

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

MARCIE FISHER-BORNE, for herself and as guardian ad litem for M.F.-B., a minor;
CHANTELLE FISHER-BORNE, for herself and as guardian ad litem for E.F.-B., a minor; TERRI BECK; LESLIE ZANAGLIO, for herself and as guardian ad litem for T.B.Z. and D.B.Z., both minors; SHANA CARIGNAN; MEGAN PARKER, for herself and as guardian ad litem for J.C., a minor; LEIGH SMITH; CRYSTAL HENDRIX, for herself and as guardian ad litem for J.H.-S., a minor; DANA DRAA; LEE KNIGHT CAFFERY, for herself and as guardian ad litem for M.M.C.-D. and M.L.C.-D., both minors; SHAWN LONG; CRAIG JOHNSON, for himself and as guardian ad litem for I.J.-L., a minor;

Case No. 1:12-cv-00589

Plaintiffs,

v.

JOHN W. SMITH, in his official capacity as the Director of the North Carolina Administrative Office of the Courts; THE HONORABLE DAVID L. CHURCHILL, in his official capacity as Clerk of the Superior Court of Guilford County; THE HONORABLE ARCHIE L. SMITH III, in his official capacity as Clerk of the Superior Court for Durham County; ROY COOPER, in his official capacity as the Attorney General of North Carolina; WILLIE COVINGTON, in his official capacity as the Register of Deeds for Durham County; and JEFF THIGPEN, in his official capacity as the Register of Deeds for Guilford County;

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION AND IN SUPPORT OF DEFENDANTS' JOHN W.**

SMITH, in his official capacity as the Director of North Carolina Administrative Office of the Courts; THE HONORABLE DAVID L. CHURCHILL, in his official capacity as Clerk of the Superior Court for Guilford County; THE HONORABLE ARCHIE L. SMITH III, in his official capacity as Clerk of the Superior Court for Durham County; and ROY A. COOPER, in his official capacity as the North Carolina Attorney General, (collectively referred to as “State Defendants”) MOTION TO STAY THE PROCEEDINGS

Defendant Willie Covington, in his official capacity as Register of Deeds of Durham County, in response to Plaintiff’s Motion for a Preliminary Injunction and the State Defendants’ Motion to Stay the Proceedings submits this Memorandum of Law in opposition to Plaintiff’s Motion for a Preliminary Injunction and in support of the State Defendants’ Motion to Stay these Proceedings.

NATURE OF THE CASE

Plaintiffs have brought this action pursuant to 42 U.S.C. §1983, alleging North Carolina’s prohibition against same sex marriages violates their rights to due process and equal protection under the United States Constitution. They seek a declaration that North Carolina’s Amendment One and N.C. Gen. Stat. §§51-1, 51-1.2 violate Plaintiffs’ rights to due process and equal protection under the United States Constitution and 42 U.S.C. §1983, and that such laws are thus void and unenforceable. Plaintiffs further seek an order directing Defendant Covington to accept marriage applications from same-sex couples and to process such applications in a manner that is consistent with the manner in which he accepts and processes applications from heterosexual couples. Additionally, Plaintiffs seek an order directing Defendant Covington to register marriage licenses of same sex couples in the same manner that he accepts and registers marriage licenses of heterosexual couples.

In furtherance of their claims for relief against Defendant Covington, Plaintiffs Shana Carignan and Megan Parker filed a Motion for a Preliminary Injunction on April 9, 2014, alleging that the state’s laws prohibiting the recognition of their out of state marriage prevents

Plaintiff Carignan from adopting Plaintiff Parker's son (J.C.), and, as such, prohibits him from receiving medical coverage under her health insurance plan. Plaintiffs further allege that this prohibition prevents J.C. from receiving the best medical care possible because he is currently only eligible to receive medical coverage through Medicaid.

On April 11, 2014 the State Defendants filed a Motion to Stay all proceedings in this matter pending a decision by the United States Court of Appeals for the Fourth Circuit in Bostic v. Schaefer (Case No. 14-1167).

ARGUMENT

I. ALL PROCEEDINGS IN THIS MATTER SHOULD BE STAYED UNTIL THERE IS A RESOLUTION OF THE PENDING MATTER IN THE FOURTH CIRCUIT (Bostic v. Schaefer, Case No. 14-1167) AND FOR PURPOSES OF JUDICIAL EFFICIENCY.

It is the position of Defendant Covington to abide by and follow the law. This position, rather this obligation, is served by finality and clarity of the law in this area which is before the Fourth Circuit in the matter of Bostic v. Schaefer, Case No. 14-1167. Defendant Covington, therefore, joins in the application of the State Defendants to stay this matter pending the decision of the Fourth Circuit.

Defendant Covington is respectful of Plaintiff's application before this Court. But Defendant Covington is duty bound to follow the law and respectfully submits that competing venues and decisions on this issue wreaks harm in the now vested review before the Fourth Circuit of the same question of law. Intervention by preliminary injunction will not result in the relief that Plaintiffs seek herein because any decision may be made questionable by higher precedent.

CONCLUSION

Plaintiffs' motion for a preliminary injunction should be denied and all proceedings in this matter should be stayed for the reasons set out herein.

This the 28th day April, 2014.

/s/ Kathy R. Everett-Perry
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF THE STATE DEFENDANTS' MOTION TO STAY was filed electronically with the Clerk of Court using the CM/ECF system which will serve copies to counsel of record in this matter as indicated below:

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This the 28th day of April, 2014.

/s/ Kathy R. Everett-Perry
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