

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**ELIZABETH HANDY and BILAL
ASIM WALK,**

Petitioners,

v.

**BRENDA FITZGERALD, M.D., in
her official capacity as Commissioner
of the Georgia Department of Public
Health; and DONNA L. MOORE, in
her official capacity as State Registrar
and Director of the State Office of
Vital Records,**

Defendants.

Civil Action File

2017CV287758

No. _____

VERIFIED PETITION FOR WRIT OF MANDAMUS

This is a Petition for a Writ of Mandamus to compel Brenda Fitzgerald, M.D., in her official capacity as the Commissioner of the Georgia Department of Public Health and Ms. Donna L. Moore, in her official capacity as the State Registrar and Director of the State Office of Vital Records, to comply with their mandatory legal duties under O.C.G.A. § 31-10-9(e)(5) to issue a birth certificate to the Petitioners' infant daughter, "in the surname ... *as designated by both parents*" in the Acknowledgment of Legitimation form attached hereto as Exhibit A and incorporated herein by reference.

In support of this Verified Petition for Writ of Mandamus, Petitioners show this Honorable Court the following:

1. **Petitioners**, Elizabeth Handy and Bilal Asim Walk, are the unmarried parents of two minor children, a son whom they have named Masterful Mosirah Aly Allah, and a daughter born in Atlanta, Fulton County Georgia in 2015, whom Petitioners have named ZalyKha Graceful Lorraina Allah. Petitioners reside in Fulton County, Georgia at Redacted, Atlanta, Georgia, 30344.

2. The **Defendants** are:

a. Brenda Fitzgerald, M.D., who is the Commissioner of the Georgia Department of Public Health and State Health Officer. Dr. Fitzgerald's official duties include overseeing the Office of Vital Records, which is responsible for issuing and recording birth certificates. Dr. Fitzgerald can be served at her office located at Two Peachtree Street, NW, Atlanta, Georgia 30303-3186. Petitioners sue Dr. Fitzgerald in her official capacity.

b. Donna L. Moore, who is the State Registrar and Director of the State Office of Vital Records. Ms. Moore oversees the Georgia Office of Vital Records, which is the repository for all Georgia vital records events. In this capacity, Ms. Moore is responsible for providing accurate records and data regarding vital events, including the preparation, issuance, and recordation of official birth certificates. Ms. Moore can be served by serving the

Commissioner of the Department of Public Health at her office located at Two Peachtree Street, NW, Atlanta, Georgia 30303-3186. *See* Ga. Comp. R. & Regs. 511-1-3-.40. Petitioners sue Ms. Moore in her official capacity.

3. This Court has jurisdiction to issue a Writ of Mandamus under O.C.G.A. § 9-6-20 *et seq.*

4. Defendants have a clear legal duty under O.C.G.A. § 31-10 -9(e)(5), which provides in pertinent part:

“When a paternity acknowledgment is completed [by the unmarried parents of a child] ***the surname of the child shall be entered as designated by both parents.***” O.C.G.A. § 31-10-9(e)(c)(emphasis added).

5. On or about April 6, 2016, Petitioners executed an Acknowledgment of Paternity in the form prescribed by law in which Petitioners jointly acknowledged that Mr. Walk was the biological father of Ms. Handy’s daughter, and jointly designated that the name of their daughter be recorded on her birth certificate as “ZalyKha Graceful Lorraina Allah,” as required by O.C.G.A. § 31-10-9(e)(5). A true and correct copy of this Acknowledgment of Paternity is attached as Exhibit A and is incorporated herein by reference.

6. Defendants refused to issue the birth certificate, asserting that the Statute precluded the issuance of a birth certificate bearing the surname as Petitioners designated, despite the clear statutory language to the contrary. *See*

December 2, 2016 Letter, attached hereto as Exhibit B; December 13, 2016 Letter, attached hereto as Exhibit C.

7. By refusing to issue the birth certificate for Petitioners' daughter as requested, Defendants have violated their clear legal duties under O.C.G.A. § 31-10-9(e)(5).

8. Petitioners exhausted administrative remedies by filing, on or about November 17, 2016, a written appeal with the State Registrar pursuant to Ga. Comp. R. & Regs. 511-1-3-.39. In this appeal, Petitioners requested the issuance of a vital record. The State Registrar, through the Office of General Counsel, issued a written decision denying Petitioners' request.

9. As a direct result of Defendants' arbitrary and unlawful refusal to issue Petitioners' daughter a birth certificate, Petitioners have been unable to obtain a Social Security number for their daughter, have been prevented from obtaining medical coverage under Medicaid, and have been prevented from obtaining food stamps through the SNAP program. Petitioners also will be unable to enroll their daughter in Pre-K or public school without a birth certificate. And Petitioners have a well-founded fear that their daughter's identity as a United States citizen may be questioned.

10. There is no specific legal remedy other than a Writ of Mandamus for Defendants' violation of Petitioners' legal rights under O.C.G.A. § 31-10-9(e)(5) to designate the surname of their daughter.

WHEREFORE: Petitioners respectfully request that this Court issue a Mandamus Nisi, directing the Defendants to be and appear before this Court within not less than ten nor more than thirty days, as required by O.C.G.A. § 9-6-27(a), then and there to be heard, and show cause, if any they have, why a Writ of Mandamus Absolute should not be granted, ordering Defendants:

(a) to issue Petitioners' daughter an official Georgia birth certificate in the name as designated by her parents as follows: "ZalyKha Graceful Lorraina Allah"; and

(b) to duly record the birth certificate in the Vital Records of the State of Georgia;

Petitioners also request such other and further relief as may be just and proper.

[signatures continue on following page]

This 21st day of March, 2017.

Respectfully submitted,



Emmet J. Bondurant
Georgia Bar No. 066900
bondurant@bmelaw.com
Michael R. Baumrind
Georgia Bar No. 960296
baumrind@bmelaw.com

BONDURANT, MIXSON & ELMORE, LLP
3900 One Atlantic Center
1201 W. Peachtree Street, NW
Atlanta, Georgia 30309
(404) 881-4100

VERIFICATION

Before the undersigned officer duly authorized to administer oaths came Bilal Asim Walk who swears under oath that she has read and examined the foregoing **Verified Petition for Writ of Mandamus**, and that the statements contained therein are true and correct.




Bilal Asim Walk

SWORN TO and subscribed before me this 21st day of March, 2017.



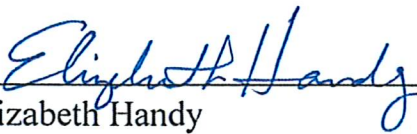
NOTARY PUBLIC

My Commission Expires



VERIFICATION

Before the undersigned officer duly authorized to administer oaths came Elizabeth Handy who swears under oath that he has read and examined the foregoing **Verified Petition for Writ of Mandamus**, and that the statements contained therein are true and correct.


Elizabeth Handy

SWORN TO and subscribed before me this 20th day of March, 2017.



NOTARY PUBLIC

My Commission Expires:



EXHIBIT A

(Print or type all information in black or blue permanent ink. This form may be copied.)
State File Number: _____ Facility: _____

PLEASE NOTE: This form cannot be completed if the mother was married to anyone within the 10 months prior to the birth of this child or if, for any other reason, there is another father of this child listed on the child's birth certificate.

BILAL ASIM WALK is the biological (natural) father of the child born to
FATHER'S | First Name Middle Last / Generation (Jr., III, etc)

ELIZABETH HANDY on the **REDACTED** in
MOTHER'S | First Name Middle Last Maiden Name CHILD'S DATE OF BIRTH

FULTON County, Georgia. We are requesting that the name of the biological father be placed on the birth certificate and that the child be named: GRACEFUL

ZALYKHA LORRAINA ALI AH
CHILD'S | First Name Middle Last Name / Generation

Mother's Information: Address Redacted City ATLANTA GA, 30344 State Zip Code

Date of Birth: **REDACTED** Social Security Number **REDACTED**

Employer self-employed Employer's Address _____

Father's Information: Address Redacted City Atlanta GA 30349 State Zip Code

Date of Birth: **REDACTED** State of Birth CA Social Security Number _____

Employer self-employed Employer's Address _____

I understand that either parent may withdraw this paternity acknowledgment, without penalty, within 60 days from the date of his/her signature. I have been informed of my rights and responsibilities as explained on the reverse side of this form.

[Signature]
Mother's Signature

Acknowledged to be true and correct before me on this 6 day of April, 2016

[Signature]
 Notary Public

My term expires on 6-20, 2016

Identification presented by Mother DEID



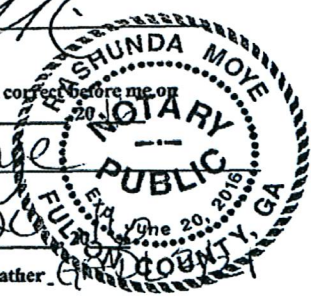
[Signature]
Father's Signature

Acknowledged to be true and correct before me on this 6 day of April, 2016

[Signature]
 Notary Public

My term expires on 6-20, 2016

Identification presented by Father [Signature]



ACKNOWLEDGMENT OF LEGITIMATION

We, the mother and biological father, voluntarily consent and agree that the relationship between the child and the father shall be considered legitimate for all purposes under law pursuant to O.C.G.A. §19-7-21.1. Note: This section does not apply if the child is over one year of age at the time this document is signed.

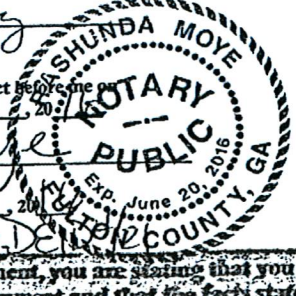
[Signature]
Mother's Signature

Acknowledged to be true and correct before me on this 6 day of April, 2016

[Signature]
 Notary Public

My term expires on 6-20, 2016

Identification presented by Mother DEID



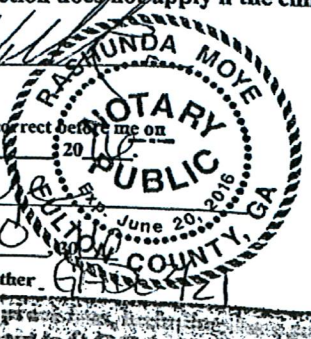
[Signature]
Father's Signature

Acknowledged to be true and correct before me on this 6 day of April, 2016

[Signature]
 Notary Public

My term expires on 6-20, 2016

Identification presented by Father [Signature]



NOTE: By signing this document, you are stating that you have read and understood all of its provisions on the reverse side of this document and that the facts stated on this document are true. Pursuant to O.C.G.A. §19-7-21.1, making a false statement on this document may go to prison for up to five years and fined up to \$10,000. **Penalty for making a false statement on this document may go to prison for up to five years and fined up to \$10,000.**

EXHIBIT B



Brenda Fitzgerald, MD, Commissioner | Nathan Deal, Governor

2 Peachtree Street NW, 15th Floor
Atlanta, Georgia 30303-3142
dph.ga.gov

Sidney R. Barrett, Jr.
General Counsel
404.657.3177
Sidney.Barrett@dph.ga.gov

2 December 2016

Kathleen Burch, Esq.
A.C.L.U. of Georgia
P. O. Box 77208
Atlanta, GA 30357

RE: **Vital Records Regulation 511-1-3-.08**

Dear Ms. Burch:

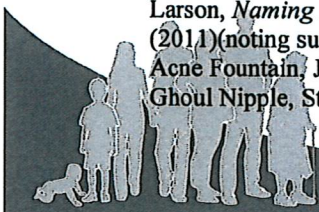
Commissioner Fitzgerald has asked me to reply to your letter of 17 November 2016, demanding the repeal of DPH Regulation 511-1-3-.08(1)(c) and requesting certain documents under the Georgia Open Records Act.

To the extent that our Department has documents responsive to the request, we have supplied them. However, we must respectfully decline to repeal our regulation.

You have argued that our regulation violates the Constitution by restricting a parent's right to name their child. I fear you have chosen the wrong target. DPH Regulation 511-1-3-.08(1)(c) was promulgated in response to complaints that parents were not allowed to designate surnames other than that of the father, according to naming conventions followed in the parents' county of origin. The purpose and effect of the regulation was to *expand* the choices available to parents in choosing a surname for their child. It does not discriminate against parents on the basis of national origin; in fact, it does precisely the opposite, by authorizing surnames chosen according to the cultural conventions of the parents' country of origin.

DPH Regulation 511-1-3-.08(1)(c) has been in place for a year and a half. The suggestion that it vests too much discretion in our staff is not borne out by experience; I am unaware of any evidence that parents have been burdened in seeking to take advantage of it. To the contrary, our training materials make clear to hospital birthing clerks that parents' cultural choices should be respected. The requirement that the naming convention be *bona fide* was not intended to increase the burden of proof on the parents, but to distinguish between names chosen according to the cultural traditions of the parents' nation of origin and names chosen on the basis of whimsy, or worse.¹

¹ For examples of the types of names that state vital records departments must grapple with on a regular basis, see Moscarello, *Because I Said So: An Examination of Parental Naming Rights*, 90 Chi.-Kent L. Rev. 1125 (2015) and Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 Geo. Wash. L. Rev. 159 (2011) (noting successful and unsuccessful attempts to bestow names such as Dracula, Tiny Hooker, Toilet Queen, Acne Fountain, JoyceLynn Aryan Nation, Crimson Tide Redd, Sex Fruit, Legend Belch, Loser, Fat Meat, Cholera, Ghoul Nipple, Stud Duck, Giant Pelvis, Satan, Zombie, Freak Skull, Number 16 Bus Shelter, Yeah Detroit,

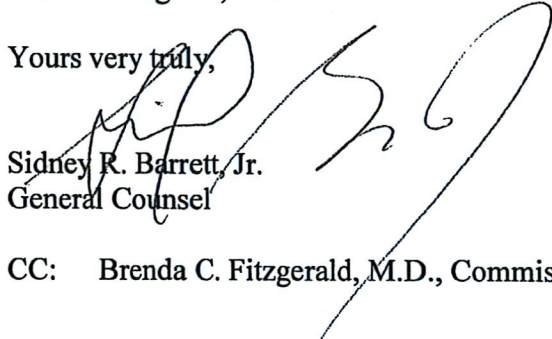


To the extent that a parent's right to name a child is restricted in Georgia, those restrictions originate not in our Department's regulations, but in statute. Georgia, like most states, imposes certain limitations on the choice of names recorded as vital records. Code Section 31-10-9 establishes rules for designating surnames on a birth certificate, and forbids names that include "obscenities, numbers, symbols, or other such nonidentifying information." I am familiar with Professor Larson's article and the court decisions cited in your letter recognizing a Constitutional right to name one's child. However, there is also authority for the proposition that a state legislature may impose reasonable regulations upon naming practices for purposes of state vital records. Even Professor Larson concedes that power, particularly with regard to the naming of children.² Any Georgia parent unhappy with those statutory restrictions is free to petition the superior court for a name change.³

It is the duty of our Department, as an agency of the executive branch, to carry out statutes enacted by the General Assembly. We have no authority to declare a law to be unconstitutional or otherwise disregard it. Accordingly, our Office of Vital Records will continue to follow Code Section 31-10-9.

With best regards, I am

Yours very truly,



Sidney R. Barrett, Jr.
General Counsel

CC: Brenda C. Fitzgerald, M.D., Commissioner of Public Health

JesusIsLord, Violence, Fish and Chips, Candy Stohr, Misteri Nigger, I'm A Fucking Moron, Messiah, Cash Guy, Cash Whoredom, Sexy Chambers, Lust, Sloth, Latrina, Louisiana Purchase, John Hodge Opera House Centennial Gargling Oil Samuel J. Tilden, Tula Does The Hula In Hawaii, and the seemingly ever-popular Adolf Hitler.)

² 80 Geo. Wash. L. Rev. at pp. 163, 172, and 182. See also *Henne v. Wright*, 904 F.2d 1208, 1215 (8th Cir. 1990)(recognizing "the state's interest in promoting the welfare of children, the state's interest in insuring that the names of its citizens are not appropriated for improper purposes, and the state's interest in inexpensive and efficient record keeping.")

³ See Code Section 19-12-1 *et seq.* The discretion of the superior court in approving a name change is broad, and in the case of children, will be guided by the best interests of the child. *In re Scott*, 288 Ga. App. 374 (2007).

EXHIBIT C



Brenda Fitzgerald, MD, Commissioner | Nathan Deal, Governor

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13 December 2016

Kathleen Burch, Esq.
A.C.L.U. of Georgia
P. O. Box 77208
Atlanta, GA 30357

RE: Birth Certificate of ZalyKha Graceful Lorraina Allah

Dear Ms. Burch:

Our State Registrar Donna Moore has asked me to reply to your letter of 5 December 2016, requesting that our Office of Vital Records issue a birth certificate for Ms. Elizabeth Handy's daughter in the name of ZalyKha Graceful Lorraina Allah. Unfortunately, Code Section 31-10-9(e) does not permit us to do so.

It is not that our Registrar has any personal objection to Ms. Handy's chosen name for her daughter.¹ It is simply that, as I said in my last letter, it is our duty as an agency of the executive branch to carry out statutes enacted by the General Assembly. Although you pointed to DPH Regulation 511-1-3-.08(1)(c) in your letter, that administrative regulation is not an obstacle to your client's request. Subsection (1)(c) does not forbid any surname; rather, it ensures that names based on cultural naming conventions in the parents' country of origin will be honored. Because Ms. Handy has not claimed that her chosen surname for ZalyKha is based on such a foreign cultural convention, DPH 511-1-3-.08(1)(c) is irrelevant to the matter at hand. The obstacle to your client's request is not our regulations, but Code Section 31-10-9(e), which requires that a baby's surname be either that of the father or the mother for purposes of the initial birth record. I am familiar with the legal authorities cited in your letter, but our Department has no authority to declare that Code Section to be unconstitutional or otherwise disregard it.

¹I note, however, that state vital records offices routinely face requests from parents who seek to impose names upon their babies that range from bizarre to vile, and which would subject the child to ridicule. It is essential that there be some mechanism in the law to reject such requests. *See, e.g.*, Code Section 31-10-9(h)(forbidding registration of name containing "obscenities, numbers, symbols, or other such nonidentifying information.") For examples of the types of names that state vital records departments must grapple with on a regular basis, *see* Kushner, *The Right To Control One's Name*, 57 U.C.L.A. L. Rev. 313 (2009), Moscarello, *Because I Said So: An Examination of Parental Naming Rights*, 90 Chi.-Kent L. Rev. 1125 (2015) and Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 Geo. Wash. L. Rev. 159 (2011)(noting successful and unsuccessful attempts to obtain legal recognition of such names as 1069, Peter Lorre, Jr., Variable, Snappy Fishsuit, Fuck Censorship, State's Rights, Louisiana Purchase, Metallica, Mene Mene Tekel Upharsin, Trailing Arbutus Vines, Brfxccxmnppccclllmmnprxvclmncssqlbb11, Captain Fantastic Faster Than Superman Spiderman Batman Wolverine The Hulk And The Flash Combined, and R.)



We Protect Lives.

13 December 2016

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The Office of Vital Records stands ready to immediately register ZalyKha's birth with the surname of Handy or, with the filing of a paternity acknowledgment, with the surname of the father or a combination of the two. Once the birth record is created, the child's surname can be changed through a petition to superior court under Code Section Code Section 19-12-1 *et seq.* The court's discretion in such matters is broad and will be guided by the best interests of the child. *In re Scott*, 288 Ga. App. 374 (2007).

With best regards, I am

Yours very truly,



Sidney R. Barrett, Jr.
General Counsel

CC: Donna Moore, State Registrar