

SCOTUS Action Clears the Path for Same-Sex Marriage – North Carolina Couples Should Prepare Now

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This week the Supreme Court of the United States denied review of seven petitions from five different states in which state bans on same-sex marriage were invalidated. One of those appeals arose from the United States Court of Appeals for the Fourth Circuit, the federal circuit with jurisdiction over North Carolina. The Court provided no opinion or comment with the denial of review.

The question now becomes what effect this will have on North Carolina. With pending actions in the North Carolina federal courts, lawyers on both sides of the issue are looking for a decision from those judges. North Carolina's Attorney General, Roy Cooper, has stated that his office will take no further action to defend North Carolina's ban on same-sex marriage. The decision from the Fourth Circuit striking down Virginia's ban on same-sex marriages is binding on the North Carolina federal courts and most predict that North Carolina's ban will be invalidated, thereby opening the door for marriage certificates to be issued in North Carolina to same-sex couples.

While North Carolina has banned same-sex marriages and refused to recognize these unions entered into in other states, many same-sex couples have nevertheless resided together in North Carolina, acquired property together, and grown their families together. These couples need to be prepared to address the financial issues and custodial issues which will arise should same-sex marriages become valid. Premarital Agreements can assist the couple in addressing the treatment of property that may have been acquired jointly by the couple prior to the legal marriage, in defining separate property and debt, and in addressing rights arising out of the marriage. In addition, where a child has been adopted by one party, a legal marriage does not automatically change the relationship between the child and the other party who may have acted as a parent but is not recognized as a legal parent. In the event that North Carolina's ban is invalidated, same-sex couples need to be prepared to address the issues and rights that will arise out of legal marriage and acknowledge that legal recognition of the union will not completely address the complexity of their union.

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