



NORTH CAROLINA GENERAL ASSEMBLY

OFFICE OF SENATOR PHIL BERGER
STATE LEGISLATIVE BUILDING
RALEIGH, NC 27601-2808

November 10, 2014

VIA U.S. MAIL & ELECTRONIC MAIL

The Honorable John W. Smith
Director, Administrative Office of the Courts
P.O. Box 2448
Raleigh, N.C. 27602
John.W.Smith@nccourts.org

Dear Judge Smith:

Thank you for your response to mine and my colleagues' October 24 letter. Regrettably, that response continues to sow seeds of doubt among courthouse officials and wrongly disregards one of our most cherished freedoms. As a legal matter, it misunderstands the interplay between Title VII of the Civil Rights Act and the Government Employee Rights Act of 1991, and it ignores the First Amendment and 42 U.S.C. §1983. Still further, its discussion of the injunctions against North Carolina's definition of marriage rests on a false premise, as though even a simple discussion of reasonable accommodation of individual liberty prevents those court orders from being followed.

More troublingly, your communication lacks any sort of reasonable effort to constructively guide courthouse officials at a time when such leadership is needed most. Far from misleading anyone, our October 24 letter encourages thoughtful consideration of a sensitive matter of public law. To actively *discourage* such conciliation is inexplicable. As the decision last week from the Sixth Circuit demonstrates, the legality of same-sex marriage is still being decided by the federal courts. This truth must be viewed together with the well-established First Amendment right to religious freedom. My office will continue to do all that it can to ensure that the expansion of rights for some does not infringe on the liberty of others. Common sense and the United States Constitution require nothing less.

Sincerely,

PHIL BERGER

Senator Phil Berger