UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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HAROLD L. ROSENBERGER

Plaintiff,

- v -

1:04-CV-0475
(GLS)

NEW YORK STATE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE, et al.,

Defendants.

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**PLAINTIFF'S MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law dated December 27th, 2004, and upon the pleadings and all prior papers by and between the parties of this action, the Plaintiff, pro se, pursuant to Rule 59(c) of the Federal Rules of Civil Procedure, Local Rule 7.1(g) and the standard of review set forth in Munafo v. Metro. Transp. Auth, 381 F.3d 99, moves this Court for Reconsideration of its DECISION AND ORDER of dismissal dated December 20th, 2004, and granting such other and further relief as the Court may deem just and proper.

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Dated: December 27th, 2004

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UNITED STATES DISTRICT COURT
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HAROLD L. ROSENBERGER

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- v - 1:04-CV-0475 (GLS)

NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, et al.,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION**

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Dated: December 27th, 2004

## TABLE OF CONTENTS

**Introduction**.......... 4

**Point I - Standard for Reconsideration**.......... 4
**Point II – Rooker-Feldman Doctrine: "Inextricably Intertwined" Standard**.......... 5
**Point III – Rooker-Feldman Doctrine: Facial Constitutional Challenge**.......... 6

**Conclusion**.......... 8
**Certificate of Service**.......... 9

## Introduction

Plaintiff timely files for reconsideration of the December 20th, 2004, DECISION AND ORDER dismissing the Complaint where the district court has determined that: (1) the court lacks jurisdiction to hear the Plaintiff's claims; and (2) the Plaintiff's "claims fall squarely within the *Rooker-Feldman* doctrine".

## Point I - Standard for Reconsideration

Reconsideration is appropriate under FRCP 59(e) and Local Rule 7.1(g) because the Plaintiff asserts a "clear error of law" is present in the court's December 20th, 2004 DECISION AND ORDER of dismissal. The Second Circuit Court of Appeals has held in Munafo v. Metro. Transp. Auth, 381 F.3d 99; 2004 U.S. App. LEXIS 17945; 150 Lab. Cas. (CCH) P59,896; 65 Fed. R. Evid. Serv. (Callaghan) 223; 21 I.E.R. Cas. (BNA) 1614,

> Although Rule 59(e) does not prescribe specific grounds for granting a motion to alter or amend an otherwise final judgment, we agree with our sister circuits that district courts may alter or amend judgment "to correct a clear error of law or prevent manifest injustice." Collison v. International Chem. Workers Union, Local 217, 34 F.3d 233, 236 (4th Cir. 1994), quoting Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993); [*13] see also Dixon v. Wallowa County, 336 F.3d 1013, 1022 (9th Cir. 2003); N. River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995). A district court's denial of a party's motion to alter or amend judgment under Rule 59(e) is also reviewed for an abuse of discretion. Devlin v. Transportation Communs. Int'l Union,175 F.3d 121, 132 (2d Cir. 1999).

## Point II – Rooker-Feldman Doctrine: "Inextricably Intertwined" Standard

The standards for determining if the Plaintiff's federal claims are "inextricably intertwined" with the state court judgment under the *Rooker-Feldman* doctrine are set forth in Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25, 107 S. Ct. 1519, 1533, 95 L. Ed. 2d 1 (1987):

> While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

This standard has been cited by the Second Circuit Court of Appeals in Hachamovitch v. Debuono, 159 F.3d 687, 697 (2d Cir. 1998).

The Plaintiff's federal claim is this: that New York State's Income Based child support statutes, New York State Family Court Act §413 and Domestic Relations Law §240, impermissibly infringe the fundamental Federal Right to Privacy, in the Privacy Protected Zone of Parenting. Complaint at ¶¶ 1, 5, 11, 34, 42.

The Plaintiff respectfully asserts that the court has made a clear error of law by failing to address whether the Plaintiff's federal claim is "inextricably intertwined" with the state court's judgment. Instead, the court merely substituted the state statutes for the Plaintiff's federal claim. "First, it is clear that the FCA and DRL statutes are "inextricably intertwined" with Rosenberger's state court judgment…" pg. 17 of DECISION AND ORDER dated December 20th, 2004.

Furthermore, for the Plaintiff's federal claims to be "inextricably intertwined" with the state court judgment the relief requested, if it were to be granted, would have to have the effect of nullifying or voiding his state court judgment. Focus v. Allegheny County

Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996) (quoting Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995)). The Plaintiff is only seeking declaratory relief from the federal district court. Complaint at ¶¶ 16, 24, 42, 48. He is not seeking injunctive relief or damages, nor any enforcement of said declaratory relief.

> The Declaratory Judgment Act of 1934, 28 U.S.C. 2201, permits a federal court to declare the rights of a party whether or not further relief is or could be sought, and we have held that under this Act declaratory relief may be available even though an injunction is not. Steffel v. Thompson, 415 U.S. 452, 462 (1974). But we have also held that the declaratory judgment statute "is an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." Green v. Mansour, 474 U.S. 64 (1985)

The Plaintiff requests a declaratory judgment that New York State's income-based child support statutes are unconstitutional. "This would not require the district court to review the state […] court decision." Centifanti v. Nix, 865 F.2d 1422, 1429 (3d Cir. 1989). The declaratory judgment the Plaintiff seeks "is prospective and directed toward 'the rules and procedures'" that determines child support "rather than toward the decision of the state […] court." Id. at 1429.

## Point III – Rooker-Feldman Doctrine: Facial Constitutional Challenge

The Plaintiff respectfully asserts that the court has made a clear error of law by failing to address the second independent element of the *Rooker-Feldman* doctrine. The Plaintiff has raised 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…" Complaint at ¶¶ 11, 13.

> The Supreme Court drew a distinction--potentially critical in the present case--between a challenge to the rule governing bar admission and a challenge to a judgment of a state court applying that rule. Because promulgation of a rule is a non-judicial act, a federal court would have jurisdiction over a general challenge to state bar rules. Hachamovitch v. Debuono, 159 F.3d 687, 694 (2d Cir. 1998). See also District of

Columbia Court of Appeals v. Feldman, 460 U.S. 462, 485-86; 103 S. Ct. 1303, 1316-17 (1983).

Such a general challenge falls squarely within a recognized exception to *Rooker-Feldman* and will unequivocally defeat a subsequent Motion to Dismiss pursuant to the second element of the *Rooker-Feldman* doctrine - raising a general challenge to state law - which is independent of the first element - a specific grievance. See VanHarken v. City of Chicago, 103 F.3d 1346, 1349 (7tth Cir. 1997).

## Conclusion

Plaintiff's federal claims are not "inextricably intertwined" with the state court judgment and are not barred by the *Rooker-Feldman* doctrine.

Plaintiff has properly plead a general constitutional challenge to New York State law.

Plaintiff has properly stated a claim and requests declaratory relief that New York's statutory child support scheme, Family Court Act §413 and Domestic Relations Law §240, be found unconstitutional on its face.

Plaintiff meets all of the federal requirements to proceed to the merits.

Plaintiff respectfully requests that the district court reconsiders the aforesaid issues first addressed in this instant motion. And as a matter of law, Plaintiff moves this district court to withdraw its dismissal of the Complaint.

Respectfully submitted,

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Dated: December 27th, 2004

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## Certificate of Service

I do hereby certify that I have on this 27th day of December, 2004 served this Notice of Motion For Reconsideration and Memorandum of Law In Support of Plaintiff's Motion For Reconsideration prior to filing the same, by depositing a copy thereof, prepaid, in the Federal Express Mail, properly addressed upon,

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