

IN THE DISTRICT COURT OF APPEALS OF FLORIDA
SECOND DISTRICT

WILLIAM A. CABANA, *pro se*,

v.

Case No.:

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

SUGGESTION FOR CERTIFICATION
TO THE FLORIDA SUPREME COURT

Comes now the petitioner, *pro se* and prepared with the assistance of counsel, pursuant to Fl. R. App. Proc. Rule 9.125 (a) to suggest this Second District Court of Appeals certify the constitutional challenges to the alimony statutes of this appeal to the Florida Supreme Court. (Art. V § 3 (b) (5) Fla. Const.) The questions presented are,

- I. Whether the “Dissolution of Marriage” statute alimony provision (§ 61.08, Fla. Stat.) impermissibly infringes Art. I, § 23, Fla. Const., Right of Privacy?
- II. Whether the “Dissolution of Marriage” statute alimony provision (§ 61.08, Fla. Stat.) impermissibly infringes Art. II, § 3, Fla. Const., Separation of Powers?

III. Whether the “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)?

The issues are offered by an Applicant who was married for only eleven years, divorced in 1972, had an alimony award of \$25 a week levied against him forever without any conditions to end payment. He lives with an income below the poverty level.

At the time of the dissolution *Canakaris v. Canakaris*, 383 So.2d (Fla.1980) was not the controlling case law on alimony, Art. I § 23, Right to Privacy, Fla. Const. had not been passed (1980), the doctrine of necessities had not be abrogated by *Connor v. Southwest Florida Regional Medical Center, Inc.*, 668 So. 2d 175 (Fla. 1995), the controlling law on Florida's Right to Privacy had not been effected, *In re T.W., A Minor*, 551 So.2d 1186 (Fla.1989) and *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003), and divorce had not yet been recognized as within the privacy protected zone of the Right to Privacy *Littlejohn v. Rose*, 768 F. 2d 765, 768 (6th Cir. 1985).

If marriage is a contract then the law as it existed at the time of the marriage should control. If current law controls the issue of alimony then all of the current law should be applied, Art. I § 23, Fla. Const., Right to Privacy, Art. II § 3, Fla. Const., Separation of Powers, *North Florida Women's Health* 866 So.2d, *Connor*

668 So.2d, *Littlejohn* 767 F.2d and the plethora of federal and state cases on the Right of Privacy as well as the Separation of Powers.

The doctrine of necessities was abrogated in *Connor* 668 So.2d. The legislature failed twice to reinstate the doctrine of necessities. After *Connor* 668 So.2d and Art. I Sec 23 Fla. Const. the state is barred from touting an economic interest in the marriage or divorce of Floridians.

REASON FOR IMMEDIATE RESOLUTION

Despite over eighteen different legal proceedings by Floridians raising similar constitutional challenges no Florida court has ever rendered a reasoned opinion.¹

On the contrary, a circuit court and a Fourth District Court of Appeals opinion deemed a constitutional challenge to § 61.08 Fla. Stat. as frivolous and affirmed sanctions against attorneys making the same Right of Privacy legal argument. *Barna v. Barna*, 850 So.2d 603 (Fla. 4th DCA 2003).

¹ See e.g. *Barna v. Barna*, 4D02-3332 (Fla.App. 4 Dist. 2003) cert denied Florida Supreme Court; *Blanchard v. Blanchard* (Fla. 4th DCA 2002); *Martyak v. Martyak* Case No. 00-730 4th DCA, Case No. 03-2077 4th DCA; *Gogola v. Gogola* Case No. 98-8094 CA C 20th Judicial Circuit Court, & Case No. 2D 02 4000 2nd DCA; *Johnson v. Johnson* Case No. 80-1004 CA 15th Judicial Circuit Court; *Alliance for Freedom from Alimony, Inc and Richard Lindsey v. Butterworth, Zingale*, 4D 02-2288; *Greenberg v. Greenberg*, 15th Judicial Circuit Court (CD98-9754 FZ), *Cabana v. Mayo*, 4D05-3906, 15th Judicial Circuit Court; *Cabana v. Zingale*, 06-CA-5063-SC, Twelfth Circuit Court of Florida.

The absence of a reasoned opinion on the constitutionality of the alimony statutes and the sanctions against attorneys for making such challenges has had a chilling effect on Floridians constitutional right of access to the courts, to find attorneys to represent them on the issues, and to make constitutional challenges to the alimony as well as other family law statutes.

ISSUES OF GREAT IMPORTANCE

These questions are of great public importance and will have a great effect on the proper administration of justice throughout the state. In Florida over eighty thousand divorces occur annually. Dissolution proceedings consume over thirty percent of Florida court resources. Innumerable Floridians are improperly jailed annually after defective alimony arrearage contempt proceedings and orders. The process of alimony litigation consumes vast amounts of limited family financial resources that could be better saved for family use.

The Second District Court of Appeals had previously certified a not dissimilar question of the validity of the alimony statute in *Fernandez v. Fernandez*, 710 So.2d 223 (2nd DCA 1998). Here and in *Fernandez* 710 So.2d it is argued that the abrogation of the doctrine of necessities in *Connor* 668 So.2d removed the rationale for alimony and effectively made parties in a marriage economic independents. Impermissibly then, §61.08, Fla. Stat. converts that independence to economic dependence after marriage.

Before the Florida Supreme Court could take the certified question in *Fernandez* 710 So.2d, the case was settled. The certified question was never answered. This court felt that issue alone worthy of the Florida Supreme Court review. Here the Appellant offers three constitutional challenge arguments to the basic liberty interest and fundamental rights that affect millions of Floridians.

WHEREFORE, Appellant, *pro se*, prays this court certify to the Florida Supreme Court these questions as of great importance, having a great effect on the proper administration of justice, and in need of immediate resolution.

Respectfully submitted, William A. Cabana

William A. Cabana, *pro se* December 11, 2006

CERTIFICATION OF IMPORTANCE

I express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Florida Supreme Court, is of great public importance and will have a great effect on the administration of justice throughout the state.

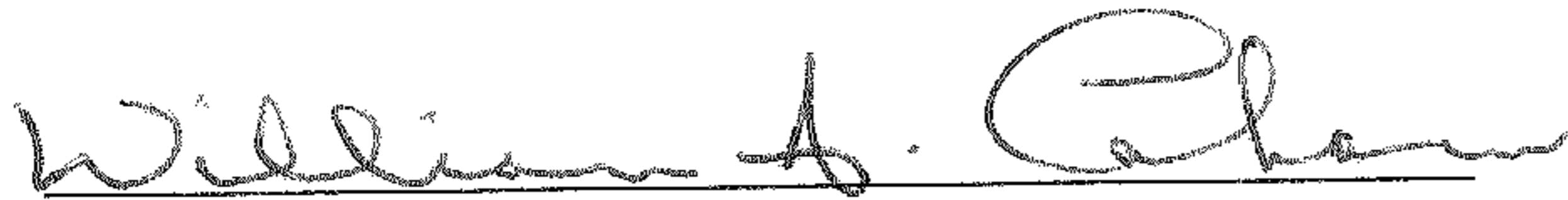
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2006, I caused a true and accurate copy of this Motion for Oral Argument to be sent by U.S. mail to:

George Waas, Esq.
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Office of the Attorney General
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Tallahassee, FL 32399-1015
Counsel for the Defendant and for
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[FIRST CLASS MAIL]



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