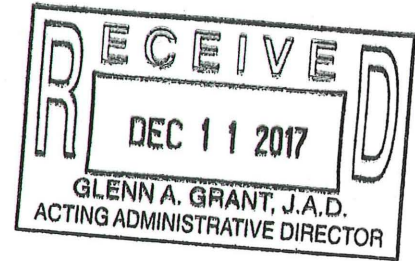


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#002



Via Email and Regular Mail

December 1, 2017

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments on Filing Particular Categories of Cases
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposed Changes to R. 4:72- Actions for Change of Name

Dear Judge Grant:

On behalf of the American Civil Liberties Union of New Jersey, I submit the following comments regarding the proposed changes to R. 4:72 requiring that all name changes for minors be filed in the Family Part of the Chancery Division rather than the Civil Part of the Law Division of the Superior Court. The ACLU-NJ's concern about the change in forum relates to the asserted policy undergirding its purported need. According to the recommendations of the Working Group on the Clarification of Divisions Civil, Family and General Equity, an action for a name change should be filed and heard in the Family Part because "it involves the best interests of the children." We respectfully disagree that the best interest of the child standard is applicable to these cases.

The right of parents to the custody and care of their children is a "fundamental liberty interest protected by the Due Process Clause" of the United States Constitution and Article I, Paragraph 1 of the New Jersey Constitution by the New Jersey Supreme Court. Moriarty v. Bradt, 177 N.J. 84, 115 (2003). A parent's choice of a name for their child falls squarely within that liberty interest. It logically follows that when parents choose to change a minor's name, it is not a matter for the Court to deliberate. A best interest analysis would only become necessary in the event of a dispute between the minor's parents, or if a minor herself objects. The New Jersey Supreme Court has made clear that "interference with parental autonomy will be tolerated *only* to avoid harm to the health or welfare of a child." Id. (emphasis added) (applying Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925)). However, except for in the most extreme of cases, no such harm is created when a minor's name is changed.

The ACLU of New Jersey is particularly concerned about the effect of the proposed changes on transgender minors. The possibility that the Court would only approve such an application if it determines the change to be in the best interest of a child is an overreach that invites unwarranted scrutiny of intensely personal decisions. In addition to the constitutional problems, a court requiring certain proofs or a more searching review in applications that raise issues related to gender identity could result in discriminatory treatment by the courts.

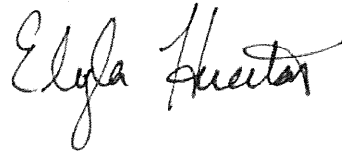
We support and wish to highlight the concerns raised in the comments submitted by Robyn Gigl. As a transgender rights advocate and leading attorney handling name change applications on behalf of parents of transgender children, Ms. Gigl is well qualified to weigh in on the potential impact of the proposed changes. We also wish to echo her sentiment that the good faith of the Working Group is not in question. Despite what we are sure were the best of intentions, the proposed changes allow family courts the opportunity to weigh in on a matter that is not within their purview. While changes are needed to this Court's rules governing names changes, the current proposal adds an improper burden for many New Jerseyans, especially for transgender minors.

We urge the Supreme Court to reject the proposed changes to R. 4:72 or to consider amending them for the aforementioned reasons.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Edward Barocas". The signature is fluid and cursive, with a large, sweeping initial "E".

Edward Barocas
Legal Director

A handwritten signature in black ink, appearing to read "Elyla Huertas". The signature is cursive, with a large, stylized initial "E".

Elyla Huertas
Staff Attorney