

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

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

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

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**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 Plaintiffs' 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 declare persons of the same gender married under Chapter 51 "Marriage" of the North Carolina General Statutes.

16. Defendants lack information sufficient 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 \_\_\_\_\_ day of April, 2004.

Respectfully submitted,

By:

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