

Appeal Case Number 2D06-5577

IN THE SECOND DISTRICT COURT OF APPEALS OF FLORIDA

WILLIAM A. CABANA
Appellant, *pro se*

v.

JAMES ZINGALE, EXECUTIVE
DIRECTOR, FLORIDA
DEPARTMENT OF REVENUE
(In his official capacity)
Appellee

Twelfth Judicial Circuit Court of Florida

Case Number 06-CA-5063-SC

APPELLANT'S REPLY BRIEF

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Introduction

This Appeal asks this Court whether Chapter 61 “Dissolution of Marriage” statute alimony provisions (§ 61.08 Fla. Stat.) impermissibly infringe two state constitution provisions, conflict with a Florida Supreme Court ruling as well as the public policy subsequently established by the legislature. The Appellant has provided the court with apposite caselaw, detailed analysis, -no gloss- and careful examination of badly decided caselaw in support of each of his issues. The Appellee’s arguments use outdated case law, contextually inapposite caselaw, and superficial reference to badly decided caselaw in attempts to validate the challenged statutory provision, § 61.08 Fla. Stat.

This lawsuit is a good faith effort to change existing law (§57.105 (2) Fla. Stat.) therefore there is no on-point caselaw. Therefore, the Appellant cannot offer direct caselaw that implicates the alimony statute and the state constitutional claims raised. There is no caselaw on point.

The flaws in Appellee’s answer brief will be discussed for each issue.

I. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) Impermissibly Infringes Art. I, § 23, Fla. Const., Right of Privacy

A. Question: “Does the challenged statutory provision fall within an established, recognized Zone of Privacy or is the Appellant asking this court to establish a new Zone of Privacy?”

Answer: “Dissolution of Marriage,” i.e. divorce, is a “personal decision relating to marriage.” Both divorce and “personal decisions relating to marriage” are recognized zones of privacy entitled to the protections of the constitutional Right of Privacy. *LittleJohn v. Rose*, 768 F.2d 765, 768 (6th Cir. 1985)

Given the "associational interests that surround the establishment and dissolution of [the marital] relationship", such "adjustments" as divorce and separation are naturally included within the umbrella of protection accorded to the right of privacy. See *Zablocki*, 434 U.S. at 385; *U.S. v. Kras*, 409 U.S. 434, 444, 34 L. Ed. 2d 626, 93 S. Ct. 631 (1975)."

Also see *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 847 (1992),

“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).”

Whether it is entering into marriage or exiting from marriage, those associational interests and liberty interests are both protected by the Florida Right of Privacy Amendment.

The Appellee states that the Appellant is trying to create a new zone of privacy and that nowhere is there caselaw to support that alimony is entitled to the protections of the Right of Privacy. The Appellee, like the United States Supreme Court in *Bowers v. Hardwick*, 478 U.S. 186 (1986) makes the wrong statement. In

