

**IN THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

Division FM-E
Case No.: 16-2003-DR-009665-FM

IN RE: THE MARRIGE OF

DOUGLAS KEVIN PHILLIPS, Husband

and

CARRIE MARIE PHILLIPS, Wife

**MOTION FOR DECLARATORY JUDGMENT MOTION
TO CHALLENGE THE CONSTITUTIONALITY OF THE
PERMANENT ALIMONY STATUTE
(§ 61.08 et seq. Fla. Stat.)**

The text of our Florida Constitution begins with a Declaration of Rights—a series of rights so basic that the framers of our Constitution accorded them a place of special privilege. These rights embrace a broad spectrum of enumerated and implied liberties that conjoin to form a single overarching freedom: They protect each individual within our borders from the unjust encroachment of state authority--from whatever official source--into his or her life.

Each right is, in fact, a distinct freedom guaranteed to each Floridian against government intrusion. Each right operates in favor of the individual, against government. . .

It is significant that our Constitution thus commences by specifying those things which the state government must not do, before specifying certain things that it may do. These Declarations of Rights . . . say to arbitrary and autocratic power, from whatever official quarter it may advance to invade these vital rights . . . "Thus far shalt thou come, but no farther." *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 618,619 (Fla. 2003)

Comes now DOUGLAS KEVIN PHILLIPS, *pro se*, with an amended motion seeking a declaratory judgment, temporary injunctive relief but not permanent injunctive relief, pursuant to the United States Constitution; Art I § 23 Fla. Const., the Privacy Amendment; Art I § 2 Fl.

Const., Basic Rights; Art. II § 3 Fla. Const., Separation of Powers and § 86.011 et seq., Fla. Stat. Declaratory Judgment.

In support he offers:

1. Chapter 86 Fla. Stat. provisions are to be liberally construed (§ 86.101 Fla. Stat.; *Olive v. Maas*, 811 So.2d 644 (Fla. 2002)).
2. This Court has jurisdiction pursuant to § 86.011 Fla. Stat. to address the constitutionality of Chapter 61 Fla. Stat. postdissolution permanent spousal support provisions (§§61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824 Fla. Stat.).
3. DOUGLAS KEVIN PHILLIPS has standing pursuant to § 86.021 Fla. Stat. as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 Fla. Stat. provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.
4. Pursuant to § 86.091 Fla. Stat. Notice is given to interested parties, i.e. Carrie Marie Phillips and to the Attorney General of the State of Florida.

Statutes

5. Chapter 61 Fla. Stat. is entitled “Dissolution of Marriage: Support: Custody.”
6. Chapter 61 Fla. Stat. postdissolution permanent spousal support provision (§§ 61.011, 61.031, 61.043, 61.071, 61.08, 61.09, 61.10, 61.12, 61.1301, 61.13015, 61.13016, 61.14, 61.17, 61.18, 61.181, 61.1824 Fla. Stat.) require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, with threat of wage garnishment, lose of driver’s license, loss of professional license, contempt and imprisonment.

7. The spousal support provisions mandate that the state invade the marriage, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions.

Constitution: Right of Privacy and Basic Rights

8. Art. I § 23 Fla. Const. restricts the government from intruding into the private life of any person. “Article I Section 23 Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into the person's 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.”
9. *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003) is controlling case law authority on Art.I § 23 Fla. Const, the Right of Privacy.
10. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy that includes a Privacy Protected Zone of “personal decisions relating to marriage”. (U.S. Constitution Fourteenth Amendment Due Process Clause; *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Carey v. Population Serv. Int'l.*, 431 U.S. 678, 684-685 (1977); *Parenthood v. Casey*, 505 U.S. 833, (1992); *Zablocki v. Redhail*, 434 US 374 (1978); Florida Constitution Article I Section 23; *Winfield v. Division of Para-Mutual Wagering*, 477 So. 2d 544 (Fla. 1985)), *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 635 (Fla. 2003)

11. Divorce, i.e. “Dissolution of Marriage” is afforded the protections of the Right of Privacy. See LittleJohn v. Rose, 768 F. 2d 765, 768 (6th Cir. 1985)
12. § 61.08 et. Seq. Fla. Stat. alimony provisions are contained with Chapter 61 “Dissolution of Marriage” Fla. Stat.
13. Art I § 2 Fla. Const. states... **“SECTION 2. Basic rights.--**All natural persons, female and male alike, ... have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property.”
14. DOUGLAS KEVIN PHILLIPS’ marriage was dissolved by Order of this Court August 26, 2005.
15. Prior to issuing its August 26, 2005 Order the State, through this Court, invaded and examined the intimate details of the privacy area of the marriage of DOUGLAS KEVIN PHILLIPS.
16. After its invasion and examination of the intimate details of DOUGLAS KEVIN PHILLIPS’ privacy area of marriage the State, through this Court reassigned the property rights between DOUGLAS KEVIN PHILLIPS and CARRIE MARIE PHILLIPS.
17. The State, through this Court, redistributed the marital property of DOUGLAS KEVIN PHILLIPS and CARRIE MARIE PHILLIPS pursuant to § 61.075 Fla. Stat.
18. The State, through this Court’s Order of Final Judgment of Dissolution required DOUGLAS KEVIN PHILLIPS to pay postdissolution permanent spousal support.
19. DOUGLAS KEVIN PHILLIPS is today subject to the ongoing threat of Social Security garnishment, contempt and imprisonment if he fails to comply with the Final Judgment Order predicated on the above Chapter 61 Fla. Stat. provisions.

20. DOUGLAS KEVIN PHILLIPS' Florida Constitutionally guaranteed Right of Privacy, Art. I § 23 Fla. Const., and Art. I § 2 Basic Rights have been violated by the State's Final Judgment of Dissolution Order of August 26, 2005 as well as other related judicial proceedings, judicial orders, the Chapter 61 Fla. Stat. provisions and the case law those judicial actions are based upon.
21. DOUGLAS KEVIN PHILLIPS' Florida Constitutionally guaranteed Right of Privacy has been violated because the State has failed to express a compelling State interest applied in the least intrusive manner to validate the Chapter 61 Fla. Stat. alimony provisions noted above which put him at risk of imprisonment, invade his privacy, and imperil his Art. I § 2 Fla. Const. Basic Rights.
22. Chapter 61 Fla. Stat. postdissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of DOUGLAS KEVIN PHILLIPS to his State constitutionally guaranteed Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 Fla. Stat. provisions serve a compelling State interest, that interest is applied in an highly intrusive manner and is at its weakest in the facts of this case.
23. DOUGLAS KEVIN PHILLIPS' Art. I § 2 Fla. Const. Basic Rights have been violated by his being denied such things as the full enjoyment of the fruits of labor and industry, retirement, own property, enjoy the freedom from fear of arrest and imprisonment, enjoy the freedom from the threat of having his Social Security garnished, enjoy the freedom from having adverse credit ratings, enjoy the freedom from the stigma of court proceedings, and to enjoy the remaining few days of his life on Earth, among other pursuits of happiness.

24. DOUGLAS KEVIN PHILLIPS' right to equal protection has been denied him compared with single persons and many other former married persons on whom the State did not statutorily and judicially, intrude into the intimate details of their marriage and then impose postdissolution permanent spousal support obligations.
25. DOUGLAS KEVIN PHILLIPS' right to equal protection has been denied him by the State compared with single persons and many other former married persons who do not have their liberty imperiled by the threat of contempt and imprisonment related to the postdissolution permanent spousal provisions of Chapter 61 Fla. Stat.
26. DOUGLAS KEVIN PHILLIPS' right to equal protection has been denied him by the State because of the Florida Judicial System implementing an Affirmative Action Gender based bias program grounded in the Report of the Florida Supreme Court Gender Bias Study Commission (1990) and Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996).
27. DOUGLAS KEVIN PHILLIPS' constitutionally guaranteed Art. I § 2 and § 23 Fla. Const. rights are violated by the State acting in a court of chancery, applying a judicial standard of equity in a self acknowledged Gender Bias setting by a judiciary granted wide discretionary powers.
28. The above noted provisions of Chapter 61 Fla. Stat. also fail for reason of vagueness.
29. The above noted provisions of Chapter 61 Fla. Stat. do not permit a reasonable person, here, DOUGLAS KEVIN PHILLIPS, to know which statutory and elements of his marriage in § 61.08 Fla. Stat. will apply and how they will be weighed in the court arriving at a judicial order.

30. The vagueness and unpredictability of § 61.14 (1)(a) Fla. Stat. “the circumstances or the financial ability of either party changes” applied to DOUGLAS KEVIN PHILLIPS’ Final Order does not provide him enough clarity of notice for him to understand the criteria for which he will be held accountable.
31. Gender Bias—Then and Now, Continuing Challenges in the Legal System, The Report of the Gender Bias Study Implementation Commission (1996) notices the Florida Courts of the vagueness of the postdissolution permanent spousal support provisions.
32. This lack of statutory predictability when coupled with the threat of wage garnishment, arrest and contempt causes the statute to fail for vagueness and ambiguity.
33. The vagueness of the Statutory provisions when coupled with wide judicial discretion applying principles of equity in a setting of Gender Bias and Gender Based Affirmative Action that subject him to a lifetime risk of imprisonment are unconstitutional.

Constitution: Separation of Powers

34. Art. II § 3 Fla. Const. prohibits the delegation of authority vested in one branch of government by that branch to another branch of government.
35. Art. II § 3 Fla. Const. prohibits a branch of government delegating authority which it does not have to another branch of government.
36. § 61.08 (2) Fla. Stat., inter alia, improperly delegates unrestricted legislative authority to the judiciary, to wit, “The court may consider any other factor necessary to do equity and justice between the parties.”
37. *Bush v. Schiavo*, 885 So. 2d 321, (Fla. 2004) is controlling case law authority on Art. II § 3 Fla. Const., the Separation of Powers.

Connor v. Southwest Florida Regional Medical Center, Inc., 668 So. 2d 175 (Fla. 1995)

38. DOUGLAS KEVIN PHILLIPS has no legal duty to support the Petitioner pursuant to *Connor v. Southwest Florida Regional Medical Center, Inc.*, 668 So. 2d 175 (Fla. 1995)
39. *Connor* 668 So. 2d established the public policy that parties in a marriage are economic independent.
40. Contrary to *Connor* 668 So. 2d, the legislature, via §61.08, cannot make parties after a marriage economic dependents.

Injunctive Relief

41. DOUGLAS KEVIN PHILLIPS has no adequate remedy at law and continues to face imminent and irreparable loss of his rights.
42. Absent expedited consideration and prompt injunction, DOUGLAS KEVIN PHILLIPS will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.
43. DOUGLAS KEVIN PHILLIPS has been, continues to be, and will be imminently further deprived of his Art. I § 2 and § 23 Fla. Const. rights by the Family Division of the Fourth Judicial Circuit Court.
44. Any payments now made to his former spouse will be immediately expended by her as the payments are allegedly for the necessities of life.
45. There will be no way for DOUGLAS KEVIN PHILLIPS to recover payments made while he awaits this Court's final Declaratory Order and possible appeals.
46. No bond is mandated for this temporary injunctive relief.
47. DOUGLAS KEVIN PHILLIPS has the likelihood of prevailing on the merits of this constitutional statutory challenge.
48. This Court has been acting under color of State law in depriving DOUGLAS KEVIN

PHILLIPS of his constitutional rights because of an unconstitutional statute.

49. DOUGLAS KEVIN PHILLIPS has been forced to retain the advice of counsel to vindicate his Right of Privacy because of the continuing risk of imprisonment, and denial of liberty interest, property rights and rights imposed by this Court's action rendered under color of state law. He has been forced to incur costs and a reasonable attorneys' fee in connection with this action.

50. DOUGLAS KEVIN PHILLIPS is entitled to recover all costs and a reasonable attorneys' fee pursuant to Florida common law as well as costs pursuant to § 86.081 Fla. Stat.

PRAYER FOR RELIEF

“It is well settled that . . . if a law ‘impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.’”
Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden, 466 U.S. 55, 76 (1980))

WHEREFORE DOUGLAS KEVIN PHILLIPS prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Enter an immediate temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against DOUGLAS KEVIN PHILLIPS related to the postdissolution permanent spousal support provisions of Chapter 61 Fla. Stat. pending appellate review by the Supreme Court;

In the alternative,

2. Enter a declaratory judgment that DOUGLAS KEVIN PHILLIPS and all Floridians have a constitutional right under the Privacy amendment to be free of the burden of the postdissolution permanent spousal support provisions of Chapter 61 Fla. Stat.;

3. Enter a declaratory judgment that DOUGLAS KEVIN PHILLIPS has a constitutional right under the equal protection laws of Florida to be free of the burden of the postdissolution permanent spousal support provisions of Chapter 61 Fla. Stat.;
4. Enter a declaratory judgment that Chapter 61 Fla. Stat. postdissolution permanent spousal support provisions impermissibly infringe the Art. I § 23 Fla. Const., and in the alternative violate the Art. I § 2 Fla. Const. and in the alternative, and in the alternative violate Art. II § 3 Separation of Powers Fla. Const., and in the alternative fail for vagueness;
5. Find that §61.08 Fla. Stat. conflicts with Fl. Supreme Court ruling in *Connor* 668 So.2d.
6. Enter a temporary injunction prohibiting the State of Florida through this or any State Court, any agency of the State of Florida, or any interested party to this action from initiating any adverse proceedings or entering, or enforcing any adverse orders against DOUGLAS KEVIN PHILLIPS related to the postdissolution permanent spousal support provisions of Chapter 61 Fla. Stat.
7. Awarding DOUGLAS KEVIN PHILLIPS all costs and a reasonable attorneys' fee for the prosecution of this action pursuant to, § 86.011 Fla. Stat. and Florida common law.

Respectfully submitted,

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September 30, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of September 2005, I caused a true and accurate copy of this Motion to be send by U.S. mail to

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