

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 04-16220-A**

DENNY C. CORMIER,

Plaintiff-Appellant, pro se

V.

MARIA GREEN, Acting Director,
Georgia Department of Human Resources, in her official capacity and,
GEORGIA DEPARTMENT OF HUMAN RESOURCES and,
BRUCE E. COOK, Chairman,
Board of Human Resources, in his official capacity and,
GEORGIA BOARD OF HUMAN RESOURCES and,
COLQUITT COUNTY SUPERIOR COURT,
The Honorable H. Arthur McLane, Chief Judge, in his official capacity.

Defendants-Appellees.

**BRIEF OF PLAINTIFF-APPELLANT
DENNY C. CORMIER**

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

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STATEMENT REGARDING ORAL ARGUMENT

The issues presented herein are novel and of tremendous importance. Therefore, the Appellant believes that oral argument would be of benefit to the Court.

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STATEMENT OF JURISDICTION

A. District Court Jurisdiction

The United States District Court for the Middle District of Georgia had jurisdiction to review this constitutional challenge to a state statute under Article III Section 2 U.S. Constitution, 28 U.S.C. § 1331, 42 U.S.C. § 1983, 28 U.S. C. § 1367(a) and authority under 28 U.S.C. § 2201. (Complaint at 11-15)

This lawsuit is a constitutional challenge to the Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) as impermissibly infringing the U.S. Constitution 14th Amendment substantive due process clause Liberty Interest and Right of Privacy in the Privacy Protected Zone of “personal decisions relating to marriage,” i.e. the Appellant’s and all Georgians’ personal decision relating to their marriage to divorce; 14th Amendment equal protection infringement treating married Georgians differently than divorcing Georgians as to spousal support; 13th Amendment infringement on the ban against involuntary servitude; and similar state constitutional infringement claims; as well as 42 U.S.C. § 1983 violations against those enforcing the challenges statutes against the Appellant.

B. 11th Circuit Court Jurisdiction

This court has jurisdiction to hear this appeal from the district court final judgment pursuant to 28 U.S.C. § 1291.

The Appellant was denied reconsideration of the District Court Order granting dismissal of all claims on October 29, 2004. This appeal was timely filed on January 10, 2005. Timeliness is proper under Fed.R.App.P. 4(a)(4).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the district court erred by dismissing the Appellant's general constitutional statutory challenge claim?

- II. a. Whether the district court erred by dismissing the Appellant's claims under the Younger abstention after the state court proceeding had been removed to federal court and, b. Whether the district court erred by failing to amend or alter its order of dismissal when informed the Younger doctrine was inapplicable because the state court action had been removed long before the court entered its motion to dismiss?

- III. Whether the district court abused its discretion when it cautioned sanctions and advised the Appellant against further filing of his constitutional challenge?

- IV. Whether the district court erred in not declaring that Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) impermissibly infringe:

- a. U.S. Constitution 14th Amendment Right of Privacy in the Privacy Protected Zone of “personal decisions relating to marriage?”
- b. U.S. Constitution 13th Amendment ban on Involuntary Servitude?
- c. U.S. Constitution 14th Amendment Equal Protection?
- d. Georgia state constitution Right of Privacy; Ban on Involuntary Servitude; and Equal Protection?

STATEMENT OF THE CASE

A. Statement of Proceedings

On April 22, 2004, the Appellant filed a constitutional challenge to the Georgia alimony statutes, O.C.G.A. §§ 19-6-(1-35), in the United States District Court Middle District of Georgia against the Appellees, whom he believes are designated to enforce the alimony statutes. The main federal-question claim asserted is that the Georgia alimony statutes impermissibly infringe the federal 14th Amendment substantive Due Process clause, Liberty Interest and Right of Privacy in the privacy protected zone of “personal decisions relating to marriage,” i.e. the personal decision relating to his marriage to divorce (Complaint at 94-99) Further, the challenged the statutes impermissibly infringe the U.S. Constitution thirteenth Amendment ban against involuntary servitude (Complaint at 107-116) and the fourteenth Amendment equal rights clause as treating married Georgians

(Complaint at 100-106), as a suspect or quasi-suspect class different than divorced Georgians as to the duration and level of spousal support. (Complaint at 102-103)

The Appellant also asserted state claims that the statutes impermissibly infringed the state right of privacy, equal protection, and ban on involuntary servitude. (Complaint at 125-180)

The lawsuit also contained a 42 U.S.C. § 1983 claim against the Appellees predicated on their application of the unconstitutional statutes against him denying him his liberty interest and property rights interest. (Complaint at 117-124)

On May 24, 2004, Appellees filed a Motion to Dismiss with the district court based on the Younger abstention. In response, Appellant filed a cross-motion to deny Appellees motion to dismiss with the district court on June 17, 2004. Separately, the Appellant removed his dissolution proceeding from the Colquitt County Georgia Superior court, Case No. 03-CVD-221, to the U.S. district court on June 22, 2004, based upon a 42 U.S.C. § 1983 claim, along with a completed JS-44 form notifying the district court of this related lawsuit (Cormier v Cormier), Case No. 6:04-CV-30.

On August 9, 2004, the district court granted the Appellees' Motion to Dismiss, declining to grant declaratory relief based upon a judgment that such relief was available in state court, and because of the Younger abstention. The

district court failed to address the general constitutional challenge and removal of the state case.

On August 18, 2004, the Appellant timely moved for reconsideration under the Federal Rules of Civil Procedure, Rule 60, based on the fact the state court proceeding had been removed to the district court on June 22, 2004 (Cormier v Cormier, 6:04-CV-30).

On October 29, 2004, the district court denied the Appellant's Motion for Reconsideration, finding Rule 60 of the Federal Rules of Civil Procedure inapplicable, while also failing to acknowledge notification on the JS-44 form. Furthermore, the district court chastised and cautioned the pro se Appellant to refrain from any further filings pertaining to the constitutionality of the Georgia alimony statutes, upon threat of sanctions.

B. Statement of the Facts

Appellant, DENNY C. CORMIER, is a 55 year old physician in good health who is now a resident of Glynn County, Georgia. (Complaint at 81) NANCY B. CORMIER is a healthy 56 year-old employed woman who is the beneficiary of a substantial non-marital trust fund (Complaint at 82-84). DENNY C. CORMIER, and NANCY B. CORMIER are married. (Complaint at 86) They have no minor children and child support is not an issue. (Complaint at 85)

Divorce proceedings were initiated by NANCY B.CORMIER against the Appellant, DENNY C. CORMIER on October 21, 2003, in Colquitt County Superior Court. (Complaint at 87)

Appellant is subject to the challenged Georgia divorce alimony statutes O.C.G.A. §§ 19-6-(1-35) because he is an involuntary defendant in his divorce proceeding. (Complaint at 27)

Appellant , in addition to being subject to the Georgia alimony statutes, is also subject to the enforcement power authorised in O.C.G.A. §§ 19-6-28, 31 and O.C.G.A. § 19-11-6 (d) to the Appellees, the COLQUITT COUNTY SUPERIOR COURT, The HONORABLE H. ARTHUR MCLANE, Chief Judge, in his official capacity, and the GEORGIA DEPARTMENT OF HUMAN RESOURCES, its Acting Commissioner MARIE GREENE, and its oversight BOARD OF HUMAN RESOURCES and its Chairman, BRUCE E. COOK, in his official capacity. (Complaint at 29-36)

STANDARD OF REVIEW

This court reviews jurisdictional issues and other questions of law de novo. See, e.g., Lucero v. Operation Rescue, 954 F.2d 624, 627 (11th Cir.1992).

SUMMARY OF THE ARGUMENT

I. **General Challenge**: The complaint contains a general challenge to the Georgia alimony statute as infringing the U.S. Constitution 14th and 13th amendments thus creating jurisdiction under 28 U.S.C. § 1331.

II. **Younger Abstention**: The Younger abstention could not apply because at the time of the Order for Dismissal no state court proceeding existed.

III. **Failure to Alter or Amend Order**: When the court became aware that no state court proceeding existed it erred by not altering or amending its Younger abstention ruling.

IV. a. **Right of Privacy**: The Georgia Divorce statutes containing the alimony section is a statute written in the liberty interest and fundamental right of privacy protected zone of a personal decision relating to marriage. Strict scrutiny applies. Therefore the alimony section is presumed unconstitutional unless the state proves a compelling state interest for alimony.

b. **13th Amendment**: United States v. Kozminski, 487 U.S. 931, 942 (1998) held that involuntary servitude “necessarily means a condition...in which the victim is forced to work for [another] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.” The Georgia alimony statute fulfils the legal definition of involuntary servitude and is therefore unconstitutional.

c. **Equal Protection**: The personal decision relating to marriage to divorce is a fundamental right. Marital status has achieved the status of a suspect or quasi-suspect class requiring strict scrutiny analysis. The Georgia alimony statutes treat similarly situated Georgia spouses differently when they divorce.

d. **Georgia state claims**: The same arguments as above apply to the Georgia Right of Privacy, equal protection and ban on involuntary servitude claims.

ARGUMENT

I. The district court erred by dismissing the Appellant's general constitutional statutory challenge claim.

The Complaint at 16 asserts a general challenge to the constitutionality of the Georgia alimony statute under the U.S. Constitution 13th and 14 Amendments. "16. Separately, and in addition to, Plaintiff presents a general challenge to the constitutionality of Georgia statutes § 19-6-(1-35) alimony provisions." As such it is a federal question under 28 U.S.C § 1331.

D.C. Court of Appeals v. Feldman, 460 U.S. 462, 486, 103 S. Ct. 1303, (1983) is authority for a federal court hearing a general constitutional challenge to a state statute, "federal district courts 'have subject-matter jurisdiction over general challenges to state bar rules . . . which do not require review of a final state court judgment in a particular case.'"

The 28 U.S.C. § 1221 Declaratory Judgment statute only grants authority, not jurisdiction to this court and is discretionary. However, subject matter jurisdiction is fulfilled by the general constitutional challenge.

II. a. The district court erred by dismissing the Appellant's claims under the Younger abstention after the state court proceeding had been removed to federal court.

While the Court was deliberating on the Appellee's motion to dismiss the state proceeding was removed to the same district court pursuant to 28 U.S.C. § 1441. The Appellant completed the prescribed JS-44 form thereby notifying the district court of this related case.

The Appellant complied with all Federal Rules of Civil Procedure and the Local Rules of the Middle District Court of Georgia. He presumed the JS-44 information would be administratively related within the district court system to the judge ruling on this case. He was reassured of this by the district court clerk's office.

Apparently the district court ruling here was not informed of the non existence of the state proceeding and subsequently applied the Younger abstention. Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, (1971).

Because, in fact, no state proceeding existed it was improper to apply Younger. The apparent failure of the district court administrative system to notify this case judge about the removed case should not result in a penalty to the Appellant. The Appellant fulfilled all federal and local rules of civil procedure.

II. b. The district court erred by failing to amend or alter its order of dismissal when informed the Younger doctrine was inapplicable because the state court action had been removed long before the court entered its motion to dismiss.

The Appellant in his motion for reconsideration called to the attention of the district court that the state court proceeding had been removed to the same district court. He argued therefore that the Younger abstention doctrine was inapplicable. Despite the court's being so informed its interpretation of Rule 60 was such as to preclude altering or amending the judgment. It was an abuse of discretion to not rectify a clear err of law resulting from no fault of the Appellant.

“Moreover, the Younger doctrine has been held to ‘have little force in the absence of a pending state proceeding.’” Lake Carriers' Assn. v. MacMullan, 406 U.S. 498, 509 (1972) (emphasis added).

“The Supreme Court has said that federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." Col. River Water Conservation Dist. v. United States, 424 U.S. 800,817, 96 S.Ct. 1236, 1246 (1976).

In addition to the inapplicability of the Younger abstention doctrine because no state court proceeding was concurrent there are separate reasons Younger is inapplicable. The Appellant argued these points in his Motion for Reconsideration.

The Appellees in their Motion to Dismiss Brief acknowledged the state proceeding is only a divorce proceeding between Nancy B. Cormier and Denny C. Cormier. None of the state Appellees are parties to that proceeding. The claims and parties here are different from the divorce proceeding in state court. The Appellees here would need to intervene in that proceeding to defend the challenged statute or the non party here, Nancy B. Cormier, would need to assume the burden of the state and defend the statutes. Further, it is conceivable the Appellant here would be liable for Nancy B.Cormier's concurrent state court attorney fees and court costs to defend the statute he is challenging.

The Plaintiff relies on The Abstention Doctrines:Balancing Comity with Federal Court Intervention, Mathew D. Staver, 28 Seton Hall Law Review 1102, 1109 (1998) citing Trainor v. Hernandez, 431 U.S. 434, 440 (1977) for the premise that litigation between the same parties should exist in the state court. “The Younger Abstention Doctrine only applies to pending state court proceedings or “litigation *between the same parties* . . . raising the same issues.” (emphasis not added) This principle of having the same claims and same parties in state court is an implied element incorporated by Chief Judge Posner of the United States Court

of Appeals for the Seventh Circuit, “[t]he core of the Younger doctrine is the proposition that a person who is being prosecuted by a state for violating its laws is not allowed to derail the prosecution by bringing a suit in federal court to enjoin the prosecution on the ground that the state statute on which it is based is unconstitutional.” Hoover v. Wagner, 47 F. 3d 845, 847 (7th Cir. 1995) Though not articulated clearly as such the implication is that the parties in the federal case are the same parties in the state case when Younger is being considered. This core principle has been expanded to quasi-criminal and civil applications of Younger but the core principle is the underpinning in the expansionism of the doctrine. In this case the core principle should be followed requiring effectively same parties and same claims. The Plaintiff is not attempting to use Federal court to enjoin a state court proceeding.

An important second prong requirement of the Younger doctrine, (Middlesex County Ethics Comm. V. Garden State Bar Assoc., 102 S. Ct. 2515, 2522-23 (1982)) i.e., do the proceedings implicate important state interests, is not fulfilled by the Appellees’ own admission, “In the case at bar, there is nothing unusual or extraordinary about this case.” (Appellees Brief to Dismiss at 5). Further, The burden is on the state [Appellees] to establish that an important state interest is implicated. See Trainor v. Hernandez, 431 U.S. 434, 448 (1977) (Blackmun, J., concurring).

“Consistently with this requirement of balancing the federal and state interests, the Court in previous *Younger* cases has imposed a requirement that the State must show that it has an important interest to vindicate in its own courts before the federal court must refrain from exercising otherwise proper federal jurisdiction.” (emphasis added)

The Appelles have not stated any state interest let alone an important one.

This Court in Rindley v. Gallagher, 929 F.2d 1552 (11th Cir. 1991) stated the scope of *Younger* application in civil cases,

“The *Younger* doctrine, based upon the principle of comity, has subsequently been extended to civil proceedings, but ‘has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved.’ Cate v. Oldham, 707 F.2d 1176, 1183 (11th Cir. 1983). See, e.g., Pennzoil Co. v. Texaco, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987) (state interest in execution of state judgments); Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982) (important state interest in maintaining and assuring the professional conduct of attorneys it licenses).”

This Court outlined its view of what constitutes an important state interest in First Ala Bank, Montgomery v. Parsons Steel, 825 F.2d 1475, 1483 (11th Cir. 1987),

“Our consideration of this threshold inquiry leads us to conclude that *Younger* abstention is not appropriate in this case because the state court action enjoined by the district court does not implicate any important government interest of the State of Alabama. The importance of a state interest may be demonstrated by the fact that the proceedings sought to be enjoined are non-criminal proceedings bearing a close relationship to criminal proceedings or by the fact the proceedings are necessary for the vindication of important state

policies or the functioning of the state judicial system. Middlesex Ethics Comm'n, 457 U.S. at 432, 102 S.Ct. at 2521. Alabama is not a party to the action enjoined in this case, nor was that action brought to vindicate important interests of that State. Similarly, the action does not implicate the State's 'important interests in administering certain aspects of [its] judicial system.' Pennzoil, 107 S.Ct. at 1527. The state court action involved in this case was merely a private action between private parties in which the State of Alabama had no interest beyond 'its interest as adjudicator of wholly private disputes.' *Id.* at n. 12. Therefore, we find that the Younger doctrine did not require that the district court abstain from issuing the injunction against further state court proceedings. and in. Cate v. Oldham, 707 F.2d 1176 (11th Cir. 1983). Application of the Younger doctrine to ongoing state civil proceedings has been limited to those civil actions in aid of criminal jurisdiction or involving enforcement-type proceedings in which vital interests of the state *qua* state are involved. See Middlesex County Ethics Committee v. Garden State Bar Ass'n., 457 U.S. 423, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982); Moore v. Sims, 442 U.S. 415, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979); Juidice v. Vail, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). Accord O'Hair v. White, 675 F.2d 680, 695 (5th Cir. 1982) (en banc); Gresham Park Community Organization v. Howell, 652 F.2d 1227, 1244-48 (5th Cir. 1981)."

Therefore, the second prong of Younger is not fulfilled by the Appellees' own admission, "In the case at bar, there is nothing unusual or extraordinary about this case."

Because the Plaintiff is not asking for this court to intervene in a state proceeding this court is not violating the Federal courts' desire to fulfill the tenet of comity. Daniel C. Norris in The Final Frontier of Younger Abstention: The Judiciary's Abdication of the Federal Court Removal Jurisdiction Statute, 31 Fla.

St. U. Law Review 193, 229 (2003) states the error of allowing the notion of comity for states to supercede the jurisdiction granted to the federal courts by the Constitution and the U.S. Congress as well as the error of using abstention for docket clearing.

“It is entirely uncertain from the Court’s extensive abstention jurisprudence why the interests of comity are constitutionally sufficient to repudiate the jurisdiction which Congress has placed upon them through the exercise of its Article III powers. This is particularly true in light of the Court’s numerous observations regarding the duty of federal courts to exercise the jurisdiction that Congress has given to them. While some commentators have rejected the notion that federal courts have an absolute duty to exercise their jurisdiction, even the Court’s own abstention cases make it clear that a refusal to exercise jurisdiction should not be undertaken lightly. While some extraordinary cases may require a district court to refuse the exercise of its jurisdiction, it seems almost axiomatic that such refusals must not rise to the level of repudiating an entire area of jurisdiction that was created by a clear and unequivocal act of Congress. While many scholars have expressed great disdain for diversity jurisdiction, federal courts must not be allowed to unilaterally act to eliminate that entire area of jurisdiction for the purpose of clearing their dockets. However, this is precisely what the modern developments in the Younger abstention doctrine have done. By essentially eliminating the right of a party to remove a case to federal court on diversity grounds, and to a lesser extent on federal question grounds, the Court has substantially interfered with the Article III prerogatives of Congress.”

Citing Hart & Wechsler, *The Federal Courts and the Federal System* ch. 7, § 3, at 1043 (2d ed. 1973), ch. 8, § 5, at 1257 (canvassing the Court’s decisions requiring the exercise of jurisdiction and its opinions that call for abstention and discussing the apparent contradiction of these two positions) and Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716 (1996); Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992); New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 359 (1989); Deakins v.

Monaghan, 484 U.S. 193, 203 (1988); Murray v. Carrier, 477 U.S. 478, 519 (1986); Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 15 (1983); Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817-18 (1976); England v. La. State Bd. of Med. Exam'rs, 375 U.S. 411, 415 (1964).

Further, "abstention from the exercise of federal jurisdiction is the exception, not the rule." Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 236 (1984). The quote of Justice O'Connor in Idaho v. Coeur d'Alene Tribe of Idaho, 117 S.Ct. 2028, 2045–46 (1997) points to the principle that the role of abstention to dismiss a federal suit is narrowly tailored. The burden is on the movants and it is a heavy one. Because of the limited role of abstention as an exception the movants are limited to the now established recognized abstentions unless they can provide foundation for this court to establish a new doctrine or expand upon the necessary elements of the established doctrine.

III. The district court abused its discretion when it cautioned sanctions and advised the Appellant against further filing of his constitutional challenge.

The Appellant is not guilty of any neglect in notifying the district court in this case about the removed state case. Even if he were guilty of neglect, this court should consider it excusable neglect. Interpreting the plain meaning of the phrase "excusable neglect," the U.S. Supreme Court concluded, "Congress plainly contemplated that the courts would be permitted, [when] appropriate, to accept late

filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 388, 113 S.Ct. 1489, 1495 (1993).

IV. a. The district court erred in not declaring that Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) impermissibly infringe U.S. Constitution 14th Amendment Right of Privacy in the Privacy Protected Zone of “personal decisions relating to marriage.”

“It is well settled that . . . if a law ‘impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.’” Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden, 466 U.S. 55, 76 (1980))

“These decisions make it clear that only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty,’ Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967)...” Roe v. Wade, 410 U.S. 113, 151 (1973)

The Appellant directs this court to the pleadings and record to incorporate the argument on this issue therein here.

In summary, the U.S. Constitution 14th Amendment substantive due process clause has a recognized liberty interest and Right of Privacy. One of the

fundamental rights is “personal decisions relating to marriage.” Carey v. Population Services International, 431 U.S. 678, 97 S. Ct. 2010 (1977).

The fundamental right of procreation has two ends to its spectrum of recognized zone of privacy protection, i.e. contraception (initiation of procreation) Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992) and abortion (termination of procreation) Roe v. Wade, 410 U.S. 113 (1973).

The fundamental right of “personal decisions relating to marriage” has two ends of its spectrum, i.e. getting married Zablocki v. Redhail, 434 US 374 (1978) and making the personal decision to dissolve one’s marriage or divorce. Littlejohn v. Rose, 768 F. 2d 765, *6th Cir. (1985) citing Zablocki 434 at 385.

No compelling state interest applied in the least intrusive manner has been offered in this case, and none exists, to rehabilitative the presumptive unconstitutionality of the Georgia permanent alimony statutes.

IV. b. The district court erred in not declaring that Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) impermissibly infringe U.S. Constitution 13th Amendment ban on involuntary servitude.

The Appellant directs this court to the pleadings and record to incorporate the argument on this issue therein here. In United States v. Kozminski, 487 U.S. 931, 943 (1998) , the U.S. Supreme Court defines

involuntary servitude leniently in a criminal statute context, “in every case in which this Court had found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.”

Georgia’s permanent alimony statutes themselves and their case law interpretation mandate that the Appellant and Georgians have no available choice but to work or be subject to legal sanction. It is important to begin with the holding of the case,

“...we hold that, for purposes of criminal prosecution under 241 or 1584, the term ‘involuntary servitude’ necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” Kozminski 487 at 952. “We hold only that the jury must be instructed that compulsion of services by the use or threatened use of physical or legal coercion is a necessary incident of a condition of involuntary servitude.” Kozminski 487 at 953.

“The primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War, *but the Amendment was not limited to that purpose;*” (Emphasis added) citing Butler v. Perry, 240 U.S. 328, 332 (1916). Id at 942 The 13th amendment projected an expansive freedom.

“While the general spirit of the phrase ‘involuntary servitude’ is easily comprehended, the exact range of conditions it prohibits is harder to define. The express exception of involuntary servitude imposed as a punishment for crime provides some guidance. The fact that the

drafters felt it necessary to exclude this situation indicates that they thought involuntary servitude includes at least situations in which the victim is compelled to work by law.” Id at 943. “Looking behind the broad statements of purpose to the actual holdings, we find that in every case in which this Court has found a condition of involuntary servitude, the victim had no available choice but to work or be subject to legal sanction.” Id at 943

The 13th amendment ban on involuntary servitude applies to the Appellant and all Georgians being forced to work for the benefit of another under threat or coercion of law or the legal process thus making the Georgia alimony statutes unconstitutional. Bailey v. Alabama 219 US 219, 31 S. Ct. 145 (1911).

IV. c. The district court erred in not declaring that Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) impermissibly infringe the U.S. Constitution 14th Amendment equal protection.

The United States Report Under The International Covenant on Civil and Political Rights July 1994 Article 2-Equal Protection of Rights in the Covenant states the official United States position as a Ratifier of the Covenant in 1992 on the issue of lack of need for a suspect class when a fundamental constitutional right is challenged,

“ Fundamental Interest. Where a so-called ‘fundamental interest’ is at stake, the Supreme Court has subjected legislative classifications to "strict scrutiny" despite the absence of a suspect classification. This explains why, in the cases involving the right to vote (including fair apportionment) and the due process cases (right to counsel, etc.), the Court has found invidious discrimination even though the basis for that discrimination is not race, national origin, sex, or any other suspect class. What makes a right ‘fundamental’ is not always clear.

The fundamental rights are not necessarily those found in other provisions of the Constitution; indeed, those other rights can be protected without reference to equal protection. More likely, the rights are the ones not found in the Constitution except by inference, such as the right to procreation.”

The same principles apply to the Liberty interest and fundamental right of personal decisions relating to marriage. The Complaint at 51 further asserts that marital status has reached the level of a suspect class and is therefore entitled to the strict scrutiny standard when a statute is review for constitutionality. See, e.g., 12 U.S.C. § 3106a (1) (b)(foreign banks must conduct operations in compliance with laws prohibiting discrimination on the basis of race, national origin, marital status); 5 U.S.C. § 7204(b) (“...[D]iscrimination because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual”); 15 U.S.C. § 1691(a)(1)(unlawful for creditor to discriminate on the basis of sex, race, religion, national origin, or marital status); 20 U.S.C. § 1087tt(c)(unlawful to discriminate in loaning money on basis of sex, race, religion, national origin, or marital status); 20 U.S.C. § 1071(a)(2)(same, for credit or insurance).

There is no compelling or even rational state interest to make Georgians who exercise their fundamental right to divorce to be subjected to the permanent alimony statute when Georgians who remain married are not subject to the same intrusions and burdens. Furthermore, divorcing Georgian spouses divorcing each

other are treated differently depending on their financial status without a compelling or rational state interest. The statute is certainly not applied in the least intrusive manner.

IV. d. The district court erred in not declaring that Georgia alimony statutes (O.C.G.A. §§ 19-6-(1-35)) impermissibly infringe the Georgia state constitution Right of Privacy; Ban on involuntary servitude; and equal protection.

The Appellant directs this court to the pleadings and record to incorporate the argument on these issues therein here. The same fundamental rights expressed in the Federal Constitution are expressed in the Georgia State Constitution, and for the arguments offered above and in the record the Georgia alimony statutes also impermissibly infringe these state constitutional fundamental rights.

CONCLUSION

“It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.” O.W. Holmes. *The Path of the Law*. 10 *Harvard Law Review* 457 (1897)

When the Georgia Legislature repealed the doctrine of necessities in 1979, it effectively made married Georgians economic independents. (GA. Laws 466, 491) This point is made by Justice Overton in his dissent in Connor v. Southwest

Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995), “The majority’s abrogation of the doctrine of necessities appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself.” The Georgia alimony statutes transform married economic independents into economic dependents when they exercise their fundamental right to divorce.

If Georgians are economic independents in marriage, then there can be no compelling state interest to transform them into economic dependents and place an undue burden on one of them to support the other at the life style of the marriage forever simply because they chose to exercise a fundamental right. (Planned Parenthood v. Casey, 505 U.S. 833, 837 (1992)) (“...the undue burden standard should be employed. An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path ...”)

This burden is a particularly oppressive burden when the yoke of alimony is placed on a Georgian who is the respondent in the divorce proceeding, as here.

Respectfully submitted,

DENNY C. CORMIER, Pro se

Dated: January 10, 2005

CERTIFICATE OF SERVICE

I, Denny C. Cormier, hereby certify that on January 10, 2005 the original and six (6) copies of the foregoing brief, and one diskette, were sent via U.S. Express Mail to the United States Court of Appeals for the Eleventh Circuit, and one (1) copy of the foregoing brief, was sent via U.S Mail to John J. Jones, Senior Assistant Attorney General, and Laura W. Hyman, Assistant Attorney General, Department of Law, 40 Capitol Square, S.W., Atlanta, Georgia 30334-1300, and to Dwight May, Esq., Attorney for Nancy B. Cormier, P.O. Box 1660, Moultrie, GA 31776.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 5,610 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2000 in Times New Roman, 14 pt.

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