

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO. 04 CVD 01396

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RICHARD CORBETT MULLINAX, JR.	)	
and PERRY RICHARD PIKE,	)	
Plaintiffs,	)	
	)	
v.	)	<b><u>MOTION TO DISMISS</u></b>
	)	<b><u>NC COUNCIL OF CHURCHES'</u></b>
WILLIE COVINGTON,	)	<b><u>LIMITED</u></b>
Durham County Register of Deeds,	)	<b><u>MOTION TO INTERVENE</u></b>
Defendant.	)	(DISM)
_____	)	

NOW COME, REVEREND ERNEST FERRELL, AND REVEREND GREGORY CLARK, ORDAINED MINISTERS OF NORTH CAROLINA, and move the Court to dismiss the "Limited Motion to Intervene by NC Council of Churches" based upon the following:

1. Counsel for Intervenors received for the first time via facsimile the "Limited Motion to Intervene by NC Council of Churches" on Friday, May 7, 2004, at 3:49P.M. [See Exhibit No. 1 Attached showing time of submission].
2. A "Notice of Hearing" was not submitted.
3. Written motions and written notices must be served "not later than five days before the time specified for the hearing..." [1A-1, Rule 6(d)]. The day of the service is not to be included, in this case, Friday, May 7, 2004. [1A-1, Rule 6(a)]. "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation". [1A-1, Rule 6(a)].

4. The Motion to Intervene filed by the NC Council of Churches fails to comply with the requirements of 1A-1, Rule 24 in that:

(a) A pleading does not accompany the motion. Rule 24(c) states: "The Motion shall state the grounds therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought".

(b) Rule 24 does not provide for "limited" motions to intervene for purposes other than a request to become a party to the case in controversy.

(c) The "Limited Motion to Intervene by NC Council of Churches" fails to satisfy any of the elements required by law under (a)(1) or (a)(2) or (b)(1) or (b)(2).

5. The NC Council of Churches has seriously mischaracterized the Motion to Intervene filed April 8, 2004 in that:

(a) The averments contained therein state "that ordained ministers may officiate at marriages" ¶ 3; "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" ¶ 5; 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." ¶ 7.

(b) "Should this Court rule in the Plaintiff's favor and require the Register of Deeds to issue a marriage license, ordained ministers would be faced with the legal dilemma of having to decide to honor the marriage license issued by the Register of Deeds at the order of a judicial officer and disregard the requirements of N.C. Gen. Stat. § 51-1 creating marriage exclusively between "a male and female person" with declaration that they are "husband and wife" and N.C. Gen. Stat. § 51-16 requiring the marriage license be between a "Groom" and a "Bride", or honoring the statutory law of North Carolina as contained in Chapter 51 "Marriage" and disregarding the license issued by the Register of Deeds as ordered by a judicial officer, incurring potential detrimental legal entanglement in either event." [¶ 5 Supplemental Affidavit].

(c) Ordained ministers must certify the named persons, "...in reference to a male person known as the 'Groom' and a female person known as the 'Bride'". [¶ 4(f) Supplemental Affidavit in the context of use of DHHS 2132 ¶ 4 – 4(e) Supplemental Affidavit].

WHEREFORE, the above named Intervenors, pray this Court DISMISS the "Limited Motion to Intervene by NC Council of Churches".

This the 10<sup>th</sup> day of May, 2004.

Respectfully submitted,

By:

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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this document MOTION TO DISMISS NC COUNCIL OF CHURCHES LIMITED MOTION TO INTERVENE in the above-captioned action upon all other parties to this cause by:

  X   Telefacsimile.

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This the 9th day of May, 2004.

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