

**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),

v.

Wyoming Commission on Judicial Conduct
and Ethics,

(Respondent).

OCTOBER TERM A.D. 2015

No. J-16-0001

**AMICUS CURIAE BRIEF OF CHURCHES AND RELIGIOUS ORGANIZATIONS
IN SUPPORT OF THE HONORABLE RUTH NEELY'S VERIFIED PETITION
OBJECTING TO THE COMMISSION'S RECOMMENDATION**

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STATEMENT OF INTEREST OF AMICI CURIAE

The Commission's recommendation, if affirmed by the Court, would effectively establish that no individual who holds a religious belief in traditional marriage and faithfully lives out that belief can be a judge. Thus, the outcome of this case threatens to disqualify innumerable Jews, Christians, and Muslims who would conclude, as Judge Neely did, that presiding over same-sex marriages violates their faith. As religious organizations that represent and minister to millions of people in those faith traditions, *Amici Curiae* have a significant interest in the outcome of this case and the effect that it will have on the people who follow their teachings.

Amici Curiae include national religious organizations representing millions of religious believers in the United States. One of these organizations is the National Association of Evangelicals ("NAE"). NAE is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 40 member denominations, as well as numerous evangelical associations, missions, nonprofits, colleges, seminaries and independent churches. NAE serves as the collective voice of evangelical churches and other religious ministries. It believes that God has ordained marriage as the most basic unit for the building of earthly societies, and that the union is alone reserved for the joining of one man and one woman.

Another national religious organization that has joined this brief is the Lutheran Church – Missouri Synod ("the Synod"). The Synod has some 6,150 member congregations with 2,200,000 baptized members throughout the United States. It steadfastly adheres to orthodox Lutheran theology and practice, and among its beliefs is

the Biblical teaching that marriage is a sacred union of one man and one woman (Genesis 2:24-25), and that God gave marriage as a picture of the relationship between Christ and His bride the Church (Ephesians 5:32). As a Christian body in this country, the Synod believes it has the duty and responsibility to speak publicly in support of traditional marriage and in support of the religious liberty of all—including the right of judges such as Judge Neely—to express their religious belief that marriage is a divinely created relationship between one man and one woman.

Amici Curiae also include religious organizations and individual churches in Wyoming. One of these groups is the Wyoming District of the Lutheran Church – Missouri Synod, which has 60 congregations and over 12,000 members. The individual Wyoming churches that have joined this brief are Calvary Chapel in Cheyenne, Restoration Fellowship International in Cheyenne, Destiny Church in Cheyenne, Emmanuel Bible Church in Thayne, Immanuel Lutheran in Sheridan, Our Savior’s Lutheran Church in Pinedale, Peace Lutheran Church in Marbleton, Redeemer Lutheran Church in Jackson, Christ Our Savior Lutheran Church in Etna, Shepherd of the Valley Lutheran Church in Fort Bridger, St. Paul Lutheran Church in Thermopolis, Our Saviour Lutheran Church in Evanston, St. Paul’s Lutheran Church in Kemmerer, Christ Reformed Presbyterian Church in Torrington, Flat Creek Community Church in Jackson, Community Bible Church in Jackson, Crossroads New Life Fellowship in Evanston, Grace Baptist Church in Kemmerer. These groups do not want to see their members and attendees excluded from the judiciary simply because of their faith.

SUMMARY OF ARGUMENT

For millennia, three major faiths—Judaism, Christianity, and Islam—have followed the traditional doctrine that marriage is the union of man and woman before God. Millions of believers in these faiths continue to adhere to the traditional view that marriage is between man and woman. Innumerable Jews, Christians, and Muslims would undoubtedly conclude, as Judge Neely did, that presiding over or solemnizing same-sex marriage violates their Jewish, Christian, or Muslim faith. Under the Commission’s erroneous reasoning, these believers would be disqualified from certain public offices in Wyoming. This reasoning should be rejected.

First, the most ancient of these three faiths, Judaism, traditionally teaches that marriage is between man and woman. The Book of Genesis teaches that God created both male and female, and thus that “a man leaves his father and mother and cleaves to his wife, and the two become one flesh.” Genesis 2:24.¹ Historical Jewish commentators understood Genesis and other ancient Hebrew Scriptures—including Genesis’s account of Lot’s experience in Sodom, and the proscriptions of the Book of Leviticus—as reflecting a divine proscription of same-sex sexual relations. This historical understanding was rooted, not in bigotry or animus, but in a theological vision of the procreative nature of male-female sexuality. Many modern Jewish communities continue to adhere to this traditional view.

Similarly, Christianity traditionally teaches that marriage is between man and woman. Christian Scriptures in both the Old and New Testament reflect the same

¹ All references to the Bible herein are to the Revised Standard Version.

understanding of same-sex relations as divinely proscribed, and of marriage as a bond between male and female. Christian theologians have reasserted this doctrine over two millennia, in both Catholic and Protestant traditions. Numerous Christian denominations continue to adhere to this traditional doctrine, including the Lutheran Church-Missouri Synod (to which Judge Neely belongs), the Catholic Church, and the forty Protestant denominations represented by the National Association of Evangelicals. Similar beliefs about marriage are also held by the Church of Jesus Christ of Latter-day Saints. These faith traditions join their Jewish counterparts in condemning bigotry and prejudice toward homosexuals, but they call for a public witness by Christians in favor of the traditional view of marriage.

Likewise, Islam traditionally teaches that same-sex relations are divinely proscribed and that marriage is between man and woman. The Qur'an includes two specific references to same-sex relations, both based on the account of Lot from the Old Testament. Both of these references indicate that same-sex relations are divinely prohibited. Muslim scholars and teachers have reaffirmed this doctrine for centuries. In the present day, Muslim communities continue to adhere to this teaching and affirm that marriage is between man and woman. Like Christian and Jewish authorities, moreover, Muslim teachers have explicitly rejected prejudice and bigotry toward homosexuals.

Thus, millions of Jews, Christians, and Muslims continue to adhere to this traditional, theologically rooted understanding of marriage. Moreover, like Judge Neely, many of them believe that celebrating or solemnizing same-sex marriage would contradict their religious beliefs. Religious leaders in all three faith traditions have called

upon believers to bear public witness to the traditional understanding of marriage as divinely ordained. All three of these faith traditions call for their followers to fully integrate their faith into their personal and professional lives. Numerous devout Jews, Christians, and Muslims would thus undoubtedly share Judge Neely's conclusion that publicly solemnizing a same-sex marriage would contradict her faith.

For these reasons, the Commission's decision effectively declares that millions of adherents of these traditional faiths—Jews, Christians, and Muslims—are unfit to hold certain public offices in Wyoming. This is an extraordinary result. The United States was founded on the principle of religious liberty, and its Constitution includes both an express guarantee of the free exercise of religion and an explicit prohibition against religious tests for public office. The Commission's anomalous recommendation that a judge should be removed from a public office for expressing her adherence to a traditional, mainstream Christian doctrine—shared by millions of Jews, Christians, and Muslims—should be rejected.

ARGUMENT

This appeal considers the extraordinary case of a longtime public servant who was deemed unfit to hold office because she expressed a traditional religious belief shared by millions of devout Jews, Christians, and Muslims throughout the world. Numerous religious believers in the United States share Judge Neely's faith conviction that marriage is between man and woman. This conviction arises, not from bigotry or prejudice, but from a divinely inspired vision of human nature and the procreative nature of the male-female conjugal union. The conclusion that such traditional religious beliefs could be deemed disqualifying for public office is particularly surprising in the United States of America, whose Constitution explicitly guarantees the free exercise of religion, U.S. CONST. amend. I, and specifically prohibits religious tests for public office. U.S. CONST. art. VI, cl. 3. The Commission's decision effectively states that innumerable devout Jews, Christians, and Muslims are unfit for public office in Wyoming.

Standard of Review. For the reasons stated in Judge Neely's Brief in Support of Verified Petition Objecting to the Commission's Recommendation, Pet'r Br., at 23-24, this Court should adopt the standard of review governing motions for summary judgment, applying *de novo* review without affording deference to the Commission's conclusions. *Bangs v. Schroth*, 2009 WY 20, ¶ 20, 201 P.3d 442, 452 (Wyo. 2009).

I. Three Great Monotheistic Religions Traditionally Teach That Marriage Is Between Man and Woman.

Three great monotheistic traditions—Judaism, Christianity, and Islam—share many common scriptures, moral precepts, and sexual ethics. The scriptures and

traditional practices of these faiths uniformly hold that same-sex marriage contradicts divine law and God’s plan for humankind. These traditional beliefs reflect a compelling theological vision of the human person, the natural order, and the theological purposes of marriage. To be sure, not all believers of these faiths continue to adhere to the view that marriage is between man and woman. But many millions of believers continue to do so, following the guidance of numerous religious teachers and institutions, including *amici*.

A. Judaism Traditionally Teaches that Marriage is Between Man and Woman.

1. Jewish scriptures and tradition hold that same-sex marriage and same-sex relations are divinely proscribed.

Both the scriptures and the traditions of Judaism have traditionally been understood to prohibit same-sex sexual relations and (by necessary implication) same-sex marriage. The scriptural root of the understanding of marriage in Judaism comes from the narrative of the creation of man in the Book of Genesis, which explicitly grounds marriage in the procreative union of male and female: “So God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them, and God said to them, ‘Be fruitful and multiply, and fill the earth and subdue it.’” Genesis 1:27-28. The second chapter of Genesis describes God fashioning Eve from Adam’s rib as foreshadowing the conjugal union between man and woman. Genesis 2:21-22. “Then the man said, ‘This at last is bone of my bones and flesh of my flesh’ Therefore a man leaves his father and mother and cleaves to his wife, and they become one flesh.” Genesis 2:23-24.

Ancient Hebrew Scriptures include numerous additional passages traditionally understood as rejecting same-sex sexual relations as contrary to divine guidance. For example, Jewish, Christian, and Muslim commentators historically understood the ancient account of Lot's experience in Sodom—in which Lot confronted men who sought to have forcible sexual relations with Lot's male guests—as entailing a prohibition on same-sex sexual relations. *See* Genesis 19:4-10. The Book of Leviticus, traditionally attributed to the great lawgiver and prophet Moses, includes explicit prohibitions against the practice of two men having sexual relations. Both Leviticus 18:21-23 and Leviticus 20:13 described such same-sex relations “*toaiva*,” divinely proscribed. Leviticus 18:21-23, 20:13.

Historical commentators in Judaism understood such divine texts to set forth a prohibition on same-sex sexual relations and to establish an order of marriage as divinely prescribed between man and woman. For example, the renowned twelfth-century Jewish thinker Moses ben Maimon, or Maimonides, commented that “Jews are not suspected of a man lying with a man,” reflecting his understanding that such practices are divinely prohibited. MAIMONIDES, HILCHOT ISSUREI BIAH 22:2. The same comment appears in the Shulchan Aruch, the highly influential sixteenth-century compilation of Jewish law. *See* SHULCHAN ARUCH, EVEN HA-EZER 24:1. The Shulchan Aruch states that, in order to avoid temptation or appearance of impropriety, “in these generations when licentiousness is prevalent, a man should not be alone with another man.” *Id.*

Moreover, this prohibition was historically understood as rooted in the inherently procreative nature of male-female sexual relations. As one influential thirteenth-century

Jewish work commented, “[a]t the root of the precept lies the reason that the Eternal Lord, blessed is He, desires the settlement of the world He created. Therefore, He commanded us that human seed should not be destroyed by carnal relations with males. For . . . there can be no fruitful benefit of offspring from it, nor the fulfilment of the religious duty of conjugal rights.” CHINUCH, MITZVAH 209.

Many Jewish communities today continue to adhere to the traditional understanding of these biblical texts. For example, in 2006, the Orthodox Union published a statement of its Executive Vice President, Rabbi Tzvi Hersh Weinreb, entitled *Orthodox Response to Same-Sex Marriage*. See Rabbi Tzvi Hersh Weinreb, *Orthodox Response to Same-Sex Marriage* (June 5, 2006), at <https://advocacy.ou.org/orthodox-response-to-same-sex-marriage/>. According to this statement, “[t]he position of traditional Judaism on homosexual behavior is clear and unambiguous Homosexual behavior between males or between females is absolutely forbidden by Jewish law, beginning with the biblical imperative, alluded to numerous times in the Talmud and codified in the Shulchan Aruch.” *Id.*

Again, this modern understanding remains rooted in the procreative nature of male-female relations as reflecting a divinely created order described in the Book of Genesis: “Within the Jewish people, the two-parent marriage is a model not only for human relations but for relations with the Divine. The Almighty Himself is seen as being a third partner to the father-mother configuration, and the central role of the family, unless circumstances make it impossible, is to conceive and raise children, thereby

perpetuating the human race and for Jews, ensuring the continuity of the Jewish people.”

Id.

2. **This traditional Jewish belief is not rooted in bigotry or animus against homosexuals, but reflects a theological vision of the nature and purposes of human sexuality.**

This traditional teaching of Judaism that same-sex sexual relations are divinely proscribed is not rooted in bigotry or animus toward homosexual persons. Rather, Jewish scriptures and commentators, while rejecting homosexual behavior, call for tolerance and acceptance of homosexual persons as sinners just like the rest of humanity. For example, describing “the attitude toward homosexual individuals prescribed by the Jewish tradition,” Rabbi Weinreb directs that “it is critical to adopt the distinction, already implicit in numerous rabbinical texts, between the sin and the sinner; that is, between the person and his or her behavior.” *Id.* The Rabbi notes with approval the practice of congregations who tolerate those “who violate Jewish norms,” including “individuals who are violators of the halachic aspects of the Sabbath, or individuals who flagrantly violate the kashrut laws.” *Id.* “The tolerance rightly shown to these individuals by no means condones their behavior, but accepts them as people who may be misled or misinformed.” *Id.* According to Rabbi Weinreb, the same tolerance should be extended to those who violate the divine proscription against same-sex relations: “[T]olerance for individuals who manifest homosexual tendencies is certainly a Jewish value.” *Id.*

Similarly, Rabbi Dr. Nachum Amsel comments that “Judaism separates between the desire to sin and the sin itself. In every realm of life, Judaism recognizes that Jews, as normal human beings, have desires to commit sins.” Rabbi Dr. Nachum Amsel,

Homosexuality in Orthodox Judaism 4, at http://lookstein.org/resources/homosexuality_amsel.pdf. “Every society . . . demands that sexual desires be held in check and regulates man’s acting on his sexual desires. Judaism does as well, and thus prohibits man to act on his homosexual desire.” *Id.* at 5. “We do not and cannot reject people as Jews and as individuals because of a particular sin. Those who violate the Shabbat, for example . . . are not thrown out of the Jewish community or denied the ability to pray in the synagogue.” *Id.* “Similarly, homosexuals who have sinned with acts of homosexuality may not be thrown out of the Jewish community or shunned.” *Id.* In short, this traditional Jewish teaching against same-sex relations has been understood as wholly consistent with the divine proscription to love everyone, clearly expressed in the Book of Leviticus: “You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself.” Leviticus 19:18.

B. Christianity Traditionally Teaches Marriage Is Between Man and Woman.

1. Traditional Christian doctrine instructs that same-sex relations and same-sex marriage are divinely proscribed.

Like traditional Jewish teaching, traditional Christian doctrine interprets biblical texts as expressing a divine proscription against same-sex sexual relations, and thus, by necessary implication, against same-sex marriage.

First, the Christian tradition shares Judaism’s reverence for the Hebrew Scriptures as divinely inspired. Christian commentators have long understood the statements in Genesis and Leviticus quoted above, for example, as reflecting a clear divine proscription

of same-sex relations, rooted in the procreative nature of male-female relations as a unique participation in God's creative order. *See supra* Part I.A.1.

The Christian Scriptures of the New Testament have been traditionally understood to reinforce this view. For example, in the Gospel of Matthew, Jesus Christ quotes from the Book of Genesis in a statement long understood as reaffirming the marital union as between male and female: "Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh?'" Matthew 19:4-5.

Elsewhere, the New Testament includes other passages traditionally understood to share the divine proscription against same-sex relations. In his Epistle to the Romans, St. Paul describes the ways of the ungodly as given up "to dishonorable passions," in that "[t]heir women exchange natural relations for unnatural, and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in their own persons the due penalty for their error." Romans 1:26-27. The same passage, moreover, goes on to criticize those who purport to judge the sins of others: "Therefore you have no excuse, O man, whoever you are, when you judge another; for in passing judgment upon him you condemn yourself, because you, the judge, are doing the very same things." Romans 2:1. Similarly, St. Paul's Epistle to the Ephesians quotes from the second chapter of Genesis, and describes the procreative union of man and woman in marriage as reflecting the love between Christ and his Church: "Even so husbands should love their wives as their own

bodies. He who loves his wife loves himself . . . ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh.’ This mystery is a profound one, and I am saying that it refers to Christ and the church.” Ephesians 5:28-32.

Christian clerics and theologians in both the Catholic and the Protestant traditions have traditionally understood such scriptural passages as reflecting a divine proscription on same-sex relations, and a theological view of male-female marriage as uniquely reflective of God’s love for mankind. For example, in the thirteenth century, St. Thomas Aquinas, a theologian widely revered in the Catholic tradition, interpreted Romans 1:27 as establishing that “copulation with an undue sex, male with male, or female with female” constitutes an “unnatural vice.” Thomas Aquinas, *SUMMA THEOLOGICA II-II, Q. 154, art. 12* (Tr. 1920), *available at* <http://www.newadvent.org/summa/3154.htm#article11>. Martin Luther likewise commented that those who participate in same-sex relations “depart[] from the natural passion and longing of the male for the female, which is implanted into nature by God, and desire[] what is altogether contrary to nature.” MARTIN LUTHER, 3 LUTHER’S WORKS 255 (1961).

Indeed, the writings of both Martin Luther and John Calvin, two of the greatest leaders of the Protestant Reformation, presuppose that marriage is between man and woman. Luther wrote that, in marriage, “each one of us must have the kind of body God has created for us. I cannot make myself a woman, nor can you make yourself a man; we do not have that power. But we are exactly as he created us: I a man and you a woman.” MARTIN LUTHER, 45 LUTHER’S WORKS 17 (1962). Likewise, John Calvin wrote:

“When a marriage takes place between a man and a woman, God presides and requires a mutual pledge from both.” JOHN CALVIN, 5 COMMENTARIES ON THE TWELVE MINOR PROPHETS 553 (John Owen, trans., 1849).

This traditional understanding has carried forward in the modern era. In the Catholic tradition, the current Catechism of the Catholic Church states: “Basing itself on Sacred Scripture, . . . tradition has always declared that ‘homosexual acts are intrinsically disordered.’ They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from genuine affective and sexual complementarity.” CATECHISM OF THE CATHOLIC CHURCH ¶ 2357 (1997). In 2000, the Pontifical Council for the Family applied this teaching to the specific issue of same-sex marriage, describing marriage as “a union of love and life between a man and a woman from which life naturally springs. Every society is solidly based on this marital union because it is a necessary value.” *Declaration of the Pontifical Council for the Family Regarding the Resolution of the European Parliament dated March 16, 2000, Making De facto Unions, Including Same Sex Unions, Equal to Family* (March 17, 2000), at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20000317_declaration-homosexual-unions_en.html.

Pope Francis expressly reaffirmed this doctrine in his recent apostolic exhortation, *Amoris Laetitia*, the Joy of Love, which states that “only the exclusive and indissoluble union between a man and a woman has a plenary role to play in society as a stable commitment that bears fruit in new life. We need to acknowledge the great variety of family situations that can offer a certain stability, but de facto or same-sex unions, for

example, may not simply be equated with marriage.” Pope Francis, *Amoris Laetitia*, ¶ 52, at http://w2.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf. “In discussing the dignity and mission of the family, the Synod Fathers observed that, ‘as for proposals to place unions between homosexual persons on the same level as marriage, there are absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family.’” *Id.*

Numerous Protestant denominations continue to share this traditional understanding. For example, the Lutheran Church-Missouri Synod, whose members include Judge Neely, “believes that the Bible teaches that homosexual behavior is contrary to God’s Word and will, and seeks to minister to those who are struggling with homosexual inclinations.” Lutheran Church-Missouri Synod, *LCMS Views – Marriage/Human Sexuality* 11, available at <http://www.lcms.org/faqs/lcmsviews> (“*LCMS Views*”). According to the Lutheran Church-Missouri Synod, “[h]omosexual behavior is prohibited in the Old and New Testaments as contrary to God’s design,” and “on the basis of Scripture, marriage is the lifelong union of one man and one woman.” *Id.* at 10.

The National Association of Evangelicals, representing forty Protestant denominations, has likewise reaffirmed the traditional understanding of marriage as a divinely sanctioned union between man and woman, rooted in the natural procreative potential given to man and woman as a gift from God. See National Association of Evangelicals, *God Defined Marriage* (June 26, 2015), at <http://nae.net/god-defined->

marriage/. “As first described in Genesis and later affirmed by Jesus, marriage is a God-ordained, covenant relationship between a man and a woman. This lifelong, sexually exclusive relationship brings children into the world and thus sustains the stewardship of the earth.” *Id.*

The Church of Jesus Christ of Latter-day Saints has similarly endorsed this traditional understanding of same-sex relations. The Mormon Church has “reaffirm[ed] the Church’s declaration that marriage is the lawful union of a man and a woman.” Church of Jesus Christ of Latter-day Saints, *The Divine Institution of Marriage*, NEWSROOM (Aug. 13, 2008), at <http://www.mormonnewsroom.org/article/the-divine-institution-of-marriage>. “From the beginning, the sacred nature of marriage was closely linked to the power of procreation. . . . Only a man and a woman together have the natural biological capacity to conceive children. This power of procreation—to create life and bring God’s spirit children into the world—is divinely given.” *Id.* After the legalization of same-sex marriage in the United States, moreover, the Mormon Church reaffirmed “the Lord’s doctrine that marriage is a union between a man and a woman ordained by God.” *Supreme Court Decision Will Not Alter Doctrine on Marriage*, at <http://www.mormonnewsroom.org/article/supreme-court-decision-will-not-alter-doctrine-on-marriage>.

2. **This traditional Christian doctrine does not reflect bigotry or animus against homosexual persons, but a vision of the divinely ordained purpose of human sexuality.**

Numerous Christian authorities agree with Jewish authorities that the divine prohibition against same-sex relations does not arise from bigotry or animus against

homosexual individuals, but reflects a divinely ordained understanding of human sexuality. Recent statements of this principle abound. For example, in the Catholic tradition, the Congregation of the Doctrine of the Faith states that “[i]t is deplorable that homosexual persons have been and are the object of violent malice in speech or in action. Such treatment deserves condemnation from the Church’s pastors wherever it occurs.” Congregation for the Doctrine of the Faith, LETTER TO THE BISHOPS OF THE CATHOLIC CHURCH ON THE PASTORAL CARE OF HOMOSEXUAL PERSONS ¶ 10 (Oct. 1, 1986), at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html. Similarly, the Catechism of the Catholic Church directs that homosexual persons “must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.” CATECHISM OF THE CATHOLIC CHURCH ¶ 2358. Pope Francis reemphasized this instruction in *Amoris Laetitia*, stating that “[w]e would like before all else to reaffirm that every person, regardless of sexual orientation, ought to be respected in his or her dignity and treated with consideration, while ‘every sign of unjust discrimination’ is to be carefully avoided, particularly any form of aggression and violence.” *Amoris Laetitia* ¶ 250 (quoting Catechism ¶ 2358).

Protestant authorities have emphasized the same point. The Lutheran Church-Missouri Synod emphasizes that “[t]he redeeming love of Christ, which rescues humanity from sin, death, and the power of Satan, is offered to all through repentance and faith in Christ, regardless of the nature of their sinfulness.” *LCMS Views*, at 11. The National Association of Evangelicals likewise emphasizes that “[a]s witnesses to the truth,

evangelicals should be gracious and compassionate to those who do not share their views on marriage.” *God Defined Marriage, supra*. Another prominent Christian pastor has written, “Homophobia exists, and it has no place in the church. . . . Happily upholding Christian sexual ethics is not the same as harboring animosity toward an entire group of people simply because you find them yucky.” Nick Roen, *Homophobia Has No Place in the Church*, at <http://www.desiringgod.org/articles/homophobia-has-no-place-in-the-church>.

The Mormon Church has also emphasized that “[t]he Church’s affirmation of marriage as being between a man and a woman neither constitutes nor condones any kind of hostility toward gays and lesbians. Church members are to treat all people with love and humanity. They may express genuine love and kindness toward a gay or lesbian family member, friend, or other person without condoning any redefinition of marriage.” *The Divine Institution of Marriage*, at <http://www.mormonnewsroom.org/article/the-divine-institution-of-marriage>.

All of these instructions reflect the Christian view that the traditional doctrine of marriage is rooted, not in bigotry, but in the divinely infused procreative potential of male-female unions. In 2015, for example, dozens of prominent Catholic and Protestant theologians joined together and offered the following statement: “Throughout history and across all cultures, marriage has been understood to be the union of male and female and is organized around the procreative potential of that union.” Evangelicals and Catholics Together, *The Two Shall Become One Flesh: Reclaiming Marriage*, FIRST THINGS (March 2015).

C. Islam Traditionally Teaches that Marriage Is Between Man and Woman.

1. Islamic scriptures and tradition instruct that same-sex relations are divinely proscribed.

Islamic scriptures and commentators in Islamic tradition have long adhered to the same view as Jewish and Christian theologians, *i.e.*, that same-sex relations are prohibited by divine law. The Qur'an includes two references to same-sex relations, both commenting on the story of Lut ("Lot" in the Hebrew scriptures) in Sodom and setting forth a clear prohibition on same-sex relations. "We also sent Lut: He said to his people: 'Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds.'" Qur'an 7:80-81. "What! Of all creatures do ye come unto the males, and leave the wives the Lord created for you? Nay, but ye are forward folk." Qur'an 26:165.

Historic Islamic authorities and commentators have long understood these scriptures to reflect a divine prohibition against same-sex relations. Summarizing such traditional Islamic teaching, the Islamic Shura Council of Southern California noted that this doctrine arises from sacred Islamic scripture and is consistent with the universal instruction of Islamic authorities throughout history: "The verses in the Qur'an about the people of Prophet Lut [Lot] clearly describe that homosexuality is sinful. . . . There is a consensus among all Muslim scholars, past and present, that the people of Prophet Lut [Lot] were criticized by God for their practice of homosexuality." Islamic Shura Council

of Southern California, *Islamic Perspective on Same-Sex Marriage* (July 7, 2015), at http://www.shuracouncil.org/Shura/Same-Sex_Marriage_Stmt_070715.pdf.

Numerous modern Islamic communities in Western nations continue to adhere to this traditional understanding of divine law. For example, in 2013, over five hundred British Muslim leaders, representing tens of thousands of British Muslims, signed a public letter opposing the legalization of same-sex marriage in Great Britain. *Muslim Leaders Stand Against Gay Marriage*, *The Telegraph* (May 18, 2013), at <http://www.telegraph.co.uk/comment/letters/10065280/Muslim-leaders-stand-against-gay-marriage.html>. The letter stated: “Marriage is a sacred contract between a man and a woman that cannot be redefined. We believe that marriage between a man and a woman is the cornerstone of family life and the only institution in which to raise children.” *Id.*

Similarly, in the United States, the Islamic Shura Council of Southern California issued in 2015 a statement on same-sex marriage that reaffirms the traditional understanding of the Qur’an. *Islamic Perspective on Same-Sex Marriage, supra*. The Council stated that the “Qur’an and Sunnah [the teachings of the Prophet Muhammad] are clear that a lawful marriage is only between a male and a female. Such legal union cannot take place between persons of the same gender. Islam never has, and never will, sanction or perform same-sex marriage since it is a clear violation of Islamic law.” *Id.*

2. The Muslim doctrine of marriage does not reflect bigotry or animus, but the divinely ordained purpose of human sexuality.

Like the Jewish and Christian views, this traditional Islamic view does not reflect bigotry or animus toward homosexual individuals. Rather, Muslim scholars recognize

that many Muslims may possess same-sex attractions: “Homosexual feelings and tendencies, however, are like other unlawful desires that may crop up in the mind of even the most devoted Muslim. The thoughts and inclinations are not sinful unless acted upon.” *Id.* Accordingly, Muslim authorities have instructed that Muslims are to treat homosexuals, both Muslim and non-Muslim, with the same respect due to all other people. The Council instructs that “[p]eople practicing something immoral according to Islamic values still deserve the basic respect and rights of any other human being. . . . Muslims should not discriminate and/or harass anyone.” *Id.* With respect to Muslim homosexuals, the Council likewise urges respectful tolerance and engagement: “Any Muslim engaging in sinful behavior is still considered a Muslim and must be treated with respect and decency. They should be welcomed as part of the Muslim community, as long as their behavior does not negatively affect their company.” *Id.*

II. Numerous Traditional Adherents of Judaism, Christianity, and Islam Reasonably Believe that Celebrating or Solemnizing Same-Sex Marriage Violates Their Religious Faith.

In light of this historical guidance and present-day teaching, millions of adherents of Judaism, Christianity, and Islam believe that same-sex marriage is inconsistent with their religious beliefs. Moreover, because these religions uniformly call for a full integration of religious faith into one’s personal and professional life, many of their adherents believe that celebrating or solemnizing same-sex marriage would violate their religious beliefs.

In the wake of the recent legalization of same-sex marriage in many Western countries, many Jewish, Christian, and Islamic leaders have called for adherents of their

faiths to engage in respectful public witness in favor of the traditional understanding of marriage. Such public witness, of course, would necessarily exclude formally presiding over or solemnizing same-sex marriages.

For example, in the Jewish tradition, the chief Rabbi of Great Britain, Lord Rabbi Jonathan Sacks, has called for respectful and courteous public witness in support of traditional marriage. In his famous 2015 speech to a Vatican conference on family life, Rabbi Sacks instructed that “our compassion for those who choose to live differently should not inhibit us from being advocates for the single most humanizing institution in history [*i.e.*, male-female marriage]. The family, man, woman, and child, is not one lifestyle choice among many. It is the best means we have yet discovered for nurturing future generations and enabling children to grow in a matrix of stability and love.” Lord Rabbi Jonathan Sacks, *Humanum Colloquium on Complementarity* (Nov. 17, 2014), at <https://cvcomment.org/2014/11/18/in-full-the-lord-sacks-speech-that-brought-the-vatican-conference-to-its-feet/>.

Numerous voices in the Christian tradition accord with Rabbi Sacks. For example, a chief official of the Southern Baptist Convention has publicly stated that “[a]ll of us must stand together on conserving the truth of marriage as a complementary union of man and woman. . . . [T]here is a distinctively Christian urgency for why the Christian churches must bear witness to these things.” Rev. Dr. Russell D. Moore, President of the Ethics & Religious Liberty Commission of the Southern Baptist Convention, *Man, Woman, and the Mystery of Christ: An Evangelical Protestant Perspective*, TOUCHSTONE (Nov. 18, 2014), at <http://www.touchstonemag.com/archives/article.php?id=28-02-022-c>.

Similarly, the National Association of Evangelicals counsels that “[e]vangelicals and other followers of the Bible have a heightened opportunity to demonstrate the attractiveness of loving Christian marriages and families. Evangelicals should renew their commitment to the sacrificial love and covenantal faithfulness to which Jesus calls all husbands and wives.” *God Defined Marriage, supra*.

The Mormon Church has made a similar statement. “The Church of Jesus Christ of Latter-day Saints, along with many other churches, organizations, and individuals, will continue to defend the sanctity of marriage between a man and a woman, because it is a compelling moral issue of profound importance to our religion and to the future of society.” *Divine Institution of Marriage, supra*. The Mormon Church has urged its members as “responsible citizens” to publicly promote adherence to traditional marriage: “We call upon responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.” *Id.*

In 2015, dozens of Catholic and Evangelical theologians agreed with these authorities in a joint statement: “As Christians, it is our responsibility to bear witness to the truth about marriage as taught by both revelation and reason—by the Holy Scriptures and by the truths inscribed on the human heart. . . . Christians have too often been silent about biblical teaching on sex, marriage, and family life. . . . If we are to remain faithful to the Scriptures and to the unanimous testimony of the Christian tradition, there can be no compromise on marriage.” *Evangelicals and Catholics Together, The Two Shall Become One Flesh, supra*.

The Catholic tradition, moreover, includes particularly clear guidance against taking actions that condone same-sex marriage. The Catholic tradition forbids “scandal,” defined as actions that might encourage or exhort other persons to engage in wrongdoing. “Scandal is an attitude or behavior which leads another to do evil. The person who gives scandal becomes his neighbor’s tempter.” CATECHISM OF THE CATHOLIC CHURCH ¶ 2284. “Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged.” *Id.* ¶ 2287. Like their Jewish and Protestant counterparts, Catholics are gravely concerned that actions celebrating or solemnizing same-sex marriage would send a public message of approval, constituting impermissible “scandal.” *Id.*

Islamic authorities have likewise concluded that Muslims must not celebrate or solemnize same-sex marriages. “Islam never has, and never will, sanction or perform same-sex marriage since it is a clear violation of Islamic law.” *Islamic Perspective on Same-Sex Marriage, supra*. “Sexual behavior within a society is not a purely private concern but rather affects all the people living in that society. Islam does not forcefully impose its teachings upon people of other faiths and persuasions. Nonetheless, it draws certain moral lines to make sure that the entire society is not affected negatively.” *Id.*

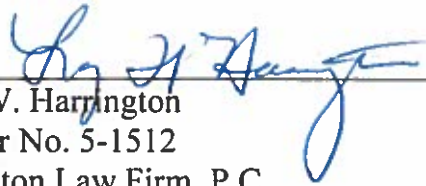
In sum, Judge Neely’s stated unwillingness to celebrate or solemnize a same-sex marriage, rooted in her Christian faith, reflects a conviction shared by millions of devout Jews, Christians, and Muslims in the United States. The conclusion that these innumerable religious believers are unqualified for public office in the United States of

America because of their religious beliefs is astonishing and unconvincing. There is no conflict between Judge Neely's traditional religious beliefs and her ability to serve as an effective—indeed, exemplary—judge in the State of Wyoming. The Commission's decision to disqualify her from office should be rejected.

CONCLUSION

For the reasons stated, this Court should reject the Commission's recommendation and dismiss its Notice of Commencement of Formal Proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2016, I filed the original of this brief and six copies thereof with the Clerk of Court via FedEx, and that I mailed a copy of this document by First-Class Mail, postage prepaid, to each of the following:

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