



## LEGAL MEMORANDUM

TO: North Carolina Registers of Deeds Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: October 16, 2014

RE: Rights of Conscience Pertaining to the Issuance of Marriage Licenses

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On October 6, 2014, the U.S. Supreme Court declined to review the Fourth Circuit Court of Appeals' decision that declared unconstitutional Virginia's laws defining marriage as the union of one man and one woman since 1607. Subsequently, two federal district courts in North Carolina declared unconstitutional North Carolina's marriage laws, and Attorney General Roy Cooper has instructed registers of deeds to be prepared to issue marriage licenses to same-sex couples that otherwise qualify for the receipt of a marriage license under North Carolina law. The full legal impact of the Fourth Circuit's decision, including whether it undermines other traditional restrictions on marriage, like bigamy or consanguinity, is not yet known. Some registers of deeds might believe that they face a serious dilemma: either resign their positions or violate their sincerely held religious or moral beliefs about marriage by being forced to issue marriage licenses to relationships inconsistent with those beliefs. But registers of deeds, as explained herein, can resolve this potential conflict.

Registers of deeds are responsible for issuing marriage licenses. *See* N.C. GEN. STAT. ANN. §§ 51-8, 51-6 (2014).<sup>1</sup> But registers of deeds whose sincere religious or moral beliefs prevent them from issuing certain marriage licenses have the ability to appoint a deputy to perform that task. *See* N.C. GEN. STAT. ANN. §§ 161-6, 51-6 (2014). A register of deeds thus should appoint a deputy with full authority to perform all acts necessary to issue, administer, or process marriage licenses should a conflict of conscience arise. This should resolve the situation and facilitate all parties' interests.

Should a register of deeds encounter resistance to their efforts to resolve a conflict, the First Amendment to the United States Constitution ensures that neither state nor county officials may impede registers' free exercise of religion. The First Amendment prohibits any government

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<sup>1</sup> Applicants seeking a marriage license do not have to be residents of the county in which they apply for a license, or even be residents of North Carolina, but can obtain a marriage license from any register of deeds in any county. *See, e.g.*, <https://www.co.forsyth.nc.us/ROD/vitals.aspx> (last visited Oct. 16, 2014) ("A North Carolina Marriage License may be obtained from the Register of Deeds Office in any county in North Carolina."); <http://www.averydeeds.com/node/5> (last visited Oct. 16, 2014); <http://www.weddingvendors.com/marriage-license-laws/united-states/north-carolina/> (last visited Oct. 16, 2014).



officials from “penaliz[ing] or discriminat[ing] against individuals . . . because they hold [particular] religious views.” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *accord Employment Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (the First Amendment prohibits the government from “impos[ing] special disabilities on the basis of religious views”). Additionally, North Carolina law provides that “no human authority shall, in any case whatever, control or interfere with the rights of conscience.” N.C. CONST. art. I, § 13 (2014). And given that state law already prescribes other means for registers of deeds to ensure that parties seeking marriage licenses receive them, government officials may not prevent a register’s reasonable and legitimate effort to resolve his or her limited conflict. Indeed, a refusal by the State of North Carolina and its government subdivisions to protect a register of deeds who cannot issue a marriage license in violation of his or her conscience suggests an unconstitutional, discriminatory intent on the part of the state or others demanding that the official violate their conscience.<sup>2</sup>

In addition, ensuring that registers of deeds are not forced to issue licenses contrary to their conscience is consistent with Title VII’s requirements that employers, including governmental employers, must reasonably accommodate the religious beliefs or practices of their employees.<sup>3</sup> In other words, an employer must make reasonable adjustments to the work environment, or to the employee’s job requirements, to ensure that the employee’s ability to maintain his or her religious conscience remains unimpeded. Registers of deeds are certainly no exception to this rule.

If registers of deeds face legal difficulties regarding their duties as they pertain to issuing marriage licenses, and would like legal advice in resolving their conflict, please contact Alliance Defending Freedom at 1-800-835-5233. All such calls are strictly confidential and protected by the attorney/client privilege even if Alliance Defending Freedom is not hired to represent the caller.

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<sup>2</sup> See *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999).

<sup>3</sup> See Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) (2012). See also *E.E.O.C. v. Ithaca Indus., Inc.*, 849 F.2d 116 (4th Cir. 1988) (Court found that employer's failure to attempt to accommodate employee was a violation of Title VII.); *Chalmers v. Tulon Co. of Richmond*, 101 F.3d 1012, 1018 (4th Cir. 1996) (“[A]n employer must, to an extent, actively attempt to accommodate an employee’s religious expression or conduct even if, absent the religious motivation, the employee’s conduct would supply a legitimate ground for discharge.”); and *E.E.O.C. v. Firestone Fibers & Textiles, Co.*, 515 F.3d 307, 312 (4th Cir. 2008) (Court stated that employer has a “statutory obligation to make reasonable accommodation for the religious observances of its employees.” (quoting *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 75 (1977))).