

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

William A. Cabana, *pro se*,
With assistance of counsel
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone/Fax: 941-480-1395
Email: bcabana2@comcast.net

Table of Contents

Table of Contents	ii
Table of Citations.....	iv
Introduction.....	1
I. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) Impermissibly Infringes Art. I, § 23, Fla. Const., Right of Privacy.....	1
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?”	1
B. Question: Does the Appellee prove a compelling state interest that is minimally applied and in fact is furthered by the challenged statute? ..	4
1980- Art. I, § 23, Fla. Const., Right of Privacy.....	5
Pacheco v. Pacheco, 246 So. 2d 778 (Fla. 1971).....	5
Ryan v. Ryan, 277 So. 2d 266 (Fla. 1973).....	6
Daniel v. Daniel, 922 So. 2d 1041 (Fla. 4 th DCA 2006).....	6
Barna v. Barna, 850 So. 2d 603 (Fla. 4 th DCA 2003).....	8
Beers v. Beers, 724 So. 2d 109 (Fla. 5 th DCA 1998).....	8
In Re: Commitment of D.E. Sutton, 884 So. 2d 198 (Fla. 2d DCA 2004)	8
Greenberg v. Zingale 138 Fed. Appx. 197 (11 th Cir. 2005).....	9
Gogola v. Zingale 141 Fed. Appx. 839, (11 th Cir. 2005).....	9
Martyak v. Martyak, 378 F. Supp. 2d 1365 (S.D. Fla. 2005).....	10
Purposes of Chapter 61 Provisions	10

II. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) Impermissibly Infringes Art. II, § 3, Fla. Const., Separation of Powers.....11

 A. Question: Does the challenged provision (§ 61.08 Fla. Stat.) represent impermissible delegated law making power to the judiciary?..... 11

III. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) Impermissibly Infringes the Ruling and Public Policy established in *Connor v. Southwest*, 668 So.2d 175 (Fla. 1995)?.....13

 A. Question: Does Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) conflict with public policy established in *Connor* 668 So. 2d and confirmed by the legislature that parties in a marriage are economic independents.....13

Conclusion 15

Certificate of Service

Table of Citations

Cases

<i>Askew v. Cross Key Waterways</i> , 372 So.2d 913 (Fla. 1978).....	12
<i>Barna v. Barna</i> , 850 So. 2d 603 (Fla. 4 th DCA 2003).....	7, 8
<i>Beers v. Beers</i> , 724 So. 2d 109 (Fla. 5 th DCA 1998).....	8
<i>Bowers v. Hardwick</i> , 478 U.S. 186 (1986).....	2
<i>Connor v. Southwest</i> , 668 So.2d 175 (Fla. 1995).....	13
<i>Daniel v. Daniel</i> , 922 So. 2d 1041 (Fla. 4 th DCA 2006).....	6, 7
<i>Fernandez v Fernandez</i> , 710 So.2d 223 (Fla. 2d DCA 1998.....	14
<i>Gogola v. Zingale</i> 141 Fed. Appx. 839 (11 th Cir. 2005).....	9
<i>Greenberg v. Zingale</i> 138 Fed. Appx. 197 (11 th Cir. 2005).....	9
<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965).....	7
<i>In re T.W.</i> , 551So. 2d 1186 (Fla. 1989).....	3
<i>In Re: Commitment of D.E. Sutton</i> , 884 So. 2d 198 (Fla. 2d DCA 2004).....	8
<i>Lawrence v Texas</i> , 539 U.S. 558 (2003).....	3
<i>Littlejohn v. Rose</i> , 768 F.2d 765 (6 th Cir. 1985).....	2
<i>Loving v. Virginia</i> , 388 U.S. 1 (1967).....	2
<i>Martyak v. Martyak</i> , 378 F. Supp. 2d 1365 (S.D. Fla. 2005).....	10
<i>Pacheco v. Pacheco</i> , 246 So.2d 778 (Fla. 1971).....	5
<i>Posner v Posner</i> , 233 So. 2d 381 (Fla. 1970).....	7

<i>Richardson v. Richardson</i> , 766 So. 2d 1036 (Fla. 2000).....	4
<i>Ryan v. Ryan</i> , 277 So. 2d 266,(Fla. 1973)	4, 6
<i>Schiavo v. Bush</i> , No. 03-008212-CI-20, 6 th Judicial Circuit Florida (2004)	13
<i>Smith v. Portante</i> , 212 So.2d 298 (Fla.1968).....	13
<i>State v . Griffin</i> , 239 So.2d 577 (Fla. 1970).....	13
<i>State v. Cotton</i> , 769 So. 2d 345 (Fla. 2000).....	11
<i>Wall v. Wall</i> , 134 So. 2d 288 (Fla. 2d DCA 1961).....	7
<i>Winfield v. Division of Pari-Mutual Wagering</i> , 477 So2d 544,548 (Fla. 1985).....	9

Statutes

§ 57.105 (2) Fla. Stat.....	1
§ 61.08 Fla. Stat.	passim
§ 61.08 (2) Fla. Stat.....	passim
Art. I, § 23, Fla. Const., Right of Privacy.....	5
Art. II, § 3, Fla. Const., Separation of Powers.....	11

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

Lawrence v Texas, 539 U.S. 558 (2003) the U.S. Supreme Court acknowledged it made the wrong statement in *Bowers* 478 U.S. and therefore wrongly decided the issue. In *Lawrence* 539 U.S. the Court made clear how to frame the right question,

"The issue presented [in *Bowers*] is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time." *Id.*, at 190. That statement, we now conclude, discloses the Court's own failure to appreciate the extent of the liberty at stake."

Here also this court must recognize the extent of the liberty at stake. It must not ask the wrong question. There is no common law right to alimony, it is merely a statutory provision written in a well-recognized zone of privacy.

In a less ethereal analysis, i.e. merely a statutory construction analysis, the Appellant argues that the challenged provision, as part of a statute must simply comport with the Florida Constitution. The statute, "Dissolution of Marriage" is written within a recognized constitutionally protected zone. As such, this court must apply the analytic process reiterated in *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So.2d 612, n16 (Fla. 2003),

"Under 'strict' scrutiny, which applies inter alia to certain classifications and fundamental rights, a court must review the legislation to ensure that it furthers a compelling State interest through the least intrusive means. The legislation is presumptively unconstitutional. The standard of proof is as follows: the State must **prove** that the legislation furthers a compelling State interest through the least intrusive means. See generally *In re T.W.*, 551So. 2d 1186, 1193 (Fla. 1989)." [Emphasis added]

B. Question: Does the Appellee prove a compelling state interest that is minimally applied and in fact is furthered by the challenged statute?

Answer: The Appellee fails his burden. The state's burden is noted,

N. Fla.. Women's Health, 866 So.2d, 647 and n75 says,

“Moreover, under strict scrutiny review, the State cannot meet its heavy burden *simply by stating* that the interests are compelling without *proof* from the State that the compelling interests are *in fact furthered by the statutory intrusion* into the protected fundamental rights, and that the statutory intrusion is the least intrusive means to achieve that goal.” [Emphasis added]

“n75 . Although case law from this Court applying the strict scrutiny standard articulates the first prong of the strict scrutiny review as a single inquiry, see, e.g., *T.W.*, 551 So. 2d at 1193; *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998), in reality the first prong involves two interrelated inquiries: (a) whether the State has carried its "heavy" burden of establishing a compelling interest; and (b) whether the State has carried its "heavy" burden of establishing that the statutory scheme in fact serves or furthers that compelling state interest.”

And another quote in *N. Fla. Women's Health* 866 So.2d, 647,

“ ‘We have found no cases in which this Court applied . . . a narrowing construction to a statute challenged solely on the basis that its clear provisions violate a substantive constitutional right. The likely reason for this result is that the constitutionality of the statute, depending on the substantive right involved, depends solely on whether the statute passes the . . . strict scrutiny test[. . . . Such a statute is unconstitutional under any circumstance unless the State satisfies its burden of establishing a compelling state interest.’ *Richardson v. Richardson*, 766 So. 2d 1036, 1041 (Fla. 2000)”

The Appellee offers as a compelling state interest protecting a needy spouse.

He offers *Ryan v. Ryan*, 277 So. 2d 266, 273 (Fla. 1973) and *Pacheco v. Pacheco*,

246 So.2d 778 (Fla. 1971) for the premise that this interest can be implemented by the “police power” of the state. The statute, § 61.08 Fla. Stat., he says is justified by the “police power” of the state. That analysis belies the real question, i.e. whether “protecting a needy spouse” is a *compelling* state interest.

The argument further fails to recognize that there are limits on the police power of the state namely, constitutional amendments, just as there are the same limits on statutes. The argument fails to review this cited “compelling state interest”--the state protecting the needy spouse-- through the lens of the Florida Constitution Privacy Amendment which was passed in 1980 long after *Ryan* 277 So. 2d and *Pacheco* 246 So. 2d were viewed as well settled case law.

1980- Art. I, § 23, Fla. Const., Right of Privacy

The Right of Privacy Amendment passage in 1980 created a new lens through which all case law relating to “Dissolution of Marriage” alimony provision must be viewed. This is so because the Right of Privacy has been attached to divorce and personal decisions relating to marriage. Case law prior to 1980 relating to the alimony provision upon which this court and the Appellee rely must now be reexamined through the Privacy prism and its analytic framework before accepting its validity.

***Pacheco v. Pacheco*, 246 So. 2d 778 (Fla. 1971)**

Pacheco 246 So. 2D is a case in which the court *denies* alimony to an adulterous wife. The state's police power is seen as a rationale to not grant alimony to the former wife.

The case has no discussion of protecting a needy spouse. The case does not even discuss a balance between denial of alimony based on adultery and granting of alimony based on need (except for one of the dissents). If providing for a needy spouse were a "compelling" state interest surely there would have been a balancing. Also, *Pacheco* 246 So. 2d was decided in 1971-long before the passage of the Right of Privacy Amendment...and also now long before this challenge that § 61.08 Fla. Stat. Infringes Art. I § 23, Fla. Const.

Ryan v. Ryan, 277 So. 2d 266 (Fla. 1973)

Ryan 277 So. 2d did not deal with any of the issues or claims presented to this court. It was a constitutional challenge to the new no-fault dissolution statute.

Daniel v. Daniel, 922 So. 2d 1041 (Fla. 4th DCA 2006)

The Appellee wrongly offers *Daniel*, 922 So.2d as support that the Right of Privacy amendment does not apply to the alimony statute. In this Appeal the Right of Privacy in the context of autonomous decision making in one's private life is at issue. In *Daniel* 922 So. 2d the Right of Privacy context at issue was that of information disclosure and the privacy of disclosure of personal financial information. This context distinction is covered in the Appellant's Initial Brief.

Daniel's 922 So. 2d misplaced reliance on *Posner v Posner*, 233 So. 2d. 381 (Fla. 1970) as its rationale is in error. The *Daniel* 922 So. 2d ruling hangs solely on a particularly onerous quote from *Posner* 233 So. 2d that today would never pass muster in light of the Privacy Amendment.

“ ‘Since marriage is of vital interest to society and the state, it has frequently been said that in every divorce suit *the state is a third party whose interests take precedence over the private interests of the spouses.*’ *Posner v. Posner*, 233 So. 2d 381, 383 (Fla. 1970); *Wall v. Wall*, 134 So. 2d 288, 289 (Fla. 2d DCA 1961).” *Daniel* 922 So. 2d at 1045 [Emphasis added]

It is inconceivable to the Appellant that this court could endorse this statement today in light of the caselaw offered to support the Zone of Privacy surrounding personal decisions relating to marriage...beginning with *Griswold v. Connecticut*, 381 U.S. 479 (1965) federally and in light of the stream of state Privacy cases culminating in *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So.2d 612 (Fla. 2003).

Bad caselaw is too easily perpetuated when the prior source is simply reiterated over time without care. *Daniel's* 922 So. 2d (2006) reliance on *Posner's* 233 So. 2d (1970) reliance on a 1961 case--*Wall* 134 So. 2d--shows the perpetuation of a poor point of law because of the failure to see and apply the intervening law change noted in *Griswold* 381 U.S. and its progeny that effectively nullified *Wall* 134 So. 2d and the subsequent cases that relied on it.

Barna v. Barna, 850 So. 2d 603 (Fla. 4th DCA 2003)

The flaws in *Barna* 850 So. 2d are detailed in the initial brief. The Appellant's review of *all* of the trial court and appellate court materials provide the basis for the analysis in his Initial Brief. At the trial court level there was no written opposition to the former husband's legal arguments, there was no transcript of the trial court proceedings and there was no Appellee brief at the Appellate level.

Barna 850 So. 2d at the appellate level was a case about attorney fees not a constitutional challenge to a statute and should carry no precedential or persuasive value.

Beers v. Beers, 724 So. 2d 109 (Fla. 5th DCA 1998)

Beers 724 So. 2d does not deal with any of the issues raised here - Right of Privacy, Separation of Powers or abrogation of the doctrine of necessities. As such, it lacks any precedential or persuasive value.

In Re: Commitment of D.E. Sutton, 884 So. 2d 198 (Fla. 2d DCA 2004)

In *In Re: Commitment of D.E. Sutton* 884 So. 2d the court found the Appellant failed to establish an expectation of privacy in order to create a new zone of privacy. In the instant Appeal it is well established that statutes written in the zone of divorce and personal decisions relating to marriage are afforded the protections of the constitutional Right of Privacy. (See supra.) No new zone of

privacy needs to be created. The Appellant bears no burden to prove an expectation of privacy. Courts have already done that for the Appellant.

Greenberg v. Zingale 138 Fed. Appx. 197 (11th Cir. 2005)

Greenberg, 138 Fed. Appx. is an unpublished opinion. It involved federal claims not state claims challenges to the Florida Alimony Statutes. The ruling was not on constitutional issues but on abstention under the Rooker-Feldman doctrine. The case is also without precedential or persuasive value to this court.

As noted in *Winfield v. Division of Pari-Mutual Wagering*, 477 So2 d 544,548 (Fla. 1985) the Florida Constitutional Right of Privacy is much broader than the federal.

“The citizens of Florida opted for more protection from governmental intrusion when they approved article I, section 23, of the Florida Constitution. This amendment is an independent, freestanding constitutional provision, which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words ‘unreasonable’ or ‘unwarranted’ before the phrase ‘governmental intrusion’” in order to make the privacy right as strong as possible. Since the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right to privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.”

Gogola v. Zingale 141 Fed. Appx. 839, (11th Cir. 2005)

Gogola v Zingale 141 Fed. Appx. is offered by the Appellee for the premise the Twentieth Judicial Circuit Court of Florida “rejected Gogola’s claims that the

alimony statute, inter alia, violated his constitutional right to privacy and equal protection....” It did not. Examination of the trial court documents and this court’s documents on appeal indicate the Chapter 86 declaratory judgment *motion* in a preexisting family law case was simply denied by the trial court. This court found that order a non-final order that was not appealable. There was no reasoned opinion offered by either court. The constitutional challenge arguments were not rejected. They were not even discussed. Mr. Gogola, the Appellant there, did not seek to effect a proper final order for appeal. This case also is without precedential or persuasive value.

Martyak v. Martyak, 378 F. Supp. 2d 1365 (S.D. Fla. 2005)

Martyak, 378 F. Supp. 2d did not have any constitutional alimony claims rejected. The case involved a state court family law case removed to federal court that was remanded to state court for lack of jurisdiction. The federal district court never assumed jurisdiction therefore never addressed any constitutional claims raised. The case has no precedential or persuasive value.

Purposes of Chapter 61 Provisions

Protecting a needy spouse is not one of the purposes of Chapter 61 legislation specified in § 61.011 Fla. Stat. “Purposes” provision. “The state nor the courts cannot write into a statute that which is not there.” *Richardson* 766 So.2d

**II. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision
(§ 61.08, Fla. Stat) Impermissibly Infringes
Art. II, § 3, Fla. Const., Separation of Powers**

“The role of the courts remains one of restraint in the application and interpretation of those laws which eventually are passed, no matter our personal disagreement or concurrence in them so long as they do not violate constitutional or other legal requirements. It is more important that the basic separation of powers in our independent branches of government be preserved than it is that we project our own concept of the public good by reaching beyond the traditional judicial limitations of these protective boundaries of the separate, independent divisions of government.” *Ryan v. Ryan* 277 So. 2d at 274,275

A. Question: Does the challenged provision (§ 61.08 Fla. Stat.) represent impermissible delegated law making power to the judiciary?

Answer: Yes. § 61.08 (2) Fla. Stat. “The court may consider any other factor necessary to do equity and justice between the parties.” is unbridled discretion that is law making. The myriad of “may’s” in § 61.08 Fla. Stat. represents unbridled discretion that is law making.

“This Court . . . has traditionally applied a strict separation of powers doctrine,” *State v. Cotton*, 769 So. 2d 345, 353 (Fla. 2000).

The Appellee tangentially, unpersuasively and irrelevantly argues that

“...*Ryan* [*v. Ryan*, 277 So. 2d 266 (Fla. 1973)] informs of the Legislature’s role in the dissolution process-which necessarily includes alimony-and *McRae*, recognizes the historic inherent powers of the judiciary to do what is required by equity and justice, including matters pertaining to dissolution and its aftermath, Appellant’s unlawful delegation claim is meritless.”

This statement has nothing to do with the legislature impermissibly delegating lawmaking authority to the judiciary in §61.08 Fla. Stat. There can be no argument: Constitutional Amendments trump Equity.

The Appellee's brief does not dispute the Appellant's analysis of the impermissible delegated law making nature of § 61.08 Fla. Stat.

Askew v. Cross Key Waterways, 372 So.2d 913, 918-19 (Fla. 1978) notes that the legislature must give guidance to the branch of government that is to administer the law. In § 61.08 Fla. Stat. surely the legislature does give "guidance" in the 2¹⁷ permutations of factors to consider in § 61.08 Fla. Stat. The excessive number of permutations is not "guidance" but license to make law.

Secondly, all of the "guidance" given by the legislature is nullified by the unbridled discretion in § 61.08 (2) Fla. Stat. to wit, "The court may consider any other factor necessary to do equity and justice between the parties." This portion of the provision effectively counteracts any specific "guidance" in the statute.

If the legislature provided a measure of discretion in § 61.08 Fla. Stat. then it is arguable whether that is "law making." When the legislature provides 2¹⁷ permutations of discretion along with the above noted sweeping unbridled discretion – that is law making.

The Appellant does not argue that the legislature may not regulate the entry and exit from marriage. He argues it must do so within constitutional constraints

of the right of privacy and the separation of powers. It must not place an undue burden on citizens who chose to alter their associational interest by entering or exiting marriage. The legislative regulation permitted is limited because of the fundamental right the legislation is addressing, i.e. personal decisions relating to marriage. The limitation is proving a compelling state interest minimally applied that the statute in fact furthers.

The Separation of Powers test is noted in *State v. Griffin*, 239 So.2d 577 (Fla. 1970),

“The test then became twofold: first, was a transfer of authority possible; second, if so, was it sufficiently restrictive?”

Smith v. Portante, 212 So.2d 298, 299 (Fla.1968) (cited in *Schiavo v. Bush*, No. 03-008212-CI-20, 6th Judicial Circuit Florida, (2004)) states,

“A statute which delegates power to the executive [in this appeal the Appellant argues the power is delegated to the judiciary] must so clearly define that power that the executive [judiciary] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”

III. Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) Impermissibly Infringes the Ruling and Public Policy established in *Connor v. Southwest*, 668 So.2d 175 (Fla. 1995)?

A. Question: Does Chapter 61 “Dissolution of Marriage” Statute Alimony Provision (§ 61.08, Fla. Stat) conflict with public policy established in *Connor* 668 So. 2d and confirmed by the legislature that parties in a marriage are economic independents?

Answer: Yes. Justice Overton dissenting in *Connor* 668 So. 2d explains the significance of the ruling,

“The majority’s decision to abrogate the common law doctrine of necessities departs from the partnership theory of marriage...”

“The majority’s abrogation of the doctrine of necessities appears to shift the policy of the State by, in effect, requiring each spouse to take care of himself or herself. It also reduces the legal obligations of the marriage contract.”

Instead of relying on the words of *Connor* 668 So. 2d or Justice Overton’s analysis of the decision the Appellee chooses to use the quote in *Fernandez v Fernandez*, 710 So.2d 223, 225 (Fla. 2d DCA 1998) about the context of *Connor* 668 So. 2d not being a family law case. The Appellant’s Initial Brief readily distinguishes the *Fernandez* 710 So. 2d ruling.

Connor 668 So. 2d abrogated the doctrine of necessities and felt it was the purview of the legislature to decide whether to reinstate it equally between parties in a marriage. The dénouement for the Appellee is that the legislature twice considered it but twice rejected reinstating the doctrine of necessities. (Fla. HB 1211 (1996); Fla. SB 906 (1996).) Therefore it is the legislature that has determined the public policy that parties in a marriage are economic independents. The legislature has failed to adjust § 61.08 Fla. Stat. to the public policy it created.

This court must harmonize the public policies of economic independence during marriage with a proper one of economic independence after marriage.

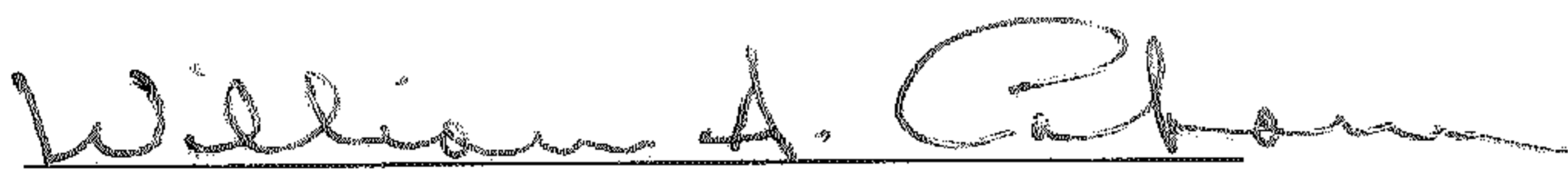
Conclusion

For the above reasons the Privacy Amendment attaches to the alimony statutory provision (§ 61.08 Fla. Stat.), the state has not proved a compelling state interest to validate the statute. The statute impermissibly infringes Art. I § 23 Fla. Const, Right of Privacy and is void ab initio.

§61.08 Fla. Stat. is impermissible legislative delegated law making authority to the judiciary and is void ab initio.

§61.08 Fla. Stat. conflicts with *Connor* 668 So. 2d and the public policy that parties in a marriage are economic independents. The legislature established that public policy when it twice failed to reinstate the abrogated doctrine of necessities. § 61.08 Fla. Stat. cannot transform economic independent Floridians in a marriage into economic dependent Floridians because they chose to exercise their fundamental right of association by making a personal decision relating to their marriage to dissolve it.

Respectfully submitted,

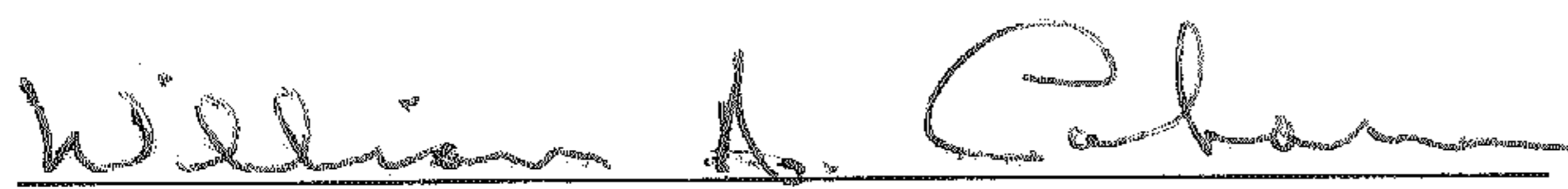


William A. Cabana, *pro se*, prepared with assistance of counsel
January 17, 2007

Certificate of Service

I hereby certify that on this 17th day of January 2007, I caused a true and accurate copy of this Appellant's Reply Brief to be sent by U.S. mail to:

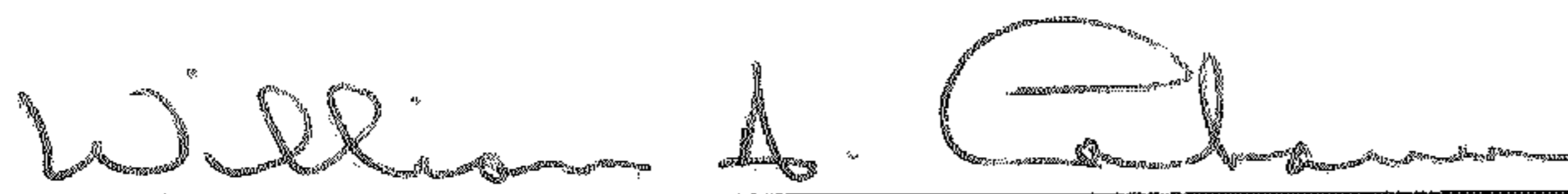
George Waas, Esq.
Special Counsel
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1015
Counsel for the Defendant and for the Office of the Attorney General



William A. Cabana, *pro se*, prepared with assistance of counsel
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone/Fax: 941-480-1395
Email: bcabana2@comcast.net

Certificate of Font and Type Size

Appellant certifies that this brief was typed using font style Times New Roman type size 14.



William A. Cabana, *pro se*, prepared with assistance of counsel
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone/Fax: 941-480-1395
Email: bcabana2@comcast.net