

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

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**NANCY B. CORMIER**  
Plaintiff

**Case Number 6:05-CV-26**

- vs -

**DENNY C. CORMIER**  
Defendant, pro se

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**NOTICE OF RE-REMOVAL**

**GEORGIA STATUTES §§19-6-(1-35) ALIMONY PROVISIONS IMPERMISSIBLY  
INFRINGE THE FEDERAL RIGHT TO PRIVACY,  
INTER ALIA**

"The domestic relations exception is not a prudential limitation on our federal jurisdiction. It is a limiting construction of the statute defining federal diversity jurisdiction, 28 U. S. C. §1332, which "divests the federal courts of power to issue divorce, alimony, and child custody decrees," Ankenbrandt, 504 U. S., at 703...

The Court [here in Elk Grove v Newdow] cites Palmore v. Sidoti, 466 U. S. 429 (1984), as an example of the exceptional case where a "substantial federal question that transcends or exists apart from the family law issue" makes the exercise of our jurisdiction appropriate... In Palmore, we granted certiorari to review a child custody decision, and reversed the state court's decision because... the alleged constitutional violation, while clearly involving a 'substantial federal question,' did not 'transcend or exist apart from the family law issue,' ante, at 9; it had everything to do with the domestic relationship--'[w]e granted certiorari to review a judgment of a state court divesting a natural mother of the custody of her infant child,' 466 U. S., at 430" Elk Grove Unified School District v. Newdow, 124 S. CT. 2301 (2004)

Denny C. Cormier, pro se, hereby gives notice of re-removal of the civil action styled Nancy B. Cormier v. Denny C. Cormier, Case No. 03-CVD-2211, from the

Superior Court of Colquitt County, Georgia, to this Court pursuant to 42 U.S.C. 1983, 28 U.S.C. §§ 1331, 1441, 1446. As grounds for re-removal, Denny Cormier hereby states:

1. This case presents a substantial federal question that transcends the family law issue.  
Elk Grove Unified School District v. Newdow, 124 S. CT. 2301 (2004)
2. Re-Removal is appropriate when intervening events or significant changes occur.  
Benson v. SI Handling Systems, Inc., 188 F.3d 780 (7th Cir. 1999)
3. This District Court in Case Number 6:04-CV-19-(HL) (Cormier v. Maria Green et al) ruled that the Georgia state court could resolve the state law constitutional challenges made and abstained under the Younger doctrine.
4. In this case, in this federal court, Nancy B. Cormier argued that the state court could remedy the constitutional challenges made herein and this Court should remand to that forum for the constitutional challenges raised.
5. Denny C. Cormier went back to the Georgia state court and raised his state law constitutional challenges and reserved his federal law claims. England v Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964); Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299, 1303 (11th Cir. 1992) citing Jennings v. Caddo Parish School Bd., 531 F.2d 1331 (5th Cir. 1976).
6. The state trial court overruled and denied Denny C. Cormier's state law constitutional statute challenge, made as a motion for declaratory relief, without reason opinion.  
(Appendix 1)
7. The Georgia Supreme Court declined to accept Denny C. Cormier's constitutional challenge appeal based upon the trial court's denial of a motion for declaratory relief.  
(Appendix 2)

8. The state court judge, in an off-the-record remark, threatened Denny C. Cormier with arrest and jail if he again sought to remove this action.
9. This District Court in Case Number 6:04-CV-19-(HL) (Cormier v. Maria Green et al) threatened sanctions if Denny Cormier presented the same claims in this District Court (under review by the U.S. Court of Appeals in the 11<sup>th</sup> Circuit, Case # 04-16220-AA).
10. Denny C. Cormier, in a good faith effort to change existing law, and with profound respect for this Court feels that the interests of justice are best served for all Georgians by this re-removal. He believes current law permits re-removal, that the claims made are in good faith with sound legal precedent and not meant to harass other parties or create excess burden for this Court.
  - a. Littlejohn v. Rose, 786 F.2d 785, 786 (6<sup>th</sup> Cir. 1985) (citing Zablocki v. Redhail, 434 at 385)

[The Court] "routinely categorized [these matters] as among the personal decisions protected by the right to privacy [and, in addition] has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Zablocki v. Redhail*, 434 U.S. 374, 384-85, 54 L. Ed. 2d 618, 98 S. Ct. 673 (1978) (citing *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40, 39 L. Ed. 2d 52, 94 S. Ct. 791 (1974).

“The Supreme Court has established broad protection for matters relating to the marital relationship including the availability of due process in seeking adjustments to the marital relationship. *Boddie v. Connecticut*, 401 U.S. 371, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971). Given the ‘associational interests that surround the establishment and dissolution of [the marital] relationship’, such ‘adjustments’ as divorce and separation are naturally included within the umbrella of protection accorded to the right of privacy. See *Zablocki*, 434 U.S. at 385; *U.S. v. Kras*,

409 U.S. 434, 444, 34 L. Ed. 2d 626, 93 S. Ct. 631 (1975)”  
*Littlejohn v. Rose*, 786 F.2d 785, 786 (6<sup>th</sup> Cir. 1985)

11. This Court need feel no obligation of comity to the Georgia state courts as they have been afforded the opportunity to rule on the state law claims raised in a motion for declaratory judgment, and have declined review or denied without reasoned opinion.
12. Denny C. Cormier is without a forum to raise the general (facial) constitutional challenge he brought before this District Court in two proceedings, and is without a forum to raise his 42 U.S.C. 1983 claims, and is without a forum to raise his as applied constitutional challenges to the Georgia alimony statutes--unless this court assumes the original and removal jurisdictions bestowed upon it by Congress and which is its duty to assume. Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)
13. This Court relied upon In re Matter of the Marriage of Smith, 549 F. Supp. 761(W.D. Texas 5th cir 1982) as supporting authority for the premise that the original state filing governs as to whether subject matter jurisdiction applies for 28 U.S.C. 1441 removal. Marriage of Smith, not originating in an appellate court, is without precedential value.
14. The premise for original remand offered by this court is no longer valid under Elk Grove Unified School District v. Newdow, 124 S. CT. 2301 (2004) and even under Ankenbrandt v. Richards, 504 U. S. 689 (1992) as discussed by Justice Rehnquist in Elk Grove. (See opening quote here)
15. The nature of this case became transformed to a civil rights case and the gravamen of the case is the constitutional validity of the statutes to be applied in the family law

case. This gravamen is similar to that in Palmore v. Sidoti, 466 U. S. 429, 432-434 (1984), as discussed in Elk Grove.

16. This case involves a general challenge (facial), an as applied constitutional challenge to the Georgia alimony statutes, a civil rights violation claim and originally a request for a divorce decree. The first claims are original jurisdiction claims pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1331 and the last, divorce decree, has been deferred to state courts alone. Ankenbrandt v. Richards, 504 U. S. 689 (1992)
17. This Court must assume subject matter jurisdiction over this case because it has original jurisdiction, because removal procedural requirements are met and because this court can effect a partial remand for a divorce decree to be granted by the Georgia state court.
18. This Court can meet its duty to assume original and removal jurisdiction and comply with Ankenbrandt abstention by a partial remand to the Georgia state court for grant of the divorce decree. 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)).
19. Denny C. Cormier incorporates into this re-removal all facts and pleadings he submitted to this Court in his first Notice of Removal and in the Complaint that accompanied it.
20. Plaintiff has willfully acted in concert with and through the encouragement of the state to violate Defendant's civil rights under color of law, especially the right to privacy and due process involving the 13<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, causing him irreparable harm.

WHEREFORE, Denny C. Cormier hereby re-removes this action, now pending in the Superior Court of Colquitt County, Georgia, to this Court, pursuant to 42 U.S.C. 1983, 28 U.S.C. §§ 1131, 1441, and 1446 based upon the above stated facts and law and the significant change of events, i.e., that the state law claims offered for adjudication pursuant to this District Court's order were overruled and denied without reasoned opinion, appeal was denied, all state court remedies have been exhausted, and declaratory relief made unavailable, causing the Defendant to be without recourse to have his general and as applied constitutional challenges, involving the 13<sup>th</sup> and 14<sup>th</sup> Amendments, adjudicated in any other forum than this; this court has original jurisdiction of this matter, the family law exception to jurisdiction is inapplicable and a mere partial remand to the state of Georgia to grant a decree of divorce will permit this court to fulfill its constitutional duty to adjudicate the federal questions claims raised.

Respectfully submitted,

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DATED this 18<sup>th</sup> Day of May, 2005

## **CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Notice of Re-Removal has been served via U.S. mail on this 18<sup>th</sup> day of May, 2005 to

Clerk of the Superior Court of Colquitt County  
9 South Main Street  
Moultrie, GA 31768

Dwight May, Esq.  
PO Box 1660  
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