

IN THE SUPERIOR COURT OF COLQUITT COUTY
STATE OF GEORGIA

NANCY B. CORMIER	§	
Petitioner	§	
	§	CIVIL ACTION FILE NO.
v.	§	03-CVD-2211
	§	
DENNY C. CORMIER	§	
Respondent, pro se	§	

MEMORANDUM OF LAW

**GEORGIA STATUTES O.C.G.A. §§ 19-6-1 ET SEQ. ALIMONY PROVISIONS
IMPERMISSIBLY INFRINGE THE U.S. and GEORGIA CONSTITUTIONS**

“Changing times demand reexamination of seemingly unchangeable legal dogma. Equality under law and evenhanded treatment of the sexes in the modern market place must also carry the burden of responsibility, which goes with the benefits.”¹

Introduction

“It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this principle before. Marriage is mentioned nowhere in the Bill of Rights... but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in Loving v. Virginia, 388 U.S. 1, 12 (1967).” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 847 (1992)

The U.S. Constitution 14th Amendment and the Georgia Constitution Article I Section 23 contain the fundamental Right of Privacy. “Personal decisions relating to marriage” is a well recognized Privacy Protected Zone. A Georgian’s personal decision

¹ Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175, 175 (Fla. 1995)

to dissolve his marriage is a personal decision relating to marriage entitled to constitutional protection.

O.C.G.A. §§ 19-6-1 et seq. are statutes intruding and impermissibly infringing in the Privacy Protected Zone of DENNY C. CORMIER's personal decision relating to his marriage to dissolve it. The temporary and permanent alimony provisions of these statutes are presumptively unconstitutional unless the state proves a compelling state interest is applied in the least intrusive manner and the statute, in fact, furthers the state interest.

For the attachment of the Privacy Amendment to O.C.G.A. §§ 19-6-1 et seq., we rely on the reasoning and the authority established Federally in Carey v. Population Serv. Int'l., 431 U.S. 678, 684-685 (1977) "*it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage...*"; Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817 (1967); Zablocki v. Redhail, 434 US 374 (1978); Planned Parenthood v. Casey, 505 U.S. 833, (1992),

"Our law affords constitutional protection to *personal decisions relating to marriage*, procreation, contraception, family relationships, child rearing, and education Our precedents "have respected the private realm of family life which the state cannot enter." These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." (Emphasis Supplied)

For State case law, attaching the fundamental Right of Privacy "personal decisions relating to marriage" see Houston v. Prosse, 361 F. Supp. 295, 296 (N.D. Ga. 1973).

Georgia Constitutional Right to Privacy Infringed

Georgia's Constitution contains a Right to Privacy much broader in scope than the Right to Privacy in the Federal Constitution. (Powell v. State of Georgia, 510 So. 2d 18 (Ga. 1998)). The parties, and all Georgians, have the fundamental constitutional "...right to be let alone so long as one was not interfering with the rights of other individuals or of the public." (Pavesich v. New England Life Ins., 122 Ga. 190, 197 (50 SE 68) (1905)). The Georgia Supreme Court further affirmed the Right to Privacy in Howard v. The State, 272 Ga. 242 (2000). Furthermore, in King v. The State, 272 Ga. 788 (2000), the Georgia Supreme Court correctly asserted the ruling in Pavesich with regard to a Georgian's Right to Privacy:

"In Pavesich v. New England Life Ins. Co., 122 Ga. 190, 197 (50 SE 68) (1905), "this Court expressly recognized that Georgia citizens have a 'liberty of privacy' guaranteed by the Georgia constitutional provision which declares that no person shall be deprived of liberty except by due process of law. [Cit.]" Powell v. State, 270 Ga. 327, 329 (3) (510 SE2d 18) (1998). This right of privacy guaranteed by the Georgia Constitution is far more extensive than that protected by the Constitution of the United States. Powell v. State, supra at 330 (3). In this state, privacy is considered a fundamental constitutional right and is "recognized as having a value so essential to individual liberty in our society that [its] infringement merits careful scrutiny by the courts." Ambles v. State, 259 Ga. 406, 408 (2) (b) (383 SE2d 555) (1989). It is against this background that we must consider Ms. King's objection to the State's use of the subpoena to gain possession of her medical records.)

In consideration of these rulings, all Georgians would obviously be outraged at the State intruding into the intimacies of their marriage and then with broad discretion redistributing their property and forever making one of them indentured to the other under threat of wrongful imprisonment and garnishment of wages. The Georgia alimony statutes, upon divorce, do just that.

The “personal decision relating to marriage”, i.e. divorce, is recognized by all Georgians, as a private matter. Stated otherwise, by “any person whose intellect is in a normal condition.” (The measure of what constitutes a private matter, Pavesich at 194).

The Right to Privacy being a fundamental constitutionally guaranteed right the court must apply the strict scrutiny standard to measure the challenged statute, i.e. to survive a constitutional challenge the statute must further a compelling state interest applied in the least intrusive manner.(Powell at 332-333)

All Georgians, have the right “to be free of unwarranted interference by the public about matters [with] which the public is not necessarily concerned, or to be protected from any wrongful intrusion into an individual’s life which would outrage...a person of ordinary sensibilities.” (Georgia Power Co. v. Buskin, 149 Ga. App. 277 (6) (254 SE2d 146) (1979)).

Annually, over 60,000 Georgians exercise their Federal and State Liberty Interest in their Right to Privacy in the Privacy Protected Zone of personal decisions relating to their marriage to divorce (i.e., dissolve their marriage).

The State of Georgia, when asked by a divorcing Georgian, applies the alimony provisions against some Georgians, primarily men, forever enslaving them for the benefit of their former spouse.

The Respondent asserts that O.C.G.A. §§ 19-6-(1-35) alimony provisions impermissibly infringe the Georgia Constitutional Right to Privacy in the Privacy Protected Zone of Personal Decisions Relating to Marriage, i.e. Georgians personal decision to divorce (dissolve their marriage).

The Respondent asserts that a fundamental Liberty Interest, the Right to Privacy, has been infringed and that the strict scrutiny standard applies.

The Respondent asserts neither the State of Georgia nor the Petitioner has ever exhorted or proven a compelling state interest that is applied in the least intrusive manner and that the interest is substantially furthered by the legislation.

The Respondent asserts that the state interest is at its weakest in the facts asserted herein. Therefore, this Court must adjudge the challenged statutes, O.C.G.A. §§ 19-6-(1-35), alimony provisions impermissibly infringe the Georgia Constitutional Right to Privacy.

Other Georgia Constitutional Rights Infringed

Furthermore, the Respondent asserts that Georgians, when exercising their fundamental Right to Privacy to divorce (dissolution of marriage), i.e. exercising a “personal decision relating to marriage,” are denied their property rights by Georgia’s alimony provisions of O.C.G.A. §§ 19-6-1 (1-35)), and some are permanently enslaved in a discriminatory manner to labor for the benefit of their former spouses, or be held in contempt and wrongfully imprisoned in violation of the U.S. Constitution’s Thirteenth and Fourteenth Amendments, and Georgia Constitution’s Basic Rights, Article I Section I, Paragraphs I, II, VII, XXII, XXV (Due Process, Equal Protection, Citizens Protection, Involuntary Servitude and Social Status).

Georgia Constitution’s Article I Paragraph II affords Georgians an “inalienable” set of basic rights. The same legal argument on Liberty Interest above is reiterated herein to invalidate challenged Georgia Statutes, O.C.G.A. §§ 19-6-(1-35).

I

O.C.G.A. 19-6-1 et seq. Alimony Provisions Impermissibly Infringe the Georgia Constitutional Guarantees to Right of Privacy

“The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses.” Parenthood v. Casey, 505 U.S. 833, (1992).

The State lacks a compelling interest applied in the least intrusive manner to invade the privacy area of personal decisions related to marriage, i.e. dissolution, to require permanent spousal support in some marriages. The Federal and Georgia Constitutionally guaranteed personal liberty interests of privacy and the Georgia Constitutionally guaranteed pursuit of happiness are infringed by the State imposing unwanted and discriminatory lifetime punitive monetary sanctions, i.e. spousal support payments, almost exclusively against men. The State further enforces these statutes and the imposed monetary sanctions with the threat of contempt, bodily arrest and wrongful imprisonment for noncompliance.

Below is argued the origin and power of the privacy amendment; judicial interpretation of the privacy amendment; the conflicts arising from the alimony provisions of O.C.G.A. §§ 19-6-1 et seq., and the misconceptions of the origins of the post-dissolution spousal support obligation; the application of the privacy amendment to areas of privacy; the rationale for a spousal support obligation along with the demise of the rationale; the need to apply the compelling State interest test to the support statutes; the absence of a compelling State interest; the rationale and its demise used for judicial decision making under current law (i.e. partnership theory of marriage), the public policy against permanent post-dissolution spousal support; approaches to judicial decision making on the subject of permanent post-dissolution spousal support; the acknowledged Gender Bias of the Georgia Court system; and the Affirmative Action based on Gender to

Remedy Gender Bias. It is further argued that Federal and State Constitutionally guaranteed fundamental rights cannot be adjudicated in a court of chancery, with a standard of equity and a cloud of Gender Bias by judges granted wide discretionary powers.

Also it is argued that the internal inherent flaws in the Georgia alimony statutes and their unconstitutional nature fail for vagueness.

Liberty Interest

Liberty interest as a legal doctrine has become firmly rooted. Lawrence v. Texas, 539 U.S. 558 (2003); Roe v. Wade, 410 U.S. 113 (1973); Griswold v. Connecticut, 381 U.S. 479(1965); Carey v Population Services International 431 U.S. 678, (1977); Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992).

So powerful has the doctrine become that Justice Kennedy chose it as his first word in the Lawrence (“Liberty protects the person from unwarranted government intrusions into a dwelling or other private places.”) and Casey (“Liberty finds no refuge in a jurisprudence of doubt.”) opinions.

The crystallization of liberty interest and its doctrinal presumptive pre-emption of government statutory intrusion on citizens is cogently analysed in Kennedy’s Libertarian Revolution, Professor Randy E. Barnett, Cato Institute.²

Personal decisions relating to marriage fall within the umbra of Liberty Interest. A definition of those rights which fall within Liberty Interest is cited in Bowers v Hardwick 478 U.S. 186, 191 (1986),

² Available at <http://www.cato.org/pubs/scr/docs/2003/revolution.pdf>

“The Court has sought to identify the nature of the rights qualifying for heightened judicial protection. In *Palko v. Connecticut*, . . . it was said that this category includes those fundamental liberties that are “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if [they] were sacrificed.” A different description of fundamental liberties appeared in *Moore v. East Cleveland*, . . . where they are characterized as those liberties that are “deeply rooted in this Nation’s history and tradition.” . . . See also *Griswold v. Connecticut*. . . .”

Marriage, and the personal decisions relating to marriage meet those qualifications.

“Several decisions of this Court make clear 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.” *Roe* 408 at 168.

“Marriage is one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.” *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942)

Now when it is asked, “Where in the Constitution is the right to sodomy?,” “Where is the Constitution is the right to abortion?,” “Where in the Constitution is the right to use contraceptives?,” and critically , “Where in the Constitution is the right to dissolve a marriage without alimony?” The answer is in two places: The U.S. Constitution’s Ninth Amendment³ and the presumption of liberty inherent in the Fourteenth Amendment that requires the government to justify its restriction on liberty.

“[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This ‘liberty’ is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly

³ Amendment IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. Poe v. Ullman, 367 U.S., at 543 (Harlan, J. dissenting from dismissal on jurisdictional grounds).” Casey 505 at 849 citing Harlan.

And further,

“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.” Casey 505 at 852

And finally,

“Although ‘[t]he Constitution does not explicitly mention any right of privacy,’ the Court has recognized that one aspect of the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment is a right of personal privacy, or a guarantee of certain areas or zones of privacy.” Carey 431 at 684

Right of Privacy

“*Casey, supra*, at 851, 112 S.Ct. 2791--which confirmed that the Due Process Clause protects personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education...” Lawrence 539 at 559

The Fourteenth Amendment Right of Privacy is well recognized and encompasses the protected zone of personal decisions relating to marriage. The U.S. Supreme Court has used strong words to convey a wide scope to the range of liberty and right of privacy afforded to all aspects of marriage. The scope is repeatedly stated as “personal decisions

relating to marriage”. Below is a list of wording applied to this liberty interest and right of privacy. Its first appearance in Griswold, Loving and Roe showed an appreciation of a spectrum of aspects where marriage shall be afforded constitutional protection. Later cases lucidly and repeatedly express the expansive nature of the privacy zone “personal decisions relating to marriage” into which the government must refrain from intrusion. Even this broad zone of privacy is not to be considered the bounds of the zone,

““While the outer limits of [the right of personal privacy] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions ‘relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967)...’ Zablocki 484 U.S. at 385

“The Court's decisions have afforded constitutional protection to personal decisions relating to marriage, see, e.g., Loving v. Virginia, 388 U.S. 1...” Casey 505 at 834

“Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. Carey v. Population Services International, 431 U.S., at 685.” Casey 505 at 851

“...includes ‘the interest in independence in making certain kinds of important decisions.’ While the outer limits of this aspect of [protected liberty] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions “relating to marriage, procreation, contraception, family relationships, and childrearing and education.”” Carey 431 at 684 –685

“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 410 at 151

“In a Constitution for a free people, there can be no doubt that the meaning of ‘liberty’ must be broad indeed.” Board of Regents v. Roth, 408 U.S. 564, 572 . The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the ‘liberty’ protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights.” Roe 408 at 572 citing Griswold

Scope of the Privacy Zone of “personal decisions relating to marriage”

There are two major reasons Georgia’s challenged Statutes, O.C.G.A. §§ 19-6-(1-35) alimony provisions fall within the Protected Privacy Zone of personal decisions relating to marriage.

The first is the plain meaning of the words. To make a personal decision to enter a marriage, to stay in a marriage or to dissolve a marriage are all personal decisions relating to marriage. All of the above cases specifically define the privacy zone as “personal decisions relating to marriage.” Only Loving talks about a fundamental right to marry. After Loving, every Supreme Court opinion uses the words “personal decisions relating to marriage” to define the privacy zone. If the Court wished to restrict the scope of the zone in any fashion it could have perpetuated the zone as a right to marry. It did not.

This court must not restrict the scope of the privacy zone from “personal decisions relating to marriage” to the zone of a right to marry. The Supreme Court chose inclusive language not restrictive language. This court should recognize the broad scope of the liberty interest and right of privacy the Supreme Court defined.

The second reason the privacy protected zone of “personal decisions relating to marriage” includes the fundamental right to dissolve a marriage is because the scope of the zone is not settled. There is a spectrum of decisions relating to marriage as to the marriage process itself. To date cases have dealt with government infringement on the right to enter a marriage. Loving (prohibitive Virginia interracial marriage statute declared unconstitutional) and Zablocki (Wisconsin statute requiring court approval for marriage if a citizen had child support arrearages was declared unconstitutional).

These cases now offer this court the opportunity to recognize the penumbra of the privacy protection afforded the personal decision at the other end of the marriage process spectrum, i.e. to dissolve a marriage.

Other evidence divorce is considered within the privacy protected zone of personal decisions relating to marriage is noted in Littlejohn v. Rose, 768 F. 2d 765, *6th Cir. (1985).

Georgia Statutes, O.C.G.A. §§ 19-6-1 et seq. Alimony Provisions

Georgia statutes O.C.G.A. §§ 19-6-(1-35), containing the challenged alimony provisions, distinctly declare they are written in the privacy protected zone. Specifically:

- 1 The alimony provisions of O.C.G.A. §§ 19-6-1,4,5 mandate that the State of Georgia invade a Georgian’s family, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, parental spending, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional,

- psychological and physical details of the parties and family during their marriage granting the judiciary a broad range of discretion to apply a property stripping statute with a standard of equity, with a threat of contempt and imprisonment.
- 2 The State of Georgia has never exhorted or proved a compelling state interest for the alimony provisions of the challenged Georgia statutes.
 - 3 O.C.G.A. 19-6-5 annunciates over 2^{27} (i.e., 134,217,728) permutations, then includes the phrase “Such other relevant factors as the court deems equitable and proper” (§ 19-16-5 (8)) from which the State of Georgia may choose as reasons to burden a Georgian with lifetime alimony and therefore violate constitutional Equal Protection guarantees.
 - 4 O.C.G.A. §§ 19-6-1,4,5 are applied with a standard of equity given to a judiciary assigned wide discretion to determine if a Georgian will be forever enslaved to pay alimony..
 - 5 The fundamental Federal and Constitutional Rights at issue under O.C.G.A. §§ 19-6-1,4,5 cannot be adjudicated by such a forum forever adversely affecting the fundamental Rights of a Georgian. Each spouse has decided they wish to go their own way in life. But, when applied, the statutes keep them shackled together for the rest of their lives.

Compounding this assault on the freedom given to its citizens by the Georgia Constitution, the Georgia Supreme Court has acknowledged that the State’s alimony statutes remain unsettled in their application. In its Executive Summary of the Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System (1991), the Supreme Court noted that the Georgia

Legislature had recognized in 1979 obvious gender bias against husbands. In addition, it recognized that the Legislature had forever severed the link between alimony and divorce through abrogation of the Doctrine of Necessaries:

“This 1979 amendment to the law ... eliminated a husband’s liability for the necessities of the wife, and made both parents jointly and severally liable for support of the children. It further abolished the causes of action for alienation of affection and criminal conversation.” (page 30) Executive Summary of the Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System (1991)

Coverture to Partnership to Independent Self Reliance-- The Abrogation of the Doctrine of Necessaries

“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.”⁴

The original rational for the obligation of spousal support has long since passed!

This obligation began in Medieval Ecclesiastical courts, known as the principle of Coverture.

“At common law, a woman’s legal identity merged with that of her husband; she could not own property, enter into contracts, or receive credit as an individual. This condition, known as Coverture, created a need for the Doctrine of Necessaries because a married woman was dependent upon her husband for maintenance and support.”⁵

⁴ O.W. Holmes. The Path of the Law. 10 Harvard Law Review 457 (1897)

⁵ Abrogating the Doctrine of Necessaries in Florida: The Future of Spousal Liability for Necessary Expenses After Connor v. Southwest Regional Medical Center, Inc. Shawn M. Wilson. Florida State Law Review 24:1031. 1997 at 1032.

Times were different in Medieval England. Times were different in 19th century Georgia. Times are different today in 21st century Georgia where the Doctrine of Necessaries has been abrogated by the Georgia Legislature!

In Georgia, a woman as a party in a marriage, has seen her economic rights progress from none to co-equal economic independent. The economic status of a woman in a marriage has gone from Coverture to the judicially created fiction of “economic partnership” to now, the judicially created co-equal economic independent.

The Georgia Courts have in effect “legislated” an economic partnership model for marriage. Essentially, this model is nothing more than a judicial fiction upon which to apply the newly created tool of Applied Economics to Law developed by the Chicago University Schools of Economics and Law. As applied to the privacy area of marriage, economics is in actuality merely a judicial tool without any legal doctrine, or statute to support its application. This tool has gained a life of its own because it has become the only tool with which the Courts can resolve the antediluvian and unconstitutional nature of the spousal support and property distribution provisions of the dissolution statutes.

The vestigial economic partnership model of marriage, as currently applied by the Courts, has no statutory or common-law basis. The Civil Courts arrived late to the privacy area of marriage. As noted above, the privacy area of marriage was historically restricted to the Ecclesiastical Courts. When the Civil Courts were statutorily given dissolution authority by the Legislature, it was amid the traditional specter used by the Ecclesiastical Courts, but for the purpose to permit the States citizens to remarry.

In the late twentieth century, the Civil Courts latched onto the use of this economic tool to resolve elements of marriage dissolution law. Having found a tool, the

courts needed an entity within the private area of marriage upon which to use the tool.

Thus, the Court created the economic partnership model of the privacy area of marriage. .

A Florida case, Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995), contains a judicial opinion of the effect of the abrogation of the Doctrine of Necessaries. Judge Overton's dissenting cry did *not* prevail in the Connor opinion. We do not need to interpret the consequences of the Connor opinion. Judge Overton himself tells us the effect and meaning of the decision, "The majority's decision to abrogate the common law Doctrine of Necessaries departs from the partnership theory of marriage..."⁶

Critically important here is the clarion significance Judge Overton recognized the Connor opinion to be...

"The majority's abrogation of the Doctrine of Necessaries appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself. It also reduces the legal obligations of the marriage contract."⁷

With brilliant foresight, Judge Overton recognized that the Connor opinion eliminated the spousal duty to care for one another. Moreover, he recognized the opinion departed from the obsolete partnership theory of marriage. He recognized the opinion forever changed the policy of the State to require each spouse to care for *himself* or *herself*. Finally, he recognized that abrogation of Doctrine of Necessaries meant the reduction of the legal obligations of the marriage contract. This Court must do the same.

The abrogation of the Doctrine of Necessaries forever eliminates the economic partnership theory of marriage. More importantly, this abrogation eliminates the

⁶ Id.

application of economic partnership theory as a foundation upon which to build an argument for a compelling State interest to intervene in the privacy area of marriage and dissolution of that marriage with statutorily mandated post-dissolution permanent spousal support requirements.

Severing of Alimony and Divorce

Coverture

The underlying economic rationale utilized by the state Court when it exercised a discretionary standard and chose to grant alimony has long since passed into antiquity. In Georgia, the rationale for alimony, Coverture, and the Doctrine of Necessaries, were extinguished with Georgia Constitution Article I Section I Paragraph XXVII (Spouse's Separate Property), forever severing the link between alimony and divorce.

Alimony-merely a statute...not common law

At common law, there never has been a right to alimony at all. It was statutorily created.

Abrogation of the Doctrine of Necessaries has completely eliminated the so-called 'right' to alimony. Therefore, alimony no longer exists as an incident to divorce a vinculo.

Georgia Constitutional Right to Privacy Infringed

1. Georgia's Constitution contains a Right to Privacy much broader in scope than the Right to Privacy in the Federal Constitution. (*Powell v. State of Georgia*, 510 So. 2d 18 (Ga. 1998)).
2. The parties, and all Georgians, have the fundamental constitutional "...right to be let alone so long as one was not interfering with the rights of other individuals or of the public." (*Pavesich v. New England Life Ins.*, 122 Ga. 190, 197 (50 SE 68) (1905)).

⁷ Id

3. All Georgians would be outraged at the State intruding into the intimacies of their marriage and then with broad discretion redistributing their property and forever making one of them indentured to the other under threat of imprisonment and garnishment of wages. The Georgia alimony statutes, O.C.G.A. §§ 19-6-1 et seq., do just that.
4. The “personal decision relating to marriage”, i.e. divorce, is recognized by all Georgians, as a private matter. Stated otherwise, this means by “any person whose intellect is in a normal condition.” (The measure of what constitutes a private matter, *Pavesich* at 194).
5. The Right to Privacy being a fundamental constitutionally guaranteed right the court must apply the strict scrutiny standard to measure the challenged statute, i.e. to survive a constitutional challenge the statute must further a compelling state interest applied in the least intrusive manner. (*Powell* at 332-333)
6. All Georgians have the right “to be free of unwarranted interference by the public about matters [with] which the public is not necessarily concerned, or to be protected from any wrongful intrusion into an individual’s life which would outrage...a person of ordinary sensibilities.” (*Georgia Power Co. v. Buskin*, 149 Ga. App. 277 (6) (254 SE2d 146) (1979)).
7. Annually, 60,000 Georgians exercise their Federal and State Liberty Interest in their Right to Privacy in the Privacy Protected Zone of personal decisions relating to their marriage to divorce (dissolve their marriage).
8. The State of Georgia, when asked by a divorcing Georgian, applies the alimony provisions in a discriminatory manner almost always against male Georgians, forever enslaving them for the benefit of their former wives.

9. The Respondent asserts O.C.G.A. §§ 19-6-(1-35) alimony provisions impermissibly infringe the Georgia Constitutional Right to Privacy in the Privacy Protected Zone of Personal Decisions Relating to Marriage, i.e. Georgians personal decision to divorce (dissolve their marriage). Furthermore, the Respondent asserts that a fundamental Liberty Interest, the Right to Privacy, has been infringed and that the strict scrutiny standard applies.
10. The Respondent asserts that neither the State of Georgia nor the Petitioner has ever exhorted or proven a compelling state interest for alimony that is applied in the least intrusive manner and that the interest is substantially furthered by the legislation.
11. The Respondent asserts that the State interest is at its weakest in the facts asserted herein.
12. Therefore, this Court must adjudge the challenged statutes, O.C.G.A. §§ 19-6-(1-35), alimony provisions impermissibly infringe the Georgia Constitutional Right to Privacy and are null and void.

Georgia Constitution Article I Section I Paragraph I

- 1 “Paragraph I: Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.”
- 2 Georgia Constitution Article I Paragraph I ensures that no Georgian shall be deprived of life, liberty, or property except by due process of law.
- 3 Substantive due process has been viewed to encompass citizens’ Right to Privacy.

“In Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992), the Court reaffirmed the substantive force of the liberty protected by the Due Process Clause. The Casey decision again confirmed that our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child

rearing, and education. *Id.*, at 851. In explaining the respect the Constitution demands for the autonomy of the person in making these choices:

“These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.” *Ibid.*” (*Lawrence v. Texas*, USSC, No.02-202, June 26, 2003)

- 4 Furthermore, O.C.G.A. §§ 19-6-(1-35) alimony provisions deny Georgians their Liberty Interest in their Liberty and Property without the State of Georgia having ever exhorted a compelling state interest for the statutes and proving the compelling state interest is applied in the least intrusive manner, and in fact the interest is substantially furthered by the legislation.
- 5 Therefore, this Court must adjudge the challenged statutes, O.C.G.A. §§ 19-6-(1-35), alimony provisions impermissibly infringe the Georgia Constitutional Article I Section I Paragraph I, Liberty Interest of Life, Liberty and Property, and as such are null and void.

Georgia Constitution Article I Section I Paragraph II

1. “Paragraph II. Protection to person and property; equal protection. Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.”
2. The Respondent asserts O.C.G.A. §§ 19-6-(1-35) alimony provisions impermissibly infringe Georgia Constitution Article I Paragraph II Protection to Person and Property and Equal Protection Clauses as well as Equal Protection

guarantees provided by the U.S. Constitution. For example: 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); O.C.G.A. § 7-6-2 (providing a cause of action for persons denied credit or a loan on the basis of race, national origin, marital status); O.C.G.A. § 7-6-1 (a)(“No bank . . . may discriminate on basis race, religion, national origin, or marital status”).

3. The Respondent asserts that not all similarly situated married Georgians who decide to divorce (dissolution their marriage) are burdened with permanent alimony per O.C.G.A. §§ 19-6-(1-35).
4. The Respondent asserts that the criteria for burdening a spouse with permanent alimony annunciate over 2^{27} combinations and permutations, then includes the phrase “Such other relevant factors as the court deems equitable and proper” (§ 19-16-5 (8)). They are applied with a standard of equity by a judiciary given wide discretion such that similarly situated spouses are not and cannot conceivably be equally evaluated, then some forever enslaved with the yoke of permanent alimony.
5. The Respondent asserts the State of Georgia treats some Georgians differently than other Georgians who decided to divorce (dissolve their marriage).
6. The State of Georgia only exercises the O.C.G.A. §§ 19-6-(1-35) alimony provisions against a Georgian whose spouse pleads for alimony.

7. The State of Georgia will not exercise O.C.G.A. §§ 19-6-1-35) alimony provisions unless a spouse pleads for alimony.
8. The Respondent asserts the state has no rationally related interest for such variability in stripping property rights from Georgians and permanently enslaving some them, almost exclusively men, to work for a former spouse in discriminatory manner.
9. The Respondent asserts that if a compelling state interest or even a rationally related state interest existed then the State of Georgia should be examining all divorce (dissolution of marriage) proceedings for the interest, not just those who contest the divorce and plead for it.
10. The Respondent asserts that the State of Georgia through O.C.G.A. §§ 19-6-1,4,5 treats Georgians whose marriages are dissolved differently as to the level of support obligation of a spouse than it does a married spouse. The State of Georgia does not measure the ability of married spouses to support each other nor establish any of the criteria for the level of support due a married spouse as it does apply to spouses who are dissolving their marriage.
11. The State of Georgia, through the challenged statutes, deprives Georgians of their Liberty Interest. It further deprives Georgians of Liberty Interest in their property, i.e. their earnings.
12. On the contrary, instead of fulfilling its Constitutional duty to protect Georgians' person and property, the State, through the challenged statutes, deprives its citizens of the very Liberty Interests it is committed to protect.
13. The Respondent asserts no compelling state interest, nor even a rationally related state interest exists for permanent alimony which forever enslaves mostly male

Georgian former spouses and denies them their future property rights in the rewards of their industry as well as fails to protect their personal Liberty. The Respondent asserts that the state interest is at its weakest in the facts asserted herein.

14. Therefore, this Court must adjudge the challenged permanent alimony statutes, O.C.G.A. §§ 19-6-(1-35), impermissibly infringe the Georgia Constitution Article I, Section I, Paragraph II Protection of Person and Property Clause, and the Equal Protection Clause and as such are null and void.

Georgia Constitution Article I Paragraph VII

1. “Paragraph VII. Citizens, protection of. All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.”
2. The General Assembly by enacting O.C.G.A. §§ 19-6-(1-35) is failing its constitutional duty to Georgians when it denies them the opportunity to exercise their constitutionally guaranteed fundamental right related to the protected privacy zone of a personal decision relating to marriage, i.e. here, divorce, without intrusion.
3. On the contrary, the General Assembly is not protecting Georgians but is denying them the full enjoyment of their constitutional rights, privileges and immunities to which they are entitled by citizenship.

4. Georgians' right to protection in the full enjoyment of the rights and privileges and immunities due such citizenship are inalienable and any statute impacting them must be reviewed by strict scrutiny.
5. The Respondent asserts that the state interest is at its weakest in the facts asserted herein.
6. Therefore, this Court must adjudge the challenged permanent alimony statutes, O.C.G.A. §§ 19-6-(1-35), impermissibly infringe the Georgia Constitution Article I Paragraph VII Protection of Citizens rights, privileges and immunities and as such are null and void.

Georgia Constitution Article I Paragraph XXII

1. Paragraph XXII Involuntary Servitude. As stated in Article I Paragraph XXII of the Georgia Constitution, "There shall be no involuntary servitude within the State of Georgia except as a punishment for crime after legal conviction thereof or for contempt of court."
2. The Respondent reasserts, Involuntary Servitude is prohibited by both the 13th Amendment to the U.S. Constitution, and by Georgia Constitution Article I Section I Paragraph XXII. And, while the term is easily definable, the "exact range of conditions it prohibits" is not so evident. In a fairly recent case, *United States v. Kozminski*, 487 U.S. 931, 942 (1998) the Supreme Court defined the term as a compulsory condition "in which a person lacks liberty especially to determine one's course of action or way of life," *Id.* a condition very much akin to slavery.
3. The U.S. Supreme Court 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.” *Id.* And the 13th Amendment bar is applicable to individuals as well as states, and to private as well as public discriminatory acts.
4. The Georgia Constitution has specific prohibition against involuntary servitude and invalidates any statute that by law or by coercion of law forces a Georgian to work for another Georgian.
 5. Alimony provisions of O.C.G.A. §§ 19-6-(1-35) create a condition of involuntary servitude for Georgians who divorce, and they must forever labor for the benefit of their former spouse by the effect of law and the coercion of law, i.e. punishment and wrongful imprisonment as delineated in O.C.G.A. 19-6-28.
 6. Furthermore, the alimony provisions of O.C.G.A. §§ 19-6-(1-35) alone create the prohibited condition of involuntary servitude, but the onerous coercive enforcement provisions in O.C.G.A. 19-6-28, implying civil or criminal contempt and jail without Miranda rights, are not only antediluvian, but also scandalously shameful.
 7. Therefore, this Court must adjudge the challenged alimony statutes, O.C.G.A. §§ 19-6-(1-35), impermissibly infringe the Georgia Constitution Article I Paragraph XXII, prohibition against Involuntary Servitude, and as such are null and void.

Georgia Constitution Article I Section I Paragraph XXV

1. “Paragraph XXV. Status of the citizen. The social status of a citizen shall never be the subject of legislation.”
2. However, all Georgians’ social status is wrongfully being measured by their marital status as a consequence of the alimony provisions of O.C.G.A. §§ 19-6-1 et seq.

3. Marital status is a social status, which Article I Section I Paragraph XXV prohibits as the basis for legislation.
4. O.C.G.A. §§ 19-6-(1-35) alimony provisions wrongfully address this social status and redefines the social status of both parties in a divorce action. These statutes wrongfully change the social status of Georgians and deprive some of them their Liberty Interests and property interest, as noted above, due to their changed social status.
5. The state of Georgia is not permitted to legislate based on the social status, i.e. marital status of Georgians—married v. divorced--without a compelling state interest applied in the least intrusive manner and proving the interest is in fact furthered by the statute.
6. Therefore, this Court must adjudge that the challenged alimony statutes, O.C.G.A. §§ 19-6-(1-35), impermissibly infringe the Georgia Constitution Article I Section I Paragraph XXV, prohibition against legislation based on social status, and as such are null and void.

Compelling State Interest

“We must beware of the pitfall of antiquarianism, and must remember that for our purposes our only interest in the past is for the light it throws on the present. I look forward to a time when the part played by history in the explanation of dogma shall be very small, and instead of ingenious research we shall spend our energy on the study of the ends sought to be attained and the reasons for desiring them.”⁸

If a compelling state interest exists, it must encompass and be applicable to the alimony provisions of the Georgia statutes, O.C.G.A. §§ 19-6-1 et seq. The nature of the concept of a compelling State interest would indicate it is self-evident, or almost self

evident, and that it is based on a legal doctrine or an overwhelming public policy. Not merely a public policy, but an overwhelming one! When one looks at the compelling State interest to be used to counter the unconstitutional nature of the statutes at issue, one should see evidence of its universal application throughout the laws of the State, a consistency in the laws of the State related to the compelling interest and a predictability of the compelling interest applied in the laws. No such compelling interest exists. Likewise, public policy—let alone an overwhelming public policy, does not offer a compelling State interest to overcome the unconstitutional nature of the statutes.

“The privacy right is explicit, it extends to *all* aspects of an individual’s private life rather than simply extending to some elusive “penumbra” of rights, and it *ensures* that the State cannot intrude into an individual’s private life absent a compelling interest.”⁹ (emphasis supplied)

Whatever the interest the Petitioner offers, one would expect it to be almost self evident; be present in the purposes for the statutes; be consistent throughout the legislative process; apply to all Georgians dissolving their marriage, not just those who contest the dissolution and also plead for alimony; must not place an undue burden on a Georgian; must be compatible with the no fault dissolution principle and O.C.G.A. §§ 19-6-(1-35) alimony provisions; must be compatible with the goal of gender neutrality of the alimony statutes contained therein; must be compatible with the changing nature of the eligibility for alimony award through the centuries for women and insane men, but not other men, denied to adulterous and deserting women, and to either men or women with adultery merely a factor to be applied by the court to either the payor or recipient as

⁸ Supra at 9.

⁹ The Right of Privacy in Florida in the Age of Technology and the Twenty-First Century: A need for Protection from Private and Commercial Intrusion. Honorable Ben F. Overton, Katherine E. Giddings. 25 Fla. St. U. L. Rev 25, 40 (1997).

specified in O.C.G.A. §§ 19-6-(1-35) alimony provisions; and finally must be compatible with a Pew Research survey about whether the government should be involved in promoting marriage, that resulted in 79% of those questions answering a resounding “no”;¹⁰ and must be compatible with the repeated appellate rulings.

The Search for a Compelling State Interest

The first place one can look to see whether there is a compelling State interest, is within the challenged statutes themselves. Specifically, none of the purposes enumerated within the alimony provisions of Georgia Statutes, O.C.G.A. §§ 19-6-(1-35), provide a compelling state interest, nor can they be interpreted to indicate a state interest, let alone a compelling state interest.

If the State’s interest was so important to reach the threshold of compelling, the legislature had ample time in the past century and a half to include it in the purposes of the statutes. Its failure to do so speaks to the lack of importance of the alimony provisions to the citizens of Georgia.

In the Law

After Connor, and independent of Connor, there is no legal doctrine supporting a compelling State interest for lifetime support of one spouse to another. The above noted

¹⁰ Q.7 In your view, should the GOVERNMENT start up programs that encourage people to get and stay married, or should the GOVERNMENT stay out of this?

18% The government should start up programs that encourage marriage

79% The government should stay out

3 % Don't know/Refused

100%

Available at <http://www.cflap.org/dl/news-articles/government/Pew-research-survey-on-government-in-family-20Mar02.htm>

legal origins of spousal support provide no legal basis, let alone a legal doctrine, for statutorily mandated lifetime spousal support after the dissolution of marriage.

Certainly the State cannot articulate a compelling reason to require permanent postdissolution spousal support, let alone set a standard of support to a former spouse to be at the level of *the lifestyle of the marriage*.

In Public Policy

What public policy rises to the level of a compelling State interest to permit the State to invade the privacy area of marriage? Whatever the compelling interest, if it were indeed compelling, *all* dissolution of marriages should be examined whether contested or uncontested to assure the policy was fostered. If there is a compelling State interest, there should be no difference in how the courts treat parties of a marriage regardless of the length of the marriage. The compelling interest should be determinative as to permanent spousal support, not the length of the marriage or whether the dissolution is contested.

Any concern for "keeping the spouse off the public dole" undoubtedly originated at the time of Coverture. Such thinking is not realistic today in light of Federal and State legislation, State judicial rulings and the equal employment opportunities available in the marketplace. If indeed this was or is a public policy, why then is it not applied uniformly to all marriages regardless of length? Also the logical extension of the reasoning approaches absurdity because the reasoning flows that all a woman need do to avert a life of poverty is to enter marriage for enough time to invoke the challenged alimony provisions and thus be afforded legislative and judicial protection from poverty for life.

Another concept offered as the reason for permanent spousal support is that a former female spouse should not be placed in peril of poverty if a supporting former spouse can pay. Besides not providing a compelling State interest, this policy is discriminatory as well. If a spouse avoiding poverty was a purpose of O.C.G.A. §§ 19-6-1 et seq., spousal support provisions, it was not listed in the purposes of the statute.

More importantly, the State prevents the supporting male spouse the pursuit of happiness, a right that is afforded him by the Georgia Constitution Privacy Amendments. One example of a judicial denial of a right of pursuit of happiness is that a supporting spouse “would have a significant burden to show that a voluntary retirement before age sixty-five is reasonable.”¹¹ This burden is on the supporting male spouse to show why he should be permitted to retire before that age. A supporting spouse, almost always the husband, is denied the pursuit of happiness of voluntarily changing jobs where his income might diminish unless he can bear the burden the court places on his to continue support of a former spouse. If voluntary choices in the pursuit of happiness impact a supporting male spouse’s ability to *forever* assure the receiving spouse the lifestyle of the marriage, he is wrongfully subject to penalty and denied the right to pursue happiness.

Integrity of marriage—no fault divorce

Preservation of marriage does not meet the test of a compelling State interest applied in the least intrusive manner. Further, no-fault divorce legislation has effectively demonstrated the State’s lack of commitment to the concept of preserving the integrity of marriage. There is no nexus, rationale or reasoning that links the statutory award in some marriages —particularly the longest marriages— of permanent post-dissolution spousal support with the purpose “to preserve the integrity of marriage.” Is it the threat that if

one risks dissolving the marriage one would be penalized with a sanction of mandated lifelong support obligation to the former spouse? The absurdity is self-evident and needs no further amplification or example.

Remarriage is a personal decision relating to marriage

The State cannot place barriers to *entry* or *exit* from the privacy-protected zone of marriage without a compelling interest. The permanent post-dissolution spousal support provisions place an unconstitutional burden on former male spouses strapped with the obligation of support. This burden unconstitutionally infringes on their right to the pursuit of happiness when they chose to reenter another marriage. The State must treat the second marriage with just as much integrity as it does the first marriage. The only reason the State grants divorce a vinculo is to permit a citizen to remarry.

The state cannot interfere with a citizen's right to remarry without a compelling State interest, Zablocki v. Redhail, 434 US 374 (1978). It is not the place of the judiciary to place greater value on a first as opposed to a second or third marriage. The citizens have spoken of their wishes by their demonstrated actions regarding divorce and remarriage. The fact that Georgia's citizens have a high frequency of divorce and a high frequency of remarriage is a reflection that the citizens of Georgia desire this freedom of activity.

Government should not promote marriage

The current White House initiative to promote marriage is not so much to encourage marriage for the sake of marriage, but as part of the program on welfare

¹¹ Pimm v. Pimm, 601 So.2d 534 at 537 (Fla. 1992).

reform.¹² This element of welfare reform is to encourage people to delay childbirth until they are married. The issue is hotly debated and does not represent the overwhelming public point of view of the role of government in marriage.

Toward the idea of whether government should initiate programs to promote marriage, The Pew Research Center reported the following statistically valid survey question:

Q.7 In your view, should the GOVERNMENT start up programs that encourage people to get and stay married, or should the GOVERNMENT stay out of this?

18% The government should start up programs that encourage marriage
79% The government should stay out (emphasis supplied)
3% Don't know/refused.¹³

Is the governmental promotion of marriage a valuable government endeavor reflective of public policy? The survey result says resoundingly... No!

If the State was interested in preserving the integrity of marriage it would not condone, even encourage, post-dissolution cohabitation. It does so when cohabitation is regarded merely as an economic factor in a modification proceeding.

State has no duty to protect parties in a marriage

The Georgia Constitution states that all political power is inherent in the people (Article I, Section II, Paragraph I). Furthermore, Article I, Section I, Paragraph XXVIII,

¹² “ Rep. Fortney "Pete" Stark (D-Calif.) said marriage is less important in determining whether families escape poverty than education.” Tying Marriage Vows to Welfare Reform. Amy Goldstein, Washington Post page A01, April 1, 2002

¹³ Americans Struggle with Religion's Role at Home and Abroad. Released March 28, 2002. Survey February 25-March 10, 2002 Pew Center for the People and the Press and Pew Forum on Religion and Public Life 2002 Religion and Public Life Survey.

Enumeration of rights not denial of others, states “The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed.” Accordingly, the people have spoken in the above survey and the Privacy Amendment that the government should stay out of making policy in the privacy area of marriage and personal decisions related to marriage.

When the State searches for a compelling reason to overcome the privacy amendment’s force it must do so in a fashion that it does not conflict with Deshaney v. Winnebago Cty. Soc. Serv. Dept., 489 US 189 (1989). The essence of Deshaney is that the United States Constitution Fourteenth Amendment Substantive Due Process Clause does not impose a special duty on the State to provide affirmative services to the public for protection against private actors as long as the State itself does not create those harms.

“The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security; while it forbids the State itself to deprive individuals of life, liberty, and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.”¹⁴

The State must not intrude in the privacy area of marriage and personal decisions related to marriage to a degree that it is assuming a duty to protect private parties to a marriage from their independent economic decisions. The State has no duty to ensure, promote, or endeavor to achieve equal economic opportunity or status, nor maintain any form of lifestyle postdissolution to the parties of a marriage.

¹⁴ Deshaney at 189.

Marriage, entering, sustaining, and departing, are part of the spectrum of personal decisions related to marriage that the judiciary must refrain from expressing policy opinion absent a compelling State interest, narrowly tailored...and there is none!

II.

Judicial Decision Making—Purposivism or Pragmatism—Same Result...Privacy Amendment Trumps Alimony Sections

This court can approach its judicial duty when it evaluates the issues in this case by the application of one of two judicial decision making doctrines, i.e. purposivism or pragmatism. The court can follow the more traditional role, purposivism, of viewing the issues before it with an eye toward the application of precedent, and the purpose of the statute along with its constitutional challenge.¹⁵

Alternatively, a judicial decision can be reached by the more iconoclastic approach of pragmatism fostered by Posner.¹⁶ It is posited that a Constitutional challenge should be reviewed under the more traditional approach. Nonetheless, using either approach the rational outcome is the same, i.e. to declare the sections regarding awards of alimony unconstitutional and eliminate the support provisions or under the pragmatic approach to do away with permanent support provision as lacking rational economic grounding.

For the traditional approach, purposivism the above arguments on the law and public policy demonstrate the unconstitutional character of the support provisions. To

¹⁵ Purposivism and pragmatism are discussed and debated (in the context of the first amendment) in Comments. Pragmatism Versus Purposivism in First Amendment Analysis. Richard Posner 54 Stanford Law Review 737 (2002)

¹⁶ Id Pragmatism...encourages the thought that the object of adjudication should be to help society to cope with its problems, and so the rules that judges create as a by-product of adjudication should be appraised by a "what works" criterion rather than by the correspondence of those rules to truth, natural law, or some other high-level abstract validating principle.

say more is to be repetitive. For the pragmatic approach the consequences of eliminating the spousal support section benefits society enormously.

If the goal of the married parties is to no longer be married and interact over important issues, then applying support provisions prevents the parties from going their separate ways in the constitutionally guaranteed pursuit of happiness. They are otherwise forever burdened and subject to court appearance in adversarial confrontations—State mandated! Without support provision, the parties go their separate ways except when minor children are involved.

There is no uncontroverted evidence that the lack of permanent post-dissolution spousal support creates economic devastation for either party. Men and women advocacy groups offer data to show how each is economically maligned by judicial rulings. Each has their bias. One of the best, most recent and neutral reports to address the consequences of no-fault divorce on the parties (“Divorce Reform in California: From Fault to No-Fault...and back again?” Prepared by Donna S. Hershkowitz and Drew R. Liebert Counsel, Assembly Judiciary Committee California State Legislature. November 1997) comments...

“However, the causal relationship between divorce and adult health problems remains, as with children, unclear...

Rather than the divorce itself, it might be the *conflict* present in divorcing families that is responsible for the onset of such problems for children of divorced parents...many of the problems observed among children of divorce are actually caused by the conflict between parents that precedes and accompanies marital dissolution, not the legal act of formally ending what has already informally collapsed.”¹⁷

¹⁷Divorce Reform in California: From Fault to No-Fault...and back again? prepared by Donna S. Hershkowitz and Drew R. Liebert Counsel, Assembly Judiciary Committee California State Legislature. November 1997) at 138, 139.

The importance of this is to show that there does not appear to be a demonstrable harm to third parties, children, related to postdissolution permanent spousal support provisions. Even if there was, the child support provisions address this issue and spousal support should not be linked to child support conceptually, or as a State interest.

There are no unbiased analyses to show that the effect of dissolution on the parties universally creates lasting harm. If there was such evidence, the legislature should have acted to instruct the judiciary to review *all* dissolution proceedings for this harm. In addition, the legislature should have amended its purposes section of the statute and it has not. For these reasons, the judiciary should not act to remedy any perceived social issues such as equal economic opportunities in the market place for women—that role belongs to the legislature.

Personal Responsibility

Connor put to rest judicial activism applied to the privacy protected zone of marriage to remedy any perceived social or economic injustices. The Connor court said personal responsibility is not the public policy unless the legislature wants to change that policy. Likewise, the Federal Legislature also stressed personal responsibility in 1996 when it titled its welfare reform act “Personal Responsibility and Work Opportunity Reform Act.” The benefits to society of that policy have been extremely positive to date. So too, a pragmatic ruling to eliminate spousal support statutes will benefit society. The concept and philosophy of public entitlement died as public policy with the passage of welfare reforms.

A pragmatic judiciary must consider Coasian transaction costs in its analysis. Can there be any doubt about the enormous economic waste devoted to the transactions

costs of analyzing, ruling upon and enforcing spousal support provisions and subsequent modification?¹⁸

III.

The Alimony Provisions of O.C.G.A. §§ 19-6-1 et seq. Fail for Vagueness

Universe of factors for judicial wanderings

Georgia Statutes O.C.G.A. §§ 19-6-1 et seq. alimony provisions are vague and over-inclusive because, after considering over 2²⁷ permutations to apply to the spouses trying to dissolve their marriage, they add the phrase, “The court may consider *any* other factor necessary to do equity and justice between the parties.”

The terms of the statute are too expansive to permit a reasonable person to know the factors and how they will be weighed. These almost infinite factors do not provide the specificity needed to reasonably anticipate which factors a court will select, weigh and apply.

The constitutional infirmity of vagueness of the statutes unfolds in the judicial decision-making process concerning post dissolution spousal support. The court, based on the factors of the statutes, starts with an astronomical number of permutations of factors to elicit, weigh, balance, and analyze. It is not argued that “standard of living during the marriage” must pass muster on the criteria of vagueness. On the contrary, the Respondent contends that the full spectrum of options, including the catchall of all other economic factors, establishes the uncertainty and lack of predictability ascertainable to a reasonable respondent.

GA. Supreme Court Commission confirms vagueness

¹⁸ Ronald Coase and Methodology Chapter in Overcoming Law. Richard A. Posner, Harvard University

The case law and statutory support for vagueness of the challenged statutes is confirmed by the Georgia Supreme Court's own Commission Report. Specifically, the Executive Summary of the Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System (August, 1991), which resulted from the Georgia Supreme Court's appointed commission on gender bias in the Court system, contains the following observations and conclusions:

"Some trial courts distribute marital assets as property or alimony with a lack of certainty and consistency. This may lead to inequitable property settlements between the parties." (page 30)

On page 32, the Report recommended, "Establishing alimony guidelines to be used by judges and juries in deciding alimony awards." Clearly, the alimony provisions of O.C.G.A. §§ 19-6-1 et seq. are too vague, over-inclusive and confusing to permit either judges or juries to make equitable decisions that do not discriminate either on the basis of gender or social status.

Moreover, the Georgia Supreme Court correctly noted in State of Georgia et al. v. Old South Amusements, Inc. et al. and Phoenix Amusements, Inc., 275 Ga. 274 (2002):

When a fundamental right is allegedly infringed by government action, substantive due process requires that the infringement be narrowly tailored to serve a compelling state interest. State of Ga. v. Jackson, 269 Ga. 308 (1) (496 SE2d 912) (1998). Where, however, it is not a fundamental right that is infringed and the person complaining is not a member of a suspect class, the government action is examined under the rational basis test, the least rigorous level of constitutional scrutiny. City of Lilburn v. Sanchez, 268 Ga. 520 (2) (491 SE2d 353) (1997).

Applying the above arguments, the Georgia alimony statutes, O.C.G.A. §§ 19-6-1 et seq., are both vague and over-inclusive. Consequently, the Respondant has clearly had his

fundamental and constitutional privacy rights infringed by the Superior court under threat of wrongful imprisonment without compelling state interest, thereby denying him substantive due process. Further affirmation of the Respondant's allegation can be found in Johnson v. State, 264 Ga. 590 (1) (449 SE2d 94) (1994) (“[a] statute is unconstitutionally over-broad if it reaches a substantial amount of constitutionally protected conduct.”)

IV.

Gender Bias—Equal Protection

The requirements of Equal Protection are well established in our Federal (U.S. Constitution, Amendment 14) and State law (Georgia Constitution Article I, Section I, Paragraph II) and need not be reiterated here. The burden here is to show the existence of bias based on a constitutionally protected basis in order to demonstrate a violation of Equal Protection. The Georgia Supreme Court Commission Report cited above offers ample evidence to support a valid claim of Bias. Indeed, the findings of the Commission and the Report confirms the existence of Gender Bias. With regard to application of O.C.G.A. §§ 19-6-1 et seq. alimony provisions, the Court even made recommendations to correct gender bias:

“Conduct a statewide study to assess and report on how marital assets are divided and the circumstances under which courts award rehabilitative and permanent alimony.

Ensure that judges are familiar with the statutory provisions governing, and materials relating to, the social and economic considerations relevant to equitable distribution and alimony awards. These materials include studies, statistics and scholarly commentary on the economic consequences of divorce...” (page 32)

However, the existence of Gender Bias and the attempt to correct it, i.e Affirmative Action based on Gender, violate Georgian's Equal Protection rights in the dissolution process. This violation is particularly flagrant and egregious when gender bias exists in a court of chancery applying a standard of equity by judges granted wide discretionary power.

Although the Georgia Supreme Court concluded that gender bias does in fact exist in the state's legal system, this acknowledgment carries with it the implicit rationale to correct the bias. This is improper. Each case carries its own facts. The Superior Courts have repeatedly asserted that there must be implicit trust in the ability of the trial judge to assess the credibility of the evidence. If bias is as prevalent as noted in the Report, the trial court's opinion value is seriously diminished.

Other aspects of the Report give cause for concern about the Court's objectivity. "Many lawyers will not represent women in divorce cases because women generally have fewer economic resources and therefore cannot afford their fees." (page 31) But how is it the duty of the judiciary as a State official to provide for and assess the quality of legal representation in a civil action?

The Report continues, "Without competent counsel, women are disadvantaged in enforcing their right to alimony, equitable distribution of material assets and child support." (page 31). Yet, how are women entitled to child support? Children are entitled to child support! Does the Court intend to assign women the same status as children? Furthermore, since when are judicial decisions predicated on assuring correct public perceptions and economic uniformity? Such a statement, and the courts heeding it diminish the objectivity of the judicial system so necessary for public trust.

The economic justification for many conclusions of the Report demonstrates the judicial legislation the Courts have embarked upon beyond the purposes of the O.C.G.A. §§ 19-6-1 et seq. alimony provisions. It is not the State's role to assess and balance economics of marriage particularly in light of Connor. No compelling state interest exists for such action. The large portion, and the emphasis, in the Report on economics of divorce imperil constitutionally protected fundamental rights in the protected sphere of personal decision relating to marriage. Such commentary is itself inappropriate and demonstrates the Court's zeal to rectify past gender bias against women with gender bias against men in the guise of "affirmative action", even though its stated goal is gender neutrality. The resulting general confusion caused by the vagueness and uncertainties in the application and adjudication of the O.C.G.A. §§ 19-6-1 et seq. alimony provisions graphically illustrates their inherently unconstitutional nature.

Conclusion

"The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses." Casey 505 at 833

Therefore, it is clear that the Georgia Statutes, O.C.G.A. §§ 19-6-1 et seq. alimony provisions, impermissibly infringe the Georgia Constitution Liberty Interest and Right of Privacy in the privacy protected zone of "personal decisions relating to marriage." The state of Georgia lacks a compelling state interest applied in the least intrusive manner to validate the challenged provisions.

The State prevents a citizen's pursuit of happiness, subjects him to a life of indentured servitude with the threat of contempt and wrongful imprisonment without a compelling State interest narrowly tailored.

A respondent brought to court in a dissolution proceeding, modification proceeding, or a related contempt proceeding cannot forfeit a constitutional right to privacy because he must defend himself in a court proceeding. Judicially noticed vagueness in the above civil statutory provisions, and Gender Bias in their application creates a morass for Georgia citizens that is unconstitutional.

Georgians Federal and State constitutionally guaranteed Liberty interest and fundamental rights cannot be imperiled in a court of chancery, with a standard of equity, applied in a cloud of Gender Bias, with wide judicial discretion.

Prayer for Relief

Constitutional rights must be enforced by courts even against the legislature's powers, and privacy in particular must be enforced even against majoritarian sentiment. At a fundamental level, the role of the Justices and judges ... is to guarantee and enforce the protection afforded by these basic rights. This is at once a judge's greatest calling and heaviest burden. It is an obligation we shoulder by our oath of office, binding ourselves to enforce individual liberty even in the face of public or official opposition. To shield the liberties of the individual from encroachment is uniquely the task of courts. In that sense, we are obliged to give sanctuary against the overreaches of government. (Shaktman)

WHEREFORE, based on the above stated laws and public policy this Court must declare that the challenged O.C.G.A. §§ 19-6-1 et seq. alimony sections impermissibly infringe and state Liberty Interest and fundamental Right of Privacy in the Privacy protected zone of "personal decisions relating to marriage"; impermissibly infringe

Georgia State constitutional Equal Protection substantive Due Process; and impermissibly infringe state constitutional Basic Rights; and grant immediate injunctive relief forthwith by holding Nancy and Denny C. Cormier no longer bound by them.

Respectfully submitted,

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Dated: February 17, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2005, I caused a true and accurate copy of the foregoing to be sent by U.S. Mail to:

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