

October 17, 2014

Vote 2014: The Truth about New Mexico Judges

Dear Conservative Voter,

The NM Center for Family Policy issues this letter to educate New Mexico voters regarding the decisions of three members of the state judiciary whom we believe deserve special attention because of their recent decisions: NM Supreme Court Justice Edward Chavez (statewide) and Second Judicial District judges Alan Malott and Nan Nash (Bernalillo County). Our mission is to promote the sanctity of life, traditional marriage, the family and religious freedom. Combined, the decisions of these judges as relayed below have taken New Mexico down a path that addresses all four of these areas, and not in a positive way. Voters have the opportunity in the upcoming November 4 election to do something about it.

Justice Edward Chavez

Key case: [2013-NMSC-040 Elane Photography, LLC v Vanessa Willock](#)

This case questioned whether NM small business owner Elaine Huguenin had the right to refuse to photograph a same-sex "wedding" ceremony because of the convictions of her beliefs. Justice Chavez ruled that she did not have that basic moral conscience protection right, thereby defying the freedom of religion clause of the First Amendment to the U.S. Constitution. The shocking decision rocked the nation because of its glaring lack of regard for this fundamental right, effectively forcing Elaine (and all NM business owners) to violate their own moral consciences in order to do business in the state. Justice Chavez boldly declared, "The New Mexico Religious Freedom Restoration Act is inapplicable to disputes in which a government agency is not a party." Actually, this Act was designed to protect people like Elaine Huguenin from the very same kind of government strong-arming that Justice Chavez wielded in his decision. Does he consider himself to be above government when he overrides state policy and legislates - his way - from the bench?

Key case: [2014-NMSC-003 Legalizes Same-Sex Marriage](#)

New Mexico has a very loose definition of marriage in Article 40 of the Statutes which does not define the gender of parties to be married. In August and September of 2013, eight of 33 NM counties began issuing marriage licenses to same-sex couples. Lawsuits were filed, and eventually the issue made its way up to the NM Supreme Court. Justice Chavez issued the ruling in this case which rendered same-sex marriage the law of the state, bypassing the NM Legislature and creating law from the bench by doing so. Again, his decision was noted on a national level for its judicial activism in taking the matter into his own hands rather than leaving it up to the people of the state. He stated in his opinion: "Neither responsible procreation nor the traditional institution of marriage constituted an important government interest to preclude same-gender marriage... the tradition of opposite-gender marriage only established that the discrimination against same-gender marriage existed for a long time."

Judge Alan Malott

This Bernalillo County judge was the first to rule on the Elane photography case mentioned above. He ruled in favor of same-sex marriage, as did Justice Edward Chavez.

Judge Nan Nash

Key case: [D-202-CV-2012-02909 Ratified "Aid in Dying"](#)

This Bernalillo County judge ushered in euthanasia for the state *from the district bench*. A terminally-ill patient (that was at the time in remission from cancer) and two physicians brought a claim against the Bernalillo County District Attorney and the State Attorney General "to clarify that when physicians provide aid in dying, they do not violate New Mexico law". In spite of the new term "aid in dying" coined therein, the plaintiffs wanted legal permission to perform euthanasia. The New Mexico Assisted Suicide Statute (NMSA 30-2-4) renders it a fourth-degree felony to deliberately aid another in taking his own life. Judge Nash stated: "In administering an aid in dying prescription to a... patient, a physician is providing the means for the patient to achieve that patient's death... and therefore deliberately aiding that patient in ending her or his life." Pulling a rabbit out of a hat, Nash cites Bishop 2009-NMSC-036: "When the literal meaning of a statute would be absurd, unreasonable, or otherwise inappropriate in any application, we go beyond the mere text of the statute." With this rabbit, she steps over the law of New Mexico and concludes: "This Court cannot envision a right more fundamental, more private or more integral to the liberty, safety and happiness of a New Mexican than the right of a... patient to choose aid in dying... The Court therefore declares that the liberty, safety and happiness interest of a competent, terminally ill patient to choose aid in dying is a fundamental right under our New Mexico Constitution." As a district court judge, Nan Nash thought that upending our laws regarding the right to life was her prerogative.

Conclusion

All three judges need 57 percent of all voters who state a preference on their ballots concerning them to choose to retain them in order for them to hold on to their respective seats. Conversely, if over 43 percent of the voters choose not to retain them, they will be deposed from their powerful positions. Please forward this information to everyone you know.

Sincerely,

Leslie Cumiford,
Executive Director