

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

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**MARGARET GODFREY, ROSEMARIE JAROSZ,
and JOSEPH ROSSINI,**

Index No: 16894/06

Plaintiffs,

**AMENDED
VERIFIED
COMPLAINT**

-against-

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

Defendant.
-----X

The Plaintiffs, by counsel, state the following in support of their Amended 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 as well as the New York State Constitution, Art 9, § 2(c) and Municipal Home Rule Law § 10(1)(i).

2. Plaintiffs are Westchester County taxpayers and allege 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 violated the New York Constitution and 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 as well as the New York State Constitution Article 9, § 2(c) and Municipal Home Rule Law § 10(1)(i).

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. Ms. Godfrey has paid and is liable to pay taxes to the County of Westchester on an assessment in excess of one thousand dollars.

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. Ms. Jarosz has paid and is liable to pay taxes to the County of Westchester on an assessment in excess of one thousand dollars.

6. 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 New Rochelle. Mr. Rossini has paid and is liable to pay taxes to the County of Westchester on an assessment in excess of one thousand dollars.

7. 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.

JURISDICTION

8. All Plaintiffs are Westchester County taxpayers who have paid and/or are liable to pay taxes to the County of Westchester on an assessment in excess of one thousand dollars and have standing to maintain this action pursuant to New York State Municipal Law § 51. Plaintiffs Godfrey and Jarosz have executed a bond pursuant to New York State Municipal Law § 51 in the amount of five thousand dollars. A copy of this bond is attached hereto as Exhibit A. The Plaintiffs also have common-law taxpayer standing to challenge Defendant's violations of the New York State Constitution, Art 9, § 2(c) and Municipal Home Rule Law § 10(1)(i).

ALLEGATIONS OF FACT

9. On June 6, 2006, the Westchester County Executive, Andrew J. Spano, issued Executive Order No. 3 of 2006 ("Exec. Ord. No. 3").

10. 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."

11. 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.”

12. 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*, 7 N.Y.3d 338 (N.Y. 2006).

13. On July 11, 2006, a New York State Supreme Court ruled that a marriage 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*, 822 N.Y.S.2d 393 (Sup. Ct. Nass. Co. 2006).¹

14. 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.

15. Defendant Spano did not respond to counsel’s letter, nor has the Defendant rescinded Exec. Ord. No. 3.

16. Defendant’s unconstitutional executive order 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. Moreover, Defendant’s illegal and unconstitutional acts have caused public mischief to Westchester County taxpayers.

¹ Counsel for the Proposed Intervenors represents the Plaintiffs in *Funderburke* and have filed notice of appeal on August 2, 2006, with the Second Department, which has not been perfected as of the date of the filing of this complaint.

FIRST CAUSE OF ACTION

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

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

18. Defendant, by issuing Exec. Ord. No. 3, has “legislated”² in the areas of marriage and domestic relations which are under the exclusive jurisdiction of the New York State Legislature.

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

20. 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.

21. 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.

22. 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 in violation of General Municipal Law § 51.

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

² The issuance of an executive order is in the nature of “legislation” for purposes of home rule analysis.

SECOND CAUSE OF ACTION

VIOLATION OF THE NEW YORK STATE
CONSTITUTION, ART 9, § 2(C) AND
MUNICIPAL HOME RULE LAW § 10(1)(I).

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

25. The Defendants has, by implementing Exec. Ord. No. 3, “legislated” in a manner “inconsistent with the provisions of [the New York] constitution [and] general law” in violation of the New York State Constitution, Art 9, § 2(c) and Municipal Home Rule Law § 10(1)(i).

26. 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.

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

28. 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.

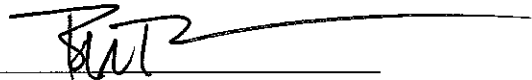
WHEREFORE, Plaintiffs pray for the following relief:

- 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 deem just and proper.

Dated: January 3, 2007.

Joseph A. Ruta
RUTA & SOULIOS, LLP
Attorneys for the Plaintiffs
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New York, NY 10036
Telephone: 212-997-4500
Facsimile: 212-768-0649

Respectfully submitted,



Brian W. Raum, Esq.
Benjamin W. Bull*
Glen Lavy*
Brian W. Raum
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Facsimile: 202-347-3622

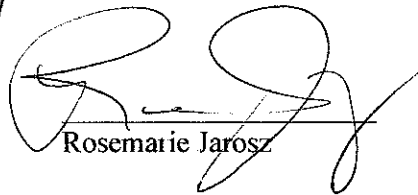
*Not Admitted in this jurisdiction- motion *pro hac vice* to be filed.

VERIFICATION

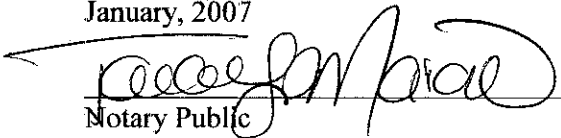
I, Rosemarie Jarosz, the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **AMENDED 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: January 4, 2007


Rosemarie Jarosz

Sworn before me this 4 day of
January, 2007


Notary Public

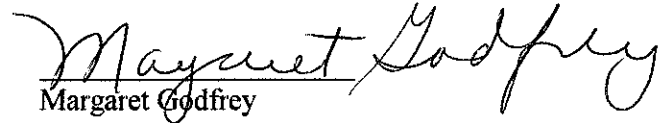


VERIFICATION

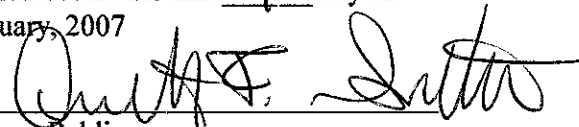
I, Margaret Godfrey , the undersigned Plaintiff, state the following under the penalty of perjury:

I have read the foregoing **AMENDED 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 4 day of
January, 2007


Notary Public

Anthony F. Sutton
Notary Public, State of New York
Qualified in Westchester County
No. 01800254950
Commission Expires March 30, 2007
2010

VERIFICATION


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

I have read the foregoing **AMENDED 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: *January 4, 2007*


Joseph Rossini

Sworn before me this 4 day of
January, 2007


Notary Public

MARGARET MURRAY
Notary Public, State of New York
No. 01MU6114863
Qualified in Bronx County
Commission Expires August 23, 20~~07~~⁰⁸

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

-----X
**MARGARET GODFREY, ROSEMARIE JAROSZ,
and JOSEPH ROSSINI,**

Index No: 16894-06

Plaintiffs,

**BOND IN TAXPAYER'S
ACTION/INJUNCTION**

-against-

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

Defendant.

-----X

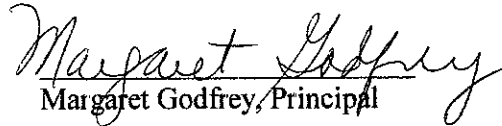
KNOW ALL MEN BY THESE PRESENTS, that we MARGARET GODFREY, and ROSEMARIE JAROSZ residing at 29 Bayview Avenue, New Rochelle, NY and 100 Hutchinson Boulevard, Mount Vernon, NY, respectively, Plaintiffs in the above entitled action, as principals, are held and firmly bound unto the Defendants in said action, in the sum of five thousand (\$5,000) dollars, for which payment said principals, their successors and assigns, jointly and severally bind themselves by these presents; and

WHEREAS, the above named Plaintiffs have commenced the above-captioned action in the New York Supreme Court, County of Westchester under Section 51 of the General Municipal Law to enjoin, restrain and prevent an illegal official act on the part of the Defendants, to wit: Defendants have acted illegally, unconstitutionally, *ultra vires*, and against the public interest by causing public injury and public mischief to the taxpayers of Westchester County including the Plaintiffs. Plaintiffs' action is for declaratory and injunctive relief specifically, Westchester Executive Order Number 3 of 2006 be declared null and void, and defendants be temporarily and permanently enjoined from enforcing, effecting, or otherwise implementing the same.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Plaintiffs in the above entitled action, principals herein, shall well and truly pay or cause to be paid over to the Defendants in said action all costs that may be awarded the Defendants in such action if the court shall finally determine the same in favor of the Defendants; and further that if an injunction is obtained by the Plaintiffs pending the outcome of this action and if the court shall finally determine that the Plaintiff was not entitled to such injunction, then if the Plaintiffs shall well and truly pay over or cause to be paid over all damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, then this obligation shall be void, otherwise it shall remain in full force and effect.

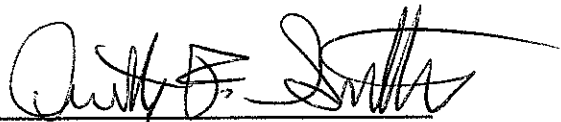
The principals herein attest they are solvent and possess sufficient assets to justify to execution of this bond.

IN WITNESS WHEREOF, we have executed this bond this 4th day of January, 2007.


Margaret Godfrey, Principal

Rosemarie Jarosz, Principal

On the 4 day of January, 2007, Margaret Godfrey personally came before me, known to be the individual described herein who executed the foregoing instrument and acknowledged she executed the same.



Notary Public

Anthony F. Sutton
Notary Public, State of New York
Qualified in Westchester County
No. 013U9254950
Commission Expires March 30, 200

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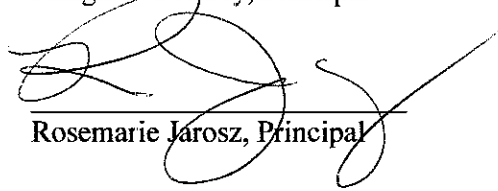
On the _____ day of January, 2007, Rosemarie Jarosz personally came before me, known to be the individual described herein who executed the foregoing instrument and acknowledged she executed the same.

Notary Public

The principals herein attest they are solvent and possess sufficient assets to justify to execution of this bond.

IN WITNESS WHEREOF, we have executed this bond this 4th day of January, 2007.

Margaret Godfrey, Principal

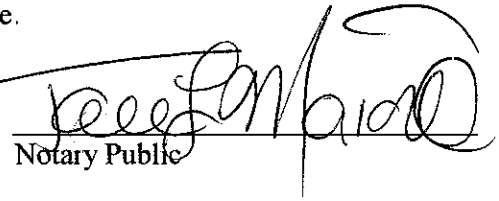


Rosemarie Jarosz, Principal

On the _____ day of January, 2007, Margaret Godfrey personally came before me, known to be the individual described herein who executed the foregoing instrument and acknowledged she executed the same.

Notary Public

On the 4th day of January, 2007, Rosemarie Jarosz personally came before me, known to be the individual described herein who executed the foregoing instrument and acknowledged she executed the same.



Notary Public

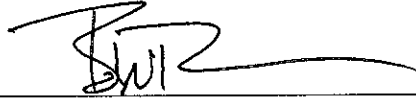


AFFIRMATION OF SERVICE

I, Brian W. Raum, an attorney duly licensed to practice law in the state of New York, affirm under the penalty of perjury that on January 8, 2007, I served a copy of the attached *AMENDED VERIFIED COMPLAINT* upon all parties by forwarding the same via first class mail with the United States Postal Service to:

Hillary J. Raimondi County of Westchester Associate County Attorney 148 Martine Avenue, Room 600 White Plains, New York 10601	<i>Attorney for Defendant</i>
Alphonso B. David LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. 120 Wall Street, Suite 1500 New York, NY 10005	<i>Attorneys for Proposed Intervenors</i>

Dated: January 8, 2007



Brian W Raum, Esq.