

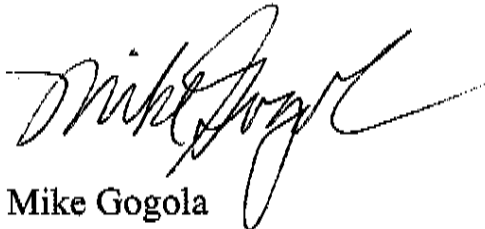
December 29, 2004

Clerk of Courts
U.S. District Court
2110 – 1st Street
Room 2-194
Fort Myers FL 33901

2005 JAN -3 PM 2:48
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

RECEIVED

Attached is a Plaintiff's Motion to Reconsider Order of Dismissal. Please use the stamped, self-addressed envelope to return a stamped copy (attached) to me. If you have any questions, please call me at 912-281-8055. Thanks.



Mike Gogola
508 Bay Street #7
Waycross GA 31501

UNITED STATES DISTRICT COURT RECEIVED
MIDDLE DISTRICT OF FLORIDA
CIVIL CASE NO. 2:04-CV-417

MICHAEL S. GOGOLA
Plaintiff, pro se
vs.

2005 JAN -3 PM 2:49
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

JAMES ZINGALE
Defendant

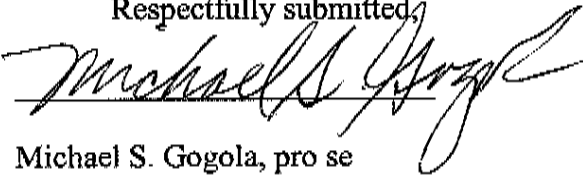
MOTION TO RECONSIDER ORDER OF DISMISSAL

Comes now the MICHAEL S. GOGOLA, Plaintiff pro se, who prays this court to grant relief in the interests of justice and pursuant to Federal Rules of Civil Procedure, Rule 59 (a) (1) and (e) and Rule 60 (b) (6) by reconsidering its Order of Dismissal. In support he offers:

1. This court's Order of Dismissal was entered December 16, 2004.
2. The Order of Dismissal dismissed the Plaintiff's general Federal statutory challenge 14th Amendment Right of Privacy claim based upon a lacking of standing and relying on Doe v. Pryor 344 F. 3d 1282 (6th Cir. 1985).
3. MICHAEL S. GOGOLA asserts that Doe v Pryor is inapposite and the court's reliance upon it resulted in a clear error of law and manifest injustice.
4. Further, this court has not construed the pleadings of the pro se Plaintiff more liberally than it would formal pleadings drafted by lawyers. (Hughes v. Rowe, 449 U.S. 5, 9 (1980)) Instead, the Court created legal arguments for the Defendants sua sponte.
5. This court is permitted to enter a new judgment denying dismissal of the substantive Due Process general Right of Privacy claim.
6. This lawsuit by MICHAEL S. GOGOLA is a good faith effort to change existing law.

WHEREFORE the Plaintiff requests this Court reconsider its Order of Dismissal and instead deny Defendant's Motion to Dismiss the general challenge to F.S. §61.08.

Respectfully submitted,



Michael S. Gogola, pro se
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**MEMORANDUM OF LAW ON MOTION TO
RECONSIDER ORDER OF DISMISSAL**

Standard of Reconsideration

Reconsideration is appropriate under FRCP 59(e) because the Plaintiff asserts a "clear error of law" is present in the court's December 16, 2004 Order of Dismissal.

"Although Rule 59(e) does not prescribe specific grounds for granting a motion to alter or amend an otherwise final judgment, we agree with our sister circuits that district courts may alter or amend judgment 'to correct a clear error of law or prevent manifest injustice.'" Collison v. International Chem. Workers Union, Local 217, 34 F.3d 233, 236 (4th Cir. 1994), quoting Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993); [*13] see also Dixon v. Wallowa County, 336 F.3d 1013, 1022 (9th Cir. 2003); N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995).

Reconsideration is proper under Federal Rules of Civil Procedure, Rule 60(b). Particularly, Subpart (6) "confers broad discretion on the trial court to grant relief when appropriate to accomplish justice [and] it constitutes a grand reservoir of equitable power to

do justice in a particular case.” Matarese v. LeFevre, 801 F.2d 98, 106 (2d Cir. 1986), cert. denied, 480 U.S. 908 (1987). Furthermore, “it is properly invoked where there are extraordinary circumstances, or where the judgment may work an extreme and undue hardship[.]” Id.; see also Virgin Atl. Airways, Ltd. v. National Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992).

Liberally construe pro se pleadings

This court was supposed to more liberally construe the pleadings of the pro se Plaintiff than if the pleadings were drafted by an attorney. (Hughes v. Rowe 449 U.S. 5, 9 (1980). It appears instead the court did the heavy lifting for the Defendants by sua sponte raising the standing issue against the Plaintiff’s general constitutional challenge and citing case law, neither of which were raised or argued by the defendants.

Doe v. Pryor

This court reliance upon Doe v Pryor , 344 F. 3d 1282 (6th Cir. 1985) is misplaced. This court’s conclusion of law is that the general Right of Privacy claim fails because the Plaintiff lacks standing to raise the claim. It founds, or looks for guidance, for its legal conclusion to Doe. The circumstances, facts, legal proceedings and legal conclusion of Doe are completed different that those of the Plaintiff here.

The claimant in Doe had several reasoned opinions written by the Alabama Appellate and Supreme Court on the issue raised in a separate federal lawsuit. In this Case Michael S. Gogola has received no reasoned or written opinion by either the state or appellate court in Florida.

The Doe claimant sued the Alabama Attorney General. The Federal 11th Circuit found the Defendant did not harm the Plaintiff. The Court concluded the wrong Defendant was named and used this as a basis for finding no standing to sue by the claimant.

Here the Defendant is the Director of the Department of Revenue, and the Department of Revenue as the state official designated to enforce the statute. (Complaint at 29) Here the Defendants are proper.

The Doe claimant wanted the federal court to issue an order binding the Alabama state court on a custody ruling.

Here the Plaintiff specifically pled he does not want a state court order modified, altered, or overruled. (Complaint at 16)

In Doe the issue presented to the federal court had already been decided in a U.S. Supreme Court ruling and by a concession by the Alabama Attorney General in such a way that granted Doe the relief sought.

Here there are no other existing ruling upon which the Plaintiff can rely for relief. His only hope is before this court to have the opportunity to argue the federal question constitutional issues.

In Doe the court felt there was no injury to the claimant to grant him standing.

Here the pleadings are replete with past, current and future injuries to the plaintiff to afford him standing to make a general federal statutory constitutional challenge. The Plaintiff not only has been threatened with prosecution over the challenged statute but has been prosecuted over the challenged statute. (Complaint at 39, 85, 91)

In Doe the court felt there was no threat of enforcement of the statute.

Here the statute was enforced against the Plaintiff.

The test for standing provided in Doe is completely met here by the Plaintiff and standing is proper to make the general challenge.

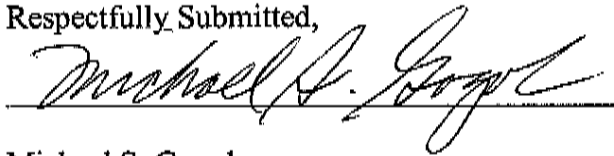
“First, the plaintiff must have suffered an ‘injury in fact’ – an invasion of a legally protected interest which is (a) concrete and particularized and (b) ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’
Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be ‘fairly traceable to the challenged action of the defendant and not the result of the

independent action of some third party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992) (citations, footnote, and some internal marks omitted)." Doe 449

Prayer for Relief

WHEREFORE, for the above stated reasons, the Plaintiff prays this court, alter the final judgment and deny Defendant's Motion to Dismiss the general constitutional challenge claims to §F.S. 61.08 permanent alimony sections. Further, based on the Plaintiff being pro se deny Defendant's Motion to Dismiss and reinstate all claims for argument and adjudication.

Respectfully Submitted,



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Date: December 29, 2004

CERTIFICATE OF SERVICE

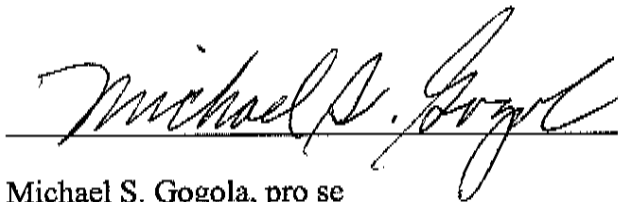
This is to certify that on this 29th day of December 2004, a true and correct copy of the foregoing motion has been served via U.S. mail to:

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P.O. Box 2007
Fort Myers, FL 33902

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Florida Department of Revenue
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Joseph H. Lee, Esq.
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Respectfully Submitted,



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