

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

U.S. DISTRICT COURT  
N.D. OF N.Y.

**ORIGINAL FILED**

APR 29 2004

LAWRENCE K. BAERMAN, CLERK  
ALBANY

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**HAROLD L. ROSENBERGER**

Plaintiff, pro se

- v -

**NEW YORK STATE OFFICE OF  
TEMPORARY AND DISABILITY  
ASSISTANCE** and,

**ROBERT DOAR**, Commissioner, Office of  
Temporary and Disability Assistance, in his  
official capacity and,

**ULTSER COUNTY FAMILY COURT**

Defendants.

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**04-CV-0475**

Civil Case No. \_\_\_\_\_

**GLS / DRH**

Assigned To:

**VERIFIED COMPLAINT  
WITH EXHIBITS**

**CLAIMS: NEW YORK STATE'S INCOME BASED CHILD SUPPORT STATUTES  
IMPERMISSIBLY INFRINGE THE FEDERAL RIGHT TO PRIVACY**

"The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by this Court... As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made." - *Troxel v. Granville*, 530 U.S. 57; 120 S.Ct. 2054 (2000).

## INTRODUCTORY STATEMENT

- 1) Now comes the Plaintiff, **HAROLD L. ROSENBERGER**, who asserts that New York State's Income Based child support statutes, New York State Family Court Act §413 (hereinafter "FCA") and Domestic Relations Law §240 (hereinafter, "DRL"), impermissibly infringe the fundamental Federal Right to Privacy, in the Privacy Protected Zone of Parenting.
- 2) In addition, the Plaintiff asserts that New York State's Income Based child support statutes impermissibly infringe the Property Interest right under the 14th Amendment of the Federal Constitution.
- 3) This action arises because the Plaintiff has suffered an injury in fact; i.e., his wages are garnished. He has been deprived of his fundamental Right to Privacy and Property Right under the 14th Amendment of the Federal Constitution because of the challenged statutes.
- 4) The United States Supreme Court has long held that the care, maintenance, companionship, educational choices and general child rearing decisions related to raising one's children are fundamental rights (Right to Privacy) protected by the Federal Constitution. As such, any action by a State legislature that intrudes upon these fundamental rights is unconstitutional until validated by a compelling State interest applied in the least intrusive manner.
- 5) The Plaintiff asserts that how much money a parent spends for the care and maintenance of his or her child is a parenting decision and thus is a constitutionally guaranteed fundamental right. The State government is not permitted to intrude upon this fundamental right without proof of demonstrable harm to the child. By mandating child support based on combined parental income, New York State FCA and DRL (see Exhibit "1") exceed the constitutionally

permitted right of the State to intrude in the Federal Right to Privacy of a parent in the Privacy Protected Zone of Parenting.

New York State FCA §413[1][b] and DRL §240[1-b]) mandate that a divorced parent spend a percentage of their income on his or her children. The State of New York does not mandate that a married parent spends a percentage of his income for his child.

- 6) All New York State parents are constitutionally entitled to be free of government intrusion in the care and maintenance of their children unless there is a proven harm to said children.
- 7) A parent is a parent... married, single, or divorced.

### **STANDING, JURISDICTION and VENUE**

- 8) The jurisdiction of this Court is invoked pursuant to federal question subject matter and the provisions of 28 U.S.C. 1331.
- 9) The jurisdiction of this Court is invoked pursuant to Article III Section 2 of the Federal Constitution; an actual “case or controversy” exists because the Plaintiff is currently subject to the jurisdiction of the Defendants and the laws of the State of New York. The challenged statutes of the State of New York have been exercised by all of the Defendants against the Plaintiff. The Plaintiff has been injured, and continues to be injured, by the challenged statutes. He suffers "injury in fact" since the challenged statutory provisions are addressed to parents like him, who must obey the statutory provisions and incur loss of liberty interest and economic injury or disobey the statute and suffer sanctions. The Plaintiff alleges that such a personal stake in the outcome of the controversy assures that “concrete adverseness”

which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.

- 10) The jurisdiction of this Court is invoked where the federal subject matter is an independent federal question and where the independent question is not inextricably intertwined with any state court judgment.
- 11) Separately, and in addition to, the Plaintiff presents a general challenge to the constitutionality of New York State FCA and DRL and the provisions of applicable sections of New York State Law that mandate child support based on combined parental income but which are not specifically asserted and/or are inadvertently omitted in this action.
- 12) Plaintiff is not requesting a divorce decree, alimony, or child custody decision from this Court. Plaintiff is not requesting that a State court judgment be overturned, altered, or modified in anyway by this Court.
- 13) There is no bar to declaratory relief of independent federal questions and/or to a general constitutional challenge of state law.
- 14) The authority of this Court is further invoked pursuant to the Federal Declaratory Judgment Act and the provisions of 28 U.S.C. 2201. The authority of this Court is invoked pursuant to the provisions of applicable sections of the U.S. Code that are not specifically asserted and/or are inadvertently omitted in this action that pertain to declaratory relief and the jurisdiction of this court.
- 15) The jurisdiction of this Court is invoked where the merits of the instant matter are capable of repetition but evade meritorious review.
- 16) Subject matter jurisdiction of this action is proper because an actual controversy exists among the parties as to which a declaratory judgment setting forth their rights and obligations

under Federal law is necessary and will resolve the active issue, i.e. whether the statutes that mandate a parent to spend a certain percentage of their income on his or her children without a showing of demonstrable harm are constitutional.

17) One or more of the Defendants reside in or are located in Ulster County, New York.

Therefore, venue is proper pursuant to 28 U.S.C. 1391 (b) (1) and (2).

### **PRO SE STANDARD OF REVIEW**

18) Because the Plaintiff is pro se, the Court has a higher standard when faced with a motion to dismiss, *White v. Bloom*, 621 F.2d 276 makes this point clear and states:

“A court faced with a motion to dismiss a pro se complaint... must read the complaint's allegations expansively, *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972), and take them as true for purposes of deciding whether they state a claim.” *Cruz v. Beto*, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081, 31 L. Ed. 2d 263 (1972).

Moreover, "the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." *Bonner v. Circuit Court of St. Louis*, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974)). Thus, if this court were to entertain any motion to dismiss this court would have to apply the standards of *White v. Bloom*.

Furthermore, if there is any possible theory that would entitle the Plaintiff to relief, even one that the Plaintiff hasn't thought of, the court cannot dismiss this case.

### **PARTIES**

19) HAROLD L. ROSENBERGER, the Plaintiff, is an Ulster County, New York State resident.

Plaintiff is a statutorily designated non-custodial parent pursuant to a final decree of the

Defendant Ulster County Family Court and is subject to New York FCA Article 4 and DRL Article 13.

20) New York Office of Temporary and Disability Assistance (hereinafter “OTDA”), a “political subdivision” and as such not subject to Eleventh Amendment immunity in federal court, is a proper defendant. The OTDA is the State agency designated to enforce child support orders by collecting child support from parents pursuant to the FCA Article 4 and DRL Article 13, as well as CPLR §§5241 and 5242.

21) Defendant Robert Doar, Commissioner of OTDA, is the state agent directing the agency whose mission is, *inter alia*, the collection of child support, i.e., enforcement of the challenged statutes. “Under the Supreme Court precedent, when a plaintiff challenges the constitutionality of a rule of law, it is the state official designated to enforce that rule who is the proper defendant, even when that party has made no attempt to enforce the rule.” *Diamond v. Charles*, 476 U.S.54, 64, 106 S. Ct. 1697, 1704, 90 L.Ed. 2d 48 (1986).

22) Ulster County Family Court, a “political subdivision” and as such not subject to Eleventh Amendment immunity in federal court, is a proper defendant. Ulster County Family Court is the State agent charged with making awards of child support pursuant to the FCA Article 4 and DRL Article 13, as well as CPLR §§5241 and 5242.

23) NOTICE is given to interested party Cynthia B. Cashman (formerly Cynthia B. Rosenberger), former wife of the Plaintiff and the obligee of the child support award.

24) NOTICE is given to the Attorney General of the State of New York because of the declaratory judgment claim challenging the constitutionality of New York State’s Income Based Child Support Statutes.

## **ISSUE OF PARENTAL SPENDING FOR A CHILD, i.e. CHILD SUPPORT**

"The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Stanley v. Illinois*, 405 U.S. 645 (1972), citing *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring).

25) Any State statute to which the Federal Right to Privacy attaches is presumed unconstitutional unless the State proves a compelling interest applied in the least intrusive manner, i.e. strict scrutiny. The Plaintiff asserts that the amount of spending by a parent for his or her child, i.e. child support, is a parenting decision. There is only a minimum amount of child support that the State can justify to prevent harm to a child. Any amount over that minimum is unconstitutional because it intrudes in the Right to Privacy of Parenting and strips property rights from the parent. Any amount over the minimum amount to prevent harm to the child represents the State substituting its judgment for the parent's.

More importantly, the challenged statutes are enforced against the parent without the State ever determining if any harm has befallen the children related to the parent's spending for them.

26) The standard for a compelling State interest to justify State intrusion in parental decisions is no longer the best interests of a child but prevention of demonstrable harm to the child.

27) The Plaintiff asserts that the New York State income based child support guidelines in excess of the minimal amount needed to prevent harm to the child represent State intrusion in the Privacy Protected zone of care and maintenance, i.e. spending, i.e. child support, which is a parenting decision. As such, New York State child support statutes based on combined

parental income are unconstitutional. The State lacks the authority to mandate spending for a child based on income.

28) All New York State statutorily designated non-custodial parents are subject to the ongoing threat of Social Security garnishment, wage garnishment, driver's license suspension, contempt proceedings and imprisonment, as well as the stigma associated with such State action.

**PRESUMPTION THAT A FIT PARENT ACTS IN THEIR  
CHILDREN'S BEST INTERESTS**

29) There is a presumption that a fit parent acts in his or her children's best interests. As the United States Supreme Court has stated:

"There is a presumption that fit parents act in their children's best interests, *Parham v. J. R.*, 442 U. S. 584, 602; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children." *Reno v. Flores*, 507 U. S. 292, 304.

Consequently, the State of New York cannot use the children's best interests standard to substitute its' judgment for a fit parent. The State cannot usurp a fit parent's decision making related to parental spending for their children, i.e., child support without either a demonstration the parent is unfit or there is proven harm to the child.



## RELEVANT LAW

- 30) New York FCA §413[1][b] and DRL §240[1-b][b] define that “child support” is to be used for the “care, maintenance and education of any unemancipated child under the age of twenty-one years.” These statutes also define “child support percentage” in terms of combined parental income and the number of children at issue.
- 31) Furthermore, FCA Article 4, DRL Article 13, and CPLR §§5241 and 5242 mandate child support and provide for enforcement authority with wage garnishment, driver license suspension, contempt and imprisonment.
- 32) The FCA and DRL provisions mandate that the State invade the family, 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, parental spending, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties and family during their marriage granting the judiciary a broad range of discretion to apply a property stripping statute with a standard of equity.
- 33) New York State CPLR §§5241 and 5242 and FCA §440 give the Defendants the authority to issue a wage execution and deduction against all statutorily designated non-custodial parents in order to enforce child support awards.
- 34) The United States Constitution’s Fourteenth Amendment contains a recognized Right to Privacy. This fundamental Right to Privacy encompasses the Privacy Protected Zone of Parenting. The Plaintiff asserts that FCA Article 4, DRL Article 13, and CPLR §§5241 and

5242 impermissibly infringe the Federal Right to Privacy to the extent they mandate the parent to support his or her children beyond a standard to prevent harm to them. They substitute the State's judgment for the parents' judgment as to the best interest of his or her children.

The challenged statutes do not mandate a review to determine if demonstrable harm exists to the children in determining the amount of support that the parent must provide.

35) The State is not permitted to determine care and maintenance, i.e. spending, i.e. child support, decisions of a fit parent based on his or her income in an intact marriage other than to prevent harm to a child. There is no basis for the State to have a statute that mandates a fit divorced parent should support their child to a different standard, i.e. the standard of the best interests of a child. Furthermore, the State must not so mandate absent a demonstration that the choice of support provided by the parent has resulted in harm to his or her children.

36) The U.S. Supreme Court has mandated that the standard for the State to intrude in parenting decisions relating to grandparent visitation is no longer "best interests of the child." *Troxel v. Granville*, 530 U.S. 57; 120 S.Ct. 2054 (2000). This court should recognize the changed standard of State intrusion in parenting should also apply to the context of parents' care, control, and maintenance, i.e. spending, i.e. child support decisions, on behalf of his or her children.

### **FACTS**

37) HAROLD L. ROSENBERGER, the Plaintiff, is the natural father of three children, Stacey Lynn, born May 18<sup>th</sup>, 1987, Kelley Anne, born May 18<sup>th</sup>, 1987, and Amy Michele, born June 9<sup>th</sup>, 1992. Interested party, Cynthia B. Cashman (formerly Cynthia B. Rosenberger), is the

natural mother of said children. Mr. Rosenberger and Mrs. Cashman were married on March 17<sup>th</sup>, 1986 and divorced on June 17<sup>th</sup>, 1999.

38) Interested party Cynthia B. Cashman filed a petition with Defendant Ulster County Family Court seeking sole custody of the children at issue. As a result, HAROLD L. ROSENBERGER, the Plaintiff, was designated a non-custodial parent and is subject to New York FCA Article 4 and DRL Article 13 pursuant to a final decree by defendant Ulster County Family Court dated August 21, 2001.

39) Subsequently, interested party Cynthia B. Cashman filed a petition with Defendant Ulster County Family Court seeking child support. Pursuant to a Findings, Decision and Order of the Ulster County Hearing Magistrate dated January 24<sup>th</sup>, 2002 (see Exhibit “2”), Plaintiff’s child support obligation was set at \$325.69 per week and was directed to pay 73% of all unreimbursed health expenses. The Findings, Decision and Order of the State court provided as Exhibit “2” proves that the Plaintiff has suffered real injury and thus has standing to bring this action; it is not provided for this federal court to review, alter, or modify in anyway.

40) Pursuant to New York CPLR §§5241 and 5242 and FCA §440, Ulster County Child Support Enforcement Unit, the county arm of Defendant OTDA, issued a wage execution dated March 21<sup>st</sup>, 2002 (see Exhibit “3”). This wage execution proves that the Plaintiff has suffered real injury and thus has standing to bring this action.

## CAUSE OF ACTION

NEW YORK STATE CHILD SUPPORT STATUTES BASED ON PARENTAL INCOME  
(NEW YORK STATE FAMILY COURT ACT §413, DOMESTIC RELATIONS LAW §240)  
IMPERMISSIBLY INFRINGE THE U.S. CONSTITUTION FOURTEENTH AMENDMENT  
RIGHT TO PRIVACY IN THE PRIVACY PROTECTED ZONE OF PARENTING

- 41) The Plaintiff incorporates 1 to 40 herein.
- 42) The Plaintiff requests a declaratory judgment that New York State Income Based Child Support Statutes FCA §413 and DRL §240 impermissibly infringe the 14<sup>th</sup> Amendment Due Process Right to Privacy in the Privacy Protected Zone of Parenting of all divorced parents in New York.
- 43) It is well established that personal decisions involving marital and familial relations - marriage, procreation, contraception, family relationships, and child rearing and education - are constitutionally protected from government intrusion. In these areas there are limitations on the State's power to intrude in this Right to Privacy Protected Zone to substantially regulate conduct.
- 44) Strict scrutiny of the facial language of a statute is the judicial standard of review required when a fundamental constitutional right is implicated.
- 45) The FCA and DRL statutes define the amount of child support that the Court must order based on percentage of combined parental income. The State lacks authority, and cannot mandate care and maintenance, i.e. spending, i.e. child support for a child based on income. The parent's fundamental federal Right to Privacy in the Privacy Protected Zone of Parenting is impermissibly infringed; parental care, control and maintenance, i.e., spending on a child, i.e. child support, is a parenting decision.

46) The standard for a compelling state interest to justify State intrusion into parental decisions is no longer the best interests of a child but prevention of demonstrable harm to the child.

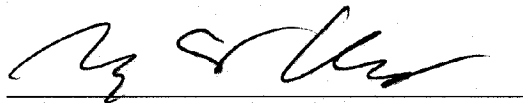
47) Because of the aforementioned, the Plaintiff requests this court declare New York income based child support statutes (FCA §413 and DRL Article §240) impermissibly infringe the U.S. Constitution Fourteenth Amendment, Right to Privacy and as such are null and void.

**PRAYER**

“Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” - *Troxel v. Granville*, 530 U.S. 57; 120 S.Ct. 2054 (2000).

- 48) Wherefore the Plaintiff, Harold L. Rosenberger, prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this matter, and:
- a) Enter a declaratory judgment that New York State Family Court Act §413 and Domestic Relations Law §240 provisions impermissibly infringe the Federal Right to Privacy and Property Interest (Due Process) clause of the Fourteenth Amendment and as such are null and void;
  - b) As Plaintiff has incurred costs and fees to prosecute this action he requests an award for all costs and reasonable fees incurred;
  - c) Provide any other appropriate relief.

Respectfully submitted,



Harold L. Rosenberger  
114 Vista Drive  
Highland, New York 12528  
845-691-8835

Dated: April 26, 2004

**Plaintiff:**

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**Defendants:**

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Robert Doar, Commissioner  
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**Interested Parties:**

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**VERIFICATION**

**HAROLD L. ROSENBERGER**, being duly sworn, deposes and says:

That deponent is the Plaintiff in the above-entitled action; that deponent has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to deponent's own knowledge; except as to matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.




Harold L. Rosenberger  
114 Vista Drive  
Highland, New York 12528  
845-691-8835

STATE OF NEW YORK

COUNTY OF ORANGE

Sworn to before me this  
April 26, 2004

  
Notary Public

JOAN D. LUCHETTE  
Notary Public, State of New York  
Dutchess County, No. 011U4968008  
My Commission Expires 6/11/2006

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