



Dated: July 8, 2008

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND

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do not object to the granting of this relief. I am familiar with the facts and circumstances set forth herein.

2. The above-captioned Petitioners (“Petitioners”) commenced this action by Verified Article 78 Petition dated June 3, 2008 against Respondent David A. Paterson in his official capacity as the Governor of the State of New York (“Respondent”). Petitioners filed an Amended Verified Article 78 Petition dated June 20, 2008.

3. Petitioners challenge Respondent’s authority to direct counsel for all state agencies to review their agencies’ policy statements and regulations in order to ensure that same-sex couples who legally married in other jurisdictions receive the same treatment under state law as other legally married couples. Governor Paterson’s directive was issued through his Counsel David Nocenti in a May 14, 2008 Memorandum to all state agency counsel (hereinafter referred to as the “Directive”). The Directive’s stated goal is “to ensure that terms such as ‘spouse,’ ‘husband’ and ‘wife,’” as those terms appear in policy statements, regulations, and statutes whose constructions are vested in state agencies, are construed to encompass legal out-of-state marriages of same-sex couples.

4. Petitioners allege that Respondent lacked power to issue the Directive and that executing the Directive will cause the wrongful expenditure or illegal disbursement of public funds. Petitioners seek declaratory and injunctive relief barring Respondent from ensuring that all state agencies follow governing appellate decisions requiring the State to recognize legal marriages of same-sex couples entered into in other jurisdictions.

5. Respondent-Intervenors believe that Respondent acted lawfully in issuing the Directive and that New York law requires recognition of valid out-of-state marriages of same-sex couples. Respondent-Intervenors, who are a married same-sex couple and State

employees, have a direct stake in the outcome of this action and seek to intervene to protect their interests.

6. Respondent-Intervenors have been in a committed long-term relationship for more than seven years. They were married in Ontario, Canada on August 22, 2005. They are jointly raising a daughter, Cecilia, now 13 years old, who was adopted out of the New York State foster care system and is a special needs child. They own their home in Stone Ridge, New York together. Ms. Rainbow is a non-tenured professor at the State University of New York at New Paltz ("SUNY"). She works for SUNY on the basis of year-to-year contracts, which are renewed depending on SUNY's needs and demand for the courses Ms. Rainbow teaches. Ms. Sloan is the Dean of Students at West Park Union Free School, a public high school that provides education and counseling to students placed with the Department of Social Services and Certified State Education.

7. There are more than 1,300 state statutes and regulations that confer rights, protections, or responsibilities on married individuals. *See Empire State Pride Agenda & the New York City Bar Association, "1,324 Reasons for Marriage Equality in New York State" (June 2007), available at [http://www.nycbar.org/pdf/report/marriage\\_v7d21.pdf](http://www.nycbar.org/pdf/report/marriage_v7d21.pdf) (last visited July 1, 2008).* Many of these protections and responsibilities fall under the jurisdiction of and are regulated or conferred by state agencies. These benefits include, for example, the right to death or disability benefits owed as workers' compensation when one's spouse is injured at work, N.Y. Workers' Comp. Law §§ 15(4), 16; the right to include one's spouse in group life insurance coverage, N.Y. Ins. Law § 4216(f); and the right to spousal health insurance coverage for public employees, N.Y. Civ. Serv. Law § 164.

8. CPLR § 7802(d) provides that the Court "may allow other interested parties to intervene." The Court has "broader authority to allow intervention in article 78 proceedings

than is provided pursuant to CPLR 1013, which itself requires only a showing that the proposed intervenor's 'claim or defense and the main action have a common question of law or fact.'"

*Greater New York Health Care Facilities Assoc v. DeBuono*, 91 N.Y.2d 716, 720 (1998).

Respondent-Intervenors are "interested parties" under CPLR § 7802(d) because if the Court were to rule against Respondent Paterson, Respondent-Intervenors would not have access to rights, protections, and responsibilities afforded to other couples who entered into lawful marriages outside of New York. For example, each Respondent-Intervenor could be denied legal authority to recover workers' compensation benefits in the event that her spouse were to perish or be injured on the job, to include each other in a group life insurance policy, or to receive spousal health insurance coverage.

9. This is not the first time that Respondent-Intervenors have been compelled to defend the legal respect their marriage is due against court challenges by the Alliance Defense Fund (the "ADF"), the Arizona religious-based organization that is prosecuting this case.<sup>1</sup> Respondent-Intervenors previously intervened in two lawsuits to protect their family's benefits as State employees. In *Godfrey v. DiNapoli*, Index No. 5896-06 (Sup. Ct. Albany County), the ADF brought very similar claims as are made in this case seeking to deprive lesbian and gay State employees with valid out-of-state marriages of the same retirement and accidental death benefits that other married State employees receive. Respondent-Intervenors moved to intervene in that case, without objection from the parties, and were granted the right to intervene as defendant-intervenors. An Albany State Supreme Court granted motions to dismiss filed by the defendant New York State Comptroller and by Respondent-Intervenors, holding that the

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<sup>1</sup> According to its website, the ADF "is a servant organization that provides the resources that will keep the door open for the spread of the Gospel through the legal defense and advocacy of religious freedom, the sanctity of human life, and traditional family values." See <http://www.alliancedefensefund.org/about/Purpose/whatwebelieve.aspx> (last visited July 1, 2008).


Comptroller followed New York law in respecting out-of-state marriages of same-sex couples. See *Godfrey v. DiNapoli*, Index No. 5896-06 (Sup. Ct. Albany County Sept. 5, 2007), *notice of appeal filed*, County Index No. 5896-06 (3d Dep't Oct. 17, 2007).

10. In *Lewis v. New York State Department of Civil Service*, Index No. 4078-07 (Sup. Ct. Albany County), the ADF again sought to deprive lesbian and gay State employees with valid out-of-state marriages of the same health insurance benefits that other married State employees receive, also based on very similar allegations as made here. Respondent-Intervenors intervened in that case as well pursuant to a stipulation entered into by the original parties and so-ordered by the Albany County Supreme Court. The court granted motions to dismiss filed by the defendant New York State Department of Civil Service and by Respondent-Intervenors, holding that the Department of Civil Service followed New York law in respecting out-of-state marriages of same-sex couples. See *Lewis v. New York State Department of Civil Service*, Index No. 4078-07, (Sup. Ct. Albany County Mar. 3, 2008), *appeal docketed*, No. 504900 (3d Dep't April 15, 2008).

11. The Directive challenged in this case encompasses policy statements and principles at issue in *DiNapoli* and *Lewis*, and thus Respondent-Intervenors have a particularly compelling interest in intervening to respond to what is in effect a collateral attack on the rights secured through those earlier cases.

12. Based on the foregoing facts, proposed Respondent-Intervenors should be permitted to intervene in this action pursuant to CPLR § 7802(d). The original parties to this action have indicated that they do not object to the granting of this relief. Respondent-Intervenors therefore respectfully request that the Court grant their motion and such other relief as may be just. The relief sought in this motion has not previously been sought in this action.

13. Pursuant to CPLR § 1014, attached as Exhibit A is Respondent-Intervenors' proposed Verified Answer to the Amended Article 78 Petition.



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Susan L. Sommer

Dated: New York, New York  
July 3, 2008

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

MARTIN J. GOLDEN, SERPHIN R. MALTESE, JAMES  
N. TEDISCO, DANIEL J. BURLING, BRIAN M. KOLB,  
MICHAEL R. LONG, SHAUN MARIE LEVINE,  
DUANE MOTLEY, JASON MCGUIRE, STEPHEN P.  
HAYFORD, WILLIAM C. BANUCHI, SR., ANGEL D.  
RODRIGUEZ, PIYATI DUTTA, WILLIAM CARLSON,  
NICOLE CARLSON, FRANCES VELLA-MARRONE,  
MICHAEL J. FITZPATRICK, AND MICHAEL W.  
COLE,

Petitioners,

- against -

DAVID A. PATERSON, in his official capacity as  
Governor of the State of New York,

Respondent,

- and -

PERI RAINBOW and TAMELA SLOAN,

[Proposed] Respondent-Intervenors.

Index No. 260148/08

**VERIFIED ANSWER OF  
PROPOSED RESPONDENT-  
INTERVENORS TO AMENDED  
VERIFIED ARTICLE 78  
PETITION**

**Preliminary Statement of Respondent-Intervenors**

A. Proposed Respondent-Intervenors Peri Rainbow (“Ms. Rainbow”) and Tamela Sloan (“Ms. Sloan”) (collectively “Respondent-Intervenors”), a committed same-sex couple, are New York State public employees who were validly married in Canada. Their interests in the myriad rights, benefits, and responsibilities afforded to other couples who entered marriages outside of New York are directly at stake in the above-captioned action.

B. Ms. Rainbow and Ms. Sloan were married in Canada on August 22, 2005. They are raising a daughter, Cecilia, now 13 years old, who was adopted out of the New York State foster care system and continues to have special needs stemming from the trauma she suffered in early childhood. Ms. Rainbow is a non-tenured, part-time professor at the State University of New York at New Paltz (“SUNY”). She works for SUNY based on year-to-year contracts, which are renewed depending on SUNY’s needs and demand for the courses Ms. Rainbow teaches. Ms. Sloan is the Dean of Students at West Park Union Free School, a public high school that provides education and counseling to students placed with the Department of Social Services and Certified State Education. Defendant-Intervenors have organized their work lives to ensure that Ms. Rainbow can be with Cecilia after school to help her with needed therapy and support.

C. On May 14, 2008, Governor David Paterson (“Respondent”), through his counsel David Nocenti, directed counsel for all state agencies to review their agencies’ policy statements and regulations in order to ensure that same-sex couples who legally married in other jurisdictions receive the same treatment under state law as other legally married couples (hereinafter referred to as the “Directive”). The Directive’s stated goal is “to ensure that terms such as ‘spouse,’ ‘husband’ and ‘wife,’” as those terms appear in policy statements, regulations, and statutes whose constructions are vested in state agencies, are construed to encompass legal marriages of same-sex couples. Petitioners challenge Respondent’s authority to issue the Directive and the provision of rights, benefits, and responsibilities pursuant to it.

D. Respondent-Intervenors are moving without objection of the parties for an Order permitting them to intervene as Respondent-Intervenors in this action.

**Respondent-Intervenors' Answers to the  
Allegations in the Verified Petition**

By their undersigned counsel, Respondent-Intervenors answer the Amended Verified Amended Article 78 Petition (the "petition") as follows:

1. Respondent-Intervenors admit that Petitioners purport to commence this Article 78 proceeding pursuant to Section 123 of the New York State Finance Law and that Respondent issued the Directive. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the remaining allegations in paragraph 1 of the petition.
2. Respondent-Intervenors admit that Petitioners make the assertions described in paragraph 2 of the petition but deny those allegations.
3. Respondent-Intervenors admit that Petitioners seek the relief asserted in paragraph 4 of the petition against Respondent but deny that Petitioners are entitled to such relief.
4. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 4 of the petition.
5. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 5 of the petition.
6. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 6 of the petition.
7. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 7 of the petition.

8. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 8 of the petition.

9. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 9 of the petition.

10. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 10 of the petition.

11. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 11 of the petition.

12. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 12 of the petition.

13. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 13 of the petition.

14. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 14 of the petition.

15. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 15 of the petition.

16. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 16 of the petition.

17. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 17 of the petition.

18. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 18 of the petition.

19. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 19 of the petition.

20. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 20 of the petition.

21. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 21 of the petition.

22. Respondent-Intervenors admit based on knowledge and belief the allegations in paragraph 22 of the petition.

23. The allegations in paragraph 23 of the petition are admitted based on knowledge and belief. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

24. The allegations in paragraph 24 of the petition are admitted based on knowledge and belief. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

25. The allegations in paragraph 25 of the petition are admitted based on knowledge and belief. Respondent-Intervenors respectfully refer the Court to the May 17, 2008 videotaped message for its complete contents.

26. The allegations in paragraph 26 of the petition are denied except that Respondent-Intervenors admit that Respondent held a press conference on May 29, 2008. Respondent-Intervenors respectfully refer the Court to recordings of the May 29, 2008 press conference for its complete contents.

27. The allegations in paragraph 27 of the petition are denied.

28. The allegations in paragraph 28 of the complaint are denied. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

29. The allegations in paragraph 29 of the petition are denied.

30. Respondent-Intervenors admit that Petitioners purport to commence this Article 78 proceeding pursuant to Section 123 of the New York State Finance Law and that Petitioners seek relief against Respondent. The remaining allegations in paragraph 30 of the petition are denied.

31. The allegations in paragraph 31 of the petition are denied. Respondent-Intervenors respectfully refer the Court to the New York Civil Practice Law and Rule (“CPLR”) Article 78 § 7803(2) for its complete contents.

32. The allegations in paragraph 32 of the petition are denied. Respondent-Intervenors respectfully refer the Court to New York State Finance Law § 123-b for its complete contents.

33. The allegations in paragraph 33 of the petition are denied.

34. The allegations in paragraph 34 of the petition are denied.

35. The allegations in paragraph 35 of the petition are denied.

36. The allegations in paragraph 36 of the petition are denied.

37. The allegations in paragraph 37 of the petition are denied. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

38. The allegations in paragraph 38 of the petition are denied.

39. The allegations in paragraph 39 of the petition are denied. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

40. The allegations in paragraph 40 of the petition are denied. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

41. The allegations in paragraph 41 of the petition are denied.

42. The allegations in paragraph 42 of the petition are denied.

43. The allegations in paragraph 43 of the petition are denied.

44. The allegations in paragraph 44 of the petition are denied.

45. The allegations in paragraph 45 of the petition are denied.

46. The allegations in paragraph 46 of the petition are denied. Respondent-Intervenors respectfully refer the Court to New York State Finance Law § 123-b for its complete contents.

47. The allegations in paragraph 47 of the petition are denied. Respondent-Intervenors respectfully refer the Court to the May 14, 2008 Directive for its complete contents.

48. The allegations in paragraph 48 of the petition are denied.

49. The allegations in paragraph 49 of the petition are denied.

50. The allegations in paragraph 50 of the petition are denied.

51. The allegations in paragraph 51 of the petition are denied.

52. The allegations in paragraph 52 of the petition are denied.

53. The allegations in paragraph 53 of the petition are denied.

54. The allegations in paragraph 54 of the petition are denied.

55. The allegations in paragraph 55 of the petition are denied.

56. The allegations in paragraph 56 of the petition are denied.

57. The allegations in paragraph 57 of the petition are denied.

58. The allegations in paragraph 58 of the petition are denied.

59. The allegations in paragraph 59 of the petition are denied.

60. The allegations in paragraph 60 of the petition are denied.

61. The allegations in paragraph 61 of the petition are denied.

62. The allegations in paragraph 62 of the petition are denied.

63. The allegations in paragraph 63 of the petition are denied.

64. The allegations in paragraph 64 of the petition are denied as calling for conclusions of law.

65. The allegations in paragraph 65 of the petition are denied.

66. The allegations in paragraph 66 of the petition are denied.

67. The allegations in paragraph 67 of the petition are denied.

68. The allegations in paragraph 68 of the petition are denied.

69. Respondent-Intervenors admit that Petitioners seek relief against

Respondent but deny that Petitioners are entitled to such relief.

70. Respondent-Intervenors are without knowledge or information sufficient to aver the truth of the allegations in paragraph 70 of the petition.

AFFIRMATIVE DEFENSES

71. The petition fails to state a claim upon which relief to Petitioners could be granted.<sup>1</sup>


72. Petitioners lack standing to assert the claims alleged in the petition.

WHEREFORE, Respondent-Intervenors respectfully request that the Court enter judgment denying all relief requested by Petitioners.

Dated: July 7, 2008

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.

By: \_\_\_\_\_

  
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Respondent-Intervenors  
Peri Rainbow and Tamela Sloan*

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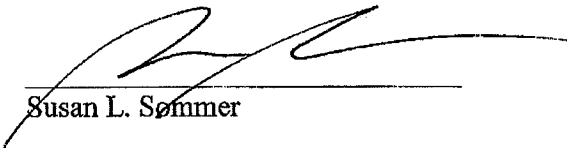
<sup>1</sup> Respondent-Intervenors respectfully refer the Court to their Cross-Motion to Dismiss which sets forth in detail the legal arguments supporting their contention that Petitioners have failed to state a claim upon which relief could be granted.

**ATTORNEY VERIFICATION**

I, Susan L. Sommer, an attorney admitted to practice in the Courts of New York, state under penalty of perjury that I am associated with Lambda Legal Defense and Education Fund, Inc., attorneys for Proposed Respondent-Intervenors in this action. I have read the foregoing **VERIFIED ANSWER OF PROPOSED RESPONDENT-INTERVENORS TO AMENDED VERIFIED ARTICLE 78 PETITION** and know the contents thereof; the same are true to my own knowledge, except as to the matters I believe to be true. I make this verification pursuant to CPLR § 3020(d)(3) because the Respondent-Intervenors are not in the county in which I maintain my office.

DATED:

July 7, 2008

  
\_\_\_\_\_  
Susan L. Sommer

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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MARTIN J. GOLDEN, SERPHIN R. MALTESE, JAMES  
N. TEDISCO, DANIEL J. BURLING, BRIAN M. KOLB,  
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PIYATI DUTTA, WILLIAM CARLSON, NICOLE  
CARLSON, FRANCES VELLA-MARRONE, MICHAEL  
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Petitioners,

- against -

DAVID A. PATERSON, in his official capacity as  
Governor of the State of New York,

Respondent,

- and -

PERI RAINBOW and TAMELA SLOAN,

[Proposed] Respondent-  
Intervenors.

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**NOTICE OF MOTION TO INTERVENE OF  
[PROPOSED] RESPONDENT-INTERVENORS**

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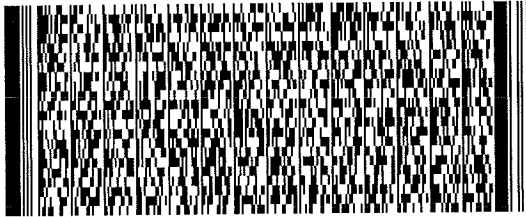


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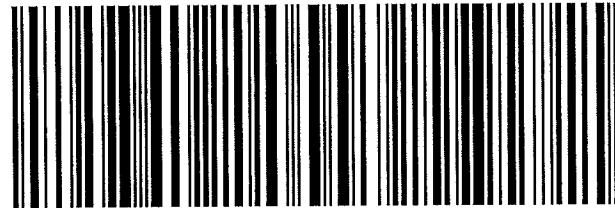
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