NO. _______

IN THE
Supreme Court of the United States

JUDGE RUTH NEELY,

Petitioner,

v.

WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wyoming

PETITION FOR A WRIT OF CERTIORARI

KRISTEN K. WAGGONER
JAMES A. CAMPBELL
KENNETH J. CONNELLY
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020

HERBERT K. DOBY
P.O. Box 130
Torrington, WY 82240
(307) 532-2700

DAVID A. CORTMAN
Counsel of Record
RORY T. GRAY
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE, Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
dcortman@ADFlegal.org

Counsel for Petitioner

QUESTION PRESENTED

In response to a reporter's questioning, Judge Ruth Neely, a small-town municipal judge and Wyoming state court magistrate with discretionary authority to solemnize marriages, disclosed that she believes marriage is the union of a man and a woman, and that her faith would not allow her to perform same-sex weddings.

The Wyoming Supreme Court, in a 3-2 decision, publicly censured Judge Neely for that statement, forced her to stop solemnizing all marriages, and drove her from her magistrate position. The majority applied strict scrutiny to Judge Neely's First Amendment claims and found that standard satisfied despite acknowledging (1) that "there is no evidence of injury to respect for the judiciary" or to "any person" and (2) that it was "not likely" that any same-sex couple would ask Judge Neely to marry them.

The question presented is:

> Does a state violate the First Amendment's Free Exercise Clause or Free Speech Clause when it punishes a judge who has discretionary authority to solemnize marriages because she states that her religious beliefs preclude her from performing a same-sex wedding?

PARTIES TO THE PROCEEDING

Petitioner Judge Ruth Neely is the Municipal Court Judge in Pinedale, Wyoming, and at the time this case began, she was also a Circuit Court Magistrate for the Ninth Judicial District in Sublette County, Wyoming.

Respondent Wyoming Commission on Judicial Conduct and Ethics is a state government entity.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING........................... ii

TABLE OF AUTHORITIES viii

INTRODUCTION 1

DECISIONS BELOW.. 3

STATEMENT OF JURISDICTION 4

PERTINENT CONSTITUTIONAL AND CODE PROVISIONS 4

STATEMENT OF THE CASE.................................. 4

I. Factual Background...................................... 4

II. Procedural Background 11

REASONS FOR GRANTING THE WRIT.............. 19

I. The Court Below Wrongly Decided an Important Free-Exercise Question that Should Be Settled by this Court. 20

A. The Decision Below Excluded Judge Neely from the State's System of Individualized Exemptions and Targeted Her Religious Beliefs for Disfavored Treatment. 26

B. The Decision Below Conflicts with Our Tradition of Religious Accommodation for Public Officials. 29

II. The Court Below Wrongly Decided an Important Free-Speech Question that Should Be Settled by this Court. 31

III. The Court Below Distorted and Misapplied this Court's Rulings in *White* and *Williams-Yulee*. 36

IV. This Case Cleanly Raises the Question Presented. 38

CONCLUSION 39

APPENDIX TABLE OF CONTENTS

Wyoming Supreme Court's Opinion (Mar. 7, 2017) 1a

Wyoming Commission on Judicial Conduct and Ethics' Recommendation (Feb. 26, 2016) 111a

Wyoming Commission on Judicial Conduct and Ethics' Order Granting the Commission's Motion for Partial Summary Judgment and Denying Judge Neely's Motion for Summary Judgment (Dec. 31, 2015) 114a

U.S. Const. Amendment I 130a

Excerpts from U.S. Const. Amendment XIV 130a

Excerpts from Wyoming Code of Judicial Conduct...131a

Excerpts from Wyoming Commission on Judicial Conduct and Ethics' Transcript of Hearing Proceedings (Dec. 4, 2015) 143a

Excerpts from Deposition of The Honorable Curt Austin Haws (Sept. 18, 2015) 145a

Excerpts from Deposition of Stephen Brian Smith (Sept. 17, 2015)..154a

Excerpts from Deposition of Wendy Jo Soto (Sept. 15, 2015) 157a

Excerpts from Deposition of The Honorable Ruth Neely (Sept. 18, 2015) 162a

Excerpts from Affidavit of The Honorable Ruth Neely (Oct. 29, 2015)..172a

Affidavit of Bob Jones (Oct. 20. 2015) 177a

Affidavit of Ralph E. Wood (Oct. 20, 2015) 181a

Affidavit of Sharon Stevens (Oct. 20, 2015)........185a

Affidavit of Kathryn Anderson (Oct. 20, 2015)...188a

Affidavit of Stephen Crane (Oct. 27, 2015) 191a

Excerpts from Wyoming Commission on Judicial Conduct and Ethics' Supplemental Rule 11(b) Disclosures (July 27, 2015) 193a

Email from Wendy Soto to Investigatory Panel Members (Dec. 22, 2014) 196a

Sublette Examiner Article (Dec. 9. 2014) 199a

Wyoming Commission on Judicial Conduct and Ethics' Notice of Commencement of Formal Proceedings (Mar. 4, 2015) 202a

Wyoming Commission on Judicial Conduct and Ethics' Amended Notice of Commencement of Formal Proceedings (Aug. 28, 2015) 210a

The Honorable Ruth Neely's Verified Amended Answer to Notice of Commencement of Formal Proceeding (Oct. 9, 2015) 221a

Wyoming Commission on Judicial Conduct and Ethics' Notice of Confession of Motion to Dismiss (Sept. 28, 2015) 234a

Excerpts from The Honorable Ruth Neely's Memorandum of Law in Support of Motion for Summary Judgment (Oct. 30, 2015) 237a

Excerpts from The Honorable Ruth Neely's Response to the Commission's Motion for Partial Summary Judgment (Nov. 19, 2015) 241a

Excerpts from The Honorable Ruth Neely's Brief filed with the Wyoming Supreme Court in Support of her Verified Petition Objecting to the Commission's Recommendation (Apr. 29, 2016) 244a

Excerpts from the Wyoming Commission on Judicial Conduct and Ethics' Brief filed with the Wyoming Supreme Court (June 15, 2016)...........................252a

TABLE OF AUTHORITIES

***Cases*:**

Barber v. Bryant,
860 F.3d 345 (5th Cir. 2017) 23

Barber v. Bryant,
193 F. Supp. 3d 677 (S.D. Miss. 2016) 23

Brown v. Polk County,
61 F.3d 650 (8th Cir. 1995) 29

Burson v. Freeman,
504 U.S. 191 (1992)..14

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993)....................................26, 28

Employment Division, Department of Human Resources of Oregon v. Smith,
494 U.S. 872 (1990)..27

Endres v. Indiana State Police,
349 F.3d 922 (7th Cir. 2003) 30, 31

Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,
546 U.S. 418 (2006)..17

Guzzo v. Mead,
2014 WL 5317797 (D. Wyo. Oct. 17, 2014) 8

Haring v. Blumenthal,
471 F. Supp. 1172 (D.D.C. 1979).......................30

Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston,
515 U.S. 557 (1995)..36

In re Sanders,
955 P.2d 369 (Wash. 1998) 32

Liljeberg v. Health Services Acquisition Corporation,
486 U.S. 847 (1988)..30

Masterpiece Cakeshop v. Colorado Civil Rights Commission,
No. 16-111, 2017 WL 2722428
(cert granted June 26, 2017) 20, 39

Matal v. Tam,
137 S. Ct. 1744 (2017).......................................33

McGinnis v. United States Postal Service,
512 F. Supp. 517 (N.D. Cal. 1980) 29-30

Obergefell v. Hodges,
135 S. Ct. 2584 (2015)................................*passim*

Reed v. Town of Gilbert, Arizona,
135 S. Ct. 2218 (2015)..33

Republican Party of Minnesota v. White,
536 U.S. 765 (2002)....................................*passim*

Rodriguez v. City of Chicago,
156 F.3d 771 (7th Cir. 1998) 30, 31

Slater v. Douglas County,
743 F. Supp. 2d 1188 (D. Or. 2010).......26, 29, 31

Ward v. Polite,
667 F.3d 727 (6th Cir. 2012) 27

West Virginia State Board of Education v. Barnette,
319 U.S. 624 (1943)...36

Williams-Yulee v. Florida Bar,
135 S. Ct. 1656 (2015)..................... 14, 20, 32, 36

Wooley v. Maynard,
430 U.S. 705 (1977)...36

Constitutional Provisions:

U.S. Const. art. VI, cl. 3 29

Statutory Provisions:

28 U.S.C. § 1257(a)...4

28 U.S.C. § 2403(b)...4

Ariz. Rev. Stat. § 25-124(A)(4) 21

Cal. Fam. Code § 400(b)(3)(A).................................21

Conn. Gen. Stat. § 46b-22(a)(1) 21

Del. Code Ann. tit. 13, § 106(e) 23

Idaho Code § 32-303 21

Me. Stat. tit. 19-A, § 655(1)(A)(2) 21

Mich. Comp. Laws § 551.7(1)(b) 21

Miss. Code. Ann. § 11-62-5(8)(b) 23

N.J. Stat. § 37:1-13(a) 21

Ohio Rev. Code Ann. § 3101.08 21

Wyo. Stat. § 5-9-212(a) 5

Wyo. Stat. § 20-1-106 .... 6, 9-10

***<u>Other Authorities</u>*:**

Adam Liptak, *On Moral Grounds, Some Judges Are Opting Out of Abortion Cases*, N.Y. Times, Sept. 4, 2005 34

Arizona Supreme Court Judicial Ethics Advisory Committee Revised Advisory Opinion 15-01 (Mar. 9, 2015) 22

Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839 (2014) 19

Elizabeth A. Flaherty, *Impartiality in Solemnizing Marriages*, Judicial Conduct Board of Pennsylvania Newsletter (Summer 2014) 24-25

In re Honorable Gary Tabor, Case No. 7251-F-158, Stipulation, Agreement and Order of Admonishment (Wash. Comm'n on Jud. Conduct Oct. 4, 2013) 21-22

In re Honorable Vance D. Day,
Case No. 12-139, 14-86, (Or. Comm'n on Jud. Fitness and Disability Jan. 25, 2016) 21

Nebraska Judicial Ethics Committee Opinion 15-1 (June 29, 2015) 22

New York Advisory Committee on Judicial Ethics Opinion 11-87 (Dec. 8, 2011).................. 22

Ohio Supreme Court Board of Professional Conduct Opinion 2015-1 (Aug. 7, 2015) 22, 24

Richard B. Saphire, *Religion and Recusal*, 81 Marq. L. Rev. 351 (1998) 34

Robin Fretwell Wilson, *Insubstantial Burdens: The Case for Government Employee Exemptions to Same-Sex Marriage Laws*, 5 NW J. L. & Soc. Pol'y 318 (2010)............. 26, 31

Wisconsin Supreme Court Judicial Conduct Advisory Committee Opinion No. 15-1 (Aug. 18, 2015) 22

INTRODUCTION

For over two decades, Judge Ruth Neely has served her small Wyoming town as its judge. She has administered justice to her fellow citizens, helped reform wayward lives, and "personally participate[d] in celebrating" the weddings of friends and strangers alike. App.74a n.17. In the words of an LGBT citizen in her community, Judge Neely is "one of the best people" you could ever hope to meet. App.186a.

Judge Neely was both a municipal judge and a part-time circuit court magistrate. In her magistrate position, she had discretionary authority to solemnize marriages. Like all other part-time magistrates, Judge Neely performed weddings on her own time and did not receive any pay from the state for doing so. Because she had no physical office or regular work hours as a magistrate, people who wanted Judge Neely to marry them would call, ask, and schedule a time for her to officiate their weddings.

Magistrates who solemnize marriages in Wyoming have the discretion to decline wedding requests that they receive. They do so for countless secular reasons, including that they do not know the couple, do not want to travel to the wedding location, would rather go to a football game, or simply do not feel like performing that couple's ceremony.

One December day, Judge Neely was at home hanging Christmas lights when she was called by a local reporter who suspected her religious beliefs and set out to expose them. He asked if she was "excited"

to perform same-sex weddings, and she said "no." When he asked why not, she explained that because of her religious beliefs, she could not solemnize such marriages.

The Wyoming Supreme Court, in a 3-2 decision over a "vigorous[]" dissent, App.64a, issued a public censure to Judge Neely for voicing this religious conflict with officiating those weddings. The majority determined that strict scrutiny applied to Judge Neely's First Amendment claims. That demanding constitutional standard was satisfied, the majority explained, because of the state's compelling interest in "judicial integrity." App.30a. It held this despite elsewhere recognizing that "there is no evidence of injury to respect for the judiciary." App.62a.

This case presents an important free-exercise question. Although the state has a system of individualized exemptions that permits magistrates to decline marriages for nearly any secular reason, the Wyoming Supreme Court held that Judge Neely could not refer same-sex-marriage requests (if she ever received any) to other magistrates for the religious reason she expressed. According to that court, the First Amendment provides no accommodation for a potential religious conflict (1) that has never actually arisen, (2) that the court below admitted is "not likely" to occur, App.57a, and (3) for a function that others could easily cover. Rather, the Wyoming Supreme Court demanded that Judge Neely either commit to performing same-sex weddings or stop performing all weddings—an ultimatum that drove her from her magistrate

position. Because other magistrates may decline wedding requests for myriad secular reasons, imposing this all-or-nothing ultimatum on Judge Neely alone singles out her faith for disfavored treatment. Such religious targeting is odious to the First Amendment.

This case also raises a significant free-speech issue. Judges who have authority to solemnize marriages should not be punished simply for expressing a religious conflict with officiating same-sex weddings. Such religious beliefs, this Court recently said, are "based on decent and honorable" premises. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015). They manifest no hostility or prejudice toward any person or class of persons. Punishing people of faith for merely expressing those beliefs conflicts with our nation's constitutional commitment to free speech.

DECISIONS BELOW

The Wyoming Supreme Court's 3-2 decision ruling against Judge Neely is reported at 390 P.3d 728 and reprinted at App.1a.

The Commission's Recommendation to the Wyoming Supreme Court and its Order ruling against Judge Neely are unreported and reprinted at App.111a and App.114a, respectively.

STATEMENT OF JURISDICTION

The Wyoming Supreme Court issued its opinion on March 7, 2017. On May 8, 2017, Justice Sotomayor extended the time to file this petition until August 4, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).[1]

PERTINENT CONSTITUTIONAL AND CODE PROVISIONS

The First Amendment and parts of the Fourteenth Amendment to the United States Constitution are found at App.130a. Relevant portions of the Wyoming Code of Judicial Conduct are set forth at App.131.

STATEMENT OF THE CASE

I. Factual Background

1. *Judge Neely's History.* The material facts of this case are undisputed. Since 1994, Judge Neely has served as the municipal judge in Pinedale, Wyoming, a town of approximately 2,000 people. App.5a. In that role, she adjudicates traffic violations and criminal misdemeanors, but has no authority to solemnize marriages. App.5a.

---

[1] 28 U.S.C. § 2403(b) may apply, so Judge Neely will serve a copy of this petition on the Wyoming Attorney General. No court has certified to him that this case raises constitutional claims, but Judge Neely served him copies of the papers she filed with the Wyoming Supreme Court below.

Around 2001, Judge Neely was also appointed a part-time magistrate for the Circuit Court in Sublette County, Wyoming. App.5a. Pinedale is Sublette County's largest town and county seat. In her magistrate position, Judge Neely had the power to perform adjudicative tasks (such as presiding over bond hearings and issuing warrants) and non-adjudicative functions (such as administering oaths, acknowledging written instruments, and officiating weddings). *See* Wyo. Stat. § 5-9-212(a); App.6a.

Judge Neely's "primary function" as a magistrate was solemnizing marriages, App.6a, although she occasionally performed adjudicative tasks and other non-adjudicative work, such as administering oaths, *see* App.163a-167a. The state did not pay Judge Neely when she performed weddings or other non-adjudicative functions. App.6a. She had no physical office or regular work hours as a magistrate, so people who wanted her to marry them would call her on the phone, present their request, and schedule a time for their ceremony. App.170a-171a; App.6a.

"Judge Neely is highly respected as a . . . judge in her community," including by members of "the gay community." App.5a. Pinedale's mayor testified that Judge Neely "has a sterling reputation in the community as a person of unswerving character and as an honest, careful, and fair judge." App.178a. One of Pinedale's LGBT citizens, Sharon Stevens, declared that Judge "Neely is one of the best people [she has] ever met." App.186a.

Judge Neely has never been biased or prejudiced against, or otherwise treated unfairly, any individual who has appeared before her in court. *See* App.178a; App.182a. Nor, prior to this case, had she ever "been accused of prejudice or bias" or "had a complaint brought against her." App.66a. Kathryn Anderson, a lesbian woman who works with Judge Neely, confirmed that the judge "treat[s] all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation." App.189a. Because of this, Anderson testified that "it would be obscene and offensive" to discipline Judge Neely for her statements about marriage. App.189a.

2. *Solemnizing Marriages*. Serving as a marriage officiant is unique among the functions that magistrates perform. A magistrate who presides over a wedding "personally participate[s] in celebrating a private event," App.74a n.17, and leads the couple in "solemnly declar[ing] . . . that they take each other as husband and wife," Wyo. Stat. § 20-1-106(b). In addition, magistrates are permitted to charge the couple whatever fee they deem appropriate for performing their wedding. App.148a-149a.

Magistrates have "the power to perform marriage ceremonies" but are "not required to do so." App.50a; *see* Wyo. Stat. § 20-1-106(a) (providing that magistrates "*may* perform" weddings) (emphasis added). Even when they decide to serve as a marriage officiant, they "can and do decline to perform marriages for various reasons," App.6a: (1) because the requesting party is a stranger, App.6a; (2) because the judge "just . . . do[es]n't feel like" solemnizing a

particular marriage, App.160a-161a; (3) because the judge declines to travel to certain locations, App.161a; (4) or because the judge "ha[s] family commitments, ha[s] other things to do, [or] prefer[s] to watch a football game," App.74a.

3. *Judge Neely's Religious Beliefs*. "Judge Neely is a devout Christian and a member of the Lutheran Church, Missouri Synod." App.7a. "[S]he holds the sincere belief that marriage is the union of one man and one woman." App.7a. Because Judge Neely personally participates in officiating the weddings she performs, it would violate her faith to solemnize a same-sex marriage. App.172a-173a. Nevertheless, if she were asked to preside over a same-sex-wedding ceremony (which has never happened), Judge Neely would assist the couple by "very kindly" connecting them to another magistrate willing to perform their wedding. App.169a; App.174a; App.68a.

Notably, Judge Neely's religious beliefs about marriage do not affect how she adjudicates cases. App.174a. If a litigant were to ask her to recognize or afford rights based on a same-sex marriage (such as asserting a spousal privilege), she would recognize that marriage and afford all the rights that flow from it. App.174a-175a; App.68a-69a.

Simply put, Judge Neely has never disputed that the law now recognizes same-sex marriages. App.175a; App.69a. She merely has a conscientious objection to personally officiating those ceremonies.

4. *Seeking Guidance amidst Change.* In October 2014, a federal district court in *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. Oct. 17, 2014), ordered the State of Wyoming to begin licensing and recognizing same-sex marriages. Within weeks, Judge Neely talked to Circuit Court Judge Curt Haws, who had most recently appointed her to her magistrate position. App.8a. She told Judge Haws that her religious beliefs would not permit her to solemnize same-sex marriages. App.8a.

Judge Haws recognized that Judge Neely was in a "very difficult position." App.150a. He realized that this issue was new and that no Wyoming judges had received any guidance. App.150a. So he advised Judge Neely to avoid discussing the issue and said that they would make a decision about her future as a magistrate once they received direction. App.150a; App.169a-170a.

5. *Publicizing Judge Neely's Religious Conflict.* Ned Donovan, a reporter with Pinedale's local paper, suspected that Judge Neely "would not perform a [wedding] ceremony for [a same-sex] couple." App.194a. So he called her in December 2014, "to learn about her position" on that topic. App.195a. While taking a break from hanging Christmas lights at her home, Judge Neely returned a call from an unidentified number. App.175a. Donovan picked up the phone, said that he was with the local paper, and asked her if she was "excited" to perform same-sex marriages. App.175a; App.8a.

Judge Neely honestly answered “no,” and when Donovan asked why not, she explained that her religious beliefs about marriage prevent her from performing same-sex weddings. App.171a; 175a. Judge Neely also said that other local officials were able to solemnize same-sex marriages and that she had never been asked to perform one. App.176a.

A few days later, Donovan’s article appeared in the local paper. He quoted Judge Neely as saying that she would “not be able to do” same-sex marriages because of her religious beliefs, that she had “not yet been asked to perform a same-sex marriage,” and that “[w]hen law and religion conflict, choices have to be made.” App.199a-200a. Months later, after Donovan moved away from Pinedale, he told the subsequent editor of the local paper that he wanted to see Judge Neely get “sacked.” App.192a.

Soon after the article was published, Judge Neely went to meet with Judge Haws to discuss this issue. Because Judge Haws still had not received any guidance on the topic, he told Judge Neely that he intended to seek an advisory opinion from the Wyoming Judicial Ethics Advisory Committee (“Advisory Committee”). App.151a-152a. But in the end, Judge Haws never requested that opinion. App.152a.

6. *Same-Sex Couples’ Access to Marriage.* The pool of individuals who can solemnize marriages in Sublette County is practically unlimited. Not only does it include at least nine public officials and innumerable members of the clergy, *see* Wyo. Stat.

§ 20-1-106(a); App.173a-174a, but also Judge Haws testified that he will appoint virtually anyone as a magistrate for a day to perform a wedding, App.146a. "[P]lenty of people" in that large pool of wedding officiants "are willing to perform marriage ceremonies for same-sex couples." App.189a; *see also* App.183a ("There is no shortage of public officials in Pinedale or Sublette County willing to officiate at same-sex wedding ceremonies.").

Moreover, the "demand for same-sex marriage" in Sublette County is not high. App.153a. In fact, the record shows that only two same-sex marriages occurred there in the first year after Wyoming began licensing those unions. App.153a; App.173a; App.183a.

Given the high number of marriage celebrants and the low number of same-sex marriages, it is not surprising that no same-sex couple "has been denied or delayed [in accessing] marriage" in Sublette County. App.69a; *see also* App.153a (stating that "[n]o one's been denied [the] opportunity" to enter a same-sex marriage in Sublette County).

7. *Instigation by the Commission.* Soon after the article about Judge Neely appeared in the local paper, the Commission's Executive Director, Wendy Soto, learned about it from conversations with her friend Jeran Artery, the president of Wyoming Equality (an LGBT advocacy group), and Ana Cuprill, the chair of the Wyoming Democratic Party. App.193a-194a. Without receiving a formal complaint, Soto, herself a former board member of Wyoming Equality,

App.158a-159a, opened a case file on Judge Neely. *See* App.196a-198a.

In early January 2015, without knowledge of Soto's actions, Judge Neely did what Judge Haws said he would: asked the Advisory Committee whether she must solemnize same-sex marriages in conflict with her faith. App.9a. The Advisory Committee, however, refused to answer her question because, by that point and unknown to her, the Commission had already begun to investigate her. App.10a.

As soon as the Commission informed Judge Haws of its investigation, he temporarily suspended Judge Neely from her magistrate position. App.10a.

II. Procedural Background

1. *Proceedings before the Commission.* In March 2015, the Commission instituted formal disciplinary proceedings against Judge Neely. *See* App.202a. In its complaint, the Commission targeted "Judge Neely's stated position with respect to same sex marriage," App.207a, and alleged that, by acknowledging her religious conflict, she violated four provisions of the Wyoming Code of Judicial Conduct (the "Code"): (1) she failed to "comply with the law" (Rule 1.1); (2) she created an "appearance of impropriety" (Rule 1.2); (3) she failed to perform the "duties of judicial office fairly and impartially" (Rule 2.2); and (4) she expressed "words" that "manifest bias or prejudice" (Rule 2.3). *See* App.205a-207a.

The Commission insisted that Judge Neely's words "preclude[] her from discharging the obligations of [the Code] . . . not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge." App.207a. In other words, the Commission said that Judge Neely can no longer be a judge because she voiced her religious conflict.

In August 2015, the Commission added new claims. *See* App.210a. It alleged that Judge Neely violated additional Code provisions—including one that prohibits affiliation with an "organization that practices invidious discrimination" (Rule 3.6)—by retaining as counsel a faith-based legal organization that shares her religious beliefs about marriage. *See* App.212a-217a.[2] The Commission insisted that because of her choice of counsel, she could not remain in either of her judicial positions. App.216a-217a. Because the new claims jeopardized her legal defense, Judge Neely filed a motion to dismiss them, which prompted the Commission to "concede[]" that motion and dismiss those claims. App.234a-235a.

Thereafter, Judge Neely filed an answer raising her First Amendment free-exercise and free-speech rights as defenses to the remaining claims. *See* App.221a; App.226a. After the parties conducted discovery, they filed cross-motions for summary judgment. App.11a. In her motion and her response to the Commission's motion, Judge Neely argued that punishing her for expressing a religious conflict would

---

[2] Judge Neely's lead counsel then, as now, was Alliance Defending Freedom.

violate her First Amendment free-exercise and free-speech rights. *See* App.237a-240a; App.241a-243a. During oral argument concerning those motions, the Commission's counsel referred to Judge Neely's religious beliefs as "repugnant." App.144a.

In December 2015, a three-member panel of the Commission held that Judge Neely violated all four cited Code provisions by allegedly "stating [an] unwillingness to follow Wyoming law" and "manifest[ing] a bias with respect to sexual orientation." App.120a-123a. In addition, the panel rejected Judge Neely's First Amendment defenses. *See* App.123a-126a.

In February 2016, the full Commission adopted the panel's decision and recommended (without explanation) that "Judge Neely be removed from her position as Municipal Court Judge and Circuit Court Magistrate." App.111a-112a.

Judge Neely petitioned the Wyoming Supreme Court to reject the Commission's legal conclusions and recommended sanction. App.11a. She argued that the First Amendment's Free Exercise and Free Speech Clauses prohibit the state from punishing her as either a municipal judge or a circuit court magistrate. *See* App.244a-251a.

2. *Wyoming Supreme Court's Decision.* On March 7, 2017, the Wyoming Supreme Court issued its 3-2 decision. The majority concluded that Judge Neely did not violate Rule 1.1, which requires judges to "comply with the law," App.48a-50a, but nevertheless held

that she violated Rules 1.2, 2.2, and 2.3 because expressing her inability to "perform marriages for same-sex couples" (1) "creates the perception in reasonable minds that she lacks . . . impartiality," App.55a, and (2) "exhibits bias and prejudice toward homosexuals," App.57a-58a.

On the constitutional issues, the majority determined that neither the Free Exercise Clause nor the Free Speech Clause shields Judge Neely from "discipline . . . for announcing that her religious beliefs prevent her from officiating same-sex marriages." *See* App.12a-30a. Following this Court's lead in *Republican Party of Minnesota v. White*, 536 U.S. 765, 774-75 (2002), and *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1664-65 (2015), the majority held that strict scrutiny applies to Judge Neely's "free exercise of religion and freedom of speech claims"—a point on which "[t]he parties agree[d]" in their briefing. App.14a; *see also* App.256a-257a.

Even though "it is the rare case in which [this Court has] held that a law survives strict scrutiny," *Burson v. Freeman*, 504 U.S. 191, 211 (1992) (plurality opinion), the majority found that standard satisfied. *See* App.14-30a. Relying on *Williams-Yulee*, the majority held that punishing Judge Neely for stating her religious conflict furthers the state's compelling interest "in maintaining public confidence in the judiciary." App.21a. It reached this conclusion despite acknowledging that "there is no evidence of injury to respect for the judiciary" or to "any person." App.62a.

The majority also determined that "[t]here is no less restrictive alternative than discipline for Judge Neely." App.30a. When analyzing that issue, the majority recognized that "in many cases, courts have required accommodation for [the] religious beliefs" of public officials, App.27a; and it assumed that "allowing Judge Neely to opt out" of solemnizing same-sex marriages would not impede those couples' attempts to marry, App.24a. But the majority nonetheless said that accommodating Judge Neely's religious beliefs would result in a "loss of public confidence in the judiciary." App.26a (alterations omitted).

Throughout its analysis, the majority referenced this Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which held that the Fourteenth Amendment requires states to license and recognize same-sex marriages. *See, e.g.*, App.23a; App.39a. Permitting Judge Neely to refer a same-sex-wedding request, the majority believed, would violate "the right of same-sex couples to marry under the United States Constitution." App.39a.

The majority concluded its opinion by ordering Judge Neely to "receive a public censure." App.64a. Regarding her future as a municipal judge, the majority held that removing Judge Neely for voicing her religious conflict would "unnecessarily circumscribe protected expression." App.64a. But regarding her future as a circuit court magistrate, the majority effectively brought about her removal. The justices knew that Judge Neely's "primary function"

as a magistrate was to solemnize marriages, App.6a, and that she could not perform same-sex weddings, App.8a. Yet they ordered her either to commit to solemnizing same-sex marriages or to stop performing marriages altogether. App.63a-64a. This virtually guaranteed that Judge Neely would lose her magistrate position.

And about a week after the court's ruling, that is exactly what happened. When Judge Neely confirmed to Judge Haws that she could not solemnize same-sex marriages, he removed her as a magistrate.

3. *The Dissenting Opinion.* Two justices "vigorously" dissented. App.64a. Unlike the majority, the dissenting opinion "carefully appl[ied]" the "vague rules" at issue, App.77a, and determined that Judge Neely did not violate the Code, *see* App.69a-91a. No reasonable person would conclude that Judge Neely lacked impartiality or engaged in impropriety, the dissent explained, because (1) Wyoming law does not require its judges to perform every requested wedding, (2) "Judge Neely would assist [same-sex couples] in finding an appropriate officiant" for their weddings, and (3) Judge Neely is "absolutely fair and impartial to all litigants" in her courtroom. App.83a-84a. Nor did her statements manifest bias or prejudice, the dissent concluded. *See* App.87a-91a. Those statements were "only an indication of her religious beliefs about marriage" and did not express "a prejudgment" against—or otherwise "denigrate"—individuals in same-sex relationships. App.89a-90a. Put differently, her religious belief about what

marriage is has "no relationship to her view of the worth of any . . . class of individuals." App.90a.

The dissent highlighted the religious targeting inherent in the majority's analysis. Under the majority's logic, the dissent noted, "it would be a violation of . . . fairness and impartiality for any judge to decline to perform a wedding if [he] would perform a wedding for anyone else." App.86a. But Wyoming judges decline to solemnize marriages for a host of reasons, such as a categorical refusal to marry strangers. App.6a. Yet Judge Neely alone, because she voiced a faith-based objection, has been singled out for punishment.

Turning to Judge Neely's constitutional defenses, the dissent concluded that the Commission could not satisfy strict scrutiny. *See* App.101a-105a. Heeding this Court's admonition to engage in focused strict-scrutiny analysis that "'look[s] beyond broadly formulated interests justifying the general applicability of government mandates,'" the dissent determined that Judge Neely's statements did not threaten the state's "interest in promoting public confidence in the judiciary." App.102a-103a (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 430-31 (2006)). The dissent relied on the distinction this Court drew in *White*: punishing a judge for manifesting "bias for or against either *party* to [a] proceeding" furthers a compelling interest, but disciplining a judge for expressing bias—or a "lack of preconception"—about a contentious issue like the meaning of marriage does not. *White*, 536 U.S. at 775-77. Because "Judge Neely never

exhibited any bias against a particular party," but merely expressed her reasonable views on the issue of marriage, the dissent explained that the government does not have "a compelling state interest" in punishing her. App.106a-107a.

The dissent further concluded that the state's actions were not narrowly tailored to uphold judicial integrity. The demand that Judge Neely no longer "perform[] any marriages is entirely unnecessary," the dissent observed. App.104a. "[T]he most narrowly tailored" solution to resolve Judge Neely's religious conflict is "exactly what [she] proposed to do": refer to other magistrates any same-sex-wedding requests that she might receive. App.107a. This sort of accommodation is a natural fit in the judicial context, the dissent observed, because it is a form of recusal, which judges are required to do when conflicts arise. *See* App.104a (explaining how a judge "assign[s] a particular case to another judge").

The dissent also exposed the majority's error in perceiving an irreconcilable clash between Judge Neely's First Amendment rights and *Obergefell*'s affirmation of same-sex couples' right to marry:

> *Obergefell* did not establish any law about who must perform [same-sex] marriages, but only said they must be available on the same terms as accorded to other couples. Because other couples in Wyoming cannot insist that a particular judge or magistrate perform their wedding ceremony, it follows that

> same sex couples also have no right to do so.

App.71a. Therefore, "[i]t is not appropriate, nor necessary, to diminish religious liberty or free speech" in order to affirm same-sex couples' rights to marry. App.94a.

In conclusion, the dissent emphasized that "on deeply contested moral issues" like the meaning of marriage, everyone should be free to "'live their own values.'" App.109a (quoting Douglas Laycock, *Religious Liberty and the Culture Wars*, 2014 U. Ill. L. Rev. 839, 877 (2014)). The majority excluded "[c]aring, competent, respected, and impartial individuals like Judge Neely" "from full participation in the judiciary." App.109a. But, the dissent noted, that did not need to happen: "[t]here is room enough" for all of us "to live according to [our] respective views of sex, marriage and religion." App.109a-110a.

REASONS FOR GRANTING THE WRIT

This Court should grant review because this case presents important free-exercise and free-speech issues. Millions of Catholics, Protestants, Mormons, Jews, and Muslims hold the same religious beliefs that led to Judge Neely's punishment. The Wyoming Supreme Court applied rules based on the American Bar Association's ("ABA") Model Code of Judicial Conduct and held that it is unethical for judges to voice—let alone live consistently with—those religious beliefs. Because the judicial rules in most states are based on the ABA's model code, the decision

below threatens the expressive and religious freedom of judges throughout the country.

Additionally, this Court should take up Judge Neely's case because the Wyoming Supreme Court's constitutional analysis conflicts with *White* and *Williams-Yulee*. While states may have a compelling interest in eliminating judicial manifestations of bias against parties to a proceeding, the government does not have a compelling interest in forbidding judges from stating their views on issues. Because Judge Neely simply expressed an honorable religious belief about the issue of marriage, the Wyoming Supreme Court's decision to punish her is inconsistent with this Court's precedents.

As an alternative to immediately granting review, this Court could hold this petition pending resolution of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111. The question presented there is whether the Free Exercise Clause or Free Speech Clause protects a cake artist's religiously based decision not to custom-design a wedding cake for a same-sex marriage. Because that First Amendment issue is related to the question presented here, the ruling in *Masterpiece Cakeshop* might provide guidance for resolving this case.

I. The Court Below Wrongly Decided an Important Free-Exercise Question that Should Be Settled by this Court.

Whether the Free Exercise Clause forbids a state from punishing a judge because her faith precludes

her from officiating a same-sex wedding is an important constitutional question that this Court should settle.

Judge Neely's religious belief that marriage "by its nature [is] a gender-differentiated union of man and woman" is "held[] in good faith by reasonable and sincere people." *Obergefell*, 135 S. Ct. at 2594. Indeed, millions of Catholics, Protestants, Mormons, Jews, and Muslims embrace that belief as part of their religious identity. And they are among the thousands of judges and attorneys who have the authority to solemnize marriages throughout the nation.[3]

Over the last few years, these people of faith have faced crises of conscience, evidenced by the multiple judicial-discipline proceedings (including this case) that have punished judges for declining to perform same-sex marriages. *See, e.g.*, *In re Honorable Vance D. Day*, Case No. 12-139, 14-86, Opinion at 39 (Or. Comm'n on Jud. Fitness and Disability Jan. 25, 2016) (concluding that a judge's practice of directing same-sex couples who want to marry to another judge impermissibly "manifest[s] prejudice . . . based upon sexual orientation"); *In re Honorable Gary Tabor*, Case No. 7251-F-158, Stipulation, Agreement and

---

[3] Judges authorized to solemnize marriages include the Justices of this Court, *see, e.g.*, Cal. Fam. Code § 400(b)(3)(A), other federal judges, *see, e.g.*, Conn. Gen. Stat. § 46b-22(a)(1), local justices of the peace, *see, e.g.*, Ariz. Rev. Stat. § 25-124(A)(4), municipal judges, *see, e.g.*, N.J. Stat. § 37:1-13(a), magistrates, *see, e.g.*, Mich. Comp. Laws § 551.7(1)(b), probate judges, *see, e.g.*, Ohio Rev. Code Ann. § 3101.08, and tribal judges, *see, e.g.*, Idaho Code § 32-303. And in some states, any attorney may officiate a wedding. *See, e.g.*, Me. Stat. tit. 19-A, § 655(1)(A)(2).

Order of Admonishment at 3 (Wash. Comm'n on Jud. Conduct Oct. 4, 2013) (determining that a judge "created an appearance of impropriety . . . by publicly stating he would not perform same-sex marriages").

The perils are quickly spreading, as state judicial-ethics commissions, many of which operate under the auspices of state supreme courts, have begun telling judges who perform weddings that they cannot decline to solemnize same-sex marriages for religious reasons.[4] Not one of those agencies, however, has considered whether the Free Exercise Clause forbids their directives, although at least one of them has recognized that this topic "raise[s] serious legal issues relating to . . . constitutional interpretation, questions which are both unsettled and highly controversial." N.Y. Advisory Comm. on Jud. Ethics Op. 11-87 at 2-3 (Dec. 8, 2011). These government dictates have produced a climate of fear among judges who hold certain religious beliefs about marriage, pressuring them to hide what they believe because of apprehension that disclosure will cost them their jobs.

---

[4] *See, e.g.*, Wis. Sup. Ct. Jud. Conduct Advisory Comm. Op. No. 15-1 at 3 (Aug. 18, 2015) ("[A] judicial officer's refusal to perform same-sex marriages based on a couple's sexual orientation would manifest bias or prejudice"); Oh. Sup. Ct. Bd. of Prof'l Conduct Op. 2015-1 at 3 (Aug. 7, 2015) ("A judge who publicly states or implies a personal objection to performing same-sex marriages and reacts by ceasing to perform all marriages acts contrary to the mandate to avoid impropriety and the appearance of impropriety"); Neb. Jud. Ethics Comm. Op. 15-1 at 2 (June 29, 2015) ("A refusal to perform [a same-sex] ceremony [even while] providing a referral to another judge . . . manifests bias or prejudice based on a couple's sexual orientation."); Az. Sup. Ct. Jud. Ethics Advisory Comm. Revised Advisory Op. 15-01 at 2-3 (Mar. 9, 2015) (similar).

Mounting concerns have prompted some state legislatures to address the problem.[5] But far too few have acted to provide relief. And even when they have, legal challenges seek to invalidate the legislatively created accommodations.[6] The only way to guarantee protection for the public officials facing these religious conflicts is for this Court to resolve the matter on constitutional grounds.

The stakes are particularly high because of the Wyoming Supreme Court's antagonism toward Judge Neely's religious beliefs. By labeling those beliefs a manifestation of "bias and prejudice toward homosexuals," App.57a-58a, the court below

---

[5] *See, e.g.*, Del. Code Ann. tit. 13, § 106(e) ("[N]othing in this section shall be construed to require any individual, including any clergyperson or minister of any religion, authorized to solemnize a marriage to solemnize any marriage, and no such authorized individual who fails or refuses for any reason to solemnize a marriage shall be subject to any fine or other penalty for such failure or refusal.") (enacted in 2013); Miss. Code. Ann. § 11-62-5(8)(b) ("Any person employed or acting on behalf of the state government who has authority to perform or solemnize marriages, including, but not limited to, judges, magistrates, justices of the peace or their deputies, may seek recusal from performing or solemnizing lawful marriages based upon or in a manner consistent with a sincerely held religious belief or moral conviction [that marriage is or should be recognized as the union of one man and one woman]") (enacted in 2016).

[6] *See, e.g.*, *Barber v. Bryant*, 193 F. Supp. 3d 677, 723-24 (S.D. Miss. 2016) (concluding that Miss. Code. Ann. § 11-62-5 violates the Establishment Clause and equal-protection guarantees, and enjoining its enforcement), *rev'd*, 860 F.3d 345, 358 (5th Cir. 2017) (holding that the plaintiffs lacked standing but leaving open "the possibility that a future plaintiff may be able to show clear injury-in-fact").

jeopardized Judge Neely's career. Rule 2.11 requires judges to recuse themselves from cases whenever a "bias" or appearance of bias exists. *See* App.135a. So now that Judge Neely's beliefs have been characterized as "bias" against a class of people, it appears that she might need to recuse herself from cases involving LGBT litigants.[7] Yet the court below, by giving Judge Neely an all-or-nothing ultimatum, made clear that a judge cannot perform a function in some contexts but not in others. So the Wyoming Supreme Court's decision, when taken to its logical end, risks driving Judge Neely off the bench completely.

Similarly, other judges who share Judge Neely's beliefs now face a difficult choice: even if they, like Judge Neely, know that they can fairly adjudicate cases involving LGBT parties, they must decide whether to recuse themselves from those cases. And if they decide not to, they must still disclose to LGBT litigants on the record that their religious beliefs preclude them from performing same-sex weddings. *See* App.139a (requiring a judge to "disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification").[8]

---

[7] *See* Oh. Sup. Ct. Bd. of Prof'l Conduct Op. 2015-1 at 5-6 (Aug. 7, 2015) (explaining that a judge who declines to marry same-sex couples for religious reasons "appear[s] to possess a personal bias or prejudice toward persons based on sexual orientation" and "is required under Jud. Cond. R. 2.11 to disqualify" from proceedings involving LGBT parties).

[8] *See also* Elizabeth A. Flaherty, *Impartiality in Solemnizing Marriages*, Jud. Conduct Bd. of Pa. Newsletter, at 6-7 (Summer

Thus, jurists who hold Judge Neely's religious beliefs must either (1) recuse themselves from cases involving a class of litigants and jeopardize their careers or (2) disclose their religious beliefs in open court and face forced disqualification and even punishment. The Wyoming Supreme Court's decision thus threatens to banish from the bench the many people who share Judge Neely's religious beliefs or, at the very least, to render them second-class members if they remain.

The Wyoming Supreme Court's opinion also raises an important ancillary issue within its free-exercise analysis: does *Obergefell* require marriage-solemnizing judges to perform same-sex weddings in violation of their faith? This question is crucial as courts work through the religious-liberty implications of *Obergefell*. *See* 135 S. Ct. at 2625 (Roberts, C.J., dissenting) ("Today's decision . . . creates serious questions about religious liberty.); *id.* at 2638 (Thomas, J., dissenting) (explaining that conflicts with religious liberty "appear[] all but inevitable . . . as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples").

The Wyoming Supreme Court's approach to that issue, which says that *Obergefell* overrides the free-exercise rights of officials like Judge Neely, is deeply flawed. *See* App.23a; App.39a. *Obergefell* guarantees

2014) (stating that a judge who expresses a religious conflict with performing same-sex weddings has "an affirmative duty to disclose" from "the bench" and "on the record" that conflict to LGBT litigants).

same-sex couples access to marry "on the same terms and conditions as opposite-sex couples." 135 S. Ct. at 2605. But because, as the dissent below explained, opposite-sex couples "in Wyoming cannot insist that a particular judge or magistrate perform their wedding ceremony, it follows that same sex couples also have no right to do so." App.71a.[9] Providing clarity on this question is an important reason to grant review.

A. The Decision Below Excluded Judge Neely from the State's System of Individualized Exemptions and Targeted Her Religious Beliefs for Disfavored Treatment.

A regulation is not generally applicable or neutrally applied if the state allows "individualized exemptions" from it. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993). When a regulation authorizes the state to assess "the reasons for the relevant conduct" and the state affords "individualized exemptions from a general requirement," the government "may not refuse to extend that system to cases of 'religious hardship'

---

[9] *See also Slater v. Douglas Cty.*, 743 F. Supp. 2d 1188, 1195 (D. Or. 2010) (noting that a citizen registering a same-sex relationship "has no cognizable right to insist that a specific clerical employee with religious-based objections process the registration as opposed to another employee (having no such objections)"); Robin Fretwell Wilson, *Insubstantial Burdens: The Case for Government Employee Exemptions to Same-Sex Marriage Laws*, 5 NW J. L. & Soc. Pol'y 318, 340 (2010) (explaining that equal-protection principles do not give a same-sex couple the "right to have each and every employee in a government office process their license").

without compelling reason." *Id.* (quoting *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 884 (1990)). And as the Sixth Circuit has explained, an "ad hoc application of [an] anti-discrimination policy" that permits referrals for "secular—indeed mundane—reasons, but not for faith-based reasons" is "the antithesis of a neutral and generally applicable policy." *Ward v. Polite*, 667 F.3d 727, 739-40 (6th Cir. 2012).

The rules governing in this case prohibit judges from failing to act "impartially," App.132a, or from "manifest[ing]" any sort of "bias," "including but not limited to" bias on the grounds listed in the rules, App.133a. According to the state and the court below, Judge Neely violated these rules by stating that her faith requires her to refer same-sex-wedding requests. But if that contravenes those rules, so does a magistrate who categorically refuses to marry strangers, App.6a, says that he "do[es]n't feel like" marrying a specific couple, App.160a-161a, declines a wedding request because of its location, App.161a, or "prefer[s] to watch a football game," App.74a. It is constitutionally suspect for a state to allow all these secular reasons for declining wedding requests while punishing Judge Neely for asserting a religious one.[10]

[10] Officiating wedding ceremonies is unlike other functions that magistrates perform. As the dissent below recognized, performing weddings is the only task in which magistrates "personally participate in celebrating a private event," and for which they "negotiate their own fee with the participants." App.74a n.17; *see also* App.148a-149a.

Making matters worse, the state extends far and wide the judicial authority to solemnize marriages, but deems Judge Neely unworthy of it because of her religious beliefs. Judge Haws testified that he will appoint almost anyone as a magistrate for a day to perform a wedding. App.146a. Yet the Wyoming Supreme Court insisted that Judge Neely must forfeit that authority because she would not commit to performing same-sex weddings in violation of her faith.

Other facts confirm that the state targeted Judge Neely because of her beliefs and thus failed to act neutrally toward religion. If "the effect of a law in its real operation" "restrict[s] practices because of their religious motivation, the law is not neutral." *Lukumi*, 508 U.S. at 533, 535. Without receiving a formal complaint, the Commission's Executive Director initiated disciplinary proceedings against Judge Neely. *See* App.196a. And during the course of those proceedings, the Commission's attorney referred to her religious beliefs as "repugnant." App.144a. In addition, the Commission demanded that Judge Neely be removed simply because she retained as counsel a faith-based legal organization that shares her beliefs about marriage. *See* App.212a-217a.[11] These facts, and more, illustrate that the state singled out Judge Neely because of her faith.

The state's refusal to extend its seemingly limitless exemptions to Judge Neely, particularly

[11] The Commission subsequently admitted its overreach on this point by "conced[ing]" Judge Neely's motion to dismiss. *See* App.234a-235a.

when combined with other facts showing that the government targeted her because of her faith, demands review by this Court.

B. The Decision Below Conflicts with Our Tradition of Religious Accommodation for Public Officials.

The Wyoming Supreme Court's refusal to allow Judge Neely to solve her religious conflict through referral is at odds with our nation's history of accommodating the religious exercise of our public officials. Some of these accommodations are written into the Constitution. *See, e.g.*, U.S. Const. art. VI, cl. 3 ("[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States"); *id.* (permitting officials to be bound by affirmation instead of oath). And others are found in cases relying on diverse sources of law ranging from the Free Exercise Clause to Title VII of the Civil Rights Act of 1964. *See, e.g.*, *Brown v. Polk Cty.*, 61 F.3d 650, 654 (8th Cir. 1995) (en banc) (explaining that "any religious activities of employees that can be accommodated without undue hardship to the government employer . . . are also protected by the [F]irst [A]mendment").

Of particular note, many courts have held that the government must accommodate religious conflicts like Judge Neely's. *See, e.g.*, *Slater*, 743 F. Supp. 2d at 1193-94 (ruling for a county employee who needed to refer applications for same-sex domestic partnerships because of her religious beliefs); *McGinnis v. U.S. Postal Serv.*, 512 F. Supp. 517, 519, 523-24 (N.D. Cal.

1980) (ruling for a postal clerk who referred an average of "five [draft] registrants per day" because of her religious objection to war); *Haring v. Blumenthal*, 471 F. Supp. 1172, 1180, 1183 (D.D.C. 1979) (ruling for an IRS official with "quasi-judicial authority" whose religion required him to refer to colleagues tax-exemption applications from groups that advocate for abortion and LGBT issues because "[i]t is difficult to see how" those referrals "could impair taxpayer confidence in the tax system or the impartiality of the IRS" given that "public confidence in our institutions is strengthened when a decision-maker disqualifies himself on account of . . . insuperable bias[] or the appearance of partiality").

Although the Wyoming Supreme Court was aware of many of these cases, *see* App.27a-28a, it chose to follow the Seventh Circuit's decision in *Endres v. Indiana State Police*, 349 F.3d 922 (7th Cir. 2003), and Judge Posner's concurrence in *Rodriguez v. City of Chicago*, 156 F.3d 771 (7th Cir. 1998), *see* App.24a-26a. But *Endres* and *Rodriguez*—which held that police departments need not accommodate officers with religious conflicts to certain patrol assignments—are entirely unlike this case. Even if the reassignment sought in those cases would have undermined public confidence in the police force, this Court has recognized that judicial recusal, which is exactly what Judge Neely proposed to do, actually "promote[s] public confidence in the integrity of the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).

Moreover, police work involves emergencies, unpredictability, and life-and-death stakes that may make accommodation more difficult. Here, however, marriage solemnization involves neither hazard nor volatility. *See Slater*, 743 F. Supp. 2d at 1194 (distinguishing *Endres* because the government work of formalizing a domestic relationship is not of a "hazardous" or "emergency" nature). Rather, Judge Neely, who had no physical office or regular work hours as a magistrate, was sporadically called by couples who asked her to schedule a time to perform their weddings. That infrequent, nonemergency work, unlike the police functions at issue in *Endres* and *Rodriguez*, is easily accommodated. *See Wilson*, *supra*, at 357-58.

In sum, the Wyoming Supreme Court held that the First Amendment does not require accommodation for a potential conflict (1) that has never actually arisen, (2) that the court below admitted is "not likely" to occur, App.57a, and (3) for a function that others could easily cover. This is true, the court below held, even though the states affords judges wide discretion to agree to some wedding requests while declining others. Whether this distorts religious-accommodation jurisprudence is a question that this Court should review.

II. The Court Below Wrongly Decided an Important Free-Speech Question that Should Be Settled by this Court.

Despite the Wyoming Supreme Court's insistence that it punished Judge Neely for "her conduct,"

App.23a, it is undisputed, as the dissent explained, that Judge Neely *did* nothing—she merely stated that her religious beliefs *would* preclude her from solemnizing a same-sex marriage *if* she *were ever asked* to do so, *see* App.107a-108a (noting that "all Judge Neely did was 'announce' her position" on personally officiating same-sex marriages). Whether the Free Speech Clause forbids the state from punishing Judge Neely for simply voicing this religious conflict is a significant constitutional question that warrants this Court's attention.

This Court has recognized that judges have free-speech rights. *See White*, 536 U.S. at 788 (applying free-speech protections to invalidate a rule of judicial conduct); *cf. In re Sanders*, 955 P.2d 369, 375 (Wash. 1998) ("A judge does not surrender First Amendment rights upon becoming a member of the judiciary."). While the state may restrict judicial speech in limited instances, *see Williams-Yulee*, 135 S. Ct. at 1672 (affirming a rule that prohibits "judicial candidates from personally soliciting campaign funds"), it may not in most circumstances, *see White*, 536 U.S. at 788 (invalidating a rule that prohibits judicial candidates "from announcing their views on disputed legal and political issues"). Wyoming's punishment of Judge Neely for stating her "decent and honorable" beliefs, *Obergefell*, 135 S. Ct. at 2602, and a conflict that she might face because of those beliefs, crosses the line into unconstitutional state action.

The state has admitted that its speech-censoring rules—by targeting expression that state officials consider to be biased or partial, *see* App.131a-133a—

discriminate based on content, *see* App.256a-257a (admitting that the rules cannot be "justified without reference to the content of the regulated speech"). It is thus conceded that strict scrutiny governs Judge Neely's free-speech claim. *See Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015) (explaining that content-based regulations subject to strict scrutiny include laws that "defin[e] regulated speech by its function or purpose").

This case, however, goes beyond mere content discrimination and actually involves discrimination based on viewpoint. Had Judge Neely said that her religious beliefs favor same-sex marriages and that she could not wait to perform those ceremonies, she would have faced no punishment. But the "First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others." *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017) (citation omitted).

Moreover, the state has not shown that its censorship withstands the rigors of strict scrutiny. While the state may have a compelling interest in forbidding judges from expressing bias toward parties in a proceeding, it has no such interest in outlawing judges from stating beliefs about issues. *See White*, 536 U.S. at 775-77. Because, as the dissenting justices explained below, "Judge Neely never exhibited any bias against a particular party," but merely expressed her reasonable views on the issue of marriage, the state does not have "a compelling state interest" in punishing her. App.106a-107a.

If the Wyoming Supreme Court's decision is allowed to stand, it poses a broad threat to judges' expressive freedom, reaching far beyond the circumstances of this case. Wyoming's rules are based on the ABA's Model Code of Judicial Conduct and thus are similar to the judicial-ethics rules prevailing in many states. According to the court below, Rule 1.2 bans expression that state officials think "creates the perception" of a lack of "impartiality." App.55a. And Rule 2.3 empowers the government to punish judges for speech that "manifest[s]" any sort of "bias," "including but not limited to" bias on the grounds listed in the Rule. App.133a. If, as the Wyoming Supreme Court determined, a state may use those rules to punish respectful expressions of reasonable beliefs, countless jurists will be at risk of discipline.

Because the prohibited manifestations of bias are not limited to the grounds specifically listed in Rule 2.3, they can arise in many contexts. Consider a state-court judge who says that he opposes the death penalty and would need to recuse himself from cases involving that issue.[12] Or suppose that a juvenile-court judge discloses that his religious beliefs require him to step aside in proceedings in which minors seek permission to undergo abortions without parental consent.[13] What if a judge indicates that she was

---

[12] *See* Richard B. Saphire, *Religion and Recusal*, 81 Marq. L. Rev. 351, 361-62 (1998) (quoting Justice Breyer as stating that "if a judge has strong personal views on a matter as strong as the death penalty, views that he believes might affect his decision in such a case, he should perhaps, if they are very strong . . . you might take yourself out of the case.").

[13] *See* Adam Liptak, *On Moral Grounds, Some Judges Are Opting Out of Abortion Cases*, N.Y. Times, Sept. 4, 2005.

sexually assaulted and would be unable to hear cases involving rape charges? By the Wyoming Supreme Court's logic, all those judges would be exposed to discipline for manifesting bias or a lack of impartiality.

Amplifying the speech concerns in this case is the religious silencing inherent in the Wyoming Supreme Court's analysis. The court recognized that other Wyoming judges may express many nonreligious reasons for refusing wedding requests (e.g., because they do not know the marrying couple, would rather attend a football game, or just "don't feel like" performing a wedding). *See* App.6a; App.74a; App.160a-161a. But judges cannot decline a wedding request if they express the religious reason that Judge Neely invoked. Such stifling of religious speech—which encourages judges to closet their beliefs or lie about their motives—confirms that this Court should review whether the Wyoming Supreme Court violated Judge Neely's free-speech rights.

Finally, the Wyoming Supreme Court's decision implicates not only Judge Neely's freedom to speak, but also her freedom to decline to express messages that violate her conscience. The court below mandated that Judge Neely commit to personally officiating same-sex weddings in order to retain her role as a marriage-solemnizing magistrate. *See* App.63a-64a. Yet agreeing to do that would have forced her to speak messages at odds with her faith. App.172a-173a. The Wyoming Supreme Court's ruling thus infringes Judge Neely's free-speech right to decline to express messages that she deems

objectionable. *See, e.g.*, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572-73 (1995) (forbidding the state from applying a nondiscrimination law to require parade organizers to present an LGBT group's messages); *Wooley v. Maynard*, 430 U.S. 705, 717 (1977) (forbidding the state from mandating that citizens display the state motto on license plates); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641-42 (1943) (forbidding the state from forcing school children to recite the pledge of allegiance). These compelled-speech concerns heighten the need for this Court's review.

III. The Court Below Distorted and Misapplied this Court's Rulings in *White* and *Williams-Yulee*.

In its strict-scrutiny analysis, the Wyoming Supreme Court discussed this Court's decisions in *White* and *Williams-Yulee*. But instead of faithfully applying those precedents, the court below resolved this case in a way that conflicts with them.

In *Williams-Yulee*, this Court held that a state's ban on judicial candidates personally soliciting funds advanced its "compelling interest in preserving public confidence in the integrity of the judiciary." 135 S. Ct. at 1666. In contrast, however, disciplining Judge Neely for voicing a potential religious conflict does not further that interest. Even the Wyoming Supreme Court recognized that "there is no evidence of injury to respect for the judiciary" in this case. App.62a.

Despite this, the court below said that Judge Neely's religious beliefs about marriage solemnization manifest a "bias and prejudice toward homosexuals" that taints her integrity as a judge. App.57a-58a. But that conclusion rests on two baseless leaps in logic. First, a limited faith-based conflict with performing a solemn non-adjudicative function says nothing about a judge's ability to fairly decide cases. Second, a decent and honorable religious belief about the issue of marriage does not equate to prejudice against a class of people. Or as the dissent below put it, Judge Neely's religious belief about what marriage is has "no relationship to her view of the worth of any . . . class of individuals." App.90a. That several of Pinedale's LGBT citizens resoundingly affirm Judge Neely's judicial integrity, *see* App.185a-190a, shows that they understand the difference between a sincere belief about an issue and a prejudice against a class, even if that distinction was lost on the majority below.

That distinction also demonstrates why the decision below conflicts with *White*. The *White* Court differentiated between the state's compelling interest in ensuring "the lack of bias for or against [a] *party* to [a] proceeding" and the state's non-compelling interest in silencing judicial "speech for or against particular *issues*." 536 U.S. at 775-77. Punishing Judge Neely does not further a compelling interest because her speech falls on the issue side of *White*'s issue/party line.

The record establishes this because Judge Neely's conflict disappears as soon as the context moves

outside of the issue of marriage solemnization. If she is asked to recognize a same-sex marriage in her role as an adjudicator, she will do it. App.174a-175a. Or if an LGBT individual asks her to administer an oath or acknowledge a written instrument, she will certainly assist. App.54a-55a. Given that Judge Neely did not manifest and does harbor bias against a class of individuals, disciplining her does not further a compelling interest. And because the state has reached so far as to punish a judge for expressing an honorable view of marriage, its efforts are not narrowly tailored toward advancing a compelling interest. *See White*, 536 U.S. at 776 (punishing a judge for expressing views about an issue is "not narrowly tailored" to eliminating bias against parties to a proceeding).

IV. This Case Cleanly Raises the Question Presented.

This case presents an ideal vehicle for resolving the important free-exercise and free-speech issues raised herein. No material facts are disputed, and the case raises pure questions of law that were resolved below through cross-motions for summary judgment. Also, because the parties engaged in extensive discovery, this case provides a comprehensive factual record that includes numerous depositions and affidavits.

Moreover, this case involves one isolated statement about marriage by a judge who is highly respected, has an unblemished judicial record, and is praised by LGBT individuals in her community.

Because of this, no ancillary facts, disputes, or issues will encumber this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant review or, at a minimum, hold this petition pending resolution of *Masterpiece Cakeshop*, No. 16-111, which raises related First Amendment issues.

Respectfully submitted,

DAVID A. CORTMAN
Counsel of Record
RORY T. GRAY
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE,
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
dcortman@ADFlegal.org

KRISTEN K. WAGGONER
JAMES A. CAMPBELL
KENNETH J. CONNELLY
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020

HERBERT K. DOBY
P.O. Box 130
Torrington, WY 82240
(307) 532-2700

August 4, 2017

APPENDIX

APPENDIX TABLE OF CONTENTS

Wyoming Supreme Court's Opinion (Mar. 7, 2017) ... 1a

Wyoming Commission on Judicial Conduct and Ethics' Recommendation (Feb. 26, 2016) ... 111a

Wyoming Commission on Judicial Conduct and Ethics' Order Granting the Commission's Motion for Partial Summary Judgment and Denying Judge Neely's Motion for Summary Judgment (Dec. 31, 2015) ... 114a

U.S. Const. Amendment I ... 130a

Excerpts from U.S. Const. Amendment XIV ... 130a

Excerpts from Wyoming Code of Judicial Conduct ... 131a

Excerpts from Wyoming Commission on Judicial Conduct and Ethics' Transcript of Hearing Proceedings (Dec. 4, 2015) ... 143a

Excerpts from Deposition of The Honorable Curt Austin Haws (Sept. 18, 2015) ... 145a

Excerpts from Deposition of Stephen Brian Smith (Sept. 17, 2015) ... 154a

Excerpts from Deposition of Wendy Jo Soto (Sept. 15, 2015) ... 157a

Excerpts from Deposition of The Honorable Ruth Neely (Sept. 18, 2015) ... 162a

Excerpts from Affidavit of The Honorable Ruth Neely (Oct. 29, 2015) 172a

Affidavit of Bob Jones (Oct. 20. 2015) 177a

Affidavit of Ralph E. Wood (Oct. 20, 2015) 181a

Affidavit of Sharon Stevens (Oct. 20, 2015) 185a

Affidavit of Kathryn Anderson (Oct. 20, 2015) ... 188a

Affidavit of Stephen Crane (Oct. 27, 2015) 191a

Excerpts from Wyoming Commission on Judicial Conduct and Ethics' Supplemental Rule 11(b) Disclosures (July 27, 2015) 193a

Email from Wendy Soto to Investigatory Panel Members (Dec. 22, 2014) 196a

Sublette Examiner Article (Dec. 9. 2014) 199a

Wyoming Commission on Judicial Conduct and Ethics' Notice of Commencement of Formal Proceedings (Mar. 4, 2015) 202a

Wyoming Commission on Judicial Conduct and Ethics' Amended Notice of Commencement of Formal Proceedings (Aug. 28, 2015) 210a

The Honorable Ruth Neely's Verified Amended Answer to Notice of Commencement of Formal Proceeding (Oct. 9, 2015) 221a

Wyoming Commission on Judicial Conduct and Ethics' Notice of Confession of Motion to Dismiss (Sept. 28, 2015) 234a

Excerpts from The Honorable Ruth Neely's Memorandum of Law in Support of Motion for Summary Judgment (Oct. 30, 2015) 237a

Excerpts from The Honorable Ruth Neely's Response to the Commission's Motion for Partial Summary Judgment (Nov. 19, 2015) 241a

Excerpts from The Honorable Ruth Neely's Brief filed with the Wyoming Supreme Court in Support of her Verified Petition Objecting to the Commission's Recommendation (Apr. 29, 2016) 244a

Excerpts from the Wyoming Commission on Judicial Conduct and Ethics' Brief filed with the Wyoming Supreme Court (June 15, 2016) 252a

IN THE SUPREME COURT, STATE OF WYOMING

2017 WY 25

OCTOBER TERM, A.D. 2016

March 7, 2017

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).	J-16-0001

Original Proceeding
Petition on Professional Regulation
Wyoming Commission on Judicial Conduct and Ethics

Representing Petitioner:

Herbert K. Doby, Torrington, Wyoming; James A. Campbell, Kenneth J. Connelly, and Douglas G. Wardlow of Alliance Defending Freedom, Scottsdale, Arizona. Argument by Mr. Campbell.

Representing Respondent:

Patrick Dixon and Britney F. Turner of Dixon & Dixon, LLP, Casper, Wyoming; Timothy K. Newcomb, Laramie, Wyoming. Argument by Mr. Dixon.

Representing Amici Curiae Mayor and Town Council Members of the Town of Pinedale and Sutherland Institute Center for Family & Society:

William H. Twichell, Pinedale, Wyoming

Before BURKE, C.J., and HILL, DAVIS, FOX, and KAUTZ, JJ.

FOX, Justice, delivers the opinion of the Court; KAUTZ, Justice, files a dissenting opinion, in which DAVIS, Justice, joins.

NOTICE: This opinion is subject to formal revision before publication in Pacific Reporter Third. Readers are requested to notify the Clerk of the Supreme Court, Supreme Court Building, Cheyenne, Wyoming 82002, of any typographical or other formal errors so that correction may be made before final publication in the permanent volume.

FOX, Justice.

[¶1] Judge Ruth Neely objects to the Wyoming Commission on Judicial Conduct and Ethics' (Commission) recommendation that she be removed from her positions as municipal court judge and part-time circuit court magistrate because of her refusal to perform same-sex marriages in her judicial capacity as a part-time circuit court magistrate. We conclude, as have all the state judicial ethics commissions that have considered this question, that a judge who will perform marriages only for opposite-sex couples violates the Code of Judicial Conduct, and we hold that Judge Neely violated Rules 1.2, 2.2, and 2.3 of the Wyoming Code of Judicial Conduct. However, we do not accept the Commission's recommendation for removal, and instead order public censure, with specific conditions.

ISSUES

[¶2] While the parties state numerous and divergent issues, we consider the issues in this case to be:

1. Does the United States Constitution permit this Court to discipline Judge Neely for announcing that her religious beliefs prevent her from officiating same-sex marriages?

2. Does the Wyoming Constitution permit this Court to discipline Judge Neely for announcing that her religious beliefs prevent her from officiating same-sex marriages?

3. Are the provisions of the Wyoming Code of Judicial Conduct alleged to have been violated by Judge Neely void for vagueness?

4. Did Judge Neely violate the Wyoming Code of Judicial Conduct?

[¶3] This case is ***not*** about same-sex marriage or the reasonableness of religious beliefs. We recognize that "[m]any who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here." *Obergefell v. Hodges*, 135 S.Ct. 2584, 2602, 192 L.Ed.2d 609 (2015). This case is also not about imposing a religious test on judges. Rather, it is about maintaining the public's faith in an independent and impartial judiciary that conducts its judicial functions according to the rule of law, independent of outside influences, including

religion, and without regard to whether a law is popular or unpopular.

FACTS

[¶4] Judge Neely was appointed as a municipal court judge for the Town of Pinedale, Wyoming, in 1994, and has served continuously in that capacity ever since.[1] As a Pinedale municipal court judge, Judge Neely hears all cases arising from the town's ordinances, such as traffic and parking violations, animal control, public intoxication, underage drinking, breach of peace, nuisances, and similar matters. Municipal court judges are not authorized to perform marriages. Wyo. Stat. Ann. § 20-1-106(a) (LexisNexis 2015). Municipal court judges are appointed by the governing bodies of the towns where they sit. Wyo. Stat. Ann. § 15-4-202(d) (LexisNexis 2015). It is undisputed that the Wyoming Code of Judicial Conduct applies to them, and that they are subject to the disciplinary authority of the Commission on Judicial Conduct and Ethics and this Court. Wyoming Code of Judicial Conduct, *Application* I.(B); *see also* Wyo. Const. art. 5, § 6. The evidence is uncontroverted that Judge Neely is highly respected as a municipal court judge in her community, including by at least one member of the gay community.

[¶5] Since approximately 2001, Judge Neely has also served as a part-time circuit court magistrate; she was most recently appointed by circuit court Judge

[1] Judge Neely is not a lawyer and has no formal legal training.

Haws to assist him. Part-time magistrates are in a unique position in that they perform judicial functions only as needed. They are not on the state payroll, but instead are compensated for particular services by voucher. Wyo. Stat. Ann. § 5-9-213 (LexisNexis 2015). One of her powers in that capacity is to perform marriage ceremonies, Wyo. Stat. Ann. § 5-9-212(a)(iii) (LexisNexis 2015), and in fact performing marriages was her primary function as a part-time circuit court magistrate. Judge Neely was compensated for marriages by the marrying couple and not by the state. Under Wyoming law, marriage is "a civil contract . . . ." Wyo. Stat. Ann. § 20-1-101 (LexisNexis 2015). Marriage ceremonies have minimal requirements:

> In the solemnization of marriage no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.

Wyo. Stat. Ann. § 20-1-106(b) (LexisNexis 2015).

[¶6] Judge Neely has performed over 100 weddings. Part-time magistrates can and do decline to perform marriages for various reasons. Stephen Smith, who also serves as a part-time circuit court magistrate, testified that he only performs marriages for people he knows. Judge Haws testified that he would turn down a request to perform a marriage if his schedule would not permit it, and that it would be acceptable

for magistrates to turn down such a request if they were going to a football game, getting their hair done, or were sick.

[¶7] When she was appointed as part-time circuit court magistrate, Judge Neely took the oath required by Wyoming law.

> "I do solemnly swear (or affirm) that I will support, obey and defend the constitution of the United States, and the constitution of the state of Wyoming; that I have not knowingly violated any law related to my election or appointment, or caused it to be done by others; and that I will discharge the duties of my office with fidelity."

Wyo. Const. art. 6, § 20.[2]

[¶8] Judge Neely is a devout Christian and a member of the Lutheran Church, Missouri Synod. It is undisputed that she holds the sincere belief that marriage is the union of one man and one woman. Shortly after the United States District Court for the District of Wyoming issued its order enjoining the state from enforcing or applying any "state law, policy, or practice, as a basis to deny marriage to same-sex couples," *Guzzo v. Mead*, No. 14-CV-200-SWS, 2014 WL 5317797, at *9 (D. Wyo. Oct. 17,

---

[2] This oath is required of circuit court magistrates by Wyo. Stat. Ann. § 5-9-203 (LexisNexis 2015).

2014),[3] Judge Neely met with Judge Haws "to explain to him that I would not be able to officiate same-sex marriages due to my sincerely held religious beliefs about what marriage is." Judge Haws advised her to "keep your head down and your mouth shut," until they received further guidance.

[¶9] On December 5, 2014, *Pinedale Roundup* reporter Ned Donovan called Judge Neely on her cell phone. She returned the call, Mr. Donovan answered "Pinedale Roundup," and he then asked her if she was "excited" to be able to perform same-sex marriages. In the article that followed the interview, two quotes were attributed to Judge Neely, which she later testified were accurate:

> "I will not be able to do them. . . . We have at least one magistrate who will do same-sex marriages, but I will not be able to."
>
> "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same-sex marriage."

[¶10] Mr. Donovan's article appeared in the December 9, 2014 edition of the *Pinedale Roundup*. The *Sublette Examiner* published the article in its online edition on December 11, 2014. The matter came to the

---

[3] That decision, essentially finding that same-sex marriage was legal in Wyoming, was established as the law of the land by the United States Supreme Court in *Obergefell v. Hodges*, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015).

Commission's attention, and on December 22, 2014, the Commission's Executive Director forwarded the articles to the Commission's Investigatory Panel for their review. On January 6, 2015, the Investigatory Panel decided to commence an investigation and sent a letter of inquiry to Judge Haws and Judge Neely.

[¶11] Also on January 6, without knowledge of the Commission's actions, Judge Neely sent a letter to the Judicial Ethics Advisory Committee to seek its guidance. She asked: "Can a magistrate recuse himself/herself from officiating at a same sex wedding due to religious conviction; and if so, without fear of civil rights repercussions?" She explained:

> Without getting in too deeply here, homosexuality is a named sin in the Bible, as are drunkenness, thievery, lying, and the like. I can no more officiate at a same sex wedding than I can buy beer for the alcoholic or aid in another person's deceit. I cannot knowingly be complicit in another's sin. Does that mean I cannot be impartial on the bench when that homosexual or habitual liar or thief comes before me with a speeding ticket? Or the alcoholic appears before me for yet another charge of public intoxication? No. Firmly, no. I have been the municipal court judge for the Town of Pinedale for over 20 years; and there has not been one claim of bias or prejudice made by anyone who has come before me. Not the

> homosexual, not the alcoholic, not the liar, not the thief. Not one.[4]

The Commission provided no answer to Judge Neely's question, explaining that it could only "provide guidance for those judges seeking resolution to *current or unresolved* ethical dilemmas, rather than to confirm a judge's decision or provide a legal opinion." On January 15, 2015, Judge Haws met with Judge Neely and suspended her from her position as a part-time circuit court magistrate.

[¶12] In her response to the Investigatory Panel's inquiry, Judge Neely affirmed that "[m]y conscience, formed by my religious convictions, will not allow me to solemnize the marriage of two men or two women . . . ." She indicated that she has not been asked to perform a same-sex marriage, and she admonished the Commission:

> [P]lease keep my and others' First Amendment rights in mind. I want to continue to officiate at weddings; and I should not have to fear that lawful exercise of my freedom of religion as a

---

[4] This letter to the Judicial Ethics Advisory Committee would normally be a protected communication. However, this Court's "determination must be made upon the evidence that was presented to the Board at the hearing." *Bd. of Prof'l Responsibility v. Custis*, 2015 WY 59 ¶ 19, 348 P.3d 823, 829 (Wyo. 2015) (citations omitted). As no party raised this issue either below or an appeal, and in fact, both parties referred to the letter, it remains part of the record, particularly when Judge Neely waived confidentiality when she filed her motion to remove confidentiality. *See infra* ¶ 14.

> member of a Lutheran church in Pinedale, Wyoming would be a violation of the Code.

[¶13] After reviewing the responses from Judge Neely and Judge Haws, the Investigatory Panel met again and determined there was probable cause to find a code violation and referred the matter to the Commission's Adjudicatory Panel. The Commission and Judge Neely retained counsel, and the parties engaged in discovery and filed cross-motions for summary judgment. The Adjudicatory Panel held a hearing on those motions and issued its Order Granting Commission's Motion for Partial Summary Judgment and Denying Judge Neely's Motion for Summary Judgment on December 31, 2015. The full Commission adopted the Adjudicatory Panel's findings and recommendations, and recommended that Judge Neely be removed from her positions as municipal court judge and part-time circuit court magistrate.

[¶14] Judge Neely timely petitioned this Court to reject the Commission's recommendation, the parties filed their briefs, and this Court heard the arguments of counsel. Although normally all proceedings before the Commission are confidential (Rules Governing the Commission on Judicial Conduct and Ethics, Rule 22), Judge Neely filed a motion seeking to remove the confidentiality, the motion was not opposed by the Commission, and it was granted by this Court. Several motions to file *Amicus Curiae* briefs were filed, and this Court denied all but the Motion for Leave to File Proposed Brief of *Amici Curiae* Mayor

and Town Council Members of the Town of Pinedale and Sutherland Institute Center for Family & Society in Support of the Honorable Ruth Neely's Petition Objecting to the Commission's Recommendation, which was granted.

DISCUSSION

[¶15] Judge Neely contends that removing[5] her from either judicial position "because of her religious beliefs" would violate her constitutional rights to free speech and free exercise of religion, under both the United States and the Wyoming constitutions. Judge Neely's religious beliefs, however, are not the issue. Rather, the issue is Judge Neely's conduct as a judge.

I. Does the United States Constitution permit this Court to discipline Judge Neely for announcing that her religious beliefs prevent her from officiating same-sex marriages?

[¶16] The free exercise clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I. This provision is made applicable to the states by the Fourteenth Amendment. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). "The free exercise of religion

---

[5] As we discuss below, *see infra* ¶ 57, this Court is not bound by the Commission's recommendation, and although we have determined that discipline is appropriate, we stop short of removing her from either of her judicial positions.

means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877, 110 S.Ct. 1595, 1599, 108 L.Ed.2d 876 (1990).[6] Yet the United States Supreme Court has recognized an important distinction between the "freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." *Cantwell*, 310 U.S. at 303-04, 60 S.Ct. at 903.

[¶17] In *Smith*, the United States Supreme Court considered the free exercise claims of two parties whose employment had been terminated for their use of peyote for religious purposes, and then were denied unemployment benefits. 494 U.S. at 874, 110 S.Ct. at 1598-99. The Court rejected respondents' claims that "their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practices . . . . ," *Id.* at 878, 110 S.Ct. at 1599, citing the principle that a citizen cannot excuse violation of the law because of his religious beliefs. "'Laws,' we said, 'are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . .'" *Id.* at 879, 110 S.Ct. at 1600 (quoting *Reynolds v. United States*, 98 U.S. 145, 166-67, 25 L.Ed. 244 (1878)).

---

[6] Although Congress subsequently attempted to overturn *Smith* by enacting the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, the United States Supreme Court struck down the Act, as applied to state actions, in *City of Boerne v. Flores*, 521 U.S. 507, 536, 117 S.Ct. 2157, 2172, 138 L.Ed.2d 624 (1997).

> Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'

Smith, 494 U.S. at 879, 110 S.Ct. at 1600 (citations omitted).

[¶18] We adhere to the *Smith* Court's rule on the interplay between the right to free exercise and the obligation to comply with a valid and neutral law, but unlike the *Smith* Court, we will apply strict scrutiny to our analysis. The parties agree that we should do so, and Judge Neely has raised both free exercise of religion and freedom of speech claims, requiring us to apply the strict scrutiny standard to our decision. *See Republican Party of Minnesota v. White*, 536 U.S. 765, 774, 122 S.Ct. 2528, 2534, 153 L.Ed.2d 694 (2002) (applying strict scrutiny in First Amendment challenge to rule restricting judicial campaign speech). Strict scrutiny requires us to determine whether disciplining Judge Neely for her refusal to conduct same-sex marriages serves a compelling state interest, and whether the discipline is narrowly tailored to serve that interest. *Williams-Yulee v. Florida Bar*, --- U.S. ---, ---, 135 S.Ct. 1656, 1664-65, 191 L.Ed.2d 570 (2015).

[¶19] The judicial code at issue in *Williams-Yulee* prohibited candidates for judicial election from

"personally solicit[ing] campaign funds, or solicit[ing] attorneys for publicly stated support . . . ." 135 S.Ct. at 1663 (citation omitted). Williams-Yulee (Yulee), who ran for a seat on a county court, drafted a campaign letter soliciting campaign contributions, which she mailed to local voters and posted on her campaign website. *Id.* The Florida bar filed a complaint against Yulee for violating the Florida Code of Judicial Conduct, and the Florida Supreme Court, finding that Canon 7C was narrowly tailored to serve a compelling state interest, imposed sanctions on Yulee for her code violation. *Id.* at 1664.

[¶20] The *Williams-Yulee* Court agreed that the State of Florida had a "compelling interest in preserving public confidence in the integrity of the judiciary . . . ." *Id.* at 1666.

> The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government. Unlike the executive or the legislature, the judiciary "has no influence over either the sword or the purse; . . . neither force nor will but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton) (capitalization altered). The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." *Offutt v. United*

> *States*, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954).

Id. See also Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 889, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) ("Judicial integrity is . . . a state interest of the highest order." (citation omitted)). We find that, like the State of Florida, the State of Wyoming has a compelling government interest in maintaining the integrity of the judiciary, in this case by enforcing Wyoming Rules of Judicial Conduct 1.2, 2.2, and 2.3.

[¶21] Judge Neely contends that *Republican Party of Minnesota v. White* governs, and there is no compelling state interest in ensuring her lack of preconception on the issue of same-sex marriage. 536 U.S. at 777-78, 122 S.Ct. at 2536. In *White*, the United States Supreme Court addressed a different rule, restricting judicial campaign activity.[7] The Court

---

[7] Most cases dealing with the tension between the First Amendment and restrictions on judicial conduct arise in the context of judicial election campaigns. *See Winter v. Wolnitzek*, 834 F.3d 681, 2016 WL 4446081 (6th Cir. Aug. 24, 2016); *In re Judicial Campaign Complaint Against O'Toole*, 24 N.E.3d 1114 (Ohio 2014). Judges in Wyoming are not elected, but rather are selected in a modified system of judicial selection known as "Merit Selection" or the "Missouri Plan." "[T]he very practice of electing judges undermines" the interest in an impartial judiciary. Judges subject to regular elections "are likely to feel that they have at least some personal stake in the outcome of every publicized case." And, because campaigns cost money, judges must engage in fundraising, which "may leave judges feeling indebted to certain parties or interest groups." *White*, 536 U.S. at 788-90, 122 S.Ct. at 2542 (O'Connor, J., concurring). "Legislative and executive officials act on behalf of the voters who placed them in office; judge[s] represent[t] the Law." *Id.* at

there had before it the "announce clause," which said that a candidate for judicial office in Minnesota shall not "announce his or her views on disputed legal or political issues." *Id.*, 536 U.S. at 770, 122 S.Ct. at 2532. (The "announce clause" is distinguished from a separate provision which "prohibits judicial candidates from making 'pledges or promises of conduct other than the faithful and impartial performance of the duties of the office.'" (internal citation omitted)).

[¶22] In *White*, a candidate for judicial office had distributed campaign literature criticizing "Minnesota Supreme Court decisions on issues such as crime, welfare, and abortion." *Id.* at 768, 122 S.Ct. at 2531. Although a complaint was filed against him, the disciplinary board with the responsibility to investigate ethical violations dismissed the complaint, expressing doubt whether the announce clause was constitutionally enforceable. *Id.* at 769, 122 S.Ct. at 2531. The candidate, who had nevertheless withdrawn from the race, filed suit, joined by the Republican Party of Minnesota and others, seeking a declaration that the announce clause violated the First Amendment. The board interpreted the announce clause to allow the candidate to criticize decisions of the state supreme court on such issues as application of the exclusionary rule in criminal cases, striking down a state law restricting welfare benefits, and financing abortions for poor women, but not if the candidate also stated

---

803, 122 S.Ct. at 2550 (Ginsburg, J., dissenting) (internal quotation marks and citation omitted).

he was against *stare decisis*. *Id.* at 771- 72, 122 S.Ct. at 2533.

[¶23] The Court found that, although judicial impartiality may be a compelling state interest, the announce clause was not narrowly tailored to serve that interest. *Id.* at 774- 76, 122 S.Ct. at 2534-35. The *White* majority reached this conclusion by first defining "impartiality" as "the lack of bias for or against either *party* to the proceeding. Impartiality in this sense assures equal application of the law." *Id.* at 775-76, 122 S.Ct. at 2535 (emphasis in original). The Court then reasoned that the announce clause failed to address the objective of judicial impartiality because it "does not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*." *Id.* at 776, 122 S.Ct. at 2535 (emphasis in original).

[¶24] There are two critical differences between *White* and Judge Neely's case. First, rather than simply express her views on a matter of law or religion, she has stated her position that she will not perform her judicial functions with impartiality. She does not merely believe that homosexuality is a sin; as a judge, she will manifest that belief by not treating homosexual persons the same way she treats heterosexual persons. Thus, unlike the candidate in *White*, Judge Neely's conduct is at odds with a "lack of bias for or against either *party* . . . ." *Id.* at 775, 122 S.Ct. at 2535. She refuses "equal application of the law" to homosexuals. *Id.* at 776, 122 S.Ct. at 2535. Second, the rules she has violated are far more well established than the announce clause at issue in

White. Rule 1.2, Promoting Confidence in the Judiciary; Rule 2.2, Impartiality and Fairness; and Rule 2.3, Bias, Prejudice, and Harassment, all address different facets of the fundamental requirement that judges maintain public confidence in the judiciary by impartially applying the law. *See infra* ¶¶ 59-70. The Wyoming Code of Judicial Conduct, including the three rules at issue here, is based on the American Bar Association Model Code of Judicial Conduct, as revised in 2007. Arthur Garwin et al., *Annotated Model Code of Judicial Conduct*, at 22, 30, 92, 111 (2d ed. 2011). Each of the rules at issue here has been applied in numerous decisions. *Id.* at 31-73, 93-111, 113-119.

> When [a judge] takes the oath of office, he or she yields the prerogative of executing the responsibilities of the office on any basis other than the fair and impartial and competent application of the law to the facts. The preservation of the rule of law as our last best hope for the just ordering of our society requires nothing less than an insistence by this Court that our justice court judges be in fact what they are in name: judges.

In re Bailey, 541 So.2d 1036, 1039 (Miss. 1989) (emphasis omitted)

[¶25] The *White* Court went on to look at other possible grounds for finding a compelling state interest, and it rejected the argument that avoiding

preconception on a particular legal view was a compelling state interest, in part because "it is virtually impossible to find a judge who does not have preconceptions about the law." 536 U.S. at 777, 122 S.Ct. at 2536. It similarly rejected the notion that there was a compelling state interest in maintaining judicial open-mindedness regarding the law, stating, for example, that Minnesota's prohibition of a judicial candidate's statement, "I think it is constitutional for the legislature to prohibit same-sex marriages," was "woefully underinclusive" because the same person could make that statement prior to announcing his candidacy, and after he is elected. *Id.* at 779-80, 122 S.Ct. at 2537. (*White* was decided before *Obergefell*.)

[¶26] Judge Neely attempts to fit her conduct into the "lack of preconception" prong discussed in *White*. 536 U.S. at 766, 122 S.Ct. at 2530. But we are not concerned here with Judge Neely's views on the issue of same-sex marriage. Instead, the questions that Judge Neely's conduct engender regarding her judicial impartiality go to her bias toward particular *parties*, rather than toward particular *issues*. Judge Neely has indicated that she will perform marriage ceremonies for one category of parties, but not another. Her position is a sufficient basis for the public's confidence in Judge Neely's impartiality to be undermined, and thus enforcement of the Code of Judicial Conduct serves a compelling state interest under these facts. Although Judge Neely contends that this result would mean that "no one who holds Judge Neely's widely shared beliefs about marriage can remain a judge in Wyoming," that is incorrect. Judge Neely may hold her religious beliefs, and she

must impartially apply the law regardless of those beliefs.

[¶27] It is quite likely that all judges disagree with some aspect of the law for religious, personal, or moral reasons. Yet the judiciary plays a key role in preserving the principles of justice and the rule of law, which requires the consistent application of the law regardless of the judge's personal views. "Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question." Wyoming Code of Judicial Conduct, Rule 2.2, Comment 2. "Our obligation is to define the liberty of all, not to mandate our own moral code." *Planned Parenthood of Southeastern Pennsylvania. v. Casey*, 505 U.S. 833, 850, 112 S.Ct. 2791, 2806, 120 L.Ed.2d 674 (1992). An independent judiciary "requires that judges decide cases according to the law and the facts, without regard to whether" a particular law is popular, and without permitting a judge's "other interests or relationships to influence the judge's judicial conduct or judgment." Wyoming Code of Judicial Conduct, Rule 2.4(B) and Comment. "No judge is permitted to substitute his concept of what the law ought to be for what the law actually is." *In re Inquiry Concerning a Judge, J.Q.C. No. 77-16*, 357 So.2d 172, 179 (Fla. 1978). We find that the state has a compelling interest in maintaining public confidence in the judiciary by enforcing the rules requiring independence and impartiality.

[¶28] We turn next to the narrowly-tailored prong of

strict scrutiny. The *Williams-Yulee* Court explained that "narrowly tailored" does not mean "perfectly tailored."

> The impossibility of perfect tailoring is especially apparent when the State's compelling interest is as intangible as public confidence in the integrity of the judiciary. . . . Here, Florida has concluded that all personal solicitations by judicial candidates create a public appearance that undermines confidence in the integrity of the judiciary; banning all personal solicitations by judicial candidates is narrowly tailored to address that concern.

Williams-Yulee, 135 S.Ct. at 1671.

[¶29] Judge Neely argues that "removing [her] for her religious beliefs and expression about marriage is fatally underinclusive," and therefore not narrowly tailored. In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993), the United States Supreme Court found that the challenged ordinances were not narrowly tailored because they were underinclusive to the city's professed governmental interest in protecting the public health and preventing cruelty to animals. The ordinances, while prohibiting the Church of Lukumi's animal sacrifice, permitted many other types of animal deaths, like euthanasia of unwanted animals. *Id.*, 508 U.S. at 543, 113 S.Ct. at 2232. Judge Neely attempts to draw parallels to her

circumstances, arguing that a municipal court judge "may critique or praise . . . the *Guzzo* decision that brought same-sex marriage to Wyoming" or could "publicly disclose their views on controversial political issues" in a caucus-type election procedure. Judge Neely again mischaracterizes her conduct at issue. She is not subject to discipline merely because she has expressed her religious beliefs. She has gone one or two critical steps farther than that to say that she will not impartially perform her judicial functions with respect to parties the United States Supreme Court has held have a constitutional right to be treated equally. *Obergefell*, 135 S.Ct. at 2598, 2602 (due process clause and equal protection clauses of the Fourteenth Amendment guarantee same-sex couples the right to marry).

[¶30] Judge Neely further argues that disciplining her would violate her free speech rights because the Commission would not have brought a disciplinary proceeding against a judge who expressed her willingness to follow the law on same-sex marriage, and therefore it is discriminating against her based on the content and viewpoint of her speech. But there would indeed be no basis for disciplining a judge who indicated her willingness to follow the law and thus demonstrated her impartiality toward parties. The action against Judge Neely is a response to her deeds, not her faith.

[¶31] Judge Neely argues that others could perform marriages for same-sex couples, causing no disruption to their rights to marry, and the dissent relies heavily on the fact that same-sex couples will

likely face no obstacles to getting married despite Judge Neely's refusal to perform their marriages. These contentions may be true, but they have no relevance to the decision whether she has violated any provision of the Code of Judicial Conduct. Even if we accepted the premise that allowing Judge Neely to opt out would have no effect on the rights of same-sex couples to marry,[8] the problem of the public's faith in judicial integrity remains. As Judge Posner explained in the context of a case decided under the Civil Rights Act of 1964, §§ 701(j), 703(a)(1), 42 U.S.C.A. §§ 2000e(j), 2000e-2(a)(1):

> Mr. Rodriguez, a Chicago police officer, claims, I have no reason to doubt sincerely, that it violates his religious principles to guard abortion clinics. He is entitled to his view. He is not entitled to demand that his police duties be altered to conform to his view any more than a volunteer member of the armed forces is entitled to demand that he be excused from performing military duties that conflict with his religious faith . . . or than a firefighter is entitled to demand that he be entitled to refuse to fight fires in the places of worship of religious sects that he regards as Satanic. The objection to recusal in all of

[8] "There cannot be one set of employees to serve the preferred couples and another who is 'willing' to serve LGBT citizens with a 'clear conscience' . . . ." *Barber v. Bryant*, Nos. 3:16-CV-417 & 442-CWR- LRA, 2016 WL 3562647, at *23 (S.D. Miss. June 30, 2016).

these cases is not the inconvenience to the police department, the armed forces, or the fire department, as the case may be, though that might be considerable in some instances. ***The objection is to the loss of public confidence in governmental protective services if the public knows that its protectors are at liberty to pick and choose whom to protect.***

The public knows that its protectors have a private agenda; everyone does. But it would like to think that they leave that agenda at home when they are on duty—that Jewish policemen protect neo-Nazi demonstrators, that Roman Catholic policemen protect abortion clinics, that Black Muslim policemen protect Christians and Jews, that fundamentalist Christian policemen protect noisy atheists and white-hating Rastafarians, that Mormon policemen protect Scientologists, and that Greek-Orthodox policemen of Serbian ethnicity protect Roman Catholic Croats. We judges certainly want to think that U.S. Marshals protect us from assaults and threats without regard to whether, for example, we vote for or against the pro-life position in abortion cases.

Rodriguez v. City of Chicago, 156 F.3d 771, 779 (7th Cir. 1998) (Posner, C.J., concurring) (emphasis added). In *Endres v. Indiana State Police*, 349 F.3d 922, 926 (7th Cir. 2003), the Seventh Circuit upheld the termination of a state police officer who would not defend a casino because it would violate his religious beliefs, emphasizing

> the need to hold police officers to their promise to enforce the law without favoritism—***as judges take an oath to enforce all laws, without regard to their (or the litigants') social, political, or religious beliefs.*** Firefighters must extinguish all fires, even those in places of worship that the firefighter regards as heretical. Just so with police.

Id. at 927 (emphasis added).

[¶32] Allowing Judge Neely to opt out of same-sex marriages is contrary to the compelling state interest in maintaining an independent and impartial judiciary. Judge Neely, like all judges, has taken an oath to enforce all laws, and the public depends upon an impartial judiciary, regardless of religious sentiment. "The objection is to the loss of public confidence in [the judiciary] if the public knows that its [judges] are at liberty to pick and choose whom to [serve]." *Rodriguez*, 156 F.3d at 779.

[¶33] "The Free Exercise Clause simply cannot be understood to require the Government to conduct its

own internal affairs in ways that comport with the religious beliefs of particular citizens." *Bowen v. Roy*, 476 U.S. 693, 699, 106 S.Ct. 2147, 2152, 90 L.Ed.2d 735 (1986). In *Bowen*, parents claimed that the government's requirement that they provide a social security number for their child in order to receive government benefits violated their sincerely held religious beliefs that the number would "rob the spirit" of their daughter. *Id.* at 696, 106 S.Ct. at 2150. The Court distinguished between beliefs and conduct, finding that the parents' issue implicated conduct and therefore was not entitled to absolute protection under the First Amendment. *Id.* at 699, 106 S.Ct. at 2152. It rejected the parents' claim, holding that "[t]he Free Exercise Clause affords an individual protection from certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the Government's internal procedures." *Id.* at 700, 106 S.Ct. at 2152.

[¶34] *Amici Curiae* point out that in many cases, courts have required accommodation for religious beliefs. For instance, in *American Postal Workers Union, San Francisco Local v. Postmaster General*, 781 F.2d 772, 776 (9th Cir. 1986), the court held that Title VII of the Civil Rights Act of 1964 required the post office to determine reasonable accommodations for postal workers who believed that processing draft registration forms was contrary to their religious beliefs. But there, unlike in *Rodriguez* and *Endres*, there was no issue of public confidence in the neutrality of the clerks processing draft registrations. *Amici Curiae* also cite *Haring v. Blumenthal*, 471 F.Supp. 1172 (D.C. Cir. 1979), another Title VII case

in which the court held that the Internal Revenue Service was required to allow its employee to disqualify himself from handling applications for exemptions from groups whose practices were abhorrent to his religious beliefs. There, the court rejected the argument that the integrity of the Internal Revenue Service was at stake, holding that "[i]t is difficult to see how that stand could impair taxpayer confidence in the tax system or the impartiality of the IRS." *Id.* at 1183. In contrast, in Judge Neely's case, public confidence in the judiciary is the central issue.

[¶35] Perhaps the seminal case representing government accommodation to freedom of religion is *Wisconsin v. Yoder*, 406 U.S. 205, 208, 92 S.Ct. 1526, 1529, 32 L.Ed.2d 15 (1972). In *Yoder*, the Court found unconstitutional Wisconsin's application of its compulsory school attendance law to Amish parents who believed that any education beyond eighth grade undermined their entire, religiously-focused way of life. 406 U.S. at 235-36, 92 S.Ct. 1543. The *Yoder* opinion emphasized "the interrelationship of belief with [the Amish] mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization," and how as a result compulsory high-school education would "substantially interfer[e] with the religious development of the Amish child and his integration into the way of life of the Amish faith community." *Id.* at 218, 235, 92 S.Ct. at 1534, 1543. The Court held compulsory attendance at *any* school—whether public, private, or home-based—prevented these Amish parents from making

fundamental decisions regarding their children's religious upbringing and effectively overrode their ability to pass their religion on to their children, as their faith required. *Id.* at 233-35, 92 S.Ct. 1542-43.

[¶36] There are obvious distinctions between Judge Neely's case and *Yoder*. She is required by the Wyoming Code of Judicial Conduct to perform a ministerial judicial function in an impartial manner. Unlike the Amish in *Yoder*, occasionally performing this function does not threaten her very "way of life" by impacting a distinct community and life style. *Yoder* emphasized that its holding was essentially *sui generis*, as few sects could make a similar showing of a unique and demanding religious way of life that is fundamentally incompatible with *any* schooling system. *See Yoder*, 406 U.S. at 235-36, 92 S.Ct. at 1543. Judge Neely can make no such showing. Moreover, in *Yoder*, the Amish parents had been criminally convicted for violating Wisconsin's compulsory school attendance law. *Id.* at 207, 92 S.Ct. at 1529. Judge Neely is not compelled to serve as a part-time circuit court magistrate and does not face criminal prosecution.

[¶37] Neither Judge Neely nor *Amici Curiae* direct us to any case in which accommodation for religious beliefs has been required when the requested accommodation would undermine the fundamental function of the position. "The First Amendment . . . gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities." *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710, 105 S.Ct. 2914, 2918

(1985) (citations omitted). There is no less restrictive alternative than discipline for Judge Neely that would serve the compelling state interest in judicial integrity.

[¶38] Judge Neely's refusal to perform marriage ceremonies for same-sex couples, in spite of the law recognizing their right to be married, implicates the compelling state interest in maintaining the integrity, independence, and impartiality of the judiciary. Imposing discipline on her for such conduct is not underinclusive or overbroad. We will address the scope of the discipline necessary and permissible under the narrowly-tailored standard below. *See infra* ¶¶ 72-75.

II. Does the Wyoming Constitution permit this Court to discipline Judge Neely for announcing that her religious beliefs prevent her from officiating same-sex marriages?

[¶39] The Wyoming Constitution can offer "broader protection than the United States Constitution." *Andrews v. State*, 2002 WY 28, ¶ 31, 40 P.3d 708, 715 (Wyo. 2002); *see also O'Boyle v. State*, 2005 WY 83, ¶ 23, 117 P.3d 401, 408 (Wyo. 2005). "Recourse to our state constitution as an independent source for recognizing and protecting the individual rights of our citizens must spring not from pure intuition, but from a process that is at once articulable, reasonable and reasoned." *Bear Cloud v. State*, 2014 WY 113, ¶ 14, 334 P.3d 132, 137 (Wyo. 2014) (quoting *Saldana v.*

State, 846 P.2d 604, 622 (Wyo. 1983) (Golden, J., concurring)).

[¶40] Judge Neely offers an articulable, reasonable, and reasoned argument for considering whether Wyoming Constitution, article 1, section 18 and article 21, section 25 provide greater protection than does the United States Constitution.[9] They provide:

> The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Wyo. Const. art. 1, § 18. Judge Neely points out that this provision is significantly broader than the similar provision in the United States Constitution—"but no religious Test shall ever be required as a Qualification

[9] Her reference to Wyoming Constitution, Article 1, section 20 (free speech rights) contains no argument for why the Wyoming Constitution might provide greater free speech rights than does the First Amendment of the United States Constitution, and we will therefore not address that provision of the Wyoming Constitution separately.

to any Office or public Trust under the United States." U.S. Const. art. VI.

> Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

Wyo. Const. art. 21, § 25. In contrast, the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . . " U.S. Const. amend. I.

[¶41] In construing the Wyoming Constitution, we follow the same rules as those we apply to statutory interpretation. Our "fundamental purpose is to ascertain the intent of the framers." *Cathcart v. Meyer*, 2004 WY 49, ¶ 39, 88 P.3d 1050, 1065 (Wyo. 2004) (citations omitted). Judge Neely argues that these provisions in Wyoming's Constitution are broader than the First Amendment of the United States Constitution, and broader than those of other states. She further directs us to the debates during the constitutional convention, which indicate article 1, section 18 was adopted in conjunction with the defeat of a proposed amendment, "aimed at the state's Mormon population, that would have prohibited anyone who entered into or believed in polygamy from voting, holding public office, or serving as a juror." Robert B. Keiter & Tim Newcomb, *The Wyoming State*

Constitution, at 69 (2011).[10] Courts of other states with similar constitutional language have held that their state constitutions provided stronger protection than the federal constitution. *See First Covenant Church of Seattle v. City of Seattle*, 840 P.2d 174, 224 (Wash. 1992); *State v. Hersberger*, 462 N.W.2d 393, 397 (Minn. 1990).

[¶42] The language of Wyoming Constitution article 1, section 18 and article 21, section 25 may offer broader protections than does the United States Constitution, but we do not find that the protections they may offer are applicable to Judge Neely's circumstances here. That is because neither her opinion on matters of her religious belief, nor her religious sentiment, are the focus of the state action.

[¶43] Referring to the debates of the constitutional convention, Judge Neely asserts that this Court should conclude that, "just as a Mormon judge who

---

[10] We have noted before that:

> The debates of the convention are not a very reliable source of information upon the subject of the construction of any particular word or provision of the constitution. As we understand the current of authority, and the tendency of the courts, they may for some purpose, but in a limited degree, be consulted in determining the interpretation to be given some doubtful phrase or provision; but, as a rule, they are deemed an unsafe guide.

Powers v. State, 2014 WY 15, ¶ 39, 318 P.3d 300, 314 (Wyo. 2014), *reh'g denied* (Feb. 12, 2014) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 138, 50 P. 819, 824 (Wyo. 1897)).

believes in polygamy cannot be excluded from judicial office because of her beliefs about marriage, neither may Judge Neely or others be expelled as municipal judges because of their sincere beliefs about that issue." This argument ignores the important distinction between the freedom to believe and the freedom to act. "While the freedom to believe is absolute, the freedom to act cannot be. 'Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection.'" *Trujillo v. State*, 2 P.3d 567, 576-77 (Wyo. 2000) (quoting *Cantwell*, 310 U.S. at 304, 60 S.Ct. at 903). In *Trujillo*, we rejected the appellant's challenge to state drug laws on both United States and Wyoming constitutional grounds, and we held the notion that compliance with the law could be "contingent upon the law's coincidence with his religious beliefs," thus making him "a law unto himself," would contradict "both constitutional tradition and common sense." *Trujillo*, 2 P.3d at 575 n.4, 577 (quoting *Smith,* 494 U.S. at 885, 110 S.Ct. at 1603). The Wyoming Constitution does not give Judge Neely the prerogative to perform her judicial functions contingent upon the law's coincidence with her religious beliefs.

[¶44] Just like the county clerk in *Miller v. Davis*, 123 F.Supp.3d 924, 944 (E.D. Ky. 2015), *appeal dismissed, cause remanded by Miller v. Davis*, Nos. 15-5880, 15-5978, 2016 WL 3755870 (6th Cir. July 13, 2016) (finding county clerk must issue marriage licenses to same-sex couples), Judge Neely remains "free to practice her [religious] beliefs," and she is "free to

believe that marriage is a union between one man and one woman, as many Americans do. However, her religious convictions cannot excuse her from performing the duties that she took an oath to perform . . . ." *Id.* "The State is not asking her to condone same-sex unions on moral or religious grounds, nor is it restricting her from engaging in a variety of religious activities." *Id.* Judge Neely is not being "molested . . . on account of [her] mode of religious worship." Wyo. Const. art. 21, § 25.

[¶45] The Alabama Supreme Court rejected a similar argument by Chief Justice Roy Moore, when he was removed from his position as a consequence of his refusal to comply with a federal court order enjoining him to remove a monument to the Ten Commandments that he had placed in the rotunda of the Alabama Judicial Building. *Moore v. Judicial Inquiry Comm'n of State of Alabama*, 891 So.2d 848, 851 (Ala. 2004). Justice Moore argued that he was being removed from office because of a "religious test," in violation of the Alabama Constitution[11] and the free exercise clause of the United States Constitution. The court cited with approval two federal courts which

> concluded that this case is not about a public official's right to acknowledge God, as Chief Justice Moore contends. Rather, this case is about a public official who took an oath to uphold the

---

[11] Alabama Constitution section 3 provides that "no religious test shall be required as a qualification to any office or public trust under this state." *Moore*, 891 So.2d at 858 (citation omitted).

> Constitution of the United States and then refused to obey a valid order of a United States District Court holding that the placement of the monument in the Judicial Building violated the Establishment Clause of the First Amendment to the United States Constitution.

Id. at 859.

[¶46] It is likely correct, as Judge Neely contends, that "a Mormon judge who believes in polygamy cannot be excluded from judicial office because of her beliefs about marriage," but if a judge broke the law against polygamy by maintaining multiple marriages, she would be removed as a judge because she broke the law, not because of her beliefs. *See, e.g., In re Steed*, 131 P.3d 231, 232 (Utah 2006) (The court removed the judge because his multiple marriages were contrary to law, holding "it is of little or no consequence that the judge may believe a criminal statute is constitutionally defective.") Similarly, Judge Neely has done more than express her opinion on a matter of religious belief. She has taken the position that, although she has sworn to "support, obey and defend" the constitutions of the United States and Wyoming, when it comes to same-sex marriages, she will decline to do so. Judge Neely is not being disciplined "because of [her] opinion on any matter of religious belief," she is being disciplined because of her conduct. Thus, Wyoming Constitution article 1, section 18 and article 21, section 25 are not violated by such discipline.

[¶47] Our conclusion is further reinforced by an examination of the entire Wyoming Constitution, for "[e]very statement in the constitution must be interpreted in light of the entire document, with all portions thereof read in *pari materia*." *Cathcart*, 2004 WY 49, ¶ 40, 88 P.3d at 1065-66. In addition to protecting religious freedom, our constitution recognizes the importance of equal rights for all.

[¶48] "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are created equal." Wyo. Const. art. 1, § 2. "No person shall be deprived of life, liberty or property without due process of law." Wyo. Const. art. 1, § 6.

> Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.

Wyo. Const. art. 1, section 3. The Wyoming Constitution also contains its own variation of the federal establishment clause. *See* Wyo. Const. art. 1, § 19 (Appropriations for sectarian or religious societies or institutions prohibited); Wyo. Const. art. 7, § 12 (Sectarianism prohibited). "Considering the

state constitution's particular call for equal protection, the call to recognize basic rights, and notion that these particular protections are merely illustrative, the Wyoming Constitution is construed to protect people against legal discrimination more robustly than does the federal constitution." *Johnson v. State Hearing Examiner's Office*, 838 P.2d 158, 165 (Wyo. 1992). Judge Neely would have us find, not only that the religious liberty provisions of the Wyoming Constitution provide greater protections than the United States Constitution provides, but also that they trump all other provisions of the Wyoming Constitution. That is contrary to the rules of constitutional interpretation.

[¶49] Applying our rule that, in interpreting the constitution, "no part will be inoperative or superfluous," *Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000), we could not read the provisions recognizing religious liberty to render those provisions recognizing equal rights and due process to be inoperative or superfluous. Judge Neely contends that the religious freedom provisions of the Wyoming Constitution entitle her to act in accordance with her religious beliefs, so long as they do not "foster[] licentiousness or jeopardize[] public safety." Such a rule would permit her, and any other judge, to apply the law in accordance with their individual views on what "divine law" required, to the exclusion of any other right under the Wyoming Constitution. That is an untenable position.

> Can a man excuse his practices . . . because of his religious belief? To permit

> this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67, 25 L.Ed. 244 (1878).

[¶50] Further, the broad reading of the Wyoming constitutional provisions recognizing freedom of religion that Judge Neely urges upon us would also require us to find that those provisions of the state constitution trump the federal due process and equal protection rights that the United States Supreme Court relied upon in *Obergefell*, 135 S.Ct. at 2602-03. If we held that freedom of religious opinion meant no state official in Wyoming had to marry a same-sex couple if it offended his or her religious belief, the right of same-sex couples to marry under the United States Constitution would be obviated. "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land." Wyo. Const. art. 1, § 37.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution

> or Laws of any State to the Contrary notwithstanding.

U. S. Const. art. VI.

[¶51] The United States Supreme Court explained this when Arkansas state officials sought to avoid school desegregation, arguing in part that they were not bound by the Court's holding in *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

> Article VI of the Constitution makes the Constitution the 'supreme Law of the Land.' In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 [(1803)], that 'It is emphatically the province and duty of the judicial department to say what the law is.' This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case is the supreme law of

> the land, and Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, ¶3 'to support this Constitution.' Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' 'anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State. ***' [Citation omitted.]

Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 1409-10, 3 L.Ed.2d 5 (1958); *see also Williams v. Eaton*, 443 F.2d 422, 429 (10th Cir. 1971) ("[I]f plaintiffs establish a violation of Federal constitutional rights and entitlement to relief under the Federal civil rights acts, the Wyoming Constitution may not immunize the defendants and override the Federal constitutional principles . . . .").

[¶52] Just last year, Alabama Chief Justice Roy Moore was suspended from office because of his instruction to Alabama probate judges to disregard the opinion of the United States Supreme Court. He said that "the *Obergefell* opinion, being manifestly absurd and unjust and contrary to reason and divine law, is <u>not</u> entitled to precedential value." *In the*

Matter of: Roy S. Moore, Chief Justice, Supreme Court of Alabama, Alabama Court of the Judiciary Case No. 46, *Final Judgment*, at 15 (September 30, 2016). As the Court of the Judiciary held, an individual judge's interpretation of divine law must give way to the "supreme law of the land." *Id.* at 34.[12]

[¶53] The religious freedom provisions of the Wyoming Constitution do not prohibit the state from

---

[12] The law recognizes no hierarchy of sincerely held religious beliefs. "'[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.'" *Church of the Lukumi Babalu*, 508 U.S. at 531, 113 S.Ct. at 2225 (quoting *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714, 101 S.Ct. 1425, 1430, 67 L.Ed.2d 624 (1981)). Yet if Judge Neely had taken the position that her religion prevented her from conducting interracial marriages, a right which our society now generally accepts, there would be little controversy regarding her discipline. While we respect the religious views of those who deem same-sex marriage to be wrong, we cannot give those views greater weight in our constitutional analysis simply because they are more widely held.

> The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia Bd. of Ed. v. Barnette,* 319 U.S. 624, 638, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." *Ibid.* It is of no moment whether advocates of same-sex marriage now enjoy or lack momentum in the democratic process.

Obergefell, 135 S. Ct. at 2605-06.

proceeding with disciplinary action against Judge Neely for her stated refusal to conduct same-sex marriages.

III. Are the provisions of the Wyoming Code of Judicial Conduct alleged to have been violated by Judge Neely void for vagueness?

[¶54] Judge Neely argues that the provisions of the Wyoming Code of Judicial Conduct that she is charged with violating are void for vagueness, citing U.S. Const. amends. I and XIV; Wyo. Const. art. 1, §§ 6, 7, 20. "The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1051, 111 S.Ct. 2720, 2732, 115 L.Ed.2d 888 (1991). A "provision is not unconstitutionally vague if its wording can reasonably be said to provide sufficient notice to a person of ordinary intelligence that his conduct was [contrary to the rules]." *Guilford v. State*, 2015 WY 147, ¶ 15, 362 P.3d 1015, 1018 (Wyo. 2015). Judge Neely again mischaracterizes the conduct for which she is being disciplined as "honestly conveying her religious beliefs," and she argues that "the Commission could use Rule 1.2's vague language to punish a judge who expresses her moral belief that human life begins at conception . . . ." However, as discussed above, Judge Neely is not being disciplined for her expression of her religious beliefs, but for her conduct in refusing to impartially perform her judicial functions.

[¶55] Further, Judge Neely ignores the law which recognizes that the standard for vagueness is relaxed when applied to codes of professional conduct.

> Given the traditions of the legal profession and an attorney's specialized professional training, there is unquestionably some room for enforcement of standards that might be impermissibly vague in other contexts; an attorney in many instances may properly be punished for "conduct which all responsible attorneys would recognize as improper for a member of the profession."

Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 666, 105 S.Ct. 2265, 2289, 85 L.Ed.2d 652 (1985) (Brennan, J., concurring in part and dissenting in part) (citation omitted). The same rationale has been applied to judicial codes of conduct. *See, e.g., Matter of Halverson*, 169 P.3d 1161, 1176 (Nev. 2007) ("[W]hen evaluating a statute that applies only to judges, the issue is whether an ordinary judge could understand and comply with it."). And in fact, courts have consistently rejected vagueness challenges in judicial discipline matters. *Matter of Halverson*, 169 P.3d at 1176; *Judicial Conduct Comm'n v. McGuire (In re McGuire)*, 685 N.W.2d 748, 761 (N.D. 2004); *In re Barr*, 13 S.W.3d 525, 565 (Tex. Rev. Trib. 1998); *In re Complaint Against Harper*, 673 N.E.2d 1253, 1263, (Ohio 1996); *In re Disciplinary Proceeding Against Ritchie*, 870 P.2d 967, 972 (Wash. 1994); *Matter of Young*, 522

N.E.2d 386, 387- 88 (Ind. 1988); *Matter of Seraphim*, 294 N.W.2d 485, 493, (Wis. 1980).

[¶56] Although Judge Neely is not an attorney, she has been a municipal court judge since 1994, and she served on the Select Committee to review the Wyoming Code of Judicial Conduct in 2008. That committee met many times, and as a consequence, Judge Neely was familiar with the Wyoming Code of Judicial Conduct. Judge Neely's own conduct tells us that she understood her refusal to perform same-sex marriages could be a code violation. She met with Judge Haws to express her concern to him, and then she wrote to the Judicial Ethics Advisory Committee to ask if she could recuse herself from officiating same-sex weddings "without fear of civil rights repercussions." We do not mean to suggest that Judge Neely should be faulted for asking the questions (although we note, as did the Judicial Ethics Advisory Committee, that her request for guidance from them came after she had already engaged in the conduct at issue here, and appeared to be more of a request for their approval than a request for guidance); we simply observe that this conduct indicates she suspected her position would put her in conflict with the Wyoming Code of Judicial Conduct. We find that an ordinary judge would also understand that refusal to conduct some marriages on the basis of the sexual orientation of the couple did not comply with the Code of Judicial Conduct and thus, it is not unconstitutionally vague.

IV. Did Judge Neely violate the Wyoming Code of Judicial Conduct?

[¶57] Because the Wyoming Supreme Court makes the initial determination whether to impose discipline on a judicial officer, we do not "review" a recommendation of the Commission on Judicial Conduct and Ethics in the same way that we review decisions of the district courts. Wyo. Const. art. 5, § 6(f). Our approach here is analogous to our approach in attorney discipline cases. While the Court "gives due consideration to the findings and recommendations of the Board, [] 'the ultimate judgment in these cases is vested in this Court.'" *Bd. of Prof'l Responsibility v. Custis*, 2015 WY 59, ¶¶ 19-21, 348 P.3d 823, 829 (Wyo. 2015) (citations omitted). Although the Commission urges us to give its findings a "significant degree of deference," we decline to do so, particularly in this case which was decided on cross-motions for summary judgment, which we review de novo. *Snell v. Snell*, 2016 WY 49, ¶ 18, 374 P.3d 1236, 1240 (Wyo. 2016) (On review of summary judgment, "[w]e examine the record from the vantage point most favorable to the party opposing the motion, and we give that party the benefit of all favorable inferences that may fairly be drawn from the record." (citation omitted)). We therefore engage in a de novo review of the record to decide whether there is clear and convincing evidence that Judge Neely violated the Wyoming Code of Judicial Conduct. Rules Governing the Commission on Judicial Conduct and Ethics, Rule 16(b). "Clear and convincing evidence" is defined as "that kind of proof which must persuade . . . that the truth of a contention is highly probable." Rules Governing the Commission on Judicial Conduct and

Ethics, Rule 2(b). We review questions of law de novo, without giving any deference to the lower tribunal's determinations. *Pope v. Rosenberg*, 2015 WY 142, ¶ 15, 361 P.3d 824, 829 (Wyo. 2015).

[¶58] The primary objective of judicial discipline is to hold judges to a high ethical standard that fosters public confidence in the integrity and impartiality of the judiciary. Garwin, *supra*, at 3; *In re Johnstone*, 2 P.3d 1226, 1234 (Alaska 2000). "Unlike the other branches of government, the authority of the judiciary turns almost exclusively on its credibility and the respect warranted by its rulings . . . ." *Carey v. Wolnitzek*, 614 F.3d 189, 194 (6th Cir. 2010). The *Preamble* to the Wyoming Code of Judicial Conduct describes the critical importance of such a high standard for the judiciary:

> An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

A. Rule 1.1

[¶59] **Rule 1.1 Compliance with the Law.**

> A judge shall comply with the law, including the Code of Judicial Conduct.

The Commission found that Judge Neely's unwillingness to perform same-sex marriages is a violation of Rule 1.1. The vast majority of Rule 1.1 violations are found when a judge violates a criminal law in his or her personal conduct. *See, e.g., In re Coffey's Case*, 949 A.2d 102, 120 (N.H. 2008) (judge violated code when she transferred assets in violation of Fraudulent Transfer Act); *Disciplinary Counsel v. Ault*, 852 N.E.2d 727, 728, 730 (Ohio 2006) (municipal court judge, convicted of attempting to obtain dangerous drugs by deception, violated code). As leading commentators have explained: "Whereas Rule 1.1 addresses the judge's duty to comply with the law in his or her daily life, this Rule [Rule 2.2] directs the judge to follow the rule of law when deciding cases." Garwin, *supra*, at 93. Here, there is no suggestion that Judge Neely has failed to comply with the law in her daily life.

[¶60] The Commission directs us to a handful of cases in which judges were found to have violated Rule 1.1 as a result of their failure to properly apply the law in executing their judicial functions. However, in all those cases, the judges had violated clear procedural rules of law. *See In re Bennington*, 24 N.E.3d 958, 961 (Ind. 2015) (The judge did not comply with Indiana law when she did not "(a) sentence [defendant] to a

set time in jail for contempt, (b) indicate when he would be released, (c) reduce her order to writing as Indiana Code section 34-47-2-4 requires, (d) appoint him an attorney before jailing him for contempt, nor (e) inform him of his right to appeal his contempt sentence."); *In re Harkin*, 958 N.E.2d 788, 791 (Ind. 2011) (The judge violated Rule 1.1 when he failed to comply with Indiana law by "referring traffic infraction litigants to the Traffic School and then dismissing their cases upon their completion of the program without any dismissal request from the prosecutor . . . ."); *In re Young*, 943 N.E.2d 1276, 1280 (Ind. 2011) (judge's imposition of penalties for traffic infractions in excess of amount authorized by law violated Rule 1.1). The Commission also cites a Texas case in which a judge was disciplined for his failure to comply with the law, for his use of writs of attachment to secure the accused's appearance at a peace bond hearing, his use of mediation in the peace bond context, and his issuance of arrest warrants without a complete written complaint, all in violation of Texas law. *In re Jones*, 55 S.W.3d 243, 248 (Tex. Spec. Ct. Rev. 2000). The Minnesota Supreme Court found violations of Rule 1.1 as a result of failure to comply with the law in the judge's judicial role in *In re Perez*, 843 N.W.2d 562, 564 (Minn. 2014) (The judge "failed to release opinions in compliance with Minn.Stat. § 271.20, falsely certified that he was in compliance with Minn.Stat. § 271.20, and made false statements in his orders regarding the date cases were submitted for decision, in violation of Minn.Stat. § 271.20 . . . .").

[¶61] Even if we were to adopt this minority application of Rule 1.1, Judge Neely has not violated a clear procedural rule governing the performance of

her legal duties. As a municipal court judge, she had no authority to perform marriages. As a part-time circuit court magistrate, she had the power to perform marriage ceremonies, but she was not required to do so. She has not violated the law in her daily life, and she has not violated a procedural rule of law, as occurred in the cases cited by the Commission, *see supra* ¶ 60. Our conclusion that the requirement to comply with the law at Rule1.1 addresses a much more specific violation than is present here is bolstered by the existence of other rules applicable to a judge's application of the law. Rules 1.2, 2.2, and 2.3 address the necessity of a judge's impartiality and absence of bias in the performance of her duties. Those rules are better fitted to the type of judicial misconduct at issue here. There is no need to stretch the requirement to comply with the law to this situation, where performance of marriages is a discretionary duty. We recognize that the language of Rule 1.1 includes compliance with the Code of Judicial Conduct. So to the extent that Judge Neely has violated other rules of the code, she has violated Rule 1.1. However, we find that, standing alone, her conduct does not violate Rule 1.1.

B. Rule 1.2

[¶62] **Rule 1.2. Promoting Confidence in the Judiciary**

> A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid

> impropriety and the appearance of impropriety.

The parties dispute the proper application of the "objective standard" that should be applied to the "appearance of impropriety" determination. Judge Neely advocates the use of the standard applied by the Mississippi Supreme Court: "The test for impropriety is whether a judge's impartiality might be questioned by a reasonable person knowing all the circumstances." *Mississippi Comm'n on Judicial Performance v. Boland*, 975 So.2d 882, 895 (Miss. 2008). The Commission contends that this standard is unduly restrictive and argues that we should apply the standard used by Alaska, which sets forth the "objectively reasonable person test" to determine whether the judge failed "to use reasonable care to prevent objectively reasonable persons from believing an impropriety was afoot." *In re Johnstone*, 2 P.3d at 1235. We do not find this debate to be particularly fruitful. We apply the standard contained in the Wyoming Code of Judicial Conduct comments to this rule:

> Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Wyoming Code of Judicial Conduct, Rule 1.2, Comment 5. It goes without saying that the "reasonable minds" would be fully informed of the relevant facts and circumstances, and we do not find conflict between the standards proposed by the parties.[13]

[¶63] The Commission found that Judge Neely's announcement that she would not perform same-sex marriages violated Rule 1.2 by giving "the impression to the public that judges, sworn to uphold the law, may refuse to follow the law of the land." Judge Neely contends that "no reasonable person knowing the following facts would conclude that Judge Neely's religious beliefs about marriage render her incapable of fairly adjudicating legal matters for LGBT citizens." However, the facts she goes on to cite are

---

[13] It is, of course, possible to interpret the phrase "appearance of impropriety" much more broadly and to suggest that it embraces a situation *where the facts are only partially known,* and where this partial version of the facts might rouse legitimate suspicion. Suppose, for example, that it was known only that Judge Haynsworth had *some* stock in the litigant, without it being known how miniscule his interest was? *But this interpretation would cut so broadly as to prevent a judge named Jones from presiding at the trial of a defendant named Jones, even though they were totally unrelated, since it would be possible from simply reading the docket entries to conclude that they were related to one another.* It will not do.

Matter of Larsen, 616 A.2d 529, 583 (1992) (quoting Rehnquist, *Sense and Nonsense About Judicial Ethics*, 28 The Record 694, 701 (1973)) (emphasis in original).

unpersuasive. First, she emphasizes that solemnizing marriages is a discretionary function, but we reject that argument because the requirement of impartiality cannot be limited to only certain types of judicial functions. In essence, this is an argument that bias or prejudice is acceptable if the judicial function is discretionary. Our society requires a fair and impartial judiciary no matter how the judicial function is classified. The Code of Judicial Conduct recognizes this when it says "The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions." Wyoming Code of Judicial Conduct, *Application*, Comment 1.

[¶64] The Washington Commission on Judicial Conduct reached the same conclusion in its Stipulation, Agreement and Order of Admonishment with a judge who told his colleagues he was "uncomfortable" performing same-sex marriages and asked them to officiate in his stead. *In re Matter of: The Honorable Gary Tabor, Thurston County Superior Court Judge*, WA Jud. Disp. Op. 7251-F-158, 2013 WL 5853965, at *1 (Wash. Com. Jud. Cond. 2013). In response to press inquiries, Judge Tabor explained that his decision was based on his religious views, and he expressed his belief that "since judges are not required, but are only permitted, to perform marriages," he was within his rights to decline to perform same-sex marriages. The Commission on Judicial Conduct disposed of that argument:

> Respondent is not required as a judicial officer to solemnize marriages. Having chosen to make himself available to solemnize some weddings, however, he is bound by the Code of Judicial Conduct to do so in a way that does not discriminate or appear to discriminate against a statutorily-protected class of people.

Id. at *2.

[¶65] Judge Neely then contends that solemnizing marriages is unlike other magisterial functions because it "involves personally participating in, celebrating, and expressing support for a marital union . . . ." However, Wyoming law does not require the person performing the ceremony to condone the union. Marriage is "a civil contract . . . ." Wyo. Stat. Ann. § 20-1-101.

> In the solemnization of marriage no particular form is required, except that the parties shall solemnly declare in the presence of the person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.

Wyo. Stat. Ann. § 20-1-106(b) (LexisNexis 2015).

[¶66] Judge Neely states that she would perform other magisterial functions for gays and lesbians, she would help them find someone else who would perform marriages, she does not question the legality

of same-sex marriage in Wyoming and would recognize the validity of such marriages, and that homosexuals in Pinedale do not question her impartiality as a judge. We accept all of these allegations as true. However, they are insufficient to overcome the fact that she has unequivocally stated her refusal to perform marriages for same-sex couples, which creates the perception in reasonable minds that she lacks independence and impartiality.[14] We conclude that Judge Neely has violated Rule 1.2.

C. Rule 2.2

[¶67] **Rule 2.2 Impartiality and Fairness**

> A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Judge Neely's primary function as a circuit court magistrate was to perform marriages. She has taken the position that she is willing to do that for one class of people (opposite-sex couples), but not for another (same-sex couples), in spite of the fact that the law provides both classes are entitled to be married. That is not fair and impartial performance by any measure. Comment 2 to Rule 2.2 is exactly on point:

---

[14] "Impartiality" includes the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties . . . ." "Impropriety" includes conduct "that undermines a judge's independence, integrity, or impartiality." Wyoming Code of Judicial Conduct, *Terminology*.

> Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

Wyoming Code of Judicial Conduct, Rule 2.2, Comment 2. The Court respects Judge Neely's religious beliefs, but when she allows them to interfere with her fair and impartial application of the law, she violates Rule 2.2 and undermines the public confidence in the integrity of the judiciary.

D. Rule 2.3

[¶68] **Rule 2.3 Bias, Prejudice, and Harassment.**

> (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
>
> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit

> court staff, court officials, or others subject to the judge's direction and control to do so.

The Commission found that Judge Neely's "expression of her inability to perform same sex marriages, manifested a bias with respect to sexual orientation."

[¶69] Judge Neely argues that her comments to the reporter did not manifest "bias or prejudice"[15] based upon "sexual orientation," but merely expressed her sincerely held religious belief. But Judge Neely did more than express her religious belief. She expressed her position that, in her performance of her judicial function, the law would have to yield to her religious beliefs. ("When law and religion conflict, choices have to be made.") The dissent suggests that Judge Neely should not be disciplined because no same-sex couple has asked her to officiate at a wedding and been turned away. But that is not likely to happen, given her clear and public statement refusing to perform same-sex marriages. She would therefore perform her judicial functions as a circuit court magistrate for one class of people, but not another.

[¶70] Comment 2 to Rule 2.3 states in part: "A judge must avoid conduct that may reasonably be perceived as prejudiced or biased." Judge Neely's refusal to perform same sex marriages exhibits bias and

---

[15] "Bias" is "[a] mental inclination or tendency; prejudice; predilection." Black's Law Dictionary 192 (10th ed. 2014). "Prejudice" is "[a] preconceived judgment or opinion formed with little or no factual basis; a strong and unreasonable dislike or distrust." Black's Law Dictionary 1370 (10th ed. 2014).

prejudice toward homosexuals. *See Supreme Court of Ohio, Board of Professional Conduct*, Opinion 2015-1, *Judicial Performance of Civil Marriages of Same-Sex Couples*, at 4-5 (August 7, 2015) ("A judge who is willing to perform marriages of only opposite-sex couples because of his or her personal, moral, or religious beliefs, may be viewed as possessing a bias or prejudice against a specific class or group of people based on sexual orientation.") Judge Neely asserts in her affidavit that she has no bias or prejudice against homosexuals. We examine the record in a light most favorable to Judge Neely and accept that averment, but our inquiry is whether her conduct may reasonably be perceived as prejudiced or biased. *See Caperton*, 556 U.S. at 881, 129 S.Ct. at 2262 ("The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is 'likely' to be neutral . . . ."); *In Matter of: The Honorable Gary Tabor*, 2013 WL 5853965, at *3 ("[A] judge must not only be impartial, but must also be perceived as impartial . . . ."). Judge Neely's refusal to conduct marriages on the basis of the couple's sexual orientation can reasonably be perceived to be biased. We therefore conclude that Judge Neely violated Rule 2.3.

[¶71] Our conclusion that Judge Neely's expressed refusal to conduct same-sex marriages violates the Code of Judicial Conduct is in line with every other tribunal that has considered the question. The judges in *In re Matter of: The Honorable Gary Tabor* and *In re Roy S. Moore*, were disciplined for their conduct. Five state advisory commissions offered opinions, consistently stating that a judge may not perform judicial functions for some parties while declining to

perform them for same-sex couples without violating the Code of Judicial Conduct: *Supreme Court of Ohio, Board of Professional Conduct*, Opinion 2015-1, *Judicial Performance of Civil Marriages of Same-Sex Couples* (August 7, 2015) (a judge may not decline to perform same-sex marriages, and may not decline to perform all marriages in order to avoid marrying same-sex couples); *Supreme Court of Wisconsin, Judicial Conduct Advisory Committee*, Opinion No. 15-1 (August 18, 2015) (judge may not decline to perform only same-sex marriages, but may decline performing all marriages); *Arizona Supreme Court, Judicial Ethics Advisory Committee*, Revised Advisory Opinion 15-01, *Judicial Obligation to Perform Same-Sex Marriages* (March 9, 2015) (judge may not distinguish between same-sex and opposite-sex couples); *Nebraska Judicial Ethics Committee Opinion*, Opinion 15-1 (June 29, 2015) (a judge who is willing to perform traditional marriage manifests bias or prejudice by refusing to perform same-sex marriage); *Judicial Conduct Board of Pennsylvania Newsletter*, *Impartiality in Solemnizing Marriages*, by Elizabeth A. Flaherty, Deputy Counsel, Judicial Conduct Board (No. 3 Summer 2014) (judge who decides not to perform wedding ceremonies for same-sex couples must opt out of officiating at *all* wedding ceremonies). Only in *Mississippi Comm'n on Judicial Performance v. Wilkerson*, 876 So.2d 1006, 1016 (Miss. 2004), did the tribunal find that a judge's comments disparaging gays and lesbians did not violate the Code of Judicial Conduct. But there, only the judge's speech as a private citizen was at issue; not his conduct as a judge, and there was no issue of performing marriages. *See Boland*, 975 So.2d at 892

(distinguishing *Wilkerson* on basis that judge in *Boland* made remarks while acting in her judicial capacity).

SANCTIONS

[¶72] We turn to the determination of the appropriate sanctions to be imposed as a result of Judge Neely's violations of Rules 1.2, 2.2, and 2.3 of the Wyoming Code of Judicial Conduct. The purpose of judicial discipline is primarily to protect the public, but of necessity it has punitive effects.

> The punitive aspect of judicial discipline serves multiple purposes: it discourages further misconduct on the part of the disciplined judge and the judiciary as a whole; it reinforces the general perception that judicial ethics are important; and it promotes public confidence by demonstrating that the judicial system takes misconduct seriously. Punishment thus subserves the various goals of judicial discipline, but is a means, not an end.

In re Johnstone, 2 P.3d at 1234; *see also In re Judicial Campaign Complaint Against O'Toole*, 24 N.E.3d 1114, 1129 (Ohio 2014) (listing purposes of judicial discipline).

[¶73] The Commission has recommended that Judge Neely be removed from her positions as a part-time circuit court magistrate and as a municipal court judge; however, we may modify or reject that

recommendation. Wyo. Const. art 5, § 6(f)(iv); Rules Governing the Commission on Judicial Conduct and Ethics, Rule 19(a). We approach our sanctions analysis mindful of our standard under strict scrutiny, which requires us to narrowly tailor the restrictions on Judge Neely's speech and religious expression. We endeavor to craft a sanction that does not "unnecessarily circumscrib[e] protected expression." *White*, 536 U.S. at 775, 122 S. Ct. at 2535 (Scalia, J., with three justice concurring and one concurring in the result) (quoting *Brown v. Hartlage*, 456 U.S. 45, 54, 102 S.Ct. 1523, 1529, 71 L.Ed.2d 732 (1982). We are also guided by the relevant factors for determining the appropriate sanctions set forth in Rule 8(d)(2) of the Rules Governing the Commission on Judicial Conduct and Ethics:

(A) the nature, extent, and frequency of the misconduct

Judge Neely's refusal to conduct same-sex marriages, and her indication that her religious beliefs would override the rule of law undermines public confidence in the integrity and impartiality of the judiciary. But her misconduct was an isolated response to a quickly-changing legal landscape, one in which many judges have experienced similar turmoil. *See supra* ¶ 71.

(B) the judge's experience and length of service on the bench

Judge Neely has had a long career as a municipal court judge and as a part-time circuit court magistrate; a career for which she is widely respected.

(C) whether the conduct occurred in the judge's official capacity or private life

As discussed above, the misconduct occurred in Judge Neely's official capacity. She did not merely express her opinion about same-sex marriage, she expressed how that opinion would impact her performance of her judicial functions.

(D) the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary

There is no evidence that any person has been injured. And while there is no evidence of injury to respect for the judiciary, under the objective standard that we apply, we have concluded that her conduct does undermine the public's respect for the judiciary.

(E) whether and to what extent the judge exploited his or her position for improper purposes

Judge Neely has not exploited her position for improper purposes.

(F) whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct

Judge Neely has not recognized or acknowledged the wrongful nature of her conduct, nor has she indicated that she would consider performing same-sex marriages.

(G) whether there has been prior disciplinary action concerning the judge, and if so, its

remoteness and relevance to the present proceeding

There have been no prior disciplinary actions regarding Judge Neely.

(H) whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion

Judge Neely requested a formal ethics advisory opinion, but only after she had engaged in the objectionable conduct.

(I) whether the judge cooperated fully and honestly with the Commission in the proceeding

Judge Neely cooperated fully and honestly with the Commission in the proceeding.

[¶74] Weighing these factors, we find that Judge Neely's misconduct warrants a public censure. We further find that Judge Neely must perform her judicial functions, including performing marriages, with impartiality. She must either commit to performing marriages regardless of the couple's sexual orientation, or cease performing all marriage ceremonies. This does not mean, as the dissent suggests, that no judge can now turn down any request to perform a marriage. What it means is that no judge can turn down a request to perform a marriage for reasons that undermine the integrity of the judiciary by demonstrating a lack of independence and impartiality. This is no different than allowing parties to exercise the right to peremptory challenges of jurors for any reason, while prohibiting them from challenging jurors on the basis of race or gender. *See Beartusk v. State*, 6 P.3d 138, 142 (Wyo. 2000); (citing

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). Depending on her choice, it will be up to the circuit court judge's discretion to determine whether she will continue as a part-time circuit court magistrate. A part-time circuit court magistrate's position is unique. Unlike a full-time circuit court magistrate or a circuit court judge, the functions of a part-time circuit court magistrate's job depend upon the particular needs of the circuit court judge appointing the magistrate. We therefore defer to the circuit court judge who appointed Judge Neely to determine whether she can continue to serve the essential functions of that position.

[¶75] We decline to remove Judge Neely from her position as a municipal court judge; such a punishment would "unnecessarily circumscribe protected expression," and we are mindful of our goal to narrowly tailor the remedy.

CONCLUSION

[¶76] We conclude that Judge Ruth Neely shall receive a public censure; Judge Neely shall either perform no marriage ceremonies or she shall perform marriage ceremonies regardless of the couple's sexual orientation; and each party will bear its own fees and costs.

KAUTZ, Justice, dissenting, in which, **DAVIS, Justice,** joins.

[¶77] I must respectfully, but vigorously, dissent.

[¶78] This case is of the utmost importance to the State of Wyoming. It is a case confronting new and challenging issues, where the parts of the legal landscape recently changed dramatically and rapidly.[16] Contrary to the position asserted by the majority opinion, this case is about religious beliefs and same sex marriage. The issues considered here determine whether there is a religious test for who may serve as a judge in Wyoming. They consider whether a judge may be precluded from one of the functions of office not for her actions, but for her statements about her religious views. The issues determine whether there is room in Wyoming for judges with various religious beliefs. The issues here decide whether Wyoming's constitutional provisions about freedom of religion and equality of every person can coexist. And, this case determines whether there are job requirements on judges beyond what the legislature has specified.

Judge Neely's Background

[¶79] The majority opinion summarizes facts from the record. However, in addition to the facts presented by

[16] No other state court has decided this issue. The Washington Commission on Judicial Conduct decided a case consistent with the majority opinion, and advisory committees in Arizona, Nebraska, Wisconsin, Pennsylvania, and Ohio have given advisory opinions. None of those states have the same religious freedom provisions found in the Wyoming Constitution. As can be seen with the Wyoming Commission's decision on Rule 1.1, Commission recommendations may or may not be correct, and are not precedent.

the majority, some additional facts are important to this decision.

[¶80] Prior to this case, Judge Neely has never been accused of prejudice or bias, and has never had a complaint brought against her either before the Commission or the Pinedale town council. Judge Neely has an outstanding record and reputation, being recognized for her fairness and willingness to serve the public. The current Mayor of Pinedale, Bob Jones, who has known Judge Neely for over ten years, states that "she has a sterling reputation in the community as a person of unswerving character and as an honest, careful, and fair judge." After observing her on the bench, Mayor Jones said he "cannot imagine a situation in which she would treat unfairly anyone who appears before her." Former mayor, Miriam Carlson, who also appointed Judge Neely and observed her both while mayor and later while serving on the town council, states "based on my experience watching her operate as a municipal judge, she has always been fair and impartial. In fact, I don't think you could find a fairer person to be a judge."

¶81] Pinedale town attorney, Ralph E. Wood, has observed Judge Neely during his entire tenure as town attorney – seventeen years. Based on his experience he describes Judge Neely as "a dedicated public servant and an unselfish and generous member of the community more generally." He unequivocally states that "in my experience, every party who appears before Ruth gets a fair shake, and she has never exhibited even the slightest hint of bias, prejudice or partiality toward anyone." Under oath,

Mr. Wood states "based on my experience, Ruth's religious belief regarding marriage and her inability to officiate at same-sex wedding ceremonies does not, and will not, affect in any way her impartiality as a judge."

[¶82] Judge Neely serves on the steering committee of the Sublette County Treatment Court. The coordinator of that agency, Kathryn Anderson, has known Judge Neely since 2006. Ms. Anderson is married to her same sex partner, Ms. Stevens. She is fully aware of Judge Neely's views on same sex marriage, yet describes Judge Neely as a "conscientious, fair, and impartial person." Ms. Anderson states, "I have no doubt that she will continue to treat all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation. Accordingly, I believe it would be obscene and offensive to discipline Judge Neely for her statement . . . about her religious beliefs regarding marriage."

What Judge Neely Said and Did

[¶83] On December 5, 2014, Ned Donovan, a reporter from the Pinedale Roundup, called Judge Neely, but she was unable to answer the call. When she called him back, Mr. Donovan identified himself as a reporter and "asked if [she] was excited to be able to start performing same-sex marriages." Judge Neely responded that because of her religious beliefs she would not be able to perform same sex marriages. However, she affirmed that others could and would perform same sex marriages. Mr. Donovan wrote an article about the conversation, concluding "Neely,

however, was clear that this does not stop any same sex couple in Pinedale from getting married in the town." Judge Neely added that she had never been asked to perform a same sex marriage.

[¶84] About twenty minutes after that conversation, Judge Neely called Mr. Donovan back and asked that he substitute her earlier statements with the following: "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same-sex marriage." Mr. Donovan called Judge Neely back a few hours later and offered to not publish a story if Judge Neely would state a willingness to perform same-sex marriages. Judge Neely declined, and on December 9, 2014, a local newspaper published an article written by Mr. Donovan which included Judge Neely's statements from both conversations.

[¶85] No one ever asked Judge Neely to perform a same sex marriage, and Judge Neely never refused such a request.

[¶86] Under oath, Judge Neely said "if I ever were to receive a request to perform a same-sex marriage, which has never happened, I would ensure that the couple received the services that they requested by very kindly giving them the names and phone numbers of other magistrates who could perform their wedding." Further, also under oath, Judge Neely stated that if any case before her "would ever require me to recognize or afford rights based on a same-sex marriage . . . I would unquestionably recognize that marriage and afford the litigant all the rights that

flow from it. . . . I have never disputed the legality of same-sex marriage."

[¶87] The record has no indication that any same sex couple has been denied or delayed marriage in Pinedale. Mr. Wood, who is able to perform marriages as a district court commissioner and as a circuit court magistrate, states "there is no shortage of public officials in Pinedale or Sublette County willing to officiate at same-sex wedding ceremonies." He indicated that he is willing to perform such marriages and has done so.

DISCUSSION

[¶88] Accusations that a judge violated the Code of Judicial Conduct are akin to criminal charges, and the most serious incriminations that can be leveled at a judge. Analysis of whether a judge violated a specific rule in the Code should be exact, just as it is with criminal charges. The public can be confident in its judiciary only if the Code is accurately applied to every judge, without watering down the requirements therein, but also without overreaching beyond the specific language in the rules.

1. *Did Judge Neely violate Rule 1.11 of the Wyoming Code of Judicial Conduct?*

[¶89] The majority opinion concludes that the record does not indicate that Judge Neely violated Rule 1.1. I concur.

[¶90] Before specifically addressing the other Rules the majority finds Judge Neely violated, it is necessary to analyze exactly what "the law" requires of Judge Neely and other Wyoming judges with respect to officiating at marriages.

[¶91] The majority opinion asserts that Judge Neely failed or refused to follow the law as established in *Guzzo v. Mead,* No. 14-CV-SWS, 2014 WL 5317797 (D. Wyo. Oct. 17, 2014). *Guzzo* is clear about the law it establishes. It states:

> Defendants (essentially State and County Officials) are hereby enjoined from enforcing or applying Wyoming Statute § 20-1-101, or any other state law, policy, or practice, as a basis to deny marriage to same-sex couples or to deny recognition of otherwise valid same-sex marriages entered into elsewhere. Marriage licenses may not be denied on the basis that the applicants are a same-sex couple.

Id. at 8.

[¶92] *Guzzo* established that Wyoming officials (which would include judges) may not deny marriage to same sex couples on the basis of any state law, policy or practice. It did not establish any law beyond this specific prohibition. It is clear from the undisputed facts that Judge Neely did not deny marriage to anyone, nor did she say she would deny marriage to anyone. Rather, she said that because of her religious beliefs, she would not perform same sex

marriages herself, but would assist couples in finding a judge who would. *Guzzo* did not involve statements about religious beliefs in any manner. It did not involve any issue of who must perform same sex marriages. *Guzzo* certainly did not establish any requirement that any particular judge or level of judges in Wyoming must perform every marriage when requested. Similarly, it did not establish any right of same sex couples to insist that they be married by a particular judge.

[¶93] In addition to *Guzzo,* the majority finds applicable law in the U.S. Supreme Court's decision in *Obergefell,* 135 S.Ct. 2584, 192 L. Ed. 2d 609 (2015). That case also is clear about the law it establishes (as it applies to the issues here). The Court stated "[t]he Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex." *Id.* at 2607. *Obergefell* did not establish any law about who must perform those marriages, but only said they must be available on the same terms as accorded to other couples. Because other couples in Wyoming cannot insist that a particular judge or magistrate perform their wedding ceremony, it follows that same sex couples also have no right to do so. In *Obergefell* the U.S. Supreme Court made some other clear statements that apply to this case. It stated "[m]any who deem same-sex marriage to be wrong reach that conclusion based on decent and honorable religious or philosophical premises, and neither they nor their beliefs are disparaged here." *Id.* at 2602. It added:

> Finally, it must be emphasized that religions, and those who adhere to

> religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.

Id. at 2607.

[¶94] The majority's decision implies that the law requires Judge Neely to perform weddings, and that Judge Neely did not "follow" the law when she made the reported statements. Indeed, a key element in the majority opinion is an assumption that to follow the law Judge Neely was required to perform all marriages, or at least all same sex marriages, when requested. Neither *Guzzo* nor *Obergefell* created such a requirement. Wyoming law does not contain such a requirement. Wyo. Stat. Ann. § 20-1-106(a) (LexisNexis 2015) governs who may perform marriages in Wyoming. It says:

> Every district or circuit court judge, district court Commissioner, supreme court justice, magistrate and every licensed or ordained minister of the gospel, bishop, priest or rabbi, or other qualified person acting in accordance with traditions or rites for

> the solemnization of marriage of any religion, denomination or religious society, may perform the ceremony of marriage in this state.

[¶95] This statute indicates that many judges and religious officials **may** perform weddings, but it does not give that authority to municipal judges. Further, this statute states that certain judges and other individuals **may** perform the marriage ceremony, but it does not require any judge to do so. Nothing in any other statute or rule requires any particular judge or individual to perform a marriage ceremony.

[¶96] It cannot be argued that Judge Neely had an implied duty to perform marriages if asked. If there is an implied duty for circuit judges or circuit court magistrates to perform all weddings when requested, then there likewise is a duty for district court judges, Supreme Court justices, ministers, bishops, priests, rabbis and others. Of course, there simply is no such duty based on the plain language of § 20-1-106(a). The legislature, not this Court, wrote § 20-1-106(a) and determines who can perform marriages and whether any particular class of officiant is required to do so. It is not appropriate for this Court to attempt to re-write this statute. *Horning v. Penrose Plumbing & Heating, Inc.,* 2014 WY 133, ¶ 18, 336 P.3d 151, 155 (Wyo. 2014) ("We are not at liberty to rewrite a statute under the guise of statutory interpretation or impose a meaning beyond its unambiguous language.").

[¶97] Further, nothing in Wyoming law or the record supports any express or implied requirement that if a judge decides to perform any weddings, he or she

must perform every wedding. The record contains evidence that magistrates and judges decline to perform legal marriages for a variety of reasons. Magistrates who perform some marriages decline to perform others because they have family commitments, have other things to do, prefer to watch a football game, or prefer to perform weddings only for friends. Wyoming judges may or may not perform weddings without regard to the reason for their decision.

[¶98] Simply put, the law does not require any Wyoming judge, including part-time magistrate Neely, to perform any marriage ceremony.[17] The applicable law only requires that state officials may not "deny marriage to same-sex couples."

[¶99] The evidence does not indicate that Judge Neely ever denied a same sex couple marriage. It does not indicate that Judge Neely ever said she would deny marriage to a same sex couple if asked. To the contrary, she clearly stated that she recognized their right to be married. Judge Neely did not hinder or delay any same sex couple seeking to be married, and

---

[17] Sound policy reasons support magistrates having discretion in exercising their marriage-celebrant authority. They are not paid by the state for performing marriages, but instead must negotiate their own fee with the participants. Magistrates are sometimes appointed to perform just a particular wedding – to act for their own private purposes. Unlike other functions of a magistrate, they personally participate in celebrating a private event. Considering these factors, it makes sense that the legislature found it appropriate to authorize many levels of judges to perform weddings, while giving each judge the discretion to decide for or against participating in any specific wedding.

she did not indicate any intent to do so. There simply is no evidence in the record indicating that Judge Neely failed to comply with the law or said she would not follow the law.

2. Did Judge Neely violate Rule 1.2 of the Wyoming Code of Judicial Conduct?

[¶100] Rule 1.2 of the Wyoming Code of Judicial Conduct states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." The Code defines "impartiality" as "the absence of bias or prejudice in favor of, or against, particular parties or classes of parties. Comment [5] to this rule states that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge."

[¶101] The majority opinion accepts the Commission's recommendation on Rule 1.2. The Commission explained the basis for its conclusion that Judge Neely violated Rule 1.2 by stating:

> Here, Judge Neely announced she would not follow the law because of her religious convictions regarding same sex marriage. By announcing her position against same sex marriage and

> her decision not to perform said marriages, she has given the impression to the public that judges, sworn to uphold the law, may refuse to follow the law of the land. She has also suggested by her statements that other citizens may follow her lead. A judge announcing her decision to pick and choose the law she wishes to follow undermines her position and our system of justice.

[¶102] The majority's position that Judge Neely violated Rule 1.2 is based on the mistaken conclusion that Judge Neely refused "to follow the law of the land." As discussed above, the undisputed evidence shows that Judge Neely made no such refusal. She did not state that she would deny marriage to same sex couples, but rather said she would assist such couples in finding someone to perform their civil marriage ceremony. The law does not require Judge Neely personally to perform every marriage. There is no clear and convincing evidence in the record that she made a decision to "pick and choose the law she wishes to follow" or that she would "refuse to follow the law of the land." As discussed above, the record is devoid of evidence that Judge Neely refused to follow any law. Nothing about what Judge Neely said remotely indicates that she will "pick and choose the law she wishes to follow."

[¶103] The majority's conclusion on Rule 1.2 is an overreach, just as the Commission's position on Rule 1.1 was. The standards in Rule 1.2 are vague, and require appropriate caution and reasonableness from

the Court when applying them. Here the majority opinion goes "too far" in attempting to find appearances of impropriety or lack of independence. It concludes that Judge Neely's statements erode public confidence in the judiciary without any evidentiary or logical support for that conclusion.

[¶104] To maintain public confidence in the judiciary, it is necessary to carefully apply vague rules like these. On the one hand, application of the standards "must be appropriately demanding to the end that justice is facilitated in every possible way. At the same time the standards must ensure that the judges are not unnecessarily separated from the communities they serve in straitjackets of judicial isolation." Robert B. McKay, *The Judiciary and Nonjudicial Activities,* 35 Law and Contemporary Problems L.J. 9 (1970). When the rule uses vague standards, such as those in Rule 1.2, "*we must fear not only unreasonable discipline, but also discipline that produces an undesirable in terrorem effect* on judges' moral and social lives." Steven Lubet, *Judicial Impropriety: Love, Friendship, Free Speech, and Other Intemperate Conduct*, 1986 Ariz. L.J. 379, 399. The majority opinion does just that, by sending messages to both the public and judges that (1) every Wyoming judge who is willing to perform any marriage must perform same sex marriages when requested or risk being found to have violated the WCJC, and (2) no person holding a sincere religious belief opposing same sex marriage may be a Wyoming judge who performs marriages.

[¶105] Rule 1.2 requires Judge Neely to act "in a manner that promotes confidence in the

independence, integrity and impartiality of the Judiciary." It further requires her to "avoid impropriety and the appearance of impropriety." Whether Judge Neely violated this part of Rule 1.2 hinges on the perceptions of a reasonable member of the public, who must determine whether Judge Neely's statements create an appearance of impropriety or undermine the public's perception of her impartiality when deciding cases. The majority opinion appropriately notes Comment [5] to this rule which specifies that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." Then, the majority concludes that clear and convincing evidence in the record would so persuade a reasonable person. The sole evidence the majority opinion uses to support its conclusion is "her stated refusal to conduct marriages for homosexuals."

[¶106] Although the majority opinion claims otherwise, it applies its own, and the Commission's, subjective test in concluding that Judge Neely violated Rule 1.2. This correct test is an objective one, not a subjective one. Arthur Garwin, et al., *Annotated Model Code of Judicial Conduct,* 61 (2d ed. 2011).

[¶107] The test for determining what constitutes "the appearance of impropriety" and what "promotes (or denigrates) confidence in the . . . impartiality of the judiciary" necessarily must be an objective test based on what a rational person would think knowing all of the circumstances. The use of any lesser standard

leads to absurd results. For example, the test cannot be whether some individual subjectively might be offended by what he or she heard or saw. Given the almost limitless capacity for people to take offense or feel "unwelcome," this would put every judge constantly at risk of being brought before the Commission to face ethics charges. Similarly, the test cannot be based on what someone would think knowing only some of the circumstances. A rational person is not rational if he or she draws conclusions based on inadequate facts. Unhappy litigants always would be able to base claims of judicial impropriety or favoritism on just the portion of the facts that supported their side. Such subjective tests would seriously impair a judge's ability to make independent decisions based on the facts and the law. The majority opinion is based on such a subjective analysis. It is based on a subjective thought that circuit court magistrates have a duty to perform marriages when requested (which they do not) and on a subjective thought that someone hearing the misleading presentation of Judge Neely's request to the advisory commission would question her impartiality.

[¶108] The "appearance of impropriety" and "promotes confidence in the … impartiality of the judiciary" language in this rule is analogous to the language found in Rule 2.11 which governs disqualification of judges. Cases decided under both rules, and under corresponding federal statutes, indicate that a reasonable person would look at the particular facts of a case, and the totality of the circumstances when determining whether a judge's actions adversely reflect on the judge's impartiality.

For example, Nebraska examines whether "a reasonable person **who knew the circumstances of the case** would question the judge's impartiality under an objective standard of reasonableness." *Tierney v. Four H Land Co. Ltd. P'ship*, 798 N.W.2d 586, 592 (Neb. 2011) (emphasis added). Alaska applies this principle by first viewing "**all of the facts**" in the judge's favor, and then determining whether **"the totality of the circumstances** surrounding (the judge's) decision . . . create(d) an unmistakable appearance that something improper was afoot." *In re Johnstone*, 2 P.3d 1226, 1236 (Alaska 2000). The 7th Circuit said that "the test for an appearance of partiality is, . . ., whether an objective, disinterested **observer fully informed of the facts** underlying the grounds on which recusal was sought would entertain a significant doubt that justice would be done in the case." *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985) (emphasis added). Mississippi held that "the test for impropriety is whether a judge's impartiality might be questioned by **a reasonable person knowing all the circumstances**." *Mississippi Comm'n on Judicial Performance v. Boland*, 975 So.2d 882, 895 (Miss. 2008) (emphasis added). The Pennsylvania Supreme Court capably expounded on the requirement that the reasonable person standard be based on a reasonable person with knowledge of all the facts and circumstances, and quoted former U.S. Chief Justice Rhenquist. It said:

> We cannot agree, however, with the suggestion that the appearance be gauged as to a misinformed or uninformed hypothetical reasonable

person. The absurdity of such a standard was ably and cogently exposed by, then, Justice Rehnquist as follows:

> It is, of course, possible to interpret the phrase "appearance of impropriety" much more broadly and to suggest that it embraces a situation *where the facts are only partially known,* and where this partial version of the facts might rouse legitimate suspicion. Suppose, for example, that it was known only that Judge Haynsworth had *some* stock in the litigant, without it being known how miniscule his interest was? *But this interpretation would cut so broadly as to prevent a judge named Jones from presiding at the trial of a defendant named Jones, even though they were totally unrelated, since it would be possible from simply reading the docket entries to conclude that they were related to one another.* It will not do.

Rehnquist, *supra,* 28 The Record at 701. (Emphasis added).

Indeed, if appearances were gauged without reference to the full and true facts, then false appearances of impropriety could be manufactured

with ease by anyone with personal or political *animus* toward a judge. If such were the case, then the hope of an independent judiciary would have been less than an evanescent dream, it would have been cruel charade and a dangerous snare for an ethical and unsuspecting judiciary.

Fortunately, our case law is squarely to the contrary. In *In re Greenberg (II),* 457 Pa. 33, 318 A.2d 740 (1974), our Supreme Court stated succinctly, "it is our duty to consider the totality of the circumstances when determining questions pertaining to professional and judicial discipline." 318 A.2d at 741. (Emphasis added).

Numerous cases would undoubtedly have been decided differently if the totality of the circumstances were *not* considered, and instead the Board and our Supreme Court applied a reasonable *mis* informed or *un* informed person standard. A judge's acceptance of a gift from a union leader might create a distinct appearance of impropriety, if our hypothetical reasonable *un* informed person did not know of their long familial association, or that the judge had systematically recused himself from any case known to involve a member of the gift donor's union. *See Matter of Braig, supra.* Likewise, an

> appearance of impropriety might certainly appear if one had neither the benefit of the respondent's version of disputed facts, nor knowledge of the respondent's excellent reputation as an ethical individual and respected jurist. *See Matter of Sylvester, supra.* Moreover, an appearance of impropriety might certainly appear in hindsight based upon facts not known at the time of a judge's challenged conduct, or based upon only one version of disputed facts, which would not appear if the limits of the judge's information at the time of the conduct and the other side of the story were considered. *See Matter of Johnson, supra.*

In re Larsen, 532 Pa. 326, 433-34, 616 A.2d 529, 583 (1992)

[¶109] A reasonable person with knowledge of all the facts would know that Judge Neely was never asked to perform a same sex marriage, and had never refused such a request. He or she would know that all who work with her have expressed unreserved confidence that she will be absolutely fair and impartial to all litigants, whatever their sexual preference. Such a reasonable person would know that Wyoming law does not require Judge Neely to perform any marriage. He or she would know that the law prohibits judges and other public officials in Wyoming from denying marriage to same sex couples, and no same sex couple has been denied marriage by or because of Judge Neely's statements. Further, a

reasonable person would know that there is no indication that any same sex couple is likely to be denied or delayed in obtaining a civil marriage because of Judge Neely's statements or religious beliefs. A reasonable person would know that if asked to perform such a marriage, Judge Neely would assist in finding an appropriate officiant, and that there is no shortage of such officiants. A reasonable person, apprised of these facts, could not conclude that Judge Neely's statements gave the appearance of impropriety nor that they eroded public confidence in the impartiality of the judiciary. To the contrary, a reasonable mind would conclude, as Ms. Anderson did, "it would be obscene and offensive to discipline Judge Neely for her statement . . . about her religious beliefs regarding marriage."

[¶110] Rule 1.2 presents an important requirement that judges act in a manner which promotes public confidence in the judiciary. The record in this case indicates that Judge Neely did just that – she promoted confidence in the integrity and impartiality of the judiciary. Based on Judge Neely's statements, the public in Wyoming can be confident that Judge Neely does not intend to "pick and choose" which law she wants to follow, but, rather, she will comply with the law about same sex marriage. She would not work against or frustrate a requested same-sex marriage. Based on Judge Neely's statements, the public in Wyoming can be confident that she respects and treats every person before her court fairly, and is not biased.

[¶111] The record does not contain clear and convincing evidence that Judge Neely violated Rule 1.2.

3. Did Judge Neely violate Rule 2.2 of the Wyoming Code of Judicial Conduct?

[¶112] The majority opinion concludes that Judge Neely also violated Rule 2.2. That rule states "[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." The majority believes Judge Neely expressed intent to act unfairly because it finds "she is willing to do that (perform marriages) for one class of people (opposite-sex couples), but not for another (same-sex couples)." However, the record does not show that Judge Neely would perform all marriages for any class of people.

[¶113] The majority position ignores the plain language of this rule. The rule, by its terms, applies only to actions, not to statements made outside the context of a case or an actual request. The words "uphold," "apply" and "perform" all relate to action or deliberate inaction by a judge. They simply cannot apply to a judge's statement about how her religious views would come into play in the event at some unknown, future time, some unknown same sex couple insisted that Judge Neely, rather than someone else, perform their marriage. Although the majority claims that this "action against Judge Neely is a response to her deeds, not her faith," the opposite is true. Judge Neely took no action, and was never involved in a "deed" which denied anyone a marriage.

[¶114] Furthermore, the rule requires judges to perform "duties" fairly and impartially. As discussed above, no judge in Wyoming has a duty to perform any particular marriage. Because no couple seeking marriage has a right in Wyoming to insist that a particular judge perform the ceremony, it is not "unfair" or "partial" for Judge Neely to arrange for some other judge to officiate for a same sex couple. Using the majority logic about this rule it would be a violation of Rule 2.2 fairness and impartiality for any judge to decline to perform a wedding if they would perform a wedding for anyone else. The majority position creates a requirement that does not exist in Wyoming—that judges who perform some marriages must perform all marriages.[18]

[¶115] If the law, or Judge Neely's job description, required her to perform every marriage when requested, and if a same sex couple actually demanded that she perform their marriage ceremony, and if Judge Neely then denied them a civil marriage ceremony, then she may have violated Rule 2.2. However, none of those facts exist here.

[¶116] *Guzzo* established a "duty" for state officials in the negative sense – they may not deny marriage to same sex couples. Even if Judge Neely's statements were seen as actions subject to Rule 2.2, she did not indicate she would violate that duty or carry it out

---

[18] The majority suggests that the results here are similar to the results in jury selection from *Batson v. Kentucky,* 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), which held that jurors could not be challenged solely on the basis of race or gender. There are many, many differences between the effect of *Batson* and the effect of the majority opinion.

unfairly with bias. Based on those statements, every couple requesting to be married would receive a marriage, no matter what their gender or sexual preference. Because there is no legal difference between marriage ceremonies conducted by one judge as opposed to another, and because no law permits any couple to insist that a particular judge or magistrate or clergy perform their marriage ceremony, Judge Neely's statements do not indicate any lack of fairness or impartiality. The record does not contain clear and convincing evidence that Judge Neely violated Rule 2.2 by her statements.

4. Did Judge Neely violate Rule 2.3(B) of the Wyoming Code of Judicial Conduct?

[¶117] Rule 2.3(A) states "a judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice." The Commission did not find that Judge Neely violated Rule 2.3(A), apparently recognizing that this rule applies to actions as opposed to statements about what would occur in hypothetical circumstances. The majority and the Commission, however, conclude that clear and convincing evidence indicates Judge Neely violated Rule 2.3(B), which states:

> A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability,

> age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the Judge's direction and control to do so.

[¶118] Analysis of whether Judge Neely's statements violated Rule 2.3 requires accurate definitions of the terms "bias" and "prejudice." We have generally defined bias as "a leaning of the mind or an inclination toward one person over another. "The 'bias' . . . must be personal, and it must be such a condition of the mind which sways judgment and renders the judge unable to exercise his functions impartially in a given case or which is inconsistent with a state of mind fully open to the conviction which evidence might produce." *Eaton v. State*, 2008 WY 97, ¶ 78, 192 P.3d 36, 73 (Wyo. 2008); *Brown v. Avery*, 850 P.2d 612, 616 (Wyo. 1993).

[¶119] W.R.C.P. 40.1(b)(2)(E) uses these same terms in defining when a judge is disqualified from sitting on a case "for cause."[19] We defined bias and prejudice as used in that rule as: "Prejudice involves a prejudgment or forming of an opinion without sufficient knowledge or examination. Bias is a leaning of the mind or an inclination toward one person over another. The 'bias' which is a ground for

---

[19] W.R.C.P. 40.1 recognizes that judges are human beings and may have personal biases and prejudices. When a judge has a bias or prejudice, the rule provides a means for the judge to be recused from that case, and assign the case to a different judge. The judge's bias or prejudice, however, does not disqualify him or her from being a judge altogether.

disqualification of a judge must be personal." *TZ Land & Cattle Co. v. Condict*, 795 P.2d 1204, 1211 (Wyo. 1990), quoting *Cline v. Sawyer,* 600 P.2d 725, 729 (Wyo.1979). To find bias or prejudice resulting in disqualification of a judge, "[s]uch conditions must exist which reflect prejudgment of the case by the judge or a leaning of his mind in favor of one party to the extent that his decision in the matter is based on grounds other than the evidence placed before him." *Id.,* quoting *Pote v. State,* 733 P.2d 1018, 1021 (Wyo. 1987).

[¶120] Using these definitions, Judge Neely would have manifested bias if her statements demonstrated an inclination of her mind toward one person over another in such a manner that sways her judgment and renders her unable to exercise her functions impartially in a given case. She would have manifested prejudice if she engaged in prejudgment or forming of an opinion without sufficient knowledge or examination.

[¶121] Judge Neely's statements contain no indication of bias or prejudice under these definitions. The statements are only an indication of her religious belief about marriage. They do not demonstrate any inclination of Judge Neely's mind for or against persons in same sex relationships. To the contrary, Judge Neely said that she would assist such a couple in finding an officiant, and that she would treat them the same as any other person in any court proceeding. Nothing in her statements indicates a prejudgment or inclination against persons in same sex relationships.

[¶122] A judge is guilty of expressing bias or prejudice by statements which denigrate the human value or standing of a person based on the fact that they fit within a particular class of persons. Comment [2] to Rule 2.3 gives examples: "epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics." Such statements truly do "impair the fairness of the proceeding and bring the judiciary into disrepute." Comment [1] to Rule 2.3. However, Judge Neely's statements did not include any indication of such denigration. To the contrary, Judge Neely's statements and all the other evidence in the record indicate that Judge Neely does not and will not engage in bias or prejudice in any judicial proceeding.

[¶123] The record does not contain clear and convincing evidence that Judge Neely violated Rule 2.3(B).

[¶124] The Commission asserted that because Judge Neely's religious beliefs oppose same sex marriage, she necessarily is biased and prejudiced against persons who might be in a same sex marriage or relationship. Likewise, the majority opinion states that "Judge Neely's refusal to perform same sex marriages exhibits bias and prejudice toward homosexuals." There simply is no logic supporting this position. Judge Neely's religious belief about who may be married has no relationship to her view of the worth of any individual or class of individuals. The overwhelming evidence in the record indicates that

Judge Neely does not hold any bias or prejudice against any person or class of persons.

[¶125] The majority opinion hinges on its conclusions that Judge Neely's statements would cause reasonable persons to question her impartiality, and would conclude she exhibited bias and prejudice toward homosexuals. Those are not conclusions that would be reached by a reasonable person apprised of the appropriate facts.

5. The Wyoming and U.S. Constitutions

[¶126] In addition to carefully analyzing the specific Rules in the WCJC that have been applied to this case, it is appropriate to review relevant portions of the Wyoming and U.S. Constitutions. Any construction and analysis of the Rules should be done in a manner consistent with those Constitutional provisions.

[¶127] Wyoming has a rich foundation for and history of protecting both free speech, equality before the law, and religious freedom. Article 1 of the Wyoming Constitution enumerates individual rights that our state government must respect, including the following:

> **§ 2. Equality of all**. In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.
>
> **§ 3. Equal political rights**. Since equality in the enjoyment of natural and

> civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever … .
>
> **§ 18. Religious liberty**. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.
>
> **§ 20. Freedom of speech** … . Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; … .

[¶128] Other portions of the Wyoming Constitution also address civil and religious freedom:

> **Preamble.** We, the people of the State of Wyoming, grateful to God for our

> civil, political and religious liberties, and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this Constitution.
>
> **Ordinances**. The following article [sections] shall be irrevocable without the consent of the United States and the people of this state:
>
> **Art. 21, § 25**. **Religious liberty.** Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

[¶129] The U.S. Constitution includes well-known protections for equality and individual freedoms:

> **Amendment 1.** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> **Amendment 14, Section 1.** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

> without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[¶130] Each of these enumerations of individual rights is vitally important to us. Together, they recognize the value of every person, and confirm that free individuals are the essence of our society. If any of these individual rights is diminished, individual value and freedom are diminished. If any of these individual rights is diminished, the public's confidence in the judiciary is at risk. Judges, along with every other person, enjoy each of these constitutional rights.

[¶131] The *Obergefell* and *Guzzo* decisions are based on equality and equal protection. The majority opinion is based on an assumption that to carry out *Obergefell* and *Guzzo,* other individual rights, including religious liberty and freedom of speech, must be curtailed. The majority opinion states that we must choose between public confidence in the judiciary by implementing *Obergefell* and *Guzzo,* and recognizing constitutionally guaranteed rights to free exercise of religion and speech. Analysis of these constitutional principles, however, shows that Wyoming, the Equality State, can equally recognize each of these individual rights. It is not appropriate, nor necessary, to diminish religious liberty or free speech in Wyoming to accomplish protection of individual rights connected with same sex marriage, or to assure the integrity of the judiciary.

A. Article 1, § 18 of the Wyoming Constitution.

[¶132] The Wyoming Constitution is particularly strong in its protection of religious freedom. The Constitution's preamble identifies religious liberty as a motivation for establishing the Constitution. Article 21, § 25 of our Constitution reaffirms the right to religious freedom, and includes that right with the most security, providing that it could only be repealed with the consent of Congress. In addition, the primary guarantee of religious liberty in Wyoming, Article 1, § 18, is almost unique among the states in its strength. It is located in the Declaration of Rights section of the Constitution, which requires that it be construed liberally to protect individual liberty. *Vasquez v. State,* 990 P.2d 476, 485 (Wyo. 1999) (quoting Robert B. Keiter and Tim Newcomb, *The Wyoming State Constitution, A Reference Guide* 11-12 (1993)).

[¶133] Article 1, § 18 establishes several very specific, strong principles which are applicable to this case. It begins by stating that "the free exercise and enjoyment of religious profession" shall be "forever guaranteed in this state." It guarantees that any person can hold "any office of trust" regardless of "his opinion on any matter of religious belief whatever." Finally, this section restricts limitations on religious freedom in Wyoming to very specific, narrow circumstances.

[¶134] Four aspects of this constitutional language are noteworthy. First, by guaranteeing "the free exercise" of religion, this provision of the Wyoming Constitution protects not just religious beliefs, but the

exercise of those beliefs through action and abstention. *In re LePage,* 18 P.3d 1177, 1181 (Wyo. 2001). The "exercise of religion" includes "the performance of (or abstention from) physical acts." *Employment Div. v. Smith,* 494 U.S. 872, 877 (1990).

[¶135] Second, unlike the U.S. free exercise clause, which simply attempts to restrain governmental action, Wyoming's Constitution expressly grants affirmative rights to the free exercise of religion. While the federal constitution restricts government from prohibiting religious exercise, the Wyoming Constitution "forever guarantees" freedom of religious exercise.

[¶136] Third, this statement in our Constitution goes far beyond the U.S. Constitution in protecting service in public office. While Article VI of the U.S. Constitution bans "religious test[s]" for public office, our Constitution prohibits **any** government action that renders **any** person incompetent from holding "**any** office of trust" based on "**any** matter of religious belief **whatever**." (Emphasis added). In Wyoming, persons are protected not just from the narrow test oaths often imposed when our country was founded, but from any type of disqualification from office based on religion.

[¶137] Finally, our Constitution states that guarantees of religious freedom are limited only in that they cannot justify "acts of licentiousness" or a threat to "the peace or safety of the state." This portion of Article 1, § 18 shows that the guarantee of free exercise of religion in Wyoming is not limited to belief and expression, but includes actions or

abstention. Otherwise, there would have been no need to state that some actions are not protected. Further, when this last statement in Article 1, § 18 specifies that certain "permissible countervailing interests of the government" may "outweigh religious liberty," the possibility that other interests might also outweigh religious liberty is foreclosed. *See State v. Hershberger,* 462 N.W.2d 393, 397 (Minn. 1990) (construing identical language).

[¶138] The history and proceedings of our state's constitutional convention are "a valuable aid in interpreting the scope of a provision of the state constitution." *Dworkin v. L.F.P., Inc.,* 839 P.2d 903, 910 (Wyo. 1992). Before adopting the broad free exercise provision we have in our Constitution, the Wyoming constitutional convention rejected much weaker language, which limited protection of religious freedom to "matters of religious sentiment, belief, and worship," and which protected public officeholders solely from being forced to meet "religious qualification[s]." *Journal and Debates of the Constitutional Convention of the State of Wyoming* 168. Clearly, Article 1, § 18 provides greater protection than what was included in the rejected language.

[¶139] The majority opinion finds that Article 1, § 18 does not apply here because, it claims, its decision is not based in any manner on Judge Neely's religious beliefs, but instead on her unwillingness to do what the majority opinion perceives is her duty as a magistrate. The majority opinion states "the action against Judge Neely is in response to her deeds, not her faith."

[¶140] The record is clear, however, that Judge Neely only made statements – nothing more. Everything Judge Neely said is based solely and entirely on her sincerely held religious belief. Her statement that if asked, she would decline personally to officiate at a same sex marriage but would find someone else who would do so is exclusively an expression of her opinion on a matter of religious belief. In spite of the claims to the contrary, it is clear from the record that the majority opinion (and the Commission's recommendation) holds her "incompetent to hold … office" because of her expression of her "opinion on … [a] matter of religious belief." The office of circuit court magistrate includes the authority to perform marriages. The result in this case holds Judge Neely incompetent to hold that function of office unless she compromises her religious convictions. The conclusions of the majority chip away at the heart of Article 1, § 18 of the Wyoming Constitution.

[¶141] Further, the majority's claim that findings against Judge Neely are based on her inability to apply and follow the law and on her display of bias rather than on her religious beliefs is not supported by the law or the record. The law does not require Judge Neely to perform any particular wedding ceremony, and she has never denied or hindered a same sex marriage in any way. If the law required Judge Neely, as a magistrate, to personally perform every marriage when asked, even allowing for scheduling difficulties, and if someone actually attempted to force her to personally perform their marriage rather than having a different officiant, or if she refused to perform same sex marriages because she held personal animosity or disrespect for the

parties, then the claims against Judge Neely might have substance. None of those facts exist here.

[¶142] Article 1, § 18's protection of the free exercise and enjoyment of religious profession is very broad, but does not apply to "acts of licentiousness" or "practices inconsistent with the peace or safety of the state." The record is devoid of even any hint that Judge Neely's expressions constituted "acts of licentiousness" or were "inconsistent with the peace or safety of the state." Wyoming's Constitution (and the U.S. Constitution) guarantees the free exercise of religion, not just the freedom to "believe." It cannot seriously be argued that Judge Neely was free to believe what she wanted, but that the state is permitted to prohibit her from acting consistently with that belief. Under our Constitution the state may restrict her actions based on religious beliefs only when they are "licentious" or "inconsistent with the peace or safety of the state." Under the U.S. Constitution, government can restrict religiously motivated action only where there is a compelling state interest and the state utilizes the least restrictive means to support that interest (as discussed below).

[¶143] The effect of the majority opinion is concerning for the people of Wyoming. It likely results in a religious test for who may be a judge, at any level, in our state. There is only a single statute granting judges and others the authority to perform marriages in Wyoming. Apparently from that statutory authority the majority concludes that a circuit court magistrate who is willing to perform any marriages must perform all same sex marriages when

requested. If such a duty exists for circuit court magistrates, it exists for all other judges as well. To avoid ethics charges like these, judges then must pass a religious test indicating that they have no religious beliefs that would prevent them from performing same sex marriages, or be precluded from performing any marriages. The record points out, and *Obergefell* confirms, that a significant portion of our country holds sincere religious views against same sex marriage. The majority position likely would exclude a significant portion of our citizens from the judiciary, without any compelling reason to do so.

[¶144] In addition, the majority opinion is concerning for Wyoming in its treatment of constitutional protections for the free exercise of religion. It finds justification to entirely restrict Judge Neely's "exercise" of her religious beliefs because the majority opinion believes someone might question her independence or impartiality, although the evidence does not support such a conclusion. This reduces the constitutional guarantee of a robust principle – "free exercise" – to a minimal "free belief."

B. Amendment I to U.S. Constitution

[¶145] **Free exercise of religion.** Although the Wyoming Constitution includes stronger freedom of religion language than the U.S. Constitution does, it is appropriate to consider some principles developed under the First Amendment in the context of this case. The U.S. Constitution essentially provides that no government may make or enforce a law which prohibits the free exercise of religion.

[¶146] Both sides agree that this Court should apply the strict scrutiny standard when considering the U.S. constitutional ramifications of the Commission's recommendations and findings. Strict scrutiny is used to determine whether a state's actions which impinge on constitutional rights such as free speech or free exercise of religion may stand, or whether they prohibit the free exercise of religion. To pass strict scrutiny, a state or state actor must "demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest." *City of Boerne v. Flores*, 521 U.S. 507, 534, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624 (1997). Strict scrutiny is the "most demanding test known to constitutional law." *Id.*; *Williams-Yulee v. Florida Bar,* 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015); *Rep. Party of Minn. v. White,* 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002). The majority opinion clearly impinges on Judge Neely's right to free exercise of religion (and free speech). Consequently, because of the strict scrutiny standard, the majority opinion's ban of Judge Neely from performing any marriage is constitutionally valid only if it is the "least restrictive means" of achieving a "compelling state interest." *Thomas v. Review Board of Indiana Employment Security Division,* 450 U.S. 707, 718, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); *accord Washakie County School District No. One v. Herschler,* 606 P.2d 310, 333 (Wyo. 1980). One cannot make such a finding here.

[¶147] The majority opinion finds that there is a compelling state interest in protecting same-sex couples from the perception of bias and partiality, and in fostering public confidence in the judiciary by

requiring judges to perform all same sex marriages if they perform any marriages. While the state does have a compelling interest in assuring that judges follow the law, no law in Wyoming requires a particular magistrate to perform a particular wedding. No law permits couples to insist that a particular judge or magistrate (or religious official) perform a wedding for them. As discussed above, Judge Neely did not fail or refuse to comply with any law. This is not a case like *Miller v. Davis,* 123 F. Supp. 3d 924 (E.D. Ky. 2015), where the state specifically required a county clerk to issue marriage licenses, nor is it like *Moore v. Judicial Inquiry Commission,* 891 So.2d 848 (Ala. 2004), where a judge was accused of refusing to comply with specific requirements in a court order. This is not a case like those cited in the majority opinion where police officers refused to follow instructions to protect abortion clinics or gambling establishments. In those cases there was an absolute duty which the officers refused to perform. That is not the case here. Absolutely nothing in the record indicates that Judge Neely failed or refused to comply with the law. The Commission's findings and recommendations, therefore, are not supported by the state's interest in insuring that judges follow the law.

[¶148] The state also has an interest in assuring that judges do not give valid cause for reasonable persons to question the judge's impartiality. That interest is broad and vaguely stated, and logically unrelated to the actual facts in this case. Strict scrutiny requires us to "looked beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[e] the asserted harm of

granting specific exemptions to particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 430-31, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006). Here, there is no evidence in the record proving that the interest in promoting public confidence in the judiciary is threatened by Judge Neely's statements.

[¶149] Apparently some individuals might find it offensive that Judge Neely said she would decline to personally perform a same-sex marriage and instead would refer them to someone else. There is no compelling state interest in shielding individuals from taking such an offense. A "bedrock principle underlying the First Amendment" is that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive." *Snyder v. Phelps,* 562 U.S. 443, 458, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011). "Government may neither compel affirmation of a repugnant belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities." *Sherbert v. Verner*, 374 U.S. 398, 402, 83 S. Ct. 1790, 1793, 10 L. Ed. 2d 965 (1963).[20]

[¶150] The state has a compelling interest in assuring that every person is treated equally and that judges do not display bias or prejudice. This interest comes

---

[20] In footnote 11 the majority suggests that if some other type of religious belief were involved or if some other type of prospective married couple were involved there "would be little controversy regarding her (Judge Neely's) discipline." Neither the hypothetical religion nor the hypothetical couple suggested by the majority are appropriately analogized to this case, and the assumed conclusion is likely incorrect.

into play when a judge demonstrates actual bias or partiality. Nothing in the record indicates any bias or prejudice on the part of Judge Neely, so the majority opinion cannot be supported on the basis of this state interest. To assure that judges do not display bias or partiality, our rules permit a judge to assign a particular case to another judge. That is just what Judge Neely proposed to do. Her proposal to refer same sex marriages to another judge cannot be a demonstration of bias, absent any obligation to personally perform such wedding ceremonies.

[¶151] Even if Judge Neely violated a compelling state interest in providing same sex marriages, to protect her constitutional rights the law requires the Commission to recommend or the Court to find the least restrictive alternative to accomplish that interest. If a less restrictive alternative would serve the government's purpose, "the legislature must use that alternative." *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000). To make this showing, the government must "prove" that no other approach will work, *id* at 816, 120 S. Ct. at 126, and must "refute … alternative schemes suggested by the plaintiff." *Yellowbear v. Lampert,* 741 F.3d 48, 62 (10th Cir. 2014). The record does not show that anyone has been denied same sex marriage in Wyoming since *Guzzo* and it does show there are sufficient persons available to perform same sex marriages in Judge Neely's jurisdiction. The remedy of prohibiting her from performing any marriages is entirely unnecessary to see that the dictates of *Guzzo* are carried out. The majority opinion claims that letting Judge Neely "opt out" of same sex marriages would not work because it

conflicts with the interests of the state in having an impartial judiciary and could result in no judge who was willing to perform same sex marriages. The evidence shows otherwise. Further, the availability of marriage officiants is an issue for the legislature, not this Court nor the WCJCE.

[¶152] Similarly, if Judge Neely violated a compelling state interest in assuring the appearance of impartiality, the state simply could require what Judge Neely already stated her intention to do – find another judge to handle same sex marriages.

C. Free Speech

[¶153] Both the Wyoming and the U.S. Constitution guarantee free speech. Just as with freedom of religion, when a government action prohibits or punishes free expression, strict scrutiny applies. In that event, the government must show that it narrowly tailored a solution to serve a compelling state interest.

[¶154] Judges subject to disciplinary claims have full protection of the First Amendment. Strict scrutiny is applied to a judge's free speech claims in circumstances like this. *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002); *Mississippi Commission on Judicial Performance v. Wilkerson,* 876 So.2d 1013 (Miss. 2004); *In re Sanders*, 955 P.2d 369 (1998). "Applying a lesser standard of scrutiny to such speech would threaten 'the exercise of rights so vital to the maintenance of democratic institutions.'" *Williams-*

Yulee v. Florida Bar, 135 S. Ct. 1656, 1665, 191 L. Ed. 2d 570 (2015).

[¶155] The *White* case provides an appropriate analysis of a judge's free speech claim in a case like Judge Neely's:

> In *Republican Party of Minnesota v. White*, Justice Scalia, writing for five members of the Court, held that [a Minnesota rule of judicial ethics prohibiting judicial candidates from "announcing" a view on any disputed legal or political issue if the issue might come before a court] violates the First Amendment. In order for the announce clause to survive strict scrutiny, it must be narrowly tailored to serve a compelling state interest. And, in order to be narrowly tailored, it must not "unnecessarily circumscrib[e] protected expression." The Minnesota rule did not meet this rigorous test. The announce clause was not narrowly tailored to promote "impartiality," in the sense of no bias for or against any party to the proceeding becaue it did not restrict speech for or against particular parties, but rather speech for or against particular issues. If the state meant to promote "impartiality" in the sense of no preconception for or against a particular legal view, that is not a compelling state interest, the Court said, because it is both 'virtually impossible," and also not

> desirable, to find a judge who does not have preconceptions about the law.

Ronald D. Rotunda, *Constitutionalizing Judicial Ethics: Judicial Elections after Republican Party of Minnesota v. White, Caperton, and Citizens United*, 64 Ark. L.Rev. 1, 36 (2011).

[¶156] The principles identified in *White* apply here. The definition of impartiality in the majority opinion leads not to true impartiality but to forced agreement with a particular idea. *White* recognizes that the impartiality pursued by the majority opinion, seeking "no preconception" against same sex marriage even on the basis of religious belief, is not a compelling state interest. The state does have a compelling interest in assuring that judges do not actually have bias against a particular party, but that is not the interest involved in this case. Judge Neely never exhibited any bias against a particular party. Furthermore, if she had any bias against a particular party, the most narrowly tailored remedy would be to find another judge to perform the wedding—exactly what Judge Neely proposed to do. Discipline against Judge Neely for her statements cannot withstand strict scrutiny as outlined in *White*.

[¶157] The majority opinion asserts that this case is distinguishable from *White* because Judge Neely did not only "announce" her position about same sex marriage, she said she would be unable to perform those marriages and would assist in finding someone who could. The majority opinion concludes that her statement goes beyond a statement and constitutes action. It is obvious, however, that all Judge Neely did

was "announce" her position. Taking that position publicly is precisely what the majority opinion sanctions her for.

[¶158] The majority opinion also claims that *White* is distinguishable because "the rules she has violated are far more well established than the announce clause at issue in *White*." That certainly is not the case. Application of Rules 1.1, 1.2, 2.2 and 2.3 to situations like this is not established at all.

[¶159] The strict scrutiny/compelling state interest analysis discussed above for Judge Neely's right to free exercise of religion applies equally to her right of free speech. Although the state has compelling interests in assuring that judges follow the law and are unbiased, the evidence here does not show that Judge Neely failed to do follow the law or is biased. Interference with Judge Neely's right of free speech is not justified by any compelling state interest.

CONCLUSION

[¶160] There is no clear and convincing evidence that Judge Neely violated any of the rules of the Wyoming Code of Judicial Conduct. Wyoming law does not require any judge or magistrate to perform any particular marriage, and couples seeking to be married have no right to insist on a particular official as the officiant of their wedding. Judge Neely did not state she could "pick and choose" which law she wanted to follow, and her statements do not encourage that.

[¶161] In our pluralistic society, the law should not be used to coerce ideological conformity. Rather, on deeply contested moral issues, the law should "create a society in which both sides can live their own values." Douglas Laycock, *Religious Liberty and the Culture Wars,* 2014 U. Ill. L.Rev. 839, 877 (2014). That is precisely how Wyoming has approached the matter since its founding.

[¶162] The *Obergefell* decision affirms this approach for the issue of same sex marriage. It emphasized that the constitutional problem arose not from the multiplicity of good faith views about marriage, but from the enshrining of a single view into law which excluded those who did not accept it as "outlaw[s]" and "outcast[s]". *Id.,* 135 S. Ct. at 2600, 2602. Unfortunately, the majority opinion does just that for Judge Neely and others who share her views. Caring, competent, respected, and impartial individuals like Judge Neely should not be excluded from full participation in the judiciary. Judge Neely's friends who actually obtained a same sex marriage recognized this and observed that it is "obscene" to impose discipline in this case.

[¶163] There is no cause for discipline in this case, nor for concern if Judge Neely is not disciplined or precluded from performing marriages. Same sex couples have full access to marriage, all persons before the courts can be certain of an unbiased and impartial judiciary, and religious individuals can remain in public office even if they hold a traditional religious view of marriage. Judicial positions are filled without either side insisting on a religious test for who may serve. There is room enough in Wyoming

for both sides to live according to their respective views of sex, marriage and religion.

[¶164] I respectfully dissent, and would find that Judge Neely did not violate the Wyoming Code of Judicial Conduct.

BEFORE THE COMMISSION ON JUDICIAL
CONDUCT AND ETHICS
STATE OF WYOMING

An Inquiry Concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

COMMISSION ON JUDICIAL CONDU
AND ETHICS
Official Record
FILED
Date: 2/26/16
Wendy J. Soto

COMMISSION ON JUDICIAL CONDUCT & ETHICS RECOMMENDATION

The Wyoming Commission on Judicial Conduct and Ethics, having convened on February 19, 2016, for the purposes of considering the issue of sanctions against Judge Ruth Neely, pursuant to Rule 16, of *Rules Governing the Commission on Judicial Conduct and Ethics* (herein after "Rules") and having heard the arguments of counsel, considering the evidence in the record, and in recognition of the guidelines provided by our Rules, specifically Rule 8(d), and, having adopted by reference the findings of fact and conclusion of law of the Adjudicatory Panel dated December 31, 2015, hereby unanimously finds and recommends as follows:

1. Judge Neely be removed from her position as Municipal Court Judge and Circuit Court Magistrate;

2. The Commission recommends that the assessment of costs and fees in this matter be left to the discretion of the Wyoming Supreme Court.

DATED this 26th day of February, 2016.

THE COMMISSION ON
JUDICIAL CONDUCT
AND ETHICS

By: Kerstin Connolly, Chairman

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2016, I served the foregoing COMMISSION ON JUDICIAL CONDUCT & ETHICS RECOMMENDATION via email and by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Herbert K. Doby
P.O. Box 130
Torrington, WY 82240

James A Campbell
Kenneth J. Connelly
Douglas G. Wardlow
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale AZ 85260

Patrick Dixon, Esq
Dixon & Dixon, LLP
104 South Wolcott,
Suite 600
Casper WY 82601

Wendy J. Soto, Executive Director
Commission on Judicial Conduct
& Ethics
PO Box 2645
Cheyenne WY 82003
Phone: 307-778-7792

cc: Commissioners

BEFORE THE COMMISSION ON JUDICIAL
CONDUCT AND ETHICS
STATE OF WYOMING

An Inquiry Concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

ORDER GRANTING COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING JUDGE NEELY'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Adjudicatory Panel on December 4, 2015 on the Commission for Judicial Conduct and Ethics' MOTION FOR PARTIAL SUMMARY JUDGMENT and THE HONORABLE RUTH NEELY'S NOTICE AND MOTION FOR SUMMARY JUDGMENT, and the Panel having reviewed the motions and the responses thereto, and being fully advised in the premises FINDS:

FINDINGS OF FACT

1. The Honorable Ruth Neely sits as Municipal Court Judge for the Town of Pinedale pursuant to

appointment by the Town Mayor and approval of the Town Council. *Neely Deposition, pp. 14-17.*

2. She also serves as Circuit Court Magistrate, pursuant to appointment by the Honorable Curt Haws. *Neely Deposition, pp. 17-18; Haws Deposition, pp. 123-126, Haws Deposition Exhibits 42, 38.*

3. Circuit Court Judges and Magistrates are authorized to perform weddings pursuant to W.S. §5-9-212, W.S. §20-1-106(a).

4. The primary purpose for Judge Neely's appointment as Circuit Court Magistrate is to perform civil marriage ceremonies. *Neely Deposition, pp. 39-43. Haws Deposition, p. 61.* Judge Neely performed other magistrate duties on only one occasion, in April 2009. *Neely Deposition, pp. 42-48.*

5. Judge Neely is a longtime member of the Lutheran Church – Missouri Synod and has been an active parishioner at her local congregation for the past thirty-eight years. *Neely Aff.* ¶ 21.

6. Judge Neely believes the teachings of the Bible and the doctrines of her denomination. *Neely Aff.* ¶ 22. She seeks to conform her conduct in all areas of her life to those teachings and doctrines. *Id*. One of the core tenets of her faith is that God instituted marriage as a sacred union that joins together one man and one woman. *See id.* at ¶ 23. *Rose Aff.* ¶ 4; Lutheran Church – Missouri Synod, *News and Information – Upholding Marriage: God's Plan and*

Gift (Connelly Aff., Exh. 11 to *Neely's Statement of Undisputed Facts in Support of Summary Judgment*).

7. On October 17, 2014, United States District Court Judge Scott Skavdahl rendered his decision in the case of *Guzzo v. Mead*, 2014 WL 5317797, No. 14-CV-200-SWS (D. Wyo. 2014). Following Tenth Circuit precedent, the effect of *Guzzo* was to legalize same sex marriage in the state of Wyoming.

8. In late October 2014, Judge Neely met with Judge Haws and informed him of her serious religious convictions regarding same sex marriage and that she would be unable to perform same sex ceremonies. *Haws Deposition, pp. 81-89, Neely Deposition, pp. 76-77, Neely Aff.* ¶25.

9. Judge Haws informed Judge Neely that he believed that performing these types of ceremonies was an essential function of her job. *Haws Deposition, pp. 84*. Judge Haws further advised Judge Neely that, pending further guidance on the issue, she should "keep [her] head down and [her] mouth shut." *Haws Deposition, pp. 81-89.*

10. On or about December 5, 2014, Judge Neely returned a call to Ned Donovan, an individual who identified himself as a reporter for the Pinedale Roundup. Mr. Donovan began the conversation by asking Judge Neely if she was excited about the prospect of performing gay marriages. Judge Neely told Mr. Donovan that she was not and then proceeded to tell him about her religious beliefs and opinions regarding same sex marriage. *Neely*

Deposition, pp. 82-92. Judge Neely publicly expressed her belief that marriage is between a man and a woman and because of her religious convictions, she would not apply the law.

11. On December 9, 2014, the Sublette Examiner published Mr. Donovan's article about Judge Neely and her beliefs about marriage. Ned Donovan, *Pinedale slow to adapt to new law*, SUBLETTE EXAMINER, Dec. 9, 2014, at p. 1. (*Soto Deposition Exhibit 4*) In the article, Mr. Donovan quotes Judge Neely as making the following statements:

> "I will not be able to do them…We have at least one magistrate who will do same sex marriages but I will not be able to."
>
> "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage,"

Id. Donovan also explained that Judge Neely's inability to perform same sex marriages was not based upon her schedule, but on her religious beliefs. *Id*. Two days later, on December 11, 2014, the Sublette Examiner published in its online edition the same article it had run in its print edition, but with the new title Pinedale judge will not marry same-sex couples. Ned Donovan, *Pinedale Judge will not marry same sex couples*, SUBLETTE EXAMINER, Dec. 11, 2014, www.subletteexaminer.com/v2_news_articles.php?heading=0&page=72&story_id=3424 (Exh. 50 to Neely's Motion for Summary Judgment).

12. Judges are required to follow and apply the law regardless of their personal beliefs and opinions about the law. When Judge Neely stated that she could not perform same sex weddings, she also stated that she would not follow the law.

PROCEDURAL HISTORY

This matter comes before the Commission on an "own motion" complaint pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics. A Copy of the Verified Complaint was provided to Judge Neely on January 12, 2015. After inquiries to Judge Neely and Judge Haws, on February 18, 2015, a duly appointed Investigatory Panel found there was reasonable cause to support a finding that Judge Neely engaged in judicial misconduct. Accordingly, disciplinary counsel was engaged and Notice of Commencement of Formal Proceedings was filed on March 3, 2015. Judge Neely filed a Verified Answer on April 27, 2015. On October 30, 2015 the Commission filed its Motion for Partial Summary Judgment and Judge Neely filed her Motion for Summary Judgment. On December 4, 2015 the Adjudicatory Panel convened and the parties presented oral argument in support of their respective Motions for Summary Judgment.

JURISDICTION

The Commission has jurisdiction pursuant to Rule 3 of the Rules Governing the Commission on Judicial Conduct and Ethics and the matter is

properly before the Adjudicatory Panel on cross motions for summary judgment.

STANDARD OF REVIEW

The Standard of Review is well defined by Wyoming case law:

> Summary Judgment is proper only when there are no genuine issues of material fact, and the prevailing party is entitled to judgment as a matter of law….. *Uinta County v. Pennington*, 2012 WY 129, ¶ 11, 286 P.3d 138, 141-42 (Wyo.2012). … The party requesting summary judgment bears the initial burden of establishing a prima facie case that no genuine issue of material fact exits and that summary judgment should be granted as a matter of law. W.R.C.P. 56(c); *Throckmartin v. Century 21 Top Realty*, 2010 WY 23, ¶ 12, 226 P.3d 793, 798 (Wyo.2010). … Once a prima facie showing is made, the burden shifts to the party opposing the motion to present evidence showing that there are genuine issues of material fact. *Boehm v. Cody Cntry. Chamber of Commerce*, 748 P.2d 704, 710 (Wyo.1987) (citing *England v. Simmons*, 728 P.2d 1137, 1140-41 (Wyo.1986)). The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings. *Boehm*, 748 P.2d at 710. However, the facts presented are considered from the vantage point most favorable to the party opposing the motion, and that party is given

> the benefit of all favorable inferences that may fairly be drawn from the record. *Caballo Coal Co.*, ¶ 12, 246 P.3d at 871.

Amos v. Lincoln Cnty. Sch. Dist. No. 2, _P.3d_, 2015 WY 115, ¶15 (Wyo. Aug. 21, 2015).

CONCLUSIONS OF LAW

Applying this standard to the factual findings above, the Panel reaches the following legal conclusions:

1. Wyoming law recognizes same sex marriage.
2. Solemnization of matrimony is a judicial function.
3. Judge Neely's statements violated the Wyoming Code of Judicial Conduct.

ANALYSIS

A. Applicable sections of the Wyoming Code of Judicial Conduct

Judge Neely violated **Rule 1.1**, which states: "A Judge shall comply with the law, including the Code of Conduct." Judge Neely violated Rule 1.1 by stating her unwillingness to follow Wyoming law (perform same sex weddings), thus undermining the integrity of the judiciary.

Judge Neely violated **Rule 1.2**, which states:

> A judge shall act at all times in a manner that promotes confidence in the independence, integrity, and impartiality of the Judiciary, and shall avoid impropriety and the appearance of impropriety.

Citizens have no right to ignore the laws because of their religious convictions. Judges are subjected to an even higher standard. Judges set the example of respect and adherence to the rule of law. Judges must support the law, not undermine it. Even the appearance of impropriety suggests to other citizens that the law may be rejected and disobeyed, justified by subjective beliefs or desires. Here, Judge Neely announced she would not follow the law because of her religious convictions regarding same sex marriage. By announcing her position against same sex marriage and her decision not to perform said marriages, she has given the impression to the public that judges, sworn to uphold the law, may refuse to follow the law of the land. She has also suggested by her statements that other citizens may follow her lead. A judge announcing her decision to pick and choose the law she wishes to follow undermines her position and our system of justice.

Judge Neely violated **Rule 2.2**, which states:

> A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Jude Neely's statement that she could not perform same sex marriages indicates she is not fair with respect to that particular judicial function. The Judge must perform her duties fairly and impartially. Comment 2 to this Rules states:

> [2] Although each judge comes to the bench with a unique background and personal philosophy, a Judge must interpret and apply the law without regard to whether the Judge approves or disapproves of the law in question.

Judge Neely's primary duty as a magistrate was the performance of marriages. Following *Guzzo*, the law of Wyoming allowed same sex couples to be married. Judge Neely expressed her unwillingness to perform same sex marriages, demonstrating her inability to act impartially with respect to the law.

Judge Neely violated **Rule 2.3**, which states:

> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment including, but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, **sexual orientation**, marital status, socio-economic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the Judge's direction and control to do so…(*emphasis added*).

Regardless of the basis of Judge Neely's opinion regarding same sex marriage (her honestly held religious belief) her expression of her inability to perform same sex marriages, manifested a bias with respect to sexual orientation. Bias and prejudice, which causes a judge to announce that she will not follow the law, is antithetical to the important role of judges in our democracy.

B. Constitutional Considerations

Free Exercise of Religion

"[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Both the law under *Guzzo* and the enforcement of the Wyoming Code of Judicial Conduct are facially neutral and of general applicability. Enforcement of the Code of Judicial Conduct is rationally related to the State's interest in upholding the rule of law, and such enforcement ensures that the judiciary is not brought into disrepute, preserves the independence, impartiality and fairness of the judiciary and promotes public confidence in the judiciary.

Judge Neely has a right to pursue her religious beliefs freely. Nevertheless, she is also a judge. A judge is required to apply and follow the law of the land irrespective of religious beliefs. Religious beliefs

do not allow an individual to refuse to comply with an otherwise valid law. *See id.*

Religious Test

"[I]ssuing a marriage license to a same-sex couple merely signifies that the couple has met the *legal requirements* to marry. It is not a sign of religious or moral approval." *Miller v. Davis*, -- F.Supp.3d.--, 2015 WL 4866729, No. 15-44-DLB, at *13 (E.D.Ky. 2015), *stay denied*, 136 S.Ct. 23 (2015) (emphasis in original). Wyoming is not requiring Judge Neely to pass a religious test in order to perform her job as a judge. Irrespective of religion, a judge must apply and follow the law.

Judge Neely argues that Article I, Section 18 of the Wyoming Constitution shields her acts because it provides that "no person shall be rendered incompetent to hold any office of trust…because of his opinion on any matter of religious belief whatever." WYO. CONST. art. I, § 18. Judge Neely's opinion on same sex marriage does not render her incompetent to perform as a judge. It is her inability to apply and follow the law that renders her incompetent to perform as a judge.

Establishment Clause

The Establishment Clause forbids a state from "prefer[ing] one religion over another." *Everson v. Bd. Of Educ. Of Ewing Twp.*, 330 U.S. 1, 15 (1947). Here, application of the Wyoming Code of Judicial Conduct has nothing to do with religion. Indeed, irrespective of

religion or reason or belief or otherwise, a refusal to follow the law renders a judge incompetent.

Freedom of Expression/First Amendment

The First Amendment limits the States' ability to abridge individuals' freedom of speech. U.S. CONST. amend. I. Likewise, the Wyoming Constitution guarantees that "[e]very person may freely speak, write and publish on all subjects." WYO. CONST. art. 1, § 20.

"'The government may not constitutionally compel persons to relinquish their First Amendment rights as a condition of public employment,' but it does have 'a freer hand in regulating the speech of its employees than it has in regulating the speech of the public at large.'" *Miller*, 2014 WL 2866729, at * 13 (quoting *Connick v. Myers*, 461 U.S. 138, 156 (1983); *Waters v. Churchill*, 511 U.S. 661, 671 (1994)). "When a citizen enters government service, the citizen necessarily must accept certain limitations on his or her freedom." *Garcetti v. Cabellos*, 547 U.S. 410, 418 (1951).

Judge Neely is not being punished for expressing her views on same sex marriage. Because she was not speaking as a private citizen on matters of public concern, Judge Neely's speech was not entitled to First Amendment protections. *Id*. at 421. In Wyoming, same sex marriage may be solemnized in a civil court by a judge. A judge's announcement that she will not follow the law, in her capacity as a **judge**, is not protected speech.

Even, assuming that Judge Neely was speaking in her capacity as a private citizen (an argument which the Commission expressly rejects), the Commission finds that the State has "adequate justification for treating [her] differently from any other member of the general public." *Id.* Whether her religious views are in favor or against same sex marriage, as a judge she is required to apply and follow the law and to give the public confidence in her ability to follow the law.

Due Process

Because the entire commission on judicial ethics and conduct will ultimately decide this matter, any complaint of bias is not well taken. Six lay persons, three attorneys, and three Wyoming judges – as varied in age, background, religious preference, gender, as Wyoming can muster, deciding this matter after providing a full and fair opportunity for the presentation of evidence and legal argument, hardly passes as a violation of due process of law. There has been no showing of bias or prejudice in the decision making of the Investigative Panel or Adjudicatory Panel or in the selection of the various panel members. No one person of the twelve people identified above is a singular decision maker. The decision here is by a majority. And no showing has been made that even one of the twelve has been shown to be prejudiced to the point of an intolerably high rise of unfairness. See *Riggins v. Goodman*, 572 F.3d 1101 (10th Cir. 2009).

THIS SPACE INTENTIONALLY LEFT BLANK

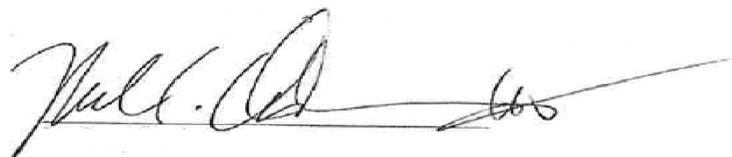
ORDER

WHEREFORE, after considering the written briefing, the evidence submitted by the parties, and the oral arguments presented by the parties' respective counsel, this Panel finds that there are no genuine issues of material fact as to any of the claims asserted in the Notice of Commencement of Formal Proceedings filed by the Commission on Judicial Conduct and Ethics, and that the Commission is entitled to summary judgment as a matter of law. This Panel further finds that sufficient evidence exists to determine appropriate discipline without further hearing in this matter.

IT IS HEREBY ORDERED THAT Judge Neely's Motion for Summary Judgment is **DENIED** in its entirety, the Commission's Motion for Partial Summary Judgment is **GRANTED** in its entirety. The matter is hereby referred to the full Commission on Judicial Conduct and Ethics for further disposition pursuant to the Rules Governing the Commission on Judicial Conduct and Ethics.

December

SO ORDERED this 31st day of ~~January~~, 2015.



Mel C. Orchard, III
Presiding Officer/Hearing Officer

Barbara H. Dilts

Barbara H. Dilts
Hearing Officer

Wendy M. Bartlett

Hon. Wendy M. Bartlett
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December, 2015, I served the foregoing ORDER GRANTING COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING JUDGE NEELY'S MOTION FOR SUMMARY JUDGMENT via email and by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Herbert K. Doby
P.O. Box 130
Torrington, WY 82240

James A Campbell
Kenneth J. Connelly
Douglas G. Wardlow
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale AZ 85260

Patrick Dixon, Esq
Dixon & Dixon, LLP
104 South Wolcott,
Suite 600
Casper WY 82601

Wendy J. Soto, Executive Director
Commission on Judicial Conduct
& Ethics
PO Box 2645
Cheyenne WY 82003
Phone: 307-778-7792

cc: Adjudicatory Panel

U.S. CONST. AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wyoming Code of Judicial Conduct

***

RULE 1.1. ***Compliance with the Law***

A judge shall comply with the law,* including the Code of Judicial Conduct.

RULE 1.2. ***Promoting Confidence in the Judiciary***

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.*

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. The principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all

such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

***

RULE 2.2 ***Impartiality and Fairness***

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3 ***Bias, Prejudice, and Harassment***

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an

appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

***

RULE 2.11 ***Disqualification***

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic

partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner* of such a person is:

> **(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;**
>
> **(b) acting as a lawyer in the proceeding;**
>
> **(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or**
>
> **(d) likely to be a material witness in the proceeding.**

(3) The judge knows* that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner,* parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a

court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and make a reasonable effort to keep informed about the personal economic interests* of the judge's spouse or domestic partner* and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might be reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under Paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than

a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

***

RULE 3.6 ***Affiliation with Discriminatory Organizations***

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex,

gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know* that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive.

The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited. Absent these or similar factors, such an organization may be perceived to discriminate invidiously. A judge's apparent condoning of such practices diminishes public confidence in the integrity and impartiality of the judiciary.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	
	)	
The Honorable Ruth Neely	)	
	)	No. 2014-27
Municipal Court Judge and	)	
Circuit Court Magistrate	)	
Ninth Judicial District,	)	
Pinedale, Sublette County	)	

TRANSCRIPT OF HEARING PROCEEDINGS

Transcript of Hearing Proceedings on the above-entitled matter held at 9:08 a.m. on the 4th day of December 2015 in the Federal Courthouse, 111 South Wolcott, Casper, Wyoming, with Hearing Officer Mel Orchard presiding; and panel members Judge Wendy M. Bartlett and Barbara Dilts in attendance.

***

MR. DIXON: Counsel says, Well, she's entitled to the free exercise of her religion. We absolutely agree with that. Personally, I find the position of the Missouri Synod of the Lutheran Church, which is the opposite of the other synods of the Lutheran Church – I find that every bit as repugnant as I found the Mormon Church's position on black people, but we have not cited her for being a member of the Missouri Synod of the Lutheran Church.

What we've cited her for is making comments in public that demonstrate a bias and a prejudice and refusing to apply and follow the law of the jurisdiction. That's the issue. It's not what she believes. It's not even exactly the words she said. It's what she put out there as a judge for the general public of the state of Wyoming to perceive relative to her impartiality.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	Commission on
	)	Judicial Conduct
The Honorable Ruth Neely	)	and Ethics
	)	
Municipal Court Judge and	)	No. 2014-27
Circuit Court Magistrate	)	
Ninth Judicial District,	)	
Pinedale, Sublette County	)	
	)	

DEPOSITION OF

THE HONORABLE CURT AUSTIN HAWS
Friday, September 18, 2015

TAKEN AT
Sublette County Library Board Room
Pinedale, Wyoming

COURT REPORTER:
Michelle L. Cunningham
Deputy and Freelance Reporter
Notary Public

Jackson Hole Court Reporting Services
(307) 733-2637

***

Q. Let's talk a little bit about magistrates. You spoke about them; that you appoint them.

A. Yes.

Q. How many have you appointed? Can you tell me that?

A. I can't – I can't give you an accurate number. I have – I have relatively few magistrates compared with other courts. We have a very small bar here. So I think at present, four, maybe five. I'm thinking four off the top of my head. I can't think of – it seems like there is another – but I will make special appointments if requested. For – if – if your niece is coming down and she really wants her uncle to marry her and I'm confident the uncle is an upstanding citizen that won't bring ill repute to the judiciary, I'll – I'll gladly give Uncle a one-day magisterial position so he can perform that wedding for his niece.

Q. And if you did do that, is that – would that be noted on the – will there be an appointment –

A. Correct.

Q. – a formal appointment form?

A. Correct.

Q. Okay.

A. It will be an order that I sign and an oath that that magistrate would sign.

Q. Okay. So if you do limit the appointment to a certain power or a certain duration, that will be noted on the –

A. Correct.

Q. –form? We talked a little bit about full-time and part-time.

***

Q. Would – would they – if they want to get married during the week, is it possible – and you have absolutely no availability, they've scoured the schedule, that they could refer that to a magistrate?

A. Sure.

Q. Okay. That's one instance where they might give them the list and say –

A. Sure.

Q. – "Judge Haws is stocked up for the whole week. Here's this"?

A. And even if it's – let's go back to your example of "I want to be married Tuesday at 11:00." "The judge has got court and won't be available until" whatever the time is, "but if you – if that's really an important date and time to you, here's – here's a list of other folks

that – that are qualified to perform that ceremony for you."

Q. And if your clerks gave that list to the couple, and they made their way down the list, one, two, three, four, five, and they came to number one, Ed Wood, and he said, "I'm going to a football game. I'm sorry. I can't do it," that would be fine?

A. Would be fine.

Q. If they came to Rachel Wecksler, and she said, "I'm getting my hair done," that would be fine?

A. That's fine.

***

Q. Okay. Would you be able to – would you be able to – do magistrate judges – or I should say circuit court magistrates, do they receive a fee for doing marriages when they perform them?

A. They do.

Q. Okay. How is – how are those fees set?

A. Set by the individual magistrate.

Q. Okay.

A. Yeah.

Q. So there's no schedule of fees listed by statute?

A. No.

Q. And that's something that the individual Magistrate would work out with the couple – the requesting couple?

A. Yes. Yes.

Q. Okay. Are there any guidelines you know of –

A. I don't.

Q. – under the law?

A. I don't know of any guidelines.

Q. Okay.

A. In fact, there was a discussion recently amongst the judges as to that – that very inquiry was made, is there a schedule, is there – not even Judge Zebre, who knows everything, was able to lay his hand on any schedules.

Q. And there's – there are no investigations or oversight committees on that? That's just left up to the discretion of the particular magistrate?

A. So far -- so far as I know, correct.

***

A. – correct. We sat down next to one other, and I asked her what I could do for her.

Q. Okay.

A. And she expressed concern about this decision and – and relayed to me her strong conviction that

marriage was an institution reserved to men and women and that she didn't – she had concerns about whether or not she could perform a wedding ceremony if it involved a same-sex couple.

Q. Okay.

A. And I don't remember the specifics of the conversation. I remember trying to be very empathetic to that very difficult position. I believe I expressed to her that I held similar views and that each person needed to decide where – where – where they need to stand up for those views, where it was appropriate and where it wasn't.

It was – I – I believe that I expressed to her my belief that that was an essential function of the job, and that if we were called upon to do it, that – that we needed to do that.

But I don't – no decisions were made at that point because it was – the decision had just come down, and we had no guidance from any higher authority as to – to what to do, how to prepare, what steps to take. And so it was kind of – I think – I don't recall if it was at that first meeting or a subsequent meeting where I suggested to her that until we knew more, my advice was to "keep your head down and your mouth shut."

***

Q. …Do you remember the next time you spoke to Judge Neely regarding this matter?

A. Let me dive back into the – into the letter because as I sit here today, I don't have an independent recollection.

(Reviewing document)

I have the – what would that be, the third bullet point on those, refresh my recollection that we met in person rather than speaking telephonically after the article had come out.

And I discussed with her – I had – I had pulled out the Canon of Judicial Ethics and reviewed those and had concerns that the – the expressions attributed to her in that article would – would, in my view, possibly run afoul of – of the – the requirement that a judge not express bias or prejudice that would – that would call in to question their impartiality.

Q. Did – so you said this meeting was in chambers; correct?

A. It was face-to-face. I don't –

Q. Okay.

A. – I don't – chambers is where it would logically take place, but I don't specifically recall.

Actually, you know what? I do. I do. It was in chambers.

Q. At some point during that conversation, did you express to Judge Neely that you intended to seek an advisory opinion?

A. I – we discussed that possibility, yes.

Q. Okay.

A. Because one of the things I expressed to her was – I said there were two issues here: One was what was – what were her obligations, and, secondly, what were my obligations as, essentially, the person that vested her with this power.

And I believed but was uncertain that I had an obligation to either report the matter or take some action to correct the matter, and I intended, at that point, to seek an advisory opinion to clarify that responsibility.

Q. Okay. Was one of the – one of the reasons also for seeking the advisory opinion is it was still a complex issue that was still unclear?

A. Absolutely. There was no guidance from any court at that point.

Q. Okay. Did you ultimately seek an opinion?

A. I did not.

Q. Okay.

A. Events overtook me.

Q. Just the – the rush of events?

A. Getting to the holiday season, and – and then shortly after the – the new year, I received a letter of inquiry from the Commission.

***

Q. … Would you say there's a high demand for same-sex marriage in Pinedale or Sublette County?

A. No.

Q. Would you say that there are a sufficient number of government officials willing to solemnize same-sex marriage here in Pinedale?

A. Absolutely. No one's been denied that opportunity.

Q. Okay. If you could give me an estimate, how many same-sex marriages would you estimate have been requested in Pinedale since that ruling?

A. There are – have been two.

Q. Two. And you're not aware of any other requests?

A. No.

Q. Okay. So you haven't been asked to solemnize any same-sex marriages?

A. I have. I was asked to solemnize one of the first marriages, was unable to do so because of – I had a performance in – in Jackson at the same time.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	Commission on
	)	Judicial Conduct
The Honorable Ruth Neely	)	and Ethics
	)	
Municipal Court Judge and	)	No. 2014-27
Circuit Court Magistrate	)	
Ninth Judicial District,	)	
Pinedale, Sublette County	)	
	)	

DEPOSITION OF

STEPHEN BRIAN SMITH
Thursday, September 17, 2015

TAKEN AT
Sublette County Library Board Room
Pinedale, Wyoming

COURT REPORTER:
Michelle L. Cunningham
Deputy and Freelance Reporter
Notary Public

Jackson Hole Court Reporting Services
(307) 733-2637

***

Q. Did you ever discuss with Judge Haws whether you would handle any kinds of marriages or marriages for him?

A. I did. I had the opportunity when I – the last time I was appointed – being a magistrate of the court, you have to be reappointed once a year. It's good for one calendar year, I think. I kind of let it expire in the summer of 2014 when Kathy approached me about performing their ceremony, so I went to Judge Haws' office for him to appoint me again, sign the paperwork and he asked me at that time if I would be willing to be available for anybody that calls and say, "Will you marry me?" And I explained to Judge Haws, as I just told you, that doesn't really appeal to me. I mean, I'm – I'm happy to marry people that I know and they're kind enough to ask me to do it but I don't want to be in the business of marrying people, so I – I explained that to Judge Haws and, no, not really. I think he was looking for somebody to help out overall performing marriages. I didn't want to be that guy.

Q. If a request came in – was made aware to you in some way for a same-sex couple to do a marriage and you didn't know the couple, would you perform it?

A. Again, depending on the circumstances: If I was available, if I was committed to doing something else, if I knew them, didn't know them. I don't know how to answer that. That's never been proposed to me.

Q. So if you – excuse me. If you did not know them, but you were available and they were close to your proximity and it wasn't inconvenient, would you do it?

MR. DIXON: Objection. Asks for speculation.

Q. (By Mr. Wardlow) Go ahead.

A. Again, I don't know.

Q. You might?

A. I might. Might not.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

NO. 2014-37

An Inquiry Concerning,

The Honorable Ruth Neely

Municipal Court Judge and Circuit Court Magistrate
Ninth Judicial District Pinedale, Sublette County

CONFIDENTIAL

DEPOSITION OF WENDY JO SOTO
Tuesday, September 15, 2015
9:00 a.m.

Taken in behalf the Honorable Ruth Neely, pursuant to Notice, and in accordance with the applicable Wyoming Rules of Civil Procedure, in the conference room of Executive Suites, 1623 Central Avenue, Cheyenne, Wyoming, before Merissa Racine, Registered Diplomate Reporter and Notary Public in and for the County of Laramie, State of Wyoming.

***

Q. Who is Joe Corrigan?

A. Joe Corrigan is a hairdresser here in town. He's – I met him through – because he was the president – or chair of Wyoming Equality.

Q. Is that currently Jeran Artery's position?

A. Yes.

Q. And how did you meet him?

A. I met Joe when I went to a board meeting for Wyoming Equality.

Q. And you were on the Wyoming Equality board?

A. I was.

Q. And when – What was your position on the board?

A. I was secretary.

Q. How many board members were there?

A. I couldn't remember. Somewhere between six and maybe eight.

Q. How long did you serve on that board?

A. Let's see. I believe I was elected to the board in, might be March of 2011, and I believe I resigned from the board, I can't remember if it was 2013 or – I think it was 2013, in, like October 2013. It might have been '14. I can't remember exactly.

Q. So for a time you were serving on the board of Wyoming Equality and you were executive director of the judicial commission, correct?

A. For a time.

***

Q. Based on what we just discussed and your knowledge, are there valid reasons that a circuit court magistrate would give to decline to exercise their authority to perform a wedding?

A. A wedding, any wedding? Sure, yeah.

Q. So perhaps if the judge is out of town, that would be okay?

A. Right, yes.

Q. Or the judge is too busy?

A. Yes.

Q. What about a judge that only wants to do weddings for friends and nobody else, would that be okay?

A. Well, I don’t know if that would be okay.

MR. DIXON: I'm going to object. Just a second. You need to slow down enough to let me get in an objection.

A. All right.

MR. DIXON: And I think the objection here is I think it’s an improper hypothetical. Go ahead.

A. What was the question?

Q. (By Mr. Wardlow) So could a valid reason for refusing to exercise the authority to perform a wedding be that a particular judge only does weddings for, say, close friends and nobody else?

MR. DIXON: Also speculative.

A. When you say it's a valid reason, what does that mean?

Q. (By Mr. Wardlow) Let me rephrase it. Do you believe that a judge could limit performing weddings to personal and close friends only and remain in compliance with the code of judicial ethics?

A. Yes.

Q. Could a judge or circuit court magistrate decline to do a wedding for no reason at all, just because they don't feel like it?

A. I suppose.

Q. And that wouldn't run afoul of the code?

MR. DIXON: Let me just make a continuing objection. Improper hypotheticals.

MR. WARDLOW: Noted.

MR. DIXON: Speculative.

A. I'm not a legal expert but I don't think so.

Q. (By Mr. Wardlow) Given your knowledge and what a we discussed you don't think so? Sorry, when you say you don't think so, explain.

A. I don't think it would run afoul with the code.

Q. Do you know whether magistrates, judges are required to perform marriages or whether it's an optional duty?

A. I don't believe they are required.

Q. So Wyoming statutes don't require any judge to perform any marriage?

A. I believe that's true.

Q. So if you learned about a circuit court magistrate who publicly stated she wouldn't perform weddings in locations that are too distant from her home, say, or from her courtroom, would you think that is something you should bring to the attention of the Commission for possible action?

A. No.

MR. DIXON: Objection. Same objection.

Q. (By Mr. Wardlow) How about if you learned a circuit court magistrate publicly stated, say to a reporter, that she wouldn't provide weddings unless they involve her personal friends.

A. No.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	Commission on
	)	Judicial Conduct
The Honorable Ruth Neely	)	and Ethics
	)	
Municipal Court Judge and	)	No. 2014-27
Circuit Court Magistrate	)	
Ninth Judicial District,	)	
Pinedale, Sublette County	)	
	)	

DEPOSITION OF

THE HONORABLE RUTH NEELY
Friday, September 18, 2015

TAKEN AT
Sublette County Library Board Room
Pinedale, Wyoming

COURT REPORTER:
Michelle L. Cunningham
Deputy and Freelance Reporter
Notary Public

Jackson Hole Court Reporting Services
(307) 733-2637

***

A. That it was an unlimited magisterial position.

Q. Okay. So am I right in thinking that in 2007, you were appointed for the sole purpose of doing marriages?

A. Yes.

Q. And in 2008, then, your appointment could include other duties, other tasks for the circuit court?

A. Yes.

Q. And – and did you, in fact, perform other assignments after 2008 for the circuit court?

A. Other than –

MR. CAMPBELL: Objection. Vague. Other than what?

Q. (By Mr. Dixon) Did you do other judicial functions as a magistrate of the circuit court?

A. Other than what?

MR. CAMPBELL: Other than what?

Q. (By Mr. Dixon) Other than doing marriages.

A. Yes.

Q. Okay. What other functions did you perform under your general appointment?

A. I held – I held bond hearings. I did a felony warrant and – and set bond several times with the sheriff's office over the phone.

Q. Okay. Thank you. Now, tell us what – what is a bond hearing?

A. A bond hearing is held to ascertain what the least restrictive terms are to get an incarcerated person out of jail and still assure that the public is safe and that the person will appear when ordered.

Q. Okay. So the typical process is someone's arrested; they have a right to apply to the Court for a bond as a condition of their release from jail. Is that a fair statement?

A. Yes.

***

A. …this: I do not charge a fee. I don't charge a flat fee.

Q. Okay. So if they paid you, it was voluntary on their part?

A. Yes.

Q. Okay. Very good. So back to our Exhibit 43. The first page would be a bill for the year April 2009 – the month of April 2009; right?

A. Yes.

Q. And the first entry is "Eduardo Vargas," and then what you list: DUI, reckless endangering, roadway, lane for traffic." Were those, like the charges –

A. Yes.

Q. – that – that Mr. Vargas was – was arrested for?

A. Yes.

Q. And then you tell what you did, and then last thing that you did is set bond?

A. Yes.

Q. So you set bond for Mr. Vargas on April 9, 2009?

A. Yes.

Q. All right. And on April 11, 2009, you set bond for, looks like one, two – four people?

A. (Reviewing document.) Yes.

Q. Okay. And then it looks like you took some phone calls. True?

A. (Reviewing document.) Yes.

Q. Were you – would this have been a situation where you were sitting in for the circuit court judge? He would be unavailable?

A. Yes.

Q. Okay. Then the second page of 42-43, Exhibit 43, can you tell me what this is?

A. That is an oath of office for Robert M. Jones as the mayor of Pinedale, Wyoming.

Q. Okay. And – and it's signed by Ruth – Ruth L. Neely as circuit court magistrate.

A. Yes.

Q. On June 2nd, 2014.

A. Yes.

Q. And this – the third and fourth pages are similar; right?

A. (Reviewing document.)

MR. CAMPBELL: Objection. Vague

THE WITNESS: (Reviewing document.) The second and third?

Q. (By Mr. Dixon) Second, third, and fourth. The – the next page is – has the name Julie Early on it and the page after that has the name Jennifer – can you tell me that name?

A. Goeke.

Q. Goeke. And – and those look like – and both signed by yourself, and they appear to be oaths; correct?

A. They are oaths; correct.

Q. Right. And why were you – what are these and what – why are you doing this?

A. Julie Early and Jennifer Goeke were municipal officers for the Town of Pinedale –

Q. Okay.

A. – and the mayor asked if I would please swear them in to their respective offices.

Q. Okay. And – and as you did that in your capacity as circuit court magistrate?

A. Yes.

Q. All right. Very good. Are there other bills like Page 1 of Exhibit 43 that you would have?

A. No.

Q. No? This – this is the only bill you ever sent the circuit court?

A. Yes.

Q. Okay. Why is that? Why is that the case?

A. Because that was all I was called to do.

Q. You get a salary from the Town as a municipal court judge?

A. Yes.

***

Q. Let – I'm gonna ask you one more hypothetical question and then I'm gonna move on. Let – let me ask you to assume that a same-sex couple called you

to do a marriage and – and you refused to do that, and then one or the other of them appeared before you the next day on a bond hearing, do you think you could impartially set that bond?

MR. CAMPBELL: Objection. Calls for speculation.

THE WITNESS: Can I answer?

MR. CAMPBELL: You can answer.

THE WITNESS: Without question.

Q. (By Mr. Dixon) Now let's walk on the other side of the bench and let me ask you: How do you think that litigant would feel about you setting his or her bond?

MR. CAMPBELL: Objection. Calls for speculation. There's no way Judge Neely can know what is in someone else's mind.

Q. (By Mr. Dixon) Do you believe that that litigant would feel you could be impartial to him or her?

A. Yes.

MR. CAMPBELL: Same objection.

Q. (By Mr. Dixon) After you, the day before, refused to perform a same-sex marriage because homosexuality is a sin?

MR. CAMPBELL: Whoa, objection. Objection. Same – assumes – sorry. Calls for speculation and assumes facts in evidence. Judge Neely's never indicated that she would say that to anyone.

THE WITNESS: Do I answer that?

Q. (By Mr. Dixon) Do you understand my question?

A. I do.

MR. CAMPBELL: You may answer.

THE WITNESS: The day before I –

Q. (By Mr. Dixon) Yeah.

A. No. Just listen to me. The day before I would have explained to the couple that I would be unable to perform their wedding, but I would very kindly give them names and phone numbers of other magistrates who could do that wedding. And so the next day, I don't believe that the party would consider any problem at all – would find any problem at all.

***

Q. Okay. And what was the nature of the conversation, as you recollect?

A. I called him. Went to see him to explain to him that I would not be able to officiate same-sex marriages due to my sincerely held religious beliefs about what marriage is. We had that conversation.

Q. Okay. And what did he tell you about that?

A. He told me that he had the same convictions about marriage, to wait until things kind of shake out and see how it all works.

Q. Okay. Did – did he tell you specifically not to talk to anyone about this or make any comments about this?

A. Yes.

***

Q. So what was your conversation with Mr. Donovan?

A. He asked me procedural questions and questions involving same-sex marriages.

Q. Like, what do you mean “procedural questions”?

A. Several procedural questions on how a person obtains a marriage license –

Q. Okay.

A. – and what the procedure is to find someone to do the wedding.

Q. All right. And I assume you answered those questions?

A. Yes.

Q. Do you remember what you told him?

A. Yes.

Q. What did you tell him?

A. I told him that in order to get a marriage license, a person goes to the county clerk’s office, fills out the papers, pays the fee, and the county clerk’s office,

circuit court and the district court would be able to give the couple names and phone numbers of people who would be able to – or were authorized to do weddings.

Q. Okay. And – and then he asked you about your position on same-sex marriage?

A. He did.

Q. Tell – tell me how that works.

A. When I answered the phone, very first thing – when he introduced himself, his first question to me was something to the effect of, “Aren’t you excited now that you’ll be able to do same-sex marriages?”

Q. Okay.

A. And my instant answer was the truth, and I said, “No.”

He changed course. We talked about procedural stuff and then my personal views on same-sex marriages. I made it clear to him that the issue is not at all about the people; that it’s solidly about the marriage.

And the conversation was approximately ten minutes long, and it was done, and I ended it.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AFFIDAVIT OF RUTH NEELY

COMES NOW Affiant Ruth Neely, and presents the following sworn testimony:

***

23. One of the core teachings of my religion is that God instituted marriage as a sacred union that joins together one man and one woman. It is my sincerely held religious belief that if I were to perform a wedding that does not reflect this understanding of marriage, I would be violating the tenets of my faith and disobeying God.

24. When I perform a wedding ceremony, I am personally involved in that event. I indicate my approval and support for that union not only by my

actions, but also by my words. For example, I often state my hope that the marriage will endure, encourage the couple to take their vows seriously, discuss the true nature of love, and explain that the wedding rings symbolize the unity of the couple's relationship. Attached to this affidavit as Exhibit 46 is a true and accurate copy (with the exception of the fact that the couple's names have been removed) of the script that I read from during a wedding ceremony that I performed. The script is emblematic of what I typically say during the wedding ceremonies over which I preside.

***

27. To my knowledge, no same-sex marriages were solemnized in Pinedale until early December 2014. On December 5 2014, Town Attorney Ralph "Ed" Wood (who is also a district court commissioner and a circuit court magistrate) performed a marriage ceremony for Krystal Suzanne Mansur and Caitlin Ann Baxley. On December 6, 2014, circuit court magistrate Steve Smith (who is also the former Mayor of Pinedale) performed a marriage ceremony for Kathy Anderson and Sharon Stevens. Attached to this affidavit as Exhibit 47 is a true and accurate copy of a Sublette Examiner Year in Review Photo that purports to depict that ceremony. These are the only same-sex marriages of which I'm aware that have been performed in Pinedale or Sublette County since same-sex marriage became legal in Wyoming.

28. There are many people authorized to solemnize marriages in Pinedale and Sublette County. In March 2015, I received from the Sublette County Circuit

Court a list of the magistrates authorized to perform marriages. Attached to this affidavit as Exhibit 48 is a true and accurate copy of that list. It contains the names of six people. Subsequently, in October 2015, I confirmed the accuracy of that list.

29. On October 22, 2015, I spoke to Jean Hayward, Deputy Clerk of Court for the District Court of the Ninth Judicial District, within and for the County of Sublette. She informed me that there are three district court commissioners for Sublette County. They are Richard McKinnon, Ed Wood, and Judge Haws.

30. Currently, Judge Haws is also the Circuit Court Judge in Pinedale, and Judge Marv Tyler is the District Court Judge in Pinedale.

31. If I ever were to receive a request to perform a same-sex marriage, which has never happened, I would ensure that the couple received the services that they requested by very kindly giving them the names and phone numbers of other magistrates who could perform their wedding.

32. Although my religious beliefs about marriage prevent me from presiding over some weddings, those beliefs do not affect how I decide cases. Given the types of cases that come before me – most of which, as I've indicated above, involve traffic and parking violations, animal control, public intoxication, general nuisances, and similar matters – it is unlikely that a case would ever require me to recognize or afford rights based on same-sex marriage. But if such a case were before me, I would unquestionably recognize

that marriage and afford the litigant all the rights that flow from it.

33. I have never disputed the legality of same-sex marriage in Wyoming.

34. On Friday, December 5, 2014, I was attempting to hang Christmas lights outside my home. I was frustrated because the lights were tangled so I came inside to untangle them. At that time, I checked my cell phone and saw that I had missed a call from an unknown number. I almost immediately returned the call, as is my habit because unknown numbers are often from people attempting to reach me about official town work (given my position as Pinedale Municipal Judge).

35. Upon dialing the unknown number, I reached Ned Donovan. I identified myself, and Mr. Donovan informed me that he was the person who had called me. He told me that he was a reporter for the Pinedale Roundup and asked if I was excited to be able to start performing same-sex marriages.

36. I was distracted at the time, struggling to remove my bulky winter clothing and holding an armload of Christmas lights. I did not immediately recall Judge Haws's earlier guidance to refrain from commenting on the matter.

37. I reflexively and truthfully answered Mr. Donovan's question, telling him that my religious belief that marriage is the union of one man and one woman precludes me from officiating at same-sex weddings.

38. Mr. Donovan then proceeded to ask me more about my personal views regarding marriage.

39. During the remainder of that call, I told Mr. Donovan that other government officials in town were willing to perform same-sex marriages, that I had never been asked to perform one, and that I had never denied anyone anything.

***

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AFFIDAVIT OF BOB JONES

COMES NOW Affiant Bob Jones, and presents the following sworn testimony:

1. My name is Bob Jones. I have been a resident of Pinedale, Sublette County, Wyoming, since 2004.

2. I am currently the mayor of Pinedale and have been so since June 2014.

3. I have known Ruth Neely for over 10 years. I first came to know Ruth and her husband when they were the owners of Bucky's Outdoors, a staple of the Pinedale business community that sells and services snowmobiles and ATVs. I know Ruth and Gary to be solid, unselfish, and caring people who are always

willing to help those in need, especially the down and out in the community.

4. After being sworn in as mayor, I reappointed Ruth as Pinedale Municipal Judge, in which capacity she had already served for over two decades. That appointment was subsequently confirmed by the Pinedale Town Council.

5. I reappointed Ruth as Pinedale Municipal Judge because she has a sterling reputation in the community as a person of unswerving character and as an honest, careful, and fair judge. Put simply, that reputation and character is the reason Ruth has been appointed and reappointed by four mayors and counting. She lets no one compromise her integrity or independence as a judge.

6. I have observed Ruth operating in her capacity as a municipal judge, and I can say without reservation that she always follows the law and gives each person who appears before her fair and equal treatment.

7. Ruth does not have the authority to officiate at any weddings when functioning in her role as Pinedale Municipal Judge. In that capacity, she hears cases arising under the Pinedale Municipal Code.

8. Based upon my experience, I do not believe that Ruth's religious belief that marriage is the union of one man and one woman has ever affected in any way her ability to be fair and impartial as a judge. When Ruth is serving in her role as a municipal judge, I cannot imagine a situation in which she would treat unfairly anyone who appears before her.

9. I personally know Ruth to be someone who is a stickler for the rules, someone who always follows the law as she understands it. And in my experience, whenever Ruth has a doubt or a question as to what the law or the rules require, she seeks guidance or counsel from others to find out that answer as soon as possible.

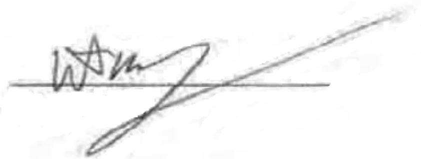
10. Ruth's handling of juvenile cases is notable, commendable, and well known in the community. She always attempts to instill a sense of responsibility in the young people who appear before her, and she often sentences juvenile offenders in a way that ultimately makes them better people and better citizens.

11. I know of no one who has ever complained that Ruth exhibited a bias or prejudice toward or against them, whether inside or outside the courtroom.

12. I view Ruth as an extremely professional judge who is a tremendous asset to the community.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

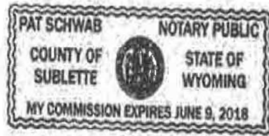
Dated this 20th day of October, 2015.



Bob Jones

STATE OF WYOMING)
) SS
COUNTY OF SUBLETTE)

SUBSCRIBED AND SWORN before me this 20th day of October, 2015, by Bob Jones.



Notary Public

My commission expires: 6-9-18

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AFFIDAVIT OF RALPH E. WOOD

COMES NOW Affiant Ralph E. Wood, and presents the following sworn testimony:

1. My name is Ralph E. Wood, generally known in the community as Ed Wood. I have been a resident of Pinedale, Sublette County, Wyoming, for 36 years and in private legal practice for 35 years. I have been the Pinedale Town Attorney for 17 years. I am also a Circuit Court magistrate and District Court commissioner, in which capacities I am authorized to officiate at wedding ceremonies.

2. I have known Ruth Neely for at least 20 years. She has been the Pinedale Municipal Judge for the entire time that I have been Pinedale Town Attorney. In my

capacity as town attorney, I regularly observe Ruth in her capacity as municipal judge.

3. I consider Ruth to be a dedicated public servant and an unselfish and generous member of the community more generally.

4. In my experience as Pinedale Town Attorney, Ruth has consistently and without question shown herself to be a judge who scrupulously follows what the law requires. She is someone who considers it her obligation to know what the law is and to follow the law without compromise, no matter what the issue is and no matter who the parties are.

5. Ruth has an excellent reputation in Pinedale as an exceedingly fair and impartial judge. In my experience, every party who appears before Ruth gets a fair shake, and she has never exhibited even the slightest hint of bias, prejudice, or partiality toward anyone. I know of no person who has made any claim that Ruth has ever been anything but impartial as a municipal judge.

6. I have observed that Ruth is particularly effective when dealing with juvenile and young adult offenders. In my experience, she does not view her work as complete upon the mere assessment of fines, jail sentences, or the like. Rather, she views each party who appears before her as an individual who must not only make amends for his or her offense, but also as someone who has the potential to do better and be a more productive member of society. Ruth sentences people as a way to help reform them to ensure that they profit from their experience with the

justice system. Many young people have benefitted from their contact with Ruth as a judge and are now better for having come through her courtroom.

7. Based on my experience, Ruth's religious belief regarding marriage and her inability to officiate at same-sex wedding ceremonies does not, and will not, affect in any way her impartiality as a judge. She has always been fair, and I have no doubt that as long as she remains a judge, she will always be fair to all parties who appear before her.

8. There is no shortage of public officials in Pinedale or Sublette County willing to officiate at same-sex wedding ceremonies. I know of only two same-sex marriages that have been requested and officiated in Pinedale or Sublette County since same-sex marriage became legal in Wyoming in October 2014. I officiated the first same-sex marriage ceremony in Pinedale on December 5, 2014, and Steve Smith officiated the same-sex marriage ceremony in Pinedale on December 6, 2014. I remain willing to officiate same-sex marriages.

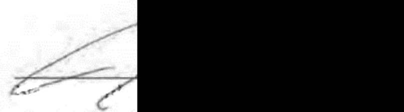
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 20th day of October, 2015

Ralph E. Wood

STATE OF WYOMING)
) SS
COUNTY OF SUBLETTE)

SUBSCRIBED AND SWORN before me this 20th day of October, 2015, by Ralph E. Wood.



Notary Public

My commission expires: 1/10/17

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AFFIDAVIT OF SHARON STEVENS

COMES NOW Affiant Sharon Stevens, and presents the following sworn testimony:

1. My name is Sharon Stevens. I have been a resident of Pinedale, Sublette County, Wyoming, since 2006.

2. I met Ruth Neely upon moving to Pinedale, and I have known her in a personal capacity since that time.

3. On December 6, 2014, I was married to Kathy Anderson. Steve Smith officiated the ceremony, which took place in Pinedale. We had originally asked Judge Curt Haws to officiate the ceremony, but he was unavailable.

4. My wife and I have been customers of Bucky's Outdoors, a snowmobile and ATV dealership, service center, and outfitter located in Pinedale, formerly owned by Ruth Neely and her husband, Gary. Gary continues to work at Bucky's. My wife and I have always felt welcome there.

5. Ruth Neely is one of the best people I have ever met. I understand that Ruth cannot officiate a same-sex wedding due to her religious beliefs. Though I do not share her beliefs regarding marriage, I have no doubt whatsoever that Ruth is fair and impartial as a judge. To my knowledge, she has always treated all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation. I firmly believe that she will continue to do so.

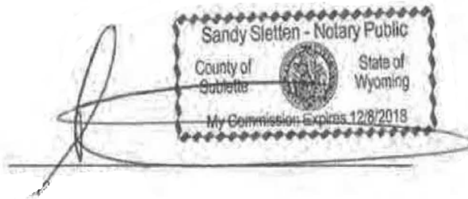
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 20th day of October, 2015.

Sharon Stevens

STATE OF WYOMING)
) SS
COUNTY OF SUBLETTE)

SUBSCRIBED AND SWORN before me this 20th day of October, 2015, by Sharon Stevens.



Notary Public

My commission expires: 12-8-18

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning	)	
	)	
The Honorable Ruth Neely	)	
	)	No. 2014-27
Municipal Court Judge and	)	
Circuit Court Magistrate	)	
Ninth Judicial District	)	
Pinedale, Sublette County	)	

AFFIDAVIT OF KATHRYN ANDERSON

COMES NOW Affiant Kathryn Anderson, and presents the following sworn testimony:

1. My name is Kathryn Anderson. I have been a resident of Pinedale, Sublette County, Wyoming, since 2006.

2. I met Ruth Neely upon moving to Pinedale. Ruth is a friend that I respect. I also know her in a professional capacity. I am the Coordinator of the Sublette County Treatment Court, and Ruth sits on the steering committee.

3. On December 6, 2014, I married Sharon Stevens. Steve Smith officiated at the ceremony, which took place in Pinedale. We had originally asked Judge Curt

Haws to officiate the ceremony, but he was unavailable.

4. It never occurred to us to ask Ruth to officiate our wedding because we know that it would put Ruth in a difficult position in light of her religious beliefs about marriage. There are plenty of people in Sublette County who are willing to perform marriage ceremonies for same-sex couples, so it would have been completely unnecessary and unfriendly to ask Ruth.

5. I consider Ruth to be a conscientious, fair, and impartial person. I have no doubt that she will continue to treat all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation. Accordingly, I believe it would be obscene and offensive to discipline Judge Neely for her statement to Ned Donovan about her religious beliefs regarding marriage.

6. In my opinion, Ned Donovan was attempting to stir a pot that did not need to be stirred.

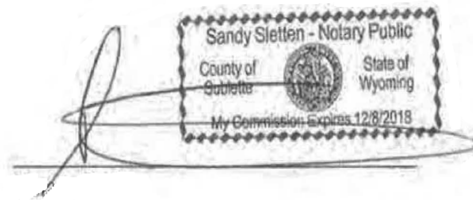
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 20th day of October, 2015

Kathryn Anderson

STATE OF WYOMING)
) SS
COUNTY OF SUBLETTE)

SUBSCRIBED AND SWORN before me this 20th day of October, 2015, by Kathryn Anderson.



Notary Public

My commission expires: 12-8-18

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AFFIDAVIT OF STEPHEN CRANE

COMES NOW Affiant Stephen Crane, and presents the following sworn testimony:

1. My name is Stephen Crane, and I am the editor of the Pinedale Roundup and Sublette Examiner newspapers in Pinedale, Wyoming. I am a resident of Sublette County, Wyoming.

2. On or about August 19, 2015, Ned Donovan sent an email to me that included the August 19, 2015 press release that the Wyoming Commission on Judicial Conduct and Ethics issued regarding its proceeding against Judge Ruth Neely.

3. Around that time, Ned Donovan called me on the telephone to verify that I had seen the press release

that he had emailed to me, and to make sure that the Pinedale Roundup and Sublette Examiner would continue to pursue the story.

4. During that telephone conversation, Ned Donovan also stated to me, referring to Judge Neely, that he wanted “to see her sacked.”

FURTHER YOUR AFFIANT SAYETH NAUGHT.

[Signature page follows.]

Dated this 27th day of October, 2015

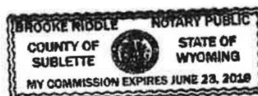
Stephen Crane

STATE OF WYOMING	)	
	)	SS
COUNTY OF SUBLETTE	)	

SUBSCRIBED AND SWORN before me this 27th day of October, 2015, by Stephen Crane.

Notary Public

My commission expires: 6/23/2019



BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	)))))))))	No. 2014-27

COMMISSION'S SUPPLEMENTAL RULE 11(b) DISCLOSURES

***

A. Persons Likely to Have Discoverable Information:

1. Ana Cuprill, [Contact information omitted]. Ms. Cuprill is a resident of Pinedale, Wyoming. Ms. Cuprill became aware of Judge Neely's position regarding same sex marriage by reading the Ned Donovan article in the Pinedale Roundup. She is also aware that there were letters to the editor and editorials published in the same publication both for and against Judge Neely's position. Shortly after the newspaper article appeared, it generated considerable Facebook chatter among Ms. Cuprill's friends and acquaintances around the state of Wyoming, most of whom were offended by the

statements attributed to Judge Neely in the newspaper articles.

Coincidentally, Ms. Cuprill attended a Christmas party at the home of Wendy Soto, the Executive Director of the CJCE. While discussing Judge Neely's comments with an acquaintance, Geron Artery, an individual affiliated with the LGBT community, Mr. Artery suggested that she should discuss the matter with Ms. Soto. Accordingly, Ms. Cuprill had a brief conversation with Ms. Soto who gave her her business card and suggested that she might want to file a complaint with the Commission. Ms. Cuprill did want to file a complaint and accordingly followed up her conversations at the Christmas party with an email to Ms. Soto, which she considers to be a complaint. Ms. Cuprill also believes that Judge Neely actively participated in support of Mayor Jones' election campaign.

2. Ned Donovan, [Contact information omitted]. Mr. Donovan is currently a resident of London, England, but was residing in Pinedale, Wyoming and writing newspaper articles for the Pinedale Roundup in the fall of 2014. Following the *Guzzo* opinion, it came to his attention that there was an unidentified same sex couple in Pinedale who had applied for a marriage license and/or intended to become married in Wyoming. He learned that Judge Neely had made it known that she would not perform a ceremony for this couple and had either begged off or made it known that she would not do so because of a scheduling conflict.

Accordingly, Mr. Donovan contacted Judge Neely to learn about her position on same sex marriage. He initiated the conversation by asking Judge Neely if she was excited to have the opportunity to perform the first same sex marriage in Sublette County. Judge Neely responded emphatically in the negative, stating that she would not perform same sex marriages and explained in detail her position with respect to same sex marriage.

***

Wendy Soto<wendy.soto@wyoboards.gov>

2014-27 Own Motion
1 message

Wendy Soto <wendy.soto@wyoboards.gov>
Mon, Dec 22, 2014 at 5:40 PM
To: Kerstin Connolly <kerstin.connolly@wyo.gov>, Karen Hayes <khay3618@aol.com>, Leslie Petersen <leslie.petersen@wyoming.com>, Julie Tiedekan <jtiedeken@mtslegal.net>, Wade Waldrip <wew@courts.state.wy.us>

Dear Panel Members,

Attached you will find an email dated 12/22/14 forwarding a newspaper article. The email quotes the text of the article and the online version has been printed and attached. I spoke to Julie about the article and she asked that I appoint an I panel to review this matter. You will also find disposition forms attached. The disposition forms are in pdf and Word formats. Please fill out the forms and return them to me via email or US Post on or before 1/5/15. Let me know if you prefer US Post and I will provide you with pre-addressed, stamped envelopes.

If you need help with the password, please call me. Let me know if there are any problems or concerns.

Thank you,

Wendy J. Soto
Executive Director
Commission on Judicial Conduct and Ethics
PO Box 2645
Cheyenne WY 82003
Telephone 307-778-7792
Cell 307-421-3247
Fax 307-778-8689
wendy.soto@wyoboards.gov
http://judicialconduct.wyo.gov

CONFIDENTIALITY NOTICE: The information contained in this message and any attachment is legally privileged and confidential information intended on for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any release, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the author immediately by replying to this message and delete the original message entirely from your computer.

Thank you.

---

3 attachments

2014-27 complaint (email with news article).pdf
2171K

2014-27 disposition frm.docx
103K

2014-27 disposition frm.pdf
55K

Sublette Examiner
12/09/2014

PINEDALE SLOW TO ADAPT TO NEW LAW

by Ned Donovan,
ndonovan@subletteexaminer.com

PINEDALE – Since Oct. 21, following a judicial ruling in Laramie that brought equal marriage to the "Equality State," same-sex couples in Wyoming have been able to get married. As a result, marriage licenses were issued around the state, and last weekend, Sublette County had its first wedding under the new rules. Municipal Judge Ruth Neely, Pinedale town judge for more than 20 years, however, has indicated that she will be unable to perform same-sex marriages if asked.

"I will not be able to do them," Neely told the *Examiner*. "We have at least one magistrate who will do same-sex marriages, but I will not be able to."

All judges are required to marry those who meet the legal requirements, unless there is a scheduling conflict or other problem. In those cases, prospective couples will be referred to other magistrates.

But Neely's inability to perform the marriages has nothing to do with her schedule, but, rather, her religious beliefs.

"When law and religion conflict, choices have to be made. I have not yet been asked to perform a same-sex marriage," Neely said.

Neely's role as a magistrate who can perform marriages is separate from her position as the

Pinedale municipal judge, according to Pinedale Mayor Bob Jones.

"As the town judge, she does not perform marriages, that is not part of the description of the work of a town judge … [Performing marriages] is something she took on herself years ago to try and … provide more services to the town," Jones told the *Examiner*. "In terms of whether she will do that as the town judge, which is what she is hired to do for us, it's kind of a non-player."

If an issue arose of a marriage being denied by Neely, Jones indicated he will bring it before the council but not before that occurs.

"Until we have a problem, I don't see any point in creating a problem," Jones said.

So far, according to Neely and Jones, no requests have been made, but a citizen may bring up the issue in a Pinedale Town Council public meeting.

"If there's one person that I know would swallow hard and do what the law said, it would be Ruth Neely," Jones said. "I want to be very clear I have all the faith in the world that if a case unrelated to this … came before her, [and] … she did not think she could be morally fair, I have every, every expectation, as well as I know her, that she would recuse herself before taking that case and enforcing her morals."

According to the National Center for Lesbian Rights (NCLR), who represented plaintiffs in the Wyoming equal marriage case, a judge refusing to marry a same-sex couple could become a constitutional problem.

"Public officials should serve all members of the public, and they shouldn't discriminate against couples based on their personal beliefs," NCLR senior

staff attorney Chris Stoll told the *Examiner*. "If a public official selectively chooses not to marry a particular group of people, that potentially raises constitutional concerns under the Equal Protection Clause."

Neely, however, was clear that this does not stop any same-sex couple in Pinedale from getting married in the town.

"All magistrates are required to perform weddings," Neely said. "And any couple, regardless of gender, can call any magistrate and any judge and see if that judge can fit them into their personal schedule."

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning	)	
	)	
The Honorable Ruth Neely	)	COMMISSION ON JUDICIAL CONDUCT AND ETHICS Official Record FILED Date: March 4, 2015 Wendy J. Soto
	)	
Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	)))))	No. 2014-27

NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS

To: Honorable Ruth Neely
Municipal Court Judge
City of Pinedale
P.O. Box 1386
Pinedale, Wyoming 82941

WHEREAS, this matter came before the Investigatory Panel on its own motion pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, and based on a newspaper article published in the Sublette Examiner quoting Judge Neely;

WHEREAS, said own motion matter was reviewed by the Investigatory Panel; and

WHEREAS, an inquiry was made with Judge Neely regarding this matter at which time Judge Neely was provided with a copy of the newspaper article; and

WHEREAS, the Investigatory Panel determined that there is a reasonable cause to believe Judge Neely engaged in judicial misconduct; and

WHEREAS, the Investigatory Panel has referred the matter to an Adjudicatory Panel of the CJCE for the institution of formal proceedings in accordance with Rule 8(g) of the Rules Governing the Commission on Judicial Conduct and Ethics.

NOTICE IS HEREBY GIVEN pursuant to Rule 8(a) of the Rules Governing the Commission on Judicial Conduct and Ethics that Disciplinary Counsel's Investigation of said verified complaint would appear to establish the following:

A. *Factual Background.*

1. Judge Ruth Neely is a Municipal Court Judge, presiding over the Municipal Court of the Town of Pinedale, Wyoming. Judge Neely holds her position pursuant to the provisions of Wyoming Statutes § 5-6-101, *et seq.*, and Chapter 23 of the Municipal Code of the Town of Pinedale. Judge Neely has served as a Municipal Judge for approximately 21 years.

2. In 2001 Judge Neely was appointed Magistrate by then Circuit Court Judge John Crow. The purpose of this appointment was to confer

authority upon Judge Neely to perform marriage ceremonies in accordance with Wyoming Statute § 20-1-106. Upon his appointment to the bench, Circuit Court Judge Curt A. Haws continued Judge Neely's appointment in the same capacity. Since her appointment in 2001, Judge Neely has performed numerous civil marriage ceremonies in her capacity as Circuit Court Magistrate.

3. On October 17, 2014, in the case of *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. 2014), the United States District Court for the District of Wyoming, following established Tenth Circuit Court of Appeals precedence, determined that same sex couples enjoyed the same constitutional right to participate in civil marriage as heterosexual couples. Judge Skavdahl's ruling was not appealed and became the law of the state of Wyoming the following Monday, October 20, 2014.

4. Sometime during the week of December 8, 2014, Judge Neely was contacted by Ned Donovan, a reporter for the local papers in Sublette County, Wyoming. Judge Neely participated in an interview, or at least a conversation with Donovan on the subject of same sex marriage. During the course of the conversation or the interview, Judge Neely informed Donovan that she would be unable to perform same sex marriages as a result of her religious beliefs. Judge Neely was quoted by Donovan as saying "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage."

5. The substance of Judge Neely's conversation or interview with Donovan, including the quoted language appeared in the Sublette Examiner on December 11, 2014 and may have appeared in other local publications in that timeframe.

6. As a result of these publications and conversations with Judge Neely, Judge Haws suspended Judge Neely's authority to perform marriage ceremonies on or about January 15, 2015.

7. In the meantime, Judge Neely, with the advice of Judge Haws, voluntarily refrained from performing marriage ceremonies for any couples, heterosexual or otherwise, and the last marriage ceremony performed by Judge Neely occurred on December 13, 2014.

8. In response to inquiries from this Commission, Judge Neely has admitted to making the comments attributed to her in the newspaper article and has reiterated her position with respect to same sex marriage, citing her religious beliefs and her First Amendment rights, presumably to the free exercise of religion.

B. *Code of Conduct.*

1. The following provisions of the Wyoming Code of Judicial Conduct are implicated by the facts recited above:

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.1. Compliance with the Law.

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Canon 2. A judge shall perform the duties of judicial office.

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.2. Impartiality and Fairness.

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3. Bias, Prejudice and Harassment.

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, *sexual orientation*, marital status, socioeconomic status, or political affiliation, and shall not prevent court staff, court officials, or others subject to the judge's direction and control to do so. (Emphasis added.)

2. Judge Neely's stated position with respect to same sex marriage precludes her from discharging the obligations of the above-cited Canons and Rules of Judicial Conduct, not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge.

C. *Notification of Members of Adjudicatory Panel.*

1. The following are members of the Adjudicatory Panel: Mel Orchard, Presiding Officer, Honorable Wendy Bartlett and Barbara Dilts.

D. *Advisement.*

1. Pursuant to Rule 8(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, Judge Neely is hereby advised that she shall have twenty (20) days from the date of service of the instant *Notice of Commencement of Formal Proceedings* within which to file a written, verified answer to the allegations above made. Her response, if any, should be served on the undersigned counsel for the CJCE.

DATED this 4th day of March, 2015.

Patrick Dixon (Wyo. Bar #5-1504)
104 S. Wolcott, Suite 600
Casper, Wyoming 82601
(307) 234-7321
(307) 234-0677 (facsimile)
Disciplinary Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of March, 2015, I served the foregoing **NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Hon. Ruth Neely
Municipal Court Judge
City of Pinedale
P.O. Box 1386
Pinedale WY 82941

Patrick Dixon, Esq,
Chair
Dixon & Dixon, LLP
104 South Wolcott,
Suite 600
Casper, WY 82601

Wendy J. Soto, Executive Director
Commission on Judicial Conduct & Ethics
P.O. Box 2645
Cheyenne, WY 82003
Phone: (307) 778-7792

BEFORE THE COMMISSION ON JUDICIAL
CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

AMENDED NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS

To: Honorable Ruth Neely
Municipal Court Judge
City of Pinedale
P.O. Box 1386
Pinedale, Wyoming 82941

A. *Factual Background.*

1. Judge Ruth Neely is a Municipal Court Judge, presiding over the Municipal Court of the Town of Pinedale, Wyoming. Judge Neely holds her position pursuant to the provisions of Wyoming Statutes § 5-6-101, *et seq*., and Chapter 23 of the Municipal Code of the Town of Pinedale. Judge Neely has served as a Municipal Judge for approximately 21 years.

2. In 2001 Judge Neely was appointed Magistrate by then Circuit Court Judge John Crow. The purpose of this appointment was to confer authority upon Judge Neely to perform marriage ceremonies in accordance with Wyoming Statute § 20-1-106. Upon his appointment to the bench, Circuit Court Judge Curt A. Haws continued Judge Neely's appointment in the same capacity. Since her appointment in 2001, Judge Neely has performed numerous civil marriage ceremonies in her capacity as Circuit Court Magistrate.

3. On October 17, 2014, in the case of *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. 2014), the United States District Court for the District of Wyoming, following established Tenth Circuit Court of Appeals precedence, determined that same sex couples enjoyed the same constitutional right to participate in civil marriage as heterosexual couples. Judge Skavdahl's ruling was not appealed and became the law of the state of Wyoming the following Monday, October 20, 2014.

4. Sometime during the week of December 8, 2014, Judge Neely was contacted by Ned Donovan, a reporter for the local papers in Sublette County, Wyoming. Judge Neely participated in an interview, or at least a conversation with Donovan on the subject of same sex marriage. During the course of the conversation or the interview, Judge Neely informed Donovan that she would be unable to perform same sex marriages as a result of her religious beliefs. Judge Neely was quoted by Donovan as saying "When law and religion conflict, choices have to be made. I

have not yet been asked to perform a same sex marriage."

5. The substance of Judge Neely's conversation or interview with Donovan, including the quoted language appeared in the Sublette Examiner on December 11, 2014 and may have appeared in other local publications in that timeframe.

6. As a result of these publications and conversations with Judge Neely, Judge Haws suspended Judge Neely's authority to perform marriage ceremonies on or about January 15, 2015.

7. In the meantime, Judge Neely, with the advice of Judge Haws, voluntarily refrained from performing marriage ceremonies for any couples, heterosexual or otherwise, and the last marriage ceremony performed by Judge Neely occurred on December 13, 2014.

8. In response to inquiries from this Commission, Judge Neely has admitted to making the comments attributed to her in the newspaper article and has reiterated her position with respect to same sex marriage, citing her religious beliefs and her First Amendment rights, presumably to the free exercise of religion.

9. On April 27, 2015 the Honorable Judge Ruth Neely's counsel Herbert K. Doby filed the *Motion to Appear Pro Hac Vice* on behalf of Kenneth J. Connolly, Douglas J. Wardlow, and James A. Campbell. See *Motion to Appear Pro Hac Vice*, April 27, 2015. The *Verified Answer*, which indicated that

James A. Campbell, Kenneth J. Connelly, and Douglas G. Wardlow work for the Alliance Defending Freedom, was filed concurrently with the *Motion to Appear Pro Hac Vice*. *Id*.; *see also Verified Answer*, April 27, 2015. The *Order Granting Motion to Appear Pro Hac Vice* was entered June 10, 2015. *Order Granting Motion to Appear Pro Hac Vice*, June 10, 2015.

10. The Alliance Defending Freedom[1] (hereinafter, "ADF") is an organization that discriminates and advocates for the discrimination of persons based upon sexual orientation and actively pursues a political agenda that includes opposing marriage equality. See generally, http://www.adflegal.org. The ADF describes itself as, "an alliance building legal organization that advocates for the right of people to freely live out their faith." See, http://www.adflegal.org/about-us/faq. Its mission statement is, "to keep the doors open for the Gospel by advocating for religious liberty, the sanctity of life, and marriage and family." *Id*. The ADF solicits support for its political agenda on its website, solicits donations in support of its political causes and allows users to share via Facebook ADF's political message. (*Id*., *see also*, http://www.adflegal.org/issues/marriage/redesigning-society).

---

[1] The ADF specializes in legal work where it believes religious freedom is being violated. *See*, *http://www.adflegal.org/about-us*. The ADF president, Alan Sears, co-wrote a fiercely anti-gay booked, called *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*. *See*, *http://www.adflegal.org/detailspages/biography-details/alan-sears*.

B. *Code of Judicial Conduct.*

1. The following provisions of the Wyoming Code of Judicial Conduct are implicated by the facts recited above:

Canon 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary.

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.1. Compliance with the Law.

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2. Promoting Confidence in the Judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Canon 2. A judge shall perform the duties of judicial office.

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.2. Impartiality and Fairness.

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3. Bias, Prejudice, and Harassment.

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, *sexual orientation*, marital status, socioeconomic status, or political affiliation, and shall not prevent court staff, court officials, or others subject to the judge's direction and control to do so. (Emphasis added.)

Rule 2.4 External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or

organization is in a position to influence the judge.

Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 3.6 Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the basis identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of the Rule when the judge's attendance is an isolated event that could not reasonable be perceived as an endorsement of the organization's practices.

2. Judge Neely's stated position with respect to same sex marriage and her subsequent engagement to James A. Campbell, Kenneth J. Connelly, Douglas G. Wardlow of the Alliance Defending Freedom Organization, and her affiliation with the Alliance Defending Freedom Organization, precludes her from

discharging the obligations of the above-cited Canons and Rules of Judicial Conduct, not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge.

C. *Notification of Members of Adjudicatory Panel.*

1. The following are members of the Adjudicatory Panel: Mel Orchard, Presiding Officer, Honorable Wendy Bartlett and Barbara Dilts.

D. *Advisement.*

1. Pursuant to Rule 8(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, Judge Neely is hereby advised that she shall have twenty (20) days from the date of service of the instant *Amended Notice of Commencement of Formal Proceedings* within which to file a written, verified answer to the allegations above made. Her response, if any, should be served on the undersigned counsel for the CJCE.

DATED this 28 day of August, 2015.

Patrick Dixon (Wyo. Bar #5-1504)
104 S. Wolcott, Suite 600
Casper, Wyoming 82601

(307) 234-7321
(307) 234-0677 (facsimile)
Disciplinary Counsel

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 28th day of August, 2015, I served the above and foregoing ***Amended Notice of Commencement of Formal Proceedings*** via email or U.S. mail, postage prepaid, as noted below:

VIA EMAIL dobylaw@embarqmail.com
Herbert K. Doby
Attorney at Law
P.O. Box 130
Torrington, Wyoming 82240

VIA EMAIL kconnelly@adflegal.org
James A. Campbell
Kenneth J. Connelly
Douglas G. Wardlow
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260

VIA orchard@spencelawyers.com
Melvin C. Orchard, III
Presiding Officer/Hearing Officer
The Spence Law Firm, LLC
Spence & McCalla
P.O. Box 548
Jackson, Wyoming 83001-0548

VIA U.S. MAIL
Wendy Soto, Executive Director
Commission on Judicial Conduct and Ethics
P.O. Box 2645
Cheyenne, WY 82003

Patrick Dixon

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	COMMISSION ON JUDICIAL CONDUCT AND ETHICS No. 2014-27

COMMISSION ON JUDICIAL CONDUCT AND ETHICS
Official Record
FILED
Date: 10/9/15
Wendy J. Soto

VERIFIED AMENDED ANSWER TO NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS

The Honorable Ruth Neely, Respondent, for her Verified Amended Answer to the Amended Notice of Commencement of Formal Proceedings (the "Notice") filed by the Commission on Judicial Conduct and Ethics (the "Commission"), states and alleges as follows:

1. Except as expressly admitted or otherwise specifically pleaded herein, Respondent denies each and every allegation in the Notice and puts the Commission to its strict proof thereof.

2. Respondent admits the allegations contained in Section A, Paragraph 1 of the Notice.

3. With respect to the allegations contained in Section A, Paragraph 2 of the Notice:

a. Respondent admits that former Circuit Court Judge John Crow appointed her as a Circuit Court Magistrate with the authority to perform marriages;

b. Respondent admits that, upon his appointment to the bench, Circuit Court Judge Curt A. Haws appointed Respondent as Circuit Court Magistrate;

c. Respondent admits that since her initial appointment in or around 2001, she has performed numerous civil marriage ceremonies as a Circuit Court Magistrate; and

d. Respondent denies each and every remaining allegation contained in Section A, Paragraph 2.

4. With respect to the allegations contained in Section A, Paragraph 3 of the Notice:

a. Respondent states that the case of *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. 2014), speaks for itself; and

b. Respondent states that the remaining allegations contained in Section A, Paragraph 3 do not call for a response, but to

the extent that a response is deemed necessary, Respondent denies those allegations in their entirety.

5. With respect to the allegations contained in Section A, Paragraph 4 of the Notice:

a. Respondent admits that she was contacted by reporter Ned Donovan in December 2014;

b. Respondent admits that Ned Donovan made inquiries of her regarding the topic of same-sex marriage;

c. Respondent admits that she informed Ned Donovan that solemnizing same-sex marriages would violate her religious beliefs;

d. Respondent admits that she was quoted by Ned Donovan as saying: "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage"; and

e. Respondent denies each and every remaining allegation contained in Section A, Paragraph 4.

6. With respect to the allegations contained in Section A, Paragraph 5 of the Notice:

a. Respondent admits that an article authored by Ned Donovan appeared in the Sublette Examiner on December 11, 2014;

b. Respondent admits that the article included the language that is quoted in Section A, Paragraph 4 of the Notice;

c. Respondent admits that similar reports may have appeared in other local publications; and

d. Respondent is without sufficient information to respond to the remaining allegations contained in Section A, Paragraph 5 of the Notice and therefore denies those allegations.

7. With respect to the allegations contained in Section A, Paragraph 6 of the Notice:

a. Respondent admits that on or about January 15, 2015, Judge Haws suspended her from performing marriage ceremonies; and

b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 6.

8. With respect to the allegations contained in Section A, Paragraph 7 of the Notice:

a. Respondent admits that she voluntarily refrained from performing marriage ceremonies before Judge Haws suspended her from performing them;

b. Respondent states that the last marriage ceremony she performed occurred on December 31, 2014; and

c. Respondent denies each and every remaining allegation contained in Section A, Paragraph 7.

9. With respect to the allegations contained in Section A, Paragraph 8 of the Notice:

a. Respondent admits that, in response to an inquiry from the Commission, she cited her First Amendment rights and reiterated that solemnizing same-sex marriages would violate her religious beliefs; and

b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 8.

10. Respondent denies each and every allegation contained in Section B, Paragraph 1 of the Notice.

11. Respondent denies each and every allegation contained in Section B, Paragraph 2 of the Notice.

12. Section C, Paragraph 1 of the Notice does not call for a response.

13. Section D, Paragraph 1 of the Notice does not call for a response.

First Affirmative Defense

The Notice fails to state a claim upon which relief can be granted.

Second Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by the First Amendment to the United States Constitution.

Third Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by Article I, Sections 20 and 21 of the Wyoming Constitution.

Fourth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by the First Amendment to the United States Constitution.

Fifth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

Sixth Affirmative Defense

Applying the provisions of the Wyoming Code of Conduct that the Commission cites in Section B of the Notice would, under these circumstances, constitute a religious test in violation of Article VI, Clause 3 of the United States Constitution.

Seventh Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, constitute a religious test in violation of Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

Eight Affirmative Defense

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice are vague and overbroad in violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.

Ninth Affirmative Defense

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice are vague and overbroad in violation of Article 1, Sections 6, 7, and 20 of the Wyoming Constitution.

Tenth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section

B of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

Eleventh Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under Article 1, Sections 2, 3, and 34 of the Wyoming Constitution.

Twelfth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate the Establishment Clause of the First Amendment to the United States Constitution.

Thirteenth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Notice would, under these circumstances, violate the state constitutional provisions that address the establishment of religion, including Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

Fourteenth Affirmative Defense

These proceedings violate Respondent's right to due process protected by the Fourteenth Amendment to the United States Constitution.

Fifteenth Affirmative Defense

These proceedings violate Respondent's right to due process protected by Article 1, Sections 6 and 7 of the Wyoming Constitution.

Sixteenth Affirmative Defense

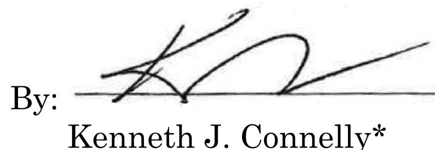
These proceedings and the Rules Governing the Commission violate the separation of governmental powers required by Article 2, Section 1 of the Wyoming Constitution.

Seventeenth Affirmative Defense

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B of the Amended Notice would, under these circumstances, violate Respondent's right to freedom of association protected by the First Amendment to the United States Constitution.

DATED this 9th day of October, 2015.

Respectfully Submitted,

By: 

Kenneth J. Connelly*

James A. Campbell*
Kenneth J. Connelly*
Douglas G. Wardlow*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
jcampbell@alliancedefendingfreedom.org
kconnelly@alliancedefendingfreedom.org
dwardlow@alliancedefendingfreedom.org
(480) 444-0020 Fax: (480) 444-0028

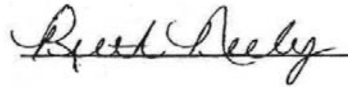
Herbert K. Doby
WSB #5-2252
P.O. Box 130
Torrington, WY 82240
dobylaw@embarqmail.com
(307) 532-2700 Fax: (307) 532-2706

Attorneys for Respondent
**Admitted Pro Hac Vice*

VERIFICATION OF ANSWER

I, Ruth Neely, the undersigned, do hereby swear and affirm, under penalty of perjury, that the information contained in my Verified Amended Answer to the Notice of Commencement of Formal Proceedings of the Commission on Judicial Conduct and Ethics is true and accurate.

Dated this 30th day of September, 2015



Signature

INSTRUCTIONS TO NOTARY

This form must be the product of an oath, not merely an acknowledgment. Before the verification is signed you must:

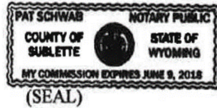
1. Place the affiant under oath:
2. Ensure that the affiant understands that all assertions are sworn to as accurate and that the affiant is subject to the penalty of perjury for any false statement; and
3. Have the verification signed in your presence.

STATE OF WYOMING)
) SS
COUNTY OF SUBLETTE)

Subscribed and sworn to me this 30th day of September, 2015.

By Ruth Neely.

Notary Public



My Commission Expires: 6-9-18

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2015, I served the foregoing Verified Amended Answer by electronic mail on the following:

Patrick Dixon, Esp.
Dixon & Dixon, LLP
104 South Wolcott
Street, Suite 600
Casper, WY 82601
pdixon@aol.com

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

Kenneth J. Connelly

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	))))))))	No. 2014-27

COMMISSION ON JUDICIAL CONDUCT
AND ETHICS
Official Record
FILED 9/30/15
Date:
Wendy J. Soto

NOTICE OF CONFESSION OF MOTION TO DISMISS

WHEREAS, on or about August 28, 2015, the Commission on Judicial Conduct and Ethics filed an Amended *Notice of Commencement of Formal Proceedings*; and said Amended Notice set forth additional factual allegations in Paragraph 10 and the footnote to Paragraph 10 and alleged the additional violation of Rule 2.4 and Canon III, Rule 3.6 of the Wyoming Code of Judicial Conduction;

WHEREAS on or about September 16, 2015 the Honorable Ruth Neely filed a motion to dismiss the Amended Notice; and

WHEREAS, the parties are in agreement that the Commission on Judicial Conduct and Ethics may withdraw these additional allegations.

COMES NOW the undersigned counsel for the Commission on Judicial Conduct and Ethics and

hereby concedes THE HONORABLE RUTH NEELY'S MOTION TO DISMISS THE NEW CLAIMS IN THE COMMISSION'S AMENDED NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS. In so doing, counsel represents to the Hearing Officer that the parties have conferred and are in agreement that the matter may proceed to disposition upon the Commission's *Notice of Commencement of Formal Proceedings*. Accordingly, upon entry of the ORDER DISMISSING AMENDED CLAIMS, Judge Neely will file an Amended Answer to the Notice of Commencement of Formal Proceedings.

DATED this 28th day of September, 2015.

Patrick Dixon (Wyo. Bar #5-1504)
104 S. Wolcott, Suite 600
Casper, Wyoming 82601
(307) 234-7321
(307) 234-0677 (facsimile)
Disciplinary Counsel

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 28th day of September, 2015, I served the above and foregoing ***Notice of Confession of Motion to Dismiss*** via email or U.S. mail, postage prepaid, as noted below:

VIA EMAIL
dobylaw@embarqmail.com
Herbert K. Doby
Attorney at Law
P.O. Box 130
Torrington, Wyoming 82240

VIA EMAIL
kconnelly@adflegal.org
James A. Campbell
Kenneth J. Connelly
Douglas G. Wardlow
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260

VIA EMAIL
orchard@spencelawyers.com
Melvin C. Orchard, III
Presiding Officer / Hearing Officer
The Spence Law Firm, LLC
Spence & McCalla
P.O. Box 548
Jackson, Wyoming 83001-0548

VIA U.S. MAIL
Wendy Soto, Executive Director
Commission on Judicial Conduct and Ethics
P.O. Box 2645
Cheyenne, WY 82003

Patrick Dixon

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING**

An inquiry concerning	)	
The Honorable Ruth Neely	)	
Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	)	

COMMISSION ON JUDICIAL CONDUCT AND ETHICS
No. 2014-27
Official Record
FILED
Date: 12/30/15
Wendy J. Soto

MEMORANDUM OF LAW IN SUPPORT OF THE HONORABLE RUTH NEELY'S MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

INTRODUCTION 1

BRIEF SUMMARY OF FACTS 4

ARGUMENT 7

I. Legal Standard for Summary Judgment 7

II. Judge Neely Did Not Violate the Wyoming Code of Judicial Conduct. 8

A. Judge Neely Did Not Violate Rule 2.3 8

B. Judge Neely Did Not Violate Rule 2.2. 11

C. Judge Neely Did Not Violate Rule 1.2. 14

D. Judge Neely Did Not Violate Rule 1.1. 17

III. Applying the Code to Punish Judge Neely Violates Her Rights to the Free Exercise of Religion and Free Speech under the U.S. and Wyoming Constitutions. 18

A. Applying the Code to Punish Judge Neely Violates Her Religious Freedom 18

1. Applying the Code to Punish Judge Neely Imposes an Unconstitutional Religious Test 18

2. Applying the Code to Punish Judge Neely Violates Her Free-Exercise Rights 21

3. Applying the Code to Punish Judge Neely Violates the Establishment Clause 27

B. Applying the Code to Punish Judge Neely Violates Her Freedom of Expression. 27

1. Applying the Code to Punish Judge Neely Discriminates Based on Viewpoint 28

2. Applying the Code to Punish Judge Neely Burdens Religious Expression and Discriminates Based on the Content of Speech 29

C. Applying the Code to Punish Judge Neely Cannot Withstand Strict Scrutiny. 30

1. The Commission Does Not Have a Compelling Interest in Punishing Judge Neely 31

2. The Commission's Efforts to Achieve its Asserted Interests Are Not Narrowly Tailored 33

IV. This Proceeding Violates Judge Neely's Due Process Rights Under the U.S. and Wyoming Constitutions............... 35

V. The Code Provisions that the Commission Invokes to Punish Judge Neely Are Vague and Overbroad in Violation of the U.S. and Wyoming Constitutions. 39

CONCLUSION...44

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS STATE OF WYOMING

An inquiry concerning The Honorable Ruth Neely Municipal Court Judge and Circuit Court Magistrate Ninth Judicial District Pinedale, Sublette County	)))))))))))	COMMISSION ON JUDICIAL CONDUCT AND ETHICS No. 2014-27 Official Record FILED Date: 11/9/15 Wendy J. Soto

---

THE HONORABLE RUTH NEELY'S RESPONSE TO THE COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

INTRODUCTION 1

RESPONSE TO THE COMMISSION'S STATEMENT OF FACTS.. 1

ARGUMENT 4

I. Judge Neely Did Not Violate the Wyoming Code of Judicial Conduct by Respectfully Stating Her Religious Beliefs about Marriage.................................. 4

A. Judge Neely Did Not Violate Rule 1.1 Because She Has Not Refused to Comply with the Law. 5

B. Judge Neely Did Not Violate Rule 1.2 Because No Reasonable Person Would Conclude that Her Religious Expression about Marriage Compromises Her Impartiality When Adjudicating Cases....................... 6

C. Judge Neely Did Not Violate Rule 2.2 Because She Has Not Refused to Uphold the Law or to Impartially Perform a Required Duty of Her Judicial Office. 7

D. Judge Neely Did Not Violate Rule 2.3 Because Her Stated Beliefs about Marriage Do Not Relate to a Required Duty of Her Judicial

Office or Manifest Prejudice Based on Sexual Orientation............................ 9

II. The Advisory Opinions that the Commission Cites Are Not Persuasive Because They Do Not Consider Concrete Facts, Wyoming Law, or the Constitutional Arguments that this Case Presents. 10

III. Applying the Code to Punish Judge Neely through this Proceeding Violates Her Rights Protected under the U.S. and Wyoming Constitutions. 12

CONCLUSION...14

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 APR 29 2016 Carol Thompson CAROL THOMPSON, CLERK

THE HONORABLE RUTH NEELY'S BRIEF IN SUPPORT OF VERIFIED PETITION OBJECTING TO THE COMMISSION'S RECOMMENDATION

Herbert K. Doby
WSB#5-2252
P.O. Box 130
Torrington, WY 82240
dobylaw@embarqmail.com
(307) 532-2700
Fax: (307) 532-2706

James A. Campbell*
Kenneth J. Connelly*
Douglas G. Wardlow*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
jcampbell@ADFlegal.org
kconnelly@ADFlegal.org
dwardlow@ADFlegal.org
(480) 444-0020
Fax: (480) 444-0028

Attorneys for the Honorable
Ruth Neely
*Admitted *Pro Hac Vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT OF THE ISSUES 3

STATEMENT OF THE CASE....................................5

I. Statement of the Facts 5

A. Judge Neely's Two Judicial Positions 5

B. Magistrates and Marriage Solemnization.....6

C. Exemplary Judicial Service to the Pinedale Community...8

D. Judge Neely's Religious Beliefs and Practices 10

E. Seeking Guidance after a Federal Court Invalidates Wyoming's Laws Defining Marriage...12

F. *Pinedale Roundup* Reporter Ned Donovan's Inquiry...13

G. Same-Sex Marriage in Pinedale and Sublette County 14

H. Ned Donovan's Articles................................16

I. The Origin of this Proceeding 18

J. The Commission's Investigation and Judge Neely's Additional Request for Guidance 19

II. Statement of the Proceedings Below 21

STANDARD OF REVIEW 23

ARGUMENT 24

I. The lynchpin of the Commission's analysis—that Judge Neely expressed an unwillingness to follow the law—is incorrect...24

II. The government cannot remove Judge Neely from her municipal judge position 28

A. Judge Neely did not violate the Code in her position as a municipal judge 28

B. Removing Judge Neely from her municipal judge position would violate her religious liberty under the Wyoming Constitution.....................29

1. The Commission seeks to punish Judge Neely for her religious beliefs and manifests hostility toward those beliefs....................29

2. Removing Judge Neely from her municipal judge position would violate Article 1, Section 18's mandate that no person be removed from office because of her religious beliefs..................................31

3. Removing Judge Neely from her municipal judge position would violate the Wyoming Constitution's general protection for the free exercise of religion 34

C. Removing Judge Neely from her municipal judge position would violate her free-exercise rights under the U.S. Constitution 41

1. The U.S. Constitution forbids the state from punishing citizens or expelling public officials because of their religious beliefs..41

2. Strict scrutiny applies to the Commission's attempt to remove Judge Neely from her municipal judge position 42

3. The Commission cannot satisfy strict scrutiny...44

D. Removing Judge Neely from her municipal judge position would violate her free-speech rights under the Wyoming and U.S. Constitutions..49

1. Removing Judge Neely from her municipal judge position would discriminate based on the content and viewpoint of her speech.............................49

2. The Commission erred in concluding that Judge Neely's speech is not constitutionally protected 51

E. The Code provisions at issue, as applied to Judge Neely's removal as a municipal judge, are impermissibly vague in violation of the Wyoming and U.S. Constitutions.....................................53

III. The government cannot remove Judge Neely from her position as a part-time circuit court magistrate 55

A. Judge Neely did not violate the Code in her magistrate position 55

1. Judge Neely did not violate Rule 2.3 because her stated religious beliefs about marriage do not relate to a required magisterial duty or manifest prejudice based on sexual orientation......................55

2. Judge Neely did not violate Rule 2.2 because she has not refused to uphold the law or to impartially perform a required magisterial duty.......................................57

3. Judge Neely did not violate Rule 1.2 because no fully informed, reasonable person would conclude that she acted improperly 58

4. Judge Neely did not violate Rule 1.1 because she has not refused to comply with the law 61

B. Removing Judge Neely from her magistrate position would violate her religious liberty under the Wyoming Constitution................................61

1. Removing Judge Neely from her magistrate position would violate Article 1, Section 18's mandate that no person be removed from office because of her religious beliefs...61

2. Removing Judge Neely from her magistrate position would violate the Wyoming Constitution's general protection for the free exercise of religion 62

C. Removing Judge Neely from her magistrate position would violate her free-exercise rights under the U.S. Constitution 63

1. Strict scrutiny applies to the Commission's attempt to remove Judge Neely from her magistrate position 63

2. The Commission cannot satisfy strict scrutiny...65

D. Removing Judge Neely from her magistrate position would violate her free-speech rights under the Wyoming and U.S. Constitutions...67

E. The Code provisions at issue, as applied to Judge Neely's removal as a magistrate, are impermissibly vague in violation of the Wyoming and U.S. Constitutions......................................68

CONCLUSION..68

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 JUN 15 2016 CAROL THOMPSON, CLERK by CHIEF DEPUTY

BRIEF OF RESPONDENT

Attorneys for Commission

Patrick Dixon (Wyo. Bar #5-1504)
Britney F. Turner (Wyo.

Attorneys for Petitioner

Herbert K. Doby, Esq.
P.O. Box 130
Torrington, WY 82240

Bar #7-5108
104 S. Wolcott, Suite
600
Casper, Wyoming 82601
(307) 234-7321
(307) 234-0677
(facsimile)

Tim Newcomb (Wyo.
Bar #5-2594
P.O. Box 928
Laramie, Wyoming
82072-3122
(307) 761-0206

James A. Campbell,
Esq.
Kenneth J. Connelly,
Esq.
Douglas G. Wardlow,
Esq.
Alliance Defending
Freedom
15100 N. 90th Street
Scottsdale, Arizona
85260

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

I. Statement of the Issues 1

II. Statement of the Case 1

A. Nature of the Case 1

B. Course of the Proceedings...............................1

C. Disposition by the Commission on Judicial Conduct and Ethics 2

D. Statement of Facts Relevant to Issues...........3

III. Statement of the Argument.................................8

A. Standard of Review 8

B. Issue I 8

1. Introduction 8

2. Judge Neely Violated Rule1.1.................13

3. Judge Neely Violated Rule1.2.................14

4. Judge Neely Violated Rule2.2.................19

5. Judge Neely Violated Rule2.3.................20

6. Ethical Opinions on the Same-Sex Marriage Question 24

C. Issue II..32

1. Wyoming Constitutional Considerations 32

2. United States Constitutional Considerations...46

3. The Code of Judicial Conduct is Not Unconstitutionally Vague 49

Conclusion 53

Appendices...56

***

2. **United States Constitutional Considerations.**

As with the Wyoming Constitution, the United States Constitution does not exempt Judge Neely's conduct from sanction under the Wyoming Code of Judicial Conduct.

While Rules 1.1, 1.2, 2.2 and 2.3 of the Wyoming Code of Judicial Conduct are neutral and of general applicability, because their application here regulate communications based on content, as stated in the preceding section, they are subject to strict scrutiny.

As discussed above, the United States Supreme Court holds that protecting the public perception of judicial integrity is a compelling interest of the highest order that fully satisfies strict scrutiny. In order for such a law or rule to survive strict scrutiny, the proponent must demonstrate that it (1) serves a compelling governmental interest and (2) is narrowly tailored. *Williams-Yulee*, _ U.S. _, _, 135 S. Ct. at 1666. In fact, *Williams-Yulee* citing *Caperton*, 556 US at 889, calls this "a state interest of the highest order." *Williams-Yulee*, 135 S. Ct. at 1666.

Strict scrutiny applies to facially content neutral laws that cannot be "justified without reference to the content of the regulated speech," or that were adopted by the government due to a "disagreement with the message [the speech] conveys," [citation omitted] those laws will be considered content based

regulations. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. at 2227.

The Code is subject to strict scrutiny, despite being facially content neutral because Wyoming Code of Judicial Conduct Rules 2.2 and 2.3 (B) require the Commission to assess a judge's speech or conduct to determine whether she has acted "impartially" or "manifested bias or prejudice." The Wyoming Code Rules 2.2 and 2.3 (B) cannot be "justified without reference to the content of the regulated speech." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. at 2227. Furthermore, because the Wyoming Code of Judicial Conduct Rules 1.1, 1.2, 2.2 and 2.3, as applied to Judge Neely's conduct, raise a hybrid of constitutional claims, that is, free-exercise combined with freedom of speech claims, strict scrutiny applies herein. *Smith*, 494 U.S. at 881-82.

In addition to serving a compelling state interest, the Wyoming Code of Judicial Conduct is narrowly tailored to effectuate that interest and so survive strict scrutiny review. Rather than be directed to the general population, it is narrowly tailored to regulate the conduct of one of the most exclusive groups in our society, the judiciary. Read together with the Comments it narrowly regulates only the conduct of a judge that might defeat the identified interests it serves.

Judge Neely avers that her free exercise of religion and free speech rights under the First Amendment exempt her from compliance with the Wyoming Code of Judicial Conduct. Her averment is

unpersuasive. The Wyoming Code of Judicial Conduct serves a compelling governmental interest – “a state interest of the highest order” – because it preserves and promotes a public confidence in the integrity of Wyoming’s judiciary and allows the judiciary to function with integrity and impartiality to those who come before it, given that the judiciary’s authority depends in large measure on the public’s willingness to respect and follow its decisions. See *Williams-Yulee*, 135 S. Ct. at 1666.

***