IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

WILLIAM A. CABANA, *pro se*,

v. **Case No.: 06-CA-5063-SC**

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

FILED FOR RECORD
VENICE BRANCH
2006 NOV 13 PM 2:28
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

PLAINTIFF'S RESPONSE TO DEFENDANT'S
NOTICE OF SUPPLEMENTAL AUTHORITY

William A. Cabana, plaintiff *pro se* with the assistance of counsel, responds to Defendant's Notice of Supplemental Authority and requests the court to consider the case law offered by the Defendant as inapposite. In support he offers,

1.Art. I § 23 Fla. Const., Right of Privacy, has two contexts---autonomous decision making and personal information disclosure.

2. This lawsuit deals with the autonomous personal decision making of the Plaintiff in the judicially recognized privacy protected zone of "personal decisions relating to marriage" to alter his associational interest and marital status by dissolving his marriage.

3. The cases cited by the Defendant (In *Re Commitment of Duane Edwin Sutton,* 884 So. 2d 198 (Fla. 2c DCA 2004); *Barron v. Florida Freedom Newspapers*, 530 So. 2d 113, (Fla. 1988)) relate to the disclosure of personal information not to the personal autonomous decision making related to the Plaintiff's personal decision to dissolve his marriage. This lawsuit is about the autonomous right of privacy of the Plaintiff to dissolve his marriage without any undue burden

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from the state. The Plaintiff has not challenged the public disclosure of his personal information or his personal financial information. Therefore, the case law offered relating to the information disclosure context of the right of privacy is inapposite.

4. The Defendant offers his case law also for the preposition that the Plaintiff must have a demonstrated expectation of privacy in order for the Right of Privacy to attach. The Defendant's argument misses the mark.

5. The use of "expectation of privacy" as a test is used when there is not a recognized zone of privacy and a Plaintiff is attempting to claim the constitutional Right of Privacy applies to the conduct at issue, i.e. where the Plaintiff is trying to pull the conduct at issue under the umbrella protection of the right of privacy.

6. Here the Right of Privacy at issue i.e. "personal decisions relating to marriage" is well defined and long recognized by the U.S. Supreme Court as being squarely under the umbrella of protection of the Right of Privacy. (inter alia, *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833 (1992); *Carey v. Population Serv. Int'l.*, 431 U.S. 678, (1977); *Zablocki v. Redhail,* 434 US 374, 385 (1978)).

7. Even more specifically "Divorce" (i.e. Chapter 61 "Dissolution of Marriage" which contains the alimony provision § 61.08 Fla. Stat). is already recognized as entitled to the umbrella of protected afforded by the right of privacy. (*LittleJohn v. Rose*, 768 F.2d 765, (6th Cir. 1985)).

Littlejohn 768 F. 2d at 768,

> "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)."

WHEREFORE this court may take notice of the supplemental authorities but must find

them inapposite.

Respectfully submitted,

November 13, 2006

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Certificate of Service

I hereby certify that on the 13th day of November, 2006, I caused a true and accurate copy of the foregoing motion to be mailed by first class mail prepaid to

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Counsel for the Defendant and for the Office of the Attorney General

Respectfully submitted,

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