

Testimony to the Interim Judiciary Committee

January 5, 2016

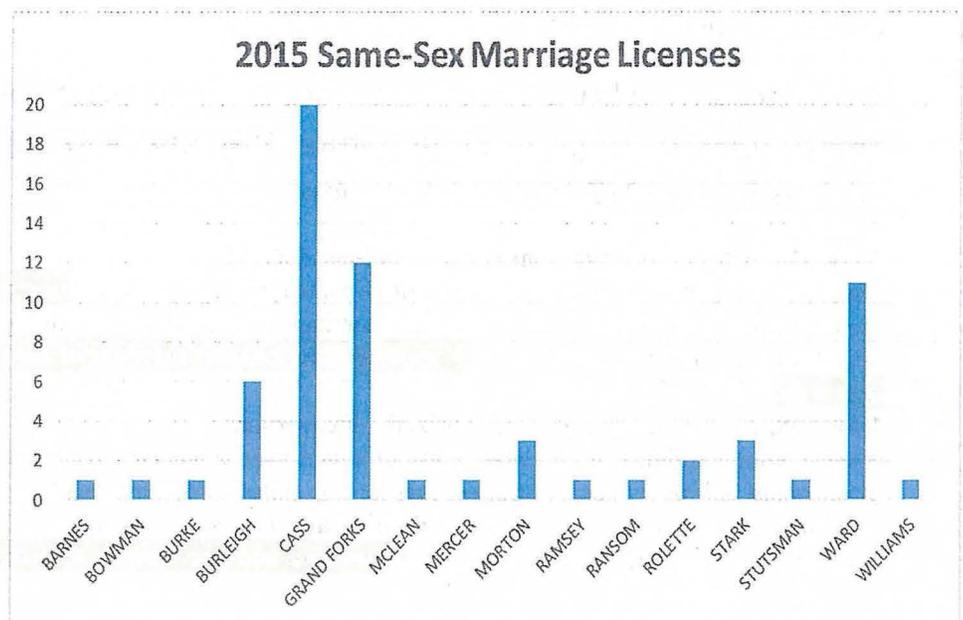
By the North Dakota Association of Counties

Donnell Preskey Hushka

Chairman Hogue and Interim Judiciary Committee, I'm Donnell Preskey Hushka with the North Dakota Association of Counties. Thank you for your interest in how the Supreme Court decision to allow for same-sex marriage is impacting our counties. First, some background on marriage licenses in North Dakota. In order to obtain a marriage license in the state, both applicants must apply together in person at the designated county office. Licenses can be obtained in the county where either of the applicants reside, the county where the marriage will occur, or the county in which a parent of either of the parties resides. In North Dakota, there is no waiting period after you apply for the license before the marriage may take place.

As you know on June 26th, 2015 the U.S. Supreme Court ruled that states must recognize and allow same sex marriages. Prior to the Supreme Court decision, North Dakota was one of seven states that banned same-sex marriage and the ban was fully enforced. Since the decision, North Dakota has abided by the same-sex marriage mandate.

The ruling has had minimal impact on our county offices, who issue licenses and conduct marriages. In 2015 there were **66 marriage licenses issued to same sex couples in North Dakota** – that's out of **4,797 total**.



So 1.3% of the marriages in the state were to same-sex couples. The attached graph shows the 16 counties who had same-sex marriages. 20 were married in Cass County, 12 in Grand Forks, 11 in Ward and 6 in Burleigh. The remaining counties had 1 to 3.

I will note that this data does not include the first couple weeks after the court ruling. Our recorders estimate approximately 10 marriage licenses were issued to same-sex couples in that time frame. The issuance of the initial same-sex marriage licenses were not tracked as such because a new application form had to be developed and distributed to include a check-box to reflect the gender of applicants. I have provided a sample of the license application currently used by our counties. Vital Records may have incurred a cost to develop that new form. As far as we know, that cost was not passed on to our counties.

Our counties did spend \$4,900 for updates to the marriage license program. However, this update was planned prior to the Supreme Court ruling, and was not a result of the mandate. Therefore, the Supreme Court ruling has not had a financial impact on our counties.

In counties where a county employee has had personal conflicts with issuing same-sex marriage licenses, the county commission has appointed or transferred those duties to other staff members. There have been three counties who have found alternative employees, in most cases that has been a deputy recorder. Since this ruling went into effect, no couples have been refused a marriage license based on their gender.

It is important to bring to your attention that the U.S. Supreme Court decision directs counties to ignore state statute. This may be something you will want to address in the 2017 Legislative session.

14-03-01. What constitutes marriage -Spouse defined.

Marriage is a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or a wife.

14-03-08. Foreign marriages recognized - Exception.

Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside this state, which are valid according to the laws of the state or country where contracted, are valid in this state. This section applies only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.

There is another somewhat related matter, this committee could consider clarifying another section of 14-03 for our counties. Our county recorders and state's attorney's would appreciate clarification on the intent of 14-03-20.1 which relates to Surname options. NDCC 14-03-20.1(1) indicates "every person has the right to adopt any surname by which that person wishes to be known." However, the statute then goes on in section 3(c) to indicate the surname must consist of "a name combining into a single surname all or a segment of the pre-marriage surname or any former surname of either spouse."

So the question has arisen can your surname be ANY name or must it be limited to combinations of surnames? For example, using myself, could a Preskey (maiden name) and Hushka (husband's last name) become an "Anderson" or are you limited to combinations such as Preshka or any combination of the letters such as "Rush"?

Generally counties have been operating that subsection 3 limits the "ANY" language in subsection one as the specific controls the general but clarification would be appreciated.

14-03-20.1. Surname options.

1. Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.
2. A person's surname does not automatically change upon marriage. Neither party to the marriage must change the party's surname. Parties to a marriage need not have the same surname.
3. One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space provided on the marriage license application. The entry on the application must consist of one of the following surnames:
 - a. The surname of the other spouse;
 - b. Any former surname of either spouse;
 - c. A name combining into a single surname all or a segment of the premarriage surname or any former surname of either spouse; or
 - d. A combination name separated by a hyphen or space, provided that each part of the combination surname is the premarriage surname or former surname of either spouse.
4. Use of the option under subsection 3 has the effect of providing a record of the surname change. The marriage certificate containing the new surname, if any, constitutes proof that the use of the new surname, or the retention of the former surname, is lawful.
5. Neither the use of nor the failure to use the option of selecting a new surname by means of a marriage license application, as provided in subsection 3, abrogates the right of either party to adopt a different surname through usage at a future date.
6. Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of section 39-06-07.1

Chairman Hogue, this concludes my testimony. We appreciate this opportunity to speak and I'll stand for any questions from the committee.

Marriage License #: _____
(Office Use Only)

QUESTIONNAIRE FOR APPLICATION

APPLICANT 1:

Full Name: _____
First Middle Last

Address: _____
Street City State Zip Code

County: _____ Phone #: _____ (Optional)

Birth Date: _____ Age: _____ SS#: _____

Marital Status:
 Single/Never Married
 Single/Spouse Deceased
 Divorced - *Certified Copy of Decree Must Be Attached*
Are you related to your Fiancée? No Yes If yes, state relationship _____

Gender: M F

New Middle Name: _____ New Surname: _____
(Enter Middle Name Only) (Enter Last Name Only)

APPLICANT 2:

Full Name: _____
First Middle Last

Address: _____
Street City State Zip Code

County: _____ Phone #: _____ (Optional)

Birth Date: _____ Age: _____ SS#: _____

Marital Status:
 Single/Never Married
 Single/Spouse Deceased
 Divorced - *Certified Copy of Decree Must Be Attached*
Are you related to your Fiancée? No Yes If yes, state relationship _____

Gender: M F

New Middle Name: _____ New Surname: _____
(Enter Middle Name Only) (Enter Last Name Only)

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OATH

By signing this form you are put under oath to swear to tell the truth and provide accurate information on the application for a marriage license. Any falsifying of information could result in charges of a Class A Misdemeanor punishable by up to one (1) year in prison or a \$3000 fine or both. These applicants state that they were placed under oath prior to providing the above information and that they were aware of the penalties for providing false information.

Applicant Sign Name

Applicant Sign Name

Applicant Print Name

Applicant Print Name

Date of Wedding: _____

Ceremony Location: _____

Officiant: _____