

SUPREME COURT - STATE OF NEW YORK
COUNTY OF ALBANY

Index No.: 5896/06

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

SUMMONS

Plaintiffs,

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

-against-

ALAN G. HEVESI, in his official capacity as the New York State
Comptroller and Sole Trustee of New York State and Local
Retirement System,

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

Defendant.

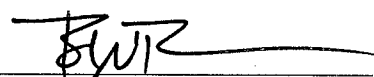
*Defendants' principal
place of business is:
110 State Street, Albany,
New York 12244*

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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: Alan G. Hevesi
New York State and Local Retirement System
110 State Street, Albany, New York 12244

Albany County Clerk
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SUPREME COURT - STATE OF NEW YORK
COUNTY OF ALBANY

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

Index No: _____

Plaintiffs,

-against-

VERIFIED
COMPLAINT

ALAN G. HEVESI, in his official capacity as the New York
State Comptroller and Sole Trustee of New York State and
Local Retirement System,

Defendant.
-----X

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

PRELIMINARY STATEMENT

1. This is an action against Defendant Alan G. Hevesi in his official capacity as the New York State Comptroller and Sole Trustee of New York State and Local Retirement System. Plaintiffs commence this action pursuant to New York State Finance Law § 123-b.
2. Plaintiffs are New York State taxpayers and allege that Defendant Hevesi has exceeded his constitutional authority and acted illegally by recognizing same-sex "marriages" performed outside the State of New York and expending State funds in the process.
3. Defendant has no authority to recognize such unions nor does he have the authority to expend State trust funds or otherwise provide benefits to these relationships that are not recognized in New York. Consequently, Plaintiffs seek a declaratory judgment and a permanent injunction against the Defendants pursuant to New York State Finance Law § 123-b.

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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 and 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, Alan G. Hevesi, is sued in his official capacity as the New York State Comptroller and Sole Trustee of the New York State and Local Retirement System pursuant to New York Social Security Law § 13. At all times relevant to this action, the New York State Comptroller maintained and continues to maintain his principle office at 110 State Street, Albany, NY 12236.

STANDING

9. All Plaintiffs are New York State taxpayers and have standing to maintain this action pursuant New York State Finance Law § 123-b.

ALLEGATIONS OF FACT

10. On or about October 8, 2004, the Defendant, Alan G. Hevesi (“Hevesi”) issued a written statement wherein he proclaimed that the New York State and Local Retirement System would recognize same-sex “marriages” established in foreign jurisdictions. A copy of a letter announcing this policy is attached to the Raum Affirmation as Exhibit A.¹ (“Raum Aff.”).

11. New York State does not issue marriage licenses to same-sex applicants. Moreover, New York State law does not recognize so called same-sex “marriages” performed outside of the State. Notwithstanding these facts, the Defendant unilaterally declared that the State and Local Retirement System would recognize foreign same-sex “marriages.” *See* Exhibit A to Raum Aff.

12. As authority for this recognition, Defendant relied on *Langan v. St. Vincent’s Hospital*, 765 N.Y.S.2d 411 (Sup. Ct. Nassau Co. 2003), wherein the court ruled that Vermont civil unions should be recognized under New York law. *Id.* This decision, however, was reversed by the New York State Appellate Division in *Langan v. St. Vincent’s Hospital*, 802 N.Y.S.2d 476 (2nd Dept. 2005).

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 justice 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

¹ The exhibits attached to the Raum Aff. are incorporated herein by reference.

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's counsel, asking whether Defendant Hevesi 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. On August 8, 2006, Defendant's counsel responded and confirmed that "the New York State and Local Retirement System continues to recognize a same-sex Canadian marriage in the same manner as an opposite-sex New York marriage." A copy of this letter is attached to the Raum Aff. as Exhibit C.

17. The Defendant's illegal acts have and will result in the disbursement of public funds. The State and Local Retirement System receives large contributions of taxpayer supplied state funds.

18. The State makes significant payments each year to the Retirement System for the payment of benefits and expenses.

19. The Retirement System funds accidental death benefits to a member's widow or widower to continue during his or her widowhood entirely from State funds.

20. The Defendant has specifically indicated that the State Retirement System will pay accidental death benefits to same-sex partners "married" out of state and treat them in all respects as "widows" or "widowers" under RSSL § 61. *See* Exhibit A to Raum Aff.

CAUSE OF ACTION

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

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

22. Plaintiff challenges Defendant's acts pursuant New York State Finance Law § 123-b. Specially, Defendant, in the course of his duties has caused, is now causing, and is about to cause a wrongful expenditure, misappropriation, misapplication, or other illegal or unconstitutional disbursement of state funds or state property to same-sex couples purportedly "married" outside the State of New York.

23. The Defendant lacks any legal authority to recognize such "marriages" and his acts are, therefore, illegal, *ultra vires*, against public policy, and otherwise contrary to law and are causing and will cause an illegal expenditure of public funds.

24. The Defendant has unilaterally recognized foreign same-sex "marriages" without legal authority, in contravention of State law and public policy.

25. The Defendant has illegally interpreted State law to include foreign same-sex "marriages" within the legislative definition of "marriage" without authority and in direct contradiction to state law and court rulings.

26. The Defendant has illegally interpreted State law to include members of foreign same-sex "marriages" within the definition of "widow" and "widower."

27. The Defendant has illegally interpreted Domestic Relations Law Section 236-B by defining "marital property" to include "retirement benefits" illegally extended to members of foreign same-sex "marriages."

28. The Defendant has illegally interpreted State law to include members of foreign same-sex “marriages” within the definition “disenfranchised surviving spouse” as set out in New York Estates Powers and Trust Law Section 5-1.1-A(b)(1)(g).

29. The Defendant has engaged in *ultra-vires* acts preempted by state law in that he is attempting to redefine the term “marriage” and “spouse” as found in applicable state legislation and case law to include members of foreign same-sex “marriages.”

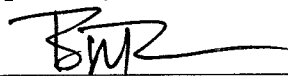
30. The Defendant’s illegal acts as set out above are expending, misappropriating, and or misapplying retirement benefit funds which have been contributed by New York State Agencies, the source of which are funds supplied from New York State tax revenue.

WHEREFORE, Plaintiffs pray for the following relief pursuant to New York State Finance Law §§ 123-e and 123-f:

- A. A Declaratory Judgment finding the Defendant’s recognition of foreign same-sex “marriages” is *ultra vires* and constitutes an illegal expenditure of State funds;
- B. A permanent injunction directing the Defendant to cease and desist from recognizing foreign same-sex “marriages”;
- C. A order directing the Defendant to reimburse the State for all funds illegally expended;
- D. Reasonable costs and attorneys fees;
- E. 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, 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 23rd 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, 2009

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
Commission Expires August 23, 2008