NO. _____

IN THE
Supreme Court of the United States

JUDGE RUTH NEELY,

Petitioner,

v.

WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

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

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

The question presented is:

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

PARTIES TO THE PROCEEDING

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

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

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INTRODUCTION

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

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

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

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

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

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

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

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

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

DECISIONS BELOW

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

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

STATEMENT OF JURISDICTION

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

PERTINENT CONSTITUTIONAL AND CODE PROVISIONS

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

STATEMENT OF THE CASE

I. Factual Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Procedural Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REASONS FOR GRANTING THE WRIT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. This Case Cleanly Raises the Question Presented.

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

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

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

CONCLUSION

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

Respectfully submitted,

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