

IN THE FOURTH CIRCUIT COURT FOR KNOX COUNTY, TENNESSEE

SABRINA RENAE WITT)
Plaintiff,)
)
v.)
)
ERICA CHRISTINE WITT,)
Defendant.)
)
And)
)
Herbert H. Slatery, III, Attorney General and)
Reporter for the State of Tennessee, Intervenor)
)
And)
)
Representatives Bill Dunn (Dist. 16), Glen Casada)
Dist. 63) Mike Carter (Dist. 29), David Alexander)
(Dist 39, Harry Brooks (Dist. 19), Kevin Brooks)
Dist. 24), Sheila Butt (Dist. 64), David Byrd)
(Dist. 71), John Crawford (Dist. 1), Barry Doss)
(Dist. 70), Jimmy Eldridge (Dist. 73), Jeremy)
Faison (Dist. 11), John Forgety (Dist. 23), Ron)
Gant (Dist. 94), Tilman Goins (Dist. 10), Curtis)
Halford (Dist. 79), David Hawk (Dist. 5), Matthew)
Hill (Dist. 7), Timothy Hill (Dist. 3), Gary Hicks)
(Dist. 9), Andy Holt (Dist. 76), Dan Howell)
(Dist. 22), Bud Hulseley (Dist. 2), Kelly Keisling)
(Dist. 38), Sabi Kumar (Dist. 66), William)
Lamberth (Dist. 44), Marry Littleton (Dist. 78),)
Ron Lollar (Dist. 99), Susan Lynn (Dist. 57),)
Pat Marsh (Dist. 62), Jimmy Matlock (Dist. 21),)
Judd Matheny, (Dist. 47), Debra Moody (Dist. 81),)
Mark Pody (Dist. 46), Dennis Powers (Dist. 36),)
John Ragan (Dist. 33), Jay Reedy (Dist. 74),)
Courtney Rogers (Dist. 45), Tim Rudd (Dist. 34),)

No. 136047

Cameron Sexton (Dist. 25), Paul Sherrell (Dist. 43),)
Jerry Sexton (Dist. 35), Mike Sparks (Dist. 49),)
Bryan Terry (Dist. 48), Rick Tillis (Dist. 92), Micah)
Van Huss (Dist. 6), Terri Lynn Weaver (Dist. 40),)
Dawn White (Dist. 37), Mark White (Dist. 83))
Ryan Williams (Dist. 42), Tim Wirgau (Dist. 75),)
Jason Zachary (Dist. 14))

And)

Senators Mike Bell (Dist. 9), Paul Bailey (Dist. 15))
Richard Briggs (Dist. 7), Rusty Crowe (Dist. 3),)
Mae Beavers (Dist. 17), Janice Bowling (Dist. 16),)
Mark Green (Dist. 22), Todd Gardenhire (Dist. 10),)
Dolores Gresham (Dist. 26), Ferrell Haile (Dist. 18))
Joey Hensley (Dist. 28), Ed Jackson (Dist. 27),)
Jack Johnson (Dist. 23), Kerry Roberts (Dist. 25),)
Steve Southerland (Dist. 1), John Stevens)
(Dist. 24), Jim Tracy (Dist. 14), Bo Watson)
(Dist. 11), Ken Yager (Dist. 12),)
)
Third Party Movant-Intervenors.)

MOTION TO INTERVENE

Come now 52 of the 99 Members of 110th General Assembly elected to the House of Representatives and 19 of the 33 Members of the 110th General Assembly elected to Senate, by and through their counsel of record, and pursuant to Tenn. R. Civ. P. 24.01 and 24.02, move this Court to intervene in this action on the following grounds.

Movant-Intervenors assert that they are entitled to intervene as a matter of right because:

(A) this Court having granted Defendant Witt leave by Order filed February 23, 2017 to file an amended answer and amended counter-complaint in order to raise a defense challenging the constitutionality of Tenn. Code Ann. § 68-3-306, that legal question is now squarely and unequivocally before this Court;

(B) Movant-Intervenors have a unique and substantial interest in the legislative authority granted them under Article II, Sections 1, 2, and 3 of the Tennessee Constitution relative to matters of family and domestic law and reserved to them under the Constitution of the United States under the Tenth Amendment and that interest constitutes an interest in and, in the words of Tenn. R. Civ. P. 24.01, an interest “relating” “to the “subject of the action”;

(C) their interest will be impeded, impaired, restricted, and/or nullified if:

(1) the judgment in *Obergefell v. Hodges*, ___ U.S. ___, 135 S. Ct. 2584 (2015), is extended beyond its ruling in the unwarranted manner Defendant Witt requests, to extend federal jurisdiction to and over relationships between children, biological parents, and other adults,

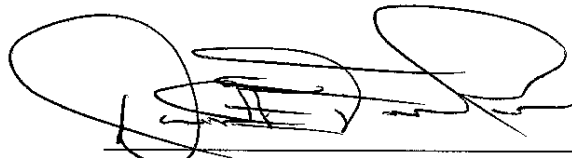
(2) the word “spouse” is substituted for the word “husband” in Tenn. Code Ann. § 68-3-306 so as to establish a relationship of parent and child in contexts not envisioned by the legislature at the time of that statute’s enactment and not therefore within the intent of the legislature, or

(3) the Court intrudes on the policy prerogatives constitutionally committed to Movant-Intervenors by (a) determining for itself whether the complementarity of male and female is legally irrelevant and of no policy regard with respect to the interests, nurture, and well-being of the children of this state (b) applying that determination to the statute in such a way as to deprive children of the influence and nurture of a father, and (c) thereby establishing a juridical principle erasing the significance of the difference between mothers and father that is anti-historical, of far-reaching legal and policy consequence, and contrary to legislative intention;

(D) Movant-Intervenors' interest is not being adequately protected nor will it be protected by the Attorney General who is now offering the extraordinary argument that the Supreme Court's *Obergefell* ruling stands for the proposition that the Supreme Court is empowered to require—and indeed, in that case ordained—this Court to rewrite a *state* statute the Supreme Court did not have before it or otherwise evaluate in that case, and rewrite that *state* statute in a manner contrary to its plain language and the manifest will of the legislature, all contrary to the circumscribed authority of the judicial office it allegedly tasked with this new requirement. Nor will Movant-Intervenors' interests be protected by Plaintiff or Defendant.

In the alternative, Movant-Intervenors assert that they are entitled to intervene as a matter of judicial discretion because their interest and the defense of that interest have a question of law in common with the main action.

A Memorandum of Law is submitted herewith in support of the foregoing Motion.



David E. Fowler (BPR # 014063)
Constitutional Government Defense Fund
Attorney for Movant-Intervenors
1113 Murfreesboro Road, No. 106-167
Franklin, TN 37064
615-591-2090

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following by placing the same in the United States mail, properly addressed and with sufficient postage affixed thereto to ensure delivery, on this the 17th day of March, 2017:

Virginia A. Schwamm, Esq.

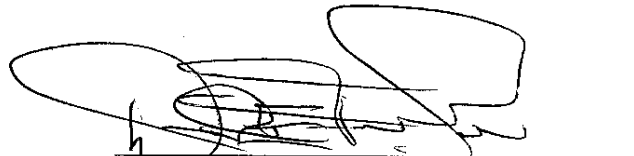
164 Market Place Boulevard
Knoxville, TN 37922
865-951-2241 (fax)

and

John K. Harber, Esq.
Two Centre Square, Suite 600,
625 Gay Street, Knoxville, TN 37901
865-522-0910 (fax)

and

Herbert H. Slattery, III,
Attorney General
c/o Sara Sedgwick,
John Sevier Building
500 Charlotte Avenue
P.O. Box 20207,
Nashville, TN 37202
615-532-1120 (fax)

A handwritten signature in black ink, appearing to read "David E. Fowler", written over a horizontal line.

David E. Fowler