

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

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

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

MOTION TO INTERVENE

NOW COME, REVEREND ERNEST FERRELL, REVEREND GREGORY CLARK AND REVEREND JEFFREY LONG, 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 ____ day of April, 2004.

Respectfully submitted,

By: _____
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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 ____ day of April, 2004:

Notary Public

My Commission Expires: _____.

I, Jeffrey Long, 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.

JEFFREY LONG, Intervenor

Sworn to and subscribed before me
This ____ day of April, 2004:

Notary Public

My Commission Expires: _____.

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 _____ day of April, 2004:

Notary Public

My Commission Expires: _____.