where appropriate. Divergence between state and federal courts in their respective analyses of basic constitutional rights can create additional uncertainty for officials charged with the duty to conform their actions to the commands of both charters, can result in duplication of judicial effort without noticeable improvement in the quality of the resulting analysis, and can cause at least the appearance of unprincipled decisionmaking on the part of one or both courts.⁶⁷ Moreover, the unique role which the United States Supreme Court enjoys in our polity—as the one body with the institutional prestige and national scope to enable it to assume leadership in articulating a common moral and legal basis for the nation—should entitle to great respect the analytic approaches it has developed to articulate and explain the scope and meaning of basic rights.⁶⁸ In addition, this tendency to rely on federal approaches may also reflect the psychology and training of lawyers. Lawyers and judges are all well versed in federal equal protection analysis; the basics of "rational basis" scrutiny and "suspect classes" are deeply ingrained. Thus, it is not

while denying such benefits to otherwise similarly situated claimants who had not previously filed such invalid claims, was unconstitutional under both the federal and state equality guarantees.

66. As the court noted in *Pierre*:

Since the classification at issue does not differentiate on the basis of race or religious beliefs, nor on the basis of birth, age, sex, culture, physical condition or political ideas or affiliations, *Sibley* provides:

[I]t shall be rejected whenever a member of a disadvantaged class shows that it does not suitably further any appropriate state interest.

Under the U.S. Constitution, the legislative classification must be rationally related to a legitimate state purpose, a standard of review that is essentially the same as Louisiana's where no fundamental right or suspect classification is involved.

553 So. 2d at 447 (citations omitted).

67. The recognition of problems such as these has been at the heart of the challenges which have begun to be raised to the recent "new federalism" trend of independent analysis of state constitutions. See, e.g., Maltz, *False Prophet—Justice Brennan and the Theory of State Constitutional Law*, 15 *Hastings Const. L.Q.* 429 (1988); Maltz, *The Dark Side of State Court Activism*, 63 *Tex. L. Rev.* 995 (1985); Hudnut, *State Constitutions and Individual Rights: The Case for Judicial Restraint*, 63 *Denver U.L. Rev.* 85 (1985).

68. See, e.g., Sager, *Foreword: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law*, 63 *Tex. L. Rev.* 959, 960-62 (1985).

surprising that even commentators who are committed to expansive protection tend, when approaching equality issues under the novel language of the state constitution, to see the problem in terms of the traditional federal categories and to regard the federal analysis as expressing the only possible modalities of discussion.⁶⁹

Nevertheless, this reliance on federal jurisprudence to interpret the Louisiana constitutional right of equal treatment, however understandable, remains misplaced. The unique language of the state guarantee of "individual dignity" was adopted intentionally by its framers, with the specific purpose of providing expansive protection for equality interests independent of and beyond the protections provided by the federal Constitution.⁷⁰ As the court in *Sibley* noted, a proposal to conform the state guarantee of equality to the protections given by the federal fourteenth amendment was explicitly defeated by the Louisiana Constitutional Convention.⁷¹ Moreover, any extensive reliance on federal analysis would fail to afford sufficient deference to *Sibley* and the concerns which motivated the decision and rationale in that case.⁷² The opinion of the court in *Sibley* was quite insistent both in its perception that the state constitution provides greater protections than does the federal Constitution, and in its rejection of the federal "three-tier" framework of

69. See, for example, Spaht, Lorio, Picou, Samuel & Swaim, *The New Forced Heirship Legislation: A Regrettable "Revolution"*, 50 La. L. Rev. 409, 422-31 (1990), arguing that, since the state's new forced heirship legislation sets up categories based on "age," one of the categories enumerated in section 3, the statute must be subjected to *state* constitutional review according to a standard approximating the *federal* "intermediate" level of scrutiny. The unspoken assumption is that the federal cases have established the range and categories of analysis, and that all that a more protective state guarantee can add is to require that a particular discrimination be analyzed at a different "place" along that federally determined range. In contrast, it appears that *Sibley* attempted to do more, to set up a *sui generis* system of review according to a single standard—"suitability" to an "appropriate" state interest—that would not necessarily have anything to do with federal analyses.

70. See generally Hargrave, *supra* note 29 at 6-10.

71. 6 Records of the Louisiana Constitutional Convention of 1973, Convention Transcripts at 1022-30, discussed in *Sibley v. Bd. of Supervisors*, 477 So. 2d 1094, 1107-08 (La. 1985).

72. The supreme court was closely divided in *Sibley*, with the justices splitting four to three on the crucial issue of whether the state equality guarantee should be interpreted differently than its federal cognate. 477 So. 2d at 1110 (Justice Watson concurring with the three-justice opinion of the court on this point); *id.* at 1110-14 (Justices Calogero, Marcus and Blanche, dissenting). And with the departure of Justice Dixon, one of the original *Sibley* majority, from the bench, there may be speculation that the court may reconsider the *Sibley* analysis. Nevertheless, it remains that the commitment to independent analysis that was made in *Sibley* has been consistently reaffirmed by the court in subsequent cases, without any overt indication of any intention to return to the heavily criticized federal analysis. See, e.g., cases cited at *supra* note 63; *Kirk v. State*, 526 So. 2d 223 (La. 1988); *Crier v. Whitecloud*, 496 So. 2d 305 (La. 1986).

equal protection analysis.⁷³ The *Sibley* court noted accurately that the federal approach often proved inflexible and ill-suited to the myriad and closely balanced factual circumstances of equal protection challenges,⁷⁴ that it had come under increasing academic attack,⁷⁵ and that even the federal Supreme Court had begun to abandon that approach in some cases.⁷⁶ Certainly *Sibley* provides no warrant for any assumption that the federal and state analyses should share more than superficial and accidental similarities.

The problems which *Sibley* saw as inherent in the federal analysis are particularly acute with respect to classifications receiving only "minimal" levels of federal scrutiny, in part because the federal courts have been unable to come up with any consistent application of that standard. As the *Sibley* court noted, such federal "rational basis" review, though "minimal in theory, has on many occasions "turned out to be non-existent in practice,"⁷⁷ construed to require no real showing by the proponent of the government classification under attack. Rather, federal courts have at times been all too willing to presume a rational reason or factual basis for the challenged government action.⁷⁸ On other occasions, as *Sibley* also noted, federal courts have applied this same rubric of "rational basis" review to what has been in fact a much more searching kind of scrutiny.⁷⁹ In contrast, *Sibley*'s express language requires that even unenumerated classifications should *always* undergo a meaningful scrutiny. While opponents of such classifications bear the burden of production and persuasion to show that an appropriate state interest is not suitably furthered, such review is—or at least should be—no rubber stamp.⁸⁰

73. 477 So. 2d at 1105-09.

74. *Id.* at 1105-06, noting the federal Supreme Court's *ad hoc* efforts to inject much-needed flexibility into the federal scheme by cobbling up the "intermediate" level of scrutiny, by *de facto* alteration of the operative standard in particular cases and, on occasion, by abandoning its standard analysis altogether.

75. *Id.* at 1106 and n.19, citing Shaman, *Cracks in the Structure: the Coming Breakdown of Levels of Scrutiny*, 45 Ohio St. L.J. 161, 182-83 (1984); Seeburger, *The Muddle of the Middle Tier: The Coming Crisis in Equal Protection*, 48 Missouri L. Rev. 587 (1983); Hutchinson, *More Substantive Equal Protection: A Note on Plyler v. Doe*, 1982 Sup. Ct. Rev. 167 (1982); and Gunther, *In Search of Evolving Doctrine on a Changing Concept: A Model for a Newer Equal Protection*, 86 Harv. L. Rev. 1 (1972).

76. 477 So. 2d at 1105-06, and cases cited therein.

77. *Id.* at 1105.

78. See, e.g., *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 101 S. Ct. 715 (1981); *Williamson v. Lee Optical*, 348 U.S. 483, 75 S. Ct. 461 (1955).

79. 477 So. 2d at 1105 and n.17 (citing *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309 (1982); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148 (1982); *Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S. Ct. 2821 (1973)).

80. 477 So. 2d at 1107-08.

The distinction thus drawn between the analysis of unenumerated categories under the state equality guarantee and "rational basis" analysis under the federal constitution is not merely formal or semantic. On the contrary, the failure to observe the distinction may well have been outcome determinative in some recent cases. For example, in *Bridley v. Alton Ochsner Medical Foundation Hospital*,⁸¹ the court held, first, that since the distinction set up by the challenged statute did not fall within any of the categories enumerated in section 3, "the provision is presumed constitutional,"⁸² and, second, that there was no need to remand the case for further evidence on whether the statute "reasonably" furthers a "legitimate" state interest "because of the minimal level of scrutiny involved."⁸³ Such conclusions might well be compatible with federal "rational basis" analysis, at least in its less rigorous form. But considered under the more searching standards that *Sibley* requires to be applied to state equality claims, both the result and the language of *Bridley* appear incorrect.⁸⁴

To be sure, the supreme court's recent comments in *Pierre* need not—and, I would argue, should not—be read as necessarily establishing an analogy between section 3 and the most permissive line of federal "rational basis" review. On the contrary, the cases cited by the court in *Pierre* to illustrate the federal standard are precisely those which embody the strictest version of federal equal protection scrutiny.⁸⁵ And it may well be that the *Sibley* standard and the strictest version of federal rational basis review would lead to similar results in most cases. Nevertheless, given the ambiguity of the federal "rational basis" standard, any such reference is bound to be unclear at best, and at worst sufficiently misleading to result in further decisions like that in *Bridley*. It would thus seem preferable for the courts of this state to continue to interpret section 3 according to its own terms, and to avoid easy but potentially misleading analogies to federal jurisprudence interpreting a very different federal guarantee.

STATE GOVERNMENT: STRUCTURE AND OPERATIONS

During the past two terms, the Louisiana courts have also rendered a number of decisions regarding the structure and operation of state

81. 532 So. 2d 905 (La. App. 5th Cir. 1988), holding that the statutory requirement that medical malpractice claims must be submitted to a medical review panel violates neither the federal nor the state equal protection guarantees.

82. *Id.* at 907.

83. *Id.* at 908.

84. See also, to similar effect, *Miller v. State Civil Service Comm'n*, 540 So. 2d 482, 486 (La. App. 1st Cir. 1989), discussed at *supra* note 57.

85. *Pierre v. Administrator, La. Office of Employment Security*, 553 So. 2d 442, 447 (citing *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 105 S. Ct. 3249 (1985), and *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309 (1982)).

government and the allocation of power among its branches. Prominent among these has been the ongoing litigation over the power of the state Board of Ethics for Elected Officials and its Supervisory Committee on Campaign Finance Disclosure, a body appointed in part by the legislative branch, to undertake the assertedly executive function of initiating civil proceedings against one alleged to have violated the Campaign Finance Disclosure Act. This is an issue which is still unresolved as this article goes to press,⁸⁶ and will therefore be left for future discussion. Other decisions have involved such disparate matters as judicial tenure,⁸⁷ the limits on execution against the state,⁸⁸ and the three dollar auto license fee.⁸⁹ Nonetheless, the most interesting development in this area of state constitutional law was surely the supreme court's recent declaration that the 1988 restructuring of the Louisiana workers compensation system impermissibly derogated from the exclusive original jurisdiction of the district courts, and was thus unconstitutional.

86. The district court initially denied defendants' motions based upon the asserted unconstitutionality of the enforcement system established by the Campaign Finance Disclosure Act, La. R.S. 18:1481-1532 (Supp. 1990). The first circuit reversed, holding that such an exercise of executive powers by the Committee did violate state constitutional provisions mandating separation of powers between the executive and legislative branches, La. Const. art. II, §§ 1 & 2, and vesting the governor with exclusive authority to execute the laws. La. Const. art. IV, § 5(A). *State, Bd. of Ethics v. Green*, 540 So. 2d 1185 (La. App. 1st Cir. 1989). As of this writing, the supreme court has issued two opinions in the case, both of which were subsequently vacated. The first opinion would have affirmed the circuit court, agreeing (by a bare four to three majority, which included Justices Marcus, Watson, and Cole, and Judge Pike Hall, sitting in place of Justice Lemmon) that the system violated separation of powers. *State, Bd. of Ethics v. Green*, 545 So. 2d 1031 (La. 1989). The second opinion would have reversed the circuit court, holding (again by a four to three majority, now including Chief Justice Dixon and Justices Lemmon, Dennis and Calogero) that *no* violation of separation of powers had occurred. *State, Bd. of Ethics v. Green*, 559 So. 2d 480 (La. 1990). The final opinion will doubtless be rendered after Chief Justice Dixon's successor is determined.

87. *Giepert v. Wingerter*, 529 So. 2d 1389 (La. App. 4th Cir. 1988), holding that La. Const. art. V, § 23(a) protects the right of any judge already serving at the time when the 1974 constitution became effective to continue in office until the mandatory retirement age of 75 established by the 1921 constitution; subsequent reelection after 1974 does not subject such a judge to the lower mandatory retirement age of 70 set by the 1974 constitution.

88. See, e.g., *Foster v. State*, 560 So. 2d 502 (La. App. 1st Cir. 1990), holding that, where state appropriates only sufficient funds to pay the principle amount of a judgment rendered against it, the state's sovereign immunity, embodied at La. Const. art. XII, § 10, bars the judgment creditor from bringing a subsequent action to recover interest and court costs. See also, to similar effect, *Bruno v. City of New Orleans*, 724 F. Supp. 1222 (E.D. La. 1989), holding that a judgment creditor in a federal civil rights action is also barred from executing that judgment against the city.

89. *Williams v. State*, 538 So. 2d 193 (La. 1989), holding that La. Const. art. VII, § 5, which limits motor vehicle license fees, precludes the state from imposing an additional "handling fee" on license applications.

Worker's Compensation and the District Courts: A Jurisdictional Limit on Administrative Adjudication

Until 1983, employees who wished to press workers compensation claims in Louisiana were required to do so by filing civil suits in district court. Revisions enacted in that year changed this system, by creating an administrative agency, the Office of Worker's Compensation Administration ("OWCA"), to handle initial processing of compensation claims and by requiring injured employees to initially file their claims with the director of the OWCA for a recommendation as to how the claim should be resolved.⁹⁰ Under the 1983 amendments, these recommendations remained advisory only; employees retained the right to bring an action *de novo* in district court if either side rejected the director's recommendation. In 1988, the legislature amended the compensation system yet again, this time eliminating the role of the district courts except in matters of enforcement.⁹¹ According to the new system, the task of conducting hearings on and initially determining disputed compensation claims fell not to district judges but rather exclusively to a newly established group of nine administrative hearing officers—executive branch employees—subject only to a right of appeal on the record to the circuit courts of appeal.⁹²

In *Moore v. Roemer*,⁹³ the Louisiana Supreme Court held, without dissent,⁹⁴ that this system of administrative adjudication of compensation claims violated the state constitution. Though plaintiffs in *Moore* raised several grounds for such a finding of unconstitutionality,⁹⁵ the supreme

90. 1983 La. Acts 1st ex. sess. No. 1. For analysis of the effects of the 1983 amendments see generally *Turner v. Maryland Casualty Co.*, 518 So. 2d 1011, 1014-15 (La. 1988).

91. 1988 La. Acts No. 938. By reforming the workers compensation system to vest exclusive original jurisdiction in an administrative agency, rather than in the courts, the legislature responded to longstanding criticism of the Louisiana system and brought this state's system into line with that of the vast majority of other states. See generally W. Malone & H. Johnson, *Workers' Compensation* § 37, at 51-57, in 13 *Louisiana Civil Law Treatise* (2d ed. 1980).

92. La. R.S. 23:1310.1-.5 (1985). As originally enacted, 1988 La. Acts No. 938 also set up a system of internal administrative appeals from initial determinations to a panel comprised of 3 hearing officers. An appeal could then be taken from this appeals panel to the circuit courts of appeal. The administrative appeals panel was abolished by 1989 La. Acts No. 454 § 9 which provided for direct appeals from the OWC hearing to the circuit court of appeal, effective January 1, 1990.

93. 567 So. 2d 75 (1990), affirming *Moore v. Roemer*, 560 So. 2d 927 (La. App. 1st Cir. 1990).

94. Justice Dennis was the only justice who did not join in the opinion of the court. He concurred and will assign reasons, which have not, as of this writing, appeared.

95. In addition to the grounds ruled on, plaintiffs also asserted in the supreme court that the 1988 amendments to the workers compensation system violated: La. Const. art.

court ruled on only one. It held that the constitution's express mandate in article V, section 16(A) that "district court[s] shall have original jurisdiction of all civil . . . matters"⁹⁶ precluded the legislature from depriving district courts of power to hear such claims. The court reaffirmed that the standard for finding legislative enactments unconstitutional is a strict one.⁹⁷ Nevertheless it found the decision in *Moore* compelled by the plain terms of the state constitution, construed by a straightforward syllogism: the legislature may not divest district courts of jurisdiction mandated by the state constitution, which includes original jurisdiction over "civil matters"; worker's compensation claims are "civil matters"; therefore no statute may vest any administrative organ with exclusive power bindingly to determine such claims in the first instance,⁹⁸ at least in the absence of *de novo* review in the district courts. Since the drafting history of section 16(A) appears to strongly support the court's major premise,⁹⁹ the real question was the constitutional definition

II, § 1 (separation of powers); art. V, § 1 (vesting the judicial power of the state in the supreme court, courts of appeal, district courts and other courts authorized by that article); art. V, § 22 (requiring election of judges); and art. I, § 22 (requiring courts to be open to provide adequate remedies for injured persons), as well as the due process and equal protection clauses of the federal and state constitutions, U.S. Const. amend. XIV & La. Const. art. I, §§ 2 & 3. *Moore*, 567 So. 2d at 78 n.3. Other related arguments raised before the court of appeal also included that the workers compensation amendment impermissibly conferred original jurisdiction on appellate courts and deprived the district courts of exclusive jurisdiction over claims in which the state or a political subdivision is a defendant, in violation of La. Const. art. V, §§ 10 & 16(A). *Moore*, 560 So. 2d at 931.

96. La. Const. art. V, § 16(A). That provision provides in full as follows:

§ 16. District Courts; Jurisdiction

(A) Original Jurisdiction. Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters. It shall have exclusive original jurisdiction of felony cases and of cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships.

(B) Appellate Jurisdiction. A district court shall have appellate jurisdiction as provided by law.

97. *Moore*, 567 So. 2d at 78, citing *Louisiana Recovery District v. All Taxpayers, Property Owners, and Citizens of Louisiana*, 529 So. 2d 384 (La. 1988), and other cases. For a brief discussion of the standards announced in that case see Devlin, *Developments in the Law, 1987-1988, Louisiana Constitutional Law*, 49 La. L. Rev. 395, 406-20 (1988).

98. *Moore*, 567 So. 2d at 78-80.

99. The court noted that the Judiciary Committee of the 1973 Constitutional Convention specifically rejected language from its working draft that would have permitted the legislature to make exceptions to the original jurisdiction of the district courts. Instead, as drafted and ratified, 16(A) provides that jurisdiction can be removed from the district courts only as "otherwise authorized by this constitution. . . ." *Moore*, 567 So. 2d at 79 n.5. While such constitutional authorization for limiting the district courts' jurisdiction

of "civil matters." While the court's conclusions on this point are not beyond dispute, it did marshal an impressive array of arguments—based on the constitution's language,¹⁰⁰ structure,¹⁰¹ and drafting history¹⁰²—to support its conclusion that the constitutional term should be construed broadly to encompass all matters not "criminal" in nature, including compensation.

Potentially more troubling, however, was the supreme court's handling of defendant's argument that the legislature may exercise its police

may exist with respect to some classes of cases—see, e.g., La. Const. art. V, § 18, providing that the jurisdiction of juvenile and family courts shall be determined by the legislature "notwithstanding any contrary provision of section 16;" art. IV, § 21, vesting original jurisdiction to regulate common carriers and public utilities in the Public Service Commission; art. X, § 12, vesting original jurisdiction to "hear and decide all removal and disciplinary cases" in the State and City Civil Service Commissions—no similar provision appears to authorize removal of jurisdiction over compensation claims. See generally, Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 La. L. Rev. 765, 811-13 (1977).

100. *Moore*, 567 So. 2d at 79, arguing that the linguistic juxtaposition of "civil" and "criminal" in section 16(A) indicates an intent by its drafters to exhaust the universe of judicially cognizable issues. As the court further noted, this same terminology, opposing "civil" and "criminal" matters, is used elsewhere in Article V for the purpose of describing the jurisdiction of the Louisiana Supreme Court to review questions of law and fact. La. Const. art. V, § 5(C). Since it appears that section 5(C) was intended to provide for all matters that might come before the state supreme court, it supports the conclusion that the same words, when used in section 16(A), should be given a similarly universal interpretation. See also, to the same effect, 6 Records of the Louisiana Constitutional Convention of 1973, Convention Transcripts 796 (1977) (Remarks of Delegate Denny, noting that matters within the purview of the Public Service Commission would be "civil matters" under the meaning of section 16).

The court also noted the use in section 16(A) of the general term "matters" rather than the narrower "cases," a term which was apparently intended to insure that the district courts' jurisdiction would extend to all types of legal issues, even those not presented in traditional adversarial form. *Moore*, 567 So. 2d at 79 n.6. See Hargrave, *supra* note 99 at 809-10. This point appears to refute the argument raised by Chief Judge Covington, dissenting from the court of appeals decision in this case, that compensation claims do not present traditional disputed "cause of action" and thus may fall outside of section 16(A). *Moore v. Roemer*, 560 So. 2d 927, 941 (La. App. 1st Cir. 1990).

101. *Moore*, 567 So. 2d at 79, noting that it is difficult to argue that administrative matters constitute a separate "non-judicial" category of matters under the language of section 16(A), since the constitution does make specific reference to the jurisdiction of certain administrative bodies such as the Civil Service and Public Service Commissions, and specifically exempts matters within their respective purviews from the original jurisdiction of the district courts. See *supra* note 92.

102. *Moore*, 567 So. 2d at 79-80, noting that workers compensation was, in 1974, generally considered to be a civil matter over which the district courts had jurisdiction, and that section 16(A) was adopted by the convention with little debate and without any intention by the framers to alter the original jurisdiction of the district courts as it existed at that time. 6 Records of the Louisiana Constitutional Convention of 1973, Convention Transcripts 795 (1977) (Remarks of Delegate (now Justice) Dennis, chairman of the Judiciary Committee).

power to endow individuals with additional "public law" rights beyond those known to common law or the Civil Code, and that where it does so it may condition its largesse by restricting beneficiaries to an administrative mechanism for vindication of those novel rights.¹⁰³ While the court acknowledged that the compensation remedy is a novel one which the legislature has discretion to confer or to eliminate entirely, it did not agree that this implied, in this case, that the legislature also possessed the lesser included power to limit beneficiaries to only an administrative remedy. The court distinguished between "public" and "private" rights, and held that compensation claims fall within the latter category since such litigation "adjudicates a dispute between private parties and results in a money judgment affecting only those parties"¹⁰⁴ and since government is not ordinarily involved in such suits, either as a party or as the administrator of the compensation system.¹⁰⁵ At least as to matters falling within the definition of "private rights," the legislature's authority is limited. Novel "private" rights, once conferred, become subject to constitutional mandates regarding the court's adjudicatory jurisdiction.¹⁰⁶

As applied to worker's compensation, the *Moore* court's conclusion that "private" rather than "public" rights were at stake in that case is certainly plausible. However, the definition of "public" rights which the Louisiana Supreme Court applied appears to be narrower than the definition used by some other jurisdictions. For example, in a recent case raising issues somewhat parallel to those in *Moore*, the United States Supreme Court reaffirmed that the category of "public rights" which Congress may assign to administrative tribunals for determination extends, for purposes of the federal Constitution, beyond that category of cases in which the government is directly involved and would include "a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution

103. The compensation remedy is generally considered to be in the nature of social welfare legislation and is to be sharply distinguished from any traditional tort remedy which might otherwise be available under the facts of a particular claim. See generally W. Malone & H. Johnson, *Workers' Compensation* §§ 32-33, in 13 *Louisiana Civil Law Treatise* (2d ed. 1980).

104. *Moore*, 567 So. 2d at 81.

105. *Id.*, distinguishing, for example, the unemployment insurance system, which government directly operates. Of course, where the injured claimant is a government employee, government is involved, in its private capacity.

106. *Moore*, 567 So. 2d at 80. This argument somewhat parallels that made in the procedural due process context, under both the state and the federal constitutions. Due process guarantees, in themselves, create no protectable liberty or property interests. However, once such interests have been created by some other mechanism, due process rights limit the mechanisms by which persons can be deprived of those interests.

with limited involvement by the . . . judiciary."¹⁰⁷ To be sure, such precedents are only persuasive, and further elucidation of the concept of "public rights" in Louisiana—and of what kinds of issues may be left for administrative rather than judicial determination in this state—will doubtless be provided by future cases. However, it may be that a too narrow definition of "public rights" and a too great insistence on the role of courts in all circumstances where private interests are opposed could, in the future pose, an obstacle to efficient administration of important government programs without any real increase in the security of individuals' rights.¹⁰⁸

In the wake of *Moore*, Article V, sections 10 and 16(A) of the Louisiana Constitution were amended so as to permit the legislature to explicitly withdraw worker's compensation claims from the original jurisdiction of the district courts and authorize direct appeal to the courts of appeal from administrative determinations of such claims.¹⁰⁹ By its express terms, this amendment addresses only the jurisdictional objections

107. *Granfinanciera, S.A. v. Nordberg*, 109 S. Ct. 2782, 2797 (1989), and cases cited. The Court in *Granfinanciera* held that even under its broader definition, the proceeding at issue in that case, the right of a bankruptcy trustee to recover fraudulent conveyances, was a "private" rather than a "public" right, and that Congress therefore could not cut off a defendant's right to a jury in such actions by assigning its resolution to a non-Article III court.

108. The court in *Moore* appears to have been somewhat sensitive to these concerns, distinguishing for example, the state environmental laws, over which administrative tribunals rather than courts presently exercise original jurisdiction. *Moore*, 567 So. 2d at 80-81. Though the court stopped short of endorsing cases which have upheld such arrangements in such contexts, *Moore* should not be read as any wholesale rejection of the principle that administrative agencies may be vested with exclusive original adjudication to determine claims arising out of at least some class of public rights, however defined.

109. 1990 La. Acts No. 1098, §§ 10, 16. The affected sections of the state constitution will now appear, in pertinent part, as follows:

Sec. 10. Courts of Appeal; Jurisdiction

(A) Jurisdiction. Except as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of (1) all civil matters, including direct review of administrative agency determinations in worker's compensation matters as heretofore or hereafter provided by law. . . .

(B) Scope of Review. Except as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations, appellate jurisdiction of a court of appeal extends to law and facts. In the review of an administrative agency determination in a worker's compensation matter, a court of appeal may render judgment as provided by law, or, in the interest of justice, remand the matter to the administrative agency for further proceedings

Sec. 16. District Courts: Jurisdiction

(A) Original Jurisdiction. (1) Except as otherwise authorized by this constitution or except as heretofore or hereafter provided by law for administrative agency determinations in worker's compensation matters, a district court shall have original jurisdiction of all civil and criminal matters

expressly ruled on in *Moore*; it does not address the other arguments—based on separation of powers, the state constitution's guarantee of open courts and adequate remedies, and the state and federal guarantees of equal protection and due process—which were raised against the 1988 amendments but left unresolved in the *Moore* litigation.¹¹⁰ Thus, even if the amendment is ratified, the administrative system established by the 1988 amendments may be subject to further constitutional challenge. Nonetheless, if challenged, the compensation system established in 1988 should now be upheld. As Chief Judge Covington argued in his dissent from the first circuit's decision in *Moore*, strong rebuttals can be raised against the challenger's separation of powers, open courts, equal protection and due process arguments.¹¹¹ In addition, a strong argument can be made that the recent constitutional amendment should be construed broadly, to insulate a worker's compensation system like that established by the 1988 amendments from state constitutional challenges of any kind. The explanation of the proposed amendment that was placed on the official ballot and presented to the voters was phrased not solely in terms of amending the jurisdiction of the state courts, but also in terms of legitimating the worker's compensation system established in 1988.¹¹² To the extent that the intentions of the ratifiers of constitutional amendments should guide interpretation and that the proposition actually put to the ratifiers is the best guide to their intentions, a compelling argument will thus be available that the amendment should be construed to overcome all objections to the worker's compensation system it was so clearly intended to restore.

110. See *supra* note 95.

111. *Moore v. Roemer*, 560 So. 2d 927, 936-39 (La. App. 1st Cir. 1990) (Covington, C.J., dissenting).

112. 1990 La. Acts No. 1098, after setting forth the proposed changes in article V, sections 10 and 16, *supra* note 109, provides for the wording of the official ballot as follows:

Section 3. Be it further resolved that on the official ballot to be used at said election there shall be printed a proposition, upon which the electors of the state shall be permitted to vote FOR or AGAINST, to amend the Constitution of Louisiana, which proposition shall read as follows:

To provide that the trial of worker's compensation cases may be decided by administrative hearing officers, rather than the district court, that appeals from administrative agency decisions on worker's compensation cases shall be heard by the courts of appeal, and to validate such processes already in operation pursuant to law. (Amends Article V, Section 10(A) and 16(A)).

