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5-31-02

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

KATHERINE ANNE FISHER DAVENPORT,
who sues by W. Scott Davenport and Timothy
M. Fisher, her next friends,
7802 Aberdeen Road
Bethesda, MD 20814

CAMERON FREDERIC FISHER DAVENPORT,
who sues by W. Scott Davenport and Timothy
M. Fisher, his next friends,
7802 Aberdeen Road
Bethesda, MD 20814

W. SCOTT DAVENPORT,
7802 Aberdeen Road
Bethesda, MD 20814

TIMOTHY M. FISHER,
7802 Aberdeen Road
Bethesda, MD 20814

HILLARY ANNE DALTON-MOFFIT,
who sues by Mark M. Dalton and Bruce H.
Moffit, her next friends,
98 Landis Drive
Lancaster, PA 17602

MARK M. DALTON,
98 Landis Drive
Lancaster, PA 17602

BRUCE H. MOFFIT,
98 Landis Drive
Lancaster, PA 17602

JOHN DOE,
who sues by Jane Doe and Jean Doe,
his next friends,
Confidential Address
Confidential City, NY, Confidential Zip Code

JANE DOE,
Confidential Address
Confidential City, NY, Confidential Zip Code, and

RECEIVED & FILED
CIRCUIT COURT
MAY 28 2002
BEVILL M DEAN, CLERK
By.....D.C.

JEAN DOE,
Confidential Address
Confidential City, NY, Confidential Zip Code

Plaintiffs,

v.

Chancery No.

DEBORAH LITTLE-BOWSER, in her capacity as
STATE REGISTRAR OF VITAL RECORDS
AND HEALTH STATISTICS
P.O. Box 1000
Richmond, VA 23218-1000, and

ROBERT B. STROUBE, MD, MPH, in his capacity as
STATE HEALTH COMMISSIONER
Main Street Station
1500 East Main Street
Richmond, VA 23219,

Defendants.

**BILL OF COMPLAINT AND
PETITION FOR WRIT OF MANDAMUS**

NATURE OF THE CASE

1. This action seeks declaratory, injunctive and other relief against the State Registrar of Vital Records and Health Statistics and the Virginia State Health Commissioner to require the issuance of new birth certificates to Plaintiffs Katherine Anne Fisher Davenport, Cameron Frederic Fisher Davenport, Hillary Anne Dalton-Moffit and John Doe.

2. Although state and federal law mandate the issuance of these birth certificates, and provide no discretion for denial of such a request when presented with a certified adoption decree or report of adoption from another state, Defendants have refused to comply. Defendants have not only failed to comply with state law, which expressly requires that new birth certificates be issued to Plaintiffs, but they also have failed to give Full Faith and Credit to valid out-of-state

adoption decrees from the District of Columbia and New York. Moreover, Defendants' refusal to issue new birth certificates violates Plaintiffs' right to Equal Protection of the laws.

3. This Complaint states claims under Title 32.1, Chapter 7 of the Virginia Code, 42 U.S.C. § 1983, Article 4, Section 1 of the United States Constitution, 28 U.S.C. § 1738, Title 8.01, Section 389 of the Virginia Code, the Fourteenth Amendment of the United States Constitution, and Title 8.01, Section 184 of the Virginia Code.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to Va. Code Ann. §§ 8.01-620, 8.01-184 and 17.1-513.

5. Venue is proper in this Court under Va. Code Ann. § 8.01-261(1)(c) and (5).

PARTIES

Plaintiffs

6. Plaintiff Katherine Anne Fisher Davenport ("Katherine Fisher Davenport"), a minor, is a resident and citizen of Bethesda, Maryland.

7. Plaintiff Cameron Frederic Fisher Davenport ("Cameron Fisher Davenport"), a minor, is a resident and citizen of Bethesda, Maryland.

8. Plaintiff W. Scott Davenport ("Scott Davenport") is a resident and citizen of Bethesda, Maryland. Scott Davenport is the life partner of Timothy Fisher and the adoptive parent of Katherine Fisher Davenport and Cameron Fisher Davenport.

9. Plaintiff Timothy M. Fisher ("Timothy Fisher") is a resident and citizen of Bethesda, Maryland. Timothy Fisher is the life partner of Scott Davenport and the natural parent of Katherine Fisher Davenport and Cameron Fisher Davenport.

10. Plaintiff Hillary Anne Dalton-Moffit (“Hillary Dalton-Moffit”), a minor, is a resident and citizen of Lancaster, Pennsylvania.

11. Plaintiff Mark M. Dalton (“Mark Dalton”) is a resident and citizen of Lancaster, Pennsylvania. Mark Dalton is the life partner of Bruce Moffit and the adoptive parent of Hillary Dalton-Moffit and another daughter, Emily.

12. Plaintiff Bruce H. Moffit (“Bruce Moffit”) is a resident and citizen of Lancaster, Pennsylvania. Bruce Moffit is the life partner of Mark Dalton and the adoptive parent of Hillary Dalton-Moffit and another daughter, Emily.

13. Plaintiff John Doe, a minor, is a resident and citizen of New York State.

14. Plaintiff Jane Doe is a resident and citizen of New York State. Jane Doe is the life partner of Jean Doe and the adoptive parent of John Doe.

15. Plaintiff Jean Doe is a resident and citizen of New York State. Jean Doe is the life partner of Jane Doe and the adoptive parent of John Doe.

16. Plaintiffs John Doe, Jane Doe and Jean Doe sue anonymously.

Defendants

17. Defendant Deborah Little-Bowser is the State Registrar of Vital Records and Health Certificates (the “Registrar”). The Registrar is appointed by and works under the supervision of the State Health Commissioner. The Registrar is responsible for administering the provisions of the Virginia Code relating to Vital Records and its appurtenant regulations. Defendant Little-Bowser is sued in her official capacity only.

18. Defendant Robert B. Stroube is the State Health Commissioner (the “Commissioner”). The Commissioner is the chief executive officer of the Virginia State

Department of Health. The Department of Health oversees the Division of Vital Records in Virginia. Defendant Stroube is sued in his official capacity only.

FACTS GIVING RISE TO THIS ACTION

Katherine Anne and Cameron Frederic Fisher Davenport

19. Plaintiff Katherine Anne Fisher Davenport was born on March 26, 1990, in Arlington, Virginia, and was issued a Virginia birth certificate at birth. Timothy Fisher is Katherine Fisher Davenport's biological father. Katherine Fisher Davenport's biological mother has since relinquished all parental rights.

20. Plaintiff Cameron Frederic Fisher Davenport was born on May 18, 1992, in Arlington, Virginia, and was issued a Virginia birth certificate at birth. Timothy Fisher is Cameron Fisher Davenport's biological father. Cameron Fisher Davenport's biological mother has since relinquished all parental rights.

21. On March 16, 2000, the Superior Court of the District of Columbia issued an Amended Final Decree of Adoption for Katherine Fisher Davenport. The court memorialized Scott Davenport's adoption of Katherine Fisher Davenport and decreed that, for all purposes, their relationship was that of natural parent and natural child. At the same time, the court preserved Timothy Fisher's preexisting rights and duties as Katherine Fisher Davenport's natural parent.

22. On March 16, 2000, the Superior Court of the District of Columbia also issued an Amended Final Decree of Adoption for Cameron Fisher Davenport. The court memorialized Scott Davenport's adoption of Cameron Fisher Davenport and decreed that, for all purposes, their relationship was that of natural parent and natural child. At the same time, the court

preserved Timothy Fisher's preexisting rights and duties as Cameron Fisher Davenport's natural parent.

23. On April 27, 2000, Scott Davenport and Timothy Fisher, through counsel, requested that new birth certificates for Katherine Fisher Davenport and Cameron Fisher Davenport be issued listing both Mr. Fisher and Mr. Davenport as parents. A certified copy of each child's Amended Final Decree of Adoption was enclosed with the request.

24. On June 12, 2000, the Registrar wrote to counsel for Messrs. Davenport and Fisher and informed them of her decision not to issue new birth certificates for Katherine Fisher Davenport and Cameron Fisher Davenport. That letter from the Registrar states that "Virginia law requires that amendments to birth certificates must be petitioned for in a court of the Commonwealth of Virginia and the Registrar must be given notice of any hearing."

Hillary Anne Dalton-Moffit

25. Plaintiff Hillary Anne Dalton-Moffit was born on August 15, 1991, in Arlington, Virginia, and was issued a Virginia birth certificate at birth. Mark Dalton and Bruce Moffit had pre-arranged their adoption of Hillary Dalton-Moffit with her biological mother. Hillary Dalton-Moffit's biological mother has since relinquished all parental rights.

26. On September 19, 1995, the Superior Court of the District of Columbia issued a Final Decree of Adoption for Hillary Dalton-Moffit. The court memorialized Mark Dalton's and Bruce Moffit's adoption of Hillary Dalton-Moffit and decreed that, for all purposes, their relationship was that of parents and child.

27. On May 16, 1996, Mark Dalton requested that a new birth certificate for Hillary Dalton-Moffit be issued listing both Mr. Dalton and Mr. Moffit as parents. A certified copy of Hillary Dalton-Moffit's adoption decree was enclosed with the request.

28. The Registrar never responded to Mr. Dalton's request. Approximately one month after making his request, Mr. Dalton telephoned the Division of Vital Records and spoke with an attorney for the Division. That attorney informed Mr. Dalton that the Division was in the process of crafting a response to his request. To date, the Division has not responded to Mr. Dalton's request.

John Doe

29. Plaintiff John Doe was born on February 27, 1999, in Fairfax, Virginia, and was issued a Virginia birth certificate at birth. Jane and Jean Doe had pre-arranged their adoption of John Doe with his biological mother, who established residency in New York State, while she was pregnant with him. John Doe was born unexpectedly in Fairfax, Virginia, while his biological mother was visiting the Commonwealth. The biological mother has since relinquished all parental rights.

30. On December 23, 1999, the Dutchess County Family Court in New York issued an adoption decree declaring Jane and Jean Doe the legal parents of John Doe. John Doe's biological mother gave her consent to the adoption.

31. Shortly after John Doe's adoption decree was issued, the issuing Judge forwarded a copy of the adoption report to the Division of Vital Records. The Division took no action and did not otherwise respond.

32. During the summer of 2000, Jane and Jean Doe, through counsel, requested via telephone that a new birth certificate for John Doe be issued listing both Jane and Jean Doe as parents. A representative of the Division informed counsel that the Division would not issue a new birth certificate showing two mothers.

33. On November 28, 2001, Jane and Jean Doe, through counsel, requested in writing that a new birth certificate for John Doe be issued listing both Jane and Jean Doe as parents. The Division responded to Jane and Jean Doe's request by stating that it would not issue a new birth certificate for John Doe listing Jane and Jean Doe as parents.

Virginia's Statutory Scheme for Issuing New Birth Certificates

34. The Virginia Code provides that the Registrar *shall* establish a new birth certificate for a person born in Virginia upon receipt of a certified copy of the adoption decree. Va. Code Ann. § 32.1-261(A)(1) states that: "The State Registrar *shall* establish a new certificate of birth for a person born in this Commonwealth upon receipt of . . . a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption." (emphasis added).

35. The Virginia Code provides for only three circumstances in which the Registrar shall not issue a new birth certificate upon receipt of a certified copy of the adoption decree or report of adoption: (1) if the court decreeing the adoption so requests, (2) if the adoptive parents so request, or (3) if the adopted person is eighteen years of age or older and so requests. None of those circumstances is present in this case.

36. Under the Virginia Administrative Code, the new birth certificate is to include the names of the adoptive parents.

37. On information and belief, the Registrar complies with Va. Code Ann. § 321-261(A) when presented with a report of adoption or certified copy of a decree of adoption from another State or the District of Columbia, but only if the adoptive parents are of different sexes.

38. The Registrar's refusal to issue new birth certificates for Plaintiffs deprives them of the equal protection of the laws.

CAUSES OF ACTION

**COUNT I
(Failure to Comply With Statute)**

39. Paragraphs 1 through 38 are incorporated herein by reference.

40. Section 32.1-261(A) of the Virginia Code requires that the Registrar issue a new birth certificate upon receipt of an adoption report or a certified copy of an adoption decree from another state. Title 12, Section 5-550-330 of the Virginia Administrative Code requires that new birth certificates issued upon adoption include the names of both adoptive parents.

41. Defendants' failure to issue new birth certificates to Plaintiffs is a violation of their duties under State law and a failure to perform a ministerial act.

**COUNT II
(Full Faith and Credit)**

42. Paragraphs 1 through 41 are incorporated herein by reference.

43. 42 U.S.C. § 1983 provides that any person who, acting under color of law, deprives another person of any of the rights, privileges or immunities secured by the Constitution and laws, shall be liable to the injured party.

44. The Full Faith and Credit Clause of the United States Constitution and 28 U.S.C. § 1738 require that States give full faith and credit to records and judicial proceedings of the courts of any State (including the District of Columbia) and that such records and proceedings may be proved by certified copies.

45. Va. Code Ann. § 8.01-389 requires that records of courts not in Virginia be given the full faith and credit given to them in courts of the jurisdiction from which they come.

46. In recognition of its Full Faith and Credit obligation, the Virginia Code and regulations direct the Registrar to issue a new birth certificate, that contains the names of both

parents, upon receipt of a certified copy of an adoption decree or report of adoption from another State or the District of Columbia.

47. In the District of Columbia, a final decree of adoption establishes the relationship of natural parent and natural child between adopter and adoptee for all purposes. Upon issuance of a final decree of adoption, a new birth certificate with the names of the adopters shall be issued.

48. In New York, an order of adoption directs that the adopted child shall be treated in all respects as the child of the adoptive parents. A new birth certificate is to be issued upon receipt of proof of the adoption.

49. Each child's adoption decree or report of adoption is entitled to full faith and credit under the Full Faith and Credit Clause of the United States Constitution, 28 U.S.C. § 1738 and Va. Code Ann. § 8.01-389.

50. Despite receipt of certified copies of adoption decrees and reports of adoption from other States and the District of Columbia, Defendants have refused improperly to issue new birth certificates.

COUNT III
(Violation of Equal Protection)

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. The Fourteenth Amendment to the United States Constitution prohibits states from denying to any person the equal protection of the laws.

53. Plaintiffs are same-sex parents and children of same-sex parents.

54. Defendants, acting in their official capacity on behalf of the Commonwealth of Virginia, issue new birth certificates showing both adoptive parents to different-sex parents and

children of different-sex parents, but have denied such birth certificates to same-sex parents and children of same-sex parents.

55. Defendants have no rational basis for issuing new birth certificates showing both adoptive parents to different-sex parents and children of different-sex parents, but denying such birth certificates to same-sex parents and children of same-sex parents.

56. Defendants' refusal to issue new birth certificates to Plaintiffs constitutes a denial under color of law of Plaintiffs' rights to equal protection under the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.

COUNT IV
(Declaratory Judgment)

57. Paragraphs 1 through 56 are incorporated herein by reference.

58. Section 8.01-184 of the Virginia Code provides that circuit courts shall have the power to make binding adjudications of right in cases of actual controversy. Defendants' refusal to issue new birth certificates to Plaintiffs, in the face of their demand for such certificates, presents an actual controversy.

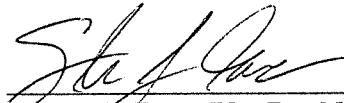
59. Defendants' refusal to issue new birth certificates to Plaintiffs is in violation of Section 32.1-261(A) of the Virginia Code, 42 U.S.C. § 1983, the Full Faith and Credit Clause of the United States Constitution, 28 U.S.C. § 1738, Section 8.01-389 of the Virginia Code, and the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, as relief for the causes of action set forth in Counts I through V hereof, Plaintiffs request that this Court:

- A. Issue an injunction or writ of mandamus requiring Defendants to issue the requested birth certificates.
- B. Issue a declaration that Defendants' refusal to issue the requested birth certificates is in violation of state statute and Defendants' full faith and credit obligations and in denial of Plaintiffs' right to equal protection.
- C. Issue a declaration that Defendants are required to issue the requested birth certificates.
- D. Award nominal damages.
- E. Award Plaintiffs their reasonable attorneys' fees and costs.
- F. Enter such additional relief as this Court may deem to be just and equitable.

Respectfully submitted,



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Dated: May 23, 2002