



2006

# Recent Developments: Duckworth v. Deane: Denial of Intervention in a Constitutional Challenge of Maryland Code, Section 2-201 of the Family Law Article Is Appropriate When the Parties Attempting to Intervene Do Not Meet the Requirements of the Rules for Intervention of Right or Permissive Intervention

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## Recommended Citation

Recker, Ashley (2006) "Recent Developments: Duckworth v. Deane: Denial of Intervention in a Constitutional Challenge of Maryland Code, Section 2-201 of the Family Law Article Is Appropriate When the Parties Attempting to Intervene Do Not Meet the Requirements of the Rules for Intervention of Right or Permissive Intervention," *University of Baltimore Law Forum*: Vol. 37 : No. 1 , Article 6.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol37/iss1/6>

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## RECENT DEVELOPMENT

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### ***DUCKWORTH V. DEANE: DENIAL OF INTERVENTION IN A CONSTITUTIONAL CHALLENGE OF MARYLAND CODE, SECTION 2-201 OF THE FAMILY LAW ARTICLE IS APPROPRIATE WHEN THE PARTIES ATTEMPTING TO INTERVENE DO NOT MEET THE REQUIREMENTS OF THE RULES FOR INTERVENTION OF RIGHT OR PERMISSIVE INTERVENTION.***

**By: Ashley Recker**

The Court of Appeals of Maryland held that denial of intervention in a constitutional challenge of Maryland Code (1984, 2004 Repl. Vol.), section 2-201 of the Family Law Article, prohibiting issuance of marriage licenses to same-sex couples, was appropriate because the parties attempting to intervene did not meet the requirements of the rules of intervention of right or permissive intervention. *Duckworth v. Deane*, 393 Md. 524, 529, 903 A.2d 883, 886 (2006). In doing so, the Court of Appeals prevented intervention by the Clerk of the Court of Anne Arundel County, eight Maryland state legislators, and one Maryland resident, maintaining that the interests of these parties were adequately represented by the Attorney General of Maryland. *Id.*

On July 7, 2004, nineteen plaintiffs filed a complaint in the Circuit Court for Baltimore City against multiple county clerks for denial of marriage licenses after having submitted the proper paperwork. The marriage licenses were denied because the applicants were same-sex couples. The defendants, all clerks of the court from various counties, were represented by the Attorney General of Maryland. Three separate motions to intervene were filed in this case. The first motion, filed by Robert P. Duckworth (“Duckworth”), Clerk of the Circuit Court for Anne Arundel County, sought intervention and the right to be represented by privately retained counsel. Eight members of the General Assembly of Maryland, all represented by their privately retained counsel, filed the second motion to intervene. The third motion to intervene was filed *pro se* by Toni Marie Davis (“Davis”), a resident of Baltimore City. Each of the three motions filed claimed a right to intervene and, alternatively, sought permissive intervention.

The circuit court denied all three motions to intervene. Duckworth, the eight members of the General Assembly of Maryland, and Davis all filed timely notices of appeal to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland granted certiorari, prior to argument in the Court of Special Appeals, to review the issue of whether denial of intervention was appropriate.

On appeal, Duckworth limited his challenge to whether he had a right to intervene by his own privately retained counsel. *Duckworth*, 393 Md. at 534, 903 A.2d at 889. The Court reviewed sections 6-106(b) and (c) of the State Government Article of the Maryland Code, which provides that “the Attorney General is the legal adviser of and shall represent ... each officer and unit of the State government...[and] an officer or unit of the State government may not employ or be represented by a legal adviser or counsel other than the Attorney General.” *Duckworth*, 393 Md. at 536, 903 A.2d at 890 (quoting MD. CODE ANN., STATE GOV’T §§ 6-106(b)-(c) (West 2006)). The Court noted that there are multiple exceptions to this statutory requirement, but none are applicable in the case at bar. *Duckworth*, 393 Md. at 537, 903 A.2d at 890. Duckworth further argued his interest in the litigation is “personal,” so as to circumvent the statutory requirement that he must be represented by the Attorney General. *Id.* The Court did not accept Duckworth’s assertion of “personal” interest to enable him to intervene because the interest he cited in his motion, the issuance of marriage licenses, relates entirely to his performance as Clerk of the Circuit Court for Anne Arundel County. *Id.* at 537-38, 903 A.2d at 890-91.

The eight members of the General Assembly of Maryland first relied on Maryland Rule 2-214(a)(1), which allows intervention “when a person has an unconditional right to intervene as a matter of law.” *Duckworth*, 393 Md. at 538, 903 A.2d at 891. The Court refers to the federal counterpart to Maryland Rule 2-214(a)(1), which is Rule 24(a)(1) of the Federal Rules of Civil Procedure, and “applies only when a statute or ordinance specifically confers an unrestricted right to intervene in a particular type of case.” *Duckworth*, 393 Md. at 538, 903 A.2d at 891. Federal Rule 24(a)(1) serves as a guide to the interpretation of the Maryland intervention rule. *Duckworth*, 393 Md. 538, 903 A.2d at 891. Using this guide, the Court found that there is no Maryland statute, applicable to any of the legislators, which specifically confers upon them an “unrestricted right to intervene,” and therefore, the Court reasoned that Maryland Rule 2-214(a)(1) did not

permit intervention of the legislators in this case. *Duckworth*, 393 Md. at 539, 903 A.2d at 891.

In accordance with Maryland Rule 2-214(a)(2), the legislators asserted an interest in this constitutional challenge because the outcome of the case may impair their ability to protect their lawmaking interest. *Duckworth*, 393 Md. at 539, 903 A.2d at 891-92. Additionally, the legislators feared that the Attorney General would not adequately represent that interest. *Id.*

The standard promulgated in Maryland Rule 2-214(a)(2) requires more than a generalized interest in the pending action, in order to permit a party to intervene. *Duckworth*, 393 Md. at 539, 903 A.2d at 892 (citing *Montgomery County v. Bradford*, 345 Md. 175, 199, 691 A.2d 1281, 1293 (1997)). The legislators must have a direct interest in the disposition of the constitutional challenge in order to intervene under Rule 2-214(a)(2). *Duckworth*, 393 Md. at 539, 903 A.2d at 891-92 (citing *Montgomery County*, 345 Md. at 199, 691 A.2d at 1293). The Court has held that an interest that is speculative, remote, and indirect is insufficient. *Duckworth*, 393 Md. at 539, 902 A.2d 892. In *Raines v. Byrd*, the United States Supreme Court held that “six members of Congress lacked standing to challenge the constitutionality of an Act of Congress” because the individual members had no greater interest in the challenge than that of the general public. *Id.* at 541, 902 A.2d 892-93 (quoting *Raines v. Byrd*, 521 U.S. 811, 829-30, 117 S.Ct. 2312, 2322 (1997)). In the case at bar, the General Assembly of Maryland may have a right to intervene, but because only eight members sought intervention, the Court viewed them as individuals with no greater interest in the challenge than that of the general public. *Duckworth*, 393 Md. at 540, 903 A.2d at 892.

Additionally, in order for the legislators to intervene under Rule 2-214(a)(2), they must have standing to be a party such that the disposition of the action would cause them to suffer a type of special damage, which differs from that suffered by the general public. *Duckworth*, 393 Md. at 540, 903 A.2d at 892 (citing *Medical Waste v. Maryland Waste*, 327 Md. 596, 613, 612 A.2d 241, 249 (1992)). The legislators’ interest in the disposition of this constitutional challenge is the same interest held by the general public. *Id.*

The Court also pointed out that even if the interest of the legislators was strong enough to garner intervention as a matter of right under Rule 2-214(a)(2), “[the legislators] do not meet the additional requirement of the Rule that their interest may not be adequately represented by existing parties.” *Duckworth*, 393 Md. at 542, 903

A.2d at 893. The legislators claimed that the Attorney General is sympathetic to the constitutional challenge but provide no support for this argument. *Id.* at 542, 903 A.2d at 893. There is also no support for the argument that the Attorney General will decline to appeal in the event of an adverse trial court decision. *Id.*

The legislators' final argument to show the inadequacies of the Attorney General's representation, was that he was unwilling to argue the trial court's lack of subject matter jurisdiction. *Id.* at 543, 903 A.2d at 894. The Court indicated that this separation of powers argument put forth by the legislators is frivolous because the judiciary has long been authorized to rule on the constitutionality of any enactment by the General Assembly. *Id.*

Davis' argument on appeal was identical to the one set forth in her motion to intervene, claiming that the outcome of the litigation "will affect not only [her] everyday life, but the everyday lives of every resident in Maryland," including the ability to protect personal religious beliefs. *Id.* at 540, 903 A.2d at 892. In order to intervene, individuals must show an interest greater than that of the general public. *Id.* at 540-41, 903 A.2d at 892. Davis not only failed to show that her interest in the litigation was greater than that of the general public but also failed to demonstrate that her interests were not adequately represented by the existing defendants. *Id.*

By holding that denial of intervention in a constitutional challenge of Maryland Code (1984, 2004 Repl. Vol.), § 2-201 of the Family Law Article is appropriate, the Court has affirmatively limited the parties involved in litigation. The constitutionality of a statute denying same-sex couples the right to marry is an issue currently pending before the Court. The limits this holding placed on intervention, specifically concerning the interest an outside party has in the disposition of the case, will ensure that the Attorney General of Maryland, an elected official, can litigate this constitutional issue as he sees fit. The Attorney General has a duty to competently represent his constituents, the citizens of Maryland and if the Attorney General's representation is inadequate, the remedy will be obtained through the election process, not intervention.