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Women's Name Rights

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WOMEN'S NAME RIGHTS

In the United States the great majority of women adopt the surnames of their husbands upon marriage. This custom became firmly established in a time when a woman, upon marriage, merged her legal identity with that of her husband.[1] However, the common law did not require that a woman use her husband's surname. But in recent years some women have refused to follow this customary pattern, maintaining among other reasons that their surnames symbolized their individual identity and their ancestral heritage.[2]

The Wisconsin Supreme Court, in *In re Petition of Kruzel*,[3] ruled that no law requires a married woman to change her name when she marries. The Wisconsin court thus became the second state supreme court to explicitly hold that, under the common law, a woman's name does not automatically change to that of her husband's upon marriage.[4] Rather, the court held that a woman assumes her husband's name when she "habitually" or "customarily" uses it. According to the court's decision, a woman need not exclusively use her "antenuptial"[5] name to have it considered a "legal"[6] name. This comment will analyze the court's reasoning in *Kruzel*, discuss its implications for Wisconsin women and men and examine the general impact of this decision on women's name changes. To place

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1. W. BLACKSTONE, COMMENTARIES 154 (3rd ed. 1890) [hereinafter cited as BLACKSTONE].

2. The reasons women give for this decision are varied. *See*, BOOKLET FOR WOMEN WHO WISH TO DETERMINE THEIR OWN NAMES AFTER MARRIAGE (1974) and 1975 Supplement, compiled by the Center for a Woman's Own Name.

3. 67 Wis. 2d 138, 226 N.W.2d 458 (1975). Four groups entered as amicus, filing two joint briefs: The American Civil Liberties Union, National Organization for Women Legal Defense and Education Fund, University of Wisconsin Women's Law Student Association and the Olympia Brown League.

4. The first was Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A.2d 223 (1972).

5. The majority in *Kruzel* used the term "antenuptial" surname which is any name used at the time of marriage, whether or not it is the "birth" or "maiden" name.

6. The majority does not speak in terms of "legal" v. "fictitious" or "illegal" names. For a discussion of the evolving concept of a person's "legal" name, *see* MacDougall, *Women's Names in Wisconsin; In Re Petition of Kruzel*, 48 WIS. BAR BULL. 4, 30 (August, 1975), [hereinafter cited as WIS. BAR BULL.]; MacDougall, *The Right of Women to Determine Their Own Names Irrespective of Marital Status*, 1 FAMILY L. REP. 4005 (Dec. 10, 1974) [hereinafter cited as FAMILY L. REP.].

this decision in perspective, the common law origins of name change requirements will be explored and a survey of relevant case law in other jurisdictions will be presented. In addition, the constitutional implications of administrative regulations and judicial decisions upholding a common name requirement and thus requiring a woman to assume or to continue to use her husband's surname will be considered.

IN RE PETITION OF KRUZEL

Kathleen Harney, an art teacher in the Milwaukee public school system, continued to use her birth name after her marriage. At no time had she used her husband's surname. The school board informed her that to continue teaching and for group insurance purposes, she either had to use her husband's surname or "legally" change her name to Harney. Ms. Harney petitioned the circuit court for a statutory name change.[7] Several other married Wisconsin women who wanted to resume their birth names had been granted statutory name changes.[8] Others have had the courts recognize their right to continue using their antenuptial surnames by "establishing" their names statutorily.[9] The trial judge denied Ms. Harney's petition, stating that it should be agreed before marriage that all members of the family should bear the same surname. If they cannot agree on a common surname, "it would be better for them, any children they may have, and society in general that they do not enter into the marriage relationship."[10] Relying on *American Jurisprudence*[11] the trial court concluded that upon marriage the wife's surname is changed to that of her husband. Authorities cited in *American Jurisprudence* erroneously hold that under the common law a woman is required to adopt her husband's surname.

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7. WIS. STAT. § 296.36 (1973).

8. *See, e.g.*, In the Matter of a Change of Name for Patricia J. Bach, No. 392481 (Milwaukee County Cir. Ct., Milwaukee, Wis., Sept. 20, 1971); *In re* Smuckler, No. 134057 (Dane County Cir. Ct., Madison, Wis., Sept. 29, 1971); Susan Beck Walter Petition for Change of Name to Susan Mary Beck, No. 394832 (Milwaukee County Cir. Ct., Milwaukee, Wis., May 9, 1972). *See also* cases cited in Brief for Appellants at 17-18, *In re* Petition of Kruzel, 67 Wis. 2d 138, 226 N.W.2d 458 (1975) [hereinafter cited as Appellant's Brief].

9. In the Matter of the Establishment of the Name of Priscilla Ruth MacDougall, No. 135463 (Dane County Cir. Ct., Madison, Wis., petition granted May 1, 1972).

10. 67 Wis. 2d at 142, 226 N.W.2d at 460.

11. 57 AM. JUR. 2d, *Name*, § 9 (1971) [hereinafter cited as AM. JUR. *Name*].

In reversing the circuit court decision, the Wisconsin Supreme Court rejected the respondent's argument that the custom of taking the husband's surname at marriage has developed into a rule of common law. "While it is true that some customs of society have developed into rules of law, there is no evidence that in this jurisdiction the custom was ever accorded that effect."[12] The majority found that although case law was silent on the issue, the state attorney general had repeatedly held that a married woman is not obligated by law to assume her husband's surname.[13] In one situation a woman nominated for public office and subsequently elected was married between the nomination and general election. The attorney general, when asked what name she must use when acting in her official capacity, determined it was immaterial which name the woman adopted for official use. "While a married woman generally takes and uses her husband's surname, there is nothing in the laws of this state that affirmatively requires it."[14] In another opinion he held that Wisconsin Statutes do not abrogate the common law rule.

> [W]here it is not done for a fraudulent purpose, an individual may lawfully change his name at will without proceedings of any sort, merely by adopting another name, and for all purposes the name thus assumed will constitute his legal name.[15]

It is important to note that in English law, upon which the majority decision is grounded, "legal" names are established by usage—"the surname of any person, male or female, is the name by which he or she is generally known provided that the name was not assumed for any fraudulent purpose."[16]

Although no Wisconsin case has dealt specifically with a married woman's statutory name change, the supreme court in *Lane v. Duchac*[17] refused to invalidate a mortgage on the

12. 67 Wis. 2d at 143, 226 N.W.2d at 461.

13. *See* Appellant's Brief, at 14, n. 41, *supra* note 8, for attorney general memos and informational bulletins in force at the time of the *Kruzel* decision regulating state administrative agencies in accord with the majority opinion. *See also* WIS. BAR BULL., *supra* note 6, at 34, n. 9, for a current update of state licensing statutes and state statutes referring to names and name changes.

14. 13 OP. ATT'Y GEN. WIS. 632, 633 (1924).

15. 20 OP. ATT'Y GEN. WIS. 627, 630 (1931).

16. Stone, *The Status of Women in Great Britain*, 20 AMER. J. COMP. 592, 606 (1972) [hereinafter cited as Stone].

17. 73 Wis. 646, 41 N.W. 962 (1889).

grounds that it was executed by a married woman in her birth name.

> True, since her marriage she is entitled to the name of her husband . . . but we are aware of no law that will invalidate obligations and conveyances executed by and to her in her baptismal name, if she chose to give or take them in that form. Hence, were she the owner of the note and mortgage in suit, it would be no defense to her action upon them that they were executed to her in her baptismal name.[18]

This case and the attorney general opinions demonstrate, the court said, that the customary adoption and use of a husband's name by his wife has not been interpreted as a rule of common law in Wisconsin.

The majority also carefully examined state divorce laws and statutes relating to persons licensed as professionals and concluded that they do not require a mandatory change of name upon marriage. Specificially, the court cited Wisconsin Statutes section 247.20[19] as applicable only if a married woman adopted her husband's name. It did not indicate that she was required to do so. This section was amended in the fall of 1975 after *Kruzel* was decided.[20] The majority concluded that neither Wisconsin statutes nor the common law require a change of name upon marriage or divorce. "A change of name results from marriage only if, in accordance with common law principles, the surname of a married woman's husband is habitually used by her."[21] The court noted that since Ms. Harney was not compelled to change her name, her petition for a statutory name change was merely a request for judicial recognition that she could continue to use her antenuptial surname after marriage.

The majority did not address the issue of a married woman who wanted to resume her antenuptial name after she had used

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18. *Id.* at 654, 41 N.W. at 965.

19. WIS. STAT. § 247.20 (1973):

The court, upon granting a divorce in which alimony jurisdiction is terminated, may allow the wife to resume her maiden name or the name of a former deceased husband, or the name of a husband of a former marriage of which there are children in her custody, unless there are children of the current marriage as to whom the parental rights of the wife have not been terminated.

20. Wis. Laws 1975, ch. 94 § 78 (Oct. 27, 1975) amending WIS. STAT. § 247.20: "The court, upon granting a divorce shall allow either spouse, upon request, to resume a former legal surname, if any."

21. 67 Wis. 2d at 150, 226 N.W.2d at 464.

her husband's name for a time, but in dicta the court indicated that fraud was the only limiting factor. Applying the common law rule espoused by the court, a married woman who wants to resume use of her antenuptial name should have few problems. Under the common law a person can, in the absence of fraud, acquire a new name by reputation and general usage.[22] Thus, a married woman could exercise her common law right to use her antenuptial name and change records and documents accordingly.[23] She could also petition the court for a statutory name change. Under the statute any state resident, adult or minor, may petition for a change of name "if no sufficient cause is shown to the contrary."[24] The court, in dicta, stated that the discretion granted a trial judge under the statute is "extremely narrow"[25] and a refusal to grant a change of name must be based on the facts and reasonable proof. "Under the common law standard, a showing of fraud or misrepresentation akin to fraud is necessary to deny a change of name."[26] Therefore, in the absence of fraud, a married woman using her husband's name who decided to resume her antenuptial name or any other name could do so by usage or alternatively by applying for a statutory name change.

It is significant that the court failed to cite *Forbush v. Wallace*,[27] a 1972 case in which a three-judge federal district court upheld Alabama's regulation based on a conceded view of the common law that required a married woman to use her husband's surname when applying for a driver's license. Citing administrative convenience, the federal court pointed out that Alabama had a "simple and inexpensive" name change procedure available to any person, including married women, thus making plaintiff's injury, if any, "de minimus."[28] The parties conceded that under the common law, marriage required a change of name. The United States Supreme Court affirmed in

22. Petition of Snook, 2 Hilton Rep. 566 (N.Y. 1859); DuBoulay v. DuBoulay, L.R. 2, P.C. 430 (1869); Smith v. United States Casualty Co., 197 N.Y. 420, 90 N.E. 947 (1910).

23. *See, e.g.*, Petition of Hauptly, ___ Ind. ___, 312 N.E.2d 857 (1974).

24. WIS. STAT. § 296.36 (1973).

25. 67 Wis. 2d at 153, 226 N.W.2d at 465.

26. *Id.* at 154, 226 N.W.2d at 466.

27. 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd mem.*, 405 U.S. 970 (1972).

28. *Id.* at 222.

a per curiam opinion, without having briefs submitted or hearing arguments.[29]

Justice Robert Hansen's dissent criticized the "habitual user"[30] test which in effect, he said, ends the right of a married woman to use either her married name or her maiden name, or both. For the free and continued "either-or" alternatives of *Lane*, there has been substituted a one-or-the-other election apparently irrevocable once exercised.[31] Because a woman can no longer use her husband's name if she is a habitual user of her birth name, according to the dissent, there is no family named used by husband, wife and children. "That there be such single name available to spouses, and identifying their children is inherent in the concept of marriage as a partnership."[32] In Wisconsin there is no statutory requirement that a spouse or a child adopt a particular family name.[33] But relying in part on Wisconsin Statutes section 247.20, the dissent stated that the legislature supported this view of a common family name, and any changes in this policy should be left to legislative enactment. In the fall of 1975, after *Kruzel* was decided, the legislature did amend this statute.[34]

Contrary to the dissent's assertion, the majority does not equate habitual or customary use of a name with exclusive use.[35] The majority says a woman adopts a new name when she "habitually" or "customarily" uses it. No exclusive use requirement is mandated by the court. Part of the difference between the majority view and the dissent stems from a misunderstanding about the common law rule on women's surnames

29. Bysiewicz and MacDonnell, *Married Women's Surnames*, 5 CONN. L. REV. 598, 613 (1973).

30. 67 Wis. 2d at 157, 226 N.W.2d at 467.

31. *Id.*

32. *Id.* at 159, 226 N.W.2d at 468.

33. The Wisconsin Attorney General has held that a child takes the surname of his parent by custom. Therefore, a change of name of the father does not automatically change the surname of the child. 21 OP. ATT'Y GEN. 528 (1932). Under Wisconsin Statutes § 296.36 (1973), both parents have the right to statutorily change the name of their legitimate children. A married couple has a mutual right to name the child at birth. 62 OP. ATT'Y GEN. 501 (1974). *See* Carlson, *Surnames of Married Women and Legitimate Children*, 17 N.Y. L. FORUM 552 (1971) for a general discussion of children's names.

34. Wis. Laws 1975, ch. 94 § 78 (Oct. 27, 1975) amending WIS. STAT. § 247.20. The state legislature eliminated gender-based discriminatory classifications in various statutes including § 247.20.

35. *See*, MacDougall, *Kruzel: A Landmark Names Case*, 1 WOMEN L. REP. 1.207 (May 1, 1975) [hereinafter cited as WOMEN L. REP.]; WIS. BAR BULL., *supra* note 6.

and surnames in general. To remedy this apparent confusion it is necessary to examine early English history and the common law.

ENGLISH COMMON LAW

Under the common law, the surname by which a person was known was considered to be a person's "legal" name.[36] But surnames are virtually unknown in England before the ninth century and did not come into general use for at least another one hundred years.[37] Hereditary surnames became the rule rather than the exception in the latter part of the thirteenth century.[38] A person's Christian or given name was considered more important than a surname because it was given at baptism. The Christian name could be changed on confirmation. Otherwise, no change was possible.[39] "And this doth agree with an ancient book, where it is holden that a man may have divers names at divers times but not divers Christian names."[40] Surnames were frequently adopted by a person or given to him or her because of some characteristic, occupation, or place of birth or residence. People often had several surnames during a lifetime.[41]

The relative unimportance of a person's surname was demonstrated in the common law rule that, in the absence of fraud, a person could change his or her surname at will without legal proceedings by adopting a new name and becoming generally known by that name. "Subject to certain restrictions imposed in the case of aliens, the law prescribed no rules limiting a man's liberty to change his name."[42] In some cases, especially in the upper classes, men took the surnames of their wives, or the wives kept their own surnames.[43] Not until the passage of an act of Henry VII establishing the parish registry system was the practice of having all family members adopt the same surname institutionalized. Under the act, all births, deaths and

36. Stone, *supra* note 16.

37. C. EWEN, A HISTORY OF SURNAMES OF THE BRITISH ISLES 389 (1931).

38. E. SMITH, THE STORY OF OUR NAMES 28 (1950) [hereinafter cited as SMITH].

39. 23 HALSBURY, LAWS OF ENGLAND 555 (2nd ed. 1936) [hereinafter cited as 23 HALSBURY].

40. COKE, A COMMENTARY UPON LITTLETON 3a (1883).

41. Arnold, *Personal Names*, 15 YALE L.J. 227 (1905); P. REANY, THE ORIGINS OF ENGLISH SURNAMES 83 (1967).

42. 23 HALSBURY, *supra* note 39.

43. L.G. PINE, THE STORY OF SURNAMES 23 (1966).

marriages were to be recorded and the father's name was generally used for recording purposes.[44]

Upon marriage the identity of the wife was merged with that of her husband.[45] This unity of person undoubtedly encouraged the custom of a woman's assuming her husband's surname after marriage.

> By marriage the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage or at least is incorporated and consolidated into that of her husband.[46]

The basis of a married woman's loss of legal rights was the feudal doctrine of coverture.[47] Coverture has been characterized as "the old common law fiction that the husband and wife are one . . . [and] the one is the husband."[48] Under this doctrine, a woman lost her separate legal existence. She was unable to make contracts or wills, convey property, or sue or be sued without joining her husband. All her personal property and possessions became the personal property of her husband.[49] But single women, in the area of contracts and property, enjoyed a legal status almost equal to that of single males.[50]

Although most married women took their husband's surname upon marriage, they were not legally required to do so under the common law.

> When a woman on her marriage assumes, as she usually does in England, the surname of her husband in substitution for her father's name, it may be said that she acquires a new name by repute. The change of name is in fact, rather than in law, a consequence of the marriage.[51]

A woman could retain her own name or the name of her first husband after she remarried.[52] For example, the wife of Sir Edward Coke, Lord Chief Justice of England, did not assume

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44. SMITH, *supra* note 38.
45. BLACKSTONE, *supra* note 1.
46. *Id.*
47. *Id.*
48. United States v. Yazell, 382 U.S. 341, 361 (1966) (Black, J. dissenting).
49. H. CLARK, THE LAW OF DOMESTIC RELATIONS 220 (1968) [hereinafter cited as CLARK].
50. *Id.* at 219.
51. 19 HALSBURY, LAWS OF ENGLAND 829 (3rd ed. 1957).
52. Cowley v. Cowley, A.C. 450 (1901).

her husband's surname.[53]

Under the civil law, a woman does not lose her antenuptial name through marriage. Her legal name does not vary with a change in her marital status. A wife may be known by her husband's name socially, but under the civil law she does not acquire his name as her "legal" name.[54]

During the nineteenth century the Married Women's Property Acts were enacted in most states, including Wisconsin, and in England.[55] These statutes, designed to reduce the common law disabilities of married women, provided in part that women be allowed to control their own property after marriage, make contracts and take part in business activities. But full legal status was not conferred upon women by these statutes.[56] For example, not until 1920 with the passage of the nineteenth amendment to the United States Constitution were women granted universal suffrage in the United States. Even with the passage of these statutes and their recognition of the separate legal existence of a husband and wife, women continued to adopt their husband's surnames. Many courts still viewed the husband as the dominant person in the marriage.[57] The Montana court held that "the common law rule that a wife owes a duty to her husband to attend to her household duties and to work for the advancement of her husband's interests was not changed by the Married Women's Acts."[58]

Concomitant with the passage of these acts, feminists in the United States began to make increasing demands for an equal role for women in society. The first women's rights convention, held in 1848 in Seneca Falls, New York, adopted a declaration of sentiments modeled after the Declaration of Independence and passed a resolution demanding the vote for women.[59] But only a few feminists showed concern for retaining their birth names after marriage. Most notorious was Lucy Stone.[60] Upon

53. M. TURNER-SAMUELS, THE LAW OF MARRIED WOMEN 345 (1957).

54. M. PLAINOL, TREATISE ON THE CIVIL LAW, No. 390, 258 (12th ed. 1959); Succession of Kneipp, 172 La. 441, 134 So. 376 (1931); Boothe v. Papale, Civ. Action No. 74-1939 (E.D. La. 1974).

55. H. CLARK, CASES AND PROBLEMS ON DOMESTIC RELATIONS 322 (1965).

56. CLARK, *supra* note 49, at 222.

57. Barnett v. Barnett, 262 Ala. 655, 80 So. 2d 626 (1955).

58. *In re* Marsh's Estate, 125 Mont. 239, ____, 234 P.2d 459, 462 (1951).

59. R. PAULSON, WOMEN'S SUFFRAGE AND PROHIBITION: A COMPARATIVE STUDY OF EQUALITY AND SOCIAL CONTROL 32 (1973).

60. A "Lucy Stoner" is a married woman who uses her maiden name as a surname,

her marriage to Henry Blackwell in 1855, she continued to use her own surname after checking with several attorneys about the legality of this action. The future United States Chief Justice Salmon P. Chase assured her that the common law allowed this.[61] Nevertheless, she was denied the right to vote in an 1879 Massachusetts school board election because she refused to register under her husband's name.[62] A Racine, Wisconsin woman, the Reverend Olympia Brown, who was the first woman in America to be ordained to the ministry of a regularly constituted ecclesiastical body, retained her own name after her marriage to John Henry Willis in 1873.[63] Another Wisconsin woman, Fola La Follette, daughter of well-known Wisconsin Senator Robert La Follette, kept her own name when she married George Middleton.[64] Some women used their birth names for professional purposes. Susan Brandeis Gilbert, a lawyer and daughter of the late Associate Justice of the Supreme Court, Louis D. Brandeis, used her birth name in her practice of law.[65]

Thus under the common law a married woman is not compelled to adopt her husband's surname. No state statutes today specifically require that a woman assume her husband's surname,[66] and an increasing number of women in recent years have chosen to retain their birth names after marriage. But many have encountered legal problems in doing so. Although some confusion and misunderstanding of the common law was apparent in earlier American case law, since *Stuart* and *Kruzel* the cases have clearly established the common law right of married women to retain their own names for all purposes.

WEBSTER'S THIRD INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE (1961). For a discussion of the early feminist movement, *see* MacDougall, *Married Women's Common Law Right to Their Own Surnames*, 1 WOMEN'S RTS. L. REP. 2 (Fall/Winter 1972/73). [hereinafter cited as MacDougall, WOMEN'S RTS. L. REP.].

61. A. S. BLACKWELL, LUCY STONE: PIONEER OF WOMEN'S RIGHTS 171 (1930).

62. E. HAYS, MORNING STAR 256 (1961).

63. R. KOHLER, THE STORY OF WISCONSIN WOMEN 51 (1948).

64. *Id.* at 80.

65. N.Y. Times, Oct. 9, 1975 at 44, col. 8.

66. Hawaii was the last state to have a statutory provision requiring a woman to assume her husband's surname after marriage. This statute was declared unconstitutional by a state circuit court under the equal rights provision of the state constitution. Cragum v. Hawaii and Kashimoto, Civ. No. 43175 (1st Cir. Ct. of Hawaii, Jan. 27, 1975), *cited in* 1 WOMEN L. REP. 1.162 (1975). Effective January 1, 1976, a Hawaii statute provides for name selection at marriage by men and women, HAWAII REV. STAT., ch. 574.1 (1975 Supp.).

AMERICAN CASE LAW

Recent American cases concerned specifically with the issue of a married woman's "legal" name fall basically into two categories: (1) where a woman retained her antenuptial surname after marriage but was required by an administrative ruling or judicial interpretation thereof to use her husband's surname, and (2) where a woman used her husband's surname but wished to resume her birth name or some other name and her petition for a statutory name change was denied. Included in this first category are voter registration rules or motor vehicle licensing regulations that have been interpreted to require married women to use their husbands' surnames. *Kruzel* spans both categories. Although Ms. Harney had never used her husband's surname, she was required by her employer to either use his name for certain administrative purposes or obtain a statutory name change. When she petitioned for a change of name, her request was denied.

A separate but related category of cases deal directly with notice requirements and only peripherally with the woman's name issue. In these cases the courts have generally held that a married woman using her husband's name failed to receive adequate notice of judicial proceedings against her because notice of publication or personal service was made in her birth name.[67] The courts did not impose a name on the woman but merely recognized the name by which she was generally known as her "lawful" name.

Stuart v. Board of Supervisors of Elections for Howard County[68] falls within the first category. The Maryland Court of Appeals, when faced with a challenge to a regulation requiring a woman to register to vote in her husband's name, became the first state supreme court to explicitly rule that under the common law a woman is not compelled to take her husband's name. Mary Stuart had consistently used her birth name after her marriage, but the board of supervisors of elections cancelled her voter registration when she refused to complete a required change of name form. The trial court, citing the ne-

67. *See, e.g.*, Morris v. Tracy, 58 Kan. 137, 48 P. 571 (1897); Claxton v. Simons, 114 Ohio App. ___, 177 N.E.2d 511 (1961).

68. 266 Md. 440, 295 A.2d 223 (1972). *See* Comment, *The Right of a Married Woman to Use Her Birth-Given Surname for Voter Registration*, 32 MD. L. REV. 409 (1973) for a discussion and analysis of the case.

cessity of accurate recordkeeping, ruled that she had to register to vote under her husband's surname, her "legal" name. The Maryland Court of Appeals reversed, ruling that a married woman's surname does not automatically change to that of her husband where the woman shows a clear intent to exclusively, consistently and nonfraudulently use her birth name after marriage. Although most women customarily adopt their husband's surnames, "the mere fact of marriage does not, as a matter of law, operate to establish the custom and tradition of the majority as a rule of law binding upon all."[69] The court distinguished the *Forbush* case in a footnote, stating as follows:

> The Supreme Court affirmance was without opinion and since it was based on Alabama common law differing from that of Maryland, it is not constitutional authority binding upon us in applying the common law rule in force in Maryland.[70]

The Tennessee Supreme Court encountered a comparable voting registration problem in *Dunn v. Palermo*.[71] Rosary Palermo, a lawyer, had consistently used her own name after marriage, but the voting registrar said state law required her to reregister in her husband's name. When she refused, her name was stricken from the registration lists. The state supreme court held that the assumption by a woman of her husband's surname is a matter of custom and not law.

> So long as a person's name remains constant and consistent, and unless and until changed in the prescribed manner, and absent any fraudulent or legally impermissible intent, the State has no legitimate concern.[72]

The court denied that permitting a married woman to keep her own name would result in administrative chaos. Rather, the court said, such a ruling could eliminate substantial administrative problems which occur incident to a change of name, especially in light of the increasing number of divorces and remarriages.

A similar administrative requirement confronted the federal district court in *Walker v. Jackson*.[73] Although the state

69. 266 Md. at ___, 295 A.2d at 227.
70. *Id.* at ___, 295 A.2d at 226 n. 2.
71. ___ Tenn. ___, 522 S.W.2d 679 (1975).
72. *Id.* at ___, 522 S.W.2d at 689.
73. 391 F. Supp. 1395 (E.D. Ark. 1975).

attorney general had issued an opinion stating that married women could register to vote under their birth name's under Arkansas law,[74] one county clerk-registrar required a married woman to register under her husband's surname and a divorced woman to register under her former husband's surname. The clerk-registrar said he was not required to follow the attorney general's opinion. He also required female voter registrants to prefix their name with "Miss" or "Mrs." Four women challenged the requirements on common law and equal protection grounds. The federal district court ruled that requiring a woman to use her husband's name for voting purposes was invalid and requiring the use of the prefixes "Miss" and "Mrs." was a violation of the equal protection clause in the absence of a similar requirement for males, or any interest in the state in imposing this requirement.

An earlier American case involving a woman who had never used her husband's surname is *State ex rel. Krupa v. Green*,[75] considered a primary authority on the common law right of name change. A well-known lawyer retained her own name after marriage.[76] When she ran for municipal court judge, a challenge was made to her use of her birth name on the nomination petition. Based on its analysis of the common law, the appeals court ruled that the petition was valid.

> It is only *by custom*, in English speaking countries, that a woman, upon marriage, adopts the surname of her husband in place of the surname of her father. The state of Ohio follows this custom but there exists no law compelling it.[77]

Most women follow this custom of adopting their husband's name, but some women, after initially following the custom, want to resume their birth names and petition for statutory name changes. Although no states require a woman to adopt her husband's surname,[78] some lower courts have held that a statutory name change is foreclosed to married women. Cases

74. 74 OP. ATT'Y GEN. ARK. 123 (1974).

75. 114 Ohio App. 497, 177 N.E.2d 616 (1961).

76. A prenuptial written contract stated that the woman, Blanche Krupansky, a well-known lawyer who was listed in *Who's Who of American Women*, would retain her own surname after marriage. A written agreement is not a requirement for name retention as the court clearly indicated in *Stuart*, where an antenuptial agreement was also involved.

77. 114 Ohio App. at 501, 177 N.E.2d at 619.

78. 1 WOMEN L. REP. 1.162 (1975).

in this second category were presented to numerous courts including the supreme courts in Indiana and Maine in recent years, and both courts held that a married woman could request and receive a change of name to her birth name under the state's name change law.

The Indiana Supreme Court, in *Petition of Hauptly*,[79] said in dicta that although the common law assumes that a married woman adopts her husband's surname, the woman could change her name with or without court proceedings. The Supreme Judicial Court of Maine, in *In re Reben*,[80] ruled that failure to grant a married woman's requested change of name back to her birth name was an abuse of judicial discretion. The trial judge had denied the petition citing lack of a sufficient purpose for the requested change. The supreme juducial court did not decide the precise question as to whether a woman takes her husband's name by operation of law. Rather, the court held that because no evidence of fraud was alleged, the lower court had abused its discretion in failing to grant the petition. The court also based its decision on the fact that the petitioner's husband supported her request, no children were involved and no objections had been filed.

One suit has held that a married woman, in her request for a name change, is not limited to a choice between her antenuptial name or her husband's name. In *Matter of Natale*,[81] a Missouri appeals court granted a statutory name change to a married woman who had used her husband's surname after marriage. She had been known by three surnames prior to her marriage due to her mother's changing her name because of remarriages and because of petitioner's one formal adoption. In reversing the trial court, the appeals courts recognized both the common law right and the statutory right of a married woman to change her name. The court held that there was no requirement of a common surname. In the absence of a showing of harm to her future children, her spouse or creditors resulting from the name change and because the surname chosen was not bizarre, offensive or a name of a governmental body, the court stated the petitioner was entitled to the statutory change of name.

79. ___ Ind. ___, 312 N.E.2d 857 (1974).
80. ___ Me. ___, 342 A.2d 688 (1975).
81. 527 S.W.2d 402 (Mo. App. 1975).

This viewpoint has been adopted in a growing number of state courts in recent years. These courts have upheld the right of a married or divorced woman to keep her own name or to change her name under the common law or under applicable state name change statutes.[82] Despite the support for the common law rule as stated in *Kruzel* and other decisions, a number of earlier cases, in dicta, state the opposite result that upon marriage a woman, ipso facto, assumes her husband's name and automatically abandons her own birth name. In only one case reaching this result did the woman assert her common law right and retain her birth name after marriage.[83]

A married Chicago attorney wanted to maintain her voter registration in her birth name. The appellate court said she could not because it is "by common-law principles and immemorial custom that a woman upon marriage abandons her maiden name and takes the husband's surname, with which is used her own given name."[84] The court cited several cases in support of its decision, none of which cited any English common law, but ignored all cases reaching an opposite result. The court did cite *Reinken v. Reinken*,[85] a 1933 case involving a divorced woman who wished to resume her first husband's surname, but apparently disregarded that court's reasoning that, even without statutory permission, a woman has the right to change her name under the common law.

Although *Lipsky* is cited as authority in various cases and in *American Jurisprudence*,[86] the Illinois Attorney General has rejected its holding. "I do not believe that this decision should

82. Custer v. Bonadies, 30 Conn. Supp. 385, 318 A.2d 639 (1974); Marshall v. State, 301 So. 2d 477 (Fla. App. 1974); Application of Halligan, 46 A.D.2d 170, 361 N.Y.S.2d 458 (1974); Application of Lawrence, 133 N.J. Super. 408, 337 A.2d 49 (1975); *In re* Marriage of Banks, 43 Cal. App. 3d 631, 117 Cal. Rptr. 37 (1974); Egner v. Egner, 133 N.J. Super. 403, 337 A.2d 46 (1975); *In re* Mohlman, 26 N.C. App. 220, 216 S.E.2d 147 (1975). In *Mohlman*, the court ruled that a married woman could petition for a change of name to her birth name but held that the woman involved in this case did not show "good cause" and "good and sufficient reason" for the name change as required by state statute. Davis v. Roos, No. X-369 (Dist. Ct. of Appeal, 1st Dist., Fla., filed Feb. 3, 1976).

83. People *ex rel.* Rago v. Lipsky, 327 Ill. App. 63, 63 N.E.2d 642 (1945). Law review commentators agree that *Lipsky* is based on an incorrect analysis of the law. *See, e.g.*, MacDougal, WOMEN'S RTS. L. REP., *supra* note 60; Lamber, *A Married Woman's Surname: Is Custom Law?* 1973 WASH. U.L.Q. 779 (1973).

84. 327 Ill. App. 63, 67, 63 N.E.2d 642, 644 (1945).

85. 351 Ill. 409, 184 N.E. 639 (1933).

86. AM. JUR. *Name, supra* note 11.

control. The other Illinois decisions and cases elsewhere establish that a woman may in fact retain her own name upon marriage with or without court proceedings."[87] The courts in *Kruzel* and in *Dunn* explicitly rejected *Lipsky* and its view of the common law.

Freeman v. Hawkins[88] was also cited in *American Jurisprudence*,[89] but this case does not fall within either category of name cases because it dealt specifically with requirements for personal jurisdiction and only indirectly with the general area of married women's surnames. In *Freeman*, the court held that service by publication in the birth name of a woman who had married and adopted her husband's surname was inadequate to confer personal jurisdiction. In dicta, the court said the law conferred on a woman the surname of her husband. But a Texas case, *Rice v. State*,[90] decided several years later, reached an opposite conclusion. The court failed to mention *Freeman*, thus negating its importance as precedent in Texas.

One of the earliest and most influential cases on married women's surnames is *Chapman v. Phoenix National Bank*,[91] another case involving adequacy of notice. Stocks registered in the name of Verina S. Moore, birth name of Verina S. Chapman, were confiscated by the federal government during the Civil War. A default judgment was entered against "Ver. S. Moore" in New York, and Mrs. Chapman, who was then living in North Carolina and had no notice of the action, moved to vacate the judgment. The New York court held that the proceedings were defective because of lack of notice to Mrs. Chapman. In dicta the court stated:

> For several centuries, by the common law among all English speaking people, a woman, upon her marriage, takes her husband's surname. That becomes her legal name, and she ceases to be known by 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.[92]

87. OP. ATTY. GEN. ILL. No. 695, Feb. 13, 1974, *cited in* Dunn. v. Palermo, ___ Tenn. at ___, 522 S.W.2d at 684.

88. 77 Tex. 498, 14 S.W. 364 (1890).

89. AM. JUR. NAME, *supra* note 11.

90. 37 Tex. Crim. 36, 38 S.W. 801 (1897).

91. 85 N.Y. 437 (1881).

92. *Id.* at 449.

The Wisconsin court in *Kruzel* cited *Chapman* but pointed out that in *Application of Halligan*,[93] a unanimous New York court held that a married woman could use her birth name as her legal name in New York. The Wisconsin court interpreted *Halligan* as specifically negating the precedential effect of *Chapman*.

The cases holding that a married woman must adopt her husband's surname often form the basis for such trial court decisions as that in *Kruzel*. But, there are several drawbacks in these decisions. None of the cases examine the common law origin of names and name changes to determine if the common law in fact supports their conclusions. They generally fail to cite authorites and cases holding an opposing view. Only one case, *Lipsky*, dealt specifically with a married woman who consistently used her birth name after marriage, maintaining that she had a common law right to do so. Since the married woman's legal name issue was peripheral in some cases to the overriding issue of adequacy of notice and service of process, many courts never carefully examined the name issue alone. In addition, the majority of these cases were decided before the rise of the women's movement in the mid 1960's. With the growth of the movement and its demands for equal rights for women, legislatures and the courts have increasingly recognized the problem of sex discrimination and taken affirmative steps to correct it through legislation[94] and judicial decisions.[95]

CONSTITUTIONAL IMPLICATIONS

The *Kruzel* decision recognized the common law right of a married woman to use her birth name or any other name she chooses. The trial court in *Kruzel* framed its opinion in terms

93. 46 A.D.2d 170, 361 N.Y.S.2d 458 (1974).

94. Title VII of the Civil Rights Act of 1964 prohibits discrimination by an employer, labor organization or other organization covered by the Act based on "race, color, religion, sex, or national origin." 42 U.S.C. §§ 2000e-2(a)(b)(c) (1970). The Equal Pay Act of 1963 prohibits wage discrimination by employers on the basis of sex. 29 U.S.C. § 206(d) (1970).

95. *See, e.g.*, Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973). As late as 1961, the United States Supreme Court upheld a statute prohibiting women from jury duty unless they volunteered, stating that a woman "is still regarded as the center of home and family life." Hoyt v. Florida, 368 U.S. 57, 62 (1961). The Court recently held that women as a class cannot be excluded or automatically exempted from jury service solely on the basis of sex if the consequence is that criminal jury venires are almost all male. Taylor v. Louisiana, 419 U.S. 522 (1975).

of a common family surname, stating that family unity "requires that all members thereof bear the same legal name."[96] To avoid the "inevitable clash between his ruling and the fourteenth amendment,"[97] the trial judge stated that both marriage partners could petition for a name change if they agreed that the wife's maiden name or any other name should be the legal name of the parties. The ACLU-NOW LDEF amici curiae brief challenged this contention stating that unquestionably this "will operate under the weight of custom to coerce women into surrendering their birth names, thus elevating custom into law and denying women the equal protection of the laws as guaranteed by the fourteenth amendment."[98]

Using an analogy to cases arising under Title VII of the Civil Rights Act of 1964,[99] the argument was made that:

> Just as superficially neutral employment qualifications that have a discriminatory impact must fall unless they "bear a demonstrable relationship to successful [job] performance," so the rule applied in the case at bar [*Kruzel*] must fail, for the bearing of an identical surname by all members of a family is not critical to or even demonstrably supportive of family stability.[100]

The Wisconsin Supreme Court in *Kruzel* did not have to deal with constitutional issues involved in a common surname requirement as advocated by the trial court because it based its decision solely on the common law. But if a court mandates a common surname or holds that reregistration statutes require

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96. Appellant's Brief, *supra* note 8, at Appendix 104.

97. Brief for American Civil Liberties Union and National Organization for Women Legal Defense and Education Fund as amici curiae at 3, Kruzel v. Podell, 67 Wis. 2d 138, 226 N.W.2d 458 (1975) [hereinafter ACLU-NOW LDEF Amici Brief].

98. *Id.* at 3-4.

99. 42 U.S.C. § 2000e *et seq.* Title VII forms a basis of appeal to the Sixth Circuit Court of Appeals in Allen v. Lovejoy, No. 76-1081 (6th Cir. 1976). In the case, a federal district court in Tennessee refused to grant back-pay to a woman who was suspended from her job for refusing to comply with a County Health Dept. rule requiring a woman employee to use her husband's surname on personnel forms and for refusing to utilize available department appeals procedures. The County Board of Commissioners subsequently revised the rule and the employee was reinstated. The Court ruled that the employee was required to use the department's appeals process before she could claim deprivation of property without due process. The court did not examine the issue of whether a woman necessarily had to adopt her husband's surname upon marriage. Allen v. Lovejoy, Civ. No. C175-118 (W.D. Tenn. Oct. 23, 1975).

100. ACLU-NOW LDEF Amici Brief *supra* note 97, at 8, *citing* Griggs v. Duke Power Co., 401 U.S. 424, 431 (1974).

married women to reregister with the voting registrar or motor vehicle department when their names are changed by marriage, these constitutional arguments should be raised. These requirements and court decisions holding that married women must adopt their husbands' surnames upon marriage seem increasingly subject to constitutional attack based on recent judicial interpretations of the equal protection and due process clauses of the fourteenth amendment.

A requirement that a woman adopt her husband's surname without imposing a similar requirement on the husband creates a classification based upon sex. The courts have held that states may establish classifications but there must be a rational basis for them. In addition, the classification must have a "substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike."[101] It is difficult to see the rational basis for requiring a woman to adopt her husband's surname so that husband and wife will have a common surname. Even a requirement such as the trial court espoused in *Kruzel*, that either husband or wife could change his or her name or both agree to adopt a new name, would not meet a constitutional challenge. "The purportedly 'sex-neutral' ruling that one party to a marriage must relinquish his/her name is invidiously discriminatory in its impact on women . . . ."[102]

In the area of administrative convenience, a rational basis was found by the three-judge panel in *Forbush v. Wallace*[103] for Alabama's regulation requiring that a married woman obtain a driver's license in her husband's name. The court specifically noted that Alabama offered a "simple, inexpensive means"[104] by which any person, including married women, could statuto-

101. F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

102. Brief for American Civil Liberties Union as amicus curiae in Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A.2d 223 (1973), *cited in* BOOKLET FOR WOMEN WHO WISH TO DETERMINE THEIR OWN NAMES AFTER MARRIAGE (1974).

103. 341 F. Supp. 217 (M.D. Ala. 1971), *aff'd mem.*, 405 U.S. 970 (1972). The constitutional issues raised in Forbush are being litigated in Whitlow v. Hodges, No. 74-1726 (6th Cir. 1974) on appeal from the United States District Court for the Eastern District of Kentucky. *Civ. No. 74-7* (E.D. Ky., Feb. 14, 1975). For a discussion of the constitutional issues and the *Forbush* case, *see, e.g.*, FAMILY L. REP. *supra* note 6; Lamber, *supra* note 83; Daum, *The Right of Married Women to Assert Their Own Names*, 8 MICH. J. LAW REFORM 63 (1974); Gordon, *Pre-Marriage Name Change, Resumption and Reregistration Statutes*, 74 COLUM. L. REV. 1508 (1974); Comment, *The Right of Women to Use Their Maiden Name*, 38 ALBANY L. REV. 105 (1973).

104. 341 F. Supp. 217, 222 (M.D. Ala. 1971).

rily change his or her name. Without this, the court may not have reached the same result. The United States Supreme Court affirmed the district court in *Forbush* without opinion. The previous year the Supreme Court had explicitly rejected this administrative convenience reasoning in *Reed v. Reed*.[105] The Court, in holding that an Idaho statute requiring males to be preferred over females in appointing administrators of estates was a denial of equal protection, found that no rational relationship existed between the classification based on sex and the stated objective of the statute. Some commentators observe that in married women's name change cases the substance of the argument that administrative convenience necessitates that a woman adopt her husband's surname

> 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.[106]

A much stricter standard than the rational basis test is applied where a statute abridges a fundamental right[107] or creates a suspect classification such as race.[108] Any such infringement can only be tolerated if a "*compelling* governmental interest" is demonstrated.[109] In *Frontiero v. Richardson*,[110] four justices agreed for the first time that sex was a suspect classification and a fifth, Justice Powell, specifically refused to rule on the issue because of the pendency of the Equal Rights Amendment. The court invalidated a statute on due process grounds which permitted a presumption of dependency in the case of a serviceman's family but not in the case of a servicewoman's family. In its increasing scrutiny of discrimination based on gender, the Court has had ample opportunity to declare sex a suspect classification, but has declined to do so. At first glance it seems unlikely on the basis of these decisions and the current membership of the court that the stand on this issue will change.

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105. 404 U.S. 71 (1971).

106. Lamber, *supra* note 83.

107. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

108. *E.g.*, Bolling v. Sharpe, 347 U.S. 497, 499 (1954); Korematsu v. United States, 323 U.S. 214, 216 (1944).

109. Shapiro v. Thompson, 394 U.S. 618, 634 (1969).

110. 411 U.S. 677 (1973).

Arbitrary name change laws or common surname requirements which discriminate against married women can also be challenged as an infringement of a fundamental right. Two interrelated approaches could be used. The personal right of privacy as well as marriage itself are recognized fundamental rights. Marriage is a basic civil right "fundamental to our very existence and survival."[111] The Supreme Court, in interpreting the equal protection doctrine, "demands recognition of marriage as a relationship between equals—a relationship in which neither may be assumed the dominant partner."[112] A regulation or judicial decision which arbitrarily requires a woman to give up her antenuptial name at marriage or requires a common surname which would have a disparate impact on women negates the idea of equality and directly impinges on the fundamental marriage relationship. Based on recent court decisions, it is doubtful whether a compelling state interest in such a common name requirement could withstand judicial scrutiny on equal protection or due process grounds.[113]

The personal right of privacy is also a recognized fundamental right,[114] requiring that any limitation be justified by a compelling state interest. Justice Douglas, concurring in *Roe v. Wade*,[115] defined this right as "the privilege of an individual to plan his own affairs."[116] Justice Brandeis called it the right "to be let alone."[117] Case law or administrative regulations which demand that a woman, when she marries, use a particular surname could be deemed a violation of the ninth amendment and the privacy right.

The proposed Equal Rights Amendment (ERA),[118] which has been approved by thirty-four of the thirty-eight states necessary for ratification, may provide an additional legal basis for

111. Loving v. Virginia, 388 U.S. 1, 12 (1967); Eisenstadt v. Baird, 405 U.S. 438 (1972).

112. ACLU-NOW LDEF Amici Brief, *supra* note 97, at 5.

113. *E.g.*, Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973); Weinberger v. Weisenfeld, 420 U.S. 636 (1975).

114. Roe v. Wade, 410 U.S. 113 (1973); Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

115. 410 U.S. 113 (1973).

116. *Id.* at 213.

117. Olmstead v. United States, 277 U.S. 438, 478 (1928), (Brandeis, J. dissenting).

118. H.R.J. Res., No. 208, 92nd Cong., 2nd Sess. (1972): "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

challenging these regulations and judicial decisions. The actual impact of the ERA will not be known unless it is adopted by the states and subsequently interpreted by the courts. Some commentators believe the amendment will make sex a suspect classification, thereby requiring a compelling state interest to allow a particular classification based on sex.[119] Other commentators say that classification based solely upon sex will be prohibited absolutely.

> In a case where a married woman wished to retain or regain her maiden or some new name, a court would have to permit her to do so if it would permit a man in a similar situation to keep the name he had before marriage or change to a new name. Thus common law and statutory rules requiring name change for the married woman would become legal nullities.[120]

Another commentator states, "There can be no question that when the Equal Rights Amendment is ratified, no woman can be compelled to change her legal name each time she remarries."[121] Based on this reasoning, a common surname requirement would also be prohibited by the ERA. A third viewpoint holds that the Equal Rights Amendment will have no effect on a married woman's right to retain her own name.[122]

Whatever the ultimate result of the ERA, it seems likely in the light of recent court decisions, that requirements compelling women to adopt their husbands' surnames for whatever reason or mandating a common surname will raise serious constitutional questions and will be subject to careful scrutiny by the courts.

CONCLUSION

Although the Wisconsin Supreme Court has held that married women can retain their own names, the majority of women in Wisconsin will probably continue to change names when they marry and use the same surname as their husbands. But for an increasing number of women, the decision represents a

119. Karst, *"A Discrimination So Trivial": A Note on Law and the Symbolism of Women's Dependency*, 49 L.A. BAR BULL. 499, 508, (Oct. 1974).

120. Brown, Emerson, Falk & Friedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 940 (1971).

121. MacDougall, WOMEN'S RTS. L. REP., *supra* note 60, at 14.

122. L. KANOWITZ, WOMEN AND THE LAW 40 (1969).

recognition by the court of the right of a woman to her own identify, separate from that of her husband. It is important as a symbolic statement of equality of rights under the law.

The court in *Kruzel* presented a succinct, well-reasoned decision that under the common law a married woman does not have to adopt the surname of her husband. But, if she chooses, she may "habitually" or "customarily" use her husband's name and thereby adopt his name by usage and repute. The dissent argued that the majority holding locked a woman into choosing and using one name and one name only as her "legal" name. The majority, significantly did not use the term "exclusively" and clearly no such implication should be made. The court merely said a woman can adopt a name by habitual and customary use. But if a woman uses a name other than her husband's surname, she might have to use that name consistently and exclusively to avoid any presumption that, as a married woman, she is better known by his surname.[123]

Although the majority declined to rule on the issue of whether a married woman who used her husband's surname can resume her birth name, this should constitute no major problem using the court's own reasoning. Under the common law, a person may acquire a new name by general usage. Therefore, a married woman could simply resume use of her birth name or she could petition for a statutory change of name. Under Wisconsin law, the change will be granted "if no sufficient cause is shown to the contrary."[124] The majority, in dicta, stated that the trial court's discretion under the statute is "extremely narrow"[125] and any refusal must be based on the facts and reasonable proof. Thus, in the absence of fraud, a married woman would generally be granted a statutory name change in Wisconsin. This view is further buttressed by the recent legislative enactment amending Wisconsin Statutes section 247.20,[126] which provides that upon request either sposue may as a matter of right resume any "former legal surname" upon the granting of a divorce. This statutory amendment also substantially weakens the argument of the dissent which relied on the origi-

123. FAMILY L. REP., *supra* note 6.
124. WIS. STATS. § 296.36 (1973).
125. 67 Wis. 2d at 153, 226 N.W.2d at 468.
126. WIS. STATS. § 247.20 (1973).

nal statute to show legislative recognition of a "single family name acquired by marriage."[127]

The court's decision, with its analysis of common law views on surnames of married women and its careful examination of state statutes, can serve as a guide for other states in the area of personal names. *Kruzel* also clarifies any misunderstanding that might have existed in Wisconsin concerning the right of a woman to retain her birth name after marriage.

PATRICIA J. GORENCE

127. 67 Wis. 2d at 160, 226 N.W.2d at 472.