

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

CASE NO. 05-10187-FF

**STEWART GREENBERG,**

Appellant,

vs.

**JAMES ZINGALE, ET AL.,**

Appellees.

\*\*\*\*\*  
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
\*\*\*\*\*

**BRIEF OF APPELLEES**

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GREENBERG v. ZINGALE

CASE NO. 05-10187-FF

**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to 11th Cir. R. 26.1, Appellees file this Certificate of Interested Persons and Corporate Disclosure Statement. The following persons and/or parties have an interest in the outcome of this case:

1. Charles J. Crist, Jr., Attorney General of Florida
2. The Hon. Jeffrey Colbath, Judge, Fifteenth Judicial Circuit of Florida
3. Charles M. Fahlbusch, Sr. Assistant Attorney General
4. The Fifteenth Judicial Circuit of Florida, Defendant
5. The Hon. Edward Fine, Chief Judge, Fifteenth Judicial Circuit of Florida
6. Florida Department of Revenue, Defendant
7. Elaine T. Greenberg
8. Stewart Greenberg, Plaintiff
9. Valerie J. Martin, Assistant Attorney General
10. Valentin Rodriguez, Esq.
11. The Hon. Kenneth L. Ryskamp, Judge, United States District Court
12. The Hon. Ann Vitunac, U.S. Magistrate Judge

[C1 of 2]

13. James Zingale, Defendant

[C2 of 2]

**STATEMENT REGARDING ORAL ARGUMENT**

Appellees respectfully submit that oral argument is unnecessary in this matter, the facts and legal arguments having been adequately set forth in the briefs of the parties, and should, therefore, be denied, in accord with Rule 34, Fed. R. App. P.

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**STATEMENT OF THE ISSUES**

**I**

**WHETHER THE DISTRICT COURT PROPERLY GRANTED  
DEFENDANTS' MOTIONS TO DISMISS?**

**II**

**WHETHER THE DISTRICT COURT APPLIED THE APPROPRIATE  
STANDARD FOR DETERMINING THE CONSTITUTIONALITY OF THE  
FLORIDA ALIMONY STATUTES?**

## STATEMENT OF THE CASE

### (i) Course of Proceedings and Disposition Below

Plaintiff filed a Complaint, allegedly pursuant to 28 U.S.C. §§ 1331 and 2201, for a declaratory judgment declaring the Florida Alimony Statutes unconstitutional on a number of alleged grounds. (R1-1). Defendants filed a joint motion to dismiss alleging failure to state a cause of action under either of the statutes alleged, abstention pursuant to both the Rooker-Feldman and Younger abstention doctrines, abstention pursuant to the Domestic Relations exception and sovereign immunity (on behalf of the Fifteenth Judicial Circuit). (R1-13). The Plaintiff then attempted to remove the dissolution of marriage action, or some portion thereof, which he had filed against his wife, pursuant to a notice of removal. (R1-15). The notice of removal was subsequently stricken on the grounds that it appeared that the Plaintiff was attempting to remove a case over which the United States District Court would not have original jurisdiction and that, even were that not the case, the Plaintiff was not a defendant in the case he was attempting to remove. (R1-19).

The Plaintiff filed a motion to deny the defendants' motion to dismiss and a memorandum in support thereof. (R1-16, 1-17). The Magistrate issued a Report and Recommendation recommending dismissal, which held that the Plaintiff's "as applied" challenge was inextricably intertwined with a state court judgment and that

Plaintiff had a reasonable opportunity to challenge the constitutionality of the statute in state court. The Court found that, therefore, it did not have jurisdiction over the “as applied” challenge. (R1-20-3-4). The Court did, however, examine whether the statutes concerned were facially unconstitutional. (R1-20-4). Regarding the involuntary servitude claim under the Thirteenth Amendment, the Court noted that, in every case in which such a violation had been found, the victim had no choice but to work or be subject to legal sanction. It found that, although Floridians who pay alimony must do so or face consequences such as the possibility of contempt, this simply does not amount to involuntary servitude. (R1-20-7-8). The Magistrate also discussed the Plaintiff’s due process and equal protection claims (R1-20-5-7) and concluded that Plaintiff had failed to state a cause of action on his facial constitutional challenge. (R1-20-5, 8-9).

Plaintiff, in his objections, denied making any “as applied” challenge on equal protection grounds (R21-3) and alleged that all his claims were “the facial constitutional validity of a state statute provision,” noting that the claims were matters of law, not of fact. (R21-6). He did not dispute that the Court would not have jurisdiction over an “as applied” challenge. (R21).

The Court adopted the report in part, but found:

However, the Plaintiff is correct in asserting that the Report and

Recommendation evaluated his substantive due process claim in the context of the right to enter into marriage, as opposed to his claim of an alleged right to exit a marriage without any undue burden imposed by the state. The Report and Recommendation also evaluates Plaintiff's equal protection claim as if it were an "as applied" claim, while this Court has jurisdiction only over the general equal protection allegation concerning the alimony statute at issue. As such, an additional report and recommendation addressing those areas is requested.

(R1-23).

The Magistrate rendered a subsequent Report and Recommendation, also recommending dismissal, as follows:

Though the Constitution does not explicitly mention a right to privacy, the Supreme Court "has recognized that one aspect of the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment is 'a right to personal privacy, or a guarantee of certain areas or zones of privacy.'" Carey v. Population Services Int'l, 431 U.S. 678, 684, 97 S. Ct. 2010, 2016 (1977) (citation omitted). Specifically, the Supreme Court has found that the government may not unjustly interfere with personal decisions relating to marriage. Id. (citing Loving v. Virginia, 388 U.S. 1, 12, 87 S. Ct. 1817, 1823 (1967))...

Unlike the statutes in the cases cited above, the Florida alimony statutes do not in anyway prohibit marriage nor do they interfere with personal decisions relating to marriage....The Florida alimony statutes provide mechanisms for all married people to receive alimony if needed, both while the parties remain married and while they dissolve their marriage. These statutes do not prevent a person from dissolving his or her marriage; the statutes do not interfere with a person's decision to exit a marriage. Therefore, Plaintiff has failed to state a substantive due process claim.

## 2. Equal Protection

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Unlike the plaintiff in Orr,<sup>1</sup> the Plaintiff here has not alleged that the alimony statutes on their face create classifications between similarly situated people.... However, everyone filing for divorce has the right to request alimony pursuant to § 61.08, while everyone who is married but not filing for divorce has the right to request alimony pursuant to § 61.09. The Plaintiff has not alleged that the Florida alimony statutes on their face create classifications between similarly situated people. Accordingly, the Plaintiff has failed to state a general equal protection claim.

(R1-24).

Plaintiff filed his objections thereto (R1-26) and the Court subsequently rendered its Omnibus Order, generally adopting the Report and dismissing the case, as follows:

Not every interference into the marital relationship, however, rises to the level of constitutional deprivation. To avoid infringement of a constitutional right, the exercise of a state's police powers must be confined to those acts which may reasonably be construed as expedient for the protection of the public safety, welfare and health or morals. E.g., *Pacheco v. Pacheco*, 246 So. 2d 778, 781 (Fla. 1970) (upholding Florida statute denying alimony to an adulterous wife). See also *Sosna v. Iowa*, 419 U.S. 393, 406-09 (upholding constitutionality of Iowa's one-year residency requirement for divorce, where the statute could "reasonably be justified" by the State's interest in not becoming "a divorce mill for unhappy spouses" and in "insulat[ing its] divorce decrees from the likelihood of collateral attack"); *Murillo v. Bambrick*, 681 F.2d 898, 905-11 (upholding New Jersey statute imposing a \$50 fee for divorces under rational basis standard of scrutiny, where state had legitimate interest to defray costs of matrimonial judicial systems).

Long-established principles of federalism dictate that this court

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<sup>1</sup>Referring to Orr v. Orr, 440 U.S. 268 (1979), which allowed wives, but not husbands to receive alimony and, thus, violated equal protection.

defer to the Florida legislature's judgment in enacting Section 61.08, which allows the state court to award permanent or rehabilitative alimony to either party in a divorce. Further, this Court finds that statute can be reasonably justified by the legislature's purposes of providing support to a former spouse, balancing inequities, and establishing the capacity for self-support by a former spouse. Namely, the permanent alimony furthers the purpose of providing for the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1201 (Fla. 1980). It also serves the purpose of balancing such inequities as might result from the allocation of income-generating properties acquired during the marriage. *Id.* at 1202. The principal of rehabilitative alimony, on the other hand, is to establish the capacity for self-support of the receiving spouse, either through the redevelopment of previous skills or provision of the training necessary to develop potential supportive skills. *Id.* Accordingly, the alimony statute does not violate Plaintiff's right to privacy in an unconstitutional manner.

(R1-31).

Plaintiff filed a Notice of Appeal more than 30 days subsequent to the date the order allegedly being appealed was rendered (R1-34), but subsequently filed an unopposed motion to extend the time to appeal and an order granting this motion was entered. (R1-35, 1-37).

(ii) Statement of the Facts

The relevant facts are set forth above in the Course of Proceedings.

(iii) Standard of Review

“We review de novo the district court's grant of a motion to dismiss under [Rule] 12(b)(6) for failure to state a claim, accepting the allegations in the complaint

as true and construing them in the light most favorable to the plaintiff.’ Hill, 321 F.3d at 1335.”<sup>2</sup> Spain v. Brown & Williamson Tobacco Corp., 363 F.3d 1183, 1187 (11th Cir. 2004). Dismissal for lack of subject matter jurisdiction (such as is involved in dismissal due to Rooker-Feldman abstention) is also de novo. See U.S. West, Inc. v. Tristani, 182 F.3d 1202, 1206 (10th Cir. 1999).

However, where the constitutionality of a state statute is concerned, such constitutionality is to be initially presumed. “[A] statute is presumed to be constitutional unless shown otherwise. See Romer v. Evans, 517 U.S. 620, 643, 134 L. Ed. 2d 855, 116 S. Ct. 1620 (1996) (Scalia, J., dissenting) (‘A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.’ (quoting United States v. Salerno, 481 U.S. 739, 745, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987))); Villanueva v. Carere, 85 F.3d 481, 487 (10th Cir. 1996) (applying presumption of constitutionality to a state statute in the face of an equal protection challenge).” Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619, 636 (10th Cir. 1998).

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<sup>2</sup>Referring to Hill v. White, 321 F.3d 1334 (11th Cir. 2003).

### **SUMMARY OF ARGUMENT**

Plaintiff does not dispute that the District Court had jurisdiction only over the facial challenge to the Florida Alimony Statutes. Further, he has been unable to refer to a single alleged fact which would have required a different decision by the Court. Where conclusory allegations are not required to be accepted, the Court was not required to disagree with facts alleged in the Complaint or hold an evidentiary hearing before dismissing the case.

Where the burdened class is limited to those persons who wish to dissolve their marriages without providing necessary support to their former spouses and where the burden which would fall to the state in the absence of such a requirement would be draconian, the District Court applied the correct standard in determining that the Florida Alimony Statutes are not facially unconstitutional.

**ARGUMENT****I****THE DISTRICT COURT PROPERLY GRANTED DEFENDANTS'  
MOTIONS TO DISMISS.**

Although the Plaintiff contends that, "...the primary issue raised by this appeal is that the district court, in making its factual assumptions, failed to accept the facts articulated in the Verified Complaint as true...." (Brief of Appellant, 6), the Plaintiff has been completely unable to state even one such fact in its brief. (Brief of Appellant).

**A. Alleged Facts Are Insufficient To Have Created A Genuine Issue.**

Conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss. South Florida Water Management District v. Montalvo, 84 F.3d 402, 408 n. 10 (11th Cir. 1996). As the Seventh Circuit noted, "we 'are not compelled to accept . . . conclusory allegations concerning the legal effect of facts set out in the complaint.' Baxter by Baxter v. Vigo County School Corp., 26 F.3d 728, 730 (7th Cir. 1994)." Reed v. City of Chicago, 77 F.3d 1049, 1051 (7th Cir. 1996). Therefore, a dismissal may be granted based on insufficient facts in the pleadings. Id. at 1050-51. Indeed, even a complaint alleging violations of 42 U.S.C. § 1983 is required to meet a heightened pleading requirement. Swann v. Southern Health

Partners, Inc., 388 F.3d 834 (11th Cir. 2004).

Simply alleging that the Plaintiff, pursuant to the Florida Alimony Statutes, is required to make substantial monthly payments (R1-1, Ex. 3; Brief of Appellant, 4) is certainly insufficient to create a valid civil rights complaint. Likewise, alleging that Plaintiff has been held in contempt due to failure to comply (R1-1-3) is insufficient.

Additionally, as noted by the District Court, only the facial challenge is within the Court's jurisdiction. "Plaintiff's claim that the alimony statute is unconstitutional as it was applied to him is inextricably intertwined with a state court judgment, and the Plaintiff had a reasonable opportunity to challenge the statute's constitutionality during the state case. Accordingly, this Court does not have subject matter jurisdiction to review the constitutionality of the statute as it was applied to the Plaintiff." (R1-20-4). This is in accord with the long-held general policy of the federal courts on the subject:

It has been understood that, "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States," Ex parte Burrus, 136 U.S. 586, 593, 594, and the jurisdiction of the Courts of the United States over divorces and alimony always has been denied. Barber v. Barber, 21 How. 582. Simms v. Simms, 175 U.S. 162, 167. De La Rama v. De La Rama, 201 U.S. 303, 307.

Ohio ex rel. Popovici v. Agler, 280 U.S. 379, 383 (U.S. 1930).

Inus, only if no set of circumstances exists under which the attacked statute could be constitutionally applied could the Plaintiff prevail. See United States v. Salerno, 481 U.S. 739, 745, 95 L. Ed. 2d 697, 107 S. Ct. 2095 (1987). The facts alleged could not have set forth a genuine issue.

**B. No Authorities Support Plaintiff's Proposition That Gender-Neutral Alimony Statutes Are Unconstitutional.**

Plaintiff has been unable to cite to a single authority which supports the proposition he submits, that alimony is, by its nature, unconstitutional.

There is, however, substantial authority to the contrary. In Pacheco v. Pacheco, 246 So. 2d 778 (Fla. 1971), the Florida Supreme Court considered the constitutionality of permitting the denial of alimony to an adulterous wife. The Court, after a discussion of the common-law and ecclesiastical bases of alimony, determined that, "[w]e therefore find that § 61.08 is a valid exercise of the State's police power and does not contravene constitutional assurances of due process and equal protection." Id. 782. The Third District Court of Appeals of Florida, in discussing an "as applied" challenge to § 61.08, while it found that it did not have jurisdiction to consider the constitutional issues raised by the husband, noted that, "[e]ven if we assumed we had jurisdiction to consider these questions, we would hold them to be without sufficient merit for reversal." Keller v. Belcher, 256 So. 2d 561 (Fla. 3d

DCA 1971).

Indeed, a facial attack on the Florida Alimony Statutes has been held sufficiently irrelevant and frivolous to support the award of attorney's fees against the party who asserted it pursuant to § 57.105, Fla. Stat. (2002). Barna v. Barna, 850 So. 2d 603 (Fla. 4th DCA 2003).

Thus, while no authorities support the Plaintiff's position that Florida's gender-neutral alimony statutes are unconstitutional, there is substantial support for the contrary. No evidentiary hearing was required to determine the constitutionality of the statutes attacked as a matter of law so the District Court did not err in granting the Defendants' Motion to Dismiss based on the facts alleged.

**THE DISTRICT COURT PROPERLY APPLIED THE APPROPRIATE  
STANDARD FOR DETERMINING THE CONSTITUTIONALITY OF THE  
FLORIDA ALIMONY STATUTES.**

The Plaintiff contends, in essence, that there is a fundamental constitutional right to dissolve a marriage without any financial obligation to the spouse and, thus, a strict scrutiny analysis is compelled if such a right is restricted. (Brief of Appellant, 7-12). Plaintiff is incorrect and, even were that not the case, the Florida Alimony Statutes would pass a “strict scrutiny, compelling state interest” examination.

An excellent discussion of the standard to be employed in the examination of alimony statutes under constitutional attack is set forth in Pattberg v. Pattberg, 497 N.Y.S.2d 251, 130 Misc. 2d 893 (N.Y.Sup.Ct., Suffolk Cty., 1985) in a case examining whether that portion of the statutes which permitted courts to modify alimony judgments upon proof that the wife is habitually living with another man and holding herself out as his wife was constitutionally valid.

As the court notes, “The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest (City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249 [1985]; Schweiker v. Wilson, 450 U.S. 221, 230 [1981]; Vance v.

Bradley, 440 U.S. 93, 97 [1979]; New Orleans v. Dukes, 427 U.S. 297, 303 [1976]).

When social or economic legislation is at issue, the equal protection clause allows the States wide latitude (United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 174 [1980]) and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes (City of Cleburne v. Cleburne Living Center, 473 U.S. at p. 439 , 105 S. Ct. at p. 3254).” Id. at 893. This general rule gives way when a statute classifies by race, alienage, national origin or gender, because these factors are seldom relevant to the achievement of any legitimate state interest. Id. at 897. The court then notes that, for purposes of equal protection, fundamental rights are those explicitly or implicitly protected by the Constitution, including an individual’s right to vote or to obtain a criminal appeal. See San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1, 17-18 (1973). Although the Supreme Court has recognized a right of privacy in the penumbras of the Bill of Rights which has been characterized as a right to “freedom of intimate association,” there is no fundamental right to cohabit with another which would trigger a “strict scrutiny” standard of review. Pattberg, supra at 255-56. As the Supreme Court has noted:

It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus, the key to discovering whether education is “fundamental” is not to be

found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.

San Antonio Ind. School Dist. v. Rodriguez, *supra* at 33.

Therefore, since education was found not to be a right guaranteed by the constitution, strict scrutiny was inapplicable and the rational relationship test was applied:

We need not rest our decision, however, solely on the inappropriateness of the strict-scrutiny test. A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which requires only that the State's system be shown to bear some rational relationship to legitimate state purposes.

Id. at 40.

A right to dissolve a marriage free from spousal support would not appear to have a stronger constitutional basis than education, so rational relationship is the appropriate test, which is easily passed.

Under certain circumstances, such as where important but not fundamental interests are at stake, an intermediate standard of review has been employed involving a balancing of the competing individual and governmental interests. Recent suggestions have proposed, in such cases, employing a five-factor balancing model which encompasses all the factors the court has relied upon in past equal protection

decisions. "The five-factor model would weigh (1) the nature of the class burdened, (2) the importance of the individual interest burdened, and (3) the extent to which the interest is burdened, against (4) the importance of the governmental interest asserted, and (5) the fit between the means selected and the ends sought." Alternative Models of Equal Protection Analysis: Plyer v. Doe, 24 B.C. L. Rev. 1363, 1381 (1983). The functioning of this model can be illustrated in reconciling the United States Supreme Court's decisions in Trimble v. Gordon, 430 U.S. 762 (1977) and Lalli v. Lalli, 439 U.S. 259 (1978). Trimble involved a constitutional attack on the Illinois probate statute which permitted illegitimate children to inherit by intestate succession only from their mothers, not their fathers. The Court found that illegitimacy, although analogous to classifications held to be suspect when used as a basis of statutory differentiations, was not sufficient to require "our most exacting scrutiny." Id. at 768. The Court noted that "[n]o one disputes the appropriateness of Illinois' concern with the family unit, perhaps the most fundamental social institution of our society." Id. at 769. However, it also noted that, where the father of the purported beneficiary had been found to be the father in a state-ordered paternity action prior to his death and ordered to contribute to the support of his child, a statute which completely abrogated the right to inherit was not sufficiently attuned to alternative considerations to pass constitutional muster, given the extremely attenuated connection between the statute

and the legislative purpose purporting to be furthered thereby. The statute in Lalli, in contrast to Trimble, did permit such intestate inheritance, but only, "if a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child." Lalli at 261. The Court analyzed the statute, applying the standard of whether the demands of the statute concerned, "...bear an evident and substantial relation to the particular state interests this statute is designed to serve." Id. at 268. The Court determined that the primary goal underlying the challenged statute is to provide for the just and orderly disposition of property at death, an area with which the States have an interest of considerable magnitude. Id. at 268. The Court held:

We conclude that the requirement imposed by § 4-1.2 on illegitimate children who would inherit from their fathers is substantially related to the important state interests the statute is intended to promote. We therefore find no violation of the Equal Protection Clause.

Lalli at 275-276.

It is respectfully submitted that the relationship between important state interests and the statutes concerned are even closer in this case than in Lalli.

The purposes of the statutes concerned in this case, according to the Florida Legislature, are:

- (a) To preserve the integrity of marriage and to safeguard meaningful family relationships;
- (b) To promote the amicable settlement of disputes that arise between the parties to a marriage; and
- (c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

§ 61.001, Fla. Stat. (2004).

Stated otherwise, as the Florida Supreme Court has held:

The purpose of permanent periodic alimony is to provide for the needs and necessities of life for a former spouse as they were established during the marriage of the parties. Canakaris v. Canakaris, 382 So. 2d 1197, 1201 (Fla. 1980).

Mallard v. Mallard, 771 So. 2d 1138, 1140 (Fla. 2000).

From a judicial perspective:

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property.

Hamlet v. Hamlet, 583 So. 2d 654, 657 (Fla. 1991).

Thus, the purposes of the alimony statutes are to mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage, to provide for the needs and necessities of life for a former spouse as they were established during the marriage of the parties, and to do equity between the parties

to a marriage during the dissolution thereof. When the five factors are applied to this situation, we discover that the burdened class is that of persons who wish their marriage dissolved, but do not wish to provide necessary support to their former spouses. The interest burdened is to dissolve a marriage. It is burdened by the requirement that necessary support be provided, as established during the marriage. That these are important state interests would appear axiomatic, and ensuring that the citizens of Florida are provided with the requirements of life as established by the parties during their marriage is a burden which would otherwise fall to the state or which would lead to inevitable increases in hunger, economic deprivation and crime affecting Florida citizens. The fit between the means selected and the ends sought would appear to be relatively precise. The five-factor test supports the decision of the trial court.

Indeed, even if a "compelling state interest" and "strict scrutiny" analysis were applied, which would appear to be inappropriate, given the significance of the state interest, the narrowness of the statutes concerned and the fact that the right to dissolve a marriage without paying support would not appear to meet the definition of fundamental constitutional right, the Florida Alimony Statutes would still have to be found constitutional.

Plaintiff's reliance on the abrogation of the common law doctrine of

necessaries in Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995) is badly misplaced.

Under the doctrine, a husband was liable **to a third party** for any necessities that the third party provided to his wife. Because the duty of support was uniquely the husband's obligation, and because coverture restricted the wife's access to the economic realm, the doctrine did not impose a similar liability upon married women.

Connor v. Southwest Fla. Regional Medical Ctr., 668 So. 2d 175, 175-176 (Fla. 1995) (emphasis added).

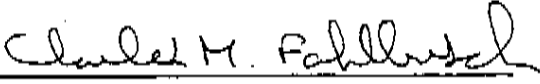
Thus, there are two major problems the Plaintiff has. First is that the doctrine of necessities was a common-law doctrine, which could be changed by the courts. See Wood v. Eli Lilly & Co., 701 So. 2d 344 (Fla. 1997) ("This Court has often changed common-law tort rules or recognized new causes of action without affecting time-barred claims."). Thus, Plaintiff attempts to invalidate a statute on the grounds that decisional law has changed. The Court did not, and could not, abrogate statutory law based on such grounds. Second, the Court in Connor either stated nor inferred that a spouse would not be responsible to the **other spouse** for such necessities since the doctrine applied only to payments to **third parties**. Connor is irrelevant to the situation here.

**CONCLUSION**

Based upon the foregoing reasons and authorities, the Judgment of the District Court should clearly be affirmed.

Respectfully submitted,

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