

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

-----X
NEW YORKERS FOR CONSTITUTIONAL
FREEDOMS, JASON J. MCGUIRE, DUANE R.
MOTLEY, NATHANIEL S. LEITER,

Index No.

Plaintiffs,

-against-

NEW YORK STATE SENATE, THE NEW
YORK STATE DEPARTMENT OF HEALTH, and
ERIC T. SCHNEIDERMAN, in his official capacity as
THE ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

SUMMONS

Date Summons Filed:

Defendants.
-----X

To the above named Defendants:

New York State Senate, State Capitol, Albany, NY 12247


New York Department of Health, Corning Tower, Empire State Plaza, Albany, NY
12237.

Eric T. Schneiderman, in his official capacity as The Attorney General of the State of
New York.

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 within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Plaintiff Jason McGuire's residence: Town of Lima, County of Livingston, State of New York.

Dated: July 23, 2011


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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

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NEW YORKERS FOR CONSTITUTIONAL
FREEDOMS, JASON J. MCGUIRE, DUANE R.
MOTLEY, NATHANIEL S. LEITER,

Index No.

Plaintiffs,

-against-

VERIFIED COMPLAINT
Date Summons Filed:

NEW YORK STATE SENATE, THE NEW
YORK STATE DEPARTMENT OF HEALTH, and
ERIC T. SCHNEIDERMAN, in his official capacity as
THE ATTORNEY GENERAL OF THE STATE OF
NEW YORK,

Defendants.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The plaintiffs, New Yorkers for Constitutional Freedoms, Jason J. McGuire, Duane Motley, and Nathaniel S. Leiter, respectfully show and allege as follows:

1. On June 24, 2011, the Marriage Equality Act passed through the New York State Legislature and was signed by Governor Cuomo. In what many are heralding as a big step forward for gay rights, others are questioning whether the corrupt legislative process by which the Act passed renders the entire Act a nullity. Specifically, the Marriage Equality Act became a “law” as a result of:

- meetings that violated New York State Open Meetings Laws;
- the suspension of normal Senate voting procedures to prevent Senators who opposed the bill from speaking;
- failure to follow Senate procedures that require that a bill must be sent to appropriate committees prior to being placed before the full Senate for a vote;

- unprecedented Senate lock-outs by which lobbyists and the public were denied access to elected representatives;
- the Governor's violation of the constitutionally mandated three-day review period before the Legislature votes on a bill by unjustifiably issuing a message of necessity;
- promises (which were fulfilled) by high-profile elected officials and Wall Street financiers to make large campaign contributions to Republican senators who switched their vote from opposing to supporting the Marriage Equality Act; and
- a private dinner between the Republican Senators and Governor Cuomo at the Governor's mansion, with the public and press excluded, aimed at convincing Republican Senators to vote in favor of the bill.

2. In seeking declaratory and injunctive relief, the Plaintiffs in this case seek to preserve not only marriage as the union of one woman to one man, but also our constitutional liberties by acting as a check on an out-of-control political process that was willing to pass a bill regardless of how many laws and rules it violated.

Jurisdiction and Venue

3. Public Officers Law § 107(1) provides that parties aggrieved by violation of the Open Meetings Law may bring an action pursuant to N.Y. C.P.L.R. 3001. Injunctive relief is sought pursuant to N.Y. C.P.L.R. 6301.

4. Venue is proper in the County of Livingston pursuant to N.Y. C.P.L.R. 503(a) based on the residence of Plaintiff Jason J. McGuire.

Parties

5. Plaintiff New Yorkers for Constitutional Freedoms (NYCF), is a New York-based, nonprofit, tax-exempt 501(c)(4) organization founded in 1982 by a group of pastors concerned about religious liberties and moral values in New York State. NYCF is a statewide, issues-oriented, political lobbying organization committed to voicing the pro-life and pro-family perspective to New York state elected officials. NYCF is actively and directly involved in influencing the legislative process. NYCF also hosts a monthly one-hour talk program, a daily commentary, and weekly fifteen-minute State Capitol update on stations throughout the upstate New York region. NYCF represents constituents throughout the entire state of New York.

6. Plaintiff Jason J. McGuire is the Executive Director of New Yorkers for Constitutional Freedoms and a resident of Livingston County, New York. He is an outspoken advocate for traditional marriage and actively opposed the Marriage Equality Act.

7. Plaintiff Duane R. Motley is the Senior Lobbyist with New Yorkers for Constitutional Freedoms and is a New York resident. He was actively involved in lobbying state legislators to oppose the Marriage Equality Act.

8. Plaintiff Nathaniel S. Leiter is Executive Director of Torah Jews for Decency, which is an Orthodox Jewish advocacy organization, active in mobilizing Orthodox Jews in several states to protect the integrity of marriage and safeguard the religious liberties of Bible adherents. Plaintiff Leiter also is the spokesman for Garden State Parents for Moral Values. As an individual, who is a New York resident, and on behalf of the constituents of Torah Jews for Decency, Mr. Leiter is actively involved in protecting marriage and religious liberties throughout New York and New Jersey. Mr. Leiter regularly engages in advocacy activities directed toward legislators at the New York State Capitol. During the two month period leading up to the June

24, 2011 vote, Torah Jews for Decency was in Albany at least seven times, totaling more than two weeks advocating against the Act.

9. Defendant New York State Senate is one house of the New York Legislature, to which Article III of the New York Constitution delegates lawmaking responsibility.

10. Defendant The New York State Department of Health is responsible for adopting rules and regulations for carrying out the state's marriage laws.

11. Defendant Eric T. Schneiderman, in his capacity as the Attorney General of the State of New York, is the chief law enforcement officer of the state of New York, responsible for enforcing the laws of New York.

Statement of Facts

12. On June 15, 2011, the Assembly passed bill number 8354-2011, known as the Marriage Equality Act (the Act). *See Exhibit 1.*

13. The Act was delivered to the Senate on June 15, 2011.

14. The majority political party in the New York Senate is the Republican party, consisting of 32 of the 62 members of the Senate.

15. As such, the Act could not have passed the Senate without some of the Republican senators voting for the Act.

16. As late as June 24, 2011, news media outlets were reporting that the Act still lacked the necessary votes to pass. *See Exhibit 2.*

17. In light of the uphill battle to pass the Act in the Senate, political pressure was placed on the Republican Senators, who previously opposed a similar bill, to switch their vote to vote in favor of the Act.

18. There were at least two meetings that took place in the weeks leading up to passage of the Act that violated New York Open Meetings Law.

19. In passing the New York Open Meetings Law, in 1976, the New York Legislature declared:

It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.

Public Officers Law § 100.

20. *Public Officers Law* § 102 defines a public body as “any entity, for which a quorum is required in order to conduct public business”

21. The Senate is a public body, of which the Republican Conference constitutes a quorum.

22. *Public Officers Law* § 107 provides as a remedy for violation of the Open Meetings Law that a “court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part.”

23. In mid-May, Mayor Bloomberg, accompanied by New York City Council Speaker Christine Quinn, a Democrat, met individually with Republican Senators to persuade them to vote in favor of the Act. *See Exhibit 3.*

24. Within two days of the Act’s passage, Christine Quinn, who openly identifies as a lesbian, announced her plans to wed her same-sex partner. *See Exhibit 4.*

25. On June 16, 2011, Mayor Bloomberg, a registered Independent, spoke to the Republican Conference in a closed door meeting at the New York Capitol building. *See Exhibit 5.*

26. Upon information and belief, a quorum of the New York Senate was present at the June 16, 2011 closed door meeting when Mayor Bloomberg spoke.

27. Reverend Duane Motley, a lobbyist with Plaintiff NYCF, asked to address the Republican Conference after Mayor Bloomberg concluded, but was denied the opportunity. *See Exhibit 5.*

28. Plaintiff Leiter also was at the Capitol building that day and was not permitted to address the Republican Conference. *Id.*

29. Upon information and belief, Mayor Bloomberg pledged to financially contribute to re-election campaigns of Republican Senators who voted in favor of the Act. *See Exhibit 6.*

30. Upon information and belief, Mayor Bloomberg pledged to financially support the campaigns of opponents of Republican Senators who opposed the Act.

31. Upon information and belief, Mayor Bloomberg has personally donated a total of \$41,200 to four Republican Senators who voted in favor of the Act. *Id.*

32. Upon information and belief, Governor Cuomo was actively involved in ensuring that the Act was passed. *See Exhibit 8.*

33. Upon information and belief, Governor Cuomo held meetings to encourage large donors to fund efforts to convince Republican Senators to vote in favor of the Act. *See Exhibit 7.*

34. Upon information and belief, Governor Cuomo met with Republican Senators at the Governor's Mansion to persuade them to vote in favor of the Act. *See Exhibit 8.*

35. Upon information and belief, a quorum of the New York Senate was at the meeting between Governor Cuomo and the Republican Senators at the Governor's Mansion.

36. The meeting at the Governor's Mansion was not open to the public.

37. Governor Cuomo is a registered Democrat.

38. During the five days preceding the Friday June 24, 2011 vote, the New York Senate ignored its own rules and at least two provisions of the New York Constitution regarding the legislative process in an effort to ensure that the Act was passed on that day.

39. Pursuant to Article III, § 10 of the New York Constitution, "The doors of each house shall be kept open, except when the public welfare shall require secrecy."

40. On Tuesday June 21, 2011, a Senate lock-out occurred where no lobbyist or advocate was permitted in the Senate lobby.

41. The Senate lobby is the primary location for lobbyists and advocates to interact with Senators.

42. After lobbyists and advocacy organizations protested the fact that they were denied access to the Republican Senators, which prevented them from performing their duties as lobbyists and activists, on Wednesday June 22 and Thursday June 23, 2011, the Senate lobby was partially re-opened, but only to legislative staff and lobbyists.

43. On Friday June 24, 2011, another Senate lock-out took place.

44. During the June 24, 2011 lock-out, the public, including lobbyists and advocates, were denied access to the Senate lobby.

45. During the June 24, 2011 lock-out, the public, including lobbyists and advocates, were denied access to the hallway on the Republican side of the Senate chamber, where the Republican conference room and leaders' offices are located.

46. During the June 24, 2011 lock-out, the public had access to the area located near the Democratic conference room and leaders' offices.

47. Upon information and belief, during the June 24, 2011 lock-out, Republican Senators turned their cell phones off so that neither the public nor their staff could reach them.

48. Generally, Senators keep their cell phones on during business hours to permit their staff and members of the public to contact them.

49. During the June 24, 2011 lock-out, there was a five-hour period where only the Republican Senators met, excluding all staff and public.

50. Reverend Motley, a lobbyist for 29 years, describes the lock-out as unprecedented in how broadly it denied the public access to the Republican Senators.

51. During the various private meetings, including those where members of other political parties were present, the Republican Senators were pressured to change their vote to allow the Act to go to a full Senate vote and, ultimately, to gain enough votes to pass the Act on the full Senate floor.

52. Upon information and belief, on June 24, 2011, the original Assembly version of the Act was amended to include limited protections for certain religious entities.

53. Pursuant to Article III, § 14 of the New York Constitution, the full text of a bill is to be considered for three days prior to a vote by the Senate or Assembly, unless the Governor issues a message of necessity.

54. Article III, § 14 states that: “**No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor,**

shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon.” (Emphasis added).

55. Although there was no pressing state need to pass the Act on June 24, 2011, the Governor issued a message of necessity on June 24, 2011.

56. Upon information and belief, during the Senate voting process on June 24, 2011, high-ranking Executive branch staff persons were actively involved on the floor of the Senate, helping to ensure a favorable vote on the Act on June 24, 2011.

57. Upon information and belief, during the June 24, 2011 Senate voting process, it was publicly stated from those on the Senate floor that a vote needed to take place before “11 o’clock” so that it could make the evening news.

58. Upon information and belief, normal Senate procedure permits Senators to make up to a two-minute statement accompanying their roll-call vote.

59. During the June 24, 2011 vote on the Act, Senators were denied the opportunity to make a two-minute statement.

60. Senator Diaz, a Democrat, moved to lay aside the bill to permit debate, but his motion was denied by Senate leadership.

61. The Senate leadership, in ignoring and changing normal Senate procedures and rules, deprived citizens, through their elected officials, the opportunity to participate in the deliberative process of the Act.

62. The Senate leadership, in ignoring and changing normal Senate procedures and rules, deprived Plaintiffs, and those they speak on behalf of, the opportunity to participate in the deliberative process.

63. Instead of permitting all Senators to make two-minute statements to accompany their vote, Senate leadership determined that only four Senators would be permitted to make two-minute statements, but only in favor of the Act.

64. Upon information and belief, three of the four who spoke in favor of the Act were Senators who had recently changed their vote to one favoring passage of the Act and the fourth speaker was the sponsor of the Act.

65. The Senate passed the Act with a vote of 33-29.

66. Upon information and belief, prior to the final vote by the Senate, the Democratic-controlled Assembly failed to send the amendment concerning religious entities to any committee, but, rather, took an immediate vote on the Act.

67. Prior to a vote on the Act in the Senate, the public and Plaintiffs were denied the opportunity to view the amendment concerning religious entities despite Plaintiffs' lobbying and advocacy efforts on behalf of some who might be extended protections under the exemption.

68. The Act was signed by the Governor on June 24, 2011 at 11:15 p.m.

69. Upon information and belief, the first same-sex "marriages" are set to occur Sunday July 24, 2011. *See Exhibit 10.*

70. Republican Senators willfully violated the Open Meetings Law.

71. Upon information and belief, the procedural, statutory, and constitutional violations impacted the deliberative process of the Act.

72. Upon information and belief, the procedural, statutory, and constitutional violations impacted the outcome of the vote on the Act.

73. There is an actual and justiciable controversy between the parties.

74. No previous application has been made for the requested relief.

75. Immediate and irreparable harm will occur if injunctive relief is not granted insofar as couples will be “marrying” pursuant to a law that is invalid and, ultimately, could result in the invalidation of those “marriages.”

76. Immediate and irreparable harm will occur if injunctive relief is not granted insofar as New Yorkers will be subjected to a fundamental change in the marriage laws of New York without their constitutionally guaranteed right to participate in the deliberative process and to have a transparent deliberative process.

77. Plaintiffs, as lobbyists, advocates, and citizens of New York, have been deprived of an open legislative process, which the Legislature has described as “essential to the maintenance of a democratic society”

78. Plaintiffs, as lobbyists, advocates, and citizens of New York, have been deprived of a legislative process that comports with the checks and balances expressly and necessarily built into the New York Constitution.

**FIRST CAUSE OF ACTION
(Open Meetings Law Violation)**

79. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 78 of the Verified Complaint as if fully set forth herein.

80. By conducting the business of a public body in closed session in violation of the provisions of the Open Meetings Law, Defendants, as public officials, failed to perform a duty required by law.

81. The foregoing actions injured Plaintiffs who as lobbyists, advocates, and citizens, who are intended to be protected by the Open Meetings Law.

82. The foregoing actions injured Plaintiffs as lobbyists, advocates, and citizens, insofar as it represents a fundamental change to New York law in that it overturns centuries of defining marriage as the union of one man and one woman.

**SECOND CAUSE OF ACTION
(Ultra Vires)**

83. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 78 of the Verified Complaint as if fully set forth herein.

84. The Governor did not properly issue a message of necessity insofar as there was no need for an immediate vote.

85. The Senate failed to perform its constitutional duty in acting as a check on the improper exercise of power by the Executive branch.

86. The Senate acted outside the scope of its authority when it voted on the Act without requiring compliance with Article III, § 14 three-day waiting period.

87. The foregoing actions injured Plaintiffs as lobbyists, advocates, and citizens, insofar as it represents a fundamental change to New York law in that it overturns centuries of defining marriage as the union of one man and one woman.

**THIRD CAUSE OF ACTION
(Free Speech Violation)**

88. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 78 of the Verified Complaint as if set forth fully herein.

89. By conducting the official business of a public body in a closed session in violation of the provisions of the Open Meetings Law, Defendants as public officials acted under color of law to injure Plaintiffs as lobbyists, advocates, and citizens by depriving them of their

right to freedom of speech secured under the First and Fourteenth Amendments to the United States Constitution.

Wherefore, Plaintiffs respectfully request that judgment be entered pursuant to CPLR 3100 and 6301 as follows:

- A. Declaring that the New York Senate violated New York Open Meetings Laws;
- B. Declaring, pursuant to *Public Officers Law* § 107, the Marriage Equality Act by the New York Senate null and void;
- C. Declaring, pursuant to Article III, § 14 of the New York State Constitution, that the Governor improperly issued a message of necessity;
- D. Declaring the Marriage Equality Act null and void for failure to comply with Article III, § 14 of the New York State Constitution;
- E. Declaring void any marriages that took place pursuant to the Act;
- F. Enjoining the Defendants, and all those acting in concert with them to implement and enforce the Marriage Equality Act, from implementing or enforcing the Marriage Equality Act;
- G. Requiring Defendant New York Senate to comply with the Open Meetings Law in all future meetings;
- H. Awarding Plaintiffs costs and fees as provided for by *Public Officers Law* § 107(2); and

I. Granting such other and further relief as the Court may deem just and proper.

No prior application for the relief requested herein has been made.

Dated: July 22, 2011



Rena M. Lindevaldsen, Esq.

Liberty Counsel

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Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Monroe) ss:

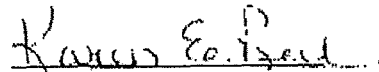
Jason J. McGuire, being duly sworn, deposes and says:

I am the Executive Director of New Yorkers for Constitutional Freedoms, a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.



Jason J. McGuire, as an Officer
of New Yorkers for Constitutional
Freedoms

Sworn to before me this
22nd day of July, 2011



Notary Public

KAREN E. REEL
NOTARY PUBLIC, STATE OF NEW YORK
No. 01RE6089185
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES MARCH 17, 2015

VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

Jason J. McGuire, being duly sworn, deposes and says:

I am a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.



Jason J. McGuire

Sworn to before me this
22nd day of July, 2011

Karen E. Reel
Notary Public

KAREN E. REEL
NOTARY PUBLIC, STATE OF NEW YORK
No. 01REG089185
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES MARCH 17, 2013

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Monroe) ss:

Duane R. Motley, being duly sworn, deposes and says:

I am a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.

Duane R. Motley
Duane R. Motley

Sworn to before me this
22nd day of July, 2011

Karen E. Reel
Notary Public

KAREN E. REEL
NOTARY PUBLIC, STATE OF NEW YORK
No. 01RE6089185
QUALIFIED IN MONROE COUNTY
MY COMMISSION EXPIRES MARCH 17, 2015

VERIFICATION

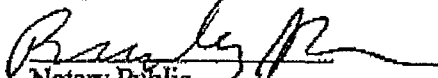
STATE OF NEW YORK)
COUNTY OF Rockland) ss:

Nathaniel S. Leiter, being duly sworn, deposes and says:

I am a plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters I believe them to be true.


Nathaniel S. Leiter

Sworn to before me this
22th day of July, 2011


Notary Public

Bradley Abramson
Notary Public, State of New York
No. 01AB6133828
Qualified in Rockland County
Commission expires 09-19-20 13