SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

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In the Matter of the Application of

Sarah Elizabeth Rockefeller **INDEX NUMBER:**

for Leave to Change Name to

EVAN KYLE ROCKEFELLER

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MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR INDIVIDUAL ADULT CHANGE OF NAME

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INTRODUCTION

Petitioner is a transgender male who was assigned the female gender at birth. See Petition Exhibit A. On November 17, 2005, Petitioner sought leave from this Court to assume the name of Evan Kyle Rockefeller, which he believes better reflects his male gender identity. On November 23, 2005, this Court issued an Order that denied that petition, without prejudice to reapply, on the ground that Petitioner had not presented medical evidence establishing that he satisfied an extra-statutory criterion. See Petition Exhibit B at 2 (In re Anonymous, Index No. 2005/12940 (Civ. Ct., Monroe Co.) (Nov. 23 2005)). In denying the Petition, the Court relied on outdated New York case law that does not reflect the current standard of medical care for transgender individuals. Accordingly, Petitioner renews his petition and files this Memorandum of Law in support of a legal name change.

As explained below, there is no legal basis for denying Petitioner's name change request. The Court's prior ruling in effect imposes a greater, extra-statutory legal burden for transgender people, such as Petitioner, than that which is imposed on other name change applicants. The statute, in fact, imposes no such burden. Any construction of the statute to do so would violate New York State law and policy, and would create problems of constitutional magnitude. By applying the statute according to its express terms, and granting Petitioner's request for a name change, the Court can avoid any such constitutional concerns.[1] Frederico v. Moore, 57 A.D.2d 704, 705, 395 N.Y.S.2d 535, 536 (N.Y. App. Div. 4th Dep't 1977) ("A constitutional issue should not be determined 'if a construction of [a] statute is fairly possible by which the

[1] In his petition, Petitioner, in the alternative, attests to additional facts that he believes make the additional showing that the Court requires. He does so under protest. For the reasons set forth in this brief, this requirement is contrary to the New York law and policy protecting governing medical privacy and undermines fundamental

[constitutional] question may be avoided.'") (quoting Matter of Peters v. New York City Hous. Auth., 307 N.Y. 519, 527-28, 121 N.E.2d 529, 530 (1954)).

STATEMENT OF FACTS

Petitioner is a transgender man. Petition at ¶ 11. At birth, he was designated female on his birth certificate and given the name Sarah Elizabeth by his parents. Id. at ¶ 1. Petitioner, however, has a male gender identity, which he currently expresses through his overall presentation, including his dress, grooming, mannerisms, and self-identification. Id. at ¶ 11. Petitioner is an adult resident of Rochester. Id. at ¶ 2. He has never been married, nor does he have any minor children. Id. at ¶ 3. There are no judgments or liens against him, nor is he party to any other legal proceeding. Id. at ¶ 8. Petitioner has never been arrested and has never declared bankruptcy. Id. at ¶¶ 6-7. No third party objects to this petition. Id. at ¶ 17.

Gender identity disorder is a relatively new field of medicine. Gender identity disorder has two components: first, a person must have a strong and persistent cross-gender identification; and second, there must be a persistent discomfort with one's assigned sex. See American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders at 532-33 (4th Ed. 1994) (hereinafter "DSM-IV"). Although the etiology of gender identity disorder is unknown, the weight of scientific evidence suggests that the condition has a biological, rather than a purely psychological, basis. P.T. Cohen-Kettenis & L. J. Gooren, Transsexualism: A Review of Etiology, Diagnosis and Treatment, 46 Journal of Psychosomatic Research 315-33 (1999); see also Louis Gooren, Gender Transpositions: The Brain Has Not Followed Other Markers of Sexual Differentiation, 4 Int'l J. of Transgenderism (2000)

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constitutional guarantees of equality, expression, privacy, and liberty. See infra discussion at 11-17.

(concluding that there is mounting scientific evidence that transsexualism is caused by biological rather than psychological factors); J.-N. Zhou, M.A. Hoffman, L.J. Gooren & D.F. Swaab, A Sex Difference in the Human Brain and its Relation to Transsexuality, Nature 378 (1995) (concluding that "gender identity alterations may develop as a result of an altered interaction between the development of the brain and sex hormones [in utero]").[2]

In 1979, the first widely recognized standards of medical care were developed by the Harry Benjamin International Gender Dysphoria Association. These standards of care indicate that, in the 1970s, clinicians tended to focus on sex reassignment surgery. But, as the field matured over the next few decades, medical experts "recognized that some persons with bona fide gender identity disorders neither desired nor were candidates for sex reassignment surgery." See Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders, 6th Version, Feb. 2001 at 2 (available at www.hbigda.org/documents2/socv6.pdf) ("Harry Benjamin Standards of Care"); see also DSM-IV at 533 (indicating that gender identity disorder may be manifested by "adopt[ing] the social role of the other sex or [by] acquir[ing] the physical appearance of the other sex through hormonal or surgical manipulation") (emphasis added). Although subject to individual patient needs, the modern transgender standards of care recognize three phases of medical treatment (known as "triadic therapy") after a diagnosis of Gender Identity Disorder has been established: first, a real-life experience in the desired gender; second, the administration of hormones of the

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[2] Courts, including those in New York, have recognized this evidence. See, e.g., Davidson v. Aetna Life & Cas. Ins. Co., 101 Misc. 2d 1, 4, 420 N.Y.S.2d 450, 452 (N.Y. Sup. Ct. N.Y. Co. 1979) (citing expert testimony that transsexualism is likely caused by difference in brain structure); In re. Heilig, 816 A.2d 68, 76-77 (Md. 2003) (summarizing medical research that indicates transsexualism is likely caused by "certain conditions in the womb and certain processes in the developing pre-natal brain"); In re. Estate of Gardiner, 22 P.3d 1086, 1093 (Kan. App. 2001) (citing medical research indicating "a neurobiological basis of gender identity disorder"), aff'd in part and rev'd in part on other grounds, 42 P.3d 120 (Kan. 2002); Kosilek v. Maloney, 221 F. Supp. 2d 156, 163 (D. Mass. 2002)

desired gender; and third, surgery to change the genitalia and other sex characteristics. Harry Benjamin Standards of Care at 3. However, "[c]linicians have increasingly become aware that not all persons with gender identity disorders need or want all three elements of triadic therapy." Id.

Consistent with these modern standards of medical care for gender identity disorder, Petitioner would like to express his gender identity through a name that, to him, better reflects his male identity, Evan Kyle. Petition at ¶ 11. In addition, by changing his legal name to Evan Kyle, Petitioner hopes to avoid much of the harassment and discrimination that he experiences when some people learn that he has a legal name that they perceive to be at odds with his overall presentation. Id. at ¶ 12. Finally, Petitioner seeks to change his legal name so that he can obtain legal documents, such as a driver's license and Social Security card, in the name by which he is known in the community. Id.

("The consensus of medical professionals is that transsexualism is biological and innate.").

ARGUMENT

New York's name change statute is permissive. It limits the ability of an individual to change his name only when there is a concern that he is seeking to evade law enforcement, debts, or other obligations, or otherwise perpetrate fraud. In his verified petition, Petitioner makes clear that he seeks to change his name neither to evade any obligations nor to perpetrate any fraud. To the contrary, Petitioner wishes to have a legal name, and legal documents, that better reflect who he is and how he is known in the community. He is entitled to change his name under New York law. Creating a more difficult rule for Petitioner than for other individuals seeking to change their name simply because Petitioner is transgender violates not only the statute and the public policy of this State, but also implicates fundamental constitutional guarantees of equality, expression, privacy and liberty.

I. Petitioner Is Entitled to Change His Name Pursuant to the New York Name Change Statute.

Under the New York Civil Rights Law, a person seeking to change his legal name must file a petition in writing that includes the following information, and only the following information:

- the grounds of the application, the name, date of birth, place of birth, age and residence of the individual whose name is proposed to be changed and the name which he or she proposes to assume; [and . . .]
- whether or not the petitioner has been convicted of a crime or adjudicated a bankrupt, and whether or not there are any judgments or liens of record against the petitioner or actions or proceedings pending to which the petitioner is a party, and, if so, the petitioner shall give descriptive details in connection therewith sufficient to readily identify the matter referred to.

N.Y. Civ. Rights Law § 61 (McKinney's 2006).[3] If the court is satisfied that a petition is true and that there is "no reasonable objection to the change of name," then "it *shall* make an order" granting the petition. N.Y. Civ. Rights Law § 63 (McKinney's 2006) (emphasis added).

Petitioner's affidavit demonstrates that he does not seek to evade law enforcement, creditors, or children or other dependents who might rely on him for support. Petition at ¶¶ 2, 5-9. To the contrary, Petitioner "seeks to change his legal name so that he can obtain legal documents, such as a driver's license and Social Security card, in the name by which he is known in the community." Id. at ¶ 12. Moreover, he seeks to change his name for the deeply personal and constitutionally protected reason that the name Evan Kyle Rockefeller, "in his view, better reflects his male gender identity." Id. at ¶ 11. Under the New York Civil Rights law, these arguments are more than sufficient to establish Petitioner's entitlement to a name change**.**

New York courts have consistently interpreted New York's name change statute broadly and circumscribed the power of a court to reject name change petitions. As the Fourth Department has explained, "[a] court may properly assume that most petitions by adults should be granted until the contrary appears, particularly when, as here, the change is unopposed by interested third parties." In re Halligan, 46 A.D.2d 170, 172, 361 N.Y.S.2d 458, 460 (N.Y. App. Div. 4th Dep't 1974); see also In re Alvarado, 166 A.D.2d 932, 560 N.Y.S.2d 586 (N.Y. App. Div. 4th Dep't 1990) (court's power in reviewing applications for name change limited to whether change of name would be an instrumentality of fraud, misrepresentation, or interference with the rights of others). Other New York courts likewise have acknowledged that

[3] An individual with a prior conviction for specified violent felony offenses and who is presently confined in a state correctional facility must make additional showings pursuant to N.Y. Civil Rights Law § 61(2). As

adult name change petitions are ordinarily to be granted, consistent with the New York Civil Rights law and an individual's broad common law right. In re Washington, 216 A.D.2d 781, 628 N.Y.2d 837 (N.Y. App. Div. 3d Dep't 1995); In re Linda Ann A., 126 Misc. 2d 43, 44, 480 N.Y.S.2d 996, 997 (N.Y. Sup. Ct., Queens Co. 1984) ("The [New York name change] statute requires the court to grant the petition if the statements in the petition are true unless there is a 'reasonable objection' to the change. The court's power of review is thus quite limited and the court should be chary of substituting its subjective judgment on the propriety or advisability of the name change for an objective consideration of its lawfulness.").

New York appellate courts have reversed lower court decisions denying petitions for name changes where the lower court imposed requirements beyond those permitted by the statute. For example, the Fourth Department struck down a requirement that a married woman show "a compelling reason" for changing her surname from that of her husband, finding that the trial court improperly imposed a burden of persuasion beyond that required by the statute. Halligan, 46 A.D.2d at 171-72, 361 N.Y.S.2d at 460. Similarly, the Third Department reversed and remanded a County Court decision holding that a prior felony conviction precluded the petitioner from applying for a statutory change of name. Washington, 216 A.D.2d at 781, 628 N.Y.S.2d at 837-38.

Furthermore, in Halligan, the Fourth Department cited with disapproval instances where the Court denied name changes based on the judge's view that the name did not match some aspect of the person's "true" identity (e.g., refusing to allow an American-born individual to adopt a traditionally African name or more "Germanic" name, or refusing to allow an individual

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demonstrated in the Petition, Petition at ¶ 6, this section of the New York Civil Rights Law is not implicated in this case.

to forego a traditionally Italian or Jewish name for a less "ethnic" name). 46 A.D.2d at 171 n.1, 361 N.Y.S. at 460 (citing with disapproval Matter of Middleton, 60 Misc. 2d 1056 (Civ. Ct., N.Y. Co. 1969), Matter of Jama, 51 Misc. 2d 9 (Civ. Ct., N.Y. Co. 1966), Matter of Filoramo, 40 Misc. 2d 598 (Civ. Ct., N.Y. Co. 1963), and Matter of Cohen, 163 Misc. 795 (City Court of NY, NY Co. 1936)). The Appellate Division's disapproval of these decisions reflects the fact that the Civil Rights Law is designed to permit the individual to determine for himself what his appropriate name should be, as it is an important expression of his identity. Thus, it is not only the text but also the intent of the statute that makes it impermissible for the Court to deny a petition for a name change for a reason that both goes beyond what the statute requires.

Last November, this Court denied Petitioner's original name change petition because he had not presented "medical evidence" demonstrating that his intention to live as a male was "irreversible and completely permanent." See Petition Exhibit B at 2 (citing Matter of Anonymous, 57 Misc. 2d 813 (Civ. Ct., N.Y. Co. 1968)). But the 1968 decision upon which the Court primarily relied to deny Petitioner's name change application reflects medically obsolete notions of what it means to be transgender (i.e., surgical sex change).

As described above, the modern standard of care for transgender individuals now encompasses a triadic process in which the transgender individual first lives as the other sex, then receives hormones of the desired gender and ultimately, may — or may not — undergo surgery. Both the language and the design of the statute indicate that these factors are irrelevant to the question of whether Petitioner is entitled to change his name pursuant to New York law and contrary to the case law cited above. This Court also stated that the grant of a name change absent of medical evidence would be "fraught with danger of deception and confusion." See id. But as the Court explained in Halligan, general fears that the public may be "confused" by an

individual's change of name is no basis for denying an applicant the relief to which he is otherwise entitled under the New York law. 46 A.D.2d at 172, 361 N.Y.S. 2d at 460 ("While we appreciate the court's apprehension over the confusion which may result, confusion is a normal concomitant of any name change."). Moreover, even the 1968 In the Matter of Anonymous Court found that "the probability of so-called fraud, if any, exists to a much greater extent when the birth certificate is permitted without annotations of any type, to classify this individual as a 'male' when, in fact, as aforesaid, the individual comports himself as a 'female.'" 57 Misc. 2d at 817.

As a New York court recently explained, the only proper inquiry is whether the name change would result in fraud, deception or interference with the rights of others. In re Guido, 1 Misc. 3d 825 (Civ. Ct., N.Y. Co. 2003). The court had originally denied the transgender petitioner's name change application with leave to refile only after the applicant had completed sex reassignment surgery. But on reconsideration, the court recognized that it had improperly expanded its inquiry beyond what the statute permits:

> On this renewed application, made with the assistance of counsel, the court is persuaded that, in its prior approach to this application, informed by [Matter of Anonymous, 57 Misc. 2d 813, 816 (Civ. Ct., N.Y. Co. 1968)] (supra), the court concerned itself with matters outside the scope of the court's jurisdiction and beyond the scope of the inquiry necessary to avoid lending the court's assistance to fraud, deception or other interference with the rights of third parties. In its previous denials, the court required evidence of sex reassignment surgery (which petitioner has apparently not had) and expressed concern about the legal conundrum presented by petitioner's prospective change of sex from male to female while still married to a woman, while New York -- despite considerable ferment in this area of the law -- continues to sanction marriage only between people of the opposite sex. . . . [H]owever, the court has concluded that its concern with both issues was misplaced, as they anticipate questions that simply are not raised by this application.
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> The law does not distinguish between masculine and feminine names, which are a matter of social tradition. . . . Apart from the prevention of fraud or interference with the rights of others, there is no reason -- and no legal basis -- for the courts to appoint themselves the guardians of orthodoxy in such matters.

Id. at 827-28. The court concluded by noting that the process for changing one's legal name is distinct from the process for changing one's legal *gender* in New York, and determined that there was no legal basis for refusing to grant the name change petition.

This approach is consistent with the approach adopted in sister states with similar name change laws. For example, in Matter of Eck, 584 A.D.2d 859 (N.J. App. Div. 1991), the New Jersey Appellate Division ruled that a trial court erred in finding that "it is inherently fraudulent for a person who is physically a male to assume an obviously 'female' name." 584 A.D.2d at 860. As the court explained,

> [A] person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery, has received hormonal injections to induce physical change, is a transvestite, or simply wants to change from a traditional "male" first name to one traditionally "female," or vice versa. Many first names are gender interchangeable – e.g., Adrian, Evelyn, Leslie, Lynn, Marion, Robin – and judges should be chary about interfering with a person's choice of a first name.[4]

584 A.D.2d at 860-61.

Similarly, in In re McIntyre, 715 A.2d 400, 402-03 (Pa. 1998), the Pennsylvania Supreme Court granted the name change petition of a transgender applicant, emphasizing that the details surrounding a petitioner's quest for sex reassignment surgery were not a matter of governmental concern, and finding no reason to impose restrictions that the legislature had not adopted. And, in Ohio, the Supreme Court reversed an intermediate appellate decision denying a transgender

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[4] It is worth noting that the name Evan, while perhaps more commonly associated with men, is a name used by some women, including actress Evan Rachel Wood. See In re Guido, 1 Misc. 3d at 828 ("Some names are traditionally associated with one gender; some with the other; some with either. And, as pointed out by petitioner,

applicant's name change petition, finding no fraudulent or criminal purpose. In re Maloney, 774 N.E.2d 239 (Ohio 2002) (reversing lower court denial of name change petition on authority of In re Bicknell, 771 N.E.2d 846 (2002)).[5]

The Petition in this case demonstrates that allowing him to change his legal name would not result in fraud, deception or interference with the rights of others. To the contrary, it would allow him to have a name in harmony with his overall presentation. In light of the evolving nature of transgender medicine, New York and other State courts have permitted transgender patients to change their names in no more of a burdensome manner than is required of non-transgender people. Accordingly, Petitioner's name change petition should be approved consistent with the four statutory corners — and no others — set forth in the New York Civil Rights law.

II. New York Law and Policy, as Well as the State and Federal Constitution, Support the Grant of Petitioner's Name Change Application Without Extra-Statutory Submissions.

As set forth in the two sections below, to impose extra-statutory burdens on transgender individuals seeking a name change both would be contrary to New York State law and policy, and would run afoul of protections contained in the New York State and federal constitutions.

A. State Law and Policy

To require transgender individuals to provide medical evidence beyond what the name change statute requires would be contrary to New York State law and policy in at least two ways. First, it undermines the extension of the Human Rights Law protection to State residents who

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the gender association of some names has changed over time.").

[5] Although the opinion does not specify that the petition involved a transgender applicant, the brief filed in support of the name change petition reflects this fact. See Merit Brief of Appellant Richard Clark Maloney, No. 2001-1726 (Sept. 24, 2002), available at 2002 WL 32506731.

are transgender and, second, it vitiates New York common law and statutory protections of medical privacy.

In the more than three decades since the 1968 decision in In re Anonymous, New York law has extended the protections of the New York Human Rights Law to transgender individuals as a class. See, e.g., Rentos v. Oce-Office Sys., 72 Fair Empl. Prac. Cas. (BNA) 1717, No. 95 Civ. 7908, 1996 WL 737215 (S.D.N.Y. 1996) (interpreting New York Human Rights Law); Maffei v. Kolaeton Indus., Inc., 164 Misc. 2d 547, 626 N.Y.S.2d 391 (Sup. Ct., N.Y. Co. 1995); Richards v. U.S. Tennis Ass'n, 93 Misc. 2d 713, 719, 400 N.Y.S.2d 267, 271 (Sup. Ct., N.Y. Co. 1977).

Indeed, for courts to apply an unique, and more burdensome, evidentiary requirement for transgender individuals than others is strikingly similar to the requirement struck down in the Renee Richards tennis case. Richards, 93 Misc. 2d at 713. In that case, the United States Tennis Association adopted the use of the Barr test (i.e., a chromosomal test) to prohibit the participation of Renee Richards, a transgender woman, in the women's competition of the United States Open Tennis Championship. Id. at 715. The Court found the use of this test to be "grossly unfair, discriminatory and inequitable and violative of her rights under the Human Rights Law of this State." Id. at 721 (citing N.Y. Exec. L. § 290, et. seq.). Accordingly, any imposition by this Court of a more burdensome and extra-statutory test for Petitioner's name change — like the imposition of a chromosomal test in the Richards case — likewise would be contrary to the public policy reflected in the State Human Rights law.

Second, it is well-established that New Yorkers enjoy a broad right to confidentiality in medical information. This right is grounded in common law,[6] but also has been codified in a broad network of statutes designed to protect patient privacy in various contexts.[7] For example, Section 18 of the Public Health Law provides extensive protection to "patient information." See N.Y. Pub. Health L. § 18(1)(e).[8] As several courts have recognized, such provisions "are clear evidence of the public policy of New York" to protect medical privacy. See, e.g., Doe v. Roe, 93 Misc. 2d 201, 208, 400 N.Y.S.2d 668 (Sup. Ct. N.Y. Co. 1977) (protection of medical confidentiality is "the public policy of this State expressed in numerous statutes and regulations") (citing, inter alia, City Council of the City of New York v. Goldwater, 284 N.Y. 296, 31 N.E. 2d 31 (N.Y. 1940)); Wheeler v. Commissioner of Social Servs., 233 A.D. 2d 4, 8, 662 N.Y.S.2d 550, 553 (N.Y. App. Div. 2d Dep't 1997) ("[Having] pioneered the use of statutes

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6 See, e.g., Doe v. Community Health Plan-Kaiser Corp., 268 A.D.2d 183, 187 (N.Y. App. Div. 3rd Dep't 2000) ("the duty not to disclose confidential personal information springs from the implied covenant of trust and confidence that is inherent in the physician patient relationship, the breach of which is actionable as a tort."); Tighe v. Ginsburg, 146 A.D.2d 268, 270-271 (N.Y. App. Div. 4th Dep't 1989) (holding that disclosure of medical information is a breach of medical confidentiality actionable in tort); MacDonald v. Clinger, 84 A.D.2d 482, 485-486 (N.Y. App. Div. 4th Dep't 1982) (holding that psychiatrists disclosure of personal information is breach of confidentiality which is actionable in tort); see also Young v. U.S. Dep't of Justice, 882 F.2d 633, 640 (2d Cir. 1989) (recognizing that New York law protects medical confidentiality in tort).

7 New York law is replete with provisions protecting the confidentiality of medical information in various contexts. See, e.g., N.Y. Pub. Health Law § 18(6) (requiring written consent prior to disclosure of patient information to third parties); N.Y. Pub. Health Law § 2805-g(3) (confidentiality of hospital records); N.Y. Pub. Health Law § 4410 (2) (prohibiting disclosure by HMOs of patient information); N.Y. Mental Hyg. Law § 33.13 (confidentiality of clinical records); 10 N.Y.C.R.R. § 751.9(m)-(n) (patients' right to privacy and confidentiality in medical information at diagnostic and treatment centers); 10 N.Y.C.R.R. § 415.3(d) (same, nursing homes); N.Y. C.P.L.R. §§ 4504 (evidentiary privilege for physicians), 4507 (same, for psychologists), 4508 (same, for social workers); 8 N.Y.C.R.R. § 29.1(b)(8) (professional misconduct statute protecting patient confidentiality); 10 N.Y.C.R.R. §§ 405.7 (c)(13) (guaranteeing patients in hospitals "[p]rivacy while in the hospital and confidentiality of all information and records regarding your care"); 405.10(a)(5) (confidentiality of hospital records).

8 See, e.g., Mantica v. NYS Dep't of Health, 94 N.Y.2d 58, 62 (1999) ("section 18(6) seeks to prevent . . . the disclosure of confidential medical records to third parties"); MacDonald v. Clinger, 84 A.D. 2d 482, 484 (N.Y. App. Div. 4th Dep't 1982); Rockland County Patrolmen's Benev. Ass'n, Inc. v. Collins, 638 N.Y.S. 2d 747, 748 (N.Y. App. Div. 2d Dep't 1996) (upholding finding that officials had violated Public Health Law § 18(6) when they released medical records to the New York State Retirement System without authorization); Grosso v. Town of Clarkstown, 1998 WL 566814, at *8 (S.D.N.Y. 1998) (recognizing that revealing patient information to a third party may violate § 18).

to protect the confidentiality of medical records, New York has been zealous in safeguarding those privacy concerns."). For courts to require individuals and their physicians to disclose confidential medical information, when such a requirement is not imposed on any other name change petitioners, would be contrary to this State's long held recognition of public policy reflecting that patients have a right to expect that their confidential medical information will be not be subjected to disclosure by their health care providers or anyone else.

B. Constitutional Protections

The New York Civil Rights Law, on its face, treats all non-fraudulent applicants equally, which is proper. Refusing to grant Petitioner's name change application because he has failed to make the evidentiary showing that the Court previously suggested that he must make would create problems of constitutional magnitude. There are numerous equality, expression, privacy and liberty interests protected by the New York and federal Constitutions that are implicated when a court imposes the kind of extra-statutory burdens imposed by the Court in its November 2005 decision denying Petitioner's name change petition.

Fundamental principles of equal protection jurisprudence protect a class of people from being singled out for disfavored treatment simply because the government or society wishes to express disapproval of or discomfort with the class, regardless of the level of scrutiny at issue. See Romer v. Evans, 517 U.S. 620, 633 (1996) ("Central both to the idea of the rule of law and to our own Constitution's guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.") (internal quotation omitted); U.S. Const. amend XIV; N.Y. Const. art 1, § 11. Imposing extra-statutory requirements upon Petitioner because he is transgender and wishes to change his name to one

that is more consistent with his gender identity violates this fundamental requirement that government treat its citizens equally.

Burdening the ability of an individual to express his identity through his choice of name triggers strict scrutiny under both the Free Expression Clause of the New York Constitution, N.Y. Const. art. 1, § 8, and the First Amendment of the federal Constitution, U.S. Const. amend. I. The choice of one's name is perhaps one of the most expressive aspects of one's personality. As one court explained,

> Given the delicate nature of any name change application . . ., a trial court should not intervene in the name selection process; nor should the court, to any extent or degree, inhibit or "chill" an applicant's freedoms of expression, guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution, to be known as he or she desires.

Raubar v. Raubar, 315 N.J. Super. 353, 368 n.16, 718 A.2d 705 (N.J. Super. Ct. Law Div. 1998). Similarly, in this case, denying Petitioner the right to change his name for reasons that are irrelevant under the statute would unconstitutionally interfere with Petitioner's exercise of his expressive liberty regarding an intensely personal realm of his life. See, e.g., Gay Activists Alliance v. Lomenzo, 31 N.Y.2d 965, 293 N.E.2d 255 (1973) (per curiam) (Secretary of State acted arbitrarily in refusing to accept certificate of incorporation from gay rights organization because its proposed corporate name was "not appropriate").

Denying Petitioner's application to change his legal name would also run afoul of fundamental guarantees of liberty and autonomy protected by the state and federal Due Process Clauses. The fundamental right to autonomy/privacy protects an individual's ability to select his name and otherwise determine for himself how he will express his identity, including his gender identity. See, e.g., Lawrence v. Texas, 539 U.S. 558, 562 (2003) ("Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate

conduct."); U.S. Const. amend. XIV, N.Y. Const. art. 1, § 6. The State cannot require all citizens to fit into the particular molds that it proscribes. Moore v. City of East Cleveland, 431 U.S. 494, 506 (1977) ("the Constitution excludes any general power of the State to standardize its [citizens]").

The Constitution also protects people against the forced disclosure of personal information of the kind that the Court sought in its November 2005 ruling. See Whalen v. Roe, 429 U.S. 589, 599 (1977) (recognizing "the individual interest in avoiding disclosure of personal matters" as protected by the right to privacy); U.S. Const. amend XIV, N.Y. Const. art. 1, § 6. Specifically, requiring a transgender applicant to submit medical and psychological information to the Court as a condition for granting a name change application would not only contravene the New York Civil Rights Law and other state statutes and policies, but also would violate this constitutionally protected right of informational privacy. Petition at ¶ 16 (explaining Petitioner's desire to keep his medical information private). See also Powell v. Schriver, 175 F.3d 107, 112 (2d Cir.1999) (in case involving disclosure of inmate's transsexual status, holding "that individuals who are transsexuals are among those who possess a constitutional right to maintain medical confidentiality.")

Finally, Petitioner has a liberty interest, protected by the Due Process Clause, in making decisions, with the advice of his doctors, about the appropriate course of medical treatment for his gender identity disorder without undue government interference. U.S. Const. amend XIV; N.Y. Const. art. 1, § 6. Any rule that precludes transgender people from changing their name until they have had surgery could not satisfy the strict scrutiny triggered when government action burdens the exercise of a fundamental right. See, e.g., Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach, --- F.3d. ---, 2006 WL 1147758 at *11 (D.C. Cir.

2006) (recognizing fundamental right to make important medical decisions free from undue government burden and interference, and remanding for determination of whether government could justify burden on this right). As noted above, according to established medical protocols, a transgender individual must first live full time as the gender to which he is transitioning for an extended period in order to qualify for the kind of surgery that the Court appeared to require in its initial adjudication of Petitioner's name change application.[9] See Petition Exhibit B at 2. Therefore, a ruling that requires an individual to undergo surgery prior to qualifying for a name change would place them in a Catch 22-situation, as a transitioning individual must change his name – an essential component of living full time as the gender to which he is transitioning – before he is eligible for surgery. The statute need not and should not be interpreted so as to create what would be such an untenable situation for transgender people.

All of these constitutional concerns can, and should, be avoided in this case. Rather than imposing additional and extra-statutory burdens on Petitioner simply because he is transgender, the Court should simply apply the statute as written, and, because there is no reasonable basis for objecting to Petitioner's name change application, should grant the petition.

[9] See Harry Benjamin Standards of Care at 17 (instructing transitioning people "to acquire a (legal) gender-identity-appropriate first name" as part of the "real life experience" prior to sex reassignment surgery). See also discussion supra at 2-4.

CONCLUSION

For the foregoing reasons, Petitioner's name change petition should be granted, along with any other and further relief as this Court deems just and proper.

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