STATUTORY DEVELOPMENT

PRE-MARRIAGE NAME CHANGE, RESUMPTION AND REREGISTRATION STATUTES

Women seeking to retain, reassume, or use their pre-marriage name face considerable legal difficulties,[1] for courts may deny a requested name change and agencies may forbid the exercise of privileges such as voting or driving under the pre-marriage name. Two basic types of statutes are involved in this area. The first, usually affecting women who first assumed their husbands' surname and subsequently wish to reassume their pre-marriage surname and divorced women who wish to revert to their prior name, enables the courts upon petition to establish new names. The second, usually affecting women who have consistently used their pre-marriage name for all purposes but are presumed by law to have adopted their husbands' name at marriage and those who wish to use their husbands' surname for some purposes while retaining their pre-marriage name for others, permits administrative control over name change.

Although the burden imposed on women seeking to retain, reassume, or use their pre-marriage name varies with the particular statute, these statutes as presently construed are subject to challenge either as unintended departures from the common law rule of name change through usage or as instances of official sex discrimination—the latter because they presume that women will adopt their husbands' name at marriage without imposing any corresponding presumption on men or because they create obstacles for women desiring a name change without similarly burdening men. Besides an examination of statutory purpose—occasionally the statutory presumption or obstacle does not accord with the legislators' stated objectives—challenge may be based on common law and federal constitutional grounds.[2] After a brief exposition of the common law rules on name change and the pertinent constitutional provisions,

1. *See generally* Hamilton, *Female Surnames and California Law*, 6 U.C.D. L. REV. 405 (1973); Bysiewicz, *Married Women's Surnames*, 5 CONN. L. REV. 598 (1973); MacDougall, *Married Women's Common Law Right to Their Own Surname*, WOMAN'S RIGHTS L. REP. Winter/Spring 1972/73; Carlsson, *Surnames of Married Women and Legitimate Children*, 17 N.Y.L. Forum 552 (1971); Hughes, *And Then There Were Two*, 23 HASTINGS L.J. 223 (1971); Comment, *Married Woman's Right to Her Maiden Name: The Possibilities for Change*, 23 BUFFALO L. REV. 243 (1973) [hereinafter cited as Comment, *Married Woman's Right*]; Comment, *The Right of Women to Use Their Maiden Names*, 38 ALBANY L. REV. 105 (1973) [hereinafter cited as Comment, *Maiden Names*]; Comment, *A Woman's Right to Her Name*, 21 U.C.L.A. L. REV. 665 (1973) [hereinafter cited as Comment, *A Woman's Right*].

2. Examination of federal law, such as passport regulations and copyright law, is beyond the scope of this note. For a treatment of this issue, see MacDougall, *supra* note 1, at 2, 5-7. This Note will also not deal with state constitutional provisions. For a good discussion of the bearing of California's constitutional provisions as well as its statutory and case law on the issue of retention or resumption of pre-marriage name, see Hamilton, *supra* note 1.

this Note will examine how the two basic types of statutory schemes will fare under common law and constitutional attack. The Appendix contains the relevant statutory provisions for each state.

I. THEORIES FOR CHALLENGING PRE-MARRIAGE NAME STATUTES

A. *Common Law Rules on Name Change*

It is generally accepted in England that there is a common law right for any person to adopt any surname by consistent use, provided the new name is not adopted for a fraudulent purpose.[3] Under English common law, a woman who continues to use her pre-marriage name without interruption upon marriage retains her pre-marriage name and a woman who seeks to reassume her pre-marriage name after changing it at marriage must merely begin to use her pre-marriage name exclusively. Not every American court, however, has followed the English common law right of adoption through usage in the case of married women.[4] Instead, some courts seem to have enunciated a common law rule that a woman assumes her husband's name at marriage by operation of law.

Most of the cases containing language in support of the operation-of-law interpretation of the common law, however, are of dubious precedential force and provide little guidance as to whether a particular state has adopted the operation-of-law approach over the change-by-usage view. The operation-of-law language in these cases may generally be disregarded as mere dictum, either because the issue of what name a married woman must use was not squarely before the court (although the court assumed adoption of husband's surname in deciding the question at issue), or because the woman had used her husband's surname and was not seeking to reassume her pre-marriage name.[5] In fact, the cases that have directly confronted the issue of whether a

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3. 19 HALSBURY'S LAWS OF ENGLAND 829 (3d ed. 1957). *Cf.* Cowley v. Cowley, [1901] A.C. 450 (House of Lords refused to enjoin remarried woman from retaining her first husband's name). *But cf.* Fendall v. Goldsmid, 2 P.D. 263, 46 L.J.P. 70 (1877); 35 ENGLISH AND EMPIRE DIGEST 704 (1927). *See generally* M. LUSH, LAW OF HUSBAND AND WIFE 63-64 (4th ed. 1933); MacDougall, *supra* note 1, at 4-5.

4. Some states allow retention of pre-marriage name by usage but require women who have adopted husband's name but wish to reassume pre-marriage name to resort to statutory name change procedures. Letter from Andrew Miller, Attorney General of Virginia, to Joan Mahan, Secretary of State Board of Elections, June 6, 1973, on file at *Columbia Law Review*; Letter from Francis Burch, Attorney General of Maryland, to Harry Hughes, Secretary, Department of Transportation, May 7, 1974, on file at *Columbia Law Review*.

5. Both defects are present in the following three types of cases. Courts have embraced the operation-of-law approach while ruling that publication by a married woman in her pre-marriage name is ineffective to establish retention of her pre-marriage name. *See* Uihlein v. Gladieux, 74 Ohio 232, 78 N.E. 363 (1906); Freeman v. Hawkins, 77 Tex. 498, 14 S.W. 364 (1890); Chapman v. Phoenix National Bank, 85 N.Y. 437 (1881). *But see* Pooler v. Hyne, 213 F. 154 (7th Cir.), *cert. denied*, 238 U.S. 620 (1914); Emery v. Kipp, 154 Cal. 83, 97 P. 17 (1908); Jones v. Kohler, 137 Ind. 528, 37 N.E. 399 (1894); Bogart v. Woodruff, 96 Cal. 609, 31 P. 618 (1892). Decisions on the right of a woman to use not only a husband's surname, but also his Christian name or initials have contained

woman has a common law right to retain her pre-marriage name at marriage involved women who had consistently and exclusively[6] used their pre-marriage name after marriage, and have held that married women enjoy a common law right to retain their pre-marriage name.[7]

Thus, even where the court seems to have followed the operation-by-law approach, the argument can still be made that there is no clear authority that the state has adopted it, and that in the absence of a definitive holding the English common law right to change one's name by consistent use prevails. Moreover, even where there is a square holding of the court in favor of the adoption-by-law view, a further argument can be made that while married women assume their husband's name at marriage, they may reassume their pre-marriage name by consistent use after marriage.[8]

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similar dicta about assumption of the husband's surname by operation of law. *See, e.g.*, Wilty v. Jefferson Parish Dem. Exec. Comm., 245 La. 145, 157 So. 2d 718 (1963); Kelle v. Crab Orchard Rural Fire Protection District, 164 Neb. 593, 83 N.W.2d 51 (1957); Roberts v. Grayson, 233 Ala. 658, 173 So. 38 (1937); Carlton v. Phelan, 100 Fla. 1164, 131 So. 117 (1930); Brown v. Reinke, 159 Minn. 458, 199 N.W. 235 (1924); Koley v. Williams, 265 Mass. 601, 164 N.E. 444 (1920). *But see* Huff v. State Election Board, 168 Okla. 277, 32 P.2d 920 (1934) (name acquired through exercise in good faith of common law right to adopt a name). Finally, dictum appears in a tort case where a woman driver was refused recovery because the automobile was registered in her pre-marriage name when she had consistently used her husband's name. Bacon v. Boston Elev. Ry. Co., 256 Mass. 30, 152 N.E. 35 (1926). *See* Carlsson, *supra* note 1, at 553-54; Comment, *Married Woman's Right*, *supra* note 1, at 246-49.

6. Two cases frequently cited in support of the operation-of-law approach do not appear from the court's statements of facts to involve women who exclusively used their pre-marriage names after marriage. *See In re* Kayaloff, 9 F. Supp. 176 (S.D.N.Y. 1934) (court required a musician to be naturalized in husband's surname although she had used her pre-marriage name for professional purposes); People *ex rel* Rago v. Lipsky, 327 Ill. App. 63, 63 N.E.2d 642 (1945) (attorney practicing under pre-marriage name required to reregister in husband's surname in order to vote). *Rago* has been constructively overruled by the Attorney General of Illinois. Letter from William Scott, Attorney General of Illinois, to J. Hoogasian, State's Attorney, Waukegan, Illinois, Feb. 13, 1974, on file at *Columbia Law Review*. *See* Carlsson, *supra* note 1, at 556-58.

Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd per curiam*, 405 U.S. 970 (1972), although involving a plaintiff who consistently and exclusively used her pre-marriage name, is inapposite since the plaintiff did not seek a determination of the Alabama common law rule but, in order to raise her equal protection claim, assumed that Alabama followed the operation-of-law approach. Brief for Appellant at 4, Forbush v. Wallace, 405 U.S. 970 (1972); Lamber, *A Married Woman's Surname: Is Custom Law?*, 1973 WASH. U.L.Q. 779, 796. For a further discussion of *Forbush*, *see* notes 41-49 and accompanying text *infra*.

7. These cases provide the strongest authority for adoption through usage, for the issue of name change is the central issue rather than merely a peripheral issue in an action that will have no effect on what name a woman uses. *See* Custer v. Bonadies, 30 Conn. Supp. 385, 318 A.2d 639 (1974) (voter may register in maiden name) (alternative holding); Stuart v. Board of Supervisors, 266 Md. 440, 295 A.2d 223 (1972) (voter may register in maiden name); State *ex rel.* Krupa v. Green, 114 Ohio App. 497, 177 N.E.2d 616 (1961) (candidate permitted to use maiden name on ballot); State *ex rel.* Bucher v. Brower, 21 Ohio Op. 208, 7 Ohio Supp. 51 (1941) (candidate permitted to use maiden name for registration and on ballot).

Two early cases which have frequently been cited in support of adoption through usage, however, do not involve a square holding on the name change issue. *See* Succession of Kneipp, 172 La. 411, 134 So. 376 (1931); Rice v. State, 37 Tex. Cr. R. 36, 38 S.W. 801 (1897).

8. For support for the view that a woman may change her name by common law right of usage after adopting husband's name by operation of law, *see In re* Hauptly, 312 N.E.2d 857 (Sup. Ct. Ind. 1974). *Cf.* Smith v. United States Casualty Co., 197 N.Y.

Where the state court forthrightly embraces the adoption-of-law approach in a case in which the woman's right to retain her pre-marriage name at marriage or to reassume it after marriage by exclusive and consistent use is directly at issue, or where the statute clearly adopts that approach, only a constitutionally-based argument is available to enforce a woman's right to adopt a name of her choice.

B. *Federal Constitutional Rights to Pre-Marriage Name*

1. *Equal Protection Approaches.* The Supreme Court has primarily applied two standards of review in dealing with challenges under the equal protection clause of the fourteenth amendment:[9] strict scrutiny, requiring demonstration of a "compelling state interest" where the statute involves "fundamental rights" or "suspect classification;"[10] and minimal scrutiny, requiring demonstration of a rational relationship between the classification system and the government objective.[11] All statutes are at least subject to rational relationship analysis. Restrictions on the right to vote, because they impair the exercise of a "fundamental right," and classifications by gender, because they employ the arguably "suspect" category of sex, are the two features of the state statutes under discussion that may trigger strict scrutiny.

While voting restrictions generally receive strict scrutiny,[12] gender classifications have not yet been denominated "suspect" by a majority of the Supreme Court. Nonetheless, statutes containing gender discrimination receive more intensive scrutiny than is usually accorded statutes subject only to the

420, 90 N.E. 947 (1910); *In re* Snook, 2 Hilt. 566, 572-76 (N.Y. Ct. Common Pleas 1859). *Cf.* Fendall v. Goldsmid, 2 P.D. 263, 46 L.J.P. 70 (1877).

For the view that married women must resort to statutory name change procedures to reassume their pre-marriage name after adoption of husband's name by operation of law, *see* Rich v. Mayer, 7 N.Y.S. 69, 71 (N.Y. City Ct.), *aff'd mem.*, 8 N.Y.S. 752 (C.D.N.Y. County 1889) (dicta); Letter from Robert Morgan, Attorney General of North Carolina, to Richard Robertson, Jr., Assistant to President of University of North Carolina, March 27, 1974, on file at *Columbia Law Review*; OP. ATT'Y GEN. GA., No. 74-33, March 15, 1974; Letter from Russell Fukumota, Deputy Attorney General of Hawaii, to George Ariyoshi, Lieutenant Governor of Hawaii, June 6, 1973, on file at *Columbia Law Review* (Hawaii statute requiring women to take husband's name upon marriage may abridge common law allowing assumption of name by usage).

9. *See Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

10. "Fundamental interests" include voting, Kramer v. Union Free School Dist., 395 U.S. 621 (1969); procreation, Skinner v. Oklahoma, 316 U.S. 535 (1942); and the right to travel, Shapiro v. Thompson, 394 U.S. 618 (1969). "Suspect classifications" include race, Loving v. Virginia, 388 U.S. 1 (1967); national origin, Korematsu v. United States, 323 U.S. 214 (1944); and alienage, *In re* Griffiths, 413 U.S. 717 (1973).

11. *See, e.g.*, F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

12. *See* notes 36-38 and accompanying text *infra*. *Cf.* Harper v. Virginia Board of Elections, 383 U.S. 663 (1966). Voting restrictions do not always trigger strict scrutiny. In recent years the Court has applied rational relationship analysis to restrictions on candidacy, *see* Lippitt v. Cipallone, 404 U.S. 1032 (1972), note 36 *infra*; and participation in primaries, *see* Rosario v. Rockefeller, 410 U.S. 752 (1973), and in special elections, *see* Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973). Voting restrictions that effect access to the ballot in a general election, especially when coupled with a classification scheme that either borders on the "suspect" or impinges on the exercise of other fundamental rights, are more likely to receive strict scrutiny. *See, e.g.*, Dunn v. Blumstein, 404 U.S. 330 (1972) (voting and travel); Harper v. Virginia Board of Elections, *supra* (voting and health).

rational relationship test.[13] Moreover, even if the Supreme Court ultimately decides that sex is not a "suspect classification," the name change statutes under discussion may fall, because the Court in recent years has transformed the rational relationship test from an unquestioning acceptance of any plausible justification for the statute[14] to a more rigorous scrutiny of the state's justifications for the classification employed, and of the extent the means employed by the statute further its purported objectives.[15]

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13. The similarities between sex and race—the paradigm suspect classification—have been used to support declaration of sex as a suspect classification. *See* K. DAVIDSON, R. GINSBURG & H. KAY, SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS 99-107 (1974). In Frontiero v. Richardson, 411 U.S. 677 (1973), a plurality of the Supreme Court found this similarity convincing:

> Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility . . . .

Id. at 686. *See also* Sail'er Inn Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

A majority of the Court, however, has not adhered to the *Frontiero* plurality's characterization of sex as a suspect category, *see* Geduldig v. Aiello, 94 S. Ct. 2485 (1974), and such categorization appears unlikely, *cf.* Kahn v. Shevin, 94 S. Ct. 1734 (1974). In *Aiello* the Court applied "rational basis" analysis to uphold a provision of the California Unemployment Insurance Code denying pregnant women state unemployment insurance benefits. Finding that the provision was rationally supported by the state's legitimate interest in maintaining a low contribution level for its unemployment insurance program, the Court rejected the equal protection attack. 94 S. Ct. at 2492. *Aiello* may be an example of the Court's continued resistance to finding additional suspect classifications and fundamental interests. *See* Gunther, *Supreme Court, 1971 Term, Foreword: In Search of Evolving Doctrine in a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1, 20-24 (1972).

The impact of the *Aiello* decision may be lessened, however, by the Court's denial that California's unemployment insurance program involved any sex discrimination. The Court's argument that distinctions based on pregnancy do not involve sex discrimination was based on two premises. First, the class benefiting from the insurance program—the class of nonpregnant persons—includes both men and women. *Id.* at 2492 n.20. And, second, since the potential for pregnancy is characteristic of women only, restrictions in pregnancy benefits discriminate among women, not between men and women. On this point, the majority, per Justice Stewart, maintained:

> There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not.

Id. at 2492.

Both legs of the Court's reasoning, however, do not apply to the name change context. First, the class immune from statutory and common law rules presuming adoption of husband's name at marriage and mandating name change procedures includes men only. And, second, possession of names—unlike the potential for pregnancy—is a characteristic of both sexes, and current name change law does not merely burden some women but forecloses name choice for all married women while permitting all married men to retain their name. *Aiello*'s reliance on "rational basis" scrutiny, therefore, should not be controlling on cases challenging sex bias in name change and presumption procedures.

The Court's summary affirmance in Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd per curiam*, 405 U.S. 970 (1972) of a lower court ruling that a state statute requiring issuance of driver's licenses in the husband's surname satisfies the "rational basis" test should not be regarded as a definitive statement of the Court's view of the proper level of equal protection scrutiny for name change statutes. *See* notes 41-44 and accompanying text *infra*.

14. *See, e.g.*, McGowan v. Maryland, 366 U.S. 420, 425 (1961), where the Court stated that the equal protection clause "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective." *See also* International Harvester Co. v. Missouri, 234 U.S. 199, 215 (1914).

15. *See, e.g.*, Reed v. Reed, 404 U.S. 71 (1971) (disallowing preference for men as administrators of estates). *See generally* Gunther, *supra* note 13, at 20.

2. *Due Process Approaches.* By imposing a surname on a married woman without regard to her individual factual situation, the state is arguably depriving her of a property right—her name and reputation[16]—without due process of law. Similarly, by conditioning the grant of benefits or issuance of licenses to a married woman on reregistration in her husband's name, the state may be acting in violation of the due process clause. Moreover, a statute preventing a married woman from determining her own name may be viewed as an infringement of her constitutional right of privacy.[17] At the minimum, due process would require an opportunity to rebut the statutory presumption that the woman had, in fact, assumed her huband's name.[18]

3. *Impact of Proposed Equal Rights Amendment.* According to scholarly authority, the proposed equal rights amendment[19] would not permit a legal requirement, or even a presumption, that a woman takes her husband's name at marriage.[20] If the amendment is ultimately ratified, the common law

16. The courts have recognized that in certain circumstances a person has an enforceable right to his or her own name. *See* W. PROSSER, LAW OF TORTS § 117 (1971); Flores v. Master Safe Co., 7 N.Y.2d 276, 164 N.E.2d 853, 196 N.Y.S.2d 975 (1959) (use of name in advertisement is invasion of right to privacy); Trademark Cases, 100 U.S. 82 (1879) (trademark as a protected property right of registrant); Annot., 66 A.L.R. 948 (1930) (protection of a corporate name); Annot., 115 A.L.R. 124 (1938) (same).

17. This approach, however, would require an extension of the right of privacy considerably beyond the limits presently recognized by the Court. Current protection afforded by the constitutional right of privacy has focused on areas relating to sexual matters. *See* Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (contraception); Griswold v. Connecticut, 381 U.S. 479 (1965) (same); Roe v. Wade, 410 U.S. 113 (1973) (abortion); Skinner v. Oklahoma, 316 U.S. 535 (1942) (sterilization). An extension of the right to privacy to women's surnames is advocated in Comment, *Maiden Names, supra* note 1, at 123; Comment, *A Woman's Right, supra* note 1, at 680-82.

18. *See, e.g.*, Cleveland Bd. of Educ. v. La Fleur, 414 U.S. 632 (1974); Vlandis v. Kline, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972). An excellent discussion of the irrebuttable presumption doctrine is contained in Note, *The Irrebuttable Presumption Doctrine in the Supreme Court,* 87 HARV. L. REV. 1534 (1974). According to the author, "irrebuttable presumption" analysis represents a hybrid of two distinct inquiries: (1) whether the classification employed by the statute satisfies equal protection; and (2) whether the classification inaccurately embraces a particular individual by attaching characteristics to membership in the class which are not true of all members. *Id.* at 1544-47. Applying this analysis to statutes regulating married women's surnames for the purported purpose of preventing fraudulent use of names, the statutory language may be rewritten from "all persons shall reregister upon change of name by marriage" to "no person shall commit fraud, and married women who do not reregister in their husband's name upon marriage are conclusively presumed to be committing fraud." Marriage is the "basic fact," using the author's terminology, from which the "presumed fact" of adoption of husband's surname is inferred. Unless there is an exact match between basic fact and presumed fact, the classification will be found to contain an impermissible irrebuttable presumption, and a hearing must be provided to enable affected individuals to rebut the presumption. *Id.* at 1534, 1544-49.

19. The proposed amendment provides:

> Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
>
> Section 2. The Congress shall have the power to enforce by appropriate legislation the provisions of this article.
>
> Section 3. This amendment shall take effect two years after the date of ratification.

H.R.J. Res. 208, 92d Cong., 2d Sess. (1972).

20. Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women,* 80 YALE L.J. 871, 940 (1971). *See generally id*; Note, *Sex Discrimination and Equal Protection: Do We Need a Constitu-*

rule that a woman assumes her husband's name at marriage by operation of law may be rendered unconstitutional.

II. Application of Theories to Pre-Marriage Name Statutes

A. *Court Establishment of Name Statutes*

Although in many states women may rely on the common law rule of adoption through use,[21] married women wishing to reassume a pre-marriage name or those who have consistently used their pre-marriage name may prefer to resort to statutory name change procedures.[22] Every state provides by statute the right to petition a court for a change of name. Since name change statutes generally allow the change to be made at the discretion of the judge reviewing the petition,[23] consistent and exclusive use of a pre-marriage name may only be persuasive to the court. The discretion residing in the courts, coupled with a paucity of statutory criteria to structure the exercise of that discretion, have resulted in denials for widely divergent and often specious reasons. Married women have been denied the right to reassume their pre-marriage names because of concern over the confusion in record-keeping and legal relationships,[24]

tional Amendment?, 84 Harv. L. Rev. 1499 (1971); K. Davidson, R. Ginsberg & H. Kay, *supra* note 13, at 107-14. *Cf.* Rheinstein, *The Transformation of Marriage and the Law*, 68 Nw. U.L. Rev. 463 (1973).

21. A few states provide that the name change statute is the exclusive method for name change. *See, e.g.*, La. Rev. Stat. Ann. § 13:4751 (Supp. 1974). Courts have interpreted statutes without such exclusivity provisions as not affecting the common law right of adoption through usage. *See, e.g.*, Application of McGehee, 147 Cal. App. 2d 25, 304 P.2d 167 (1956); *In re* Useldinger, 35 Cal. App. 2d 723, 727, 96 P.2d 958, 961 (1939); Don v. Don, 142 Conn. 309, 114 A.2d 203 (1955); Petition of Buyarsky, 322 Mass. 335, 77 N.E.2d 216 (1948).

22. In states that deem a woman to have adopted her husband's surname by operation-of-law at marriage and interpret the name change statutes as abrogating the right of adoption through usage, a woman may need to resort to the name change statute to preserve or reassume a pre-marriage name. *See* note 21 *supra*; Letter from Robert Morgan, Attorney General of North Carolina, to Richard Robinson, Jr., Assistant to President of University of North Carolina, March 27, 1974, on file at *Columbia Law Review*; Op. Att'y Gen. Ga., No. 74-33 (March 15, 1974). Moreover, even in states that permit adoption by usage, a woman who has never used her husband's name may still feel the need to establish her pre-marriage surname after marriage in order to resist agency and business pressure to use her husband's surname.

23. Approximately 44 states provide for some judicial discretion in administering name change procedures, and only six states deny courts discretion in passing on name change petitions. *See* Appendix. While the language of the statute provides some guidance, it is difficult to determine the extent of discretion vested in the court until a statute is definitively construed. *See, e.g.*, Wis. Stat. Ann. § 296.36 (Supp. 1973) ("Any resident of this state . . . may upon petition . . . if no sufficient cause be shown to the contrary, have his name changed or established . . . ."), construed as conferring broad discretion in Petition of Kruzel, No. 404-587, (Circuit Ct., Milwaukee County, Wis., Feb. 19, 1973), *on appeal*, Kruzel v. Podell, No. 445 (Sup. Ct. Wis., 1974).

24. *See, e.g.*, Application of Halligan, 76 Misc. 2d 190, 350 N.Y.S.2d 63 (Sup. Ct., Onondago County, 1973); *In re* Hauptly, 294 N.E. 833 (Ind. App. 1973), *rev'd*, 312 N.E.2d 857 (Sup. Ct. Ind. 1974). *Halligan* is particularly noteworthy because the court's reasons for denying the name change included anticipated hardship to credit card companies, check cashers and computerized personal record keepers, despite the fact that the statute involved severely limited judicial discretion. The statute applied in *Halligan* indicates that if the petition is legitimate, the court is directed to change the name unless there is a "reasonable objection." N.Y. Civ. Rts. Law §§ 60-64 (Supp. 1973). In *Halligan* no one interposed a "reasonable objection," for the petition was uncontested. The lower

and a desire to mitigate any threat to familial harmony and stability[25] that may result from marriage partners with different names.

Where the common law rule is adoption of husband's name by operation of law and statutory name change procedures permit discretionary denials of name change, aggrieved women may be able to raise a viable equal protection challenge. The justifications given by the courts for denying a married woman the right to retain a name that she has always used or to reassume a name that she has consistently and exclusively used for a considerable time, while permitting a man's name to remain unaffected by marriage, are unlikely to survive either "compelling state purpose" or rational relationship scrutiny. The potential confusion in record keeping and legal relationships can be prevented more efficaciously without placing differential burdens on wives and husbands. Rather than requiring that wives maintain the same name as their husbands, courts can better serve this purpose by conditioning name change grants on notation of marriage in the relevant records and notification of all parties who might be affected by a name change. Furthermore, the courts' perception of a causal relationship between the possession of different surnames in a family and family instability is so spurious that this justification should not survive even the most minimal level of constitutional scrutiny.

Divorced women suffer even greater burdens than married women, for divorce statutes as construed may not permit name change through usage or by resort to statutory name change procedure.[26] While most states allow the court discretion[27]—involving the same potential for arbitrary denials as present in ordinary statutory name change procedures—to order resumption of pre-marriage surname as part of the divorce decree, some statutes contain disabling conditions[28] which may prevent resumption of pre-marriage name.[29]

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court in *Hauptly* was similarly concerned about the difficulties of processing family insurance policies, registering in a hotel and holding a clear title to real estate held in the entirety.

25. *See, e.g., In re* Natale, No. 3461117 (Circuit Court, St. Louis, Mo., August 21, 1973); Petition of Kruzel (Circuit Ct., Milwaukee County, Wis., Feb. 19, 1973), *on appeal*, Kruzel v. Podell, No. 445 (Sup. Ct. Wis., 1974).

26. Some states do not regard statutory divorce procedures for name change as exclusive, permitting divorced women who wish to reassume their pre-marriage name to resort to statutory name change procedures or common law change through usage. OP. ATT'Y GEN. PA., No. 62 (August 20, 1973); Rheinstein, *supra* note 20, at 465 (divorce laws with express rules concerning the names of divorced women are declaratory, not mandatory).

27. Twenty-seven states authorize judicial discretion over name change in their divorce statutes, while 11 states do not vest any discretion in the courts. *See* Appendix.

28. Six divorce statutes contain disabling conditions. *See, e.g.*, S.D. COMP. LAWS § 25-4-47 (1967) (no minor children); MICH. COMP. LAWS § 552.391 (1967) (same); WIS. STAT. ANN. § 247.20 (Supp. 1973) (no child in custody and no alimony); ARK. REV. STAT. ANN. § 34-1216 (1962) (no children); OKLA. STAT. ANN. tit. 12, § 1278 (1961) (husband at fault); W. VA. CODE ANN. § 48-2-23 (Supp. 1974). *See also* KY. REV. STAT. ANN. § 403.230 (Supp. 1972) (mandatory name change if no children, but discretionary if children).

29. Interpretation of the effect of disabling conditions varies. States that view their divorce procedures as the exclusive means for name change open to divorced women consider presence of a disabling condition dispositive. Some states that permit resort to

The most common disabling condition denies a divorced woman a name change if she has children by the marriage from which she seeks this divorce.

The divorce statutes, involving a sex classification because a divorced man's name remains unaffected by divorce as well as marriage while his former spouse must take his name upon marriage and must overcome special procedures to reassume her pre-marriage name upon divorce, are subject to equal protection attack. To the extent that the divorcing court may deny a divorced woman a name change for the same reasons as a court administering a name change statute, the same analysis applies to invalidate a divorce statute permitting such discretionary denials. Moreover, the disabling provision for a divorced woman with children fails to advance any "compelling state purpose" or bear a rational relationship to any legitimate state interest, for the objective of uniformity in name between parents and children is not always served by requiring the divorced woman to retain her former husband's name; where she has children by previous marriages or she remarries,[30] any uniformity is lost. No other justifications have been tendered for such disabling conditions, and it is not the court's role, even under the rational relationship test as presently applied by the Supreme Court, to manufacture conceivable justifications for statutory classifications which fail to advance their purported purposes.[31]

B. *Administrative Control Over Name*

Most states require notification of election boards, motor vehicle bureaus and other administrative agencies after a change of name.[32] These statutes frequently enumerate situations in which notification is necessary, and the enumerations always include marriage.[33] Married women who have retained their pre-marriage name may bring a court action to resist agency pressure to reregister in their husbands' name on the basis of their common law right of adoption by usage.[34] Although authority is divided, the general view is that the enumeration of marriage does not abrogate the common law rule of adoption through usage, but merely recognizes, in a permissive sense, the custom of

statutory name change procedures will nonetheless permit the court to deny a name change because of disabling conditions in the divorce statute; other states that view divorce procedures as nonexclusive maintain that the disability applies only to the resumption of the pre-marriage name as an immediate consequence of the divorce decree, not other name change procedures, *see* note 26 *supra*.

30. Over half of the divorced women ultimately remarry. M. RHEINSTEIN, MARRIAGE, STABILITY, DIVORCE AND THE LAW 282-83 (1972).

31. *See* Gunther, *supra* note 13, at 20-21.

32. Thirty-six states have provisions pertaining to notification of election boards and thirty-six states have provisions pertaining to motor vehicle bureaus. Notification is optional in some states. *See Appendix*.

33. *See* Appendix. Statutes providing for reregistration upon "marriage or otherwise," *e.g.*, R.I. GEN. LAWS ANN. § 31-10-32 (1968); ILL. STAT. ANN. ch. 46, § 4-16 (Smith-Hurd 1965), may be distinguishable from those providing for reregistration upon "marriage, divorce or court decree," *e.g.*, IOWA CODE ANN. § 48.6 (Supp. 1974); N.J. STAT. ANN. § 19:31-13 (1964). The former may indicate that the common law right to name change by usage is preserved, whereas the latter may indicate abrogation of that common law rule.

34. *See* notes 3-4 and accompanying text *supra*.

adopting the husband's surname.[35] Nonetheless, this is not the universal view; where a state's administrative statutes are based on the operation-of-law rule, only a constitutional attack is available.

Administrative statutes requiring married women to register in their husband's name as a condition to continued exercise of the privileges or continued receipt of the benefits regulated, while not similarly conditioning the privileges or benefits ordinarily flowing to married men, clearly employ sex classifications.

Where such classifications appear in a statute regulating the right to vote, strict judicial scrutiny for equal protection defects is appropriate.[36] While states can regulate voting, particularly where they act to ensure accurate voter lists by registration requirements, they may not impose discriminatory standards that restrict access to the ballot without establishing some "compelling state purpose" for such restrictions. Statutes classifying all married women within the group of persons who must register because of a name change are overinclusive,[37] in that they reach married women who have consistently used their pre-marriage name as well as those who have adopted their husband's name, and are not necessary to ensure accurate voter lists.[38]

Statutes conditioning the exercise of privileges or receipt of benefits by married women on reregistration in their husband's name should be similarly subject to intensive scrutiny. Equal protection may require that statutes employing overinclusive classifications working a hardship on women exclusively be supported by a showing of "compelling state purpose."[39] Due

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35. *See* note 33 *supra*; Hamilton, *supra* note 1, at 409-11. *See, e.g.*, election cases cited in note 7 *supra*. *See also* OP. ATT'Y GEN. MONT. (May 1, 1974); OP. ATT'Y GEN. VT., No. 179 (Feb. 4, 1974); OP. ATT'Y GEN. PA., No. 62 (Aug. 20, 1973); Letter from Francis Burch, Attorney General of Maryland, to Harry Hughes, Secretary, Department of Transportation, Maryland, May 7, 1974, on file at *Columbia Law Review*; Memorandum from Jon A. Lund, Attorney General of Maine, to Peter M. Damborg, Assistant Secretary of State, Maine, April 12, 1974, on file at *Columbia Law Review*; Letter from William J. Scott, Attorney General of Illinois, to Jack Hoogasian, State's Attorney, Illinois, Feb. 13, 1974, on file at *Columbia Law Review*; Letter from Andrew Miller, Attorney General of Virginia, to Joan Mahan, State Board of Elections, Virginia, June 6, 1973, on file at *Columbia Law Review*; Letter from Craig Hudgins, Counsel to Texas Legislature, to Sarah Weddington, Representative to Texas Legislature, Jan. 9, 1973, on file at *Columbia Law Review;* OP. ATT'Y GEN. TEXAS, No. H-432 (Oct. 25, 1974); Letter from Francis Burch, Attorney General of Maryland, to Willard A. Morris, State Administrator of Election Laws, Nov. 30, 1972, on file at *Columbia Law Review. But see* Forbush v. Wallace, 341 F. Supp. 217 (M. D. Ala. 1971), *aff'd mem.*, 405 U.S. 970 (1972); notes 41-49 and accompanying text *infra*.

36. *See notes* 10-12 and accompanying text *supra*. State regulation of candidates, as opposed to restrictions on voting, may only be subject to the rational relation test, unless the regulation affects the ability of the voters to cast their ballots effectively. *See, e.g.*, Bullock v. Carter, 405 U.S. 134 (1972); Lippitt v. Cipollone, 405 U.S. 1032 (1972). Thus, a state may have more control over a woman candidate's name than a woman voter's name, although it would be difficult, even under a "rational basis" test, to justify a requirement that a woman candidate run under a name other than the one by which she is generally known.

37. *Cf.* Carrington v. Rash, 380 U.S. 89 (1965) (striking down irrebuttable presumption that all military personnel are nonresidents for voting purposes).

38. *See* Custer v. Bonadies, 30 Conn. Supp. 387, 391, 318 A.2d 639, 643 (1974).

39. *See* note 10, and notes 12-15 and accompanying text *supra*.

process may also require that married women be accorded a hearing to show that they have not changed their names upon marriage before significant property interests, whether the right to a name of one's choice or a license to drive a car, may be denied.[40]

In *Forbush v. Wallace*,[41] however, the Supreme Court summarily affirmed a decision employing rational relationship, rather than "compelling state interest," analysis to uphold a state's requirement that a driver's license be issued in the husband's surname. Aside from the weak precedential force of a summary affirmance,[42] and the subsequent trend of Court decisions toward stricter review of gender classifications,[43] it is unlikely that the state's motor vehicle regulation would have survived even "rational basis" scrutiny[44] if the Court had permitted the case to be briefed and argued.

In *Forbush*, the state justified its classification scheme on the grounds of custom, uniformity and administrative convenience.[45] These justifications are either specious or lack a reasonable relationship to the means employed by the statute. The custom and uniformity arguments fail upon close examination. Many states rejecting the operation-of-law interpretation of the common law permit women to retain their pre-marriage names at marriage by consistent and exclusive use.[46] Not only are state requirements regarding the assumption of the husband's surname at marriage far from uniform but also the custom of adopting a husband's surname has been subject to challenge for decades.[47] Finally, as long as women are permitted to change their names through recourse to name change statutes, uniformity is impossible even within the state.

The state's administrative convenience argument is based on its legitimate interest in identifying its citizens and preventing fraud. It is by no means clear, however, how this interest is served by requiring the use of a name by which the woman is not known. In fact, requiring registration in the husband's surname when a woman exclusively uses another name burdens the state with unnecessary additional recording. Moreover, the Supreme Court has not been receptive to the administrative convenience justification, even where the discrimination imposes only a minor burden on the victim.[48] There are more effec-

40. *See* notes 16-18 and accompanying text *supra*.

41. 405 U.S. 970 (1972), *aff'g per curiam* 341 F. Supp. 217 (M.D. Ala. 1971).

42. *See* Edelman v. Jordan, 39 S. Ct. 662, 676-77 n.13 (1974); Serrano v. Priest, 5 Cal. 3d 584, 616, 487 P.2d 1214, 1264 (1971); Currie, *The Three Judge Panel in Constitutional Law Litigation*, 32 U. CHI. L. REV. 1, 74 (1965); R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 233 (4th ed. 1969). *But see* Mercado v. Rivera, Dkt. No. 73-2120 (2d Cir., August 15, 1974).

43. *See* note 13 and accompanying text *supra*.

44. Given the Court's recent transformation of the "rational basis" test from summary review of statutes accorded a presumption of constitutionality to more rigorous scrutiny of the relationship between statutory means and ends and of the reasonableness of the ends themselves, *see* notes 14-15 and accompanying text *supra*, it is particularly unlikely that *Forbush* would be decided the same way today.

45. 341 F. Supp. at 222.

46. *See* notes 3-4 and accompanying text *supra*; Appendix.

47. *See* MacDougall, *supra* note 1, at 5-7.

48. Although the Court in *Forbush* stressed administrative convenience as a sufficient

tive and less restrictive means of furthering the statutory purpose than a rule that requires registration in the husband's surname.[49] Of course, if a woman has in fact changed her name, by either adopting her husband's surname or reassuming her pre-marriage name, there is no reason why she should not be required to reregister. But just as statutes should allow women who have consistently and exclusively used a pre-marriage name to continue to use the name of their choice, they should not freeze a woman who had once adopted her husband's surname into that name and should not place a greater burden on women who wish to use two names than on men.

Unless state legislatures provide more persuasive justifications than those tendered in *Forbush*, reregistration schemes which presume women assume their husband's name upon marriage and compel registration in that name as a condition to receiving licenses or benefits are not likely to pass muster under current tests of constitutionality.

C. *Professional Name Statutes*

While use of an assumed name for business purposes has been permitted in most instances,[50] some professional name statutes prohibit practice of certain careers under a "false or assumed" name or in a name other than one's "own."[51] Married women who have retained their pre-marriage surnames for all purposes should be able to escape liability under these statutes by raising the common law and constitutional arguments set out above. But married women who wish to use their husband's surname for certain purposes and another

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justification for a sex classification imposing only a minor burden on the discriminated-against class, see 405 U.S. at 222, other decisions have rejected this rationale. Neither administrative convenience, *see* Reed v. Reed, 404 U.S. 71, 77 (1971); Frontiero v. Richardson, 411 U.S. 677 (1972); Dunn v. Blumstein, 405 U.S. 330 (1972), nor the ease with which the statutory restriction can be overcome, *see* Stanley v. Illinois, 405 U.S. 645 (1972), would seem sufficient to sustain an otherwise arbitrary legislative choice. Furthermore, it is difficult to see how administrative convenience and prevention of fraud is in fact achieved by causing a woman who is known by one name to register in another, especially when the reregistration itself involves additional recording.

49. Assuming reference to the husband's name is required to prevent fraud, this purpose can be satisfied by requiring notation of the fact of marriage and retention of pre-marriage surname. Stuart v. Board of Supervisors, 266 Md. 440, 295 A.2d 223 (1973); Custer v. Bonadies, 30 Conn. Supp. 387, 318 A.2d 639 (1974).

50. Some courts have recognized a common law right to conduct one's business or profession under a name of one's choice, in the absence of fraud or deceit. *See, e.g., In re* Kayaloff, 9 F. Supp. 176 (S.D.N.Y. 1934); People *ex rel.* Rago v. Lipsky, 327 Ill. App. 63, 63 N.E.2d 642 (1945); *In re* Hauptly, 294 N.E.2d 833 (Ind. App. 1973), *rev'd*, 312 N.E.2d 857 (Sup. Ct. Ind. 1974); People v. Dancy, 59 Cal. App. 2d 342, 350, 139 P.2d 118, 124 (1st Dep't 1943); Emery v. Kipp, 154 Cal. 83 (1908).

Some states require the filing of a certificate of assumed name before permitting use of more than one name. *See, e.g.*, N.Y. GEN. BUS. L. § 130 (McKinney, 1963); N.J. STAT. ANN. 56.1-2 (1964); Letter from Craig Hudgin, Counsel to Texas Legislature, to Sarah Weddington, Representative to Texas Legislature, Jan. 9, 1973, on file at *Columbia Law Review*.

51. These professional name statutes create an exception for certain businesses and professions to the comon law rule for non-fraudulent adoption of a business or professional name, requiring the use of a single name in certain careers. *See, e.g.*, ARIZ. REV. STAT. §§ 32-92, 32-1262, 32-1755 (1956); N.Y. EDUC. LAW §§ 6612, 7327, 7308 (McKinney, 1971); MASS. ANN. LAWS ch. 112, § 80 (1973); N.M. STAT. ANN. §§ 35:1-14, 67:4-16 (1968).

name for professional purposes are not consistent in their use of a surname, and, arguably, have assumed an "assumed" name. A specific prohibition in a professional name statute against such dual use would seem to be unchallengeable if the prohibition applies equally to women and men.[52]

CONCLUSION

Legal action by women seeking to retain or reassume their pre-marriage names may rest upon two areas of the law. Reading statutes that require reregistration upon name change against the background of the common law right to adopt a name by consistent use may lead to a rule that a married woman need reregister only if she affirmatively adopts her husband's surname. Rights arising under the equal protection and due process clauses of the fourteenth amendment ensure that name changes are granted to women under rules that apply equally to men and that correspond to the reality of the individual's situation.

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52. The use of more than one surname, unless in contexts where the option is also available to men, would not be permitted even under the equal rights amendment. The proposed amendment mandates equality of treatment, thereby precluding special privileges for women even when defended as a remedy for prior discrimination. S. REP. No. 92-689, 92d Cong., 2d Sess. 2 (1972); K. DAVIDSON, R. GINSBURG & H. KAY, *supra* note 13, at 108-10, 114-15.

Statutory Procedures for Name Change or Resumption

D Name change is subject to potentially unlimited judicial discretion.
LD Limited judicial discretion: name change may be refused only for fraud, deceit, or enumerated reasons, or burden of persuasion is on persons challenging name change.
ND No judicial discretion: change may be denied only for fraud, deceit, or unfairness to others.
E Statute is exclusive and abrogates common law right to change name by usage.
a Court may restore pre-marriage name.
b Court may restore pre-marriage name or former name.
c Court may restore pre-marriage name or name of former deceased husband.
d Court may grant wife any name she chooses to adopt.

Administrative Statutes Requiring Reregistration Upon Change of Name

C Statute requires notification upon change of name.
CM Statute requires notification upon change of name and specifically mentions change by marriage.

APPENDIX

PRE-MARRIAGE NAME CHANGE, RESUMPTION, AND REREGISTRATION STATUTES

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Alabama ALA. CODE	ND tit. 13, § 278 (1958)	D[1] tit. 34, § 39(1) (1958)				Law: Forbush v. Wallace 341 F. Supp. 217 (M.D. Ala. 1971, *aff'd mem.*, 415 U.S. 970 (1970).
Alaska ALAS. STAT.	D § 09.55.010 (1973)	D § 09.55.210 (1973)	CM § 15.07.090 (1971)	C § 28.10.550 (1970)	C § 28.15.140 (1970)	
Arizona ARIZ. REV. STAT.	D § 12-601 (1956)	ND[b] § 25-325 (Supp. 1973)	C (optional) § 16-112 (1956)	CM § 28-427 (1956)		
Arkansas ARK. REV. STAT. ANN.	D §§ 34-801— 34-803 (1962)	D[b2] § 34-1216 (1962)	CM Const. amend. 51 § 10(C)	CM §§ 75-327— 75-339(5) (1957)		Usage: OP. ATT'Y GEN. 74-55 (April 19, 1974).
California ANNOT. CAL. CODES	LD[3] CAL. CIV. PRO. § 1276-79 (1972)	D[b] CAL. CIV. CODE §§ 4362 (Supp. 1974), 4457 (1970)	CM CAL. ELECTION CODE § 14404 (1961)	[4] CAL. VEHICLE CODE § 12809 (Supp. 1974)	C CAL. VEHICLE CODE § 4150 (1971)	Usage: OP. ATT'Y GEN. (March 12, 1974).
Colorado COLO. REV. STAT. ANN.	D § 20-1-1 (1963)		CM (optional) § 49-419 (1963)	CM § 13-4-17 (1963)	CM § 13-4-17 (1963)	
Connecticut CONN. GEN. STAT. ANN.	D § 52-11 (1958)	D[b] Public Act. No. 73-373, § 14 (May 29, 1973)	CM § 9-33 (Supp. 1974)			Usage: Custer v. Bonadies, 30 Conn. Supp. 387, 318 A.2d 639 (1974).

* Table does not include statutes requiring married women to register in their husbands' surnames upon original registration.

1. Wife may be enjoined from use of husband's given name and initials.
2. Restoration permissible only if no children.
3. Substantial reason must exist for denial. *In re* McGehee, 147 Cal. 2d 25, 304 P.2d 167 (1957).
4. Use of a false or fictitious name is forbidden.

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Delaware DEL. CODE ANN.	LD tit. 10 §§ 5901-5905 (1953)	D[c] tit. 13 § 1536 (1953)	CM tit. 15, § 1750 (1953)			
District Columbia D.C. CODE ANN.	D §§ 16-2501—16-2503 (1973)	D[b] § 16-915 (1973)				
Florida FLA. STAT. ANN.	D §§ 62.031 (1969), 69.02 (1964)		CM §§ 97.091, 97.103 (Supp. 1972)	CM § 322.19 (1968)		
Georgia GA. CODE ANN.	D(E) §§ 79-501—79-504 (1973)	ND[b] §§ 30-116—30-121 (1969)		§ 92A-9912 (1972)[5]		Law: OP. ATT'Y GEN. 74-33 (March 15, 1974).
Hawaii HAWAII REV. STAT.	D(E)[6] §§ 574-1, 574-5 (1968)	D[b] § 574-5 (1968)	CM §§ 11-20—11-21 (1968)	CM § 236-131 (1968)		Law: HAWAII REV. STAT. § 574-1 (1968).
Idaho IDAHO CODE ANN.	D §§ 7-802—7-804 (1948)		CM §§ 34-421—34-423 (Supp. 1973)	CM § 49-323 (1967)		
Illinois ILL. STAT. ANN. (Smith-Hurd)	ND[7] Ch. 96, §§ 1-3 (1971)	D[b] Ch. 40, § 17 (1956)	CM Ch. 46, § 4-16, 6-54 (1965)	CM Ch. 95-1/2, §§ 6-114—6-116 (1971)	CM Ch. 95-1/2, § 3-416 (Supp. 1974)	Usage: Memorandum from Sec. of State (Jan. 24, 1974); OP. ATT'Y GEN. No. 5-695 (Feb. 13, 1973).
Indiana IND. ANN. STAT. (Burns)	ND[9] §§ 34-4-6-1—34-4-6-5 (1973)	ND[d] § 31-1-11.5-18 (Supp. 1974)	CM[10] § 3-1-7-28 (1972)	CM § 9-1-4-36 (1973)		Law: *In re* Hauptly, 312 N.E.2d 857 (Sup. Ct. Ind. 1974) (dicta).

5. Use of false or fictitious name is forbidden.
6. Woman assumes husband's name by operation of law, but may use statutory name change method to resume prior name. Letter from Russell Fukumoto, Attorney General of Hawaii, to R. Ariyoshi, Lieutenant Governor of Hawaii, June 6, 1973.
7. Name change shall be granted upon receipt of form; *see* Memoranda Re: Policy Regarding Name Changes, Sec. of State, Illinois, Jan. 24, 1974.
8. Name changes to be made as requested upon proof of identification in new name. Memorandum Re: Policy Regarding Name Changes, Sec. of State, Illinois, Jan. 24, 1974.
9. *In Re* Hauptly, 312 N.E. 2d 857 (Sup. Ct. Ind., 1974).
10. Professional women may vote or become candidates for office in their professional names.

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Iowa IOWA CODE ANN.	D[11] §§ 674.6, 674.12 (Supp. 1974)		CM §§ 48.6, 48.31 (Supp. 1974)		CM § 321.41 (1966)	
Kansas KAN. STAT. ANN.	D § 60-1402 (1964)	ND[b] § 60-1610 (Supp. 1973)	C § 25-2316 (1973)	CM § 8-248 (1964)		Usage: Gallop v. Shanahan, No. 120-456, (Shawnee County, Kan., Nov. 2, 1972) (dicta).
Kentucky KY. REV. STAT. ANN.	D (excludes married women) § 401.010 (1972)	ND or D[12] § 403.230 (Supp. 1972)	C § 128.080 (Supp. 1972)	CM § 186.540 (1971)		
Louisiana LA. REV. STAT. ANN. (West)	D(E) § 13:4751 (Supp. 1974)		CM §§ 18:234, 18:41 (1969)			[13]
Maine ME. REV. STAT. ANN.	D 19 § 781 (Supp. 1974)	D 19 § 752 (1965)	CM 21 §§ 637-638 (Supp. 1974)	CM 29 § 546 (1965)		Usage: OP. ATT'Y GEN. (April 12, 1974).
Maryland MD. ANN. CODE	D[14] art. 16, § 123 (1973)	D[b] art. 16, § 32 (Supp. 1973)	CM art. 33, §§ 3-8, 3-9, 3-18(C) (Supp. 1973)	CM art. 66-1/2, § 6-116 (1970)	CM art. 66-1/2, § 3-414 (1970)	Usage: OP. ATT'Y GEN. (Nov. 30, 1972); Stuart v. Board of Supervisors, 266 Md. 440, 295 A.2d 223 (1972).
Massachusetts MASS. ANN. LAWS	ND(E)[15] Ch. 210, § 12 (1969)	D Ch. 208, § 23 (Supp. 1973)	CM Ch. 51, § 2 (1971)	C Ch. 90, § 26A (Supp. 1973)	C Ch. 90, § 26A (Supp. 1973)	Usage: OP. ATT'Y GEN., No. 74/75-5 (Sept. 16, 1974).

11. If married, spouse must join in petition and children over 14 must consent. New name may become name of spouse and minor children.

12. Nondiscretionary restoration, but discretionary where there are minor children.

13. "Under the civil law, a woman does not lose her patronymic name through marriage; and her legal name never varies with a change in her marital status." Notes to Form No. 208c, LA. CODE CIV. PRO. ANN. (West, 1963); *cf.* Succession of Kneipp, 172 La. 411, 134 So. 376 (1931); *but cf.* Witty v. Jefferson Parish Dem. Exec. Comm., 245 La. 145, 157 So.2d 718 (1963).

14. Married woman may reassume pre-marriage name only by statutory name change. Francis Burch, Att'y Gen., Maryland, to Honorable Harry Hughes, Sec. Dept. of Trans., Maryland, May 7, 1974.

15. Only method by which a resident of state can change name with legal effect other than changes by marriage, divorce or adoption, but a person can use any name for honest purpose without going to courts. Petition of Merolevitz, 320 Mass. 448, 70 N.E.2d 249 (1946), *but see* Petition of Buyarsky, 322 Mass. 335, 77 N.E.2d 216 (1948); *In re* Rusconi, 341 Mass. 167, 167 N.E.2d 847 (1960) (change granted unless fraud).

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Michigan MICH. COMP. LAWS	D[16] § 711.1 (1968)	ND[d17] § 552.391 (1967)	[18]			
Minnesota MINN. STAT. ANN.	D § 259.10 (1971)	D § 518.27 (1969)	CM § 201.14 (1962)	CM § 171.11 (1960)		
Mississippi MISS. CODE ANN.	D § 93-17-1 (1972)					
Missouri MO. REV. STAT.	D § 527.270 (1969)	ND[b] § 452.100 (1969)				
Montana MONT. REV. CODES ANN.	D §§ 93-100-1, 93-100-9 (1964), *as amended* (Supp. 1974)			CM § 31-140 (1961)		Usage: OP. ATT'Y GEN. (May 1, 1974).
Nebraska NEB. REV. STAT.	D § 61-102 (1971)		C § 32-216 (1968)	CM § 60-415 (Supp. 1971)		
Nevada NEV. REV. STAT.	D §§ 41.270-41.290	D § 125.130 (1973)	CM[19] § 293.517 (1973)			Law: Married woman must vote and declare candidacy in husband's surname, ATT'Y GEN. OP. 311 (March 15, 1966).
New Hampshire N.H. REV. STAT. ANN.	D § 547.7 (1955)	D[b20] § 458.24 (1968)		C § 261:2 (1966)	C § 260:2 (1966)	

16. Change in husband's name changes name of wife.
17. Restoration permissible if no minor children.
18. Married women may vote and run for office in pre-marriage name. [1923-24] MICH. ATT'Y GEN. BIENNIAL REP. at 138. Married women may resume their pre-marriage name. [1935-36] MICH. ATT'Y GEN. BIENNIAL REP. at 254.
19. Women may be candidates in any name by which they are known in the community. NEV. REP. STAT. § 293.177(3) (1973).
20. Court may order name change regardless of whether requested.

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
New Jersey N.J. STAT. ANN.	D § 2A:52-1 (1951)	D[b21] § 2A:34-21 (1952)	CM § 19:31-13 (1964)			
New Mexico N.M. STAT. ANN.	LD § 22-5-1 (1953)		C (optional) §§ 3-4-5, 3-4-11 (1970)	CM § 64-13-53 (1972)	CM § 64-3-15 (Supp. 1973)	
New York (McKinney)	D or LD[22] N.Y. CIV. RIGHTS LAW §§ 60-64 (Supp. 1973)	ND[a] N.Y. DOM. REL. LAW § 240-a (Supp. 1973)	CM (optional) N.Y. ELECTION LAW, §§ 198, 412(3), 410(3) (1964)			
North Carolina N.C. GEN. STAT.	D(E)[23] §§ 101-2, 101-5 (1972)	D[c] § 50-12 (Supp. 1973)			C § 20-67 (1965)	Law: OP. ATT'Y GEN. (March 27, 1974).
North Dakota N.D. CENT. CODE	D §§ 32-28-01—32-28-02 (Supp. 1973)				CM § 39-06-20 (1972)	
Ohio OHIO REV. CODE ANN. (Baldwin)	D § 2717.01 (Supp. 1973)	ND[b] § 3105.16 (1971)	C § 3503.19 (Supp. 1973)			Usage: Krupa v. Green, 114 Ohio App. 497, 177 N.E.2d 616 (1969).
Oklahoma OKLA. STAT. ANN.	ND(E) tit. 12, §§ 1631-1640 (1961)	ND[a24] tit. 12, § 1278 (1961)		CM tit. 44, § 6-116 (1962)		

21. Court may enjoin use of husband's name.
22. Petition to be granted if "true and no reasonable objection to change of name exists." *But see* Application of Halligan 350 N.Y.S. 2d 63 (1973).
23. Married woman who has assumed husband's name must use statutory method to resume maiden name. Robert Morgan, Attorney General, North Carolina, to Richard Robertson Jr., Ass't. to Pres., Univ. of North Carolina, March 27, 1974.
24. Name change granted if husband is at fault.

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Oregon OREGON REV. STAT.	D(E) § 33.410 (1973)	D § 107.105 (1973)	CM §§ 247.290-247.440 (1973)	CM § 482.290 (1974)	CM § 481.107 (1974)	
Pennsylvania PA. STAT. ANN. (Purdon)	D tit. 54, § 2 (1964)	ND tit. 23, § 98 (1955)	CM tit. 25, § 623-4 (1963)	C tit. 75, §§ 612, 613 (1971)	C tit. 75, § 407 (1971)	Usage: OP. ATT'Y GEN., No. 62 (August 20, 1973).
Rhode Island R.I. GEN. LAWS ANN.	D § 8-9-9 (1969)	D § 15-5-17 (1969)	CM (optional) § 17-9-18 (1969)	CM § 31-10-32 (1968)	CM § 31-3-35 (1968)	
South Carolina S.C. CODE ANN.	D § 48-52 (1962)	D[b] § 20-117 (1962)		CM § 46-170 (1962)		Usage: OP. ATT'Y GEN. (June 6, 1974).
South Dakota S.D. COMPILED LAWS	D §§ 21-37-1-21-37-10 (1967), *as amended* (Supp. 1974)	D[25] § 25-4-47 (1967)	CM § 12-4-18 (Supp. 1974)			
Tennessee TENN. CODE ANN.	D §§ 23-801—23-805 (1955)		CM § 2-206(b) (Supp. 1973)	CM § 59-708 (1968)		
Texas REV. CIV. STAT. ANN. (Vernon)	D[26] FAMILY CODE art. 32.01, 32.22 (1973)	D FAMILY CODE art. 32.44 (1973)	CM ELECTION CODE art. 5.18(d) (Supp. 1973)	CM art. 6687b, § 20 (1969)		Usage: OP. ATT'Y GEN., No. H-432 (October 25, 1974).
Utah UTAH CODE ANN.	D § 42-1-1 (1970)				CM § 41-1-54	

25. Name change may be requested by either party if no minor children in custody.

26. Judge has to apply same standards to men and women. Letter from Craig Hudgins, Legis. Counsel, Texas State Legislature, to Honorable Sarah Weddington, State. Rep., Texas State Legislature, Jan. 9, 1973. Women who retained maiden name may vote in that name. *Id.*

APPENDIX (CONTINUED)

State	*Statutory Procedures for Name Change or Resumption*		*Administrative Statutes Requiring Reregistration upon Change of Name**			*Name Change upon Marriage by Usage (Usage) or Operation of Law (Law)*
	General	*Divorce*	*Election*	*Driver's License*	*Auto Title or Registration*	
Vermont VT. STAT. ANN.	ND[27] tit. 15, §§ 811, 814, 816 (1974)	LD[b] tit. 15, § 558 (1974)		C tit. 23, § 205 (Supp. 1974)	C tit. 23, § 205 (Supp. 1974)	Usage: OP. ATT'Y GEN., No. 179 (Feb. 4, 1974).
Virginia VA. CODE ANN.	D(E)[28] § 8-577.1 (Supp. 1974)	D § 20-121 (1960)		CM § 24.1-51 (1973)		Usage: OP. ATT'Y GEN. (June 6, 1973).
Washington WASH. REV. CODE	D §§ 4.24.130, 2.24.040(6) (1956)	ND[29] § 26.09.150 (Supp. 1973)	CM § 29.10.050 (1965)	CM § 46.20.205 (1967)		
West Virginia W. VA. CODE ANN.	D §§ 48-5-1, 48-5-3 (Supp. 1974)	D[30] § 48-2-23 (Supp. 1974)	C § 3-2-28 (1971)	CM 17B-2-13 (1966)	CM 17A-3-18 (1966)	
Wisconsin WIS. STAT. ANN.	LD[31] § 296.36 (Supp. 1973)	D[32] § 247.20 (Supp. 1973)	CM § 6.40(1)(c) (Supp. 1974)	CM § 343.22 (1971), *as amended* (Supp. 1974)		
Wyoming WYO. STAT. ANN.	D § 1-739 (1957)					

27. Consent of spouse required. Change in husband's name changes name of wife also.
28. Woman must use statutory method if she adopted husband's name and wishes to reassume pre-marriage name.
29. Court may order wife to assume name other than that of husband.
30. Court may restore woman's maiden name if there are no children. If there are children by former husband, court may restore women to maiden name or name of prior husband.
31. Name change or establishment permitted "if no sufficient cause be shown to the contrary." *But see* Petition of Kruzel (Circuit Ct., Milwaukee County, Wis., Feb. 19, 1973), *on appeal*, Kruzel, No. 445 (Sup. Ct. Wis., 1974).
32. If no child in custody and no provision for alimony.