



Written by [Steve Byas](#) on August 23, 2016

Wyoming Judge Faces Ouster for Religious Beliefs

“For [Judge Ruth Neely] to make the statement that a big chunk of the public is simply not welcome to exercise their constitutional rights in her courtroom flies in the face of everyone’s First Amendment protection that we don’t have an official state religion,” proclaimed Jason Marsden, executive director of the Matthew Shepard Foundation, in calling for the Wyoming Supreme Court to uphold the ouster of a municipal court judge, after she told a reporter that she did not believe in same-sex “marriage.”



The Wyoming Supreme Court has taken the case on appeal after the state Commission on Judicial Conduct and Ethics (CJCE) called for a lifetime ban from the bench for Neely, combined with \$40,000 in fines. Neely has served as a municipal court judge in Pinedale, Wyoming (with a population of only 2,030), for 21 years, but after the Supreme Court decision that said persons of the same sex had a “constitutional right” to marry each other (the *Obergefell* decision), a reporter asked for her opinion on the controversial ruling.

Judge Neely told the journalist that she personally could not perform same-sex unions, due to her beliefs. This precipitated a complaint being filed with the Wyoming CJCE, calling for her ouster. The Commission called her religious beliefs so “repugnant” that any judge who expressed such opinions “cannot remain in office.”

If Neely were removed, she would be the first judge in America that has been removed for simply expressing a religious belief about marriage. And it would clearly be used as a precedent to remove scores of judges around the country.

But Neely is not even allowed to perform weddings in her role as a municipal judge. Her jurisdiction is limited to such infractions of the law as speeding and public intoxication. She has never performed a wedding, and no same-sex couple has ever asked her to perform a wedding. Her supposed violation was that she expressed her sincerely held religious belief that marriage is limited to those of the opposite sex.

The Becket Fund, a religious liberty-supporting organization, filed an amicus curiae brief with the Wyoming Supreme Court, arguing that religious freedom “includes not just the right to privately hold religious beliefs, but also the right to express them.”

The brief added that even the Supreme Court’s *Obergefell* decision, in which a divided court said same-sex “marriage” was legal in all 50 states, agreed that “decent and honorable religious or philosophical” beliefs that marriage is limited to opposite-sex unions is held “in good faith by reasonable and sincere people.” In fact, this was the belief espoused by even most liberal Democrats, including President Barack Obama, Vice President Joe Biden, and then-Secretary of State Hillary Clinton less than five years ago!



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Two reasons are offered by the CJCE for ignoring Neely's religious beliefs, according to the Becket brief. "First, it argues that Judge Neely and those judges who share her beliefs suffer from an 'inability to apply and follow the law,' which is what 'renders [them] incompetent to perform as a judge.'"

Amazingly, as the Becket brief explains, "The law does not even authorize, much less require, Pinedale municipal judges to perform marriage ceremonies, nor does the law require Sublette County magistrates to perform marriage ceremonies; it merely allows them the discretion to do so and allows them to cite many reasons — including schedule, relationship, and convenience — for declining to perform particular ones."

The Alliance Defending Freedom (ADF) has taken up Neely's defense, and they cite Article 1, Section 18 of the Wyoming state constitution. In this section, it clearly states that religious beliefs do not make one ineligible to hold public office: "The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror *because of his opinion on any matter of religious belief whatever.*" (Emphasis added.)

This language is consistent with that found in the U.S. Constitution, which declares, in Article VI, "No religious test shall ever be required as a qualification to any office or public trust under the United States."

The ADF noted that should the reasoning of the Wyoming CJCE be carried to its logical conclusion, "jurists like Chief Justice John G. Roberts and Associate Justices Clarence Thomas and Samuel A. Alito, Jr., of the United States Supreme Court could not sit on the bench in Wyoming. Not only have they written opinions explaining their view that the U.S. Constitution does not include a right to same-sex marriage, but also they (like Judge Neely) ascribe to a religious tradition that precludes them from celebrating a same-sex marriage."

No doubt the secular progressives of the Wyoming CJCE would love to kick those three off the U.S. Supreme Court, as well, if they could.

A second argument of the Wyoming CJCE that the removal of Judge Neely, *and those with similar beliefs* according to the Becket brief, is necessary "to avoid the perception of bias." (Emphasis added.) The Becket brief counters, however, that "in two decades of serving as a judge, no one has ever complained that Judge Neely is biased. The only evidence is to the contrary: Judge Neely has been an exemplary judge who treats LGBT citizens, like all other citizens, with impartiality and fairness both inside and outside her courtroom."

Finally, the Becket brief offers that it is not uncommon for judges to face cases in which they may feel bias, or the parties in the case may perceive bias on the part of the judge. In those cases, "Wyoming already has the means for addressing" either: recusal. The judge can simply hand the case off to another judge.

In effect, what the CJCE is saying is that no person who holds a religious belief that contradicts their beliefs, religious or secular, can serve as even a traffic court judge in Wyoming. This is clearly an example of a religious test.

This raises the issue of Christian ministers who also perform wedding ceremonies for couples — either for church members or non-church members. Many preachers will not perform such weddings, even for members of their congregation, if the couple, for example, does not have pre-marital counseling. Others will not perform a wedding for any non-member. Some will not marry a couple that is presently living



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together, or for a host of other reasons. And certainly there are ministers of the gospel who will refuse to perform a wedding for a same-sex couple.

So are they also to be banned from performing any weddings at all?

On the other hand, there are ministers who have no problem marrying anyone who shows up, and there are those who would be absolutely gleeful to perform a wedding for a same-sex couple. They proclaim that their “religious belief” recognizes a same-sex “marriage” as just as valid as a marriage between a man and a woman. What the state of Wyoming is doing in this case is putting its stamp of approval on one religious belief — that same-sex “marriages” are correct — over another belief — that same-sex “marriages” violate their interpretations of Scripture.

As James Campbell of the ADF told the Wyoming Supreme Court at the recent hearing in Cheyenne, “This case presents significant First Amendment issues.” Clearly, he is talking about freedom of speech, and freedom of religious practice.

But one must wonder if religious liberty means anything at all in the eyes of many secular progressives. Former New Mexico Governor Gary Johnson, the *Libertarian* Party nominee for president, has recently dismissed religious liberty as a “black hole,” expressing concern that allowing someone to assert their religious beliefs to refuse to serve a cake for a same-sex wedding is just a cover for “discrimination.”

We shall soon see whether the Wyoming Supreme Court views religious liberty as America’s “first freedom,” or whether they will also cast it aside as a “black hole.”



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