

SUPREME COURT, STATE OF WYOMING

IN THE SUPREME COURT
STATE OF WYOMING
FILED

MAY - 9 2016

Carol Thompson
CAROL THOMPSON, CLERK

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

MOTION OF AMICI CURIAE WYOMING STATE SENATORS PAUL BARNARD AND CURT MEIER AND CURRENT AND FORMER WYOMING STATE REPRESENTATIVES JIM BLACKBURN, ROBERT A. BRECHTEL, DONALD BURKHART, JR., SCOTT CLEM, AMY EDMONDS, HARLAN EDMONDS, ROY EDWARDS, GERALD GAY, MARTI HALVERSON, LYNN HUTCHINGS, MARK JENNINGS, KENDELL KROEKER, DAN LAURSEN, TYLER LINDHOLM, BUNKY LOUCKS, TROY MADER, ROBERT MCKIM, DAVID MILLER, DAVID NORTHRUP, GARY PIIPARINEN, BILL POWNALL, TOM REEDER, MARK SEMLEK, CHERI STEINMETZ, STEPHEN WATT, SUE WILSON, AND NATHAN WINTERS, AND PROFESSOR GERARD V. BRADLEY FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF THE HONORABLE RUTH NEELY'S PETITION OBJECTING TO THE COMMISSION'S RECOMMENDATION

Pursuant to Wyoming Rule of Appellate Procedure 7.12, the above-listed current and former Wyoming state legislators, along with Professor Gerard V. Bradley, request leave to file an amici curiae brief in support of the

Honorable Ruth Neely's Petition Objecting to the Commission's Recommendation. Amici offer the following reasons in support of their request to file the attached amici curiae brief.

1. Interests of Amici in this Case

Amici include current and former Wyoming state legislators. As duly elected representatives of the people of Wyoming forsworn by oath to uphold and defend both the Wyoming and United States Constitutions, amici have a direct interest in this case arising from their duty to safeguard the rights and promote the welfare of the people of Wyoming.

Additionally, amicus Gerard V. Bradley is Professor of Law at the University of Notre Dame, where he teaches constitutional law and co-edits *The American Journal of Jurisprudence*, an international forum for legal philosophy. Professor Bradley has published over one hundred scholarly articles and reviews, including *The No Religious Test Clause and the Constitution of Religious Liberty: A Machine That Has Gone of Itself*, 37 Case Western Res. L. Rev. 674 (1987), and the "Religious Test" section in *The Heritage Guide to the Constitution* (2nd edition 2014). Professor Bradley's extensive scholarship on the religious test clauses in the federal and various state constitutions contributed greatly to the contents of the attached amici curiae brief. He shares the amici legislators' interest in encouraging this Court to interpret Article I, section 18 of the Wyoming Constitution as the

framers intended – to ensure that no one will be disqualified from public office because of his or her religious beliefs about marriage.

The Commission claims that Judge Neely must be removed from both of her judicial positions (a municipal judge and a circuit court magistrate) because she expressed her religious belief that marriage is an opposite-sex union and further communicated that because of that religious belief, she would not be able to solemnize same-sex unions. Although Wyoming law does require any judge to celebrate any marriage, the Commission has nonetheless concluded that Judge Neely's comments indicate an unwillingness to follow the law and found that she should be punished – in fact, removed from office – because she expressed those beliefs about marriage.

This case thus implicates our First Freedom – the religious liberty guarantees at the heart of the Wyoming Constitution. Without doubt, this case is of paramount importance to this state and its polity. Amici legislators represent thousands of Wyoming citizens who, just like Judge Neely, believe in traditional marriage and do not view such a belief as either unlawful or as disqualifying them from public service. Yet if this Court were to ratify the Commission's Recommendation, it would essentially set up a religious litmus test for public office – those who believe in traditional marriage need not apply. As elected officials entrusted with representing the people, amici have a substantial interest in ensuring that Wyoming statutes are properly

interpreted and defended and that the religious liberty so important to Wyoming's framers is not sacrificed. The attached brief, drawing upon Professor Bradley's scholarship, seeks to accomplish those very aims.

2. **Appropriateness and Desirability of this Amici Curiae Brief**

Amici legislators, along with amicus Professor Gerard V. Bradley, are uniquely situated to present this Court with a detailed explication of Wyoming's constitutional history, particularly the history concerning Article I, section 18 of the Wyoming Constitution. That constitutional history shows why the Commission's attempted discipline of Judge Neely cannot be sustained.

The attached brief sets Wyoming's constitutional protection for public office-seekers and officeholders in the broader national context. It begins with a discussion of the history surrounding the federal Constitution's prohibition on religious tests for public office. Then, the brief explores many of the similar state constitutional provisions that were enacted in the century between the ratification of the federal Constitution and the Wyoming Constitution. Next, it examines the relevant discussions at the Wyoming Constitutional Convention showing the framers' intent behind the broad protection for office-seekers and officeholders in Article I, section 18. In that part of the brief, amici show that Article I, section 18 is one of the broadest

religious protections for public officials ever ratified in the United States. Finally, the brief concludes by explaining the many ways in which the Commission's attempt to discipline Judge Neely violates Article I, section 18.

Given the centrality of that constitutional provision to the resolution of this case, and given the relevance of the constitutional history surrounding that provision, amici believe that their brief will aid the Court in deciding the important constitutional issues in this case.

3. Amici's View Regarding Representation of the Parties

Amici believe that both parties are competently represented. But as stated above, amici also believe that they are uniquely suited to speak to constitutional issues that are central in this case. Moreover, Judge Neely's counsel has no doubt been limited in their ability to exhaustively address every salient issue implicated by the Commission's Recommendation. So, given amici legislators' status as the people's representatives, and given Professor Bradley's breadth and depth of expertise in this area of constitutional jurisprudence, amici are well suited to present to this Court the history and import of Wyoming's unparalleled solicitude for religious liberty.

4. Amici's Interests in Other Cases

Amici have no interest in any other pending case that may be affected by the decision in this matter. But the amici legislators represent thousands

of Wyoming citizens who stand to be cast out of the judiciary should this Court accept the Commission's Recommendation. Thus, amici legislators want to explain to this Court, with the expert assistance of Professor Bradley, why the Commission's Recommendation contravenes the Wyoming Constitution. They want to preserve for the people they represent the opportunity guaranteed to all citizens in this state – the ability to believe and live according to one's religious faith tradition.

5. Perspective of Amici

As stated above, amici legislators represent countless citizens who are deeply concerned about how the outcome of this case will affect the future of religious freedom in Wyoming. And Professor Bradley brings an unquestioned expertise concerning the history and interpretation of religious test clauses. Therefore, amici's perspective will help the Court assess the important legal issues that Judge Neely presents in her Petition.

WHEREFORE, for the foregoing reasons, Amici request leave of the Court to permit them to file the attached amici curiae brief in support of Judge Neely's Petition Objecting to the Commission's Recommendation.

Respectfully submitted this the 6th day of May, 2016.



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CERTIFICATE OF SERVICE

I certify that on May 6, 2016, I mailed this motion (along with six copies) to the Clerk of Court for the Wyoming Supreme Court via FEDEX, and that I mailed a copy of this document via First-Class Mail, postage prepaid, to each of the following:

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