IN THE SUPREME COURT, STATE OF WYOMING

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),	)	**J-16-0001**
v.	)	
WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS	)	
(Respondent).	)	

AMICI CURIAE BRIEF OF CONCERNED SCHOLARS AND JUDGES *ET AL.* IN SUPPORT OF PETITIONER THE HONORABLE RUTH NEELY

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Amici include law professors, retired judges, public service organizations, and practitioners, all of whom support free speech and are very concerned that the State of Wyoming is imposing a religious test for public office.

***Amicus* Family Research Council ("FRC").** FRC is a non-profit organization located in Washington, D.C., that exists to develop and analyze governmental policies for consistency with traditional religious and family values. FRC believes in protecting the rights of all people to adhere to and pursue their religious beliefs. Integral to this freedom of religion is the freedom to engage, or decline to engage, in the solemnization of marriages. Additionally, FRC believes that a person does not relinquish the right to exercise his or her sincerely held religious beliefs when assuming a public position, even if that position is a judgeship. Consequently, Family Research Council has a strong interest in ensuring judges are not forced to participate in marriage ceremonies against which they have a sincerely held religious beliefs.

***Amicus* Christian Legal Society ("CLS").** CLS is an association of Christian attorneys, law students, and law professors founded in 1963. Throughout its fifty-three years, CLS has included attorneys serving as judges, as well as attorneys who hope one day to serve their communities in a judicial capacity. The Commission's recommendation that a judge be disqualified from holding judicial office because of her religious beliefs is antithetical to the basic principles upon which this country was founded. The United States Constitution itself provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const. Art. VI, cl. 3.

CLS has long believed that pluralism, which is essential to a free society, prospers only when the First Amendment rights of all Americans are protected, regardless of the current popularity of their speech. For that reason, CLS was instrumental in passage of the Equal Access Act, 20 U.S.C. §§ 4071-4074 ("EAA), which protects the right of all students to meet for "religious, political, philosophical or other" speech on public secondary school campuses. 20 U.S.C. §4071(a). *See* 128 *Cong. Rec.* 11784-85 (1982) (Senator Hatfield statement recognizing CLS's contribution to the drafting of the EAA). Courts have recognized that the EAA protects both religious and LGBT student groups' right to meet for disfavored speech. *See, e.g., Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (EAA protects religious student group); *Straights and Gays for Equality v. Osseo Area School No. 279*, 540 F.3d 911 (8th Cir. 2008) (EAA protects LGBT student group).

Since 1975, CLS has worked to protect free speech and assembly for all persons through its legal advocacy arm, the Center for Law and Religious Freedom, which

promotes religious liberty in the courts, the legislature, and the public square. As the Declaration of Independence acknowledges as a "self-evident truth," all persons are endowed with rights by their Creator that no government may abridge. Among such inalienable rights are religious liberty and freedom of speech.

SUMMARY OF ARGUMENT

The Wyoming Commission on Judicial Conduct and Ethics ("Commission") has created a religious test for judicial office by invoking an improper and expansive interpretation of the rules prohibiting judges from creating an "appearance of impropriety." According to this new test, those with a religious conviction that does not permit them to personally solemnize a same-sex wedding ceremony are not qualified to be a judge. No law mandates such an interpretation, however, for the state cannot force a judge to participate and officiate in a same sex wedding. Judges have discretion whether to solemnize marriages, and there are alternate solemnizers. Nor does the state have an interest in forcing a particular judge to participate in a ceremony, because there is no burden on the same sex couple who wants to marry.

Given that judges have discretion when deciding whether to serve as a wedding celebrant, it appears that the Commission is singling out and attempting to remove the Honorable Ruth Neely because the public knows about her views regarding marriage. However, judges have significant freedom to express their views and engage in conduct that discloses their views on controversial topics. If the government has the power to remove a judge in this case, no judge's career is safe because all judges hold beliefs on contentious issues.

Moreover, because Judge Neely will not be performing a ministerial duty, but actually participating in a same sex wedding, the state cannot force her to participate in a same sex wedding in violation of her free speech and free exercise rights. *See Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557 (1995); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

ARGUMENT

"We sometimes think, loosely, that ethics is good and therefore more is better. But 'more' is not better if 'more' exacts higher costs, measured in terms of vague rules that impose unnecessary disqualifications. Overly-broad ethics rules impose costs on the judicial system and litigants, which we must consider when determining whether 'impartiality might reasonably be questioned.'" Ronald D. Rotunda, *The Propriety of a Judge's Failure to Recuse When Being Considered for Another Position*, 19 Geo. J. Legal Ethics, 1187, 1195 (2006).

The high cost of such vague rules is squarely before this Court, as the Commission has singled out the religious belief of a judge for prejudicial treatment. It reaches this result by construing Wyoming Code of Judicial Conduct ("Code") Rule 1.2's "appearance of impropriety" in such a sweeping sense so as to create a de facto religious test for office –a test that the Honorable Ruth Neely has apparently failed, and that would render sitting members of the United States Supreme Court subject to impeachment. The Court should not accept the Commission's invitation to interpret the vague language, "appearance of impropriety," to impose such an unconstitutional test. It should reverse the Commission's Order Granting Commission's Motion for Partial Summary Judgment

and Denying Judge Neely's Motion for Summary Judgment ("Order"). The Commission claims that a Wyoming judge can refuse to officiate and participate in a wedding for any reason or for no reason except the judge must officiate if the couple is gay. The Commission is imposing a legal requirement on Judge Neely that is not a generally applicable law (it only applies to a particular religious objection) and hence violates the First Amendment, as discussed more fully below.[2]

I. THE STATE CANNOT FORCE JUDGE NEELY TO PARTICIPATE AND OFFICIATE IN A SAME SEX WEDDING, BECAUSE JUDGES ARE NOT OBLIGATED TO PARTICIPATE IN EVERY WEDDING AND THERE ARE OTHERS ABLE TO PARTICIPATE IN THE WEDDING.

The Commission has taken the drastic step of recommending the removal of a sitting judge from both her Municipal Court Judge and Circuit Court Magistrate positions for not participating in a hypothetical wedding ceremony that she has not been asked to officiate or that she could not be required to participate in even if she were asked. The Court should not permit this unprecedented attempt to oust a well-regarded and competent jurist over her religious beliefs.

The State of Wyoming cannot force a judge to participate in a wedding ceremony, because judges are not obligated to participate in any wedding. Pursuant to Wyo. Stat.

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[2] See below for an expanded discussion of *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993). In that case, a church challenged city ordinances that prohibited killing of animals but allowed exceptions, such as fishing, and rat extermination. The ordinances were not of general applicability and hence violated the Free Exercise clause.

Sec. 20-1-106(a), the Wyoming Legislature expressly provides that the participation of judges is not required for the solemnization of marriages:

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

Wyo. Stat. § 20-1-106(a). Thus, the category of people authorized to perform marriage ceremonies far exceeds those occupying judicial office.

With the inclusion of so many potential solemnizers, Wyo. Stat. Sec. 20-1-106 is in accord "with states' moves in the early nineteenth century to empower more diverse personnel to perform marriages and to eliminate difficulties or fees associated with banns or licenses, [as part of] a shared public policy facilitating monogamous marriage." Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* 39 (2002). In fact, no state in the nation confines those authorized to solemnize civil marriages to those in judicial office. (*See* Table of Marriage Statutes, attached hereto as Appendix A.)

Moreover, Wyoming law does not compel any judge to perform any wedding ceremony. Merely identifying those parties who are eligible to solemnize marriages is not a statutory mandate that any such party must solemnize any and all marriages. Even if the focus is limited to the judicial offices identified in the statute, no mandate can be deduced. To wit,

> "Every district or circuit court judge . . . supreme court justice, [and] magistrate . . . *may* perform the ceremony of marriage in this state."

Wyo. Stat. § 20-1-106(a) (emphasis added).

If the Wyoming Legislature intended to deny a judge the discretion of whether to participate in a wedding ceremony, it would not only have confined authorized solemnizers to those in judicial office, it would have also employed a duty-imposing term such as "shall" or "must," not the permissive or discretionary "may." But it did not, nor should it have, for merely being a judge does not require one to participate in the wedding ceremony of every requesting couple.

For instance, a judge is not obligated to participate in the wedding of his ex-wife to the man who cuckolded the judge. Nor is a judge obligated to participate in the wedding of a man who killed his daughter. Nor is a judge obliged to participate in the wedding of a Ku Klux Klan member who burned a cross in the judge's yard. In each of these examples, the notion of the state forcing any of those judges to participate in the marriage celebration is absurd. Yet, the Wyoming Commission on Judicial Conduct actually argues that every Wyoming Judge *must* perform wedding ceremonies if the couple is gay. (*See* Order 4 ("Judge Neely violated Rule 1.1 by stating her unwillingness to follow Wyoming law (perform same sex weddings)….".) The Commission thereby re-writes Wyoming Stat. Sec. 20-1-106(a) to read: "Every district or circuit court judge . . . supreme court justice, [and] magistrate . . . *may* perform the ceremony of marriage in this state but *shall* perform the ceremony of marriage for any gay couple that requests such service." (emphasis added). Thus, the Commission singles out a particular religious belief and, in effect, announces that any judge who holds such a religious belief cannot hold judicial office.

Moreover, forcing the judges to participate in these wedding ceremonies does not interfere with the right of any gay couple to marry. There is always someone else who can perform the ceremony, whether a judge or otherwise. Thus, given the other options, it makes the Commission's singling out of Judge Neely because of her religious beliefs much more troubling, especially considering that there are no penalties for non-judicial celebrants who refuse to participate in certain weddings, e.g., a Catholic priest who declines to wed a Muslim couple, or a Catholic priest who denies to marry a gay couple. In each case, the Catholic priest is exercising the power of the state – the power to solemnize a wedding – but the law imposes no such restrictions on those official acts.

The expansion of the franchise of marriage to same-sex couples entails the issuance of the marriage license, not the state's provision of a particular judge to solemnize the marriage. The Commission wrongly pronounced that, "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." (Order 5.) On the contrary, Judge Neely's decision to not participate in an optional privilege of her job does not amount to an inability to act impartially with respect to any law.

It is instructive to consider the actual holding of *Guzzo*:

> Defendants 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.

Guzzo v. Mead, No. 14-CV-200-SWS, 2014 WL 5317797, at * 7 (D. Wyo. Oct. 17,

2014). Thus, the holding says nothing regarding solemnization, but only provides that no state official my refuse to issue marriage licenses to same sex couples.

Marriage in Wyoming is "a civil contract" (Wyo. Stat. § 20-1-101) that requires three acts in order to be enforceable: licensure (§ 20-1-103); solemnization (§ 20-1-106); and certification (§ 20-1-107). The only one of those three components that Judge Neely's comment to the reporter potentially concerns is the second, though her choosing to participate in a wedding has no bearing upon either the legality of the contractual arrangement itself or the ability of the couple to satisfy the requisite conditions of marriage in Wyoming.[3] Furthermore, given that the statute contemplates non-judicial parties capable of solemnizing a marriage, a judge's participation in the ceremony is not required in order for the contract to be enforceable. Accordingly, Judge Neely's exercise of her discretion to participate in a marriage ceremony, regardless of the sexual orientation of the couple involved, has no bearing on her partiality regarding any law.

II. THE STATE HAS NO INTEREST IN FORCING A PARTICULAR JUDGE TO PARTICIPATE IN A CEREMONY THAT VIOLATES HER RELIGIOUS BELIEFS BECAUSE THERE IS NO BURDEN ON THE SAME SEX COUPLE WHO WANTS TO MARRY.

The Commission states that "the law under *Guzzo* and the enforcement of the Wyoming Code of Judicial Conduct are facially neutral and of *general applicability*."

[3] Because Judge Neely's comments did not pertain to the issuance of a marriage license, her case is completely inapposite from that of Kim Davis in *Miller v. Davis*, 123 F. Supp. 3d 924 (E.D. Ky. 2015), which concerned the issuance of marriage licenses. (*Contra* Order 6.)

(Order 5 (emphasis added).) That is false. This law is not of general applicability. As explained above, the state does not require every judge to participate in all weddings. Accordingly, because the state does not have any generally applicable law that it is making Judge Neely comply with, it is simply forcing her to violate her religious beliefs.

The state has no interest in compelling Judge Neely to participate in a ceremony that violates her religious beliefs. The Commission claims that any burden on Judge Neely is justified because "she is . . . a judge . . . [and] is required to apply and follow the law of the land irrespective of religious beliefs." (Order 5.) However, there is no evidence or reason to believe that Judge Neely will not follow the law.

Many religious traditions refuse to solemnize or bless same-sex relationships. The teachings of the Catholic Church, the LDS Church, Islamic Law, Orthodox Judaism, and many Protestant Christian churches do not recognize same-sex relationships as marriages. The Commission is really saying that no judge who belongs to any of these religions is allowed to be a Wyoming judge. That is nonsense. All Judge Neely did is articulate what she believes. Other judges may not say out loud what they believe, but they still believe it. Her belief does not interfere with any duty state law imposes on her, because state law does not mandate judges to participate in gay marriages.

Judge Neely is flouting no law here, nor is she denying any same-sex couple from being married. Even postulating a "hypothetical couple," even they would not have been harmed, because there would be another judge in line who would participate in their ceremony. Accordingly, given the lack of harm and the absence of a law requiring judges to participate in marriages, this is not like a judge who refuses to hear a case involving an

auto accident because the judge does not like the sleeping arrangements of the plaintiff.

Thus, it appears the true motivation of the Commission is to either force Judge Neely to violate her religious beliefs or punish her for holding fast to her convictions. If the Commission's Order is upheld, judicial office in Wyoming will no longer be an option for anyone who embraces a religious belief that does not encompass gay marriage. This case is just the first step of purging those Wyoming judges who share Judge Neely's conscientious beliefs.

The Commission has run rough shod over a Wyoming citizen's conscience and constitutional rights, and in so doing, has provided yet another unfortunate example of the government's attempt to purge religion from public life. *See* Ronald D. Rotunda, *The Government Campaign to Weaken Religion*, Verdict: Legal Analysis and Commentary from Justia (April 28, 2016, 1:16 AM), https://verdict.justia.com/2015/06/09/the-government-campaign-to-weaken-religion.

III. GIVEN THAT JUDGES ARE NOT REQUIRED TO PERFORM WEDDINGS AND THAT THEY HAVE DISCRETION WHEN DECIDING WHETHER TO SERVE AS A WEDDING CELEBRANT, IT APPEARS THAT THE COMMISSION IS SINGLING OUT AND ATTEMPTING TO REMOVE JUDGE NEELY BECAUSE THE PUBLIC KNOWS ABOUT HER VIEWS REGARDING MARRIAGE.

The Commission claimed, with no support in the record, that Judge Neely's comment to the reporter "has given the impression to the public that judges, sworn to uphold the law, *may* refuse to follow the law of the land."[4] (Order 4 (emphasis added).)

[4] In support of its conclusion that Judge Neely violated Rule 1.2, the Commission states, "A judge announcing her decision to pick and choose the law she wishes to follow

The Commission further deemed Judge Neely's comments ineligible for constitutional protection "[b]ecause she was not speaking as a private citizen on matters of public concern." (*Id.* at 6.) The Commission thus concluded that Judge Neely violated Rules 2.2 and 2.3 of the Wyoming Code of Judicial Ethics, and in so doing, essentially declared that a judge espousing her religious views on an issue is a per se violation of the Code. This interpretation and enforcement of the Code is unconstitutional.

> In *R.A.V. v. City of St. Paul* [505 U.S. 377] (1992), the City of St. Paul charged R.A.V. (a juvenile) with violating a city ordinance prohibiting bias-motivated disorderly conduct. R.A.V. burned a cross on a black family's lawn. The Court held that the ordinance, on its face, violated the First Amendment because it imposed special prohibitions on speakers who express views on certain disfavored subjects, "race, color, creed, religion or gender," while not punishing displays containing abusive invective if they are not addressed to those topics. For example, under the law, one could hold up a sign saying, all "anti-Catholic bigots" are misbegotten, but not

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undermines her position and our system of justice." (Order 4.) One wonders if the Commission would come to the same conclusion regarding the Attorney General of Virginia's decision not to defend Virginia's voter-ID law, *see* Editorial, *Herring the Activist AG*, Richmond Times Dispatch, April 3, 2016, http://www.richmond.com/opinion/our-opinion/article_c01a1521-b8dc-51b3-8e9a-52917000195e.html, or President Obama's order to then Attorney General Eric Holder to stop defending the federal Defense of Marriage Act, *see* Statement of the Attorney General on Litigation Involving the Defense of Marriage Act, United States Dep't Justice (Feb. 23, 2011), https://www.justice.gov/opa/pr/statement-attorney-general-litigation-involving-defense-marriage-act.

> that all papists are because the former does not attack a religion while the latter does.

Ronald D. Rotunda, *Marriage Litigation in the Wake of* Obergefell v. Hodges, Verdict: Legal Analysis and Commentary from Justia (April 28, 2016, 2:08 AM), https://verdict.justia.com/2015/09/28/marriage-litigation-in-the-wake-of-obergefell-v-hodges.

Here, a judge is permitted to not participate in a wedding for a variety of reasons—the judge is too busy; the people getting married are not willing to pay the judge's rate for his services; the groom-to-be cuckolded the judge and the judge does not want to celebrate the wedding of the cuckolder to his ex-wife; the groom-to-be ran over the judge's dog a decade earlier. Like the law in *R.A.V.*, only certain categories are within the Commission's prohibition. The Commission's mandate does not apply to a judge who refuses to participate in weddings that favor traditional marriage; it applies only to judges who refuse to participate in a same-sex marriage. This distinction the Commission makes between favored and disfavored speech looks a lot like the law that *R.A.V.* invalidated because it drew distinctions between favored and disfavored speech.

The Commission claims that by expressing her religious convictions, Judge Neely created the impression of impropriety. (*See* Order 4.) The Commission does not support this inference with any basis in any decision that Judge Neely has ever made. This inference allows the Commission to disqualify all judges who share Judge Neely's religious beliefs. (Until a few years ago, the President of the United States said he did not believe in gay marriage.)

[T]he vague "appearance of impropriety" standard . . . can easily lead to ad hoc and ex post facto analysis. Any allegation that a judge violated the ethics rules is a very serious matter, for it attacks his integrity and bona fides. . . .

[C]onsider the American Bar Association's move away from the "appearance of impropriety" standard in the Model Rules of Professional Conduct. While the Model Rules govern lawyers, not judges, its cautions are still relevant. The Model Code of Professional Responsibility, which used to govern lawyer conduct, included the "appearance of impropriety" standard. The ABA ultimately concluded that the standard was "question-begging," and therefore rejected it in 1983 when it adopted the Model Rules. Even before that date, the ABA warned, if the "appearance of impropriety" language were a disciplinary rule, "it is likely that the determination of whether particular conduct violated the rule would have degenerated ... into a determination on an instinctive, ad hoc or even ad hominem basis." Commentators, such as Professor Geoffrey C. Hazard, Jr., the reporter for the original Model Rules, referred to the old "appearance of impropriety" standard as "garbage."

The Second Circuit generally advised, over a quarter of a century ago: "When dealing with ethical principles ... we cannot paint with broad strokes. The lines are fine and must be so marked .... [T]he conclusion in a particular case can be reached only after painstaking analysis of the facts and precise application of precedent." The Restatement (Third) of the Law Governing Lawyers has also cautioned us not to read too much into vague phrases like "appearance of impropriety":

> [T]he breadth [of vague, 'catch-all' provisions] creates the risk that a charge using only such language would fail to give fair warning of the nature of the charges to a lawyer respondent and that subjective and idiosyncratic considerations could influence a hearing panel or reviewing court in resolving a charge based only on it. That is particularly true of the 'appearance of impropriety' principle (stated generally as a canon in the 1969 ABA Model Code of Professional Responsibility but purposefully omitted as a standard for discipline from the 1983 ABA Model Rules of Professional Conduct). Tribunals accordingly should be circumspect in avoiding overbroad readings or resorting to standards other than those fairly encompassed within an applicable lawyer code.

Rotunda, 19 Geo. J. Legal Ethics at 1192-94 (footnotes omitted).

"Creating, after the fact, a rule that applies to only one case is simply a way of engaging in ad hoc, ex post facto, ad hominem attacks. This form of attack is so old and shopworn that we identify it using names in Latin, a language long dead. The advantage (and unfairness) of creating unique rules is that we no longer have to worry about precedent because we apply the rule to only one case." *Id.* at 1187. This is precisely what has occurred here.

Had the reporter asked Judge Neely if she was excited to conduct the wedding of paupers who could not pay her for her services, and she stated she would decline any such invitation, the Commission would not have found her in violation of the Rules, despite paupers' clear right to marriage in Wyoming.

> Hurling the charge of "appearance of impropriety" (if I may mix metaphors) is like using a blunderbuss. Nowadays, we might describe a blunderbuss as a weapon of terror. It was not a very precise weapon, and marksmen never used it. Instead, it was good for crowd control, when the goal was to shoot multiple balls simultaneously in the hope of hitting something. The ABA has chosen to arm any lawyer or any pundit with the equivalent of a blunderbuss to attack a judge by giving its imprimatur to a charge of violating the "appearances of impropriety." The attack on the judge's ethics seldom results in discipline or disqualification, but it does serve to besmirch and tarnish a judge's reputation.

Ronald D. Rotunda, *Judicial Ethics, the Appearance of Impropriety, and the Proposed New ABA Judicial Code*, 34 Hofstra L. Rev. 1337 (2006), desktop publishing example p. 105, available at http://ssrn.com/abstract_id=926437. Tragically, the Commission's blunderbuss attack will not merely damage Judge Neely's reputation, but will destroy her career.

IV. JUDGES HAVE GREAT LEEWAY TO EXPRESS THEIR VIEWS OR ENGAGE IN CONDUCT THAT DISCLOSES THEIR VIEWS ON CONTROVERSIAL TOPICS.

The Commission's statement that Judge Neely's comment "has given the impression to the public that judges, sworn to uphold the law, may refuse to follow the law of the land" (Order 4), is sheer speculation and completely unsupported by the record. "As Justice Souter noted in the campaign-financing case of *Nixon v. Shrink Missouri Government PAC,* 'We have never accepted mere conjecture as adequate to carry a First Amendment burden. . . .' [528 U.S. 377, 392 (2000).]" Ronald D. Rotunda, *Constitutionalizing Judicial Ethics: Judicial Elections after* Republican Party of Minnesota v. White*,* Caperton*, and* Citizens United," 64 Ark. L. Rev. 1, 18 (2011).

The Commission's speculation is not excused merely because Judge Neely holds judicial office. "Judges are human beings who cannot divorce themselves from the real world, public discussions, newspapers, and the like." *Id.* at 31. Moreover, the United States Supreme Court has held that a state cannot prohibit a judge from speaking out on controversial issues.

> In *Republican Party of Minnesota v. White* [536 U.S. 765 (2002)], 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 because 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. Indeed, the Minnesota Constitution specifically requires judges to be "learned in the law."

Id. at 36 (footnotes omitted).[5]

> The Court not only acted as if it were applying a rigorous, strict-scrutiny test, as the summary of its reasoning shows, but *White* explicitly adopted that test with vigor, holding that those who seek to justify content-based restrictions of speech by candidates for public office have the burden to prove that any restriction is (1) narrowly tailored, to serve (2) a compelling state interest. The strict-scrutiny test represents very active judicial review, which is why the Court almost always invalidates laws when the Court evaluates them under strict scrutiny.

Id. at 37-38.

As set forth above, the Commission is not applying the Code in a neutral and generally applicable fashion; therefore, strict scrutiny applies. The Commission cannot carry its burden under that demanding standard, as it is unnecessarily proscribing Judge Neely's First Amendment interests, and in so doing, is, in effect, creating a religious test for public office: no individual can remain a state judge if he or she believes that marriage is a joining of man and woman, a view, by the way, that four justices of the U.S. Supreme Court embraced.[6] Three of them are still on the Court and U.S. Supreme Court

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[5] Like Minnesota's, Wyoming's Constitution also requires its judges to be "learned in the law." *See* Wyo. Const. Art. 5, §§ 8, 12.

[6] The Wyoming Constitution expressly forbids religious tests for office. *See* Art. 1 §18 ("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***;

justices can perform wedding ceremonies. Is the State of Wyoming stating that these three Justices should be impeached because they will not perform a gay wedding?

"Nor can it plausibly be argued that any part of the Constitution requires any person, association, or polity to remain discreetly silent while progressive and LGBT positions on human sexuality become the new orthodoxy in public policy, lest dissent—openly expressed by word or deed—be taken as conclusive evidence of intolerance, lack of social sophistication, 'homophobia,' or actionable hostility." Robert A. Destro, *You Have the Right to Remain Silent: Does the U.S. Constitution Require Public Affirmation of Same-Sex Marriage?*, 27 BYU L. Rev. 397, 398-99 (2013).

Furthermore, Judge Neely's revelation of her convictions regarding a particular issue has no greater potential to give the public an impression of her fidelity to the law than activities which the Code expressly contemplate and encourage Wyoming judges to participate in, e.g., "speaking, writing, teaching, or participating in scholarly research projects. . . . [and] educational, religious, charitable, fraternal or civic extrajudicial activities," (Canon 3, Rule 3.1, Cmt. 1); "participat[ing] in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit," (Canon 3, Rule

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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" (emphasis added)).

3.7(A)); and attending local political caucuses (Canon 4, Rule 4.1, Cmt. 4). The Order would render all such activities fodder for impeachment proceedings by judges' ideological opponents, and would force judges, out of concern for self-preservation, to become judicial automatons removed, hermit-like, from the very society they are entrusted to judge.

V. IF THE GOVERNMENT HAS THE POWER TO REMOVE A JUDGE SIMPLY BECAUSE THE PUBLIC IS AWARE OF HER VIEWS ABOUT A CONTROVERSIAL TOPIC, NO JUDGE'S CAREER IS SAFE BECAUSE ALL JUDGES HOLD BELIEFS ON CONTENTIOUS ISSUES, AND THUS OTHERS (EVEN NONRELIGIOUS JUDGES) ARE ALSO AT RISK OF REMOVAL.

"Unnecessarily imprecise ethics rules allow and tempt critics, with minimum effort, to levy a plausible and serious charge that the judge has violated the ethics rules. Overuse not only invites abuse with frivolous charges that have the patina of legitimacy, but also may eventually demean the seriousness of a charge of being unethical." Rotunda, 34 Hofstra L. Rev., at 102. What the Commission is attempting to do to Judge Neely sends a stark warning to Wyoming jurists: If your personal convictions do not align with those of an unelected panel of commissioners, you will be labeled a bigot and run off the bench. Conform, or else.

This is nothing less than an inside attack on judicial independence.

> The most prominent of those who fear the loss of judicial independence is Justice Sandra Day O'Connor. Since her retirement, she has repeatedly warned that "the breadth of the unhappiness being currently expressed, not only by public officials, but in public opinion polls in the nation" against federal judges is "certainly cause for great concern." She expressed alarm that some of these vocal critics would "strong-arm" the judiciary into adopting their policies. "It takes a lot of degeneration before a country falls into dictatorship," she warned, "but we should avoid these ends by avoiding

> these beginnings." Unless we act now, Justice O'Connor predicted, we risk nothing less than dictatorship.

Ronald D. Rotunda, *Judicial Transparency, Judicial Ethics, and a Judicial Solution: An Inspector General for the Courts*, 41 Loy. U. Chi. L.J. 301, 301-302 (2009) (footnotes omitted).

Here, the Commission concluded that Judge Neely violated Rule 2.3:

> 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 marriage, 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.

(Order 5 (emphasis added).) However, Judge Neely did not announce that she would not follow the law. Indeed, she announced that she would follow it, because Wyoming law allows her to refuse to participate in any wedding ceremony for any reason.

Threats to judicial independence typically concern how a judge is likely to rule in a given matter. What the Commission is doing here transcends the confines of litigation and affects the private, deeply held religious beliefs of a judge—or judicial candidate for that matter. The Commission has thus positioned itself as an assembly of high priests, cloaked with inquisitional authority to define orthodoxy and excommunicate judicial heretics.

VI. JUDGE NEELY WILL NOT BE PERFORMING A MINISTERIAL DUTY. SHE WOULD BE PARTICIPATING IN THE SAME SEX WEDDING.

As set forth above, no one is preventing the same sex couple from marrying or securing a wedding license. Here, the judge is saying, "I choose not to participate in your

wedding, but there are plenty of other judges or others who would be happy to help." This is a perfectly constitutional response.

In *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), the Court did *not* rule that sexual orientation is a suspect class. Accordingly, the right to same-sex marriage that is implied in due process and equal protection cannot violate "what the First Amendment specifically guarantees—free expression and free exercise of religion." Ronald D. Rotunda, *Shooting a Wedding is Different than Taking a Passport Photo*, National Review, (April 28, 2016, 8:27 AM), http://www.nationalreview.com/article/420923/obergefell-sexual-orientation-strict-scrutiny.

> In *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston* [515 U.S. 557] (1995), gays, lesbians, and bisexuals sought to march as a group in the St. Patrick's Day parade. The parade's organizers refused, and the state courts ruled that this exclusion violated Massachusetts's public-accommodation law, prohibiting discrimination because of sexual orientation. Justice Souter, for a *unanimous* Court, ruled that requiring the defendants to alter any expressive content of their parade violated free speech. The Court noted that the parade organizers in *Hurley* did not exclude gays as individuals; they did exclude a gay-pride float, and the First Amendment protected that exclusion.
>
> *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah* [508 U.S. 520] (1993) involved the Santerias, who engage in ritual sacrifice of animals such as doves. When a Santeria church planned a house of worship in Hialeah, the city passed several ordinances to forbid the animal-killing that would occur there. Justice Kennedy, for the Court, invalidated them. To survive a Free Exercise challenge, *the law must be neutral and of general applicability.* For example, a state law that forbids all murder applies to a religion that believes in child sacrifice. In contrast, the law in *Babalu* fails that test because, the Court explained, it allowed animal deaths for nonreligious reasons, such as fishing or *extermination of rats* in the home. There were no dissents.

> These cases apply to those who, on free-speech or free-exercise grounds, do not want to participate in gay marriages. For example, the state could provide that a photographer cannot refuse to take a passport photo of a customer because the customer is gay. Taking passport photos is not a work of art, and neither is it a participation in anything.

Id. (emphasis added).

However, the passport photographer is different from a judge hired to solemnize a wedding ceremony, because solemnizing the wedding is more than taking a passport photo: the judge participates in the marriage. "*Hurley* indicates that the state cannot force this participation," for refusing to participate in a wedding ceremony "is part of free expression, like a parade that excludes a gay-pride float." *Id.*

"[I]n *Babalu*, the Court said that the law must be neutral and of general applicability to be valid under Free Exercise. The laws forbidding discrimination on the basis of sexual orientation are not neutral if they do not prohibit a [judge] from refusing participation in a wedding for other reasons. For example, 'You cuckolded me, and now you are marrying my ex-wife.' Or: 'I will not participate in your wedding by [solemnizing your marriage] because you intentionally ran over my dog yesterday.' *Hurley, Babalu*, and similar cases all suggest that the state . . . could not force [a judge] to participate in gay weddings, because sexual orientation is not a suspect class." *Id.* Accordingly, the state cannot force Judge Neely to participate in a same sex wedding in violation of her free speech and free exercise rights.

CONCLUSION

For the foregoing reasons, the Court should reverse the Commission's Order and reject the Commission's recommendation to remove the Honorable Ruth Neely from her positions as Municipal Court Judge and Circuit Court Magistrate.

Dated: May 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 2016, the original and six copies of the foregoing document were sent to the Wyoming Supreme Court via [United Parcel Service/FedEx], and the foregoing document was served by mailing a copy of it via United States mail, first class, postage prepaid, to the following:

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APPENDIX A: TABLE OF MARRIAGE STATUTES

State	Statute	Authorized Marriage Solemnizers
Alabama	Ala. Code § 30-1-7	(a) *Generally.* Marriages may be solemnized by any licensed minister of the gospel in regular communion with the Christian church or society of which the minister is a member; by an active or retired judge of the Supreme Court, Court of Criminal Appeals, Court of Civil Appeals, any circuit court, or any district court within this state; by a judge of any federal court; or by an active or retired judge of probate.
Alaska	Alaska Stat. Ann. § 25.05.261	(a) Marriages may be solemnized (1) by a minister, priest, or rabbi of any church or congregation in the state, or by a commissioned officer of the Salvation Army, or by the principal officer or elder of recognized churches or congregations that traditionally do not have regular ministers, priests, or rabbis, anywhere within the state; (2) by a marriage commissioner or judicial officer of the state anywhere within the jurisdiction of the commissioner or officer; or (3) before or in any religious organization or congregation according to the established ritual or form commonly practiced in the organization or congregation.
Arizona	Ariz. Rev. Stat. Ann. § 25-124	**A.** The following are authorized to solemnize marriages between persons who are authorized to marry: 1. Duly licensed or ordained clergymen. 2. Judges of courts of record. 3. Municipal court judges. 4. Justices of the peace. 5. Justices of the United States supreme court. 6. Judges of courts of appeals, district courts and courts that are created by

		an act of Congress if the judges are entitled to hold office during good behavior. 7. Bankruptcy court and tax court judges. 8. United States magistrate judges. 9. Judges of the Arizona court of military appeals.
Arkansas	Ark. Code Ann. § 9-11-213	(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons: (1) The Governor; (2) Any former justice of the Supreme Court; (3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more; (4) Any justice of the peace, including any former justice of the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55; (5) Any regularly ordained minister or priest of any religious sect or denomination; (6) The mayor of any city or town; (7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or (8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.
California	Cal. Fam. Code Ann. § 400	Although marriage is a personal relation arising out of a civil, and not a religious, contract, a marriage may be solemnized by any of the following who is 18 years of age or older: (a) A priest, minister, rabbi, or authorized person of any religious denomination. A person authorized by this subdivision shall not be required to solemnize a marriage that is contrary to the tenets of his or her faith. Any refusal to solemnize a marriage under this subdivision, either by an individual or by a religious denomination, shall not affect the tax-exempt status of any entity.

		(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record in this state. (c) A judge or magistrate who has resigned from office. (d) Any of the following judges or magistrates of the United States: (1) A justice or retired justice of the United States Supreme Court. (2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior. (3) A judge or retired judge of a bankruptcy court or a tax court. (4) A United States magistrate or retired magistrate. (e) A legislator or constitutional officer of this state or a Member of Congress who represents a district within this state, while that person holds office.
Colorado	Colo. Rev. Stat. Ann. § 14-2-109	(1) A marriage may be solemnized by a judge of a court, by a court magistrate, by a retired judge of a court, by a public official whose powers include solemnization of marriages, by the parties to the marriage, or in accordance with any mode of solemnization recognized by any religious denomination or Indian nation or tribe. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the county clerk and recorder within sixty-three days after the solemnization. Any person who fails to forward the marriage certificate to the county clerk and recorder as required by this section shall be required to pay a late fee in an amount of not less than twenty dollars. An additional five-dollar late fee may be assessed for each additional day of failure to comply with the forwarding requirements of this subsection (1) up to a maximum of fifty dollars. For purposes of determining whether a late fee shall be assessed pursuant to this subsection (1), the date of forwarding shall be deemed to be the date of postmark.

Connecticut	Conn. Gen. Stat. Ann. § 46b-22	(a) Persons authorized to solemnize marriages in this state include (1) all judges and retired judges, either elected or appointed, including federal judges and judges of other states who may legally join persons in marriage in their jurisdictions, (2) family support magistrates, family support referees, state referees and justices of the peace who are appointed in Connecticut, and (3) all ordained or licensed members of the clergy, belonging to this state or any other state. All marriages solemnized according to the forms and usages of any religious denomination in this state, including marriages witnessed by a duly constituted Spiritual Assembly of the Baha'is, are valid. All marriages attempted to be celebrated by any other person are void. (b) No public official legally authorized to issue marriage licenses may join persons in marriage under authority of a license issued by himself, or his assistant or deputy; nor may any such assistant or deputy join persons in marriage under authority of a license issued by such public official.
Delaware	Del. Code Ann. tit. 13, § 106	(a) A clergyperson or minister of any religion, current and former Judges of this State's Supreme Court, Superior Court, Family Court, Court of Chancery, Court of Common Pleas, Justice of the Peace Court, federal Judges, federal Magistrates, clerks of the peace of various counties and current and former judges from other jurisdictions with written authorization by the clerk of the peace from the county in Delaware where the ceremony is to be performed may solemnize marriages between persons who may lawfully enter into the matrimonial relation. The Clerk of the Peace in each county for good cause being shown may: (1) Allow by written permit within that Clerk's respective county, any duly sworn member of another state's judiciary, to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation. (2) Allow by written permit within that Clerk's respective county, the Clerk of the Peace from another county within the State to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation.

		Within the limits of any incorporated municipality, the Mayor thereof may solemnize marriages between persons who may lawfully enter into matrimonial relation. Marriages shall be solemnized in the presence of at least 2 reputable witnesses who shall sign the certificate of marriage as prescribed by this chapter. Marriages may also be solemnized or contracted according to the forms and usages of any religious society. No marriage shall be solemnized or contracted without the production of a license issued pursuant to this chapter.
District of Columbia	D.C. Code Ann. § 46-406	(b) For the purpose of preserving the evidence of marriages in the District of Columbia, a marriage authorized under this chapter, may be solemnized by the following persons at least 18 years of age at the time of the marriage: (1) A judge or retired judge of any court of record; (2) The Clerk of the Court or such deputy clerks of the Court as may, in writing, be designated by the Clerk and approved by the Chief Judge of the Court; (3) A minister, priest, rabbi, or authorized person of any religious denomination or society; (4) For any religious society which does not by its own custom require the intervention of a minister for the celebration of marriages, a marriage may be solemnized in the manner prescribed and practiced in that religious society, with the license issued to, and returns to be made by, a person appointed by the religious society for that purpose; (5) A civil celebrant; (6) A temporary officiant; (7) Members of the Council; (8) The Mayor of the District of Columbia; or (9) The parties to the marriage.
Florida	Fla. Stat. Ann. § 741.07	(1) All regularly ordained ministers of the gospel or elders in communion with some church, or other ordained clergy, and all judicial officers,

		including retired judicial officers, clerks of the circuit courts, and notaries public of this state may solemnize the rights of matrimonial contract, under the regulations prescribed by law. Nothing in this section shall make invalid a marriage which was solemnized by any member of the clergy, or as otherwise provided by law prior to July 1, 1978.
Georgia	Ga. Code Ann. § 19-3-30	(c) The license shall be directed to the Governor or any former Governor of this state, any judge, including judges of state and federal courts of record in this state, city recorder, magistrate, minister, or other person of any religious society or sect authorized by the rules of such society to perform the marriage ceremony; such license shall authorize the marriage of the persons therein named and require the Governor or any former Governor of this state, judge, city recorder, magistrate, minister, or other authorized person to return the license to the judge of the probate court with the certificate thereon as to the fact and date of marriage within 30 days after the date of the marriage.
Hawaii	Haw. Rev. Stat. Ann. § 572-12	A license to solemnize marriages may be issued to, and the marriage rite may be performed and solemnized by any minister, priest, or officer of any religious denomination or society who has been ordained or is authorized to solemnize marriages according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, or any justice or judge or magistrate, active or retired, of a state or federal court in the State, upon presentation to such person or society of a license to marry, as prescribed by this chapter. Such person or society may receive the price stipulated by the parties or the gratification tendered.
Idaho	Idaho Code Ann. § 32-303	Marriage may be solemnized by any of the following Idaho officials: a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, the current or a former governor, the current lieutenant governor, a current or retired magistrate of the district court, a current mayor or by any of the following: a current federal judge, a current tribal judge of an Idaho Indian tribe or other tribal

		official approved by an official act of an Idaho Indian tribe or priest or minister of the gospel of any denomination. To be a retired justice of the supreme court, court of appeals judge, district judge or magistrate judge of the district court, for the purpose of solemnizing marriages, a person shall have served in one (1) of those offices and shall be receiving a retirement benefit from either the judges retirement system or the public employee retirement system for service in the Idaho judiciary.
Illinois	750 Ill. Comp. Stat. Ann. 5/209	(a) A marriage may be solemnized by a judge of a court of record, by a retired judge of a court of record, unless the retired judge was removed from office by the Judicial Inquiry Board, except that a retired judge shall not receive any compensation from the State, a county or any unit of local government in return for the solemnization of a marriage and there shall be no effect upon any pension benefits conferred by the Judges Retirement System of Illinois, by a judge of the Court of Claims, by a county clerk in counties having 2,000,000 or more inhabitants, by a public official whose powers include solemnization of marriages, or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group, provided that when such prescriptions require an officiant, the officiant be in good standing with his or her religious denomination, Indian Nation or Tribe or Native Group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, both parties to the marriage, shall complete the marriage certificate form and forward it to the county clerk within 10 days after such marriage is solemnized.
Indiana	Ind. Code Ann. § 31-11-6-1	Sec. 1. Marriages may be solemnized by any of the following: (1) A member of the clergy of a religious organization (even if the cleric does not perform religious functions for an individual congregation), such as a minister of the gospel, a priest, a bishop, an archbishop, or a rabbi. (2) A judge. (3) A mayor, within the mayor's county. (4) A clerk or a clerk-treasurer of a city or town, within a county in which the city or town is located.

		(5) A clerk of the circuit court. (6) The Friends Church, in accordance with the rules of the Friends Church. (7) The German Baptists, in accordance with the rules of their society. (8) The Bahai faith, in accordance with the rules of the Bahai faith. (9) The Church of Jesus Christ of Latter Day Saints, in accordance with the rules of the Church of Jesus Christ of Latter Day Saints. (10) An imam of a masjid (mosque), in accordance with the rules of the religion of Islam.
Iowa	Iowa Code Ann. § 595.10	Marriages may be solemnized by: 1. A judge of the supreme court, court of appeals, or district court, including a district associate judge, associate juvenile judge, or a judicial magistrate, and including a senior judge as defined in section 602.9202, subsection 3. 2. A person ordained or designated as a leader of the person's religious faith.
Kansas	Kan. Stat. Ann. § 23-2504	(b) The following are authorized to be officiating persons: (1) Any currently ordained clergyman or religious authority of any religious denomination or society; (2) any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church of the denomination to which the licentiate or appointee belongs, if not restrained from so doing by the discipline of that church or denomination; (3) any judge or justice of a court of record; (4) any municipal judge of a city of this state; and (5) any retired judge or justice of a court of record.
Kentucky	Ky. Rev. Stat. Ann. § 402.050	(1) Marriage shall be solemnized only by: (a) Ministers of the gospel or priests of any denomination in regular communion with any religious society; (b) Justices and judges of the Court of Justice, retired justices and judges

		of the Court of Justice except those removed for cause or convicted of a felony, county judges/executive, and such justices of the peace and fiscal court commissioners as the Governor or the county judge/executive authorizes; or (c) A religious society that has no officiating minister or priest and whose usage is to solemnize marriage at the usual place of worship and by consent given in the presence of the society, if either party belongs to the society.
Louisiana	La. Stat. Ann. § 9:202	A marriage ceremony may be performed by: (1) A priest, minister, rabbi, clerk of the Religious Society of Friends, or any clergyman of any religious sect, who has attained the age of majority and is authorized by the authorities of his religion to perform marriages, and who is registered to perform marriages; (2) A state judge or justice of the peace.
Maine	Me. Rev. Stat. tit. 19-A, § 655	1. Persons authorized to solemnize marriages. The following may solemnize marriages in this State: A. If a resident of this State: (1) A justice or judge; (2) A lawyer admitted to the Maine Bar; or (3) Deleted. Laws 2001, c. 574, § 6. (4) A notary public under Title 4, chapter 19; B. Whether a resident or nonresident of this State and whether or not a citizen of the United States: (1) An ordained minister of the gospel; (2) A cleric engaged in the service of the religious body to which the cleric belongs; or (3) A person licensed to preach by an association of ministers, religious seminary or ecclesiastical body; and
Maryland	Md. Fam. Law Code Ann. § 2-406	(2) A marriage ceremony may be performed in this State by: (i) any official of a religious order or body authorized by the rules and

		customs of that order or body to perform a marriage ceremony; (ii) any clerk; (iii) any deputy clerk designated by the county administrative judge of the circuit court for the county; or (iv) a judge.
Massachusetts	Mass. Gen. Laws Ann. ch. 207, § 38	A marriage may be solemnized in any place within the commonwealth by the following persons who are residents of the commonwealth: a duly ordained minister of the gospel in good and regular standing with his church or denomination, including an ordained deacon in The United Methodist Church or in the Roman Catholic Church; a commissioned cantor or duly ordained rabbi of the Jewish faith; by a justice of the peace if he is also clerk or assistant clerk of a city or town, or a registrar or assistant registrar, or a clerk or assistant clerk of a court or a clerk or assistant clerk of the senate or house of representatives, by a justice of the peace if he has been designated as provided in the following section and has received a certificate of designation and has qualified thereunder;
Michigan	Mich. Comp. Laws Ann. § 551.7	Sec. 7. (1) Marriages may be solemnized by any of the following: (a) A judge of the district court, anywhere in this state. (b) A district court magistrate, anywhere in this state. (c) A municipal judge, in the city in which the judge is serving or in a township over which a municipal court has jurisdiction under section 9928 of the revised judicature act of 1961, 1961 PA 236, MCL 600.9928. (d) A judge of probate, anywhere in this state. (e) A judge of a federal court. (f) A mayor of a city, anywhere in a county in which that city is located. (g) A county clerk in the county in which the clerk serves, or in another county with the written authorization of the clerk of the other county. (h) For a county having more than 1,500,000 inhabitants, an employee of the county clerk's office designated by the county clerk, in the county in which the clerk serves. i) A minister of the gospel or cleric or religious practitioner, anywhere in

		this state, if the minister or cleric or religious practitioner is ordained or authorized to solemnize marriages according to the usages of the denomination. (j) A minister of the gospel or cleric or religious practitioner, anywhere in this state, if the minister or cleric or religious practitioner is not a resident of this state but is authorized to solemnize marriages under the laws of the state in which the minister or cleric or religious practitioner resides.
Minnesota	Minn. Stat. Ann. § 517.04	Civil marriages may be solemnized throughout the state by an individual who has attained the age of 21 years and is a judge of a court of record, a retired judge of a court of record, a court administrator, a retired court administrator with the approval of the chief judge of the judicial district, a former court commissioner who is employed by the court system or is acting pursuant to an order of the chief judge of the commissioner's judicial district, the residential school superintendent of the Minnesota State Academy for the Deaf and the Minnesota State Academy for the Blind, a licensed or ordained minister of any religious denomination, or by any mode recognized in section 517.18.
Mississippi	Miss. Code. Ann. § 93-1-17	Any minister of the gospel ordained according to the rules of his church or society, in good standing; any Rabbi or other spiritual leader of any other religious body authorized under the rules of such religious body to solemnize rites of matrimony and being in good standing; any judge of the Supreme Court, Court of Appeals, circuit court, chancery court or county court may solemnize the rites of matrimony between any persons anywhere within this state who shall produce a license granted as herein directed. Justice court judges and members of the boards of supervisors may likewise solemnize the rites of matrimony within their respective counties.
Missouri	Mo. Rev. Stat. Ann. § 451.100	Marriages may be solemnized by any clergyman, either active or retired, who is in good standing with any church or synagogue in this state. Marriages may also be solemnized, without compensation, by any judge,

		including a municipal judge. Marriages may also be solemnized by a religious society, religious institution, or religious organization of this state, according to the regulations and customs of the society, institution or organization, when either party to the marriage to be solemnized is a member of such society, institution or organization.
Montana	Mont. Code Ann. § 40-1-301	(1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.
Nebraska	Neb. Rev. Stat. Ann. § 42-108	Every judge, retired judge, clerk magistrate, or retired clerk magistrate, and every preacher of the gospel authorized by the usages of the church to which he or she belongs to solemnize marriages, may perform the marriage ceremony in this state. Every such person performing the marriage ceremony shall make a return of his or her proceedings in the premises, showing the names and residences of at least two witnesses who were present at such marriage.
Nevada	Nev. Rev. Stat. Ann. § 122.062	1. Any licensed, ordained or appointed minister or other church or religious official authorized to solemnize a marriage in good standing within his or her church or religious organization, or either of them, incorporated, organized or established in this State, or a notary public appointed by the Secretary of State pursuant to chapter 240 of NRS and in good standing with the Secretary of State, may join together as husband and wife persons who present a marriage license obtained from any county clerk of the State, if the minister, other church or religious official authorized to solemnize a marriage or notary public first obtains a certificate of permission to perform marriages as provided in NRS 122.062 to 122.073, inclusive.

New Hampshire	N.H. Rev. Stat. Ann. § 457:31	A marriage may be solemnized in the following manner: I. In a civil ceremony by a justice of the peace as commissioned by the state, by a state supreme court justice, superior court judge, or circuit court judge, and by judges of the United States appointed pursuant to Article III of the United States Constitution, by bankruptcy judges appointed pursuant to Article I of the United States Constitution, or by United States magistrate judges appointed pursuant to federal law; or II. In a religious ceremony by any minister of the gospel in the state who has been ordained according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination; by any member of the clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, and who resides in the state, after being licensed therefor by the secretary of state; or within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state.
New Jersey	N.J.S.A. 37:1-13	a. Authorization to solemnize marriages and civil unions. Each judge of the United States Court of Appeals for the Third Circuit, each judge of a federal district court, United States magistrate, judge of a municipal court, judge of the Superior Court, judge of a tax court, retired judge of the Superior Court or Tax Court, or judge of the Superior Court or Tax Court, the former County Court, the former County Juvenile and Domestic Relations Court, or the former County District Court who has resigned in good standing, surrogate of any county, county clerk, and any mayor or former mayor not currently serving on the municipal governing body or the deputy mayor when authorized by the mayor, or chairman of any township committee or village president of this State, every member of the clergy of every religion, and any civil celebrant who is certified by the Secretary of State to solemnize

		marriages or civil unions as set forth in subsection b. of this section, are hereby authorized to solemnize marriages or civil unions between such persons as may lawfully enter into the matrimonial relation or civil union; and every religious society, institution or organization in this State may join together in marriage or civil union such persons according to the rules and customs of the society, institution or organization. b. A civil celebrant shall be authorized to solemnize marriages or civil unions if certified to do so by the Secretary of State.
New Mexico	N.M. Stat. Ann. § 40-1-2	A. The civil contract of marriage is entered into when solemnized as provided in Chapter 40, Article 1 NMSA 1978. As used in Chapter 40, Article 1 NMSA 1978, "solemnize" means to join in marriage before witnesses by means of a ceremony. B. A person who is an ordained member of the clergy or who is an authorized representative of a federally recognized Indian nation, tribe or pueblo may solemnize the contract of marriage without regard to sect or rites and customs the person may practice. C. Active or retired judges, justices and magistrates of any of the courts established by the constitution of New Mexico, United States constitution, laws of the state or laws of the United States are civil magistrates having authority to solemnize contracts of marriage. Civil magistrates solemnizing contracts of marriage shall charge no fee therefor.
New York	NY DOM REL § 11	No marriage shall be valid unless solemnized by either: 1. A clergyman or minister of any religion, or by the senior leader, or any of the other leaders, of The Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of The Brooklyn Society for Ethical Culture, having its principal office in the borough of Brooklyn of the city of New York, or of the

		Westchester Ethical Society, having its principal office in Westchester county, or of the Ethical Culture Society of Long Island, having its principal office in Nassau county, or of the Riverdale-Yonkers Ethical Society having its principal office in Bronx county, or by the leader of any other Ethical Culture Society affiliated with the American Ethical Union; provided that no clergyman or minister as defined in section two of the religious corporations law, or Society for Ethical Culture leader shall be required to solemnize any marriage when acting in his or her capacity under this subdivision. 2. The current or a former governor, a mayor of a village, a county executive of a county, or a mayor, recorder, city magistrate, police justice or police magistrate of a city, a former mayor or the city clerk of a city of the first class of over one million inhabitants or any of his or her deputies or not more than four regular clerks, designated by him or her for such purpose as provided in section eleven-a of this article, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section. 3. A judge of the federal circuit court of appeals for the second circuit, a judge of a federal district court for the northern, southern, eastern or western district of New York, a judge of the United States court of international trade, a federal administrative law judge presiding in this state, a justice or judge of a court of the unified court system, a housing judge of the civil court of the city of New York, a retired justice or judge of the unified court system or a retired housing judge of the civil court of the city of New York certified pursuant to paragraph (k) of subdivision two of section two hundred twelve of the judiciary law, the clerk of the appellate division of the supreme court in each judicial department, a retired city clerk who served for more than ten years in such capacity in a city having a population of one million or more or a county clerk of a county wholly within cities having a population of one million or more; or,

North Carolina	NC ST §51-1	A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, either: (1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate; and b. With the consequent declaration by the minister or magistrate that the persons are husband and wife; or (2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.
North Dakota	ND ST 14-03-09	Marriages may be solemnized at any location within the state by: 1. All judges of courts of record; 2. Municipal judges; 3. Recorders, unless the board of county commissioners designates a different official; 4. Ordained ministers of the gospel, priests, and clergy, authorized by recognized denominations; and 5. By any individual authorized by the rituals and practices of any religious persuasion.
Ohio	OH ST § 3101.08	An ordained or licensed minister of any religious society or congregation within this state who is licensed to solemnize marriages, a judge of a county court in accordance with section 1907.18 of the Revised Code, a judge of a municipal court in accordance with section 1901.14 of the Revised Code, a probate judge in accordance with section 2101.27 of the Revised Code, the mayor of a municipal corporation in any county in which such municipal corporation wholly or partly lies, the superintendent of the state school for the deaf, or any religious society in conformity with the rules of its church, may join together as husband and wife any persons

		who are not prohibited by law from being joined in marriage.
Oklahoma	OK ST T. 43 § 7	A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge of any court in this state, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.
Oregon	OR ST § 106.120	(2) Marriages may be solemnized by: (a) A judicial officer; (b) A county clerk; (c) Religious congregations or organizations as indicated in ORS 106.150 (2); or (d) A clergyperson of any religious congregation or organization who is authorized by the congregation or organization to solemnize marriages.
Pennsylvania	PA ST 23 Pa.C.S.A. § 1503	**(a) General rule.**--The following are authorized to solemnize marriages between persons that produce a marriage license issued under this part: (1) A justice, judge or magisterial district judge of this Commonwealth. (2) A former or retired justice, judge or magisterial district judge of this Commonwealth who is serving as a senior judge or senior magisterial district judge as provided or prescribed by law; or not serving as a senior judge or senior magisterial district judge but meets the following criteria: . . . **(b) Religious organizations.**--Every religious society, religious institution or religious organization in this Commonwealth may join persons together in marriage when at least one of the persons is a member of the society, institution or organization, according to the rules and customs of the society, institution or organization.

Rhode Island	15 R.I. Gen. Laws Ann. § 15-3-5	Every ordained clergy or elder in good standing; every justice of the supreme court, superior court, family court, workers' compensation court, district court or traffic tribunal; the clerk of the supreme court; every clerk, administrative clerk, or general chief clerk of a superior court, family court, district court, or traffic tribunal; magistrates, special or general magistrates of the superior court, family court, traffic tribunal or district court; administrative clerks of the district court; administrators of the workers' compensation court; every former justice or judge and former administrator of these courts; every former chief clerk of the district court; every former clerk, administrative clerk, or general chief clerk of a superior court; the secretary of the senate; elected clerks of the general assembly; any former secretary of the senate; any former elected clerk of the general assembly who retires after July 1, 2007; judges of the United States appointed pursuant to Article III of the United States Constitution; bankruptcy judges appointed pursuant to Article I of the United States Constitution; and United States magistrate judges appointed pursuant to federal law, may join persons in marriage in any city or town in this state; and every justice and every former justice of the municipal courts of the cities and towns in this state and of the police court of the town of Johnston and the administrator of the Johnston municipal court, while he or she is serving as an administrator, and every probate judge and every former probate judge may join persons in marriage in any city or town in this state, and wardens of the town of New Shoreham may join persons in marriage in New Shoreham.
South Carolina	S.C. Code Ann. § 20-1-20	Only ministers of the Gospel, Jewish rabbis, officers authorized to administer oaths in this State, and the chief or spiritual leader of a Native American Indian entity recognized by the South Carolina Commission for Minority Affairs pursuant to Section 1-31-40 are authorized to administer a marriage ceremony in this State.
South Dakota	S.D. Codified Laws § 25-1-30	Marriage may be solemnized by a justice of the Supreme Court, a judge of the circuit court, a magistrate, a mayor, either within or without the corporate limits of the municipality from which the mayor was elected, or

		any person authorized by a church to solemnize marriages.
Tennessee	Tenn. Code Ann. § 36-3-301	a)(1) All regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age, having the care of souls, and all members of the county legislative bodies, county mayors, judges, chancellors, former chancellors and former judges of this state, former county executives or county mayors of this state, former members of quarterly county courts or county commissions, the governor, the speaker of the senate and former speakers of the senate, the speaker of the house of representatives and former speakers of the house of representatives, the county clerk of each county, former county clerks of this state who occupied the office of county clerk on or after July 1, 2014, and the mayor of any municipality in the state may solemnize the rite of matrimony. For the purposes of this section, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state.
Texas	Tex. Fam. Code Ann. § 2.202	(a) The following persons are authorized to conduct a marriage ceremony: (1) a licensed or ordained Christian minister or priest; (2) a Jewish rabbi; (3) a person who is an officer of a religious organization and who is authorized by the organization to conduct a marriage ceremony; (4) a justice of the supreme court, judge of the court of criminal appeals, justice of the courts of appeals, judge of the district, county, and probate courts, judge of the county courts at law, judge of the courts of domestic relations, judge of the juvenile courts, retired justice or judge of those courts, justice of the peace, retired justice of the peace, judge of a municipal court, retired judge of a municipal court, associate judge of a statutory probate court, retired associate judge of a statutory probate court, associate judge of a county court at law, retired associate judge of a county court at law, or judge or magistrate of a federal court of this state; and (5) a retired judge or magistrate of a federal court of this state.

Utah	Utah Code Ann. § 30-1-6	(1) Except for a county clerk, or a county clerk's designee, as provided below, the following persons may solemnize a marriage at that person's discretion: (a) ministers, rabbis, or priests of any religious denomination who are: (i) in regular communion with any religious society; and (ii) 18 years of age or older; (b) Native American spiritual advisors; (c) the governor; (d) the lieutenant governor; (e) mayors of municipalities or county executives; (f) a justice, judge, or commissioner of a court of record; (g) a judge of a court not of record of the state; (h) judges or magistrates of the United States; (i) the county clerk of any county in the state or the county clerk's designee as authorized by Section 17-20-4; (j) the president of the Senate; (k) the speaker of the House of Representatives; or (l) a judge or magistrate who holds office in Utah when retired, under rules set by the Supreme Court.
Vermont	Vt. Stat. Ann. tit. 18, § 5144	(a) Marriages may be solemnized by a Supreme Court Justice, a Superior judge, a judge of Probate, an assistant judge, a justice of the peace, a magistrate, a Judicial Bureau hearing officer, an individual who has registered as an officiant with the Vermont Secretary of State pursuant to section 5144a of this title, a member of the clergy residing in this State and ordained or licensed, or otherwise regularly authorized thereunto by the published laws or discipline of the general conference, convention, or other authority of his or her faith or denomination, or
Virginia	Va. Code Ann. § 20-23	When a minister of any religious denomination shall produce before the circuit court of any county or city in this Commonwealth, or before the judge of such court or before the clerk of such court at any time, proof of

		his ordination and of his being in regular communion with the religious society of which he is a reputed member, or proof that he is commissioned to pastoral ministry or holds a local minister's license and is serving as a regularly appointed pastor in his denomination, such court, or the judge thereof, or the clerk of such court at any time, may make an order authorizing such minister to celebrate the rites of matrimony in this Commonwealth. Any order made under this section may be rescinded at any time by the court or by the judge thereof.
Virginia	Va. Code Ann. § 20-25	**Persons other than ministers who may perform rites** Upon petition filed with the clerk and payment of applicable clerk's fees, any circuit court judge may issue an order authorizing one or more persons, resident in the circuit in which the judge sits, to celebrate the rites of marriage in the Commonwealth. Any person so authorized shall, before acting, enter into bond in the penalty of $500, with or without surety, as the court may direct. Any order made under this section may be rescinded at any time. Any judge or justice of a court of record, any judge of a district court or any retired judge or justice of the Commonwealth or any active, senior or retired federal judge or justice who is a resident of the Commonwealth may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization.
Washington	Wash. Rev. Code Ann. § 26.04.050	The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, supreme court commissioners, court of appeals commissioners, superior court commissioners, any regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization, and judges of courts of limited jurisdiction as defined in RCW 3.02.010.
West Virginia	W. Va. Code Ann. § 48-2-401	A religious representative who has complied with the provisions of section 2-402, a family court judge, a circuit judge or a justice of the

		supreme court of appeals, is authorized to celebrate the rites of marriage in any county of this state.
Wisconsin	Wis. Stat. Ann. § 765.16	(1m) Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only by the mutual declarations of the 2 parties to be joined in marriage that they take each other as husband and wife, made before an authorized officiating person and in the presence of at least 2 competent adult witnesses other than the officiating person. The following are authorized to be officiating persons: (a) Any ordained member of the clergy of any religious denomination or society who continues to be an ordained member of the clergy. (b) Any licentiate of a denominational body or an appointee of any bishop serving as the regular member of the clergy of any church of the denomination to which the member of the clergy belongs, if not restrained from so doing by the discipline of the church or denomination. (c) The 2 parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties may belong. (d) Any judge of a court of record or a reserve judge appointed under s. 753.075. (e) Any circuit court commissioner appointed under SCR 75.02(1) or supplemental court commissioner appointed under s. 757.675(1). (f) Any municipal judge.
Wyoming	Wyo. Stat. Ann. § 20-1-106	(a) 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 the traditions or rites for the solemnization of marriage of any religion, denomination or religious society, may perform the ceremony of marriage in this state.