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A MARRIED WOMAN'S SURNAME: IS CUSTOM LAW?

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A general awakening of concern for the rights of women has occurred in recent years, and with it the particular problems of married women have been analyzed against a background of centuries of legal and social assumptions. With the impetus of employment discrimination legislation, the proposed equal rights amendment,[1] and litigation raising sex discrimination issues, it is not surprising that many women are actively seeking to retain their pre-marriage names. This movement compels us to re-examine the custom that a woman must assume her husband's surname upon marriage. That such a phenomenon is custom and not law deserves our attention for several reasons. First, a name is an obvious and significant symbol of a person's identity—a woman's birth-given name is the name by which she is known and with which her achievements are associated. Secondly, despite growing enlightenment about women and their roles in society, many judges are making decisions based upon misreadings of the common law and precedents in older cases, without proper examination of constitutional and policy considerations. Thirdly, the proposition stated so positively in legal encyclopedias[2] that a woman upon marriage takes her husband's surname actually reflects one more "unknowing" or "unintended" discriminatory practice which perpetuates male dominance solely by the fact of maleness. Arbitrariness is not a policy which should be lightly pursued; we should at least expect that our laws are reasonable and that our courts articulate and encourage reasonableness. Therefore, although I first examine the history of surnames, the focus of this Article is an inquiry into two questions which the courts must resolve: First, under the common law can women retain their pre-

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1. H.R.J. Res. No. 208, 92d Cong., 2d Sess. (1972). *See generally* Note, *Sex Discrimination and Equal Protection: Do We Need a Constitutional Amendment?*, 84 HARV. L. REV. 1499 (1971).

2. 57 AM. JUR. 2D *Name* § 9 (1971); 65 C.J.S. *Names* § 3c (1966); *see* Annot., 35 A.L.R. 413 (1925).

marriage names during marriage; and secondly, if not, is the imposition of the husband's name on his wife constitutional?[3]

I. A BRIEF HISTORY OF SURNAMES

People have not always had surnames; rather, they began to adopt surnames through necessity. Since a name is an important source of identification, it is not surprising that once the population of communities reached a certain level there developed a need to devise more distinguishable appellations and consequently names themselves became longer.[4] "Adam" and "Eve" sufficiently identify the seminal characters of the *Book of Genesis*; one needs no further label. However, once "John," "William," "Thomas," and "Peter" no longer sufficiently identified people because of the sheer increases in population, second names were added. "William, son of Robert," became "William Rob-

3. In the past few years several commentators have discussed the subject of a woman's right to retain or regain her pre-marriage name, making possible this overview approach and emphasis on constitutional arguments. *See* Brief for ACLU as Amicus Curiae, Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A.2d 223 (1972) [hereinafter cited as *ACLU Brief*]; Carlsson, *Surnames of Married Women and Legitimate Children*, 17 N.Y.L.F. 552 (1971); Hughes, *And Then There Were Two*, 23 HASTINGS L.J. 233 (1971); MacDougall, *Married Women's Common Law Right to Their Own Surnames*, WOMEN'S RTS. L. REP. 2 (Fall/Winter 1972-1973). *See also* L. KANOWITZ, WOMEN AND THE LAW: THE UNFINISHED REVOLUTION 42-46 (1969); Sedler, *The Legal Dimensions of Women's Liberation: An Overview*, 47 IND. L.J. 419, 430-33 (1972).

4. In *Ex parte* Snook, 2 Hilt. 566 (N.Y. Ct. C.P. 1859), the court, before concluding that petitioner was free to continue to use an assumed name despite falling short of a New York statute's requirement that legal name changes be granted only upon a showing that the applicant will derive pecuniary benefit from the change, traced the history of surnames. Surnames came into use in the fourteenth century and were not of "controlling importance" as a means of identification until at least the time of Elizabeth I. *Id.* at 568. During this period of growth in the use of a second name, the choice of *what* name to adopt was individual, *id.* at 569; the Christian, or given, name continued as the primary means of personal identification:

> Greater importance being attached to the Christian name arose from the fact that it was the designation conferred by the religious rite of baptism, while the surname was frequently a chance appellation, assumed by the individual himself, or given him by others, for some marked characteristic, such as his mental, moral or bodily qualities, some peculiarity or defect, or for some act he had done which attached to his descendants, while sometimes it did not.

Id. Only with the great increase in population over the centuries, necessitating a more sophisticated distinction, and the requirement (from the time of Henry VIII) of recording full names at birth, marriage, and death, did the custom of adopting parents' surnames become widespread. Nonetheless, "all this . . . was brought about without any positive provision of law," *id.* at 571, and, consequently, "there is nothing in the law prohibiting a man from taking another name if he chooses." *Id.* at 572.

ertson;" "John the cook" became "John Cook;" and "Thomas" came to be called "Thomas Hall" because he lived in or near a manor house. At first these names were merely descriptive; they were changed to reflect the owner's new position, or replaced by a better descriptive label, or changed with each generation. It was only when surnames ceased to literally describe some characteristic of the bearer that they developed into hereditary family names.[5]

Since surnames were basically descriptive or occupational,[6] it followed that women took their husbands' surnames as their own. Most women did not pursue occupations outside the home and inheritance typically passed through sons or other male heirs. And there was the common law fiction that the husband and wife were "one"—that "one" being the husband.[7] Thus the names that best described and identified women to local officials were their husbands'. However, since the procedure for obtaining a surname was informal and flexible, it was a common practice for children to be designated by their mother's name if she were prominent. Also, if an inheritance was through the wife's family, the husband might well adopt his wife's name as his surname.[8]

The common law fiction that husband and wife were "one" is

5. E. SMITH, THE STORY OF OUR NAMES 39 (1970). *See also* W. BOWMAN, THE STORY OF SURNAMES (1973); C. EWEN, A HISTORY OF SURNAMES OF THE BRITISH ISLES (1931).

6. E. SMITH, *supra* note 5, at 44. The author suggests two additional categories, local and patronymical, to complete his four classes of surnames. *Id.*

7. W. BLACKSTONE, COMMENTARIES 189 (B. Gavit ed. 1941):

> By marriage, the husband and the wife are one person in law, that is, the legal existence of the woman is suspended during marriage, or at least is incorporated into that of the husband, under whose protection, and cover, she performs everything, and is therefore called by French law, a *feme covert*, or under the protection of the husband, her baron or lord, and her condition during marriage is one of coverture.

Cf. 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 403 (1895).

8. MacDougall, *supra* note 3, at 6 n.18. *See also* L. PINE, THE STORY OF SURNAMES 23-24 (1966):

> With regard to the surnames of married women, the usual course has been and is to take the husband's name. There is no compulsion in the matter, and there have been occasional instances of a woman retaining her own maiden surname after marriage. There are more numerous examples of a man taking his wife's surname. This is not always due to excessive feminism on the wife's part, but to a variation of the old names and arms clause, by which the husband of an heiress may well be required to assume her name. The idea here is to give continuity to the ownership of the property and to preserve an historic name. Many are the instances hidden under the thick branches of a family tree, in which a man's name has been sacrificed in order that the family themselves, and future ages also, may be deluded into assuming that the male line identity has been kept up from a remote period.

probably most responsible for the law-like custom that a married woman's surname is her husband's. The fiction encouraged a man to treat his wife as chattel, with no rights of her own and not legally competent to act for herself. Thus, following the fiction to a logical conclusion, the husband would "name" his wife as he might slaves or pets. Such an uncompromising use of the common law is unfortunate as well as undeserved. According to Pollock and Maitland, the marital relationship, particularly within the sphere of property law, cannot be explained as being simply a subjection of the wife to the husband's will. Rather, the woman continued to own property after marriage but the husband acted as her guardian and the manager of the property. He needed her concurrence to alienate more than a life estate, and the law assured her the opportunity to freely refuse her assent to his acts.[9] Yet the view that a woman's rights were somehow merged into the husband's through the marriage relationship served to support the practice of suspending the woman's surname in favor of her husband's.[10]

Finally, even if we accept as rational the tradition of married women taking their husbands' surnames—for example, as a means of simplifying identification—it should be noted that the common law also recognizes an informal means for changing names.[11] By mere use, a person can adopt a new legal name for any non-fraudulent reason.[12] Ironically, it is actually this common law change-of-name process that enables a married woman to assume her husband's surname as her own without formal court proceedings.[13]

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9. 2 F. POLLOCK & F. MAITLAND, *supra* note 7, at 403-08.

10. *See* Converse v. Converse, 9 Rich. Eq. 535, 570 (S.C. Ct. Err. 1856): "[I]n general, wives have surnames by courtesy only, adopted from their husbands, and it is inconvenient that they should have appellations different from husbands." The lower court refused to grant a wife a change of surname, requested with other equitable relief in an action of partition against the husband, on the grounds that the requested change was without precedent and that it would constitute an additional impediment to the possible reconciliation of the couple. *Id.* at 539-40. Of course, had the husband been granted a change of name, "that of the wife would also be changed, as a necessary consequence," *id.* at 539, thus avoiding the problem of estranging the couple by permitting them to use different surnames.

11. *See* Everett v. Standard Accident Ins. Co., 45 Cal. App. 332, 187 P. 996 (1919); Romans v. State, 178 Md. 588, 16 A.2d 642 (1940); The King v. Inhabitants of Billingshurst, 105 Eng. Rep. 603 (K.B. 1814).

12. *See, e.g.*, 23 HALSBURY'S LAWS OF ENGLAND 810, 812 (1936).

13. *See* Smith v. United States Cas. Co., 194 N.Y. 420, 90 N.E. 947 (1910); M. TURNER-SAMUELS, THE LAW OF MARRIED WOMEN 345-46 (1957); MacDougall, *supra* note 3, at 4.

From this examination of the history of surnames it should be apparent that there is nothing in our English heritage requiring married women to assume their husbands' surnames. Rather, choice, convenience, and devotion to a fiction[14] gave us this custom. Indeed, "in England, *custom* has long since ordained that a married woman takes her husband's name. This practice is not invariable; nor compelled by law."[15] What happened, then, to the common law in the hands of American courts?

II. CASE LAW

In the tradition of avoiding constitutional questions, if possible, in the resolution of disputes, I will look first at the case law to determine if the common law allows married women to retain their birth-given names. It is my contention that the answer is an emphatic "yes." Some writers who have examined the subject of women's rights disagree;[16] their disagreement, however, can be traced primarily to a desire to emphasize the plight of women at the hands of arbitrary and discriminatory laws and to a misreading of the relevant cases. In fact, the misreading of precedent has caused the statement "a woman upon marriage takes her husband's surname" to be transformed from an assertion of fact and custom into one of law and compulsion.

It should be clearly stated at the outset that there are only three cases, *People ex rel. Rago v. Lipsky*,[17] *State ex rel. Krupa v. Green*,[18] and *Stuart v. Board of Supervisors of Elections*,[19] on the precise issue of whether the common law operates to change a woman's name. The other cases relied upon by the commentators are clearly distinguishable. In fact, most of the cases which have raised the question of a married woman's surname have done so only tangentially. Typically, the ques-

14. It should be noted that even if the concept that husband and wife were one person in law is accepted as an accurate statement of the common law, the Married Women's Property Act of the late nineteenth and early twentieth centuries have effectively negated this concept. *See, e.g.*, Ch. 63, [1923] Ind. Acts 190, *as amended*, IND. ANN. STAT. §§ 38-101 to -122 (1949, Supp. 1972).

15. M. TURNER-SAMUELS, *supra* note 13, at 345 (emphasis added).

16. *See, e.g.*, L. KANOWITZ, *supra* note 3, at 42-46; Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 940-41 (1971); Hughes, *supra* note 3, at 233-39. *Contra*, Carlsson, *supra* note 3; MacDougall, *supra* note 3.

17. 327 Ill. App. 63, 63 N.E.2d 642 (1945).

18. 114 Ohio App. 497, 177 N.E.2d 616 (1961).

19. 266 Md. 440, 295 A.2d 223 (1972).

tion before a court is whether a married woman has been properly notified of litigation pending against her. For example, a Texas case, *Freeman v. Hawkins*,[20] is often cited as establishing the principle that a woman's name upon marriage is that of her husband.[21] The controlling issue in *Freeman* was whether a prior default judgment, following service by publication issued against a woman in her maiden name, was admissible against her in a trial involving the same property. The court held that personal jurisdiction had not been obtained in the prior judgment because the woman, known at the time of publication by her married name, was not a "party" in a lawsuit designating her by her maiden name only. Since the prior judgment was not binding on her, evidence of it should not have been admitted by the trial judge.[22] Unfortunately, some readers of *Freeman* have focused on the court's gratuitous observation that, upon a woman's marriage, "the law confer[s] on her the surname of her husband,"[23] instead of the substance of the decision: To provide legally adequate notice to a female defendant by publication, her name must appear as the one she actually uses. The *source* of that name is immaterial; the case would presumably be applicable if service were attempted on a male by a name which he has abandoned.[24]

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20. 77 Tex. 498, 14 S.W. 364 (1890).

21. *E.g.*, Kidd v. Rasmus, 285 S.W.2d 415 (Tex. Civ. App. 1955); Cloud v. McK'y, 216 S.W.2d 285 (Tex. Civ. App. 1948); Freeman v. State, 123 Tex. Crim. 289, 58 S.W. 2d 835 (1933); Stevens v. Stevens, 18 S.W.2d 719 (Tex. Civ. App. 1929); Fields v. Rust, 36 Tex. Civ. App. 350, 82 S.W. 331 (1904).

22. 77 Tex. at 500, 14 S.W. at 365.

23. *Id.*

24. Two Ohio cases are in accord with *Freeman*, although the decisions were based on an interpretation of a statute requiring personal service when the defendant's name is "unknown." Uthlein v. Gladieux, 74 Ohio St. 232, 78 N.E. 363 (1906); Claxton v. Simons, 177 N.E.2d 511 (Ohio App. 1961). However, an appeal in *Claxton* overruled this narrow reading of the statute, 174 Ohio St. 33, 189 N.E.2d 62 (1963). In addition, the Ohio decision of State *ex rel.* Krupa v. Green, 114 Ohio App. 497, 177 N.E.2d 616 (1961), leaves little doubt about Ohio's common law. *See* notes 58-61 *infra* and accompanying text.

There are several other cases contrary to *Freeman* which enforced a prior judgment issued in the maiden name of a married woman who used her husband's surname. In most cases the distinguishing fact is that either the married woman actually received notice or at least the other party did everything possible to provide notice. *See* Pooler v. Hyne, 213 F. 154 (7th Cir. 1914); Emery v. Kipp, 154 Cal. 83, 97 P. 17 (1908); Morris v. Tracy, 58 Kan. 137, 48 P. 571 (1897).

In related cases the principle is the opposite. Notice given in the name of the husband is not sufficient in situations in which a married woman uses another name. *See, e.g.*, Kotechi v. Augusztiny, 87 Nev. 393, 487 P.2d 925 (1971) (notice to creditors

A more recent Texas case weakened the "principle" for which *Freeman* has been mistakenly cited. In *Rice v. State*[25] a conviction for rape was dismissed for failure of the indictment to positively aver that the victim was not the accused's wife.[26] The state argued that since the victim's surname was different from the accused's, the indictment implicitly negated the possibility that she was his wife. However, the court pointed out that, although by custom women assume their husbands' surnames, nothing in Texas law compels them to do so.[27] Thus the court held that the indictment could not rely on an implicit negation of marriage on the basis of custom, but must explicitly negate all possible exceptions.

Another group of cases often cited as establishing the married-woman-takes-husband's-name rule concerns the appropriate form of name for a married woman, presently using her husband's name, who is a candidate for public office. *Huff v. State Election Board*[28] and *Wilty v. Jefferson Parish Democratic Executive Committee*[29] are illustrations of this problem with different but consistent results. In *Huff* the wife wanted to use the name "Mrs. I. L. Huff" on the primary ballot as a candidate for Oklahoma Commissioner of Charities and Corrections. The state election board refused, contending that Ms. Huff's legal name was her Christian name plus "Huff," the surname of her husband, and not "Mrs." followed by her husband's initials and surname. On writ of mandamus, the Oklahoma Supreme Court reasoned that the purpose of the relevant statute[30] was to ensure that voters would be informed of the identity of candidates, and that this purpose was best served by candidates running under the names by which they are commonly known. Since "Mrs. I. L. Huff" best identified the candidate, she was permitted to so designate herself on the ballot.[31]

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must be in the decedent's maiden name to properly identify her since she had used her maiden name in dealings with them).

25. 37 Tex. Crim. 36, 38 S.W. 801 (1897).

26. The court ruled that all essentials of the statutory crime must be alleged in the indictment and all exceptions in the statute must be negated. The statute defined rape as "the carnal knowledge of a female under the age of 15 years, other than the wife of the person . . . ." *Id.* at 37, 38 S.W. at 801.

27. *Id.* at 38, 38 S.W. at 802.

28. 168 Okla. 277, 32 P.2d 920 (1934).

29. 245 La. 145, 157 So. 2d 718 (1963).

30. Ch. 62, § 1, [1933] Okla. Laws 114.

31. 168 Okla. at 280, 32 P.2d at 922: "[I]t is not so much a question as to the true legal name of the candidate as it is that the voter may be informed as to the candidates by the names by which they are commonly known and called and transact

Wilty, a Louisiana case, reached the opposite result, but for reasons consistent with the principle in *Huff*. Ms. Laura Wilty wanted to use the name "Mrs. Vernon J. Wilty, Jr." on the primary ballot in her campaign for parish assessor. Her husband, Vernon J. Wilty, also a candidate, filed an objection to her candidacy under this name, based on the potential confusion to voters. The Louisiana Supreme Court held that while "Mrs. Vernon J. Wilty, Jr." was the name by which the wife was commonly known, fairness to the other candidate and the voters required that she be identified on the ballot as "Mrs. Laura Verret Wilty."[32] The court found that, although "there is no definite law or decision in Louisiana as to what is the legal name of a married woman," the rule in other jurisdictions that women's names upon marriage were changed to those of their husbands, as a matter of law, was sound.[33] This conclusion is dictum; the question was whether the wife

their important private or official business." *Accord*, Roberts v. Grayson, 233 Ala. 658, 173 So. 38 (1937).

32. At issue in both cases was whether "Mrs." was part of the candidate's name. Most authorities agree that it is merely a title, not part of a legal name, but may be used to more completely identify the candidate. *See* Branch v. Bekins Van & Storage Co., 106 Cal. App. 623, 290 P. 146 (1930); City of Camilla v. May, 70 Ga. App. 136, 27 S.E.2d 777 (1943); Feldman v. Silva, 54 R.I. 202, 171 A. 922 (1934); *cf.* Brown v. Reinke, 159 Minn. 458, 199 N.W. 235 (1924).

It should be emphasized that both women wanted to use the title "Mrs." as well as their husbands' names. To fully understand *Wilty*, it should be noted that the Wiltys were legally separated at the time of the election filing.

33. In Succession of Kneipp, 172 La. 411, 134 So. 376 (1931), the Louisiana Supreme Court held that a mother's signature in her maiden name preceded by the title "Miss" on a marriage license for her second marriage was not conclusive in determining the legitimacy of her son by an alleged first marriage: "The fact that the license was issued for the [second] marriage . . . in the maiden name of the testatrix is not at all strange, for, in law, she still retained her maiden name, and bore [her first husband's] name, if married to him, as a matter of custom." *Id.* at 415, 134 So. at 378. Most authorities have read this case as evidence that Louisiana follows a civil law tradition of French origin, under which a married woman continues to bear her birth-given name in law. *E.g.*, McMahon, *Local Government Law*, 25 LA. L. REV. 415 (1963):

> Under French civil law, a woman retains her patronymic name throughout her life, and regardless of marriage. Hence, there is no necessity for judicial authority to resume the use of her maiden name after a divorce. Socially, the wife in France uses the name of her husband; but no legal effect flows from this social usage, as she must continue the use of her patronymic name in legal and judicial acts. . . .
>
> By universal custom, the French practice was followed in Louisiana for more than a century, and it continues to be followed today in New Orleans and considerable portions of South Louisiana.

Hence, a concurring opinion in *Wilty* took issue with the majority's belief that Louisiana law was indefinite. 245 La. at 171, 157 So. 2d at 727 (Sanders, J., concurring).

might identify herself in the socially acceptable mode of "Mrs." followed by her husband's name. The court held that this social practice should give way to the important public policy of ensuring the fairness of elections, and forced the wife to use her own Christian names.[34]

Thus, neither *Huff* nor *Wilty* determines the form which a woman's name must take upon marriage. Instead, they both conclude that in order to prevent potential confusion to voters as to the identity of candidates, a woman's name should appear in a designated form. Yet both courts helped to reinforce the transformation of a custom into "law" by their use of unnecessary language.

A third set of cases raises the question of the proper name of a married woman for the purposes of motor vehicle registration. In *Bacon v. Boston Elevated Railway Co.*[35] a husband and wife were injured when an electric car was negligently driven into the automobile they occupied. Although the evidence indicated that the wife, who operated the car, exercised due care, the couple was precluded from recovering from the owner of the electric car, by the following logic: the automobile, owned by the wife, was registered in her maiden name although she had purchased it after her marriage; the wife was commonly known by, and otherwise identified herself by, her husband's surname; "as a matter of law"[36] her name upon marriage became that of her husband; therefore, the vehicle was illegally registered under a false name,[37] thus constituting a nuisance; because the wife was operating a nuisance, she was denied recovery; and because the husband had reason to know the registration was improper, he was denied recovery.[38]

Three years later the Massachusetts Supreme Court refined its position on the requisite form for motor vehicle registration. In *Koley*

34. 245 La. at 171, 157 So. 2d at 727.

35. 256 Mass. 30, 152 N.E. 35 (1926).

36. *Id.* at 32, 152 N.E. at 36, *citing* Chapman v. Phoenix Nat'l Bank, 85 N.Y. 437 (1881), *see* notes 42-46 *infra* and accompanying text, *and* MASS. GEN. LAWS ch. 208, § 23 (1954): "The court granting a divorce to a woman may allow her to resume her maiden name or that of a former husband."

37. MASS. GEN. LAWS ch. 90, §§ 2, 9 (1954), *as amended*, (Supp. 1973). At the time of the action, Massachusetts' doctrine was that an illegally registered car was a nuisance and a trespasser on the highway. The doctrine was statutorily withdrawn in 1967; now illegal registration is evidence of negligence.

There is no indication in the opinion as to the reason for registering the car in the wife's pre-marriage name since it was purchased after her marriage and change of name.

38. 256 Mass. at 32, 152 N.E. at 36.

v. Williams[39] a passenger in a taxicab was injured when the taxicab collided with another vehicle. Apparently because the other driver was not negligent, the injured party attempted to recover on the theory that the owner of the second car had improperly registered it in the name of "Mrs. John P. Williams," instead of her "legal" name, Ethel M. Williams. In denying recovery, the court held that a wife's registration in her husband's name is not illegal, particularly when the husband is prominent in public life and the wife is commonly known by reference to his name. The situation is different from *Bacon*, in which the wife was known by a name other than that which she used for registration. In short, the two cases, like the election cases, permit a wife to use a name which reasonably identifies her in order to comply with statutes whose purpose is identification. But again, the *Koley* court prefaced its discussion of statutory purpose with the unnecessary observation that "as a matter of law the legal name of the [wife] upon her marriage was Ethel M. Williams. The wife takes the husband's surname."[40] All that was required was a sensible application of the Massachusetts nuisance rule to resolve the problem created by a married woman's use of her husband's full name preceded by the title "Mrs."[41]

In determining whether a married woman can, if she desires, retain her pre-marriage name, it is necessary first to distinguish between the situation in which the woman uses the surname of her husband—and thus has changed her name—and that in which the woman retains her birth-given name. Obviously, we should disregard those cases in which a woman has adopted her husband's surname, for they do not tell us whether the common law compels such a change. Therefore, none of the cases discussed above is relevant in determining whether the common law mandates a change of name upon marriage. Rather, each is illustrative of judicial approval of a common law change of name, from the pre-marriage name to the husband's surname, and each

39. 265 Mass. 601, 164 N.E. 444 (1929).

40. *Id.* at 602, 164 N.E. at 444, *citing Bacon.*

41. *See* note 32 *supra* and accompanying text.

Custom has also declared that although "Ethel M. Williams" is the legal name of the woman, a proper social appellation is "Mrs. John P. Williams." Custom carries the distinction further, so that "Mrs. Ethel M. Williams" indicates a divorce while "Mrs. John P. Williams" will continue to identify a married woman when she becomes a widow, although these uses are not without ambiguity. *See* Carlton v. Phelan, 100 Fla. 1164, 131 So. 117 (1930).

either assumes, or purports to decide, that this change is compelled by established principles of common law. The cases are also examples of judicial overstatement; each statement of dictum is relied upon in further dictum to give a custom the apparent weight of prior judicial determination.

The situation is complicated when it is unclear from the court's opinion whether the woman has changed her name upon marriage. A group of New York cases is illustrative. In *Chapman v. Phoenix National Bank of the City of New York*,[42] Verina S. Moore, an unmarried resident of North Carolina, purchased 150 shares of stock in a New York bank in her maiden name in 1854. In 1859 she sold 66 shares and took a new certificate for the retained shares, again in her maiden name. In 1861 she was married to Reverend Dr. Chapman, and apparently adopted his surname. In 1864 her shares were seized in New York under a federal statute[43] authorizing confiscation of property of persons aiding the insurrection of the South. The ensuing judicial proceeding in New York federal court was instituted against "Ver. S. Moore;" service of process was attempted by local publication only. Following a default judgment, Ms. Moore brought an action to recover the dividends declared by the bank on the retained 84 shares. The court held that the prior judgment was not conclusive of her rights, because (1) the designation "Ver. S. Moore" did not sufficiently identify Ms. Moore;[44] (2) notice was published only locally in New York, from which it could not be expected to reach Ms. Moore in North Carolina, particularly during the Civil War; and (3) the 84 shares of stock were not identified so as to be conclusively recognized as those of Ms. Moore.[45] In short, *Chapman* was a *Freeman*-type notice case, and did not require a determination of the legal form of Ms. Moore's post-marriage surname. Unfortunately—and unnecessarily—the court made a pronouncement which for nearly a century in New York has buttressed the principle that women take their husbands' surnames:

> For several centuries by the common law among all English speaking people, a woman, upon her marriage, takes her husband's surname. That name becomes her legal name, and she ceases to be known by

42. 85 N.Y. 437 (1881).

43. Act of Aug. 6, 1861, ch. 60, 12 Stat. 319.

44. 85 N.Y. at 449: "Who was Ver. S. Moore? If 'Ver.' is to be held not to be a name but an abbreviation of some name, of what name? Is it the abbreviation of Verplank, Vergil, Verrius, Verginius or of other names which could be mentioned?"

45. *Id.*

her maiden name. By that name she must sue and be sued, make and take grants and execute all legal documents. Her maiden surname is absolutely lost, and she ceases to be known thereby.[46]

In *Baumann v. Baumann*[47] a woman attempted to prevent her husband's paramour[48] from using his surname. Reversing the trial court, the New York Court of Appeals decided that there was no authority for an injunction against adoption of a name under these circumstances so long as its use by someone other than the legal wife did not affect the matrimonial status of the wife—for example, by impersonation.[49] The court's rationale was that a wife has a "legal," but not "exclusive," right to use her husband's name.[50]

In *In re Kayaloff*[51] a married woman sought to have her naturalization certificate issued in her maiden name. She argued that she was a professional musician, known commonly by her maiden name, and therefore might suffer a financial loss by being registered in another name. The court cited *Chapman* and *Baumann* as authority for the principle that a woman's legal name following marriage is that of her

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46. *Id.* The court cited no authority.

47. 250 N.Y. 382, 165 N.E. 819 (1929).

48. The husband had attempted a Mexican divorce, but his subsequent marriage to the paramour was declared void since the divorce was not valid. *Id.* at 385, 165 N.E. at 820.

49. *Id.* at 385, 165 N.E. at 819.

A vigorous dissent objected on the ground that the paramour's behavior *did* amount to "impersonation;" in addition, the dissent argued that use of the Baumann name by some other woman did in fact injure the wife and deprive her of a special, desired status:

> It is more than a name; it is a position, a status, a condition, a relationship, a capacity. A name may mean very little, but the status and relationship which it indicates may mean a great deal, not only to the parties, but to the world. It means so much that a very large number of our citizens are opposed to the severence of the marriage tie for any reason.

Id. at 391, 165 N.E. at 822 (dissenting opinion). *Compare* Erie Ins. Exch. v. Lane, 246 Md. 55, 227 A.2d 231 (1967) (no fraud in woman using name of someone other than her legal husband but answering that she was married), *with* Blanc v. Blanc, 21 Misc. 268, 47 N.Y.S. 694 (1897) (court acknowledged common law rule that wife may adopt her husband's surname but held her in contempt for continuing to use it after divorce because of her adultery). *Blanc* illustrates that a name may be important enough that deprivation is considered an effective punishment.

50. 250 N.Y. at 387-88, 165 N.E. at 821.

Another dissent, echoing the ancient concept of the "merger" of husband and wife in marriage, asserted that the wife has a property right to her name, analagous to the "title of a civil or military office," which cannot be circumvented by the paramour's common law right to assume a name. *Id.* at 388-89, 165 N.E. at 823.

51. 9 F. Supp. 176 (S.D.N.Y. 1934).

husband and denied relief, adding that women in public life are frequently known by maiden or stage names, and that petitioner was not seriously harmed by registering in her married name. Since it is unclear whether petitioner used her husband's surname socially or used her maiden name exclusively, *Kayaloff* cannot be said to stand for the principle of mandatory change of name. If, in fact, she used both names, the principle is irrelevant; if she did not, the principle is the basis for decision, but is based on a misreading of New York precedent, since both *Chapman* and *Baumann* involved women who presumably changed their names.

There are, as noted above, three reported decisions in which the issue of whether a name change is mandatory is determinative. In *People ex rel. Rago v. Lipsky*[52] a woman who had not changed her name upon marriage sought, by writ of mandamus, to force the Chicago Board of Election Commissioners to reinstate her registration to vote under her maiden name. The woman was an attorney who used her maiden name in all her business pursuits, and was admitted to the Illinois Bar and had her law practice in that name. An Illinois statute required that a "registered voter who changes his or her name by marriage or otherwise, shall be required to register anew and authorize the cancellation of the previous registration . . . . "[53] Ms. Rago argued that since she had *not* changed her name, the statute was inapplicable. The Illinois Court of Appeals, however, construed the statute as requiring a change of name upon marriage. Although it found no Illinois authority in point, the court noted that courts in other jurisdictions "have under varying facts and circumstances consistently held that by custom and authority a woman, upon her marriage, takes her husband's surname."[54] Since nothing in the Illinois cases suggested any "lack of adherence" to this principle, it followed that the legislature, by "expressly recogniz[ing] a change of name by marriage," meant to require such a change of name in voter registration.[55]

The *Lipsky* opinion may be criticized on several grounds. First, the authorities relied upon by the court as establishing the principle that a woman must take her husband's surname upon marriage merely

52. 327 Ill. App. 63, 63 N.E.2d 642 (1945).

53. ILL. ANN. STAT. ch. 46, § 6-54 (Smith-Hurd 1964). For the requirements in other states, see Table in Appendix.

54. 327 Ill. App. at 69, 63 N.E.2d at 645.

55. *Id.*

recognize or approve the common practice of changing names. Since they do not hold such a change mandatory, the *Lipsky* court's reliance on them is misplaced. Secondly, while the pertinent statute reflects a presumption that married women do, in fact, change their names—a presumption that was reasonable at the time of its origin—the presumption is not irrebutable.[56] It is more logical to read the statute as creating a procedure for easing the administrative problems created by name changes by registered voters. If, for whatever reason, a registrant's name is changed, the change should be reflected on the registration rolls to prevent confusion or fraud. When a woman continues to use her maiden name after marriage the purpose of the statute is served by retention of that name in registration. Thirdly, the court, by endorsing Ms. Rago's continued use of her maiden name in her professional life, underscored the illogic of its holding. The use of two names by married women professionals not only creates problems in their signing documents and performing other business acts, but actually tends to encourage confusion or fraud.[57]

In *State ex rel. Krupa v. Green*[58] the Ohio Court of Appeals reached a contrary result on facts very similar to those in *Lipsky*. A taxpayer sought to prevent a county board of elections from placing a woman's maiden name on a ballot for the office of municipal court judge. The attempted disqualification was based on the fact that the woman's voter registration had been cancelled under a procedure similar to Illinois'.[59] Unlike the *Lipsky* court, the *Green* court ruled that since the candidate had not changed her name upon marriage, the statute did not apply.[60] Further, the court examined English authorities

56. *See* notes 62-67 *infra* and accompanying text. Since many states have registration statutes similar to Illinois', the issue of interpretation is crucial. *See* Table in Appendix.

57. *See* text accompanying notes 82 & 83 *infra*. Requiring identification to be in the husband's surname but allowing the wife to use and be known by any name she chooses is impractical as well as undesirable, and raises constitutional questions.

58. 114 Ohio App. 497, 177 N.E.2d 616 (1961). *See also* State *ex rel.* Bucher v. Brower, 21 Ohio Op. 208 (Montgomery County C.P. 1941); Lane v. Duchac, 73 Wis. 646, 41 N.W. 962 (1889).

59. OHIO REV. CODE ANN. § 3503.18 (Page 1972).

A concurring judge questioned whether cancellation of voter registration, if proper, would disqualify the woman as a candidate for public office since the requirements for being a candidate provide that, in addition to certain legal qualifications, the person must be a "qualified," but not necessarily a "registered," elector. There was no question that the woman was legally qualified as an elector. 114 Ohio App. at 506, 177 N.E.2d at 620-21.

60. 114 Ohio App. at 502, 177 N.E.2d at 620. If the notice procedure is still

on the relevant common law and concluded that name changes upon marriage were merely a custom, not compulsory; since the woman was free to use whatever name she chose, it followed that she should be permitted to file for public office under any name by which she was commonly known. Here, she had clearly demonstrated that she was best identified by her maiden name, having arranged by antenuptial contract with her husband to retain her maiden name, notified the election board and obtained a notation on her registration card that she was married but would retain her maiden name, voted consistently under that name, and scrupulously used no other name in her public activities.[61]

The most recent of the cases in point is a Maryland case, *Stuart v. Board of Supervisors of Elections.*[62] A married woman who, pursuant to an oral antenuptial agreement with her husband,[63] retained her maiden name, sought to have her name reinstated on the voter registration roll following cancellation for failure to change the name to her married name, pursuant to a statute similar to those of Illinois and Ohio. The court construed the statute to require a change in registration only if the registrant in fact had changed his or her name, or was compelled to by law.[64] Since plaintiff clearly had not changed her name, the court examined Maryland law to determine whether the change was required. The court concluded that there were two lines of common law authority, one requiring the change, the other not, and found Maryland to be within the latter:

followed in Ohio, some communication with the election board may be necessary. *See* note 67 *infra.*

61. 114 Ohio App. at 501-02, 177 N.E.2d at 619.

The indicated steps are helpful, but all may not be essential in retaining one's birth-given name. For example, an antenuptial contract may be evidence of intent, but so is the continued, uninterrupted use of a birth-given name after marriage.

62. 266 Md. 440, 295 A.2d 223 (1972), *noted in* 32 MD. L. REV. 409 (1973).

63. It is questionable whether such an agreement was necessary to the outcome of the case since it is not required for women in changing their names at marriage, nor for men in retaining their names. An antenuptial agreement might be helpful to future litigants, however.

64. MD. ANN. CODE art. 33, § 3-18(c) (1957). Maryland's procedure provides for notification by clerks of the circuit court to the Board of Supervisors of Elections of the names of females over eighteen years of age, in order to facilitate cancellation of registration in the former name and re-registration in the married name. The clerks then notify the Board of all female residents over twenty-one years of age "whose names have been changed by marriage . . . ." *Id.* § 3-18(a)(3). The Board then notifies the registrant that she has two weeks "to show . . . why [her] registration should not be cancelled." *Id.* § 3-18(c).

> . . . Maryland law manifestly permits a married woman to retain her birth given name by the same procedure of consistent, non-fraudulent use following her marriage. In so concluding, we note that there is no statutory requirement . . . that a married woman adopt her husband's surname.[65] Consistent with the common law principle referred to in the Maryland cases, we hold that a married woman's surname does not become that of her husband where, as here, she evidences a clear intent to consistently and non-fraudulently use her birth given name subsequent to her marriage.[66]

In answer to the argument of potential confusion and fraud, the court suggested the election board "make whatever cross-reference notation to the fact of . . . marriage . . . that it thinks administratively feasible to meet the avowed needs of voter identification and prevention of dual registration."[67]

In concluding this examination of the case law to determine whether the common law allows a married woman the option of retaining her birth-given name,[68] it may not be incorrect to state that by

65. For a contrary situation, see HAWAII REV. STAT. § 574-1 (1968): "Every married woman shall adopt her husband's name as a family name." Hawaii is the only state with a statutory provision determinative of the issue, although Kentucky and possibly Minnesota have implied such a rule since their statutory change-of-name procedures exclude married women. KY. REV. STAT. § 401.010 (1973); MINN. STAT. ANN. § 259.10 (1971). *See also* Table in Appendix.

66. 266 Md. at 446-47, 295 A.2d at 226-27.

67. *Id.* at 450, 295 A.2d at 228.

Actually, because of notice given by court clerks to election boards, it is still necessary for women to "show cause" why their registration should not be cancelled. Such a burden, though, is satisfied by "production of adequate identification and other convincing evidence that she is known and identified in the community by the name under which she seeks to register." Letter from Maryland Attorney General to Willard Morris, State Administrator of Election Laws, Nov. 30, 1972 (signed by E. Stephen Derby, Assistant Maryland Attorney General).

It might well be a better procedure to have the presumption work in the opposite way; that is, the "state will assume no change of name unless notified by the individual." *See* note 82 *infra.*

68. In order to determine the common law in states where there is neither statutory pronouncement nor relevant case law, one must rely on other states' cases and decide which the court would follow. Some indication of the public policy of the state may be obtained by examining the statutes cited in the Table in Appendix.

It should also be noted that the controversy over names is not peculiar to the present time. During the 1920's there was a strong movement to protect the right of married women to retain their pre-marriage names. For a detailed discussion, see E. SMITH, *supra* note 5, at 250-51; MacDougall, *supra* note 3, at 5-7. In the nineteenth century, suffragette Lucy Stone was perhaps the most famous married woman not to adopt her husband's surname.

operation of law, the wife takes the husband's surname. Such a statement is more accurately merely recognition of a fact; most women upon marriage take their husbands' surnames as their own, and the law permits this change of name. But by misstating precedent and overemphasizing the frequency with which the change occurs, many courts and officials have transformed an option into a requirement. Because the law in some jurisdictions is, or appears to be, supportive of the principle of mandatory change, examination of the constitutional implications of requiring a woman to change her name on marriage is necessary.

III. CONSTITUTIONAL CONSIDERATIONS

In *Forbush v. Wallace*[69] the constitutionality of a mandatory change of name by operation of common law was upheld by a three-judge district court and affirmed without opinion by the Supreme Court. A married woman brought a class action challenging the constitutional validity of an unwritten regulation of the Alabama Department of Public Safety that a married woman's driver's license must be issued in her husband's surname. In order to induce the court to decide whether the regulation violates the equal protection clause of the fourteenth amendment,[70] the woman conceded that Alabama's common law required a change of name upon marriage.[71] After satisfying itself that mandatory change *is* the Alabama rule, the district court found a rational basis for the regulation and refused to enjoin the Department from enforcing it. On direct appeal, the Supreme Court, without hearing or briefs, affirmed per curiam.[72] The importance of *Forbush* rests on three determinations: (1) Does the common law of Alabama require that a woman change her surname upon marriage? (2) What is the significance of the Supreme Court's affirmance? and

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Finally, we should remember that entertainment personalities traditionally do not change their names upon marriage; for them to do so could be extremely burdensome.

69. 341 F. Supp. 217 (M.D. Ala. 1971) (three-judge court), *aff'd per curiam*, 405 U.S. 970 (1972).

70. *See ACLU Brief* 11.

71. For discussion of whether Alabama has a common law rule requiring married women to change their names, see notes 73 & 74 *infra* and accompanying text.

72. 405 U.S. 970 (1972):

> Unwritten regulation of Alabama Department of Public Safety requiring each married female applicant to use husband's surname in seeking and obtaining driver's license, and Alabama common law rule that husband's surname is wife's legal name, does not violate Equal Protection Clause.

(3) Was the three-judge panel's determination of the equal protection question correct?

The district court in *Forbush* found, as plaintiff had alleged, that Alabama common law did require a name change upon marriage. Yet examination of the cases relied on demonstrates that in Alabama, as elsewhere, there had been no case directly in point, but only dicta reciting the aphorism that a name change is mandatory.

Had the *Forbush* court understood this, and made a comprehensive examination of the conflicting decisions in other jurisdictions, it might have advisedly deferred its judgment under the abstention doctrine.[73] But plaintiff alleged a mandatory rule, and the case was decided on the pleadings on a motion to dismiss; hence the question of Alabama's actual common law rule is not foreclosed by *Forbush*.[74]

The importance of the Supreme Court's summary affirmance in *Forbush* is open to question. Direct appeal to the Supreme Court is, of course, automatic for cases in which a three-judge court has granted or denied a request for a permanent injunction.[75] Arguably, then, the Court was faced with a seemingly unimportant question, was unwilling or unable to hear arguments, yet was compelled by statute to rule, since theoretically it does not have discretionary jurisdiction in

73. *See* Note, *Equal Rights for Women: The Need for a National Policy*, 46 IND. L.J. 373, 378 n.24 (1971).

74. It appears a wiser course of action for future litigants to challenge both the common law "rule" and its constitutionality. Courts often are thereby encouraged to resolve the less volatile common law issue favorably to avoid the constitutional question. *See, e.g.*, Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A.2d 223 (1972).

Two issues tend to be confused in *Forbush*, and should be refined. First, Ms. Forbush challenged the regulation that requires a married woman to obtain her driver's license in her husband's name; and secondly, she challenged Alabama's "rule" which requires a married woman to adopt her husband's surname as her own. If the latter question is resolved as constitutional, the former is also easily designated as correct. Surely the state has an interest in making certain that a person applies for and receives a driver's license in only one name, and arguably this name is better if it is the applicant's legal name. But it might well be argued successfully that the state's interest is served by knowing *any* one name which identifies the citizen and that it makes no difference whether this name is a "legal" one. A "legal" name could be the one which identifies the citizen. To illustrate: what is the legal name of a man who alters his birth-given name through the general common law change-of-name procedure? Thus the key issue is whether the second "rule," Alabama's mandatory change-of-name rule, is constitutional. However, the *Forbush* opinion does not make clear these distinctions and tends to focus on the former question.

75. 28 U.S.C. § 1253 (1966); FED. R. CIV. P. 72.

three-judge appeals. However, since the Court did not have briefs, heard no oral arguments and wrote no opinion, its disposition of the constitutional question is of doubtful precedential value.[76] Further, the constitutional question might be somewhat different when presented in the context of a denial of voting rights, which have been accorded "fundamental" or special status in previous equal protection cases.[77] Finally, the Supreme Court's recent decision in *Frontiero v. Richardson*[78] appears to signal a new direction in sex discrimination cases.

In determining the constitutionality of both Alabama's common law obligatory name change and its practice of requiring women to obtain driver's licenses in their husbands' names, the *Forbush* court employed the traditional "rational basis" test of equal protection.[79] The court discussed three factors tending to support the rationality of Alabama's practices: custom, uniformity, and administrative convenience. Even assuming that the court was correct in premising that the practices are permissible if it "can discern any rational basis" for them, the factors relied upon are of questionable validity. First, "custom"

76. R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 233 (4th ed. 1969); *ACLU Brief* 11; Currie, *The Three Judge District Court in Constitutional Litigation*, 32 U. CHI. L. REV. 1, 74 n.365 (1964); Frankfurter & Landis, *The Business of the Supreme Court at October Term, 1929*, 44 HARV. L. REV. 1, 14 (1930); Sedler, *supra* note 3, at 448 n.167.

In Serrano v. Priest, 5 Cal. 3d 584, 616 n.35, 487 P.2d 1241, 1264 n.35 (1971), the court stated:

> Summary disposition of a case by the Supreme Court need not prevent the court from later holding a full hearing on the same issue. The constitutionality of compulsory school flag salutes is a case in point. For three successive years —in Leoles v. Landers [302 U.S. 656 (1937)]; Hering v. State Board of Education [303 U.S. 624 (1938)]; and Johnson v. Deerfield [306 U.S. 621 (1939)]—the Supreme Court summarily upheld lower court decisions which ruled such requirements constitutional. The very next year the high court granted certiorari in Minersville District v. Gobitis [310 U.S. 586 (1940)], thereby providing for oral argument and a full briefing of the issue. Although in *Gobitis* it adhered to its earlier per curiam decisions, three years later the court reversed its position and ruled such requirements invalid. (West Virginia State Board of Education v. Barnette [319 U.S. 624 (1943)]).

See also [1973] PA. ATT'Y GEN. OP. 62 (distinguishing *Forbush*).

77. The voting rights case is different since another, more rigorous standard of review is used. *See* text accompanying notes 93-95 *infra*.

78. 411 U.S. 677 (1973).

79. "Under traditional equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational relationship to a legitimate governmental interest." *Id.* at 683, *citing* Jefferson v. Hackney, 406 U.S. 535, 546 (1972), Richardson v. Belcher, 404 U.S. 78, 81 (1971), Dandridge v. Williams, 397 U.S. 471, 485 (1970), McGowan v. Maryland, 366 U.S. 420, 426 (1961), *and* Fleming v. Nestor, 363 U.S. 603, 611 (1960).

is not necessarily a logical basis for any law since a custom may be arbitrary and discriminatory.[80] Although state regulations which reflect longstanding convention and practice may be less disruptive than those which alter or expand them, mere longevity of an arbitrary or discriminatory practice should not serve as justification in itself for its continuation. An examination of the history of "custom" in race relations in the United States demonstrates the danger of rationalizing present behavior in terms of historical practice. Moreover, a primary benefit of the equal protection clause, under either the "rational basis" or "suspect criteria" test, is that it serves to hinder the protraction of social convention or "custom" by its own weight. To say that one group must be subjected to different treatment from another because society has so required for centuries nullifies equal protection.

The same analysis applies to "uniformity."[81] While uniformity of practice may give some indication of what is considered "fair" or "rational," it cannot by itself support a classification. This is particularly true in an area like women's rights, where "uniformity" may signify no more than longstanding insensitivity or indifference. And, as discussed above, uniformity on the question of mandatory change of name does not exist anyway.

The administrative convenience rationale is more difficult. Clearly, the state has a legitimate interest in preventing fraud in motor vehicle registration and in administering its registration process as efficiently as possible. The state has a valid interest in being able to quickly and correctly identify people in numerous circumstances, for example, in verifying various statutory qualifications, in auditing tax returns, and in maintaining accurate voting records. And the state has an important interest under its police powers in preventing people from fraudulently misrepresenting themselves. These articulated state interests are not, however, served by requiring a married woman to assume her husband's surname.[82] For example, a married woman may

80. *See ACLU Brief* 12; E. SMITH, *supra* note 5, at 124-64.

81. *See* Doe v. Bolton, 410 U.S. 179 (1973); Roe v. Wade, 410 U.S. 113 (1973).

82. Actually, the state's interest in administrative convenience is one of presumption, in that the state assumes a woman changes her name upon marriage and is therefore confused when she does not. A simple resolution of this confusion, however, is that the state should assume that a person's name remains the same and, if there is a change, the state will be notified. It should not be assumed the person changing names forgot. If the state is not notified, then the burden and responsibility fall properly on the individual who failed to give notice.

lawfully use a professional name as well as the required surname, making communication with and identification of her more, rather than less, difficult. The cases discussed earlier, in which notice was attempted in married women's maiden names, only arose because the women *had* changed their names upon marriage, making tracing and identification more difficult.

To look at the same problem in a somewhat different way, consider the state's argument if the rule were not in effect and a woman had sought to *require* a change of name. The state could logically argue that to require women always to use their birth-given names, except by judicial action, regardless of their matrimonial status, would be less confusing and more likely to prevent fraud. Since the matrimonial status of women is irrelevant for purposes of motor vehicle registration, this would provide the easiest possible record-keeping for the state—no one changes his or her name from the time of registration without a court order. The substance of the administrative convenience argument, then, lies not in the inherent convenience or virtue of changing names upon marriage, but in the temporary inconvenience of changing from one system of registration to another, a basis that should never by itself support an arbitrary classification.[83]

A notation as to marital status and spouse's name, of course, would not aid in detecting other frauds, for example, when a person has stolen other identification and assumes a new identity.

83. Aiding a court in its analysis of the constitutional issue of what different treatment of men and women is allowable are a number of recent cases. *See, e.g.*, Bray v. Lee, 337 F. Supp. 934 (D. Mass. 1972); Kirstein v. Rector & Visitors, 309 F. Supp. 184 (E.D. Va. 1970); Mollere v. Southeastern La. College, 304 F. Supp. 826 (E.D. La. 1969); United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968). *See also* Johnson & Knapp, *Sex Discrimination by Law: A Study in Judicial Perspective*, 46 N.Y.U.L. REV. 675 (1971).

In my discussion of how to satisfy an equal protection-rational basis test, I have used the analysis of the *Forbush* court and presented an alternative measure of it. However, one might well argue that the entire analysis is out of focus and some key considerations are omitted. For example, the rational basis test was originated to establish whether there was a rational reason for treating people differently. That is, an equal protection challenge in this case claims that it is unconstitutional to require married women to change their names upon marriage but to make no such requirement of men. However, if the interest to be served is a resulting "family" name, then it would be ridiculous to require both men and women to change, for no common name would result. But if continuation of the family name is a legitimate state interest, the automatic choice of the man's is not likely to be upheld. *See* Reed v. Reed, 404 U.S. 71 (1971) (Idaho's mandatory preference for men in estate administration appointments held unconstitutional); *cf.* Stanley v. Illinois, 405 U.S. 645 (1972) (unwed father successfully challenged statute which allowed unwed mothers a hearing but none for un-

The *Forbush* court balanced the interests of the state against those of the class of women and found that administrative convenience and the cost of change outweigh the harm to women in having to formally change their names back to their maiden names following marriage. The injury imposed by the classification was characterized as "de minimus" since Alabama's change of name procedure is simple, automatic, and costs only two dollars. In balancing, however, the court should have looked at the state's true interest, which is knowing who a registrant is. To serve this interest there are better, alternative procedures available which could be implemented inexpensively and would not deprive a married woman of the appellation of her choice.

This discussion of *Forbush* should demonstrate that the court's analysis of the constitutional issue should not be accepted without further reflection and refinement.[84] Admittedly, the rational basis test is not easy to apply, but too often in the past the tendency has been to uphold a regulation with almost any alleged, or even potential, state interest, without examining whether the interest actually exists or is properly served by the regulation. Dissatisfied with the results of traditional equal protection analysis in some areas, the Supreme Court has developed other standards of review. The standard of review feminists have urged courts to adopt for sex discrimination cases is the "compelling state interest" test. Under this test, if a regulation creates or enforces a classification that is "suspect" or impinges on a "fundamental" right, it will not be upheld unless it can be justified by a compelling state interest.[85] And in determining whether this higher

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wed fathers before declaring their children wards of the state). Thus, administratively convenient assumptions which discriminate have been recently held unconstitutional.

We might also question the legitimacy of a family name, for it does not seem to be relevant to any valid governmental objective. That two people share the same name could indicate that they are married, divorced, brother and sister, mother and son, or cousins. One could have assumed the name of the other under the general common law change of name or it could be a matter of chance. If the fact of marriage is really what is important, factual notation on any records, easy in a computer age, is preferable. This argument is really premised on due process, which limits the government's right to act in areas which are beyond its legitimate interests. Such an argument would follow the analysis suggested in the abortion decisions, Doe v. Bolton, 410 U.S. 179 (1973); Roe v. Wade, 410 U.S. 113 (1973), and the mandatory maternity leave case, Cleveland Bd. of Educ. v. LaFleur, 94 S. Ct. 791 (1974).

84. *But cf.* [1973] HAWAII ATT'Y GEN. OP. LETTER (statute requiring name change "unquestionably" valid).

85. *E.g.*, Graham v. Richardson, 403 U.S. 365, 372 (1971); Shapiro v. Thompson, 394 U.S. 618 (1969); Loving v. Virginia, 388 U.S. 1, 11 (1967); McLaughlin v. Flor-

standard has been satisfied, courts subject the purported basis for the classification to "strict scrutiny;" "potential" or "arguable" rationales are not sufficient.

After continuous urging from courts, writers, and litigants,[86] a plurality of four members of the Supreme Court declared in *Frontiero v. Richardson* that "classifications based on sex, like classifications based upon race, alienage, or national origin, are inherently suspect and must therefore be subjected to strict judicial scrutiny."[87] In *Frontiero* a married female Air Force officer successfully challenged a statute which declared that spouses of male members of the uniformed services are "dependents" for purposes of obtaining increased housing and medical allowances, but that spouses of female members are not "dependents" unless they are, in fact, dependent for over one-half of their support on the income of their wives. In urging the constitutionality of the regulation, the Government relied on the administrative convenience argument; in essence the Government argued that because wives in our society—particularly within the armed services—frequently are economically dependent upon their husbands, while husbands rarely are dependent upon their wives, a legitimate interest of saving money is served by the absolute presumption in one case and the need for proof in the other.[88] In rejecting this reasoning as insufficient to uphold the statute, the Court was skeptical about the validity of both the presumption of dependency, recognizing the higher earning capacity of women today and the low salaries of most service personnel,[89] and of the cost argument, since the dependency determination

ida, 379 U.S. 184, 191-92 (1964); Korematsu v. United States, 323 U.S. 214, 216 (1944); *cf.* Dunn v. Blumstein, 405 U.S. 330, 363 (1972) (Burger, C.J., dissenting).

86. United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968); Sail'er Inn Inc. v. Kirby, 485 P.2d 529, 95 Cal. Rptr. 329 (1971); Carlsson, *supra* note 3, at 561-62; Hughes, *supra* note 3, at 241-43; *ACLU Brief* 14-18. *See also* Brief for Appellant at 8-24, Reed v. Reed, 404 U.S. 71 (1971); Brief for American Veterans Comm. & NOW Legal Defense & Educ. Fund as Amici Curiae at 7-19, Reed v. Reed, 404 U.S. 71 (1971).

87. 411 U.S. at 688.

88. Automatic qualification of wives as dependents, whether they are in fact, but requirement of proof of actual dependency of husbands, is the general pattern in federal and state employment benefits and social insurance legislation. *See* Holman & Bixby, *Women and Social Security*, in LAW AND POLICY IN FIVE COUNTRIES 73 (HEW Pub. No. (SSA) 73-11800, 1973); Petitioner's Brief for Certiorari at app. E, Commissioner v. Moritz, 469 F.2d 466 (10th Cir. 1972), *cert. denied*, 412 U.S. 906 (1973), *cited in* Ginsburg, *The Need for the Equal Rights Amendment*, 59 A.B.A.J. 1013, 1015 n.26 (1973).

89. 411 U.S. at 689-90 n.23.

was made merely by written affidavits and not by full hearings. Moreover, the Court reasserted its belief that administrative convenience should not be the determinative test in evaluating discriminatory classifications.[90]

If sex is now to be placed in the "inherently suspect" group, as the *Frontiero* plurality suggests, the constitutionality of mandatory name changes should be re-examined. Since only women must affirmatively undertake to change their names by judicial process in order to retain their maiden names after marriage,[91] in those states where name changes are mandatory the law creates a classification based solely on sex. When the only valid state interest served by the classification is administrative convenience, and particularly when that interest can easily be served in less onerous ways, the practice should not be upheld.[92]

There is another way in which women can invoke the compelling state interest test in challenging mandatory change-of-name rules: that is, if the challenged regulation deals with voting, which has been recognized as a "fundamental" right.[93] For example, in *Stuart* it was argued that the statutes requiring cancellation of voting registration interfered with the right to vote and could not be sustained unless the state showed that the regulation advanced a compelling state interest.[94] It appears from the cases[95] that once a court adopts this rigorous standard of review, the regulation is not likely to stand.

If the lower federal courts decline to follow the *Frontiero* plurality

90. *Id.* at 690, *quoting* Stanley v. Illinois, 405 U.S. 645, 656 (1972): "[O]ur prior decisions make clear that although efficacious administration of governmental programs is not without some importance, 'the Constitution recognizes higher values than speed and efficiency.' "

91. Mandatory change of name is surely discriminatory on the basis of sex since it is the woman who is compelled to change her name. It does not matter that only married women are so classified because the distinction is drawn between married men and married women; thus the difference in treatment is based on sex. *See* Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971).

92. *See* Frontiero v. Richardson, 411 U.S. 677 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Reed v. Reed, 404 U.S. 71 (1971); Griggs v. Duke Power Co., 401 U.S. 424 (1971); Struck v. Secretary of Defense, 460 F.2d 1372, 1379 (9th Cir. 1971) (dissent from denial of rehearing), *vacated and remanded*, 409 U.S. 1071 (1972).

93. *E.g.*, Dunn v. Blumstein, 405 U.S. 330, 336 (1972).

94. 266 Md. at 449, 295 A.2d at 229. *See ACLU Brief* 14-18. The *Stuart* casenote, *supra* note 62, at 423-26, analyzes the constitutional question in regard to this fundamental right.

95. *See* cases cited notes 85-92 *supra*.

and refuse to apply the compelling state interest test in sex classification cases, there is another possible standard of review to consider. Many courts have read *Reed v. Reed*,[96] a sex classification case relied upon by the *Frontiero* majority, as establishing a stricter standard of review within the traditional "rational basis" test.[97] For example, the Second Circuit Court of Appeals in *Green v. Waterford Board of Education*[98] viewed *Reed* as a refinement of the rational basis test. In *Green* a mandatory maternity leave for school teachers not less than four months prior to expected confinement was held unconstitutional. The first question the court addressed was which standard of review to use. Relying on *Reed*, the court adopted a more stringent rational basis test which required that a "classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a *fair and substantial* relation to the object of the legislation."[99] The court concluded that the state's interests—continuity of classroom education, protection of pregnant women, prevention of classroom disruptions through student reactions to pregnancy, and administrative convenience—were not "suitably furthered" by the rigid maternity leave policy.

In challenging mandatory change of name, the "fair and substantial" test should be sufficient to declare the alleged common law "rule" unconstitutional. The analysis required today of any court, even under the "traditional" test of equal protection, is more than the mere articulation of historical but irrelevant doctrines. The state interests advanced to satisfy any standard of review will be the same and will be subject to the same refutation.[100]

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96. 404 U.S. 71 (1971). *See also* note 83 *supra*.

97. Frontiero v. Richardson, 411 U.S. 677, 692 (1973) (concurring opinion) ("abundantly support"); Cohen v. Chesterfield County School Bd., 474 F.2d 395, 401-02 (4th Cir. 1973) (dissenting opinion), *rev'd sub nom.* Cleveland Bd. of Educ. v. LaFleur, 94 S. Ct. 791 (1974); *see* Boraas v. Village of Belle Terre, 476 F.2d 806 (2d Cir. 1972), *prob. juris. noted*, 414 U.S. 907 (1973); LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184, 1188 (6th Cir. 1972), *aff'd*, 94 S. Ct. 791 (1974); Struck v. Secretary of Defense, 460 F.2d 1372, 1378-80 (9th Cir. 1971) (dissenting opinion), *vacated and remanded*, 409 U.S. 1071 (1972).

98. 473 F.2d 629 (2d Cir. 1973).

99. *Id.* at 633, *quoting* Reed v. Reed, 404 U.S. 71, 76 (1971). The court also cited Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972), and Chicago Police Dep't v. Mosley, 408 U.S. 92 (1972), as supportive of this new standard of review.

100. The difference in standards of review is not one of substance but of presumption. That is, under the traditional rational basis test a court presumes the statute or regulation to be valid and the challenge must establish its arbitrariness. On the other hand, under the strict scrutiny standard it appears that the regulation is presumed invalid and the state has the burden of establishing its validity. Therefore, the refu-

IV. OTHER STATE INTERESTS

My discussion of constitutional challenges to a mandatory change-of-name rule has focused primarily on two state interests in perpetuating the rule: ease of administration and prevention of fraud. Although these are the most often articulated interests, there are other possible interests a court might be asked to protect. First, there is the interest of creditors and other members of the public who rely on proper identification of the people with whom they do business. For example, most limitations on a person's right to change his or her name, by common law or by statutory procedure, are calculated to protect other people. The identity of the owners of property should be available to creditors to prevent fraud. To facilitate property changes, accurate recording of the names of the owners is essential. There are situations in which a woman who has changed her name upon marriage is obligated to give notice of the name change.[101] Thus if a woman does not change her name upon marriage, notice would be unnecessary. As long as she continues to be known by the same name under which she does business or holds property, nothing is gained by forcing her to assume her husband's surname.[102]

A second interest is raised by the problem of naming children. Obviously, the issue of a child's name may never arise, since having children is not the only reason people marry. Further, the marriage relationship involved may well be one in which the couple, by mutual agreement, can choose any appropriate name for their child. There are generally no statutes dictating that married parents give a child the surname of the father; although customarily parents do, they have a choice

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tation of the state's interests provided in the *Forbush* discussion, *see* notes 79-83 *supra*, is still applicable.

We should also note that if the proposed equal rights amendment is adopted by the states, more impetus will be felt to disallow a mandatory change of name as well as any presumptions of change of name by married women. Several writers have discussed the equal rights amendment's effect. *E.g.*, Brown, Emerson, Falk & Freedman, *supra* note 16, at 940-41; Sedler, *supra* note 3, at 432 n.67.

101. For a more fully developed analysis of this notice problem, see Hughes, *supra* note 3, at 341-43. Although I disagree with some of her conclusions, the discussion raises some state interests which ultimately will be tested.

102. In the context of marital property being subject to creditors of one spouse, a creditor may have a legitimate interest in knowing that a person is married. I have chosen not to discuss in detail the consequences of this special property relationship but, again, notation of marriage is a better means of giving a creditor notice than a mandatory change of name.

and can freely exercise it. Cases that have addressed the issue of a child's surname typically involve a situation in which a divorced mother has custody of the child, has remarried and changed her name, and wants to change the child's name against the wishes of the father.[103] In these cases the courts, in denying the mother's request, have employed the common law doctrine that a father has a "customary" right to have his child bear his surname.[104]

Even though it is a *custom* in the United States to give a child the father's surname, it is not the only possibility. Persons of Spanish ancestry often use both parents' surnames as the surname of the child.[105] Couples can choose the mother's name as the more appropriate. Or couples can choose an entirely different surname for their children, just as they are free to choose the first and middle names. As with a woman's marital status, any records which need to indicate the parents' names could contain some notation or cross-reference system identifying the child. Since there are several alternatives in naming a child, this is really a "non-issue" as long as it is recognized that the state's interest is in correctly identifying the child and nothing more.

A third problem is that the state may claim an interest in the preservation and stability of the family as a viable social unit; allowing married women to keep their own names may aid in the destruction of the family. Assuming that the state does have an interest in the family, a "one name" rule will not help keep a family together if it is not already stable and viable.[106]

Finally, it was argued in *Forbush* that allowing a married woman to retain her maiden name was unnecessary since almost all states allow a married woman to change her name through a statutorily established court procedure. This state interest is actually part of the administrative convenience argument and is objectionable on grounds noted above.[107] A second objection is to the implicit assumption that a

103. *See, e.g.*, Application of Trower, 260 Cal. App. 2d 75, 66 Cal. Rptr. 873 (1968); Kay v. Kay, 112 N.E.2d 562 (Ohio 1953).

104. The primary concern of the courts is the best interest of the child. If the father is continuing to fulfill his parental responsibility, the courts usually decide a change of name would injure the relationship between child and father. *See* Carlsson, *supra* note 3, at 563-69; Hughes, *supra* note 3, at 243-47; 44 CORNELL L.Q. 144 (1958).

105. E. SMITH, *supra* note 5, at 134. *See generally id.* at 124-64.

106. *See* Brief for Petitioner at 14-16, *In re* MacDougall, Case No. 135463 (Dane County, Wis. Cir. Ct. 1972).

107. *See* text accompanying notes 82 & 83 *supra.*

change-of-name petition and procedure reflect. The principle to which many women object is that the only way to retain their birth-given names is to change them upon marriage and then spend additional time and money to change them back.[108] Thirdly, such a rule would raise serious constitutional questions since only women are required to go through formal court procedures to retain their names. It is also arguably unconstitutional to impose additional requirements for retaining one's name, when the retention is already legal.[109] Finally, many judges construe statutory change-of-name procedures as granting them broad discretion.[110] In states where the statutory procedure is non-exclusive[111] such a reading would have the incongruous result of discouraging people from using the formal statutory procedure because of fear of an adverse judicial decision.[112] Actually, allowing a change of name by court procedure refutes the argument that a state may have an interest in compelling a woman to adopt her husband's surname,[113] since the results of successful court action and retention of a birth-given name are the same: a married woman with a name different from her husband's.

Having articulated potential state interests in a mandatory change of name, we should reflect again on the interest of a woman in keeping

108. *See* note 74 *supra.*

109. Restrictions on voting rights serve as a recent example. The Court, answering the argument that taking children from their father without a hearing was defensible because he might regain custody through adoption, stated in Stanley v. Illinois, 405 U.S. 645, 647 (1972): "This Court has not, however, embraced the general proposition that a wrong may be done if it can be undone."

110. *See In re* Hauptly, — Ind. App. —, 294 N.E.2d 833 (1973); *cf.* Application of Douglas, 60 Misc. 2d 1057, 304 N.Y.S.2d 558 (1969); MacDougall, *supra* note 3, at 13; WOMEN'S RTS. L. RPTR. 26 (Spring 1972).

111. *See* Table in Appendix.

112. Since people may change their names informally by continuous use, most change-of-name statutes are codifications of the common law. The primary value of such statutes is for record-keeping. In states where the statutory procedures are not exclusive, the common law has not been abrogated. State officials believe the statutory method is preferable because it provides judicial notice and an official record. However, if judges deny change-of-name petitions to married women on the basis of judicial discretion while married women and others are allowed to use the common law change of name, there is no incentive, but actually dis-incentive, to go to court. Thus the statutes would not serve their purpose. Therefore, a judge's discretion should be limited to situations of fraud or injury to others—the same limits imposed on common law changes of name.

113. Such an argument might be used in Hawaii which, while requiring a change of name upon marriage, permits a married woman to change her name by court procedure. *See* note 115 *infra.*

her name. A woman may not only have a sentimental or hereditary attachment to her name, but presumably will expect society to associate her name with her accomplishments and personality—in short, a woman will regard her name as a primary symbol of her identity. Thus, a woman who has lived for twenty-two years and has been married for only two may justifiably consider her birth-given name as the best means of identification.[114] To allow a state to take away a name a woman wants to keep—her own source of identification to the world—is not a "de minimis" injury. The woman's interests, coupled with the fact that men and single women are relatively unrestrained in choosing the names by which they are known, are sufficient to counterbalance the state's interest in requiring women to change their names upon marriage. The sex discrimination explicit in change-of-name requirements compels us to look for alternative ways to serve relevant state interests.

V. CONCLUSION

Present throughout this discussion of the right of married women to retain their pre-marriage names is the assumption that names are a matter of choice. Thus, I do not advocate that all women retain their birth-given names when they marry. Some women, for convenience, may want to adopt their husbands' surnames, which they may do through a general common law change of name. However, for women who do not wish to change their surnames, some procedure should be made available. This could be accomplished most easily by a simple legislative statement of policy that a married woman may keep her maiden surname. Of course, the legislature could prescribe specific procedures for a woman to follow in indicating her choice. However, in those states in which there has been no judicial decision requiring a change of name upon marriage, *no* legislative action is necessary.[115] Rather, courts should adhere to the ancient presumption that a woman's name

114. Retaining one's name in marriage may also encourage each partner to develop individually without relying on the other's reputation.

115. Legislation may be required in Alabama, Hawaii, Kentucky, and Illinois. *See* Table in Appendix. However, the Attorney General of Hawaii has issued an opinion that a married woman may change her name through statutory procedures. Letter from Hawaii Attorney General to Lieutenant Governor George Ariyoski, June 6, 1973. The Attorneys General of Pennsylvania and Virginia have expressed opinions that the common law does not require a woman to change her name upon marriage. [1973] PA. ATT'Y GEN. OP. 62; Letter from Virginia Attorney General to Ms. Joan Mahan, Secretary, State Board of Elections, June 6, 1973.

is her birth-given name until she changes it. It should be a matter of state administrative concern that a change of name made at any time be properly recorded. This would dispose of the problems of fraud and ease of identity at least as well as present practice, and would properly place the burden on the person adopting a new name. Judicial adherence to this presumption, and some relatively simple administrative procedures, will protect the interests of both state and individual, an objective not yet accomplished:

> With some notable exceptions, [judges] have failed to bring to sex discrimination cases those judicial virtues of detachment, reflection and critical analysis which have served them so well with respect to other sensitive social issues. . . . Judges have largely freed themselves from patterns of thought that can be stigmatized as "racist". . . . With respect to sex discrimination, however, the story is different. "Sexism" —the making of unjustified (or at least unsupported) assumptions about individual capabilities, interests, goals and social roles solely on the basis of sex differences—is as easily discernible in contemporary judicial opinions as racism ever was.[116]

116. Johnson & Knapp, *supra* note 83, at 676.

APPENDIX

TABLE

STATUTORY AND CASE LAW COMPILATION: CHANGE OF NAME[a]

	Alabama	Alaska	Arizona	Arkansas	California
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	ALA. CODE tit. 13, § 278 (1959)	ALASKA STAT. § 9.55.010 (1973)	ARIZ. REV. STAT. ANN. § 12-601 (1956)	ARK. STAT. ANN. § 34-801 (1962)	CAL. CIV. PRO. CODE §§ 1275-79 (Deering 1973)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none	ALASKA STAT. § 15.07.090(a) (1971)	ARIZ. REV. STAT. ANN. § 16-112 (1956)	ARK. CONST. amend. 51, § 10	CAL. ELECTIONS CODE §§ 214-15 (Deering 1961)
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	ARIZ. REV. STAT. ANN. § 16-143 (1956)	ARK. CONST. amend. 51, § 6(a)(1)	CAL. ELECTIONS CODE § 310(b) (Deering Supp. 1973)
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	ALASKA STAT. § 28.15.140 (1970)n	ARIZ. REV. STAT. ANN. § 28-427 (1956)n	ARK. STAT. ANN. § 75-327 (1962)n	none
Partial List of Relevant Case Law	Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd per curiam*, 405 U.S. 970 (1972)				Sousa v. Freetas, 10 Cal. App. 3d 660, 89 Cal. Rptr. 485 (1970); Branch v. Bekins Van & Storage Co., 106 Cal. App. 623, 290 P. 146 (1930)
Statute Allowing Use of Birth Name After Divorce	none	ALASKA STAT. § 9.55.010 (1973)	ARIZ. REV. STAT. ANN. § 25-319 (1956)	ARK. STAT. ANN. § 34-1216 (1962)b	CAL. CIV. CODE § 4362 (Deering 1972)

	Colorado	Connecticut	Delaware	District of Columbia	Florida
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	COLO. REV. STAT. ANN. § 20-1-1 (1963)	CONN. GEN. STAT. REV. § 52-11 (1968)	DEL. CODE ANN. tit. 10, § 5901 (1953)	D.C. CODE ANN. § 16-2501 (1966)	FLA. STAT. ANN. § 69.02 (1964)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	COLO. REV. STAT. ANN. § 49-4-19 (1963)	CONN. GEN. STAT. REV. § 9-33 (Supp. 1969)	DEL. CODE ANN. tit. 15, § 1750 (1953)	none	FLA. STAT. ANN. § 97.103 (Supp. 1973)
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	COLO. REV. STAT. ANN. § 13-4-17(1) (1963)[n]	none	none	none	FLA. STAT. ANN. § 322.19 (1964)
Partial List of Relevant Case Law					Carlton v. Phelan, 100 Fla. 1164, 131 So. 117 (1930)
Statute Allowing Use of Birth Name After Divorce	none	CONN. GEN. STAT. REV. § 46-21 (1968)	DEL. CODE ANN. tit. 13, § 1536 (1953)	D.C. CODE ANN. § 16-915 (1966)	none

	Georgia	Hawaii	Idaho	Illinois	Indiana
Statute Requiring Change of Name on Marriage	none	HAWAII REV. STAT. § 574-1 (1968)	none	none	none
Statutory Procedure for Change of Name	GA. CODE ANN. § 79-501 (1973)	HAWAII REV. STAT. § 574-5 (1968)[c]	IDAHO CODE § 7-802 (1948)	ILL. ANN. STAT. ch. 96, § 1 (Smith-Hurd 1971)	IND. ANN. STAT. § 3-801 (Supp. 1972)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none	none	IDAHO CODE §§ 34-421 to -422 (Supp. 1973)	ILL. ANN. STAT. ch. 46, §§ 4-16, 5-23, 6-54 (Smith-Hurd 1965, Supp. 1973)	IND. ANN. STAT. § 29-3428 (Supp. 1972)[d]
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	none	IDAHO CODE § 49-323 (1967)[n]	ILL. ANN. STAT. ch. 95 1/2, § 6-116 (Smith-Hurd 1971)[n]	IND. ANN. STAT. § 47-2710 (1969)[n]
Partial List of Relevant Case Law				People *ex rel.* Rago v. Lipsky, 327 Ill. App. 63, 63 N.E.2d 642 (1945)	
Statute Allowing Use of Birth Name After Divorce	GA. CODE ANN. § 30-116 (1969)	HAWAII REV. STAT. § 574-5 (1968)	none	ILL. ANN. STAT. ch. 40, § 17 (Smith-Hurd 1956)	IND. ANN. STAT. § 3-1225 (1968)

	Iowa	Kansas	Kentucky	Louisiana	Maine
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	IOWA CODE ANN. § 674.1 (Supp. 1973)	KAN. STAT. ANN. § 60-1401 (1964)	KY. REV. STAT. ANN. § 401.010 (1969)[c]	LA. REV. STAT. § 13:4751 (Supp. 1974)[e]	ME. REV. STAT. ANN. tit. 19, § 781 (Supp. 1973)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	IOWA CODE ANN. § 48.6(1) (1973)	KAN. STAT. ANN. §§ 25-2316, 2321 (1964)	Ch. 134, § 28, [1952] Ky. Acts 344 (repealed 1972)	LA. REV. STAT. §§ 18:41, 234 (1969, Supp. 1974)[f]	ME. REV. STAT. ANN. tit. 21, § 638 (1965, Supp. 1973)[g]
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	KAN. STAT. ANN. § 8-248 (1964)[n]	KY. REV. STAT. ANN. § 186.540 (1969)[n]	none	ME. REV. STAT. ANN. tit. 29, § 546 (1965)[n]
Partial List of Relevant Case Law				Wilty v. Jefferson Parish Dem. Exec. Comm., 245 La. 145, 157 So. 2d 718 (1963); Succession of Kneipp, 172 La. 411, 134 So. 376 (1931)	
Statute Allowing Use of Birth Name After Divorce	none	KAN. STAT. ANN. § 60-1610(e) (1964)	Ch. 205, § 27, [1893] Ky. Acts 925 (repealed 1972)	LA. CODE CIV. PRO. ANN. form 208c (West 1963)	ME. REV. STAT. ANN. tit. 19, § 752 (1965)

	Maryland	Massachusetts	Michigan	Minnesota	Mississippi
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	MD. ANN. CODE art. 16, § 123 (1973); Rules of Procedure BH70-75 (1971)	MASS. GEN. LAWS ANN. ch. 210, § 12 (1969)	MICH. STAT. ANN. § 27.3178(561) (1962)	MINN. STAT. ANN. § 259.10 (1971)[c]	MISS. CODE ANN. § 1269-01 (1957)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	MD. ANN. CODE art. 33, § 3-18 (Supp. 1973)	MASS. GEN. LAWS ANN. ch. 51, § 2 (1971)	none	MINN. STAT. ANN. § 201.14 (1962)	none
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	MD. ANN. CODE art. 66 1/2, § 6-116 (1970)	MASS. GEN. LAWS ANN. ch. 90, § 26A (Supp. 1972)[n]	none	MINN. STAT. ANN. § 171.11 (1960)	none
Partial List of Relevant Case Law	Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A.2d 223 (1972)	Bacon v. Boston Elevated Ry., 256 Mass. 30, 152 N.E. 35 (1926)	[1922-1923] MICH. ATT'Y GEN. BIENNIAL REP. 138; [1935-1936] MICH. ATT'Y GEN. BIENNIAL REP. 254	Brown v. Reinke, 159 Minn. 458, 199 N.W. 235 (1924); [1942] MINN. ATT'Y GEN. OP. 103	
Statute Allowing Use of Birth Name After Divorce	none	MASS. GEN. LAWS ANN. ch. 208, § 23 (1969)	MICH. STAT. ANN. § 25.181 (1957)[b]	MINN. STAT. ANN. § 518.27 (1969)	none

	Missouri	Montana	Nebraska	Nevada	New Hampshire
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	MO. REV. STAT. § 527.270 (1969)	MONT. REV. CODES ANN. § 93-100-2 (1964)	NEB. REV. STAT. § 61-102 (1971)	NEV. REV. STAT. § 41.270 (1967)	N.H. REV. STAT. ANN. § 547:7 (1955)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none	none	NEB. REV. STAT. § 32-216(2) (1968)	NEV. REV. STAT. § 293.517(4) (1967)	none
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	none	NEB. REV. STAT. § 60-415(2) (1971)	NEV. REV. STAT. § 483.390 (1967)	N.H. REV. STAT. ANN. § 261:2 (1966)[n]
Partial List of Relevant Case Law			Kelle v. Crab Orchard Rural Fire Protect. Dist., 83 N.W.2d 51 (Neb. 1957)	Kotecki v. Augusztiny, 487 P.2d 925 (Nev. 1971)	
Statute Allowing Use of Birth Name After Divorce	MO. REV. STAT. § 452.100 (1969)	none	none	NEV. REV. STAT. § 125.130(3) (1967)	N.H. REV. STAT. ANN. §§ 458:24, 25 (1968, Supp. 1972)

	New Jersey	New Mexico	New York	North Carolina	North Dakota
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	N.J. REV. STAT. § 2A:52-1 (1952)	N.M. STAT. ANN. § 22-5-1 (1953)	N.Y. CIV. RIGHTS LAW § 60 (McKinney Supp. 1973)	N.C. GEN. STAT. § 101-2 (Supp. 1971)	N.D. CENT. CODE § 32-28-02 (Supp. 1973)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	N.J. REV. STAT. § 19:31-13 (1964)	N.M. STAT. ANN. § 3-4-11 (1970)g	N.Y. ELECTION LAW § 198 (McKinney 1964)h	none	none
Elections: Statute Requiring Prefix "Miss" or "Mrs."	N.J. REV. STAT. § 19:31-3(b)(1) (1964)	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	N.M. STAT. ANN. § 64-13-53 (1953)n	none	none	N.D. CENT. CODE § 39-06-20 (1972)
Partial List of Relevant Case Law			*In re* Kayaloff, 9 F. Supp. 176 (S.D.N.Y. 1934); Chapman v. Phoenix Nat'l Bank, 85 N.Y. 437 (1881)		
Statute Allowing Use of Birth Name After Divorce	N.J. REV. STAT. § 2A:34-21 (1952)	none	none	N.C. GEN. STAT. § 50-12 (Supp. 1973)	none

	Ohio	Oklahoma	Oregon	Pennsylvania	Rhode Island
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	OHIO REV. CODE ANN. § 2717.01 (Page Supp. 1972)	OKLA. STAT. ANN. tit. 12, § 1631 (1961)	ORE. REV. STAT. § 33-410 (1971)	PA. STAT. ANN. tit. 54, §§ 1-6 (1964)[e]	R.I. GEN. LAWS ANN. § 8-9-9 (1970)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	OHIO REV. CODE ANN. §§ 3503.18-.19 (Page 1972)	none	ORE. REV. STAT. §§ 247.290-.310, .440 (1971)	PA. STAT. ANN. tit. 25, §§ 623-4, 951-38 (1963)	R.I. GEN. LAWS ANN. § 17-9-18 (1970)[i]
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none	OKLA. STAT. ANN. tit. 47, § 6-116 (1962)[n]	ORE. REV. STAT. § 482.290(2) (1971)	PA. STAT. ANN. tit. 75, § 612 (1971)[n]	R.I. GEN. LAWS ANN. § 31-10-32 (1970)[n]
Partial List of Relevant Case Law	State *ex rel.* Krupa v. Green, 114 Ohio App. 497, 177 N.E. 2d 616 (1971)	Huff v. State Election Bd., 32 P.2d 920 (1934)		*In re* Upset Sale, 278 A.2d 172 (Pa. 1971); *In re* Romm, 77 Pa. D. & C. 481 (Dauphin County C.P. 1952); Appeal of Egerter, 32 Pa. D. & C. 164 (Allegheny County C.P. 1938)	
Statute Allowing Use of Birth Name After Divorce	OHIO REV. CODE ANN. § 3105.16 (Page 1972)	OKLA. STAT. ANN. tit. 12, § 1278 (1961)	ORE. REV. STAT. § 107.100(f) (1971)	PA. STAT. ANN. tit. 23, § 98 (1955)	R.I. GEN. LAWS ANN. § 15-5-17 (1970)

	South Carolina	South Dakota	Tennessee	Texas	Utah
Statute Requiring Change of Name on Marriage	none		none	none	none
Statutory Procedure for Change of Name	S.C. CODE ANN. § 48-51 (Supp. 1971)	S.D. COMPILED LAWS ANN. §§ 21-37-1 to -5 (1969)	TENN. CODE ANN. §§ 23-801 to 805 (1955, Supp. 1973)	TEX. FAM. CODE art. 32.01 (1973)	UTAH CODE ANN. §§ 42-1-1 to -3 (1970)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none	S.D. COMPILED LAWS ANN. § 12-4-18 (Supp. 1973)	none	TEX. ELECTION CODE art. 5.18d (Supp. 1973)	none
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	S.C. CODE ANN. § 46-170 (1962)[n]	none	TENN. CODE ANN. § 59-708 (1968, Supp. 1973)[n]	TEX. REV. CIV. STAT. art. 6687b, § 20 (1969)	none
Partial List of Relevant Case Law				Kidd v. Rasmus, 285 S.W.2d 415 (Tex. 1955); Hartman v. Chumley, 266 S.W. 444 (Tex. App. 1924); Freeman v. Hawkins, 14 S.W. 364 (Tex. 1890)	
Statute Allowing Use of Birth Name After Divorce	S.C. CODE ANN. § 20-117 (1962)	S.D. COMPILED LAWS ANN. § 25-4-47(1) (1969)	none	TEX. FAM. CODE art. 32.04 (1973)	none

	Vermont	Virginia	Washington	West Virginia	Wisconsin
Statute Requiring Change of Name on Marriage	none	none	none	none	none
Statutory Procedure for Change of Name	VT. STAT. ANN. tit. 15, §§ 811, 814 (1958)[j]	VA. CODE ANN. § 8-577.1 (Supp. 1973)	WASH. REV. CODE ANN. § 4.24.130 (1962)	W. VA. CODE ANN. § 48-5-1 (Supp. 1973)	WIS. STAT. ANN. § 296.36 (1958, Supp. 1973)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none	VA. CODE ANN. § 24.1-51 (1973)	WASH. REV. CODE ANN. § 29.10.050 (1965)	W. VA. CODE ANN. § 3-2-28 (1971)	WIS. STAT. ANN. § 6.40(1)(c) (Supp. 1973)[l]
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none	none	none	none	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	VT. STAT. ANN. tit. 23, § 205 (Supp. 1973)[n]	none	WASH. REV. CODE ANN. § 46.20.205 (1970)[n]	W. VA. CODE ANN. § 17B-2-13 (1966)[n]	WIS. STAT. ANN. § 343.22 (1971)
Partial List of Relevant Case Law					Sulk v. Sulk, 3 Wis. 2d 307, 88 N.W.2d 738 (1958); Lane v. Duchac, 73 Wis. 646, 41 N.W. 962 (1889)
Statute Allowing Use of Birth Name After Divorce	VT. STAT. ANN. tit. 15, § 5 (1958)	VA. CODE ANN. § 20-121 (1960)	WASH. REV. CODE ANN. § 26.08.130 (1961)	W. VA. CODE ANN. § 48-2-23 (Supp. 1973)[b]	WIS. STAT. ANN. § 247.20 (Supp. 1973)[m]

	Wyoming
Statute Requiring Change of Name on Marriage	none
Statutory Procedure for Change of Name	WYO. STAT. ANN. § 1-739 (1957)
Elections: Statute Requiring Re-registration After Change of Name at Marriage	none
Elections: Statute Requiring Prefix "Miss" or "Mrs."	none
Motor Vehicles: Statute Requiring New Driver's License or Notification After Change of Name at Marriage	none
Partial List of Relevant Case Law	
Statute Allowing Use of Birth Name After Divorce	none

a. original source: unpublished memorandum, American Civil Liberties Union, Women's Rights Project, 22 East 40th Street, New York, N.Y. 10016, September 1972 (updated, December 1973)
b. provided no children born to marriage
c. excludes married women
d. allows women to use professional name
e. exclusive procedure
f. file affidavit
g. give written notice
h. sign both names
i. "entitled"
j. spouse's consent required—changes both names
k. *see* VA. CODE ANN. § 55-106.1 (1973) (index deeds)
l. transfer/notice
m. if wife receives no alimony
n. notification only