

IN THE SUPREME COURT  
STATE OF WYOMING

OCTOBER TERM, A.D. 2015

An Inquiry Concerning the Honorable Ruth  
Neely, Municipal Court Judge and Circuit  
Court Magistrate, Ninth Judicial District,  
Pinedale, Sublette County, Wyoming

Judge Ruth Neely  
Petitioner,

v.

Wyoming Commission on Judicial Conduct  
and Ethics  
Respondent.

No. J-16-0001

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

MAY 10 2016

CAROL THOMPSON, CLERK  
  
by CHIEF DEPUTY

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**MOTION OF AMICUS THE BECKET FUND FOR RELIGIOUS LIBERTY  
TO FILE AMICUS BRIEF IN SUPPORT OF THE HONORABLE RUTH NEELY'S  
PETITION OBJECTING TO THE COMMISSION'S RECOMMENDATION**

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Douglas W. Bailey  
WSB#7-5102  
BAILEY, STOCK, HARMON, COTTAM P.C.  
221 E. 21st Street  
P.O. Box 1557  
Cheyenne, WY 82003  
(307) 638-7745 Fax: (307) 638-7749  
[dwb@bsh-law.com](mailto:dwb@bsh-law.com)

Local Counsel for Amicus Curiae

Luke Goodrich\*  
Daniel Blomberg\*  
THE BECKET FUND FOR RELIGIOUS LIBERTY  
1200 New Hampshire Ave. NW  
Suite 700  
Washington, DC 20036  
[lgoodrich@becketfund.org](mailto:lgoodrich@becketfund.org)  
[dbloomberg@becketfund.org](mailto:dbloomberg@becketfund.org)  
(202) 955-0095 Fax: (202) 955-0090

Counsel for Amicus Curiae

\*Admission *pro hac vice* pending

## INTRODUCTION

In accordance with Wyo. R. App. P. 7.12, the proposed *amicus* respectfully requests leave to file its brief in support of the Honorable Ruth Neely's petition objecting to the Wyoming Commission on Judicial Conduct and Ethics recommendation. A copy of the proposed brief is attached.

### INTEREST OF *AMICUS CURIAE*

The Becket Fund for Religious Liberty is a nonprofit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. It is founded on a simple but crucial principle: that religious freedom is a fundamental human right rooted in the dignity of every human person. To vindicate this principle, the Becket Fund has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world.

In the last four years, the Becket Fund has represented the prevailing party in three major Supreme Court cases on the issue of religious freedom. *See Holt v. Hobbs*, 135 S. Ct. 853 (2015); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012). It also has decades of experience representing people who, like Judge Neely, have been targeted or otherwise discriminated against by the government for their religious beliefs and practices. *See Rich v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 525 (11th Cir. 2013); *Merced v. Kasson*, 577 F.3d 578, 582 (5th Cir. 2009); *Fraternal Order of Police Newark Lodge No. 12 v. City*

*of Newark*, 170 F.3d 359, 365 (3d Cir. 1999) (Alito, J.); *Singh v. Carter*, ---F. Supp. 3d---, 2016 WL 837924 (D.D.C. Mar. 3, 2016).

The Becket Fund represents religious people and institutions with a wide variety of views about same-sex marriage, including clients on competing sides of the same-sex marriage debate, and including both non-LGBT and LGBT clients. The Becket Fund has long sought to facilitate scholarly discussion of the relationship between legal recognition of same-sex marriage and religious liberty. For instance, over ten years ago, the Becket Fund hosted a conference of noted First Amendment scholars representing the full spectrum of views on same-sex marriage. The conference resulted in the first significant scholarly book on the issue: *Same-Sex Marriage and Religious Liberty: Emerging Conflicts* (Douglas Laycock, Anthony R. Picarello, Jr. & Robin Fretwell Wilson eds., 2008).

The Becket Fund is concerned that the Commission's recommendation would stoke needless social tension and constitute a blatant violation of religious liberty.

## **ARGUMENT**

The Becket Fund does not take a position on same-sex marriage as such, but addresses same-sex marriage only insofar as it implicates its expertise in religious liberty. This unique perspective aids the Court in a way that neither party can, though both are represented by competent counsel. Moreover, the Becket Fund's amicus brief is appropriate and desirable in this case because it provides an in-depth explanation for why the Commission's recommendation is inconsistent with the pluralistic principles described in *Obergefell v.*

*Hodges*, 135 S. Ct. 2584 (2015), specifically as those principles are protected by Wyoming Constitution Article 1, § 18 and the Free Exercise Clause of the First Amendment to the U.S. Constitution.

The Commission's recommendation conflicts with *Obergefell* by seeking to impose on the Wyoming judiciary a rigid orthodoxy on sex, marriage, and religion. But those are deeply important issues about which Americans hold a variety of beliefs. The freedom to form, express, and live one's own beliefs about these issues is central to each citizen's own dignity and self-definition. *Obergefell*, 135 S. Ct. at 2593; *see also* Wyo. Const. art. 1, § 18 (broadly protecting religious liberty). Indeed, *Obergefell* was animated by the proposition that marriage is a "transcendent" issue about which individuals should remain free to make their own decisions, without government coercion. *Obergefell*, 135 S. Ct. at 2594, 2599-2604. Accordingly, the U.S. Supreme Court saw no problem with people and institutions holding the "decent and honorable religious or philosophical" belief that marriage is limited to opposite-sex unions, and recognized that this belief is held "in good faith by reasonable and sincere people." *Id.* at 2602, 2594. Instead, the Court emphasized that constitutional problems arise only when the State makes citizens "outcast[s]" for pursuing a less popular view of marriage. *Id.* at 2600.

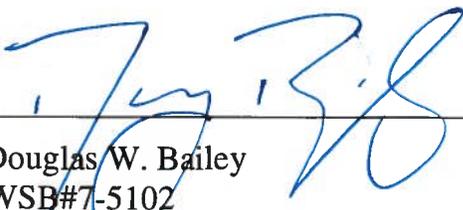
But making Wyoming citizens into outcasts for their viewpoints on marriage is what the Commission's recommendation aims to do. As the Becket Fund's amicus brief explains, the recommendation is unconstitutional for at least two reasons. First, Article 1, section 18 of the Wyoming Constitution was enacted to prevent religious views, and

particularly religious views on marriage, from being used to disqualify individuals from public office. Yet the Commission seeks to remove Judge Neely from *all* judicial office, including non-marriage-related ones, because—despite over twenty years of sterling service as a judge, absolutely no evidence of any actual bias or partiality, and no refusal to perform any mandatory judicial duty—it strongly disagrees with her religious views on marriage. Second, the Free Exercise Clause of the First Amendment forbids government action against religion which is either not neutral or not generally applicable. The Commission’s recommendation is neither because it allows government officials to make ad hoc decisions whether to initiate investigations of judges who decline to perform marriages, and it punishes Judge Neely’s religious motivation for declining while permitting many nonreligious motivations to so decline—such as a desire to marry only friends and family, only at certain times or locations, or only when it does not conflict with fishing, football games, or hair appointments.

The Becket Fund respectfully urges this Court to grant leave to file its amicus brief.

Respectfully submitted this the 10th day of May, 2016.

By: \_\_\_\_\_

  
Douglas W. Bailey  
WSB#7-5102

BAILEY, STOCK, HARMON, COTTAM P.C.  
221 E. 21st Street  
P.O. Box 1557  
Cheyenne, WY 82003

(307) 638-7745 Fax: (307) 638-7749  
[dwb@bsh-law.com](mailto:dwb@bsh-law.com)

Luke Goodrich\*  
Daniel Blomberg\*  
THE BECKET FUND FOR RELIGIOUS  
LIBERTY  
1200 New Hampshire Ave. NW  
Suite 700  
Washington, DC 20036  
[lgoodrich@becketfund.org](mailto:lgoodrich@becketfund.org)  
[dbloomberg@becketfund.org](mailto:dbloomberg@becketfund.org)  
(202) 955-0095 Fax: (202) 955-0090

Amici Curiae  
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## CERTIFICATE OF SERVICE

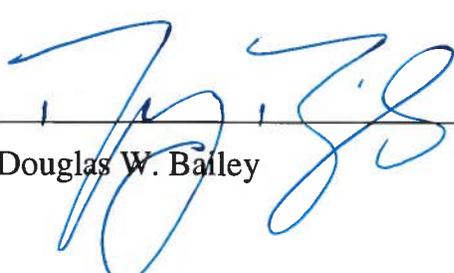
I hereby certify that on the 10th day of May, 2016, the original and six copies of the foregoing document were hand-delivered to the Wyoming Supreme Court and the foregoing document was served by mailing a copy of it via United States mail, first class, postage prepaid, to the following:

Patrick Dixon  
Dixon & Dixon, LLP  
104 South Wolcott, Suite 600  
Casper, WY 82601  
pdixn@aol.com  
*Counsel for the Commission on  
Judicial  
Conduct and Ethics*

Tim Newcomb  
P.O. Box 928  
170 North Fifth  
Laramie, WY 82073  
newcomb@appellateconsultation.com  
*Counsel for the Commission on  
Judicial  
Conduct and Ethics*

Wendy J. Soto  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
wendy.soto@wyoboards.gov  
*Executive Director of the Commission on  
Judicial  
Conduct and Ethics*

Peter J. Michael  
Wyoming Attorney General  
123 Capitol Building  
Cheyenne, WY 82002  
peter.michael@wyo.gov  
*Attorney General for the State  
of Wyoming*

  
\_\_\_\_\_  
Douglas W. Bailey