

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13 SP 1523

COUNTY OF DURHAM

IN RE: CHANGE OF NAME

FROM: David Gavri'el Chayim, f/k/a David  
Gordon Hobbs

TO: Hadassah Gavriella Chayim

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**BRIEF IN SUPPORT OF PETITION  
FOR RECONSIDERATION OF  
DENIAL OF NAME CHANGE**

### Introduction

Hadassah Gavriella Chayim (“Ms. Chayim” or “Petitioner”), whose legal name is David Gavri'el Chayim, is a transgender woman who seeks to change her legal name from a traditionally male name to a traditionally female name. Like other transgender women, Ms. Chayim seeks to live in accordance with her immutable, intrinsic sense of being female, which includes adopting a female name in place of the male name given to her at birth. Ms. Chayim has lived openly as a woman since 2010 and submitted a petition to change her name to put an end to the harassment and discrimination that often accompanies her use of a male name.

On December 17, 2013, Ms. Chayim submitted a Petition for Legal Name Change of an Adult (the “Petition,” *see* attached Exhibit A) that sought to change her legal name from “David Gavri'el Chayim” to “Hadassah Gavriella Chayim.” On January 8, 2014, her Petition was denied by the Office of the Clerk of Superior Court of Durham County, North Carolina (the “Order,” *see* attached Exhibit B). Ms. Chayim’s Petition was denied for one reason: she had previously changed her name under North Carolina General Statute Section 101. Ms. Chayim files this appeal because the denial of her Petition does not accomplish any of the purposes of Section 101, which was enacted to streamline the process by which adults may change their name, to prevent fraud, and to alleviate public confusion over a person’s identity. *See In re Mohlman*, 216 S.E.2d 147, 151 (N.C. Ct. App. 1975). More significantly, as discussed further below, if Section 101 is

construed as an absolute bar to name-change applications like the Petition, it will violate both the North Carolina Constitution and the U.S. Constitution.

But this Court need not construe Section 101 so broadly. Under North Carolina General Statute Section 101-5(f), this Court is empowered to reconsider the Order and may avoid a construction of the statute that might render it unconstitutional. And in fact, the only other North Carolina court known to have addressed this issue opted to exercise its power under Section 101-5(f) and granted a petition just like Ms. Chayim's Petition here. (*See* attached Exhibit C, November 15, 2012 Order of the General Court of Justice, Superior Court Division.) We respectfully urge this Court to do the same; Ms. Chayim now moves the Court, pursuant to Section 101-5(f), to reconsider her Petition and to issue an Order changing her name from "David Gavri'el Chayim" to "Hadassah Gavriella Chayim."

### **Background**

#### **Relevant Statute**

North Carolina General Statute Section 101 governs the State's legal name-change process. First, a person must file an application before the clerk of the superior court in the county where he or she lives. N.C. Gen. Stat. § 101-2. The applicant must "state in the application his true name, county of birth, date of birth, the full name of parents as shown on birth certificate, the name he desires to adopt, his reasons for desiring such change, and whether his name has ever before been changed by law, and, if so, the facts with respect thereto." *Id.* at § 101-3. The applicant must also "file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing." *Id.* at § 101-4.

If the clerk "finds that good and sufficient reasons exist for the change of name . . . it is the clerk's duty to issue an order changing the name of the applicant from that person's true name to the name sought to be adopted." *Id.* at § 101-5(d). But if the clerk "finds that good and

sufficient reasons exist to deny the applicant’s request for a name change, it is the clerk’s duty not to issue an order changing the name of the applicant . . . .” *Id.* at § 101-5(f). The order denying the name change must “state the reasons for the denial.” *Id.* To appeal the clerk’s decision, an applicant must “petition the chief resident superior court judge within 30 days of the denial to request a reconsideration of the application.” *Id.*

A provision that dates from the initial passage of the statute in 1891, however, provides: “No person shall be allowed to change his name under [§ 101] but once.” *Id.* at § 101-6(a). The statute contains only two limited exceptions: one for persons who seek to resume a former name and another for persons who are widowed. *Id.* at §§ 101-6(a), 101-8. But Section 101 was enacted to streamline the process by which adults may change their name and to prevent fraud and alleviate public confusion over a person’s identity. *See Mohlman*, 216 S.E.2d at 151. It was not intended to bar applications—like this one—that are made in good faith and supported by ample evidence of good and sufficient reason for the change. *Id.*

**Petitioner**

[REDACTED]

Ms. Chayim has struggled with her gender identity since she was a child. Growing up, she felt that she was neither a man nor a woman, but gender neutral. She never felt able to fully express who she was. As Ms. Chayim grew older, she realized that she connected with people as

a woman, rather than as a male. In order to live a happy and authentic life, Ms. Chayim has lived openly as a woman for the past three years.

### **First Petition**

Ms. Chayim is the daughter of a Jewish mother and non-Jewish father. For religious reasons, Ms. Chayim changed her last name from Hobbs (her father's name) to Chayim in January 2009. She felt that her original last name failed to identify her as Jewish and decided to adopt a last name that reflected her religious and spiritual identify as a person of Jewish faith. Around this time, Ms. Chayim was also beginning to come to terms with her gender identity and sexual orientation. She had recently come to accept that she was bisexual, and yet continued to feel trapped, unable to express parts of her personality. As a result, she suffered from depression and anxiety. In addition to the fact that her new name expressed her Jewish identity, Ms. Chayim also selected her new name because "chayim" means "life" in Hebrew. With her selection, Ms. Chayim hoped to convey her desire to create a new life for herself—a life that included acceptance of her sexual orientation and gender identity. At this time, Ms. Chayim had not started to regularly dress in accordance with her female identity or express herself as a woman and had no imminent plans to transition socially to female.

On January 23, 2009, Ms. Chayim gave notice of her intention to file a name-change petition in Harnett County, North Carolina. Ten days later, Ms. Chayim submitted her petition to change her name from David Gordon Hobbs to David Gavri'el Chayim and her request was granted.

At the end of 2009, Ms. Chayim began to experiment with wearing women's clothing. She recalls the first time that she tried on a friend's dress; as soon as she put on the dress, she felt that she could genuinely express herself in a way never before possible. Similarly, the first time she tried on high heels, she felt more confident than ever before. Ms. Chayim had always been

aware that she did not feel connected to a male identity, but before wearing women's clothing, she believed that she was gender neutral, unable to see herself as either a man or a woman.

In the winter of 2010, Ms. Chayim began to publicly identify herself as a woman, immediately feeling braver and happier. For the first time in her life, she realized that the way she felt inside could match her outward expression. Ms. Chayim had always loved the name "Hadassah," at one time believing that if she had a daughter, she would choose this name for her. But ultimately, Ms. Chayim realized that *she*, in fact, identified with this name, and wanted to be called "Hadassah" in her everyday life. She has lived as a woman named Hadassah Chayim since that time.

The next step in Ms. Chayim's process of self-discovery was her decision to begin therapy in the fall of 2010 to discuss her feelings about sexual orientation, gender, and identity. Those therapy sessions helped Ms. Chayim decide that she wanted to change her body to match her internal sense of being a woman. Ms. Chayim often discussed the process of hormone replacement therapy with her therapist—a medical treatment involving the administration of hormones for the purpose of bringing body chemistry and sex characteristics in alignment with the brain. After several months of therapy, Ms. Chayim's therapist recommended that she begin hormone therapy in order to make the final transition and to live openly as a woman. In September 2011, once she had saved enough money to buy her medication, Ms. Chayim began hormone therapy.

It has been two years since Ms. Chayim began hormone therapy. She feels her life as a man was a past life, and refers to the man she once was in the third person. She finally feels natural and at ease in her own body. She fits into the clothes that she wants to wear and finally feels beautiful—and like herself. Ms. Chayim needs only a name to align her legal documents

with her female sex. Her North Carolina driver license already identifies her sex as female and displays her typically female picture, alongside a traditionally male name. (*See* attached Exhibit E.) This issue has caused Ms. Chayim great anxiety, including frequent panic attacks, as she is forced to identify herself with a male name and to explain to others why her name does not match her outward appearance.

### **This Petition**

Absent a legal name change, Ms. Chayim is thwarted in her efforts to convey to others that she is female. Because the name that appears on her key identity documents identifies her as male, Ms. Chayim's ability to live openly as a woman and express herself as a woman is necessarily limited absent the name change sought by the Petition.

On October 22, 2013, Ms. Chayim gave notice of her intent to file a Petition for Legal Name Change of an Adult. (*See* attached Exhibit F.) Then, on December 11, 2013, she submitted the Petition to the Office of the Clerk of Superior Court of Durham County, North Carolina, respectfully requesting the Court to issue an Order changing her legal name from "David Gavri'el Chayim" to "Hadassah Gavriella Chayim." (*See* attached Exhibit A.) As required under North Carolina law, the Petition states Ms. Chayim's true name, county of birth, date of birth, the full name of parents as shown on birth certificate, the name she desires to adopt, her reasons for desiring such change, the fact that she had previously changed her name, and the facts relating to those name changes. It also attaches two affidavits attesting to proof of Ms. Chayim's good character. *See* N.C. Gen. Stat. § 101-3, 4.

On January 8, 2014, the clerk of the Court denied the Petition. (*See* attached Exhibit B.) The only reason given by the clerk for the denial of Ms. Chayim's petition is that she previously changed her name under North Carolina General Statute Section 101.

## Discussion

Ms. Chayim submitted the Petition for “good and sufficient reason(s),” including: “I am transgender and changing my name will allow me to express who I am, to change my identity documents, to continue my medical treatment, and to end the discrimination and harassment that I face because of the discrepancy between my female gender identity and expression and my male name.” The Clerk of Durham County’s denial of the Petition based on Ms. Chayim’s previous name change is perhaps understandable for a clerical action, but it adopts an unnecessarily rigid construction of Section 101—one that this Court need not adopt. If North Carolina General Statute Section 101 is found to be an absolute bar to applications like Ms. Chayim’s Petition, it will violate both the North Carolina Constitution and the U.S. Constitution.

Specifically, requiring Ms. Chayim to retain the male legal name “David Gavri’el Chayim” will: (1) abridge her rights under the North Carolina and U.S. Constitution by denying her the expressive value of a traditionally female name; (2) compel private speech by forcing her to identify herself by a male name, thereby denying her the expressive value of a traditionally female name, and (3) infringe her fundamental rights, including her rights to vote, to travel, and to privacy and liberty. Each is addressed in turn below. It does, however, bear emphasis that this Court need not adopt a construction that threatens to render Section 101 unconstitutional. The statute was not adopted to bar applications—like Ms. Chayim’s—that are made in good faith and supported by ample evidence of good and sufficient reason for the change. This Court should reconsider the Petition and issue an Order changing Ms. Chayim’s name from “David Gavri’el Chayim” to “Hadassah Gavriella Chayim.”

*First*, if the State of North Carolina requires Ms. Chayim to retain the legal name “David Gavri’el Chayim,” it will impermissibly deny her the expressive value of a traditionally female legal name, which is a core symbol of who she is.

**Second**, if North Carolina continues to restrict Ms. Chayim’s ability to obtain a legal name change, the State will impermissibly continue to compel private speech by forcing Ms. Chayim to use a male name, and thereby express that she is male against her will. Although Ms. Chayim may choose to call herself Hadassah, there are numerous instances in her daily life where she has no choice but to present identification or other documentation containing her legal name—a name that she rejects because it does not express who she is.

In fact, by restricting Ms. Chayim’s ability to obtain the legal name change that she desires, North Carolina has already impermissibly compelled Ms. Chayim to use a male name that expresses that she is male. Specifically, this has already occurred while:

1. **Applying to Jobs.** When applying to jobs Ms. Chayim is forced to use her legal name so that potential employers can run appropriate background checks and correctly fill out other forms and documentation (*i.e.* tax forms). Though her voice and appearance are recognizably female, on the phone with potential employers, and on written job applications, Ms. Chayim must state that her full name is “David Chayim,” causing embarrassment for her and confusion for the potential employer. This awkward exchange has caused Ms. Chayim such anxiety that she has stopped looking for jobs at this time, avoiding the embarrassment of using her legal name and explaining that she is a transgender woman to a potential employer.
2. **Applying for a Driver’s License.** At the end of 2012, Ms. Chayim lost her driver’s license and went to the DMV to apply for a new license. During the application process, she was forced to use her male legal name to fill out forms and was forced to answer to “David” at the DMV office when she was called for her turn in line. This process caused Ms. Chayim great distress as she felt the need to explain the reasons behind her male name.
3. **Responding to Authorities in a Car Accident:** Recently, Ms. Chayim was involved in a minor car accident, and when asked by the police to supply identification, was forced to show the officer her license with the name “David.” Already upset by the accident, having to show her license with a male name caused Ms. Chayim further stress. She was embarrassed by the male name on her license and felt the need to explain why the name on the license was “David” even though she looked and sounded like a woman in every other way.

In addition to the above, there are numerous other instances where North Carolina compels private speech by forcing Ms. Chayim to keep a legal name that expresses that she is



male rather than female. These include air or other travel that requires presenting government-issued identification, driving, and interacting with law enforcement. With respect to the last category, it is notable that failure to provide identification during the aftermath of a car accident is a class 1 misdemeanor in North Carolina. *See* N.C. Gen. Stat. § 20-166.2. The speech that North Carolina has already compelled, and threatens to compel, is in violation of Ms. Chayim’s rights under the North Carolina Constitution and the U.S. Constitution.

*Third*, the rights at issue in Ms. Chayim’s case—rights such as privacy and liberty, the right to vote, and the freedom to travel—are rights that have been deemed fundamental by the North Carolina Supreme Court and the U.S. Supreme Court. Where fundamental rights are concerned, courts abhor regulation that threatens to infringe such rights unless the regulation is narrowly tailored to serve a compelling interest. *See, e.g., Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Here, if Section 101 is construed to prevent Ms. Chayim from adopting a female legal name, the statute infringes her ability to exercise her fundamental rights. As applied, even presuming North Carolina has a compelling interest in regulating name changes, the statute is not narrowly tailored to achieve such interests. Accordingly, it will be unconstitutional under the North Carolina Constitution and the U.S. Constitution.

Finally, North Carolina case law firmly establishes that when construction of a statute raises a serious constitutional question, courts should adopt an available alternate construction that avoids constitutional questions. *See, e.g., Best v. Wayne Memorial Hosp., Inc.*, 147 N.C.App. 628, 633-34 (2001) (“We rely, instead, on the familiar canon of statutory construction that ‘[w]here one of two reasonable constructions will raise a serious constitutional question, the construction which avoids this question should be adopted.’”); *see also Delconte v. North Carolina*, 313 N.C. 384, 402, (1985). This Court should avoid raising a serious constitutional

question with § 101 by reconsidering the Petition and issuing an Order permitting Ms. Chayim to change her name under the statute.

**Conclusion**

For the reasons stated above, Petitioner respectfully requests that the Chief Resident Superior Court Judge reconsider the Petition and issue an Order changing her name from “David Gavri’el Chayim” to “Hadassah Gavriella Chayim.”

Respectfully submitted, this the 22<sup>nd</sup> day of January, 2014.

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