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# SUFFOLK UNIVERSITY LAW REVIEW

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## **A Name of One's Own: The Spousal Permission Requirement and the Persistence of Patriarchy**

Beth D. Cohen\*

Throughout the years, I have witnessed many friends and acquaintances struggle with naming decisions during the occasions of marriage, birth of children, divorce, and remarriage. Naming decisions are deeply personal, and as expected, people choose different paths; they change their names to their spouses' last names, keep their birth names, hyphenate their names, and alternate the last names of their children. In particular, two friends, who upon marriage adopted their husbands' last names, decided to resume using their birth names during the course of their marriage; both felt as though they had lost a piece of themselves and sought to reclaim their identity by reclaiming their birth name. Their individual identities, however, were not reclaimable by themselves as individuals; each woman had to either get her husband's signed permission or serve her husband as a defendant in what was otherwise a simple, administrative name-change proceeding. While some may dismiss this as a lingering anachronism, the requirement that a woman specifically notify or secure her husband's permission prior to changing her name continues to inflict real present-day harms and remains an unnecessary vestige of patriarchy.

### I. INTRODUCTION

We carry many things with us through life, not the least of which is our own name. Although this significant part of our identity is given to us, selected for

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us at birth, most people accept their “given name” as their own. However, cultural norms and pressures exist to encourage women to change their name, typically upon marriage.<sup>1</sup> This article addresses a discrete but inequitable issue in the area of name-change law.<sup>2</sup> As the law currently operates in Massachusetts, the process by which a married person, usually a woman,<sup>3</sup> can seek a legal name change requires signed permission—the written assent of a spouse.<sup>4</sup> In the absence of such signed permission or spousal consent, a married person seeking a name change is required to serve his or her spouse by certified mail, as an adversary, in what is otherwise typically a nonadversarial administrative legal process.<sup>5</sup> This requirement of spousal notification and consent, although gender neutral on its face, has a disparate impact on married women seeking to change their names, including those seeking to resume their birth names.<sup>6</sup> Although the legalization of same-sex marriage has somewhat

1. See Elizabeth F. Emens, *Changing Name Changing: Framing Rules and the Future of Marital Names*, 74 U. CHI. L. REV. 761, 762 (2007) (examining and challenging legal and social constructs of name-change laws). Emens proposes alternative framing rules to alter the current paradigm of naming and name changing. *Id.* at 793-839.

2. *In re Merolevitz*, 70 N.E.2d 249, 250 (Mass. 1946) (“In jurisdictions where this subject [name-change law] has been regulated by statute it has generally been held that such legislation is merely in aid of the common law and does not abrogate it.”). In general, name-change laws supplement the common-law right to change one’s name. See Jane M. Draper, Annotation, *Circumstances Justifying Grant or Denial of Petition to Change Adult’s Name*, 79 A.L.R.3d 562, § 2[a] (1977) (“The common-law privilege of changing one’s name at will, in the absence of fraudulent intent, has not been abrogated by present-day name change statutes, but such statutes have been held to be in aid of the individual’s common-law right, giving the advantages of a public record of such change and a specific time at which the change is made.”).

3. See MASS. GEN. LAWS ANN. ch. 210, § 14 (West 2012). Every December each Register of Probate is required to notify the Commissioner of Public Health and the Commissioner of Probation of all name changes. *Id.*; Merle H. Weiner, *We Are Family: Valuing Associationalism in Disputes Over Children’s Surnames*, 75 N.C. L. REV. 1625, 1637 (1997) (“Thus, it is not surprising that women institute most name change petitions—usually for the purpose of giving children the mother’s birth name or the surname of a new stepfather.”).

4. See Hampshire Cnty. Probate & Family Court, *Change of Name*, HAMPSHIRE PROBATE (July 10, 2012), [http://hampshireprobate.com/Change%20of%20Name/change\\_of\\_name.htm](http://hampshireprobate.com/Change%20of%20Name/change_of_name.htm) (“MARRIED ADULTS must have the written ascent [sic] of their spouse to their change of name AND must file a certified copy of their marriage certificate.”). But see Commonwealth of Mass. Probate & Family Court Dep’t, *Changes of Name(s)*, MASS.GOV, <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/documents/cjp27.pdf> (last visited Oct. 21, 2012) (requiring signature of spouse for joint petition).

5. See *In re Zhan*, 37 A.3d 521, 523 (N.J. Super. Ct. App. Div. 2012) (“The name change statute provides a more formal means to adopt a new name and ‘provides a definitive and swift procedure for public recordation.’” (quoting *In re Bacharach*, 780 A.2d 579, 130-31 (N.J. Super. Ct. App. Div. 2001))).

6. See Kim Willsher, *Madame Steinem Would Approve*, L.A. TIMES, Jan. 15, 2012, <http://articles.latimes.com/2012/jan/15/world/la-fg-france-mademoiselle-20120115> (illustrating gender discrimination in naming conventions).

“It’s about eliminating all terms that could be discriminatory or indiscreet,” the town hall at Cesson-Sevigne, a suburb of the western town of Rennes, in Brittany, said in a statement explaining that the title “mademoiselle” had been banished from all official forms since the beginning of the year. “The existence of two different terms to indicate women who are married and those who aren’t is a discrimination for women because there is no differentiation that exists for men.”

*Id.* Use of “birth name” as opposed to “maiden name” is a choice to use a more gender-neutral term as there is

altered these dynamics, many individuals in same-sex relationships also change their names upon marriage and therefore the impact of the spousal-consent requirement applies with equal force in any marital relationship. Whether due to marriage, change in marital status, or some other significant life event, there is no question that many people, particularly women, face the issue of whether to change their name.<sup>7</sup> The law that addresses this most personal and private—yet also very public—issue of name-change regulation includes vestiges of patriarchy that place an undue burden on women, particularly those who marry. This article will discuss why this spousal-consent requirement is a problem and suggests simple changes to cure at least this one flagrant disparity. Additionally, because this “requirement” is not referenced in the controlling statutory law, it seems to fall into the category of what Elizabeth F. Emens refers to as “desk-clerk law” in her seminal article *Changing Name Changing: Framing Rules and the Future of Marital Names*.<sup>8</sup> Therefore, it seems that this problem can be corrected by a legislative, administrative, or judicial initiative to correct the forms as well as the required process for legal name change in Massachusetts.

Part I provides a brief overview of the historical, social, and political context of name changes for women. Part II describes the history and current state of name-change law and process in Massachusetts and compares Massachusetts with other states. Part III explores the negative and inequitable impact of the spousal-consent requirement. Specifically, the requirement for either spousal consent or the service of process alternative places an unfair and unnecessary burden on women, and, as in other name-change cases, the publication requirement should be sufficient even when the person seeking a name change is married. Part IV suggests a legislative, administrative, or judicial remedy to address the needlessly onerous and outdated spousal-consent requirement for name changes and outlines steps that courts, clerks, and legal advisors could take to remedy this seemingly overlooked obstacle.

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no comparable term for male “family name” or “birth name.”

7. See COMMONWEALTH OF MASS. PROBATE & FAMILY COURT DEP'T, ANNUAL REPORT FOR FISCAL YEAR 2010, at 18 (2010). There were 3128 name changes in Massachusetts in fiscal year (FY) 2010 (2705 in FY 2005; 2856 in FY 2006; 3126 in FY 2007; 3205 in FY 2008; and 3023 in FY 2009). *Id.*; Mildred Antenor, *Should Women Keep Their Maiden Names After Marriage?*, THE GRIO (Jan. 6, 2011, 8:51 AM), <http://thegrio.com/2011/06/06/should-women-keep-maiden-names-after-marriage/>. “According to the 2010 Real Weddings Survey released by The Knot, only 6 percent of newlywed women opted to hyphenate their names. Of the roughly 20,000 brides polled, responses overwhelmingly favored taking their husband’s name, [at] to close to 86 percent.” Antenor, *supra*.

8. Emens, *supra* note 1, at 762 (examining and challenging legal and social constructs of name-change laws and customs, proposing alternative framing rules to alter current paradigm of naming and name changing).

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## II. HISTORY, CONTEXT, AND SOCIAL SIGNIFICANCE

### A. *Historical Overview of Women's Name Change*

While considering the legal process of name changing, it is helpful to have some historical background to put the process into context. First, understanding the development and use of surnames is useful to appreciate the importance and implications of names, especially for women.<sup>9</sup> For example, although we generally take the existence and imposition of surnames for granted, the use and adoption of surnames is, in relative terms, a more recent historical phenomenon.<sup>10</sup> Furthermore, although the imposition of surnames and the impact on women is commonly accepted in American culture, a woman's choice regarding surnames in other cultures varies.<sup>11</sup> As Elizabeth Emens set forth in *Changing Name Changing: Framing Rules and the Future of Marital Names*:<sup>12</sup>

Marital names shape our ideas about marriage, about our children, and about our selves. For about a hundred years, American states required married women to take their husbands' names in order to engage in basic civic activities such as voting. While the law no longer requires women to change their names, it still shapes people's decisions about marital names in both formal and informal ways.<sup>13</sup>

As for the controlling authority, "[t]he current law regarding names and name changes upon marriage belongs exclusively to the states."<sup>14</sup> Although there have been significant strides towards equalization of marital rights, gender discrimination remains, both in law and in practice. For example, "as of 2010 the majority of states do not allow a man to change his name to that of his wife by virtue of marriage, while the woman can do so via a simple and straightforward process in every state except one [Louisiana]."<sup>15</sup>

Although naming practices and policy may not appear to be as significant

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9. See Deborah J. Anthony, *A Spouse by Any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 190-93 (2010) (summarizing historical development of surnames).

10. See *id.* at 191. "The word 'surname' originates from 'sir' name . . ." *Id.* ("[S]urnames themselves did not exist in England before the Norman Conquest in 1066.").

11. Kif Augustine-Adams, *The Beginning of Wisdom Is to Call Things by Their Right Names*, 7 S. CAL. REV. L. & WOMEN'S STUD. 1, 12-15 (1997) (noting how other countries address legal constraints regarding women's choice of surname).

12. Emens, *supra* note 1, at 762.

13. *Id.*

14. Anthony, *supra* note 9, at 190.

15. *Id.* Consistent with other civil law countries, Louisiana law provides: "Marriage does not change the name of either spouse. However, a married person may use the surname of either or both spouses as a surname." LA. CIV. CODE ANN. art. 100 (West 2012).

as many other critical equality issues including employment discrimination, intimate partner violence, or reproductive rights, they are a fundamental representation of the notion of choice—the choice to structure one’s own identity, life, and family as one sees fit.<sup>16</sup>

As a further indication of the far-reaching impact and significance of names, naming decisions, and name changing in our culture, the discussion and scholarship spans across many disciplines. For example, popular culture, newspapers, magazines, blogs, and websites have addressed topics relating to names and name changes.<sup>17</sup> Specialty law, anthropology, sociology, international, and feminist journals also have rich and varied articles addressing the multitude of issues raised by naming and name changes.<sup>18</sup> Issues addressed range from constitutional equal protection and due process issues to feminist legal theory, transgender issues, and cultural naming practices.<sup>19</sup> The range and

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16. Anthony, *supra* note 9, at 190.

17. See, e.g., ACLU of S. Cal., *Anchoring the Constitution*, ACLU-SC (Aug. 13, 2010), <http://www.aclu-sc.org/anchoring-the-constitution/>; Antenor, *supra* note 7.

A recent study from Indiana University showed that 95 percent of women are changing their names and 70 percent of women say that they should remove their last name for their spouses. Old habits die hard. Traditional social customs dictate that women should take on their husbands’ surnames upon marriage. Meanwhile, looking back through history, women were once considered property and changing the last name reflected that. Although this of course is no longer true, in the legal or communal sense, name changing symbolically still reflects agreement and commitment.

Antenor, *supra* note 7; see also Kristina Tedeschi, *What’s in a Name?*, DAILY HAMPSHIRE GAZETTE (Northampton, MA), March 22, 2008, at 17C (“That’s a question many women must ponder.”); Steve Friess, *More Men Taking Wives’ Last Names*, USA TODAY, Mar. 21, 2007, [http://usatoday30.usatoday.com/news/nation/2007-03-20-names-marriage\\_N.htm](http://usatoday30.usatoday.com/news/nation/2007-03-20-names-marriage_N.htm); Jenny C. McCune, *Here Comes the Bride’s Name Change*, BANKRATE, <http://www.bankrate.com/brm/news/advice/20050125a1.asp> (last visited Jan. 22, 2012) (“First comes love. Then comes marriage. Then comes the name change challenge.”).

18. See, e.g., Anthony, *supra* note 9 (exploring current state laws allowing men to change name upon marriage); Augustine-Adams, *supra* note 11 (exploring how naming practices impact fundamental conceptions of individuality, identity, family, and community); Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893 (2010) (exploring role of names in family law and policy debates); Yuri Kolesnikov, *Chapter 567: Saying “I Do” to Name Changes by Husbands and Domestic Partners*, 39 MCGEORGE L. REV. 429 (2008) (reviewing California’s Name Equality Act of 2007); Omi Morgenstern Leissner, *The Name of the Maiden*, 12 WIS. WOMEN’S L.J. 253 (1997) (exploring discrimination implicit in denying woman’s right to name herself and her children); Marc R. Poirier, *Commentary, Name Calling: Identifying Stigma in the “Civil Union”/“Marriage” Distinction*, 41 CONN. L. REV. 1425 (2009); Teresa Scassa, *National Identity, Ethnic Surnames and the State*, 11 CANADIAN J.L. & SOC’Y 167 (1996) (addressing relationship between attitudes toward surname policies relating to national identities); Julia Shear Kushner, *Comment, The Right To Control One’s Name*, 57 UCLA L. REV. 313 (2009) (exploring constitutional implications and protections of name change law); Kelly Snyder, *Note, All Names Are Not Equal: Choice of Marital Surname and Equal Protection*, 30 WASH. U. J.L. & POL’Y 561 (2009) (examining lack of equal protection in naming rights).

19. See *supra* note 18 (identifying constitutional issues in name-change law); see also TRANSGENDER FAMILY LAW, A GUIDE TO EFFECTIVE ADVOCACY 16-35 (Jennifer L. Levi & Elizabeth E. Monnin-Browder eds., 2012) (discussing name-change procedures for transgender individuals).

scope of these articles indicate the broad sweeping but often overlooked individual and societal impacts of names and naming rights. Individual and family names and naming practices have personal, political, cultural, and legal ramifications that cannot be overstated. Therefore, every aspect of the substance and process of the law is significant and meaningful.

### B. Massachusetts Name-Change Law

In general, under common-law principles, a person may change his or her name without resorting to a legal process, as long as it is not for fraudulent purposes.<sup>20</sup> Most states, including Massachusetts, have enacted statutes that provide methods to facilitate name change that are not intended to restrict the right to change one's name, but rather to aid in establishing an official record of the name change.<sup>21</sup> Massachusetts courts have been consistent in broadly interpreting and applying statutes that address naming rights.<sup>22</sup> The Massachusetts statutes include the right to change one's name upon marriage,<sup>23</sup> upon divorce,<sup>24</sup> with adoption,<sup>25</sup> and in gender reassignment.<sup>26</sup>

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20. See *In re Rusconi*, 167 N.E.2d 847, 850 (Mass. 1960) (recognizing broad right to change one's name). The court should grant change-of-name petitions except where change is sought for fraudulent or dishonest purposes or is inconsistent with public interests. *Id.*; *In re Buyarsky*, 77 N.E.2d 216, 218 (Mass. 1948). The statutory petition for name change does not abrogate common-law rights, but it does provide means to obtain an official record of the change. *Buyarsky*, 77 N.E.2d at 218; *In re Verrill*, 660 N.E.2d 697, 698 (Mass. App. Ct. 1996). The statute requiring a name-change petition does not abrogate the common-law right to use a name of one's own choosing and the petition should be granted unless it is inconsistent with the public interest. *Verrill*, 660 N.E.2d at 698.

21. *Sec'y of the Commonwealth v. City Clerk of Lowell*, 366 N.E.2d 717, 724 (Mass. 1977). Massachusetts name-change-petition statutes provide an official record of the changed name and do not restrict the right of a person to use his or her name of choice. *Id.*; see 65 C.J.S. *Names* § 21 (2012) (explaining general right to name change under statutory provisions).

22. See Christine M. Durkin & Angela M. Ordonez, *Naming Nonmarital Children: Birth Certificates and Name Change Petitions*, in *PATERNITY AND THE LAW OF PARENTAGE IN MASSACHUSETTS* ch. 10 (Pauline Quirion ed., 2d ed. 2009), available at Westlaw PLPI MA-CLE. "As the legal status of women in the family and of children born to unmarried parents has evolved, however, discriminatory naming preferences based on gender and marital status are no longer sanctioned by the legal system." *Id.* § 10.1 (citing *Richards v. Mason*, 767 N.E.2d 84, 87 (Mass. App. Ct. 2002); *Jones v. Roe*, 604 N.E.2d 45, 47 (Mass. App. Ct. 1992)).

23. MASS. GEN. LAWS ANN. ch. 46, § 1D (West 2012).

24. MASS. GEN. LAWS ANN. ch. 208, § 23 (West 2012) ("The court granting a divorce may allow a woman to resume her maiden name or that of a former husband.").

25. MASS. GEN. LAWS ANN. ch. 210, § 6 (West 2012) (allowing name change in adoption proceeding upon request of petitioner).

26. Ch. 46, § 13(e).

If a person has completed sex reassignment surgery, so-called, and has had his name legally changed by a court of competent jurisdiction, the birth record of said person shall be amended to reflect the newly acquired sex and name, provided that an affidavit is received by the town clerk, executed by the person to whom the record relates, and accompanied by a physician's notarized statement that the person named on the birth record has completed sex reassignment surgery, so-called, and is not of the sex recorded on said record. Said affidavit shall also be accompanied by a certified copy of the legal change of name aforementioned above.

For example, one Massachusetts statute provides that “[e]ach party to a marriage may adopt any surname, including but not limited to the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof.”<sup>27</sup> Furthermore, the statutory name-change process has been established and interpreted as supplementing, not limiting, the common-law right of choice of name.<sup>28</sup>

The process for legal name change in Massachusetts includes filing a petition for change of name, a publication notification requirement, and a filing fee.<sup>29</sup> The filing fee, governed by statute, can be waived upon a showing of indigency.<sup>30</sup> The petition for name change must be completed and, in addition to the required information, the petitioner must file a birth certificate and any documents or decrees that reflect previous name changes, including marriage certificates.<sup>31</sup> Before granting the name change, the court must request a report from the Commissioner of Probation and require public notice of the petition.<sup>32</sup> Although the public notice requirement may be waived in certain circumstances,<sup>33</sup> publication generally requires that “notice of said proceedings shall be given by publishing a copy of the foregoing citation once in each week for three successive weeks in the (name of the newspaper) a newspaper published in [name of place], the last publication to be one day at least before said return day.”<sup>34</sup>

Although the statutory name-change process has been criticized in general for placing an unfair burden on what many consider to be a fundamental privacy right, the constitutional ramifications and considerations are beyond the scope of this article.<sup>35</sup> Rather, the discrete problem addressed here is the situation where someone, typically a woman, changes her name upon marriage, and then, as is allowed by law, decides to change her name or resume her birth name during the course of the marriage. As the process currently exists in

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*Id.*

27. *Id.* § 1D.

28. *Sec’y of the Commonwealth v. City Clerk of Lowell*, 366 N.E.2d 717, 722 (Mass. 1977). Massachusetts statutes requiring court petitions to change a name provide an official record of the changed name and do not restrict the right of a person to use the name of his or her choice. *Id.* at 724.

29. Ch. 210, § 13; *see* 3 CHARLES P. KINDREGAN & MONROE L. INKER, MASSACHUSETTS PRACTICE SERIES: FAMILY LAW AND PRACTICE, § 62:4 (3d ed. 2012).

30. MASS. GEN. LAWS ANN. ch. 262, § 40 (West 2012) (setting filing fee for change of name); MASS. GEN. LAWS ANN. ch. 261, § 27A (West 2012) (providing indigent waiver of civil fees and costs).

31. MASS. GEN. LAWS ANN. ch. 210, § 13 (West 2012).

32. *Id.*

33. *Id.* (public notice required except upon showing of good cause and petitioner filing Motion to Waive Notice of Name Change Proceeding by presenting affidavits supporting sensitive nature of matter and potential harm caused by notice).

34. 5A FRANCIS T. TALTY, PATRICIA SULLIVAN & ALAN L. BRAUNSTEIN, MASSACHUSETTS PRACTICE SERIES: METHODS OF PRACTICE § 24:16 (4th ed. 2012).

35. *See supra* notes 1, 18 and accompanying text (discussing constitutional name-change issues).



Massachusetts, such individuals are treated unfairly and have an additional burden to obtain permission—written assent from their spouse or serving their spouse as a defendant or adversary in an otherwise nonadversarial proceeding.<sup>36</sup> Conversely, an unmarried person does not have to fulfill this additional requirement and publication alone suffices to provide adequate notice.

Contrary to the process in Massachusetts, name changes can be made without spousal consent and without any publication in neighboring Rhode Island.<sup>37</sup> The New Hampshire Probate Court website name-change checklist makes no mention of needing any type of spousal approval.<sup>38</sup> Although the Connecticut name-change form has a space for a petitioning or nonpetitioning spouse, there is no indication that any approval is required.<sup>39</sup> Likewise, New Jersey's form asks if the petitioner has ever been married, but the form does not ask about the petitioner's current marital status.<sup>40</sup> Furthermore, there is no indication that New York requires spousal approval or notification for a name change.<sup>41</sup> Significantly, in nearby Vermont, the name-change instructions specify that "[p]art II of the petition 'Consent of Spouse' is no longer required and does not need to be filled out."<sup>42</sup> Therefore, a review of the forms and processes in other states adds credence to the claim that Massachusetts is

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36. Interview with Clerk at Hampshire Cnty. Probate and Family Court, in Northampton, Mass. (Apr. 3, 2012) [hereinafter Clerk Interview] (notes on file with author). According to the clerk, if there is no spousal consent, the petitioner is required to show notice to the spouse by service of the citation by certified mail, or be able to prove to the court that the petitioner tried everything to locate and notify the spouse including use of the internet, postal service, probation department, friends, and family. *Id.*

37. See R.I. GEN. LAWS ANN. § 8-9-9 (West 2012) (granting general jurisdiction over name changes to probate courts); Traugott v. Petit, 404 A.2d 77, 80 (R.I. 1979) (holding "that s 8-9-9 is an optional method that may be employed to change one's name. . . . [A] number of courts have held that their name-change statutes do not abrogate or supersede the common law, but merely afford an additional method of effectuating a name change as a matter of public record."); R.I. Sec'y of State, *Change of Name Form*, RI.GOV, <http://sos.ri.gov/documents/probate/PC8.1.pdf> (last visited Nov. 20, 2012).

38. See N.H. REV. STAT. ANN. § 490-D:2 (West 2012) (granting name-change authority to judicial branch family division). New Hampshire follows the common law, allowing, but not requiring, an individual to petition the court for a name change. *Id.*; N.H. REV. STAT. ANN. § 547:3-I (West 2012) (granting general name-change authority to Probate Court); N.H. Circuit Court, *Name Change—Adult*, N.H. JUDICIAL BRANCH (Aug. 1, 2011), <http://www.courts.state.nh.us/probate/servicecenters/checklists/checklistfiles/025ANameChg-Adult.pdf>.

39. See CONN. GEN. STAT. ANN. § 52-11 (West 2012) (outlining complaints for name change in Connecticut); Conn. Court of Probate, *Application for Change of Name (Adult)*, CONN. JUDICIAL BRANCH, <http://www.jud.ct.gov/webforms/forms/pc-901ar.pdf> (last visited Nov. 20, 2012).

40. See N.J. STAT. ANN. § 2A:52-1 (West 2012) (outlining New Jersey's name-change process); N.J. Superior Court, Law Div., Civil Part, *How to Ask the Court to Change Your Name*, N.J. COURTS (Oct. 2011), [http://www.judiciary.state.nj.us/prose/10551\\_namechg\\_adult.pdf](http://www.judiciary.state.nj.us/prose/10551_namechg_adult.pdf).

41. See N.Y. CIV. RIGHTS LAW § 60 (McKinney 2012) (outlining New York's name-change process); N.Y. City Civil Court, *Name Changes*, N.Y. STATE UNIFIED COURT SYS., <http://www.nycourts.gov/courts/nyc/civil/namechanges.shtml> (last visited Nov. 20, 2012).

42. Vt. Probate Div., *Name Change of Adult Information*, VT. JUDICIARY, <http://www.vermontjudiciary.org/GTC/Probate/MasterDocumentLibrary/Name%20Change%20of%20Adult%20Information.pdf> (last visited Oct. 12, 2011); see VT. STAT. ANN. tit. 15, § 811 (West 2012).

uncharacteristically out of step by retaining this vestige of patriarchy in the name-change process.

### III. NEGATIVE AND UNFAIR IMPACT OF THE SPOUSAL-CONSENT REQUIREMENT

The spousal-consent requirement or the service alternative places an unfair and unnecessary burden on women. As is the situation in all other name-change cases, the publication requirement should be sufficient even when the person seeking a name change is married.

This additional requirement of separate spousal notification and/or consent creates an inequitable situation and undue burden that disproportionately impacts women, especially women who seek to merely resume use of their birth name. If a name is considered a fundamental right, a married adult should not need to obtain spousal consent before changing his or her own name. This is not an instance where a woman is seeking to change the name of a child of the marriage, but rather to change her own name while maintaining marital status. It is a striking contrast that spousal permission is not required in areas such as birth control, abortion, medical procedures, mental health treatment, or military service. The same fundamental rationale for rejecting spousal consent in these areas of personal rights and liberties exists with regard to name-change law. As the Supreme Court observed: “Women do not lose their constitutionally protected liberty when they marry. The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual’s family.”<sup>43</sup>

The spousal-consent requirement in the name-change process is reminiscent of the antiquated restrictive property rights of women and, correspondingly, fosters a submissive and subservient paradigm. The Supreme Judicial Court of Massachusetts has opined: “Important changes in popular and legal thinking suggest that ancient canards about the proper role of woman have no place in the law.”<sup>44</sup> Requiring a married person to get what amounts to a permission slip signed by his or her spouse places that adult, typically a woman, in an infantilized and subservient position, the very place sought to be abolished by laws of equality.

Furthermore, there seems to be no compelling or rational justification to require a married person to serve his or her spouse when that spouse will, because of the publication requirement, have the same opportunity to be heard and/or to object to the requested name change as any other interested person. In other words, the spousal consent does not replace the burden of publication;

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43. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 898 (1992).

44. *Sec’y of the Commonwealth v. City Clerk of Lowell*, 366 N.E.2d 717, 723 (Mass. 1977) (citing *Surabian v. Surabian*, 285 N.E.2d 909, 913 n. 7 (Mass. 1972)).

it is in addition to the publication requirement. The alternative to obtaining signed permission is to serve the spouse with the petition-for-name-change papers.<sup>45</sup> This additional process not only adds unnecessary cost, but also has the potential to heighten the level of acrimony in a relationship and converts an otherwise personal choice and administrative matter into an adversarial process. As noted earlier, the publication requirement provides the spouse with ample opportunity to object. If this requirement is sufficient for unmarried adults, it should be deemed sufficient for married adults as well.

Although the process does carve out an exception in circumstances involving a history of domestic violence, the petitioner has the additional burden of providing evidence of domestic violence in order to waive the spousal-consent requirement. Even in other circumstances, such as where spouses are estranged, or the power imbalance in the relationship is more subtle, the requirement of spousal consent or service of the petition reinforces the power imbalance and has the potential to create acrimony. In sum, the spousal-consent requirement may inhibit women from making what should otherwise be a personal and fundamental choice regarding their own name.

#### IV. REMEDIES TO OUTDATED NAME-CHANGE REQUIREMENTS

The Massachusetts General Laws specify that “[t]he judges of the probate courts . . . shall . . . make rules for regulating the practice and for conducting the business in their courts . . . and shall prescribe forms . . . as it considers necessary in order to secure regularity and uniformity.”<sup>46</sup> Additionally, according to the General Probate Court Rules in Massachusetts, “[t]he Chief Justice of the Probate and Family Court shall [with the advice of the Administrative Committee] prescribe and promulgate uniform probate and domestic relations forms, and shall designate the specifications under which such forms may be printed or computer generated.”<sup>47</sup> Furthermore, according to the statutory process, the uniform probate forms are approved by the Supreme Judicial Court, and according to case law, probate courts have no

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45. Clerk Interview, *supra* note 37.

46. MASS. GEN. LAWS ANN. ch. 215, § 30 (West 2012).

The judges of the probate courts or a majority of them shall from time to time make rules for regulating the practice and for conducting the business in their courts in all cases not expressly provided for by law and shall prescribe forms, and, as soon as convenient after making or prescribing them, shall submit a copy of their rules, forms and course of proceedings to the supreme judicial court, which may alter and amend them, and from time to time make such other rules and forms for regulating the proceedings in the probate court as it considers necessary in order to secure regularity and uniformity.

*Id.*

47. MASS. GEN. PROBATE COURT R. 29C.

authority to change printed forms.<sup>48</sup> In fact, the resources of different probate courts within Massachusetts are not consistent with regard to the use of updated forms. For example, although the Name Change Petition Form was amended in 2007 and 2009, many probate courts, including Hampshire and Barnstable, still link to the older form on their websites.<sup>49</sup> The Hampshire Probate Court website contains the instruction that “MARRIED ADULTS must have the written ascent [sic] of their spouse to their change of name AND must file a certified copy of their marriage certificate.”<sup>50</sup>

Therefore, in order to rectify this inherent unfairness in the name-change process in Massachusetts, the judges of the probate courts and the Administrative Committee should update the name-change petition form to omit the spousal-signature requirement. Furthermore, the judiciary should

48. *In re Lucey*, 118 N.E.2d 762, 763 (Mass. 1954).

49. See Commonwealth of Mass. Probate & Family Court Dep’t, *supra* note 4. The form (CJP-27) was changed in May 2007, then again April 2009. The 2009 version looks like this:

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
**SIGNATURE OF PETITIONER**

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**SIGNATURE OF SPOUSE (if joint petition)**

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new in 2009



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**Signature of Minor(s) as signed by father or mother as next friend.**

50. See Hampshire Cnty. Probate & Family Court, *supra* note 4.

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**SIGNATURE OF PETITIONER**

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**SIGNATURE OF SPOUSE**

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**Signature of Minors as signed by father or mother as next friend.**

make certain that the process does not include either the spousal-consent or service-of-process requirement. This would require an express statement on all of the probate court websites similar to the statement in Vermont that “‘consent of spouse’ is no longer required and does not need to be filled out.”<sup>51</sup> In fairness, all probate court websites should be reviewed to make certain that the most current forms and processes are being used and enforced. Re-examination of the name-change procedure in Massachusetts would also provide the opportunity to determine whether publication should remain a requirement. These changes would not impact the naming procedures when children are involved, which would still be governed by the best interests of the child standard.<sup>52</sup>

The proposed changes would be consistent with the goals of the Probate and Family Court of making the “court more efficient and accessible in a manner that promotes access to justice.”<sup>53</sup> As stated in the annual report of the Probate and Family Court, one of the initiatives and improvements to increase access to justice includes “[c]ontinuing to improve the Probate and Family Court website including the Self-Help Center by adding forms that can be saved upon completion.”<sup>54</sup> There is no reason to continue to support a name-change procedure that has a disparate impact on women, adds an unnecessary burden to married individuals that may unnecessarily increase acrimony, and that is a vestige of the patriarchal dominance of a woman’s identity and personal choice. Especially in light of all of the advancements that Massachusetts has made in the areas of family law and equal access, a review of the name-change procedure in Massachusetts seems long overdue.

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51. See VT. STAT. ANN. tit. 15, § 811 (West 2012); Vt. Probate Div., *supra* note 42.

52. See *Richards v. Mason*, 767 N.E.2d 84, 87 (Mass. App. Ct. 2002). “Neither does the provision in G.L. c. 210, § 12, that a petition seeking to change the name of a person ‘shall be granted unless such a change is inconsistent with public interests,’ displace the ‘best interests’ standard applicable to matters relating to the care and custody of children.” *Id.* (citing *Jones v. Roe*, 604 N.E.2d 45 (Mass. App. Ct. 1992)).

53. See COMMONWEALTH OF MASS. PROBATE & FAMILY COURT DEP’T, *supra* note 7, at 1.

54. *Id.* at 2.