

SUPREME COURT - STATE OF NEW YORK  
COUNTY OF WESTCHESTER

Index No.: 16894/06

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MARGARET GODFREY, ROSEMARIE JAROSZ, GEORGE  
V. IMBURGIA and JOSEPH ROSSINI,

SUMMONS

Plaintiffs,

*Plaintiff designates  
Westchester County as  
the place of trial.*

-against-

ANDREW J. SPANO, in his official capacity as the Westchester  
County Executive,

*The basis of venue is:  
Defendants' principal  
place of business.*

Defendant.

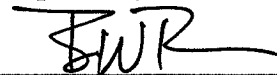
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**RECEIVED**  
SEP - 8 2006  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
*Defendants' principal  
place of business is:  
148 Martine Avenue  
White Plains, NY 10601*

TO THE ABOVE NAMED DEFENDANT(S):

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney(s) within 20 days after the services of this summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 23, 2006

Respectfully submitted,



\_\_\_\_\_  
Brian W. Raum, Esq.

**DEFENDANTS' ADDRESS:**

TO: Andrew J. Spano  
148 Martine Avenue  
White Plains, NY 10601

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

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**MARGARET GODFREY, ROSEMARIE JAROSZ,  
GEORGE V. IMBURGIA and JOSEPH ROSSINI,**

Index No: \_\_\_\_\_

**Plaintiffs,**

**-against-**

**ANDREW J. SPANO, in his official capacity as the  
Westchester County Executive,**

**Defendant.**  
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**VERIFIED  
COMPLAINT**

**RECEIVED**

**SEP - 8 2006**

**TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER**

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

**PRELIMINARY STATEMENT**

1. This is an action against Defendant Andrew J. Spano, in his official capacity as the Westchester County Executive. Plaintiffs commence this action pursuant to New York General Municipal Law § 51.

2. Plaintiffs are Westchester County taxpayers and allege that Defendant Andrew J. Spano has exceeded his constitutional authority and otherwise acted illegally by issuing Executive Order No. 3. of 2006. This order requires all County departments and officials to recognize same-sex "marriages" performed outside the State of New York. As a result, the Defendant has caused and is causing public mischief including but not limited to expending County funds to promulgate, effectuate and administer Executive Order No. 3 of 2006.

3. Defendant has no authority to recognize foreign same-sex “marriages” nor does he have the authority to provide any “rights and benefits” to these relationships. Consequently, Plaintiffs seek a declaratory judgment and a permanent injunction against the Defendant pursuant to New York State Municipal Law § 51.

#### PARTIES

4. Margaret Godfrey 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 Westchester and City of New Rochelle.

5. Rosemarie Jarosz 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 Westchester and City of Mount Vernon.

6. George V. Imburgia 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 Westchester and City of New Rochelle.

7. Joseph Rossini, 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 Westchester and City of Mount Vernon.

8. The Defendant, Andrew J. Spano, is sued in his official capacity as the Westchester County Executive. At all times relevant to this action, Defendant Spano maintained and continues to maintain his principle office at 148 Martine Avenue, White Plains, New York 10601.

## STANDING

9. All Plaintiffs are Westchester County taxpayers and have standing to maintain this action pursuant to New York State Municipal Law § 51.

## ALLEGATIONS OF FACT

10. On June 6, 2006, the Westchester County Executive, Andrew J. Spano, issued Executive Order No. 3 of 2006 ("Exec. Ord. No. 3"). A copy of this Executive Order is attached to the Raum Aff. at Exhibit A.<sup>1</sup>

11. Exec. Ord. No. 3 orders and directs "each and every department, board, agency, and commission of the County of Westchester . . . to recognize same-sex marriages lawfully entered into outside the State of New York in the same manner as they currently recognize opposite sex marriages for the purposes of extending and administering all rights and benefits belonging to these couples, to the maximum extent allowed by law."

12. New York State law does not permit marriage licenses to be issued to same-sex applicants within the State. Moreover, New York State law does not recognize so called same-sex "marriages" performed outside of the State. Notwithstanding these facts, the Defendant has ordered all Westchester County officials and agencies to recognize foreign same-sex "marriages." *See Exhibit A to Raum Aff.*

13. On July 6, 2006, the New York State Court of Appeals affirmed New York State's definition of marriage as the legal union of one man and one woman. *See Hernandez v. Robles*, 2006 WL 1835429 (N.Y.), 2006 N.Y. Slip Op. 05239.

14. On July 11, 2006, a New York State Supreme Court ruled that a marriage

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<sup>1</sup> Plaintiffs incorporate herein all exhibits to the Raum Aff. by reference.

performed in Canada did not constitute a marriage as defined by the New York Court of Appeals, and, therefore, a same sex couple purportedly “married” in Canada were not entitled to State insurance benefits under New York Civil Service Law. *See Funderburke v. New York State Department of Civil Service*, 2006 WL 1931812 (N.Y. Sup).

15. On August 2, 2006, counsel for the Plaintiffs herein, sent a letter to Defendant Spano asking whether he intended to continue recognizing out of state same-sex “marriages” in light of the legal authority set out above. A copy of this letter is attached to the Raum Aff. at Exhibit B.

16. Defendant Spano has neither responded to counsel’s letter, nor has the Defendant rescinded Exec. Ord. No. 3.

17. Defendant’s illegal act has resulted and will continue to result in the illegal disbursement of County funds by providing County funded benefits to same-sex “married” couples which are otherwise intended for legally married couples.

### **CAUSE OF ACTION**

#### **VIOLATION OF NEW YORK STATE GENERAL MUNICIPAL LAW § 51**

18. Plaintiffs incorporate the preceding paragraphs herein the same as though they had been pleaded in full.

19. Defendant, by issuing Exec. Ord. No. 3, has legislated in the areas of marriage and domestic relations which are under the exclusive jurisdiction of the New York State Legislature.

20. Defendant, by issuing Exec. Ord. No. 3, has legislated in a field of law preempted by the New York State Domestic Relations Law.

21. The Defendant, by issuing Exec. Ord. No. 3, has legislated in a manner

inconsistent with the provisions of the New York State Constitution and general law.

22. The Defendant, by issuing Exec. Ord. No. 3, has acted and is continuing to act illegally, unconstitutionally, *ultra vires*, and against New York State public policy.

23. The Defendant, by issuing Exec. Ord. No. 3, has caused and is continuing to cause injury and mischief to the taxpayers of Westchester County, including the Plaintiffs.

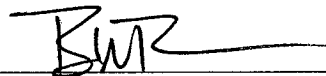
24. The Defendant, by issuing Exec. Ord. No. 3, has spent and will continue to spend County tax revenue to implement, execute, administer, and effectuate Exec. Ord. No. 3.

WHEREFORE, Plaintiffs pray for the following relief pursuant to New York State Municipal Law § 51:

- A. A Declaratory Judgment finding Westchester's recognition of foreign same-sex "marriages", pursuant to Executive Order No. 3 of 2006, illegal, *ultra vires*, unconstitutional and otherwise null and void;
- B. A permanent injunction directing the Defendant and all Westchester County officials to cease and desist from implementing or effectuating Executive Order No. 3 of 2006;
- C. Reasonable costs and attorneys fees;
- D. Such other and further relief as this Court may seem just and proper.

Dated: August 24, 2006.

Respectfully submitted,



Brian W. Raum, Esq.

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Facsimile: 202-347-3622

\*Not Admitted in this jurisdiction- motion *pro hac vice* to be filed.

**VERIFICATION**

I, Margaret Godfrey the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true.

DATED:

Margaret Godfrey

Sworn before me this 23 day of August, 2006.

Joseph Rossini  
Notary Public

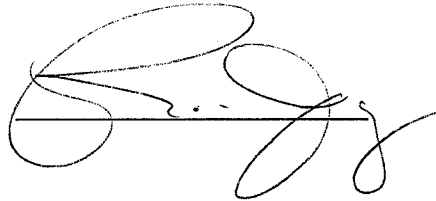
**JOSEPH ROSSINI**  
Notary Public, State of New York  
No. 60-3362360  
Qualified in Westchester County  
Commission Expires October 31, 2007

**VERIFICATION**

I, Rosamaria Jarosz the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true.

DATED:



Sworn before me this 23 day of August, 2006.

Joseph R. Rossini  
Notary Public

**JOSEPH ROSSINI**  
Notary Public, State of New York  
No. 60-3362360  
Qualified in Westchester County  
Commission Expires October 31, ~~2007~~

**VERIFICATION**

I, GEORGE V. IMBURGIA the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true.

DATED:

George V. Imburgia

Sworn before me this 23<sup>rd</sup> day of August, 2006.

Joseph Rossini  
Notary Public

**JOSEPH ROSSINI**  
Notary Public, State of New York  
No. 60-3362360  
Qualified in Westchester County  
Commission Expires October 31, ~~2007~~

VERIFICATION

I, Joseph Rossini, the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters I believe to be true.

DATED: 8/30/06

Joseph Rossini \_\_\_\_\_ Joseph Rossini

Sworn before me this 30 day of August, 2006.

Margaret Murray  
Notary Public  
**MARGARET MURRAY**  
Notary Public, State of New York  
No. 01MU6114863  
Qualified in Bronx County <sup>08</sup>  
Commission Expires August 23, 20