

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF ALBANY**

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**KENNETH J. LEWIS, DENISE A. LEWIS, ROBERT C. HOUCK, JR.,
AND ELAINE A. HOUCK,**

Index No: _____

Plaintiffs,

-against-

**AMENDED VERIFIED
COMPLAINT**

**THE NEW YORK STATE DEPARTMENT OF CIVIL SERVICE AND
NANCY G. GROENWEGEN *in her official capacity as the President
of the New York State Department of Civil Service,***

Defendants.

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The Plaintiffs, by counsel, state the following in support of their Verified Complaint:

PRELIMINARY STATEMENT

1. This is an action against the New York State Department of Civil Service and Nancy G. Groenwegen in her official capacity as the President of the New York State Department of Civil Service. Plaintiffs commence this action pursuant to New York State Finance Law Section 123-b, the New York State Constitution and the New York Administrative Procedures Act Section 202.

2. Plaintiffs are New York State taxpayers and allege that the Defendants have exceeded their constitutional authority and acted illegally by redefining the term “spouse” as found in New York Civil Service Law Section 164 to include same-sex partners purportedly “married” outside the State of New York. Consequently, the Defendants have directed all State and local agencies to provide health insurance benefits to these individuals at taxpayer expense.

3. Defendants have no authority to recognize such “spouses” nor do they have the authority to expend State resources or otherwise provide benefits to these out-of-state relationships. Consequently, Plaintiffs seek a declaratory judgment and a permanent injunction against the Defendants pursuant to New York State Finance Law § 123-b *et seq.* and New York common-law.

PARTIES

4. Kenneth J. Lewis is a natural person and at all times relevant to this action was and is a resident and taxpayer of the State of New York, County of Rensselaer, and City of Valley Falls.

5. Denise A. Lewis is a natural person and at all times relevant to this action was and is a resident and taxpayer of the State of New York, County of Rensselaer, and City of Valley Falls.

6. Robert C. Houck, Jr. is a natural person and at all times relevant to this action was and is a resident and taxpayer of the State of New York, County of Albany, and City of Latham.

7. Elaine A. Houck is a natural person and at all times relevant to this action was and is a resident and taxpayer of the State of New York, County of Albany, and City of Latham.

8. Defendant New York State Department of Civil Service is an agency of the State of New York duly organized pursuant to New York State Law. This Defendant maintains its principle place of business at Alfred E. Smith State Office Building, Albany, New York 12239.

9. Defendant Nancy G. Groenwegen is sued in her official capacity as the President and Commissioner of the New York State Department of Civil Service. This

Defendant maintains her principle place of business at Alfred E. Smith State Office Building, Albany, New York 12239.

STANDING

10. All Plaintiffs are New York State taxpayers and have standing to maintain this action pursuant New York State Finance Law § 123-b *et seq.* as well as common-law taxpayer standing.

FACTS

11. New York Civil Service Law § 164 (“NYCSL § 164”) authorizes State agencies to provide health insurance to an employee’s “spouse and children” and to promulgate regulations to implement this provision.

12. The New York Compilation of Codes, Rules and Regulations Title 4 § 73.2 (“4 NYCRR § 73.2”) provides that an “employee shall be eligible for coverage under the plan for himself and for his dependents”

13. The New York Compilation of Codes, Rules and Regulations Title 4 § 73.1 (“4 NYCRR § 73.1”) limits dependants to “the *spouse* of an employee or retired employee” and “such person's unmarried child under 19 years of age, any unmarried child 19 years of age or older who is incapable of self-support by reason of mental or physical disability and who became so incapable before reaching the age at which dependent coverage would otherwise terminate, and any student dependent” (Emphasis added).

14. On May 1, 2007, the New York Department of Civil Service (“DCS”), promulgated a regulation which states “[e]ffective May 1, 2007, the Department of Civil Service recognizes, *as spouses*, the parties to any same sex marriage performed in jurisdictions where

that marriage is legal.” (Emphasis added). A copy of this policy is attached hereto as Exhibit A.

15. In an official press release dated April 27, 2007, Defendant Groenwegan stated that DCS’s new rule “furthers Governor Spitzer’s recently announced intention to create marriage equality for all New Yorkers.” A copy of this press release is attached hereto as Exhibit B.

16. Upon information and belief, the Defendants have failed to provide public notice of this rule and/or regulation change as required by law.

FIRST CAUSE OF ACTION

**VIOLATION OF NEW YORK STATE
FINANCE LAW § 123-B**

17. Plaintiffs incorporate the preceding paragraphs herein the same as though they had been pled in full.

18. Plaintiffs challenge Defendants’ acts pursuant to New York State Finance Law § 123-b. Specially Defendants are causing, and/or are about to cause, a wrongful expenditure, misappropriation, misapplication, or other illegal or unconstitutional disbursement of State funds or State property to same-sex “spouses” purportedly “married” outside the State of New York.

19. The Defendants lack any legal authority to recognize such “marriages” or to redefine the term “spouse.” Therefore, their acts are illegal, *ultra vires*, against public policy, otherwise contrary to law and are causing and will cause an illegal expenditure of public funds.

20. The Defendants have, without authority and in direct contradiction to State law and court rulings, illegally interpreted State law to include members of foreign same-sex “marriages” within the legislative definition of “spouse.”

21. The Defendants' policy is *ultra-vires* and preempted by State law in that the policy attempts to redefine the term "marriage" and "spouse" as found in applicable State legislation and case law to include members of foreign same-sex "marriages" and therefore violates the separation of powers doctrine.

22. The Defendants' illegal acts as set out above are expending and will expend State funds and/or resources supplied from New York State tax revenue.

SECOND CAUSE OF ACTION

VIOLATION OF THE SEPARATION OF POWERS DOCTRINE

23. Plaintiffs incorporate the preceding paragraphs herein the same as though they had been pled in full.

24. The definition and regulation of marriage falls within the exclusive jurisdiction of the State Legislature.

25. The term "spouse" as found in State legislation is limited to individuals who are legally married pursuant to New York State law.

26. The term "spouse" does not include same-sex partners "married" outside New York State.

27. The Defendants have acted unconstitutionally by creating policy and interpreting State legislation to include individuals who have entered foreign same-sex "marriages" as "spouses" for purposes of applying State law.

28. The Defendants have usurped the State legislative and policy making function in violation of the separation of powers doctrine.

29. Consequently, the Defendants have acted illegally, unconstitutionally and *ultra vires*.

THIRD CAUSE OF ACTION

VIOLATION OF THE NEW YORK CONSTITUTION ARTICLE VII, SECTION 8

30. Plaintiffs incorporate the preceding paragraphs herein the same as though they had been pled in full.

31. Defendants promulgated their rule and/or regulation recognizing foreign same-sex “marriages” for the express purpose of supporting Governor Spitzer’s and other private organizations’ political agendas, namely, the promotion of legislation to redefine marriage in New York State.

32. Defendants have expended State funds and resources through the promotion of Governor Spitzer’s and other private partisan organizations’ political agendas.

33. Defendant Groenwegan has used State resources including but not limited to, government staff, office equipment and supplies to communicate support for Governor Spitzer’s and other private organizations’ partisan political agendas, namely, the promotion of legislation to redefine marriage in New York State.

34. Consequently, Defendants have violated the New York State Constitution, Article VII, Section 8, by using State funds and resources to support and further Governor Spitzer’s and other private organizations’ partisan political agendas.

FOURTH CAUSE OF ACTION

**VIOLATION OF NEW YORK
ADMINISTRATIVE PROCEDURES ACT SECTION 202
AND THE NEW YORK STATE CONSTITUTION
ARTICLE IV, SECTION 8.**

35. Plaintiffs incorporate the preceding paragraphs herein the same as though they had been pled in full.

36. Defendants have established a rule and/or regulation which requires all State and local governments in New York State to recognize same-sex partners “married” in foreign jurisdictions as “spouses” for purposes of interpreting health insurance eligibility under New York Civil Service Law § 164.

37. The New York Administrative Procedures Act § 202 and the New York State Constitution, Art. IV § 8 require the Defendants to effectuate public notice of applicable rule and/or regulation changes with the Secretary of State’s office prior to establishing the same.

38. The Defendants have failed to comply with the legal notice requirements mandated by State law.

39. As a result of Defendants’ failure to comply with the applicable notice requirements the new rule and/or regulation concerning the recognition of foreign same-sex “spouses” is void.

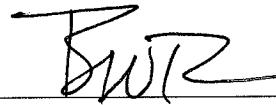
WHEREFORE, Plaintiffs pray for an order granting the following relief:

- A. A Declaratory Judgment finding the Defendants’ recognition of foreign same-sex “marriages” and/or “spouses” is illegal, unconstitutional, *ultra vires*, void and constitutes an illegal expenditure of State funds;
- B. A permanent injunction directing the Defendants to cease and desist from recognizing foreign same-sex “marriages” and/or “spouses”;

- D. Reasonable costs and attorneys' fees;
- E. Such other and further relief as this Court may deem just and proper.

Dated: June 7, 2007.

Respectfully submitted,



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*Not admitted in this jurisdiction.

EXHIBIT A

Employee Benefits Division Policy Memorandum

Number: 129r1

Date Issued: September 22, 2006

Date revised: May 1, 2007

Policy File Ref: A330

Subject: Dependent Eligibility

ISSUE:

Recognition of the spousal relationship in marriages between partners of the same sex conducted in jurisdictions where they may legally be performed.

BACKGROUND:

A number of NYSHIP enrollees have entered into marital relations with persons of the same sex and requested that their partner be eligible for coverage as a spouse. Prior to promulgation of this revised policy, such requests were denied. In 1995, the negotiated agreements between the State and with the various unions representing State employees provided eligibility to same sex spouses and certain others as domestic partners of State employees. Domestic partner coverage was also made available to Participating Agencies (PAs) and Participating Employers (PEs) at the discretion of agency. This policy has been challenged in litigation, in which an appeal is now pending (Funderburke v. New York State Department of Civil Service et al.). As a result of legal and policy concerns in regard to the prior policy, the Department of Civil Service determined that for purposes of benefits eligibility under NYSHIP and all other benefit plans administered by its Employee Benefits Division, it would recognize as spouses partners in same sex marriages legally performed in other jurisdictions.

POLICY:

Effective May 1, 2007, the Department of Civil Service recognizes, as spouses, the parties to any same sex marriage performed in jurisdictions where that marriage is legal. This policy applies to all health benefit plans provided under NYSHIP, including the Empire Plan, the Student Employees Health Plan and HMOs, and all other benefits administered by the Employee Benefits Division, including The New York State Dental and Vision Plans, the M/C Life Insurance Program and NYPERL. Recognition of these spouses is mandatory for the State and all other entities participating in NYSHIP, including all PAs and PEs.

UNIT RESPONSIBILITY:

All

Director of Employee Benefits

EXHIBIT B

Civil Service Recognizes Same-Sex Marriages for Spousal Coverage under New York State Health Insurance Program

For release: Immediate, Friday, April 27, 2007

Albany, NY- Effective May 1, 2007, the New York State Department of Civil Service will revise its policy to recognize any same-sex marriage that is legal in the jurisdiction where it was performed for the purposes of extending spousal benefits eligibility in the New York State Health Insurance Program (NYSHIP) and for all other benefit programs administered by the Department's Employee Benefits Division.

These benefits programs include the New York State Vision Program, Management Confidential Life Insurance Program, New York Public Employee and Retiree Long Term Care Program (NYPERL) and the New York State Dental Insurance Program, including the Retiree Dental Plan administered by GHI. All NYSHIP participating entities, including local government agencies and public authorities, in all programs in which they participate, must recognize such same-sex spouses as benefits eligible.

After May 1, 2007, the Department of Civil Service will recognize a same-sex marriage for the purpose of spousal benefits eligibility from the following jurisdictions: Massachusetts, Canada, including all its provinces, Spain, South Africa, the Netherlands, and Belgium. Civil unions will continue to be acceptable as part of proof requirements for domestic partner coverage. To implement this change, there will be a special enrollment period, from May 1, 2007 through May 31, 2007, during which time enrollees may enroll same-sex spouses in NYSHIP without regard to the usual enrollment effective date rules.

Department of Civil Service Commissioner Nancy G. Groenwegen stated, "This policy furthers Governor Spitzer's recently announced intention to create civil marriage equality for all New Yorkers. Health insurance benefits are an important part of the advantages and protections extended to married couples regardless of sex."