

February 16, 2017

Rep. Jonathan Kreiss-Tomkins
Chairman, House State Affairs Committee
State Capitol, Room 411
Juneau, Alaska 99801



Re: Opposition to HB 20, relating to marriage solemnization

Dear Representative Kreiss-Tomkins:

We are writing to express our opposition to House Bill 20:

“An Act relating to marriage solemnization; and authorizing elected public officials in the state to solemnize marriages.”

HB 20 proposes to add elected officials to the list of persons who are authorized under law to solemnize marriages. Currently, those authorized to solemnize marriages include religious leaders (ministers, priests, rabbis), judicial officers, and marriage commissioners.

Alaska Family Council is concerned that the “authority” to solemnize a marriage can, especially with respect to public officials, be easily construed as a “duty” to solemnize a marriage.

Religious leaders can and do refuse to solemnize marriages for any number of reasons. For example, they can decline if the persons seeking marriage do not comply with the marriage requirements of a particular religion, or church. The First Amendment of the U.S. Constitution, as well as Article I, Section 4 of the Alaska State Constitution, would presumably protect the right of religious leaders to decline to solemnize a marriage for reasons that are purely sectarian.

Unfortunately, recent legal and political developments make it less clear that public officials enjoy the same freedom to refuse marriage solemnization for reasons of individual conscience or religious belief.

In Wyoming, the case of Judge Ruth Neely has drawn national attention. The following is a statement from the attorneys representing Judge Neely, that sums up the relevant facts of her case. This statement is accessible on the website for Alliance Defending Freedom:

<https://www.adflegal.org/detailspages/case-details/an-inquiry-concerning-the-honorable-ruth-neely>

“Judge Neely has served as the municipal judge in Pinedale, Wyoming, for over 21 years. In that position, she hears cases that involve traffic and parking violations, animal-control issues, and miscellaneous criminal misdemeanors like public intoxication and shoplifting.

Judge Neely has no authority to solemnize marriages as a municipal judge.

“Judge Neely has also served as a part-time circuit court magistrate for approximately 14 years. In that capacity, she has the authority to do things like administer oaths, issue subpoenas, conduct bond hearings, issue warrants, and solemnize marriages. Although Judge Neely ‘*may perform the ceremony of marriage*’ as a magistrate, she has *no legal obligation or duty* to do so.

“In December 2014, a reporter in Pinedale who suspected that Judge Neely’s religious beliefs prevented her from serving as a celebrant for same-sex marriages asked her whether she was ‘excited’ to perform same-sex weddings. In response, Judge Neely stated that she believes that marriage is the union of one man and one woman, and therefore, she would be unable to perform same-sex weddings. A few days later, an article appeared in the *Sublette Examiner* quoting Judge Neely as saying that, because of her religious beliefs, she would ‘not be able to do’ same-sex marriages and that she had not ‘been asked to perform’ one. [emphasis added]

“In March 2015, the Wyoming Commission on Judicial Conduct and Ethics filed a complaint against her, alleging judicial misconduct and seeking her removal from both judicial positions. The commission claimed that by merely communicating her religious beliefs about marriage and her inability to serve as a celebrant for same-sex marriages, Judge Neely failed to follow the law and manifested bias and prejudice.

“The commission brought these charges even though Judge Neely has never been asked to solemnize a same-sex marriage, no law requires magistrates to serve as a celebrant for any marriage, magistrates may decline to perform weddings for a host of secular reasons, and Judge Neely has an unblemished record of integrity, impartiality, and scrupulous compliance with the law in her more than 21 years of judicial service.

“In February 2016, the commission filed with the Wyoming Supreme Court a recommendation that Judge Neely be removed from office. The commission recommended that Judge Neely be removed not only from her position as a part-time circuit court magistrate, the position in which she may but need not perform weddings, but also from serving as a municipal judge, a job in which she is not even permitted to solemnize marriages.

“In April 2016, Judge Neely filed a petition with the Wyoming Supreme Court objecting to the commission’s recommendation. She also filed a brief explaining that it would violate the United States and Wyoming Constitutions to remove her from office for stating her religious beliefs about marriage.”

The case in Wyoming has yet to be resolved. But it underscores our concern with HB 20, that when a public official is vested with the “authority” to solemnize marriages, this can be easily be construed as a “duty” to perform marriages – or at least limit their reasons for declining to do so.

As a practical matter, HB 20 seems unnecessary because any elected official can already apply for the temporary authority to solemnize a marriage by seeking a one-day marriage commissioner appointment. The process for seeking such an appointment is explained on the Alaska Court System website at the following link:

<http://courts.alaska.gov/trialcourts/trialcts.htm#comm>

Alaska Family Council believes that HB 20 is unnecessary, and potentially could lead to situations in which elected officials suffer punitive consequences merely for declining to solemnize marriages for reasons of personal conviction or religious belief.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Minnery", with a horizontal line underneath the name.

Jim Minnery
President, Alaska Family Council