

NAME, :SUPERIOR COURT OF NEW JERSEY
Plaintiff, :CHANCERY DIVISION, FAMILY PART
:BURLINGTON COUNTY
:
v. :Docket No.
:
NAME :CIVIL ACTION
Defendant. :

**MOTION FOR DECLARATORY JUDGMENT TO CHALLENGE THE
PERMANENT ALIMONY AND PROPERTY DISTRIBUTION
PROVISIONS (N.J.S.A. 2A:34-23 et al)
AS VIOLATIVE OF NEW JERSEY CONSTITUTION
ARTICLE I PARAGRAPH 1 RIGHT OF PRIVACY AND
ARTICLE III PARAGRAPH 1 SEPARATION OF POWERS**

“The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses.” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 847 (1992)

INTRODUCTION

Comes now the Respondent NAME, *pro se*, pursuant to N. J.S.A. 2A:16-52 Declaratory Judgment statute to request this court declare N.J.S.A. 2A:34-23, permanent alimony statute impermissibly infringes Article I Paragraph 1 N.J. Const. Right to Privacy and Article III Paragraph 1 N. J. Const. Separation of Powers.

In support he offers:

1. N.J.S.A. 2A:16-52 declaratory judgment is to be liberally construed, N.J.S.A. 2A:16-51.
2. A declaratory judgment on the constitutionality of N.J.S.A. 2a:34-23 et al will terminate the uncertainty of the application of the statute to this divorce proceeding.
3. This Court has jurisdiction pursuant to N.J.S.A. 2A:16-52 to address the constitutionality

of N.J.S.A. 2A:34-23 et al permanent alimony provisions.

4. PLAINTIFF NAME has standing pursuant to N.J.S.A. 2A:16-53 as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted N.J.S.A. 2A:34-23 et al provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.

Statutes

5. N.J.S.A. 2A:34-23 et al require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, with threat of wage garnishment, lose of driver's license, loss of professional license, contempt and imprisonment.
6. The spousal support provisions mandate that the state invade the marriage, 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, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions. This court did so.
7. The Respondent is before this court involuntarily as a current alimony payer subject to the challenged statute and its enforcement via contempt and incarceration.

Constitution

8. Article I Paragraph 1 N.J. Const. Right to Privacy restricts the government from intruding into the private life of any person without a compelling state interest minimally applied.
9. Federal Constitution and Judicial rulings have determined the existence of a right of

privacy that includes a Privacy Protected Zone of “personal decisions relating to marriage,” i.e. here divorce. (U.S. Constitution Fourteenth Amendment Due Process Clause; Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985); Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int’l., 431 U.S. 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail, 434 US 374 (1978); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985)), N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003).

10. N.J.S.A. 2A:34-23 et al impermissibly infringe Article I Paragraph 1, N.J, Const. Separation of Powers as the impermissible delegation by the legislature to the judiciary of exclusive legislative law making powers.
11. PLAINTIFF NAME is entitled to recover all costs and a reasonable attorneys’ fee for required attorney consultation to pursue this declaratory relief.

Prayer for Relief

“It is well settled that . . . if a law ‘impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.’”
Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden, 466 U.S. 55, 76 (1980))

WHEREFORE PLAINTIFF NAME prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Enter a declaratory judgment that PLAINTIFF NAME and all New Jerseyites have a constitutional right under the Privacy amendment to be free of the undue burden of the postdissolution permanent spousal support provisions of N.J.S.A. 2A:34-23 et al;
2. Enter a declaratory judgment that PLAINTIFF NAME has a constitutional right under the

equal protection laws of New Jersey to be free of the undue burden of N.J.S.A. 2A:34-23 et al:

3. Enter a declaratory judgment that N.J.S.A. 2A:34-23 et al impermissibly infringes Article III Paragraph N.J. Const. Separation of Powers, and; impermissibly infringe Article I Paragraph 1. N.J. Const. Right to Privacy.
4. Awarding PLAINTIFF NAME all costs and a reasonable attorneys' fee for the prosecution of this declaratory judgment proceeding.

Respectfully submitted,

PLAINTIFF NAME *pro se*

January 29, 2006

Address?

Phone?

CERTIFICATE OF SERVICE

I hereby certify that on the DATE, I caused a true and accurate copy of this Motion to be send by U.S. mail to Esq, Attorney For RESPONDENT NAME, at ADDRESS