

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

NICOLA M. CUCINOTTA, and :
TAMARA J. CUCINOTTA, :
formerly TAMARA J. DAVIS, :
 :
Plaintiffs, :
v. :
 :
COMMONWEALTH OF PENNSYLVANIA, :
 :
Defendant. :

451 MD 2013

NOTICE TO DEFEND

TO: COMMONWEALTH OF PENNSYLVANIA

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street
Harrisburg, PA 17101
(717) 232-7536

2013 SEP -6 P 1:05
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OF PENNSYLVANIA

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451 MD 13.
**COPY WENT
TO COURT**
9-6-13.

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COMMONWEALTH COURT
OF PENNSYLVANIA
2013 SEP -6 P 1:05

COMPLAINT FOR DECLARATORY JUDGMENT

1. Nicola M. Cucinotta is an individual with an address at 551 Foxwood Lane, Paoli, PA 19301.

2. Tamara J. Cucinotta, formerly Tamara J. Davis, is an individual with an address at 551 Foxwood Lane, Paoli, PA 19301.

3. Commonwealth of Pennsylvania is properly addressed for this action at the office of the Attorney General, 15th Floor, Strawberry Square, Harrisburg, PA 17120.

4. Plaintiffs bring this action for judgment pursuant to 42 Pa.C.S. §§ 7531-7541, declaring they have the right to be married to one another under Article I, §§ 1, 3, 25, 26, and 28 of the Pennsylvania Constitution, notwithstanding any purported traditional or statutory definition of marriage limited to one man and one woman.

5. This court has original jurisdiction over this action pursuant to 42 Pa.C.S. § 761(a), whereby the Commonwealth Court shall have original jurisdiction of all civil actions against the Commonwealth government.

6. Plaintiffs are adult women of full capacity. Plaintiffs have chosen to be married to one another.

7. There is no impediment to plaintiffs being married to one another other than their sex, which raises a question of the definition of marriage in Pennsylvania case law, such as De Santo v. Barnsley, 476 A.2d 952 (Pa.Super. 1984), and in the Pennsylvania Marriage Law, 23 Pa.C.S. §§ 1101 et seq.

8. De Santo held that a marriage was between a man and a woman and that any change would be properly legislative. De Santo expressly declined to consider the Pennsylvania Constitution because the parties had not raised the Pennsylvania Constitution in the Court of Common Pleas.

9. The Marriage Law was amended in 1996 to provide that a marriage is "a civil contract by which one man and one woman take each other for husband and wife." 23 Pa.C.S. § 1102.

10. Pennsylvania Constitution, Article I, § 25, nullifies governmental acts that transgress Article I, as ultra vires:

"§ 25. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate."

11. Purported denial of the rights, benefits, and mutual obligations of marriage violates Article I, §§ 1, 3, 26, and 28, which say:

"§ 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

"§ 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship."

"§ 26. Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

"§ 28. Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual."

12. The limitation on marriage in Pennsylvania case law and the Marriage Law transgresses plaintiffs' inherent rights of pursuing their own happiness, interferes with their rights of conscience, denies them the enjoyment of the civil rights of marriage, discriminates against them in the exercise of their civil rights, and denies them equality of rights under the law because of their sex.

WHEREFORE, plaintiffs Nicola M. Cucinotta and Tamara J. Cucinotta demand judgment in their favor against the Commonwealth of Pennsylvania, declaring that they have the right to be married to one another with all the benefits and obligations pertaining, pursuant to Pennsylvania Constitution, Article I, §§ 1, 3, 25, 26, and 28, notwithstanding any purported traditional or statutory definition of marriage limited to one man and one woman.



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Counsel for Plaintiffs

VERIFICATION

NICOLA M. CUCINOTTA says the following:

I am a plaintiff in this matter and the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information, and belief.

I understand that these statements are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: September 5, 2013.


Nicola M. Cucinotta

VERIFICATION

TAMARA J. CUCINOTTA says the following:

I am a plaintiff in this matter and the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information, and belief.

I understand that these statements are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: September 5, 2013.

A handwritten signature in black ink, appearing to read 'Tamara J. Cucinotta', written over a horizontal line.

Tamara J. Cucinotta