

FILED: August 13, 2014

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1167 (L)
(2:13-cv-00395-AWA-LRL)

TIMOTHY B. BOSTIC; TONY C. LONDON; CAROL SCHALL; MARY
TOWNLEY

Plaintiffs - Appellees

JOANNE HARRIS, JESSICA DUFF, CHRISTY BERGHOFF, VICTORIA KIDD,
on behalf of themselves and all others similarly situated

Intervenors

v.

GEORGE E. SCHAEFER, III, in his official capacity as the Clerk of Court for
Norfolk Circuit Court

Defendant - Appellant

and

JANET M. RAINEY, in her official capacity as State Registrar of Vital Records;
ROBERT F. MCDONNELL, in his official capacity as Governor of Virginia;
KENNETH T. CUCCINELLI, II, in his official capacity as Attorney General of
Virginia

Defendants

MICHELE MCQUIGG

Intervenor/Defendant

DAVID A. ROBINSON; ALAN J. HAWKINS; JASON S. CARROLL; NORTH CAROLINA VALUES COALITION; LIBERTY, LIFE, AND LAW FOUNDATION; SOCIAL SCIENCE PROFESSORS; FAMILY RESEARCH COUNCIL; VIRGINIA CATHOLIC CONFERENCE, LLC; CENTER FOR CONSTITUTIONAL JURISPRUDENCE; STATE OF WEST VIRGINIA; INSTITUTE FOR MARRIAGE AND PUBLIC POLICY; HELEN M. ALVARE; STATE OF INDIANA; STATE OF ALABAMA; STATE OF ALASKA; STATE OF ARIZONA; STATE OF COLORADO; STATE OF IDAHO; STATE OF LOUISIANA; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF UTAH; STATE OF WYOMING; WALLBUILDERS, LLC; LIBERTY COUNSEL; AMERICAN COLLEGE OF PEDIATRICIANS; SCHOLARS OF HISTORY AND RELATED DISCIPLINES; AMERICAN LEADERSHIP FUND; ROBERT P. GEORGE; SHERIF GIRGIS; RYAN T. ANDERSON; PAUL MCHUGH; UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; NATIONAL ASSOCIATION OF EVANGELICALS; CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; THE ETHICS & RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; LUTHERAN CHURCH-MISSOURI SYNOD; THE BECKET FUND FOR RELIGIOUS LIBERTY; EAGLE FORUM EDUCATION AND LEGAL DEFENSE FUND; DAVID BOYLE; ROBERT OSCAR LOPEZ; CONCERNED WOMEN FOR AMERICA; THE FAMILY FOUNDATION OF VIRGINIA

Amici Supporting Appellant

CONSTITUTIONAL LAW SCHOLARS; ASHUTOSH BHAGWAT; LEE BOLLINGER; ERWIN CHEMERINSKY; WALTER DELLINGER; MICHAEL C. DORF; LEE EPSTEIN; DANIEL FARBER; BARRY FRIEDMAN; MICHAEL JAY GERHARDT, Professor; DEBORAH HELLMAN; JOHN CALVIN JEFFRIES, JR.; LAWRENCE LESSIG; WILLIAM MARSHALL; FRANK MICHELMAN; JANE S. SCHACTER; CHRISTOPHER H. SCHROEDER; SUZANNA SHERRY; GEOFFREY R. STONE; DAVID STRAUSS; LAURENCE H. TRIBE, Professor; WILLIAM VAN ALSTYNE; OUTSERVE-SLDN; THE AMERICAN MILITARY PARTNER ASSOCIATION; THE AMERICAN SOCIOLOGICAL ASSOCIATION; VIRGINIA CONSTITUTIONAL LAW PROFESSORS; AMERICAN PSYCHOLOGICAL ASSOCIATION; THE

AMERICAN ACADEMY OF PEDIATRICS; AMERICAN PSYCHIATRIC ASSOCIATION; NATIONAL ASSOCIATION OF SOCIAL WORKERS; VIRGINIA PSYCHOLOGICAL ASSOCIATION; EQUALITY NC; SOUTH CAROLINA QUALITY COALITION; CHANTELE FISHER-BORNE; MARCIE FISHER-BORNE; CRYSTAL HENDRIX; LEIGH SMITH; SHANA CARIGNAN; MEGAN PARKER; TERRI BECK; LESLIE ZANAGLIO; LEE KNIGHT CAFFERY; DANA DRAA; SHAWN LONG; CRAIG JOHNSON; ESMERALDA MEJIA; CHRISTINA GINTER-MEJIA; CATO INSTITUTE; CONSTITUTIONAL ACCOUNTABILITY CENTER; HISTORIANS OF MARRIAGE; PETER W. BARDAGLIO; NORMA BASCH; STEPHANIE COONTZ; NANCY F. COTT; TOBY L. DITZ; ARIELA R. DUBLER; LAURA F. EDWARDS; SARAH BARRINGER GORDON; MICHAEL GROSSBERG; HENDRIK HARTOG; ELLEN HERMAN; MARTHA HODES; LINDA K. KERBER; ALICE KESSLER-HARRIS; ELAINE TYLER MAY; SERENA MAYERI; STEVEN MINTZ; ELIZABETH PLECK; CAROLE SHAMMAS; MARY L. SHANLEY; AMY DRU STANLEY; BARBARA WELKE; PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS, INC.; KERRY ABRAMS, Albert Clark Tate, Jr. Professor of Law University of Virginia School of Law; VIVIAN HAMILTON, Professor of Law William and Mary; MEREDITH HARBACH, Professor of Law University of Richmond; JOAN HEIFETZ HOLLINGER, John and Elizabeth Boalt Lecturer in Residence University of California, Berkeley School of Law; COURTNEY G. JOSLIN, Professor of Law University of California, Davis School of Law; NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; HOWARD UNIVERSITY SCHOOL OF LAW CIVIL RIGHTS CLINIC; FAMILY EQUALITY COUNCIL; COLAGE; GLMA: HEALTH PROFESSIONALS ADVANCING LGBT EQUALITY; WILLIAM N. ESKRIDGE, JR.; REBECCA L. BROWN; DANIEL A. FARBER; MICHAEL GERHARDT; JACK KNIGHT; ANDREW KOPPELMAN; MELISSA LAMB SAUNDERS; NEIL S. SIEGEL; JANA B. SINGER; HISTORIANS OF ANTI-GAY DISCRIMINATION; ANTI-DEFAMATION LEAGUE; AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; BEND THE ARC: A JEWISH PARTNERSHIP FOR JUSTICE; HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA; HINDU AMERICAN FOUNDATION; THE INTERFAITH ALLIANCE FOUNDATION; JAPANESE AMERICAN CITIZENS LEAGUE; JEWISH SOCIAL POLICY ACTION NETWORK; KESHET; METROPOLITAN COMMUNITY CHURCHES; MORE LIGHT PRESBYTERIANS; THE NATIONAL COUNCIL OF JEWISH WOMEN; NEHIRIM; PEOPLE FOR THE AMERICAN WAY FOUNDATION; PRESBYTERIAN WELCOME;

RECONCILINGWORKS; LUTHERANS FOR FULL PARTICIPATION;
RELIGIOUS INSTITUTE, INC.; SIKH AMERICAN LEGAL DEFENSE AND
EDUCATION FUND; SOCIETY FOR HUMANISTIC JUDAISM; T'RUAH: THE
RABBINIC CALL FOR HUMAN RIGHTS; WOMEN'S LEAGUE FOR
CONSERVATIVE JUDAISM; COLUMBIA LAW SCHOOL SEXUALITY AND
GENDER LAW CLINIC; BISHOPS OF THE EPISCOPAL CHURCH IN
VIRGINIA; CENTRAL ATLANTIC CONFERENCE OF THE UNITED
CHURCH OF CHRIST; CENTRAL CONFERENCE OF AMERICAN RABBIS;
MORMONS FOR EQUALITY; RECONSTRUCTIONIST RABBINICAL
ASSOCIATION; RECONSTRUCTIONIST RABBINICAL COLLEGE AND
JEWISH RECONSTRUCTIONIST COMMUNITIES; UNION FOR REFORM
JUDAISM; THE UNITARIAN UNIVERSALIST ASSOCIATION;
AFFIRMATION; COVENANT NETWORK OF PRESBYTERIANS;
METHODIST FEDERATION FOR SOCIAL ACTION; MORE LIGHT
PRESBYTERIANS; PRESBYTERIAN WELCOME; RECONCILING
MINISTRIES NETWORK; RECONCILINGWORKS: LUTHERANS FOR FULL
PARTICIPATION; RELIGIOUS INSTITUTE, INC.; WOMEN OF REFORM
JUDAISM; 28 EMPLOYERS AND ORGANIZATIONS REPRESENTING
EMPLOYERS; COMMONWEALTH OF MASSACHUSETTS; STATE OF
CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA;
STATE OF ILLINOIS; STATE OF IOWA; STATE OF MAINE; STATE OF
MARYLAND; STATE OF NEW HAMPSHIRE; STATE OF NEW MEXICO;
STATE OF NEW YORK; STATE OF OREGON; STATE OF VERMONT;
STATE OF WASHINGTON; GARY J. GATES; NATIONAL AND WESTERN
STATES WOMEN'S RIGHTS ORGANIZATIONS; VIRGINIA CHAPTER OF
THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS; THE
NATIONAL WOMEN'S LAW CENTER; EQUAL RIGHTS ADVOCATES;
LEGAL MOMENTUM; NATIONAL ASSOCIATION OF WOMEN LAWYERS;
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES; SOUTHWEST
WOMEN'S LAW CENTER; WOMEN'S LAW PROJECT; PROFESSORS OF
LAW ASSOCIATED WITH THE WILLIAMS INSTITUTE; BAY AREA
LAWYERS FOR INDIVIDUAL FREEDOM; LEADERSHIP CONFERENCE ON
CIVIL AND HUMAN RIGHTS; PUBLIC INTEREST ORGANIZATIONS; BAR
ASSOCIATIONS; FAMILY LAW AND CONFLICT OF LAWS PROFESSORS;
GAY AND LESBIAN ADVOCATES AND DEFENDERS; PEOPLE OF FAITH
FOR EQUALITY IN VIRGINIA; CELEBRATION CENTER FOR SPIRITUAL
LIVING; CLARENDON PRESBYTERIAN CHURCH; COMMONWEALTH
BAPTIST CHURCH; CONGREGATION OR AMI; HOPE UNITED CHURCH
OF CHRIST; LITTLE RIVER UCC; METROPOLITAN COMMUNITY
CHURCH OF NORTHERN VIRGINIA; MT. VERNON UNITARIAN CHURCH;

ST. JAMES UCC;; ST. JOHN'S UCC; NEW LIFE METROPOLITAN COMMUNITY CHURCH; UNITARIAN UNIVERSALIST FELLOWSHIP OF THE PENINSULA; UNITARIAN UNIVERSALIST CONGREGATION OF STERLING; UNITED CHURCH OF CHRIST OF FREDERICKSBURG; UNITARIAN UNIVERSALIST CHURCH OF LOUDOUN; ANDREW MERTZ; REV. MARIE HULM ADAM; REV. MARTY ANDERSON; REV ROBIN ANDERSON; REV. VERNE ARENS; RABBI LIA BASS; REV. JOSEPH G. BEATTIE; REV. SUE BROWNING; REV. JIM BUNDY; REV. MARK BYRD; REV. STEVEN C. CLUNN; REV. DR. JOHN COPERHAVER; RABBI GARY CREDITOR; REV. DAVID ENSIGN; REV. HENRY FAIRMAN; RABBI JESSE GALLOP; REV. TOM GERSTENLAUER; REV. ROBIN H. GORSLINE; REV. TRISH HALL; REV. WARREN HAMMONDS; REV. JON HEASLET; REV. DOUGLAS HODGES; REV. PHYLLIS HUBBELL; REV. STEPHEN G. HYDE; REV. JANET JAMES; REV. JOHN MANWELL; REV. JAMES W. MCNEAL; REV. MARC BOSWELL; REV. ANDREW CLIVE MILLARD; REV. DR. MELANIE MILLER; REV. AMBER NEUROTH; REV. JAMES PAPILE; REV. LINDA OLSON PEEBLES; REV. DON PRANGE; RABBI MICHAEL RAGOZIN; RABBI BEN ROMER; REV. JENNIFER RYU; REV. ANYA SAMMLER-MICHAEL; REV. AMY SCHWARTZMAN; REV. DANNY SPEARS; REV. MARK SURIANO; REV. ROB VAUGHN; REV. DANIEL VELEZ-RIVERA; REV. KATE R. WALKER; REV. TERRY WILLIAMS; REV. DR. KAREN-MARIE YUST

Amici Supporting Appellees

ORDER

Upon consideration of submissions relative to the motion to stay mandate, the court denies the motion.

Entered at the direction of Judge Floyd with the concurrence of Judge Gregory. Judge Niemeyer voted to grant the motion.

For the Court

/s/ Patricia S. Connor, Clerk