

FILED

STATE OF NORTH CAROLINA
2004 APR -8 PM 12:26
COUNTY OF DURHAM
DURHAM COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 4 CVD 01396

_____	BY _____)
RICHARD CORBETT MULLINAX, JR.)
and PERRY RICHARD PIKE,)
Plaintiffs,)
)
v.)
)
WILLIE COVINGTON,)
Durham County Register of Deeds,)
Defendant.)
_____)

MOTION TO INTERVENE
(INTR)

NOW COME, REVEREND ERNEST FERRELL, AND REVEREND GREGORY CLARK, ORDAINED MINISTERS OF NORTH CAROLINA, EACH MARRIED according to law, and move this court, pursuant to North Carolina Rules of Civil Procedure 24, for leave to intervene as defendants in this action in order to assert the defenses set forth in the proposed Answer, a copy of which is attached as Exhibit A. Movants are entitled to intervene of right in this action pursuant to N.C. Gen. Stat. 1A-1, Rule 24(a) based upon the following grounds:

- (1) The institution of marriage is one of the most cherished and important legal rights a citizen of North Carolina may obtain;
- (2) The General Assembly has declared marriage as being between "a male and female" in Chapter 51 of the North Carolina General Statutes;
- (3) The General Assembly has prescribed that "ordained" ministers may officiate at marriages and declare "a male and female" to be "husband and wife";

- (4) Your movants are ordained ministers residing in North Carolina and are authorized by law to conduct marriages under the laws of North Carolina;
- (5) Your movants, are required by law to declare married those who meet the requirements in law as being "husband and wife" in all ceremonies over which they officiate;
- (6) Your movants are ordained ministers of North Carolina who sincerely follow the laws of marriage as promulgated by the North Carolina General Assembly and are unable to officiate at and consequently declare persons of the same gender to be husband and wife; or husband and husband; or wife and wife;
- (7) The request for relief as contained in the Plaintiff's Complaint in the above captioned case, calls for the issuance of a marriage license to two persons of the same gender, and if the Court were to grant the requested relief your movants, as ordained ministers, and thousands of others similarly situated, would be immediately confronted with having to perform a marriage ceremony because a license to marry was issued to two or more persons of the same gender, in violation of movants sincerely held religious beliefs and in violation of N.C.G.S. § 51-1, or face the possibility of civil lawsuits for refusal to perform marriage ceremonies for failing to honor a marriage license issued to two or more persons of the same gender.

- (8) Movants are married men, living in a state of Holy matrimony for many years to their respective wives.
- (9) Movants value marriage as an exclusive and unique union between a husband and wife, as recognized through thousands of years of history and in the laws of North Carolina throughout all of the State's history, and value marriage as the most fundamental building block of society because marriage provides for the natural procreative process, protection and stability for children and the child-rearing process in which children can fully benefit from a father and mother relationship, and overall family health and preservation.
- (10) Movants allege on information and belief that forced recognition of same sex marriage will weaken, damage and destroy the meaning, integrity and value of marriage between one male person and one female person.
- (11) On information and belief, your movants allege that the Register of Deeds of Durham County, North Carolina, will be represented by the Durham County Attorney, Mr. Chuck Kitchen, in the above styled case.
- (12) On information and belief, your movants allege that the County Attorney and County Commissioners of Durham County, North Carolina, have passed over strenuous objections of many citizens, a local law, ordinance, policy, provision, or directive whereby Durham

County provides for "domestic partner benefits" to homosexual couples.

(13) On information and belief, this measure of providing "domestic partner benefits" to homosexual couples was achieved in part by the legal advice and assistance of Mr. Chuck Kitchen, the Durham County Attorney, working in conjunction with the Durham County Commissioners.

(14) On information and belief, the official actions of the Durham County Attorney, Mr. Chuck Kitchen, demonstrate favoritism and bias toward acknowledgment of marriage between persons of the same gender by providing a "first step" through Durham County's provision of "domestic partner benefits" to couples of the same gender as has historically been provided for Durham County employees that are in a traditional marriage relationship consisting of a male person and female person.

(15) On information and belief your movants allege that it is highly improbable, if not impossible, for the Durham County Attorney to adequately represent their interests as ordained ministers, as described herein, and in their official capacity in law and further it is highly improbable, if not impossible, for the Durham County Attorney to adequately represent the interests of your movants as adherents to the preservation of the true value and historic meaning of marriage

between a male person and a female person as described herein and in the laws of North Carolina.

(16) On information and belief, the Durham County Attorney is in the employ of Durham County, has economic interests in representing the desires of certain Durham County Commissioners, which conflict with the sincerely held beliefs of your movants as ordained ministers, as herein described, and authorized to perform marriage ceremonies under North Carolina law.

(17) The issue(s) presented by the Complaint in the above captioned case along with the relief sought therein, directly impact the interests of your movants, and are the same issue(s) giving rise to the absolute need for your movants to intervene in this action, providing for common questions of law and fact.

(18) On information and belief, your movants have no other forum available to assert the need to protect their rights and interests under law, other than the above captioned case, and the failure to allow intervention as of right will cause irreparable harm to the movants.

(19) Allowing your movants motion to intervene will be in keeping with judicial efficiency and the general theory of permissive joinder allowing for claims and defenses having a common legal and factual basis to be disposed of in one lawsuit rather than multiple lawsuits.

(20) Movants actions are timely in that:

- (i) the above captioned Complaint was filed on March 22, 2004, a copy of which was never served upon your movants;
- (ii) the Defendant Willie Covington, Durham County Register of Deeds, has not filed an Answer, or any motions in the case, and the time for Answering by the named Defendant has not yet expired.

WHEREFORE, Movants pray this Court:

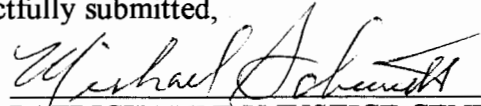
(1) Grant their motion to intervene as a matter of right and in the alternative, as permissively allowed to intervene under subsection (b) of Rule 24, for the foregoing reasons, and because there exist common questions of law and fact, exclusively derived from the Complaint filed in the above captioned action; and

(2) Allow this verified motion as an affidavit in support of the Movant's Motion to Intervene.

This the 8th day of April, 2004.

Respectfully submitted,

By:


PATRICK HENRY JUSTICE CENTER
Michael Schmidt, SBN 12545
Attorney for Intervenors
10322 Stewartville Cemetery Road
Laurinburg, NC 28352
Telephone: (910) 266-9017

and

ALLIANCE DEFENSE FUND

Jordan W. Lorence

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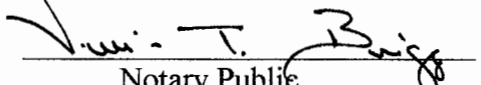
VERIFICATION

I, Ernest Ferrell, being first duly sworn, depose and say that I have read the foregoing Motion to Intervene, and know the contents thereof, that the same is true of my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.


ERNEST FERRELL, Intervenor

Sworn to and subscribed before me

This 8 day of April, 2004:


Notary Public



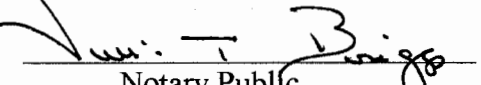
My Commission Expires: 1/23/06

I, Gregory Clark, being first duly sworn, depose and say that I have read the foregoing Motion to Intervene, and know the contents thereof, that the same is true of my own knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true.


GREGORY CLARK, Intervenor

Sworn to and subscribed before me

This 8 day of April, 2004:


Notary Public



My Commission Expires: 1/23/06

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
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FILE NO. 4 CVD 01396

RICHARD CORBETT MULLINAX, JR.)
and PERRY RICHARD PIKE,)
Plaintiffs,)

v.)

WILLIE COVINGTON,)
Durham County Register of Deeds,)
Defendant.)
_____)

EXHIBIT A

**ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendants, Reverend Ernest Ferrell, Reverend Jeffrey Long, Reverend Gregory Clark, ordained ministers, through their attorneys, file the following Answer to Plaintiff's Complaint:

FIRST AFFIRMATIVE DEFENSE

By law in North Carolina,

"[a] valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either:

- (1)a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate; and
- b. With the consequent declaration by the minister or magistrate that the persons are husband and wife;... " N.C. Gen. Stat. 51-1;

and the Plaintiff's are not "male and female" persons, cannot be "husband and wife" and are not entitled to obtain the unique status of being married to each other, and therefore the Plaintiff's Complaint and prayer for relief requesting a marriage license be issued to them as members of the same gender, should be dismissed its totality.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's are not entitled to obtain a marriage license from the Register of Deeds of Durham County, Mr. Willie Covington, and thence go before ordained ministers and magistrates to be declared "husband and wife", or "husband and husband" or "wife and wife" in violation of N.C. Gen. Stat. 51-1, necessitating the Plaintiff's Complaint and all requested relief contained therein, demanding the Durham County Register of Deeds be forced to issuance a marriage license to them as members of the same gender should be dismissed in its entirety.

THIRD AFFIRMATIVE DEFENSE

Pursuant to the separation of powers as contained in Article I § 6, of the Constitution of North Carolina, the General Assembly has provided by law for the institution of marriage to be uniquely and exclusively established by "a male and female person who may lawfully marry, presently to take each other as husband and wife" [N.C. Gen. Stat. 51-1] and the General Assembly pursuant to its constitutional law-making authority has declared "[m]arriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina" [N.C. Gen. Stat. 51-1.2], requiring the sum of the Plaintiff's Complaint and the relief requested therein be dismissed on the basis that this Court lacks subject matter jurisdiction.

Subject to and without waiver of the foregoing affirmative defenses, Defendant answers the Complaint as follows:

1. Admitted to the extent the same is represented in the Plaintiffs' verified Complaint.
2. Admitted.
3. Admitted in part and denied in part. It is admitted that the Plaintiffs seek declaratory and injunctive relief in relation to the matter of issuance of a marriage license. It is denied that the Plaintiffs are entitled to declaratory and injunctive relief in relation to the matter of issuance of a marriage license.
4. Admitted.
5. Denied.
6. Paragraph 6 of Plaintiffs' Complaint is a partial quote from N.C. Gen. Stat. § 51-8 to which no response is necessary. To the extent that a response is deemed necessary, the Defendants assert N.C. Gen. Stat. § 51-8 in its entirety and in the context of Chapter 51 "Marriage" of the North Carolina General Statutes and deny Plaintiffs are entitled to any relief thereunder.
7. Paragraph 7 of Plaintiffs' Complaint is a quote from N.C. Gen. Stat. § 51-2 to which no response is necessary. To the extent that a response is deemed necessary, the Defendants assert N.C. Gen. Stat. § 51-2 in its entirety must be read in the context of Chapter 51 "Marriage" of the North Carolina General Statutes and deny Plaintiffs are entitled to any relief.

8. Paragraph 8 is a legal conclusion to which no response is necessary.
To the extent that a response is deemed necessary, the averments of Paragraph 8 are denied.
9. Denied. Defendants lack sufficient information to admit or deny the age and marital status of the Plaintiffs.
10. Admitted in part and denied in part. Admitted, on information and belief based upon the Plaintiffs' verified Complaint, that Plaintiffs presented themselves to Defendant Register of Deeds of Durham County, North Carolina, requested a marriage license and were denied a license to marry. The remaining averments of Paragraph 10 are denied.
11. Admits, on information and belief, that Defendant Register of Deeds of Durham County, North Carolina, asserted "that a marriage between two persons of the same gender is not valid in North Carolina" and he is "prohibited from issuing a marriage license to Plaintiffs", but has insufficient information with which to admit or deny whether he referenced N.C. Gen. Stat. § 51-1.2 or any other specific provisions of law.
12. Denied.
13. Admitted in part and denied in part. It is admitted that N.C. Gen. Stat. § 51-17 operates as a penalty provision to the Register of Deeds for "knowingly or without reasonable inquiry" issuing a marriage license for the marriage of any two persons to which there is a lawful

impediment. It is denied that the inquiry for impediment to marriage is limited to "specifically a failure to meet the age requirements set forth in the statutes".

14. Denied. Paragraph 14 of the Plaintiffs' Complaint consists of legal conclusions to which no response is necessary. To the extent that a response is deemed necessary, it is denied that "[t]he only lawful impediment to marriage is lack of capacity to marry, as set forth in N.C.G.S. 51-2", denied that "the possibility that a marriage between Plaintiffs would later be declared invalid or void is not a lawful impediment to the act of marriage" and denied that only after a marriage license has been issued, and a marriage has occurred can the validity of the marriage be determined.

15. Paragraph 15 of the Plaintiffs' Complaint consists of legal conclusions to which no response is necessary. To the extent that a response is deemed necessary, the issues before the Court is (1) whether the Court has subject matter jurisdiction and can grant any relief requested by the Plaintiffs, where the Legislature has provided that marriage is exclusively "created by the consent of a male and female person" to be declared to be "husband and wife" in North Carolina and expressly provided that marriages outside of North Carolina between individuals of the same gender are not valid in North Carolina, (2) whether two (or more) persons of the same gender meet the qualifications established by the General Assembly to enter into marriage consisting of "a male

and female person" to be declared "husband and wife" pursuant to pursuant to N.C. Gen. Stat. § 51-1 as being required for the institution of marriage in North Carolina and (3) whether the Defendant is required to issue a marriage license to persons of the same gender and ordained ministers or others authorized to officiate at marriage ceremonies are required to declare persons of the same gender married under Chapter 51 "Marriage" of the North Carolina General Statutes.

16. Defendants lack sufficient information to admit or deny the age and marital status of the Plaintiffs. All other averments contained in Plaintiffs' Paragraph 16 are denied.

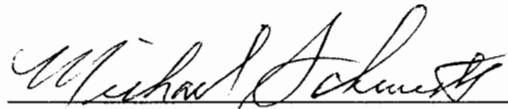
WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendants respectfully request that the Court find as follows:

1. That the Court does not have subject matter jurisdiction and must dismiss the Plaintiffs' Complaint;
2. That the Court deny the Plaintiffs' request for Declaratory and Injunctive relief and all relief;
3. That the Court grant other and further relief to the Defendants as the Court deems just and proper.

This 8th day of April, 2004.

Respectfully submitted,

By:



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Michael Schmidt, SBN 12545
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10322 Stewartsville Cemetery Road
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Telephone: (480) 444-0020

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this document Motion to Intervene in the above-captioned action upon all other parties to this cause by:

Personal delivery to the attorney for each party, or to the individual party.

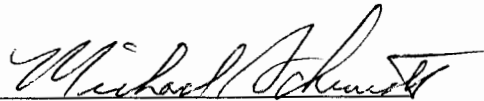
Depositing a copy hereof, enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service and properly addressed to the attorney for each party, or party, as follows:

Cheri C. Patrick
Attorney for Plaintiffs
100 E. Parrish Street, Suite 400
Durham, NC 27701

County Attorney for Durham County
Chuck Kitchen
200 E. Main Street
2nd Floor, Old Courthouse
Durham, NC 27701

This the 8th day of April, 2004.

PATRICK HENRY JUSTICE CENTER



Michael Schmidt, SBN 12545
Attorney for Intervenors
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