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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

Case Number 2:04-CV-417

2004 DEC -9 PM 1:51

**MICHAEL S. GOGOLA**

Plaintiff, pro se

CLERK OF DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT LAUDERDALE, FLORIDA

v

**JAMES ZINGALE**, Chairman, Executive Director  
Florida Department of Revenue,  
in his official capacity and,

**FLORIDA DEPARTMENT OF REVENUE**,  
Defendants.

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**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Plaintiff, pro se, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the standard of review set forth in Celotex Corp. v. Catrett, 477 U.S. 317 (1986), moves this Court for an Order granting summary judgment in favor of the Plaintiff as against the Defendants on the claim the Florida Statutes Chapter 61 "Dissolution of Marriage" permanent alimony section (§61.08) impermissibly infringes Floridians' Liberty interest and Right of Privacy in the Privacy Protected Zone of "personal decisions relating to marriage."

Plaintiff also moves for summary judgment for the Plaintiff as against the Defendants that the state claims, i.e. that the challenged permanent alimony section ( §61.08) impermissibly infringes Florida Constitution Article 1 Section 23 Right of Privacy and Article I Section 2 Basics Rights as well as conflict with the Florida Supreme Court ruling and public policy effected in Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995). This motion is made on the following grounds.

Pursuant to the standard set forth in Celotex, there is no genuine issue as to any

material fact and the moving party, the Plaintiff, is entitled to a judgment as a matter of law. Id. at 322. In support he offers,

**A. Federal Question: Infringement on Liberty interest and Right of Privacy**

The existence of the constitutional 14<sup>th</sup> Amendment Liberty interest doctrine is well settled. (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))

The existence of a constitutional 14<sup>th</sup> Amendment Right of Privacy is well settled. (Griswold v. Connecticut, 381 U.S. 479(1965); Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992); Carey v Population Services International 431 U.S. 678, (1977)).

Within the right of privacy there exist well established privacy zones one of which has been repeatedly deemed the zone of “personal decisions relating to marriage.” Casey Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992); Carey v Population Services International 431 U.S. 678, 684 (1977); Roe v. Wade, 410 U.S. 113 (1973); Skinner v Oklahoma, 316 U.S. 535 (1942).

Dissolution of a marriage is a personal decision relating to marriage and as such is entitled to the constitutional protections afforded a fundamental Liberty interest and the fundamental Right of Privacy.

F.S. Chapter 61 is entitled “Dissolution of Marriage” and contains a section (§61.08) for the state to have the wide discretion to award the harsh lifetime burden of permanent alimony against a Floridian only if his spouse pleads for it.

The challenged permanent alimony section ( §61.08) sits squarely within the privacy zone of a “personal decision relating to marriage”, i.e. to dissolve a marriage and the strict scrutiny standard applies making the provision unconstitutional unless rehabilitated by the state of Florida proving a compelling state interest applied in the least intrusive manner and that the provision in fact furthers the compelling state interest.

“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))

No compelling state interest exists to rehabilitate F.S. §61.08. It therefore impermissibly infringes the Liberty interest and federal right of privacy of Floridians and is unconstitutional.

#### **B. Florida Constitution Article I Section 23 Right of Privacy**

Florida Constitution Article I Section 23 affords Floridians a broader Right of Privacy that that afforded them in the U.S. Constitution. North Florida Women's Health & Counseling Services, Inc. v. State, 866 So.2d 612 (Fla. 2003); In re T.W., 551 So. 2d 1186 (Fla. 1989)

The same Right of Privacy and Zone of Privacy argument above is reiterated herein to invalidate F.S. §61.08.

#### **C. Florida Constitution Article I Section 2 Basic Rights**

Florida Constitution Article I Section 2 affords Floridians an “inalienable” set of basic rights.

The same legal argument on Liberty Interest above is reiterated herein to invalidate F.S. §61.08.

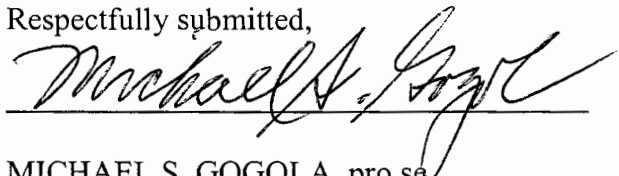
**D. Connor v. Southwest Florida Regional Medical Center, Inc.**

The Florida Supreme Court in Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995) abrogated the doctrine of necessities making parties in a marriage economic independents and shifted the public policy of the state “requiring each spouse to take care of himself or herself.” Connor 668 Overton dissent. F.S. § 61.08 effectively reverses, and ignores this shift in public policy without invoking the legislative process. Two attempts were made by the Florida legislature to reinstate the doctrine of necessities after the issuance of the Connor opinion—both attempts were unsuccessful. Fla. HB 1211 (1996); Fla. SB 906 (1996)

WHEREFORE for the above stated reasons the Plaintiff moves this Court to find Florida Chapter 61 “Dissolution of Marriage” permanent alimony section (F.S. § 61.08) impermissibly infringes the U.S. Constitution 14th Amendment Liberty interest and Right of Privacy and is unconstitutional.

Furthermore, the challenged section impermissibly infringes Florida Constitution Article I Section 23 Right of Privacy and Article I Section 2 Basic Rights and impermissibly conflicts with Florida Supreme Court Ruling in Connor and the public policy therein effected and, thus, is unconstitutional.

Respectfully submitted,



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