IN THE COURT OF APPEALS
STATE OF GEORGIA

IN RE: BAUMERT FILE NO. A17A0041

On Appeal From The Superior Court of Columbia County
Civil Action No. 2016D0067
Honorable J. David Roper, Presiding

BRIEF OF APPELLANT ANDREW NORMAN BAUMERT (LEGALLY DELPHINE RENEE BAUMERT)

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INTRODUCTION

Appellant is a transgender man who sought, but was denied, a name-change. R-11.[1] He petitioned the Superior Court of Columbia County to change his name from "Delphine Renee Baumert" to "Andrew Norman Baumert." R-4. Despite satisfying the procedural requirements for his request, and testifying that he was not seeking the change for any fraudulent purpose, *see* T-5–7; R-9, R-12, the court denied Mr. Baumert's unopposed petition based on its judicial "policy" to deny name-changes from transgender people who seek a name congruent with their gender identity—unless the name is "gender neutral."[2] R-13. The court forced Mr. Baumert to select "a name that [the court] can live with." T-9.

It is Mr. Baumert who must live with his name, not the court. The superior court did not exercise sound legal discretion in denying Mr. Baumert's request. *See*

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[1] "Transgender" refers to an individual whose gender identity does not conform to the sex assigned to him or her at birth. *See, e.g.*, Lauren R. Deitrich, *Transgender and the Judiciary: An Argument to Extend* Batson *Challenges to Transgender Individuals*, 50 Val. U. L. Rev. 719, 739 (2016). "Gender identity" refers to one's innate sense of self as male or female. *See, e.g.*, Atlanta, Ga., Ord. No. 94-10 (2000); Am. Psychological Assoc., *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients* (2006), *available at* www.apa.org/pi/lgbt/resources/guidelines.aspx.

[2] This brief will reference Mr. Baumert in accordance with his male gender identity.

In re Mullinix, 152 Ga. App. 215, 215 (1979) (name-change requests reviewed for sound legal discretion); *Miller v. Wallace*, 76 Ga. 479, 486 (Ga. 1886) (describing sound legal discretion standard). Rather, it applied a "policy" of refusing to "change a name from an obviously male name to an obviously female name and vice versa." T-7–8. The court justified its "policy," and the consequent denial of Mr. Baumert's petition, based on a desire to avoid: (1) offending the "sensibilities and mores of a substantial portion of the citizens of this state"; and (2) "confus[ing] and mislead[ing] the public." R-12, R-14. That reasoning does not satisfy the "sound legal discretion" requirement in name-change decisions, nor does it justify the intrusion on Mr. Baumert's constitutional right to free-expression and equal protection of the law. The court's discomfort, and its concern with the presumed "mores" of some citizens should have had no impact on its decision. *See Lawrence v. Texas*, 539 U.S. 558, 571 (2003) ("that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice"). Moreover, forcing Mr. Baumert, who lives as male, to retain a female-sounding name exacerbates, not ameliorates, pubic confusion.

Name changes are routinely granted in this State when the petitioner satisfies

the procedural requirements and does not seek to defraud or interfere with the rights of others. Mr. Baumert satisfied those requirements, and his petition should have been granted. This Court should reverse and order the superior court to grant Mr. Baumert's request to change his name.

PART ONE:
PROCEEDINGS BELOW AND MATERIAL FACTS

A. Proceedings Below

On January 26, 2016, Mr. Baumert filed a Petition to Change Name in the Superior Court of Columbia County. R-4. Consistent with Georgia law, Mr. Baumert filed a Notice of Filing in the *Columbia County News-Times* on February 2, 2016; February 10, 2016; February 17, 2016; and February 24, 2016. R-9. His notice contained his birth name, the name he was seeking, the court in which he filed his petition, the date on which he filed his petition, and the right of any interested or affected party to appear and file objections. *Id.*

The superior court held a nine-minute hearing on Mr. Baumert's petition, *see* R-11; T-1–10, in which the court denied the name-change request. T-9. On June 8, 2016, the superior court entered final judgment against Mr. Baumert, which further explained the court's reasoning. R-11–15. Mr. Baumert filed a timely notice of appeal on July 1, 2016. R-1.

B. Material Facts Relevant to Appeal

Mr. Baumert was born Delphine Renee Baumert. R-4, R-9, R-11. As testified to by his mother, and as is the case with many transgender people, the incongruence between Mr. Baumert's gender identity and the gender assigned to him by doctors at birth created significant problems. His mother testified that Mr. Baumert did not "feel comfortable in his skin" and had "a very difficult childhood." T-6. Mr. Baumert's childhood was so challenging that he dropped out of school, "because high school was not safe for him." *Id.*

Since that time, Mr. Baumert changed his life for the better. T-5–7. He entered Georgia Military College and then enrolled in Augusta University, where he graduated with two Bachelor's degrees in science. T-6. Mr. Baumert began his studies for a master's degree at Georgia State University this fall, and eventually he would like to conduct cancer research. *Id.*

These positive changes in Mr. Baumert's life were closely tied to his diagnosis and treatment for gender dysphoria—a diagnosis recognized by the American Psychiatric Association. T-6–7; Am. Psychiatric Assoc., Diagnostic and Statistical Manual of Mental Disorders 576 (4th ed. 2000); *see also Diamond v. Owens*, 131 F. Supp. 3d 1346, 1354 (M.D. Ga. 2015) (Gender dysphoria "is a

medical condition in which an individual's gender identity and . . . identification differ from the gender assigned at birth."). Mr. Baumert enlisted a full team of physicians to assist in his treatment. T-5–7. After undergoing a months-long evaluation process by his psychotherapist, T-7, an endocrinologist prescribed Mr. Baumert testosterone. *Id.* After beginning a regime of testosterone, Mr. Baumert underwent a bilateral mastectomy—a surgical removal of the breasts—to align his body with his gender identity as part of his treatment. T-5, T-7. Mr. Baumert continues to take hormones. T-5.

In addition to his medical diagnosis, treatment, and surgery, Mr. Baumert has also socially transitioned to male. T-5; *see also* R-11–R-12. His friends and family only know him as "Andrew." T-5. At the hearing, Mr. Baumert asked that the court refer to him as "Mister,"[3] and during the proceeding, Mr. Baumert's mother referred to him only as "Andrew." T-5–6. Mr. Baumert's mother, father, and grandmother appeared at the hearing with him. T-5.

[3] The court asked Mr. Baumert, "[i]s it Miss?," Mr. Baumert responded, "Mister." T-5. Despite this, the court referred to Mr. Baumert using female pronouns throughout the hearing and in the superior court's final judgment. T-8; R-11, R-12, R-14.

After hearing from Mr. Baumert and his mother, the court issued an oral ruling denying the name-change request. T-7–T-10. Prior to offering any support in favor of or against its ultimate decision, the court explained its "policy has been that [it] will not change a name from an obviously female to an obviously male name, and vice versa." T-7–8. The court clarified: "my policy is to allow someone who claims to be transgendering [sic][4]—and I've had them in various stages—my policy is to permit someone to change, in your case, from an obviously—what appears to me to be a female name to something that is gender–neutral." T-8. The court gave Mr. Baumert "two choices": "If you want to rethink the name situation and come back to me with a name that I can live with, that is gender-neutral—you know the names. There's Shannon [ph], there's Shaun [ph], there's Bobby [ph], and even Morgan [ph] is now transgender. Jamie [ph], whatever . . . Here's your choices. I'm giving you a choice to get a different name or I can deny your petition and you can appeal my order to the court of appeals." T-9.

Several days after the hearing, the court issued a final judgment denying Mr. Baumert's petition. R-11–15. Despite hearing direct testimony from both Mr.

[4] The term "transgender" is an adjective, not a verb. *See*, *e.g.*, Oxford Dictionary, *available at* http://oxforddictionaries.com/us/definition/american_english/transgender.

Baumert and his mother to the contrary, the judgment began by indicating that "[t]here is no evidence that [Mr. Baumert] was anything other than a normal female child" and that Mr. Baumert "claims that she has a condition referred to as 'gender dysphoria.'" R-11. The judgment noted that Mr. Baumert attended his hearing "dressed as a male," and he testified that his peers, coworkers, and family know him as "Andrew Norman Baumert." R-11. There was no evidence that Mr. Baumert had a criminal record or that he had attempted to defraud creditors by filing his petition with the superior court. R-11–12.

The judgment explained "This Court's Policy" respecting similar name-change requests. R-12. As part of its "policy," the court stated that "[n]ame changes which allow a person to assume the role of a person of the opposite sex confuse and mislead the general public, emergency personnel, actuaries, insurance underwriters, and other businesses and relationships where the sex of an individual is relevant." *Id.* The court stated that "third parties should not have to contend with the quandary, predicament and dilemma of a person who presents as a male, but with an obviously female name, and vice versa" and offered the "accommodation" of permitting "petitioners to change their name to a 'gender-neutral' name." R-13.

As part of its analysis, the court also included (1) references to the military's recognition of transgender people; (2) a statement that President Obama "has forced" issues associated with transgender people on the states; (3) a report of the "recent resignation [sic] ACLU of Georgia's executive director, Maya Dillard Smith, who left because she did not agree with the ACLU's position opposing North Carolina's law requiring transgender people to use the public bathroom that corresponds with their gender at birth"; and (4) a synopsis of a website created by Maya Dillard Smith following her departure, which posed questions relating to transgender people's access to bathrooms. R-12–13.

The court took note that there are no Georgia appellate decisions on whether and under what circumstances a superior court must grant a transgender person's name-change petition. R-12. Rather, the request is left to the "sound legal discretion" of a superior court judge. R-13. To determine what is within a court's "sound legal discretion," the court took instruction from a 2003 New York trial court decision, *In re Bobrowich*, 2003 WL 230709, at *1 (N.Y. City Civ. Ct. 2003), which purported to consider whether a name-change would "confuse or mislead the general public"; would be "obscene, pornographic, or offensive"; or would "violate" the "morals" of the citizens of New York. R-14.

The court concluded by stating that "[n]ame changes which allow a person to assume the role of a person of the opposite sex are, in effect, a type of fraud on the general public. Such name-changes also offend the sensibilities and mores of a substantial portion of the citizens of this state." *Id.*

This was not the first time that this particular superior court judge has applied his "policy" to limit the name choices of a transgender person to names that the court finds sufficiently gender-neutral. Earlier this year, the court also denied Rowan Feldhaus's request to change his name from "Rebecca Elizabeth" to "Rowan Elijah." Appeal of that denial is separately docketed in this Court for resolution by the December Term. *See In Re: Feldhaus,* Appeal No. A16A1770.

PART TWO:
ENUMERATION OF ERRORS
AND JURISDICTIONAL STATEMENT

A. Enumeration of Errors

The superior court did not exercise sound legal discretion in denying Mr. Baumert's name-change petition because the denial (a) was based on improper considerations and not evidence of fraudulent or improper motive and (b) improperly impinged on Mr. Baumert's constitutional rights to free expression and equal protection under the law.

B. Jurisdictional Statement

This Court, rather than the Supreme Court of Georgia, has jurisdiction of this case on appeal under Ga. Const. Art. VI, § V, Para. III. Issues relating to changing one's name and appeals of such cases are not reserved to the Supreme Court of Georgia. Ga. Const. Art. VI, § VI, Para. II. Furthermore, although Mr. Baumert presents constitutional arguments on appeal, Mr. Baumert does not challenge the constitutionality of a statute, which would be reserved to the Supreme Court of Georgia. *See Gaines v. State*, 205 Ga. 210 (1949).

PART THREE:
ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

"The action of the superior court in granting or refusing a proper application to change the name of a person is based solely on a sound legal discretion." *Binford v. Reid*, 83 Ga. App. 280, 280 (1951). Therefore, this Court should review the superior court's decision for an abuse of discretion. *See In re Redding*, 218 Ga. App. 376, 377 (1995).

B. Argument and Citations of Authority

The Superior Court Failed to Exercise Sound Legal Discretion in Denying Mr. Baumert's Petition to Change His Name Because the Decision Was Arbitrary and Based on Insufficient and Improper Reasons That Infringed on Appellant's Constitutional Rights.

Mr. Baumert complied with all procedural requirements for a name change. R-4–9. As the superior court found, there was no evidence that his unopposed petition was aimed at concealing a criminal record or designed to defraud creditors. R-11–12. Nevertheless, it denied Mr. Baumert's request in its "discretion" to avoid "a type of fraud on the general public" and the risk of "offend[ing] the sensibilities and mores of a substantial portion of the citizens of this state." R-14. The discretion the court exercised was not "sound legal discretion." *See In re Mullinix*, 152 Ga. App. at 215. Because the court abused its discretion in basing the decision on arbitrary, improper motives and because it interfered with Mr. Baumert's protected rights, the superior court committed reversible error.

1. Under Georgia Law, the Exercise of Sound Legal Discretion When Evaluating a Name Change Petition Involves a Consideration of Whether the Petition Is Brought For an Improper Motive.

Appeals of unopposed name-change requests are rare. There is also little Georgia law governing the circumstances under which a court may deny such

request. Outside of a statutory prohibition against changing one's "name with a view to deprive another fraudulently of any right under the law," *see* O.C.G.A. § 19-12-4, the Code is silent on what standard, test, or consideration a superior court should use in evaluating a name-change petition.

Procedurally, the Georgia Code provides that any person wishing to change his or her name must first present a petition to the superior court of the county in which he lives. O.C.G.A. § 19-12-1(a). Then, within seven days of filing the petition, the petitioner must publish a notice of the filing—containing the petitioner's name, the name of the person whose name is to be changed if different from that of the petitioner, the new name desired, the court in which the petition is pending, the date on which the petition was filed, and the right of any interested or affected party to appear and file objections—in the official legal organ of that county once a week for four weeks. O.C.G.A. § 19-12-1(b). Upon completion of the notice requirement, the superior court will conduct a hearing to determine all matters raised in the petition and render final judgment. O.C.G.A. § 19-12-1(f).

There is no dispute that Mr. Baumert completed these steps, R-4–R-9—and the superior court did not identify any concerns with non-compliance. Rather, the court's decision to deny Mr. Baumert's request rested on the exercise of its "sound

legal discretion"—the standard this Court has followed in evaluating decisions to grant or deny a name-change request. *See Binford*, 83 Ga. App. 280; *Johnson v. Coggins*, 124 Ga. App. 603, 604 (1971).

The sound legal discretion standard is neither a new standard nor a standard used solely in this context. Georgia courts have utilized the sound legal discretion standard for over a century in dozens of contexts unrelated to changing one's name. *See, e.g.*, *R. H. Macey & Co. v. Chancey*, 116 Ga. App. 511, 513 (1967) (holding that superior courts may, in the exercise of sound discretion, revise or vacate orders and judgments during the term in which they are made); *Griffin v. State*, 12 Ga. App. 615, 617 (1913) (granting the trial judge sound legal discretion to withdraw a plea of guilty after sentence is pronounced).

As the Supreme Court of Georgia opined over a century ago, sound legal discretion is not unlimited and must not be exercised arbitrarily; rather, it must be guided by law. *Miller v. Wallace*, 76 Ga. 479, 486 (1886) ("Under the 'discretion' vested in him, no judge has authority to disregard or even to impair any acknowledged or established right of a party by its exercise, and if he does so . . . he abuses that discretion."). In *Griffin v. State*, 12 Ga. App. at 617, this Court held that "[a]n appeal to a judge's discretion is an appeal to his judicial conscience. This

discretion must be exercised, not in opposition to, but in accordance with, established rules of law. It is not an arbitrary power, but one which must be exercised wisely and impartially." Therefore, judicial "discretion means, not a decision by mere whim or caprice, but a sound legal discretion, determinable by the particular facts of the case." *Tifton, T. & G. R. Co. v. Butler*, 4 Ga. App. 191, 193 (1908).

This Court has had several occasions to apply this standard to a name-change decision—and has done so in favor of the name change, even when there are concerns about "confusion." In *In re Mullinix*, the petitioner was a married mother who had taken her husband's surname originally but, because she was an only child and wanted to preserve her family name, she sought to restore her maiden name years later. 152 Ga. App. 215. The superior court denied her petition, reasoning "that such a change . . . would set the stage for serious confusion, misunderstanding, complications, and above all embarrassment, particularly for the minor child who would be put in a very strange situation." *Id.* at 215. On appeal, this Court reversed the superior court's decision. *Id.* In applying the "sound legal discretion" standard, the Court considered (1) the petitioner's reason for requesting a name-change; (2) whether there were any objections to petitioner's name-change

petition; and (3) whether evidence of fraud existed. *Id.* There was no objection, including from petitioner's husband or child, and no evidence of any intent to defraud. *Id.* Importantly, the Court rejected the superior court's "confusion" rationale; that "reason alone is not a valid basis for denying a change of name," the Court said. *Id.* Where the "appellant met the statutory criteria for a change of name and no objections whatsoever were raised at the hearing," the lower court abused its discretion in denying the request. *Id.*; *see also Binford*, 83 Ga. App. at 280-81 (affirming name-change request on behalf of son after divorce, to align son's name with stepfather—even over biological father's objection).

The Court has also occasionally affirmed the denial of a name-change request based on the proper exercise of sound legal discretion—but only where there was evidence of potential fraud or an effort to interfere with the rights of others. In *In re Redding*, the petitioner sought to change his name for religious reasons from Kenneth Charles Redding to Faheem Shabazz Batuta. 218 Ga. App. at 376. Although the petitioner alleged that he did not seek to change his name with the intention of defrauding another, the superior court discovered that petitioner had previously been convicted of burglary, aggravated assault, aggravated sodomy, rape, robbery, and armed robbery. *Id.* Reasoning that legally

changing the petitioner's name "might result in confusion, allow him to conceal his true identity and to disassociate with his past criminal record," the court denied the petitioner's name-change request. *Id.* This Court affirmed that decision, observing that "the evidence authorizes the conclusion that a change in [the petitioner's] name at this time might result in confusion, allowing him to conceal his true identity and disassociate himself with his criminal past." *Id.* at 377.

Similarly, in *In re Serpentfoot*, this Court affirmed the denial of a petitioner's name-change request who sought to change her name for an improper purpose. 285 Ga. App. 325 (2007). The petitioner sought a change from Anne Otwell to Anne Serpentfoot-Mooney—seemingly motivated by a desire to tarnish the name of Burgett Mooney III, a publisher of the *Rome News Tribute*, who had published a negative, unflattering article about the petitioner. *Id.* at 325. Mooney, the publisher, objected, arguing that the name-change would cause him embarrassment and ridicule. *Id.* At the hearing, the petitioner openly testified that the change was motivated by her antipathy towards Mooney, explaining that she would like Mooney "to treat [her] name and the name of my previous husband's family, the same way he would like his name treated." *Id.* at 326. The court denied the request, reasoning that allowing her to change her surname would harm

Mooney and that the request was based on an improper reason. *Id.* The Court affirmed on appeal, because petitioner could not change her name "with a view to deprive" Mooney fraudulently of the right to protect his good name. *Id.* at 327.

These cases indicate that the determinative criterion for evaluating a name change petition is whether the request is based on improper motivations. Put differently, "there is nothing in the law prohibiting a person from taking or assuming another name, so long as he does not assume a name for the purpose of defrauding other persons through a mistake of identity." *Fulghum v. Paul*, 229 Ga. 463, 463 (1972) (citing 57 Am. Jur. 2d 289, § 22; 65 CJS 25, § 11 (1)). It is not the court's job to second-guess whether the request will create (or, for that matter, resolve) confusion. Except in limited circumstances in which there is evidence that the petitioner seeks to change his name to defraud or invade the rights of another, courts are not free to substitute their judgment for the judgment of the petitioner as to his or her desired name.

2. The Denial of Mr. Baumert's Name-Change Request Was Based on Improper Considerations and Not the Exercise of Sound Discretion.

Believing it was acting without clear guidance from this Court, the superior court applied its own "policy" to avoid purported "confus[ion]" to "the general

public" to deny Appellant's name-change request. R-12. The court failed to heed the Court's admonition nearly 40 years ago that concerns about "confusion, misunderstanding, complications, [and] embarrassment" are not proper considerations when evaluating an unopposed name-change request. *Mullinix*, 152 Ga. App. at 216. Even so, the court's so-called policy considerations were themselves misplaced—and, in reality, a thinly-veiled disguise for discrimination.

The court's worry about confusion—or, more dramatically, a "fraud on the general public"—in granting name-change requests to transgender men and women has no legal or factual support. R-14. In fact, the general public is more likely to be confused by someone who appears male with a female-sounding name. Indeed, the court highlights the irony of its denial by stating that "third parties should not have to contend with the quandary, predicament and dilemma of a person who presents as a male, but with an obviously female name." R-13. Name change requests like Mr. Baumert's are made to avoid confusion and reduce the risk of violence, harassment, and distress because one's legal name does not match his physical appearance or his gender identity. The superior court's decision creates safety risks and public confusion; it does not redress a fraud on the general public.

Further, the only law on which the court relied (other than for general

principles) to deny Mr. Baumert's request does not support the court's reasoning. The court based its decision in part on *In re Bobrowich*, 2003 N.Y. Misc. LEXIS 52, *1, 2003 NY Slip Op 50025(U), 2 (N.Y. Civ. Ct. Jan. 6, 2003), where a New York court denied a request to change petitioner's name from Stephen Michael Bobrowich to "Steffi Owned Slave." R-14. The court denied the petition for a variety of reasons—none of which apply here: (1) the petitioner did not fulfill the statutorily-imposed procedural requirements; (2) the petitioner provided no medical or psychiatric evidence describing whether he was transgender; and (3) the court found that changing the name to "Steffi Owned Slave" necessarily reflected an illegal status of slavery and was objectionable on that basis alone. *Bobrowich*, 2003 N.Y. Misc. LEXIS 52, at *1-8.

Not only is *Bobrowich* distinguishable, but it is also not good law in New York. The requirement of having medical or psychiatric evidence describing whether the petitioner is transgender is no longer a "requirement" under New York law. *See*, *e.g.*, *Matter of Powell*, 95 A.D.3d 1631, 1632 (N.Y. App. Div. 3d Dep't 2012) (stating that "the lack of medical evidence [is not relevant] inasmuch as petitioner seeks only to assume a different name, not a declaration of a gender 'change[] from male to female'"). Thus, because *Bobrowich* has been overruled in

New York and is factually distinguishable from this case in significant ways, it does not provide a sufficient rationale for denying the name change petition here.

Further, the superior court's decision is inconsistent with the majority of published decision from other jurisdictions. *See, e.g.*, *In re Harvey*, 293 P.3d 224, 225 (Okla. Civ. App. Div. 1 2012) ("The law does not require males be given traditionally male names, or females traditionally female names, by their parents at birth. … The relevant issue in a name change proceeding is not whether the applicant's DNA corresponds with the traditionally male or female name preferred by the applicant. The statute does not change the sex of the applicant, only the applicant's name."); *In re McIntyre*, 715 A.2d 400, 402-03 (Pa. 1998) ("it was undisputed that Appellant was judgment free and was not seeking a name change to avoid any financial obligations or commit fraud. The fact that he is a transsexual seeking a feminine name should not affect the disposition of his request.") (citations omitted). Indeed, last year, the Supreme Court of Virginia twice reversed the denial of a transgender petitioner's name-change request, holding that granting the petition would not have a negative impact on the community. *See In re Brown*, 770 S.E.2d 494, 497-98 (Va. 2015).

The superior court was transparent in its discomfort with Mr. Baumert's

request; it told Mr. Baumert that he could only select a name that the judge "can live with." T-9. That included several gender-neutral names such as Shannon, Shaun, Bobby, Morgan (which "is now transgender," according to the court), and Andy (because the judge has "a grandniece who's called Andy"). *Id.* Mr. Baumert's request was filtered through the individualized experience and tolerance level of a single judge. Discomfort aside, judges are required to exercise sound legal discretion, not base their decisions on personal opinions or name preferences.

The court's decision appears to have been based on the incorrect notion that allowing a name-change from a female name to a "traditionally and obviously" male name, would "allow a person to assume the role of a person of the opposite sex . . . [which is] a type of fraud on the general public." R-12. This purported concern fails to recognize that although one's name may reflect one's gender role, it does not create it. Appellant's gender expression and appearance is male because of, among other things, his choice of clothing, the fact that he has had a mastectomy, and is on hormone therapy. The name-change merely reflects reality: Mr. Baumert's appearance matches his male gender identity. No court decision will or can change that. *See, e.g., Powell,* 95 A.D.3d at 1632 (reversing the lower court's denial of petitioner's name-change application based upon the grounds of

risk of confusion, and stating that the petition was not a declaration of a gender "change[] from male to female."); *Schroer v. Billington*, 424 F. Supp. 2d 203, 205 (D.D.C. 2006) (describing plaintiff's "presenting as a woman," which entailed more than using a traditionally feminine name and dressing in traditionally feminine attire).

The notion that the gendered nature of a name can give rise to a "public fraud" whenever it does not match the sex assigned at birth makes little sense. Males are sometimes named Dana, Leslie, or Stacey at birth—names that have historically and often are considered female. Those parents have not committed a fraud by choosing "female" names for their "male" children. No law requires males to be given "traditionally male" names or females "traditionally female" names at birth. It is well understood that a person's name—whether traditionally associated with one gender or not—is not determinative of his sex. *See Matter of Eck*, 584 A.2d 859, 861 (N.J. App. Div. 1991) ("Many first names are gender interchangeable—*e.g.*, Adrian, Evelyn, Erin, Leslie, Lynn, Marion, Robin—and judges should be chary about interfering with a person's choice of a first name.").

Parents have a right to name their child whatever they wish. Surely, an adult should have the same right to select a first and middle name for himself, if the one

given at birth does not fit. There is no right to be free from confusion because another person's name does not match his or her perceived gender, and there is no property right in another's name. *See Fulghum v. Paul*, 229 Ga. at 463. The only right at issue here is the right to choose one's name, absent fraud or improper purpose. Indeed, if parents have the right to name a male child an "obviously" female at name at birth, it is illogical that an adult does not have the same right to change his name if he so desires.

3. The Denial of Mr. Baumert's Name-Change Request Infringed His Constitutional Rights.

Sound legal discretion may not be exercised in a manner that violates the petitioner's legal rights. *See Miller*, 76 Ga. at 486 ("Under the discretion vested in him, no judge has authority to disregard or even to impair any acknowledged or established right of a party by its exercise, and if he does so, . . . he abuses that discretion."). Here, the superior court exercised its discretion in a manner that violated Mr. Baumert's rights to free expression, to avoid compelled speech, and to be free from discrimination on the basis of sex.

First, self-expression is protected speech, and choosing one's name is a quintessential form of self-expression. Indeed, "[i]t is difficult to imagine many acts of speech more integral to self-expression than choosing one's own name."

Koutnik v. Berge, 2004 U.S. Dist. LEXIS 13926, *16 (W.D. Wis. July 19, 2004). Sigmund Freud once wrote: "A man's name is a principal component of his personality, perhaps even a portion of his soul." Julia S. Kushner, *The Right to Control One's Name*, 57 UCLA L. Rev. 313, 323-34 (2009).

This type of self-expression is especially important for transgender people. The act of taking a new name—one congruent with a transgender person's gender identity—is a powerful act of self-affirmance that conveys, also, a public message about who the person is. It is also a political act, especially given the historical (and current) discrimination transgender people have faced. *See Adkins v. City of N.Y.*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015) ("[T]ransgender people report high rates of discrimination in education, employment, housing, and access to healthcare."); *see also* Jamie Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*; *cf. Gay Law Students Ass'n v. Pacific Tel. & Tel. Co.*, 595 P.2d 592, 609-11 (Cal. 1979)(being openly gay was "political activity" because of political struggle for gay and lesbian acceptance).

Central to Mr. Baumert's right to self-expression is his right to choose a name that fits who he is, consistent with his gender identity. The superior court disregarded the important role that Mr. Baumert's name plays in his self-identity

and his presentation to the world. The court improperly elevated nebulous societal interests against "confusion"—a confusion the court also admitted occurs *without* the name change, R-13—over Mr. Baumert's right to express himself freely.

Second, the court's decision effectively compels Mr. Baumert to communicate a particular message—namely, that he wishes to be known by "Delphine" and not "Andrew." Mr. Baumert not only disagrees with that message, but the superior court's decision also deprives him of the right to express his male gender identity to the world. This is important as a safety measure and as part of the established medical criteria for treating gender dysphoria.[5] It is well-settled that the government cannot force an individual to express the government's own specific message; likewise, one has the right to decide "what not to say." *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (quoting *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 11 (1986) (plurality opinion)). The right to be free from compelled speech is necessary to protect the "right of individuals to hold a point of view different from the majority." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977).

[5] *See* World Prof'l Ass'n For Transgender Health, Standards Of Care For The Health Of Transsexual, Transgender, And Gender Non-conforming People, 1–2 (Eli Coleman et al. eds., 7th ed. 2012).

The superior court's decision has compelled Mr. Baumert to express a name he disavows, and to inaccurately reflect a female gender identity. That compelled speech also creates an increased risk of violence, harassment, or abuse. Although the court gave Mr. Baumert the option to pick a name that the court "could live with," it deprived him of the right to choose his own name, the name he is known by in his family and community, and to communicate the message that he identifies as male. The government may no more compel Mr. Baumert to use a name he rejects than it may require students to recite the Pledge of Allegiance or drivers to display a particular license plate motto. *See Wooley*, 430 U.S. at 715 (license plate); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (Pledge of Allegiance).

Third, the superior court's decision also interfered with Mr. Baumert's right to be free from sex discrimination in violation of the Equal Protection Clause of the United States Constitution. "All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype." *See Glenn v. Brumby*, 663 F.3d 1312, 1315-16 (11th Cir. 2011). "[T]he Equal Protection Clause forbids sex discrimination no matter how it is labeled." *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 118-19 (2d Cir. 2004); *see also*

Chavez v. Credit Nation Auto Sales, LLC, 2016 WL 158820 at *1 (11th Cir. Jan. 14, 2016) ("Sex discrimination includes discrimination against a transgender person for gender nonconformity.") (citations omitted).

To make out a sex discrimination claim, "a plaintiff must prove that he or she suffered purposeful or intentional discrimination on the basis of gender." *Glenn v. Brumby*, 632 F. Supp. 2d 1308, 1315-15 (N.D. Ga. 2009) (citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-65 (1977)). "[A]ll gender-based classifications today warrant heightened scrutiny." *United States v. Virginia*, 518 U.S. 515, 555 (1996) (internal quotation marks omitted). Once sex discrimination is shown, courts must determine whether the justifications for the unequal treatment are "exceedingly persuasive." *Id.* at 556. A gender-based classification must serve important government interests that are substantially related to those interests. *Franklin v. Hill*, 264 Ga. 302, 304 (1994).

The superior court plainly discriminated on the basis of sex—it refused to grant Mr. Baumert a name-change request inconsistent with the sex on his birth certificate. That was a decision "based on sex." The decision was also motivated by, and made in reliance on, sex stereotypes. The court ruled that only non-transgender males could have male-sounding names, and *vice versa*, based on its

policy. That policy was itself rooted in deeply held notions of gender roles, gender identity, and how one's name should align with one's sex.

The superior court's justifications for its blatant sex discrimination fall short.[6] The court gave two reasons: (1) "Name changes which allow a person to assume the role of the opposite sex are, in effect, a type of fraud on the general public"; and (2) "Such name changes also offend the sensibilities and mores of a substantial portion of the citizens of this state." R-14. Neither is sufficient.

First, it is not an appropriate judicial function to regulate name changes based on the sex designation at birth; nor is it the court's job to police the gender neutrality of names. *See Eck*, 584 A.2d at 861 (gender appropriateness of name change sought by transgender petitioner of no concern to the judiciary); *McIntyre*, 715 A.2d at 403 (same); *see also Mullinix*, 152 Ga. App. at 215 (judge's opinion that divorced mother should have same last name as child was abuse of discretion). That an individual has assumed a male identity, and taken steps to transition from male to female, "is of no concern to the judiciary" and "has no bearing upon the

[6] For the same reasons, the justifications for the interference with Mr. Baumert's free-speech rights also fall short. *See Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2291 (2012) (government action interfering with free speech must serve a compelling interest).

outcome of a simple name change application." *Eck*, 584 A.2d at 861.

The court's concern with protecting the public from the "confusion" created by a mismatch between a person's name and the sex on his or her birth certificate presumes a harm that is non-existent and, at most, purely speculative. *See Bernal v. Fainter*, 467 U.S. 216, 227-28 (1984) (statute prohibiting resident aliens from becoming notaries violated equal protection, in part, because purported interest was not shown to be a "real, as opposed to a merely speculative, problem to the State"). No one in the community objected to Mr. Baumert's name-change request or raised these concerns. They are concerns entirely of the court's own making.

The court's logic is also deeply flawed. On the one hand, the court recognized that Mr. Baumert was "not going to cease claiming to be a person of the opposite gender." R-12. On the other hand, the court insisted that the only way to cure this "problem[] for the person and the general public," R-12, is to allow the Mr. Baumert to pick a gender-neutral name or, if he declines, to keep the name assigned at birth, R-13. No doubt a third option exists to cure this "problem": allow Mr. Baumert to choose a name consistent with his gender identity. R-12.

Last, the superior court's concern for the "sensibilities" and "mores" of Georgians should have had no place in its decision to grant or deny Mr. Baumert's

request. It is well-settled that "[m]oral disapproval of [a] group" is an insufficient state interest—even under the more lax rational-basis review. *Lawrence*, 539 U.S. at 582 (O'Connor, J., concurring). Likewise, "avoiding the anticipated negative reactions of others cannot serve as a sufficient basis for discrimination and does not constitute an important government interest" to justify discrimination against a transgender person. *Glenn v. Brumby*, 724 F. Supp. 2d 1288, 1305 (N.D. Ga. 2010), *aff'd*, 663 F.3d 1312 (11th Cir. 2011). No state interest—and certainly not one rooted in moral disapproval or apprehension—can justify denying a simple name-change request where the petitioner meets all statutory criteria and has no improper purpose for seeking the change.

CONCLUSION

For the foregoing reasons, Mr. Baumert respectfully requests that this Court reverse the decision below, and order the superior court to grant his petition.

This 8th day of September, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2016, I have electronically filed the foregoing Brief of Appellant Andrew Norman Baumert (legally Delphine Renee Baumert) with the Clerk of Court by using the Court's eFiling system. I also hereby certify that, given this case involves the denial of an unopposed petition to change the name of Mr. Baumert, there is no opposing counsel to serve or otherwise notify of this Brief of Appellant.

This 8th day of September, 2016.

/s/ Merritt E. McAlister
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