

Alimony Reform Glossary

1. **Abstention Doctrines**: the staying of the exercise of federal jurisdiction in a case that involves a question of state law or policy, which the federal court prefers to have resolved by a state court or agency, often in conflict with the federal court's constitutional obligations. For example, when the Supreme Court refuses to exercise its federal constitutional jurisdiction or declines to consider a question of state law arising from a case being appealed from a state supreme court.
2. **Alimony**: a court-ordered allowance where payment is demanded without consideration, from one spouse to another (almost always for the wife's benefit), for support after legal separation (temporary) or divorce (permanent), and enforced with improper use of the court's contempt power; besides having no basis in contract law, the legality of alimony is very controversial because the original basis for alimony, the so-called Doctrine of Necessaries, has been repealed by most state legislatures, which also has severed the link between alimony and divorce.
3. **Ankenbrandt Abstention**: sometimes referred to as the "domestic relations exception", this abstention doctrine originated in *Ankenbrandt v. Richards*, [504 U.S. 689, 694](#) (1992) is without foundation in law and states that a federal court cannot review cases dealing with "domestic relations" or family law. The federal court's refusal to review family law cases is a clear violation of their constitutional obligation, and has created a virtual miasma of abusive and corrupt rulings in the state courts, many in clear violation of the U.S. Constitution.
4. **Appellate Brief**: concise formal statement of a case used in appellate courts for purposes of appeal at either the state or federal level; e.g., an appellate brief is required for an appeal of an alimony ruling from family law court.
5. **A Vinculo Matrimonii**: legal phrase meaning to break the bond of marriage.
6. **Civil Complaint**: the initial pleading in a civil court that starts a lawsuit and that sets forth the allegations made by the plaintiff against the defendant and the plaintiff's demand for relief.
7. **Civil Liberty**: freedom from arbitrary governmental interference (as with the right of free speech), specif. by denial of governmental power, especially as guaranteed by the Bill of Rights. (See liberty interest).
8. **Civil Rights**: the nonpolitical rights of a citizen, especially the rights of personal liberty guaranteed to U.S. citizens by the 13th and 14th amendments to the Constitution and by acts of Congress; these cases are generally adjudicated under 42 USC 1983 federal law.
9. **Class**: a group of persons or things having characteristics in common, including a) a group of persons who have some common relationship to a person making a will and are designated to receive a gift under the will but whose identities will not be determined until sometime in the future, b) a group of securities (as stocks or bonds) having similar distinguishing features, c) a group whose members are represented in a class action, d) "protected class", e) a group of crimes forming a category distinguished by a common characteristic (as the use of violence or the requirement for a maximum penalty).

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10. **Classification:** the act or method of distributing people or things into a class or category according to characteristics; e.g., suspect classification.
11. **Colorado River Abstention:** an abstention grounded esp. on the involvement in the federal case of questions of state concern that are also at issue in a parallel case in state court.
12. **Comity:** the informal and voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another.
13. **Compelling State Interest:** a governmental interest (as in educating children or protecting the public), which is so important that it outweighs individual rights; the nature of the concept of a compelling state interest would indicate it is self-evident, or almost self evident, and that it is based on a legal doctrine or reflecting an overwhelming public policy, and there should be evidence of its universal application throughout the laws of the State, a consistency in the laws of the State related to the compelling interest and a predictability of the compelling interest applied in the laws.
14. **Constitutional Rights:** the rights guaranteed to citizens of the United States by the US Constitution, and to residents of a particular state by their respective state constitution.
15. **Construction:** the act of building by combining or arranging parts or elements; the act or process of interpreting or explaining the sense or intention of a writing (e.g., statute, opinion or instrument).
16. **Construe:** to analyze and explain the meaning of a sentence or passage.
17. **Court of Chancery:** court of equity; family law courts are generally considered to be courts of chancery.
18. **Coverture:** a common-law doctrine, originating in Medieval Ecclesiastical courts, whereby a woman's legal identity was considered to be merged with that of her husband; because she could not own property, enter into contracts, or receive credit as an individual, her husband was obligated for maintenance and support; in fact, this doctrine classifies women as chattel or property. All states have abrogated or repealed Coverture, thereby eliminating the legal basis for alimony.
19. **Declaratory Judgment:** a judgment declaring a right or establishing the legal status or interpretation of a law or instrument; e.g., seeking a declaratory judgment that the regulation is unconstitutional
20. **Declaratory Relief:** an order from a court granting a particular remedy as set forth in a declaratory judgment.
21. **Doctrine of Necessaries:** this doctrine, originating in Medieval Ecclesiastical court, arose from the obligation inherent in the doctrine of Coverture; this obligation was later formalized into the so-called "Doctrine of Necessaries", which became the justification for alimony. Most state legislatures have abrogated or repealed these doctrines thereby eliminating the legal basis for alimony and forever severing the link between alimony and divorce.
22. **Default Judgment:** a judgment entered by a court after an entry of default against a party for failure to appear, to file a pleading, or to take other required procedural steps.
23. **Discretion or Discretionary Power:** a public official's power or right to act in certain circumstances according to personal judgment and conscience. (see

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- Judicial Discretion); e.g., discretionary power is often abused by family law judges by violating the privacy rights of spouses to make arbitrary alimony awards.
24. **Due Process:** due process: 1) a course of formal proceedings (as judicial proceedings) carried out regularly, fairly, and in accordance with established rules and principles (procedural due process); 2) a requirement that laws and regulations must be related to a legitimate government interest (as crime prevention) and may not contain provisions that result in the unfair or arbitrary treatment of an individual (substantive due process). Note: The guarantee of due process is found in the Fifth Amendment to the Constitution, which states "no person shall . . . be deprived of life, liberty, or property, without due process of law," and in the Fourteenth Amendment, which states "nor shall any state deprive any person of life, liberty, or property without due process of law." The boundaries of due process are not fixed and are the subject of endless judicial interpretation and decision-making. The requirement of due process also applies to agency actions.
 25. **Equal Protection of the Law:** a guarantee under the 14th Amendment to the U.S. Constitution that a state must treat an individual or class of individuals the same as it treats other individuals or classes in like circumstances (see also rational basis test, strict scrutiny, suspect classification, Amendment XIV to the Constitution). Note: The Equal Protection requirement of the Constitution protects against legislation that affects individuals differently without a rational basis for doing so. In reviewing claims of denial of equal protection, a court will uphold legislation that has a rational basis unless the legislation affects a fundamental right or involves a suspect classification, such as race. In such a case, the court will use a strict scrutiny standard of review and will strike down legislation that does not show a compelling need for discriminating.
 26. **Equitable:** 1) having or exhibiting equity (i.e., dealing fairly and equally), e.g., shall allocate . . . appropriations in an equitable manner -- U.S. Code; 2) existing or valid in equity or as a matter of equity as distinguished from law, e.g., property is supposed to be distributed in an equitable manner in family law court.
 27. **Equity:** justice according to fairness, esp. as distinguished from mechanical application of rules (i.e., prompted by considerations of equity). Example: comity between nations, and equity require it to be paid for -- F. A. Magruder
 28. **Et Seq:** legal abbreviation for "et sequentia" meaning "and the following ones"; usually refers to a sequential set of state or federal statutes.
 29. **False Imprisonment:** wrongful imprisonment of a person contrary to law, without due process and the benefits of normal legal safeguards, e.g., *Miranda* rights.
 30. **Federal District Court:** the system of lower federal courts serving regions or districts within each state; wrongful use of contempt power to enforce state alimony orders can be removed to federal district court (See Removal).
 31. **Federal Question:** a question that falls under the jurisdiction of a federal court because it requires a resolution of the construction or application of federal law.
 32. **Federal Question Jurisdiction:** the jurisdiction granted to federal courts over civil actions arising under the Constitution, federal laws, or treaties of the U.S.; federal jurisdiction over cases involving a federal question. Note: The federal courts

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- have usually interpreted the statutory phrase "arising under" rather strictly. U.S. Supreme Court decisions have held that the plaintiff's pleading must establish that the cause of action raises an issue of federal law (as by depending on construction or application of a federal law).
33. **Fourteenth Amendment:** U.S. Constitutional Amendment governing civil rights, right to privacy, due process, and equal protection rights along with other freedoms for citizens, which are considered to be fundamental rights.
 34. **Fundamental Right:** a right that is considered by a court (as the U.S. Supreme Court) to be explicitly or implicitly expressed in a constitution (as the U.S. Constitution) Note: A court must review a law that infringes on a fundamental right under a standard of strict scrutiny. A fundamental right (e.g., right to privacy) can be limited by a law only if there is a compelling state interest, *Roe v. Wade*, [410 U.S. 113](#) (1973).
 35. **Gender Bias:** a personal, discriminatory and often unreasoned judgment for or against one side in a dispute based upon gender, which is prohibited under the Equal Protection clause of the U.S. Constitution's 14th Amendment; e.g., alimony awards are almost always granted in favor of women. U.S. Supreme Court ruled against the use of gender classification in *Orr v. Orr*, [440 U.S. 268](#) (1979) and *Stanton v. Stanton*, [429 U.S. 501](#) (1977).
 36. **Impermissibly Infringe:** to encroach upon in a way that violates the law or rights of another.
 37. **Inter Alia:** (Latin) legal phrase meaning among other things.
 38. **Invasion of Privacy:** the tort of unjustifiably intruding upon another's right to privacy by appropriating his or her name or likeness, by unreasonably interfering with his or her seclusion, by publicizing information about his or her private affairs that a reasonable person would find objectionable and in which there is no legitimate public interest, or by publicizing information that unreasonably places him or her in a false light
 39. **Involuntary Servitude:** a severe restriction of liberty, as in or similar to slavery; prohibited by the 13th Amendment to the U.S. Constitution, the primary purpose of this amendment was to abolish slavery as it had existed in the U.S. until the Civil War. But the U.S. Supreme Court has held that it was not limited to that purpose and intended to cover conditions akin to slavery. *Butler v. Perry*, 240 U.S. 328, 332 (1916). More recently, *United States v. Kozminski*, [487 U.S. 931](#), 942 (1998) the Supreme Court defined the term as a compulsory condition "in which a person lacks liberty especially to determine one's course of action or way of life," Id. The Court held that involuntary servitude "necessarily means a condition...in which the victim is forced to work for [another] by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process," such as occurs through the imposition of alimony.
 40. **Jennings Reservation:** legal measure in a state proceeding to preserve the right to later litigate issues of a state case in federal court. *Jennings v. Caddo Parish School Bd.*, 531 F.2d 1331 (5th Cir.1976), [429 U.S. 897](#), 97 S.Ct. 260, 50 L.Ed.2d 180 (1976).
 41. **Judicial Discretion:** the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a

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- court's power to act or not act when a litigant is not entitled to demand the act as a matter of right; e.g., family law judges often abuse their judicial discretion by making alimony awards in violation of statutory law or privacy rights.
42. **Jurisdiction:** the power, right, or authority to interpret, apply, and declare the law (as by rendering a decision); e.g., to be removed to the State having jurisdiction of the crime -- U.S. Constitution Article IV. Example: a court of competent jurisdiction. Note: Jurisdiction determines which court system should properly adjudicate a case; e.g., state vs. federal jurisdiction.
 43. **Liberal (Broad) Construction:** an interpretation that applies a writing in light of the situation presented and that tends to effectuate the spirit and purpose of the writing; also termed equitable construction, loose construction or broad interpretation.
 44. **Liberty Interest:** a constitutional right, title or claim in freedom from governmental deprivation of liberty, esp. without due process Example: *Marshall v. Jerrico, Inc.*, [446 U.S. 238](#) (1980).
 45. **Minimally Applied:** to put a law into operation or effect in the least intrusive manner.
 46. **Miranda Rights:** relating to U.S. Supreme Court ruling, *Miranda v. Arizona*, 384 U.S. 436 (1966), establishing legal rights of an arrested criminal defendant to have an attorney and to remain silent so as to avoid self-incrimination. Example: alimony defendants have been jailed through misuse of contempt power in a quasi-criminal proceeding without benefit of *Miranda* rights.
 47. **Narrowly Construed:** see Strict Construction.
 48. **Narrowly Tailored:** a content-neutral restriction on the time, place, or manner of speech in a designated public forum; being only as broad as is reasonably necessary to promote a substantial governmental interest that would be achieved less effectively without the restriction; no broader than absolutely necessary.
 49. **Original Jurisdiction:** the jurisdiction granted a court to try a case in the first instance, make findings of fact, and render a usu. appealable decision; e.g., the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States -- U.S. Code
 50. **Over-inclusive:** (of legislation) extending beyond the class of persons intended to be protected or regulated; burdening more persons than necessary to cure the problem; e.g., alimony statutes tend to be over-inclusive by burdening a large segment of the population with involuntary servitude and infringement of privacy.
 51. **Permanent Alimony:** imposition of alimony upon a former spouse for the lifetime of either party; this form of alimony satisfies the definition of involuntary servitude and is currently illegal in Texas.
 52. **Privacy:** freedom from unauthorized intrusion: state of being let alone and able to keep certain esp. personal matters to oneself (e.g., expectation of privacy, invasion of privacy interest, right of privacy). See *Griswold v. Connecticut*, [381 U.S. 479](#) (1965) and *Roe v. Wade*, [410 U.S. 113](#) (1973).
 53. **Privacy Interest:** an interest in freedom from governmental intrusion into matters into which one has a reasonable expectation of privacy, e.g., the privacy-protected zone of marriage.

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54. **Privacy Protected Zone:** an area or aspect of life that is held to be protected from intrusion by a specific constitutional guarantee (as of the right to be secure in one's person, house, papers, or effects against unreasonable searches or seizures) or is the object of an expectation of privacy; all alimony statutes infringe upon the privacy-protected zone of marriage. See *Griswold v. Connecticut*, [381 U.S. 479](#) (1965); *Carey v. Population Serv. Int'l.*, 431 U.S. 678, 684-685 (1977); *Zablocki v. Redhail*, 434 US 374 (1978); *Roe v. Wade*, [410 U.S. 113](#) (1973); *Loving v. Virginia*, [388 U.S. 1, 12, 87 S.Ct. 1817](#) (1967); *Planned Parenthood v. Casey*, 505 U.S. 833, 859 (1992), *Littlejohn v. Rose*, 786 F.2d 785, 786 (6th Cir. 1985).
55. **Privacy Rights (right to privacy, right of privacy):** the right of a person to be free from intrusion into or publicity concerning matters of a personal nature; to be let alone, in absence of some "reasonable" or compelling public interest (e.g., state interest) in a person's activities, like those of celebrities or participants in newsworthy events. Invasion of the right to privacy can be the basis for a lawsuit for damages against the person or entity (such as a magazine or television show) violating the right. Although not explicitly mentioned in the U.S. Constitution, a penumbral right of privacy has been held to be encompassed in the Bill of Rights (esp. 14th Amendment and 4th Amendment), providing protection from unwarranted governmental intrusion into areas such as the privacy-protected zone of marriage and contraception. A person's right of privacy may be overcome by a showing that it is outweighed by a compelling state interest. (See also invasion of privacy)
56. **Pro Se:** literally, of or in itself or of oneself; i.e., to act as one's own legal counsel.
57. **Procedural Due Process:** a course of formal proceedings (as legal proceedings) carried out regularly and in accordance with established rules and principles; fundamental to procedural due process is adequate notice prior to the government's deprivation of one's life, liberty, or property, and an opportunity to be heard and defend one's rights to life, liberty, or property. The U.S. Supreme Court has held that a state violates the Due Process Clause if it imposes procedures, which effectively impede access to the appellate court system. *Evitts v. Lucey*, 469 U.S. 387, 393-94 (1985); *Smith v. Robbins*, 528 U.S. 259, 270 (2000).
58. **Pullman Abstention:** an abstention grounded on the involvement in the federal case of the interpretation of an ambiguously worded state law whose constitutionality would have to be determined by the federal court. Note: A party to a case subjected to a Pullman abstention may reserve the right to return to federal court once the state court has resolved the state law question (See Jennings Reservation). Pullman abstentions are the most common type of abstention. *Railroad Comm'n of Texas v. Pullman Co.*, [312 U.S. 496](#) (1941)
59. **Rational Basis Test:** a test less intensive than strict scrutiny or an intermediate review that involves a determination of whether a statutory or regulatory classification of persons (as by age or offender status) has a rational basis and does not deny equal protection under the Constitution; e.g., if the classification neither affects a fundamental right, nor creates a suspect classification, nor is

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- based on gender, then the rational basis test is applied -- *Charlton v. Kimata*, 815 P.2d 946 (1991).
60. **Rational State Interest**: a state interest relating to, based on, or guided by reason, principle, fairness, logic; a legitimate state interest, or a consideration of fact; e.g., age distinctions are not subject to strict scrutiny, but they must have a rational relationship to a legitimate state interest -- *In re J. M.*, 642 A.2d 1062 (1994).
 61. **Reconsideration**: re-examination or secondary review of a previous judgment within the same court, usually involving additional facts or matters of law.
 62. **Reinstatement**: to restore to a previous legal standing within a judicial proceeding.
 63. **Remedy**: the means to enforce a right or to prevent or obtain redress for a wrong; the relief (e.g., damages, restitution, specific performance, or an injunction) that may be given or ordered by a court or other tribunal for a wrong; e.g., if the contract is null and void, the remedy is to rescind and to put the parties in the position in which they were prior to the attempted agreement -- *First Nat'l Mortgage Corp. v. The Manhattan Life Ins. Co.*, 360 So. 2d 264 (1978)
 64. **Removal**: transfer of jurisdiction from state to federal court, usually requiring a civil rights or civil liberties issue, liberty interest or imminent federal question for urgent adjudication.
 65. **Res Judicata**: a matter finally decided on its merits by a court having competent jurisdiction and not subject to litigation again between the same parties.
 66. **Right to Privacy**: See Privacy Rights.
 67. **Rooker-Feldman Doctrine**: an abstention maintaining that a federal court cannot review a case that has already been decided in state court even if the state-court decision is clearly unconstitutional. Federal courts still have discretionary authority to review such cases. Due process and equal protection claims can overcome this doctrine because they are within the federal jurisdiction and are not "inextricably intertwined" with a state-court action. *Rooker v. Fidelity Trust Co.*, [263 U.S. 413](#) (1923), and *District of Columbia Court of Appeals v. Feldman*, [460 U.S. 462](#) (1983).
 68. **Scrutiny**: searching study or inquiry; judicial investigation into the constitutionality of a statutory classification of persons under the equal protection clause of the U.S. Constitution.
 69. **Social Status**: the condition of a person in the eyes of the law based upon based upon his or her socioeconomic classification or statutory standing within a suspect classification, such as race, sex or marriage.
 70. **Statutory Rights**: assignment of rights enacted, created, regulated, or defined by state or federal statutes; these rights are subordinate to constitutional and fundamental rights.
 71. **Strict**: characterized by narrowness; not demonstrating a broad or liberal view
Example: **strict** construction.
 72. **Strict Construction**: a narrow interpretation (as of a writing or legislation) based on a literal or technical understanding of the words used; an interpretation that considers only the literal words of a writing (i.e., teleological interpretation); a construction that considers statutory or contractual words narrowly as in their

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- historical context with highly restrictive readings (i.e., strict interpretation); philosophy underlying of strict interpretation of statutes.
73. **Strict Scrutiny**: the highest level of judicial scrutiny that is applied esp. to a law that allegedly violates equal protection in order to determine if it is narrowly tailored to serve a compelling state interest.
 74. **Subject-Matter Jurisdiction**: the jurisdiction of a court over the subject, type, or cause of action of a case that allows the court to issue a binding judgment (see original jurisdiction); e.g., housing court lacks *subject matter jurisdiction* to adjudicate fraudulent conveyance actions -- *National Law Journal*
 75. **Substantive Due Process**: a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual; substantive due process is a limit on the government's power to enact laws or regulations that affect one's life, liberty, or property rights; it is a safeguard from governmental action that is not related to any legitimate government interest or that is unfair, irrational, or arbitrary in its furtherance of a government interest; e.g., infringement of privacy rights by alimony laws.
 76. **Substituted Judgment**: a decision usually regarding medical treatment made by a person (as a family member) on behalf of a person who is incompetent and unable to decide for himself or herself; some family law judges have erroneously claimed to use substituted judgment in alimony cases.
 77. **Summary Judgment**: judgment that may be granted upon a party's motion when the pleadings, discovery, and any affidavits show that there is no genuine issue of material fact and that the party is entitled to judgment in its favor as a matter of law. Note: According to Rule 56 of the Federal Rules of Civil Procedure, a motion for summary judgment may be made at any time after 20 days following the commencement of the action. Summary judgment may be granted on all or on just part of a case.
 78. **Suspect (Protected) Class**: a class of individuals marked by immutable characteristics (e.g., race or marital status) and entitled to equal protection of the law by means of judicial scrutiny of a classification that discriminates against or otherwise burdens or affects them; e.g., a classification that does not impact a suspect class or impinge upon a fundamental constitutional right will be upheld if it is rationally related to a legitimate government interest -- *Doe v. Poritz*, 622 A.2d 367 (1995) Note: Suspect class and suspect classification are often used synonymously in regard to a group of persons, but suspect class does not refer to the process of classifying itself.
 79. **Suspect Classification**: a statutory classification that is subject to strict scrutiny by the judiciary of its consistency with constitutional Equal Protection guarantees because it affects a suspect class, such as race, sex or marital status.
 80. **Temporary Alimony**: generally a short-term form of alimony usually demanded by court order while a person (almost always the husband) is still married; because it is enforced while a person is married, temporary alimony violates the Equal Protection clause by discriminating against persons based upon social status and gender.
 81. **Thirteenth Amendment**: U.S. Constitutional Amendment abolishing slavery and involuntary servitude. Section 1. Neither slavery nor involuntary servitude, except

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- as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.
82. **Vagueness**: lacking clear expression, having imprecise meaning, or stated in indefinite legal terms; e.g., alimony statutes are inherently vague because they are applied on a discretionary basis with almost infinite variations.
83. **Younger Abstention**: an abstention grounded on the plaintiff's invocation of federal jurisdiction for the purpose of restraining an ongoing (usu. Criminal) state proceeding (comity) that has been brought in good faith and not for harassment, *Younger v. Harris*, [401 U.S. 37](#) (1971). In a more recent opinion, the U.S. Supreme Court stated, "Younger abstention is mandated if the State's interests in the proceedings are so important that exercise of the federal judicial power would disregard the comity extended between the States and the National Government." *Texaco Inc. v. Pennzoil Co.*, 784 F.2d 1133, 1152 (2d Cir. 1986) *overruled on procedural grounds*, 481 U.S. 1 (1987).