

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

NANCY B. CORMIER
Plaintiff

Case Number 6:05-CV-26

- vs -

DENNY C. CORMIER
Defendant, pro se

MOTION FOR PARTIAL REMAND

Comes now Defendant, DENNY C. CORMIER, pro se, moving this Court to grant a partial remand to the Superior Court of Colquitt County, Georgia, in order for the state court to grant the divorce in this case. Partial remand is proper pursuant to Wisconsin Dept. of Corrections v. Schacht, 97 S. Ct. 461 (1998). This court may then unencumbered address the statutory constitutional challenges that have become the gravamen of this case, subject to Elk Grove Unified School District v. Newdow, 124 S. Ct. 2301 (2004), for the following reasons:

1. Georgia Alimony Statutes O.C.G.A. 19-6-1 et seq impermissibly infringe Defendant's constitutional Right to Privacy guaranteed under the 14th Amendment to the U.S. Constitution in the privacy-protected zone of personal decisions relating to marriage.

2. Divorce is recognized as within the umbrella of the protected zone of the Right of Privacy. Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985)
3. This Court must adjudicate the constitutional issues relating to the Georgia Alimony Statutes under 28 U.S.C. 1331 and 42 U.S.C. 1983 because declaratory relief has proven unavailable within the Georgia state court system.
4. The Superior Court of Colquitt County, Georgia will not permit a bifurcation of the instant case to grant a divorce decree due to provisions of Georgia Superior Court Rule §24.7, which states, "... no divorce decree shall be granted unless all contestable issues in the case have been finally resolved."
5. Defendant has exhausted all appellate remedies at the state court level, including an application for appeal to the Georgia Supreme Court, which was denied May 12, 2005.
6. This Court is authorized to grant a partial remand to the Georgia state court for grant of a divorce decree subject to Wisconsin Dept. of Corrections v. Schacht, 97 S. Ct. 461 (1998) (rejects the argument that if subject matter jurisdiction is lacking over one claim in a multi-claim case, the entire case must be remanded under § 1447(c)).
7. The link between divorce and alimony has forever been legally severed in the state of Georgia subsequent to repeal of the Doctrine of Necessaries by the Georgia Legislature in 1979.

8. This Court is the proper venue to adjudicate federal questions surrounding impermissible infringement of the Georgia Alimony Statutes upon U.S. constitutional law and fundamental rights without compelling state interest.
9. Under provisions of 28 U.S.C. 1331, this Court has original and subject-matter jurisdiction to adjudicate the constitutional issues of this case.
10. In addition to the federal question raised by Georgia Alimony Statutes impermissibly infringing the 14th Amendment, there are related constitutional issues pertaining to due process and equal protection, as well as violations of the 13th Amendment to the U.S. Constitution that demand this Court's review under Congressional mandate. All have been proffered in the Notice of Removal and the Complaint placed before this court in Cormier v. Cormier, Case Number 6:04-CV-30 (WLS).
11. The movant incorporated the Complaint from Case Number 6:04-CV-30 (WLS) into this case for the allegations and claims raised.

WHEREFORE, Defendant in the above described case hereby requests this Court to:

1. Grant a partial remand of the portion of this case relating to the matter of divorce back to the Superior Court of Colquitt County, Georgia for the grant of a divorce decree;
2. Retain the portion of this case relating to the federal questions that require adjudication in Federal Court caused by Georgia Alimony Statutes O.C.G.A. 19-6-1 et seq impermissibly infringing upon the Defendant's Right to Privacy, Right to Due Process and Equal Protection under the 14th Amendment, and Right to

Freedom from Involuntary Servitude under the 13th Amendment of the U.S.
Constitution and subject to the provisions of 28 U.S.C. 1331 and 42 U.S.C. 1983.

Respectfully submitted,

DENNY C. CORMIER, pro se

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DATED this 10th Day of June, 2005.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Partial Remand has been served via U.S. mail on this 10th day of June, 2005 to

Clerk of the Superior Court of Colquitt County
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