

FILED LEE CO. FLORIDA
CLERK OF COURT
2005 JAN -5 AM 9:55

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN
AND FOR LEE COUNTY,
FLORIDA

BY _____ D.C.

Family Division
Case No: 98-8094 CA C

MICHAEL S. GOGOLA
Former Husband, pro se

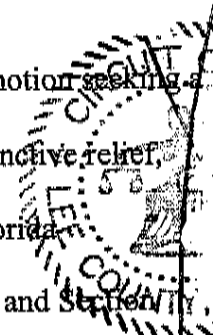
and

SANDRA LEE GOGOLA
Respondent/Former Wife.

**DECLARATORY JUDGMENT MOTION TO CHALLENGE THE
CONSTITUTIONALITY OF THE PERMANENT ALIMONY STATUTE**

(F.S. §61.08 inter alia)

Comes now MICHAEL S. GOGOLA, pro se, with an amended motion seeking a declaratory judgment, temporary injunctive relief but not permanent injunctive relief, pursuant to the United States Constitution; Article I Section 23 of the Florida Constitution, the Privacy Amendment; Article I Section 2, Basic Rights; and Section 86.011 et seq., Florida Statutes.



Further, MICHAEL S. GOGOLA seeks an immediate order of disqualification and certification to the District Court of Appeal with suggestion, pursuant to Florida Rules of Appellate Procedure Rule 9.125, to immediately certify to the Florida Supreme Court as a matter of great public importance, because the issues have a great effect on the proper administration of justice throughout the state.

Jennings & England Reservation

MICHAEL S. GOGOLA reserves all his federal and state constitutional claims for subsequent litigation in federal court by making on the record, at this outset, a reservation as to the disposition of the entire case by the state courts to preserve access to the federal forum. 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).

MICHAEL S. GOGOLA requests this court adjudicate his state court constitutional challenge of §61.08 as violation of the Florida Constitution Article I Section 23 and Article I Section 2 and Conflicting with Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995).

He requests this court to review and incorporate but not adjudicate his federal constitutional challenges to the statutes. England v Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964)

MICHAEL S. GOGOLA plans to return to federal court to adjudicate his federal claims in the event this court rules adversely on his state claims.

MICHAEL S. GOGOLA is before this court involuntarily because the state of Florida has applied, and is enforcing §61.08 against him. He must defend himself because the statutes authorize, and this Circuit Court has retained jurisdiction.

MICHAEL S. GOGOLA does not have federal court available to him at this time to adjudicate these state constitutional claims.

Incorporation of Federal Court Materials

This Court and all parties are noticed that MICHAEL S. GOGOLA incorporates all federal court materials in Civil Case No. 2:04-CV-417 (Gogola v Zingale), (United

States District Court, Middle District of Florida) in this motion.

In support he offers:

1. Florida Statutes Chapter 86 provisions are to be liberally construed (Florida Statutes § 86.101; Olive v. Maas, 811 So.2d 644 (Fla. 2002).
2. This Court has jurisdiction pursuant to Florida Statutes § 86.011 to address the constitutionality of Florida Statutes Chapter 61 postdissolution permanent spousal support provisions (61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824).
3. MICHAEL S. GOGOLA has standing pursuant to Florida Statutes § 86.021 as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.
4. Pursuant to Florida Statutes § 86.091 Notice is given to interested parties, i.e. Sandra Lee Gogola , James Zingale, Executive Director, Florida Department of Revenue, and to the Attorney General of the State of Florida.

Statutes

6. Florida Statutes Chapter 61 is entitled "Dissolution of Marriage: Support: Custody."
7. Chapter 61 postdissolution permanent spousal support provision (61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824) require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, with threat of wage garnishment, lose of driver's license, loss of professional license, contempt and imprisonment.
- 8 The spousal support provisions mandate that the state invade the marriage, 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, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions.

Constitution

9. Florida Constitution Article I Section 23 restricts the government from intruding into the private life of any person. "Article I Section 23 Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

10. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy that includes a Privacy Protected Zone of "personal decisions relating to marriage". (U.S. Constitution Fourteenth Amendment Due Process Clause; Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int'l., 431 U.S. 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail, 434 US 374 (1978); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985)), N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003).

11. Florida Constitution Article I Section 2 states... "SECTION 2. Basic rights.--All natural persons, female and male alike, ... have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for

industry, and to acquire, possess and protect property.”

Disqualification and Certification

13. This Court has the jurisdiction to rule on this motion related to the constitutionality of the challenged statutes (§ 86.011, § 86.011 (1)).

14. Code of Judicial Conduct Canon 3 E (1) (d) (i) mandates a judge disqualify herself when she is a defendant in an action.

15. This Court has an irremedial conflict of interest as the former defendant in federal court on a constitutional challenge to § 61.08 (Civil Case No. 2:04-cv-417 (Gogola v Zingale), (United States District Court, Middle District of Florida) and now an adjudicator in this motion.

16. The only plausible resolution to this Court’s conflict of interest is disqualification and certification of the questions to the District Court of Appeal with the suggestion to immediately certify to the Florida Supreme Court as a matter of great public interest, as a matter that has great effect on the proper administration of justice in the State (Rule 9.125).

MICHAEL S. GOGOLA

19. MICHAEL S. GOGOLA’S marriage was dissolved by Order of this Court May 7, 1999.

20. Prior to issuing its May 7, 1999 Order the State, through this Court, invaded and examined the intimate details of the privacy area of the marriage of MICHAEL S. GOGOLA.

21 After its invasion and examination of the intimate details of MICHAEL S.

GOGOLA'S privacy area of marriage the State, through this Court reassigned the property rights between MICHAEL S. GOGOLA and Sandra Lee Gogola .

22. The State, through this Court, redistributed the marital property of MICHAEL S. GOGOLA and Sandra Lee Gogola pursuant to Florida Chapter § 61.075.

23. The State, through this Court's Order of Final Judgment of Dissolution required MICHAEL S. GOGOLA to pay postdissolution permanent spousal support.

24. MICHAEL S. GOGOLA has continuously met his postdissolution spousal support obligation to the best of his economic, physical, mental and emotional capacity.

25. MICHAEL S. GOGOLA is today subject to the ongoing threat of Social Security garnishment, and present contempt and imprisonment if he fails to comply with the Final Judgment Order predicated on the above Chapter 61 provisions.

26. MICHAEL S. GOGOLA has had Contempt proceedings instituted against him by Sandra Lee Gogola for non-payment of Chapter 61.08 permanent support provisions.

27. MICHAEL S. GOGOLA is imminently subject to arrest warrants and imprisonment because of the enforcement of a Chapter 61 Final Judgment Order. Such enforcement is part of Chapter 61.

28. MICHAEL S. GOGOLA'S Florida Constitutionally guaranteed Right of Privacy (Florida Constitution Article I Section 23 right) and Article I Section 2 Rights have been violated by the State's current contempt judicial proceedings and Final Judgment of Dissolution Order of May 7, 1999 as well as other related judicial proceedings, judicial orders, the Chapter 61 Florida Statutes provisions and the case law those judicial actions are based upon.

29 MICHAEL S. GOGOLA'S Florida Constitutionally guaranteed Right of Privacy

(Florida Constitution Article I Section 23 right) has been violated because the State has failed to express a compelling State interest applied in the least intrusive manner to validate the Chapter 61 Florida Statutes noted above which put him at risk of imprisonment, invade his privacy, and imperil his Article I Section 2 basic rights.

30. Florida Chapter 61 postdissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of MICHAEL S. GOGOLA to his Federal and State constitutionally guaranteed Liberty interest and Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 provisions serve a compelling State interest, that interest is applied in an highly intrusive manner and is at its weakest in the facts of this case.

31. MICHAEL S. GOGOLA'S Article I Section 2 basic rights have been violated by his being denied such things as the full enjoyment of the fruits of labor and industry, retirement, own property, enjoy the freedom from fear of arrest and imprisonment, enjoy the freedom from the threat of having his Social Security garnished, enjoy the freedom from having adverse credit ratings, enjoy the freedom from the stigma of court proceedings, and to enjoy the remaining few days of his life on Earth, among other pursuits of happiness.

32. MICHAEL S. GOGOLA'S right to equal protection has been denied him compared with single persons and many other former married persons on whom the State did not statutorily and judicially, intrude into the intimate details of their marriage and then impose postdissolution permanent spousal support obligations.

33. MICHAEL S. GOGOLA'S right to equal protection has been denied him by the State compared with single persons and many other former married persons who do not have

their liberty imperiled by the threat of contempt and imprisonment related to the postdissolution permanent spousal provisions of Chapter 61.

34. MICHAEL S. GOGOLA'S right to equal protection has been denied him by the State because of the Florida Judicial System implementing an Affirmative Action Gender based bias program grounded in the Report of the Florida Supreme Court Gender Bias Study Commission (1990) and Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996).

35. MICHAEL S. GOGOLA'S constitutionally guaranteed Article I Section 2 and Section 23 rights are violated by the State acting in a court of chancery, applying a judicial standard of equity in a self acknowledged Gender Bias setting by a judiciary granted wide discretionary powers.

36. The above noted provisions of Florida Statutes Chapter 61 also fail for reason of vagueness.

37. The above noted provisions of Florida Statutes Chapter 61 do not permit a reasonable person, here, MICHAEL S. GOGOLA, to know which statutory and elements of his marriage in Florida Statute 61.08 will apply and how they will be weighed in the court arriving at a judicial order.

38. The vagueness and unpredictability of § 61.14 (1)(a) "the circumstances or the financial ability of either party changes" relating to a modification of MICHAEL S. GOGOLA'S Final Order does not provide him enough clarity of notice for him to understand the criteria for which he will be held accountable.

39. Gender Bias—Then and Now, Continuing Challenges in the Legal System, The

Report of the Gender Bias Study Implementation Commission (1996) notices the Florida Courts of the vagueness of the postdissolution permanent spousal support provisions.

40. This lack of statutory predictability when coupled with the threat of wage garnishment, arrest and contempt causes the statute to fail for vagueness and ambiguity.

41. The vagueness of the Statutory provisions when coupled with wide judicial discretion applying principles of equity in a setting of Gender Bias and Gender Based Affirmative Action that subject him to a lifetime risk of imprisonment are unconstitutional.

Injunctive Relief

42. MICHAEL S. GOGOLA has no adequate remedy at law and continues to face imminent and irreparable loss of his rights.

43. Absent expedited consideration and prompt injunction, MICHAEL S. GOGOLA will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.

44. MICHAEL S. GOGOLA has been, continues to be, and will be imminently further deprived of his Article I Section 2 and Section 23 Rights by the Family Division of the Fifteenth Judicial Circuit Court.

45. Any payments now made to his former spouse will be immediately expended by her as the payments are allegedly for the necessities of life.

46. There will be no way for MICHAEL S. GOGOLA to recover payments made while he awaits this Court's final Declaratory Order and possible appeals.

47. No bond is mandated for this temporary injunctive relief.

48. MICHAEL S. GOGOLA has the likelihood of prevailing on the merits of this constitutional statutory challenge.

49. This Court has been acting under color of State law in depriving MICHAEL S. GOGOLA of his constitutional rights because of an unconstitutional statute.

50. MICHAEL S. GOGOLA has been forced to retain the advice of counsel to vindicate his Right of Privacy because of the continuing risk of imprisonment, and denial of rights imposed by this Court's action rendered under color of state law. He has been forced to incur costs and a reasonable attorneys' fee in connection with this action.

51. MICHAEL S. GOGOLA is entitled to recover all costs and a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988 and Florida common law as well as costs pursuant to Florida Statutes § 86.081.

Prayer for Relief

“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))

WHEREFORE MICHAEL S. GOGOLA prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Disqualify itself and enter an immediate order of certification to the District Court of Appeal and a suggestion to immediately certify to the Florida Supreme Court as a matter of great public importance, as having a great effect on the proper administration of justice in the state (R. A. P. Rule 9.125), and,

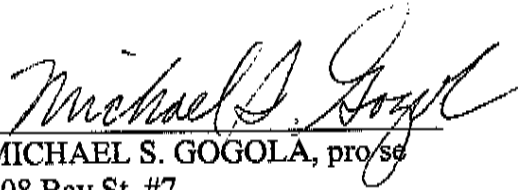
2. Enter an immediate temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against MICHAEL S. GOGOLA related to the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61 pending appellate review by the Supreme Court;

In the alternative,

3. Enter a declaratory judgment that MICHAEL S. GOGOLA and all Floridians have a constitutional right under the Privacy amendment to be free of the burden of the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;
 4. Enter a declaratory judgment that MICHAEL S. GOGOLA has a constitutional right under the equal protection laws of Florida to be free of the burden of the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;
 5. Enter a declaratory judgment that Florida Statutes Chapter 61 postdissolution permanent spousal support provisions impermissibly infringe the Florida Constitution Article I Section 23, and in the alternative violate the Florida Constitution Article I Section 2, and in the alternative, and in the alternative fail for vagueness;
 6. Enter a temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against MICHAEL S. GOGOLA related to the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;
 7. Awarding MICHAEL S. GOGOLA all costs and a reasonable attorneys' fee for the
-

prosecution of this action pursuant to, Florida Statutes § 86.011 and Florida common law.

Respectfully submitted,



MICHAEL S. GOGOLA, pro se
508 Bay St, #7
Waycross, GA 31501
Telephone: 912-281-8055
Fax: 912-287-2579
Email: michaelg@satilla.org

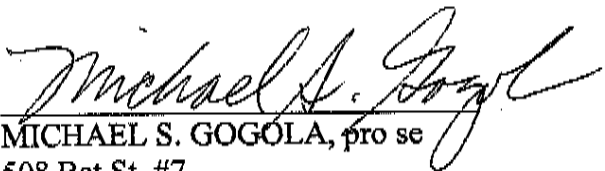
CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of December, 2004, I caused a true and accurate copy of this Motion to be send by U.S. mail to

Alexis Parker, Esq. Attorney for Sandra Lee Gogola
P.O. Box 2007
Fort Myers, FL 33902

James Zingale, Executive Director
Florida Department of Revenue
5050 W. Tennessee Street, Building 1
Tallahassee, FL 32399-0100

Joseph H. Lee, Esq.
Assistant Attorney General,
501 East Kennedy Blvd, Suite 1100
Tampa FL 33602-5237



MICHAEL S. GOGOLA, pro se
508 Bat St, #7
Waycross GA 31501
Telephone: 912-281-8055
Fax: 912-287-2579
Email: michaelg@satilla.org