

IN THE [NAME]TH CIRCUIT COURT  
IN AND FOR [NAME] COUNTY,  
FLORIDA  
CIVIL DIVISION

CASE NO.

[NAME]

v.

THE [NAME]TH CIRCUIT COURT OF FLORIDA

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**ACTION FOR A DECLARATORY JUDGMENT, TEMPORARY INJUNCTIVE  
RELIEF, PERMANENT INJUNCTIVE RELIEF, DISQUALIFICATION AND  
CERTIFICATION BECAUSE THE POSTDISSOLUTION PERMANENT SPOUSAL  
SUPPORT PROVISIONS OF FLORIDA STATUTES CHAPTER 61 VIOLATE THE  
FLORIDA CONSTITUTION.**

Comes now [NAME], through counsel, seeking a declaratory judgment, temporary injunctive relief, and permanent injunctive relief, pursuant to the United States Constitution; Article I Section 23 of the Florida Constitution, the Privacy Amendment; 42 U.S.C. § 1983 the Civil Rights Act of 1879; and Section 86.011 et seq., Florida Statutes.

Further, [NAME] seeks an immediate order of disqualification and certification to the District Court of Appeal with suggestion, pursuant to Florida Rules of Appellate Procedure Rule 9.125, to immediately certify to the Florida Supreme Court as a matter of great public importance, because the issues have a great effect on the proper administration of justice throughout the state, and because the law creates an anomaly of conflict of interest for this Court and the District Court of Appeal. In support he offers:

1. Florida Statutes Chapter 86 provisions are to be liberally construed (Florida Statutes § 86.101; Olive v. Maas, No. SC00-317 Corrected Opinion February 14, 2002 (Fla. 2002)).
2. This Court has jurisdiction pursuant to Florida Statutes § 86.011 to address the constitutionality of Florida Statutes Chapter 61 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).
3. [NAME] has standing pursuant to Florida Statutes § 86.021 as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted Chapter 61 provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.
4. The proper defendant, pursuant to Chapter 86 provisions, the Attorney General, and Florida case law, is this Circuit Court as the State official charged with enforcing Florida Statutes Chapter 61 postdissolution permanent spousal support provisions. (See also Chapter 61.14)
5. Pursuant to Florida Statutes § 86.091 Notice is given to interested parties, i.e. [Spouse's Name], party to the marriage dissolution action, to this Court as the State's enforcing official, and to the Attorney General of the State of Florida.

### **Statutes**

6. Florida Statutes Chapter 61 is entitled "Dissolution of Marriage: Support: Custody."
7. Chapter 61 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) 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.

8. 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**

9. Florida Constitution Article I Section 23 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.”

10. Federal and Florida Constitutions and Judicial rulings have determined the existence of a right of privacy which includes marriage and personal decisions related 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))

11. Florida Constitution Article I Section 2 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.”**

### **Disqualification and Certification**

12. This Court as the state official charged (61.08 (4)(b), 61.1301, 61.1301 (1)(a), 61.1301 (1)(b), 61.130 (6)(c), 61.13015 (1), 61.13015 (3)(b)) with enforcing Florida Statutes Chapter 61 provisions is the defendant in the declaratory and injunctive motion pursuant to Florida Statutes § 86.091 for the constitutionally challenged postdissolution permanent spousal support statutes applied in the Final Order of Judgment in this case.

13. This Court also has the jurisdiction to rule on this motion related to the constitutionality of the challenged statutes (§ 86.011, § 86.011 (1)).

14. Code of Judicial Conduct Canon 3 E (1) (d) (i) mandates a judge disqualify herself when she is a defendant in an action.

15. This Court has an irremedial conflict of interest as the defendant and adjudicator in this motion.

16. The District Court of Appeal stands in the same shoes as the Circuit Court as a defendant to this action. It suffers the same infirmity of conflict of interest.

17. The Florida Supreme Court serves as the court of last resort and therefore, despite it also standing in the shoes of the Circuit Court, is the only remaining state entity capable of ruling on the issues in this action.

18. The only plausible resolution to this Court's conflict of interest is disqualification and certification of the questions to the District Court of Appeal with the suggestion to immediately certify to the Florida Supreme Court as a matter of great public interest, as a matter that has great effect on the proper administration of justice in the State (Rule 9.125), and because of the apparent conflict of interest created for the courts by the statutes and case law.

**[NAME]**

19. [NAME]'s marriage was dissolved by Order of this Court [DATE].
20. Prior to issuing its [Date of Final Judgment] Order the State, through this Court, invaded and examined the intimate details of the privacy area of the marriage of [NAME].
21. After its invasion and examination of the intimate details of [NAME]'s privacy area of marriage the State, through this Court reassigned the property rights between [NAME] and [SPOUSE'S NAME].
22. The State, through this Court, redistributed the marital property of [NAME AND SPOUSE'S NAME] pursuant to Florida Chapter § 61.075.
23. The State, through this Court's Order of Final Judgment of Dissolution required [NAME] to pay postdissolution permanent spousal support.
24. [NAME] has continuously met his postdissolution spousal support obligation to the best of his physical, mental and emotional capacity.
25. [NAME], is today subject to the ongoing threat of Social Security garnishment, driver's license suspension, contempt and imprisonment if he fails to comply with the Final Judgment Order predicated on the above Chapter 61 provisions.
26. [NAME]'s Florida Constitutionally guaranteed right to privacy (Florida Constitution Article I Section 23 right) and Article I Section 2 Rights have been violated by the State's judicial proceedings and Final Judgment of Dissolution Order of [Date of Final Judgment] as well as subsequently related judicial proceedings, judicial orders, the Chapter 61 Florida Statutes provisions and the case law those judicial actions are based upon.
27. [NAME]'s Florida Constitutionally guaranteed right to privacy (Florida Constitution Article I Section 23 right) 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 Florida Statutes noted above which put him at risk of imprisonment, invade his privacy, and imperil his Article I Section 2 basic rights.

28. Florida Chapter 61 postdissolution permanent spousal support provisions do not serve a State interest sufficiently compelling to override the rights of [NAME] to his Federal and State constitutionally guaranteed Right of Privacy in the facts in this case. To the extent that the noted Chapter 61 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.

29. [NAME]'s Article I Section 2 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.

30. [NAME]'s 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 impose postdissolution permanent spousal support obligations.

31. [NAME]'s 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.

32. [NAME]'s 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).

33. The above noted provisions of Florida Statutes Chapter 61 also fail for reason of vagueness.

34. The above noted provisions of Florida Statutes Chapter 61 do not permit a reasonable person, here, [NAME], to know which statutory and elements of his marriage in Florida Statute 61.08 will apply and how they will be weighed in the court arriving at a judicial order.

35. The vagueness and unpredictability of § 61.14 (1)(a) “the circumstances or the financial ability of either party changes” relating to a modification of [NAME]’s Final Order does not provide him enough clarity of notice for him to understand the criteria for which he will be held accountable.

36. 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.

37. 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.

38. The vagueness of the Statutory provisions applied in a court of chancery, with a standard of equity, when coupled with wide judicial discretion in a setting of Gender Bias and Gender Based Affirmative Action that subject him to a lifetime risk of imprisonment are unconstitutional.

### **Injunctive Relief**

39. [NAME] has no adequate remedy at law and continues to face imminent and irreparable loss

of his rights. Absent expedited consideration and prompt injunction, [NAME] will continue to suffer substantial and irreparable harm and his rights will continue to be denied before this court can rule.

40. Any payments now made to his former spouse will be immediately expended by her as the payments are allegedly for the necessities of life.

41. There will be no way for [NAME] to recover payments made while he awaits this Court's final Declaratory Order and possible appeals.

42. No bond is mandated for this injunctive relief.

43. The former spouse always has the Florida Statutes Chapter 61 remedy for non payment of support obligation available to her.

44. This Court has been acting under color of State law in depriving [NAME] of his constitutional rights because of an unconstitutional statute.

45. [NAME] has been forced to retain the undersigned counsel to vindicate his right to privacy because of the continuing risk of imprisonment, and denial of 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.

46. [NAME] is entitled to recover all costs and a reasonable attorneys' fee pursuant to 42 U.S.C. § 1988, Florida Statutes § 86.081 and Florida common law.

**Wherefore** [NAME] prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Disqualify itself and enter an immediate order of certification to the District Court of Appeal and a suggestion to immediately certify to the Florida Supreme Court as a matter of great public importance, as having a great effect on the proper administration of justice in the state (R.A.P. Rule 9.125), and because the law creates an anomalous conflict of interest for the Circuit Court as defendant and adjudicator; AND,
2. 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 [NAME] related to the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61 pending appellate review by the Supreme Court;

In the alternative,

3. Enter a declaratory judgment that [NAME] has a constitutional right under the privacy amendment to be free of the burden of the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;
4. Enter a declaratory judgment that [NAME] 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 Florida Statutes Chapter 61;
5. Enter a declaratory judgment that Florida Statutes Chapter 61 postdissolution permanent spousal support provisions violate the Florida Constitution Article I Section 23, and in the alternative violate the Florida Constitution Article I Section 2, and in the alternative, the United States Constitution Due Process clause of the Fourteenth Amendment, and in the alternative fail for vagueness;
6. Enter a temporary and permanent 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 [NAME] related to the postdissolution permanent spousal support provisions of Florida Statutes Chapter 61;

7. Awarding [NAME] all costs and a reasonable attorneys' fee for the prosecution of this action pursuant to 42 U.S.C. § 1988, Florida Statutes § 86.011 and Florida common law.

IT IS HEREBY CERTIFIED that a copy of this pleading has been mailed to interested parties [SPOUSE'S NAME], and Assistant Attorney General this \_\_\_\_ Day of [Month] , 2003.

Respectfully submitted,

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alimonyreform@hotmail.com

Counsel for [NAME] as Cooperating Attorney for the Alliance For Freedom From Alimony, Inc.