

1 **Jennings Reservation**

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- 3 1. DWAIN S. BAREFIELD reserves all his federal and state constitutional claims for
- 4 subsequent litigation in federal court by making on the record, at this outset, a reservation
- 5 as to the disposition of the entire case by the state courts to preserve access to the federal
- 6 forum. Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir. 1976).
- 7
- 8 2. DWAIN S. BAREFIELD is before this court involuntarily because the state of California
- 9 is applying and seeking to enforce California Spousal Support and Property Distribution
- 10 codes (Ca. Family Code 4300-4360, 2500-2660) against him. He must defend himself
- 11 because the statutes authorize, and this Circuit Court has retained jurisdiction.
- 12
- 13 3. DWAIN S. BAREFIELD does not have federal court available to him at this time to
- 14 adjudicate these constitutional claims.

15 **Statutes**

- 16 4. California Spousal Support (Ca. Family Code 4300-4360) require a spouse and former
- 17 spouse to a marriage with the ability to pay to support the other former spouse with a
- 18 need, possibility for life, to the lifestyle of the marriage, with threat of wage garnishment,
- 19 lose of driver's license, loss of professional license, contempt and imprisonment.
- 20
- 21 5. The spousal support provisions mandate that the state invade the marriage, through the
- 22 judiciary, to examine, evaluate, determine and conclude the terms and nature of the
- 23 interpersonal relationship, spousal roles, spousal conduct, parental decision making,
- 24 parenting conduct, economic standard of living, occupations, education, savings, assets,
- 25 charitable contributions and most importantly the intimate emotional, psychological and
- physical details of the parties during their marriage to apply a discretionary opinion using
- an equitable standard in order to implement the statutory provisions.

1 **Constitution**

- 2 6. California Constitution Article I section I restricts the government, and private actors,
3 from intruding into the private life of any person. “Article I Section I. All people are by
4 nature free and independent and have inalienable rights. Among these are enjoying and
5 defending life and liberty, acquiring, possessing, and protecting property, and pursuing
6 and obtaining safety, happiness, and privacy. (Emphasis added)
7
8 7. Federal and California Constitutions and Judicial rulings have determined the existence
9 of a right of privacy that includes a Privacy Protected Zone of “personal decisions
10 relating to marriage”. (U.S. Constitution Fourteenth Amendment Due Process Clause;
11 Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int’l., 431 U.S.
12 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail,
13 434 US 374 (1978); LittleJohn v. Rose, 768 F. 2d 765, 768 (6th Cir. 1985); California
14 Constitution Article I Section I; Boren v. Department of Employment Development
15 (1976) 59 Cal. App. 3d 250, 259; Perez v. Sharp, 32 Cal. 2d at 714-15.

16
17 **Dwain S. Barefield**

- 18 8. DWAIN S. BAREFIELD exercised his constitutional right of association within the
19 privacy protected zone of a personal decision relating to marriage to dissolve his
20 marriage when he filed a petition for dissolution on December 27, 1999.
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22 9. Prior to issuing its final judgment of dissolution the State of California, through this
23 Court, is actively invading and examining the most intimate details of the privacy area of
24 the marriage of DWAIN S. BAREFIELD.

1 10. After its invasion and examination of the intimate details of DWAIN S. BAREFIELD'S
2 privacy area of marriage the State, through this Court has already begun to reassign the
3 individual titles property rights between DWAIN S. BAREFIELD and JANE L.
4 HUNTER.

5 11. The State, through this Court, redistributed the marital property of DWAIN S.
6 BAREFIELD and JANE L. HUNTER pursuant to California Code 2500-2660.

7 12. The State of California, through this Court's Order of Final Judgment of Dissolution has
8 the power to imminently require DWAIN S. BAREFIELD to pay postdissolution spousal
9 support.
10

11 13. DWAIN S. BAREFIELD is today having his property right in his assets, his property
12 rights in his future earnings and his property rights in his Right of Privacy destroyed.
13 Additionally, he is subject to the ongoing threat of Social Security garnishment, and
14 contempt and imprisonment if he fails to comply with the Final Judgment Order
15 predicated on the above California Code 4300-4360 spousal support and 2500-2660
16 property distribution provisions.

17 14. DWAIN S. BAREFIELD'S California Constitutionally guaranteed Right of Privacy
18 (California Constitution Article I section I) has been and continues to be violated because
19 the State of California has failed to express a compelling State interest applied in the least
20 intrusive manner to validate the California Spousal Support and Property Distribution
21 codes (Ca. Family Code 4300-4360, 2500-2660) noted above which put him at risk of
22 imprisonment, invade his privacy, and imperil his Article I section I fundamental rights.
23
24
25

- 1 15. California Spousal Support (Ca. Family Code 4300-4360) postdissolution permanent
2 spousal support provisions do not serve a State interest sufficiently compelling to
3 override the rights of DWAIN S. BAREFIELD to his Federal and State constitutionally
4 guaranteed Right of Privacy in the facts in this case. To the extent that the noted
5 California Spousal Support and Property Distribution codes (Ca. Family Code 4300-
6 4360, 2500-2660) provisions serve a compelling State interest, that interest is applied in a
7 highly intrusive manner and is at its weakest in the facts of this case.
8
- 9 16. Separation of Powers Clause, Article III section 3 of the California Constitution, "The
10 powers of state government are legislative, executive, and judicial. Persons charged with
11 the exercise of one power may not exercise either of the others except as permitted by
12 this Constitution."
- 13 17. Article III section 3 Ca. Const., Separation of Powers, prohibits one branch of
14 government delegating its authority to another branch of government.
- 15 18. Ca. Family Code 4320 (k,l,m,n) impermissibly infringe Article III section 3 Ca. Const.
16 Separation of Powers by the improper delegation of legislative authority to the judiciary.
- 17 19. DWAIN S. BAREFIELD'S right to equal protection has been denied him compared with
18 single persons and many other former married persons on whom the State did not
19 statutorily and judicially, intrude into the intimate details of their marriage and then
20 impose postdissolution permanent spousal support obligations.
- 21
22 20. DWAIN S. BAREFIELD'S right to equal protection has been denied him by the State
23 compared with single persons and many other former married persons who do not have
24 their liberty imperiled by the threat of contempt and imprisonment related to the
25 postdissolution permanent spousal provisions of California Codes 4300-4360.

1 21. The above noted provisions of California Spousal Support and Property Distribution
2 codes (Ca. Family Code 4300-4360, 2500-2660) also fail for reason of vagueness.

3 22. The above noted provisions of California Spousal Support and Property Distribution
4 codes (Ca. Family Code 4300-4360, 2500-2660) do not permit a reasonable person, here,
5 DWAIN S. BAREFIELD, to know which statutory and elements of his marriage in
6 California Statute 61.08 will apply and how they will be weighed in the court arriving at
7 a judicial order.

8 23. The vagueness and unpredictability of California Spousal Support codes (Ca. Family
9 Code 4300-4360) is manifest in C. Codes 4320 (n): any other factors the court determines
10 are just and equitable. This provision does not provide him enough clarity of notice for
11 him to understand the criteria for which he will be held accountable.

12 24. This lack of statutory predictability when coupled with the threat of wage garnishment,
13 arrest and contempt causes the statute to fail for vagueness and ambiguity.

14 25. The vagueness of the Statutory provisions when coupled with wide judicial discretion
15 applying principles of equity that subject him to a lifetime risk of imprisonment are
16 unconstitutional.
17

18 **Injunctive Relief**

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21 26. DWAIN S. BAREFIELD has no adequate remedy at law and continues to face imminent
22 and irreparable loss of his rights.

23 27. Absent expedited consideration and prompt injunction, DWAIN S. BAREFIELD will
24 continue to suffer substantial and irreparable harm and his rights will continue to be
25 denied before this court can rule.

1 28. DWAIN S. BAREFIELD has been, continues to be, and will be imminently further
2 deprived of his Article I section I Ca. Const. by the Sacramento County Court.

3 29. Any payments now made to his former spouse will be immediately expended by her as
4 the payments are allegedly for the necessities of life.

5 30. There will be no way for DWAIN S. BAREFIELD to recover payments made while he
6 awaits this Court's final Declaratory Order and possible appeals.

7 31. No bond is mandated for this injunctive relief.

8 32. DWAIN S. BAREFIELD has the likelihood of prevailing on the merits of this
9 constitutional statutory challenge.

10 33. This Court has been acting under color of State law in depriving DWAIN S.
11 BAREFIELD of his constitutional rights because of an unconstitutional statute.

12 34. DWAIN S. BAREFIELD has been forced to retain the advice of counsel to vindicate his
13 Right of Privacy because of the continuing risk of imprisonment, and denial of rights
14 imposed by this Court's action rendered under color of state law. He has been forced to
15 incur costs and a reasonable attorneys' fee in connection with this action.

16 35. DWAIN S. BAREFIELD is entitled to recover all costs and a reasonable attorneys' fee
17 pursuant to California declaratory judgment code and California common law.
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19
20 **PRAYER FOR RELIEF**

21 "It is well settled that . . . if a law 'impinges upon a fundamental right explicitly or
22 implicitly secured by the Constitution [it] is presumptively unconstitutional.'"

23 Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden,
466 U.S. 55, 76 (1980))

24 WHEREFORE DWAIN S. BAREFIELD prays that the Court take jurisdiction over this
25 matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1 1. Enter an immediate temporary injunction prohibiting the State of California through this or
2 any State Court, any agency of the State of California, or any interested party to this action
3 from initiating any adverse proceedings or entering, or enforcing any adverse orders against
4 DWAIN S. BAREFIELD related to the postdissolution California Spousal Support and
5 Property Distribution codes (Ca. Family Code 4300-4360, 2500-2660) pending appellate
6 review by the California Supreme Court.

7
8 In the alternative,

9 2. Enter a declaratory judgment that DWAIN S. BAREFIELD has a constitutional right under
10 the California Constitution Privacy Amendment to be free of the burden of the postdissolution
11 permanent spousal support provisions of California Spousal Support and Property
12 Distribution codes (Ca. Family Code 4300-4360, 2500-2660);

13 3. Enter a declaratory judgment that DWAIN S. BAREFIELD has a constitutional right under
14 the equal protection laws of California to be free of the burden of the postdissolution
15 California Spousal Support and Property Distribution codes (Ca. Family Code 4300-4360,
16 2500-2660);

17
18 4. Enter a declaratory judgment that Ca. Family Code 4320 impermissibly infringes Article III
19 section 3 Ca. Const. Separation of Powers, is void ab initio and unenforceable.

20 5. Enter a declaratory judgment that California Spousal Support and Property Distribution codes
21 (Ca. Family Code 4300-4360, 2500-2660) violate the Art. I § I Ca. Const. Right of Privacy,
22 and in the alternative fail for vagueness;

23
24 6. Enter a temporary and permanent injunction prohibiting the State of California through this
25 or any State Court, any agency of the State of California, or any interested party to this action
from initiating any adverse proceedings or entering, or enforcing any adverse orders against

1 DWAIN S. BAREFIELD related to California Spousal Support and Property Distribution
2 codes (Ca. Family Code 4300-4360, 2500-2660);

3 7. Awarding DWAIN S. BAREFIELD all costs and a reasonable attorneys' fee for the
4 prosecution of this action pursuant to California declaratory judgment code and California
5 common law.
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7
8 Respectfully submitted,
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10 _____
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 18th day of November, 2005, I caused a true and accurate copy of the
3 foregoing to be served in via U.S. Mail Return Receipt Requested to:

4
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