

Commonwealth of Massachusetts

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

CIVIL ACTION NUMBER: 06-1092-B

ERNEST ORTIZ

Plaintiff,

v.

ALAN LeBOVIDGE, COMMISSIONER
MASSACHUSETTS DEPARTMENT OF REVENUE
(In his official capacity),
CATHERINE J. ORTIZ
Defendants.

PLAINTIFF'S MOTION TO DENY MOTION TO DISMISS

Plaintiff, *pro se* with assistance of counsel, pursuant to Mass. Civ. P. Rule 7 (b) moves this court to deny Defendant Alan LeBovidge's, Commissioner Massachusetts Department of Revenue, motion to dismiss. In support he offers,

1. The Plaintiff's complaint states a cause of action.
2. G.L. 231A (declaratory judgment) is to be liberally construed.
3. The Plaintiff has standing to request the declaratory and injunctive relief requested because he has suffered, is suffering and will continue [to] suffer injury from the challenged alimony statute (G.L. c. 208, § 34). The complaint delineates the active, real ongoing injury.
4. The Plaintiff's complaint does not ask relief for him to keep his finances private. (This is not relevant to a motion to dismiss but rather to a motion for summary judgment.)

5. The Massachusetts Constitution does not expressly recognize the authority to award alimony as being a judicial power for whose exercise the Legislature is empowered to make provision. (Pt. 2, c. 3, art.5 Mass Const.)

(This is not relevant to a motion to dismiss but rather to a motion for summary judgment.)
6. Rather, Pt. 2, c. 3, art.5 Mass Const. merely defines which part of the judiciary shall have jurisdiction over hearing relating to the legislature's law making on the subject of marriage, divorce and alimony statutes.

(This is not relevant to a motion to dismiss but rather to a motion for summary judgment.)
7. The Plaintiff's complaint does not raise an equal protection claim based on gender. He argues an equal protection claim grounded in the principle that he (and many divorcing Massachusians) bear an undue burden of alimony compared with similarly situated, i.e. divorcing Massachusians, not judicially ordered to bear the undue burden of alimony.

(This is not relevant to a motion to dismiss but rather to a motion for summary judgment.)

Wherefore for the above stated reasons the Plaintiff moves this court to Deny

Defendant's Motion to Dismiss.

Respectfully submitted,

Ernest Ortiz, *pro se*, with assistance of counsel
90 Weeden Road
Fairhaven, MA 02719
508-997-0920
llswede12@aol.com

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