

N. C. Marriage Press Conference

July 28th, 2014

Today the 4<sup>th</sup> Circuit Court of Appeals told us that Virginia's marriage law is unconstitutional. The 4<sup>th</sup> Circuit has jurisdiction over the federal courts in North Carolina.

Currently, there are 4 cases in North Carolina challenging our state's marriage law, which is similar to Virginia's.

Our attorneys have vigorously defended North Carolina marriage law, which is their job. But today we know our law almost surely will be overturned as well.

Simply put, it is time to stop making arguments we will lose and instead move forward, knowing that the ultimate resolution will likely come from the US Supreme Court.

This ruling today doesn't mean marriages in North Carolina can start right away because no judge has ruled on North Carolina's law. However, it does predict our law will be struck down.

So here is what we expect will happen next:

Plaintiffs challenging the North Carolina marriage law in one or more of these 4 pending cases probably will ask federal judges to start proceedings, 3 of which are currently stayed.

If any of the judges agree to begin proceedings, we believe those judges will be bound by today's 4<sup>th</sup> Circuit opinion, and we believe they will be bound to find North Carolina's marriage law unconstitutional.

Those rulings themselves will likely not be given immediate affect because of the likelihood that the 4<sup>th</sup> Circuit's decision will be stayed and because the judges in North Carolina will likely stay them as well.

Finally, it is likely that no valid same-sex marriages can occur in North Carolina until the US Supreme Court either turns down the case on appeal or ultimately decides the issue.

Here's how we got here. Last year the United States Supreme Court in *US v. Windsor* held that the federal part of the Defense of Marriage Act was unconstitutional at the federal level. They left the question of state marriage laws unanswered but they did give some guidance.

Since the *Windsor* case, 14 federal district court judges in addition to the 10<sup>th</sup> Circuit and now the 4<sup>th</sup> Circuit Courts of Appeal have answered that question. They all decided that marriage is a fundamental constitutional right and that state laws banning it are unconstitutional. The 10

state high courts that have considered this question have also all found their own state's marriage laws unconstitutional.

Today's 4<sup>th</sup> Circuit decision is similar.

After reviewing the 4<sup>th</sup> Circuit decision and consulting with attorneys here, I have concluded that the State of North Carolina will not oppose the cases moving forward. In addition, the State of North Carolina will acknowledge the 4<sup>th</sup> Circuit opinion that marriage is a fundamental right and that our office believes that the judges are bound by this 4<sup>th</sup> Circuit decision.

In all these cases challenging state marriage laws, our office along with other attorneys general and state attorneys across the country have made about every legal argument imaginable. Since the US Supreme Court ruled in the *Windsor* case, all the federal courts have rejected these arguments each and every time. So it's time for the State of North Carolina to stop making them.