

**REPORT TO THE FLORIDA LEGISLATIVE DELEGATION
CONCERNING PERMANENT ALIMONY STATUTES AND THE
STATE OF FAMILY LAW.**

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Introduction

Greetings honorable chairman and delegation members. My name is Robert Sell and I chair a registered political action committee called CITIZENS FOR LIBERTY AND PRIVACY. I speak today on behalf of the committee and the ALLIANCE FOR FREEDOM FROM ALIMONY, INC.

Both organizations exist to achieve **equality for all Floridians who make the personal decision to dissolve their marriage** by the abolishment of Florida's permanent alimony laws. Laws which we believe we adequately prove are unconstitutional under the federal and Florida constitutions. This is clearly explained in our included memo of law.

Also, we would like to express our firm belief that family law, in general, is fatally flawed because it is permeated with unconstitutional precepts and concepts that are long overdue for reform.

Thank you for this privilege to speak today.

From a statistical standpoint 50% of all marriages in America end in dissolution. **In Florida, this represents 80,000 dissolutions annually.** Some couples ending their marriages amicably, divide their assets and go their separate ways. Each thereafter free to enjoy the pursuit of life, liberty, and happiness that America's founding fathers envisioned for all Americans. However, due to the emotionally charged atmosphere surrounding the breakup of a marriage, this scenario is the exception and not the rule.

During this emotionally vulnerable time state laws that were written to regulate dissolution of marriage, act as a catalyst to promote and perpetuate a bitter fight between divorcing couples. This ultimately results in the denial of finality and closure for the failed relationship and in many instances pushes individuals to commit acts of physical violence, suicide, and even murder.

These laws also act as an enabling mechanism for the state's legal and judicial machinery to deplete thousands and thousands of dollars in cash and assets from divorcing couples through never ending litigation. Monies far better preserved for the benefit of families and children at risk.

The Florida legislature by enacting the statutes under the title of "dissolution of marriage" have given family court judges unlimited discretionary power to invade the

most intimate aspects of the private lives of divorcing couples and apply whatever factors and remedies they deem necessary to the dissolution process.

In the end, the couple dissolving their marriage, are literally made wards of the court through perpetual court jurisdiction over their private lives and forced to be inextricably tied to each other, and the court, through permanent alimony statutes.

By granting judges unlimited discretionary power in the dissolution process, the Florida legislature has opened the door wide to flawed judicial caveat that is influenced by erroneous studies and misinformation within the legal community.

This information is often supplied by organizations and individuals with radical political agendas or an insatiable appetite for ill gotten gain. These agendas pay no respect to constitutional rights or privacy in the pursuit of their goals.

Florida Family Law Is Gender Biased

“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)

Interestingly, the Florida Supreme Court through it’s own commissioned gender bias studies discovered that the family court system of Florida is gender biased.

We know this to be true from our efforts since 99% of all people who we have found recorded under order to pay permanent alimony - are men.

This built-in gender bias is not the result of reference to gender name but results from the statutes being written to give preference to and reward matriarchal societal position and punish patriarchal roles. Both of which are private personal choices.

This gender bias cannot be corrected by simply removing the words man and woman or husband and wife from the statute text. By doing so, the Florida legislature is merely playing a word game designed to retain it’s discriminatory practices without being held constitutionally responsible or liable.

The effects of gender bias in the system is clearly reflected in society – apart from the commission study. A perfect example is the use of the phrase “deadbeat dad” or “deadbeat husband”.

No such reciprocal expressions exist despite the statistical fact that on a percentage basis, there are more deadbeat mothers than deadbeat dads and more wives who fail to pay their alimony than husbands. Consequently, little evidence exists within the family court system that deadbeat mothers and deadbeat wives are held to the same standard of accountability as men.

Instead, it is our position that in this society there are actually “deadbeat people.” Those being individuals who seek to have government protect their desire to not be responsible for themselves as individuals. This despite the fact that the constitution not only conveys it as a right but also an obligation through the concept of equal opportunity and equal protection.

Permanent alimony statutes are a perfect example of the Florida legislature’s willingness to placate and perpetuate irresponsibility and to inequitably shift the burden of it through statutes that are inherently gender biased. If you don’t think so, why is the vague concept of “lifestyle during the marriage” written into the alimony statutes?

Additionally, the report documented the fact that the majority of family court judges have no desire to adjudicate these laws and in fact find the whole dissolution process, created by the Florida legislature, to be distasteful.

Quoting the **FLORIDA SUPREME COURT COMMISSION REPORT ON GENDER BIAS 1990 and 1996** “Apparently, most judges really do not want to hear family law matters and it shows...It cannot be comforting to find that the one who holds the future of your access to your children and your financial future in his or her hands has, at best, little interest in that role, or, at worst, a distaste for it.” (page 54) 1990 Fl. S.C. Court Gender Bias Commission Report.

Honorable delegates, can you tell us why Florida’s judges who are tasked with the responsibility to ensure the equitable administration of justice in Florida, would so loath that responsibility when it comes to performing it under your dissolution of marriage statutes?

In light of the Florida Supreme Court’s findings, can you also tell us why the legislature has failed to act to correct the findings of the court’s study by reforming the laws?

Equal Protection ?

“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.”

“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.”

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

In the early days of our country, it was common law that husbands were responsible for the necessities of their wives. This was due to the fact that women were considered the property of their husbands and had fewer rights extended to them.

This responsibility of a husband to his wife known as the doctrine of necessities or coverture, was abolished by the Florida legislature in Florida statute 708.08 . It reads in part:

708.08 Married women's rights; separate property. (1) Every married woman is empowered to take charge of and manage and control her separate property, to contract and to be contracted with, to sue and be sued, to sell, convey, transfer, mortgage, use, and pledge her real and personal property and to make, execute, and deliver instruments of every character without the joinder or consent of her husband in all respects as fully as if she were unmarried.

Subsequently, the Florida Supreme Court in Connor vs. Southwest Florida Medical Center also abrogated the doctrine of necessities. On two different occasions the Florida legislature failed to reestablish coverture and restore the doctrine of necessities.

Therefore honorable delegates, can you please tell us why the Florida legislature cannot and will not abide by it's own codified legislation nor follow the public policy established by the Florida Supreme Court - by abolishing permanent alimony statutes?

The Public's View

As organizations dedicated to eradicating state meddling in our private lives, CITIZENS FOR LIBERTY AND PRIVACY and the ALLIANCE FOR FREEDOM FROM ALIMONY, have in the course of our efforts, discussed the permanent alimony issue with hundreds of private citizens.

What we have found is that the general public also finds this intrusion by the state to be unacceptable and many times unsettling. The following are examples of comments by the public we consistently receive when we present the facts of this unconstitutional scheme to the general public.

“How can they do that?”, “That’s not right!” , “Isn’t that unconstitutional?”.

A 2002 PEW RESEARCH INSTITUTE study entitled “RELIGION AND PRIVATE LIFE SURVEY” asked the following question: “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 ?” Seventy nine percent (nearly 80%) of the respondents said that the government should stay out. In a representative republic, wouldn’t that be a majority?

The Law Is A Failure

The stated goals of the Florida legislature’s dissolution of marriage statutes, as stated within the statutes themselves is:

1. To preserve the integrity of marriage and to safeguard meaningful family relationships.
2. To promote the amicable settlement of disputes that arise between parties to a marriage.
3. To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

The statutes designed to achieve these goals have been a dismal failure. If the Florida legislature disagrees, then they should meet with and listen to the victims of the process, not ivory tower academics or those who administer the scheme, and then decide whether there is success or not.

Considering the existence of radical political influences upon the academic community and the profit motive of the divorce industry, it is only right that the Florida legislature rely purely on its constitutional responsibility to see to it that the inalienable rights of Floridians are protected.

It is laughable to say that laws that actually encourage divorce and promote the litigation of it in an adversarial environment, preserve the integrity of marriage or protect meaningful family relationships. This is the equivalent of saying that the purpose of dynamite is to protect the integrity of structures and prevent destruction.

The Florida legislature cannot legislate the foundations of a good marriage or meaningful family relationships nor is it their job to do so. A good marriage is based on intangible factors that are broadly defined and differ from couple to couple, marriage to marriage. Some of those being love, understanding, and cooperation between two people.

There are far too many factors affecting the personal relationship between two people in a marriage for the legislature to achieve their stated goals. In reality, dissolution of marriage statutes by their very nature, undermine marriage and promote the destruction of family relationships.

We know for a fact from the personal testimony of many of our members that the destructive nature of the dissolution process is used as a vindictive, coercive, weapon in many marital relationships. This is because one spouse knows that they can use the statutes against the other to their personal benefit instead of resolving marital disputes equitably or amicably.

Why The Law Fails

Goal #1 fails because the divorce rate has climbed to one out of every two marriages since the establishment of these laws. No evidence exists that decades of state meddling in the dissolution process has reduced the desire by individuals to seek dissolution.

In fact, just the opposite has occurred. Census figures show that the number of people getting married has dropped 40% in the last four decades. The largest percentage

occurring in the last thirty years. Cited by individuals in the prime marrying years of their lives is the fear of the punitive consequences of state divorce laws.

Open the yellow pages of any metropolitan phone directory and you will find that the only thing the Florida legislature's dissolution of marriage statutes is preserving and safeguarding, is the explosive growth of divorce lawyers and the divorce industry.

This is also a very good reason why goal # 2 fails. The statutes allow that judges have the authority to enforce equity through chancery. What really results from this is inequity from legal chicanery.

It is not unusual for a contested divorce to drag on for years while representative attorneys for the parties employ a plethora of legal tricks and maneuvers. The result is that the ensuing stalled legal battle cleverly strips the litigants of a large portion (if not all) of their lifelong accumulated assets.

For wealthy individuals and movie stars, it makes for amusing newspaper headlines. However, for the middle class, it is a punitive and destructive scheme that leaves the victims hating themselves, their country, one another, and you.

Instead of separating a couple from one another with an equitable share of their mutually earned assets, free to enjoy the rest of their life, the Florida legislature's dissolution of marriage scheme forces them into bankruptcy and poverty at a time in their lives when they should be contemplating retirement and forces one to work for the other in perpetuity with threat of punishment – a condition not unlike slavery.

Even when parties to dissolution recognize that mediating a quick settlement is in their best interest financially, the distribution of assets often shifts inequitably to one party by use of the coercive tool of lifetime alimony statutes and the threat of judicial caveat.

Whether you are depleting your assets in a courtroom fight or an across the table fight, the results are many times the same. I can testify to this in the first person.

Ultimately, there is no requirement that alimony recipients spend the money they receive for the intended purpose. As an example of the speciousness and untimeliness of alimony statutes and the way the courts interpret them, here is what the appellate courts have to say.

““Similarly, a receiving spouse can squander alimony payments on gambling and liquor without these acts resulting in a downward modification”. See Phillippi v. Phillippi, 148 Fla. 393, 4 So. 465 (1941); Horner v. Horner, 222 So. 2d 791 (Fla.2d DCA 1969); Springstead v. Springstead, 717 So. 2d 203, 204 (Fla. 5th DCA 998).

It does not take a rocket scientist to see that mitigating harm to spouses and their children through this process is an oxymoron of purpose. Therefore, goal #3 also fails.

Who's Obstructing Reform ?

It has been the position of the Florida legislature, Governor, and state judiciary to turn a blind eye and a deaf ear to the never ending cries of foul by individuals who have been subjected to these laws. Twice in the recent past state senator Gary Siplin of Orlando has attempted to reform the system to make alimony recipients more responsible to their respective payers.

Both efforts were defeated by legislative procedure and soundly rebuffed in the Miami Herald by both the head of the Florida Senate and representatives of the family law division of the Florida Bar Association - to which the senate president has close historical ties.

Permanent alimony statutes have no basis in common law. They are merely laws enacted by the legislature with seemingly arbitrary justification. However, it is the responsibility of the Florida legislature when enacting laws that abridge the constitutional rights of Florida's citizens, to express, prove, and justify to the citizens of Florida that a "compelling" state interest is being furthered by the statutes and to see to it that they comport with state and federal constitutions.

This was clearly not done when the Florida legislature hatched it's dissolution of marriage scheme.

To date despite being given numerous opportunities to so present this compelling state interest in a courtroom environment, not one state official either of those elected and pledged to protect our constitutional rights nor of those appointed by them, have offered even a rational explanation for the statutes. Let alone one rising to the required level of protecting a compelling state interest.

Government By The People ?

In 1980 the citizens of Florida fearful of and angered by growing state meddling in their private lives and the usurping of state authority over them, approved a ballot referendum to add article I section 23 to the Florida constitution.

It says: "Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into his 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."

Within the plain meaning of plain words, the people of Florida do not want the state of Florida or it's representatives intruding into the private areas of their lives and exerting unnecessary unconstitutional authority over them. So much so that they by majority vote amended the state constitution to try and protect themselves - from you.

Honorable delegates, why do you refuse to listen to them ?

Floridians have a right to expect that regulatory laws which the Florida legislature enacts treats them in ways that are fair, conclusive, unobtrusive, and that protect their inalienable constitutional rights.

Yet, dissolution of marriage statutes written to intentionally intrude into the private relationship between married couples, in unfathomable ways, remain unaffected .

State government officials , including the legislature, who swore by oath to protect and defend the constitutional rights of Floridians, consistently choose not to defend those rights when it comes to dissolution of marriage statutes and have in fact turned the family court system into an unregulated oligarchy.

This oligarchy by the use of comity, judicial immunity, and various abstention precedents shields itself from accountability to anyone except the Florida legislature. Who for unknown and unexpressed reasons, continues to perpetuate the existence of this rogue government.

Honorable delegates, can you now in plain words tell us and the people of Florida what compelling state interest is being furthered by effectively stripping an individual of their citizenship by forcing them to be permanently enslaved to this oligarchy and one another for the rest of their lives with the threat of financial ruin, indefinite imprisonment, and without the constitutional right of trial by jury or due process?

Can you further tell us why Florida's legislature through dissolution of marriage statutes has elevated broken marital relationships to the level of a felony?

Can you tell us why the Florida legislature chooses to govern against the will of the people by ignoring the endless opportunity to correct legislation that clearly violates the rights of the people that the legislature's members are pledged to protect and defend?

Honorable delegates, we are baffled and dismayed by the Florida legislature's refusal after decades of failure by the system to achieve it's goals and the continued growth and expansion of an out of control oligarchy , ruled by rogue judges, to act for the good of the people.

Conclusion

“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)

Honorable delegates in concluding we want to make it abundantly clear that we object to the association of permanent lifetime alimony with child support. They are two different concepts and two different issues.

We completely support the concept of child support and believe that both parents have a duty to provide for their children outside of their mutual differences. However, we may disagree on the appropriate methods of achieving and fulfilling that duty.

The application of permanent alimony most often occurs where the marriage has lasted well beyond the ten year and in many instances the twenty and thirty year anniversaries. Normally, by then the children have reached the age that they are or will soon be adults and in many cases have married with families of their own.

Honorable delegates, we are not here to beg for our rights or our liberty. It is the premise of the experiment called America that we should not have to. To seek and hold an office of state government means raising your right hand and swearing before God and man that you will protect the inalienable rights of the people who voted you there.

We are simply asking you to do your sworn duty regardless of or despite the perceived consequences. Just as Ronald Reagan stood before the world and demanded that the Soviet Union tear down the Berlin wall that held East German's captive to Soviet will.

We are demanding that you tear down permanent alimony statutes that hold and have held thousands of Floridians captive to you.

Thank You.