IN THE DISTRICT COURT OF APPEALS OF FLORIDA
FOURTH DISTRICT

In Re Marriage of WILLIAM A. CABANA Petitioner, Former Husband, pro se	:	Case Number: 4D06-1883
and SHARON ANN MAYO f/k/a SHARON ANN CABANA Respondent, Former Wife.	:	

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 Fourth 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)?

IV. Whether incarceration (civil contempt powers) for enforcement of alimony

nonpayment is impermissible after Art. I, § 23, Fla. Const and *Connor v Southwest*, 668 So.2d 175 (Fla. 1995) nullify the duty of a husband to his wife and society allegedly created by marriage?

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. He had paid alimony for over thirty years and is in arrears. The former wife with considerable assets and income, through over thirty motions pressed hard for and received a contempt and incarceration order resulting in the Appellant's being jailed--all predicated on the challenged alimony statutes.

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 necessaries 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 unique enforcement of alimony arrearages by jailing is grounded in an antediluvian no longer valid dicta that a "husband" has a duty to his "wife" and to society (*Phelan v. Phelan* 12 Fla. 449 (1868); *Bronk v. State,* 43 Fla. 461 (1901)). The doctrine of necessaries was abrogated in *Connor* 668 So.2d. The legislature failed twice to reinstate the doctrine of necessaries. After *Connor* 668 So.2d and Art. I Sec 26 Fla Const. the state is barred from touting an economic interest in the marriage or divorce of Floridians.

REASON FOR IMMEDIATE RESOLUTION

The petitioner has already twice lost his personal liberty, right of privacy and property rights because the challenged alimony statutes were actively being applied and enforced against him without any Florida court ever having rendering a reasoned opinion on their constitutionality on Right of Privacy and Separation of Powers grounds. He is currently at imminent risk of another incarceration over the challenged statutes.

Despite over fifteen different legal proceedings by Floridians raising similar constitutional challenges no Florida court has never 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).

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

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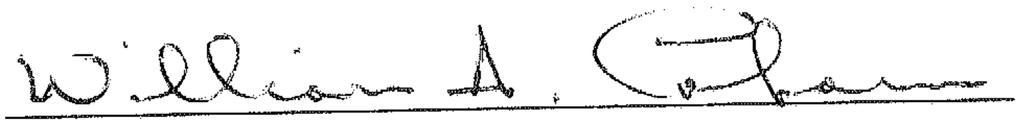
[1] See e.g. Barna v. Barna, 4D02-3332 (Fla.App. 4 Dist. 2003) cert denied Florida Supreme Court; Blanchard v. Blanchard (Fla. 4th DCA 2002), Martyak v. Martyak Case No. 00-730 4th DCA, Case No. 03-2077 4th DCA; Gogola v. Gogola Case No. 98-8094 CA C 20th Judicial Circuit Court ,& Case No. 2D 02 4000 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.

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 necessaries 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. The Second District Court of Appeals felt that issue alone worthy of the Florida Supreme Court review. Here the Appellant offers three other constitutional challenges to the basic liberty interest and fundamental rights that affect millions of Floridians.

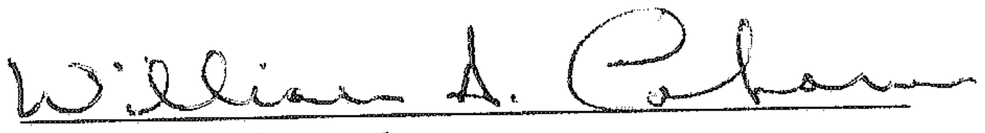
WHEREFORE, Appellant, *pro se*, prays this court certify to the Florida Supreme Court these questions as of great importance, having a great effect on the proper administration of justice, and in need of immediate resolution.

Respectfully submitted, 

William A. Cabana, *pro se* May 25, 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.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 25th Day of May, 2006 I caused a true and accurate copy of this Notice to Clerk of Appeals to be send by U.S. mail to:

Cathy L. Kamber, Esq.
Attorney For Sharon Ann Mayo:
1675 Palm Beach Lakes Boulevard
The Forum, Tower A, Suite 700
West Palm Beach, FL 33401

David J. Glantz, Esq.
Assistant Attorney General,
110 S.E. 6th Street, 10th Floor,
Fort Lauderdale, Fl. 33301-5000

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