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.	No. J-16-001

AMICUS BRIEF OF THE FREDERICK DOUGLASS FOUNDATION, THE NATIONAL HISPANIC LEADERSHIP CONFERENCE, THE NATIONAL BLACK CHURCH INITIATIVE, THE COALITION OF AFRICAN AMERICAN PASTORS USA, THE NATIONAL BLACK RELIGIOUS BROADCASTERS, ALVEDA KING MINISTRIES, THE RESTORATION PROJECT, THE RADIANCE FOUNDATION, URBAN FAMILY COMMUNICATIONS, CHURCH OF GOD IN CHRIST WORLD MISSIONS, STAND, FREEDOM'S JOURNAL INSTITUTE FOR THE STUDY OF FAITH AND PUBLIC POLICY, RYAN T. ANDERSON, AND SHERIF GIRGIS IN SUPPORT OF PETITIONER JUDGE RUTH NEELY'S PETITION OBJECTING TO THE COMMISSION'S RECOMMENDATION

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I. INTEREST OF THE *AMICUS CURIAE*

Amici are a diverse group of organizations, scholars, and individuals that believe in and advocate for the view that marriage is a union between one man and one woman. The organizational *Amici* represent significant portions of the African American and Hispanic communities. They speak on behalf of more than 70,000 African American and Hispanic churches, and tens of millions of African Americans and Hispanic Americans, throughout the United States. These *Amici* have an interest in denouncing the spurious notion that understanding marriage to be a union between a man and a woman is akin to holding racist views about marriage. The attorney for the Commission has repeatedly argued that those two views about marriage are comparable, and *Amici*, as members of the African American and Hispanic communities, have a strong interest in debunking that comparison.

The scholar *Amici* include published authors who have studied the institution of marriage and carefully analyzed the moral, political, and jurisprudential implications of redefining marriage to include same-sex couples. They have an interest in explaining that sound rational reasons underlie the view that marriage is inherently a union between a man and a woman.

The organizational and scholar *Amici* include the following groups and individuals:

The Frederick Douglass Foundation ("FDF"). FDF is a national Christ-centered, multi-ethnic education and public policy organization with local chapters across the United States. It advocates for traditional marriage (among other things). Its members

believe that Americans live in a land of liberty, where the natural rights of individuals precede and supersede the power of the state, and that the United States is a constitutional republic in which government power is limited and employed for the purpose of providing legitimate public goods rather than for the benefit of insiders and special interest groups. Moreover, FDF's members believe in equal rights, equal justice, and equal opportunity for all, regardless of race, creed, sex, age, or disability.

The National Hispanic Leadership Conference ("NHCLC"). The NHCLC is the National Hispanic Evangelical Association. It is the largest Latino Christian organization in America, leading millions of Hispanic Born Again Christians via its 40,118 Evangelical congregations in the United States and 400,000 congregations throughout Latin America. It provides leadership, networking, fellowship, strategic partnerships, and advocacy platforms in service of its seven directives: Life, Family, Great Commission, Stewardship, Education, Youth, and Justice. Among other missions, the NHCLC seeks to promote biblical marriage and protect religious liberty.

The National Black Church Initiative ("NBCI"). The NBCI is a national network of 34,000 African American and Latino churches representing 15 denominations and more than 15.7 million people. NBCI works to build strong communities and eradicate racial discrepancies in healthcare, education, and housing. NBCI also supports traditional marriage.

The Coalition of African American Pastors USA ("CAAP"). CAAP is a grassroots movement of tens of thousands of African American Christians and clergy who believe in traditional family values, such as protecting the lives of the unborn and

preserving the traditional understanding of marriage. CAAP encourages Christian people of all races and backgrounds everywhere to make a stand for their beliefs and convictions.

The National Black Religious Broadcasters ("NBRB"). The NBRB is a national coalition of over 10,000 black religious broadcasters throughout the country who use broadcast and cable television, internet, and radio to spread their religious messages. NBRB supports the right of every individual to live according to his or her religious convictions.

Alveda King Ministries ("AKM"). Dr. Alveda King is the niece of Reverend Martin Luther King, Jr., and the daughter of civil rights leader A.D. King. She is a committed guardian of her family's civil rights legacy. Throughout her upbringing, she saw firsthand the ills and evils of racism. She persevered through those difficulties, eventually becoming a college professor, an author, a stage and screen actress, and a Georgia State Legislator. Now through her organization, AKM, she seeks to advance the Gospel of Jesus Christ and to promote traditional family values.

The Restoration Project ("Restoration"). Restoration is a non-profit organization dedicated to rebuilding families, promoting the sanctity of life, and providing related educational materials. Restoration seeks to create in black communities a restored culture of uprightness, evenhandedness, and virtue.

The Radiance Foundation ("Radiance"). Radiance is a non-profit educational organization established to affirm that every human life has purpose. Through ad campaigns, multimedia presentations, community outreach, and citizen journalism,

Radiance illuminates the intrinsic value we all possess, motivating people to peacefully and positively affect the world around them. Radiance works on a local and national level to advance a culture of life that rejects abortion, fights racism, promotes adoption, values religious liberty, celebrates natural marriage between a husband and a wife, promotes strong intact families, and protects the free speech that makes this messaging possible. In this vein, Radiance firmly believes in peacefully defending our First Amendment rights of free speech and religious liberty.

Urban Family Communications ("UFC"). UFC is a multi-media communications network and outreach ministry born from the conviction that the black community deserves truth, and more specifically, biblical truth. UFC is a collection of people operating in ministry, media, and politics who are committed to one goal: the spiritual revitalization of urban communities. UFC's mission is to inform and empower black families to grow by wisely applying biblical truth to issues and interests unique to the black community. UFC stands for truth, wisdom, and empowerment, and broadcasts its programming 24 hours a day, 7 days a week.

Church of God in Christ World Missions ("The Church"). The Church is a Christian organization in the Holiness-Pentecostal tradition. It is the largest Pentecostal denomination in the United States and its membership is predominantly African American with more than six million members. The Church has congregations in 63 countries around the world. The World Mission Department has launched the Family Life Campaign in the US, which affirms traditional marriage.

STAND (Staying True to America's National Destiny). STAND is a non-profit organization that reaches across racial and cultural lines to bring people together around the foundational principles that made America great. STAND engages the community through town hall meetings, conference calls, and other events to promote educational choice, to support entrepreneurship, and to strengthen families. STAND professes a belief in the Christian understanding of marriage and rejects any attempt to compare that belief to racism.

Freedom's Journal Institute for the Study of Faith and Public Policy ("FJI"). FJI is devoted to the research, education, and the advancement of public policy that promotes responsible government, individual liberty, economic empowerment, and strong family values. FJI believes that marriage is intended to be a permanent relationship between one man and one woman, and is the foundation for healthy and stable families. FJI further believes that the free exercise of religious faith is paramount to the health and wellbeing of a free society, and that while government is prohibited from establishing any religion, it is also prohibited from interfering in the practice thereof. Citizens, therefore, should be free to worship as they choose without fear of governmental interference, coercion, or manipulation.

Ryan T. Anderson, Ph.D. (A.B., Princeton University, M.A., Ph.D. University of Notre Dame). Dr. Anderson is the Editor of *Public Discourse: Ethics, Law, and the Common Good*, the online journal of the Witherspoon Institute (affiliations are listed here for identification purposes).

Sherif Girgis (A.B., Princeton University; B.Phil., University of Oxford-Rhodes Scholar). Mr. Girgis is a research scholar of the Witherspoon Institute currently pursuing a Ph.D. in philosophy at Princeton University and a J.D. at Yale Law School (affiliations are for identification purposes).

II. INTRODUCTION

This case is about the status of Americans of goodwill who continue to believe what our law long held about marriage—that it is a union of husband and wife. It is about whether government may penalize them for living out that belief in the public square, or more specifically, whether government may expel them from public office for expressing such a belief.

The Supreme Court has ruled that the U.S. Constitution requires states to recognize same-sex marriage, but its ruling in no way commands every individual public servant to facilitate same-sex marriages against their conscience. Indeed, the Court went out of its way to affirm the right to give witness to dissenting beliefs. Nor did these beliefs originate in bigotry; history disproves that decisively.

Ultimately, Judge Neely seeks the freedom to act on her reasonable, conscientious belief about marriage—while leaving same-sex couples free to do the same. And Judge Neely's belief about the nature of marriage—call it the conjugal view—is eminently reasonable. There are excellent nonreligious and non-invidious grounds for understanding marriage as a conjugal relationship—as inherently a union of man and woman. We know that there are *nonreligious* grounds for this view because nearly every culture has singled out male-female bonds for recognition and regulation. Indeed, ancient thinkers fully

aware of same-sex sexual relationships—but ignorant of Judaism and Christianity—nonetheless saw special social value in the kind of union that only a man and woman can form.

This view is also impossible to ascribe to sheer hostility toward those identifying as gay or lesbian. First, the countless cultures that have singled out male-female bonds for special treatment span the spectrum of attitudes toward homosexuality. Second, some of the classical thinkers who affirmed the distinct value of such bonds worked in cultures where same-sex sexual activity was accepted and practiced across society, and nothing like our modern concept of gay identity existed. So they could not have been motivated by bias or prejudice against gay people as a class. Indeed, the line they drew around committed relationships sealed in coitus and oriented to family life left out even some *opposite-sex* relations. So the conjugal view's intellectual roots are not found in either religion or bigotry, but honest and carefully developed beliefs about the common good.

Some say that support for the conjugal view is like hostility to interracial marriage—so that government should treat its proponents like racists. But conceptually and historically, the two views are nothing alike. In all human history, opposition to interracial marriage only arose out of broader campaigns to oppress a particular group. Nothing of the sort is true of support for the conjugal view of marriage.

Nor does the government have a compelling interest to enforce here. The right of religious liberty that Judge Neely has invoked concerns the institution of marriage, not sexual orientation in general. Put differently, Judge Neely treats all citizens, including gays and lesbians, fairly when adjudicating their cases, but objects to personally presiding

over same-sex *weddings*. Moreover, the record in this case shows that there are more than enough government officials to perform same-sex wedding ceremonies in Sublette County and that no same-sex couple has been unable to get a public official to officiate at their wedding. Judge Neely's beliefs thus do not deprive any eligible couple of a marriage license or participation in public life on equal terms. This Court should therefore reject the Commission's recommendation to remove Judge Neely from her judicial positions.

III. STATEMENT OF THE CASE

Amici hereby incorporate by reference Judge Neely's Statement of the Case.

IV. ARGUMENT

A. The conjugal view of marriage is eminently reasonable. Intellectual and cultural history refute the charge that only bias or prejudice motivates the conjugal view.

Judge Neely's religious liberty and conscience claims are rooted in a view of marriage that has found support in reasoned reflection that spans countless traditions across several millennia.

Many cultures and thinkers have understood marriage as a stable sexual union of man and woman, apt for family life. It is historically impossible to attribute these cultural and intellectual traditions to any one religion, or to hostility toward people identifying as homosexual. They confound the idea that only a narrow religious impulse or prejudice could motivate the view that the conjugal union of husband and wife has distinctive value.

For millennia, cultures around the world have regulated male-female sexual unions in particular, with a view to children's needs. As one historian observes, "Marriage, as the socially recognized linking of a specific man to a specific woman and her offspring, can be found in all societies. Through marriage, children can be assured of being born to both a man and a woman who will care for them as they mature."[1]

Major intellectual traditions have affirmed the special value of male-female bonds. Plato wrote favorably of legislating to have people "couple[], male and female, and lovingly pair together, and live the rest of their lives" together.[2] For Aristotle, the foundation of political community was "the family group," by which he "mean[t] the nuclear family."[3] In Aristotle's view, indeed, "between man and wife friendship seems to exist by nature," and their conjugal union has primacy even over political union.[4]

Likewise, the ancient Greek historian Plutarch wrote approvingly of marriage as "a union of life between man and woman for the delights of love and the begetting of

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[1] G. Robina Quale, *A History of Marriage Systems* 2 (Praeger 1988).

[2] Plato, 4 *The Dialogues of Plato* 407 (Benjamin Jowett trans. & ed., Oxford Univ., 1953) (360 B.C.).

[3] Alberto Moffi, *Family and Property* Law, *in Cambridge Companion to Ancient Greek Law* 254 (Michael Gagarin & David Cohen eds., 2005).

[4] Aristotle, *Ethics, in The Complete Works of Aristotle* 2 (Jonathan Barnes ed., rev. Oxford trans., 1984) (1836).

children."[5] He considered marriage a distinct form of friendship, specially embodied in "physical union."[6] And for Musonius Rufus, the first-century Roman Stoic, a "husband and wife" should "come together for the purpose of making a life in common and of procreating children, and furthermore of regarding all things in common between them . . . even their own bodies."[7]

Not one of these thinkers was Jewish or Christian, or even influenced by Judaism or Christianity. Nor were they ignorant of same-sex sexual relations, which were common, for example, between adult and adolescent males in Greece. No one imagines that these great thinkers were motivated by sectarian religious concerns, ignorance, or hostility of any type toward anyone. Yet they reasoned their way to the view that male-female sexual bonds have distinctive and deeply important value.

Indeed, the anthropological evidence of a nearly perfect global consensus on sexual complementarity in marriage supports broader conclusions: First, no particular religion is uniquely responsible for the conjugal view of marriage. And second, it cannot be ascribed simply to bias or prejudice against people identifying as homosexual. After all, it has prevailed in societies that have spanned the spectrum of attitudes toward

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[5] Plutarch, *Life of Solon*, *in 20 Plutarch's Lives* 4 (Loeb ed., 1961).

[6] Plutarch, *Erotikas* 769 (Loeb ed., 1961).

[7] Musonius Rufus, *Discourses XIIIA, in Musonius Rufus: The Roman Socrates* (Cora E. Lutz trans., 1947), *available at* https://sites.google.com/site/thestoiclife/the_teachers/musonius-rufus.

homosexuality – including ones *favorable* toward same-sex acts, and others lacking anything like our concept of gay identity.

So something besides bias or prejudice can motivate the view that the union of man and woman has special value. That something is a rational judgment shared across history and cultures, and affirmed by the great philosophers and teachers of humanity, from Socrates to Gandhi. Accordingly, Judge Neely's honest, decent, and widely shared beliefs about marriage should not disqualify her from the judiciary.

B. History shows that while oppression *must* have been the point of anti-miscegenation, it *could not* have been the goal of the conjugal view.

Attempts to lump support for the conjugal view together with opposition to interracial marriage simply fail, both historically and conceptually. Interracial marriage bans are the exception in world history. They have existed *only* in societies with a race-based caste system, and began only in connection with race-based slavery. The conjugal view of marriage, on the other hand, has been the norm throughout human history, shared by the great thinkers and religions of both East and West and by cultures with a wide variety of views on homosexuality.

And far from having been devised as a pretext for excluding same-sex couples—as some now charge—marriage as the union of husband and wife arose in many places entirely independent of and centuries before any debates about same-sex marriage. Again, it arose in cultures that had no concept of sexual orientation and in some that fully accepted homoeroticism.[8] Searching the writings of Plato and Aristotle, Augustine and

[8] John Finnis, *Human Rights and Common Good* 315–88 (2011).

Aquinas, Maimonides and al-Farabi, Luther and Calvin, Locke and Kant, Gandhi and Martin Luther King Jr., one finds that the sexual union of male and female goes to the heart of their reflections on marriage, but considerations of race with respect to marriage are simply absent.[9]

> Ever since ancient Rome, class-stratified and estate-based societies had instituted laws against intermarriage between individuals of unequal social or civil status, with the aim of preserving the integrity of the ruling class…. But the English colonies stand out as the first secular authorities to nullify and criminalize intermarriage on the basis of race or color designations.[10]

Indeed, the earliest antimiscegenation statutes—Maryland's was first, in 1661—were part and parcel of chattel slavery.[11] Slaves "could *not* marry legally; their unions received no protection from state authorities. Any master could override a slave's marital commitment [emphasis in original]."[12] Because they were not persons in the eyes of the

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[9] *Id.*; John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (1997)*; and* Scott Yenor, *Family Politics: The Idea of Marriage in Modern Political Th*ought (2011).

[10] Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* 483 (Kindle ed. 2000).

[11] Francis Beckwith, *Interracial Marriage and Same-Sex Marriage* (Public Discourse, Witherspoon Institute, May 21, 2010), *available at* http://www.thepublicdiscourse.com/2010/05/1324/.

[12] Cott, *Public Vows: A History of Marriage and the Nation* 382.

law, "[t]he denial of legal marriage to slaves quintessentially expressed their lack of civil rights."—"[t]o marry meant to consent, and slaves could not exercise the fundamental capacity to consent."[13]

Francis Beckwith summarizes the history of antimiscegenation laws:

> The overwhelming consensus among scholars is that the reason for these laws was to enforce racial purity, an idea that begins its cultural ascendancy with the commencement of race-based slavery of Africans in early 17th-century America and eventually receives the imprimatur of "science" when the eugenics movement comes of age in the late 19th and early 20th centuries.[14]

He concludes:

> Anti-miscegenation laws . . . were attempts to eradicate the legal status of real marriages by injecting a condition—sameness of race—that had no precedent in common law. For in the common law, a necessary condition for a legitimate marriage was male-female complementarity, a condition on which race has no bearing.[15]

History is clear: antimiscegenation laws were but one aspect of a legal system designed to hold a race of people in economic and political inferiority and servitude. They had nothing to do with varied intellectual traditions on the nature of marriage, and everything to do with subjugation.

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[13] *Id*.

[14] Beckwith, *Interracial Marriage and Same-Sex Marriage*.

[15] *Id*.

C. Hostility to interracial marriage was and is unreasonable. Support for conjugal marriage is reasonable.

As noted in Part A, almost all cultures, and strands of our own philosophical and legal traditions, have seen marriage as bringing man and woman together in a sexual union oriented to family life, shaped by its demands (*e.g.*, norms of stability), and regulated to increase children's chances of being reared by the man and woman whose union gave them life. As noted in Part B, opposition to interracial marriage first emerged in colonial America, and has only existed amid broader racial castes.

Philosophical reflection on the nature of marriage explains why both of these things are true. It reveals that the conjugal view makes sense of many shared convictions about marriage. It is no arbitrary accident of our particular culture or history, but finds support in the reflections of various thinkers and traditions. A long Aristotelian tradition of reflection about the coherence and cogency of this vision of marriage establishes its reasonableness.

Many traditional elements of the conjugal view of marriage are unified and explained by the idea that marriage is a *comprehensive* union: Joining spouses *in body* as well as in mind, it is begun by consent and sealed by sexual intercourse. So completed in the acts by which new life is made, it is especially apt for – and deepened by – procreation, and calls for that broad domestic sharing uniquely fit for family life. Uniting spouses in these all-encompassing ways, it calls for all-encompassing commitment: permanent and exclusive. Comprehensive union is valuable in itself – not merely as a

means to responsible procreation and child-rearing – but its link to children's welfare is what justifies recognizing and regulating it in law.

In the Aristotelian tradition that has long informed Western thought and practice, community is created by common action – by cooperative activity, defined by common goods, in the context of commitment. The activities and goods build up that bond and determine the commitment that it requires.

For example, a scholarly community exists whenever people commit to cooperate in activities ordered toward gaining knowledge. These activities and the truths they uncover build up their bond and determine the sort of commitment scholars owe each other: namely, a commitment to academic integrity and the like.

It is in these three ways that the kind of union created by marriage is comprehensive: in (1) how it unites persons, (2) what it unites them with respect to, and (3) how extensive a commitment it demands.

It unites two people (1) in their most basic dimensions, in mind *and* body; (2) with respect to procreation, family life, and its broad domestic sharing; and (3) permanently and exclusively.[16]

[16] This argument is expanded upon in Chapter 1, "Men, Women, and Children: The Truth about Marriage," of Ryan T. Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (2015), and in Chapter 2, "Comprehensive Union," of Sherif Girgis et al., *What Is Marriage? Man and Woman: A Defense* (2012).

As to (1): The bodily union of two people is much like the union of organs in an individual. Just as one's organs form a unity by coordinating for the biological good of the whole (one's bodily life), so the bodies of a man and woman form a unity by coordination (coitus) for a biological good (reproduction) of the couple as a whole. In choosing such biological coordination, spouses unite bodily, and do not merely touch. Non-marital bonds are, by contrast, only unions of heart and mind.

Second, marriage is oriented to procreation, family life, and thus a comprehensive range of goods. The act that makes marital love is also the kind of act that makes new life, creating new participants in every type of good. So marriage itself, the bond embodied by that act, would be fulfilled by family life, and by the all-around domestic sharing uniquely apt for it. By contrast, other forms of companionship – unions of heart and mind through conversations and other activities – have more limited and variable scope.

Third, a union comprehensive in these two senses calls for a comprehensive commitment. Through time, that requires permanence; and at any given time, it requires exclusivity. People united in their whole persons—mind and body—should be united for their whole lives. Such a total commitment is also uniquely called for by the kind of relationship that is fulfilled by having and rearing children. For that is an inherently open-ended task calling for unconditioned commitment; and children's good is undermined by divorce and infidelity, which fragment families and often deprive children of fathers or mothers.

Indeed, the conjugal view better explains why spouses should pledge *sexual* exclusivity than views that consider marriage to be essentially an emotional union—any companionate bond. After all, sex is just one of many pleasing activities that foster tenderness, and some partners regard sexual openness as better for lasting companionship. But the conjugal view is not arbitrary in picking out sexual activity as central to exclusivity, since it distinguishes marriage by the type of cooperation, defined by the common ends, that it involves: bodily union and its natural fulfillment in family life. While people in other bonds may pledge and live out permanent sexual exclusivity as a matter of subjective preference, only conjugal union objectively requires such a commitment if it is to be realized fully. Only in conjugal marriage is there a principled basis for these norms apart from what spouses may prefer.

In short, the conjugal view of marriage is no arbitrary grab-bag of rules. It is a coherent vision that can make sense of many of our shared convictions about marriage—e.g., in the importance of its total commitment and link to family life. So whether the conjugal view is ultimately correct or mistaken, whether it should be enshrined in law or not, it is the fruit of honest and rich rational arguments, and thus holding that view cannot be grounds for removing someone from judicial office.

D. Historically, religious views on conjugal marriage are more widely shared and deeply rooted than religious attempts to rationalize racism.

Although some invoked the Bible to support interracial marriage bans, religious views about marriage helped to eliminate those very laws. Indeed, the first court to strike down an interracial marriage ban did so in light of a religious argument advanced by an

interracial Catholic couple. Professor Fay Botham describes the reasoning behind the California Supreme Court's decision in *Perez v. Sharpe* (1948):[17]

> [The argument] hinged upon several key points of Catholic doctrine: … third, that the Catholic Church has no law forbidding "the intermarriage of a nonwhite person and a white person"; and fourth, that the Church "respects the requirements of the State for the marriage of its citizens as long as they are in keeping with the dignity and Divine purpose of marriage."[18]

Botham continues:

> [The argument] appealed to the highest source of Catholic authority: the Holy Father himself. Citing Pope Pius XI's 1937 encyclical to the church in Germany, *Mit brennender Sorge*, [the lawyer] pointed out that the "Church has condemned the proposition that 'it is imperative at all costs to preserve and promote racial vigor and the purity of blood; whatever is conducive to this end is by that very fact honorable and permissible.'"[19]

The court sided with the Catholic plaintiffs and overturned the state's ban on interracial marriage. Part of the argument hinged on what marriage is and its connection to procreation:

> The right to marry is as fundamental as the right to send one's child to a particular school or the right to have offspring. Indeed, "We are dealing here with legislation which involves

[17] *Perez v. Sharpe*, 32 Cal. 2d 711 (Cal. 1948).

[18] Fay Botham, *Almighty God Created the Races: Christianity, Interracial Marriage, and American Law (Chapel Hill: University of North Carolina Press, 2013), Kindle edition*, location 310.

[19] *Id.*, location 313.

> one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race."[20]

A few years later, the same court again addressed the meaning of marriage, finding that "the institution of marriage" serves "the public interest" because it "channels biological drives that might otherwise become socially destructive" and "ensures the care and education of children in a stable environment."[21]

The U.S. Supreme Court reached a similar conclusion in 1967 when it struck down all bans on interracial marriage in *Loving v. Virginia*. Declaring that such laws were premised on "the doctrine of White Supremacy,"[22] the Court held as follows:

> There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.[23]

The law thus fell as an impermissible racial classification.

As in *Perez*, numerous religious groups argued that racism distorted a clear-eyed understanding of marriage. As Susan Dudley Gold recounts in "*Loving v. Virginia": Lifting the Ban against Interracial Marriage*:

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[20] *Perez v. Sharpe*, 711, 715 (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 536 [1942]).

[21] See *De Burgh v. De Burgh*, 250 P.2d 598, 601 (Cal. 1952).

[22] *Loving v. Virginia*, 388 U.S. 1, 7 (1967).

[23] *See id.* at 11–12.

> A coalition made up of Catholic bishops, the National Catholic Conference for Interracial Justice, and the National Catholic Social Action Committee filed a fourth amicus brief in favor of the Lovings. The bishops and the nonprofit groups became involved in the case because of their commitment "to end racial discrimination and prejudice" and because of the "serious issues of personal liberty" raised by the Lovings' ordeal.[24]

Catholics were not alone. Southern Baptist theologians also opposed bans on interracial marriage. In 1964, three years before the Supreme Court ruled in *Loving*, T. B. Maston published a booklet for the Christian Life Commission of the Southern Baptist Convention titled *Interracial Marriage*. While Maston thought "interracial marriages, at least in our society, are not wise," he was clear on their biblical status: "A case cannot be made against interracial marriages on the basis of any specific teachings of the Scripture."[25] Indeed, he argued, "The laws forbidding interracial marriages should be repealed."[26]

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[24] See Susan Dudley Gold, "*Loving v. Virginia": Lifting the Ban against Interracial Marriage* (New York: Cavendish Square Publishing, 2009), 71–72 (quotations in original).

[25] T. B. Maston, *Interracial Marriage*, Christian Life Commission, Southern Baptist Convention, p. 9.

[26] *Id.*, 9. Of course, there were Christians who claimed the Bible supported their position, but Maston showed how they misinterpreted the Scriptures. Any Old Testament prohibitions about marriage "were primarily national and tribal and not racial. The main motive for the restrictions was religious…. The Prohibitions regarding intermarriage in

E. The government's interest in a case like this is not compelling and is entirely unlike its interest in a case involving interracial marriage.

The strict scrutiny test that government must overcome before violating one of its citizens' religious freedom "look[s] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[s] the asserted harm of granting specific exemptions to particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006).

Here, Government has no compelling interest in forcing conscientious citizens to participate in same-sex weddings in violation of their religious or moral convictions. Even people who personally support same-sex marriage can see that the government is not justified in coercing people who do not. Disagreements about the nature of marriage are not about the dignity of the people who identify as gay or lesbian. Americans on

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the Old Testament might be used to argue against the marriage of a Christian and a non-Christian, and even against the marriage of citizens of different nations, but they cannot properly be used to support arguments against racial intermarriage" *Id.*, 5. Maston went on to note that in the Old Testament, "there are a number of instances of intermarriages," and "many of the great characters of the Bible were of mixed blood." *Id.*, 5–6. Maston pointed out that a sound Christian view of marriage had nothing to say about race but everything to say about sexual complementarity of male and female: "The Christian view which is soundly based on the biblical revelation is that marriage, which was and is ordained of God is a voluntary union of one man and one woman as husband and wife for life." *Id.*, 7.

different sides of the marriage issue agree that everyone should be free to participate in public life on equal terms.

In contrast, government has a very different interest where interracial marriage is at issue. The dehumanization of African Americans that began with chattel slavery before the Civil War persisted for decades under Jim Crow laws, which prevented blacks and whites from associating or contracting with one another. Racism thus was entrenched and backed by state-sponsored violence. As discussed above, history shows that opposition to interracial marriage was part of this broader effort to subjugate a class of people. In that context, the government has a much different, and far stronger, interest to pursue.

Here, however, the government does not have a strong interest in removing Judge Neely from office. The record reflects that Sublette County has more than enough government officials willing and available to perform same-sex wedding ceremonies. And Judge Neely has done nothing to hinder anyone's ability to enter into a marriage, same-sex or otherwise. In fact, even though she cannot perform a same-sex wedding, she would assist any same-sex couple seeking to be married in promptly locating another public official to preside over the ceremony.

Nor do Judge Neely's beliefs affect her independent judgment when deciding cases and legal issues as a jurist. Judge Neely has indicated that she would gladly recognize a same-sex marriage in the context of litigation; her religious objection applies only to personally presiding over a wedding that declares a relationship to be a marriage in violation of her beliefs. In this context, unlike in the interracial context, the government does not have a strong interest to pursue.

V. CONCLUSION

Judge Neely's conflict of conscience is motivated by her reasonable beliefs about the nature of marriage—not bias or prejudice against gay persons. People of goodwill – who care for and respect those in the gay community – can and do continue to believe that marriage is best understood as uniting a man and a woman. The Court should reject the Commission's recommendation and dismiss the claims against Judge Neely.

DATED: May 5, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2016, I filed the foregoing original and six copies thereof with the Clerk of Court for the Wyoming Supreme Court via FedEx. I further certify that I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following:

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